

CHAPTER 3

FEDERAL, STATE AND TERRITORY PROGRESS IN COMPLYING WITH THE CONVENTION

Introduction

3.1 The extent to which Australia has met its obligations is detailed in Australia's Report and the additional information to the United Nations Committee on the Rights of the Child and will not therefore be repeated here. The Human Rights Commissioner believed that the standards set in the Convention are reasonable, practical and easy to meet.¹

3.2 Ms Mason, Chairperson of the United Nations Committee on the Rights of the Child, submitted that the Convention is not a magic wand that immediately erases all problems but it presents basic standards for countries.² The United Nations Committee was put in place to assist governments in the realisation of these standards and notes the progress and what difficulties prevent the achievement of those basic goals.³ Ms Mason added that the UN Committee is realistic and recognises that poverty, ill-health and unemployment exist in every society and each country has its own problems depending on the resources available.⁴ The Convention is designed to guide governments in the amelioration of the conditions of children in their country.⁵

Lack of implementation

3.3 A number of groups believed that Australia did not live up to its obligations. Ozchild suggested that the minimum standards in the Convention provide goals to aim for and that it is only a matter of political will in making it a priority and providing the resources needed.⁶ UNICEF submitted that in Australia, there remains:

1 Sidoti, Transcript of Evidence, 5 August 1997, p. 1168

2 Mason, Transcript of Evidence, 3 September 1997, p. 1533

3 *ibid*

4 *ibid*

5 *ibid*

6 Ozchild: Children Australia, Supplementary Submission No. 413a, p. S 3405

... clearly indisputable urgent priorities for Australian children. These include: health, nutrition, water and sanitation needs of Aboriginal and Islander children, high levels of youth suicide, low levels of immunisation of Australian children, access to quality education, employment opportunities, issues related to juvenile justice and family law.⁷

3.4 Jones and Marks believed that there is not only little evidence of progress being made with respect to children's rights in Australia but that there has been some erosion of children's rights in the areas of juvenile justice, the rights of children with disabilities, the commitment of State resources to protect and support children and families, and in the exploitation of children.⁸ They added that the treatment of and denial of rights to Indigenous children breaches every article of the Convention and there is a severe shortage of child protection services, child refuges, substitute care, mental health services, child advocacy and legal representation. There have been no effective measures designed to redress the institutional and structural disadvantage confronting Indigenous children.⁹

3.5 Youth Advocacy Centre Inc expressed the concern that the measures cited in Australia's Report have been lost or are under threat and that the Convention has had little impact upon Australian services and policies for children.¹⁰ The Youth Affairs Council of South Australia also believed that the national commitment to the Convention is under threat:

Evidence of the slippage in commitment ranges from the submission of late reports on compliance, to open hostility from governments to CROC in the framing of new legislation, particularly in the juvenile justice and child protection areas. Added to this a new climate of scepticism and misunderstanding around the inalienability of human rights (such as the right to protection against neglect, cruelty and exploitation and the right to shelter) - and the trend towards making rights conditional on so called 'responsibilities' or 'obligations'.¹¹

3.6 Mr Turner believed that the most charitable adjective to describe Australia's commitment to the Convention would be 'lukewarm'.¹² Given the resources available in Australia, he contends that not much has been done to

7 UNICEF, Submission No. 156, p. S 1048

8 Jones and Marks, Submission No. 91, p. S 440

9 Jones, Transcript of Evidence, 5 August 1997, p. 1198; Jones and Marks, Submission No. 91, p. S 440

10 Youth Advocacy Centre Inc, Submission No. 14, p. S 57

11 Youth Affairs Council of South Australia, Submission No. 158, p. S 1074

12 Turner, Transcript of Evidence, 14 August 1997, p. 1424

change things since ratification.¹³ The Early Childhood Association were also critical of Australia's compliance:

The public commitment in words is not matched by policies or practice in many instances. It is not possible to deliver appropriate services for many children within the constraints imposed by policies which are backed up by inadequate funding. Outcomes for children are still very much dependent on the social, educational and economic status of their families. This remains unacceptable.¹⁴

3.7 Youth Action and Policy Association also expressed the concern about the number of young people in Australia who do not have:

... access to a basic level of income support, health care, legal rights, accommodation or education. These young people primarily include young people who are homeless, in care, or from a Non English Speaking or Aboriginal background. However, there are also many young people not from these groups who do not enjoy access to the basic rights set out in CROC. Government departments and organisations at Federal, State and Territory levels fail to ensure that sufficient resources and programs are available to young people to assist them in achieving their full potential.¹⁵

3.8 The Kids Help Line raised the concern that although there are approximately 7000 services in Australia for children and young people, their relevance, accessibility and effectiveness in many cases is less than ideal and many are not child friendly because of their structure or lack of resources.¹⁶

Children's rights compared to welfare

3.9 The Australian Catholic Social Welfare Commission believed that the Convention frames the basic developmental and autonomy interests of children as rights and not simply as laudable goals subject to resource constraints but as obligations the States should provide.¹⁷

3.10 The Youth Advocacy Centre Inc commented, however, that there is little real commitment to the Convention particularly in relation to the rights-based articles as opposed to the protection issues.¹⁸ The Children's Interests Bureau

13 Turner, Transcript of Evidence, 14 August 1997, p. 1433

14 Australian Early Childhood Association, Submission No. 394, p. S 2211

15 Youth Action and Policy Association, Submission No. 130, p. S 722

16 Kids Help Line, Submission No. 148, p. S 982

17 O'Connor, Transcript of Evidence, 29 April 1997, p. 181

18 Youth Advocacy Centre Inc, Submission No. 14, p. S 57

Board South Australia also believed that children's interests and rights have been relatively disregarded in Australia as opposed to their welfare needs in relation to health, education and protective services.¹⁹

3.11 Kids Help Line commented that there have been few attempts by Australian governments to implement legislation promoting children's rights and that governments continue to introduce new legislation and policies that contravene children's rights. They provided the examples of Juvenile Justice laws in Queensland and Western Australia, curfews in New South Wales, and school suspension and exclusion policies in Queensland and New South Wales.²⁰

3.12 Further, it was suggested that implementation and compliance should not be limited to the legislative action and that many non-government agencies are demonstrating that the Convention can also be implemented in a civil and social sense.²¹

Federal, State and Territory jurisdictions

3.13 When a country which has a Federal system ratifies a Convention then it applies to all levels of government. As signatory to the Convention it is the responsibility of the Commonwealth Government to ensure that the legislation and policy complies with the Convention.²² However, it was submitted that:

The majority of policy areas which directly impact on children fall under the jurisdiction of the Australian States and Territories. This has resulted in a complex array of legislation and policy determining how children's rights are delivered, which differ from State to State. The previous Commonwealth Government was confident that this web of legislation and policy was congruent on the Convention.²³

3.14 HREOC suggested that there are advantages and disadvantages in dividing the responsibility for children between different levels of government.²⁴ The main advantage is the capacity to develop policies which are more appropriate for regional needs but this may lead to a lack of

19 Children's Interests Bureau Board South Australia, Submission No. 327, p. S 1808

20 Kids Help Line, Submission No. 148, p. S 980

21 *ibid*

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

23 *ibid*

24 Human Rights and Equal Opportunity Commission, Submission No. 336, p. S 1886

coordination.²⁵ Save the Children Australia submitted that there are many inconsistencies which cost money.²⁶

Federalism and the Convention

3.15 There was some concern that the Federal Government would use federalism as an excuse for not insisting that the States and Territories uphold the international human rights obligations.²⁷ Australian Early Childhood Association expressed the view that if the political will to implement a convention is absent then the Federal structure becomes a convenient excuse for inaction.²⁸ Community Services Australia also submitted that the Commonwealth/State responsibilities are not clearly delineated and there is no mechanism to ensure the principles of the Convention are reflected in Commonwealth or State and Territory legislation or policy.²⁹

3.16 Mr Burdekin gave the view that if the actions of the States do not comply with minimum standards then the Commonwealth has an obligation to legislate uniform national standards.³⁰ However, another approach supported by National Industry Association for Disability Services (ACROD Ltd) was to involve States, Territories and NGOs in the signing and implementation of conventions.³¹ They submitted that it is inappropriate for Australia to enter into treaties and then use the division of powers and responsibilities within Australia to avoid effective implementation.³² Ms Rayner commented that:

It has not been helpful for the well-being of Australian children to be caught up in Commonwealth/State bureaucratic and political rivalries. State governments tend to assert their excellent work for children, 'given their budgetary constraints' and explicitly or implicitly blame the Commonwealth for failing to resource them adequately. This is simple evasion of responsibility, if children's human rights are inalienable.³³

25 *ibid*

26 Rose, Transcript of Evidence, 10 July 1997, p. 986

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

28 Australian Early Childhood Association, Submission No. 394, p. S 2211

29 Community Services Australia, Submission No. 154, p. S 2024

30 Burdekin, Transcript of Evidence, 5 August 1997, pp. 1288-9

31 ACROD, Submission No. 40, p. S 225

32 *ibid*

33 Rayner, Submission No. 223, p. S 1474

3.17 The Catholic Commission for Justice, Development and Peace also believed that the issue of State's rights should not overshadow Australia's responsibility as a good international citizen or its obligation to protect the vulnerable groups in our society.³⁴

Concluding comments

3.18 Australia's Report to the United Nations Committee on the Rights of the Child provides an extensive overview of the programs and services available to children in Australia and provides numerous examples of the nation's progress in complying with the Convention. What was not always clearly articulated in that Report were areas where Australia had not always achieved significant successes. There have also been a number of significant advances since November 1995 and a number of problems highlighted to the community. These are dealt with throughout the remaining chapters of this Report.

34 Catholic Commission for Justice, Development and Peace, Submission No. 201, p. S 1366