

The Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia - 2005

Summary Briefing Paper and Key Issues Table

Summary Briefing

In September 2005 the United Nations Committee on the Rights of the Child (“**the Committee**”) will examine the Australian Government’s *Combined Second and Third Reports* and make recommendations to further Australia’s compliance with the United Nations Convention on the Rights of the Child (“**the Convention**”). The National Children’s & Youth Law Centre and Defence For Children International (Australia) have prepared a non-government report and materials to assist the Committee in this process, following consultations with a wide range of people working with children and young people in Australia across many sectors as well as some participation and input from children and young people themselves.

It is now 15 years since Australia ratified the Convention and nearly ten years since the Australian Government presented its first periodic report to the Committee (December 1995). Defence for Children International (Australia) presented the first non-government report to the Committee in 1996.

Australia has made some advances, and there are numerous examples of governments and communities developing programs and projects that provide support for children and their families. But the lack of an effective national commitment to the Convention, a national Commissioner for Children, and a national plan of action for children inhibits the development of a national collaborative process to evaluate, share information, learn lessons and promote best practice.

The non-government sector shares the Committee’s concern that Australia’s ratification of the Convention does not give rise to legitimate expectations that an administrative decision will be made in conformity with the requirements of the Convention. Under the present constitutional arrangements, unless the Australian Government explicitly enacts legislation to implement its obligations under an international treaty such as the Convention, the only effect of the Convention is indirect, by, for example, affecting the way a court may interpret the law about procedural fairness in relation to the doctrine of natural justice. The Australian Government has shown little interest in developing a domestic human rights regime to implement its human rights obligations under international law, and has little economic or political incentive to do so in the present circumstances.

The non-government sector is concerned that the Australian Government was initially tardy, and now seems inclined to retreat from its commitment to the Convention and other international human rights vehicles. Given the lack of any constitutional or statutory bill of rights or other domestic regime for giving local effect to the Convention, the other important uses of the Convention are educational and bench-marking. The deliberations of the Committee will provide an important reminder to all governments in Australia that children have survival, protection, development and participatory rights and the publication of its findings will provide a significant rallying point and yardstick for children’s advocates.

While the Australian Government’s report outlines numerous positive examples of policy initiatives and programs, it falls well short in providing substantial evidence of accountability or review and evaluation. The gaps and priorities for action are clear - the substandard living conditions of Indigenous children equivalent in many cases to conditions more commonly seen in developing countries remains Australia’s greatest shame. Despite increasing awareness of the importance of self-determination, the Australian community continues to repeat the mistakes of previous generations, and to make new ones. Despite Australia’s wealth, Indigenous children are not receiving effective health care or education, and they are many times over-represented in the child protection, out-of-home care and juvenile justice systems. The Federal Government has failed to explain why Indigenous children, when compared with their non-Indigenous peers, do not have the benefits of the excellence of education, health and welfare that the non-Indigenous community takes for granted.

The Federal Government has failed to explain why it persists in a policy of arbitrary immigration detention of children in adult prisons for long periods of time in clearly damaging circumstances. This and the survival of mandatory sentencing in Western Australia criminal justice indicate that Australia fails to maintain a commitment to the use of detention as a measure of last resort.

A consistent theme in the submissions to, and from the consultations for this report, was a very great concern about the ad hoc service delivery for children and their communities, and a failure to achieve systemic change and greater equity and equality of opportunity. Increasing numbers of children are identified as abused or neglected, or homeless, but for many, being identified in this way does not solve their problems or meet their needs. There is a shortfall in the delivery of services for the most vulnerable children in a country which is wealthy in world terms. Many children with a disability, mental health problems or subjected to violence or experiencing homelessness are not getting the help they need to ensure healthy development.

While there have been a number of developments in relation to children's participation, there are significant restrictions and tokenistic or manipulative processes in some important areas of children's and young people's involvement in society. Some Australian children and young people are still subject to discrimination and are not yet treated with respect by the education, health care, justice and social security systems.

The non-government report and accompanying materials address the areas of non-government concern and make recommendations for systemic and specific changes to improve Australia's compliance with the Convention. The five areas highlighted for the attention of the Committee in the accompanying Key Issues Table and Summary Papers are as follows:

- Indigenous Children
- Liberty
- Protection
- Participation And Process
- Coordination

National Children's and Youth Law Centre

Defence for Children International

Sydney, Australia

May 2005

Key Issues Table for the NGO Combined Second & Third Report under the Convention on the Rights of the Child - 2005

Key Issue	NGO Report	Australia's Report	1997 Concluding Observation	Recommendations
Indigenous Children Article 30				
Health <i>Article 6, 23 and 27</i>	Malnutrition, trachoma, otitis media, chronic infections, communicable diseases - major public health problems. Substance abuse, suicide and mental health - afflict older children. Services and funding - inadequate	Health and infant mortality rates remain concern (paras 285-291)	Paragraph 13 and 32 - standard of living, health inadequate for indigenous children	Acknowledge role of Indigenous communities to find solutions. Implement NACCHO Report. Make national commitment to collaboration, funding and support for local intervention programs
Education <i>Article 28 and 29</i>	Attendance and retention rates remain low. Problems already evident in Early Childhood schooling. Suspension and expulsion rates higher	National Aboriginal & Torres Strait Islander Education Policy (paras 351-358)	Paragraph 13 and 32 - education systems inadequate for indigenous children	Develop National Strategy to address systemic and structural issues, teaching models, disciplinary process and inclusive practices
Detention <i>Article 37 and 40</i>	Rates remain unacceptably high. Diversion not working	Details of ATSIC and regional state responses (paras 451-456)	Paragraph 22 and 32 - concern at high rates of detention of indigenous children	Implement ALRC & HREOC "Seen & Heard" Report - national standards. Support indigenous community justice models
Family Environment <i>Article 9, 10, 19 and 20</i>	Over representation in child protection and out-of-home care HREOC Report calls for recognition of harm for past policies of forcible removal of indigenous children			Make national commitment to work with communities to implement Aboriginal Child Placement Principle Implement HREOC "Bringing Them Home" report

Key Issue	NGO Report	Australia's Report	1997 Concluding Observation	Recommendations
Liberty & Identity				
Police Powers <i>Article 8</i> <i>Article 15</i>	Consultations demonstrate abuse of existing powers. Powers extended under recent Anti-Terrorism legislation. Public space issues not addressed. Lack of monitoring	Invokes Article 15 (2) - public safety and order	Paragraph 16 - concern at legislation for police removal powers.	Review policies, legislation and regulation Implement ALRC & HREOC "Seen & Heard" Report - national standards
Immigration Detention <i>Article 10, 22, 37 and 39</i>	Current Policy reflects significant breaches of Convention - arbitrary, not of last resort , not for the shortest period of time, not subject to effective review . Children at high risk of harm, rights denied	Family reunification measures for asylum seekers and refugees (paras 220-228) Refugee protection, placement, treatment in detention provisions (paras 391-431)	Paragraph 20 and 30 - concern at treatment and detention of asylum seekers and refugees.	Implement HREOC "A Last Resort" Report Review in light of UNE&SC Working Group on Arbitrary Detention Report (2002)
Juvenile Justice <i>Article 10, 37 and 40</i>	Diversion not benefiting indigenous children. Concern at transfer of NSW centre management to adult correction authorities. Lack of juvenile justice system in Northern Territory. Impact of fines system for children.	Diversion schemes (paras 438-462)	Paragraph 21 - concern at detention of children in the juvenile justice system.	Implement ALRC & HREOC "Seen & Heard" Report - national standards required
Reservation to Article 37	Reservation not justified		Paragraph 8 and 23: reservation to Article 37	Withdraw reservation
Arbitrary Detention <i>Article 37</i>	Mandatory sentencing in WA persists			Repeal legislation

Key Issue	NGO Report	Australia's Report	1997 Concluding Observation	Recommendations
Protection				
Corporal Punishment <i>Article 37(a)</i>	Disparity between regional states. Practiced in home and private schools	Refers to regional state legislation (paras 184-188)	Paragraph 15 and 26 - lack of prohibition on corporal punishment	Consistent legislation of prohibition required
School Violence <i>Article 37(a)</i>	Bullying significant issue No national strategy.	Bullying issue of concern (paras 189-192)		Develop national standards Research and support for peer relations strategies
Child Protection <i>Article 9, 19, 20, 25 and 39</i>	Issues - co-existence with domestic violence, safety on contact visits with non-custodial parent, inadequate services for children, lack of periodic review of placement	Refers to regional state reviews of child protection systems (paras 233-247), details of various initiatives (paras 254-272)	Paragraph 15 and 26 - extent of child abuse within family.	Develop national standards, strategy and policy including audit of care arrangements, consistent periodic review, best practice.
Housing <i>Articles 9, 10, 19 and 20</i>	Children under 16 not recognised as clients; lack of crisis or supported accommodation, need for support services for complex needs, no indigenous strategy	<i>Reconnect</i> and <i>National Homelessness Strategy</i> (paras 334-340)	Paragraph 18 and 33 - concern at homelessness;	Develop national child-specific strategy with adequate resources for identified needs
Suicide <i>Article 6 and 19</i>	Rates remain high especially rural, remote, indigenous and homeless children	Figures decreasing. National Youth Strategy replaced by non-specific National Strategy (paras 296-303)	Paragraph 18 and 33 - concern at suicide.	Target resources for rural, remote, indigenous and homeless children
Female Genital Mutilation <i>Article 37</i>	Concern practice may persist and be arranged extraterritorially	Statement of opposition and refer to regional state legislation	Paragraph 19 and 34 - need for prevention of female genital mutilation	Research on incidence and develop national strategy

Key Issue	NGO Report	Australia's Report	1997 Concluding Observation	Recommendations
Participation & Process				
International Aid	No consistent program for the promotion of child rights. 5% of aid delivered through NGOs.	No proposed change (paras 41-51).	Paragraph 6 and 25 - increase development and focus on children.	Support Concluding Observations.
Implementing The Convention <i>Article 4</i>	<p>No incorporation of Convention into domestic law.</p> <p>Funding cuts to HREOC.</p> <p>National Minister for Children now Parliamentary Secretary.</p> <p>No National Commissioner for Children. Not all regional states have Commissioners.</p> <p>No National Agenda for Children. Continuing disparity between regional states</p>	<p>No acceptance of legitimate expectation of administrative decisions to be in conformity with Convention.</p> <p>Focus on role of HREOC (paras 33-35)</p> <p>Claimed increased coordination. (para15 - 24)</p>	<p>Paragraph 7:</p> <ul style="list-style-type: none"> - complaint in courts; - administrative decisions to be in conformity with Convention; <p>Paragraph 9 and 24: comprehensive policy and monitoring mechanisms required; disparity between regional states</p>	<p>Implement ALRC & HREOC "Seen & Heard" Report - Recommendations 1 to 3 - to coordinate, monitor and implementing National Agenda for Children.</p> <p>Resource HREOC adequately</p> <p>Establish National and State Commissioners for Children</p>
Promoting the Convention <i>Article 42 and 44</i>	National Committee on Human Rights Education inadequately funded and narrow focus	National Committee on Human Rights Education established (paras 54-55)	Paragraph 10, 27 and 35: lack of public awareness of Convention, process and principles	Promote Convention to community and policy makers adequately

Key Issue	NGO Report	Australia's Report	1997 Concluding Observation	Recommendations
Discrimination <i>Article 2</i>	Exemptions in education sector. Racial, sexuality, religious discrimination persisting. Systemic discrimination against indigenous Australians.	First steps taken (paras 52-66) National Age discrimination legislation introduced	Paragraph 12 and 28 - no consistent non-discrimination scheme	Review legislation for age discrimination and for education sector.
Participation <i>Article 12, 13, 14 and 17</i>	Defunding of national peak NGO for young people. Roundtable process controlled. No national strategy for participation of young people.	Established National Youth Roundtable and National Indigenous Youth Leadership Group (paras 109-132)	Paragraph 12 and 28- insufficient provision and support for children to express views and participate.	Implement ALRC/HREOC "Seen and Heard" report Promote debate on lowering voting age to 16.

Key Issue	NGO Report	Australia's Report	1997 Concluding Observation	Recommendations
Coordination				
Definition of Child <i>Article 1</i>	QLD state juvenile justice system excludes 17 year olds			Amend definition of child to under 18 years
Education <i>Article 28 and 29</i>	Discipline processes in schools failing to ensure natural justice, loss of access and quality of education for 'difficult' children		Paragraph 13 - standard of education inadequate for NESB & indigenous children	Implement ALRC & HREOC "Seen and Heard" report - national standards for all schools
Maternity leave <i>Article 26 and 27</i>	Disparity remains. Ability of industrial awards to implement reduced	HREOC Report under consideration (paras 207-210)	Paragraph 17 and 31: lack of consistent availability of maternity leave	Implement HREOC National Paid Maternity Leave Scheme
Health <i>Article 16, 17 and 24</i>	Confidentiality of, access to and capacity to consent to healthcare unclear			Develop and implement training for health professionals
Mental Health	Services inadequate in rural and remote areas and in schools. Over use of medication	National Action Plan for Mental Health targets adolescents (para 313)		Develop and implement national program of services including counselling
Standard of Living <i>Article 26 and 27</i>	Inadequacy of Youth Allowance and dissatisfaction with indexation, eligibility and breach policy	Family Assistance measures (paras 320-323)		Review allowances and policy to remove discriminatory impacts