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WHAT FUTURE FOR THE WELFARE STATE?

Proceedings of National Social Policy Conference
Sydney, 5-7 July 1989

Volume 6: Concurrent Sessions

Community Services: Policy and Practice

edited by

Sara Graham

Social Policy Research Centre
THE UNIVERSITY OF NEW SOUTH WALES
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FOREWORD

This report is one of six published by the Social Policy Research Centre and based on papers presented to the National Social Policy Conference held at the University of New South Wales on 5-7 July 1989. The overall theme of the Conference was **Social Policy in Australia: What Future for the Welfare State?** The six reports are published in the Social Policy Research Centre **Reports and Proceedings** series with the following numbers and titles:

No. 79 **Volume 1: Plenary Sessions**, edited by Peter Saunders and Adam Jamrozik.

No. 80 **Volume 2: Concurrent Sessions. Contributions from the Social Policy Research Centre**, edited by Peter Saunders.

No. 81 **Volume 3: Concurrent Sessions. The Ideology, Philosophy and Political Environment of Social Policy**, edited by Adam Jamrozik.

No. 82 **Volume 4: Concurrent Sessions. Social Policies in Australia and New Zealand**, edited by Russell Ross.

No. 83 **Volume 5: Concurrent Sessions. Income Maintenance and Income Security**, edited by Peter Whiteford.

No. 84 **Volume 6: Concurrent Sessions. Community Services: Policy and Practice**, edited by Sara Graham.

The papers in this report address a number of issues that relate to the finance, provision, and administration of community services and what the impact of those services has been. The breadth of topics covered in the report - ranging from legal aid and child welfare to public housing and health-related services - illustrates the very important role that community services play in the lives of many Australians, particularly those in the most disadvantaged circumstances. The range of social policy issues raised in the papers in the report point to the need for, and importance of, further research in the community services area.

The Conference on which this report is based was designed to bring together a range of individuals, researchers and practitioners working throughout Australia on contemporary social policy issues, and to provide a national forum for the exchange of ideas, information, analysis and results. The Conference was always seen by the Centre as a way of raising the profile of debates on social policy research and analysis, rather than as a platform for the expression of definitive conclusions or particular points of view. If the social policy debate in Australia is to be taken as seriously as the economic policy debate is currently, there is not only a need for more research, but also for more critical debate and assessment of the issues raised by that research.

It was extremely encouraging to see from the total number of contributed papers presented at the Conference, as well as from the many stimulating discussions generated during the Conference, that social policy research in Australia is already attracting a good deal of attention from individuals from a broad range of disciplinary perspectives. In publishing the papers in this and the other reports from the Conference, the Social Policy Research Centre aims to make available to a wide audience a body of work on social policy that reflects the state of the discipline in Australia at the end of the 1980s. The Centre itself does not assume responsibility for the views expressed in the papers in this and its companion reports. It does, however, hold firmly to the view that a healthy research environment is crucially dependent upon publication and critical review of research papers and results.

The Centre is already planning a second National Social Policy Conference to take place in July 1991. These plans, along with the release of this report, are part of a broader strategy designed to enhance the nature of the Australian social policy debate, thereby creating a more conducive climate for the development of social policies that address our social problems.

Peter Saunders
Director

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THE CHILDREN OF PRISONERS SUPPORT GROUP

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> *Children almost invariably suffer, when their parents are imprisoned. Some of the problems they face are inevitable by-products of the simple fact of parental removal ... Many, however, are not inevitable. They are caused by structural inadequacies in the prison, legal and welfare systems - inadequacies which could be rectified by changes in public policy, if only the will to do so existed.* (Social Research and Evaluation Ltd., 1982, p. i)

1. INTRODUCTION

The recent vigorous critiques and analyses of social policies coming from the gender class perspective in such works as **Labour of Loving** (Finch and Groves, 1983) and **Women, Social Welfare and the State** (Baldock and Cass, 1983), have disentangled the several ways in which the nexus between caring and dependence has been both exploited and reconstructed in a variety of areas of social policy. However the extensive caring work of families of prisoners is generally not a visible element in these analyses of the changing boundaries between state and family and the economy. There are major shifts currently occurring in the penal-welfare field as penal administrators of nearly all Western Industrial Societies face the increasing problems of prison overcrowding. The Children of Prisoners Support Group would like to highlight the implications of these changes for families of prisoners and in particular the consequences for those families who are the outside carers of children of prisoners.

2. THE CHILDREN OF PRISONERS SUPPORT GROUP

When offenders are sentenced two sets of people are punished: the man or woman imprisoned and the family outside. Children of prisoners comprise a sizeable, though hidden section of our community. It is estimated that on any given day 3,000 children have a parent in prison in NSW and yearly some 10,000 children may be in this situation.[1] These figures can only be estimates as children of prisoners are effectively invisible. It has been argued that the 'invisibility' of children affected by the imprisonment of one or both parents is an inherent aspect of a judicial and penal system that is based upon the principle of specific individual punishment for individual offences. In the words of the Children of Imprisoned Parents Report this invisibility

> *... is not accidental. It is both convenient and necessary, because those who uphold the prevailing legal and penal ideology simply cannot afford to consider what happens to prisoners' kids. Any recognition of their plight strikes at the very notions of 'justice', ... 'innocent' and 'guilt' upon which this ideology is founded.* (Social Research and Evaluation Ltd., 1982, p. 1)

The Children of Imprisoned Parents Report was commissioned by the Family and Childrens Services Agency of the Ministry of Youth and Childrens Services. The report was released to the media at a public meeting in March 1982. Following that meeting the Children of Prisoners Support Group (CPSG) was formed with the objective of pressing for the implementation of the report's recommendations. Of the six major recommendations none have been fully implemented and are unlikely to be without a major shift in public attitudes.

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1. This can only be an estimate as there are no official records of just how many children are affected by the imprisonment of their parent. These figures are extrapolated from the data in the **Children of Imprisioned Parents Report** (Social Research and Evaluation Ltd, 1982).

The Self Support Group

A Community Worker funded through the CEO program was appointed in 1985 to work towards setting up a self support group of outside carers of prisoners' children. In one year the Community Worker was successful in establishing a group of ten to twelve women who met regularly to share information and experiences. As families of prisoners' groups are comprised of an inherently shifting population, and the families 'outside' have to struggle with almost overwhelming practical and emotional problems as part of their day to day lives, the Community Worker's position as a core person is essential for the maintenance of the self support group.

The self support group is a particularly important component in the CPSG program as the children and families of prisoners constitute a minority group whose special problems are not specifically addressed in the provision of practical services. The prison, legal, welfare, and educational systems overlook the special and specific needs of these children and their outside carers. Of the several recommendations of the Children of Imprisoned Parents Report it was this issue that was given priority in the request for:

> *immediate and adequate funding of an autonomous community based organisation of families and friends of prisoners in order to:*
>
> *- provide mutual support, advice and assistance in accordance with the self help model of need satisfaction*
>
> *-ensure that the legitimate voice of those affected by the prison and welfare systems is heard and seriously considered in policy decisions at all levels.* (Social Research and Evaluation, 1982, p. iii)

Children of Prisoners - Issues

There are several issues that need to be addressed in relation to current penal policies and their implications for children of prisoners and their outside carers. Some aspects of the plight of children of prisoners are long standing and intricately bound up with contradictions inherent in a society where incarceration is a significant form of punishment yet where social and family policies ensure that being a member of a single parent family is to be at grave risk of impoverishment. Children of prisoners are an especially significant group of children because they are caught between the contradictions of two sets of government policies. Firstly, in the social-welfare sphere, a variety of taxation and social security policies and practices continually reinforce the importance of the male parent as primary breadwinner. Secondly, in the legal-penal sphere, the central feature of the system of punishment and control is imprisonment which is the direct restriction of the parent's freedom to exchange his[2] labour for a wage.

Layered onto this basic cause of the 'hidden' punishment of children of prisoners is a complex and often contradictory set of policies and practices as the political climate surrounding penalty shifts from an emphasis on 'reform' to 'back to justice' to 'law and order'. The often ad hoc policies that follow these political wings have incorporated families of prisoners into the penal system in a number of contradictory ways. Families of prisoners are expected to be the 'bridge back to society', the prisoners 'major reforming agency' or 'central source of his self respect' yet they are also seen as potential threat to the security of the prison and their visits as disruptive to prison routine.

There is a considerable body of international and Australian evidence (Morris, 1965; Holt and Miller, 1972; Perry, 1974; McGowan and Blumenthal, 1978; Liker, 1981; de Coninck, 1982; Jones, 1983, Ferraro et al., 1983; Hounslow, 1984; Baunach, 1985, Smith, 1986) that prisoners' familie face a series of interwoven parallel punishments: heavy

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2. This does not mean that children of imprisoned mothers are not also punished. Indeed there is great deal of evidence that the experience of children of female offenders is especially traumatic. However, since its introduction as the central feature of punishment in the late eighteenth century, imprisonment has become an increasingly masculinised form of social control with the proportion of women to men in prision declining from approximately 30 per cent to 5 per cent in the past 200 years.

economic costs, serious obstacles in accessing essential information, social isolation, heavy emotional demands made by the prisoner inside, pressing emotional needs of children, the risk of social stigma, considerable practical problems relating to housing, childrens schooling and in dealing with complex penal, legal and welfare bureaucracies, and the lack of any political voice to give expression to these unique problems.

Although as this evidence suggests, there are many issues that need to be addressed the discussion in this paper will be limited to the two topics:

i) Visiting Conditions

ii) Home Detention

3. VISITING CONDITIONS

Visiting poses particularly heavy practical, economic and emotional demands, especially for the outside carers of prisoners' children. It is important to emphasise that the experience of visiting for families of prisoners conflicts with the usual perceptions of visiting as an occasional and pleasurable aspect of life associated with leisure and autonomy. In contrast, for families prison visiting is a pivotal point of their daily life. It involves a considerable amount of preparation. One prison visit of an hour can take a complete day[3] especially if the family has no private transport. This work of visiting includes: arranging timetables, preparing and carrying the requirements for caring for young children for the day, ensuring that children of school age are cared for in after-school time as visits often involve the outside carers in travelling long distances on inconvenient bus routes that can include one or more changes of buses or trains. Visits to country prisons (or for families living in country areas who visit metropolitan prisons) involve the even greater practical problems of finding accommodation and care for their home and for school age children whilst they are away. The unrecognised work that families do in maintaining contact with prisoners is undertaken in the face of often seemingly insuperable obstacles and with little or no support, advice or assistance.

It is important also to emphasise that the work of visiting plays a significant yet unpaid and largely invisible part in the administration of our penal system in at least two ways:

1) regular visits by families are incorporated into the management of prisons and prisoners. The work that families do in maintaining contact with the prisoner has been shown to make a direct contribution to moderating the negative effect of imprisonment and the reduction of tension within prison (Howser et al. 1983; Homer, 1979). Visiting is drawn explicitly into the management of prisons as family contact is defined not as a right but as a privilege that can be withdrawn as a form of punishment or control.[4]

2) the punishment of imprisonment is usually for a pre-determined period, defined by a release date. From this date a prisoner will re-enter the community. Therefore maintaining family contact is recognised as an important factor in social re-integration and a preventative factor in re-offending. Thus the offender's family is constructed as the prisoner's 'bridge back to the community'. When we have penal policies predicated upon the principle of the prisoner's return to the community, we as a society make use of the unpaid labour of the families of prisoners especially in the extensive work that they provide in maintaining contact with the prisoner through the work of visiting.

The same 'double equation' occurs then in penal policies and practices as it occurs in other spheres of social policy where, in Finch and Groves words:

> *... in practice community care equals care by the family, and in practice care by the family equals care by women.* (Finch and Groves, 1983, p. 224)

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3. Visits to country prison or for families of prisoners in metropolitan prisons who live in the country.

4. The CPSG has argued that visits should be redefined as a **right of the child.**

The caring work of prison visiting is an unpaid and largely invisible part of the administration of our penal system. Indeed visiting often involves major economic and emotional costs to the women who provide the extensive caring work of visiting prisons. The extent of these costs is partly evidenced here in the experiences of some of the women who maintained contact with prisoners in the Central Industrial Prison in the Long Bay Complex in NSW over the period 1986 to 1988:[5]

CAROL Husband has been in various prisons, now in CIP, daughter 12, son 6.

> *... you see, there's just no facilities. There's no one to look after the children. You know, not all women have got families they can say to 'Look Mum, can you look after the kids while I go to the jail' and there's no facilities at the jail ... at Parklea they've got swings and grass. In fact if every prison in NSW was like Parklea, jail visiting wouldn't be so bad whereas in the CIP it's like going back to the days of the penal colonies.*

BRENDA Husband in CIP, son 3

> *You're so close and so far apart ... no conversation ... a whole lot of people in one room, no privacy .. two guards at both ends, if the children run around a lot the screws say some smart remark. There should be some toys or something but there's nothing for them to do.*

BETH Husband in CIP, teenage daughter and son

> *You cannot smoke you cannot get a cup of coffee. The tables' numbered, the keys numbered and you are called out as a number...'number four you can sit down' number four, leave'.*

CAROL

> *If you're lucky and he hasn't had a contact visit that week, you'll get a contact visit. But if there's not enough room, you'll get a box visit. It's not that he's done something wrong. It's just that there's not enough room.*

GWEN Husband in CIP, daughter 5

> *I can't stand those box visits. We used to have one contact visit and then one box visit ... you can hardly see their face, or hear what they're talking about. If you want them to hear you have to yell out real loud so everyone else can hear.*

JULIE Husband in CIP, daughter 13, daughter 4

> *... although they knew it was my first time - and I was really shaking, a real nervous wreck - and the warders tell you nothing, any thing you find out, you find out yourself, and that was mainly through the other women.*

VIRGINA Husband was in Goulburn, now in CIP, son 2, eight months pregnant.

> *... how come one jail has one set of rules and another jail has another set of rules ... because at Maitland I used to be allowed to take his bottle in but down here in the CIP you're not allowed. And sometimes you have to wait an hour before you go in to visit and the kid's screaming and tired especially after it takes an hour to get here getting on to the bus. At Maitland you can get a cup of coffee but down here in CIP there's absolutely nothing in the visiting room. So by the time you get called in, by the time*

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5. Taken from transcripts that form part of an unpublished thesis for a PhD at the University of Wollongong.

your husband gets taken out the baby's is tired and hungry so the only hour you get to visit with your husband in prison has got to be spent keeping the child quiet. And the guards told him 'if they play up too much they end the visit'. Now I don't reckon that's fair - we only get a flaming hour.

JANE Husband CIP, son eighteen months

You can't take nappies in for the baby so the baby's got to stay in the one nappy for the visit. You can't take the bottles in or the dummies or anything. If he's wet you've got to cut the visit short or wait until the visits over to change them. I've had times when I've checked Mark just before I went in there and he's been bone dry and then the next minute he's just piddled and piddled and piddled. He's held it all the way from home to here then just let go.

GWEN

Nicol, my daughter, won't come and visit ... she remembers that it (visiting) hurt. She used to cry when he used to leave her the last time I'd take her and visit. She'd cry because she didn't want to go home. She wanted him to go home with her and I think she just remembers all that and she doesn't want to go through that again. I can understand that because it hurts me too, but there's not much you can do about it.

JANE Husband CIP, daughter 6

Christie's always liked to know that Dad's there and she keeps it inside herself. She had a - the doctor said it was an - emotional problem. She just wasn't putting on weight. She'd eat and eat, she just wasn't putting on weight.

JULIE

They take turns (come to visit with me). ... My husband was very, very tense and I looked at my little girl as I was walking through the gate and the tension must have gone to her something phenomenal, she looked as if she was going to pass out ... she just had a strange look all over. I thought 'My God, this poor kid's feeling the tension from him and me and she's just picking it up'.

Economic Costs

In addition to these considerable practical and emotional costs of visiting there are also economic costs. Hilary Graham has highlighted the paradox of the work of caring and its costs to women:

> *... for men, economic dependency and poverty is the cost of being cared for: for women, economic dependency and poverty is the cost of caring.* (Graham, 1983, p. 25)

In providing the considerable unpaid work of maintaining contact between imprisoned parents and their children the outside carers can be involved in major costs for travelling and accommodation.

There is considerable pressure on families to provide material support for the prisoner. Families can be faced with having to provide basic necessities for prisoners: underwear, clothes, food and toiletries as well as money for those items that help to provide the prisoner with some sense of contact with the outside world, for example television, hobby equipment or magazines. Not infrequently, because of the emotional pressures and the transfer of guilt commonly felt by prisoners families, the basic needs of the family outside are sacrificed in order to provide such material support for the prisoner.

Current Penal Policies

Sue Smith, in researching the impact of penal policies in families of prisoners in England, makes the point that the recent New Right emphasis upon law and order in policing and penal policies has direct consequences for families of prisoners:

> *... it would be political suicide to build up one picture of crime and criminals to the voting public, instilling fear and prejudice, and presenting a law and order platform, and then contravene it by aiding prisoners' families.* (Smith, 1986, p. 7)

The 'law and order' orientation that has characterised juridical and penal policies and practices in NSW, has resulted in the current situation of prison overcrowding. By May this year, the NSW prison system had reached its highest population level for nearly 20 years. In that month there were over 4,500 prisoners in custody in the State and the prisons were overcrowded by 13 per cent. The Long Bay complex was 300 prisoners, and the Central Industrial Prison 235 prisoners, over the usual capacity with some prisoners in the CIP being forced to sleep on mattresses on cell floors because of lack of beds (Harvey, 1989, p. 4).

The recent 'truth in sentencing' legislation, is likely to exacerbate the problem of prison overcrowding.

In addition to increasing the number of families who become involved in the criminal justice system this major pressure on resources depends what has been called the 'protracted crisis' of having a family member imprisoned in a number of ways:

i) Prisoners are being held longer in police lock ups where inadequate conditions of imprisonment increase the stress and trauma of the early post arrest period for the families outside.

ii) The pressure on resources of space and staffing in visiting areas in the major prisons make already difficult conditions almost intolerable.

iii) The increase in the case loads of welfare workers inside prison has not been accompanied by a parallel increase in resources for the Prison Welfare Service. The workloads of the unpaid prison visitors and of the workers in the Children of Prisoners Support Group has also undergone significant increase without parallel increases in resources.

iv) One particular concern the Group has about the rise in imprisonment rates is that there is even more pressure on families outside to supplement the economic costs of imprisonment. Last winter women visiting imprisoned relatives at the Long Bay complex reported that there were insufficient sweaters, pyjamas and even shoes so that prisoners were having to ask families outside to provide funds for these basic necessities. The 'law and order' policies of the last few years then have been partly subsidised from the budgets of the very families which are already struggling to respond to the many demands placed on them by the penal system.

The second issue we want to raise is directly linked to prison overcrowding. It is the issue of home detention.

Home Detention

Prison overcrowding has become an increasingly serious issue in nearly all major Western societies in the past decade (Australian Institute of Criminology, 1987). In several administrations the response has been to introduce home imprisonment programs (Australian Institute of Criminology, 1987). Electronic surveillance techniques have added an attractive 'technological fix' to these programs, promising tight controls at low cost (Schmidt, 1987).

One of our concerns is that the very obvious disadvantages of imprisonment to families of prisoners - the problems of visiting, of losing a major wage earner, and of maintaining family relationships particularly those between children and prisoners - can be used as influential arguments in support of home imprisonment. Nevertheless, these arguments mask several serious issues which we think need to be considered in relation to children of prisoners.

i) That imprisonment within the home can impose, particularly in periods of unemployment, potentially explosive forms of stress within the family especially if there is a 24 hour curfew in the home, or the kind of curfew which would go beyond what would usually be seen as normal for family interaction.

ii) There is a great deal of discussion by probation and parole officers about a contradiction inherent in their work. On one hand they are expected to be both caring or supportive toward the person on parole, on the other, they must supervise and control that person. If the prisoner is imprisoned in the home we would expect that contradiction to be a particularly severe experience for the parents or partner of the prisoner. All home detention programs, either explicitly or implicitly, impose on the partner or the parent of the prisoner the responsibility to monitor, control and potentially inform on the prisoner's behaviour in the home. We believe that this unpaid work of control would impose undue stresses on families of prisoners.

iii) Malcolm Feiner has pointed out another potential form of stress in home detention (cited in Law Reform Commission, 1987, p. 76). Families who actually decide **not** to sign the contract that allows the prisoner out on home imprisonment then have to face the fact that the prisoner is going to come out eventually and confront them about that decision.

iv) The Minister for Corrective Services in NSW has indicated that home detention is to be introduced in this State as a sentencing option for magistrates (Sydney Morning Herald, 11 January 1989). It is this option that causes most concern in relation to the dangers of net widening.[6] Net widening it is argued, occurs as increasing numbers of relatively minor offenders who would otherwise attract lesser sentences such as bonds or probation are sentenced to home detention (Cohen, 1985, Chapter 2). This would **increase** the total number of individuals under some form of incarceration.

v) An added problem is the possibility of increases in imprisonment rates from what Cohen has called the 'feedback loop' (Cohen, 1985, Chapter 2). Given the present unknown level of stress of home based imprisonment, it is possible that there could eventually be even higher numbers of gaol inmates, as 'failures' in the home prison programs may result in even longer prison sentences, with charges such as breach or 'escape' added to their original offence. In sum, more people could be drawn to the net of control and of these a significant number could end up in gaol, thereby exacerbating rather than relieving prison overcrowding.

vi) Finally, one of the constant themes in the debates about imprisonment is the 'capacity led thesis' (Australian Institute of Criminology, 1987). This suggests that the more prisons that are built, the higher the rate of imprisonment. From this 'supply-side' perspective of imprisonment, the introduction of home detention raises significant questions about the future in both the penal and the domestic sphere of life: if every home can be a prison how will this effect future imprisonment rates and will the outcomes mean a restructuring of domestic life in NSW?

4. CONCLUSION

The 1982 report on Children of Imprisoned Parents included the disclaimer that in delineating the extensive work and the hidden punishments borne by children of prisoners and their outside carers there was no intention to romanticise prisoners. Imprisoned parents as much as parents in the general community may be violent and oppressive and the imprisonment may be experienced as a relief for the family.

Nevertheless that report emphasised there is no reason to believe that those situations occur any more frequently in prisoners' families than in the community generally. For most children having a parent imprisoned is experienced as a major but unwarranted punishment that can exceed in its effects the legal punishment of the father or mother inside.

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6. The alternative is the 'back end option in which home detention comes towards the end of a period of institutional imprisonment (The Law Reform Commission, 1987).

The outside carers of children bear major burdens. They have demands placed on them from all sides and yet they are a largely invisible population, receiving little practical or financial support and having little or no voice in the several policies and administrative decisions in which they are nevertheless crucially involved.

Since the Children of Imprisoned Parents Report in 1982, and as a result of its publication, the Children of Prisoners Support Group has provided some practical assistance and a limited public forum through which the interests of families of prisoners can be articulated. Nevertheless there is little evidence in any of the official political, administrative or academic documents and discourses concerning the restructuring of our penal system that the interests of families of prisoners have any priority or are even marginally visible. At a time when this restructuring is likely to further draw the family into the system of punishment and control, both extensively and intensively, this invisibility is a cause for concern. We believe this concern should be shared not just by those people who comprise the population 'families of prisoners' but by all groups with interests in social policy and social control.

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FUTURE DIRECTIONS FOR SEXUAL ASSAULT POLICY

Moira Carmody
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1. INTRODUCTION

Sexual assault has been addressed as an aspect of social policy in Australia since the 1970s. Several government investigations into the issue were held in Queensland in 1945 (as cited Daniels and Murnane, 1977) and in NSW in 1969 (Legislative Council Select Committee into Violent Sex Crimes). However substantial government intervention in the form of the establishment of victim support services and legislative reform did not occur until the late 1970s and early 1980s.

This paper will trace the development of support services for victims of sexual assault and contrast the models utilised by NSW and Western Australia. Some of the constraints operating on the development of social policy in this area will be discussed. Finally, some future directions for sexual assault policy will be explored.

2. BACKGROUND TO THE DEVELOPMENT OF SERVICES

Pressure on state governments to intervene in the issue can be directly attributed to the development and political pressure exerted by the birth of the contemporary women's movement. The movement's emphasis on identifying common areas of women's oppression resulting in an identification of the experiences of victim's of rape. The often punitive treatment they received from police, courts and helping professionals was also identified. Rape and the fear of rape were identified as ultimate examples of women's oppression and women's lack of control over their own lives (Brownmiller, 1975).

Early political activity surrounding the issue focused on identifying publicly the humiliation and fear women had experienced. Public speak outs were organised across the United States. Similar developments occurred in Australia. In Sydney in 1974, the courage of one woman to speak publicly of her experiences at a forum on Women in a Violent Society resulted in the establishment of the Rape Crisis Centre - the first in Australia.

Radical women's groups called for a restructuring of societal relations between men and women which promoted and condoned rape. They also called for the establishment of funded victim support services and legislative reform. Radical groups were joined by more conservative women's organisations in these demands. The Royal Commission into Human Relationships investigated in 1974-77, the current Australian attitudes and policies regarding rape and made 57 recommendations to improve government response to victims (Deveson, 1978). This detailed investigation of Australian society conducted under Federal Government auspice gave credibility to many of the concerns of the women's movement.

Legislative reform had begun to be debated in the mid 1970s by both lawyers and women's organisations across Australia. In NSW legislative reform did not occur until 1981. Reforms have also occurred in most states in Australia in the last ten years. The majority of these reforms have been aimed at reducing victim trauma in court and therefore to increase the willingness of victims to report the crime to the police. Another aim has been to increase the conviction rate. In NSW this has been achieved with an 11 per cent increase on convictions since 1981 (Bureau of Crime Statistics and Research, 1985).

Victim care prior to the establishment of the Rape Crisis Centre did not exist in an organised or effective manner. Forensic medical examinations were conducted by male police surgeons in police stations. Hospital casualties were often reluctant to treat victims and it was not uncommon for police to take victims to several hospitals before anyone would treat them. Training of medical nursing and counselling staff did not include care of victims of sexual assault. This situation reflected the hidden nature of the crime and resulted in intense isolation and stigma of victims.

The failure of community and government instrumentalities to recognise the true incidence of rape and its effects, resulted in significant long term psychological disturbances in victims. The extent of this harm has only recently begun to be documented overseas and in Australia (Finkelhor, 1979; Waldby, 1985; Russell, 1986; Goldman and Goldman, 1986). Over a quarter of the victims currently being seen in the 33 Department of Health Sexual Assault Services are seeking counselling for assaults that occurred in their childhood or later years (Department of Health, NSW files). Community health centres also report substantial numbers of clients with unresolved past rape experiences.

In Western Australia and NSW in 1975 and 1978, following political pressure on the state governments to provide funded victim support services, government enquiries were held. The focus was to investigate the most appropriate structure for the delivery of services. Noticeably absent from the NSW Task Force into Care for Victims of Sexual Offences, was any representation of women's groups which had brought the issue into the public arena.

The terms of reference of the NSW investigation, reveal a definition of the problem of rape as being primarily medical (Premier's Task Force into Care for Victims of Sexual Offences, 1978). While medical care was one aspect of concern, this emphasis reflects a narrowing and redefinition of the structural causes of rape identified by feminists. Societal values about male female relations were not questioned and government response to the issue was translated into a potential piece of administrative reform. This process of redefinition is consistent with many social issues as they move from one of public concern to government action (Nelson, 1984).

Following the NSW Task Force, nine teaching hospital based services were established in metropolitan Sydney, Newcaslte and Wollongong. Additional funding was provided for social work staff medical and nursing staff. Funding was also provided for the refurbishment of casualty premises to allow victims to be seen in privacy. Victims had access for the first time to 24 hour 7 day a week counselling and medical treatment. Social workers were located within social work departments. While rape was identified procedurally as a medical emergency, psychological and social issues were also recognised. Medical staff were and continue on the whole to be reluctant to become involved in the issue or to take responsibility for the medical needs of victims beyond the forensic examination. When co-ordinators of the Centres were established in 1979, social workers were placed in charge.

In Western Australia, the establishment of services occurred differently. Following this state's government review, a hospital based centre was established in Perth in 1976. It appears the government was keen to maintain women's movement involvement in the service (Inquiry into Perth SARC, 1985). As a result, the hospital appointed lay counsellors to run the counselling service. A number of these counsellors had worked in the Rape Crisis Centre and relocated their expertise to the new setting. This arrangement had several advantages. Staff with expertise would be involved in counselling victims. These staff were less expensive to employ then formally qualified social workers or psychologists. Strategically the involvement of these women would potentially reduce the criticism of the government from feminists and the anti rape movement in particular. Medical staff involvement was high with a panel of committed female doctors forming the medical team - a situation which continues today.

Given the structure established by the hospital, it is not surprising that later attempts to professionalise the service resulted in a particularly public and bitter dispute. As a result the Centre was relocated to another hospital with a Board of Management to oversee its functions. The issue of professional versus non-professional counsellors was not fully resolved and continues to simmer under the surface. The Centre sees itself as part of the community and separate from the mainstream health system.

In NSW in 1986 following the Child Sexual Assault Task Force (1985) and the Women's Health Policy Review (1985), additional funding was allocated to establish 22 new Sexual Assault Services, 18 of these services are located in rural areas. This was a significant development in reaching victims in the country. Prior to this, ad hoc arrangements existed or victims were required to travel to Sydney, Newcastle or Wollongong.

The service model selected for the new services attempts to increase access to health services by victims. Most new services have developed a dual location of community health centre and hospital. The community health centre is the base for staff and the daytime contact point for counselling. The hospital location is used for daytime medical examinations and acute rape presentations and the after hours crisis counselling and medical care. This model maintains access to crisis services on a 24 hour basis in the acute hospital setting but encourages a less medical setting for ongoing counselling.

The needs of victims for acute and ongoing care are therefore recognised. Many victims have expressed ease with attending a hospital directly after the rape but feel reluctant to return to that location.

This has had a significant impact on victims' willingness to continue in ongoing counselling (Westmead Sexual Assault Centre Evaluation Study, 1984). The increasing presentation of young children reinforced the commitment to find a less threatening location for follow up work.

3. CONSTRAINTS ON THE OPERATION OF SERVICES

NSW Sexual Assault Services are operated within the mainstream health system. The services have attempted to gain acceptance of the needs of victims within health settings and the need for a specialist and multi-disciplinary response by health professionals. The location of services within the health system has resulted in a number of benefits and difficulties for victims and service providers.

Anonymity within a generalist setting is of benefit to victims who fear discovery and are publicly stigmatised. This is of particular concern in close knit rural communities where people often know each others business more than in the city. Access to 24 hour crisis care significantly enhances the resolution of the trauma surrounding rape (Burgess and Holmstrom, 1979). Medical examination, treatment crisis counselling and access to information about police and legal options can take place in one setting. Privacy is aimed for by the provision of separate comfortable premises. Both victims needs in crisis and long term can be catered for by using hospital and health centre locations.

Counselling and medical staff operate as a specialist team within the health setting and participate in both the life of the organisation and have access to the resources it provides. Opportunities for educating other health professionals about the needs of victims is enhanced. Potentially this will improve the understanding of the issue and increase the quality of care of victims. For staff it reduces isolation and tunnel vision and the risk of burn-out.

Multi-disciplinary team work and skill sharing is increased. A greater awareness of the role of counselling in life crisis situations can also be achieved. A willingness by sexual assault counsellors to participate in 24 hour rosters has resulted in increased visibility of the role of social workers and increased recognition of the seriousness of rape and its impact on victims. A benefit of this program in city hospitals has been the development of general crisis counselling services for patients experiencing a range of traumas including motor vehicle injuries, domestic violence, sudden infant death syndrome.

The areas where sexual assault service experience most difficulty lies in the conflict of values between a social or bio-medical model which sees disease as an individual event, which requires quick intervention to remove the problem. Sexual assault is foremost a crime of violence in which the patient has multiple acute and long term needs. The event of rape is not resolved easily or quickly by the victim or their families. Staff are required to liaise and co-ordinate activities of health, police, statutory child welfare and court systems on an ongoing basis. As many of these tasks occur outside the immediate health setting, the work is often invisible to administrators. They therefore involve staff in activities not commonly recognised as legitimate by the hospital.

This situation can result in misunderstanding and a negation of the roles fulfilled by the staff in the sexual assault service. The potential for value conflict is therefore considerable. All sexual assault services in NSW have been established with additional funding and new positions which have been welcomed by hospital administrators. The recent introduction of global budgeting by the NSW Department of Health places responsibility on Area Health Boards to administer budgets and determine program priorities. The maintenance of the sexual assault budget allocations short and long term relies on the ability of the service staff to educate the administrators, on their willingness to recognise both the needs of victims and the roles staff are required to fulfil in order to work effectively. A reliance on the bio-medical model of health care discussed previously and the attitudes concerning the significance of a crime which is often reduced to a 'woman's problem' also play a part in the acceptance of the issue as a legitimate health concern. As increasing pressure is placed on health administrators to contain budget blow outs, 'social' programs will be required to compete even more rigorously with traditional acute medical care.

In an attempt to avoid some of these pitfalls, Western Australia has developed two new services in community based organisations in rural areas. The sexual assault staffing of these Centres is one counsellor plus clerical assistance.

This situation creates an almost unachievable task for the counsellor, hindered further by the long distances between towns and the lack of adequate professional staff outside Perth. The services will be dependant on the good will they establish with local hospitals and general practitioners for the provision of medical care. As organisations operating outside the health system this may limit their bargaining power. On the other hand, as community representatives, the hospital may respond more favourably. While so far referrals to the Centres would indicate community need and acceptance, many of these referrals are not acute presentations. The ability of this model of service to influence the mainstream health and welfare systems has yet to be evaluated.

In November 1988, a statewide review of sexual assault services was conducted for the Health Department of Western Australia (Carmody, 1988). Recommendations included increased staffing levels in existing rural services to make them viable. While the recommendations were incorporated into the Labor Party's pre-election promises, the allocation of funds has yet to occur. Without increasing funding, professional support and access to training staff will not be retained in the Centres and victims will be disadvantaged.

4. FUTURE DIRECTIONS

Any discussion concerning the future direction of social policy has to acknowledge the economic climate in which policy is being developed. Increasing constraints are being placed on government expenditure while private sector development is being encouraged. In NSW we are seeing massive cuts in welfare, education, health and other sectors. The impact of welfare cuts has resulted in the reduction of services to families most in need. The delivery of sexual assault services is occurring within this climate of increased scrutiny and cynicism about the effectiveness of government intervention. Increasing reliance is being placed on individual ability to deal with social problems. Within this context, there is a need for clinicians to be actively aware of the political processes surrounding the development of social policy and to participate in the process. Increased competition for decreasingly government resources will require them to take an even more active role than in the past. Related to this is a need to demonstrate the effectiveness of the services and to increase the visibility of the work carried out by them.

An evaluation of the effectiveness of services for victims of sexual assault has not been conducted. If we examine the lack of services prior to 1976 and the current situation there has been a substantial change. In NSW referrals have increased from 478 in 1981 to 5,113 in 1988. In Western Australia with only one service the increase has been from 300 in 1978 to 650 in 1988. Looking at the increase in referrals of victims in these two states, it would appear the services are meeting a substantial community need. However, little attention has been given to the relationship between community incidence figures and the referral patterns to services. To some degree this reflects the energy and struggle that has been expended in both establishing the services and the direct provision of services to victims.

While all states in Australia have some form of victim support services, their acceptance as part of the government policy agenda varies considerably. In Queensland and Tasmania no state funding is provided, limited funds are provided in the Northern Territory, and ACT, Victoria and NSW are the only states with an extensive rural program. Western Australia is beginning to expand the program to rural areas. Victoria and NSW are the only states with policy advisors responsible for developing services and policy directions.

The reality is therefore an inconsistent distribution of resources and a lack of comparative quality of care between states. An immediate priority must be the development of minimum staffing levels and secure state funding in all states in Australia.

On a national level there is a need for policy direction to state which emphasises the quality of care for victims and encourages the development of models of service appropriate to local needs. Only NSW conducts a statewide data collection of referrals to sexual assault services. This needs to be developed in all states to obtain an accurate picture of the profile of offences and the needs of victims, national policy advice could encourage this direction and ensure there are comparable statistics nationwide. A national profile would also assist in pressuring states to take responsibility for the issue.

While many individual services have developed policy and procedures manuals for local services, most states have no consistent policy framework in which to locate these procedures. Victims across a state have a right to consistently high standard of care which is not only dependent on the goodwill of individual workers or settings. A published state

policy both indicates government acceptance of the issue and provides an accountability mechanism for individual services. Another benefit is to document the range of activities services are involved in. This would provide an additional education tool for increasing professional and community understanding of the issue.

Related to policy development is the need for evaluation mechanisms. In NSW this has been addressed by developing standards for sexual assault services. This has been developed in conjunction with a statewide Policy and Procedure Manual (Department of Health, NSW, 1988). The model of standards chosen adapted the CHASP standards developed by the Australian Community Health Association (1985). The standards are specific to sexual assault services and identify key areas to be evaluated. They are constructed in such a way to obtain detailed factual answers and avoid the pitfalls of some other standards which are merely statements of principle. As an evaluation tool they provide service providers and administrators with specific recommendations for improvement and feedback on areas performed well. Additional benefits of the model include an educational function and a planning framework for service provision.

As discussed previously, the provision of counselling, medical services and policy development in the area of sexual assault has only occurred in Australia since the mid 1970s. Australian practitioners have been poor to document the experience of the last ten years. This situation negates the wealth of experience obtained in the field and reduces its impact on community understanding and government policy. Practitioners need to redress this gap and challenge the reliance that is placed on overseas experience. Related to this is the need for research to be conducted into a variety of aspects of sexual assault in the Australian context. It is encouraging to see in the last couple of years a greater recognition amongst practitioners of the importance of research.

On a broader level, there is a need to re-open the debate concerning the causes of sexual assault in our communities. While gains have been made in improving support services for victims and enacting legislative reform, the numbers of victims seeking help continues to rise. Virtually no attention has been given to the causes of rape and what can be done to prevent its occurrence. If we accept a feminist analysts of the issue as being power motivated and due to the inequality that continues to plague male and female relationships, we need to explore this structural inequality and develop mechanisms to remove it.

Traditional approaches to social problems look for piecemeal reforms to redress the inequalities. The development of services for victims of sexual assault and improving the responsiveness of legal systems are examples of this approach. While they have resulted in a more humane response to victims, as a community we have failed to come to grips with the values which continue to promote and condone rape. This remains one of the biggest challenges we have yet to address.

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LEGAL AID AND PUBLIC POLICY: SOME INITIAL OBSERVATIONS

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1. INTRODUCTION

This paper seeks to draw together some ideas about legal aid policy-making in the context of related public policy forces in the Australian administrative, legal and social welfare systems. In many senses, it is simply a 'working draft', intended to encourage discussion from different or fresh perspectives in relation to funding, providing and supplying legal aid services in Australia in the 1990s.

The paper treats the question of the nature of government programs of public expenditure on legal aid services as simply another social program which shares some features of more developed aspects of the Australian welfare state, and as a problem in public policy-making. Whilst this may seem to be a self-evident and obvious position to many people, the notion that 'legal aid' is the peculiar preserve of legal professional culture in its various forms continues to influence government, interest group and public perceptions of the role of legal aid services. Thus, whilst the application of general principles of public-policy theory and practice to national legal aid programs is self-evident and desirable, there remains a need to make linkages between socio-legal policy and other areas of public policy if future directions are not simply to mirror uncritically past developments and trends.

This paper draws on the National Legal Aid Advisory Committee (NLAAC) discussion papers **Funding, Providing and Supplying Legal Aid Services** (1989). One of the matters raised in those papers is the need to define the budgetary period in which possible future reforms or innovations in legal aid could occur (National Legal Aid Advisory Committee, 1989, pp. 12-13). Therefore, this paper has adopted the framework of the short, medium and long-term future in respect of the 1990s as defined in those papers.

2. BACKGROUND

As any attempt to suggest or introduce trends for public policy in the future must inevitably do, the discussion in this paper takes place in a particular context. This includes existent contemporary factors, judgements about national expenditure and taxation policy in the short to medium-term, possible effects of Commonwealth program management initiatives and levels of social well-being or social security in the community including trends in the provision and supply of accessible legal and community legal services.

Some of these factors are mentioned below. They are identified merely for the purposes of focusing the discussion which appears in the remainder of the paper. It is obvious that the listed factors are neither generic or equivalent in temporal or public policy terms. Further, some factors may be based on mistaken or false assumptions. Other opportunities will exist for these issues to be examined.

The first of the factors is that NLAAC is currently inquiring into 'working principles' of legal aid in Australia. NLAAC was established by an amendment to the **Commonwealth Legal Aid Act 1977** in 1988 (National Legal Aid Advisory Committee, 1989, pp. 1-16). It is an independent committee of people with expertise in funding, providing and supplying legal aid charged with advising the federal Attorney-General, through the Minister for Justice, on 'the extent of the need for legal assistance in Australia and the most effective, economical and desirable means of satisfying that need' (Section 9, Commonwealth Legal Aid Act 1977). The public policy issues identified in this paper include those which will influence NLAAC in its deliberations later this year.

The second contextual issue is the inter-related factors of the inaccessibility to disadvantaged people of appropriate services in relation to legal problems and federal fiscal and financial management policy. The first-mentioned of these factors has come to be described as 'unmet needs for legal aid'. Unmet needs are, however, more than an article of

faith adhered to by segments of the legal aid community or exemplary of the imprecision of current legal aid policy. The inaccessibility of the legal system to disadvantaged groups is a significant measure of social well-being for the members of those groups, their families and the community.

Federal fiscal and financial management policy are related to unmet needs for legal aid. The nature of the inter-relationship is complex involving ideas about law, liberal democracy and the development of the Australian social welfare state. A detailed case study along the lines of Castles' **Australian Public Policy and Economic Vulnerability** would help to adequately describe and understand the nature of the inter-relationship (Castles, 1988). For the present purpose it is sufficient to note one aspect of the current view of the federal Department of Finance and to recognise again the probable course of federal expenditure and taxation policies in the funding of legal aid.

The Department of Finance believes that 'the efficiency and effectiveness of the [Commonwealth] legal aid program has not been satisfactorily established' (National Legal Aid Advisory Committee, 1989, p. 43). This was publicly acknowledged by a senior departmental officer at the May 1989 conference 'Legal Aid in the 1990s' held in Melbourne. The question of whether this belief is well-founded is only part of the issue. The fact is that the Commonwealth provides more than 50 per cent of legal aid funding in Australia which directly and indirectly funds the key services and infrastructure. Senior officers and their advisers in the Department of Finance are major players in the financial management of Commonwealth expenditure; what they think, as NLAAC has pointed out in **Funding, Providing and Supplying Legal Aid Services,** matters.

The foregoing discussion of public policy factors and the future of legal aid also proceeds on the basis that it is more likely than not that federal governments will continue to favour minimalist policies in relation to public expenditure on social welfare and related programs in the short to medium-term. As the discussion below indicates, it is reassuringly simplistic to view this in terms of static or reduced funding for legal aid. Nevertheless, in terms of the broad brush objective of these introductory contextual factors, it is obvious that foreseeable trends in federal monetary, expenditure and taxation policy will neither produce funding to meet adequately existing unmet needs for legal aid nor fund initiatives to meet needs which may arise from the implementation of minimalist strategies.

The third general contextual factor is the change that has occurred in the accessibility and availability of publicly funded legal services to disadvantaged groups in Australia since 1973. This cannot be discussed in any detail in this paper. On the other hand, these changes have been too important, in both structural and social justice terms, not to be acknowledged, however briefly. In the overview to the NLAAC discussion papers the 'legal aid system' in 1989 is described as follows:

> *Australia now has an effective national legal aid system in which governments, legal aid commissions, community legal centres and the private legal sector co-operate in funding, providing and supplying legal aid services ...*
>
> *Since 1973, available levels of public funding of legal aid has enabled the legal aid community to increase the accessibility and availability of legal services and community legal services to socially and economically disadvantaged groups in the Australian community ...*

Clearly, these three factors are not the only significant general background factors. It will become evident from later parts of the paper that other factors could be included, and the list revised. The list does, however, sufficiently put in place the policy, funding, and social well-being issues which are the background to discussing factors affecting legal aid policy in the future.

There is one other factor which it is useful to remember in 'planning', 'advising' or 'recommending' about policy and structures in the future. It is necessary to keep in mind the factors, if that is indeed what they are, of happenstance, the 'cubic centimetre of chance', personalities and the emergence of unforeseen or unforeseeable coalitions of apparently disconnected and unconnected factors. This is a commonplace to those schooled in politics or social and economic policy. It is less so, for example, for lawyers, whose professional culture and training celebrates classification along historical lines, and the possibility and desirability of ordering future conduct on the basis of present-day curial or legislative pronouncements based on historical experience. It could also be noted that traditionally disposed lawyers are not alone in tending to prescriptive views of society.

My object, however, is not to criticise for its own sake and to be drawn into the 'legal aid warrior syndrome' which I do criticise below. In fact, my object is simply to acknowledge the factor of 'tomorrow is another day in another place' in the process of thinking about legal aid policy in the future, and thereby in part, amongst other things, to lift something of the apparent complexity and magnitude of the task of considering legal aid in Australia in over the next 2, 3 and 10 years. Whatever is done, or said, by any of the actors in 1989 is only one part of the whole.

3. APPLIED POLICY-MAKING IN LEGAL AID

This paper also has what may be described, for economy of expression, as a creative role. In one sense, it is for the purpose of fulfilling an obligation to the organisers of this conference. Potentially, however, it may have a wider function and I am proposing to allocate a few paragraphs to that possibility. The reason being that it seems to me that this may have some value in an educative sense to illustrate the honeycomb characteristics of national policy-making processes and structures.

The paper may ultimately make some contribution to the task of NLAAC in focusing up the issues which it must consider in its deliberations on 'working principles' of legal aid in August, September and October 1989. One of the reasons that I have chosen to look at the arena of public policy and legal aid is for the purposes of this very practical exercise. As **Funding, Providing and Supplying Legal Aid Services** describes, the NLAAC investigations flow directly from its responsibilities and functions as an independent statutory committee charged with providing advice on legal assistance in Australia. The introduction to **Funding, Providing and Supplying Legal Aid Services** recounts the background to this project which has emphasised openness and consultation in its deliberative processes.

This is, therefore, the issue to which the questions raised in this paper can be directly applied. This paper does not attempt to define the issue in detail. However, if this were the task then the specific reference points would flow from a question which may take the following form:

> *From a national perspective, what policy trends, service goals and objectives, administrative regimes and mix of structures are practicable and desirable for the implementation of effective and appropriate publicly funded legal services and community legal services in different parts of Australia in the 1990s?*

There is another matter that I wish to include amongst the factors necessary to put this discussion of aspects of legal aid policy and policy-making in its proper context. It is that one of the criticisms of NLAAC's goal of suggesting 'working principles' of legal aid policy is that it is probably a waste of time, as 'the Government will ignore it anyway'.

At one level, this may regrettably be a reasonable prediction. On another level, however, it seems to me that it ignores the real processes of government policy-making, the chance factors I have described above and the complexity of the relationship between Ministers and their senior advisers. The answer that I have given to this criticism has been twofold. First, to remind people of the continuing influence of the research produced by the Commonwealth Legal Aid Commission and the Commonwealth Legal Aid Council, and the fact that documents have long lives in bureaucracy. Secondly, to repeat one of the points that I made in an essay late last year in what in retrospect was a premature attempt to crystalise the key policy constraints and issues. This point remains valid nevertheless:

> *Social and political theories of society, administration and law are a staple of modern public and private bureaucracies. In the federal bureaucracy, a combination of an increasing emphasis on managerialism in senior appointments, the natural tendency of bureaucracy to discourage innovation and the ascendancy of economic rationalism over social welfare ideals have resulted in significant policy vacuums. These and historical and constitutional reasons mean that there is no [comprehensive and coherent] federal legal aid policy in 1988. By a greater understanding of the political economy of legal aid and legal aid delivery in Australia in the late 1980s it may be possible to affect public policy and expenditure in the future.*

The announcement in May by the Senate Standing Committee on Legal and Constitutional Affairs that it is conducting an inquiry into the cost of justice in Australia adds another card to the pack. This inquiry inevitably has promise and risks for funding, providing and supplying legal aid services. As I suggest below, the nature of the connection between the inaccessibility of lower, middle and upper-middle income earners to legal services and the courts is a relevant, if unpredictable, factor in considering legal aid policy.

4. POLICY AND INSTITUTIONAL FACTORS AFFECTING CHOICES ABOUT SUGGESTIONS FOR PRACTICABLE NATIONAL LEGAL AID POLICIES

I now come to the central question. Given that those who would seek to develop nationally oriented 'legal aid' public policy cannot sensibly begin de novo, what are some of the unavoidable public policy, institutional and ideological influences which the path of practicability, social justice and changeability must traverse?

The nature of some of those influences are discussed below with the object of beginning the process of identifying the public policy elements which affect the outcome of developing 'working principles' of legal aid. At the same time, I note some of the choices which these brief and preliminary policy analyses would appear to present to policy-makers or advisers.

5. THE PLACE OF 'LEGAL AID' IN THE FEDERAL, STATE AND TERRITORY CIVIL AND CRIMINAL JUSTICE SYSTEMS

The political and social doctrines of legalism are fundamental to the Australian systems of government, and to social regulation through law, the courts and the legislative and administrative system. Legal aid as public policy is a very small part of a social and political system in which constitutionality and related legal and social polices are pre-eminent.

Government policies with respect to resolving social dislocation or conflict will naturally tend to adopt solutions which favour the use of the legal system, or at least aspects of the way in which legalism reflects most social relations in rule-based rights and obligations. This is, of course, at once a limitation and an important feature of the form which liberal democracy has taken in Australia, in which the pluses clearly outweigh the minuses.

Constitutionality, 'civil liberties', civil rights and 'freedom of contract' are, however, examples of public policies which constrain available choices to legal aid policy-makers. It is obvious that these constrains result from two factors. First, the significance of the function the values contained in those policies perform as regulatory and reconciliatory agents within a liberal democratic state. Secondly, the influence exerted by the social, political and legal institutions and instruments by means of which these public policies are directly and indirectly implemented and promoted.

In practical terms, this means that legal aid policies will necessarily reflect those primary public policies, and that public expenditure on legal aid will tend to be applied to the provision of legal services in the courts and tribunals where this dispute resolution will continue to take place. There are other consequences as well, but the main point to be made quickly here is of the significance of these ideological and institutional forces outlined above for choices about the content of legal aid policies.

6. THE ROLE OF THE PRIVATE LEGAL SECTOR

The relationship between the legal profession and legal aid policy and the provision and supply of legal aid services is at times in contention amongst governments, legal aid commissions, salaried lawyers, income and service cohorts within the private legal sector and the governing bodies of the private profession itself. These inter-relationships clearly will affect the making of legal aid policy, but it seems to me that it may be beneficial to test exactly why this is the case.

Generally, legal services in Australia are provided by self-employed, self-regulating barristers and solicitors. State governments, and the Federal government in respect of federal territories, have chosen to minimally interfere with the organisation, trade practices, pricing and role of the private legal sector as the principal provider of legal services.

The role and function of the private legal sector, its relations with government and its place in the community and the services it provides will inevitably be the subject of public comment, and concern by governments, the community and the members of the legal profession. For brevity's sake, this can probably best be descried as the 'natural and desirable outcome of changing power relations'.

Legal aid has tended to provide a battleground for proponents of opposed views on the optimal relations amongst state, public and private legal sector interests. At its extremes, some members of the private legal sector have perceived a threat to professional independence from the 'slippery slope' of public funding of the supply of legal services, and critics of the profession have tended not to distinguish the public interest which can be served by a vigourous and independent legal profession, from its restrictive practices and the cost of its services. A recurring expression of these conflicts in legal aid in Australia is the pursuit, ostensibly on the grounds of relative cost-effectiveness, of what is essentially an ideological argument about the comparative 'cost' of private sector and salaried lawyers.

It is possible, and practicable, for legal aid policy-makers to stand aside from the 'warrior' view of the goals and objectives of legal aid. The way in which the community has, by omission or commission, 'decided' to organise the supply of legal services is really only of an administrative or operational consequence in legal aid policy. For example, if it were a legal aid policy objective to provide people charged with criminal offences with legal representation of a certain standard and quality, and $X were available for this purpose, then the purchase of legal services to implement that objective is only really affected by what is cost-effective.

The relations between legal aid policy, governments, law and the provision of legal services is itself the subject of a paper. Therefore, I want to conclude this brief discussion by making several points in summary form. First, the role of lawyers, their incomes, status and power will be constant issues in the liberal democratic-welfare state in Australia. These relationships in the short, medium and long-term may change by direct intervention by society through its governments and will always be changing through the influence of government and public and private sector expenditure benefiting different income cohorts of the legal profession. These forces can only be affected on the margins by legal aid policy.

I have suggested above that the provision of legal aid services in Australia will have a natural tendency towards the supply of publicly funded legal services. The supply of legal services by the private legal sector and salaried lawyers in legal aid accounts for approximately 80 per cent of overall national legal aid expenditure. Approximately 60 per cent, probably some $120 m.-$130 m., is spent on the supply of legal services by the private legal sector. The practicable opportunities for reducing expenditure on legal services, whether by referral to the private profession or on 'in-house' lawyers, in legal aid are very limited. Thus, and I concede that this point has not been fully developed, the making of legal aid policy should probably accept the legal services system as a given factor over which it has few opportunities to exert influence.

These comments should not be interpreted as suggesting that there may not be considerable scope for improving the productivity or cost-effectiveness of the supply of legal services in legal aid by the private legal sector. Productivity and cost-effectiveness are aspects of administration and management of legal aid programs which, whilst appropriate fields of policy considerations, are one-step removed from the broad brush issues I am discussing at this point in the paper. For similar reasons, I have not accorded salaried lawyers supplying legal services in legal aid commissions, ALAOs and community legal centres any detailed treatment in this part of the discussion. This is partly because they do not exert the same degree of influence as the private legal sector, and partly because I mention some of the particular issues confronting them in relation to management and administrative policy considerations.

7. COMMONWEALTH-STATE RELATIONS

There are factors affecting the provision of funds by the Commonwealth government, and the amounts which have been and could be contributed by State and Territory governments, which bring issues affecting Commonwealth-State

relations into play. These need to be acknowledged in contemplating practicable future directions in national legal aid policies.

Legal aid as part of the central government's financial relations with the States is an area which has only indirectly been given consideration. Indirectly, that is, in the sense of the now defunct Commonwealth matters 'numbers system' and in the current form of Commonwealth-State legal aid funding agreements. However, it is certainly a factor which has influenced the Department of Finance perspective on legal aid funding, and which is part of the current ALP government's policy on legal aid funding.

All that I am seeking to do in this discussion, is to mention some of the more obvious implications of legal aid in the context of Commonwealth-State financial relations. More careful consideration will need to be given to this at the appropriate time.

In the short to medium-term the existence of the new Commonwealth-State funding agreements with the States for legal aid must have the effect on maintaining the status quo in the existing legal aid services system in the States and Territories. This will be manifested in two ways. First, the existing institutions of legal aid commissions and community legal centres, and their relations with the legal profession and the community, and the types of legal aid services provided are unlikely to be changed significantly in this period. This is not to say, for example, that greater Commonwealth interest in the co-operative and co-ordinated development of a more effective legal aid system could not be implemented through State governments to those legal aid agencies. Secondly, and this really follows from the first point, the existence of these structures in some senses constrains practicable recommendations for legal aid policy-makers.

Another aspect of Commonwealth-State financial relations affecting legal aid in this. The historical pattern exists for the federal government to treat its legal aid responsibilities as primarily discharged by providing financial assistance to the States to fund legal aid agencies. This has been the case since the dismemberment of the ALAO in the mid-1970s. The major legal aid agencies have been established in an environment where this arm's length relationship with the Commonwealth has been the norm. I make some further points on these issues later in the paper, but is sufficient at this point to acknowledge this in-built tendency.

The continuation of the legal aid funding agreement system, to the extent that the Commonwealth enjoys a real choice in the matter, indicates that this also reflects the attitude of the present government towards the funding and administration of legal aid services throughout Australia. As I suggest below, this is consistent with the withdrawal by the Commonwealth government from other areas of expenditure affecting social well-being. In other words, to use a short-hand phrase, its reduced spending on social welfare state matters.

In practice, it may be that there are benefits in terms of co-ordinated national legal aid policies for the place of legal aid as part of Commonwealth-State funding to be formalised in accordance with the existing and usual administrative arrangements between the States and the Commonwealth. For example, the operation of the de facto State committee formed by the directors of legal aid commissions would appear to be a rather inadequate means of attempting to co-ordinate national legal aid policy and Commonwealth spending on legal aid.

8. GENERAL TRENDS IN NATIONAL EXPENDITURE ON THE SOCIAL WELFARE STATE

In considering the practicable directions of legal aid policy in the short, medium and long-term it is also necessary to take into account existing expenditure trends by the federal government in relation to public services. This is an area which cannot be dealt with in this short paper, and all that I will attempt to do is to identify central themes some of which may need to be developed or investigated further.

In the discussion papers **Funding, Providing and Supplying Legal Aid Services,** NLAAC suggests that:

> *In the later 1980s, governments in Australia have adopted fiscal policies intended to reduce or limit expenditure on providing public services. This has been in response to concerns about levels of budgetary deficits, national productivity and realisation of the need to facilitate re-structuring of parts of the Australian economy.*

> *Consequently, governments and their advisers have given priority to reducing or limiting levels of expenditure on public services and evaluating the cost-efficiency and cost-benefit of existing publicly funded social programs including legal aid. These policies are likely to continue in to the 1990s.*
>
> *Reviewing overall levels of public expenditure ... has had [a major effect on the legal aid program in that] -*
>
> *... real levels of Commonwealth funding of legal aid appear likely to remain static in the short to medium-term. The Commonwealth has re-negotiated legal aid funding agreements with the States and Territories. These are intended to limit federal legal aid spending by sharing responsibility with State and Territory governments.*

For the purposes of this paper, I simply wish to adopt that picture of the likely patterns of federal spending on legal aid in the short to medium-term. If it proves to be a mistaken view, then it would be a pleasant surprise.

This has implications for legal aid policy-making. At one level, it may be seen as simply 'cutting funds for legal aid', and that therefore legal aid policy can only practicably look to developments which can be afforded within a limited budget. In terms of the short to medium-term, that is certainly the case, and this must weigh on the policy maker's mind. But, it seems to me that these expenditure trends also have possible implications for planning of legal aid services in Australia in the long-term.

Once again I seek refuge behind the shield of time, and so makes these points only briefly. I do not think it is much in dispute that the Australian welfare state never developed into the social insurance net which occurred in comparable OECD countries at a later time. This is notwithstanding that in some senses it had an early beginning in this field. In fact, public expenditure on social well-being in Australian has typically been to provide those unable to work through age, ill-health or unemployment with minimal 'wages' funded from taxation revenue without the development of a wider contributory social security system. The provision of benefits and redistributive forces have tended to be through the wages system, with its explicit and implicit assumptions of normality of participation in work and employment and of the practicability of ensuring effective and equitable social justice through a redistributive wages system, with its explicit and implicit assumptions of normality of participation in work and employment and of the practicability of ensuring effective and equitable social justice through a redistributive wages system. The role of the Industrial Relations Commission and its predecessors in this is well documented back to Higgins' Harvester judgment and I do not discuss this in any detail here. The issues are developed in Castles' **Australian Public Policy and Economic Vulnerability** to which I acknowledge that I am indebted.

This has had a number of implications for the development of the Australian society and economy, not the least of which is that there appears to be an arguable case that the lack of a generalised income maintenance system typical of post-war European liberal democracies has played some part in restricting the flexibility and adaptability of Australian governments, industry, unions and the work-force, with consequent long-term effects on productivity, terms of trade and social wealth in the Australian community. The connection between these factors and legal aid policy may not appear to be immediately obvious.

It seems to me that the linkages are as follows. In the first place, public discussion about the need to 're-structure' the Australian economy is not only convenient and timely political rhetoric, but the body of apparently informed opinion in government, business and the newspapers which recognises the long-term structural problems in the economy is growing steadily. The financial and social problems which will accompany either the re-structuring, or alternatively the 'de-structuring', will confront governments in the short, medium and long-term.

This is merely re-stating the obvious. The ways in which the nature of the Australian 'welfare state' and the long-time and long-term structural problems in the Australian economy will affect legal aid policy-making include the following matters.

In Australia, the provision of legal aid services has not been viewed as part of the umbrella of funding and administration of the post-war social welfare state. Providing access to legal services has remained primarily a 'private' matter for individuals and the private legal profession. This can be contrasted to the development of the secondary and tertiary education system and the provision of health services. The reasons for the publicly-funded

legal aid services remaining outside the welfare system are complex. They need not be inquired into in this paper. It is sufficient to note that in 1989, legal aid, and legal aid policy-makers, have probably not got the option of belatedly attempting to shelter under the fraying edges of Australian state welfarism.

It is too late, unless governments themselves change direction in their attitudes towards public financing of social well-being in the Australian community. The ALAO, had it been properly funded and survived as a publicly funded, centrally administered but community based service, may have gone a long way towards making this transition of legal aid into the federal welfare system; but, it did not.

The opportunities which exist for the introduction of a national organisation similar to the ALAO in the long-term are very restricted. This is because national public spending on services in the federal welfare state is becoming increasingly 'targeted' which is simply another word for the selectivity in the provision of welfare benefits which has been a characteristic of Australian state welfarism even in 'good' economic times. In the present circumstances, governments are unlikely to increase funding for legal aid even for the very poor in traditional areas of demonstrated demand for traditional legal services. In fact, it is possible that there may be pressures to even restrict current availability of assistance. Therefore, it would seem to me that there is not a real case for legal aid policy-makers in looking at legal aid funding increases as such in planning for the short, medium and long-term future.

The policy implications may be even wider than suggested by trends in 'welfare' spending. It may also be that there is only a limited opportunity in political and cultural terms to press for acceptance of a policy that legal aid, in its narrowest sense of publicly funded legal services, should be seen as a 'right' or 'entitlement' of the community in Australia. Essentially, because it may be that formal recognition of the legitimacy of such 'rights' or 'entitlements' would be against the trend of state welfare policy and its institutions in Australia and government wages and tax expenditure policies.

Thus, it may be that legal aid policy-makers are limited to a consideration of the existing institutions which have evolved in matters affecting social well-being within the Australian welfare state. This is a new point and the way in which it is suggested it may be useful as a practicable policy perspective is introduced in the paragraphs immediately below.

If it is likely that additional funds will be provided to expand legal aid services through legal aid budgets to meet some of the identifiable and quantifiable unmet needs for legal aid, a different strategy may be called for in the medium to long-term. I am using 'unmet needs' here in the sense of inter-personal and individual-state social dislocation in which other public policy considerations, e.g., 'civil liberties', protection of children, or the legal system itself does not necessarily require the amelioration of that dislocation by characterising it as a 'legal problem'. For example, consumer-retailer disputes, 'neighbourhood disputes', administrative claims and appeals, and, in general, matters affecting personal and social 'well-being'. What could be literally called, if it were not for the DSS, 'social security'.

One available strategy may be to leave the legal aid sector within the fold of the minimalist public expenditure where the practicable opportunities for increased funding and expansion of service structures may be reasonably adjudged to be very limited. For it may be that there are opportunities for meeting many of the 'unmet needs' which I have indicated above from within the existing social welfare or community sector.

Put very shortly for the purposes of focusing discussion, it would seem to me that legal aid policy-makers may need to consider looking to the community and social welfare sector to provide services and fund many areas of unmet needs for legal aid. The alternative may be to suggest program and funding innovations which in practice face almost insurmountable cultural, professional and institutional barriers to broadening the concept of 'legal problems' to include 'social', 'administrative' or 'welfare problems'. In other words, instead of endeavouring to put lawyers and legal aid into lorries on the road to Damascus, it may be more practicable to recognise the existence of a range of incidents of social dislocation which are not inevitably legal problems - although lawyers, courts and the legal system may sometimes be appropriate for their total or partial resolution.

It is possible there may be significant benefits in giving serious consideration to this approach. First, many areas of unmet need are below the threshold of 'legal problems'. In other words, lawyers, whether private sector or salaried, may not have established areas of influence or sources of income, and this may promote innovation. Secondly, there may be opportunities to use existing staff and infrastructure of welfare and community sector organisations, thereby

allowing funding proposals which are credible to governments. Thirdly, re-thinking established responses to unmet needs may actually contribute to creating and providing appropriate services in the medium to long-term.

I know that it will be said that in the past I have promoted the idea of legal aid joining the social welfare sector. It now seems to me for the reasons which I have discussed above that this is impracticable, and that a more practicable solution may be as I have suggested. It may also be that there are 'votes' in community-based proposals in raw political terms, where there may not be in legal aid.

The issue of trends in Australian state welfarism also has consequences for the question of the problem of access to legal services in the wider community. For example, it is factor which must affect the deliberations of the Senate Committee inquiry mentioned above. I am not proposing to consider those issues here other than to suggest that the role of wages policy, employers and the unions in the Australian welfare state may also indicate some new areas for access to legal services. It would seem to me that the suggestions which have been made by commentators such as Frank Regan with regard to union sponsored and employer based group legal schemes are much more credible from this perspective. It would seem to me that legal aid policy-makers should probably also give some consideration to access to legal services as part of the 'wage package' and tax expenditure policies intended to encourage development of group schemes. This has obvious difficulties. The papers **Funding, Providing and Supplying Legal Aid Services** discuss the problems of advocating program specific innovations in tax expenditure. The idea merits investigation, as there may be other linkages with the future of legal aid in this area of state welfarism.

9. EXISTING INSTITUTIONS IN LEGAL AID

Clearly, consideration of legal aid policy must give careful consideration to the factors affecting the existing institutions of legal aid. These are the Office of Legal Aid Administration (OLAA) in the Commonwealth Attorney-General's Department, State and ACT legal aid commissions, the ALAO in Tasmania and the Northern Territory and the community legal centres. The list must also include NLAAC and the National Legal Aid Representative Council (NLARC). In policy terms, consideration must extend to the appropriateness of these institutions, their role and functions and the place which they play or should play in a legal aid system in the short, medium and long-term.

The thrust of this paper, and indeed common-sense, suggests the presence of a very strong case for treating these institutions as being appropriate. It is politically unrealistic to consider recommending the abolition or even major re-structuring of the legal aid commissions or the community legal centres. Apart from other matters, the possible even short-term disruption in relation to the availability of publicly-funded legal services and community legal services would be significant.

On the other hand, it is not necessary for legal aid policy-makers to be blind to the weaknesses in these institutions. These should, however, be always seen in a real context and by taking the time to fully understand their complementary strengths.

The State based structure of legal aid commissions and community legal centres does have problems, but they are probably comparable to those of regional offices of centrally administered agencies, for example, the operation of the ALAOs in Northern Territory and Tasmania, or, for that matter, federalism as a system of administration and government. From the policy point of view, one of their major strengths is that they have a greater opportunity of reflecting local and community needs and are of proven effectiveness in the case of the legal aid commissions and properly funded community legal centres.

Similar considerations apply to OLAA. The fact is that there is a need for an effective central manager of federal expenditure on legal aid and co-ordinator of national legal aid policies. It may even be that OLAA will be the keystone to legal aid policy in the short to medium-term.

Thus, it is important for legal aid policy-makers to continue to see the wood amongst the trees of OLAA. It, or a similar organisation in different guise, is an essential plank of any national legal aid strategy. Personally, I may favour the idea of a national legal services commission as advocated by Sackville (**Legal Aid in Australia**, 1975, para. 1.7) but, on my own arguments in this paper, this is likely to be politically and financially impracticable in at least the short

to medium-term. Thus, coming to terms with the staffing, management and financial problems faced by the OLAA is a factor in making legal aid policy.

NLAAC and NLARC may be viewed in the same light. One could easily say that the role of national legal aid bodies has already had a sufficiently chequered history. NLAAC and NLARC may be inadequate in some senses but stability may be a more important factor in policy administration than the disruption which implementation of a recommendation for change may cause. This should not be interpreted as a defence of the status quo for its own sake, but it is a suggestion made from the 'practicable' perspective and carries with it the implicit suggestion that policy-making should investigate provision of sufficient independent budgetary and staffing arrangements for these two agencies. This is linked with the role of OLAA.

In terms of the role and functions of the legal aid commissions and community legal centres how they perceive themselves, and the ideology which has arisen in connection with these interest groups, must be acknowledged by policy makers.

10. THE CONTENT OF LEGAL AID POLICY

The development of legal aid policy must take place within existing ideological constraints. The influence of Anglo-Australian legal positivist thinking has been referred to above. Clearly, this remains very influential in thinking about law in Australia and, when combined with the political liberalism which is the basis of many of the law reform and derivative critiques of the legal system, continues to play an important role.

The NLAAC paper on 'Legal Aid Policy' in **Funding, Providing and Supplying Legal Aid Services** described some of the existing goals and objectives for legal aid exemplified in the 1973 Murphy statement (Senate, 1973, pp. 2800-2803), legislation establishing legal aid commissions, community legal centre legal aid policy, Law Council of Australia, Legal Aid Policy (1987), the ACOSS (National Legal Aid Advisory Committee, 1989) position and the implicit view of legal aid in the federal social justice strategy. These ideas will all influence the development of legal aid policy.

The paper also suggests that a three part 'model' may be useful in attempting to obtain some overall view of the directions of these existing policies and choices for the future. The 'model' advanced comprises the 'government-public administration perspective', the 'strategic perspective' and the 'community perspective'. These perspectives are discussed and their roles set out at paras 4.27-4.70 of the NLAAC paper, which I have substantially reproduced below as it seems useful to keep these ideas in mind in the policy-making process.

There are several reasons for recognising different perspectives in legal aid policy. First, it has been said that one explanation for the failure to develop effective national legal aid policies in Australia is that defining legal aid goals and objectives has been regarded as overly 'political'. It is clear that when any attempt is made to analyse the range of interests affected by funding, providing and supplying legal aid services that the process of formulating the contents of the public policy underpinning legal aid will inevitably have 'political' aspects. It could not be otherwise. However, identifying different legal aid perspectives demonstrates that the 'political' issues may not be partisan issues, and are more likely to relate to balancing of government, interest-group and community interests. Secondly, the three legal aid perspectives highlight the breadth of government and social interests which must be addressed in effective legal aid policies. Thirdly, it provides a clear illustration of the existence of practical and available alternatives to the problem of declining public expenditure on legal aid and the cost of providing legal aid with the supply of legal services. These can be seen as real alternatives to achieving the goals and objectives of legal aid by providing publicly funded legal services.

The formation and adoption of legal policy is affected by the perspective of the policy maker. The formation of legal aid policy is not different. Therefore, it is useful in encouraging the discussion about future legal aid policy to identify some of the possible goals and objectives of legal aid viewed form the 'government-administrative', 'strategic' and 'community' perspectives. These can be portrayed as looking 'down', 'sideways' and 'up' at law in society.

a) 'Looking down' on Law, Society and Legal Aid: The 'Government-Public Administration' Perspective

As discussed above, the Australian systems of government are based upon constitutions containing rules defining the way in which laws are made and repealed, and, as parliamentary democracies, have formal regard to the regulation of social conduct by means of legal rules which are pre-eminent. Constitutionality disguises the fact that the needs of government and the governed are not equivalent, and that government goals and objectives in legal policy may differ from those promoted by the community or particular social, racial or cultural groups.

Therefore, in re-considering the goals and objectives of public expenditure on legal aid services it is important to acknowledge that governments may have distinct interests in legal aid. These interests may be different from those of groups and individuals in the community who are affected by the incidence of the legal system or who represent or claim to act on behalf of those groups or individuals. Government or bureaucratic policies will pursue different interests in legal aid according to social, political and administrative objectives from time to time. For example, the policy goals of a specific legislative program, such as the **Child Support Act 1988**, the policy of the federal Department of Immigration, Local Government and Ethnic Affairs in providing legal aid for prohibited non-citizens in immigration proceedings in the Federal court and expenditure under the legal aid program will all be different. The public policy goals and objectives which may be reflected in legal aid policy in the 'government-public administration' perspective include the following:

i) Legal Aid to Enable Citizens to Enforce, Create or Defend Legal Interests

In a legal system such as Australia, where the state provides courts and tribunals for the enforcement, creation or protection of legal rights, and where legal services are seen as necessary to participate effectively as a party to adjudicative proceedings, public funds may be expended on legal services to give the people whose rights or interests may be affected by operation of the Australian civil, criminal or administrative justice systems a greater degree of access to the legal system. Legal aid is provided by governments as a public service for those who would otherwise be denied effective access to the legal system.

This policy is essentially supporting the expenditure of public funds to allow individuals to pursue their 'individual' interests in the state legal system. It is an approach which tends to emphasise the role of legal services and the significance of the state-created legal rights. Policies of this kind have had a major influence on the development of legal aid systems in Australia.

ii) Legal Aid for Effective and Efficient Management of the State and the Legal System

Public policy interests in legal aid need not necessarily be 'rights based' or based upon conceptions of social justice. The provision of legal aid may be desirable in the interests of the state. Legal representation may contribute to the efficiency of courts and tribunals, and thereby the operation of the market economy, the efficiency of the social security system or specific regulatory objectives in legislation. These public policy interests may only have indirect reference to the legal interests of particular individuals.

iii) Legal Aid as Part of Social and Economic Policy

The 'government-administrative' perspective may promote legal aid to achieve social or economic policy objectives. Once again, these aspects of legal aid policy relate to wider state interests than merely the efficient operation of the legal system or aspects of the law-regulated society. For example, legal aid may be available in consumer matters to improve the efficiency of manufacturers of retail goods, or, as in the case, of the Commonwealth social justice strategy, as part of wider objectives.

iv) Legal Aid as Part of the Social Welfare State

The provision of legal aid may simply be seen as one of the state funded social security factors. This may tend to greater integration of legal and social policy. It is one of the possible factors affecting the formulation of legal aid policy.

b) 'Looking Side-Ways' at Law, Society and Legal Aid: The 'Strategic' Perspective

The second perspective on legal aid can be described as the 'strategic' perspective. The terms 'social engineering', 'social justice' or 'social reform' could equally well be applied to describe this view of the goals and objectives of legal aid. The use of the state legal system, legislation and substantive and procedural rules as a strategy for social, economic or political change or reform is the distinguishing characteristic of the 'strategic' perspective in legal aid. If legal aid policy is viewed as contributing to reform of legal and social relations it will obviously have different goals and objectives to those of the 'government-public administration' perspective.

However, the 'reformist' aspect of the 'strategic' perspective shares at least one common interest with the 'government-public administration' perspective on legal aid. It is essentially a legalistic strategy which relies upon the existence and operation of an efficient and effective state legal system and the availability of accessible legal services.

There are several identifiable objectives which may be appropriate for inclusion in legal aid policies if legal aid in Australia is viewed from the 'strategic' perspective. They include the following.

i) Legal Aid to Achieve Greater Congruence Between Legal, Social and Economic Relations

The social and law reform aspects of the 'strategic' perspective in legal aid endeavour to use the state legal system, and the legislative and common law 'rights' and 'obligations' which it creates or adopts, in order to achieve greater congruity between those rights and the social and economic relations which they describe, protect and enhance. For example, publicly funded legal services may be sought in test case litigation or class actions to enforce remedies against recalcitrant manufacturers or retailers with the objective of giving effect to the legislative policy contained in consumer legislation. These proceedings may be undertaken in recognition of the fact that, in practice, notwithstanding the potential of legislation to change manufacturer-consumer relations, few individual consumers have the money, time or inclination to initiate legal proceedings. Similarly, action may be taken in relation to landlords and estate agents who are failing to repay rental bonds in order to make the tenancy legislation function more effectively or to reform the regulatory procedures.

Whilst the reformist 'strategic' perspective is less legal services oriented, it remains closely aligned with a legalist view of law and society and is closely related to some elements of the 'government-public administration' perspective.

ii) Legal Aid to Affect Social, Political and Economic Change

There is a second aspect of the 'strategic' perspective in legal aid. This part of the 'strategic' perspective may see expenditure of public funds on the supply of legal services to enable participation of groups or individuals in the civil, criminal and administrative justice systems as an instrument of forcing social or political change. In other words, that legal aid policies should include funding redistributive goals and objectives, and not simply strategies for the promotion of collective legal interests or law reform.

In particular cases, it may be difficult to distinguish between reform and redistributive objectives in providing legal aid services. Nevertheless, is useful to make the distinction for the purposes of policy analysis.

c) 'Looking Up' at Law, Society and Legal Aid: The 'Community' Perspective

The principal vantage points for viewing legal aid in Australia at the end of the 1980s are the 'government-public administration' and the 'strategic' perspectives. There is, however, another perspective. The 'community' perspective is usually not acknowledged, or is believed to be represented by the proponents of the 'strategic' perspectives. One important advantage of distinguishing three legal aid policy perspectives is in enabling policy makers to understand the real needs of those who are affected by the law in everyday life for appropriate legal services and community legal services. It is useful to ask why do individual members of the community need legal aid services? Or, more specifically, why does the community need legal representation, legal advice, preventive legal services or legal education?

The answer may not be that individuals have 'legal' problems, or require access to appropriate legal services in courts and tribunals. One reason why individuals and groups in the community need legal aid services is because they have problems affecting their social or economic relations which the state legal system characterises as a 'legal' or law-related problem. Put very simply, people don't have legal problems; society creates legal problems for them.

From the community, group or individual perspective, many of their 'legal' problems are truly manifestations of social, familial or economic dislocation in which remedies are currently to be found in the legal system and its agencies. In other words, community needs for legal aid are fundamentally for effective and available dispute resolution, whether those disputes be inter-personal or arising out of individual-state relations. These disputes can, for present purposes, be classified into two categories. First, those which are inter-personal and arise out of familial, economic or social conflict amongst individuals. Secondly, those arising out of individual-state relations. For example, the application of the criminal law, or entitlement to welfare benefits or other services provided by the social welfare state.

There are, therefore, two principal legal aid goals and objectives discernible when legal aid policy is viewed from the 'community' perspective. They are as follows.

i) Legal Aid to Assist Members of the Community in Favourably Resolving or Preventing Conflict in Individual-State Relations

The protection of individuals in their relations with the state arising out of social regulation by the criminal law is a major concern of legal aid viewed from the 'community' perspective.

The state may take action affecting the liberty of an individual in the application or enforcement of the criminal law. From the 'community' perspective, legal aid policy must include measures to assist individuals involved in the state criminal justice system, and to prevent the unwarranted incidence of the state criminal law into social relations, amongst its primary goals and objectives. These may, although need not necessarily, result in a need for legal services. In some cases, law reform may reduce the opportunities for conflict in individual-state relations. For example, de-criminalising prostitution or diversion of first-offenders in minor criminal offences may reduce the need for legal aid.

On the other hand, state law may confer rights or benefits on individuals which directly affect their social relations. For example, the income support schemes provided under the **Social Security Act 1947** affect the ability of individuals to maintain rudimentary standards of social security. If an entitlement to a social welfare benefit is removed by an action of the DSS, then the community 'perspective' may see the provision of legal services or improved administrative practices of DSS officers, as appropriate objectives for legal aid policy.

ii) Legal Aid to Assist Members of the Community in Favourably Resolving or Preventing conflict in Inter-Personal Relations.

The availability of appropriate and accessible dispute resolution for social, economic and familial conflict amongst individuals is the other major objective of legal aid viewed from the 'community' perspective. These conflicts may

also have aspects of individual-state relations. For example, with the respect to the role of the **Family Law Act 1975** and the availability of the legal system to enforce common law rights.

Nevertheless, the 'community' perspective is likely to place a greater emphasis on alternative dispute resolution and the accessibility and availability of effective remedies to social disputes than the more legalist orientation of the 'government-public administration' or 'strategic' perspectives on legal aid.

On reflection, it would seem to me that the 'government-public administration' and 'strategic perspective' are likely to provide the practicable choices for legal aid policy-makers because they are readily compatible with the way in which the law and legal system operates, and is seen to operate by its principal actors and institutions. The 'community perspective' may have a part to play in this, but I am beginning to believe that its role may be more to describe the socio-legal policies and the potential role of the community and welfare sector in providing services to encourage community-based dispute resolution and conciliatory processes where these are appropriate.

11. PROGRAM MANAGEMENT

Legal aid policy will need to develop proposals for appropriate and effective review and assessment of public expenditure on legal aid services. The need to improve the range, availability and uniformity of statistical information has already been recognised. This will need to be extended. Program management will have a greater role in legal aid in the future than it has in the past.

Policy makers will need to give careful thought to the particular needs of funding, providing and supplying legal aid. In many areas, standard administrative responses may be appropriate. In other areas it will not be so. For example, there are special industrial problems with the employment of salaried lawyers in legal aid commissions, and the adoption of inappropriate program management initiatives may have the effect of needlessly causing staff management problems.

Generally, there is a need for greater co-ordination of management initiatives at the federal level, and policy-makers need to give careful thought to the form and content of appropriate policies which are effective, and yet give recognition to the autonomy of legal aid providers and different requirements of the community in different parts of Australia.

12. AVAILABLE AND ACCESSIBLE LEGAL AND RELATED SERVICES FOR THE 'NON-POOR'

It may not be strictly accurate to view the levels of inaccessibility of the courts, legal remedies and lawyers to lower and middle-income groups in Australia as a question of legal aid policy. Whether legal aid should concern itself with the interests of the 'non-poor' is no doubt a contentious question. The pre-eminent factors which emerge from the 'cost of legal services' problem are at the hard end of the policy-political spectrum.

This wider community problem lays at the heart of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the cost of jutice in Australia (Senate,1989, pp. 2133-2134). It will have an effect on legal aid, if only because there are 'votes' in trying to increase the accessibility of the legal system to middle-Australia whereas in 1989 there are few votes in legal aid.

Therefore, the nature of the relationship between legal aid and the cost of legal services is a matter which must be considered by legal aid policy-makers. Perhaps, this ought not be so in a purely objective sense. But, it is so in a political sense and legal aid administrators, providers and policy-makers cannot avoid the disproportionate responsibilities and profile which they have in the national legal services system, however unfair this may be in some senses.

The promotion of procedural reform, alternative dispute resolution and substantive law reform are therefore all matters which must find some expression in legal aid policy.

13. CONCLUSION

As I said at the beginning, this paper has simply made some initial observations about legal aid and public policy. The challenge remains for policy-makers to develop legal aid policies which are responsive and effective at a time of great change in the society.

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TRENDS IN CORONARY PROCEDURES IN PERTH, WESTERN AUSTRALIA

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1. INTRODUCTION

Mortality from ischaemic heart disease in Australia has fallen by approximately 50 per cent since the peak rates seen in the late 1960s (Thompson, et al., 1988). Nevertheless, ischaemic heart disease remains the leading cause of death in our community as well as being a significant source of chronic morbidity and a major contributor to expenditure on health.

The downturn in coronary mortality was preceded only by the advent of the first pharmacological agents for treatment of hypertension, in the 1950s, and by the inception of modern coronary care facilities, in the mid-1960s. Other technological advances in the management of IHD such as the development of beta-blocker drugs (used in the management of hypertension and angina, and to stablise cardiac rhythm after myocardial infarction), calcium-channel blocking drugs, and techniques to re-open or bypass partially or totally blocked coronary arteries appeared on the Australian scene only after the fall in mortality from IHD was already apparent. These developments therefore cannot have initiated the downward trend in mortality although they may have served to maintain it since persons with established, symptomatic coronary disease are at highest risk of suffering a new, potentially fatal, coronary event.

The impact on mortality from IHD of coronary artery bypass surgery (CABG), which became available in Perth in the latter 1970s, and, more recently, of coronary angioplasty (dilatation of an obstructed coronary artery using a balloon catheter - available in Perth since the early 1980s - (see Figures 1 and 2) is hotly debated. These procedures are certainly of benefit in the control of anginal pain, especially angina that has not responded to maximal medical (drug) treatment. Coronary bypass surgery is also of proven benefit, in terms of prolongation of survival, in patients with certain patterns of coronary arterial obstructions including some where the impairment of blood supply to the cardiac muscle is sufficient to compromise its pumping efficiency (CASS, 1983; European Coronary Surgery Study Group, 1982). Coronary angioplasty is a simpler, cheaper procedure requiring less time in hospital than bypass surgery and is presumed, although not yet proven, to bring equivalent benefits in terms of decreases in mortality.

Although IHD was once a disease of the well-fed, sedentary middle classes, over the last 20 years coronary mortality has been lower and falling faster in the professional and administrative groups than in clerical, sales and blue collar workers (Gibberd, et al., 1984). Thus, the downward overall trend over the last 20 years in the leading cause of death in Australia has been accompanied by a **widening** gap in coronary experience. We wondered whether inequalities in access to coronary surgery might have been contributing to this phenomenon.

2. METHOD

Western Australia is unique among the Australian states in having a collection of computerised hospital morbidity data that includes information on every separation from every hospital in the state. Each record in the system includes the name, age, sex, place of residence, place of birth and occupation of the patient, the principal and other conditions treated and major operative procedures performed while the patient was in hospital, and the dates of admission and separation. We used this system to identify every admission with any mention of myocardial infarction that had occurred between 1971 and 1987 in any resident of Perth who was aged between 25 and 64 years at the time. These data were taken to reflect the 'background pattern' of ischaemic heart disease according to age, sex, current occupation and place of birth. Separate validation studies demonstrated that myocardial infarction was diagnosed in a consistent fashion throughout the period of interest (Martin, et al., 1987).

The hospital morbidity data were also used to obtain a provisional file of all patients meeting the same residential and age criteria who had undergone coronary bypass surgery or coronary angioplasty over the same period. This file was supplemented by manual checking of operating theatre logbooks at the two hospitals performing these procedures as previous experience had shown that the discharge data did not always include evidence that one or both of these procedures had been performed during any particular admission.

Trends in procedures are expressed in absolute numbers, as in Figures 1 and 2, and as sex-specific age-standardised rates (to avoid artifacts arising from changes in the size or age-structure of the population of Perth). The 'world' population (Waterhouse, et al., 1976) has been used as the reference for direct standardisation.

The rates of coronary surgical procedures in particular sub-groups defined by occupation (professional and administrative versus all other) or place of birth (Australia, UK and Eire, all other) are expressed as the proportion of all surgical procedures in a single year that were performed for members of that group compared with the proportion of all admissions for acute myocardial infarction (AMI) in that year which occurred in that group. Thus, it is quickly seen whether the number of operations performed was greater or less than might have been expected from the incidence of ischaemic heart disease as reflected by documented myocardial infarction.

The analyses by occupation are restricted to males because of likely disjunction between current occupation and previous occupation, education and training in women.

3. RESULTS

Numbers of Procedures

In both sexes the number of coronary bypass operations rose steeply during the latter part of the 1970s to reach a peak in the early 1980s. Subsequently there was a decrease of approximately 25 per cent before numbers stabilised in males and an upwards trend was re-established in women.

The number of patients undergoing coronary angioplasty increased five-fold in both sexes between 1983 and 1985, decreased slightly in 1986 and resumed an upwards trend in 1987.

For both procedures approximately five times as many operations are performed in males as in females in any given year (Figures 1 and 2).

Rates of Procedures

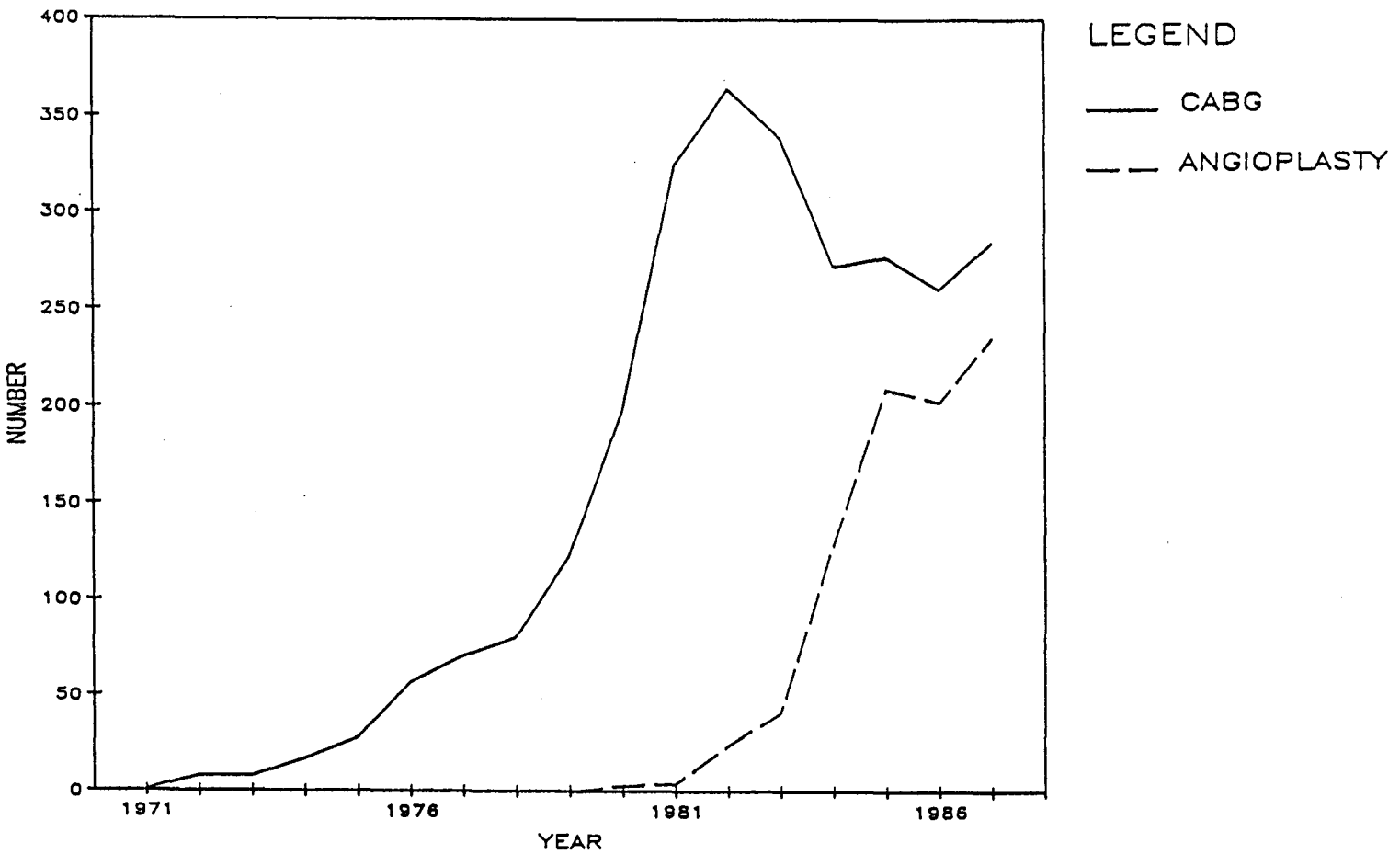
Among males, the age-standardised rate of coronary bypass operations reached a peak of 177 per 100,000 in 1982 and has subsequently fallen, although progressively more slowly. The advent of coronary angioplasty has meant that rates for both procedures combined continued to increase after 1982, but more slowly than before that year. For women the peak rate for coronary surgery was reached in 1983 and the subsequent fall has been less marked. However, when coronary angioplasties are included, the total rate for coronary revascularization is seen to increase steadily throughout the period 1976 - 1987 (Figures 3 and 4).

Occupational Comparisons

In eleven of the twelve years under review more men in professional or administrative occupations underwent coronary bypass surgery than would have been expected from the corresponding proportional incidence of acute myocardial infarction. There was no consistent trend in the extent of this apparent over-representation.

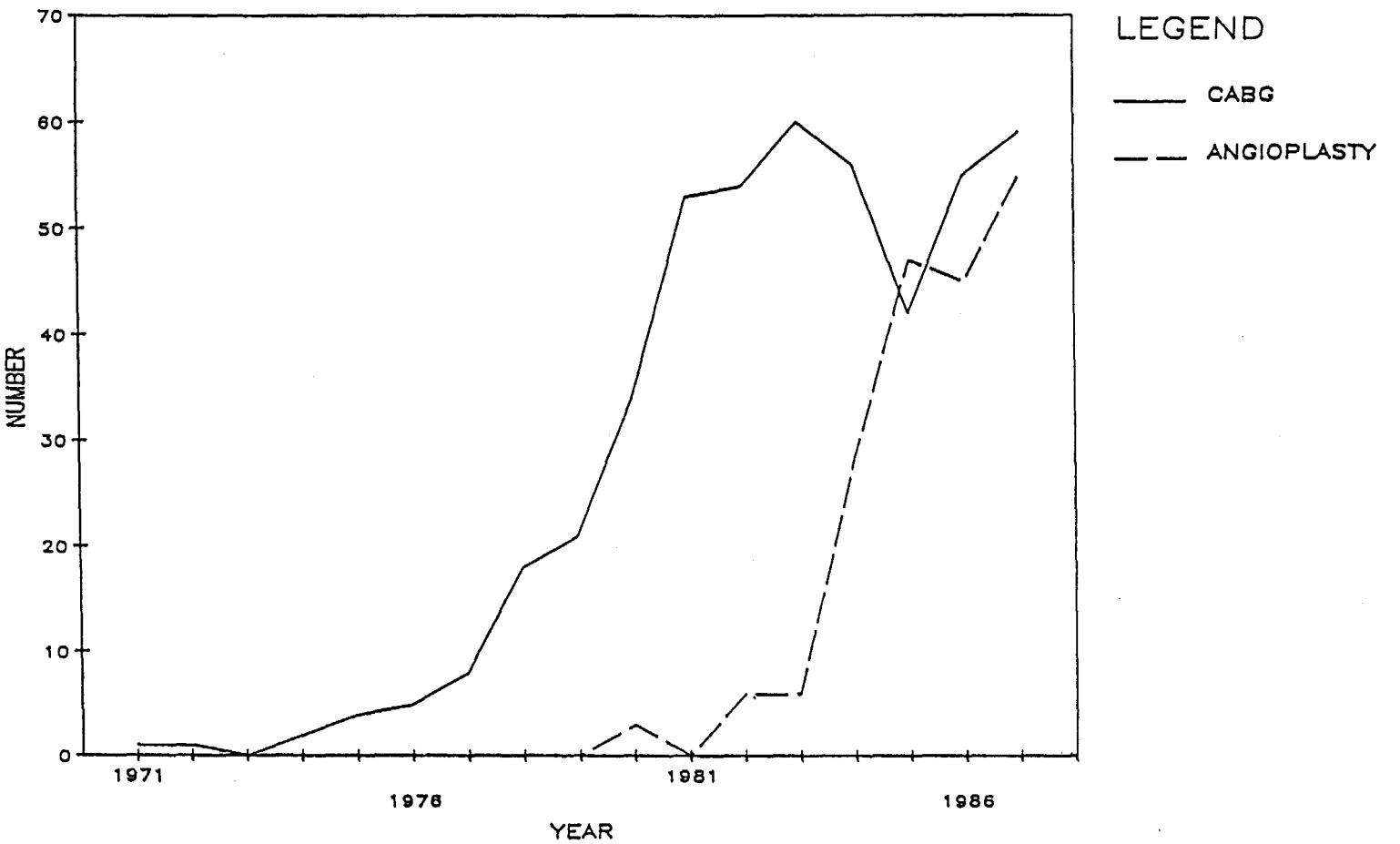
The data for coronary angioplasty also show a greater than expected proportion of these procedures were performed on men from the highest occupational strata. This pattern becomes progressively less marked, however, during the five years for which data are available (Figures 5 and 6).

FIGURE 1: CARDIAC PROCEDURES 1971-1987 PERTH STATISTICAL DIVISION MALES AGED 25-64



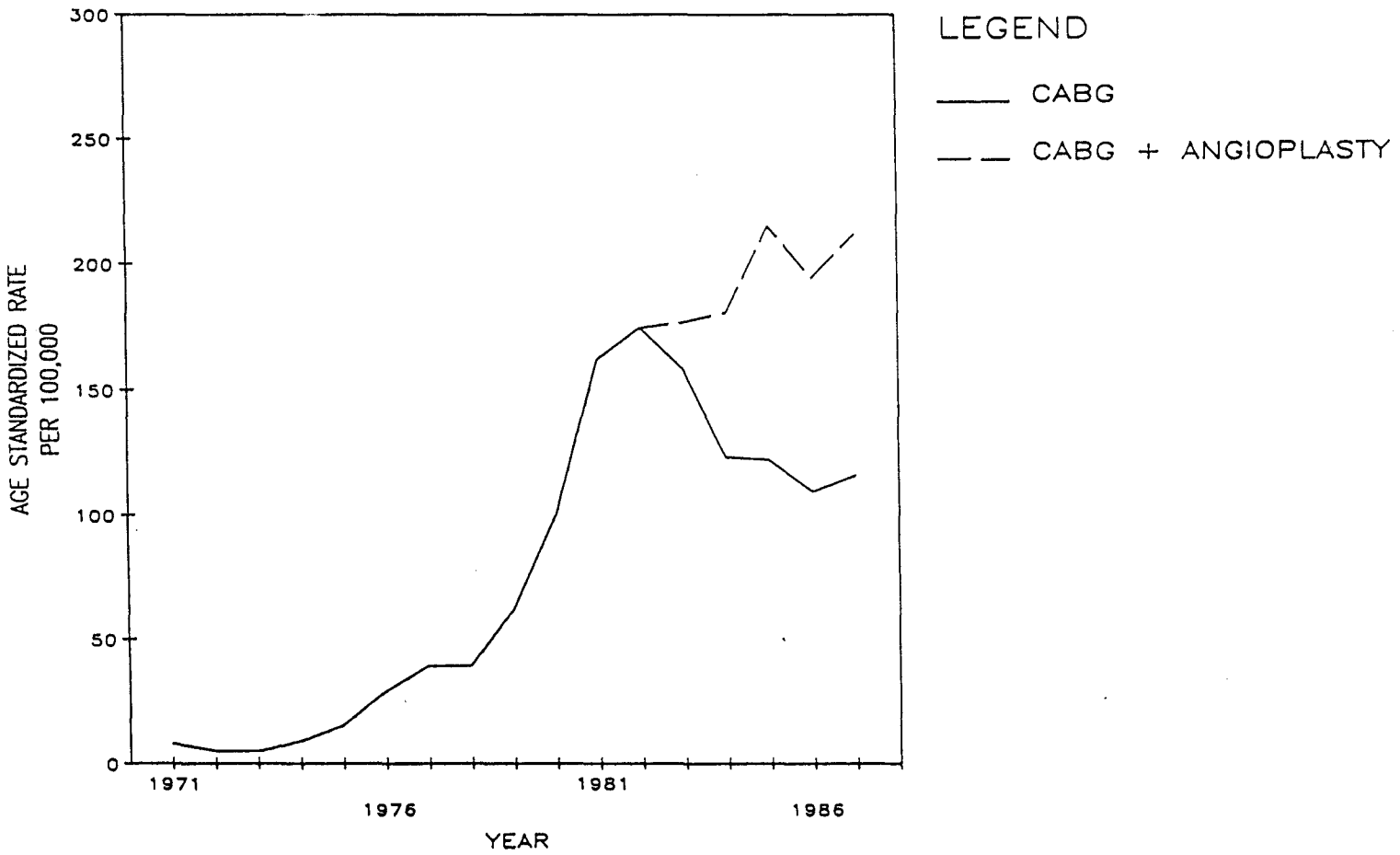
Source: Hospital Morbidity Data.

FIGURE 2: CARDIAC PROCEDURES 1971-1987 PERTH STATISTICAL DIVISION FEMALES AGED 25-64



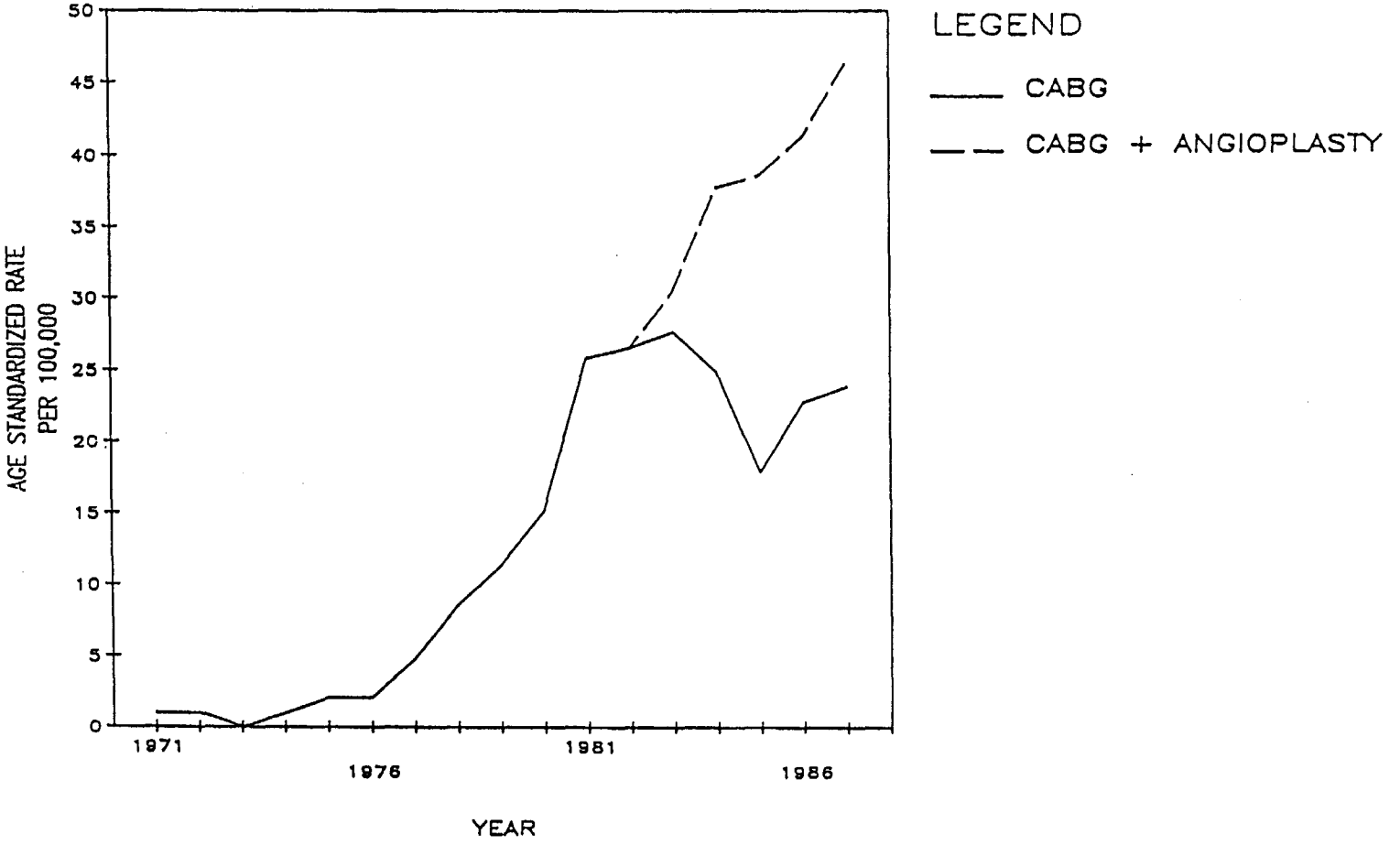
Source: Hospital Morbidity Data.

FIGURE 3: CARDIAC PROCEDURES 1971-1987 PERTH STATISTICAL DIVISION MALES AGED 25-64



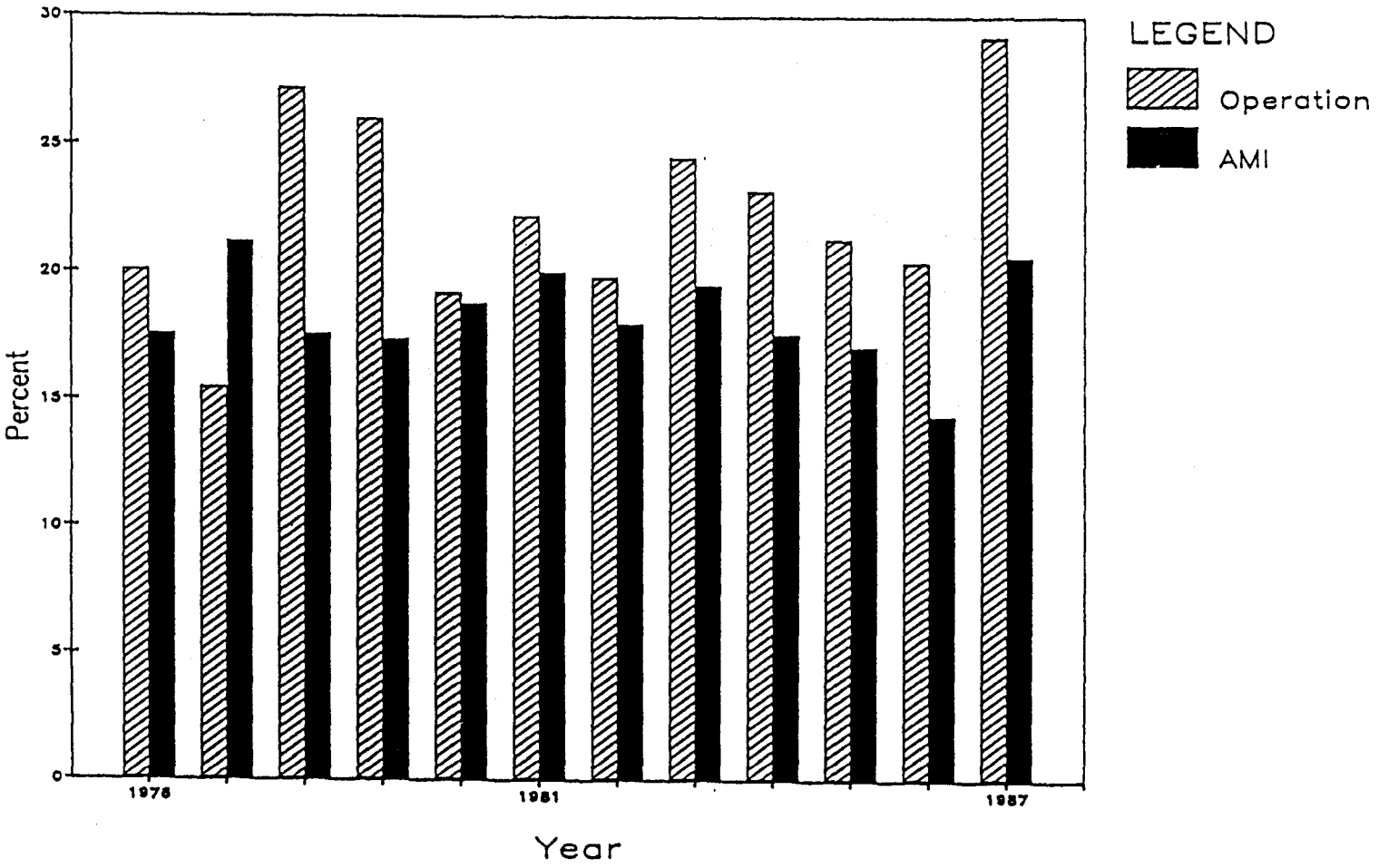
Source: Hospital Morbidity Data.

FIGURE 4: CARDIAC PROCEDURES 1971-1987 PERTH STATISTICAL DIVISION FEMALES AGED 25-64



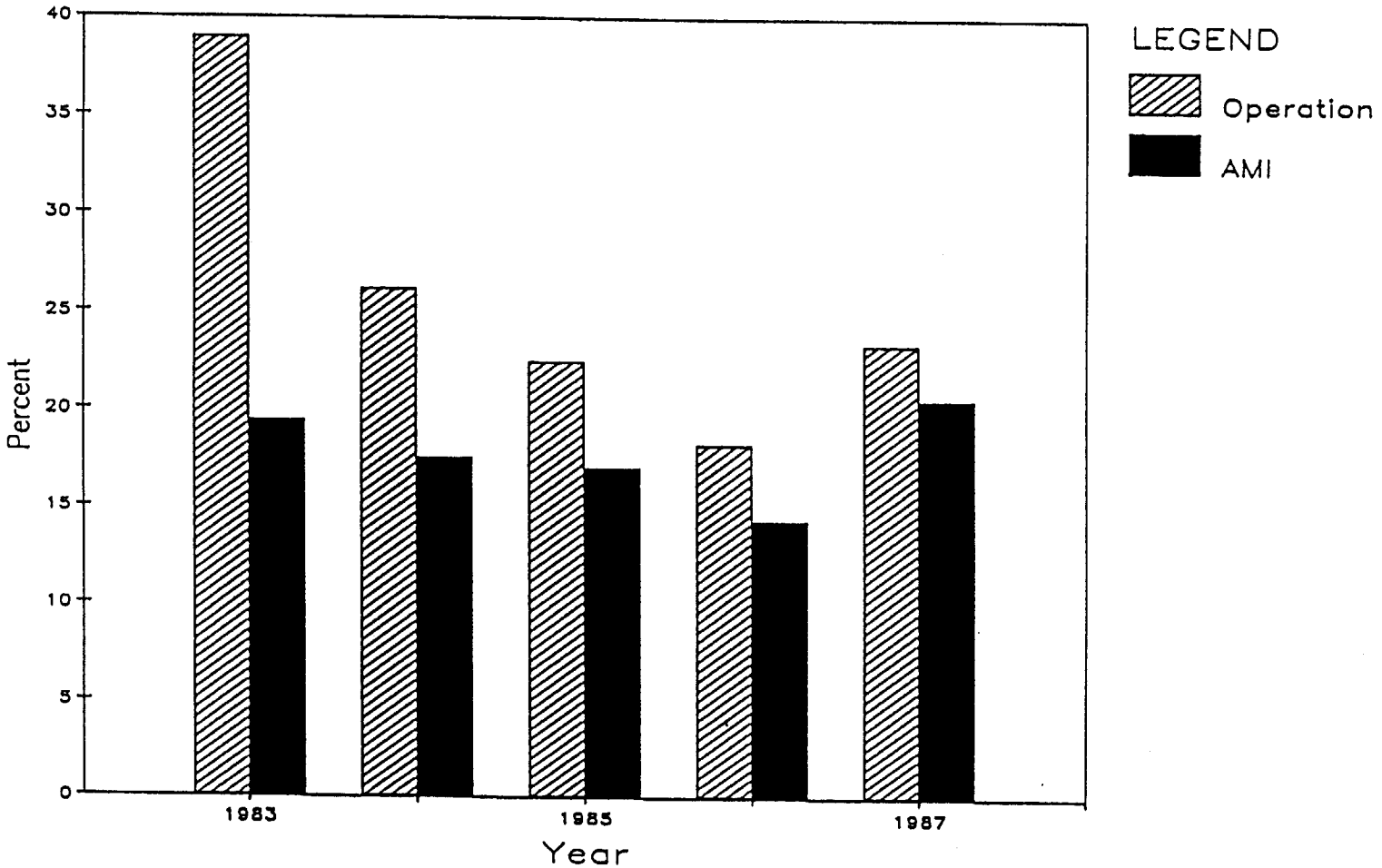
Source: Hospital Morbidity Data.

FIGURE 5: CARDIAC PROCEDURES 1976-1987 CORONARY BYPASS SURGERY - PROFESSIONAL/ADMINISTRATIVE PERTH STATISTICAL DIVISION MALES AGED 25-64



Source: Hospital Morbidity Data.

FIGURE 6: CARDIAC PROCEDURES 1983-1987 ANGIOPLASTY - PROFESSIONAL/ADMINISTRATIVE PERTH STATISTICAL DIVISION MALES AGED 25-64



Source: Hospital Morbidity Data.

Comparison by place of birth

A. Coronary bypass surgery in men

In each year, approximately 50 per cent of both operations and infarctions involve men born in Australia (Figure 7). Male migrants from the UK and Eire are at least slightly over-represented in ten of the twelve years under review (Figure 8). There is a trend for male migrants from non-English speaking countries to be under-represented among those undergoing surgery in the first eight years of the series while they have been slightly over-represented in each year from 1984 onwards (Figure 9).

B. Coronary bypass surgery in women

Australian born women were under-represented among women undergoing coronary bypass surgery between 1976 and 1978 but the total number of operations in women was small at that time and no consistent pattern has emerged since (Figure 10).

C. Coronary angioplasty in men

Apart from 1983, there has been a slight tendency for men from non-English speaking backgrounds to be more likely to undergo coronary angioplasty than would be expected from the data for acute myocardial infarction. Correspondingly both English-speaking groups have been slightly under-represented in recent years (Figure 11).

D. Coronary angioplasty in women

Migrant women from English speaking countries are consistently over-represented among women undergoing angioplasty in each year from 1983. However, this observation is based on a maximum annual total of less than 60 procedures and must be subject to considerable random error (Figure 12).

4. DISCUSSION

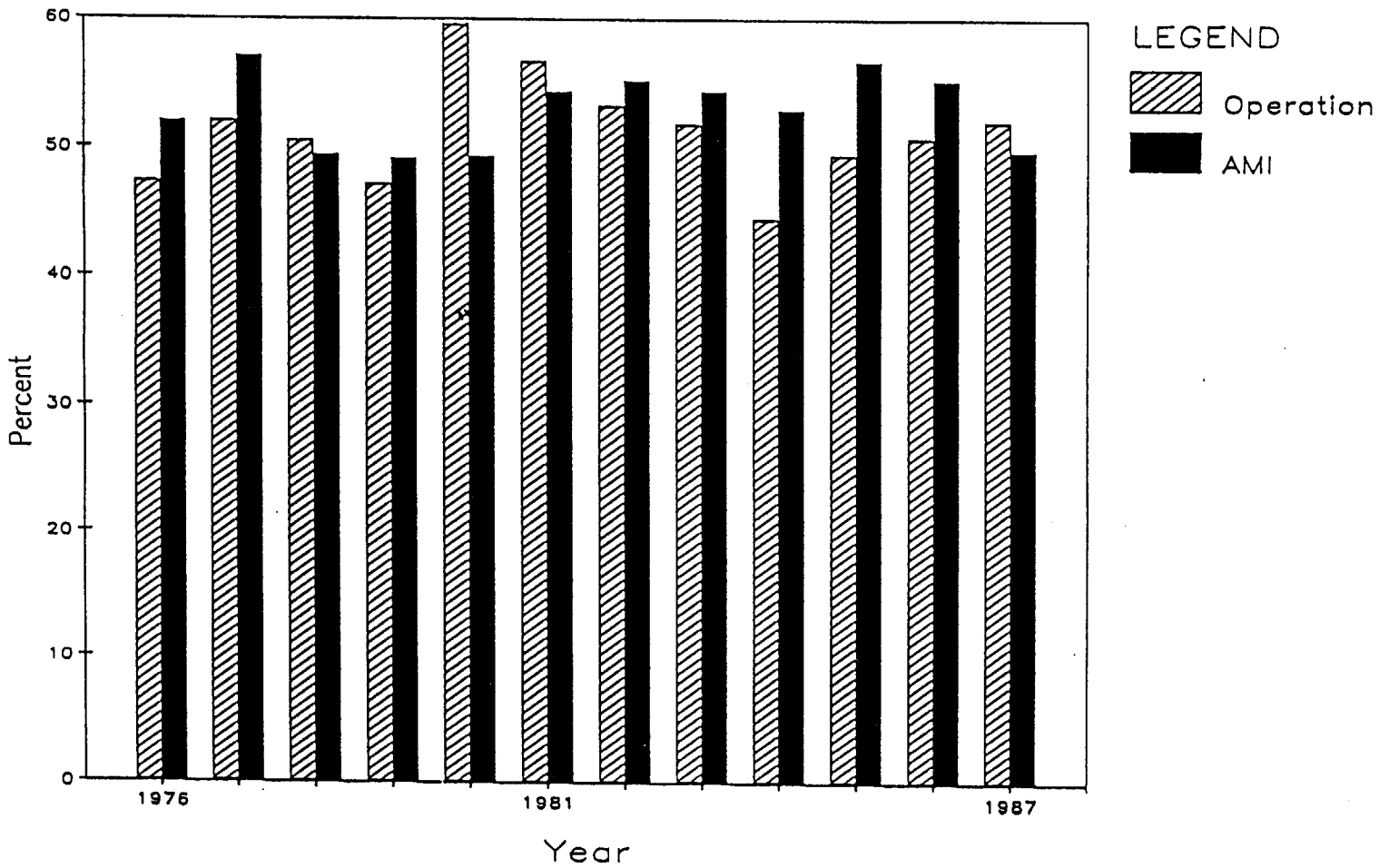
Our data show that the rate and number of coronary bypass operations performed on adult residents of Perth of working age rose steeply in both sexes until 1982 and subsequently have stabilised somewhat below their peak levels. However, the advent of coronary angioplasty has meant that the total rate of coronary revascularization procedures has continued to increase throughout the period 1976-1987 in both sexes.

The analysis of occupational groups consistently shows that more men in professional and administrative groups undergo the two procedures than would be expected from their proportional incidence of myocardial infarction, although this trend is becoming progressively less marked for coronary angioplasty.

When the data on procedures and infarctions are sub-divided according to place of birth, certain patterns are discernible for particular sub-groups but they are not consistently apparent across the two sexes or the two procedures.

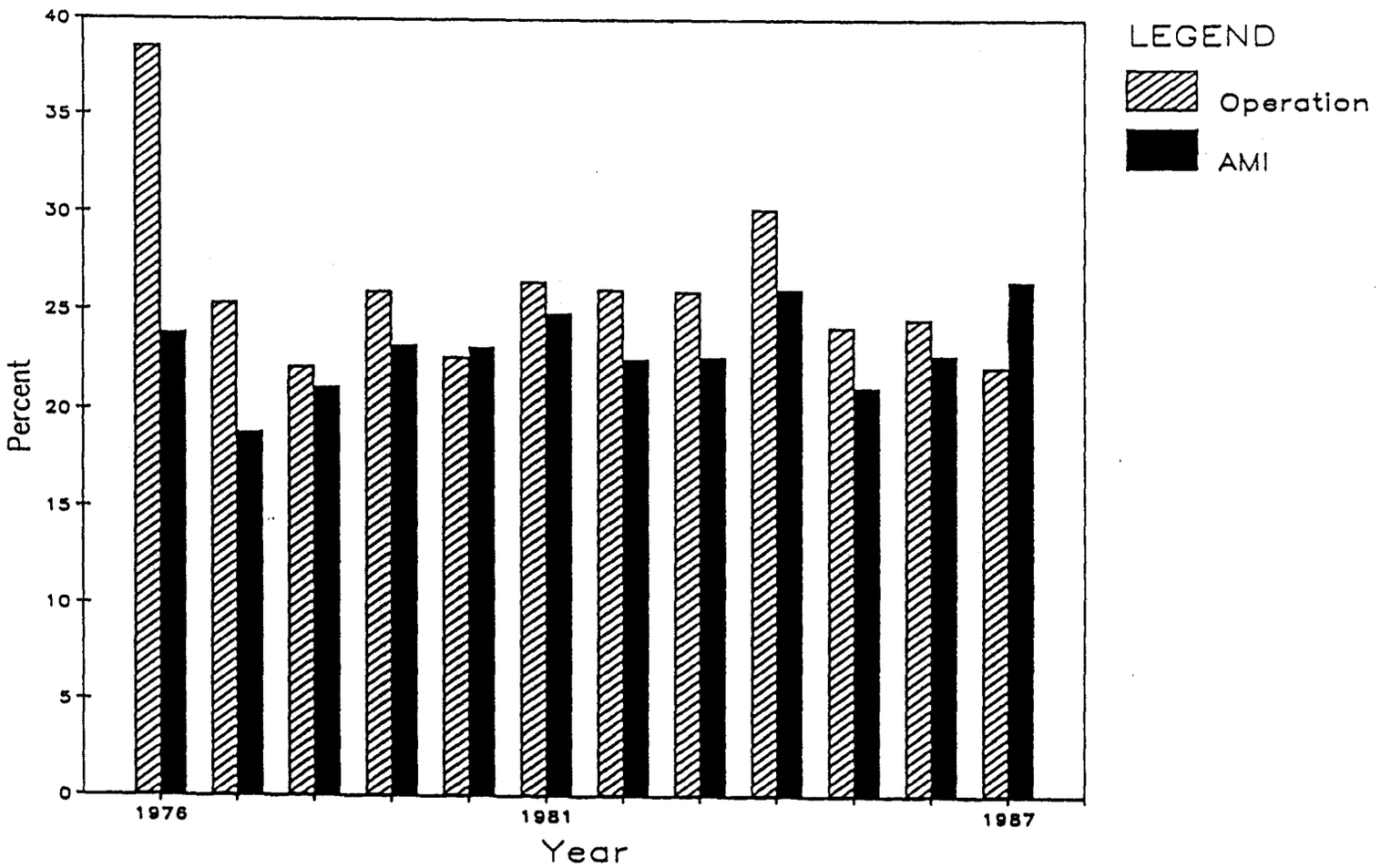
We are confident that our data are not subject to bias arising from incomplete ascertainment of either operations or smyocardial infarctions or from changes in the way myocardial infarction was diagnosed. All of our occupational data were collected from living patients by a single system. If persons accompanying an acutely sick man had tended to 'upgrade' his occupation when interviewed by an admissions clerk, such that a 'shopkeeper' becomes a 'business manager,' while the patient himself gave a less misleading answer when returning for a planned procedure, we would have expected middle class occupations to have been **under**- rather than **over**-represented among those undergoing a procedure.

FIGURE 7: CARDIAC PROCEDURES 1976-1987 CORONARY BYPASS SURGERY - AUSTRALIAN BORN PERTH STATISTICAL DIVISION MALES AGED 25-64



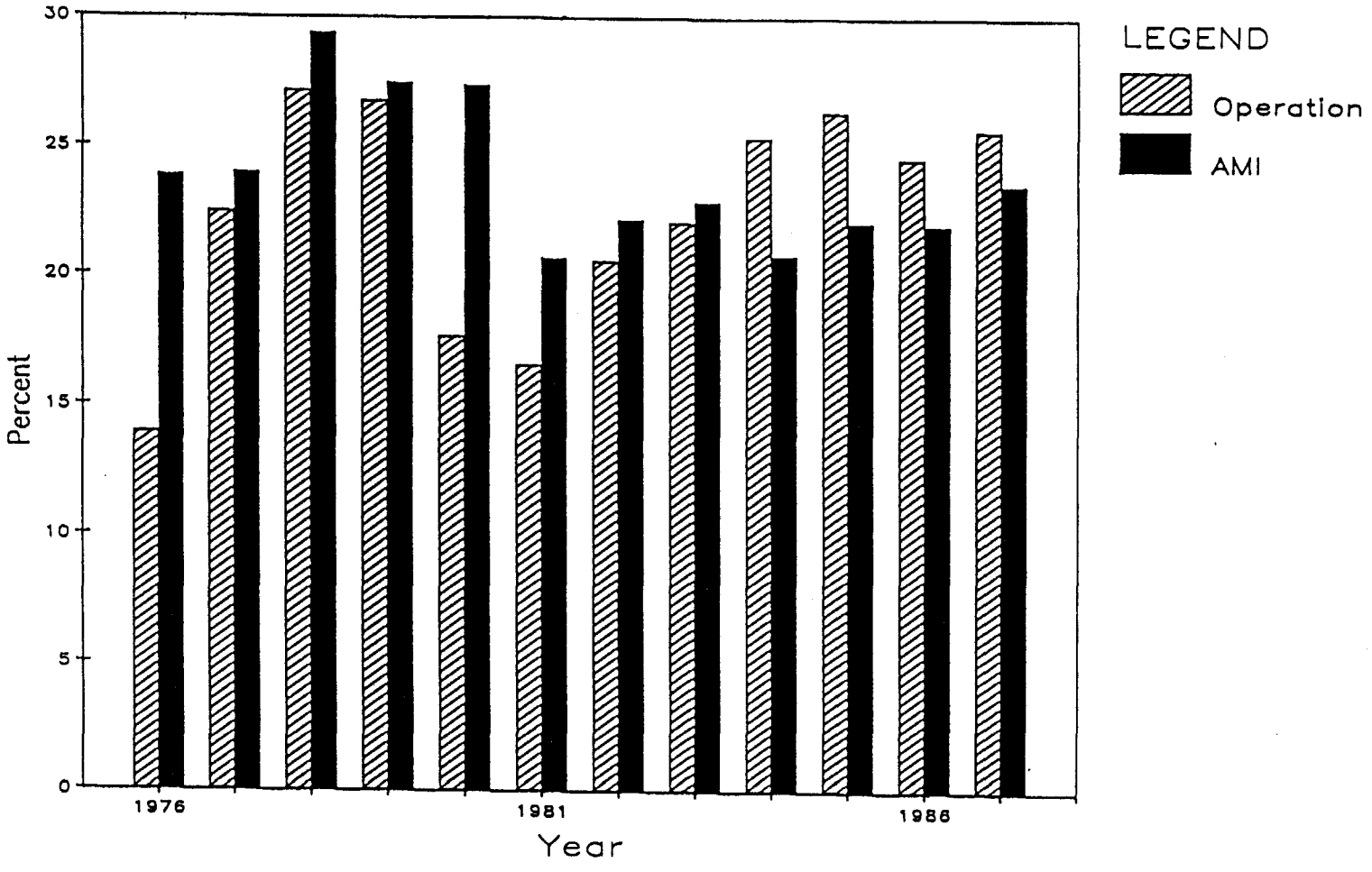
Source: Hospital Morbidity Data.

FIGURE 8: CARDIAC PROCEDURES 1976-1987 CORONARY BYPASS SURGERY - ENGLISH SPEAKING MIGRANTS PERTH STATISTICAL DIVISION MALES AGED 25-64



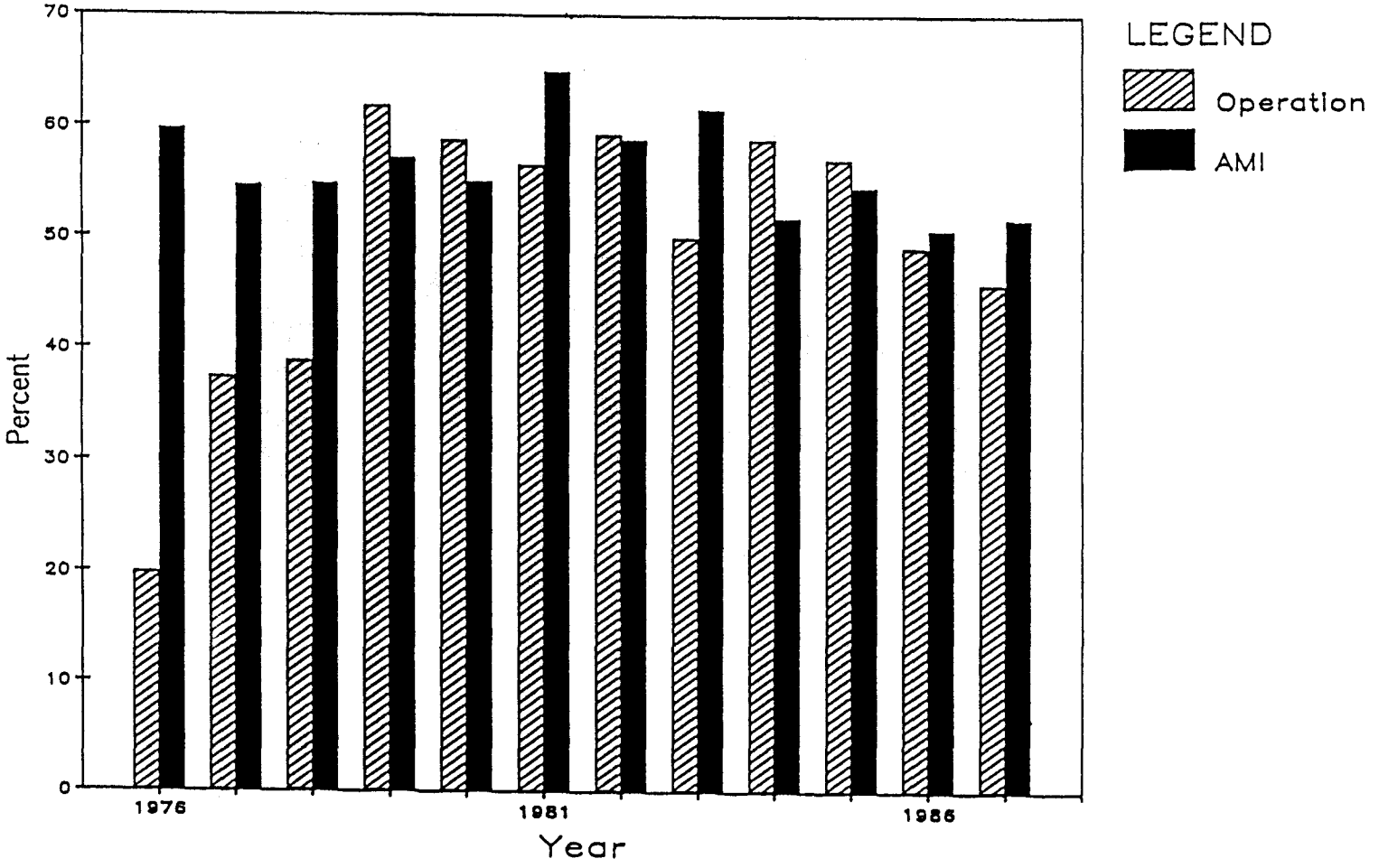
Source: Hospital Morbidity Data.

FIGURE 9: CARDIAC PROCEDURES 1976-1987 CORONARY BYPASS SURGERY - NON-ENGLISH SPEAKING MIGRANTS PERTH STATISTICAL DIVISION MALES AGED 25-64



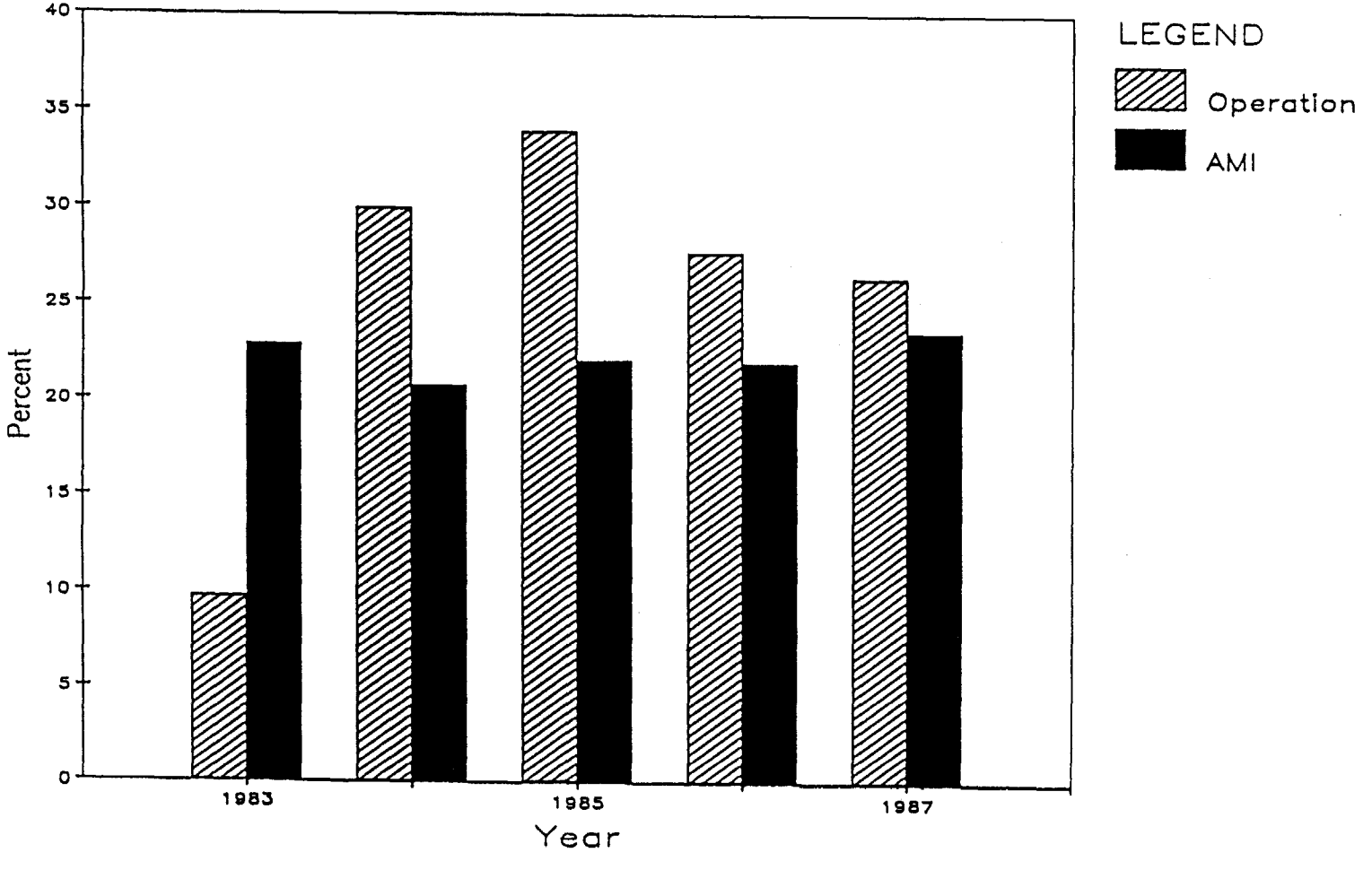
Source: Hospital Morbidity Data.

FIGURE 10: CARDIAC PROCEDURES 1976-1987 CORONARY BYPASS SURGERY - AUSTRALIAN BORN PERTH STATISTICAL DIVISION FEMALES AGED 25-64



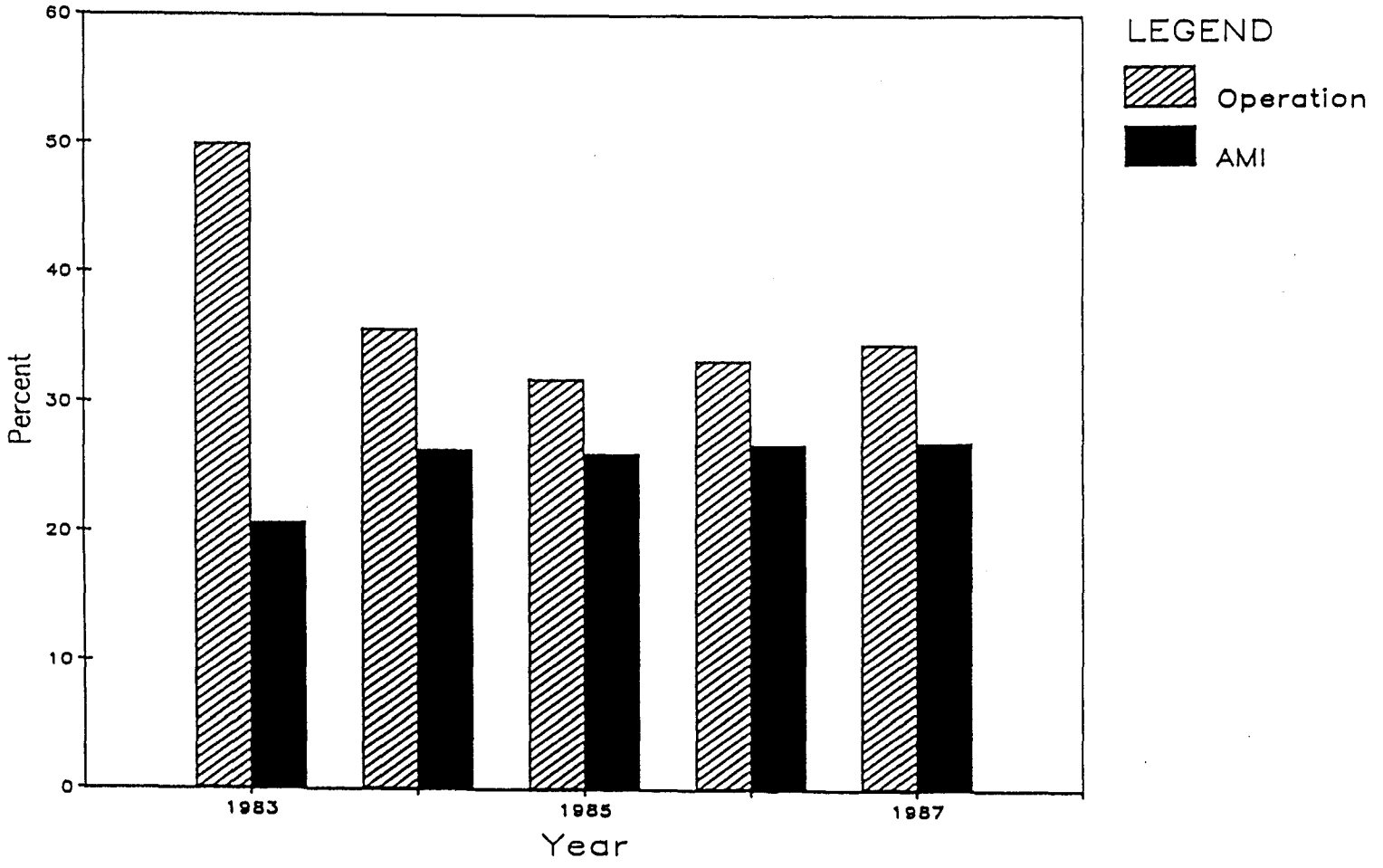
Source: Hospital Morbidity Data.

FIGURE 11: CARDIAC PROCEDURES 1983-1987 ANGIOPLASTY - NON-ENGLISH SPEAKING MIGRANTS PERTH STATISTICAL DIVISION MALES AGED 25-64



Source: Hospital Morbidity Data.

FIGURE 12: CARDIAC PROCEDURES 1983-1987 ANGIOPLASTY - ENGLISH SPEAKING MIGRANTS PERTH STATISTICAL DIVISION MALES AGED 25-64



Source: Hospital Morbidity Data.

It seems unlikely that promotion of clerical, sales and blue collar survivors of myocardial infarction to administrative roles could explain our data. Nor are we aware of any data to show that symptomatic coronary vascular disease affecting men in those groups is intrinsically more likely to be fatal or less likely to be amenable to operative intervention, either of which could theoretically account for our results.

Thus, we are left with the conclusion that men in professional and administrative occupations appear to have had disproportionately greater access to coronary bypass surgery and coronary angioplasty than their 'background' incidence of IHD would suggest. There is probably unmet demand for these procedures among men in less prestigious occupations, unmet demand that could be contributing to the widening gap in coronary mortality across occupational groups in Australia.

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THE SIDS ENIGMA: A HUMAN ECOLOGICAL APPROACH TO A PRIMARY HEALTH CARE PROBLEM*

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1. INTRODUCTION

It is not necessary to describe changes in risk patterns in industrialised societies in order to justify a paradigm shift in looking at concepts of causality in relation to problems of public health importance. Models of causality which focus on striaghtforward (linear) cause and effect interventions are not always suitable nor appropriate. This is certainly so with Sudden Infant Death Syndrome, known colloquially as SIDS or Cot Death. The ecologically appropriate method for attempting to understand the enigmatic nature of this event essentially considers the interdependence between human beings and their physical and socio-cultural environments.

It is our contention that SIDS is a result of the silent and invisible confluence of such environments. To get a clear understanding of how these factors contribute to SIDS it is necessary to separate them out in order to attempt to reconstruct the interaction which produces a SIDS event. Further we believe that current modes of thinking and primary health care service delivery are ill-equipped and ill-prepared to recognise the new reality posed by just such a paradigm shift. The move away from the current behavioural/epidemiological mode towards a more social-cultural approach makes it possible to see that the five hundred or so SIDS deaths annually in Australia makes it a disease of public health importance. While the bio-medical approach has a contribution to make to the understanding of SIDS, it is reified knowledge without the addition of the socio-cultural context.

Sudden Infant Death Syndrome is not only one of the most enigmatic medical events, it is one which has so far been most reluctant to yield its secrets. In this, the latter part of the twentieth century, Sudden Infant Death Syndrome has been impervious to the best efforts of medical scientists throughout the world. Many theories have been purported and yet despite this and many millions of research dollars having been spent, it seems that little has been generated save the inconclusive theories themselves (Milner, 1987).

Yet there are factors which arise consistently out of the research that has so far been carried out. The definition itself clearly indicates that it is not so far considered a medical entity or disorder as such.

> *SIDS is the sudden death of any infant or young child which is unexpected by history and which a thorough post mortem examination fails to demonstrate an adequate cause of death.* (Beal, 1986)

Rather it is, in terms of its definition, a set of conjunctions which are essentially prompted by the legal requirement for a post mortem examination to occur in the event of a death for which no adequate cause (medically) can be found and recorded on a death certificate. The assumption here, be it implicit or explicit, is that the post mortem is needed not only to satisfy the legal requirements of establishing a cause of death for the certificate, but also to rule out the possibility of foul play.

The domination of the bio-medical disease model, under which auspices the majority of the research in the last forty years has been carried out, has aimed at finding a cause of SIDS. The closed nature of this approach fails to include legal, historical and sociological perspectives and insights and hence the value of other disciplines has been discounted

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* Editor's Note: For further information on unpublished data provided in the figures, in this paper, readers are advised to contact the authors.

bio-medical model of disease and is at best considered controversial and at worst irrelevant or too 'delicate' (authors emphasis) an issue and hence outside the sphere of true medical knowledge.

2. SALIENT EPIDEMIOLOGICAL FEATURES

In the world picture the following factors are consistently associated with SIDS. These risk factors in the main are constituent items associated with what we believe is a major contributor to the SIDS story, namely poverty. Bastardy, young age of mother, unemployment, lack of education and low socio-economic status all add up to what might be called a poverty index for SIDS.

1. Poverty
2. Bastardy
3. Mean age at death 3 months
4. Male gender
5. Parity 2
6. Second in the birth order of twins
7. Young age of mother
8. Young unemployed father
9. Low socio-economic status of mother
10. High winter incidence
11. Smoking during pregnancy
12. Non-attendance ante-natal care

Even though many theories about SIDS have been generated which may account for some cases but not others, the consistent epidemiological findings are primarily sociological rather than medical. Couple this with the legal requirement for a post mortem examination and essentially what is left is an event which by its own definition satisfies none of the adequacy criteria in either scientific or medical terms. It would seem on the basis of this introductory explanation of SIDS, that although a child dies and hence there must be a cause of death, it is, as such, not a medical event, but rather a sociological and legal construct.

These descriptive epidemiological features have been known since before the 19th century. In the Lancet of January 1855 the salient features as outlined are described in the Inquests and Medical Trials (**The Lancet**, 27 January 1985). Thus, then as now, the issue of ruling out foul play, surrounding the unexplained death of an infant, has been the motivating factor in the legal and medical procedures that have been implemented to deal with SIDS. In this way the complex autopsy investigations which are a legal requirement have become the process whereby SIDS is recorded only because any other possible cause of death has been eliminated.

The lack of recognition of this fact is one of the problems in dealing with SIDS. In fact there has been a blurring of the distinctions between issues at law, social relations, history and medical diagnosis and practice. It has been assumed that the criteria appropriate to one branch of learning are the same as others, or even worse, that legal or medical issues must take precedence over others.

3. LEGAL INVOLVEMENT

The essential constituent of the SIDS definition is the legal requirement for a post mortem examination which arose out of the British Poor Laws of the 16th and 17th centuries (Nicholls, 1967). It is here that the first conceptual muddle out of which arise the blurred distinctions between disciplines, is found. Legally the Bastardy Act of 1575-76 (18 Elizabeth cap 3) has been assumed by legal historians to have prompted an increase in prosecutions for infanticide (Nicholls, 1967). It is from this act that the legal requirement for a post mortem on a bastard infant found dead occurred. This was because the prosecutions for bastardy and other related acts were transferred from the Ecclesiastical courts (Bawdy Courts, so named because of the volume of sexual offences tried in them) to the Royal courts and the coroners and magistrates of those courts were instructed to penalise heavily any miscreants whose actions drew too heavily on the public purse in the form of Poor Law or Parish Relief (Hoffer and Hull, 1981), these of course being the forerunner of our current social welfare payments.

Prior to the reign of Elizabeth 1 a suspicion of overlaying or SIDS was by custom heard in the 'Bawdy Court'. It was during this reign that tighter government control over the poor and itinerants was instituted, albeit, somewhat unsuccessfully. Overlaying was an assumed cause of infanticide along with suffocation, drowing, exposure and accidental death (Hoffer and Hull, 1981). These courts treated bastardy and overlaying more leniently than the royal

courts proved subsequently to do. The aim was for the stiffer laws to act as a deterrent to the crime of bastardy and subsequent suspected infanticide in order to curb a drain on public funds for poor relief for the support of these bastard infants in the event, frequently the case, of the father not providing for the infant's upkeep. When the cases transferred to the Royal Courts after 1576, infanticide prosecutions jumped by 225%. Magistrates were prompted to prosecute vehemently cases of bastard infant death of which overlaying was a prominent cause. What is important here and pertinent to the understanding of the historical perspective of SIDS is the bastardy/infanticide/overlaying association. It is important because the assumptions that the conjunction of this triad, accepted as valid in the 16th century, is still current in historical/legal literature today and in fact underpins the current definition of SIDS. It also is the basis upon which the current procedural investigations and autopsies current in South Australia are based.

Following on from the Bastardy Law of 1575-76 came the Infanticide Act of James 1 of 1623-24 (Nicholls, 1967). Titled 'An Act to prevent the Murthering of Bastard Children', it was assumed to be necessary because of the failure of the previous act under Elizabeth to either curb the bastardy rate, or compel bastard begetters to pay child maintenance. Again, the presumed result of this was that the burden of care which fell to the mother was so burdensome and onerous that the authorities assumed that the mothers resorted to infanticide to avoid both shame as well as the financial burden of having to provide for the child's upkeep.

The issue in this act which is at odds with English common law is that the burden of proof was placed upon the mother (the bastard bearer) to show, in the event of her infant dying, that she had not murdered it. This was done by proof from one witness at least that the child was born and that the mother did not murder it, or if born alive that it had not subsequently been the victim of foul play. In this way there is a progression in the bastardy/overlaying alleged infanticide association to an automatic assumption of infanticide in the event of the death of a bastard infant. It is in these two acts of bastardy and infanticide enacted by James 1 and Elizabeth 1 that the legal involvement in SIDS has its historical antecendents and precedence at least in the British cultural context.Thus when we compare the 20th century epidemiological and legal profile of SIDS already drawn, with that of the 16th and 17th centuries, and overlaying, there is a remarkable similarity which points to a SIDS continuity in a vulnerable group of the population over a significant time period. This probable structural nature of SIDS incidence in the population is an interesting phenomenon given the reported changes in the nature of family life which are purported to have occurred in the transition from the traditional period, through the early modern, the industrial and into the post-industrial late 20th century context.

4. FAMILY SIZE AND SIDS INCIDENCE

Within the western European tradition, historically family size shows clear differences along class lines. The households of the very poor show that there were only (Nicholls, 1967) children per household and those of the labouring classes had 1.2 (Flandrin, 1979). When we consider overall family size within this context, we find that in the better off sectors, families were more complex in structure, more numerous and contained more children (Flandrin, 1979). An overall consideration of family size in those households which had sunk into poverty either through the death of the father, or his itinerancy identifies the presence of the single mother and her child. It is from the ranks of these women that accusations associated with overlaying/SIDS were drawn.

Other sociological factors associated with the rise of respectability during the 19th century have been influential in the transfer of SIDS from the unmarried poor in the past to the married poor in the present. Formal registered marriage is the preferred option for many women in the western cultural context in the 20th century. For the lower socio-economic strata this has not always been so (Rose, 1985). Historically common-law 'marriage' was much more frequent an occurrence before the present time.

If for example, the burden of SIDS has shifted from the unmarried poor in earlier historical times, to the married poor in the 20th century, then it would seem to us that in terms of social structure, the infants of the same group of people are still succumbing to SIDS. That is to say, the respectability of marriage may not, in fact, protect against SIDS. Thus it raises the point that SIDS may not be amenable to such socially manipulable events as marriage/respectability, as contrasted with bastardy, it being a form of social deviance. It would seem that the issues raised by this descriptive epidemiology are important in understanding SIDS and in helping to discriminate what may or may not be important in SIDS aetiology.

5. SEASONALITY AND SIDS

In the historical context along with poverty, a high winter incidence has been consistently associated with SIDS. This association was identified in various comments in medical journals during the 19th century. The most succint epidemiological descriptions which highlights the precise order of seasonal incidence is found in Medical Jurisprudence in the Lancet, 27th January 1885 (Inquests and Medical Trials, 1885). Here the seasonal order is quite clear and is as follows:

> *The greatest number of such bodies found dead are discovered in the months December, January and February; the next greatest number in September, October and November. The spring months - namely, March, April and May, exhibit them in the third degree; and, beyond all question, the least number are found in the summer months - June, July and August.* (Inquests and Medical Trials, 1885)

Findings on seasonality in the twentieth century context concur with this description.

The southern coastline of Australia offers an opportunity to study the effects of weather on SIDS' where generally speaking it moves from west to east. The effect of seasonality on SIDS prevalence between Perth and Melbourne is consistently high for winter and low for summer (Figure 1). This means that babies born in summer have up to three times the risk of dying from the condition than those born in spring (Taylor, 1982). Older babies at the ages of 3 and 4 months are at greatest risk in mid winter (Figure 2).

However, in the northern hemisphere SIDS rates vary 50 times between Scandinavia (0.06/1000) and Canada (3.0/1000) and countries of similar latitudes (Peterson, 1980). Therefore, exposure to cold and other rearing cultural factors are more likely theoretical explanations of this phenomenon than winter viral epidemics. In Britain, one study demonstrated a rise in SIDS rates when health visiting services became scarce.

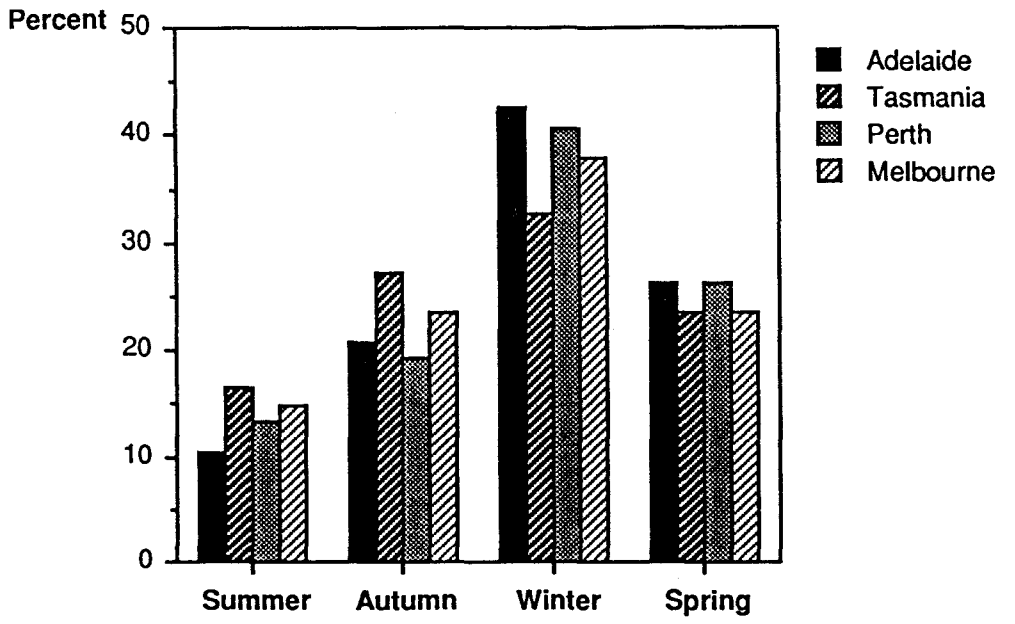
Young maternal age, low maternal education and low family income have strong associations with SIDS (Kraus et al., 1989). In metropolitan Adelaide house value, and by implication social class, has an inverse relationship with SIDS with risk rates 5 times greater between suburbs of 'low' and 'high' house value (Figure 3).

The data for South Australia 1979 - 1988 indicates that factors consistently associated with SIDS in the world picture are also evident here. Amongst others we have been able to demonstrate the consistently familiar peak in deaths from SIDS at age three months (Figure 4). Similarly the same consistency of birth and death frequency by month/season with births peaking in March/April and deaths during July/August replicate other findings (Figure 5). The ratio of males to females in the order of 2:1 is a finding from the South Australian data 1979 - 1988 which is in line with the SIDS world picture (Figure 6).

A hypothesis which we are working with is that the older babies are at the greatest risk in terms of poverty scores (Figure 7). When linked with the seasonality factors, the question arises of the affordability of home heating in mid-winter as a socio-economic factor to explain SIDS rate differences. A recent study from Hong Kong demonstrated low incidence explained by crowding (Lee et al., 1989).

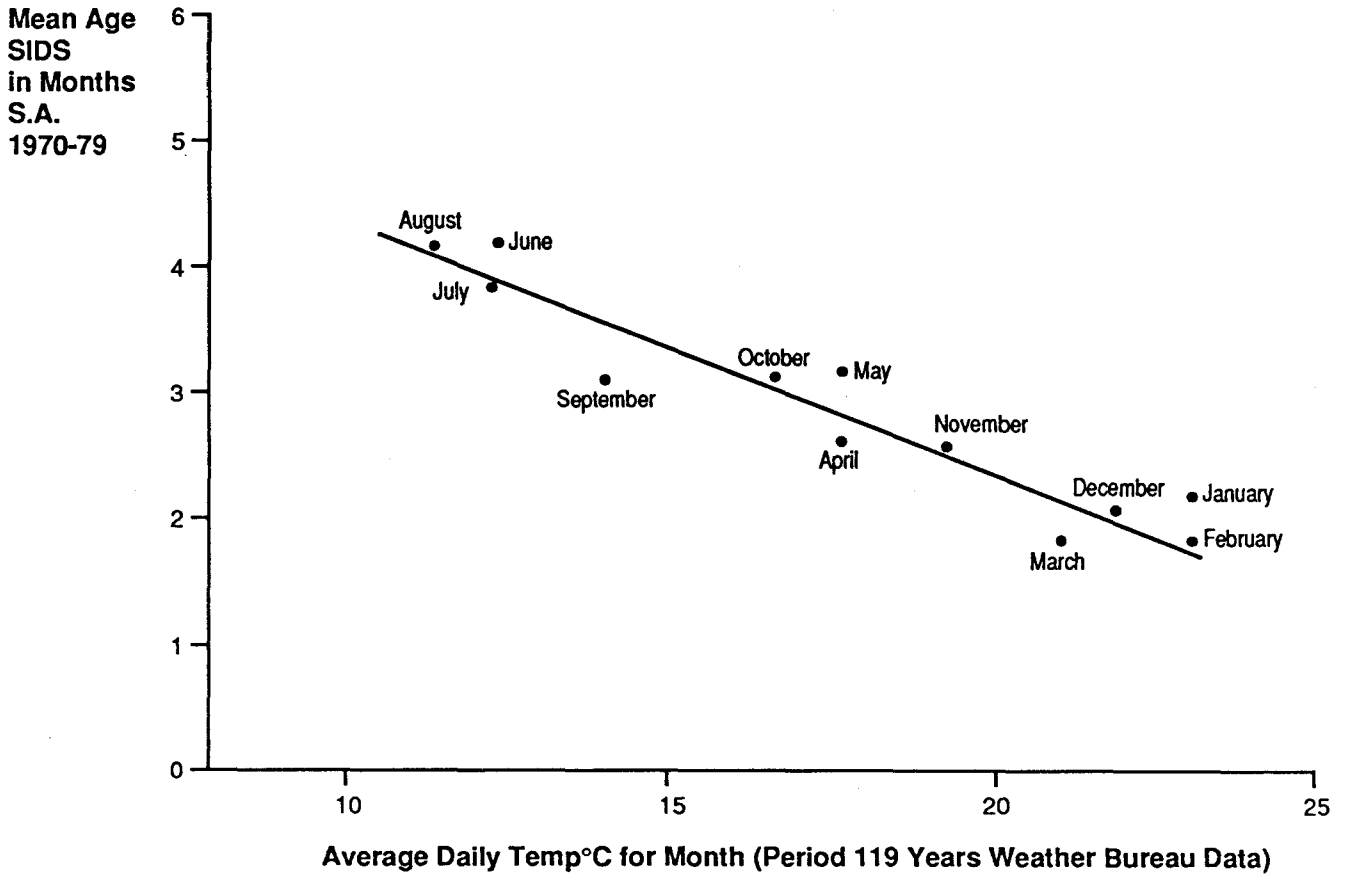
This macro-ecological approach focusing on weather and the concept of a three attack statistical model needs to be linked with the micro-ecological environment in which anaerobic toxins may be implicated. Our biomedical researches on SIDS suggest a toxigenic death mode in many cases, particularly in the older babies. We have recovered an anaerobic enterotoxin which has the potential to cause apnea and cardiac arrest (Murrell et al., 1987). (Figure 8). This work has now been verified by a group from Sydney University (Murrell, et al., in press). The effect of weather and environment on the production of this and other lethal toxins in the infant at risk may well be determined by the broader issues of poverty, education and other cultural factors. This is particularly apposite for the 3 - 4 month infant whose own immune system takes over from maternal protective influences.

FIGURE 1: SIDS SEASONALITY SOURTHERN AUSTRALIA 1975-1984



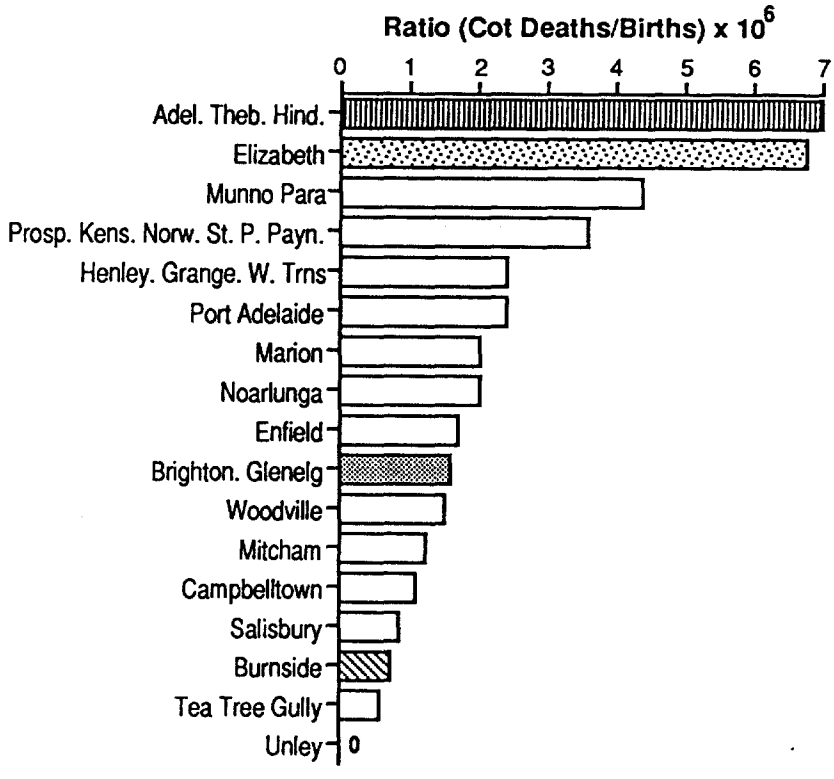
Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 2: AGE AND TEMPERATURE ASSOCIATIONS FOR SIDS



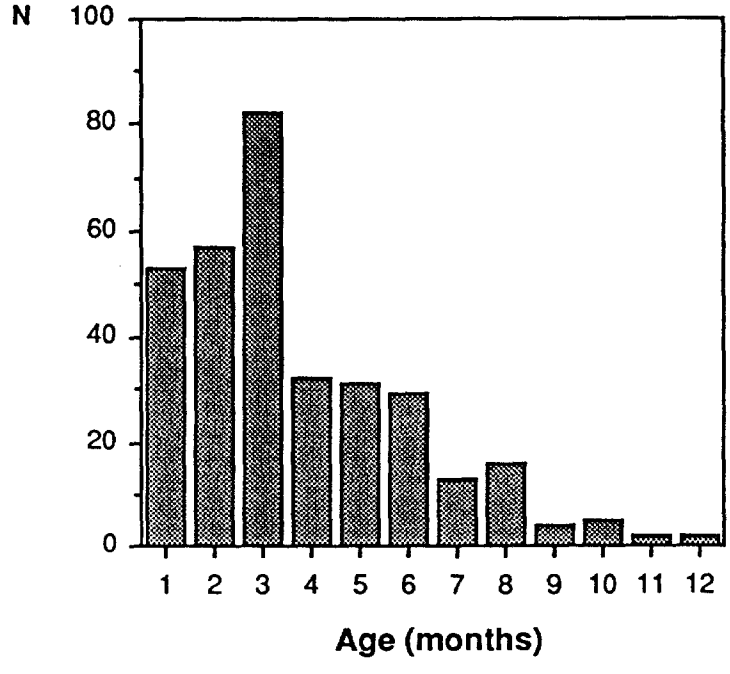
Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 3: RATIO OF COT DEATHS TO BIRTHS BY DISTRICTS FOR THE YEARS 1974, 1975, 1976 COMBINED



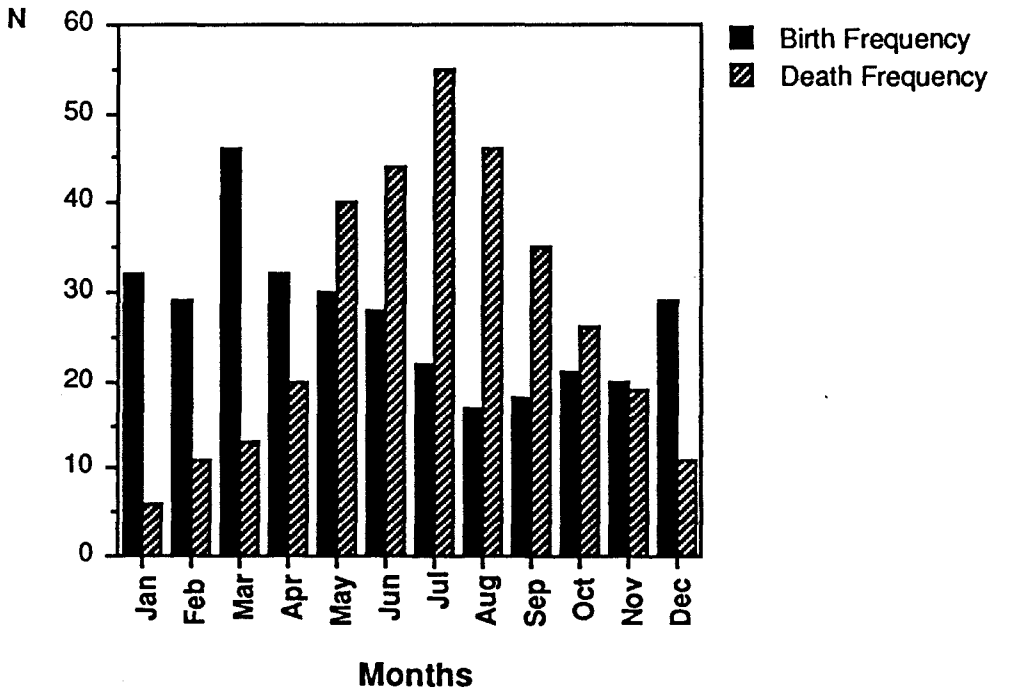
Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 4: AGE FREQUENCY DISTRIBUTION IN SIDS SOUTH AUSTRALIA 1979-1988



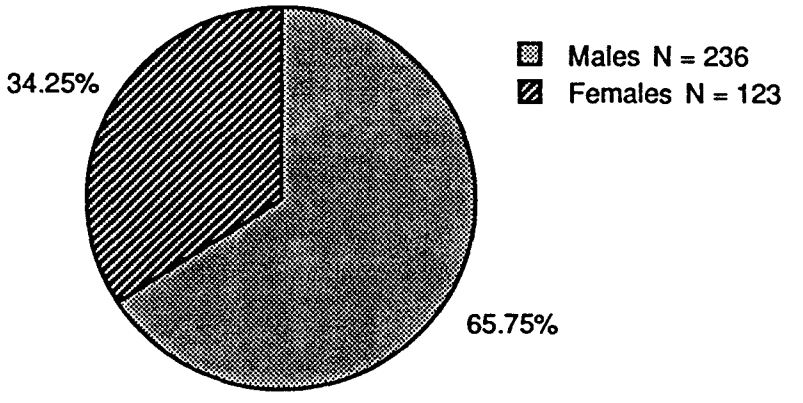
Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 5: BIRTH AND DEATH DISTRIBUTION BY MONTH SOUTH AUSTRALIA 1979-1988



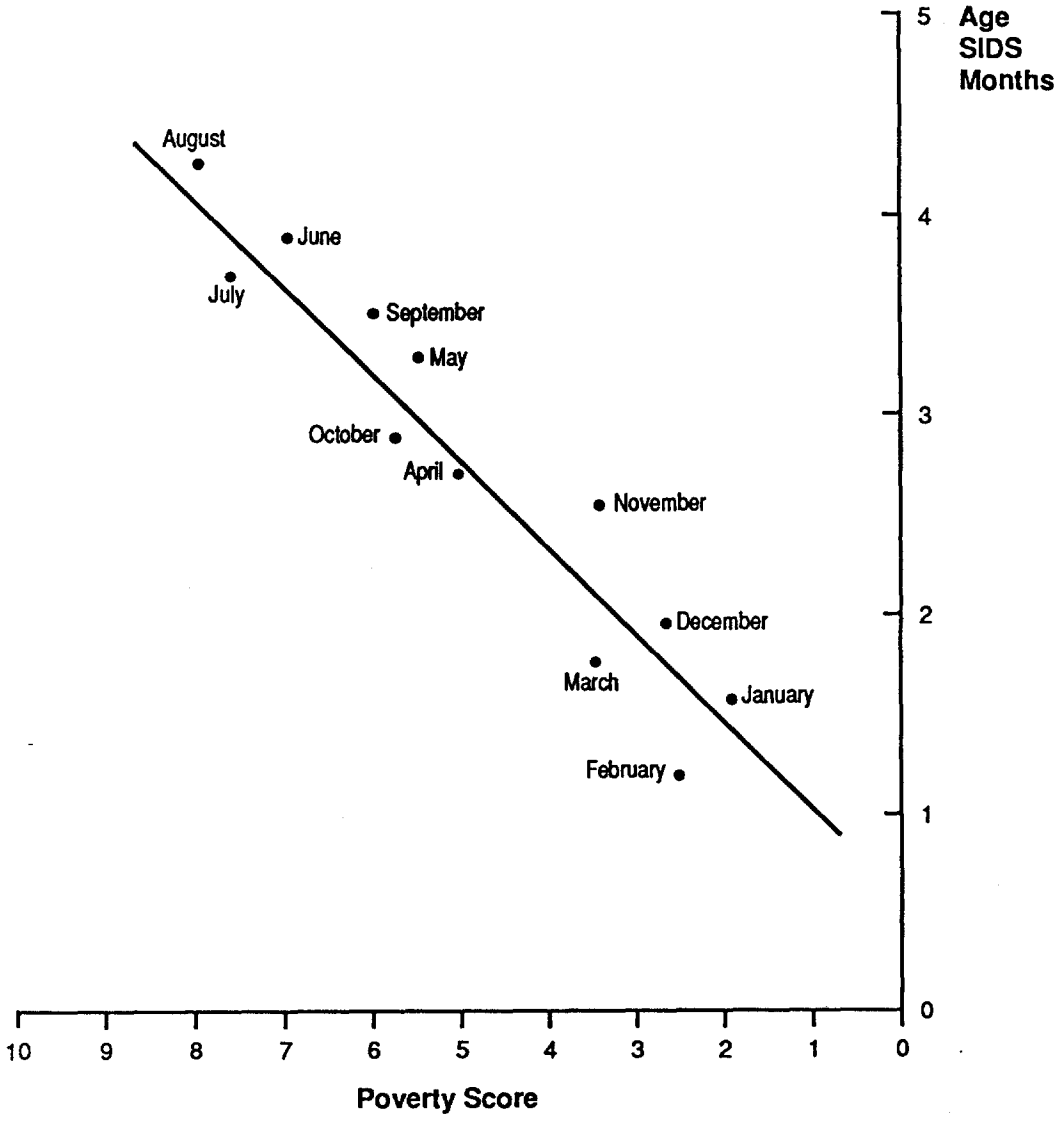
Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 6: SIDS AND GENDER SOUTH AUSTRALIA 1979-1988



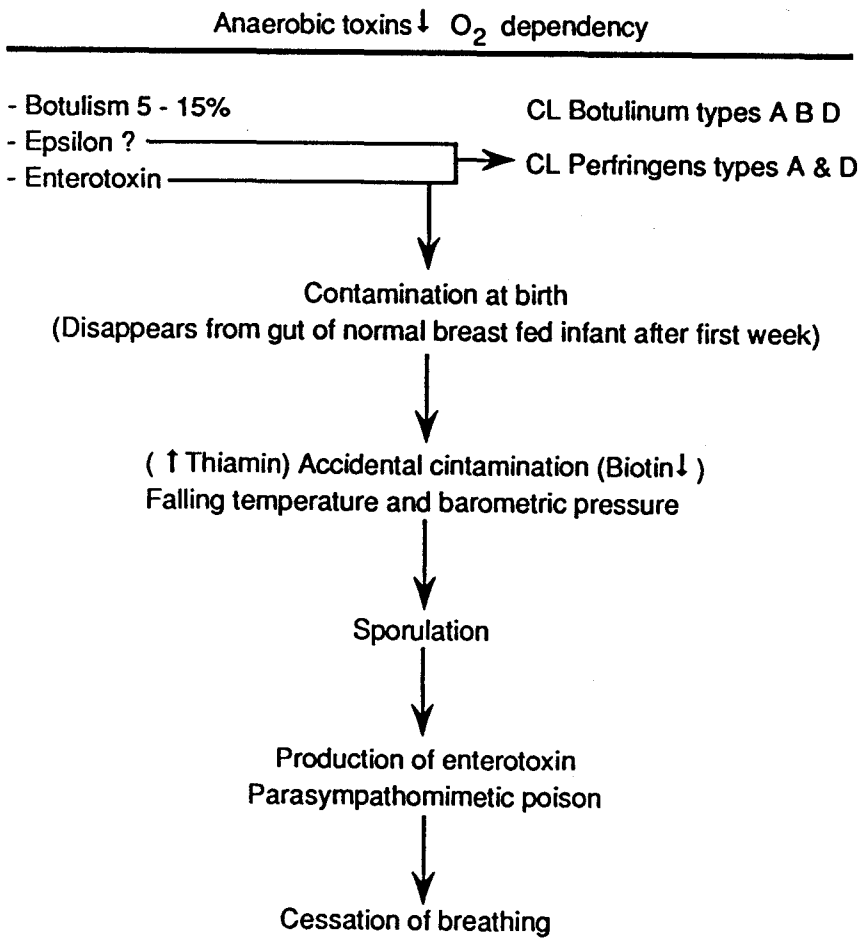
Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 7: A HYPOTHETICAL SOCIO-ECONOMIC AGE PROFILE FOR SIDS



Source: Unpublished data: Department of Community Medicine, University of Adelaide.

FIGURE 8: HYPOTHESIS AETIOLOGY SIDS



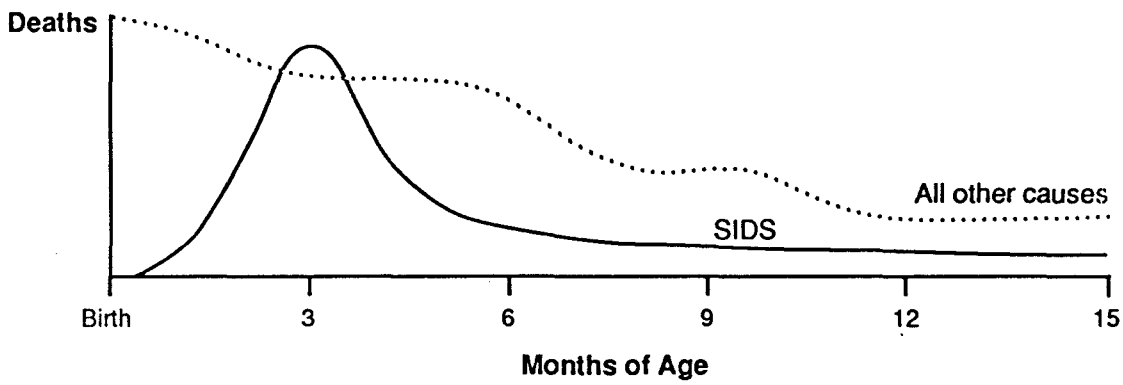
Source: Murrell et al. (1987).

6. CONCLUSION

Work by Murrell and Moss on SIDS and seasonality across Southern Australia indicates that SIDS is also a micro-ecological environmental problem rather than just an issue of the macro-climate. The broader issues associated with the socio-cultural environments, namely the institutions of the family, law and education together with poverty combine silently and invisibly to produce the SIDS phenomenon. This possible inter-relationship between macro and micro-environments may produce a situation whereby the anaerobic toxins overwhelm thehost in order to facilitate their own survival. This interdependence between environments seems to be at the heart of the SIDS engima.

It is our contention that the burden of SIDS incidence has historically fallen upon the poorest sectors of society and that current research substantiates that situation in the 20th century context. The conceptual muddles between disciplines has so far obscured this incidence pattern of SIDS. There are known reducible risks for the problem which child welfare agencies in Australia are not addressing. We have identified a SIDS prone subset of the population that is continuous over the past four hundred years. Legislation and public health policies have failed to adequately address this issue. Five hundred babies die in Australia each year from SIDS. It is the commonest cause of death for infants from one to twelve months of age (Figure 9). Perhaps it is time to declare it a problem of public health importance.

FIGURE 9: COMPARISON OF SIDS DEATH WITH ALL OTHER CAUSES OF DEATH



Source: Knight (1983), Figure 6, p. 27.

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IN WHOSE 'BEST INTEREST'?
SOME MOTHERS' EXPERIENCES OF CHILD WELFARE INTERVENTIONS

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1. INTRODUCTION

The reporting, recording and associated surveillance of families where children are considered 'at risk' of abuse or neglect has increased dramatically in Western countries in the last two decades. Yet, as Hepworth (1985) has remarked in describing the Canadian situation, there exists a general confusion as to how to define child abuse and neglect and 'our remedies' for dealing with it 'remain uncertain and may do more harm than good' (p. 160). Policies formulated to extend mandated reporting and intervention into families, ignore our lack of knowledge of the consequences of such policies for the families and children at whom they are directed.

A lack of research into the consequences of child protection policies can be attributed to paternalistic concepts according to which, as Fox describes it, the 'politically neutral and beneficent' state intervenes in families in order to promote children's best interests, in instances where standards of parenting are considered to fall below socially accepted norms (1982, p. 288). Parton (1988) describes two small studies into the effects of surveillance on families where children were considered to be 'at risk' of abuse and neglect. In a study by Brown (1986), twenty-three parents, and in a study by Corby (1987), ten sets of parents were interviewed. In these studies it was reported that parents had experienced surveillance by child protection workers as very traumatic. A major issue emerging from the research was the extent to which parents were uninformed about investigations.

This research project was developed in response to discussion by students in class, of their personal experiences of child protection agency interventions. These students reported trauma resulting from such interventions which exacerbated their parenting problems.

The major aim of this research was to make 'public' the 'personal' experiences of some recipients of child protection policies in New South Wales. It was assumed that in the implementation of child protection policy it is women on whom the major responsibility for adequate nurturing is placed. Wilson (1983) has noted how social policy generally, because it focuses in its operation on the private world of the family, has particular consequences for women. The fact that the impact of interventions on women has received little attention may reflect what Burden and Gottlieb (1987) have remarked on as the trend for social scientists to trivialise or ignore the perspectives of women.

Child welfare policies have traditionally been vehicles for imposing on women models of appropriate mothering. Much child protection practice and research rationalises intervention in families by focusing on the effects on children of inadequate parenting. It was hoped that making public some personal experiences of these interventions would contribute to the development of more effective child protection policies.

2. RESEARCH METHODOLOGY

The methodology utilised in this research project was essentially qualitative, influenced by the principles identified by Reinharz (1983) as basic to feminist research. In particular, the qualitative nature of the research was developed from open, empathetic interaction between interviewers and interviewees, using the language of participants. The project co-ordinator and research assistants incorporated an awareness of their own values and roles in the research process.

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* Assisted in Research by the following students in Welfare Courses at Macarthur Institute of Higher Education: Carolyn Banados, Sharon Feltman, Cheryl Jepsom, Robyn Palmer and Gloria Stolsteimer. Carolyn Noble-Spruell and Leonie Gibbons made helpful comments on earlier drafts of the paper.

Collaborative, non-authoritarian relationships were established between interviewers and interviewees. Important in implementing the principles of this research was the fact that the research assistants were female students who volunteered for the project as part of their social welfare field work placement requirement.

Participants in the project were provided with opportunities to contribute to the research process. Participants in the main project were shown transcripts of their interviews prior to data analysis and the participants were invited to a session to discuss this paper in its written form and if necessary make amendments.

Data were obtained by the use of relatively unstructured interviewing techniques. The three pilot interviews were extremely unstructured, enabling participants to focus on issues of concern to them in the intervention process. The ten interviews in the main study were focused interviews, which enabled the researchers to follow-up on issues they had identified as salient in the initial interviews. The decision to focus on specific areas meant some structuring of the interviews to ensure attention to these areas. There was variation between interviews in the degree of structure imposed - the more verbal participants requiring minimal structuring, the less verbally fluent, in particular two persons with severe hearing deficits, requiring more structuring.

The participants in the pilot study were contacted because the project co-ordinator had become aware through various avenues, of their interest in discussing and making known their experiences with the Department of Family and Community Services (FACS). These participants differed somewhat from those of the main study, in particular in that they were not all sole parents at the time of the interviews.

The participants in the main study comprised what was essentially a convenience sample, from the South-Western Region of Sydney, located by visits to eleven agencies in the area. These agencies all had as one of their functions supportive activities for parents. One participant was located through personal contact with one of the researchers and two participants by contact from other participants. A number of potential participants declined to participate, on grounds that they felt too stressed by current interventions, or because they feared repercussions from discussing agency actions. This fear of agency intervention was a significant factor in limiting the numbers of people interviewed for the study and influenced the decision to include for analysis data obtained in the pilot, as well as in the main study.

3. DATA ANALYSIS

All those contacted were women. In the main project the participants were, at the time of interview, all sole parents receiving the supporting parents' benefit and occupying Department of Housing accommodation. The children of the participants ranged from unborn to seventeen and the number per parent from one to six. Four of the women mentioned physical abuse to themselves by men. The majority appeared to be somewhat to very isolated - only three mentioning having family or friends with whom they had regular contact.

The dominant feeling expressed by participants in response to intervention was of **powerlessness at the removal, or threat of removal of their children.** These feelings were associated with a **perception of the child welfare agency interventions as punitive.**[1]

Gale stated

> *When they take kids out of your hands its like they're not your kids anymore ... its like I haven't got the power anymore.*

Mary claimed

> *They're illegal kidnappers. It's like playing with little kids - where if they don't get their way, they pack up their dolls and go home. [Now] I can't make up my mind on anything.*

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1. Pseudonyms have been used.

I've got to ring and check with them about everything [for example the schools to which the children are sent].

Kate commented

Both my children have been terrified by strangers who legally can come into your home and threaten to kidnap them, threaten to abuse them. They were set up to prevent what they are now doing. ... We were terrified because they said they could take [the child] whenever they felt like it.

Dianne said

I didn't know what to do ... two men ... came and took him ... you just sort of felt that you had no rights.

Vivian believed

... as far as they're concerned you've got no rights.

and Sara

They [the authorities] discuss something behind your back ... I was the last to find out ... and I felt awful.

For Pat

I felt, well, I can't even be a proper person because they are not even telling me what's happening. I kept thinking I must be totally stupid.

Effie was

... really afraid they might take Marie away from me and I felt that I was not a good mother.

Vivian whose children were removed from school for questioning without her being notified, had threatened legal action and believed that this action prompted the cessation of intervention. Generally however, participants were apathetic, or at least wary of asserting themselves, in relation to FACS, fearing their actions could result in punitive responses.

Gale said,

... you can't show that [anger] because things might get worse, so you keep quiet and take it all.

Kerry considered that the District Officer was harassing her but couldn't say anything because

... who would believe me - they always believe the District Officer.

Kate was told by a District Officer

... that even when we get to court, we hadn't a leg to stand on.

She was advised by a solicitor

Keep calm because they can do what they want and there is nothing you can do legally.

Some mothers expressed fears at the implications of being labelled as abusive. Gale said she had the feeling they were a 'labelled family'

This was

> *... a horrible fear that if you do the wrong things they can take your kids away.*

This fear was exacerbated by the practical problem of child care - a problem which remained following intervention. Mary was due to have a baby but was

> *... 'scared' to leave the children 'even with Temporary Family Care, because I'm scared that while I'm in there, their gonna take the kids'.*

Sara, who was without family support was concerned

> *If I get sick or that, what will happen?*

Kim, who also had no family support had been advised by the Health Department to request FACS to look after her children when she attended court for a domestic abuse case. She stated

> *'I'm scared' in case they kept her children, 'I don't know if I can trust them to give my children back'.*

Some of the women stated that their children had been emotionally damaged by intervention. Tony described her son's hostility to her when he returned from care and his dependence on therapy for some time following return. Mary said her son 'screamed and screamed' following his return, while her daughter is now scared of having doctors examine her.

> *They have to listen to her chest through her clothes.*

Both Kate and Mary claimed that their children had decided against having children, as they were scared that FACS would automatically take them.

While all the women expressed trauma in connection with FACS interventions, when questions focused specifically on the **helpfulness of FACS interventions**, many of the women discriminated between actions of different workers with whom they had contact, on the basis of whether they received **practical help**.

Pat said,

> *I had a really nice man ... he got my daughter into a pre-school ... so that she could come home ... he gave us the practical help we needed ... money was really short ... and he got us onto the food vouchers from the Sydney City Mission and got us a clothing order and blankets.*

She compared the action of this officer with that of another officer who had been unhelpful.

> *He had the attitude you're doing things wrong - I'm the expert, do things my way.*

Dianne had a worker who was

> *excellent ... he actually got me into the refuge.*

For Vivian,

> *FACS were helping me financially ... that's when they seemed to care - now they don't.*

Tony said of her worker,

> *anytime I needed anything ... he knew that I never wasted money ... he made sure I got a cheque for some food and another time a stroller. A couple of times money came out of his pocket.*

She stated that the good ones [District Officers] are very few and far between. Those women who had experienced voluntary agency assistance discriminated in a similar way.

For some of the women, once their children had been removed, access to them was a major problem. In Pat's case lack of time and finances made contact with her child

> *very hard, because I had a husband in jail and I had to go to Long Bay at weekends, I couldn't see him during the week, and then going out to Bondi [from Campbelltown area] during the week, it was just financially impossible to see her more than twice a week ... I had to wait for my Mum to come up with the money so that I could go down and see her ... when I wasn't going down to see her, they were saying - well, you're not interested in her - you know - why don't you come and visit?*

Tony described feelings of exclusion similar to a number of the women. However she was more assertive than the others.

> *At the lunch time they told me get outside. I said no! I said I'm here now, its my kid and I'll feed him.*

Tony visited every day.

> *And there's no visiting allowed there on Sundays, but I was still at the gate on Sunday morning.*

4. DISCUSSION

The experiences of the majority of participants in this study were of powerlessness, apathy and passivity in interactions with welfare agency personnel, whom they frequently perceived as punitive towards them.

These experiences accord with feminist analysis which argues that welfare workers typically, as agents of social control, reinforce female passivity and dichotomise women as 'good' or 'bad'. Where workers focus on children as victims and respond punitively to those closest to them - their mothers, they ignore the vulnerability of these women. This vulnerability may be only marginally less than that of their children.

In our society, age-related dependence of children is associated with childhood being clearly demarcated as a stage for indulgence and protection. The position of women as mothers is more ambiguous. As adults they are expected to be responsible for the nurturing of children. This expectation holds even when women are in positions of extreme social and economic dependency - a dependency strongly associated in the literature with allegations of child abuse and neglect (e.g. Polansky 1981, Pelton 1980, Fernandez 1986), and exemplified by the situations of nearly all the women in this study.

In those instances where interventions did provide the women in the study with financial and other forms of practical assistance, their comments indicate that interventions was seen by the women as helpful and empowered them to meet some of their children's needs. Where interventions were perceived as punitive the women frequently responded with withdrawal which, for some mothers was exacerbated by problems in maintaining contact with their children in care. The long-term implications of parental withdrawal for the well-being of children has been emphasised by research into the factors associated with children considered 'lost', or in a state of 'drift', following their entry into the child welfare system (e.g. Maas and Engler, 1959; Fanshell and Shinn, 1978; McCotter, 1981).

In summary, the experiences of the women in this study challenge the continued emphasis on the reporting of and surveillance of parents, as currently implemented in New South Wales, as an effective method of preventing child

abuse and neglect. Interventions which reinforce the passivity and powerlessness of women who are considered to be failing to respond adequately as mothers, by ignoring the validity of their feelings and experiences, may actually exacerbate, rather than prevent potentially abusive situations.

5. IMPLICATIONS OF THIS RESEARCH FOR CHILD PROTECTION POLICY

Reporting and surveillance policies which further oppress women do little to develop a caring society in which children's rights might become a reality. Policies which recognise the validity of mothers' perspectives will help to empower them and strengthen their parenting abilities by promoting strategies which support the rights of individuals and their access to resources.

The new Community Welfare Legislation (if fully implemented) appears to incorporate such strategies, by providing for the establishment of appeal and review mechanisms and by emphasising the provision of services to parents prior to court action. However, the findings of research into the effectiveness of similar legislative provisions in the United States, indicate that implementation of such provisions is likely to be ineffective in empowering parents. The United States experience highlights the extent of the power of the state vis a vis individual parents.

For example, researchers found that in instances where individual parents were aware of and appealed against court decisions the state's ability to defend itself inevitably 'dwarfed' the ability of parents to effectively establish cases against the state (Beyer and Mlyniec, 1986). Further, these researchers found that where services were provided to parents in accordance with legislative requirements, they were frequently not of use to the parents, as to use them parents would have had to possess a level of self-sufficiency typically lacking in parents who come into contact with child welfare agencies.

The effectiveness of legislative provisions in the New South Wales Act might be enhanced by the establishment of an independent agency to support parents in their interactions with the agency and court. A model for such an agency is the Family Rights Group in England. This organisation, established by lawyers and social workers, collaborates with families to improve the law and practice relating to children. The central group resources local parent groups which are formed to provide mutual support, information and assistance to parents in their interactions with child welfare agencies. The groups seem to have had some success in empowering individual parents to participate in agency decision-making. At a more fundamental level child protection policies must move away from the traditional residualist concerns of child welfare towards social policy goals of structural change. Policies which redress inequalities in class, gender and age will be more likely to reduce individual vulnerability and effectively promote the 'best interests' of children.

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HAS 'LEGAL AID FOR THE POOR' BEEN A TRAGIC MISTAKE? REFLECTIONS ON WELFARE STATES AND LEGAL SERVICES

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1. INTRODUCTION

Access to legal services is once again becoming a social policy issue in Australia, after disappearing from the agenda for some ten years. Three national reviews or inquiries in relation to legal services have been proposed or are already underway. First, the Commonwealth's peak advisory body on legal aid, the National Legal Aid Advisory Committee (NLAAC), is undertaking a major review of the funding, provision and delivery of legal aid. A major discussion paper has recently been published to prompt community debate (NLAAC, 1989).

At the same time the Senate Standing Committee on Legal and Constitutional Affairs recently announced a wide-ranging inquiry into 'The Cost of Justice'. The terms of reference include inquiring into the cost of legal services, the functioning of courts, the effectiveness of legal aid, and whether there are alternatives to our current system. (A recent ACOSS discussion paper sets out a wide range of steps that could be considered by the inquiry Churchman, Hunter and Regan, 1988).

The third study, proposed by the Trade Practices Commission will inquire into the functioning of the professions - including the legal profession. According to the President of the Law Council of Australia the proposed 'open-ended' study of the legal profession is 'unnecessary' (Australian Law News, May, 1989).

Within this context of scrutiny of the legal profession, legal services, and the justice system, we need to focus special attention on the successes and failures of legal aid - that mechanism that was developed to assist the poor's access to legal services. We need to ask: How well has legal aid assisted the poor to have improved access to legal services? But it is the contention of this paper that we must also consider legal aid within the larger question of improving access to legal services for the community as a whole. Indeed this paper argues that one of the major reasons that legal aid is in difficulties is that it has been separated from the wider issue of the community's access to legal services. A new integration of the two issues into an overall policy debate over access to legal services promises to achieve the best results for both the poor and the community generally. This is the only way in which we can both develop new directions for legal aid, and at the same time assist the wider community in their right to legal services.

After 15 years of publicly funded legal aid in Australia we are in a position to come to some conclusions about its effectiveness, though it is an area of social policy that is hampered by a lack of reliable national statistics. The evidence in relation to access to legal services for the non- poor is unfortunately even more sketchy.

The available evidence suggests that legal aid for the poor has been a mistake because it has not actually worked very well in providing access to legal services for the poor. Legal aid for the poor has also been a mistake politically - it has not been able to develop a constituency to provide support in times of public expenditure restraint. But it has been a mistake in other ways: improved access to legal services has been denied to the non-poor who are not eligible for legal aid; and the question of improving access to legal services for the community generally has not emerged as a critical issue of social policy at least partly because the existence of legal aid for the poor diverted attention away from the wider question.

The constraints of space and time allow only a sketch of the evidence necessary to support these arguments, but the use of evidence from other countries will strengthen the conclusions in relation to the Australian situation. The discussion will focus on the twin concerns of access to legal services for the poor, and for the whole community; and will draw on evidence from the attempts of three welfare states to respond to these twin concerns: the USA, Sweden, and Australia.

2. THE AUSTRALIAN CONTEXT

Legal aid in Australia is in trouble. Pressure is mounting in many quarters for major change. The Commonwealth Government, the major source of legal aid funds, announced in the 1988/89 budget a cut to legal aid funds in each of the following three years. The aim is to cut or at least 'cap' its commitment to legal aid as part of the overall strategy of reducing outlays; and in addition to 'target' legal aid funds more carefully to those who most need them - the very poor. Some of the state governments are also attempting to cut outlays on legal aid.

At the same time both levels of government are coming under increasing pressure from the community to do something about the cost of legal services and the cost of justice. As a result the Commonwealth and some state governments are, among other things, expressing interest in various legal expense insurance schemes that on first blush promise to improve access to legal services for the non-poor/non-rich group. The Commonwealth is also responding to these concerns by way of the Senate Inquiry into the Cost of Justice referred to above.

This paper argues that there is a close connection between these events - the pressure on legal aid, and the moves by government to be seen to be trying to improve access to justice and legal services. The connection is not accidental, but rather it is argued here, it is at least partly a result of establishing a 'legal aid for the poor' scheme in Australia in the early 1970s.

3. LEGAL SERVICES FOR 'THE POOR' OR 'THE COMMUNITY'?

Titmuss would not be terribly surprised that the 'legal aid for the poor' budget is being cut in Australia, and also in the USA, as we shall see below. Titmuss argued that provision of services to the poor on a means tested and selective basis was the wrong way to go about things. The aim of social policy was to try to improve the well-being of society and especially the poor. But it was not a good idea to 'target' the poor. He argued that the debate in Britain during the 1950s over 'selective versus universal services' was misleading and destructive, and that:

> *The real challenge that faces us is not the choice between universal and selective social services. The real challenge resides in the question: What particular infrastructure of universalist services is needed in order to provide a framework of value and opportunity bases within and around which can be developed acceptable selective services provided as social rights, on criteria of the needs of special categories, groups and territorial areas and not dependent on individual test of means?* (Titmuss, 1968, p.122, emphasis in original)

He goes on to argue that selective services within a framework of universal services assist the poor more effectively than selective services targeted to the poor only. But the former are also more human in that they don't 'involve an assault on human dignity' by separating the poor out for special attention or charity. Universal services are in addition not socially divisive because they do not provide services to just one section of the society. Selective services also tend to result in two standards of services in society - one for the poor and another for the non-poor. Finally, selective services within the universal framework actually redistribute resources better to those who need them most - the poor.

Applying Titmuss's argument to the question of how to improve access to legal services provokes a radically divergent line of analysis to that proposed by, for example, popular left wing critiques of legal aid that tend to endlessly demonstrate legal aid's failures. According to Abel (1985) and other analysts legal aid is inadequate because it doesn't assist all the poor who should be assisted, and because of its inability to overthrow the unequal class structure of capitalist society.

How have different societies attempted to improve their citizens access to legal services - both the poor and the non-poor? Have the members of modern societies been left to the vagaries of the market allocation of legal services? Has there been any development of occupational provision of legal services? What are the ways in which the poor have been assisted in different societies? Have any societies attempted a universal scheme to improve access to legal services for the whole community rather than just the poor as Titmuss would suggest? In the rest of this paper the attempts made by three societies to improve the access of their citizens to legal services will be compared.

4. ACCESS TO LEGAL SERVICES IN AUSTRALIA

Australia established a 'legal aid for the poor' scheme in the early 1970s. What has been the effect of 15 years public funding to legal aid? The evidence available is unfortunately incomplete, but it is possible to come to some tentative conclusions. The Australian Legal Aid Office established in 1973, transformed legal aid from a 'charity provided by the legal profession' to those poor people who were lucky enough to know about the professions's scheme, to a publicly funded national scheme available on a means tested basis. Space does not permit description of the current legal aid system here. For an outline and discussion see NLAAC (1989).

The successes of legal aid include the following:

* a substantial increase in the number of poor people who have legal representation when their case is decided in court;

* a substantial increase in the number of people using a duty solicitor service at the courts, especially benefiting the poor;

* a massive increase in the availability of free or low cost legal advice especially to the poor, but also benefiting the non-poor;

Nevertheless, an assessment of legal aid must also confront the evidence that tends to suggest that legal aid has failed to provide legal services to all the poor who need them, or to provide the services equally across the country, or to provide them to certain identifiable groups of the poor.

While there is no national statistical collection available to analyse legal aids performance we are forced to rely on a variety of other sources of information. (NLAAC believes that a collection may be available in the early to mid 1990s, a remarkable state of affairs given that publicly funded legal aid will have developed for some 20 years without access to good quality uniform national statistics.) Leaving this matter aside we can make use of three sources of data to demonstrate the failures of the legal aid system to provide legal services to the poor. First, the Annual Reports of the Commonwealth Attorney General's Department demonstrate that a poor person's access to legal aid services is partly dependent on which state/territory they happen to live in. There are marked variations in the funding, the services provided, and the criteria used to determine eligibility for services, between the states and territories. You may be poor enough to be granted aid in one state but not another; and your case may be within the eligibility criteria in one state but not in another.

In 1986/87 for example, per capita income of major legal aid bodies varied from $6.98 per person in South Australia, to $12.37 per person in the ACT. Legal advice services provided varied from 7.5 per 1,000 population in Victoria, to 55.2 per 1,000 population in the Northern Territory. Legal casework - duty solicitor and court representation combined - varied from 12.2 services per 1,000 population in Queensland to 20.1 per 1,000 in the NT (Commonwealth Attorney General's Department, 1987).

Second, while legal aid has had a substantial impact on the proportion of poor people who appear in court without legal representation, the available data indicate that there are still significant proportions of poor defendants who have no legal representation when their case is dealt with. The data from the South Australian Office of Crime Statistics, for example, indicate that representation rates in the Magistrates Court have increased from 52.7 per cent in 1982/83 to 69.3 per cent in 1987. But of the 30.7 per cent or 6,562 people who were not legally represented in 1987, 40 per cent were pensioners or beneficiaries. We don't know how many of the remaining 60 per cent were poor or in receipt of low incomes. Some of these people would not have been eligible for aid because their case was outside legal aid guidelines, and others because their income and assets made them ineligible. Nevertheless, it is an indication of an inadequate legal aid system for the poor if so many low income people are excluded from aid, or simply don't apply for it. If legal aid is for the poor, and if these South Australian data can be generalised to other states, why are so many poor people in court unrepresented? In addition why are there so many people in court who are not represented? What is it about legal services that people are not making use of them?

The third source of data is the studies undertaken on behalf of the Commonwealth government's advisory body on legal aid in the early to mid 1980s. Collectively these research projects concluded that access to legal aid and legal services for Social Security appellants, institutionalised people, and youth, were 'deficient' and a 'failure'

(Chamberlain, et al., 1984; Redfern Legal Centre, 1985; O'Connor and Tilbury, 1986). We can be sure that many other groups also have inadequate access to legal services despite the existence of legal aid, for example, the homeless, recent immigrants, the elderly, etc. While the research evidence is sketchy or simply not available to support this claim, it is almost certain that need for legal services is one of the cluster of disadvantages faced by these groups of the poor and disadvantaged in our society.

On the basis of this range of evidence - and noting that it is incomplete - we can conclude that legal aid has a long way to go before it can be said that it has provided effective access to legal services for the poor.

While the poor have admittedly patchy and inadequate access to legal services through the legal aid system, the non-poor are left to purchase whatever legal services they can on the market - determined of course by their income. In most legal matters those who are not poor enough to be granted legal aid either purchase their expensive legal services from private practitioners or simply do without. Unfortunately the legal profession in this country has managed to maintain its monopoly over the delivery of legal services to a far greater extent than for example, in the USA. In the USA as we shall see below, a range of mechanisms have developed that have improved access to legal services for some in the community.

5. ACCESS TO LEGAL SERVICES IN THE USA

In the USA the preoccupation in welfare provision is also with assisting the poor with access to services - including legal aid. The legal aid programme was established as a publicly funded scheme under the Office of Economic Opportunity's War on Poverty in the early 1960s, and exists today in the form of the Legal Services Corporation. Aid is available only to the very poor - unlike Australia if you have any means above the set limit you are not eligible for aid and have to go elsewhere. The evidence suggests that the USA legal aid scheme is not adequate in other ways apart from the fact that it only assists the very poor. According to Abel's recent major comparative study of legal aid, the USA has experienced the common problem of certain groups of the poor not using legal aid, particularly American Indians and recent immigrants (Abel, 1985). More seriously the USA Administration under Ronald Reagan cut funding substantially to the scheme in 1982 (by 25%) and imposed a series of restrictions on the types of legal work that could be undertaken. According to one recent commentator, legal aid in the USA faces further funding cuts and further restrictions on the cases it can deal with. Many different measures are being utilised to raise funds, including investigating using corporate sponsorship from private legal firms (Menkel-Meadow, 1984). It is not too far fetched to suggest that legal aid in the USA may be returning to its charitable beginnings, where, as in Australia, aid was granted on the basis of charity by the private legal profession to those deserving poor who, firstly, were lucky enough to know about the scheme and second, poor enough to qualify for it.

While some of the poor make do with legal aid, there have been a range of mechanisms developed that have acted to improve access to legal services for the non-poor. Low cost legal clinics provide a basic range of legal services at a discount; individual insurance against future legal expenses has also had some success with the middle class; 'group legal services' where members of a co-op or trade union employ their own practitioners or contract private lawyers have worked well in some settings; and a wide range of often highly trained and accredited 'paralegals' have emerged to provide often better quality and cheaper legal services to the poor and non-poor. (For a recent discussion see, Purcell, 1984; and for paralegals see: Noone,1987; and for application to the Australian situation Regan, 1988.) Most of these arrangements have been bitterly contested by the legal profession. While they are not adequate solutions in that they do not improve access for all citizens they have improved access for some people and may pave the way for other developments in the future.

The experience in the USA is depressingly similar to that in Australia. Legal aid is for the poor, it has been unstable politically and funding has been cut, and the non-poor have limited access to legal services other than by purchasing services on the market. But the USA has developed mechanisms that assist some of the non-poor. The future for legal aid in both countries is bleak with the ironic possibility that the access of the poor will continue to decline at the same time as that of the non-poor continues to improve.

6. ACCESS TO LEGAL SERVICES IN SWEDEN

In Sweden the situation is quite different. Here, a 'legal aid for the poor' scheme was abandoned at the same as Australia was establishing one. Sweden, along with half a dozen other European countries has established a more or less universal legal aid scheme. That is, in Sweden, unless you are quite rich, the state assists you with the cost of legal services. The poor pay nothing except small flat fees and aid is provided on a means tested sliding scale up to a point well above average earnings. In practice this is what Titmuss suggested would be the best assistance to the poor - a universal scheme that specially helped the poor. Unfortunately there is no research material available in English to my knowledge that documents how well the poor actually use the legal aid system in Sweden. But it is worth noting that the legal aid scheme prior to 1973 that was for the poor, was quite successful in assisting the poor with representation in court, according to Bruzelius and Bolding (1975). The universal post 1973 scheme may have improved on this performance at best, and at worst it may simply have provided legal aid with a constituency to support it in times of recession and economic restraint.

Another achievement of the Swedish legal aid scheme is that it has withstood the period of public expenditure restraint well. Because most of the population are eligible for aid it has proved difficult to cut funding. So not only has legal aid proved a mechanism for assisting most Swedes with their legal services, and assisted the poor in a special way, but it has also proved resilient to cost cutting in times of restraint. While the legal aid for the poor schemes experience cost cutting that necessarily affects the poor, the universal scheme experiences cost cutting that does not only affect the poor. If aid is targeted to the poor then funding cuts will by definition also target the poor. If aid is for all, the poor are less likely to bear the brunt of the cuts. Marklund's study of the effect of the recession in the Scandinavian countries tends to support this conclusion. Indeed he concludes that:

> *The welfare state is a highly variable entity. It is reversible to the extent that its provisions, costs and general features are capable to (sic) change. This study has shown that a number of factors contribute to this variation in terms of stability. Some of the most important of such factors are located within the welfare structure itself; universal access, shared financial burdens and work oriented welfare systems are more stable than selective systems based on general tax revenue and relief payments.* (Marklund, 1988, p. 106)

The pattern has been to increase flat charges, delay automatic indexed income payments, as ways of reducing expenditure, rather than simply cutting the levels of services available. In this way the community as a whole shares the services and the funding restraint. Funding cuts do not target the poor as they do in the legal aid for the poor schemes.

Nevertheless it will be interesting to see how legal aid survives in Sweden given the current instability in the tri-partite arrangements and the resulting pressures on welfare provision.

7. CONCLUDING COMMENTS

Legal aid for the poor has been a mistake if the Australian and USA experience is anything to go by. The poor benefit but access is patchy; it is unstable politically and vulnerable to funding cuts; it has excluded the non-poor from service provision because it is for the poor; and it has tended to divert attention away from the fundamental social policy question of how to improve access to legal services for the community as a whole.

Are there any lessons to be learnt for Australia from the experience of the USA and Sweden?

First, the accessibility of legal services must become an issue of importance to a wide range of groups in the community. The obvious groups include: trade unions, women's groups, housing co-ops, etc. More groups need to be involved in debate over how we can provide more readily available and more affordable legal services to all members of the society. Trade unions in particular have a key role to play here if the USA is anything to go by - especially given the links to the ALP. Unions need to establish group legal services for their members so that they don't have to suffer the vagaries of the marketplace. Over time they may in this way not only improve access to legal services for their members, but also develop an understanding of the importance of a universal system of legal aid.

Under the current tri-partite arrangements between labour, capital and the state access to legal services could become part of the social wage at some point in the future. A universal legal aid scheme is certainly more possible in Australia than in the USA in the light of our relatively more centralised trade union movement.

Legal aid's future must be re-integrated into the question of improving access to legal services for the community. This will be a difficult task to accomplish given that the government is marginalising legal aid by suggesting more and more targeting. Perhaps the Cost of Justice inquiry and the NLAAC review of legal aid will propose some ways which would benefit the poor and non-poor and re-integrate their common needs. Unless they are re-integrated it is hard to see that legal aid will not suffer further funding cuts.

Finally the monopoly of the private legal profession has to be broken open for the sham that it is. We need new forms of low cost legal professions that will for example: give advice on minor matters at a low cost to any member of society; represent you in court at low cost, on minor guilty pleas and other minor matters. The USA experience has very important lessons for us in this area. Unless the profession's monopoly is dismantled it is hard to see how access will improve for the poor or the non-poor. Perhaps the Trade Practices Commission inquiry will apply some free enterprise logic to legal services that will benefit us all in the same way that the British government is proposing to introduce market forces into legal service provision in the UK (Carr, 1989).

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THE IMPACT OF THE SALES OF PUBLIC HOUSING IN AUSTRALIA

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> *Many policy changes were introduced in 1956. A new Commonwealth/State Agreement still provided loan money at 1 per cent below the ruling rate, but the accent was to be on Houses For Sale. Progressively 30 per cent of the Commission's Funds were diverted to Co-operative Societies, and the houses built with the remaining funds, 50 per cent were to be for sale and 50 per cent for rental.*
>
> *There was also to be a drive to sell houses already tenanted. This policy had the result that today 47,800 houses and flats built by the Commission, 16,000 have been sold. Most of these have been sold on terms over 30 to 45 years with deposits of 100 pounds to 300 pounds.* (The Victorian Housing Commission, 1962)

The Victorian Ministry of Housing Annual Report for 1986 features a photograph of a new public housing tenant accepting the front door keys to the 100,000th dwelling. Yet the same report indicates that the total stock of rental units was only 49,073 as at 30 June 1986.

The major question is, then, where is the rest of the public housing built in Victoria?

Apart from a few demolitions, the rest of the MOHC stock has been sold off. The earlier reference to low deposits, long term repayment periods and subsidised interest rates are some of the reasons why tenants chose to become home owners. I was born in the city of Sunshine in Melbourne's working class western suburbs. In the early 1950s it was about the cheapest place in Melbourne to buy a house. The flat treeless plains, clay and tiger snakes held little attraction to up and coming accountants and solicitors.

Since 1945, in Sunshine, the former Housing Commission of Victoria (now the Ministry of Housing and Construction) has built a total of 4,381 houses and flats. This is more than any other suburb west of the CBD.

Yet as at 30 June 1987, there were only 1,627 public housing units rented to civilians. The percentage of units sold is actually 58.95 per cent of all dwellings built. As at May 1988, there were 1,017 families approved for public rental in the City of Sunshine. All waiting lists were indefinite.

The Bolte Liberal Government was in power from 1955 until 1972. As a party of free enterprise it actively encouraged home ownership. Renting was seen as a short term tenure, often for young marrieds and newly arrived migrants. By 1977 the six state housing authorities had constructed 462,780 dwellings but 250,696 had been sold. This represented 54.2 per cent of sold housing (Kemeny, 1981, p. 297). In November of 1980, a Victorian Green Paper noted that some new home owners were having difficulties in meeting escalating repayments. It also made recommendations for broadening the co-operative sector. Under conservative Housing Ministers Brian Dixon and later, Jeff Kennett there was some slowing of the sales to tenants program.

In an article written in 1981, Jim Kemeny concluded, from examining a number of years of annual reports from various housing authorities, that:

> *... Victoria's policy of selling to sitting tenants has resulted in higher per unit costs on the unsold rental stock than in South Australia where very few houses have been sold to sitting tenants. It is argued that tenants who do not buy necessarily subsidise those who do buy, and that if governments wish to encourage sales then they, and not the bulk of public tenants, should pay the cost of sales.* (Kemeny, 1981, p. 297)

In the same journal, John Roseth commented on the change of direction of the Victorian Housing Commission:

> *Sales to sitting tenants are over in Victoria. A whole new set of controversial policies for public housing have been announced by the government, the most important being not to build any more public housing estates. It would be more timely to discuss the possible effects of these proposals than to analyse discredited and abandoned practices of the past.* (Roseth, 1981, p. 313)

The election of the Cain Labor Government in April 1982 saw the appointment of Ian Cathie as Housing Minister. For some two years there was a virtual moratorium on the sale of public housing. The 1983 report indicates that 2,845 new units were handed over to public housing stock in Victoria and only 60 units, most of which were sold, were disposed of.

In the lead up to the 1985 Victorian elections the Liberals called for the sale of the inner suburban high rise flats. Shelter Victoria community housing worker, Ian Stewart, wrote to the Melbourne Age:

> *The proposal to sell the 'notorious highrise flats' is a fantastic one. It is devoid of all common sense and proposed in the knowledge that it would never be implemented.*
>
> *Apparently both the 'Age' and the Liberal Party are aware of the terms of the Commonwealth State Housing Agreement which prohibits the sale of Ministry property for less than replacement value. We understand that the nett effect of the sale of high rise flats will be the loss of approximately 6,000 units from the public sector. This would only add to the already bloated Ministry waiting lists.* (Stewart, 1985)

The policy on housing produced by the National Party was very brief. In part it stated that a government would

> *Place a major emphasis on the availability of Ministry of Housing homes for purchase by tenants.* (Scates, 1987)

Labor was returned but an internal review recommended sales to tenants of at least three years on a cash basis. Sales were to be at Valuer-General valuation plus a fee. Inner urban and some other areas were embargoed.

I was given the task of administering this small sales to tenants program in November 1985. As well as this task (for which I had little enthusiasm), I also answered telephone enquiries from high finance applicants. The demands from tenants wanting to buy was considerable. Frequently they would request consideration for the rent paid in negotiating a purchase price. One war widow got RSL Chief Bruce Ruxton to write asking for a discount on the purchase price.

The 1985/86 year saw 343 'subtractions from public housing stock'. A look at the figures showed that in the western suburbs the prices paid to the Ministry for each unit sold averaged about $38,517. Most valuations appeared more than reasonable from the point of view of the tenant/purchaser. The problem is being able to purchase replacement houses at a similar price.

In the year 1986/87 there were 231 sales to tenants (Ministry of Housing, 1986/87). Eligibility was tightened to allow tenants of 5 years or more to apply to buy. The Ministry from time to time sells other public housing, such as a number of ex-armed forces units at Laverton, which were sold by auction in February 1987.

On 28 February 1989, the new Victorian Minister for Housing wrote to the author in reply to a letter concerning the sale of public housing in the western suburbs of Melbourne. Mr Pullen wrote

> *During the year, July 1986 to June 1987 the Ministry's Sales to Tenants program received seventeen applications from tenants in the Western region wishing to purchase their rental properties.*
>
> *... Bacchus Marsh is the only area that remains designated as available under the Program. The remaining four (local government) areas have been withdrawn due to high rental demand and the difficulties of replacing housing stock.* (Pullen, 1989)

I will now deal with NSW under Greiner. This is a state where we have just seen cuts to the housing and tenancy services of a magnitude not seen before.

In the lead-up to the 1988 NSW elections, the Liberal Opposition promised to make home ownership easier for public housing tenants. The 'Ready to Buy' home loan scheme of the NSW Government in 1988/89 allowed 1,000 public housing properties to be sold to tenants (Australian Financial Review, 1989). However, in February of this year the Greiner Government began to back away from its sales to tenant philosophy. The replacement cost was rising too fast especially in inner Sydney. A new 'Ready to Buy' scheme was launched which encouraged public tenants to save and to buy later on the private market.

The move away from sales to existing tenants was in line with community and especially NSW Shelter positions. In 'The Alternative Report' published in November 1988, Shelter found that

> *Some 60 per cent of submissions focused on the retention and increase of funds to public housing generally (from increased CSHA funds and from increased state tax revenue) ...*
>
> *3/4 of those advocating public housing increases also argued specifically against the sale of existing public housing ...* (Shelter NSW, 1988)

Of equal concern is the Bannon Government's promotion of the sale of public housing in South Australia. During 1987/88 a total of 292 houses were sold to tenants by the South Australian Housing Trust (South Australian Housing Trust, 1988). This is similar to the percentage of sales in Victoria. However, the South Australian Housing Trust was promoting the sale of public housing late in 1988. It was possible to win a video recorder in a completion designed to promote sales. Federal Minister for Housing and Aged Care, Peter Staples wrote to the author on 15 February 1989

> *The CSHA allows the States to sell public rental housing. Any such sales must, however be in strict accordance with the sales provisions of the Agreement, namely that sales are to charge replacement cost for dwellings less than 5 years old and market value or replacement cost for dwellings older than 5 years ... the sales provisions in South Australia, as outlined in the pamphlet you sent me, are consistent with these requirements.* (Staples, 1989)

In replacing units sold there is always a lead time. Local Ministry of Housing officers sometimes complain that the targets of new dwellings are not revised upwards to take into account the loss of public housing. Once a unit is sold it is lost forever. On the death of the original tenant the children/grandchildren put it on the market. The real estate agent's hammer falls without social compassion. To indicate the breath of the political spectrum arguing for increased sales of public housing. I refer to an article in 'Socialist Objective', a journal associated with the left of the ALP in Victoria. The authors argue

> *There needs to be a scheme which would allow the sale of public housing stock to tenants , with the money from such sales being reused to fund further public housing projects. This would increase the flexibility of the public housing sector to direct resources into the most appropriate kinds of housing stock; it would allow tenants to gain ownership of their homes if they so wish while maintaining levels of public housing stock.* (Asker and Carli, 1989)

If we are to revert to the high sales of public housing of the 1950s and 1960s, then governments will find that they cannot generate enough funds from sales to buy replacement stock. The supply of rental housing for low income earners will diminish. Selling off public housing in a desperate attempt to solve the housing crisis is like moving around the deck chairs on the Titanic.

For most of September 1988 I was in Thatcher's Britain. Newspaper man, Rupert Murdoch, has built a 'Fortress Wapping' in East End of London. Old Council (public) housing has been sold off to yuppies. A former safe Labour ward is now marginal Tory at elections. Nearby in Westminster the Conservative civic leaders are actually evicting the Council tenants who are too poor to buy.

A Glasgow tenant representative wrote about the UK 'right to buy' legislation

> *... developers were getting public finance to do up dwellings which are then sold for profit, while councils are denied the finance they need to provide decent housing for their tenants.* (Housing Review, 1988, p. 34)

Although there has been some resistance to the sell-off of Council housing by Labour controlled municipalities, much has already been privatised. An article in the London Times gives some idea of the volume of rental stock being transferred to the private sector:

> *Sevenoaks District Council completed the sale yesterday of its entire council stock of 6.353 properties for 68 million pounds (Stirling or $140 million Australian), to the newly formed privately run West Kent Housing Association.*
>
> *... Since the Government introduced its right-to-buy legislation in 1981, more than 2,700 Sevenoaks tenants have bought their homes.* (London Times, 1989)

An even more recent proposal to encourage the sale of Council housing in the UK was outlined in the British housing magazine. **Inside Housing**, is the new 'portable discount' scheme available to tenants in Scotland. Operating from June 1989, this scheme will give Scottish tenants the equivalent of the 'right to buy' discounts if they buy a house other than the one in which they currently reside. The expectation is that, in Scotland alone, 800 rental properties will be sold off each year.

This paper would not be complete unless I made some general comments about the housing crisis in Australia. Every day waiting lists for public housing grow longer. It is a question of where you put resources. The politicians who cry crocodile tears over young kids sleeping in dump-masters are probably the first to urge the sale of existing public rental housing. This thrust, while very much in line with the thinking of the new right, has a great number of supporters.

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MENTAL ILLNESS, SOCIAL POLICY AND SUPPORT GROUPS

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It is perhaps symbolic that this paper is the last one on the agenda of this conference. The welfare of people suffering from mental disorders has traditionally been right at the bottom of the agenda in the formulation of social welfare policies. As Dax (1989) points out in a recent article in the **Australian and New Zealand Journal of Psychiatry**:

> *... it has needed crises (in the mental health system) to rouse public opinion and to drive the authorities to action which, in many cases, only resulted in an enquiry or the formation of a committee or commission to postpone the day on which some action had to be taken.*

We can perhaps look forward to what is going to happen after the current enquiry into Chelmsford. It has indeed taken so long to do the enquiry that the main protagonists are now long gone. The outcome and the action taken will perhaps be a test of the government's commitment or non commitment to change in the area of mental health care services.

The recent report commissioned by the Federal Government into mental health care delivery highlighted the fact that we really have very inadequate data about mental illness in Australia. Dr Peter Eisen and Kevin Wolfenden, the authors of the report, highlighted the need for a national data base on the effects of mental illness in the community and the need to move care away from the medical model to one of dealing with psychosocial disability. The report also commented that mental health services in Australia range from some of the best in the world to some of the poorest. Unless a national mental health policy is adopted, we will continue to have an ill coordinated and inconsistent collection of services for those people suffering from mental illness who need care (Eisen and Wolfenden, 1988).

The rapid move away from long term institutionalisation of the mentally ill over the past thirty years means that we need a re-examination of the implications of having a large population with a disabling illness in the community. Psychiatric services have been shown to be sadly lacking in their capacity to help people cope with the disabling effects of episodes of severe mental illness and to respond quickly when people become ill and need to be re-admitted to hospital. Respite care for families, home care for people out of hospital but still suffering the aftermath of severe mental illness, and support for families caring for a seriously mentally ill relative should be essential parts of a mental health care system - but they are not at present. The Eisen report points out that up to ninety percent of people who have had a mental illness live in the community - yet ninety percent of the money allocated to the care of people with a mental illness is tied up in large hospital systems. Very little is left over to provide essential community support alternatives.

Thirty years after the introduction of phenothiazine tranquillisers made it possible for large numbers of patients to leave hospitals and live in the community, we now recognise that emergency services such as crisis teams and respite care are an essential part of the medical needs of the mentally ill. Yet training of staff in this new approach has not been seen as a necessary priority in the funding of services. In the country where lithium was discovered as a possible breakthrough in the treatment of mania in 1949, people who suffer from episodes of mania and depression still face inadequate and inconsistent services, doctors who don't know how to administer the drug or test for its safety and a community that is largely unaware and uncaring of the problems of living with a mental disorder.

Mental illness was first treated in Australia by putting the lunatics in with the prisoners. The housing might have changed, but the stigma has remained and will remain until mental illness becomes seen as just another illness to be treated in a general hospital and not in a large psychiatric institution. The treatment of those with a mental illness has traditionally been the province of the psychiatric profession yet the major problems facing those with a mental illness today are social, psychological and economic. Hospital and medical staff have too often used their influence to ensure that the treatment of mental illness stays in the large hospitals. Beverley Dudman (1989), at the recent Alliance of the Mentally Ill conference in Canberra, pointed out that it is hardly normal for the health department to provide people's accommodation, their social interaction in the form of living skill centres, day centres or professional chats and their employment in sheltered workshops.

People who have had an episode of mental illness face two choices on leaving hospital: to pretend it never happened or to accept the reality that the community is terrified of people who have had a mental illness and to face the discrimination resulting from this fear. Some, like Frances Farmer who did so many years ago after five years in hospital, leave the hospital, move interstate and quietly resume life as another identity, living in fear that one day someone will find out that they have had a mental illness and tell their employer or their neighbours or their friends.

Deinstitutionalisation in NSW has come to mean group homes. It is difficult enough to live with one's own mental disorder; it is even harder to live with the effects of other people's mental disorder. No one has ever said that there is anything therapeutic about living with other people who are similarly afflicted.

Most people would find living on a psychiatric hospital ward one of the most stressful experiences they could ever experience. It may be a profound experience to learn about other types of mental disorder - but it is hardly the time to do it when one is recovering from one's own particular type of mental disorder. Like the concept of group therapy which was introduced as a cost saving measure to spread around the few therapists available in large institutions, group homes are an economic necessity and a social necessity, not a therapeutic necessity. Try telling a prospective household which has advertised for a new member that you have spent the last few weeks in a psychiatric hospital. Those who succeed in gaining accommodation this way will usually do it by lying that they have been 'overseas' recently or have come from 'interstate'.

Like group therapy which rationalised its existence after the fact, we may yet see articles appearing which will talk about the benefits of group homes where similarly afflicted people share accommodation. Institutions, and now group homes, exist because the community will not accept that people who have had a mental illness have a right to share living space within the normal community.

This is not to deny that there are some benefits in people getting together to share experiences and talk about change. Group therapy can be a most effective tool for taking control and thence political action. The women's movement used it most effectively in consciousness raising groups: to focus not on the individual pain and pathology but to share common experiences and analyse the social and economic forces producing the pain. And then to work out strategies for political action and social change.

Support groups start out initially by a few people wanting to share and analyse the experiences they have most recently encountered. The Sydney Manic Depressive Support Group started out as a sharing experience at the Pala Festival of Madness in 1981. Interestingly enough, there was some opposition to the idea from the organisers: 'we're not into labels, why not talk about women and madness?'. Whether you label it manic depressive disorder or bipolar affective disorder or simply madness, it exists. And we who suffer from it have the right to talk about it and to analyse it and to criticise the existing models of conceptualisation and treatment of it.

The group agonised over its name: the 'MAD' group, the 'manic depressive sufferers' group, the 'manic depressive self help group', 'MANDA'. Finally, the group followed the lead of groups elsewhere and became the Depressive and Manic Depressive Association of NSW.

But the names reflected the stages of understanding and acceptance of the disorder we ourselves experienced: **'MAD'** - the stigma of madness, **'manic depressive sufferers group'** - the suffering of the aftermath of severe psychotic illness, **'manic depressive self help group'** - the need to gain control of our lives and remove ourselves from the paternalism of the health department **'MANDA'** - the need to have a name not too open, not too blatantly obvious as a gathering of the previously mentally ill. The final name of the group, the Depressive and Manic Depressive Association of NSW is simply an open statement that that is what we are, no more and no less. And, most importantly, we identified with other groups elsewhere who weren't ashamed to be what they were.

The comparison between self help groups and older support groups such as GROW are significant. GROW's philosophy can be summarised thus: to accept that one is responsible for one's pathology; to accept that one cannot cope on one's own; to have faith in a higher power and not to talk about one's medication or particular disorder. Professor Donnison made the point yesterday that one must first diagnose the problem before one can act. Being forbidden to talk about the specific ways one's illness is disabling can hardly lead to action. Being forbidden to talk about one's treatment does not open up ways a group might take action to confront inadequate or exploitative or dangerous treatments.

There are a number of underlying assumptions or even myths about mental disorder which have a large influence on services provided and which pose particular problems in working with people who have had a mental illness.

The first assumption is that **working with people who have a mental illness is unrewarding and dangerous: it is too difficult, too negative.** At a recent meeting of the new Eastern Area Health Service it was proposed that, of course, people wouldn't want to work with the seriously mentally ill in crisis settings and, of course, staff should be rotated around to spread the stress. This was hotly disputed by two community psychiatrists whose own experience had shown that, if the right resources are there, working with the severely mentally ill can be rewarding. Prompt crisis intervention can reduce the deterioration caused by severe psychotic illness. Whether we accept the claims of orthomolecular psychiatry or not, there is little doubt that a person whose mental state is deteriorating and who is not eating properly or sleeping properly for some days or weeks, is likely to take much more time to recover than someone who receives early treatment and is given proper pharmacological, nutritional and nursing care.

The second assumption is that **mental illness is contaminating.** I confess I was surprised when my otherwise friendly and politically aware psychiatrist expressed fears when I proposed to start a support group for people who had had episodes of mania and depression. He commented I would become obsessed by it. Well, I suppose I would have to agree on one level since anyone who undertakes a PhD in any area gets obsessed with the topic - although this appears to be a perfectly acceptable pathology within the university system. But I wasn't proposing to do a PhD at that point. I wasn't even sure I could ever work again. So I put the comment with that of a previous psychiatrist who had forbidden patients from his clinic to share flats because it 'wasn't good for them'.

Now this is the kind of comment one gives to children: no, you can't eat that because it isn't good for you. As children grow up and want to know what the difference between healthy and junk food is so they can decide for themselves, surely people with a disability have a right to know on what basis decisions are being made for them. And to take the risk of making the decision themselves. A second illustration of this myth is in the now defunct theory of the schizophrenogenic family where the family interaction is blamed for the illness of one member.

I recall a file at Rozelle Hospital where an unfortunate mother had brought her son in 1962 for treatment. The diagnosis was schizophrenia: the cause: 'caused by mother'. The treatment - none, the mother took her son away a few days later to cope as best she could on her own one assumes. It is a convenient myth - no attention need be given to the practical problems of families coping with a member who has a severe disability. And, if it is contaminating, one is responsible for catching it in the first place - an argument now applied by the more conservative to AIDS sufferers.

The third assumption is that **you can't trust people with a mental disorder.** This means it may be all right to get people who have recovered from mental illness doing mundane, routine, lowly paid work in the community but that one cannot trust them in responsible, decision making jobs. The corollary of this myth is also that you cannot trust them to tell you what they need. If they do tell you what they need, then they are not to be believed since, like other devalued groups such as women and blacks, they are seen to be exaggerating the real situation and presenting it in an 'overemotional' way.

On the few occasions when I have been speaking to mental health services staff as a consumer of mental health services, I have been variously told that one 'cannot have consumers at meetings since (ho, ho) the meetings are disruptive enough as it is' and I could bring others to talk about the problems of disability and mental illness 'as long as they weren't disruptive'. Even more insulting is the approach of 'tell-us-about-what-you-did-when-you-were-crazy-so-we-can understand - you - better'. Which of course means no one has to take much notice of what recommendations for change I might make after this performance.

While it is self evident that people who are currently mentally ill may not be able to function at some level, many people who have had a mental illness are simply never given the chance to show what they can or cannot do. Many people recover totally from one episode of mental illness and never have another. A person recovering from an episode of mental illness does need ongoing reassessment of abilities and skill acquisition. But they are often not consulted about what support they currently need. People do need social rehabilitation but at differing levels. Some sheltered workshops have been quite rightly criticised for providing only very low levels of routine work and little in the way of staged rehabilitation.

Physical rehabilitation is regarded as essential after physical accidents yet equivalent programs of rehabilitation are still not regarded as an essential part of the recovery from mental illness.

The fourth assumption is that **you can treat them all the same.** Macdonalds and Kentucky Fried have made millions on the assumption that people like predictability and blandness. But can we really do the same in mental health services? There is a wide range of disability amongst people who have had a mental disorder. Big psychiatric hospitals categorise their patients on admission into geographical residence. Patients usually residing in Balmain and Annandale go to Ward 26, Petersham residents go to Ward 24 and so on. This is great for medical students who are assured of a smorgasbord of subjects when they do their placements on the wards but is certainly not based on any therapeutic models. Like the practice of group therapy it has more to do with economics and spreading scarce resources than any real philosophy of care.

What can we do to ensure that there will never be another Chelmsford or that governments and the community will not continue to absolve themselves of the responsibility for those who have a mental disorder?

- The first and foremost action needed is some national overview of service provision and some real attempt to understand just how many people suffer from mental disorder and what services they want.

- The second is to ensure that disability does not mean automatic exclusion from policy development. This means developing mechanisms for vulnerable groups to have input into decision making processes.

- The third action needed is to educate the community about the reality of mental illness. This means educating politicians too - for example anti discrimination legislation in NSW does not cover mental illness because it was seen as simply too difficult. It is time we recognised that mental disorder is not that different from physical illness, that effective treatment is available and that it is not impossible for people who have had a mental illness to ever lead a normal life.

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RESTRUCTURING HOME LOANS FOR LOW INCOME FAMILIES: RESULTS FROM THE CAPITAL INDEXED LOAN SCHEME

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1. INTRODUCTION

There is a growing body of literature on the profound and dramatic shifts occurring in low-income housing provision during the 1980s. Dominating much of the discussion is the significant change in policy direction in Britain and Western Europe - a move away from the support of public rental housing to the encouragement of owner-occupation (Booth and Crook, 1986; Harloe and Martens, 1987; van Vliet, 1987). This change is commonly attributed to two key factors: the increasing need for governments to reduce public spending, and the consumer preference for and persistent belief in the inherent superiority of home ownership (Forrest and Murie, 1987).

In Australia, a society where home ownership has been supported by government policy since the mid 1950s (see, for example, Newton and Wulff, 1985; Carter, 1988), what is occurring is more a change in the way home ownership programs are delivered, rather than a re-direction of housing policy. The major goal of government policy has more to do with maintaining, rather than boosting, Australia's historically high levels of home ownership. Australia's home ownership rate appears to have plateaued since 1961 at about 70 per cent of households (Yates, 1989). Moreover, access to home ownership is becoming increasingly restricted to those with high family incomes (Yates, 1989), thereby excluding single-earner families, single people, and female sole parents (Watson, 1988).

The problem, therefore, is seen as one of initial access and affordability (Yates, 1989). In fact, Neutze and Kendig (1989, p. 28) specifically refer to the affordability of 'becoming a home owner', in contrast to the lifetime affordability of home ownership. As house prices have skyrocketed, particularly in the major capital cities, two average incomes have become the prerequisite for purchasing a median-priced home (Dippelsman and McDonald, 1989). Rapidly increasing home prices, combined with the high nominal interest rates associated with traditional (often termed 'credit foncier') mortgages, have effectively blocked many families from becoming home owners and dramatically increased the numbers of families requiring housing assistance.

2. POLICY RESPONSE: ALTERNATIVE MORTGAGE STRUCTURES

The high cost of housing finance contributes largely to problems of access and affordability. Interest rates - and the terms under which mortgages traditionally are offered - are crucial determinants of housing affordability. Housing analysts, therefore, have argued that a possible solution to this problem is to re-design or restructure the terms on which mortgages are usually offered (Carter, 1988).

The major problem associated with traditional mortgages has been termed the 'front-end loading' (Carter, 1988) or the 'financing gap' (Marcis, 1980): in other words, the high level of repayments in the early years of the loan relative to most family incomes. Under traditionally structured mortgages, interest rates are calculated to account for the anticipated inflation level over the course of the loan - this is done to ensure that the lender maintains the 'real value' of the money they lend. Prior to the partial deregulation of the financial system in 1986, mortgage repayments for a credit foncier mortgage remained constant for the life of the loan. (With the current interest rate escalation, however, many families with traditional mortgages are adjusting to rising levels of mortgage repayments.) Accordingly, in the early years of the loan, repayments relative to family income tend to be high, although eventually the relative burden declines. Nevertheless, the financing gap problem in the early years of the loan can force many households to downgrade their housing or to forego home ownership completely.

In order to increase access to home ownership among marginal buyers, a different mortgage instrument was called for: one designed to lower the mortgage repayments in the early years and gradually increase repayments in later years (as

family income rises), typically termed a 'low start' loan (Yates, 1989). According to Carter (1988), the 'purest form' of a low start loan is a capital indexed loan.

In late 1984, the Victorian Ministry of Housing and Construction introduced the Capital Indexed Loan Scheme. Under this scheme, open to both two- and one-parent families, eligible families could apply for a low start mortgage, with loans up to 95 per cent of the purchase price. Buyers were limited, though, to homes valued at the lower end of the housing market, approximately 25 per cent below average house prices in the metropolitan area. Against the mortgage, the client was charged a real (or constant) interest rate of 3 per cent. The special feature distinguishing a capital indexed loan from a traditional bank loan is that inflation is accounted for, not up-front in a nominal interest rate, but by adjusting the outstanding balance on the mortgage according to the annual Consumer Price Index. In effect, this means that the amount outstanding on the loan rises each year by the CPI. In turn, the constant 3 per cent interest is charged against the new amount outstanding, and repayments levels adjusted accordingly. Many families have great difficulty understanding the complexity of the loan and think that they are paying larger and larger amounts each year (AIFS, 1988). But the basic point of capital indexed loans is that while the actual dollar repayments do increase over time, they remain the same in real terms. In other words, the repayments change only in line with inflation.

Moreover, to protect families from any sudden drops in income, the size of mortgage repayments are linked to 25 per cent of gross family income - and this can be adjusted upwards and downwards with changes in family income. If, in a given period, repayments fail to meet the 3 per cent interest, the short-fall is added to the amount oustanding. Overall, the term of the loan is flexible (a novel feature when the loan was introduced, but more common since deregulation and subsequent sharp jumps in nominal interest rates.)

The introduction of the Capital Indexed Loan Scheme followed directly upon the policy statements outlined in the 1984 Commonwealth-State Housing Agreement. The 1984 Agreement recommended that low income home ownership assistance programs encapsulate two principles (Mead, 1987, p. 183): that mortgage repayments be linked to family income and that State governments attempt to recover the interest subsidies when the borrowers' incomes permit.

In a report prepared for the International Year of Shelter for the Homeless, Kendig, Paris and Anderton (1987) term this type of restructured loan the 'obvious solution' to problems of housing affordability. These loans not only help families to overcome the large deposits and high repayments expected in the early years of a traditional bank loan, but they are designed to ensure that governments recoup their subsidies. Therefore, governments can 'do their job of assisting people to become home owners without diverting scarce resources to the accumulation of personal wealth' (p. 118).

3. THE EVALUATION OF POLICY INNOVATIONS

Often new housing programs are launched with the assumption that they will serve social goals as well as economic and political ones, yet the underlying assumptions are seldom evaluated critically in light of behavioural data. There are particular difficulties attached to evaluating an innovative housing policy. Harloe and Martens (1987) raise several issues regarding the way in which innovations are evaluated. They point out that often underlying innovative policies is the 'implicit or explicit assumption that social innovation is a beneficial process - or that research into innovations ought to be mainly concerned with such benefits' (p. 196). Against this, they caution policy researchers that 'innovations may have positive and/or negative consequences for those affected by them'.

The Australian Institute of Family Studies (AIFS), with a five year research grant from the Victorian Ministry of Housing and Construction, is evaluating many of the underlying assumptions of this Capital Indexed Loan Housing Scheme. Will real incomes increase over time? Can home loans be extended to families on very low incomes? Is home ownership really 'the Great Australian Dream', resulting in high levels of residential satisfaction? And who wins and who loses on this scheme? In brief, the AIFS evaluation study is examining the impact of a major housing innovation on consumers - a group largely excluded from access to mainstream housing.

Broadly, this paper empirically examines the major hypotheses underlying the Capital Indexed Loan Scheme; that is, that the attainment of home ownership affects the likelihood of families increasing their employment and income

relative to families in the public and private rental sectors; that home purchasers enjoy higher levels of housing satisfaction than do renters; and finally, that by restructuring mortgages in the form of capital indexed loans, home purchasers may realize average housing costs similar to private rent levels, yet have the economic advantage of accruing equity in their home.

Moreover, research evidence suggests that gender and family type exert an independent effect on housing outcomes (Watson, 1988; Wulff, 1989). Accordingly, the differential effects of this housing scheme on married couple families (the conventional recipients of most government home ownership schemes) and sole parents (one of the most marginally housed groups in Australia and traditionally excluded from access to home ownership) are compared within the different tenure categories.

Thus, the key independent variables in the following analysis are tenure and family type. Dependent variables include employment, real family income, housing costs and housing satisfaction. While data are presented in cross-tabulations, statistical significance has been determined using multiple analysis of variance.

4. SURVEY DESIGN AND SAMPLES

The data are drawn from the Australian Institute of Family Studies five year Capital Indexed Loan Evaluation Study. The study, begun in 1985 and due to be completed in 1990, consists of a series of personal interviews with two groups of low-income families: one group purchasing a home with a capital indexed loan, and the other, renting in either the public or private housing sectors. This paper reports on data collected during the first two rounds of interviews: late 1985 or early 1986 and again 18 to 24 months later in October/November, 1987. (For a fuller report on the study, see AIFS, 1988).

The home purchasers sample (or loan sample) originally aimed to capture all families who received loan approval during the first week of loan operations in November 1984. During that first week, 11,000 applications flooded the Ministry of Housing and Construction and, assuming all criteria were met, loans were essentially approved on a 'first come, first serve' basis. The total 535 families approved for the Capital Indexed Loan Scheme were asked to participate in the survey, resulting in an original sample of 480 families. By the second interview, 55 families had either sold their Capil home or were uncontactable, reducing the second round sample to 425 families. Missing information accounted for a further loss of 19 families, thereby making the usable sample for the present paper 406 families.

The sample of renters was drawn separately from the remaining families on the Capital Indexed Loan waiting list. A systematic effort was made to find families that matched the 481 Capil loan families in family income, size and type - in other words, different only in that they were simply further down on the lengthy Capil waiting list and, therefore, likely to remain renters at least for the first stages of the research project.

This matching exercise produced 1,600 families, all of whom received a letter of invitation to participate in the study. About 580 families agreed to participate. But by the time of the actual interviews, two to three months later, there was a large attrition of families, due largely to refusals and change of addresses. The final renter sample, therefore, ended up at 275 families. By the second interview, only 167 families still participated. The majority of this loss was due to refusals and non-contacts, but about forty families had moved into home ownership since the original interview, thereby were no longer eligible as a control 'renter'. (Note: the control group were not interviewed at the third interview in July, 1989, due to the 40% loss between Waves 1 and 2.)

The sample characteristics for both the Capil loan group and the renter control group are presented in Table 1. At the first interview, the loan and renter respondents were roughly similar in age, sex, family type, educational level, and reliance on government benefits. With regard to birthplace, however, the loan group contained relatively more overseas born families, particularly recently arrived Asian families, than did the control group. As well, despite the attempted match on family income, the control group median income of $215.00 per week was higher than the average $204.00 of the loan group.

TABLE 1: CHARACTERISTICS OF RESPONDENTS: LOAN AND CONTROL SAMPLES, WAVE 1 AND WAVE 2[a]

Characteristics	Loan	Control	Loan	Control
	Wave 1		Wave 2	
	(N=481)	(N=275)	(N=406)	(N=167)
Median age (years)	35.4	37.3	35.5	37.8
Median weekly family income	$204.00	$215.00	$204.00	$213.00
% male	33.5	37.3	34.0	33.5
% female	66.5	62.9	66.0	66.5
% Post-Secondary/ Tertiary Education	18.7	15.6	17.5	15.6
% Australian	52.9	64.4	52.1	69.1
% UK	7.5	9.5	7.9	9.1
% European	23.1	18.2	22.4	16.4
% Asian	16.5	7.6	17.7	5.5
% Married Couple Families	47.8	48.7	49.5	46.1
% Sole Parent Families	52.2	51.3	50.5	53.9
% on government benefit	76.9	70.5	77.4	74.8

Note: (a) All figures are derived from data obtained at Wave 1.

By the second round of interviews, both the loan and control samples lost substantial numbers of families: 15 per cent and forty per cent, respectively. Overall, however, the general social and economic characteristics of loan and control families at the second round of interviews remained generally similar to their profiles at the initial interview - the loss of families, it appears, tended to be random, rather than systematic. One slight difference among the control group was that relatively more sole parent families remained in the sample than married couples (nearly 54% of families interviewed at the second wave were sole parents compared with 50% at the initial interview).

5. KEY FINDINGS

Table 2 presents the employment profile of loan and renter families at both interviews. Married couple families and sole parent families are examined separately. For example, the employment of married couples is examined with regard to whether one or both adults are in the workforce, while the major consideration for sole parents is whether the adult is employed part- or full-time. The table considers only those families whose marital status remained unchanged between interviews; to do otherwise would have raised the complicating factor of re-partnering or marital break-up as the reason behind a growth or decline in family employment, rather than marital status per se.

Two explanations commonly offered for assuming that over time home purchasers, relative to a similar group of renters, will increase their employment and income: first, the stability of owner occupancy provides a base for searching for and finding appropriate employment, and second, the greater incentive to increase family income in order to repair and renovate their homes (Carmon and Gavrieli, 1987).

TABLE 2: EMPLOYMENT PATTERN BY FAMILY TYPE AND TENURE, WAVES 1 AND 2[a]

	CAPIL		PUBLIC RENTER		PRIVATE RENTER	
	W1 %	W2 %	W1 %	W2 %	W1 %	W2 %
Couples						
Both partners employed	5.2	21.1	8.0	10.2	22.2	33.3
One partner employed	29.3	36.1	18.0	20.4	33.3	44.4
Neither employed	65.4	42.8	74.0	69.4	44.4	22.2
TOTAL %	100.0	100.0	100.0	100.0	100.0	100.0
N	191	194	50	49	18	18
Index of Employment Growth[b]	61%		15%		75%	
Sole Parents[c]						
Employed full-time	8.1	19.2	1.6	8.1	4.8	14.3
Employed part-time	17.9	23.8	15.9	27.4	19.0	33.3
Not employed	74.0	57.0	82.5	64.5	76.2	52.4
TOTAL %	100.0	100.0	100.0	100.0	100.0	100.0
N	173	172	63	62	21	21
Index of Employment Growth						
Full-time	146%		100%		100%	
Part-time	32%		-[d]		-[d]	

Notes:
(a) This and subsequent tables consider only those families whose marital status remained unchanged between Waves 1 and 2.
(b) Index of employment growth is the ratio between the number of adults employed at Wave 2 over the number of adults employed Wave 1 multiplied by 100.
(c) With the exception of four male respondents, sole parents in this and subsequent Tables are female, and thus are frequently referred to in text as female.
(d) The numbers are too small to disaggregate into full- and part-time work. Nearly three-quarters of the employment growth however, is in part-time work.

For married couples in the Capil scheme, nearly a four-fold increase in two-earner families occurred between the two interviews. Families with both adults unemployed or not in paid work declined from 65 per cent at Wave 1 to just under 43 per cent at Wave 2. The Index of Employment Growth - a figure showing the percentage change in adults employed between the first and second round of interviews - is 61 per cent.

This stands in sharp contrast to the small gains experienced by married couples renting public housing. Their equivalent index score is only 15 per cent, suggesting very few adults moved into employment between interviews. While the sample of private renters is small (18 married couples) - requiring that findings pertaining to this group be

viewed cautiously - three-quarters of the adults (75%) had moved into employment between interviews, leaving only about one-fifth (22%) of families on government benefits.

Substantial numbers of sole parents entered the work-force between the two rounds of interviews. The number of Capil sole parents in full-time employment increased by a dramatic 146 per cent. Public and private renters, while overall doubling the number in employment, tended to move into part- rather than full-time work. Within the public rental sector, sole parents founds jobs at a considerably greater rate than did married adults. While this finding deserves further examination, one possible explanation for this difference lies in the expressed reasons for not being in paid employment. Sole parents generally tended to mention the needs of their pre-school children as the greatest barrier to their gaining paid employment: a 'barrier' that eventually disappears as children grow up and become more independent. Married adults, on the other hand, cited ill health or lack of training and work skills - these latter barriers are perhaps more persistent and difficult to overcome (AIFS, 1988).

Gains in real net weekly family income increased similarly to employment growth (see Table 3). The data presented in Table 3 suggest that both tenure and family type are statistically associated with gains in real net family income. Capil home purchasers were statistically more likely than public or private renters to experience income gains; moreover, the real income of married couples increased at a greater rate than that of sole parents. Between the first and second wave of interviews, married couples in the Capil Scheme generally moved out of the lower income groups (less than $300 weekly) to the relatively higher income levels - an overall growth rate of 23.4 per cent. Female sole parents in the Capil scheme, primarily because of the lack of the second earner, experienced lower income gains (7.6%) and, even at the second interview, over half reported family incomes less than $200 weekly.

Families in the public rental sector experienced a general stagnation in income: indeed, the family income of sole parents declined by .10 per cent and 68 per cent of these sole parents subsisted on less than $200 per week. None of the sole parents reported family incomes over $400 weekly.

The family income of married private renters grew by 18.7 per cent between interviews: sole parents, however, fared less well and nearly half still reported less than $200 weekly at the second interview.

Thus, home purchasers experienced greater income gains than public and private renters, but within tenure groups, the family income of married couples grew at a significantly greater rate than sole parents. Tenure aside, sole parent families possess significantly less income than married couples - and accordingly have experienced fewer income gains. The presence of an additional, potentially income earning partner, is of major importance to the standard of living of families.

6. HOUSING COSTS

In addition to mortgage repayments, housing costs for home purchasers include the necessary costs of local council and water rates and building insurance. (As these latter costs are incorporated into the level of private rents, a comparison of rent with mortgage alone would be inadequate.) Thus, in Table 4, the housing costs for Capil home purchasers (mortgage repayment, rates, and building insurance) are compared with the rents paid by families in the control group. Also included in Table 4 are the dollar amounts and per cent of total family income that on average housing costs absorb each month.

Housing tenure, as shown in Table 4, is statistically associated with housing costs. Of the tenure groups, private renters, on the whole, have both the highest average monthly housing costs (in dollar terms) and outlay, relatively, the greatest proportion of their family incomes on rent. In comparison, the housing costs faced by Capil loan families, while on the surface not dramatically different from private renters are, nonetheless (in a statistical sense), significantly lower. Perhaps the key advantage of housing costs for Capil families is not the relative dollar amounts expended each month, but the possibility that mortgage, rates and house insurance are going towards an asset that is gaining in value over time, a potential benefit perceived by many families. When asked about the main advantages of purchasing a house, many Capil families were quick to point out that they were not 'throwing dead money away on rent'.

TABLE 3: REAL NET WEEKLY FAMILY INCOME BY TENURE AND FAMILY TYPE, WAVES 1 AND 2[a]

Real Net Weekly Income $ per week	Married Couple Families		One-Parent Families	
	Wave 1 %	Wave 2 %	Wave 1 %	Wave 2 %
		CAPIL LOAN GROUP		
<$200	4.2	5.2	48.3	51.7
$201 - 300	74.0	49.7	44.3	36.6
$301 - 400	15.1	19.4	6.9	9.9
$400 plus	6.8	25.7	0.6	1.7
TOTAL %	100.0	100.0	100.0	100.0
Mean real income	$275.00	$340.00	$206.00	$215.00
N	(192)	(191)	(174)	(172)
Index of Real Income Growth[b]		23.4%		7.6%
		PUBLIC RENTERS		
$200	20.0	18.0	63.5	68.3
$201 - 300	62.0	52.0	31.7	28.6
$301 - 400	14.0	26.0	4.8	3.2
$400 plus	4.0	4.0	-	-
TOTAL %	100.0	100.0	100.0	100.0
Mean real income	$235.00	$270.00	$197.00	$189.00
N	(50)	(50)	(63)	(63)
Index of Real Income Growth		.08%		-.10%
		PRIVATE RENTERS		
<$200	5.6	11.1	57.1	47.6
$201 - 300	66.7	27.8	38.1	42.9
$301 - 400	16.7	38.9	4.8	4.8
$400 plus	11.1	22.2	-	4.8
TOTAL %	100.0	100.0	100.0	100.0
Mean real income	$304.00	$342.00	$212.00	$220.00
N	(18)	(18)	(21)	(21)
Index of Real Income Growth		18.7%		4.3%

Significance: Tenure $p<.001$ Family type $p<.000$

Notes:
(a) Real income adjusted to December 1987.
(b) Index of Real Income Growth is the ratio between family income at Wave 2 and adjusted family income at Wave 1 multiplied by 100.

TABLE 4: WEEKLY HOUSING COSTS[a] AS A PROPORTION OF FAMILY INCOME BY TENURE AND FAMILY TYPE, WAVE 2

Housing costs % of family income	Married Couple Families %	One-Parent Families %
	CAPIL LOAN GROUP	
0 - 15	9.9	4.1
16 - 20	7.9	5.2
21 - 25	20.9	20.3
26 - 30	31.9	30.2
31 plus	29.3	40.1
TOTAL %	100.0	100.0
N	(191)	(172)
Mean Monthly Housing Costs ($)	86	66
Mean Monthly % family income	27	32
	PUBLIC RENTERS	
0 - 15	18.0	17.7
16 - 20	42.0	43.5
21 - 25	20.0	21.6
26 - 30	12.0	12.9
31 plus	8.0	4.8
TOTAL %	100.0	100.0
N	(50)	(62)
Mean Monthly Rent ($)	52	36
Mean Monthly % family income	20	19
	PRIVATE RENTERS	
0 - 15	11.1	4.8
16 - 20	16.7	14.3
21 - 25	11.1	19.0
26 - 30	22.2	9.5
31 plus	38.9	52.4
TOTAL %	100.0	100.0
N	(18)	(21)
Mean Monthly Rent ($)	87	79
Mean Monthly % family income	29	33

Significance: Tenure $p<.000$ Family type $p<.001$

Note: (a) Housing costs refer to **Mortgage repayments, rates** and **house insurance** for CAPIL loans group and **rent** for public and private renters.

Within the public rental sector, monthly payments are considerably more in line with family income than in the other tenure categories. In addition, average monthly payments are substantially lower in both dollar terms and in the proportion of family income expended. In further contrast to the other categories, there is greater equivalence in the proportion of family income expended on rent for married couples and sole parents: regardless of family type, public renters devote about 20 per cent of monthly family income on rent.

For home owners and private renters, however, sole parents, although paying lower absolute dollar amounts than married couples, expend relatively greater proportions of their family income on housing costs. While this may not be surprising in the private rental sector (where rent levels are not established with family income taken into account), it is unexpected under the Capital Indexed Loan Scheme, which is an income-geared reapyment scheme. Capil sole parents are statistically more likely than married couples in the scheme to be outlaying more than the requisite amount on housing costs. Indeed, over two-fifths of sole parents in the scheme were paying over 31 per cent of their income on housing costs. In large part, this appears to stem from a lack of awareness of the possibility of re-adjusting their mortgage repayments to any changes in their family income (AIFS, 1988) and the gradual inflation adjustment made automatically by the Ministry of Housing and Construction slowly increases their repayment levels. [1]

7. HOUSING SATISFACTION

The evaluation of government housing policy, if responsive to the needs of the families it serves, must take into account whether the 'clients' are satisfied. Reponsive and sensitive housing programs are designed with more than bricks and mortar in mind. The analysis of the residential satisfaction of families in the Capital Indexed Loan Scheme is shown in Table 5 in terms of three key dimensions: satisfaction with the space and privacy of their homes; the general location of their homes; and their mortgage or rent payments.

The key issue examined in Table 5 is the extent to which tenure affects housing satisfaction. Does owning a home necessarily result in greater satisfaction than renting? The desire for owner-occupancy is strong in Australia - and housing preference studies have indicated that over 90 per cent of Australians desire home ownership (Maddocks, 1978). Most Australian renters hope to own a home one day, no matter how impossible this dream may be. Given the dominance of home ownership in the Australian value system, the belief that government home ownership programs necessarily produce satisfied clients is often a taken-for-granted assumption.

Table 5 presents the level of reported satisfaction with three key aspects of the housing environment: space and privacy within the home; the general location of the home; and mortgage or rent payments. For both Waves 1 and 2, Capil home purchasers are compared with public and private renters in regard to the level of reported satisfaction. Index scores showing the percentage change in satisfaction levels between the two rounds of interviews are also included.

At Wave 1, families in the Capital Indexed Loan Scheme expressed greater residential satisfaction on every dimension than did the public or private renters. Even with regard to mortgage payments, all but very few families stated they were satisfied with the amount they were required to pay. By the second interview, two and a half years later, the overall number of families satisfied declined between 9 and 28 per cent. The initial euphoria expressed by the Capil families at the first interview is not uncommon among new home purchasers, particularly with a group of families for whom owning a home was only a remote possibility. Without the opportunity to interview families again a few years later, however, these enormously high levels of satisfaction could be mistakenly construed as the normal or usual consequences of owning a home. In any once-only attitude survey, this problem is a possiblility, but particularly so for housing satisfaction studies of new home purchasers.

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1. One item of housing costs not discussed in this paper is one that is faced solely by home purchasers - the ongoing financial responsibility for repairs, maintenance, and home improvements. Families undertaking basic repairs added between 10 to 18 per cent to their monthly housing costs, while home improvements added on average 35 per cent. For a fuller description of repairs and home improvements, see Wulff, 1989.

TABLE 5: CHANGING LEVELS OF RESIDENTIAL SATISFACTION BY TENURE AND FAMILY TYPE, WAVES 1 AND 2[a]

Residential Satisfaction Indicators	Capil Loan Group		Public Renters		Private Renters	
	Wave 1	Wave 2	Wave 1	Wave 2	Wave 1	Wave 2
Space and Privacy						
% Dissatisfied	4.3	6.3	19.5	21.0	11.9	31.0
% Neutral	6.8	30.3	0.8	2.4	2.4	-
% Satisfied	89.9	63.4	79.7	76.6	85.7	69.0
N	(407)	(407)	(124)	(124)	(42)	(42)
Index of satisfaction change[b]	28.5%		-3.2%		-19.4%	
Wave 1 Significance Tenure p<.000 Wave 2 Significance Tenure p<.000						
Locations						
% Dissatisfied	3.9	9.8	17.7	14.5	19.0	19.0
% Neutral	9.1	11.3	14.5	9.7	14.3	21.4
% Satisfied	86.7	78.9	67.7	75.6	66.7	59.5
N	(407)	(407)	(124)	(124)	(42)	(42)
Index of satisfaction change[b]	-9.1%		-10.7%		-10.7%	
Wave 1 Significance Tenure p<.000 Wave 2 Significance Tenure p<.02						
Mortgage and Rent						
% Dissatisfied	1.7	18.2	12.1	8.1	48.8	26.8
% Neutral	4.5	15.2	17.7	12.9	14.6	9.8
% Satisfied	93.8	66.6	70.2	79.0	36.6	63.4
N	(407)	(407)	(124)	(124)	(42)	(42)
Index of satisfaction change[b]	-28.3%		12.6%		73.3%	
Wave 1 Significance Tenure p<.001 Wave 2 Significance Tenure p<.006						

Notes:
(a) As family status was shown in the analysis to have no statistical association with residential satisfaction, it does not appear in this Table.
(b) Index of satisfaction change is the difference in the number of respondents satisfied at Waves 1 and 2 divided by the number of satisfied respondents at Wave 1, multiplied by 100.

In an insightful study of recent home buyers in a newly developed American suburb, Gans (1968) cautioned researchers about the problems of asking such families how happy they are now that they finally own a home of their own (Gans, 1968). As the author points out, it is too easy to confuse a **predisposition** towards a particular environment (such as a home that one owns or living in a particular suburb or area) as a **direct effect** of that environment. In other words, if families are clearly predisposed to becoming home owners (as were the Capil families), then it is not necessarily home ownership, per se, that has caused the reported satisfaction, but the fact that they were also inclined psychologically to that particular living environment anyway. This 'honeymoon effect' (AIFS, 1988) is most likely to appear with home purchasers in the early period after moving in - when the happiness of achieving a desired goal is most apparent.

While tenure still statistically affected levels of residential satisfaction at Wave 2, home purchasers did not maintain the highest satisfaction on each of the three dimensions. Although statistically more satisfied with space, privacy, and location, Capil families declined significantly in their satisfaction with monthly repayments. On this dimension, public renters reported the greatest satisfaction. In fact, their reported satisfaction with rent payments increased by 12.6 per cent between the two interviews. There was also a 10.7 per cent increase in the number of public renters satsfied with their location. Capil families, nevertheless, continued to maintain the highest proportion satisfied with the location of their homes - even though the actual level had declined by 9 per cent between interviews. Satisfaction levels, however, for public renters generally increased between interviews, specifically with their location and their rent payments.

Private renters present a mixed picture in terms of residential satisfaction. While clearly reporting on average the lowest levels on each of the three satisfaction dimensions, an odd result appears in the index of satisfaction change - 73 per cent more families reported satisfaction with rent payments at Wave 2 than did so at the first interview. While this may be due, to some extent, to the small sample size (whereby the addition of a few satisfied families can appear as an enormous percentage increase), it may also stem from an inherent methodological problem with satisfaction studies - the 'Pollyanna effect', a hypothesis positing that most study respondents prefer to use positive, rather than negative, terms when communicating with an interviewer (Francescato, Weidemann, and Anderson, 1987). This could only be more fully tested with a much larger sample of private renters.

8. CONCLUSIONS AND IMPLICATIONS

Does home ownership make a difference to the lives of a group of Victorian low-income families? According to the AIFS Capital Indexed Loan Evaluation Study, home purchasers, relative to renters, demonstrated greater employment and income gains during the two and a half year period since moving into their homes. These effects, however, are not uniform across all types of families, but are particuarly true for married couple families. Even though sole parents in the Capital Indexed Loan Scheme entered the work-force and gained income at a relatively greater rate than sole parents who were renting, their gains were minor in comparison to the married couples. The possible spectre of a home owning sector polarised along family lines is deserving of more detailed investigation.

In comparison with home purchasers and private renters, the employment and income of families in the public rental sector changed little between the two interviews. It is this general economic stagnation that is noteworthy and raises the question of residualisation: while some low-income families, many of whom were former public housing tenants, move into owner-occupancy, are those families left in the public housing rental sector, the 'residual population', increasingly marginalized (Harloe and Martens, 1987)?

Tenure is also statistically associated with housing costs. In a hierarchy of monthly housing costs, Capil families pay marginally less than private renters, but considerably more than public renters. (In exchange for their housing cost outlays, however, Capil families are accruing equity in their homes, an issue examined in detail in the third phase of the study.) Another finding of note is the impact of family type on housing costs: sole parents outlay statistically greater proportions of their family income on rent or mortgage than married couples. Although under the Capital Indexed Loan Scheme, repayments are targetted to family income, the appropriate adjustments of mortgage to family income were not operating at the second interview and sole parents were paying greater proportions than required. Within the public rental sector, though, rent is more closely targeted to family income and all families, regardless of marital status, paid approximately twenty per cent of income on rent.

In accordance with the Great Australian Dream, home owners are statistically more likely to be satisfied with their housing situation than public or private renters. Despite the decline in expressed satisfaction, Capil families, at the second interview, continued to express the greatest satisfaction with the space, privacy and location of their homes. Media reports of dissatisfaction aside, public renters - more than Capil home purchasers and private renters - were statistically more likely at Wave 2 to express satisfaction with rental payments.

Thus, to the extent that comparisons are valid among the three tenure groups examined (and an analysis of characteristics suggests this is the case), tenure bears a strong and significant association with increases in employment and income, average housing costs, and housing satisfaction. With the exception of the latter, family type also relates significantly to these same outcomes.

When a cultural value is adopted as wholeheartedly as home ownership is in Australia, it is often the case that government policy in this area goes unexamined. By following the progress of low income home-owners for five years, the AIFS Capital Indexed Loan Evaluation Study offers Australian housing analysts unique insights into the 'Great Australian Dream'.

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