

**Submission No. 88**

(homelessness legislation)

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## **Submission**

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### **A Child Rights Approach to Homelessness**

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**August 2009**

**James McDougall, Director**  
National Children's and Youth Law Centre

## **1 National Children's and Youth Law Centre**

- 1.1 The National Children's and Youth Law Centre ("the Centre") is a national community legal centre working for and with children and young people. The Centre promotes the rights and interests of Australian children and young people through advocacy, advice and information, strategic casework and policy development. Since its inception in 1993, the Centre has made over 180 public submissions on law and policy affecting children and responded to over 150,000 enquiries by or on behalf of children and young people throughout Australia.
- 1.2 The National Centre seeks to increase children's access to legal assistance, to improve the status of children and young people and to promote child rights in Australia.
- 1.3 The Centre thanks its volunteers for their assistance in preparing this submission.

## **2 Summary**

- 2.1 The National Children's and Youth Law Centre welcomes the opportunity to make submissions on the Federal House of Representatives Standing Committee on Family, Community, Housing and Youth Inquiry into Homelessness Legislation.
- 2.2 The Centre submits that the key principles guiding the Committee's approach to youth homelessness should be based on a clear and practical understanding of the issues facing children and young people who experience homelessness, and respect for the views and rights of children and young people.
- 2.3 This approach should support the ability of children and young people to make informed decisions and exercise their rights, and should balance their rights with the responsibilities of duty bearers (including parents, guardians, governments and the broader community).

## **3 Using a rights-based approach**

- 3.1 The National Children's and Youth Law Centre submits that universally accepted human rights standards provide a clear normative framework to assess laws and policies with respect to children and young people.<sup>1</sup>
- 3.2 The most widely accepted international standards for the treatment of children are set out in the United Nations ("UN") Convention on the Rights of the Child ("the Convention").<sup>2</sup> The Convention has been adopted and ratified by Australia<sup>3</sup> and is now the most widely ratified international instrument. It provides a universally accepted rights-based framework for addressing the treatment of children. This framework should view the rights contained in the Convention as interdependent and indivisible<sup>4</sup>.

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<sup>1</sup> J Tobin "Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs" (2006) 14 *The International Journal of Children's Rights* 275 at 279.

<sup>2</sup> United Nations, "Convention on the Rights of the Child", *United Nations Treaty Series*, vol. 1577, p. 3 (entry into force 2 Sep 1990).

<sup>3</sup> 17 December 1990.

<sup>4</sup> *Children and the Law in Australia* ed G Monahan & L Young, J Tobin, chapter 2, 'The Development of Children's Rights', p.39, Butterworths 2008

- 3.3 A consideration of the issue of the homelessness of children and young people should include the identification and assessment of relevant rights, such as:
- (i) the right to be protected from violence and abuse;<sup>5</sup>
  - (ii) the right to family and its nurturing and care (and the right to be provided with alternative care when a child has been temporarily or permanently deprived of an appropriate family environment);<sup>6</sup>
  - (iii) the right to benefit from social security;<sup>7</sup>
  - (iv) the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;<sup>8</sup>
  - (v) the right to information and education;<sup>9</sup>
  - (vi) the right to be heard and to express views in decisions;<sup>10</sup>
  - (vii) the right to appropriate measures to promote physical and psychological recovery and social reintegration as a victim of neglect, abuse or cruel and degrading treatment;<sup>11</sup> and
  - (viii) the right not to be discriminated against<sup>12</sup>.
- 3.4 Assessing proposed policies and law that affect children from a rights-based perspective is not a novel idea.<sup>13</sup> Involving human rights considerations in legislative and policy evaluation processes is increasingly common since the former UN Secretary General Kofi Annan's directive in 1997<sup>14</sup> which called for Governments to uphold human rights regardless of their political, economic, social or cultural systems and notwithstanding their economic and social situation.<sup>15</sup>
- 3.5 The Centre submits that recognising and providing effective support for the rights of children and young people in dealing with the issues relating to homelessness will assist the Australian Government in meeting its obligations under the United Nations Convention on the Rights of the Child.
- 3.6 In this submission, the Centre refers to "children" and "young people". For the purposes of this submission, those terms refer to persons under the age of 18 years (unless indicated otherwise).

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<sup>5</sup> CROC Article 19.

<sup>6</sup> CROC Articles 18 and 20.

<sup>7</sup> CROC Article 26.

<sup>8</sup> CROC Article 27.

<sup>9</sup> CROC Articles 17, 28 and 29.

<sup>10</sup> CROC Article 12.

<sup>11</sup> CROC Article 39.

<sup>12</sup> CROC Article 2.

<sup>13</sup> See e.g. J Tobin, above n 1.

<sup>14</sup> United Nations General Assembly, Report of the Secretary-General, *Reviewing the United Nations: A Programme for Reform*, A/51/950 (14 July 1997); see also United Nations General Assembly, *Vienna Declaration and Programme of Action*, A/CONF.157/23 (12 July 1993).

<sup>15</sup> K Annan *Report of the Secretary-General on the work of the Organisation* United Nations August 1999

#### 4 The Reality of Children Leaving Home

- 4.1 Children and young people aged 12 to 18 years make up the largest proportion of the Australian homeless population.<sup>16</sup> Of the approximately 100,000 homeless persons in Australia each year, almost half are under 18 years old.<sup>17</sup>
- 4.2 In the last five years, the number of homeless children under 12 has increased by 22%.<sup>18</sup> In 2007/2008, 19,000 children under 12 accompanied a homeless adult into the Supported Accommodation Assistance Program (SAAP).<sup>19</sup>
- 4.3 Homelessness has a severe impact on children and young people, and may be the first step on a path of lifelong disadvantage. Children and young people who experience homelessness are more likely to become homeless when they reach adulthood unless they receive specialist assistance at critical points in the cycle.<sup>20</sup>
- 4.4 Whilst this submission will focus more attention on issues relevant to older children (over the age of 12 years), the development of a rights based approach to the entitlements of all children – to a basic standard of living, adequate housing and protection from violence and abuse – is in our view an essential starting point for public policy to address homelessness for all age groups and break the cycle of disadvantage.
- 4.5 Of those children and young people who sought SAAP services in 2007/2008, the most commonly cited reason was “family breakdown” followed by a need for “time out” from family.
- 4.6 The Centre believes, on the basis of its own experience and the Government’s focus on family reconciliation, that the incidence of family breakdown or conflict as a reason for homelessness is under-reported by this particular age group.
- 4.7 The development of public policy requires an understanding of the developing capacities of children to act as independent individuals. The Centre’s experience of the decisions made by children in this age group (particularly the decision to leave the family home) supports the need for such an understanding.
- 4.8 The emergence of developmental science (drawing on research in biology, sociology and neuroscience) has given us the opportunity to understand the child more clearly as a developing person.<sup>21</sup> We also note recent studies that propose that by the age of 13 a young person has acquired “the major components of a mature political self”.<sup>22</sup> The child rights approach of the Convention supports this understanding.
- 4.9 Current Government policy fails to reflect this understanding. In the Centre’s view, the recognition of children as developing persons capable of independent decisions and action is critical in addressing the issue of homelessness in Australia.

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<sup>16</sup> The White Paper: ‘A Road Home’ December 2008 p4

<sup>17</sup> The White Paper: ‘A Road Home’ December 2008 p9

<sup>18</sup> The White Paper: ‘A Road Home’ December 2008 p5

<sup>19</sup> ‘Homelessness in NSW’ Housing NSW, August 2009

<sup>20</sup> The White Paper: ‘A Road Home’ December 2008

<sup>21</sup> “The Developing Child and the Law”, J A Lawrence, *Children and the Law In Australia*, Butterworths 2008.

<sup>22</sup> Ludbrook, R., *Children and the Political Process*, Australian Journal of Human Rights, 1996, Vol 9, note 17.

- 4.10 The Australian Government's initiatives and funding should contemplate the provision of services which allow young homeless people (including particularly children over the age of 12 years) to independently access information and advice and be supported in making their own decisions about their care and development.
- 4.11 Given that a child or young person is often likely to become homeless because of breakdown of family relationships and the experience of violence and abuse in the conventional family setting (as opposed to the direct result of financial distress, mental health issues or the failure of social networks), the government approach to youth homelessness should not place disproportionate emphasis on efforts to 'reunite' a child or young person with his or her family.
- 4.12 Family mediation has an important role. However, a child rights based approach (emphasising the health and well-being of a child), requires primary attention being paid to creating or restoring a living environment for the child that provides stability and support, allowing the child to maintain education and/or employment and appropriate social networks.
- 4.13 Failure to give this attention to the rights and needs of these children will not address the underlying issues, and will increase the risk of exposure to ongoing stress and other risk factors.

## 5 Failure of Government Policy

### *Current 'family-based' approach*

- 5.1 We note the current explicit “family-based” approach to youth homelessness used by the Federal Government. The Reconnect website states that the aim of its services is to bring about “family reconciliation” for young people and to break the cycle of homelessness by providing counselling, mediation and practical support “to the whole family”.<sup>23</sup>
- 5.2 This stated aim fails to recognise the true extent and value of the work undertaken by the Reconnect program. The Centre calls for an explicit acknowledgement and focus for this and other youth homelessness support services on the rights and needs of children and young people. A broad understanding of the role of the community (and government) in complementing and supporting the role of the family – a role that is not always met by the traditional family unit, is required.
- 5.3 In addition to the failure of this approach to reflect rights based thinking and to recognise the development of children as independent actors, this “family based” approach is problematic for practical reasons. Firstly, many children become homeless because of the very circumstances which exist within their families.<sup>24</sup> To encourage a child to return to his or her family to re-face the abuse, violence and conflict which caused him or her to leave home in the first place is counter-productive, and may exacerbate the distress and trauma faced by the child.
- 5.4 Secondly, official endorsement of a “family based” approach heightens expectations of the traditional family unit. Many families struggle with the financial, emotional and psychological issues raised by meeting the needs of the care, protection and development of children. Whilst the family has a central role in the care of children, the family itself also often requires support.
- 5.5 Recognising the challenges that families face in providing for children and acknowledging the diversity of arrangements that can assist in effectively meeting the needs of children would be a more appropriate approach. Avoiding moral judgments and narrow representations of appropriate care settings for children would be helpful and better reflect reality.
- 5.6 Finding the most appropriate living arrangement for a child requires an assessment of the rights, needs and wishes of that particular child. The child’s family will then also be more able to continue to provide appropriate support to the child.

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<sup>23</sup> Reconnect website, <<http://www.facs.gov.au/internet/facsinternet.nsf/youth/programs-reconnect.htm>>.

<sup>24</sup> Australian Institute of Health and Welfare (2007) Homeless People in SAAP, Supported Accommodation Assistance Program National Data Collection Agency Annual Report 2005–06

*Accreditation of non-governmental service providers*

- 5.7 It has been suggested that a system of accreditation for non-government service providers will improve the quality of services provided to persons that are homeless, and decrease their numbers. We support the Youth Accommodation Association's position that a system of accreditation *without* an increased commitment by the government in terms of resources and funds, is unlikely to achieve either of these outcomes. We would add that a rights framework that recognises the responsibility of Government to provide adequate housing is also required.
- 5.8 A system of accreditation could play an important role in setting minimum standards. But in the absence of an explicit commitment by government to the right to adequate housing for all, it would seem to be an exercise in blame-shifting and place an increased burden on the already strained non-governmental service providers without providing the necessary focus on the ultimate aim of providing for young people that are homeless.

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## 6 What Do Children Say?

6.1 The National Children's and Youth Law Centre provides an online advice and information service to children via its website ([www.lawstuff.org.au](http://www.lawstuff.org.au)). This service allows children to seek legal advice, referrals and information by email on topics such as leaving home, family law and their legal rights.

6.2 We hear children describe their experiences and we provide them with information and advice. One of the most common challenges faced by children who approach us is their desire to leave home. Often the child describes abuse and conflict as a reason for having left or wanting to leave home.

6.3 The following is a sample of the emails which the Centre receives (with identifying information altered or removed to protect the privacy and confidentiality of the children concerned).

- 14 year old (NSW)

*"i seriously want to move out from my family, im not happy, they choose everything for me everything about my life, they own my life. is like if i dont even have a life, my parents fight a lot, sometimes about me. im always so sad whenever they fight and leaves me at the corner crying. i became very independent when my parents started business, as more and more money they earned less and lesser time they ever spend time with me, i dont know my parents and they know nothing about me. whenever something happens my dad would always blame my mother, and i was hit by him ever since little, i had lots of bruises before and my friends would always ask my what happened but when i was little i didnt want anyone to think about me differently."*

- 15 year old (VIC)

*"Hey, I am fifteen years of age and over the past eight or nine years I have suffered quite a few traumas; such as rape, my father passing away, my mums alcohol addiction, violence between my parents and bullying. My mum and I have never got along and I never feel like I belong, I never feel worthy or any good for anyone or anything, and constantly as though I'm a failure. I want to move out of home because I know that if I'm closer to my close friends and my support network and my boyfriend that I will be happier and be able to happily continue my education live life as a happy teenager. I know that I am legally not allowed to move out and it is harder for me because I dont have anywhere to go, but is there anything that I could take into context and that could help me? I'm sick of feeling useless and always being put down, I feel like im suffocating or screaming but no one cares. Please help me."*

- 16 year old (QLD)

*"I want to leave home because I feel my mother is causing me a great deal of emotional distress. She is constantly putting me down and telling me I'm not good enough. Its gotten to the point where I won't even try to do things because I know It wont be good enough for her. When I try to reason with her she ignores me or walks off. She won't write notes to excuse me being too sick to go to school which means I get in trouble for wagging. I'm on edge whenever she is around, I feel like I'm walking on egg shells. I'm trying to complete my senior years at school which I'm finding so difficult with all the stress I'm under. Lately I've been breaking down and having panic attacks mostly about school work, I'm really stressing out. Is there any way I can go into foster care or some kind of institution? Or are there any allowances*

*or benefits I can claim if I were to move out and live on my own? I'd do almost anything to get away from her, I feel like she is destroying my life."*

- 15 years (WA)

*"hi im 15 years of age and i am in year 10. I am really getting sick of my parents. They have no idea how much they make my life hell. I have great days at school with all my friends, then i come home and its liek a prision. They dont let me o on anywhere, and they dont trust me at all. I know im not an adult but im not stupid about what choices i can make in life. I was wondering if there is any possible way i can move out, and move in with someone else without going to court or anything. I hate being at home all upset and i just want to have a good life."*

- 13 year old (SA)

*"hi i am 13 and would like to move out because home is crap and it does not feel real safe and my mum is really controlling, i am also pregnant and have only just found out. i have friends i can move in with and they know about the pregnancy, i would really like to move out asap. i live with my mum not my dad cause he used to bash me and threaten me, there are court cases against him also. my mum calls me a slut slaped me across the face and she doesnt know about the pregnancy either cause she would go crazy at me, the friend i could move in with is 26yo and lives just around the corner from my school. please help me i kneed to move out now."*

- 15 year old (SA)

*"I am fifteen and have been having trouble at home my whole life. My dad has hit me. Threatened to kill me attempted to strangle me, thrown tables at me. And glass objects witch have actually hit me and broke. I feel unsafe emotionally and physically. I would like to leave home. My mum sides with my dad. And i hate it. Please help me with information about living on my own i am getting very depressed living here at home."*

14 year old (QLD)

*"i have just started to live on the streets..., and i was wondering what my rights are and how i am expected to be treated by law officials. do i have any obligations to follow on with, such as support benefits or youth worker assoication. well i need to contact centerlink in any way to receive support packages or something like that. how long would it take to recieve government support packages and law advice on my rights and obligations \\ as a teen living in the streets."*

- 6.4 These emails sent to a website offering legal information are not abstract legal questions – they are clear statements of distress and pleas for assistance. The Centre offers them confidential advice, referrals for assistance and courses of action they can follow. Unfortunately, these emails reflect a reality for many of the children that are, or are at risk of becoming, homeless.
- 6.5 It is clear that Australia's response to the homelessness of children and young people is inadequate and needs further attention. The gap in service delivery must be addressed with early intervention and support programs that recognise the individual needs of young people at risk of homelessness, and support young people in both family reconnection (where appropriate) or confident independent living.

- 6.6 For these children, flexible options and unqualified access to support services are more important than a program that gives priority to “family reconciliation” without first acknowledging and addressing their immediate and future physical, emotional, developmental and educational needs.
- 6.7 The Centre’s work with youth networks reinforces the need for greater support mechanisms (including financial support and accommodation) that work together. These mechanisms can ensure young people are able to live independently in the short to medium term and better plan and meet their long term development and educational needs.
- 6.8 We also note and applaud the work of those who deliver Reconnect program services. These agencies provide essential services professionally and with care and empathy, under difficult circumstances. Having a more flexible policy framework would make their work easier and more effective.

## 7 Effective and Independent Support

- 7.1 In order to support the rights of children (to safety and protection from abuse, alternate care, accommodation, adequate standard of living, social security and education), current assistance and support available to homeless children should be reviewed and improved. Child protection systems to date have been unable to provide secure, stable accommodation, particularly for young people leaving home care and the juvenile justice system.<sup>25</sup>

### *Financial assistance*

- 7.2 The National Youth Commission 2008 report states that the level of income support available to homeless young people is “insufficient for the costs of living independently”.<sup>26</sup> The Centre submits that the income support must be sufficient to allow children and young people to live independently.

### *An Unqualified Right to Accommodation*

- 7.3 Public policy in Australia in the last decade has consistently failed to recognise the individual rights and entitlements of children and young people. This is particularly clear in their treatment the youth justice system. Most States and Territories continue to provide inadequate accommodation options for homeless children or at-risk children appearing in court on criminal charges. The Australian Law Reform Commission and the Human Rights & Equal Opportunity Commission in their joint 1997 Report<sup>27</sup> made recommendations in relation to the provision of accommodation for these children that have still not been implemented<sup>28</sup>.
- 7.4 Many providers of accommodation for homeless people specifically exclude young people because they are deemed to be “problematic”. This gap in service provision reinforces youth homelessness in crisis, short term, medium term and long term settings. The failure to adopt a rights-based approach means that solutions are shelved and those most at risk are abandoned.
- 7.5 The failure to provide basic services to this group perpetuates a cycle of homelessness and mistreatment. The Government’s review must ensure recognition of the fundamental rights of these children and young people, and then the provision of services that will ensure that these fundamental entitlements are met. We may then be able to start to address the abuse and lack of care and respect that often caused these children and young people to consider leaving home in the first place.

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<sup>25</sup> J McDowell *Report Card: Transitioning from Care* CREATE Foundation Sydney 2008

<sup>26</sup> D Mackenzie & C Chamberlain *Australia’s Homeless Youth, A Report of the National Youth Commission Inquiry into Youth Homelessness* National Youth Commission Victoria 2008

<sup>27</sup> Australian Law Reform Commission & Human Rights & Equal Opportunity Commission. 1997. *Seen and Heard : priority for children in the legal process* Australian Govt. Pub. Service, Canberra.

<sup>28</sup> National Children’s & Youth Law Centre and Youthlaw, 2007. *Preliminary Review of the Implementation Status of the Seen & Heard Report*, Discussion Paper, Schedule, p 53-54.

## 8 Comments on Models for Addressing Homelessness.

8.1 As indicated earlier in this submission, the Centre supports models that:

- adopt a rights-based approach;
- acknowledge the differing experiences of homelessness for young children, older children and young people (as distinct from those of adults);
- hear the concerns of children and young people in the development and evaluation of policy, and
- seek to provide services to and meet the entitlements of children and young people as individuals with clarity, respect and inclusiveness.

8.2 The Centre supports in principle models that:

- focus on tailoring services to the individual who is homeless or at risk of becoming homeless;
- "wrap" services around the individual so that all their needs can be met;<sup>29</sup>
- are provided in an integrated way;<sup>30</sup> and
- focus on early intervention and prevention<sup>31</sup>.

8.3 The Centre expresses concern that programs and strategies that focus on transitions (such as from school to work) or "at-risk" categorisation of children and young people often lack a fundamental commitment to rights and entitlements of all children and young people. The unintended result is that some children and young people are more likely to fall between the cracks – not only of the programs themselves but also of the entitlements to basic services. This is particularly likely to be the case for children under the age of 15 – for example, those who have been excluded from school, and those experiencing abuse in homes where cultural issues make it less likely that domestic violence services will have been involved.

8.4 The Centre also supports the fundamental objective that policy and services in this area should improve the ability of women and children to protect themselves from violence. This will require the cooperation and collaboration of a range of government and community services. Again the Centre believes that the adoption of a rights based approach that sees the right to bodily integrity (for women and children)<sup>32</sup> and to protection from abuse (for children in particular)<sup>33</sup> as fundamental provides the underlying framework for effective policy and protection.

8.5 The Centre supports the use of the Supported Accommodation Assistance Program (SAAP) as a practical focal point to create a national response to homelessness. However it notes that the reform of the Program will be necessary to ensure a better focus on long term outcomes.

8.6 The Centre also argues that a rights-based approach will require an improved mainstream service response to homelessness which could in the longer term decrease the need for homelessness-specific services. This could enable a better focus on early intervention and prevention so that existing programs such as SAAP may be able to evolve into a more limited crisis and short term service option.

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<sup>29</sup> The White Paper: 'A Road Home' December 2008 pxi

<sup>30</sup> The White Paper: 'A Road Home' December 2008 px

<sup>31</sup> The White Paper: 'A Road Home' December 2008 px

<sup>32</sup> International Covenant of Civil and Political Rights, Articles 6, 7, 9 and 10

<sup>33</sup> United Nations Convention on the Rights of the Child, articles 19, 34, 36 and 37 and International Covenant of Civil and Political Rights, Article 24.

- 8.7 The Centre supports the National Partnership on Homelessness goals to assist children and young people with the provision of early intervention and prevention programs, particularly an increased focus on providing life skills to assist this age group to make the transition to independence. However, the success of such programs depend upon a strong legislative base which provides an explicit rights-based framework to underpin the National Homelessness response, set standards and deliver the best quality services to children and young people.
- 8.9 Legislative reform provides a unique opportunity to set standards for children and young people that will deliver the best quality services possible whilst treating this vulnerable age group with dignity and respect.

## 9 Conclusion

- 9.1 The National Children's and Youth Law Centre reiterates the need identified by the White Paper for additional services targeting people at risk of homelessness in the 12-18 year age group. Such services need to be interconnected and aimed at providing not only reconnection with families (where safe and appropriate) but a focus on nurturing independence and facilitating re-engagement in education, training, work and community life.
- 9.2 The Centre submits that the Government's approach to homelessness should acknowledge the reality of the experience of homelessness for children and young people and provide them with services that recognise their rights and meet their needs.
- 9.3 The development of a rights-based approach will give a stronger framework for reducing the incidence of homelessness, and addressing the disadvantage and damage caused by the reasons for homelessness and by homelessness itself.
- 9.4 This rights-based approach should include the provision of access to information, advice and support and consultation regarding individual needs. In addition, there must be provision for adequate income support, protection from violence, access to appropriate accommodation and ongoing education and community involvement. Homelessness deprives children and young people of nurturing care, social security and the opportunity to reach their full potential. Above all, legislative reform must reflect respect for the rights of children and young people.
- 9.5.1 Finally it is necessary to place our response to the homelessness of children and young people in the context of other policy initiatives and to take positive steps to overcome the jurisdictional and departmental boundaries that act as justification for inaction and create or consolidate the gaps in service delivery that perpetuate disadvantage.
- 9.5.2 Therefore, we need a National Policy Framework for Children that is built on a child rights framework and connects, measures and evaluates action plans and policies that purport to address care and support, child protection, poverty, violence, justice and community safety, discrimination and disadvantage in outcomes in health, housing and education. Then homelessness will be simply a measure of disadvantage rather than a policy initiative and subject matter for more government inquiries.