

CHAPTER 7

ADEQUACY OF PROGRAMS AND SERVICES OF SPECIAL IMPORTANCE TO CHILDREN

Introduction

7.1 The *Convention on the Rights of the Child* creates an expectation that Australian Governments will provide adequate resources to address children's rights in relation to housing, education, health care, welfare and access to law.¹ Ms Rayner expressed the view that Australia must adopt a national strategy which focuses on the well being of children or we will continue to face international embarrassment.² There are, however, competing demands for limited resources³ which means that all of the children's needs are not met and there is a need to consider whether in areas where programs and services are not adequate, children's issues will develop into major social problems.⁴

Family environment and alternative care

The family as the fundamental unit of society

7.2 The ratification of the *Convention on the Rights of the Child* committed the Government to supporting the family as the fundamental unit of society and developing policies that protect the family unit as the best environment for children to grow up in.⁵ The Attorney-General's Department gave the view that the importance of the role of the family is reinforced in Preambular Clauses 5 and 6 and Articles 7, 16, 18, 24, 27, 29 and 37.⁶ Children can be supported by supporting parents and by enhancing community attitudes which value children.

1 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1271

2 Rayner, Submission No. 223, p. S 1475

3 Tasmanian Government, Submission No. 168, p. S 1115

4 Children's Commissioner of Queensland, Submission No. 25, p. S 148

5 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1271; Call to Australia, Submission No. 179, p. S 1202; Krohn, Transcript of Evidence, 9 July 1997, p. 833; Kaye, Transcript of Evidence, 4 August 1997, p. 1085; McCorquodale, Transcript of Evidence, 29 April 1997, p. 162; Burnside, Submission No. 94, p. S 451; Premier of Queensland, Submission No. 144, p. S 947; Bayes, Transcript of Evidence, 28 April 1997, p. 84; Dolgopoul, Transcript of Evidence, 4 July 1997, p. 663; Community Services Australia, Submission No. 154, p. S 1023

6 Attorney-General's Department, Submission No. 133, pp. S 766-7

The Government has some responsibility for policy planning and coordination of standards and for monitoring these.⁷

7.3 Article 18 explicitly recognises the importance of the role of parents and the responsibility of government to support parents and the family unit.⁸ A lot has been said about the inalienable rights of parents but with those rights there are responsibilities.⁹ It was suggested that if all parents were responsible then the whole questions about the rights of the child would not arise.¹⁰ The *Family Law Reform Act 1995* does not refer to the rights of parents but rather the rights of the child and responsibilities of parents.¹¹

Assistance to parents

7.4 The Committee received a great deal of evidence about significant improvements in the services approach to supporting families in recent years. These included counselling, mediation, reconciliation and workplace changes.¹² The Family Services Program contracts community based organisations to provide a range of services to families, to assist families achieve and maintain appropriate functional relationships. There are a number of organisations funded to provide family skills training to promote positive parenting and non-violent problem solving.¹³ Legal Aid and Family Services is currently developing a collaborative strategy, including a national information system to collect and disseminate management information about family relationship services.¹⁴

7.5 There have been a number of initiatives at the State, Territory and Federal levels.¹⁵ For example, the Western Australian Government has, as the major theme of its program supporting children, the 'reconciliation and strengthening of the family unit' and removing the child is seen as a measure of

7 Defence for Children International Australia (1996) *Australia's promises to children - The Alternative Report*, p. 13

8 Les, Transcript of Evidence, 4 July 1997, p. 683

9 Uhlmann, Transcript of Evidence, 29 April 1997, p. 211

10 Boland, Transcript of Evidence, 5 August 1997, p. 1279

11 *ibid*

12 For example, Council to Homeless Persons, Submission No. 74, p. S 372

13 Attorney-General's Department, Submission No. 133, pp. S 780-1

14 Attorney-General's Department, Supplementary Submission No. 133a, p. S 3359

15 *Australia's response to issues raised by the Committee on the Rights of the Child*, Office of International Law, Attorney-General's Department, August 1997, pp. 41-46; Western Australian Government, Submission No. 402, pp. S 2255-6

last resort.¹⁶ In Western Australia the family support strategies have been implemented to strengthen families such as parent information centres.¹⁷ In New South Wales there are around 150 families support services¹⁸ The Child Health Council of South Australia added that it is not only the 'disadvantaged' children who benefit from the provisions outlined in the Convention but 'normal' parents utilise it on behalf of their children to secure services, or to resolve grievances with bureaucracies.¹⁹

7.6 The Convention incorporates social rights which infer social policies to redistribute resources to families caring for children and young people themselves.²⁰ Australian Catholic Social Welfare Commission commented that the income support system is complex due to the careful targeting of payments to those families and individuals in need.²¹ It was submitted that children from low income families probably still are denied rights to education and the basic necessities of life which are essential for the welfare, goodness and growth of a child.²²

7.7 It was suggested that appropriate national financial strategies could alleviate the need for paid maternity leave,²³ enable mothers to remain at home and should take into account the number of dependant children being supported along the lines of the quotient system operating in France.²⁴ However, Ozchild raised the concern that the assumption that funding packages for families will positively impact on children may not eventuate and that there needed to be funds made available for programs and services specifically targeted for children.²⁵

7.8 Tonti-Filippini *et al* considered that it was unjust to tax those who have dependent children on the same basis as those without dependents. However, most taxation applied in Australia does not make concessions for those whose

16 Ashford, Transcript of Evidence, 3 July 1997, p. 531; Western Australian Government, Submission No. 402, p. S 2254

17 Van Soelen, Transcript of Evidence, 3 July 1997, p. 535

18 Gledhill, Transcript of Evidence, 9 May 1997, p. 411

19 Child Health Council of South Australia, Supplementary Submission No. 151a, p. S 2382

20 Australian Catholic Social Welfare Commission, Supplementary Submission No. 124a, p. S 1592

21 Australian Catholic Social Welfare Commission, Submission No. 124, p. S 656

22 Davis, Transcript of Evidence, 9 July 1997, p. 825

23 Forster, Submission No. 373, p. S 2111

24 The Women's Action Alliance, Submission No. 152, p. S 1013

25 Ozchild: Children Australia, Supplementary Submission No. 413a, p. S 3410

major expenditure is on providing for children.²⁶ They believed that in relation to the potential for government economic policies to advantage some and disadvantage other types of family arrangements, that the limited system of family allowance and tax rebates is small compensation for the families in a system of taxation that generally treats children as an optional luxury.²⁷

7.9 It was submitted that supporting families is the best way to address children's rights and some of the disadvantages facing Australia's families; the vast majority children who suffer abuse and/or neglect do so at the hands of their families.²⁸ Family Support Services Association of New South Wales believed that funding of family support services has not kept pace with the growing need of Australia's parents for support and assistance in raising their children and the current resources cannot meet the high rate of child protection notifications.²⁹ Community Services Australia were of the view that government has not placed a priority on the promotion, funding or evaluation of parental guidance and counselling programs.³⁰ In situations where parents are unable to 'parent effectively' there should be adequate support.³¹ For example, it was suggested that improvements could be made to the Child Support Agency in relation to the time taken to do assessments, the review process and matters involving children living outside Australia where the paying parent resides here.³²

7.10 An important aspect of child welfare must be the training of parents because children's rights are assisted by resourcing parents to deal with the problems that might arise.³³ Youth Affairs Network of Queensland commented that there are a number of programs targeting family breakdown and crime prevention which are known to work. However, these receive such limited funding that they are inhibited in their availability to the broader community.³⁴

26 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1271

27 *ibid*, p. S 1272

28 Cooney, Transcript of Evidence, 29 April 1997, p. 184

29 Family Support Services Association of NSW Inc, Submission No. 100, p. S 482; Barnardos Australia, Submission No. 101, p. S 487

30 Community Services Australia, Supplementary Submission No. 154a, p. S 2389

31 Rubenach, Transcript of Evidence, 4 August 1997, p. 1109

32 Queensland Law Society and the Family Law Practitioners Association, Submission No. 123, p. S 638

33 Jones, Transcript of Evidence, 5 August 1997, p. 1221

34 Youth Affairs Network of Queensland, Submission No. 415, p. S 2486

There were a number of requests for additional parent training, counselling and mediation services for children and parents.³⁵

7.11 It was suggested that there is a need for parenting programs to be freely available for all parents and that parenting courses should be compulsory subjects in high schools.³⁶ Basic life skills training should be mandatory in schools so that our young people who are at risk of parenting inadequately may have this opportunity.³⁷

7.12 There was a call for more resources to be allocated for parenting skills and communication skills.³⁸ Focus on the Family stated that family breakdowns cost \$3 billion per year where only \$20-30 million is spent on marriage counselling and education programs.³⁹ Only 15-20 percent of couples marrying each year participate in marriage education.⁴⁰ The majority of groups providing marriage education are not funded by the Federal Government.⁴¹

7.13 It was submitted that parenting programs need to be available at low or no cost and to be provided by experienced people with appropriate training and compassionate attitudes, possibly at local schools.⁴² The Women's Action Alliance also suggested a longer notification period prior to marriage and a redeemable voucher system for relevant courses.⁴³ They added that the optimum situation would be where parents saw parenting education as a regular activity not as an optional extra.⁴⁴ They also suggested that parent education courses be made more widely available.⁴⁵

35 *ibid*; Dolgopoul, Transcript of Evidence, 4 July 1997, p. 675; Lutheran Community Care, *Response to the Australian Law Reform Commission Re: Children and the Legal Process*, p. 2

36 Early Childhood Teachers Association, Submission No. 353, p. S 2021

37 Lutheran Community Care, *Response to the Australian Law Reform Commission Re: Children and the Legal Process*, p. 2

38 Muehlenberg, Transcript of Evidence, 10 July 1997, p. 1044; Duncan, Transcript of Evidence, 29 April 1997, p. 217

39 Muehlenberg, Transcript of Evidence, 10 July 1997, p. 1044

40 The Women's Action Alliance, Submission No. 152, p. S 1009

41 *ibid*, p. S 1010

42 Smith, Submission No. 117, p. S 562

43 The Women's Action Alliance, Submission No. 152, p. S 1010

44 *ibid*, p. S 1011

45 *ibid*, p. S 1014

Prevention measures for families at risk

7.14 The Family Support Services Association of New South Wales believed that there are many gaps in service provision and there has been quite a dramatic shift in supportive programs for parents away from the preventive role to crisis intervention.⁴⁶ Research in Britain has shown that families with a history of violence, substance abuse, poverty, sole parent families, over anxious parents and those with children under five years were most potentially at risk.⁴⁷ It was suggested that there should be intense family support and additional health services for those who may develop abusive behaviour.⁴⁸

7.15 It was submitted that some assessment during pregnancy and at hospital might ascertain which parents and families are more at risk than others.⁴⁹ Issues will arise after the baby is home out of the safety of the hospital arena when parents are less able to call for help.⁵⁰ It was argued that the emphasis should change from investigations of child abuse and neglect to determining high risk families and early intervention to support families.⁵¹

7.16 The NGOs believed there has been an increasing focus on crisis intervention at the expense of prevention services.⁵² Crisis intervention may mean court proceedings which may be expensive and more destructive to families.⁵³ It was suggested that there are some excellent programs for parents and families but they are not really reaching those who most need them.⁵⁴ The NGOs expressed the concern that the lack of services is particularly acute in rural and remote areas.⁵⁵

7.17 The Family Support Services Association of New South Wales (FSSA) believed that Australia is failing to offer appropriate assistance to families and the resources available were not adequate to meet the considerable demand.⁵⁶

46 Gledhill, Transcript of Evidence, 9 May 1997, p. 412

47 Save the Children Fund Australia, Supplementary Submission No. 80b, p. S 2556

48 *ibid*

49 Herring, Transcript of Evidence, 10 July 1997, p. 984

50 *ibid*, p. 985

51 De Lissa Institute of Early Childhood and Family Studies, Submission No. 146, pp. S 3724-5

52 Defence for Children International Australia, *op cit*, p. 18

53 *ibid*

54 National Council of Women of Tasmania, Submission No. 52, p. S 284

55 Defence for Children International Australia, *op cit*, p. 18

56 Family Support Services Association of NSW Inc, Submission No. 56, p. S 296; *Ibid*, Supplementary Submission No. 56a, p. S 1575

In 1988 the Commonwealth National Family Support Program was abandoned and family support was moved entirely to State and Territory governments. It was argued that a broad national policy framework is essential for the comprehensive provision of services to families and for the monitoring of such provision.⁵⁷ FSSA expressed the concern that although there is a Minister for Family Services, there was no policy framework for family services and no national agenda.⁵⁸

7.18 The Youth Action and Policy Association supported the call for an increase in support services for families by providing the skills needed to deal with the inner dynamics of the family.⁵⁹ Save the Children Fund Australia also emphasised pre-natal education, relationship skills, child development, coping strategies and communicating with children programs to target teenage parents, first time parents and sole parents.⁶⁰ A New South Wales study showed that 30 per cent of child protection allegations reflected parenting problems, family functioning, social disadvantage or family lifestyle issues.⁶¹ The Australian Law Reform Commission commented that the legal process to resolving areas of potential conflict between parents and children through conferencing models was also being trialed in the care and protection system.⁶²

7.19 In many cases abuse has to occur before action can be taken and there was a call for a statutory authority to act for families who are 'at risk' who chose not to use support services.⁶³ Some families may need to understand the consequences of their actions but there needs to be some statutory authority to perform that.⁶⁴ Mr Francis commented that the State usually only intervenes after an offence has occurred and there should be provision for counselling parents who do not meet appropriate standards.⁶⁵

7.20 The Youth Homelessness Pilot Program will look at innovative and effective strategies to assist young people and their families by intervening at an early stage in the process of a young person becoming homeless.⁶⁶ It is difficult

57 Family Support Services Association of NSW Inc, Submission No. 56, p. S 296

58 Gledhill, Transcript of Evidence, 9 May 1997, p. 414

59 Morey, Transcript of Evidence, 9 May 1997, p. 365

60 Save the Children Fund Australia, Supplementary Submission No. 80b, p. S 2557

61 *ibid*

62 Cronin, Transcript of Evidence, 5 August 1997, p. 1183

63 Save the Children Fund Australia, Supplementary Submission No. 80a, p. S 2338

64 Herring, Transcript of Evidence, 10 July 1997, p. 984

65 Francis, Transcript of Evidence, 10 July 1997, p. 1055

66 Department of Health and Family Services, Submission No. 137, p. S 880

to get young people and families into mediation when conflicts arise to be able stop further schisms and splits within the family, and it was submitted that the resources are not there.⁶⁷

7.21 The Counsel to Homeless Persons expressed the concern that one third of the people residing in supported accommodation are children and suggested that this was an indictment on Australia's ability to assist families and nurture children.⁶⁸ There has been an increase of 60 per cent of young people assisted by the Supported Accommodation Assistance Program over the last five years.⁶⁹ Twenty-five per cent of women and children requesting refuge cannot be accommodated and more children than women utilise domestic violence services.⁷⁰ The Council also suggested that there needed to be an expansion of complaint and grievance mechanisms for young people within supported accommodation projects.⁷¹

7.22 The Catholic Commission for Justice, Development and Peace expressed their concern about the reduction in support services for families and although some of this money has been redirected to families there is also a need for families to be able to access support services.⁷² The Committee supports the view that preventing family breakdowns by providing appropriate assistance is preferable to dealing with the symptoms of dysfunctional families.

7.23 The Australian Catholic Social Welfare Commission commented that child welfare services have moved towards supporting children in families over the past decade.⁷³ The Catholic Commission for Justice, Development and Peace called for a coordinated strategy to ensure the protection of children's rights and research into the capacity of agencies to identify problems and improve the existing arrangements.⁷⁴

7.24 The Children's Interests Bureau Board South Australia recommended that the Federal, State and Territory governments cooperate to establish and monitor the application of national standards in child protection, alternative care

67 Morey, Transcript of Evidence, 9 May 1997, p. 367

68 McDonald, Transcript of Evidence, 10 July 1997, p. 970; Council to Homeless Persons, Submission No. 74, p. S 371

69 Council to Homeless Persons, Submission No. 74, p. S 370

70 Council to Homeless Persons, *Parity Magazine* Issue 1 Volume 9, Melbourne 1996 cited in Council to Homeless Persons, Submission No. 74, p. S 371

71 McDonald, Transcript of Evidence, 10 July 1997, p. 972

72 Curran, Transcript of Evidence, 9 July 1997, p. 883

73 Cooney, Transcript of Evidence, 29 April 1997, p. 192

74 Curran, Transcript of Evidence, 9 July 1997, p. 883

systems and for children and young people leaving care.⁷⁵ The Board would like to see standards included in the planning and review processes, an assessment of the adequacy of services, complaints and appeals mechanisms, an independent monitoring of service quality and accountability measures for staff at all levels.⁷⁶ The Committee notes that the Standing Committee of Community Services and Income Security Administrators is preparing draft model legislation in relation to child protection orders and proceedings.⁷⁷



Children who have a home and homeless children

Fergus Hill, aged 8 years, Raquel Redman Art for Children, Brisbane

Maternity leave

7.25 The United Nations Committee on the Rights of the Child expressed concern that women working in the private sector do not have the same maternity leave entitlements as those working in other sectors.⁷⁸ The State Council of the Presbyterian Women's Association suggested that paid maternity leave should be a burden on the whole community, not the individual employer as industries need to be competitive.⁷⁹

75 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1818

76 *ibid*

77 ACT Government, Submission No. 189, p. S 1302

78 United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR 403-405), 24-25 September 1997, p. 3

79 State Council of the Presbyterian Women's Association, Supplementary Submission No. 358a, p. S 2799

Childcare services

7.26 A National Planning Framework for Child Care is currently being developed and a National Child Care Information Strategy will be developed to provide information to parents and providers.⁸⁰ The Department of Health and Family Services described the Children's Service Program as being equitable, affordable and delivering high quality child care to Australian families with Government subsidies to assist affordability of child care particularly for low income families.⁸¹

7.27 The National Quality Improvement and Accreditation system provides access to training and support programs for participating centres.⁸² The National Aboriginal Youth Law Centre commented that the system was a positive step in providing quality care but that it is not considered culturally inclusive by Aboriginal and Torres Strait Islander child care agencies.⁸³ The current situation is that the standards do not apply to these agencies and there does not appear to be any move to modify the system to accommodate the cultural needs of this group.⁸⁴ Ms Melville-Jones believed that community based childcare centres should be staffed by Aboriginal people who will be role models for parenting skills and recommended that parents should be encouraged to participate in such centres.⁸⁵

7.28 The question was also raised as to whether child care services provided for parents' needs and if there was a responsibility to ensure those services were right for children.⁸⁶ There was concern expressed that, under the guidelines, federally funded child care is unlikely to be available to disadvantaged children.⁸⁷ Contact Inc believed the focus on working families disadvantages non-working families who cannot afford early childhood services.⁸⁸ It was argued that every child should have access to structured, affordable, quality, and culturally and linguistically appropriate child care.⁸⁹ Further, it was

80 Department of Health and Family Services, Submission No. 137, p. S 873

81 *ibid*, pp. S 875-6

82 Department of Health and Family Services, Submission No. 137, p. S 876

83 National Aboriginal Youth Law Centre, Submission No. 109, p. S 523

84 *ibid*

85 Melville Jones, Transcript of Evidence, 3 July 1997, p. 571

86 Whitaker, Transcript of Evidence, 1 May 1997, p. 313

87 Barnardos Australia, Submission No. 101, p. S 487

88 Contact Inc, Submission No. 75, p. S 377

89 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 671

suggested that there was no complaints mechanism for parents who use the services, particularly those centres managed by the commercial sector.⁹⁰

7.29 It was suggested that the added tax burden of providing childcare facilities for other parents in situations where the husband was the main or sole breadwinner, increasingly drove mothers of young children into the workforce.⁹¹ The view was given that single income families should not subsidise families in which both parents choose to work.⁹²

Out of school care

7.30 The National Outside School Hours Care Pilot and Research Program was allocated \$5.8 million over 3 years.⁹³ This program was established in response to concerns about the affordability of care and the inequity in funding for out of schools care compared to other forms of child care.⁹⁴

7.31 Network of Community Activities commented that services for children out of school hours are also generally directed to children of working parents.⁹⁵ Children of non-working parents may be excluded from these activities and opportunities to play with friends or take part in leisure, recreation or cultural pursuits will not be available to them unless their parents can afford to pay.⁹⁶ Families of NESB, Aboriginal people and children with disabilities experience difficulties in accessing child care services as the structure, procedures and attitudes of the services often create barriers to access.⁹⁷

7.32 It was suggested that priority of access guidelines are biased towards workforce participation and instead should be weighted in favour of those in the greatest need.⁹⁸ Women's Action Alliance suggested that the children's services programs should be expanded to include all children, while access priority should be based on need and there should be a single child care benefit.⁹⁹

90 *ibid*

91 The Australian Family Association, Submission No. 183, p. S 1237; Endeavour Forum, Submission No. 8, p. S 28

92 Lawrence, Submission No. 329, p. S 1840

93 Department of Health and Family Services, Submission No. 137, p. S 876

94 *ibid*

95 Network of Community Activities, Submission No. 64, p. S 326

96 *ibid*

97 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 671

98 Women's Action Alliance, Submission No. 152, p. S 1013

99 *ibid*, pp. S 1014-5

Women's Action Alliance expressed the view that a children's service program that is funded by taxpayers should include all children.¹⁰⁰

7.33 Children in small rural, remote or isolated communities are particularly disadvantaged because of the lack of services and because of economic considerations.¹⁰¹ However, \$10.9 million was allocated in the 1996-97 Budget for new places to ensure rural and remote areas and areas of special need have access to flexible child care programs and \$12.5 million over 4 years was allocated to ensure access to child care is not lost by families in disadvantaged areas.¹⁰²

Separation from parents

7.34 A number of countries have reservations or declarations on Article 9 of the Convention in relation to the right of competent authorities to determine the separation of the child from the parents, the release of information and deportation issues.¹⁰³

7.35 Tonti-Filippini *et al* commented that when domestic and community structures fail, the State has an obligation to protect children.¹⁰⁴ They added that the Convention embodies principles which authorise and limit State intervention; assert the authority, responsibilities and duties of parents; list the minimal requirements for the harmonious development of a child, and provide a point of reference for defining the *parens patriae* jurisdiction of Australian governments.¹⁰⁵ Judge Jackson commented that in relation to the parenting issues, there are points at which the State and its agencies have a legitimate role in taking an interest in what was happening in families for the protection of the children.¹⁰⁶

7.36 The Western Australian Government stated that intervention only occurs when there is evidence that the child has suffered significant harm or is at risk.¹⁰⁷ They added that if a child has been removed from their family, the

100 *ibid*, p. S 1013

101 Contact Inc, Submission No. 75, p. S 377

102 Department of Health and Family Services, Submission No. 137, p. S 877

103 *The Convention on the Rights of the Child* http://www.un.org/depts/treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html

104 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1270

105 *ibid*

106 Jackson, Transcript of Evidence, 3 July 1997, p. 589

107 Ashford, Transcript of Evidence, 3 July 1997, p. 531

family is facilitated and the child is returned if it is in their best interests, reflecting the intent of the Convention.¹⁰⁸



Children without a family

Nikki Fraser, 7 years, Raquel Redman Art for Children, Brisbane

Role of extended family

7.37 The ACT Grandparents Support Group believed that the extended family is almost completely excluded in the Family Court processes despite the importance of grandparents in the provision of day to day care for children.¹⁰⁹ Research in New South Wales has shown that 80 per cent of children are cared for by the grandparents while both parents went out to work.¹¹⁰ The extent of grandparent support appeared not to be well understood by Family Court judges although the majority of judges express sympathy, they allow little contact.¹¹¹ They added that in situations where there are blended families, grandparents can provide stability in children's lives.¹¹² With longer life expectancy, grandparents now perform that role for more than half of their life.¹¹³

7.38 It was suggested that the right of children to have access to their grandparents should be automatic in things like parenting orders and should be

108 *ibid*

109 Davies, Transcript of Evidence, 16 June 1997, p. 510

110 WA Grandparent Support Group Inc, Submission No. 213, p. S 1428

111 Davies, Transcript of Evidence, 16 June 1997, p. 512

112 ACT Grandparents Support Group, Submission No. 127, p. S 690

113 *ibid*, p. S 691

written into legislation.¹¹⁴ In the United States, family legislation gives the child the automatic right of contact with the grandparents in the case of a divorce. In that case, if there is a problem between the parents and grandparents, the parent must go before the court to have the possibility of contact removed rather than the grandparent try to enforce contact.¹¹⁵

7.39 In Australia, there is currently no legal recognition of the role of grandparents and little support from the Family Court and child welfare departments and grandparents are often actively obstructed in their efforts to continue to contribute to the child's care and stability, where the parents object to this role.¹¹⁶ There have been cases where maternal grandmothers have been subjected to scathing, humiliating and unwarranted attacks by judges who trivialise the cases as mother-daughter disputes.¹¹⁷

The family law does make allowances for that and at directions hearings they do in fact compel the parties to go for counselling, whether it be parents or grandparents. But at the present time it is quite possible to wait anything up to six months just to get to the directions hearing which compels those discussions to take place.¹¹⁸

7.40 The ACT Grandparents Support Group made the comment that children going to counsellors with family problems emphasises the importance of the problem, whereas access to grandparents may be able to minimise rather than enlarge the problem.¹¹⁹

7.41 Grandparents are reluctant to take any action for fear of losing any contact they have.¹²⁰ The comment was also made that grandparents are reluctant to complain in cases where the mother is 'dysfunctional' because in such circumstances, the father may be awarded custody and they could lose contact with the child.¹²¹ In situations where grandparents are forced to complain about abuse and neglect of their grandchildren, grandparents are often stereotyped as 'interfering' by the authorities but in reality, most grandparents

114 Davies, Transcript of Evidence, 16 June 1997, p. 519

115 *ibid*, p. 513

116 ACT Grandparents Support Group, Submission No. 127, p. S 688

117 *ibid*, p. S 694

118 Davies, Transcript of Evidence, 16 June 1997, p. 518

119 *ibid*, p. 516

120 WA Grandparent Support Group Inc, Submission No. 213, p. S 1429

121 ACT Grandparents Support Group, Submission No. 127, p. S 692

bend over backwards to meet the parent's demands in order to maintain contact with their grandchildren.¹²²

7.42 The ACT Grandparents Support Group suggested a 'grandparents register' where grandparents could voluntarily place their names which would enable children to re-establish contact, particularly if they were in need of care.¹²³ It could also be used by welfare departments, police and children's refuges when looking for extended family to care for children.¹²⁴ This could run in conjunction with the present adoption services.¹²⁵ If this program were run on a national basis, data could be accessed by regional offices.¹²⁶ Parents should not be able to veto access to the register after the child is 18 years of age.¹²⁷

Role of the State

7.43 There were 12 300 children under care and protection orders in Australia at June 1996 and during 1995-1996 there were more than 20 000 in at least one substitute care placement.¹²⁸ Nineteen per cent of these were Indigenous children.¹²⁹ In 1994 there were 12 750 children in care which was less than half the number in care 20 years prior to that.¹³⁰

7.44 Ozchild commented that the *Family Law Reform Act 1995* refocusses on parental responsibilities towards children ensuring the best care, welfare and development of children.¹³¹ There is no provision to allow children to be involved in the development of parenting plans, which is left to the discretion of the parents, and children were not involved in the primary dispute resolution or mediation process.¹³² Ozchild were also concerned about the number of child and youth lawyers assisting community legal centres, funding for contact

122 *ibid*, p. S 691

123 *ibid*, p. S 688

124 *ibid*, p. S 700

125 *ibid*, S 701

126 *ibid*

127 *ibid*

128 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 20

129 *ibid*

130 Angus G and Golley L (1995) *Children Under Care and Protection Orders Australia 1993-94* Australian Institute of Health and Welfare, Child Welfare Series No. 12, AGPS Canberra, p. 1 and Boss P, Edwards S and Pitman S (1995) *Profile of Young Australians* Churchill Livingstone Melbourne p. 46 cited in Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1895

131 Ozchild: Children Australia, Supplementary Submission No. 413a, p. S 3408

132 *ibid*

and access centres, trained interpreters and the charging of fees for counselling services.¹³³

Consistent national approach

7.45 There should be a consistent approach across all Australian jurisdictions in relation to care and protection proceedings.¹³⁴ The Standing Committee of Community Services and Income Security Administrators is preparing draft model legislation which will enable the transfer of child protection orders and child protection proceedings between States and Territories.¹³⁵

Concerns about excessive intervention by the State

7.46 There have been a number of recent reports which have been critical of the care and protection system. The Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission report *Seen and Heard: Priority for children in the legal process*,¹³⁶ the Systems Abuse Committee Report,¹³⁷ *Children in Care and Protection*,¹³⁸ and the *Report on wards leaving care: a longitudinal study*.¹³⁹ The issues addressed in these report include the delays and 'welfare drift', multiple placements, multiple social workers, multiple schools, separation from parents and siblings and lack of clarification of the role of legal representatives.¹⁴⁰

7.47 Tonti-Filippini *et al* commented that with the increasing prominence of child neglect, violence and incest, governments have become more willing to intervene in the domestic arrangements of families where there was a suspicion of abuse.¹⁴¹ They suggested that there is little political will to adequately

133 *ibid*, p. S 3409

134 Queensland Law Society and the Family Law Practitioners Association, Submission No. 123, p. S 628

135 ACT Government, Submission No. 189, p. S 1302

136 Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, report on *Seen and Heard: Priority for children in the legal process*, Report No 84, September 1997

137 *Systems Abuse Committee Report*, New South Wales Child Protection Council 1983 cited in National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 37

138 Goldman S (1996) *Children in Care and Protection*, National Children's and Youth Law Centre, September 1996

139 Cashmore J and Paxman M (1996) *Report on wards leaving care: a longitudinal study*, University of New South Wales Social Policy Research Centre for Department of Community Services, January 1996

140 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 37

141 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1273

provide the resources to make intervention effective and there is an issue in the way the Convention is interpreted in relation to the duties and responsibilities of parents by legislators, jurists and policy makers.¹⁴²

7.48 Mr Francis while supporting the admirable features of the Convention, stressed that the State should only intervene where there was obvious and significant harm or potential danger to the child from its parents or otherwise it was an invasion of parental rights and should not have been ratified.¹⁴³ Professor Hafen also expressed his concern that the possibility of altering intervention standards as part of implementing the new phrases and terms in the Convention.¹⁴⁴

7.49 It was suggested that the care system should only be used as an alternative when the family is clearly dysfunctional, but it is difficult to strike that balance.¹⁴⁵ The two criticisms usually leveled at care and protection agencies were either that they stepped in too quickly or that they waited until the child was bashed to death.¹⁴⁶ Festival of Light provided an example of a teenager who admitted lying about her father to obtain welfare support and two examples of misdiagnosis of abuse of young children.¹⁴⁷

7.50 Article 9.1 of the Convention deals with the separation of a child from their parents when it is considered in the best interests of the child. Under domestic legislation in a number of jurisdictions, a child who is extraordinarily unhappy can proceed through the Family Court irrespective of the Convention.¹⁴⁸ Tonti-Filippini *et al* added that the Convention does not suggest options to support the family unit, counselling and other remedies to address the circumstances which led to the abuse or neglect nor does it recognise that the State was unlikely to be an adequate substitute even for bad parents.¹⁴⁹ They supported the trend to alter the circumstances that led to the abuse or neglect so that the child could return to their family.¹⁵⁰

142 *ibid*

143 Francis, Transcript of Evidence, 10 July 1997, p. 1046

144 Hafen, Transcript of Evidence, 17 April 1998, p. 1570

145 Burdekin, Transcript of Evidence, 5 August 1997, p. 1290

146 Jackson, Transcript of Evidence, 3 July 1997, p. 588

147 Festival of Light, Submission No. 138, p. S 907

148 Dolgopol, Transcript of Evidence, 4 July 1997, p. 676

149 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1273

150 *ibid*, pp. S 1273-4

7.51 The Children's Commissioner of Queensland told the Committee that:

Article 18, which requires appropriate assistance to parents in the performance of their child-rearing responsibilities, seems to be too often overlooked in favour of the easier bureaucratic approach of simply removing children from their families. My personal view is that when legislative and bureaucratic dimensions replace human dimensions in the affairs of children and their families like this, it is a very sad day indeed.¹⁵¹

7.52 It was suggested that Article 9 is open to abuse if 'competent authorities' wish to separate families for their own agenda.¹⁵² The Children's Interests Bureau Board South Australia were particularly concerned that:

... independent advocacy and representation mechanisms be established in relation to statutory welfare organisations and, in particular, their child protection powers and functions, in view of the disproportionate formal and informal power that these bodies are able to exercise in dealing with families and children; and that

all advocacy and allied bodies assume a primary obligation to educate the community about their proper role and functions and to create an ethos in which independent scrutiny of policies and advocacy on behalf of groups and individuals is not viewed as an adversarial and antagonistic process, but as a necessary adjunct to the work of other statutory and non-statutory bodies in promoting the best interests and rights of the child.¹⁵³

Indigenous children

7.53 The *Bringing them home*¹⁵⁴ Report covers many of the relevant issues and these are not repeated here. The Tasmanian Aboriginal Centre raised the issue of the Government's failure to apologise for past practices in relation to the compulsory separation of Aboriginal and Torres Strait Islander children from their families.¹⁵⁵ Another submission commented that while the removal of Indigenous children from their families caused sorrows and heartaches for some, there were also blessings and benefits for others.¹⁵⁶

151 Alford, Transcript of Evidence, 1 May 1997, p. 227

152 King, Submission No. 159, p. S 1078

153 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1809

154 Human Rights and Equal Opportunity Commission, *Bringing them home, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997

155 Tasmanian Aboriginal Centre Inc, Submission No. 647, p. S 3239

156 Eglinton, Submission No. 414, p. S 2478

7.54 All Australian jurisdictions now recognise, either in legislation or policy, that Aboriginal or Torres Strait Islander children in substitute care should be placed within their own culture and community with connections with extended families where possible and also that Indigenous people should be consulted about placements.¹⁵⁷

7.55 The Department of Health and Family Services fund eleven Aboriginal and Torres Strait Islander Child Care Agencies nationally which assist with the fostering and adoption of Indigenous children and related family welfare matters.¹⁵⁸ It was argued that there should be an expanded role for the Aboriginal Child Care Agency in determining whether a placement is necessary.¹⁵⁹ There is also a lack of services to Aboriginal children to counter the effects of institutionalisation suffered by these children.¹⁶⁰

7.56 The Catholic Commission for Justice, Development and Peace commented that often aunts, uncles, grandparents and cousins may contribute to the upbringing of the children. Therefore the rigid applications of objections to the child remaining on the grounds that there was no parent may be misapplied in ignorance of the cultural exigencies operating which are enriching and appropriate.¹⁶¹

7.57 It was submitted that in Alice Springs, notwithstanding the availability of Aboriginal carers that of the children placed in care, 54 per cent were Aboriginal children and of those, 58 per cent were placed with non-Aboriginal care providers.¹⁶² Children in the care of non-Aboriginal foster parents or carers in institutions lose their language, have little contact with their families, lose their culture and suffer multiple disadvantage.¹⁶³

7.58 The National Inquiry into Children and the Legal Process found that welfare departments in all jurisdictions fail to consult adequately, if at all, or not in a culturally appropriate manner, with Indigenous families, communities and organisations.¹⁶⁴ Aboriginal organisations also need to be involved to achieve a

157 Stolen Generation Litigation Unit, North Australian Aboriginal Legal Aid Service, Submission No. 406, pp. S 2415-6

158 Department of Health and Family Services, Submission No. 137, p. S 877

159 Stolen Generation Litigation Unit, North Australian Aboriginal Legal Aid Service, Submission No. 406, p. S 2416

160 Alice Springs Youth Affairs Coordination Committee, Submission No. 182, p. S 1228

161 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1370

162 Lloyd, Transcript of Evidence, 14 August 1997, p. 1475

163 Lynch, Transcript of Evidence, 7 November 1997, p. 79

164 Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1900-1

sustainable return home and while legislation provides a sound basis, there are significant problems in the administrative practices.¹⁶⁵

7.59 In addition to the lack of consultation with the Aboriginal organisations there were also problems with the preparation of court reports and the review of arrangements for children who have been in care for some time.¹⁶⁶ It was argued that the role of Aboriginal organisations in the lives of these children should extend past the actual case management.¹⁶⁷

7.60 One solution being proposed was to increase the Indigenous self-determination in developing these criteria.¹⁶⁸ The Tasmanian Aboriginal Centre would like to be notified when Aboriginal children were placed in alternative care so that the option of placing the child with the extended family could also be considered.¹⁶⁹

Ethnic children

7.61 The Ethnic Child Care, Family and Community Services Co-operative Ltd commented that legislation does not take into account the extended families in cases of foster care, or family law matters of custody and guardianship.¹⁷⁰ They also expressed their concern at the increasing number of NESB children being placed in care in New South Wales:

Is it because the NESB parents do not understand the system, their and their children's rights and do not challenge the decisions to remove their children from their care. Or is it subtle discrimination on the part of the law enforcing bodies and legal system which is not sensitive to cultural/linguistic, social factors. Also NESB parents do not understand the appeals systems as information is not provided in other languages to appeal against the decision of the State. Also a substantial number of children of immigrants live in poverty as has been demonstrated in studies by the Brotherhood of St Lawrence and these children are at risk of abuse, disadvantaged economically and socially and their parents are powerless and cannot protect their rights, therefore they are more likely to have their parental roles and authority challenged by the system ... reviews are done by professionals who are often not aware of cultural, social, religious, extended family rights and linguistic

165 Lloyd, Transcript of Evidence, 14 August 1997, p. 1478

166 *ibid*, pp. 1478-9

167 *ibid*

168 Storey, Transcript of Evidence, 14 August 1997, p. 1483

169 Tasmanian Aboriginal Centre Inc, Submission No. 647, p. S 3240

170 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 668

factors which have an important implication on the outcome of such reviews.¹⁷¹

Removal of a child from home

7.62 It was suggested that officials who remove a child have a vested interest in justifying their actions and can manipulate a child into producing 'evidence' of parental unfitness.¹⁷² The Child Abuse Prevention Service stressed the importance of Paragraphs 5 and 6 of the Preamble and emphasised that there must be 'searching justification' for the removal of children from families.¹⁷³ They added that Paragraphs 1 and 2 of both Articles 9 and 12 were not adhered to by governments.¹⁷⁴ They cited cases in which children's personal views are not sought even though they are capable of forming and expressing opinions and they are separated from their parents without practical recourse:

We believe that these children's interests have NOT been of primary consideration nor have the views of the children been sought or taken into account - even though they have claimed being unhappy enough 'to want to die' in their enforced situation.¹⁷⁵

7.63 The Child Abuse Prevention Service suggested a strengthening of Article 9, 12 and 18 to ensure that the government fulfils its responsibilities and provides independent arbitration at no cost to children, so that 'their best interests may prevail'.¹⁷⁶

7.64 The Australian Catholic Social Welfare Commission expressed the view that these powers exist in domestic legislation and that the Convention promotes ongoing contact with parents, and the importance of children being aware of their background and heritage.¹⁷⁷ They also commented that the Convention supports the current professional opinion in child welfare services.¹⁷⁸

171 *ibid*, pp. S 669-70

172 Grigg A (1995) 'Uninvited House Guests', *The New American*, 3 April, pp. 30-33, p.31

173 Child Abuse Prevention Service, Submission No. 26, p. S 163

174 *ibid*, p. S 164

175 *ibid*

176 *ibid*

177 O'Connor, Transcript of Evidence, 29 April 1997, p. 182

178 *ibid*

7.65 In addition to the lack of consistency between jurisdictions, the NGOs were concerned at the number of times children are arbitrarily separated from their parents such as the separation of very young children from imprisoned parents; separation resulting from eviction from public housing; some situations in which the separation for the purpose of child protection; and the time before children left overseas can be reunited with immigrating parents.¹⁷⁹

7.66 The Queensland Government commented that when intervention occurs to protect children, the vast majority of the work is done with the child remaining in the family; and, of the children removed, a large proportion of them are returned home within 12 months.¹⁸⁰ Systems are now designed to support the family and the child in the family context, however, in dysfunctional families, the preferred option is to place the child with the extended family except where it is too dangerous.¹⁸¹

7.67 The Attorney-General's Department referred to the *Family Law Act 1975* which supports mediation and counselling with the parents and often involving the child as well to resolve questions of residence and contact without a court ruling and that only 5 per cent of cases were adjudicated upon by the court.¹⁸²

7.68 Many submissions argued, however, that the Convention provided additional support to increase government intrusion into families and Call to Australia gave examples of problems in Adelaide and Brisbane in the late 1980s prior to the ratification of the Convention.¹⁸³ The Committee received a number of submissions from parents who believed that government authorities had incorrectly dealt with their situations.¹⁸⁴ The Committee has not made these submissions public because they contained sensitive material but has given serious consideration to the issues raised. The Queensland Government is reforming their alternative care and intervention services systems, including services for Indigenous children.¹⁸⁵

179 Defence for Children International Australia, *op cit*, p. 18

180 Elliot, Transcript of Evidence, 6 August 1997, pp. 1301-2

181 Culbert, Transcript of Evidence, 6 August 1997, p. 1310; Elliot, Transcript of Evidence, 6 August 1997, p. 1310; Olafsen, Transcript of Evidence, 4 July 1997, p. 757

182 Jackson, Transcript of Evidence, 28 April 1997, p. 29

183 Call to Australia, Submission No. 179, p. S 1215

184 Ballard, Submission No. 217; Coulson, Submission No. 82; Daw, Submission No. 83; Dawson, Submission No. 49; Field, Submission No. 540; Griffin, Submission No. 199; Hobbs, Submission No. 79; Huntley, Submission No. 53; Jones, Submission No. 102; Lau, Submission No. 114; Sibley, Submission No. 555; Ware, Submission No. 31; Wright, Submission No. 487; Marsh, Submission No. 664; Brown, Submission No. 176; Nuttall, Submission No. 89

185 Premier of Queensland, Submission No. 144, p. S 948

7.69 Action for Children believed that there should be greater emphasis on the accountability of welfare departments and community services as well as written guidelines and standards covering the duties of the relevant directors and ministers.¹⁸⁶ It was suggested that agencies must employ appropriately trained staff and support and educate families unless of course the child is at risk of sexual or other abuse.¹⁸⁷

7.70 Recent inquiries into care and protection have shown that some States have an 'extremely poor record' in acting in the best interests of the child. The Catholic Commission for Justice, Development and Peace submitted that inappropriate decision making has led to child suicide, homelessness and the deprivation of children's access to their parents.¹⁸⁸ Poor families without legal aid have few options therefore consideration must be given to preventative programmes in light of the consequences a wrong decision.¹⁸⁹ Ms Jones believed that in the context of child protection there have been very bad decisions made in both directions, but the Convention may be useful in adding one level of reflection to the process and to make people stop and think about what is in the best interests of the child.¹⁹⁰

7.71 The ACT Grandparents Support Group suggested that a tribunal of three people should review each case rather than one person making the final decision and the right to appeal may remove the present arbitrariness of the Family Court.¹⁹¹

7.72 Currently children involved in Family Court proceedings are not investigated under the child protection system.¹⁹² There is also no provision for separate representation in care and protection proceedings in Queensland under the *Children's Services Act 1965* which is inconsistent with the practice in other States and Territories.¹⁹³ It was submitted that this may mean that the mechanism may not be providing sufficient evidence before the Court about the child's best interests.¹⁹⁴

186 Action for Children, Submission No. 227, p. S 1488

187 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1369

188 *ibid*

189 *ibid*

190 Jones, Transcript of Evidence, 5 August 1997, p. 1204

191 ACT Grandparents Support Group, Submission No. 127, p. S 699

192 Buchanan, Transcript of Evidence, 4 July 1997, p. 753

193 Queensland Law Society and the Family Law Practitioners Association, Submission No. 123, p. S 627

194 *ibid*, p. S 629

7.73 The Alternative Report requested the development of standards which are in the child's best interests.¹⁹⁵ The application of the 'best interests' principle should require departments to show that arrangements the department proposes are superior to existing arrangements and provide a long term case plan for the child.¹⁹⁶ It was submitted that the State must address the social and emotional needs of the child as well as their financial independence.¹⁹⁷ The Australian Catholic Social Welfare Commission added that:

Social institutions share many of the family's responsibilities toward children, but they cannot take the place of families. Rather, social institutions - government at all levels, employers, religious institutions, schools, media, community organisations - should enter into creative partnerships with families so that families can fulfil their responsibilities toward children.¹⁹⁸

7.74 Tonti-Filippini *et al* commented that the presumption that parents retain the authority and responsibility for the child even during separation should be upheld unless this is contrary to the child's best interests.¹⁹⁹

In recognition of these difficulties, the Family Law Council has recently emphasised joint parenting plans and shared parenting rather than *winner takes all* custody.²⁰⁰ There is a concern that the CRC [Convention] does not give adequate attention to supporting both parents in their parental duties and responsibilities when they separate.²⁰¹

7.75 Ms Evatt commented that:

Australian Family Law, in making parental contact the right of the child, is in compliance with article 9(3). However, child welfare law in N.S.W. may well be in contravention of this article in not providing a right of contact for the child with natural parents and in not providing any external, let alone judicial, review or scrutiny of the contact regime, which is entirely in the hands of administrators.²⁰²

195 Defence for Children International Australia, *op cit*, p. 18

196 Queensland Law Society and the Family Law Practitioners Association, Submission No. 123, p. S 629

197 Billings Ovulation Method Council of Victoria Inc and Ovulation Method Research & Reference Centre of Australia Ltd, Submission No. 191, p. S 1316

198 Australian Catholic Social Welfare Commission, Submission No. 124, p. S 647

199 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1274

200 *Family Law Council News* Issue No 18, April 1997 cited in Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1274

201 Tonti-Filippini N, Fleming J, Fisher A, Krohn A and Coghlan P, Submission No. 187, p. S 1274

202 Evatt, Supplementary Submission No. 5a, p. S 1561

7.76 Save the Children Fund Australia expressed their concern at the growing number of children being killed in family disputes.²⁰³ Concern was also raised about insufficient number of children's contact centres which may lead to children not having contact with the non-resident parent, a vulnerable parent being placed in a dangerous position or where there may be substantial costs in travelling to the nearest centre. This may mean that the centres are not available to children and parents who could benefit from such services.²⁰⁴ They suggested that contact services are a highly effective means of maintaining personal relations and direct contact between children and the non-resident parent.²⁰⁵ Contact services provide a safe and appropriate transfer of children between separated parents and safe and appropriate interaction between the visiting person and the child during supervised visits.²⁰⁶ The ten organisations funded to provide this service are currently being evaluated.²⁰⁷

7.77 The Children's Commissioner of Queensland submitted that complaints about departmental decisions and officers suggested the need for a greater commitment to the principles embodied in the Convention. He added that attention should probably be given to the Convention in training professionals such as medical practitioners, nurses, social workers and psychologists.²⁰⁸

7.78 The ACT Grandparents Support Group suggested that although Articles 5 and 18 of the Convention allow for a legal guardian to substitute for parents and extended family members, that this should only occur when there are no family members, or it is in the best interests of the child not to be with any existing family members.²⁰⁹ Currently, State governments become the legal guardians of children in care and are restricted by jurisdictional limitations from placing the child with relatives in other States.²¹⁰

This creates the paradoxical situation in which the child's right to live with a non-residential parent or members of his/her extended family, has already been pre-empted by the imposition of a legal guardian, without taking into account of the requirement in Article 9.2 that all interested parties should be given the opportunity to participate in the proceedings and make their views known ... The only way around the problem of conflicting State jurisdictions is

203 Save the Children Fund Australia, Supplementary Submission No. 80a, p. S 2337

204 Queensland Law Society and the Family Law Practitioners Association, Submission No. 123, pp. S 636-7

205 *ibid*, p. S 637

206 Attorney-General's Department, Submission No. 133, p. S 781

207 *ibid*

208 Alford, Transcript of Evidence, 1 May 1997, p. 226

209 ACT Grandparents Support Group, Supplementary Submission No. 127b, p. S 3731

210 *ibid*, p. S 3732

for family members (and 'significant others') to apply to the Federal Family Court for residence on behalf of the child ... States rights should never be allowed to take precedence over the right of children to be loved and cared for by their immediate or extended family wherever this is possible.²¹¹

7.79 Council to Homeless Persons commented that children under care and protection orders often experience a myriad of emotions concerning their parents and the new caregivers, to the effect that an attachment with the caregivers may not be formed, placements may 'fail', children may abscond and many may find themselves homeless.²¹²

7.80 The National Children's and Youth Law Centre suggested regular reviews of placement, addressing the rapid turnover in departmental social workers, children having some say in their placement, mandatory reporting of suspected abuse and neglect and the provision of after-care support.²¹³

7.81 The Australian Catholic Social Welfare Commission believed that it was the Commonwealth's responsibility, as signatory to the Convention, to ensure through funding arrangements, a flexible high quality alternate care for children.²¹⁴ They submitted that States' resources are below the real costs of providing a quality service and while appreciating the need for sound financial management and efficient use of public funds, they suggested the current level of funding is not sufficient.²¹⁵ Barnardos added that there are now inadequate numbers of foster carers because of the insufficient reimbursement and the lack of incentives.²¹⁶

7.82 In Victoria, a recent report found that:

... 26 per cent of children under State care for more than three years were not living in a permanent care arrangement, that about 20 per cent of those under guardianship between 1993 and 1996 were missing, and that 56 per cent of a survey of homeless population - which involved interviewing 200 of the homeless youth population within Melbourne - had statutory histories.²¹⁷

211 *ibid*

212 Council to Homeless Persons, Submission No. 74, p. S 371

213 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, pp. 42-3

214 Australian Catholic Social Welfare Commission, Submission No. 124, p. S 648

215 *ibid*, p. S 654

216 Barnardos Australia, Submission No. 101, p. S 487

217 McDonald, Transcript of Evidence, 10 July 1997, p. 971



The children in the city don't have homes and families to go to

Nicola Casswell, 8 years, Raquel Redmond Art for Children, Brisbane

7.83 Some submissions expressed the view that there should be additional facilities available to enable a right of appeal against State authorities²¹⁸ and suggestions included Federal legislation or a Federal Children's Commissioner. While the Committee is sympathetic to these concerns, we note, however, that many of the issues involved are in State and Territory jurisdictions. Accordingly, the Committee does not believe that Federal legislation or a Federal children's commission are the appropriate remedies for this situation.

Family reunification

7.84 Some State wards remain living with their parents and in 1994 about 25 per cent of children under care and protection orders remained with their parents.²¹⁹ The Ballarat Children's Homes and Family Services Inc commented that, in cases where children have been removed in situations of abuse, often there is little done to address the issues at the parenting level before the children are returned home to the family and that strengthening the family and providing care and protection for the return of children should be a priority.²²⁰

7.85 Lutheran Community Care also expressed their concern that returning children who have been through the care and protection system are often abused

218 Child Abuse Prevention Service, Submission No. 26, p. S 163

219 Angus G and Golley L (1995) *Children Under Care and Protection Orders Australia 1993-94*, Australian Institute of Health and Welfare, Child Welfare Series No. 12, AGPS Canberra, p. 1 cited in Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1895

220 Ballarat Children's Homes and Family Services Inc, Submission No. 162, p. S 1095

again.²²¹ There needs to be greater consideration of the family situation with support, help or counselling on many levels and over an extended period of time to negate this cycle.²²² There is a need for better assessment and treatment of families involved in child protection programs.²²³

7.86 Lutheran Community Care advocated the inclusion of birth parents in decisions about the child.²²⁴ People have usually not been allowed to express their grief, humiliation and anger about what happened, which they need to do before they can come to a more positive relationship with their child or the alternate caregivers.²²⁵

Training of staff in the care system

7.87 Concern was expressed in relation to adequacy of therapy and mental health support for children who have suffered trauma and abuse and there is also a need to recognise and monitor systems abuse in the child protection system.²²⁶ It was submitted that there are a very small proportion of children in care who have been abused and neglected.²²⁷

7.88 The Children's Commissioner for Queensland told the Committee that the assessment, training and review of foster carers is inadequate and there is also a need to review the avenues for complaint and redress for young people in accordance with Article 3.3 and Article 27.²²⁸ The NGOs also believed that training and review of foster carers was inadequate and was poorly supported by resource agencies.²²⁹ The Queensland Government is currently looking at the way it supports, trains and recruits their care providers because children from difficult backgrounds often exhibit challenging behaviours.²³⁰

221 Lutheran Community Care, Submission No. 61, p. S 314

222 Early Childhood Teachers Association, Submission No. 353, p. S 2021

223 Lutheran Community Care, Submission No. 61, p. S 314

224 Morrison, Transcript of Evidence, 4 July 1997, p. 719

225 Lutheran Community Care, *Response to the Australian Law Reform Commission Re: Children and the Legal Process*, p. 4

226 Lutheran Community Care, Submission No. 61, p. S 314

227 Elliott, Transcript of Evidence, 6 August 1997, p. 1317

228 Alford, Transcript of Evidence, 1 May 1997, p. 228

229 Defence for Children International Australia, *op cit*, p. 21

230 Mulkerin, Transcript of Evidence, 6 August 1997, p. 1313

7.89 Children in care are often moved and more attention should be paid to the selection of families whose language and culture are compatible with that of the child.²³¹ The NGOs were particularly concerned about the treatment of Aboriginal children and young people and those from non-English speaking backgrounds in the care system.²³²

7.90 Call to Australia commented on the Melbourne case of the boy divorcing his parents²³³ and a father who sold his house to clear his name and regain access to his children, a situation in which the judge described the department as an 'unstoppable juggernaut'.²³⁴ The Committee notes that these cases occurred before Australia ratified the Convention.

Children leaving care

7.91 The Children's Interests Bureau Board South Australia expressed the concern that governments have failed to make satisfactory arrangements for young people in transition from being in care to having full adult independence.²³⁵ This transition often results in homelessness for many children who feel unprepared and unsupported.²³⁶ The Council to Homeless Persons would like to see the provision of emergency housing made a legal right and the implementation of National Child Protection Standards.²³⁷ The Human Rights and Equal Opportunity Commission commented that relevant departments were doing little to assist in the transition.²³⁸ There are few programs for young people leaving care with a small number of non-government agencies providing some services, but these are scattered, uncoordinated and cannot handle the numbers of children leaving guardianship nor provide for the full range of their needs.²³⁹

231 Defence for Children International Australia, *op cit*, p. 22

232 *ibid*, p. 20

233 'Boy's divorce of parents may cost Vic Govt \$1m', *The Advertiser*, 30 January 1989, p. 3

234 Campbell R 'Court scathing of SA Officials', *The Canberra Times*, 6 February 1989

235 Le Sueur E J (1990) *Guardianship Long Term legal Status and Related Issues*, Department of Family and Community Services, SA State Print, September 1990, p.13 *et passim* cited in Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1819

236 Council to Homeless Persons, Submission No. 74, p. S 371

237 *ibid*, p. S 372

238 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1901

239 Taylor J (1990) *Leaving Care and Homelessness*, Brotherhood of St Laurence, Melbourne, cited in Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1901-2

7.92 The Council to Homeless Persons was also concerned at the reduced resources available for the students at risk program.²⁴⁰ Further, they believed that there should be greater emphasis on social belonging and connectedness in schools, as disadvantaged young people see school as their sense of belonging if the family is dysfunctional.²⁴¹ It was submitted that the changes in the previous budget had the most impact on 16 to 18 year olds in care, because they are unlikely to be at school and do not have an income.²⁴²

7.93 Mr Burdekin reported that in a three year study, he found that every homeless child who was involved in prostitution in Kings Cross had been a ward of the State.²⁴³ Lutheran Community Care believed that the support given to young people leaving care is the thing we do least well.²⁴⁴ They do not have the family resources to help them deal with their situation.²⁴⁵

Children as carers

7.94 The Children's Interests Bureau Board South Australia believed that there should be research conducted into the health, education, social, financial and recreational needs of children who care for siblings or adult relatives and the support needed to ensure that their developmental needs are met.²⁴⁶

Mother in prison

7.95 Mothers anxious to do the best for their children relinquish their children rather than keep them in an impoverished prison environment. Therefore the children are also penalised because of their mother's circumstances.²⁴⁷ The National Council of Single Mothers and Their Children would like to see in place children's resources in female prisons, together with parent support education programs and re-unification programs for women leaving prison.²⁴⁸

240 McDonald, Transcript of Evidence, 10 July 1997, p. 971

241 *ibid*

242 *ibid*

243 Burdekin, Transcript of Evidence, 5 August 1997, p. 1282

244 Lutheran Community Care, *Response to the Australian Law Reform Commission Re: Children and the Legal Process*, p. 4

245 *ibid*

246 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1823

247 National Council of Single Mothers and Their Children, Submission No. 139, p. S 917

248 *ibid*

Child abduction

7.96 The Report on *Helping Australians Abroad: A Review of the Australian Governments Consular Services* of the Senate Foreign Affairs, Defence and Trade References Committee tabled in June 1997 addressed this issue and therefore it will not be dealt with in detail in this report. The *Hague Convention on the Civil Aspects of International Child Abduction* also covers this issue.

7.97 The Family Law Council told the Committee that the incidence of parental child abduction is increasing and suggested that this matter required attention.²⁴⁹ The Council is considering the issue of whether child abduction should be criminalised.²⁵⁰

International family reunification

7.98 The Ethnic Child Care, Family and Community Services Co-operative Ltd commented on the increasing difficulty in achieving family reunification in the point system where English knowledge and employability are heavily weighted. They believed this discriminated against NESB migrants and does not admit people with disabilities into Australia, thus preventing the reunification of many refugee families and children.²⁵¹

7.99 In its concluding observations on Australia, the United Nations Committee on the Rights of the Child recommended that legislation and policy reform be introduced to guarantee that children of asylum seekers and refugees are reunited with their parents in a speedy manner.²⁵²

Recovery of maintenance for the child

7.100 There are problems in instigating proceedings against those not paying maintenance.²⁵³ However, it was submitted that while efforts have been made to compel fathers to pay maintenance, there have been no corresponding efforts to make mothers comply with access orders because of the negative

249 Family Law Council, Submission No. 178, p. S 917

250 Boland, Transcript of Evidence, 5 August 1997, p. 1277

251 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 668

252 United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR 403-405), 24-25 September 1997, p. 5

253 Staniforth, Transcript of Evidence, 29 April 1997, p. 142

implications of fining or imprisoning the mothers.²⁵⁴ The Family Law Council suggested that there needs to be a relatively speedy and inexpensive appeals mechanism and an effective and inexpensive means of enforcing contact orders.²⁵⁵ Further, concern was expressed that when maintenance was paid, the providers had no authority over how the money was spent.²⁵⁶

7.101 The Ethnic Child Care, Family and Community Services Co-operative added that when one parent is overseas and the custodial parent is in Australia, there is no legal provision under the child support system for the custodial parent to claim maintenance.²⁵⁷

Children deprived of a family environment

7.102 This remains a significant problem notwithstanding the 1989 report on *Our Homeless Children* and the 1996 report on *Aspects of Youth Homelessness*.²⁵⁸ In March 1997, the Chairperson of that Committee expressed his concern at the lack of implementation of the 129 recommendation in that report.²⁵⁹ This material will not be revisited in this report.

7.103 There are a number of programs available including the Supported Accommodation Assistance Program, the Crisis Accommodation Program, Health Services for Homeless Youth and National Youth Housing Strategy. The Youth Homelessness Pilot Program will be evaluated in 1998 and the Prime Ministerial Youth Homeless Taskforce will consider how best to improve Australia's response to youth homelessness.²⁶⁰ A representative of the National Youth Coalition on Housing is a member of the Prime Ministerial Youth Homeless Taskforce. Representatives from the National Youth Coalition on Housing and the Australian Association of Young People in Care are also members of the Commonwealth Advisory Committee on Homelessness.

7.104 The United Nations Committee on the Rights of the Child expressed its concern that the high level of youth homelessness in Australia could lead to

254 Endeavour Forum, Submission No. 8, p. S 28

255 Family Law Council, Submission No. 178, p. S 1197

256 Hofmeyer, Transcript of Evidence, 4 July 1997, p. 752

257 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 669

258 Human Rights and Equal Opportunity Commission (1989) *Our Homeless Children*; House of Representative Standing Committee on Community Affairs (1995) *Report on Aspects of Youth Homelessness*

259 Morris A (1997) Council of Homeless Person, *Parity* Issue 2 Volume 10, March 1997, pp. 3, 5, cited in Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1905

260 Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1906-7

children becoming involved in prostitution, drug abuse, pornography, or other forms of delinquency and economic exploitation.²⁶¹



Children who have a home and children who don't

Gina Solar, aged 10 years, Woodridge State School

7.105 The Human Rights and Equal Opportunity Commission's *Bringing them home* Report,²⁶² covers in detail the plight of Aboriginal children separated from their families and this information will not be repeated here. Subsequent to that Report, however, it was submitted that there was now a reluctance by authorities to become involved with Aboriginal families and therefore Aboriginal children may be returned to abusive homes.²⁶³

Despite the fact that Aboriginal children are over represented in alternative childcare placements, there is evidence to suggest that some child protection agencies in Central Australia shun Aboriginal children because they fear the accusation of unlawfully removing such children from their families. This means that reports of concerns for the well being of Aboriginal children are not followed up, or that the child is sent straight back to an abusive home. Again, such situations highlight the need for clear legislative guidelines for the placement of Aboriginal children into alternative care.²⁶⁴

7.106 Young Aboriginal people wishing to escape town camps become homeless because of an inability to access services and the lack of safehousing

261 United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR 403-405), 24-25 September 1997, p. 3

262 Human Rights and Equal Opportunity Commission, *Bringing the home, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997

263 Central Land Council, Submission No. 399, p. S 2240

264 *ibid*

in Alice Springs.²⁶⁵ The Alice Springs Youth Accommodation and Support Service assists young people who are homeless or in risk of being homeless and with 50 per cent of its clientele being young Aboriginal people.²⁶⁶

Homeless Allowance

7.107 Very few of the claims for the independent homeless allowance are on the grounds of parental abuse, either physical or sexual. It was suggested that most arise because parents refuse to allow the young person to return home.²⁶⁷ About 40 per cent of claims are rejected because the child can return home or there has been some mediation and the family has come to some agreement.²⁶⁸

7.108 The Youth Homeless Allowance was seen by some as actively encouraging children to leave home.²⁶⁹ The *Report on Aspects of Youth Homelessness* concluded, however, that the allowance itself did not act as an incentive to leave home although it acknowledged that a few may abuse the system by making fraudulent claims.²⁷⁰ Many homeless children were not receiving the homeless rate of income support and there were significant numbers of unsupported young people not receiving an income.²⁷¹ It was submitted that in situations where a child wanted to leave home because they believed that there were too many restrictions on their freedom, some of these young people have been homeless for some time and have made several attempts to return home and improve the relationship with their parents because they crave a home life.²⁷²

7.109 The Department of Social Security requires that allegations of abuse by parents are verified by a third party who is removed from the family.²⁷³ In a recent case in Western Australia, a child died while living away from home on the youth homeless allowance.²⁷⁴ The Committee believes that parents should

265 *ibid*, p. 2243

266 Wright, Transcript of Evidence, 6 November 1997, p. 33

267 Winzar, Transcript of Evidence, 28 April 1997, p. 60

268 *ibid*

269 For example, Craigslea Branch, National Party of Australia, Submission No. 9, p. S 32

270 House of Representatives Standing Committee on Community Affairs, *Report on Aspects of Youth Homelessness*, May 1995, The Parliament of the Commonwealth of Australia, p. 131

271 *ibid*, pp. 131-2

272 Buchanan, Transcript of Evidence, 4 July 1997, p. 756

273 Winzar, Transcript of Evidence, 28 April 1997, p. 60

274 Walton, Transcript of Evidence, 3 July 1997, p. 652

be contacted in relation to the child applying for financial assistance in all but exceptional cases where the child is at risk, then the parents should be able to be involved with a view to possible reconciliation and verification of allegations.

7.110 The Youth Action and Policy Association accepted that while there may be some bad practice in relation to social workers excluding parents, this does not occur to the extent that people claim.²⁷⁵ Action for Children commented that children do not use social security benefits to the extent claimed and that the majority of children and young people who access the homeless allowance have severe problems at home.²⁷⁶

7.111 The Council to Homeless Persons commented that homeless young people are the individuals in the community with the fewest rights and are least able to access allowances in terms of mobility or finances.²⁷⁷ The Youth Advocacy Centre Inc workers believed the administrative processes were not user friendly, particularly applications for AUSTUDY at the homeless rate. They argued that while Government rhetoric supported reuniting young people with their families, the necessary resources were not available to achieve this.²⁷⁸ They added that because of the time delays in the assessment process, many young people were at risk and suffered hardship because withholding income support from young people did not mean that they would return home.²⁷⁹ They added that after the assessment there is a gap in responsibility for ensuring young people are assisted with accommodation and support.²⁸⁰

7.112 Australian Catholic Social Welfare Commission commented that in relation to leaving home being considered an easy option only because the allowance is available, that young people have no right to be deceptive about their home situation.²⁸¹ If the young person received support to which they were not entitled, it would mean that the Department failed to properly investigate the application.²⁸² It was suggested that the problem does not lie in granting children and young people the right to support from the State. The situation should not arise where a young person is forced to remain in an

275 Morey, Transcript of Evidence, 9 May 1997, p. 369

276 Dolgopoul, Transcript of Evidence, 4 July 1997, p. 667

277 McDonald, Transcript of Evidence, 10 July 1997, p. 975

278 Youth Advocacy Centre Inc, Submission to ALRC and HREOC *Speaking for ourselves: Children and the legal process*, Issues Paper 18, July 1996, pp. 17-18

279 *ibid*

280 *ibid*

281 Australian Catholic Social Welfare Commission, Supplementary Submission No. 124a, p. S 1591

282 *ibid*

abusive situation because they have no alternative as the State would have abrogated their responsibilities and undermined the rights of the child.²⁸³

7.113 The Commission commented that there is a very thorough assessment in applying for the youth homeless allowance and the majority of young people on the allowance are victims of violence and rejection from their families.²⁸⁴ The vast majority of these young people are some the most disadvantaged children and young people in the community.²⁸⁵ Further, crime by homeless young people without support becomes a community cost.²⁸⁶



The right to a home and shelter

Katie Lewis, 11 years, Rainworth State School

7.114 The State Council of the Presbyterian Women's Association believed that children should not be given public money to leave home unless there are actions by the parent which are proved to be a criminal offence.²⁸⁷ They argued that if children made allegations of abuse, a full investigation should be conducted.²⁸⁸ They provided the example of a 16 year old girl who died and her parents were unable to find out where she was because of privacy rules.²⁸⁹

283 *ibid*

284 Cooney, Transcript of Evidence, 29 April 1997, p. 187

285 *ibid*

286 *ibid*, p. 193

287 State Council of the Presbyterian Women's Association, Submission No. 358, p. S 2046

288 *ibid*

289 *ibid*, Supplementary Submission No. 358a, p. S 2799

7.115 Ms Rayner expressed the view that during the Burdekin inquiry into homeless children in Western Australia, there was plenty of anecdotal evidence that children were prostituting themselves because they could not get any money and the majority of those children were the victims of serious abuse in their homes.²⁹⁰ She believed that the allowance meant that a child had access to money to lessen that risk until the child could return home.²⁹¹ It is important that homeless children should have some financial support to protect them from exploiters and rapists and others of that nature and that there should be resources in the community available to assist children to resolve their relationship with their parents.²⁹² She added that most social workers would not make it easy for a child to leave home, because they know young people cannot cope well outside it. They are usually unable to access support allowances because they are homeless and emotionally and socially inept.²⁹³

7.116 The Association of Children's Welfare Agencies suggested that it was better to err in this way than to return a child to an unsatisfactory situation.²⁹⁴ Children and Domestic Violence Action Group stated that research has shown that the majority of young people who leave home voluntarily are victims of sexual abuse or domestic violence or both.²⁹⁵ They added that the New South Wales guidelines between refuges and the Department of Community Services ensure that parents are informed if the child is safe and, wherever possible, the family is involved unless the child would be in physical danger if returned home.²⁹⁶

7.117 The focus is on mediation and conciliation so that even if the child does not return home they will stay in contact with the family.²⁹⁷ Access to benefits is now more difficult and the allowance does not sustain a high life style away from home. The only young people who do that are highly educated, privileged middle-classes doing it as a social protest.²⁹⁸ Children who have less access to information do not know where the refuges are, or the availability of

290 Rayner, Transcript of Evidence, 29 September 1997, p. 1556

291 *ibid*

292 *ibid*

293 *ibid*

294 Scott, Transcript of Evidence, 5 August 1997, p. 1153

295 Buchanan, Transcript of Evidence, 4 July 1997, p. 758

296 Scott, Transcript of Evidence, 5 August 1997, pp. 1153-4

297 *ibid*, p. 1154

298 Scott, Transcript of Evidence, 5 August 1997, p. 1155

Commonwealth benefits and leave because they do not like their current situation.²⁹⁹

7.118 Mr Scott submitted that, although there is a lot of anecdotal evidence that welfare officers do not provide information to parents, there are also a number of older kids who are living away from home because of parental abuse. Their anecdotes might outnumber the others but they do not line up to give evidence to parliamentary committees.³⁰⁰

7.119 In relation to the privacy issue, Mr Scott made the comment that if it is important enough to support a child's departure from the family for the child's safety, then it is important enough to be investigated and the parents have a right to know what is being said as a matter of natural justice.³⁰¹

7.120 In relation to children being safer on the street than at home, Ms Rayner suggested that there is no question that most of the children are victims of parents who could not cope, an education system that did not keep them at schools, or welfare systems that did not provide adequate services.³⁰² Parents do not have access to support services early enough because of a lack of resources directed at family counselling services and there is an ethos that makes it difficult for parents to seek help.³⁰³

7.121 The Council of Homeless Persons added that the current rate of youth homelessness is 25 000 to 30 000 and doubled between 1991 and 1994 for the 12 to 18 years of age group.³⁰⁴ The Federal Government has allocated \$100 million for homeless children.³⁰⁵

7.122 The NGOs were also concerned about the plight of Australia's homeless children and believed that there needed to be standards for the accreditation of child protection agencies; standards of integrity and competence for staff; a national code of practice for the care and protection of young people; and access for homeless children to safe, secure stable accommodation, education, training and health services.³⁰⁶ The United Nations Committee on the Rights of

299 *ibid*

300 *ibid*

301 *ibid*, p. 1153

302 Rayner, Transcript of Evidence, 29 September 1997, p. 1557

303 Scott, Transcript of Evidence, 5 August 1997, p. 1157

304 McDonald, Transcript of Evidence, 10 July 1997, p. 970

305 Burdekin, Transcript of Evidence, 5 August 1997, p. 1287

306 Defence for Children International Australia, *op cit*, p. 22

the Child recommended that Australia further research the issue of homelessness and further strengthen the support services that it provides to homeless children.³⁰⁷

7.123 There are currently 12 organisations funded to provide adolescent mediation and family therapy services to assist young people and their families to resolve a family conflict that could lead to premature youth homelessness.³⁰⁸ For example, Centacare in the ACT is working to bring the child back to meaningful discussion with the parents through mediation.³⁰⁹



Children living with their families and children begging

Eloise Kearney, 10 years, Raquel Redmond Art for Children, Brisbane

Periodic review of placement

7.124 The NGOs believed that there should be a review of placements and a provision for hearing the child's view, right of access to grandparents or extended family members, and monitoring of efforts to reunite the child with his or her parents.³¹⁰

7.125 In relation to the temporary placement of children, Ozchild commented that people make decisions which are constrained by guidelines, funding, and resources and without anybody arguing independently for what is in the best

307 United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR 403-405), 24-25 September 1997, p. 5

308 Attorney-General's Department, Submission No. 133, p. S 780

309 Harrigan, Transcript of Evidence, 29 April 1997, p. 195

310 Defence for Children International Australia, *op cit*, p. 23

interests of the child.³¹¹ There are case plans developed without an indepth assessment of the family's capacity to change sufficiently to take charge of their children so there is no early planning for permanency.³¹² It was submitted that in Queensland, in the administration of children's services, practices such as continuity of care decisions have developed which nullify Article 25 of the Convention in relation to the need for a periodic review of placements. The matter has been raised with the Director-General of the Department.³¹³

Adoption

7.126 Thirteen countries have placed reservations on Article 21 and three have entered declarations in relation to the trafficking and sale of children, inconsistencies with their constitution or Islamic Shariah and on issues relevant to their Indigenous peoples.

7.127 The Joint Standing Committee on Treaties addressed some of these issues in relation to its consideration of the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*. The New South Wales Law Reform Commission's Report 81 extensively reviewed the issues relevant to both domestic and intercountry adoptions.¹ The Commission's conclusions favoured an approach that encourages voluntary plans for open adoption and compliance with international treaties and emphasises the paramountcy of the child's best interests.¹

Adoption within Australia

7.128 It was suggested that there is a need for national consistency in adoption laws.³¹⁴ There is currently variation amongst the States and Territories in relation to adoption by de facto couples and surrogacy and it was argued that not all are consistent with the best interests of the child.³¹⁵

Right to know their biological parents

311 Pitman, Transcript of Evidence, 9 July 1997, p. 917

312 *ibid*

313 Alford, Transcript of Evidence, 1 May 1997, p. 227

314 Braun, Transcript of Evidence, 4 July 1997, p. 720

315 Turner, Transcript of Evidence, 14 August 1997, p. 1435

7.129 Lutheran Community Care argued that 'closed adoption' is in breach of Article 8 of the Convention and that the child's identity can be preserved and strengthened by knowing both birth parents.³¹⁶ The Australian Institute of Family Studies commented that knowing both birth parents is a matter of importance to Australian society and that evidence from adults whose 'name and family relations' were not available to them was that it is important to maintain those links during childhood:

The Stolen Children Inquiry reflects what has also been carried on with other children: disabled children, children born in socially difficult circumstances (to unmarried mother in previous eras, to mother with drug, psychiatric, intellectual or other difficulties), children subject to particular migration circumstances, and even children who become the subject of custody and other disputes which make contact with one parent difficult.³¹⁷

7.130 Other aspects of concern raised were the imposition of a contact veto by the relinquishing parent and the arbitrary age of 18 in relation to the right to know who your parents are, rather than being based on the evolving capacity of the child.³¹⁸ The *Tasmanian Adoption Act 1988* requires the consent by both parents prior to adoption, however, this can be circumvented by the court.³¹⁹ It was suggested that it may be in the best interests of the child to dispense with the requirement for parental consent.³²⁰

7.131 Articles 7 and 8 of the Convention refer to the child's right to acquire a nationality and an identity. The National Council for Adoption believed that while adoption confers a nationality, that identity has now become a problem with the trend to open adoption and that in most States in Australia, this causes an identity problem because the child has two sets of parents.³²¹ It was suggested that counselling against adoption was enshrined in law and open adoption is promoted by government departments and it was argued that this does not comply with the social and legal principles in the Convention which states that a child has a right to a permanent family.³²²

316 Lutheran Community Care, Submission No. 61, p. S 314

317 Australian Institute of Family Studies, Submission No. 363, p. S 2067

318 Turner, Transcript of Evidence, 14 August 1997, p. 1436

319 Kaye and Turner, Submission No. 21, p. S 94

320 Turner, Transcript of Evidence, 14 August 1997, p. 1436

321 Carroll, Transcript of Evidence, 1 May 1997, p. 287

322 Law, Transcript of Evidence, 1 May 1997, p. 295

7.132 The National Council for Adoption was also concerned that guardianship and custody issues will take a higher priority than adoption.³²³ The Council supported uniform legislation to replace the varied State legislation, provided there was an option of legally protected confidentiality.³²⁴ Although retrospectively one can object to the release of information, currently there is a provision for the automatic disclosure of information once the child is 18.³²⁵

7.133 The National Council for Adoption believed that some birth mothers are unwilling to enter open adoption agreements and elect to raise the child themselves when they believe they can not raise the child the way they would like.³²⁶ They suggested that open adoption accommodated the needs of the adults without giving primary consideration to the child's need for permanency and security and they considered that open adoption is merely long-term guardianship.³²⁷

7.134 They argued that continual visitations by relatives can inhibit a sense of belonging and that the legality of adoption and the emotional security that are the benefits of adoption over other forms of substitute parenting.³²⁸ They added that adoptive parents change their attitudes towards the children, make decisions about the children's upbringing to please the birth family rather than the best interests of the child.³²⁹

Discrimination in adoption

7.135 The Committee was given a number of examples of discrimination in adoption. Call to Australia believed that foster parents should be chosen from stable married couples with proven parenting skills.³³⁰ Australian Families for Children commented that in most States children over the age of 9 are rarely considered for adoption.³³¹ Some children are also discriminated against by limiting adoption to certain categories such as restricting adoption to infertile couples and it was suggested that the standards for adoptive parents are not the

323 Carroll, Transcript of Evidence, 1 May 1997, p. 290

324 *ibid*, p. 293

325 *ibid*

326 *ibid*, pp. 287

327 *ibid*

328 *ibid*, p. 288

329 *ibid*

330 Call to Australia, Submission No. 179, p. S 1202

331 Australian Families for Children, Submission No. 660, p. S 3317

same as those for special needs children.³³² It was also argued that to prohibit the placement of Aboriginal children with non-Aboriginal families can lead to immense delays in the placement of children.³³³ It was submitted that residency and citizenship requirements may prohibit adoptions by families in other States.³³⁴

7.136 It was suggested that by restricting adoptions to childless couples, you have eliminated parents who have children, who may well adopt a child with special needs but do not meet the eligibility criteria.³³⁵ The welfare of the child must always be the primary consideration if not the only consideration.³³⁶ It was suggested that children should not be denied the right to be adopted into a family where there are already biological children, however, there is an infertility clause in Queensland legislation:

It has been known that an abused child has been adopted to a single parent where the law in that state did not allow for that normally, which meant that the standards of that state were changed because the child was an abused child, so these children are discriminated against.³³⁷

7.137 Another area of concern was in the case of single mothers, who later marry and whose husbands wish to adopt the child, the Family Court of Australia has power to veto an adoption by step parents, substituting a guardianship order preventing the child from becoming a full legal member of an adoptive family.³³⁸ It was suggested that the adoption legislation of many States echoes the preference for guardianship over adoption and there is an anti-adoption trend.³³⁹ It was submitted that adoption must remain a viable option for the care and nurturing of children whose biological parents and/or families cannot or do not wish to care for them.³⁴⁰

7.138 The National Council for Adoption commented that in 1994-95 there were 331 adoptions in Australia compared to 12 000 in the pre 1970s.³⁴¹ It was

332 National Council for Adoption Inc, Submission No. 93, p. S 448

333 Australian Families for Children, Submission No. 660, p. S 3317

334 *ibid*, p. S 3318

335 Law, Transcript of Evidence, 1 May 1997, p. 297

336 Carroll, Transcript of Evidence, 1 May 1997, p. 286

337 *ibid*, p. 287

338 *ibid*

339 *ibid*

340 *ibid*, p. 286

341 *ibid*, p. 289

argued that given the number of children under care and protection orders and the fact that a significant proportion of these were from female single parent families who may have been talked out of adoption when they wanted it, and are simply not coping and adoption may have been a better option.³⁴² The National Council for Adoption submitted that birth mothers do not want open adoptions.³⁴³

Intercountry adoptions

7.139 Australia has now ratified the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*. It was suggested that Australia could be more proactive in initiating agreements with other countries to allow more intercountry adoptions.³⁴⁴

7.140 It was submitted that intercountry adoption should only be considered an option if the biological family or relatives cannot provide a loving and caring family and the child cannot be raised within their own culture.³⁴⁵ Institutions may not cater for the emotional, social and perhaps physical development of the child and may lack physical and medical resources. Perhaps international adoption is a better option if a child raised in this situation where they did not learn to appreciate the richness of their own culture.³⁴⁶ It was suggested that children coming to Australia are able to maintain their culture by becoming involved with organisations such as the Sri Lankan organisation and meetings with other children brought in on the intercountry adoption schemes.³⁴⁷

7.141 Lutheran Community Care argued that intercountry adoption contravenes the child's right to grow within their own culture and identity.³⁴⁸ They commented that a lot of these overseas adoptions do break down when the children get to be 15 or 16 because they have lost their culture and identity and a number of other issues.³⁴⁹ They suggested that there needs to be more support and training for the adoptive parents.³⁵⁰

342 Carroll, Transcript of Evidence, 1 May 1997, p. 289

343 *ibid*, p. 288

344 The Australian African Children's Aid and Supports Association Inc, Submission No. 36, p. S 199

345 Melit, Transcript of Evidence, 6 August 1997, p. 1318

346 *ibid*

347 Connell, Transcript of Evidence, 14 August 1997, p. 1467

348 Lutheran Community Care, Submission No. 61, p. S 313

349 Morrison, Transcript of Evidence, 4 July 1997, p. 723

350 *ibid*

7.142 Lutheran Community Care added that there are successful models which maintain children in their own environment where they have links with their own community which they believe is a much better option for children.³⁵¹

7.143 It was submitted that the number of legislative requirements and administrative processes appear to be making it increasingly difficult for intercountry adoption. Legislation appropriate for adoption in Australia is sometimes unreasonably applied to intercountry adoptions.³⁵² Adoption plans and agreements between the birth parents, unrealistic demands for information and the adoptive parents may not always be feasible for intercountry adoptions.³⁵³

7.144 The *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* is intended to facilitate uniform standards for the process of intercountry adoption by setting a basic level of procedure for both the donating and the receiving country in an intercountry adoption. The Convention advocates the rights of the children involved as paramount.³⁵⁴

7.145 Currently, Australian State and Territory governments negotiate agreements of their own with other countries³⁵⁵ and the vast majority of children enter Australia through these government to government agreements.³⁵⁶ In addition, a number of NGOs have formal or informal arrangements with some countries. There are in excess of 300 intercountry adoptions annually in Australia through these agreements.³⁵⁷

7.146 In Australia, the Convention will be implemented by additions to the Family Law regulations and a Commonwealth-State agreement.³⁵⁸ There are currently 19 parties to the Convention.

351 Lutheran Community Care, Submission No. 61, p. S 313

352 Melit, Transcript of Evidence, 6 August 1997, p. 1319

353 *ibid*, p. 1320

354 The Convention, at Schedule one of the Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 17

355 New South Wales Government, Submission No. 22 to the Inquiry into the Hague Convention on Intercountry Adoption, p. S 161

356 *ibid*

357 Maria and Andrew Katelaris, Submission No. 23 to the Inquiry into the Hague Convention on Intercountry Adoption, p. S 167

358 At the time of writing, the Regulations was in a revised draft form. The Commonwealth State agreement was at schedule one of the original Draft Regulations, but was omitted from the revised draft. The Committee understands the agreement has not changed.

7.147 The Committee supported the ratification of the Hague Convention but recommended improvements to the consultation processes to include all interested parties to facilitate Australia's compliance with the Convention and the continuation of intercountry adoptions.

The Committee's views

7.148 The Committee urges an assessment of the adequacy and effectiveness of early intervention programs in terms of support and assistance for families as a mechanism to reduce the number of cases in which it is considered necessary to remove children from their families. The Committee notes that the majority of abused children want the abuse to stop so they can stay at home and therefore serious consideration must be given before steps are taken to disrupt families.³⁵⁹

Recommendation 28

The Joint Standing Committee on Treaties recommends that the Government consider the adequacy of resources and the mechanisms in place to provide early intervention programs to support families and thereby reduce the need to remove children from families.

7.149 The Committee is concerned at reports of an excess of demand over supply in relation to counselling and mediation services and a need for greater access to parent training programs.

Recommendation 29

The Joint Standing Committee on Treaties recommends that the Government assess the adequacy and accessibility of counselling and mediation services provided for families.

Recommendation 30

The Joint Standing Committee on Treaties recommends that the Government consider the adequacy of and accessibility of parenting courses.

7.150 It was suggested that research was also needed into the identification of a potentially at risk family to facilitate the offer of support at an earlier stage

359 Dimitriou, Transcript of Evidence, 4 August 1997, p. 1112

before abuse occurs. There needs to be more work done in relation to situations where children should or should not be removed from families.

Recommendation 31

The Joint Standing Committee on Treaties recommends that the Government research possible indicators of families at risk in Australia and the opportunities to provide early intervention support to reduce the need to remove children from families.

Recommendation 32

The Joint Standing Committee on Treaties recommends that the Government investigate the extent to which Aboriginal representatives are consulted during decisions on the placement of Indigenous children in care.

7.151 The Committee believes that there could be greater emphasis placed on the role of extended families in the care of children in need and that procedures should be in place to enable them to receive appropriate government support in this role.

Recommendation 33

The Joint Standing Committee on Treaties recommends that where appropriate the Government review mechanisms for greater involvement of extended families for children in care.

Recommendation 34

The Joint Standing Committee on Treaties recommends that the Government investigate the feasibility of establishing a voluntary register for grandparents.

7.152 The Committee believes that facilities need to be made available for child care for disadvantaged children to provide opportunities for recreation and cultural development in the light of government assistance to working couples to access child care for their families.

Recommendation 35

The Joint Standing Committee on Treaties recommends that the Government consider the adequacy of facilities and accessibility of child care and assistance to families with disadvantaged and disabled children.

7.153 There is also a need for substantial improvements in relation to homeless children, services available for children leaving care, alleviation of abuse while in care and services provided when children are being returned to their families.

Recommendation 36

The Joint Standing Committee on Treaties recommends that the Government investigate the adequacy of, and accessibility to, support services for young people leaving care.

Recommendation 37

The Joint Standing Committee on Treaties recommends that the Government investigate the adequacy of complaints mechanisms for reporting abuse when the child is in care and develop a best practice model.

Recommendation 38

The Joint Standing Committee on Treaties recommends that the Government investigate the adequacy of and accessibility to support services for young people returning to families after being in care.

7.154 The Committee is concerned at the problems occurring in relation to excessive intervention by government agencies in terms of the removal of children from families, the adequacy of support for families when children are being returned including Indigenous families, and the training of staff in care system. These matters fall within State and Territory jurisdictions and we note that a range of child protection measures are currently being considered by the Standing Committee on Community Services Income Security Administrators.

BASIC HEALTH AND WELFARE

Introduction

7.155 The National Health Policy for Children and Young People was endorsed by Australian Health Ministers in June 1995 and an implementation plan is being developed although health services are a State responsibility. It was submitted that there was little uniformity in legislation or health services for children across State borders.³⁶⁰ It was suggested that a national approach

360 Queensland Paediatric Nurses' Association Inc, Submission No. 233, p. S 1530

would enable State health departments to become part of universal systems for delivery of care which would facilitate the evaluation of such systems.³⁶¹

7.156 The Queensland Paediatric Nurses' Association noted that there is competition for funding because children represent a smaller percentage of the total population.³⁶² Some funding has been allocated to the Australian Institute of Health and Welfare to work towards national health information on children.³⁶³ There was concern that:

The thousands of children living in poverty and homelessness do not have adequate access to health care. People from NESB, ATSI have a double disadvantage as lack of information and sensitivity to cultural and other issues precludes them from obtaining health care. The governments decision to impose a doctors fee for all will further disadvantage those who are already disadvantaged.³⁶⁴

7.157 Primary health care is the most efficient, cost effective way of delivering health care but gets little recognition in Australia where health facilities spend much more on expensive, highly technical delivery of care. Rural areas where primary health care is most needed often suffer most from cuts in health funding.³⁶⁵

Discrimination against children

7.158 It was submitted that children are discriminated against in terms of regulatory approval for pharmaceuticals, clinical trials and case mix allocations.³⁶⁶ For example, the allowances for incontinence equipment, carers allowances and availability of drugs and medicines on the Pharmaceutical Benefits Scheme.³⁶⁷

7.159 The National Association of Practising Psychiatrists was also concerned about the lack of adequate provision within the health care system for the psychological well being of children since changes in the Budget in 1996.³⁶⁸

361 *ibid*, p. S 1532

362 Mason, Transcript of Evidence, 6 August 1997, p. 1335

363 Australian College of Paediatrics, Submission No. 97, p. S 473

364 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 674

365 Queensland Paediatric Nurses' Association Inc, Submission No. 233, p. S 1531

366 The Australian Association of Paediatric Teaching Centres, Supplementary Submission No. 10a, p. S 2281

367 The Australian Association of Paediatric Teaching Centres *Policies 1997 Office of Children*, p. 2

368 Falk, Transcript of Evidence, 9 May 1997, p. 381

The criteria enabling patients to receive more than 50 treatments per year are not applicable to most children.³⁶⁹ It was argued that sick children become sick adolescents so it does not make economic sense.³⁷⁰

Aboriginal and Torres Strait Islander Children

7.160 Of particular concern was the fact that the health of Aboriginal and Torres Strait Islander children is significantly worse than that of other Australian children.³⁷¹ The Australian College of Paediatrics described it as deplorable.³⁷² Studies have also shown that it is considerably poorer than that of indigenous minorities in other societies with comparable histories, such as Canada, the United States and New Zealand.³⁷³ Notwithstanding the National Aboriginal Health Strategy developed in March 1989, progress in improving the health status of Indigenous children has been slow.³⁷⁴

7.161 The issues involved with indigenous health are currently the subject of an extensive inquiry by the House of Representatives Standing Committee on Family and Community Affairs and therefore will only be dealt with briefly here.³⁷⁵

7.162 The Department of Health and Family Services commented that the factors underlying poor health of Indigenous children are numerous reflecting broader structural issues and therefore require action in a number of portfolios of government, and in all jurisdictions.³⁷⁶ Problems include high infant and child mortality rates, low birth weights, malnutrition, higher levels of infection, lower levels of completed vaccinations and a higher incidence of diarrhoea and respiratory diseases.³⁷⁷ It was suggested that while it was relatively easy to

369 *ibid*, pp. 382-83

370 Halasz, Transcript of Evidence, 9 May 1997, p. 386

371 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 168

372 Australian College of Paediatrics, Submission No. 97, p. S 473

373 Kunitz S J (1994) *Disease and Social Diversity: The European Impact on the Health of Non-Europeans* New York, Oxford University Press and Kunitz S J and Brady M (1995) 'Health care policy for Aboriginal Australians: the relevance of the American Indian experience' *Australian and New Zealand Journal of Public Health* 19: 549-558 cited in Burns, Submission No. 405, p. S 2405

374 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1916

375 These issues were also addressed in the First and Second Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Northern Territory Government released a report on the *Provision of Health Services to Aboriginal Communities in the Northern Territory* in November 1996.

376 Department of Health and Family Services, Submission No. 137, p. S 874

377 *Australia's Report under the Convention on the Rights of the Child*, December 1995, pp. 168-71

identify the issues relating to the provision of adequate health services to Aboriginal people in remote regions, facilitating the necessary changes to address these issues is difficult.³⁷⁸

7.163 Framework agreements have been developed with State and Territory governments to address the issue of Aboriginal and Torres Strait Islander health except for Tasmania and the Northern Territory.³⁷⁹ State and Territory forums will identify regional health plans which will identify priorities in health needs across Australia.³⁸⁰

7.164 While the primary responsibility for the provision of health services rests with State and Territory governments, Federal programs which provide funding on indigenous health include approximately \$83 million annually to support around 100 services which provide culturally appropriate, locally controlled health services. These complement existing mainstream services provided by States and Territories; provide resources to tackle some of the underlying causes of poverty among Indigenous Australians; a National Rural Health Strategy; and an examination the mental health needs of Indigenous peoples.³⁸¹

7.165 Dr Burns submitted that the funding for health services in remote areas such as Maningrida is grossly insufficient even for the present inadequate service.³⁸² The average Medicare claims per capita in the Northern Territory were \$168 in 1993-94 compared to \$253 Australia wide and that most Aboriginal communities do not access Medicare facilities and rely on government health clinics.³⁸³ Dr Burns argued that the Commonwealth Grants Commission funding formula for the Northern Territory did not recognise the low levels of Medicare and Pharmaceutical Benefits Scheme uptake in remote areas; the assumption that young people are healthier is inappropriate in light of the high child morbidity in Aboriginal communities and the labour intensive services which are culturally appropriate.³⁸⁴ He added that:

The NT Government claims to spend approximately 50% of its health budget on the Aboriginal population which is approximately 25% of the total NT

378 Burns, Submission No. 405, p. S 2408

379 Department of Health and Family Services, Submission No. 137, pp. S 874-5

380 *ibid*, p. S 875

381 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 202

382 Commonwealth Grants Commission Working Papers, 1995 Update, Canberra AGPS cited in Burns, Submission No. 405, p. S 2406

383 Burns, Submission No. 405, p. S 2406

384 *ibid*

population.³⁸⁵ For Aboriginal people in remote areas such as Maningrida, most of this expenditure is on institutional (i.e. hospital) health care rather [than] primary health care at a community level.³⁸⁶



Children should have suitable food

Jazmin Ryle, 12 years, Rainworth State School

7.166 Traditional Aboriginal people have a high rate of infant illness and death as a result of respiratory disease, diarrhoea and under-nutrition.³⁸⁷ Aboriginal children have a higher prenatal mortality rate than non-indigenous Australians although this has declined in Western Australia from 21.7 per 1000 births in 1985 to 16.6 in 1994 but this is still twice the non-Aboriginal rate.³⁸⁸ Each child at Maningrida remote Aboriginal community was admitted to hospital 1.5 times each year on average, 50 per cent of the admissions were for diarrhoeal disease, 35 per cent were underweight or malnourished, 50 per cent anaemic and 25 per cent suffered ear, urine and/or chest infections.³⁸⁹

7.167 The Ngaanyatjarra Pitjantjatjara Yankunytjatjarra Women's Council Aboriginal Corporation among other services provide disability support services for children in care as well as assistance in sexual assault cases of

385 Territory Health Services, *Aboriginal Health Policy 1996. Aboriginal Program Initiatives: NT Coordinated care trials* cited in Burns, Submission No. 405, p. S 2407

386 Burns, Submission No. 405, p. S 2407

387 Edith Cowan University, Submission No. 157, p. S 1065

388 *ibid*, p. S 1067

389 Burns, Transcript of Evidence, 14 August 1997, pp. 1502-3

young children and nutrition issues.³⁹⁰ There is a need for maternal education in the area of health promotion but there are other issues to be addressed such as housing, poverty, domestic violence and substance abuse.³⁹¹ Teenage pregnancy is a significant problem which may lead to the early onset of diabetes. Poor parenting skills, unstable or often non-existent partners are also apparent.³⁹²

7.168 The health issues of Indigenous mothers also have a significant impact on the well being of their babies.³⁹³ The level of maternal education is a significant factor in child health and child mortality rates fall with increased education of both parents.³⁹⁴ Improving self-esteem, employment, housing, plumbing, education and training will lead to the improvement of health.³⁹⁵ With Aboriginal children from birth to five years there is a strong link between care, education and health therefore there is a need for a coordinated approach.³⁹⁶

7.169 World Vision Australia commented that preventable diseases are compounded by limited access in some communities to clean drinking water which breaches Article 24(2)(c).³⁹⁷ Australia's Report stated that:

It should be noted that the consistently higher levels of respiratory, skin, ear, eye, infectious and parasitic problems experienced by Aboriginal and Torres Strait Islander peoples reflects their relatively poor socio-economic position and the inadequate physical and social environments in which many Aboriginal people live. For example, the availability of good quality water to remote communities is a factor which contributes to health status of Aboriginal children. Whilst there is no national data to quantify the extent of waterborne disease in the Aboriginal Islander population diarrhoeal disease, common in infants and young children is often associated with the lack of water and poor hygiene.³⁹⁸

390 Lloyd, Transcript of Evidence, 7 November 1997, p. 75

391 *ibid*, p. 77

392 *ibid*, p. 78

393 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1916

394 Burns, Transcript of Evidence, 14 August 1997, p. 1507; Caldwell J and Caldwell P (1995) *The Cultural, Social and Behavioural Component of Health Improvement: the evidence of health transition studies*, National Centre for Epidemiology and Population Health, Canberra cited in Australian Reproductive Health Alliance, Submission No. 121, p. S 606

395 Goodier, Transcript of Evidence, 3 July 1997, p. 627

396 Edith Cowan University, Submission No. 157, p. S 1056

397 World Vision Australia, Submission No. 135, p. S 815

398 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 202

7.170 It was submitted that while infrastructure issues such as sanitation and water are important, community delivered programs have been most successful.³⁹⁹ The Office for Aboriginal and Torres Strait Islander Health Services funds 120 Aboriginal community controlled primary health care organisations.⁴⁰⁰ A lot of resources such as those for educating young mothers are centred in Alice Springs and could effectively be used in communities.⁴⁰¹ The Edith Cowan University believed that Aboriginal parents should be encouraged to participate and cooperate in programs designed to benefit their children's health.⁴⁰² It was suggested that community based child care centres should be staffed by Aboriginal people who will be role models for parenting skills and parents should be encouraged to participate in such centres.⁴⁰³ For example; the Nundu Tidi Pirni project in Western Australia is concerned with enhancing ante-natal and post-natal care and teaching women about the early care of children. The project is run by Aboriginal women.⁴⁰⁴

7.171 Youth Affairs Network of Queensland believed that access to health services and standards of care to children in remote Aboriginal communities is abysmal.⁴⁰⁵ Government decisions based on population numbers means a lower level of services than that provided to more populous centres. Attention needs to focus on the adequacy of services to children in rural families especially at a time of economic difficulty, declining employment opportunities and increasing rural youth suicide rates.⁴⁰⁶ The Children's Interests Bureau Board South Australia expressed their concern about the trend to reduce services outside metropolitan areas and the move to relaying information through centralised technology systems.⁴⁰⁷

399 Australian Reproductive Health Alliance, Submission No. 121, p. S 606

400 Department of Health and Family Services, Submission No. 137, p. S 883

401 Lloyd, Transcript of Evidence, 7 November 1997, p. 78

402 Edith Cowan University, Submission No. 157, p. S 1070

403 *ibid*, p. S 1071

404 *ibid*, pp. S 1068-9

405 Salmon Report, Queensland Health 1995 cited in Youth Affairs Network of Queensland, Submission No. 415, p. S 2487

406 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1884

407 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1820



Children should have access to clean water

Helena Redmond, 12 years, Rainworth State School

7.172 Very little work has been done in Australia in the area of the link between health needs and service delivery requirements other than the work carried out by the Menzies School of Health Research in 1995.⁴⁰⁸ Ms Jones expressed the concern that the provision of clean water and adequate nutrition and pre-natal maternal health care can reduce the incidence of disabilities and some communities in Australia do not have these services.⁴⁰⁹

7.173 Australia's Report also stated that hospitalisation ratios of Aboriginal children are higher than non-Aboriginal children for the treatment of diseases of the respiratory system, infectious diseases, injury and poisoning.⁴¹⁰ Dr Burns commented on the high level of morbidity in the children at the Maningrida region⁴¹¹ and added that foetal malnutrition and recurrent infections and malnutrition in early childhood can contribute to chronic lung disease, cardiovascular disease, diabetes and renal disease in adult life.⁴¹²

7.174 Significant health issues include chronic ear disease among Aboriginal children with otitis media, deafness and perforated eardrums occurring frequently⁴¹³ affecting 80 to 98 per cent of children in the Northern Territory's

408 Burns, Submission No. 405, p. S 2405

409 Jones, Transcript of Evidence, 5 August 1997, p. 1198

410 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 201

411 Burns C B (1995) *Feasibility study and service plan of Health Services as Maningrida*, Darwin Menzies School of Health Research cited in Burns, Submission No. 405, p. S 2405

412 Burns, Submission No. 405, p. S 2406

413 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 201

Aboriginal schools.⁴¹⁴ The Committee notes that the Australian Hearing Services will participate in the delivery of a \$5.7 million health initiative targeting 0-5 year olds over 3 years.⁴¹⁵

7.175 Other significant health problems include an increase in oral health problems such as dental caries,⁴¹⁶ Foetal Alcohol Syndrome⁴¹⁷ and a disproportionately high level of poor mental and emotional health, youth suicide and drug abuse, as symptomatic of the youth's psychological traumas.⁴¹⁸

7.176 It was submitted that the emotional and social dislocation which affects families and communities manifests itself in undiagnosed mental illness or emotional trauma due to a loss of cultural security.⁴¹⁹ There is illness, injury and disease which afflict Aboriginal children in the Northern Territory which can cause lasting disadvantage and become inter-generational.⁴²⁰

7.177 Petrol sniffing was also cited as a problem.⁴²¹ The reasons given for petrol sniffing included taking away hunger, the experience of invasion and alienation, powerlessness and marginalisation in a country that you do not have a part to play and as a result of boredom.⁴²² A lack of coordination of programs to address this situation has meant that the programs provided have had limited impact.⁴²³ Petrol sniffing may be effectively addressed by developing employment and skills training programs for young people as well as encouraging, empowering and supporting Aboriginal decision making bodies, and individuals, to address these issues.⁴²⁴

7.178 Not many doctors are able to offer psychological services to Aboriginal people because of the cross-cultural problems.⁴²⁵ The National Aboriginal and Torres Strait Islander Emotional and Social Well Being (Mental Health) Action

414 Central Land Council, Submission No. 399, p. S 2234

415 Department of Health and Family Services, Submission No. 137, p. S 884

416 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 201

417 *ibid*, p. 202

418 World Vision Australia, Submission No. 135, p. S 815

419 Warden, Transcript of Evidence, 14 August 1997, p. 1519

420 *ibid*

421 *ibid*

422 Wright, Transcript of Evidence, 6 November 1997, p. 38; Bowden, Transcript of Evidence, 7 November 1997, p. 72; Lloyd, Transcript of Evidence, 7 November 1997, p. 80

423 Lloyd, Transcript of Evidence, 7 November 1997, p. 83

424 Burns, Submission No. 405, p. S 2408

425 Warden, Transcript of Evidence, 14 August 1997, p. 1521

Plan was developed to enhance the capacity of community controlled health services to respond to mental health needs.⁴²⁶

7.179 It was suggested that most illness in the Aboriginal communities is caused by poverty which combined with the education and health problems existing in these communities, have a serious impact on enjoyment of rights for these children in Australia.⁴²⁷

7.180 Tonti-Filippini *et al* also referred to Article 24.3 the Convention which asserts that States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children that may have implications for some Aboriginal initiation rites.⁴²⁸

7.181 In relation to the issue of the health of Indigenous children, there is a need for greater coordination of and accessibility to services. The Committee supports the focus on primary health care and the efforts being made in relation to the provision of quality water and the improvement of hygiene standards in some of these communities. We also support the move towards greater participation of Aboriginal communities in the provision of these services.

Youth Suicide

7.182 The United Nations Committee on the Rights of the Child expressed concern about the lack of effective measures to reduce the suicide rate among young people.⁴²⁹ There are a number of steps outlined in Australia's Report including funding to investigate the causes behind youth suicide, establish suicide awareness programs and train health professionals, particularly in rural and remote areas.⁴³⁰ In October 1995 the Suicide Reduction Strategy was introduced and continue to 1999.⁴³¹

7.183 In Australia, the youth suicide rate for 15 to 24 year olds is 16.7 per 100 000 and this is the fourth highest of the 24 countries surveyed by the World

426 Department of Health and Family Services, Submission No. 137, p. S 885

427 Warden, Transcript of Evidence, 14 August 1997, p. 1519

428 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1275

429 Committee on the Rights of the Child Fifth Session, Pre-sessional Working Group, 27-31 January 1997, *Implementation of the Convention on the Rights of the Child, List of issues to be taken up in connection with the consideration of the initial report of Australia* (CRC/C/8/Add.31), p. 4; United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR 403-405), 24-25 September 1997, p. 3

430 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 208

431 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1915

Health Organisation.⁴³² Youth suicide is particularly prevalent in rural areas and amongst Aboriginal young people.⁴³³ In relation to the increased rate of youth suicides, chronic unemployment, poverty, lack of opportunity and services, the impact of drought and poor commodity prices, family stress due to financial hardship, access to firearms, and inadequate mental health and counselling services all contribute to this tragic situation.⁴³⁴

7.184 The House of Representative Standing Committee on Community Affairs released a report on *Aspects of Youth Suicide* which addresses these issues therefore this will not be dealt with in detail in this Report.⁴³⁵

7.185 It was submitted that most adolescents who suicide have asked for help first.⁴³⁶ Of particular concern to the Committee were reports that it can take up to one month to obtain urgent counselling services for suicidal children.⁴³⁷ Non-urgent appointments in urban areas can take six to eight months in urban areas and in rural areas 14 to 18 months.⁴³⁸

7.186 The Committee will look forward to the 1999 evaluation of the Suicide Reduction Strategy as a basis for further direction and hopefully a report of substantial improvement. Of particular concern, however, are the long waiting lists of young people wishing to receive treatment when they are categorised as suicidal.

432 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1821

433 Defence for Children International Australia, *op cit*, p. 23

434 *ibid*, p. 24; Human Rights and Equal Opportunity Commission (1993) *Human Rights and Mental Illness: Report on the National Inquiry into the Human Rights of People with Mental Illness*, Volume 2, p 639

435 House of Representative Standing Committee on Community Affairs, *Aspects of Youth Suicide, Summary Report*, May 1997

436 Falk, Transcript of Evidence, 9 May 1997, p. 389

437 Olafsen, Transcript of Evidence, 4 July 1997, p. 758

438 *ibid*, p. 759

Disabled Children

7.187 In Australia one in twenty children between the ages of five and fourteen have a disability and 10-15 per cent of adolescents suffer from mental health problems.⁴³⁹ The Human Rights and Equal Opportunity Commission submitted that some children with disabilities have difficulty in accessing government services, may experience far greater levels of state intervention, are over-represented in the care and protection system⁴⁴⁰ and in the juvenile justice area, and children with psychiatric, language or learning difficulties may be more likely to come to the adverse notice of the police.⁴⁴¹

7.188 Concern was expressed at the impact of the reduced funding accountability of programs which previously provided equipment and policy changes for issuing equipment to disabled children.⁴⁴² The proposed new Commonwealth State Disability Agreement includes more comprehensive reporting by all parties on outcomes being achieved for people with disabilities, including children.⁴⁴³

7.189 There was also concern raised at the limited national coordination and planning of services for children with disabilities and the lack of national data about the incidence of children with disabilities.⁴⁴⁴ It was suggested that it is essential that children with low incidence disabilities should become the responsibility of the Federal Government in an attempt to attain standardisation between jurisdictions.⁴⁴⁵ Another issue raised by ACROD was the transferability of services interstate and intrastate and the possible exemption from the six percent efficiency dividend applied to many funding programs in the last budget where they relate to programs for children with disabilities.⁴⁴⁶

439 Boss P, Edwards S and Pitman S (1995) *Profile on Young Australian* Churchill Livingstone Melbourne and House of Representatives Standing Committee on Community Affairs *Report on Aspects of Youth Homelessness*, AGPS Canberra, 1995, pp. 300-4 cited in Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1884

440 Szwarc B (1992) *Changing Particular Care: A national survey on non-government care in Australia*, national Children's Bureau of Australia Notting Hill cited in Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1884

441 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1885

442 Bartl, Transcript of Evidence, 10 July 1997, p. 1059-60

443 Department of Health and Family Services, Submission No. 137, p. S 871

444 Swalwell, Transcript of Evidence, 9 July 1997, p. 818

445 The Advisory Council for Children with Impaired Hearing (Victoria), Submission No. 28, p. S 173

446 ACROD, Submission No. 40, p. S 228; Braithwaite, Transcript of Evidence, 29 April 1997, p. 149

7.190 It was submitted that in Victoria the average funding level (which is already inadequate) has declined and continues to do so.⁴⁴⁷ In Victoria young people with intellectual disabilities have a right to secure services and register as service recipients.⁴⁴⁸ For example, the reduction in 'sheltered workshops' means significant social deprivation for many of these young people.⁴⁴⁹ ACROD gave the example that in Victoria, organisations providing services restrict information on services available because their resources do not cope adequately with existing clients and others in need were unable to access the resources available.⁴⁵⁰

7.191 The view was given that there was a need for user friendly services for NESB and Aboriginal children.⁴⁵¹ While the move to family-centred practices based on family priorities and family cultural style and preferences has been shown to be an effective approach, it is also important for children with disabilities to be included in the community including activities such as participation in child care.⁴⁵²

7.192 ACROD suggested that there are a number of principles which should be considered in the provision of services including: being relevant to individual circumstances; universally available; adequately resourced; pro-active in terms of identification and provision; transferable from one location to another; timely; and must coordinate with other services⁴⁵³

7.193 It was submitted that the Commonwealth/State Disability Agreement (CSDA) ignores the needs and priorities of children and young people, other than in relation to employment while there are inadequate arrangements for therapy services and for the provision of equipment.⁴⁵⁴ There are no effective arrangements in place to deal with time-critical and crucial decisions faced by young people with disabilities such as at the start of the academic year.⁴⁵⁵ ACROD believed that the Home and Community Care Program reference to

447 ACROD, Submission No. 40, p. S 229

448 Black, Transcript of Evidence, 29 April 1997, p. 152

449 Braithwaite, Transcript of Evidence, 29 April 1997, p. 155

450 ACROD, Submission No. 40, p. S 229

451 Swalwell, Transcript of Evidence, 9 July 1997, p. 819

452 Moore, Transcript of Evidence, 9 July 1997, p. 820

453 ACROD, Submission No. 40, p. S 227

454 *ibid*, pp. S 231-2

455 *ibid*, p. 231

'frail aged and younger people with disabilities' specifically disadvantages families with a disabled child and relegates them to the bottom of priorities.⁴⁵⁶

7.194 Over the last decade as a result of the debate on children's rights there has been some significant improvement in the opportunities provided for disabled children in some jurisdictions, such as children with intellectual disabilities who were previously institutionalised who can now access an education, family life, a caring environment and the community in South Australia.⁴⁵⁷

Access in rural areas

7.195 Thirty two percent of Australia's population live outside urban areas.⁴⁵⁸ Not withstanding the additional costs of providing services to isolated communities, funding levels are provided on the same basis as urban areas.⁴⁵⁹ Mobile resource units are sometimes used in areas where the population base is not sufficient to establish services.⁴⁶⁰ Further, it was submitted that the service system is fragmented and does not provide a coherent and consistent approach across States and Territories.⁴⁶¹ There are areas where there is good service development, but there are very many rural areas and growth corridors where there is limited service availability.⁴⁶²

Accommodation

7.196 The NGOs claimed that the accommodation assistance referred to in Australia's Report is the exception rather than the rule and cited examples of severely disabled young people being accommodated in aged persons nursing homes and hostels.⁴⁶³ At 30 June 1995, 79 young people of 20 years of age and under were housed in aged persons' nursing homes, with 23 of them being between the ages of 0-5 years.⁴⁶⁴ A 14 year old with mild intellectual disability was being kept in an adult psychiatric unit for nine months although he had no

456 *ibid*, p. S 232

457 Les, Transcript of Evidence, 4 July 1997, p. 687

458 Kingwill, Transcript of Evidence, 9 May 1997, p. 448

459 *ibid*, p. 449

460 *ibid*

461 Swalwell, Transcript of Evidence, 9 July 1997, p. 818

462 *ibid*, p. 823

463 Defence for Children International Australia, *op cit*, p. 24; ACROD, Submission No. 40, p. S 231

464 ACROD, Submission No. 40, p. S 231

diagnosed psychiatric disorder.⁴⁶⁵ There are also people 25 years old who have been in nursing homes for 20 years.⁴⁶⁶ There is a program in the ACT to move disabled children and young people from nursing homes to special community homes, however, this process should also to be pursued nationally.⁴⁶⁷ ACROD believed that regulatory measures are required to prevent inappropriate admissions including specialist residential care and support for young people with high support needs.⁴⁶⁸

7.197 The Committee received a number of submissions relating to the options or lack of options for the care and development of disabled children.⁴⁶⁹ It was also submitted made that some hospitals are very poorly designed for young children with disabilities.⁴⁷⁰ It was suggested that any facility treating or admitting paediatric patients should be child friendly to reduce stress for the child and the importance of play in the child's recovery is undervalued.⁴⁷¹

Early intervention

7.198 Considerable evidence was received in relation to the need for early intervention, because of the limited access of children with disabilities to mainstream children's services.⁴⁷² It was submitted that early intervention for disadvantaged children and their families can be a sound economic investment with taxpayers as the primary beneficiaries.⁴⁷³ ACROD gave the example that in Victoria, there are significant numbers of children with developmental difficulties, either not identified, or on waiting lists with only limited bridging support. ACROD argued that this reduced the effectiveness of early intervention which was dependent on timing.⁴⁷⁴

465 Youth Advocacy Centre Inc, Supplementary Submission No. 14a, p. S 1036

466 Black, Transcript of Evidence, 29 April 1997, p. 151

467 Braithwaite, Transcript of Evidence, 29 April 1997, p. 150

468 ACROD, Submission No. 40, p. S 231

469 Coldwell, Submission No. 2, p. S 4

470 Swalwell, Transcript of Evidence, 9 July 1997, p. 821

471 Australian Association of the Welfare of Child Health Inc, Submission No. 412, p. S 2462

472 For example, ACROD, Submission No. 40, p. S 224

473 Miesels and Shonkoff (eds) (1990) *Economic costs and benefits of early intervention*, Cambridge University Press

474 ACROD, Submission No. 40, p. S 229

7.199 Disabled children should have access to quality childcare.⁴⁷⁵ The Commonwealth Government's supplementary funding that supports children's inclusion in preschool caters for only the highest-needs children. It was submitted that in Victoria about 0.5 of a per cent of children actually get funding, in terms of special needs assistance aids, for about half of their time in preschools which means that even these children either do not access the preschool for half of the time, or their families need to find the additional support that is required.⁴⁷⁶

7.200 It was suggested that a lot of resourcing issues need to be addressed: early intervention services are underserviced, under-resourced and only reach a very small percentage of children who need them.⁴⁷⁷ Without early intervention, their eventual level of disability will be greater.⁴⁷⁸

Support for families

7.201 Article 23.3 of the Convention refers to 'free of charge' care for disabled children and it was submitted that this aspect has not received adequate attention.⁴⁷⁹ The Child Disability Allowance aims to provide extra financial assistance for families with children with disabilities who require extra care and attention. It seeks to encourage family rather than institutional care and is not means tested.⁴⁸⁰ There was concern in relation to the lack of access to support until the child is six months old and to changes to the designated disabilities criteria.⁴⁸¹ Concern was expressed about the Federal Government proposal to change the allocation of the child disability allowance in July 1998 in relation to a child's eligibility for a child health care card, for the child disability allowance or for both.⁴⁸²

475 Swalwell, Transcript of Evidence, 9 July 1997, p. 821; The Wallis report (Supplementary Services (SUPS) Program Evaluation - Final report April 1994, page 8) reports that 'Based on the 1992 Census of Child Care Services and ABS data, children with additional needs were less than half as likely to be using mainstream child care as children with no additional needs.' The review of services in NSW demonstrates that there is an inadequate range of respite and family-based services available for children with disability. Foster care or shared care is almost non-existent.

476 Swalwell, Transcript of Evidence, 9 July 1997, p. 821

477 Jones, Transcript of Evidence, 5 August 1997, p. 1198

478 ACROD, Submission No. 40, p. S 228

479 Catholic Women's League Archdiocese of Canberra and Goulburn Inc, Submission No. 86, p. S 415

480 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 180; Department of Social Security, Submission No. 132, p. S 735

481 Swalwell, Transcript of Evidence, 9 July 1997, p. 822

482 *ibid*

7.202 The Committee was told that children are often removed from families not for reasons of abuse or neglect but because of the lack of alternative options for the families.⁴⁸³ It was submitted that Australia's history of children in institutions was one of isolation, segregation, institutionalisation, abuse, neglect and denial of human rights.⁴⁸⁴

This is clearly evidenced in the *Criminal Justice Report* (1995) in Basil Stafford Centre, the *Lachlan Report* (1995), into a centre in North Ryde, the Community Services Commissions Report into *Large Residential Centres for People With Disabilities in New South Wales*, the Ramsey Report into Marsden and Rydlemere Centres, and investigations at Peat Island, Kew Cottages, Stockton, Riverside, Grosvenor, Barringa, Challinor Centre, Maryborough Disabled Persons Ward and others.⁴⁸⁵

7.203 There are wide gaps in service provision for children and young people with mild intellectual disabilities.⁴⁸⁶ Some families do not want their child taken to respite care and may prefer home support.⁴⁸⁷ The Queensland Parents of People with a Disability commented that in Australia, families are still torn apart in an attempt to care for children with disabilities. Instead of providing appropriate levels of individualised support at home to allow families to stay together, the system 'targets, isolates and discriminates against children and disabilities' despite a history of abuse, neglect and other misconduct in Australian institutions.⁴⁸⁸

7.204 The Children's Interests Bureau Board South Australia cautioned that the alternative accommodation and community support programs have not met the needs of the deinstitutionalisation initiatives and that an:

... increasing number of young people with intellectual disabilities, severe brain damage or mental health problems are being accommodated in licensed supported residential facilities (boarding houses, hostels, rest homes) or in unlicensed boarding houses. These facilities are filling a vacuum created by the de-institutionalisation programs; they are variable in quality, with some establishing high standards of care but others being unwilling or unable to provide the standard of care and specialised services required.⁴⁸⁹

483 Queensland Parents of People with a Disability, Submission No. 369, p. S 2094

484 *ibid*, p. S 2094

485 *ibid*, pp. S 2094-5

486 Youth Affairs Network of Queensland, Submission No. 415, p. S 2487

487 Seymour, Transcript of Evidence, 6 August 1997, p. 1353

488 Queensland Parents of People with a Disability, Submission No. 369, p. S 2093

489 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1822

7.205 The Catholic Commission for Justice, Development and Peace commented that deinstitutionalisation without the necessary community support or resources seriously impacts on families and young persons with a mental illness if they are unable to access psychiatric services as they approach the acute phase.⁴⁹⁰

Attitudes to children with disabilities

7.206 Concern was expressed that a disabled child was seen as being different requiring special, extraordinary treatment rather than a person with feelings, aspirations, ordinary needs and rights which are lost when they are placed away from others in a 'manufactured life'.⁴⁹¹ Some professionals viewed disabled children as less valuable members of the community.⁴⁹²

7.207 The Ethnic Child Care, Family and Community Services Cooperative supported policies such as the *Disability Services Act 1991*, *Disability Discrimination Act 1992* and the State and Territory disability agreements but added that they do not specifically deal with children.⁴⁹³ The 1996-97 Federal Budget allocated funding for 1000 new employment places for people with disabilities.⁴⁹⁴ Under the Commonwealth *Disability Services Act 1991*, the Commonwealth is really only responsible for employment and the other services are in State and Territory jurisdictions.⁴⁹⁵

7.208 Queensland Parents of People with a Disability believed that the Commonwealth Government is sending a negative message as there are inadequacies in the Commonwealth *Disability Discrimination Act 1992* and some aspects the *Migration Act 1958* which imply that people with disabilities are less valuable than other citizens.⁴⁹⁶ They commented that:

the impact of disability on the attitudes towards a newborn child and the abuses which occur as a result of medical devaluation of the worth of the child; the lack of appropriate supports to families, making vulnerable children more vulnerable and resulting in the current rate of approximately 30 per cent

490 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1372

491 Queensland Parents of People with a Disability, Submission No. 369, p. S 2095

492 Seymour, Transcript of Evidence, 6 August 1997, p. 1350

493 Germanos-Koutsounadis, Transcript of Evidence, 9 May 1997, p. 371; Black, Transcript of Evidence, 29 April 1997, p. 160

494 Department of Health and Family Services, Submission No. 137, p. S 885

495 Braithwaite, Transcript of Evidence, 29 April 1997, p. 155

496 Queensland Parents of People with a Disability, Submission No. 369, p. S 2096

of children who are child protection clients being children with disabilities; the legacy of abuse resulting from institutionalising children as the first and often the only option, without other supports being available; the exclusion of children with disabilities and their families from becoming residents of Australia, and the devalued images which this allowable discrimination portrays; the continued linking of resources to systems of support which can segregate children on the basis of their disability, with particular emphasis on the education system; and disability as the last bastion of rights abuses.⁴⁹⁷

7.209 Ms Jones noted that some children with disabilities have been denied an education and may be living in substandard accommodation. There are also reports of sexual abuse of children with disabilities in and out of institutions, communication aids available to adults are not always available to children and the sterilisation of young girls with disabilities for no reason other than the existence of a disability.⁴⁹⁸

7.210 The Australian African Children's Aid and Supports Association Inc submitted that children who are disabled in some countries do not always receive a high level of care and are available for international adoption but are not accepted as eligible immigrants to Australia even if the disability may be minor or repairable.⁴⁹⁹

Opportunities for disabled children

7.211 There are still significant obstacles put in place for those families trying to get disabled children into mainstream education and this will be discussed in more detail in section on education. Contact Inc made the comment that children with disabilities are often disadvantaged by not being able to access either early childhood services or out of school hours programs because additional funding is needed to cope with their extra needs.⁵⁰⁰ They added that governments must recognise that children with a disability are children first with the same rights to play, education and access to services as all other children.⁵⁰¹ There is also often inadequate respite care provided to families with children with disabilities thus carers become stressed and these children are potentially 'at risk of abuse'.⁵⁰²

497 Dyke, Transcript of Evidence, 6 August 1997, p. 1348

498 Jones, Transcript of Evidence, 5 August 1997, p. 1198

499 The Australian African Children's Aid and Supports Association Inc, Submission No. 36, p. S 203

500 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, pp. S 672-3

501 Contact Inc, Submission No. 75, p. S 378

502 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 673

7.212 The Ethnic Child Care, Family and Community Services Co-operative Ltd also expressed concern at the inadequacy of the post-school options and employment programs for young people with disabilities particularly for those with high support needs and at a socio-economic disadvantage and cannot buy services in the present user pay climate.⁵⁰³ Further, they believed that services for NESB and ATSI young people with disabilities were not culturally, linguistically or ethnically sensitive enabling these groups to access appropriate services.⁵⁰⁴

7.213 The Committee notes that there has also been some significant improvement in the capacity for young people with disabilities to access other services and programs which could enable them to stay with their family. In some areas there has also been improvement in access to mainstream education but this has not been universal.

7.214 In particular the Committee is concerned, however, with the lack of support and opportunities for some disabled children. We heard of situations where support was not forthcoming and other examples of where schools had welcomed disabled students and gone to a great deal of effort to ensure their integration. There are also still problems in access to the necessary learning devices and equipment and this needs to be addressed as a matter of urgency. Severely disabled children are a separate issue again and their needs should be given special priority.

7.215 Of particular concern is the lack of access to early intervention treatment, childcare and out of school care and in some jurisdictions respite care. There is also an ongoing concern relating to the abuse of children in institutions. Further, the attitude and capacity of some professionals also needs addressing and additional training provided to ensure they are able to meet the needs of disadvantaged children in a culturally sensitive manner.

Mental health

7.216 Australia is signatory to the United Nations *Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care* and with the *Mental Health Statement of Rights and Responsibilities* provide guidance for Australia's legislation.⁵⁰⁵ As part of the National Mental Health Strategy there is a move to greater national consistency and Australian Health

503 *ibid*

504 *ibid*

505 Department of Health and Family Services, Submission No. 137, p. S 873

Minister's Advisory Council National Mental Health Working Group have developed a model mental health legislation.⁵⁰⁶ The Government has commissioned the development of a Rights Analysis Instrument which will evaluate the extent to which current mental health legislation complies with UN principles and to assess the likely impact of proposed new legislation or amendments on the human rights of people of all ages with mental illness.⁵⁰⁷ The National Mental Health Strategy includes \$200 million funding over four years and will be evaluated in 1998 to determine future directions.⁵⁰⁸ The Federal Government has allocated \$500-600 million to mental health services.⁵⁰⁹

7.217 Funding has been provided for mental health research and to conduct a Community Awareness Program designed to raise awareness of mental illness, reduce stigma and discrimination and promote mental health in the community.⁵¹⁰ Action for Children commented that there is no integrated national data about the mental health status of young Australians.⁵¹¹ Action for Children added that it is estimated 10 to 15 per cent of young people up to 18 years of age suffer from mental health problems.⁵¹² Early detection and intervention into emotional and behavioural disorders and family problems can reduce the high social and financial costs with adult mental health difficulties.⁵¹³

7.218 The Human Rights and Equal Opportunity Commission conducted a national *Inquiry into the Human Rights of People with Mental Illness* which found that 16 000 young Australian were affected by mental illness.⁵¹⁴ The 1993 report found that there was a lack of adequate services in most areas and access to them was limited although a number of programs are underway:

However, the overwhelming picture is one of inadequate funding, inadequate provision of facilities, inadequate staffing, inadequate training of health and other workers, inadequate inpatient care, inadequate community and home based care, inadequate co-ordination between agencies, inadequate

506 *ibid*

507 *ibid*

508 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1914

509 Burdekin, Transcript of Evidence, 5 August 1997, p. 1287

510 *Australia's Report under the Convention on the Rights of the Child*, December 1995, p. 207

511 Action for Children, Supplementary Submission No. 387a, p. S 3419

512 Australian Bureau of Statistics, *Causes of Death, Australia* 1995, ABS Cat. 3303.0, p. 108 cited in Action for Children, Supplementary Submission No. 387a, p. S 3419

513 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1821

514 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1912

knowledge, inadequate research, inadequate data collection and inadequate commitment to the establishment of prevention and intervention services.⁵¹⁵

7.219 HREOC expressed particular concern about these deficiencies for Aboriginal and Torres Strait Islander young people, NESB young people and those with dual or multiple disabilities and the tragic consequences of these omissions.⁵¹⁶ It was submitted that the mental health services for Indigenous children are inadequate and there is a need for counselling and other services to cope with the trauma and grief associated with family loss and separation, cultural bereavement, domestic violence and socio-economic disadvantage.⁵¹⁷

7.220 The National Association of Practising Psychiatrists suggested that emotional difficulties in childhood can impede normal development and problems can represent additional cost in community resources.⁵¹⁸ They argued that the Medicare funding changes (Item 319) in 1996 adversely effected young people who require long-term psychiatric treatment as they no longer receive the most appropriate treatment thus contravening the Convention.⁵¹⁹ These new Medicare arrangements also adversely affect the frequency with which depressed mothers can be treated which also impacts on the child.⁵²⁰

7.221 Many of our homeless young people were psychiatrically disturbed or mentally ill which reflects a lack of early intervention and prevention.⁵²¹ It was suggested that young people with a mental illness, a psychiatric disability, or with dual and multiple disabilities were repeatedly rejected or marginalised by the legal and health systems so that their rights were either ignored or openly violated.⁵²² In many rural and isolated areas there are either few or no services for young people with a disability. It was submitted that many young people who commit suicide because the detoxification or drug and alcohol units do not deal with the mentally ill because that is a psychiatric problem; while the psychiatrists do not deal with substance abusers either.⁵²³

515 Human Rights and Equal Opportunity Commission (1993) *Human Rights and Mental Illness: Report of the National Inquiry into the Human Rights of People with mental Illness* Volume 2, p. 647

516 *ibid*

517 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1916

518 National Association of Practising Psychiatrists, Submission No. 54, p. S 288

519 Halasz, Submission No. 50, p. S 273; National Association of Practising Psychiatrists, Submission No. 54, p. S 288

520 National Association of Practising Psychiatrists, Submission No. 54, p. S 291

521 Burdekin, Transcript of Evidence, 5 August 1997, p. 1284

522 *ibid*, p. 1283

523 *ibid*, p. 1285

7.222 Mr Burdekin added that there is not equal opportunity in education for children with disabilities or for those who need psychiatric care and many young people with a psychiatric disability end up in gaol. There are significant financial costs in incarcerating young people as well as the costs in terms of their lives.⁵²⁴

7.223 Very few professionals have a good understanding of the specific issues of children in care in relation to mental health and more work needs to be done in the child's environment rather than office situations.⁵²⁵ Lutheran Community Care believed there should be better training of professionals in areas of separation, grief and loss, attachment and bonding and identity issues.⁵²⁶

Sterilisation of disabled children

7.224 There have been 1200 minors who have undergone hysterectomies and sterilisations in Australia since 1992 of which only 20 have had formal approval by the Family Court.⁵²⁷ The Family Law Council believed that sterilisation should only be permitted where there is a serious danger to the child's physical or psychological health.⁵²⁸

... notwithstanding the 'best interests of the child' approach endorsed by the majority of Justices of the High Court in *Marion's Case* and in *P v P*, commentators have observed, with growing alarm, the frequency with which applications to the Family Court for authorisation to sterilise young women have been granted.⁵²⁹

7.225 It was submitted that there needs to be a formal principle or rule to protect disabled children from invasive, non-therapeutic medical interventions as sterilisation is one of the most severe medical intrusions which can be performed upon a person.⁵³⁰ The comment was made that such a procedure does not protect a person from sexual abuse or anything except pregnancy.⁵³¹

524 *ibid*, p. 1286

525 Morrison, Transcript of Evidence, 4 July 1997, p. 718

526 *ibid*

527 Australian Catholic Bishops Conference, Submission No. 174, p. S 1164

528 Family Law Council, Submission No. 178, p. S 1196

529 Australian Catholic Bishops Conference, Submission No. 174, p. S 1164

530 *ibid*, p. S 1165

531 Australian Catholic Bishops Conference, Submission to the Family Law Council *Sterilisation and other Medical Procedures on Children*, March 1994, p. 1

7.226 The Family Law Council argued that in relation to the applications for medical procedures before the court that the large amount of money may be better spent on support for the families of children with disabilities.⁵³² Research in Queensland found that when parents were offered other options such as respite care, or education training strategies for the child that parents did not go back to the Family Court or to the Guardianship Board to request sterilisation.⁵³³ Ms Jones submitted that in relation to children with disabilities a lot of the issues considered conflicts between the rights of the parents and children relate to parents being unable to cope and there needs to be mechanisms to enable solutions that respect everybody's rights.⁵³⁴

Other health - related matters

Pre-natal and post-natal health care

7.227 A number of countries have placed reservations on or made declarations to Article 24 in relation to the methods of family planning and protection of the unborn child.⁵³⁵ China, France, Luxembourg and Tunisia have made reservations or declarations to Article 6(2) which requires States Parties ensure to the maximum extent possible the survival and development of the child in relation to family planning and the voluntary termination of pregnancy.⁵³⁶

7.228 It was submitted that although Article 24 of the Convention requires appropriate pre-natal and post-natal health care for mothers, there is now no provision to treat mothers adequately in the post-natal period and that also affects children.⁵³⁷ The Central Land Council also identified non-availability of culturally appropriate pre-natal and post-natal health care for Aboriginal women in rural areas as a contributing factor in infant mortality.⁵³⁸

7.229 NESB Youth Issues Network also referred to the lack of culturally or linguistically appropriate pre-natal and post-natal support and the fact that no interpreters were available in hospitals to young women who speak languages

532 Boland, Transcript of Evidence, 5 August 1997, p. 1275

533 Jones, Transcript of Evidence, 5 August 1997, p. 1201

534 *ibid*, p. 1202

535 *The Convention on the Rights of the Child* http://www.un.org/depts/treaty/fi...wfiles/part_boo/iv_11.html

536 *ibid*

537 Falk, Transcript of Evidence, 9 May 1997, p. 384

538 Central Land Council, Submission No. 399, p. S 2233

other than English.⁵³⁹ However, Queensland Health is redeveloping Child Health Services emphasising primary health care, pre-natal and post-natal health care for mothers and improved health promotion services targeting families.⁵⁴⁰ There was concern at the diminishing number of child health centres and reduction in funding for Aboriginal antenatal clinics.⁵⁴¹

Access to health care by young people

7.230 There were a number of factors affecting access to health care. Many young people do not realise they can access medical advice without parental consent.⁵⁴² In relation to child psychiatry, the legal status of the child is one of a minor and so all children are dependent on their parents or guardians giving permission for treatment.⁵⁴³

Article 24 of the CRC [Convention] recognises the child's right to health care services but makes no mention of the role of parents in deciding what is appropriate care for a child. The CRC refers to "appropriate measures", "necessary medical assistance" and "appropriate care for expectant mothers" but ignores the complex issue of the authority of parents in relation to consent to medical decisions for their children.⁵⁴⁴

7.231 There are also gaps in relation to the provision of mental health strategies for children, particularly for children who are homeless and have trouble accessing generalist services.⁵⁴⁵ It was suggested that difference in treatment may not be the result of difference in mental health strategies but differences in resourcing levels and the levels of access to facilities.⁵⁴⁶

7.232 Lutheran Community Care also commented that in the case of a child moving from a birth family to a care family the health, dental and child care services are means tested on the care giver and subsidised services are not available until the child is of school age.⁵⁴⁷

539 NESB Youth Issues Network, Submission No. 194, p. S 1333

540 Premier of Queensland, Submission No. 144, p. S 954

541 Balnaves, Transcript of Evidence, 29 April 1997, p. 200

542 Youth Advocacy Centre Inc, Supplementary Submission No. 14a, p. S 1036

543 Halasz, Transcript of Evidence, 9 May 1997, p. 382

544 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1275

545 Curran, Transcript of Evidence, 9 July 1997, p. 884

546 Jones, Transcript of Evidence, 5 August 1997, p. 1201

547 Lutheran Community Care, Submission No. 61, p. S 314

7.233 There is also a trend to reduce health services such as vision screening in the New South Wales school health system.⁵⁴⁸ These services can identify ocular problems that may cause permanent visual loss, interfere with learning, or indicate serious systemic disease such as cancer or diabetes which parents and teachers may not be able to detect and there are costs involved in having children tested privately.⁵⁴⁹ Screening programs are important because some vision problems cannot be improved after 8 years of age.⁵⁵⁰ The cost to the community of having someone with blindness is substantial and this may be avoidable.⁵⁵¹

Female genital mutilation

7.234 There was considerable opposition expressed to female genital mutilation (FGM)⁵⁵² Female genital mutilation is so physically damaging to children, it is therefore a different category to male circumcision.⁵⁵³ The United Nations Committee on the Rights of the Child expressed concern about the continued practice of female genital mutilation in some communities and that some Australian States do not have legislation prohibiting the practice.⁵⁵⁴ In Australia's culturally diverse community, the legitimacy of this practice poses certain problems. The importance of acknowledging and valuing the traditions

548 Orthoptic Association of Australia Inc, Submission No. 17, p. S 67

549 *ibid*, p. S 68; Silveira, Transcript of Evidence, 9 May 1997, p. 393; Wilcox, Transcript of Evidence, 9 May 1997, p. 396

550 Silveira, Transcript of Evidence, 9 May 1997, p. 397

551 Wozniak, Transcript of Evidence, 9 May 1997, p. 394

552 De Lissa Institute of Early Childhood and Family Studies, Submission No. 146, p. S 3725; Briggs, Transcript of Evidence, 4 July 1997, p. 785

553 Rayner, Transcript of Evidence, 29 September 1997, p. 1558

554 United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR 403-405), 24-25 September 1997, pp. 3, 5

and beliefs of other cultures must be balanced against the incompatible of non-consensual mutilation of the genitalia of young girls as a principle of the individual's right to bodily integrity.⁵⁵⁵

7.235 Some scholars have attempted to justify this practice in international law terms by referring to notions of cultural relativity, in that different cultures interpret the same provisions of a Convention in a manner consistent with their cultural background.⁵⁵⁶ This has been repudiated by some western international lawyers even though the Convention gives some support to notions of cultural relativity.⁵⁵⁷

7.236 The Independent Islamic Sisterhood Inc welcomed the banning of female genital mutilation which they explained was not an Islamic practice, it was cultural and has been practiced by African tribes, Christians and Jews.⁵⁵⁸ Nonetheless, inappropriate media reporting has resulted in Muslims being persecuted in Australia.⁵⁵⁹

7.237 The Independent Islamic Sisterhood believed that education is the most effective weapon against cultural practices and that this should include families intending to migrate to Australia as well as those already here who hold this belief but the legislation must be enforced to deter this practice.⁵⁶⁰

7.238 The introduction of legislation prohibiting female genital mutilation was agreed by the Standing Committee of Attorneys'-General in 1994. Most States and Territories already have legislation banning female genital mutilation. Education about the significant associated health hazards is also needed.⁵⁶¹ The national education program is aimed at the affected communities and workers in the health and welfare systems.⁵⁶² The Department of Health and Family

555 Swain M (1996) *Female Genital Mutilation An Update* NSW Parliamentary Library Research Service, Briefing Paper No 1/1996, p. 20

556 Kaye, Transcript of Evidence, 4 August 1997, p. 1083

557 *ibid*

558 Mustapha, Transcript of Evidence, 6 August 1997, p. 1327

559 *ibid*, p. 1329

560 Independent Islamic Sisterhood submission to the Queensland Law Reform Commission on Draft Report No. 42 on *Female Genital Mutilation*, July 1994, p. 2

561 Doran, Transcript of Evidence, 28 April 1997, p. 63; Queensland, Tasmania and Western Australia have not yet expressly banned female genital mutilation - National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 18

562 Attorney-General's Department, Submission No. 133, p. S 783

Services stated that Western Australia is still considering the proposal and Queensland have legislated an offence of torture which would cover female genital mutilation.⁵⁶³

Circumcision

7.239 A number of submissions objected to the practice of male circumcision.⁵⁶⁴ The grounds for rejecting this procedure included that it is performed without the consent of the child and without anaesthesia.⁵⁶⁵ It was submitted that circumcision was a non-therapeutic, invasive and an irreversible operation which contravenes Articles 24(3) and 43(3) of the Convention.⁵⁶⁶ At one end of the spectrum, the suggestion was made that circumcision constitutes criminal behaviour.⁵⁶⁷ Mr King argued that:

It appears that circumcision may help reduce the risk of many life threatening diseases eg AIDS and some other STDs as well as various other infections. According to the Australian College of Paediatrics Standing Committee on Perinatal Medicine, which has recently reviewed it's previous anti-circumcision stance have said that "it would be wrong either to claim that there are definite health benefits or to deny that they exist" ... To see parents and doctors facing potential lawsuits for doing what they believe is in the best interests of the child is absurd.⁵⁶⁸

7.240 Muslim parents have their male children circumcised in infancy as a religious binding obligation to have the child circumcised before puberty and, therefore, it was suggested that the practice cannot be discontinued.⁵⁶⁹

563 Department of Health and Family Services, Supplementary Submission No. 137a, p. S 2363

564 De Lissa Institute of Early Childhood and Family Studies, Submission No. 146, p. S 3725; Mather, Submission No. 6, p. S 19; Ford, Submission No. 7, p. S 22; Briggs, Transcript of Evidence, 4 July 1997, p. 785

565 Mather, Submission No. 6, p. S 19; *ibid*, Supplementary Submission No. 6b, p. S 1395; Ford, Submission No. 7, p. S 22

566 Mather, Submission No. 6, p. S 19; NOCIRC, Submission No. 12, p. S 45

567 Mather, Supplementary Submission No. 6a, p. S 1391; Letter from J N Turner to Mr Mather, dated 6 September 1995, p. 1; NOCIRC, Submission No. 12, p. S 46

568 King, Supplementary Submission No. 159a, p. S 3389

569 Independent Islamic Sisterhood Inc submission to the Queensland Law Reform Commission research paper on *Infant Male Circumcision*, December 1993, p. 1

Artificial reproductive technology

7.241 Only three States have legislated in relation to reproductive technology notwithstanding the recommendation by the National Health and Medical Research Council to do this. In March 1997, Justice Alastair Nicholson alleged that it was the responsibility of politicians as law-makers to make the decisions arising from new reproductive technologies not the courts.⁵⁷⁰

7.242 Similar concerns were raised in relation to the Commonwealth's funding of Artificial Reproductive Technologies on the basis that international human rights covenants protect all members of the human family including the unborn.⁵⁷¹ Tonti-Filippini *et al* commented that Articles 6-9, 11, 14, 16, 18-20, 22-25, 27, 32, 35-37 and 39 of the Convention describe rights which can be violated by decisions made before birth and that legislation is needed. This has occurred in Victoria, Western Australia and South Australia to protect the unborn child from damage through reproductive technology.⁵⁷² They added that reproductive technology has made children so vulnerable, in the laboratory they are exposed to risks and because of the possible permutations and combinations for parenthood.⁵⁷³

7.243 The Caroline Chisholm Centre for Health Ethics believed that because the Preamble of the Convention refers to protection of the child before as well as after birth, the law should protect the dignity of human life by banning reproductive methods that unduly risk harm to human embryos or that the resulting children should not be trafficked as products of technology.⁵⁷⁴

7.244 Tonti-Filippini *et al* also expressed the view that with the States' legislation being held to be in conflict with the Commonwealth discrimination legislation, that the State's legal restrictions relating to access to reproductive technology has been overturned. They argued that this permits unmarried couples with no commitment to each other or to the nurture of children and same sex couples and single persons to access this technology.⁵⁷⁵ They added that the anti-discrimination principles should not be the only consideration in

570 Haslem B, 'MPs 'duck' birth ethics', *The Australian* 14 March 1997, p. 3

571 Krohn, Transcript of Evidence, 9 July 1997, p. 835

572 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1280

573 *ibid*

574 Ford, Transcript of Evidence, 9 July 1997, pp. 843-4

575 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1283

the area of family formation by technical assistance.⁵⁷⁶ They suggested that the discrimination legislation needed to be amended to accommodate the principle of paramountcy of the child's best interests as embodied in the Convention and that the Federal Government has the Constitutional means to do so.⁵⁷⁷ It was also submitted that Articles 3, 7 and 18 of the Convention state that a child should, as far as possible, know and be cared for by his or her parents.

7.245 The Committee is concerned that the existence of Commonwealth legislation that is in conflict with the Victorian *Infertility (Medical Procedures) Act 1984*, the South Australia *Reproductive Technology Act 1988* and the Western Australian *Human Reproductive Technology Act 1991* may deter other States and the Territories from introducing legislation that will protect children and ensure that those using this technology will consider the best interests of the child.

7.246 Further, the Caroline Chisholm Centre for Health Ethics called for the banning of destructive non-therapeutic embryo research, cloning and the use of foetal gametes to form an embryo or to achieve a pregnancy.⁵⁷⁸ In relation to donor gametes, the Centre stated that:

While we recognise the disappointment that infertility can impose on couples, we feel that the rights of the child to know and be cared for by his or her parents (Article 7) and to preserve his or her identity, including name and family relations (Article 8), should rule out the possibility of using donor gametes. The distress that adopted children have felt in the past at not knowing their genetic relations is an example of this. By the use of donor gametes children are deliberately conceived with the knowledge they will grow up for many years deprived of the right to the knowledge, love and support of their genetic parents.⁵⁷⁹

Immunisation

7.247 Immunisation rates across Australia are lower than some of the lowest in the third world including India and Bangladesh.⁵⁸⁰ Immunisation rates vary between States and Territories, between socioeconomic groups and between ethnic groups and immunisation rates for Indigenous children are particularly

576 *ibid*, p. S 1284

577 *ibid*

578 Caroline Chisholm Centre for Health Ethics, Submission No. 66, p. S 335

579 *ibid*, p. S 336

580 Phillips, Transcript of Evidence, 9 May 1997, p. 434

poor.⁵⁸¹ Only 54 per cent of children under the age of 6 are fully immunised and death from preventable diseases like whooping cough is still occurring at an unacceptably high rate.⁵⁸²

7.248 The National Childhood Immunisation program provides funding allowing access to free vaccines, collection of data on immunisation coverage, educational activities and the establishment of a research centre.⁵⁸³ A national strategy to lift immunisation rates was announced in February 1997 which contained financial incentives, education and research initiatives and monitoring and evaluation programs.⁵⁸⁴ The Committee supports the Government's initiatives in the area.

Breast feeding

7.249 The Australian Lactation Consultants Association commented that an important aspect of the right to enjoy the 'highest attainable standard of health' is the support for mothers who are breast feeding.⁵⁸⁵ The Association expressed concern at the lack of provision of suitable work environments for mothers who are breast feeding to express milk as required in the ILO Convention of 1919, the unrealistically short period of paid maternity leave, the need for an additional six month unpaid leave as an option, and the inadvertent promotion of bottle feeding as the norm by the media.⁵⁸⁶

Social security

Independent social security benefits

7.250 The eligibility and identity requirements for independent social security benefits and the waiting periods applied mean that some young people are

581 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1911

582 *ibid*

583 Department of Health and Family Services, Submission No. 137, p. S 887

584 Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1911-2

585 Australian Lactation Consultants Association, Submission No. 186, p. S 1249

586 *ibid*, p. S 1251

unable to obtain social security support which it was submitted, breaches Articles 26 and 27.⁵⁸⁷ The Youth Advocacy Centre commented that:

The Social Security system is a very complex system, and doubly so for young people who find it very difficult to ascertain their entitlements. It is also the case that a child under 18 who applies for a benefit may be referred to the Department of Families, Youth and Community Care with or without their agreement, contrary to Articles 3 and 12.

A child is unable to be the recipient of child support payments - which could, in fact avoid the necessity for them to apply for a social security benefit.⁵⁸⁸

Common Youth Allowance

7.251 The Youth Allowance was designed to simplify income support for young people and maximise incentives for education and training. An additional \$212 million has been allocated over the next four with an 153 750 young people receiving more money.⁵⁸⁹ It was also acknowledged that 12 800 young people will receive no payment as a result of the parents' means tests and 1600 young people will also not receive income support as they will not seek work, return to study or training.⁵⁹⁰

7.252 Youth Affairs Network of Queensland believed that the abolition of income support for 16 and 17 year olds who are not in training or education is backward progress in compliance with the Convention.⁵⁹¹ It was submitted that the introduction of the Common Youth Allowance may mean that children are dependent on their families until the age of 21 which may cause financial hardship.⁵⁹² The Tasmanian Aboriginal Centre Inc added that funding changes to the Youth Program have resulted in a lack of support services for youths at risk.⁵⁹³

At a time of life when young people are needing to establish their independence, we are extending their dependent child status. We are

587 National Children's Bureau of Australia (1993) *Where rights are wronged: A critique of Australia's compliance with the Convention on the Rights of the Child*, p. 38 cited in Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1905-6

588 Youth Advocacy Centre Inc Supplementary, Submission No. 14a, p. S 1036

589 Senator Jocelyn Newman, Minister for Social Security, *News Release 'Youth Allowance'*, 12 March 1998, p. 1

590 Senator Jocelyn Newman, Minister for Social Security, *News Release 'Labor to Young Australians: 'You're Better off on the dole'*, 9 March 1998, p. 2

591 Youth Affairs Network of Queensland, Submission No. 415, p. S 2485

592 Tasmanian Aboriginal Centre Inc, Submission No. 647, p. S 3240

593 *ibid*, p. S 3241

potentially denying them the financial means to establish their independence, yet we have failed to provide them with jobs. We need to be sure that we are not starting a trend where young people will need to get pregnant or married to get access to income support, or live on the streets or offend to escape family or financial difficulties.⁵⁹⁴

7.253 The Common Youth Allowance payments are made to parents or guardians with no guarantee that the child has access to the money, while the child appears to be legally responsible for debt incurred.⁵⁹⁵ It was suggested that there was little incentive for parent in conflict with the young person to be honest if the child applied for the homeless allowance because this would mean a loss of income for the parent.⁵⁹⁶

7.254 The income support system for young people is frequently inadequate and presents significant barriers to many who try to gain legitimate access to it while Government policies and assistance have increasingly been based on assumptions that parents should take more financial responsibility for their children.⁵⁹⁷ It was submitted that young people are reluctant to pursue income support applications if they are required to be deemed at risk.⁵⁹⁸ It was suggested that this is a more serious problem than the minority of young people who falsely claim social security payments.⁵⁹⁹

7.255 It was suggested that amendments to social security arrangements now mean that 14 to 16 year Aboriginal males who are men in Aboriginal traditional law and do not live with their families will be denied access to social security.⁶⁰⁰ The Common Youth Allowance was designed to assist children at school but this is inappropriate for Aboriginal children who have never been to school and do not have a school that will take them.⁶⁰¹

7.256 It was also suggested that Aboriginal children cannot access social security because social workers consider they have extended family.⁶⁰² Whether Aboriginal children receive this Allowance depends on a sympathetic

594 Les, Transcript of Evidence, 4 July 1997, p. 684

595 Baker, Transcript of Evidence, 6 November 1997, p. 49; Simpson, Transcript of Evidence, 7 November 1997, p. 62

596 Baker, Transcript of Evidence, 6 November 1997, p. 49

597 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1820

598 *ibid*

599 *ibid*

600 Holder, Transcript of Evidence, 6 November 1997, pp. 19, 31

601 Wright, Transcript of Evidence, 6 November 1997, p. 39

602 *ibid*

and culturally sensitive officer. Many Aboriginal young people are incapable of completing forms and understanding complex regulations and many move too frequently to fulfil the notification of address requirements.⁶⁰³ The suspension of Job Search, Newstart and Youth training allowances for administrative breaches did not take into account Aboriginal children's commitments to ceremony or other cultural business.⁶⁰⁴

7.257 Mainstream youth services are often unaware that NESB young people need their support as they do not access these services because of service barriers such as a lack of information in community languages, lack of cross-cultural youth work skills within mainstream services and racism from some Anglo-Australian focused services etc.⁶⁰⁵

Standard of living

7.258 The *Universal Declaration on Human Rights* (Article 25.1) and the *International Covenant on Economic, Social and Cultural Rights* (Article 12) also guarantee the resources for health and well being as does the *Convention on the Rights of the Child*. Over the last 20 years there have been improvements in family payments, eligibility, greater targeting, greater integration of different family payments, directing of payments to the parent who cares for the child, increased assistance to sole parents, provision of social security rather than improving the personal income tax system and more options for those seeking paid employment.⁶⁰⁶

7.259 The Department of Social Security provides means tested social security to 2 million Australian families with dependent children representing some 80 per cent of families with dependent children under 16.⁶⁰⁷ It is estimated that there will be an outlay of \$12.03 billion which is 2.3 per cent of the Gross Domestic Product.⁶⁰⁸

7.260 Assistance to families is provided through a range of benefits including: the Family Payment; Double Orphan Pension; Family Tax Payment; Maternity Allowance; Parenting Allowance; Sole Parent Pension; The Jobs, Education

603 Central Land Council, Submission No. 399, p. S 2244

604 *ibid*

605 NESB Youth Issues Network, Submission No. 194, p. S 1334

606 Department of Social Security, Submission No. 132, p. S 738

607 *ibid*

608 *ibid*

and Training Program; Child Support Scheme; Childcare Assistance; Child Disability Allowance, Youth Training Allowance, Disability Support Pension, Carer Pension; and the personal income tax system by way of the Sole Parent Rebate and the Dependent Spouse Rebate.⁶⁰⁹

7.261 Notwithstanding these benefits, a study in Melbourne showed that there were heavy relative losses in average social wage incomes when the impact of the 1996-7 Budget on sole parents and their children.⁶¹⁰ The Women's Action Alliance congratulated the Government on the family tax initiative although they would like to see some changes.⁶¹¹

Child poverty

7.262 The Luxembourg Income Study Poverty Line showed that in Australia 50 per cent of children in solo-mother families live below the poverty line.⁶¹² In relation to the incidence of child poverty, Australia was rated second behind the United States in the industrialised world.⁶¹³ There has been a significant increase in payments to low income families in terms of enhancement in payments and an extension of the coverage of payments.⁶¹⁴ A recent study showed that one third of children throughout Melbourne lived in chronically poor families.⁶¹⁵

609 *ibid*, pp. S 739-744

610 Melbourne Institute of Applied Economic Research and Social Research and the National Institute of Economic and Industry Research (1997) *Evaluation of the Distributional Impact on Australian Households of the Package of Measures Contained in the 1996-7 Budget (March 1997) Impact*, cited in Defence for Children International, Submission No. 120, p. S 594

611 Smit, Transcript of Evidence, 9 July 1997, p. 943

612 UNICEF, *Progress of Nations*, United Kingdom, 1996 p. 44 cited in World Vision Australia, Submission No. 135, p. S 807

613 Australian Catholic Social Welfare Commission, Submission No. 124, p. S 657; Action for Children, Supplementary Submission No. 387a, p. S 3419

614 Stanton, Transcript of Evidence, 28 April, p. 62

615 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1367 citing a Monash Centre for Population and Urban Research, 2 June 1997 study



Each child should have suitable food

Greg Midgley, 10 years, Raquel Redmond Art for Children, Brisbane

7.263 Indigenous people are the most disadvantaged in Australia on any social indicator such as health, housing, education, income or contact with the criminal justice system.⁶¹⁶ In Central Australia in 1994, 50.3 per cent of the population were not of working age and therefore could be considered dependent. This coupled with low incomes and overcrowding in Aboriginal communities is a major concern.⁶¹⁷

Youth unemployment

7.264 The Committee will not address this issue in detail as it has been dealt with in the report of the House of Representatives Standing Committee on Employment, Education and Training, *Youth Unemployment: A working solution*, tabled in September 1997. That report recommended a number of measures in relation to employment programs, education, vocational training, careers guidance, training and wages.⁶¹⁸

Most problems affecting young people, particularly unemployment, have persisted over many years and through the tenures of successive State and Federal governments of different political persuasions. Those most adversely affected are from the most disadvantaged sections of the community, including

616 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1883

617 Central Land Council, Submission No. 399, p. S 2234

618 House of Representatives Standing Committee on Employment, Education and Training, *Youth Unemployment: A working solution*, September 1997.

some significant pockets of rural youth, but the parameters seem to be growing almost exponentially without effective response.⁶¹⁹

7.265 The Children's Interests Bureau Board South Australia commented that State governments rely on the macroeconomy or statistical data interpretation. The focus is on equipping young people with basic vocational competencies and work experience rather than addressing the dearth of employment opportunities.⁶²⁰

7.266 There was particular concern in relation to the situation of Aboriginal young people. It was stated that the cuts to Abstudy will make it particularly difficult for Aborigines, as will the 10 per cent cuts to local government strategies for employment of Indigenous Australians.⁶²¹ The closure of CES offices requires many people travel some distance to the CES office or its replacement.⁶²² Newstart Allowance penalties that apply if the recipient moves to an area where their employment opportunities are reduced may place significant burdens on Aboriginal families as it is important for Aborigines to participate in cultural activities and social events.⁶²³

The Committee's views

7.267 The Committee will look forward to the 1999 evaluation of the Suicide Reduction Strategy as a basis for further direction and hopefully a report of substantial improvement. Of particular concern, however, are the long waiting lists of young people wishing to receive treatment when they are categorised as suicidal.

7.268 It was suggested that there needs to be formal protection for disabled children from invasive, non-therapeutic medical interventions such as sterilisation which does not protect a person from sexual abuse or anything except pregnancy. The Committee was concerned at reports that disabled children may be sterilised in situations where this could be avoided if there was sufficient support for the families of the children with disabilities.⁶²⁴

619 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1819

620 *ibid*, pp. S 1819-20

621 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1373

622 Balnaves, Transcript of Evidence, 29 April 1997, p. 200

623 Tasmanian Aboriginal Centre Inc, Submission No. 647, p. S 3238

624 Boland, Transcript of Evidence, 5 August 1997, p. 1275

Recommendation 39

The Joint Standing Committee on Treaties recommends that the Government investigate the adequacy of support programs providing alternatives for parents contemplating the sterilisation of children with disabilities.

7.269 The Committee is concerned that Commonwealth legislation is in conflict with the Victorian *Infertility (Medical Procedures) Act 1984*, the South Australia *Reproductive Technology Act 1988* and the Western Australian *Reproductive Technology Act 1991*. This may deter other States and the Territories from introducing legislation that will protect children and ensure that those using this technology will consider the best interests of the child.

7.270 The Committee also received evidence that Aboriginal children cannot access social security because social workers consider they have extended family; many are incapable of completing forms and understanding complex regulations; and many move too frequently to fulfil the notification of address requirements. Further it was suggested that the Youth Allowance will mean that 14 to 16 year Aboriginal males who are men in Aboriginal traditional law and do not live with their families will be denied access to social security. The Common Youth Allowance is inappropriate for Aboriginal children who have never been to school and do not have a school that will take them.

Recommendation 40

The Joint Standing Committee on Treaties recommends that the Minister for Social Security review the eligibility criteria for the Common Youth Allowance to ensure that Indigenous young people have access to appropriate support.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education including vocational training and guidance

7.271 The Convention promotes free primary school education. While primary and secondary public schools in Australia do not charge compulsory fees, many students are required to pay for particular subjects, the use of materials, and activities or facilities. Fees collected may include general fees, voluntary fees, contribution to Parents and Citizens Associations, summer and winter uniforms, school camps, excursions, summer and winter sports programs, text books, photocopying and paper, photos, computer disks, assignments, attending

concerts and entertainment, travel, elective subjects, fundraising items and miscellaneous costs.⁶²⁵ The Smith Family expressed its concern at the cost of education citing one example of \$2000 being sought for photography or hospitality subjects.⁶²⁶ It provided 3500 families with scholarships to meet educational costs and they expect this to increase to 20 000 families in the future.⁶²⁷

7.272 The New South Wales Federation of School Community Organisation commented that there appears to be an increasing reliance on parental funds to supplement funds provided by the education authorities and student choices are often limited by their parents' financial circumstances and thus impacting on the most vulnerable in the community.⁶²⁸ It was submitted that many children could not participate in the full range of educational experiences with 62 per cent unable to afford computer discs, 50 per cent could not participate in school camps, 24 per cent could not afford sporting activities and 15 per cent could not afford school excursions.⁶²⁹

7.273 Despite policies which explicitly preclude practices which humiliate students of families who are unable to pay voluntary contributions, HREOC reported that in many cases considerable pressure is brought to bear on families.⁶³⁰ Students who did not pay their fees were threatened with withholding the child's marks, a debt collector, court action or students were severely embarrassed by being seated in a special row, denied the use of books or marked absent which meant that Austudy or Abstudy payments were affected.⁶³¹

7.274 Many families are compelled to pay 'voluntary school levies' leaving little money for food, electricity and other essentials.⁶³² Even students on 'school card' who are exempt from these charges often exceeded their allowance resulting in them missing excursions or being required to pay the extra money.

625 Orr E (1997) *Free education - Who can afford it?* Social Issues Series Paper No. 7, A Smith Family Publication, pp. 6-8

626 Orr, Transcript of Evidence, 9 May 1997, p. 440 see also NSW Federation of Parents and Citizens Associations, 1995 *Parental Contributions Survey Report* cited in Orr E *op cit*

627 Orr, Transcript of Evidence, 9 May 1997, p. 440 see also Senate Employment Education and Training Reference Committee *Not a Level Playing Field - Private and Commercial Funding in Government Schools*, 1997, pp. 13-16

628 Lonnon, Transcript of Evidence, 5 August 1997, p. 1240

629 Orr E, *op cit*, p. 4

630 Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1908-9

631 Orr E, *op cit*, pp. 6, 9; Human Rights and Equal Opportunity Commission, Submission No. 336, pp. S 1908-9

632 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1371

For low income families without a school card and with a number of children at school these charges are a heavy burden even on a 'time payment' basis. It was submitted that such pressures result in extra stress for parents and consequently lower tolerance and patience in managing children's behaviour and abuse may result.⁶³³

7.275 The NGOs were concerned at the decline in relative spending on education in Australia and the inequities between schools.⁶³⁴ States and Territories budget decisions resulting in the closure of some schools will impact most severely on Indigenous, non-English speaking and poor families.⁶³⁵ Ballarat Children's Homes and Family Services Inc believed that:

the cutbacks to the welfare programs within schools develops even more elitist schools where the disadvantaged and vulnerable are excluded and seek their compensation in drugs and homelessness.⁶³⁶

7.276 NESB Youth Issues Network submitted that access to education for NESB young people depends on their English language skills.⁶³⁷ Headmasters have the discretion to decide whether children of NESB and Aboriginal backgrounds have their language and culture provided in the education system.⁶³⁸ It was suggested that NESB young people may truant themselves and eventually be excluded from schools if they cannot keep pace with other students. The Network believed that more funding must be allocated to the development of English language skills to effectively address this problem.⁶³⁹

Educational opportunities for disabled children

7.277 There were 74 315 children with disabilities in Australian schools in 1995.⁶⁴⁰ The Special Learning Needs Programme offers financial support to

633 Smith, Submission No. 117, p. S 566

634 Defence for Children International Australia, *op cit*, p. 25

635 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1910

636 Ballarat Children's Homes and Family Services Inc, Submission No. 162, p. S 1094

637 NESB Youth Issues Network, Submission No. 194, p. S 1334

638 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 676

639 NESB Youth Issues Network, Submission No. 194, p. S 1335

640 Department of Employment, Education, Training and Youth Affairs cited in Bartl, Submission No. 59, p. S 304

improve the educational participation and outcomes of children with disabilities including the additional costs of integrating students into mainstream education.⁶⁴¹

7.278 It was submitted that there were still significant barriers for families trying to enrol disabled children into mainstream education.⁶⁴² Families often have to fight to enable their children to attend mainstream schools with their siblings and friends and that special schools focus on the child's disability rather than on the social and educational outcome for the young people.⁶⁴³ The lack of integration of children with disabilities into the mainstream education services often related to a lack of allocated resources which denied them opportunities available to other children.⁶⁴⁴ In some jurisdictions the support given for the inclusion of special needs children was totally inadequate.⁶⁴⁵ It was suggested that there was a lack of resources in all areas of education with little or no teacher training which did not uphold the rights or the special needs of the child.⁶⁴⁶ Queensland Parents of People with a Disability believed that children with disabilities who were denied enrolment to mainstream education or provided with inadequate resources represented a generation of Australians who were denied their rights to develop to their fullest potential.⁶⁴⁷

7.279 There are still problems in cases where children with disabilities have been able to access mainstream education. For example, there has been a reduction in access to quality braille education for blind and vision impaired children.⁶⁴⁸ The National Federation of Blind Citizens of Australia expressed the concern that teachers are not receiving adequate training in braille and therefore children are not acquiring proficiency in braille and literacy and are directed to reading by cassette or computer.⁶⁴⁹

7.280 The Head Injury Council of Australia also expressed concern that the Australian education system is not providing adequate or appropriate support to

641 Department of Employment, Education, Training and Youth Affairs, Submission No. 111, p. S 633

642 Seymour, Transcript of Evidence, 6 August 1997, p. 1357

643 Queensland Parents of People with a Disability, Submission No. 369, p. S 2096; see also Bartl, Transcript of Evidence, 10 July 1997, p. 1057

644 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 672

645 Early Childhood Teachers Association, Submission No. 353, p. S 2021

646 *ibid*, pp. S 2021-2

647 Queensland Parents of People with a Disability, Submission No. 369, p. S 2097

648 National Federation of Blind Citizens of Australia, Submission No. 347, p. S 1997

649 *ibid*

the estimated 78 000 children with acquired brain injury.⁶⁵⁰ Where successful collaboration between the health and education sectors occurs the school re-entry was more likely to be a positive experience but it was submitted that these procedures were more the exception than the rule.⁶⁵¹ The Council added that many children with acquired brain injury are not recognised by the education system as potentially requiring special educational, social and emotional support.⁶⁵²

7.281 In some jurisdictions, if a child attends a non-government school, the school has to purchase the visiting teacher service from the Department of Education and this may limit the choice of school for the student.⁶⁵³ It was suggested that this may contravene Article 28 of the Convention which requires equal opportunity of access to education, Article 23 which relates to a disabled child's right to a full life and Article 13 in relation to the media of the child's choice.⁶⁵⁴

7.282 Jones and Marks were also concerned at the failure of State education systems to adequately cater for children with disabilities.⁶⁵⁵ They added that in Victoria, adults were able to access government funding to acquire communication aids such as hearing aides, communication boards and technical devices, while children were unable to do so, thus affecting their rights to education under Articles 28 and 29 and was in breach of Article 23.⁶⁵⁶ Mr Bartl considered that the support for children with disabilities in Australian schools is manifestly inadequate.⁶⁵⁷

7.283 The Report *Disability Discrimination in Schools* stressed the right of children with disabilities to equal access and opportunity as other children.⁶⁵⁸ Section 22(2) of the Commonwealth *Disability Discrimination Act 1992* states that it is unlawful for an educational authority to discriminate against a student on the ground of the student's disability.

650 Head Injury Council of Australia, Submission No. 398, p. S 2227

651 *ibid*, p. S 2228

652 *ibid*

653 National Federation of Blind Citizens of Australia, Submission No. 347, p. S 1998

654 *ibid*, p. S 1999

655 Jones and Marks, Submission No. 91, p. S 442

656 *ibid*

657 Bartl, Submission No. 59, p. S 304

658 Flynn C (1997) *Disability Discrimination in Schools*, National Children's and Youth Law Centre, April 1997

7.284 The Report found evidence of 'highly prevalent' discrimination against children with disabilities in schools despite the existence of legislation making this unlawful.⁶⁵⁹ There was blatant discrimination by refusing enrolment or allowing partial enrolment with conditions because of a lack of resources or an unwillingness to meet the child's needs.⁶⁶⁰ After enrolment there were deficiencies in the personal support needs, participation and belonging, discriminatory attitudes of staff, school ground bullying and other parent's attitudes which impacted on children with disabilities.⁶⁶¹

For parents who complained to the school, the outcome was negative for the large majority of them. The students were discriminated against or forced to leave school as a result ... There was particular concern about the difficulty in making formal complaints about pre-school education because the Department of School Education is not responsible for that sector.⁶⁶²

7.285 The research also found that senior education authorities supported inclusion policies for students with a disability although there was resistance from some individual principals.⁶⁶³ It was argued that that inclusion policies in schools are beneficial from both the economical and humane levels. Education is vital for equal opportunity to employment, which reduces social welfare dependence, and children with disabilities were entitled to the same dignity, self esteem and social networks that an education provided.⁶⁶⁴

7.286 It was submitted that reforms at the school level are needed in relation to staff training and student awareness, the handling of enrolment procedures, the acceptance and inclusion of disabled students, parent and staff communication and relationships possibly including interpreters, resource allocation and support needs.⁶⁶⁵ In relation to education authorities, it was suggested that there should be information available to staff, staff training, resource allocation and support, and communication between parents and authorities.⁶⁶⁶

7.287 It was also suggested that the definition of disability be changed in line with that recommended under the *Disability Discrimination Act 1992*, to ensure

659 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 28

660 *ibid*, p. 26

661 *ibid*, p. 27

662 *ibid*

663 *ibid*, p. 28

664 *ibid*

665 *ibid*, pp. 28-30

666 *ibid*, pp. 30-1

access to complaints mechanisms and additional resources.⁶⁶⁷ In relation to the Commonwealth Government, the National Children's and Youth Law Centre called for more funding, greater access to information and a Commonwealth ministerial advisory committee on disability and education.⁶⁶⁸ Mr Bartl requested greater accountability on the part of the States in the manner in which Commonwealth funds were allocated.⁶⁶⁹

7.288 The New South Wales Federation of School Community Organisations commented that in relation to children with developmental disabilities and learning difficulties, that education should be in the most normal setting feasible. They suggested that integration within the neighbourhood school should be the aim.⁶⁷⁰ They added that special schools should be retained where total integration into mainstream schools was not in the best interests of the child.⁶⁷¹ The Federation added that the Department of Education should be involved from the time of diagnosis of a problem and that individual programs should be planned for each child.⁶⁷²

Aboriginal and Torres Strait Islander children

7.289 The National Aboriginal and Torres Strait Islander Education Policy came into effect from January 1990 and establishes 21 long term goals in relation to involvement, access, participation and outcomes in education.⁶⁷³ The Department of Employment, Education, Training and Youth Affairs explained that the role of the Commonwealth included funding, policy development, national leadership and coordination in implementation of the policy.⁶⁷⁴

7.290 Concern was expressed that some Aboriginal children do not have access to education beyond primary school level and services for children with specific difficulties or disabilities are inadequate.⁶⁷⁵ Eleven per cent of Aboriginal and Torres Strait Islander children aged 15 years and over have never been to

667 *ibid*, pp. 31-2

668 *ibid*, p. 32

669 Bartl, Submission No. 59, p. S 306

670 NSW Federation of School Community Organisations, Submission No. 153, p. S 1020

671 *ibid*

672 *ibid*

673 Department of Employment, Education, Training and Youth Affairs, Submission No. 111, p. S 533

674 Prior, Transcript of Evidence, 28 April 1997, p. 73

675 Defence for Children International Australia, *op cit*, p. 25

school.⁶⁷⁶ An Indigenous child has only a 17 per cent chance of completing school to year 12, compared with a 70 per cent chance for other children.⁶⁷⁷ In addition, an Indigenous child has a one in eight chance of going to school between the ages of 5 and 9.⁶⁷⁸

The Royal Commission into Aboriginal Deaths in Custody found that the failure in the formal education system was a contributing factor in many of the cases of deaths in custody, and was partly responsible for the disproportionate representation of Aboriginal people in police and custodial facilities ... mainstream education systems had been either unable or unwilling to accommodate many of the values, attitudes, codes and institutions of Aboriginal society. The result was Aboriginal participation and achievement within the education system (as defined by the wider Australian society), had been limited and this limited the real choices available to Aboriginal people.⁶⁷⁹

7.291 The Central Land Council submitted that Aboriginal children in remote areas finish primary school with only year 2 to year 3 achievement levels and there is no evidence that any child from a rural Aboriginal school went through the government secondary system on an age-for-grade basis in the Northern Territory and matriculated.⁶⁸⁰

7.292 World Vision Australia suggested that greater access to correspondence schools for remote communities would foster their emotional and cultural growth as well as in the traditional areas like mathematics and English.⁶⁸¹ They also supported the establishment of indigenous schools in which Indigenous people design their own curriculum and guide the education of their children, as a way of enabling Indigenous students to better meet the post-school challenges.⁶⁸² Dr Burns added that the lack of educational attainment was a barrier to progress for Aboriginal people.⁶⁸³ The Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation also believed that a good education was a key factor for Aboriginal children.⁶⁸⁴

676 Save the Children Fund Australia, Submission No. 80, p. S 392

677 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1910

678 *ibid*

679 Tasmanian Aboriginal Centre Inc, Submission No. 647, pp. S 234-5

680 Central Land Council, Submission No. 399, pp. S 2234, 2237; see also Northern Territory Government, *Provision of School Education Services for Remote Aboriginal Communities in the Northern Territory*

681 World Vision Australia, Submission No. 135, p. S 820

682 *ibid*

683 Burns, Transcript of Evidence, 14 August 1997, p. 1506

684 Woods, Transcript of Evidence, 7 November 1997, p. 82

7.293 Aboriginal primary school children in Central Australia have very poor attendance records. All secondary schools in the Northern Territory are in urban areas while a sizeable portion of the Aboriginal population lives in remote areas.⁶⁸⁵ Aboriginal children from remote areas have access to only two boarding schools, however, these have long waiting lists and require an adequate level of primary education which most children do not have.⁶⁸⁶

7.294 In a number of areas in central Australia there is a need for appropriate education facilities for high school aged Aboriginal children.⁶⁸⁷ For example, the Detour project in Alice Springs is designed for unemployed early school leavers.⁶⁸⁸ English is not their first language and many have low literacy and numeracy levels. Many have had sporadic experience with schools even at the primary level and these young people need basic skills in a user-friendly and culturally appropriate way.⁶⁸⁹ It was suggested that access for these children meant offering a curriculum compatible with their cultural, emotional and social context and not imposing more alien culture.⁶⁹⁰ The Detour program involves the elders of the community who assist in reuniting of family groups and this offers an opportunity for Aboriginal elders to be valued in the education process.⁶⁹¹

7.295 It was suggested that six new mobile services could significantly increase the educational services available to remote Australia and that a computerised information network should be established to link the 30 existing mobile services.⁶⁹² In addition, it was submitted that an 18 per cent rural subsidy should be added for services in rural and remote areas.⁶⁹³ Another suggestion was that teacher training institutions should concentrate on a special awareness program to prepare teachers for living in remote areas and teaching Aboriginal children.⁶⁹⁴

7.296 Further, the existing system does not cater for Aboriginal languages, cultural commitments or environmental circumstances that especially affect

685 Holder, Transcript of Evidence, 6 November 1997, p. 19

686 Central Land Council, Submission No. 399, p. S 2242

687 Simpson, Transcript of Evidence, 7 November 1997, p. 58

688 *ibid*, p. 59

689 Bowden, Transcript of Evidence, 7 November 1997, p. 60

690 Simpson, Transcript of Evidence, 7 November 1997, p. 61

691 Bowden, Transcript of Evidence, 7 November 1997, p. 71

692 Jeremy, Submission No. 87, p. S 422

693 *ibid*

694 *ibid*, p. S 419

Aboriginal people such as illiteracy and poverty.⁶⁹⁵ The International Board on Books for Young People believed that the Government should encourage the writing, publishing, promotion and distribution of Aboriginal children's literature.⁶⁹⁶ The Edith Cowan University submitted that an education for some traditional groups of Aboriginal children must promote cultural identity, and maintain the home language and that bilingualism must be addressed.⁶⁹⁷ It was suggested that more resources were needed for sport and indigenous art, bilingual teaching and the rediscovery and teaching of traditional languages.⁶⁹⁸

7.297 Aboriginal children living in inadequate circumstances are ashamed to go to school.⁶⁹⁹ In Alice Springs many young people living in town camps were not participating in high school education with only two Aboriginal students completing high school in 1996.⁷⁰⁰

7.298 It was also submitted that Aboriginal children do not have adequate access to structured learning situations before preschool.⁷⁰¹ With Aboriginal children from birth to the age of five there is a strong link between care, education and health.⁷⁰² The Edith Cowan University believed that care and education should be provided as a continuous integrated service for children from birth to seventeen years.⁷⁰³

Child care and preschool programs if adequately planned can contribute to the achievement of more equitable educational outcomes for young Aboriginal and Torres Strait Islander children and this forms a strong foundation for future educational success and achievement.⁷⁰⁴ It must be noted, however, that good early childhood education should be accompanied by the provisions of other social services such as adequate housing, proper sanitation, basic health services and access to basic facilities such as power and transport.⁷⁰⁵

695 Central Land Council, Submission No. 399, p. S 2242

696 International Board on Books for Young People, Submission No. 110, p. S 530

697 Edith Cowan University, Submission No. 157, p. S 1063

698 World Vision Australia, Submission No. 135, p. S 820

699 Wright, Transcript of Evidence, 6 November 1997, p. 38

700 Simpson, Transcript of Evidence, 7 November 1997, pp. 59, 73

701 Edith Cowan University, Submission No. 157, p. S 1063

702 *ibid*, p. S 1056

703 *ibid*, p. S 1062

704 Toonan (1996) *Aboriginal preschools. The Effect of Aboriginal children's participation in Aboriginal preschools as four year olds on the children's development and educational outcomes in year one at primary school*. Unpublished masters dissertation, Edith Cowan University, Perth, cited in Edith Cowan University, Submission No. 157, p. S 1062

705 Edith Cowan University, Submission No. 157, p. S 1062

7.299 The comment was made that formal child care is not relevant to the Aboriginal culture.⁷⁰⁶ The Edith Cowan University commented that to be successful, a program needs to be contextually orientated and to reflect the values of the group therefore more research is needed to determine which programs are going to work for Aboriginal people.⁷⁰⁷

7.300 There were no cuts to the last Budget in terms of overall funding for schools and there were increases in terms of indigenous education.⁷⁰⁸ The Commonwealth Government has provided an additional \$10 million over 4 years to create an extra 600 pre-school places for Aboriginal and Torres Strait Islander children but it is not known to what extent these positions have been taken up and what proportion of Aboriginal and Torres Strait Islander children have access to education and child care services.⁷⁰⁹

Teaching of the Convention in schools

7.301 It was suggested that all children need to be educated about the Convention, about human rights generally and that information should be made available in a form appropriate to the age and maturity of the child, and in a language understood by the child.⁷¹⁰

7.302 The New South Wales Federation of School Community Organisation submitted that there is very little evidence that the Convention was included in teacher education programs or that teachers were aware of parts of the Convention.⁷¹¹ The National Children's and Youth Law Centre expressed their concern that the Convention held a marginal position in school curricula because those responsible had little knowledge of the obligations under the Convention. They suggested this highlighted the governments' failure to publicise its principles and provisions to the public.⁷¹²

7.303 Dr Piscitelli also expressed her concern that many schools do not formally teach children about their rights although it is included in the social studies curriculum in Queensland. She suggested the inclusion of the

706 McCarthy, Transcript of Evidence, 14 August 1997, p. 1494

707 Corrie, Transcript of Evidence, 3 July 1997, p. 574

708 Arthur, Transcript of Evidence, 28 April 1997, p. 70; Prior, Transcript of Evidence, 28 April 1997, p. 70

709 Edith Cowan University, Submission No. 157, pp. S 1062-3

710 Jones and Marks, Submission No. 91, p. S 443

711 Lonnon, Transcript of Evidence, 5 August 1997, p. 1240

712 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 101

Convention in relevant in-service education programs as this could lead to the teaching profession adopting a rights perspective in its teaching practice and curriculum.⁷¹³ The Queensland Board of Teacher Registration also recommended that teacher education programs should formally address social justice and human rights in their pre-service and in-service training.⁷¹⁴ A Queensland University of Technology study revealed that many teachers do not specifically teach children about human rights in their classrooms, nor do they reflect a human rights perspective in their classroom environments.⁷¹⁵ Ms Piscitelli suggested a review of teacher education programs to determine the extent to which information about the Convention was provided to professionals working with children.⁷¹⁶

7.304 The National Children's and Youth Law Centre found that:

While the Convention on the Rights of the Child receives limited recognition within most school curricula, the principles of equity, social justice and active citizenship which underlie all human rights treaties are clearly acknowledged in educational policies and the rhetoric surrounding them. This awareness is evident in the Common and Agreed National Goals for Schooling in Australia ... which were developed by the Australian Educational Council in 1989.⁷¹⁷

7.305 The Ethnic Child Care, Family and Community Services Co-operative supported the teaching of the Convention in schools for preschool and school aged children.⁷¹⁸ The inclusion of the Convention in school curriculum materials would need to be well thought out and teachers well versed in the subject matter.⁷¹⁹ Teaching children about their rights should include the responsibilities that are attendant upon those rights⁷²⁰ and include information being made available to the parents.⁷²¹

7.306 The Committee believes that there are many aspects of the *Convention on the Rights of the Child* that should be taught as part of a human rights curriculum but this must be in conjunction with the teaching of responsibilities

713 Piscitelli, Supplementary Submission No. 107a, p. S 1118

714 Queensland Board of Teacher Registration (1995) *Implications of Social Justice Issues for Teacher Education* cited in Piscitelli, Supplementary Submission No. 107a, p. S 1118

715 Piscitelli, Transcript of Evidence, 1 May 1997, pp. 322-3

716 *ibid*

717 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 99

718 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 665

719 Castell-McGregor, Transcript of Evidence, 4 July 1997, p. 703

720 Handshin, Transcript of Evidence, 4 July 1997, p. 712

721 Presbyterian Church of Queensland, Submission No. 376, p. S 2128

and appropriate information being made available to parents. A step forward would be to ensure that teachers are properly trained regarding Australia's obligations under the Convention.

7.307 Some parents expressed their concern that the inclusion of the Convention in school curricula would result in children seeing the Convention as empowering them to challenge the authority of parents as well as having the support of the school, legal aid and bodies such as the ombudsman in doing so.⁷²² Also, some teachers oppose educating students about their rights because they fear the loss of authority, however, it was noted that this should not be a problem if they educate children about their responsibilities at the same time.⁷²³ The concomitant responsibilities must be spelled out clearly for the whole community.⁷²⁴

Aims of education

7.308 The Ministerial Committee for Education, Employment, Training and Youth Affairs has established a task force to develop a set of nationally agreed benchmarks in literacy and numeracy and to inquire into the desirability of nationally agreed disability standards in education.⁷²⁵ It was submitted that currently many children do not fit the curriculum because they are developmentally delayed due to the effects of trauma and abuse or they have both academic and social problems and the education system cannot accommodate their needs and so they fall through the gaps in service provision.⁷²⁶

7.309 Lutheran Community Care commented that although there are negotiated curriculum plans for those below normal intelligence or three years behind, there are limited resources for those on a learning assistance program.⁷²⁷ The Smith Family believed that Australia's disadvantaged children are facing diminished opportunities in education with 60 per cent of the socially

722 Lawrence, Submission No. 329, p. S 1842

723 Lonnon, Transcript of Evidence, 5 August 1997, p. 1245

724 National Council of Women of Tasmania, Submission No. 52, p. S 282

725 Premier of Queensland, Submission No. 144, p. S 960

726 Morrison, Transcript of Evidence, 4 July 1997, p. 717

727 *ibid*

disadvantaged high school students already considered functionally illiterate compared to 10 - 20 per cent of the all students.⁷²⁸

7.310 It was suggested that there are other avenues available to teach children other than the formal education system. Dr Piscitelli referred to a study which concluded that children's potential to learn is almost unlimited, however, many parents do not support very young children's learning, particularly parents who have low self-esteem, poor vocabulary and limited educational experience.⁷²⁹ Parents may need assistance in learning how to interact effectively with their children in ways which will affect intelligence, increase curiosity, confidence and problem solving and that needs to be considered in relation to the child's right to develop to their full potential.⁷³⁰

7.311 Another avenue was suggested by the National Council of Women of the ACT in relation to the quality of children's TV programs as an additional education tool. The Council expressed their concern at the extent of violence, undesirable social models, the reliance on magical powers for success, the promotion of junk food, and the lack of 'social, spiritual and moral well being and physical and mental health' in criteria for production of these programs.⁷³¹

Access to alternative school models

7.312 There was concern that the wording of Article 28 does not acknowledge that education for many children can be best achieved outside the traditional education system.⁷³² Some suggested that Articles 28 and 29 provide an opportunity to undermine the curriculum, values and beliefs of non-government schools, parents and systems.⁷³³

7.313 Notwithstanding the requirement of Article 28 of the Convention that the Government encourage the development of different forms of secondary education, a number of submissions supporting home schooling expressed their concern that the wording of this Article does not make provision for home

728 Orr E (1994) *Australia's Literacy Challenge: The importance of education in breaking the poverty cycle for Australia's disadvantaged families*, The Smith Family, p. iii- iv

729 Piscitelli, Transcript of Evidence, 1 May 1997, p. 322

730 *ibid*

731 The National Council of Women of the ACT, Submission No. 35, p. S 195

732 Wells, Submission No. 172, p. S 1145-6

733 Parents and Friends' Federation of Western Australia Inc, Submission No. 145, p. S 963

schooling.⁷³⁴ Article 28 makes primary education compulsory and requires the State to take measures to encourage regular attendance at schools which they believed could remove the rights of parents to home school their children and could therefore disadvantage families in rural areas.⁷³⁵ The view was given that compulsory state education was 'mind control' and potentially divisive between parents and children if the children receive instruction in ideologies and philosophies contrary to their parents wishes.⁷³⁶ Tonti-Filippini *et al* commented that:

Article 28 of the CRC recognises a child's right to an education but gives no explicit role to the parents in relation to achieving the goal. Primary education is to be compulsory and free but no weight is given to the parents right to choose a form of education for their children which both meets the community's criteria for a social education and conforms to the parents own beliefs and convictions.⁷³⁷

7.314 It was suggested that a ban on home schooling would also contravene the *International Covenant on Civil and Political Rights* which grants parents the right to ensure the religious and moral education of their children and the *International Covenant on Economic, Social and Cultural Rights* which grants parents to right to choose freely an education for their children.⁷³⁸

7.315 The Committee does not believe that the wording of Article 28 does or should exclude the option of home schooling. As the Convention was ratified in 1990 and home schooling has not been banned in Australia it is unlikely that this potential consequence is likely to arise.

7.316 Another model was that exemplified by the School Without Walls (SWOW) and Boorobin schools. At both schools, the decisions on the operation of the schools were made by students and staff together, with no hierarchy.⁷³⁹ SWOW added that students rarely abused those rights and embraced the concept that others have rights as well.⁷⁴⁰ It was submitted that

734 Evans, Submission No. 193, p. S 1323; Jeunaway, Supplementary Submission No 211a, p. S 3737; Peirson Adolescent Support Service, Submission No. 128, p. S 706; Salt Shakers, Submission No. 129, p. S 717; Festival of Light, Submission No. 138, p. S 904; Lawrence, Submission No. 329, p. S 1841; Gullo, Submission No. 340, p. S 1963

735 Khor, Submission No. 623, p. S 3169

736 Matthews, Submission No. 272, p. S 1671

737 Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1276

738 Call to Australia, Submission No. 179, p. S 1212

739 Sheppard, Transcript of Evidence, 1 May 1997, p. 300

740 Connor, Transcript of Evidence, 16 June 1997, p. 488

with the closing of SWOW there are now no longer any choices in the Australian Capital Territory for students who can not afford or do not wish to participate in a private education.⁷⁴¹

7.317 The students capacity to achieve in this environment was demonstrated by the SWOW students who achieved the highest average TER mark in the Australian Capital Territory for 20 out of 24 years.⁷⁴² SWOW also had more university gold medallists than any other college in the ACT.⁷⁴³

7.318 In the ACT neither the *Education Act 1937* nor the *Schools Authority Act 1976* provide any legal rights to students.⁷⁴⁴ There is no legal precedent in Australia involving a school community challenging the decisions of their education department.⁷⁴⁵ SWOW were able to win a legal injunction preventing the closure of the school until a hearing could be held into their case and at that hearing the school would have relied heavily on the Convention to protect the rights of the students.⁷⁴⁶

7.319 The mother of a former student submitted that the fact the ACT Minister for Education made a decision to close a school without proper processes or accountability, which denied these children their right to complete their education without notice, was a breach of the Convention.⁷⁴⁷

7.320 Tonti-Filippini *et al* believed that:

There has been a shift in Government policy toward greater choice for parents in regard to education of children. Much still needs to be done to ensure that the primary right and responsibility of parents to determine the way in which children are educated is met. Choice of institution has increased, but it is also important to encourage the trend toward giving parents greater involvement in curriculum development.⁷⁴⁸

741 Shannon, Transcript of Evidence, 16 June 1997, p. 506

742 Connor, Transcript of Evidence, 16 June 1997, p. 489

743 *ibid*, p. 506

744 *ibid*, p. 487

745 *ibid*

746 *ibid*

747 Shannon, Transcript of Evidence, 16 June 1997, p. 494

748 Tonti-Filippin, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. S 1286

Discipline in schools

7.321 Cashmore *et al* define physical punishment as the use of physical force against a child by an older person in a position of authority or power over the child, as a means of punishing the child for unacceptable behaviour.⁷⁴⁹ They distinguished physical punishment and physical discipline on the basis that all children need discipline while it can be argued that physical punishment is neither the only or the most effective means of achieving this.⁷⁵⁰

7.322 The Attorney-General's Department did not believe that Article 37 precluded the use of corporal punishment in schools *per se*.⁷⁵¹ The Department added that:

The drafting history of the CROC indicates that the infliction of moderate and reasonable corporal punishment for breaches of discipline is not contrary to Article 28. The original draft of Article 28 contained a further sentence making clear that methods of punishment which were physically or mentally cruel or degrading were prohibited. This was deleted and the words 'in conformity with the present Convention' inserted to make it clear that the prohibition on cruel, inhuman or degrading treatment or punishment set out in Article 37(a) applied to the administration of discipline. But there was no understanding that corporal punishment *per se* was prohibited.⁷⁵²

7.323 Accordingly, the Department did not believe that Article 19 required Australia to legislate to ban all forms of physical punishment and that the use of physical punishment by parents was circumscribed by the prohibition in Article 37 on torture, cruel, inhuman or degrading treatment or punishment.⁷⁵³ Professor Kolosov commented that the Convention provides the minimum standard and while there is nothing in the Convention about corporal punishment, there are provisions that every child should be treated in a manner not contrary to their dignity.⁷⁵⁴ The physical integrity of the child is protected by the Convention and it depends on the interpretation and while some believe that slight smacking is admissible; others do not.⁷⁵⁵ He added that a study of

749 Cashmore J and de Haas N (1995) *Legal and Social Aspects of the Physical Punishment of Children*. Paper commissioned by the Department of Human Services and Health under the auspices of the National Child Protection Council, p. 3

750 *ibid*

751 Attorney-General's Department, Supplementary Submission No. 133a, pp. S 3368-9

752 *ibid*, p. S 3370

753 *ibid*, p. S 3371

754 Kolosov, Transcript of Evidence, 3 September 1997, p. 1526

755 *ibid*

800 cases in the United States concluded that even slight physical punishment was harmful to the future character of a person.⁷⁵⁶ He also commented that the members of the United Nations Committee on the Rights of the Child did not believe that corporal punishment should be part of the education of a child.⁷⁵⁷

7.324 Cashmore *et al* commented that statutory defences have a common notion of 'reasonableness' which it could be argued can accommodate changing standards and some local determination of what constitutes acceptable force compared to what is criminal assault.⁷⁵⁸ They added that for the defence to succeed, the intention must be to correct behaviour and the force must be 'reasonable and moderate'.⁷⁵⁹ They list the factors relevant to reasonable as: the nature of the misbehaviour; a proper and reasonable instrument; age; maturity and other physical characteristics of the child; location of the blows; the extent of the injury; and the culture.⁷⁶⁰

7.325 The Attorney-General's Department made the comment that:

The question of whether corporal punishment in school amounts to cruel, or other inhuman or degrading treatment or punishment may be found in the decisions of the European Commission of Human Rights and the judgements of the European Court of Human Rights. A recent example is the case of *Y v. United Kingdom* (1994) 17 EHRR 238 in which the applicant, a 15 year old school boy, claimed that the corporal punishment [that he] was subjected to amounted to degrading treatment within the meaning of Article 3 of the Convention. The boy was caned four times on the buttocks through his trousers by his headmaster using a hard thin cane. The corporal punishment was imposed as punishment for defacing a fellow pupil's file. The caning resulted in four 15 cm long by 1.23 cm wide wheals plus heavy bruising and swelling of both buttocks. The European Commission of Human Rights agreed that the level of force used and the injury and pain inflicted constituted a breach of Article 3.⁷⁶¹

7.326 The Department stated that previously the Commission had not found that moderate corporal punishment in schools constituted institutionalised violence of the kind which would be in breach of Article 3 but the decision related to the severity of the punishment and the manner and method of its

756 *ibid*

757 *ibid*, p. 1527

758 Cashmore J and de Haas N (1995) *Legal and Social Aspects of the Physical Punishment of Children*. Paper commissioned by the Department of Human Services and Health under the auspices of the National Child Protection Council, pp. 18-9

759 *ibid*, p. 20

760 *ibid*, p. 29

761 Attorney-General's Department, Supplementary Submission No. 133a, p. S 3369

execution and circumstances of the case. The Commission concluded that the injury to the boy was unacceptable whether inflicted by a parent or a teacher and that there was no pedagogical reason for using superior force.⁷⁶²

7.327 The Attorney-General's Department also commented that:

The reference to physical violence in Article 19 appears in the context of an obligation to protect children from abuse, neglect, maltreatment and exploitation. Article 19.1 uses the terms 'violence', 'injury' or 'abuse'; it does not refer to 'punishment' or 'discipline' although these terms have been used elsewhere in the Convention for example in Articles 28 and 40. The language of violence, injury and abuse connotes as unjustified and destructive violation of the child's physical or mental integrity or well being. By contrast the term 'punishment' or 'discipline' implies a justifiable chastisement.⁷⁶³

It was open to the drafters to use the terms 'punishment' or 'discipline' if they had intended that Article 19 was to require State parties to ban all forms of corporal punishment. It is clear from the *Travaux préparatoires* that there was no discussion of the use of reasonable physical chastisement. The absence of discussion on the question of whether moderate and reasonable physical punishment of a child is destructive of the child's physical integrity, results in physical or mental injury, or constitutes abuse in the *Travaux préparatoires* lends support to the proposition that there was no intention to prohibit the limited, moderate and reasonable smacking of a child in the normal course of chastisement.⁷⁶⁴

7.328 The Attorney-General's Department also noted that the United Nations Committee applied a stricter view of Article 19 and did not accept defence of 'reasonable chastisement' to a criminal charge of assault and have recommended that Australia, Canada, the United Kingdom and New Zealand review their legislation to ban all forms of physical punishment of children.⁷⁶⁵ The UN Committee also suggested awareness raising campaigns in relation to alternative forms of discipline.⁷⁶⁶

7.329 The United Nations Human Rights Committee under the *Convention on Civil and Political Rights* indicated that corporal punishment in schools could affect the human dignity of the child.⁷⁶⁷ The Human Rights Committee in its

762 *ibid*, p. S 3370

763 *ibid*, p. S 3371

764 *ibid*, p. S 3372

765 *ibid*

766 *ibid*

767 Dolgopoul, Transcript of Evidence, 4 July 1997, p. 662

General Comment 20 on the equivalent prohibition in Article 7 of the *International Covenant on Civil and Political Rights* stated that:

The Covenant does not contain any definition of the concepts covered in article 7 nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinction depends on the nature, purpose and severity of the treatment applied.

The Human Rights Committee at para 5 of its General Comment 20 emphasised the application of Article 7 to children in school:

'In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as a punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasise in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.'⁷⁶⁸

7.330 The law relating to punishment in schools varies in different jurisdictions and between independent and Government schools. Most States and Territories ban corporal punishment in government schools but permit corporal punishment in independent schools.⁷⁶⁹ While independent schools in most States are not prohibited from using corporal punishment, it was submitted that the Catholic sector tended to follow the legislation implemented for government schools.⁷⁷⁰ The National Association of Independent Schools, the National Catholic Education Commission and Department of Employment, Education, Training and Youth Affairs do not have policies on corporal punishment in schools.⁷⁷¹

7.331 In Tasmania, the use of corporal punishment in the discipline code requires consultation with the community and the permission of the Secretary for Education.⁷⁷² There have been no applications for permission since this system was introduced two years ago.⁷⁷³

7.332 In the Northern Territory the Department of Education's policy is that corporal punishment should be kept to a minimum, not administered in the

768 Attorney-General's Department, Supplementary Submission No. 133a, p. S 3369

769 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 62

770 Eastwood, Transcript of Evidence, 3 July 1997, p. 622

771 *ibid*; Arthur, Transcript of Evidence, 28 April 1997, p. 71

772 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 65

773 *ibid*

presence of other pupils, only to be administered by the principal or a senior teacher and a register must be kept stating the reasons for the corporal punishment and the name of the person administering it.⁷⁷⁴ Parents have the right to revoke the use of corporal punishment but then parents may be asked to take remedial action and failure on the part of the parent to do so may result in the expulsion of the child from the school for a period of up to one month.⁷⁷⁵

7.333 The Northern Territory *Education Act 1996* gives school councils the authority to determine discipline policies in their schools.⁷⁷⁶ It was also submitted, however, that corporal punishment was the exception rather than the rule in Territory schools and was used as a last resort after counselling and other methods of reprimand.⁷⁷⁷

7.334 The NGOs believed that the physical punishment in schools is in clear breach of the Convention.⁷⁷⁸ The Youth Advocacy Centre believed that corporal punishment should be banned as it constitutes an unjustifiable assault and reinforces the notion of violence as an acceptable way of solving problems.⁷⁷⁹

7.335 It was argued that corporal punishment is in contravention of Article 19 of the Convention and that the banning of corporal punishment in New South Wales and the Australian Capital Territory has already occurred.⁷⁸⁰ It was also argued that it is indefensible to discriminate against young people on the basis of whether they attend a government or non-government school.⁷⁸¹ It was submitted that all children should be entitled to equal protection by law.⁷⁸²

7.336 The Attorney-General's Department submitted that this Convention may not enable the Commonwealth Government to outlaw corporal punishment in schools.⁷⁸³

774 *ibid*

775 *ibid*

776 Nicholson, Transcript of Evidence, 6 November 1997, p. 14

777 Anderson, Transcript of Evidence, 6 November 1997, p. 14

778 Defence for Children International Australia, *op cit*, p. 25

779 Youth Advocacy Centre Inc, Submission to ALRC and HREOC *Speaking for ourselves Children and the legal process Issues Paper 18*, July 1996, pp. 16

780 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 67

781 *ibid*

782 *ibid*

783 Campbell, Transcript of Evidence, 28 April 1997, p. 31

Under section 51 xxix of the Constitution the Commonwealth government could legislate to implement the Convention, however the High Court has held that to be constitutionally valid domestic legislation must closely conform to the language of an international treaty. The Convention does not expressly prohibit or limit the use of corporal punishment. The general prohibition enshrined in Article 37 (a) uses the phrase 'torture or other cruel, inhuman or degrading treatment or punishment'. It is therefore uncertain whether a provision in a Federal statute specifically aimed at limiting the use of corporal punishment would be upheld.⁷⁸⁴

7.337 Mr Mahoney supported funding cuts by the Federal Government to schools that use corporal punishment.⁷⁸⁵ The National Children's and Youth Law Centre stated that the Commonwealth does have the power to exert influence over the States and Territories by attaching conditions to grants.⁷⁸⁶ The Centre suggested that grants to construct new school buildings be conditional on the prohibition of corporal punishment.⁷⁸⁷ They also suggested that the Commonwealth lacked the determination to do anything about corporal punishment in schools.⁷⁸⁸

7.338 The Committee does not support the imposition of a ban on corporal punishment in schools as a condition to Commonwealth funding. The Committee believes that this approach would potentially disadvantage an enormous number of children. We support an educational approach that would encourage the use of corporal punishment only as a last resort in those jurisdictions where it is still legal to use these measures and that appropriate alternatives be used in preference to corporal punishment.

7.339 It was submitted that the defence of the use of corporal punishment relies on two factors: the common law provision of 'reasonable chastisement' or admission to the school which amounts to consent to abide by school rules.⁷⁸⁹ In relation to the first point, the National Children's and Youth Law Centre stated that:

... 'reasonable chastisement' of a child provides a defence to battery. If on an objective standard the physical force used to administer punishment is reasonable no legal liability will arise. If on the other hand excessive force is

784 Attorney-General's Department, Supplementary Submission No. 133a, p. S 3371

785 Maloney, Submission No. 304, pp. S 1756-7

786 Attorney-General (VIC); ex rel *Black v Commonwealth* (1981) 146 CRL 559 cited in National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 63

787 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 63

788 *ibid*

789 *ibid*, p. 67

used the perpetrator will not have a legal defence. The difficulty is that 'reasonable force' accepts the power imbalance between adults and children without question, and it is this very distinction that offends the basic human rights of the child.⁷⁹⁰

7.340 In relation to the second point, it is the consent of the parents and not that of the child.⁷⁹¹

7.341 Professor Kolosov commented that a legally binding interpretation of the Convention can be made only by the States Parties themselves:

If it comes to a conflict between, say, the international community and the position of a given state party, then the issues would be raised at a meeting of states parties. The interpretation of that meeting which is adopted by a two-thirds majority will be legally binding for all party states. Otherwise, all other interpretations are of an academic nature.

The committee, consisting of experts in these fields, has the right to make its own interpretation, but in my view it is not legally binding. This is the opinion of the experts in the committee. We, the committee members, believe that corporal punishment contradicts the duty of states parties and, to protect the physical integrity of a child and to respect his dignity, this is our interpretation.

If a state body has a different interpretation, it may report to the committee that corporal punishment is in accordance with the cultural traditions of the society and it is not physically injurious - that is, it does not cause harm to the health of a child. If it is a custom or tradition, there may be a dispute between the delegation and the committee members, but the committee may not issue an order to the state party to adopt special legislation prohibiting corporal punishment ...⁷⁹²

Whether or not corporal punishment of children is a violation of the convention depends on whether it is injurious.⁷⁹³

7.342 The National Children's and Youth Law Centre believed that corporal punishment should be banned outright.⁷⁹⁴

It is not acceptable to leave some children exposed to the rigours of corporal punishment and not others. Those that are exposed to corporal punishment would have a legal remedy, but the question has to be asked is it desirable to

790 *ibid*, p. 68

791 *ibid*, p. 67

792 Kolosov, Transcript of Evidence, 3 September 1997, p. 1531

793 *ibid*, p. 1536

794 National Children's and Youth Law Centre, Submission No. 321, Annexure 2, p. 68

have teachers exposed to the risk of litigation? And also the question arises implicitly, should a pupil have to resort to law after they have been hit? Even so-called 'reasonable force' may cause psychological trauma in some more vulnerable individuals. The only safe course it is submitted is a total ban on corporal punishment, and that is entirely concordant with Article 19 of CROC.⁷⁹⁵

7.343 The State Council of the Presbyterian Women's Association believed that parents saw a need for discipline which supported the family standards or better standards and added that the ban on corporal punishment in government schools had not resulted in better behaviour and there was an escalation of student suspensions and risk to teachers.⁷⁹⁶

7.344 In areas where there are greater numbers of poor people there is a sub-culture of certain patterns of behaviour developing that are foreign to the way our schools operate so these students have very little in common between the school culture and the culture where they developed their values, morals and ideals.⁷⁹⁷ This compares with those attending:

... private schools are coming mostly from a middle class environment. They are linked very easily into the culture and so they accept discipline, for starters. The whole thing is meshed much more easily, but when you have a lot of poverty, you still have a middle class type value school with these students who actually do not have the morals and values to meet those.⁷⁹⁸

7.345 Family Services Australia believed that the increasing trend to use punitive responses to truant children represented a move from the view of the school as a community to one of institutionalisation.⁷⁹⁹ They added that access to education was not restricted to physical access but included ensuring school had a positive meaning for the child and punitive measures and regressive discipline policies simply reduced access in the sense of meaning and community.⁸⁰⁰

Alternative methods of discipline in schools

795 *ibid*

796 State Council of the Presbyterian Women's Association, Submission No. 358, p. S 2046

797 Orr, Transcript of Evidence, 9 May 1997, p. 446

798 *ibid*

799 Family Services Australia Ltd, Submission No. 482, p. S 2716

800 *ibid*

7.346 The Smith Family believed that the introduction of rules and regulations preventing schools from caning children has led to a reduction in options and has resulted in children being suspended because the system has not replaced this form of discipline with anything.⁸⁰¹ The National Council of Women of Tasmania supported the view that teachers now have limited options and the national education policy of exclusion is a policy of 'rejection' when there should be a policy of inclusion with more adult supervision and assistance.⁸⁰²

Suspension or exclusion from school

7.347 The Committee notes that Article 28(e) states that States Parties are required to take measures to encourage regular attendance at schools and reduce drop out rates. The New South Wales Federation of School Community Organisation commented on the increased use of exclusion from school as a method of behaviour management even with very young children.⁸⁰³

7.348 The Smith Family concluded that in relation to the problem of truancy, it is not possible to physically constrain students or manipulate them through alternative approaches to conform to a policy which offers no benefits and so they speak with their feet.⁸⁰⁴ It is an issue of appropriate education models to meet the educational needs of students from disadvantaged families.⁸⁰⁵

7.349 The NGOs also believed that suspension and expulsion are used without adequate safeguards for the rights of the child.⁸⁰⁶ Concerns were raised that young people are becoming increasingly vulnerable in the education system. The Early Childhood Teachers Association also expressed a concern in relation to the capacity for schools and other institutions to enact disciplinary procedures without informing or involving the child.⁸⁰⁷ They added that this is an example of rights afforded to adults in our society in relation to information, dignity and justice that are not always evident for children.⁸⁰⁸

801 Orr, Transcript of Evidence, 9 May 1997, p. 442

802 National Council of Women of Tasmania, Submission No. 52, p. S 279

803 Lonnon, Transcript of Evidence, 5 August 1997, pp. 1241-3

804 Orr E (199) *Inquiry into Truancy and Exclusion from School*, The Smith Family, Social Issues Paper No. 2, p. 12

805 *ibid*, p. 13

806 Defence for Children International Australia, *op cit*, p. 25

807 Early Childhood Teachers Association, Submission No. 353, p. S 2022

808 *ibid*

7.350 It was submitted that Queensland legislation has recently been amended to allow school principals greater power and young people fewer rights and less procedural fairness in relation to suspensions and exclusions.⁸⁰⁹ In particular, fifteen year olds are provided with no procedural fairness in that a principal has an almost unfettered discretion to cancel the child's enrolment at the school.⁸¹⁰

7.351 The Committee does not support the introduction of Federal legislation to ban corporal punishment in schools. We believe, however, that greater effort could be applied to developing alternative methods of disciplining students. Clearly many schools have achieved this and it appears to work well in Tasmania and the Northern Territory where the community has been involved in the process. The Committee is also concerned at the excessive use of suspension and expulsion from school and the denial of natural justice implicit in some of the procedures used.

Leisure, recreation and cultural activities

7.352 Playgrounds on Demand submitted that Australia still has a long way to go to improve a variety of situations for children and young people and that play can be used to solve problems including some of the problems with Aboriginal children but there needs to be an acknowledgment that play is an important aspect of a child's development and well being.⁸¹¹ This includes the development of the child's personality, talents and mental and physical abilities, respect for human rights, fundamental freedoms, cultural identity, language and values of the country of origin and other countries. The right to leisure is also identified in Article 24 of the *Universal Declaration on Human Rights* and Article 7 of the *International Covenant on Economic, Social and Cultural Right*.

7.353 It was submitted that there is an emphasis on numeracy/literacy, national assessment of young children, economic rationalism etc but there need to be guidelines in place to ensure that artistic and cultural activities have a place in our schools notwithstanding the difficulty in measuring the outcomes and usefulness.⁸¹²

809 Youth Advocacy Centre Inc, Supplementary Submission No. 14a, p. S 1036

810 *ibid*

811 Playgrounds on Demand, Submission No. 140, p. S 919

812 Early Childhood Teachers Association, Submission No. 353, p. S 2022



Children need recreation and culture

Nick Pincus, aged 7 years, Rachel Redmond Art for Children, Brisbane

7.354 Karawara Community Centre commented that developers and local governments do not consider the children's need to play.⁸¹³ Concern was also expressed that urban consolidation may reduce backyard areas.⁸¹⁴ There is a diminishing status of play in the lives of children as play spaces are removed in many homes, schools, preschools and child care centres and natural play areas in the community replacing them with modern developments.⁸¹⁵

7.355 Children's right to play is not seen as a priority in our society and planning for our cities and towns increasingly alienates children, also competitive service provision policies mean that children are treated as commodities in the pursuit of profit.⁸¹⁶ The role of play throughout all of childhood is generally undervalued by our society.⁸¹⁷

813 Gleeson, Transcript of Evidence, 3 July 1997, p. 602

814 Finlason, Transcript of Evidence, 5 August 1997, p. 1268

815 McDonald, Transcript of Evidence, 3 July 1997, p. 604

816 Network of Community Activities, Submission No. 64, pp. S 325-6

817 *ibid*, p. S 326



The Right to Play

Khelly-John Niemark, aged 8 years, Woodridge State School

The answer to juvenile delinquency is usually to introduce punitive measures or blame the family. Families most at risk often have limited access to community programs and resources that provide support for child rearing and which are preventative rather than crisis driven. Article 27 looks at a standard which will promote 'the child's physical, mental, spiritual, moral and social development'. Article 18 indicates the need to provide for parental support for this role.⁸¹⁸

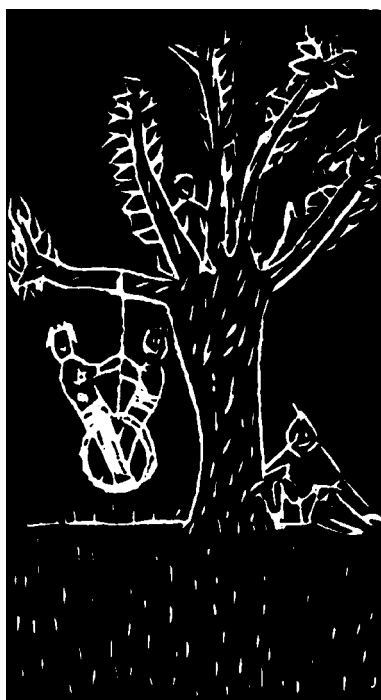
7.356 The Network of Community Activities believed that there is too much emphasis on competitive sport and more should be placed on children's playtime and culture.⁸¹⁹ Childhood is a culture in itself through rhymes, stories and fantasy.⁸²⁰ The playground is one of the freest places for children of primary age to play with minimum supervision and proposals to shorten lunch times should be considered carefully.⁸²¹ Ms Reed commented that:

818 *ibid*

819 Finlason, Transcript of Evidence, 5 August 1997, p. 1267

820 *ibid*, p. 1268

821 *ibid*



The right to play

Arja Gullvik, aged 11 years, Rainworth State School

... through play many of the articles in the convention can be addressed. For example: article 2, non-discrimination; article 3, best interest of the child; article 4, implementation of rights; article 6, survival and development; article 12, child's opinion; article 13, freedom of expression; article 18, parental responsibilities; article 23, more appropriately called people with disabilities; article 27, standard of living; articles 28 and 29, education; article 30, children of minority or indigenous people; article 31, play; and article 42, awareness of the convention.⁸²²

7.357 The Convention promotes the developmental needs of children and provides a sound basis for children to develop into socially acceptable adults. Children's play provides a comfortable mechanism that children can understand and absorb. Play environments are important not only as playground equipment but also as a quiet nook for social interaction, natural environment to encourage sensory experiences, spaces that encourage integration and areas that are acceptable for teenagers to feel comfortable in without being harassed or moved on.⁸²³ This can only be done through community involvement at the local level, involving children and young people:⁸²⁴

822 Reed, Transcript of Evidence, 3 July 1997, p. 601

823 *ibid*

824 *ibid*

Research has shown that this involvement helps to provide a sense of ownership for the community, which in turn helps to reduce the incidents of vandalism. Many current play environments in Western Australia can offer only the static, bright coloured playground equipment that reduces children's imagination and exploratory behaviour to a point where boredom enhances vandalism.⁸²⁵



The kids are swimming in the waterhole It has a big waterfall.

The right to play and recreation in a clean environment

Kirsten Lamb, aged 8 years, Woodridge State School

7.358 If their social needs are not being accommodated older children in particular, establish their own adventures which may lead to risk taking behaviours.⁸²⁶ The Youth Advocacy Centre were also critical of government policy that criminalised graffiti and did not recognise it as a legitimate art activity.⁸²⁷ With rights there are responsibilities and there is nothing in the Convention that allows damage to community and private property.

A recent research by the WA child health survey shows the following information: 21 per cent of 12 to 16 year-olds suffered with mental health problems and boys seemed to have a higher prevalence of mental health problems than girls; and 16 per cent of youths have suicidal thoughts. This report identifies that the mental health of teenagers is at risk owing to the types of opportunities afforded the child. It also identifies that in the future the stronger relationship between a variety of health risk behaviours will have

825 *ibid*, p. 602

826 Gleeson, Transcript of Evidence, 3 July 1997, pp. 602-3

827 Youth Advocacy Centre Inc, Supplementary Submission No. 14a, p. S 1037

important implications for the design of programs of prevention. POD believes these issues can be attributed to deprivation of appropriate play opportunities at an early age.⁸²⁸

Children with disabilities

7.359 Network of Community Activities submitted that in relation to out of school services that children with disabilities do not always have appropriate play opportunities and are consequently deprived of the social interaction with their peers.⁸²⁹ There should be an integration of play spaces for disabled children as they should be considered children first and their disabilities should be considered as secondary.⁸³⁰ It was suggested that all children should have access to quality out of school hours activities in positive and secure environments to interact with each other and be creative.⁸³¹ The Committee notes that from 1 July 1997, \$10 million per year has been allocated to support children with high levels of additional needs such as those with disabilities.⁸³²

Facilities for asylum seeking children

7.360 The 1994 Inquiry by the Joint Standing Committee on Migration (JSCM) concluded that there would be substantial benefits in allowing these children to attend local schools and recommended that:

... having regard to the literacy levels of detainee children, the number of native languages spoken, the likelihood of the children being allowed to remain in Australia, and the standard of education provided within the centre in which the children are detained, that the Department of Immigration and Ethnic Affairs consult with State Government education agencies to determine, whether, in appropriate cases, children held at the detention centres might be able to attend local schools, and to consider whether education in a child's native language is viable and can be organised.⁸³³

828 Reed, Transcript of Evidence, 3 July 1997, p. 605

829 Network of Community Activities, Submission No. 64, p. S 326

830 McDonald, Transcript of Evidence, 3 July 1997, p. 604

831 Jeremy, Submission No. 87, p. S 421

832 Department of Health and Family Services, Submission No. 137, p. 9

833 Joint Standing Committee on Migration (1994) *Asylum, Border Control and Detention*, February 1994, Report to the Parliament of the Commonwealth of Australia, p. 193

7.361 United Nations High Commissioner for Refugees considered that there is adequate access to education for children in detention which includes dedicated facilities for pre-primary, primary and secondary students.⁸³⁴

Cultural activities

7.362 It was submitted that governments do not provide NESB young people with opportunities to enjoy their own culture.⁸³⁵ The Executive Council of Australian Jewry noted the failure of education systems to accommodate the multicultural and multi-religious nature of Australian society.⁸³⁶

7.363 The Committee was given the example of the dismantling of the Cultural Equity Unit in the Queensland Education Department and it was submitted that this has sent a message to the NESB community groups that the Department does not value cultural diversity.⁸³⁷

7.364 The Australian African Children's Aid and Support Association included among their aims the maintenance of the culture of African children.⁸³⁸ For children seeking asylum then, the development of their cultural identity and language was considered to be the role of the parents.⁸³⁹ There are very few programs for children in languages other than English.⁸⁴⁰

7.365 Articles 2.2, 6.2, 8.1, 14.1, 22.1, 29.1(c) and 30 refer to a child's right to maintain their culture. Dr Piscitelli expressed the view that there has been a significant neglect of children's cultural life at the early childhood level (0-8 years) particularly in relation to policy development and financial support for young children's involvement in the arts.⁸⁴¹ Government policies in the arts and cultural life are directed at the 12 to 25 year olds and not the special needs or

834 United Nations High Commissioner for Refugees, Office of the Regional Representative for Australia, New Zealand and the South Pacific, Submission No. 67, p. S 346

835 Youth Advocacy Centre Inc, Supplementary Submission No. 14a, p. S 1037

836 Executive Council of Australian Jewry, Submission No. 105, p. S 505

837 NESB Youth Issues Network, Submission No. 194, p. S 1336

838 The Australian African Children's Aid and Supports Association Inc, Submission No. 36, p. S 198

839 Attorney-General's Department, Submission No. 91 to the Inquiry into Detention Practices, Joint Standing Committee on Migration, August 1993, p. S 857

840 Clarke, Transcript Evidence, 9 July 1997, pp. 927-8

841 Piscitelli, Transcript of Evidence, 1 May 1997, p. 321

the younger groups.⁸⁴² Dr Piscitelli believed there should be a review of Australia's approach and commitment in this area.⁸⁴³



Life in Samoa - my cultural home

Nellie Fiaii, aged 8 years Woodridge State School

7.366 The Early Childhood Teachers Association expressed their concern at the continuous down-grading of early childhood programs and services.⁸⁴⁴ The Association believed that institutions should be aware of the status of age and ensure that children of all ages receive equal access, opportunity and appropriate support to participate in all aspects of their learning and development.⁸⁴⁵

7.367 The Free Kindergarten Association of Victoria provides bilingual support to children through State and Commonwealth funded services.⁸⁴⁶ It was submitted that the continuation of a child's first language assists in the carriage of culture and family.⁸⁴⁷

7.368 Ethnic Schools Association of South Australia expressed their concern in relation to the broadbanding of Commonwealth funding which enabled States to allocate the amount of funding for community languages as there is a potential for the majority of funding to be allocated to priority languages at the expense

842 Piscitelli, Supplementary Submission No. 107a, p. S 1117

843 *ibid*, p. S 1118

844 Early Childhood Teachers Association, Submission No. 353, p. S 2019

845 *ibid*, p. S 2020

846 Clarke, Transcript Evidence, 9 July 1997, p. 923

847 *ibid*, p. 926

of ethnic schools.⁸⁴⁸ The Association is concerned that the Federal Government does not recognise the contribution of the ethnic schools as an alternative, yet complementary, form of languages and culture education.⁸⁴⁹ The Association would like to see greater accountability in relation to expenditure on specific items.⁸⁵⁰



Be nice to people from other cultures

Chloe Casswell, aged 10 years, Raquel Redman Art for Children, Brisbane

7.369 Further, the rights of children who have been rendered parentless with respect to a continuation of the child's ethnic, religious, cultural and linguistic background may depend on being placed with culturally appropriate foster parents but this is not always considered an issue.⁸⁵¹

7.370 Young Media Australia produced a video *Put me in the picture* to encourage producers to truthfully reflect the cultural diversity in Australia as a natural part of life.⁸⁵² They added that in relation to linguistic needs of ethnic or Indigenous children:

848 Rumpe, Transcript of Evidence, 4 July 1997, p. 737; The Ethnic Schools Association of South Australia Inc, Submission No. 341, p. S 1968

849 The Ethnic Schools Association of South Australia Inc, Submission No. 341, p. S 1968

850 Rumpe, Transcript of Evidence, 4 July 1997, p. 738

851 Ethnic Child Care, Family and Community Services Co-operative Ltd, Submission No. 125, p. S 668

852 Biggins, Transcript of Evidence, 4 July 1997, p. 768

... there is little or no provision in that area. No network provides any such material for children on a regular or even a frequent basis. SBS used to provide programs for children in different languages. It now provides practically nothing in that field.⁸⁵³

7.371 Concerns were expressed about the lack of racial tolerance in Australia. NESB Youth Issues Network commented that:

Recently, there has been a 'race debate' raging in Australia, and in Queensland in particular. Members of the NESB Youth Issues Network report that NESB young people have been targeted for violent attacks and bullying due to their cultural backgrounds. These attacks have increased as the public debate about migration has increased ... unfortunately, we do not have statistical evidence that racist violence aimed at young people is increasing. However, we do have anecdotal evidence and young NESB people themselves believe that racist slurs and violence have escalated since the vocal controversy started. Members of the Network who support NESB young people are increasingly being called to schools by young people and teachers who are unequipped to deal with this violent backlash.⁸⁵⁴

7.372 The Committee believes that more needs to be done to improve racial tolerance to enable NESB communities to maintain their cultural heritage. The Committee believes that a greater emphasis on a multicultural approach can benefit the broader community as well as the children involved. We also support the continuation of bilingual programs for migrant and Indigenous children.

Facilities in childcare

7.373 Ms Jeremy submitted that there are proven benefits to quality early education 0 to 5 years, the value of play and the development of creativity.⁸⁵⁵ She also made the comment that free education means from birth until they leave school.⁸⁵⁶

7.374 The Women's Action Alliance stated that 23 per cent of children under the age of 12 go into paid care to which the government contributes 60 per cent of the costs to the \$24 billion industry. The parenting allowance for the other

853 *ibid*

854 NESB Youth Issues Network, Submission No. 194, p. S 1337

855 Jeremy, Submission No. 87, p. S 418

856 *ibid*, p. S 420

77 per cent is \$600 million.⁸⁵⁷ Further, they comment that some poor families are getting no childcare assistance.⁸⁵⁸

7.375 Concerns were expressed that financial considerations may take priority over children's needs so that the quality of childcare will meet minimum legislative requirements. Space and layout issues can negatively impact on children's development.⁸⁵⁹ Over 50 per cent of children under the age of five in Australia are in formal childcare and some spend 12 000 hours in formal care. The impact of good (or poor) physical environments on young children can be enormous.⁸⁶⁰ There is a need for best practice documents and appropriate national standards.⁸⁶¹

7.376 The Lady Gowrie Child Centre Inc expressed their concern at potential reductions in staff/child ratio's and reductions in outdoor play space in South Australian child care facilities.⁸⁶²

7.377 Playground legislation varies between States and the legislation and guideline documents have not worked in times of rapid expansion.⁸⁶³ It was submitted that physical environments in early childhood centres is one of the most neglected areas of quality in childcare.⁸⁶⁴

80 per cent in Queensland - of early childhood centres are now privately run. To quote the mayor of one of the major regional councils in Queensland, we have ended up with many kid ghettos and baby factories where, frankly, commercial profit has been a major motivating factor rather than the interests of children.⁸⁶⁵

7.378 Children who have the longest hours of care are in the worst physical environments and the impact is evident in less focused play, they are noisier, more aggressive and antisocial.⁸⁶⁶

857 Smit, Transcript Evidence, 9 July 1997, p. 941

858 *ibid*

859 Walsh, Submission No. 11, p. S 40

860 *ibid*, p. S 41

861 *ibid*, p. S 42

862 Lady Gowrie Child Centre Inc, Submission No. 147, p. S 973

863 Walsh, Transcript of Evidence, 1 May 1997, pp. 333, 338

864 *ibid*, p. 333

865 *ibid*, p. 334

866 Walsh, Transcript of Evidence, 1 May 1997, p. 336

The Committee's views

7.379 Concern was expressed that many schools do not formally teach children about their rights although it is included in the social studies curriculum in Queensland.⁸⁶⁷ It was submitted that many teachers do not specifically teach children about human rights in their classrooms, nor do they reflect a human rights perspective in their classroom environments.⁸⁶⁸

7.380 It was suggested the inclusion of the Convention in relevant in-service education programs could lead to the teaching profession adopting a rights perspective in its teaching practice and curriculum.⁸⁶⁹ Teacher education programs could formally address social justice and human rights in their pre-service and in-service training.⁸⁷⁰ A review of teacher education programs was suggested to determine the extent to which information about the Convention was provided to professionals working with children.⁸⁷¹ The Committee supports the view that the Convention should be included in training programs to ensure that a balanced view is presented.

Recommendation 41

The Joint Standing Committee on Treaties recommends that the Government encourages the inclusion of the *Convention on the Rights of the Child* in training programs for teachers and other professionals working with children with an emphasis on the mutuality of rights and responsibilities including the rights of parents.

7.381 The Committee believes that there are many aspects of the *Convention on the Rights of the Child* that should be taught as part of a human rights curriculum but this must be conjunction with the teaching of responsibilities and appropriate information being made available to parents. A step forward would be to ensure that teachers are properly trained regarding Australia's obligations under the Convention.

7.382 Some parents expressed their concern that the inclusion of the Convention in school curricula would result in children seeing the Convention as empowering them to challenge the authority of parents as well as having the

867 Piscitelli, Supplementary Submission No. 107a, p. S 1117

868 Piscitelli, Transcript of Evidence, 1 May 1997, p. 322-3

869 Piscitelli, Supplementary Submission No. 107a, p. S 1117

870 Queensland Board of Teacher Registration (1995) *Implications of Social Justice Issues for Teacher Education* cited in Piscitelli, Supplementary Submission No. 107a, p. S 1117

871 Piscitelli, Transcript of Evidence, 1 May 1997, p. 322-3

support of the school, legal aid and bodies such as the ombudsman in doing so. It was also submitted that, some teachers oppose educating students about their rights because they fear the loss of authority, however, it was noted that this should not be a problem if they educate children about their responsibilities at the same time. The concomitant responsibilities must be spelled out clearly for the whole community.

Recommendation 42

The Joint Standing Committee on Treaties recommends Federal Minister for Education encourage State and Territory authorities to develop appropriate and balanced curricula and supporting material which properly explain the rights and commensurate responsibilities of children and parents as members of our Australian society.

7.383 The Committee does not support the introduction of Federal legislation to ban corporal punishment in schools. We believe, however, that greater effort could be applied to developing alternative methods of disciplining students and informing teachers of other options. Clearly many schools have achieved this and it appears to work well in Tasmania and the Northern Territory where the community has been involved in the process. The Committee is also concerned at the excessive use of suspension and expulsion from school and the denial of natural justice implicit in some of the procedures used.

Recommendation 43

The Joint Standing Committee on Treaties recommends the introduction of an information program for teachers on alternative discipline options available.

7.384 The Committee supports a greater emphasis on quality play and recreation environments and supports a campaign to increase the awareness of local councils and developers catering for the needs of children. It is of concern to the Committee that children with disabilities and from low income families may not have equal access to facilities.

7.385 The Committee believes that more needs to be done to improve racial tolerance and to counter recent public debate. We believe that more can be done to promote the multicultural aspects of our society to address this issue. The Committee also supports the continuation of bilingual programs for migrants and Indigenous children.