

## Question without Notice

28<sup>th</sup> September 2011

**Q.: "In what aspects are current and former Adoption Laws contrary to the Australian Constitution?"**

Dear Senators Rachel Siewert, Claire Moore, Carol Brown, Bridget McKenzie

### **Chapter V, 117 Rights of residents in States**

***"A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were subject of the Queen resident in such other State."***

Mothers who had their babies taken from them in Victoria have their rights to access information on the name of their taken child subject to the possibility of a Veto being placed by their taken child.

This avenue is no longer available to adopted people in Queensland. They may not, under current Queensland Law, refuse a mother the right to know who her child became.

For the mental health of the mother whose child was taken, this information impacts on her mental wellbeing. The Victorian mother is condemned to a state of bewilderment concerning the outcome of her child's adoption, and is therefore unable to ascertain if her baby lived past the moment of abduction.

She will never be able to "bring her child home from hospital," so she will stay at a stage of unresolvable grief. The Queensland mothers can locate their adult child and begin the journey of birthing completion, to ultimately reach grief minimisation, ..... maybe.

In terms of the greater part of the Australian population, this is discrimination against a mother made manifest. Has this situation occurred because Victoria has a more powerful Adoptive Parent lobby than any other State? Have the mothers of Victoria been silenced, and if so, how did this come about?

The implications for the Mental Health Bill for the Government of Victoria and the Federation of Australian States is clear. The other States are subsidising the Victorian Mental Health costs because the Victorian Government refuses to legislate the humane option. The current Victorian Laws can only lead to depression, with no hope of respite for the mothers.

## Chapter V, 109 Inconsistency of Laws

***"When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."***

Australia is signatory to at least 27 treaties concerning the rights of children. These may be "Conventions," "Agreements," or "Protocols." It is interesting to note that one of the earliest conventions Australia was signatory to occurred in 1922, the International Convention for the Suppression of the Traffic in Women and Children.

Yet young unmarried, pregnant women, mostly minors, were trafficked from one State to another, usually by arrangements engaged in by the Christian churches, and the young women's parents. These practices were contrary to the external affairs powers of the Australian Parliament, yet nobody stopped the practice.

If you refer to Part 5 of Part 1 – ***"Powers of the Parliament"***

51. Legislative powers of the Parliament, with respect to

***"(xxii) divorce and matrimonial causes; and in relation thereto, parental rights and the custody and guardianship of infants;"***

you will discover that the Australian Parliament has, since Federation, had the control (direct) ***"over the custody and guardianship of infants."***

***So the Federal Government has been responsible for "parental rights," "the custody," and "guardianship of infants" since 1901.***

Its external affairs powers only back up the stated internal affairs jurisdictional responsibilities.

At no time has the Australian Parliament revoked its stewardship concerning parental rights and the custody and guardianship of infants.

***The Commonwealth Parliament has had both direct control, and effectual control over***

- a) the suppression of the traffic in women and children (since 1922) over State borders
- b) the suppression in the traffic in women of full age (since 1933).
- c) parental rights and the custody and guardianship of infants.

As one of the eight founding members who formulated the Universal Declaration of Human Rights within the United Nations Charter, Australia, represented by Dr Herbert Evatt as head of the Australian Delegation, signed the Charter on behalf of the Australian Nation. This signing took place in 1948.

I will mention a few of the Articles.

- Article 1: All human beings are born free and equal in human rights.*
- Article 3: All human beings have a right to life, liberty, and security of person.*
- Article 4: No one shall be held in slavery and servitude.*
- Article 5: No one shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment.*
- Article 6: Everyone has the right to recognition everywhere as a person before the law.*
- Article 7: All are equal before the law.*
- Article 8: Everyone has the right to effective remedy.*
- Article 9: Detainment: No one shall be subjected to arbitrary arrest, detention or exile.*
- Article 25: 1) Everyone has a right to a standard of living including food, clothing, housing and medical care, livelihood, and security.*  
*2) Motherhood and childhood are entitled to special care and assistance whether born in or out of wedlock, all children shall enjoy the same social protection.*

All of the above were ignored in the practices of the child theft era from 1950's to the 1990's. In being one of the consulting nations, Australia knew how its citizens should be treated as evidenced in the international arena, but was unable to back up the rhetoric in its practices at home. Let's look at

**Article 4: No one shall be held in slavery or servitude**

All women held by Church laundry outfits were held in servitude.

All women held in Church Homes for Delinquent Girls were held in slavery (cleaning, cooking) and servitude (providing their own flesh and blood, their babies to childless married Christians).

**Article 7: All are equal before the law.**

This is, of course, unless you are not married. If unmarried, you have no right to see, love, succour, or care for your own child, once you were incarcerated.

**Article 5: No one shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment**

All women incarcerated in Homes had their new-borns taken from them once they were sufficiently drugged. I'd call that 'cruel degrading treatment' – they were punished and were unequal before the law.

**Article 8: Everyone has the right to effective remedy**

Those who decide an apology from the Australian Parliament constitutes a part of 'effective remedy, should be entitled to it. Those who don't think it constitutes 'effective remedy' for them, simply don't have to turn up for any apology.

One of the suggested recommendations from the NSW Inquiry was that the Statute of Limitations should be overturned in criminal cases, when even the oppressive laws were broken. This did not eventuate. So for me, 'effective remedy' was not possible in my dealings with the NSW Government and the Anglican Church.

The 'effective remedy' article in relation to the outcomes for those women incarcerated in the Magdalen Homes in Ireland, are relevant to the Australian incarcerations.

**Article 9: Detainment: no one shall be subjected to arbitrary arrest, detention or exile.**

All the mothers placed in Homes were in both exile and detention without any arrest or charge. We were simply arbitrarily detained, and those trafficked across the State borders, were placed in exile. To be sure, the Welfare would have brought in the police should you try to escape.

**Article 25: 2) Motherhood and childhood are entitled to special care and assistance whether born in or out of wedlock, all children shall enjoy the same social protection.**

Young women and their children born out of wedlock in this country received 'special' attention all right, but not the kind Dr Evatt would have had in mind.

Were any **married women** who fell pregnant incarcerated, handcuffed, drugged, refused permission to see their new-borns, refused permission to hold their babies, refused permission to leave the hospital unless they had signed adoption consents???. Why were married women not offered adoption for their new-borns?

In conclusion –

The Federal Minister for the Environment intervened in the proposed construction of a Dam on the Mary River, Queensland. The stated jurisdictional entitlement of the Commonwealth to do this (since the waters of the States were under State control) was

*'even though the Commonwealth Parliament has no specific power in relation to the environment, it can, under its external affairs power, prohibit the construction of a dam by a State if that is necessary to give effect to an international agreement on the environment.'*

### Commonwealth Legislative Powers

Page ix Australia's Constitution

It is imperative that the Australian Government '**give effect to the international agreement on Human Rights**' –

It was one of the eight planners assembled in 1945, it signed the document in 1948, AND HAS BEEN BOUND BY THE DOCUMENT EVER SINCE.

*Janice Kashin*

J A KASHIN

**[1993] ATS 3**

- ILO Convention (No. 58) fixing the Minimum Age for the Admission of Children to Employment at Sea

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- ILO Convention (No. 7) fixing the Minimum Age for Admission of Children to Employment at Sea

**[1935] ATS 14**

- ILO Convention (No. 10) concerning the Age for Admission of Children to Employment in Agriculture

**[1957] ATS 17**

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

**[2007] ATS 6**

- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect to Parental Responsibility and Measures for the Protection of Children (under the auspices of the Hague Convention)

**[2003] ATS 19**

- ILO Convention (No. 16) concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea

**[1935] ATS 17**

- Protocol amending the Convention for the Suppression of the Traffic in Women and Children of 30 September 1921, and the Convention for the Suppression of the Traffic in Women of Full Age of 11 October 1933

**[1947] ATS 17**

- International Convention for the Suppression of the Traffic in Women and Children

**[1922] ATS 10**

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime

**[2005] ATS 27**

- Draft Convention on the Rights of the Child
- Convention on the Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions

- Convention concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors

- Agreement for United Nations Relief and Rehabilitation Administration [UNRRA]

**[1943] ATS 2**

- Convention on the Rights of the Child

**[1991] ATS 4**

- Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations

**[2002] ATS 2**

From:

Sent:

To:

Subject:

Monday, 24 October 2011 7:31 AM

Universal Declaration of Human Rights

# Universal Declaration of Human Rights

## Preamble

Whereas recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, therefore, The General Assembly, Proclaims this *Universal Declaration of Human Rights* as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

## Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

## Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

And lastly,

**Article 3: All human beings have a right to life, liberty, and security of person.**

There was no liberty in this country for the unmarried pregnant woman. Such young women were reported to the police by neighbours, or enemies, or placed in Christian Homes for Delinquent Girls by their parents. Their right to the life they bore was extinguished from the moment they fell pregnant, and they had no right to defend their maternity or the child they bore.

The Australian Government is guilty of double-dealing and hypocrisy. To sign such a document on the international stage, but to encourage the exact opposite behind international waters is a betrayal of its young women, and their babies. Such betrayal is diabolical in the extreme. So much for 'social protection for all children born in and out of wedlock.' Those born out of wedlock were abducted from their drugged mothers, who were 'equal to (nobody) before the law.'

There are many other Articles to the Universal Declaration of Human Rights within the United Nations Charter. The ones I have mentioned paint a picture of a Federal Parliament comfortable with breaking its own Conventions, Agreements, and Protocols, and sailing on as though it will never be called to account. If we have to bring a case before the United Nations, we will. **I am sure we will all settle for the Magdalen Laundry of Ireland's Band system for Restitution and Effective Remedy.**

And those of us who have experienced the steps towards wholeness afforded us by the apologies we have received from our families, our hospitals and the WA Government, and the Catholic Church, take another step towards official National Government acknowledgement, and ultimate responsibility and accountability of a **Parliament that is elected by the people, for the people.**

The childless do not have more rights than the fertile. The married couples do not have more rights than single women.

**Article 1 of the 'Universal Declaration of Human Rights'** says:-

**"All human beings are born free and equal in human rights."**

**This document, signed by Dr Herbert Evatt in 1948 is part of our Constitutional entitlement.**

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3**

Everyone has the right to life, liberty and security of person.

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 25**

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

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**Sent:** Monday, 24 October 2011 7:51 AM  
**Subject:** Article 28

Article 29

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.