

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

**UNITED NATIONS CONVENTION ON THE
RIGHTS OF THE CHILD**

17th Report

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ISBN

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TERMS OF REFERENCE

In relation to the implementation of the *United Nations Convention on the Rights of the Child* in Australia the Joint Standing Committee on Treaties resolves to inquire into:

1. the domestic ramifications of Australia having ratified the Convention;
2. Federal and State progress in complying with the Convention;
3. the difficulties and concerns arising from implementation in its current form;
4. possible inconsistencies between domestic jurisdictions and the need for agreed national standards;
5. the need for a mechanism to promote, monitor and report publicly on compliance and implement public consultation processes;
6. the adequacy of the administrative, legislative and legal infrastructure in addressing the needs of children;
7. the adequacy of programs and services of special importance to children; and
8. any further action required in relation to the Convention.

FOREWORD

Conduct of the Inquiry

The Inquiry into of the Status of the United Nations *Convention on the Rights of the Child* in Australia focused on those aspects that were of concern to the Australian community. Accordingly the Committee adopted a broad set of issues as its Terms of Reference.

On 25 February 1997 the Committee resolved to inquire into the Status of the United Nations *Convention on the Rights of the Child* in Australia and the Inquiry was advertised nationally on 1 March 1997. The Committee received 764 submissions and 100 supplementary submissions and five petitions containing 164 signatures. A number of children put in submissions, the youngest being eight years old.⁸

Public hearings were held in all States and Territories with 270 witnesses representing 170 organisations or individuals and included a number of children. Hearings were held in Adelaide on 4 July 1997; Brisbane on 1 May 1997 and 6 August 1997; Canberra on 28 and 29 April 1997, 16 June 1997, 3 and 29 September 1997 and 28 May 1998; Darwin on 14 August 1997; Hobart on 4 August 1997; Melbourne on 9 and 10 July 1997; Perth on 3 July 1997; and Sydney on 9 May 1997, 5 August 1997 and 17 April 1998.

Informal discussions were held in Alice Springs on 6 and 7 November 1997. Some members of the Committee also visited accommodation sites for homeless children in the area.

The Joint Standing Committee on Treaties met with the Chairperson and the Deputy Chairperson of the United Nations Committee on the Rights of the Child on 2 and 3 September 1997 in Canberra to clarify interpretative and other issues which are relevant to Australia's implementation of the Convention.

General observations on submissions received

Those who supported the Convention saw it as valuable because it places a positive obligation on the Government to provide resources for families and useful as a background from which to argue for better conditions, facilities and services; providing international benchmarks across cultural borders; and providing a framework and an opportunity to rework legislation, policy and practices to ensure the economic, cultural, civil and political rights of children. The concerns

⁸ Paul-Cooper, Submission No. 210

expressed in these submissions include the lack of compliance and implementation; the need for Federal legislation; the need for a children's commissioner, office for children, minister for children, ombudsman for children; better monitoring of, reporting on and compliance with the Convention; the need for child impact statements, a national agenda for children and other mechanisms to improve national consistency in legislation, policy and practices relevant to children.

Fifty one per cent of the submissions opposed the Convention. The major concerns raised were the granting of autonomous rights to children and therefore potentially over-riding parental rights; lack of freedom for parent to choose the type of religion and education for their children; sovereignty and the role of the United Nations; encroachment on State and Territory rights by the Commonwealth; government interference in family life; relevance or irrelevance of the Convention to Australia; the lack of definition, allowing a number of interpretations of various articles; outlining children's rights but not responsibilities; concern at the fear of implementation and the failure to address the issue of abortion. A number of the submissions addressed single issues such as the removal of children from their parent, sovereignty or abortion.

Many also saw the Convention as unnecessary either because they believe that Australia should be doing the best for children and families as a matter of decency, or because they consider that Australian children were already adequately catered for.

Structure of the Report

Chapter 1 provides a general introduction and background to the Inquiry. This section also addresses sovereignty and jurisdictional issues. Chapter 2 focuses on the general measures of implementation, the monitoring and reporting of Australia's compliance with the Convention.

Chapter 2 looks at the moral, legislative and political ramifications of the implementation of the Convention in Australia. The lack of community awareness and the need to publicise the Convention is also discussed.

Chapter 3 provides some brief comments on Australia's progress in compliance with the Convention.

Chapter 4 outlines the definitions, general principles, the rights of children and the difficulties which have arisen in the Australian community from different interpretations of these when trying to implement the principles of the Convention into policy and practice.

Chapter 5 looks at the national perspective including the need for national standards, national legislation and a central coordinating agency such as an office of children or children's commissioner. Comments are made on a number of mechanisms aimed at advocacy for children and national coordination of children's issues.

Chapter 6 discusses Australia's reporting obligations and the need to monitor the welfare of our children.

Chapter 7 looks at the adequacy of programs and services that are relevant to children and their families and the extent to which they are meeting the needs of Australian children. The areas covered briefly in this Report are support to families, the care system, health, social security and education.

Chapter 8 outlines briefly a number of issues involved in the protection of children such as the legal services in juvenile justice and family law proceedings, child labour and other exploitative practices and the special measures needed to provide for minority and Indigenous groups.

Chapter 9 provides the concluding comments on what steps are needed in the future to ensure the welfare of Australia's children and families and to address the divisions in the community about the Convention. This section also includes the options of denunciation, denunciation and re-ratification, the status quo, retaining the Convention but adding declarations and amending the Convention. The Committee's conclusions are then presented.

Throughout the report the Committee will refer to a number of recent inquiries by other Parliamentary Committees rather than revisit these with short summaries of the issues involved.

- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs - *Inquiry into the Implementation by Governments of the recommendations of the Royal Commission into Aboriginal Deaths in Custody 1994*;
- Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, tabled in February 1994;

- House of Representatives Standing Committee on Community Affairs, *Report on Aspects of Youth Homelessness*, tabled in May 1995;
- House of Representative Standing Committee on Community Affairs, *Aspects of Youth Suicide, Summary Report*, tabled in May 1997
- Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's efforts to Promote and Protect Human Rights*, tabled in November 1994;
- Senate Employment Education and Training Reference Committee, *Childhood Matters The report on the inquiry into early childhood education*, tabled in July 1996;
- Senate Employment Education and Training Reference Committee, *Report of the Inquiry into Education and Training in Correctional Facilities*, tabled in April 1996;
- House of Representatives Standing Committee on Employment, Education and Training, *Youth Unemployment: A working solution*, tabled in September 1997;
- Senate Employment Education and Training Reference Committee, *Not a Level Playing Field - Private and Commercial Funding in Government Schools*, tabled in 1997.

The Committee will also not repeat the material presented in:

- Attorney-General's Department, *Australia's Report under the Convention on the Rights of the Child*, December 1995;
- 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, Sterling Press;
- Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission, *Seen and Heard: priority for children in the legal process*, Report No. 84, September 1997.

Although these reports are central to the issues of the well-being of children and young people in Australia, in the interests of brevity, the issues raised in those reports will only be briefly mentioned in relation to the issues raised in evidence to this Inquiry.

RECOMMENDATIONS

The *Convention on the Rights of the Child* is a wide ranging instrument encompassing civil, cultural, economic, social and political rights of the child. The articles of the Convention are couched in general terms which are often open to a number of interpretations. While this allows States Parties a margin of appreciation in implementing the Convention in a manner compatible with their culture, in Australia this has led to continuing confusion and concern about its implementation.

The major concerns relate to the perceived impact of the Convention on families. The Committee supports the principles of the Convention and believes that its implementation must recognise the family as the fundamental unit of Australian society and have due regard for the rights and responsibilities of parents as the primary carers. The role of the state is not to interfere with functioning families but to support families as the appropriate environment for the growth and development of children and to support those children whose well being may be under pressure due to problems confronting the family, or who sadly find themselves at risk. Our over-riding concern, however, is for the interests of Australia's children. Accordingly, the following recommendations should be read in this context.

Best interests principle

Recommendation 1

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Community Services and Income Security Administrators investigate the need to clarify the interpretation and application of the 'best interests' principle. (Paragraph 4.306)

Inconsistencies between State, Territory and Federal legislation

Recommendation 2

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General investigate and remedy the inconsistencies between legislation in different jurisdictions that may adversely impact on children. (Paragraph 4.310)

*Issues relating to the media***Recommendation 3**

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General address jurisdictional inconsistencies in relation to the publication of children's names in circumstances that would be detrimental to the child's best interest. (Paragraph 4.311)

Recommendation 4

The Joint Standing Committee on Treaties recommends that the appropriate industry organisations monitor and encourage responsible reporting in the preparation of news stories in relation to the potential impact on children. (Paragraph 4.312)

Recommendation 5

The Joint Standing Committee on Treaties recommends that the Government monitor, assess the adequacy of and enforce existing guidelines to provide greater protection for children viewing television. (Paragraph 4.312)

Recommendation 6

The Joint Standing Committee on Treaties recommends that the Government monitor and control the content of advertisements designed to appeal to children. (Paragraph 4.312)

Recommendation 7

The Joint Standing Committee on Treaties recommends that the Government establish an effective and timely complaints mechanism in relation to television programs and advertisements. (Paragraph 4.312)

The right to know the parents

Recommendation 8

The Joint Standing Committee on Treaties recommends that the Government request that information identifying gamete donors be registered in all jurisdictions. (Paragraph 4.313)

Non-discrimination

Recommendation 9

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General to review legislation to ensure that there is no exploitation of children on the basis of age. (Paragraph 4.314)

Recommendation 10

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General to review legislation, policies and practices to ensure that children in all jurisdictions are adequately protected. (Paragraph 4.314)

Recommendation 11

The Joint Standing Committee on Treaties recommends that the Government investigate educative initiatives apart from the formal complaints mechanisms which can address racial discrimination against children evident in the community. (Paragraph 4.316)

Recommendation 12

The Joint Standing Committee on Treaties recommends that the Government formally seek input into policy formulation from Non-English Speaking Background and Indigenous sections of the community in the development of mainstream programs which may be accessed by those groups. (Paragraph 4.317)

Recommendation 13

The Joint Standing Committee on Treaties recommends that the Government formally seek input into the preparation of Australia's reports on compliance with international treaties from Non-English Speaking Background and Indigenous sections of the community. (Paragraph 4.317)

Recommendation 14

The Joint Standing Committee on Treaties recommends that the Government review its policies and practices to ensure that programs and services are accessible to children from Non-English Speaking and Indigenous backgrounds. (Paragraph 4.317)

Participation in policy and program development

Recommendation 15

The Joint Standing Committee on Treaties recommends that the Government encourage children and young people to have input into the development of policies and programs that affect them. (Paragraph 4.318)

Support for women contemplating abortions

Recommendation 16

The Joint Standing Committee on Treaties recommends that the Government investigate the adequacy of support services to enable women to contemplate alternatives to abortions. (Paragraph 4.319)

Teenage pregnancy

Recommendation 17

The Joint Standing Committee on Treaties recommends that the Government investigate how abortions can be avoided through appropriate sex education in schools. (Paragraph 4.320)

*Decision making responsibilities of government agencies***Recommendation 18**

The Joint Standing Committee on Treaties recommends that the Government request that the relevant departments and agencies identify their decision-making responsibilities in relation to the *Convention on the Rights of the Child* and make this information readily available to the community. (Paragraph 5.193)

*Jurisdictional inconsistencies***Recommendation 19**

The Joint Standing Committee on Treaties recommends that the Government request that all relevant bodies address the inconsistencies within Australia in relation to matters that impact on children's rights, responsibilities and services. (Paragraph 5.194)

Recommendation 20

The Joint Standing Committee on Treaties recommends that the Government review its policies and practices to reduce the inconsistencies between portfolios in relation to the provision of programs and services for children and young people. (Paragraph 5.194)

Recommendation 21

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General to review the existing legislation, policies and practices at Federal, State and Territory levels for compliance with the *Convention on the Rights of the Child*. (Paragraph 5.195)

*Status of non-legislated international treaties in Australia***Recommendation 22**

The Joint Standing Committee on Treaties recommends that the consideration of the Administrative Decisions (Effect of International Instruments) Bill 1997 recommence as a matter of priority. (Paragraph 5.198)

Recommendation 23

The Joint Standing Committee on Treaties recommends that the Government take the necessary steps to ensure relevant officials are aware of pertinent international treaties in making decisions. (Paragraph 5.199)

Office for Children

Recommendation 24

The Joint Standing Committee on Treaties recommends that the Government establish an Office for Children as an independent statutory authority attached to the Prime Minister's portfolio to promote the vitality and importance of the family as the basic unit in society, which is responsible for the growth and the development of our nation's children, while recognising the need for government support for families and those children whose well being may be under pressure due to problems confronting the family. (Paragraph 5.200)

Recommendation 25

The Joint Standing Committee on Treaties recommends that the role and functions of the Office for Children should:

- **ensure that all legislation, policies and practices support the family as the natural environment for the development and well being of children with parents having the primary role and responsibility in raising children;**
- **develop a national strategy and work with the States and Territories on improving coordination of policies affecting children and their families;**
- **encourage Federal departments to incorporate the principles of the *Convention on the Rights of the Child* into their policies, programs and practices and act as a voice for children to government;**
- **consider the potential impact of Government policies, programs and proposed legislation on children and their families;**
- **develop mechanisms to assist the coordination of Federal Government policies, programs and practices;**

- **identify and encourage research on children's issues;**
- **provide leadership and coordination in the development of national standards in consultation with the States and Territories;**
- **consult with community organisations, children and young people in relation to issues affecting them;**
- **monitor programs and initiatives for compliance with the Convention;**
- **coordinate the development of models of best practice for services and/or programs relevant to children;**
- **liaise with the Federal, State and Territory complaints handling agencies and to facilitate cooperation in respect to matters extending beyond the limits of individual State or Territory jurisdictions;**
- **report to Parliament on the status of children in Australia;**
- **encourage and facilitate public debate and community awareness on matters relating to children;**
- **monitor performance of Australia's international obligations to children;**
- **establish a mechanism for public reporting on breaches and compliance with the *Convention on the Rights of the Child*;**
- **prepare Australia's reports to the United Nations Committee on the Rights of the Child; and**
- **investigate appropriate processes to enhance the opportunities for contribution by non-government organisations and young people to Australia's reports to the United Nations Committee on the Rights of the Child. (Paragraph 5.200)**

Complaints mechanisms

Recommendation 26

The Joint Standing Committee on Treaties recommends that the Government review the role and functions of the Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman to ensure that there are adequate opportunities and resources available to address potential complaints concerning children under the *Convention on the Rights of the Child*. (Paragraph 5.203)

Monitoring the implementation of the Convention in Australia

Recommendation 27

The Joint Standing Committee on Treaties recommends that the Government develop a coordinated mechanism for ongoing monitoring of the implementation of the Convention. (Paragraph 6.50)

Support for families

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 to reduce the need to remove children from families. (Paragraph 7.148)

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. (Paragraph 7.149)

Recommendation 30

The Joint Standing Committee on Treaties recommends that the Government consider the adequacy of and accessibility of parenting courses. (Paragraph 7.149)

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. (Paragraph 7.150)

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. (Paragraph 7.150)

Involvement of extended families

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. (Paragraph 7.151)

Recommendation 34

The Joint Standing Committee on Treaties recommends that the Government investigate the feasibility of establishing a voluntary register for grandparents. (Paragraph 7.151)

Support for disadvantaged and disabled children

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. (Paragraph 7.152)

*Children and young people in care***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. (Paragraph 7.153)

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. (Paragraph 7.153)

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. (Paragraph 7.153)

*Sterilization of disabled children***Recommendation 39**

The Joint Standing Committee on Treaties recommends that the Government investigate the adequacy of support programs providing alternatives for parents contemplating the sterilization of children with disabilities. (Paragraph 7.268)

*Access to support for young Indigenous people***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. (Paragraph 7.270)

Training for professionals working with children

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. (Paragraph 7.380)

Teaching of the Convention in schools

Recommendation 42

The Joint Standing Committee on Treaties recommends the 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 their parents as members of our Australian society. (Paragraph 7.382)

Discipline in schools

Recommendation 43

The Joint Standing Committee on Treaties recommends the introduction of an information program for teachers on alternative discipline options available. (Paragraph 7.383)

Juveniles in detention

Recommendation 44

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General to investigate the alternative options to mandatory sentencing. (Paragraph 8.280)

Recommendation 45

The Joint Standing Committee on Treaties recommends that the Government request the Standing Committee of Attorneys-General review existing juvenile justice legislation to ensure that children and young people cannot receive longer sentences than adults for any particular offence. (Paragraph 8.281)

Recommendation 46

The Joint Standing Committee on Treaties recommends that the Government request the cooperation of the State and Territory governments in establishing the frequency with which juveniles are held in custody with adults and to develop measures to address this problem. (Paragraph 8.283)

Recommendation 47

The Joint Standing Committee on Treaties recommends that the Government withdraw the reservation to Article 37(c) of the *Convention on the Rights of the Child*. (Paragraph 8.283)

Prosecution of child sex offences committed internationally**Recommendation 48**

The Joint Standing Committee on Treaties recommends that the Government review existing procedures used in prosecutions under the Crimes (Child Sex Tourism) Amendment Act 1994 to ensure all requirements of procedural fairness and the interests of justice are met. (Paragraph 8.284)

Declarations on the importance of families**Recommendation 49**

The Joint Standing Committee on Treaties recommends that the Government lodge declarations in relation to the controversial Articles of the *Convention on the Rights of the Child* to ensure appropriate recognition of the rights and responsibilities of parents in raising their children. (Paragraph 9.104)

ACKNOWLEDGMENTS

The Committee wishes to thank all those who participated in the Inquiry by appearing as witnesses, providing written submissions and assisting with the arrangements for Committee meetings and inspections. The Committee is grateful for the interest shown and the co-operation and the advice provided.

Although the Committee was not able to take oral evidence from everyone who provided submissions or to cite all submissions in the report, the Committee considered all the information provided in determining the conclusions in the report.

The Committee would also like to express its appreciation to the Queensland University of Technology for permission to use the drawings from the *Children Have Rights: A Children's Art Exhibition* and Dr Barbara Piscitelli for her assistance and cooperation in enabling this to occur.

The Committee would also like to thank Sean Baker and Cate Buchanan who prepared papers relevant to the Inquiry as part of their internships.

The Committee would like to acknowledge to special efforts of Inquiry Secretary, Cheryl Scarlett, without whose perseverance this very important report would not have been completed in a timely manner.

It is a ground breaking parliamentary report with ramifications for many portfolio areas of Federal and State and Territory responsibility.

ABBREVIATIONS AND ACRONYMS

AAYPIC	Australian Association for Young People in Care
ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Commission
ABS	Australian Bureau of Statistics
ACFOA	Australian Council for Overseas Aid
ACROD	National Industry Association for Disability Services
ACT	Australian Capital Territory
ACTAC	Australian Children's Television Action Committee
AEP	National Aboriginal and Torres Strait Islander Education Policy
AHMAC	Australian Health Ministers Advisory Council
ALRC	Australian Law Reform Commission
ARC	Australian Research Council
ARHA	Australian Reproductive Health Alliance
ART	Artificial Reproductive Technology
ATSI	Aboriginal and Torres Strait Islander
CES	Commonwealth Employment Service
COAG	Council of Australian Governments
CRC	United Nations Committee on the Rights of the Child
CROC	Convention on the Rights of the Child
CSDA	Commonwealth/State Disability Agreement
CTH	Commonwealth
DCI	Defence for Children International
ECPAT	End Child Prostitution <i>Pornography and Trafficking</i> Australia
FGM	Female Genital Mutilation
FSSA	Family Support Services Association of New South Wales
GNP	Gross National Product
GPSG	Grandparent Support Group
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
IVF	Invitro fertilisation
JSCM	Joint Standing Committee on Migration
JSCT	Joint Standing Committee on Treaties
MCCOC	Model Criminal Code Officers' Committee
NCWT	National Council of Women of Tasmania
NCYLC	National Children's and Youth Law Centre
NESB	Non-English Speaking Background
NGO(s)	Non-Government Organisation(s)
NHMRC	National Health and Medical Research Council

OECD	Organisation for Economic Cooperation and Development
OMEP	Organisation Mondiale pour l'Education Prescolaire
OSCE	Organisation for Security and Cooperation in Europe
P&C	Parents and Citizens
POD	Playgrounds on Demand
SBS	Special Broadcasting Service
SLCRC	Senate Legal and Constitutional References Committee
SWOW	School Without Walls
TCFUA	Textile, Clothing and Footwear Union of Australia
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCROC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VCLT	Vienna Convention on the Law of Treaties
VLA	Victorian Legal Aid
WHO	World Health Organisation
YACSA	Youth Affairs Council of South Australia
YANQ	Youth Affairs Network of Queensland
YAPA	Youth Action and Policy Association