

Submission to the Attorney General's Department on Australian Government's Draft Fourth Report under the Convention on the Rights of the Child.

Introduction

I was appointed as Western Australia's inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act).

Under this Act, I have responsibility for advocating for the half a million Western Australian citizens under the age of 18 and for promoting children and young people's entitlement to live in a caring and nurturing environment and to be protected from harm and exploitation.

In performing all functions under the Act, I am required to have regard to the United Nations Convention on the Rights of the Child (UNCRC), and the best interests of children and young people must be my paramount consideration.

I must also give priority to, and have special regard to, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.

It is with these responsibilities in mind that I submit comment on the Australian Government's Draft Fourth Report (the Government's Report) to the UN Committee on the Convention on the Rights of the Child. Many of the comments I have made do not make direct reference to the Government's report, but rather aim to highlight areas of need as I see them, make recommendations for future UN reporting processes, and to encourage the Australian Government to consider the needs of children and young people as it steers public policy into the future.

The report and the reporting process

The Government's Report provides a succinct summary of the major projects, programmes and policies relating to children that are underway within Australia. In this way it provides a useful overview of the policy environment and gives a sense of where children and young people are placed in the various State and Territory Governments' priorities.

However, I share the concerns that various non-government organisations have expressed since Australia submitted its first report to the UN on UNCRC; namely, that the Australian Government needs to use this reporting process as an opportunity for substantial examination of child rights in this country.

These reports, produced every five years, provide the opportunity for critical assessment of the implementation and status of child rights in Australia. Indeed, this is the fundamental purpose of reporting to the UN, as noted in the UN Reporting Guidelines:

States parties should see the process of preparing their reports... as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation...The reporting process should encourage and facilitate, at the national level, public scrutiny of government policies and constructive engagement with relevant actors of civil society conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant convention.¹

It appears that the opportunities presented by this reporting process have not been fully taken up, as the Government's Report contains no broad, strategic assessment of Australia's child rights standards, only limited analysis of problems or shortcomings in its approach to UNCRC's implementation, and was not subject to extensive consultation. This is a missed opportunity to engage the community in constructive engagement and debate about child rights, and to undertake a comprehensive analysis of where improvements are required.

I understand that the new Federal Government inherited both a large part of the Government's Report and a short timeframe for revisions, and I am aware that there is unlikely to be any scope for an overhaul of this report if the UN reporting deadline is to be met.

I would therefore encourage the Australian Government to turn its attention to the next five year reporting period, and to use that time to establish a robust process of assessment and examination so that Australia's 2013 Report on UNCRC will be an innovative, useful, comprehensive and critical evaluation of child rights in Australia.

Participation of children and young people

I would also emphasise the importance of consultation in this process, particularly with children and young people. As mentioned above, one of my primary roles as Commissioner for Children and Young People is to encourage the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their maturity.

I am concerned to ensure that children and young people are involved in future analyses and reporting on UNCRC because of the significant impact that its implementation (or lack thereof) has on their lives. As the 'key stakeholders' in the delivery of child rights, children's views on how effectively their rights are being implemented are integral to knowing how well we are faring.

One of the guiding principles of UNCRC is that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard. Article 12 of the Convention states that:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.²

The aim of this principle is to recognise the potential of children and young people to:

¹ United Nations, *Harmonized Guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents*, UN Doc HRI/MC/2006/3, 2006, p 4-5.

² United Nations, *Convention on the Rights of the Child*, Article 12.

*...enrich decision-making processes, to share perspectives and to participate as citizens and actors of change.*³

I note that the Australian Government has previously acknowledged the importance of engaging with Australia's young people and in its consultation process to establish the Australian Youth Forum it committed to providing young people with "real, meaningful opportunities to interact with Government".⁴

I believe that there can be no issue more relevant to discuss with children and young people than the status of their human rights, and that if ever there was a need for a 'real and meaningful' engagement opportunity it is to help the Government analyse Australia's performance in meeting its international obligations under this treaty.

I would therefore recommend that the Government conduct broad and extensive consultations with children and young people across Australia over the next five years so that the Government's Report, future Government policy, the UN, and the community more broadly can be informed by their views.

Priority areas for children and young people in Western Australia

Since my appointment in December 2007, my staff and I have met with and written to hundreds of people—including children and young people, federal and state parliamentarians and government and non-government representatives at all levels. I have focused on introducing myself and my role, gathering information and encouraging action where necessary. This process has led to the identification of some key, high-level focuses that will underpin the work of my Office into the future.

I have provided a broad summary of these priority focus areas in the section below as I believe that they are crucial to the wellbeing of children and young people in Western Australia. I recommend that the Australian Government consider these areas in the context of future UNCRC reporting, and in the development of future public policy.

Best interest of the child

The Government's Report notes that "a determination of the best interests of the child is the key principle in most legislation concerning children in Australian, State and Territory jurisdictions". In my view, however, the best interests of the child needs to be embedded in all policy and legislation—not just those that are specifically targeted to children. That is, even in the delivery of mainstream services or policies where children and young people are not the target group, a child-centred view should be taken to help promote the right for every child to feel loved and supported within the family and the community.

This point was made by Dr Judy Cashmore, Professor Dorothy Scott, and Gillian Calvert, the NSW Commissioner for Children and Young People in their joint submission to the Special Commission of Inquiry into Child Protection Services in NSW:

Services whose primary focus is on adults have a responsibility to children when there are factors relating to the parent which make children more vulnerable... Given that children of parents with an alcohol or drug problem, a mental illness or

³ UNICEF, Convention on the Rights of the Child Factsheet: 'The Right to Participation', <http://www.unicef.org/crc/files/Right-to-Participation.pdf>

⁴ *The Australian Youth Forum: a new era in youth consultation*, Discussion Paper, Australian Government, 2008.

*an intellectual disability are at much greater risk than other children, especially in a single parent family or where both parents have such conditions, organisations servicing these client populations need to build their capacity to respond to children's needs.*⁵

The 'best interest' principle can also be extended to incorporate work that promotes positive attitudes towards children and treats them as equal citizens with an important voice in our society, discourages discrimination against children and young people and supports child friendly communities.

Collaboration

One of my primary goals as Commissioner for Children and Young People is to encourage collaboration between the various sectors on particular issues relevant to children and young people. I believe that the government and non-government sectors have a fundamental responsibility to support children and that this can only be achieved if the child is seen as a whole, not as small parts in individual silos.

The *Western Australian Aboriginal Child Health Survey* identified one of the four constraints on children's optimal social and emotional wellbeing as 'chaos', and listed Governments and their policies as one of the primary perpetrators of this chaos:

*Policy development for children has become a political fashion with governments of the day formulating policies and branding, re-branding and repackaging children's services and programs for the life of government rather than for the lives of children. Governments have a responsibility to formulate, implement and evaluate coherent, sustained policies that assist and support in the development of children... This requires political and scientific leadership to ensure that parents, the broader community and governments recognise the extent to which the sustainability of society and the economy is dependent on such a strategic vision.*⁶

I will be working hard with government agencies to overcome this 'chaos'; to find ways to cater more appropriately to children's and communities' complexities and to enhance their wellbeing.

Early Childhood

There is a significant amount of research and evidence that the first years of life are the key to children's growth, development and a harmonious and productive adult life. The nature of our future Australian society will be greatly shaped by the resources and support offered to parents and young children, even before they are born.

In a recent article for the Australian Institute of Family Studies, Professor Fiona Stanley pointed out that:

*...the amount of GDP alone does not predict good outcomes for children and young people. In fact the wealthiest countries performed relatively poorly compared with those with lower GDPs but whose policies focus more on family support, valuing parenthood (e.g. very good parental leave provisions), early childhood services and on reducing inequalities.*⁷

⁵ Cashmore, J., Scott, D., Calvert, G., *Submission to the Special Commission of Inquiry into Child Protection Services in NSW*, March 2008, p38.

⁶ Zubrick, S., et al., *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2005, p559-560.

⁷ Stanley, F., 'The Importance of Caring for Children in Australian Society' in *Family Matters*, Australian Institute of Family Studies, Issue 76, 2007, p45.

It is increasingly apparent that the challenges are not in understanding the needs of young children and their families, but in how the research and evidence can be used to shape and provide services and programs, as well as collaboration between the Commonwealth, State and community sector in delivering improved outcomes for children. Services need to respond to the child and the family in an integrated way with opportunities for identification, assessment and intervention along a life continuum that begins at or prior to birth.

Aboriginal and Torres Strait Islander Children and Young People

The significant disadvantage that continues to be faced by Aboriginal and Torres Strait Islander children and young people is of great concern to me and will be a primary focus for my Office:

- The cumulative mortality rate for Aboriginal Western Australian children under one year old is four times higher than that for non-indigenous infants.⁸
- Aboriginal Western Australian children suffer a great burden of infectious disease and emotional and behavioural problems.⁹
- Aboriginal children continue to be vastly overrepresented in Western Australia's juvenile justice system, making up 75 per cent of 10-17 year olds in detention.¹⁰
- The discrepancy between Aboriginal and non-Aboriginal academic outcomes in Western Australia is unacceptable.¹¹

I concur with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, that addressing this disadvantage is "the defining challenge for our nation" and that:

*Aboriginal children – wherever they live in Australia – deserve a future in which they have the same opportunity as other children to thrive, develop and enjoy life. They are entitled to such a future for no other reason than that they are human, born with dignity and in full equality to all other Australians.*¹²

I commend the Prime Minister's commitment to 'close the gap' between Aboriginal Torres Strait Islander people and wider Australia, beginning "with the little children"¹³, and I will be encouraging all government and non-government agencies to build on evidence-based successes to move Aboriginal children into a future of equality, hope and dignity.

Conclusion

I believe that Australia's process of reporting to the United Nations on UNCRC needs to be revised to encompass a broader level of assessment, scrutiny, participation and debate. The five yearly reports provide a valuable opportunity for substantial examination of child rights in this country and the chance for an honest assessment of where future efforts should be made. I ask that the Australian Government

⁸ Freemantle, J., et al., *The First Research Report: Patterns and trends in mortality of Western Australian infants, children and young people 1980-2002*, Advisory Council on the Prevention of Deaths of Children and Young People, The Department for Community Development, Government of Western Australia, 2004, p30.

⁹ Kulunga Research Centre, <http://www.ichr.uwa.edu.au/kulunga/research/overview>

¹⁰ Snowball, L., 'Diversion of Indigenous Juvenile Offenders', in *Trends & Issues in Crime and Criminal Justice*, No.355, Australian Institute of Criminology, June 2008, p1.

¹¹ *Western Australian Aboriginal Education and Training Operational Plan 2005-2008*, Department of Education and Training, Western Australian Government, 2007 [revised], p1.

¹² Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission, 2008, p5.

¹³ Prime Minister Kevin Rudd's Apology to Australia's Indigenous Peoples, http://www.aph.gov.au/house/Rudd_Speech.pdf, 13 February 2008.

implement a robust and extensive consultation process over the next five years, particularly with children and young people, to help achieve this.

I have provided an outline of the primary strategic focuses of my Office, as I believe they are key areas where more work needs to be done and that they are fundamental principles that could be used to inform future assessment of UNCRC's implementation.