

Aboriginal Children and the UN Convention on the Rights of the Child

Pertinent comment from the NCBA Report "Where Rights are Wronged"

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Where Rights Are Wronged: A critique of Australia's compliance with the United Nations Convention on the Rights of the Child was published in March of this year. It is a report of the National Children's Bureau of Australia for the Children's Rights Coalition by consultants Graeme Brewer and Phillip Swain.

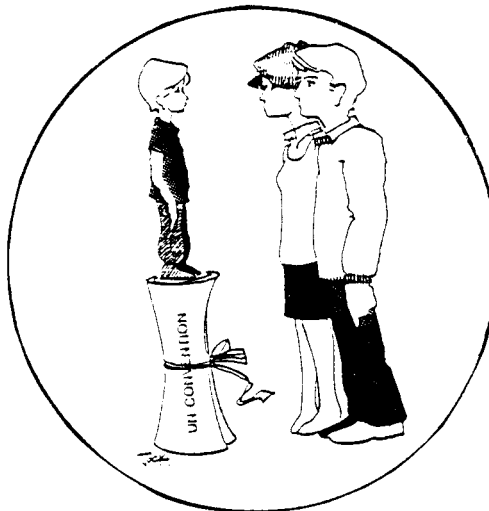
Australia ratified the UN Convention on the Rights of the Child in December, 1991. Article 44 of the Convention reads as follows:

1. State parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted, which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights (a) within two year of the entry into force of the Convention from the State party concerned (b) thereafter every five years.

Australia's first report to the United Nations on its compliance with the Convention was therefore due in January 1993.

The Children's Rights Coalition, born in February 1992 at a national conference on the implementation of the UN Convention, is a working group whose purpose is to promote the Convention and independently monitor compliance. The working party represents a broad range of interests: Michael Hogan of the Public Interest Advocacy Centre (NSW); Nigel D'Souza, of SNAICC (Secretariat for National Aboriginal and Islander Child Care) representing the interests of Aboriginal and Torres Strait Islander children; John Edwards, the Executive Director of the National Children's Bureau of Australia; Carey Drake-Brockman, then a member of the Office of the Family but now Senior Policy Officer in the Department of Community Development (WA); Sally Castell-McGregor, the Director of the South Australian Children's Interest Bureau; Janet Wight, of the Youth Advocacy Centre (Qld) and Moira Rayner, Victorian Commissioner for Equal Opportunity.

Where Rights are Wronged was not intended to examine every article of the Convention comprehensively. The intention was 'to focus upon a range of significant issues about which there is concern in the non-government sector that compliance was not occurring' (p1).



I found this report exceptionally clearly written and very interesting. I strongly urge all concerned Australians to purchase a copy and familiarise themselves with the issues. As the Koori community here says so simply and so wisely, **'our children are our future'**

For this article in the special Year of the World's Indigenous People edition of *Children Australia*, I will outline the report's findings where these have direct implications for Aboriginal children.

The report finds that the two areas where Australia fails significantly to comply with the Convention are:

1. there is very little knowledge about the Convention amongst those who ought to know about it.

2. and this is the most serious failure – that of Government to develop and resource children's services properly. Many of the breaches of the Convention documented in the report stem from a lack of will to fund family, supportive and preventative services for children...The failure to provide these resources might well be, in itself, a prima facie breach of the Convention' (vii).

Section One: Rights and Child Protection.

This section examines the protection of children as a national issue. It mentions Castell-McGregor's (1990) suggestion of the development of a Ministry for children at state and national levels 'with a specific focus upon children and a commitment to the recognition of families as the primary institution which nurtures children' (p4).

Although the need for a Charter of Children's Rights has been canvassed in Australia, there has been little apparent willingness, however, on the part of governments to incorporate such a Charter into child welfare legislation.

In regard to a national approach, the report says that while all states 'purport to enshrine in legislation the "best interests of the child" philosophy, as encapsulated in Article 3 of the Convention, there is inconsistency among the various states in the definition of the "best interests" notion and there remain concerns as to the form and philosophy of intervention.' p3)

In 1990, there was general agreement that all Australian states should work toward consistent legislation, policies,

practices and services affecting children and their welfare, but progress toward actuality of a common approach to children's rights has been very slow. 'Aboriginal advocacy groups have argued for a number of years that a national approach to Aboriginal legislation, including in relation to children, is essential if change itself is to occur.' (p3)

It is viewed as a national issue that children with particular needs such as children of ethnic minorities, disabled and Aboriginal children are groups not well protected. 'The lack of consultation with Aboriginal groups and communities, characteristic of service provision across many policy and program areas, was also reported to be occurring in child protection matters. This was of particular concern in Western Australia and Queensland, where the experience of Aboriginal communities was of 'white city-based models of intervention' being imposed upon Aboriginal families and communities with little scope for consultation'. (p13)

The **administration of justice** came under scrutiny, in terms of separate representation of the child and the need for training of juvenile court magistrates and judges. Often the offending child and the child in need of protection are one and the same, but in Victoria the legislative requirement in the *Children and Young Persons Act (Vic)* that children be separately represented in family matters, has yet to be proclaimed.

The NSW child protection and child welfare system suffers from the lack of legislative proclamation of the relevant child welfare provisions setting up review processes (particularly Boards of Review), presumably due to economic reasons.

Several states raised the specific concern of the need for training opportunities for juvenile court judges and magistrates. 'There are also major concerns across Australian juvenile jurisdictions about delays in processing of child protection matters by the legal and welfare system.' (p5)

Mandatory reporting of child abuse is established in South Australia, New South Wales, Queensland and Tasmania. However, 'marked differences exist even

between these states as to the definition of intervention, the legal orders available and the philosophy underpinning each State's legislation...' (p6).

In all states, whether formally supportive of mandatory reporting or not, there was consistent reporting of a lack of treatment of programs for young children and young persons and the inadequacy of services for parent education and other services to assist parents in the care of their children. 'Not only does this appear to be in breach of the obligations contained in articles 3 and 18 of the Convention, but it supports the assertion by Carter et al (1988) that the current debates about reporting and the child protection system have contributed to the neglect of preventive services and their development.' (p6)

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Probing into the **philosophy of child protection** across Australia yielded the impression that 'child protection is ideologically driven and financially hamstrung. The child protection system is marked by increasing numbers of allegations to protective authorities, but decreasing resources for intervention, particularly non-statutory intervention...' (p7).

'The dominant ideology in Australia appears to be to avoid "intrusion" into family life if at all possible, and to redefine the parameters of legitimate child protection intervention within increasingly narrow boundaries.' (p7) The presumption is that by withdrawing to a narrower group of statutory clients, other families and children will be assisted by the "community", but the evidence presented is that the community and network of agencies is less and less able to assist the growing flood of referrals seeking assistance. 'This is true even in states such as Victoria with a well-developed network of community agencies, but much more so in such states as New South Wales and Queensland where the network of non-government agencies is relatively under-developed. Increasingly then, to obtain resources and assistance, it is

necessary to fall within the "child protection" label and intervention which cannot be so categorised (such as preventive or family support) becomes a lesser priority or cannot be financed or resourced at all.' (p7)

Recovery from the Effects of Abuse

'By article 39, the Convention clearly obliges the State to support and encourage programs to assist children toward recovery from the effects of all forms of abuse and neglect. This requires, when considering compliance, that attention be given not only to the child protection system itself, but to the preventive, supportive and therapeutic services provided to child victims of abuse and neglect. The strong message was that, in this regard, there had been little change in Australia since the publication of the 1989 report of the National Inquiry into Homeless Children and that generally the "system" was good at rescue, but not at rehabilitation.' (p7) ...The lack of provision for counselling and follow-up care for the victims of sexual abuse was commented upon frequently, ... Yet reports of sexual abuse continue to rise in all Australian states. (p8)

Section Two: Rights of Substitute Care

This section is of special relevance to Aboriginal children. Because of the removal policies, which in Victoria operated officially from 1868 to 1969, Aboriginal children of mixed (ie one white parent) parenthood could be taken from their family without any court order. Ninety percent of the children who were removed ended up in institutions. Today there is a crisis of parenting as the majority of these removed children did not receive adequate, consistent parenting, especially during their earliest and most formative years. Apart from the thousands of children directly affected at the time, there was a more serious effect on the capacity of the removed children to parent children themselves. Removal of children thereby became a generational cycle.

Case-planning and co-ordination was found to be wanting: 'overall, the picture presented was of an uncoordinated approach to the planning for children in

care... Data, particularly regarding children in substitute care under "voluntary" arrangements, were inadequate, reviews and review mechanisms were not uniformly enacted across Australia and generally there were too many occasions when children in State care and their families failed to be supported due to the failure or inability of the appropriate State departments to assign supervisory staff. (p14)

The report noted that the "Aboriginal placement principle" was widely accepted in Australia, ie that Aboriginal children unable to be cared for by their parents ought to be placed whenever possible within their own immediate family and community or, failing that, elsewhere in the Aboriginal community. The practice, however, does not always live up to the promise of the principle. It was commented that, in outback Queensland, involvement of Aboriginal communities and organisations in the planning for particular Aboriginal children frequently falls to the discretion of the local Department office. For Aboriginal and Torres Strait Islander children the right to permanency planning is illusory simply because the resources to guarantee that right are not available.' (p15)

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In general, the situation is that the 'steady reduction in financial support for community agencies and increasing limitation of formal state support to only those children under statutory orders, has meant that there are fewer rather than more options for children in Australia'. (p15)

There is a similar lack of planning for **children leaving care**. The 1989 National Inquiry into Homeless Children concluded:

...The failure of State welfare and health authorities, both to provide appropriate and timely assistance to families in need

and to provide appropriate nurture and support to children committed to and leaving their care, is a serious indictment of the willingness and capacity of these authorities to properly discharge their legal and social responsibilities...it is simply unacceptable that this situation should continue... (1989)

'It is an even greater indictment, and a clear breach of the Convention, that some three years after the Inquiry into Homeless Children, similar concerns about the plight of children leaving State care and guardianship should continue to be reported.' (p16)

Section Three: Rights to Health Care

This section overviews mental health, services to Aboriginal people, drug and alcohol rehabilitation and sexual health.

In relation to mental health, the report states: 'in all areas in which consultations took place, the inadequacy of psychiatric facilities for young people especially in rural areas and for older adolescents, was commented upon. Even in reports of regional governments there appears to be an acceptance, even if tacitly, that the right of young people to services for the treatment of mental illness is far from assured'. (p19)

'Kosky et al have pointed out that there is also a paucity of mental health services within the juvenile justice system. This has particular significance for children who are generally disadvantaged socio-economically: in some areas it has particular significance for Aboriginal children.' (P20)

There were generally reports of young people, often having their first manifestation of mental illness, being placed in quite unsuitable accommodation with adults...' There were no residential facilities for the treatment of adolescents' mental health problems...and there is a glaring gap in service provision to children who have been sexually abused.' (p21)

Aboriginal children are affected by the particular shortage of mental health services in rural areas. In a recent survey of all reported Western Australian suicides in the age range of 15-24 years for the year 1986-90, Aboriginal youth were over-represented at almost three times their representation in the

Western Australian youth population (10.4% versus 3.6%). Only a very small proportion of these Aboriginal suicides were cell-deaths.

'The separation of large numbers of Aboriginal children from their families in earlier generations is also reported to have left a legacy of mental health problems among those children and to be contributing to problems in the upbringing of their own children.' (p21)

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While in general, the quality and range of health services in Australia and access to them is good, especially in large population centres, there are concerns about particular areas of health for Aboriginal people. In several remote areas of Western Australia and the Northern Territory, Aboriginal communities still do not have access to clean drinking water and the quality of fresh food leaves much to be desired. The unavailability of clean drinking water places Australia in breach of Article 24(2)(c) of the Convention.

There is still concern about the persisting level of what paediatricians perceive as **preventable morbidity**. Aboriginal infant mortality was 83 infant deaths per 1000 live births in 1972-73, 32 per 1000 in 1986-88. 'The year in which the rate was lowest coincided with a research program on nutrition that involved frequent, almost monthly, visits by an Aboriginal team to all Aboriginal communities.' (p22)

'A study carried out in northern Victoria...Found that problems of malnutrition were inversely correlated with the degree of self-government within Aboriginal communities.' (p22)

A serious shortage of drug and alcohol rehabilitation facilities for adolescents was reported nationally. Within several Aboriginal communities petrol sniffing among children also remains a substantial dilemma. In relation to sexual health, it was commented: 'There isn't as clear an acknowledgment of children's right to confidentiality compared with adults.' (p23)

Section Four: Rights to Education

The observations of Lippman (1986) are still valid ...'there has generally been minimal impact of multi-culturalism in the pre-school area, compounded by a shortage of bi-lingual teachers and translators and ...the availability of pre-school education for Aboriginal and Torres Strait Islander children is inadequate.'...'The current picture presented in this regard appears largely unchanged.' (p25)

'Despite the requirements of Article 29 regarding educational efforts to promote respect for culture and cultural differences, educational programs reflecting Aboriginal heritage and culture are minimal, especially in schools with no or few Aboriginal students.' (p25)

In regard to discipline in schools, Article 28 by implication condemns the use of corporal punishment for children and young persons. Yet in Queensland it is still permissible and in New South Wales, each school council is able to determine the disciplinary policy to be enacted for local schools. Few NSW schools have chosen corporal punishment to date.

There is a problem of children excluded from school. The particular educational needs of children in substitute care and detention were often inadequately provided for, especially when the particular needs and educational backgrounds of these groups of children were taken into account. (p26)

The philosophy of local control, and its implications for education were, in reality, not as positive as the ideal hoped for - 'The reality presented was one of wide inequalities in parental involvement, compounded by increasing expectations of parental contributions to the costs in time and financial

terms of ensuring that schools are adequately resourced.' (p28)

'Increasingly, access to adequate educational services is dependent upon wealth, leaving homeless children and children of families with an Aboriginal, non-English speaking or impoverished background, significantly disadvantaged.' (p28)

Section Six: Rights to Social Security.

Equity for all young persons is not happening as the positions of Aboriginal and non-Aboriginal populations are too unequal. Reliance on Social Security exacerbates the inequality as it is invariably inadequate. For young persons in Australia, income support, particularly for those 'who were homeless, without family support or living independently, was simply inadequate to allow the young person to survive with dignity.' (p36)

Harris (1986) argues that 'the economic inequality of the Aboriginal population in Australia is reflected in higher death rates (than the non-Aboriginal population) and worse health, housing and legal status.' She concludes '...the marked disparities between the life chances of the Aboriginal and non-Aboriginal population stand out as the single, clearest issue' and that 'The position of Aboriginal children will not be strengthened until white dominance is lessened, Aboriginal communities are strengthened and the voices of Aboriginal parents are heard.'

In several submissions, it was argued that the standard of living for many Aboriginal and Torres Strait Islander children continues to be that suffered by children living in the third world, and that for these populations the advent of the Convention has meant little, if anything, for the reality of their daily lives. (p36)

Section Seven: Rights and the Administration of Justice

It is a poor picture of juvenile justice in Australia which is reflected in this section: 'Allegations of mistreatment of young people by police officers were

disconcertingly common. They were made by lawyers, community workers, young people themselves and by workers attached to the children's court.' (p42)

'...It remains the case that often no third person is present at all during police questioning.' (p43)

On most occasions, children appearing before Children's Courts in Australia are legally represented. However in some places, notably in remote rural areas, there are reportedly still problems with children gaining access to legal representation at court. Research of adults charged with a criminal offence shows that represented defendants are six times more likely to be acquitted than unrepresented defendants and the latter are three times more likely to receive a prison sentence.

In New South Wales, a parliamentary report found that many young offenders had little idea of what was going on throughout their proceedings.

Throughout Australia there is a disproportionate number of Aboriginal children appearing before Children's Courts and incarcerated in juvenile detention centres. (p45)

Where Aboriginal children are detained some distance from home, they are often isolated, culturally as well as geographically.

The racist jibes directed towards Aboriginal children, viewed by Lawrence (1991) as 'simply a manifestation of the degree to which the community implicitly accepts racist attitudes and values' are also viewed in this report as stemming from structural disadvantage. (p46)

The recent Western Australian legislation with regard to 'serious and repeat offenders' was an issue of extreme concern in all states in which consultation occurred. Under this legislation, children given indeterminate sentences cannot themselves make an application for a review of the sentence, even after the expiration of the minimum period of the sentence.

The legislation was enacted despite contrary advice to the government from both its own Advisory Committee on Young Offenders and the Human Rights Commission: 'There was a unanimous view among interviewees...That the act

breaches Article 37(b) of the Convention that requires that any deprivation of liberty not be arbitrary. ...The fact that there are no other dispositions available to the court also constitutes a clear breach of Article 40(4) of the Convention.' (p48)

'Apart from being in breach of Australia's human rights obligations, the act is widely criticised also for undermining several key recommendations of the report of the Royal Commission into Deaths in Custody.' (p49)

It was also reported that throughout Australia, 'the condition under which many juveniles are detained are dreadful. It is rare to encounter reports of comprehensive programs aimed at rehabilitation.' (p52) The City Watchhouse in Melbourne is quoted as an example of unacceptable conditions for 17 year old children.

The report states that its finding with respect to Aboriginal people, are 'a history of repression, confined with continuing structural disadvantage and discriminatory acts, underpins their over-representation throughout the juvenile justice system.' (p52)

Conclusion

I wish to conclude my summary of this report on the rights of Aboriginal children by firstly, congratulating the Children's Rights Coalition and their consultants - Graeme Brewer and Phillip Swain - for an excellent critical review of Australia's compliance or lack thereof with the **United Nation's Convention on the Rights of the Child**. I highly recommend *Where Rights Are Wronged* to all concerned residents of Australia.

I am also compelled to reflect upon the situation of two very opposite cultures, who met 205 years ago. 'Without exception, the earliest Europeans to catch a glimpse of traditional Aboriginal camp life noted the boundless joy, exuberance and independence of the children...many anthropologists have declared it to be the most child-centred society they every observed.' (Lawlor, 1991) ♦

References

The following references are all cited in:

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HEAR THE CRIES OF CHILDREN FROM YESTERDAY

Kym Walker 1991

Hear the cries of the children
As they are torn from their mother's breast
Taken from their families
the only real love a child should know
Stripped of their identity and culture
Not knowing where they belong

Hear the cries of the mothers
As their hearts and souls are broken into pieces
for the want of their children
Feel the pain as they are sent into a state of shock
Never knowing if their children may return

Hear the cries of the children
As they are placed in environments so cold and unloving
Abused by the hands of strangers
Being silenced from their families and culture

Hear the cries of these children
Trying to find their way back as adults
Discovering their lost identity
Searching for their families,
that missing link in their lives
Trying to discover where they fit in

Hear the cries of my people
Asking why should our children
Be put through this uncaring pain
When their childhood should have been
A time of games, joy, exploring and discovery.

Hear those cries of sorrow and pain from yesterday
As those who are lost find their way home
Let us protect our children of today
So they never cry those tears of sorrow
or feel that pain like our children from yesterday