

# “WHAT’S UP CROC?”

Australia’s implementation of the Convention  
on the Rights of the Child (CROC)

A cartoon illustration of a grey crocodile with large, wide eyes and a slightly open mouth, sitting inside a cracked eggshell. The crocodile is looking upwards and to the left. The eggshell is split open, with the crocodile's head and front legs visible. The background is plain white.

A CONSULTATION PAPER

**FEBRUARY 2004**

Submissions must be made by May 31<sup>st</sup> 2004

## THE NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

The National Children's and Youth Law Centre (NCYLC) is an independent non-profit community legal centre incorporated in New South Wales and enjoying charitable status. It was established in 1993 with the aim of working to improve conditions and opportunities for the children and young people of Australia with an emphasis on law reform and legal advocacy.

From its inception the NCYLC has promoted the Convention on the Rights of the Child and makes reference to it in all its submissions and published discussion papers. The NCYLC had input into Australia's first report under CROC by contributing to the government report.

Check out our website at [www.lawstuff.org.au](http://www.lawstuff.org.au) and [www.ncylc.org.au](http://www.ncylc.org.au)

## DEFENCE FOR CHILDREN INTERNATIONAL

The Defence for Children International (DCI) is a global chain of children's rights agencies recognised by the United Nations. The Convention sets out principles, such as the rights of children to protection, provision, promotion and participation, which guide DCI's actions and campaigns.

DCI-Australia is the local link in the DCI network and is a national organisation independent of government and reliant on subscriptions and donations. They have no core funding and no paid staff and apart from some specifically funded projects in the past, all activities are undertaken by volunteers from within DCI-Australia ranks.

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## CONCERNED ABOUT THE RIGHTS OF CHILDREN AND YOUNG PEOPLE?

There is one international law agreement that is solely focussed on protecting the rights, interests and development of children and young people – the Convention on the Rights of the Child (the Convention). All countries, except the United States of America and Somalia, have signed the Convention.

Australia signed the Convention in December 1990. Our Federal, State, Territory and local governments are legally bound to take steps to implement the Convention for the benefit of children, young people and our whole community.

### What's happening where you are?

The Australian government has to present a report to the United Nations Committee on the Rights of the Child every five years. The first report was presented in 1995 and the second in October 2003. Obviously they need a hand!

Non government organisations are a window to the lives of children and young people. Our report will give the UN Committee a detailed and real picture of life for young people in our cities, towns and deserts. The UN Committee has always welcomed NGO reports particularly to alert it to any areas of serious non-compliance with the principle of the Convention.

The NGO report will be considered with the Government report in 2005.

### How's Australia going so far?

The UN Committee considered Australia's first report under the Convention in 1997. The Committee is concerned that Australia may not be complying with the Convention in relation to the position of Aboriginal and Torres Strait Islander children, children from non-English speaking backgrounds and children seeking asylum in Australia.

### What do I need to know to prepare my submission?

This Consultation Paper:

- highlights issues arising under the Convention
- tells you which Articles of the Convention are relevant
- notes the concerns of the UN Committee
- notes the Government response
- asks questions to start you off

The Background Briefing provides you with detailed information and you can click on the following:

- The Convention at <http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>
- The Committee guidelines for the Non Government Report at <http://www.unhchr.ch/html/menu2/6/crc/treaties/partners.htm>
- The Australian Government Report 2003 at [www.ag.gov.au](http://www.ag.gov.au)
- The National Children's and Youth Law Centre website for resources and a consultation form for children and young people at [www.lawstuff.org.au](http://www.lawstuff.org.au)

The NCYLC and the DCI will widely distribute this Consultation Paper and the Background Briefing for people who want further background information on the issues.

## MAKING A SUBMISSION FOR THE NON GOVERNMENT REPORT

We welcome your contribution to the non-government report (the NGO Report).

The Consultation Paper contains a series of questions in relation to specific issues covered by The Convention. It is not necessary to address every question in your submission. Pick the issues which are most relevant to you or your organisation. Feel free to add other issues.

The final report that will go to the United Nations Committee on the Rights of the Child must be no more than 40 pages in length. Submissions should be concise. Actual case studies and details of specific issues, current research and statistical data (with source citations) will be particularly useful.

To assist us in preparing the report, we would appreciate it if you could provide full details and page citations of any reports, statistics or research referred to in your submission.

Submissions can be lodged in any of the following ways:

**Mail** NCYLC, c/ UNSW, Sydney NSW 2052

**Email** [ncylc@unsw.edu.au](mailto:ncylc@unsw.edu.au)

**Fax** (02) 9398 7416

For further information please visit the NCYLC website at **[www.ncylc.org.au](http://www.ncylc.org.au)** or contact Ms Louise Goodchild, Principal Solicitor at the NCYLC on (02) 9398 7488.

If you would like to make an independent submission to the UN Committee please call us and we can assist you.

We also request that you encourage the direct participation of children and young people and help them to access consultation resources via **[www.lawstuff.org.au](http://www.lawstuff.org.au)**

THANK YOU!

# themes for consultation

## PARTICIPATION IN DECISION-MAKING: ARTICLE 12

Children are an integral part of Australian society. Legal barriers and social attitudes have often denied children opportunities to have a say when decisions are made which affect them.

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### ***Rights under the Convention***

All children capable of forming their own views have the right to express their views freely in all matters that affect them, and to have their views given due weight according to their age and maturity.

“In judicial or administrative proceedings children have the right to express their views directly to the decision-maker or through a representative.” (Article 12)

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### ***Concerns of the UN Committee***

- The UN Committee was concerned that the principle of having respect for the views of the child was not being fully applied in Australia, and recommended that the Australian Government conduct an education campaign on this issue.

### ***Australian Government Report 2003***

The Government Report cites the following measures as addressing the UN Committee’s concerns:

- The National Youth Roundtable; State and Territory charters and youth advisory councils, and Children’s Commissions in NSW, Queensland and Tasmania, to promote youth participation in Government policy-making.
- The National Indigenous Youth Leadership Group of 16 young Indigenous Australians who have the opportunity to meet with Government about issues affecting their community.
- Federal Government commitment to promoting child inclusive practice in government funded services for families in conflict.
- The *Children’s and Young Persons (Care and Protection) Act 1998 (NSW)* which provides children with a right of participation in decisions about care and protection.
- The Children’s Services Tribunal and Care and Protection legislation in Queensland.
- The *Young Offenders Act 1997 (NSW)* which allows young offenders to express their views in youth justice conferences, and changes to the law regarding children’s evidence in South Australia.

### **Participation in Decision-Making – Some Current Issues**

Although Australia takes pride in democracy and the universal right to vote, children in Australia are not able to vote or stand for election in any Federal Government, State or Territory or local government elections, and thus have very limited political power.

It is not clear whether the consultative groups such as the National Youth Roundtable and the Indigenous Youth Leadership Group as cited by the Government, are sufficiently representative of the views of the broad spectrum of children in Australia, or whether the views expressed by these groups are actually given weight and implemented by the Government.

Even where rights of participation in decision-making are included in charters or legislation, such as the NSW Care and Protection legislation, such rights may not be respected in practice, or may not be enforceable by children.

Children also face other barriers to participation in public life and decision making. For example, legislation in some States and Territories does not allow children to be appointed as officers of incorporated associations, which excludes young people from management roles in youth organisations.

In the area of health, many State and Territory laws allow parents to make decisions on behalf of their children. Others state a fixed age at which children can make their own health decisions. No State or Territory health laws require health professionals to give weight to the views of children.

In education, children in Australia have no guaranteed right of participation in school decision-making whether in relation to school governance, curriculum, teaching methods, selection of teaching staff, school facilities, school rules and uniform codes.

In the Family Court, a lawyer is appointed to represent the child's interests in a minority of cases, but they do not act on the child's instructions and can present a view that differs from the child's to the Court.

## **Questions**

1. Is there sufficient awareness in your community of the rights of children to participate and have their views respected? Have any awareness raising campaigns been conducted in your State or Territory?
2. How effective are the mechanisms for participation of children in Government policy and law making in your State or Territory? Please provide case studies, examples or statistics where available.
3. Are children's views heard and respected in relation to decisions which affect them in your State or Territory, for example in relation to their care, family law, health, education or other areas? Please provide case studies or examples.
4. Are there any other issues relating to children's participation in decision-making that you think should be highlighted in the NGO Report? If so, please give details.



## CIVIL RIGHTS AND FREEDOMS: ARTICLES 2, 13, 14, 15, 16

Australians take for granted certain basic civil rights and freedoms even though we have no formal proclamation of rights, such as a Bill of Rights or Charter. The Convention reinforces the relevance of basic human rights and freedoms to children.

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### ***Rights under the Convention***

- the right to freedom from discrimination (Article 2)
- the right to freedom of expression, thought, conscience and religion (Articles 13 and 14)
- the right to freedom of association and peaceful assembly (Article 15)
- protection from interference with privacy, family, home and correspondence and from attacks on reputation (Article 16)

These rights may be limited for the protection of public safety, order, reputation, health and morals or where they would affect the rights and freedoms of others.

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### ***Concerns of the UN Committee***

- The UN Committee was concerned about Australian legislation which allows police to remove children and young people who are congregating in public places. This is an infringement on children's rights to assembly.

### ***The Australian Government Report 2003***

The Government report states that:

- "Restrictions placed on children's rights to associate freely and peacefully assemble are designed to ensure public safety and order, including safety of children, as well as to prevent children from committing crimes and thereby becoming involved in the criminal justice system."
- The Government highlights the positive projects being undertaken in relation to public space, referring to a youth participation pilot project in Tasmania and Hilary's Youth Project Enquiries Program in WA. It states that other States are providing more public places for children in urban areas.

## **Civil Rights and Freedoms - Some Current Issues**

### ***Public space***

Over the last decade some laws have been passed across Australia which give the police greater power to stop, question and search people in public spaces. These laws often have a disproportionate impact on children. Other laws give police the right to remove young people from public spaces altogether (for example new curfew laws in WA and the *Children (Protection and Parental Responsibility) Act 1997* in NSW).

Children may be denied the right to free assembly in privately owned public spaces such as shopping centres where security guards have the power to ban them from the premises relying on rights of private ownership and trespass laws.

### ***Discrimination***

Although there are State and some Federal laws regarding discrimination on a range of grounds including race, sex, disability and age, these remedies are not always accessible or effective for disadvantaged groups, including children.

Some discrimination on the basis of age is now entrenched in legislation such as curfew legislation and employment legislation which allows for junior wages, while other forms of discrimination are more subtle, reflected in the disproportionate impact of general legislation on certain groups such as Indigenous children.

### ***Other civil liberties***

Although freedom of expression is generally respected for adults, children may be punished or treated less favourably where they question or express a critical view of authority, particularly within the school environment, or in dealings with the police.

Children are also often perceived to have a lesser right to personal privacy than adults. Breach of privacy is of particular concern for children in institutions such as juvenile detention centres.

Protection from unjustified attacks on honour and reputation is not guaranteed to children in Australia, where taking legal action for defamation is often prohibitively expensive. Children frequently suffer bullying and teasing at school; and many schools do not handle such complaints effectively.

### **Questions**

1. Do you have any concerns about the adequacy of the protection of children's civil liberties in your State or Territory? Please provide case studies or other examples.
2. In relation to public space issues, are the measures taken by the Government in your State or Territory necessary or appropriate to ensure public space or order? Are there other measures which would be more appropriate? Please provide case studies or other examples.

## INDIGENOUS CHILDREN: ARTICLE 30

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### ***Rights under the Convention***

“In those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.” (Article 30)

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### ***Concerns of the UN Committee***

- The UN Committee in its Observations noted concern over local legislation which allows local police to remove children and young people congregating in public places, as this is an infringement on children’s civil rights including the right to assembly.
- The UN Committee noted its concerns over the special problems faced by Indigenous children with regards to standard of living and level of services particularly in education and health.
- The UN Committee encouraged the Government to take further steps to raise the standards of education of disadvantaged groups particularly Indigenous groups.
- The UN Committee expressed concern over the level of youth suicide in Australia.
- The UN Committee recognised the need for measures to address the high rate of incarceration of Aboriginal and Torres Strait Islander children. It further suggests that research be continued to identify the reasons behind this disproportionately high rate, including investigation into the possibility that attitudes of law enforcement officers towards these children may be contributing factors.

### ***Australian Government Report 2003***

The Government Report notes:

- The National Indigenous Youth Leadership Group of 16 young indigenous Australians who have the opportunity to meet with Government about issues affecting their community.
- The implementation of a National Indigenous and Torres Strait Islander Education Policy under which the Government has provided \$10.2 million in funding from 2001-2004 for measures to encourage Indigenous students to complete year 12.
- Particular Indigenous education programs in place in SA (the Yurrekaityarindi model) and WA (the Follow the Dream strategy).
- The high infant mortality rate of Indigenous children compared to other Australian children. It cites Federal funding given to the WA Indigenous Child Health Survey (\$1.5 million) and State funding for initiatives such as the Indigenous Health Strategic Plan (\$1.5 million).
- The National Youth Suicide Prevention Strategy which ran from 1995 – 1999, and was then replaced with a National Suicide Prevention Strategy.
- Some State and Territory governments have adopted initiatives to ensure the preservation of identity by Indigenous children.
- The national network of link-up services to assist family reunions has improved access to Federal Government records to help Indigenous people trace family members.

- The Indigenous Child Placement Principle that, where possible, Indigenous children in substitutive care should be cared for within their community or by another Indigenous family or community.
- The early intervention programmes for Indigenous children at risk, and Indigenous parenting and family wellbeing projects initiated in response to the Bringing them Home report such as Waltja Tjutanku Palyapayi in Central Australia.
- In relation to family violence, the Government acknowledges that Federal, State and Territory governments and ATSIC have injected funds towards projects which address the high rate of Indigenous family domestic violence. ATSIC funds the national Family Violence Prevention Program that provides funding to 13 Family Violence Prevention Legal Services (FVPLS).
- The Government also notes a strong focus on involving Indigenous communities in the development of family violence policy and programs.
- The Government acknowledges that over \$300 million is spent each year on Indigenous housing and infrastructure and the dedication of specific funds to rural and remote areas.

## **Indigenous Children - Some Current Issues**

### ***Self-determination***

Any real and sustained commitment to addressing thoroughly issues confronting Indigenous kids is inseparable from a commitment in all areas of government to self-determination for Indigenous people. Self-determination is the founding concept of international law in respect to Indigenous peoples and should be reflected in domestic legislation.

### ***Criminal justice system***

The disproportionate contact of Indigenous youth with criminal justice processes has continued, culminating in Indigenous young people making up 43% of all detainees in juvenile corrective institutions in 2001 despite accounting for less than 4% of the Australian juvenile population.

### ***Health***

Although there has been some Federal and State funding in this area, the Indigenous infant mortality rate is nearly three times that of the general population.

Statistics display a considerable discrepancy in health standards achieved in the Indigenous child population compared with the general Australian child population.

### ***Education***

Indigenous students are expelled, suspended and drop out of school at rates far exceeding the national average. Literacy levels remain comparatively low.

Although some education is provided on Indigenous culture and language in schools in some States, curriculum development along these lines as a practical step in the recognition of Indigenous culture has not been fully addressed.

### ***Suicide***

Indigenous youth continue to commit suicide at a rate far exceeding that of non-Indigenous youth.

### ***Sexual abuse***

Official statistics on the sexual abuse of Indigenous children are not a reliable indicator of the prevalence of this crime as often they are dependent on the utilisation of official procedures which have traditionally been under-utilised by the Indigenous population. Other sources indicate that Indigenous children are victims of child sexual abuse at considerably higher rates than the general community.

### **Questions**

1. Do you agree that self-determination for Indigenous communities is essential to achieving quality of life for Indigenous children and young people?
2. What steps towards reconciliation could the Federal Government take to promote and assist self-determination for Indigenous communities?
3. How appropriate are current structures, such as the National Indigenous Youth leadership Group, for representing the views of Indigenous children and young people to governments? Are there other structures you would like to see in place, particularly in the States and Territories?
4. What are the education and training needs of Indigenous students? Do Indigenous students in your area have access to appropriate language in their education? What programs are necessary to achieve this?
5. Which organisations or government departments should have the primary responsibility for taking action to reduce family violence and sexual abuse towards Indigenous young people?
6. What steps are necessary to achieve greater safety for young people in your community?
7. Is youth suicide an issue in your community? What factors contributed towards this? What is necessary to reduce youth suicide in your community?
8. What are the three most significant health issues for young Indigenous people? Are there currently services in place to address these issues? What else needs to be done? Please list other issues you are concerned about if there are more than three.
9. What factors contribute to the high rates of detention of Indigenous young people? Have these rates decreased or increased in your community? Is appropriate action being taken to reduce the rate of detention of Indigenous young people?
10. Have Indigenous children and youth's religious and cultural values been adhered to? Could religious beliefs and values be better understood or incorporated into Government-run programs? If so, how?

## EDUCATION: ARTICLES 28, 29

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### ***Rights under the Convention***

“Education must be accessible to all children, and children should be supported to attend school and finish their education.” (Article 28).

“Education should aim to develop the child’s personality and abilities to their full potential. Discipline measures must respect the child’s dignity and should not involve corporal punishment.” (Article 29).

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### ***Concerns of the UN Committee***

- The UN Committee recommended that the Government ban corporal punishment in all schools.
- It was also concerned over the standard of education provided to Indigenous and Torres Strait Islander children and children from non-English speaking backgrounds and rural and remote areas.

### ***Australian Government Report 2003***

The Government Report notes:

- The implementation of a National ATSI Education Policy under which the Government has provided \$10.2 million in funding from 2001-2004 to encourage Indigenous students to complete year 12.
- Particular Indigenous programs in place in SA (Yurrekaityarindi model) and WA (Follow the Dream strategy).
- The extension of the eligibility criteria for the English as a Second Language Strategy has been extended to any minors accepted under the Immigration Humanitarian Program.
- The current development of a disability standard for education.
- The establishment of a National Literacy and Numeracy plan with National benchmarks, focussed on the achievement of basic skills for all students.
- Initiatives such as Youth Activities Services and Links to Learning for students ‘at risk’.
- The banning of corporal punishment in Australian government schools and some non-government schools in the ACT, NSW, SA, TAS, VIC and WA.
- Some positive developments in procedural fairness in school discipline in WA.

## **Education – Some Current Issues**

### ***Free education***

It is questionable whether Government education is truly ‘free’ and accessible for Australian students, with schools increasingly seeking contribution fees from parents to supplement inadequate funding. Although not enforceable, pressure is placed upon parents to contribute. Other charges may be made for excursions and materials, and children are deprived of these educational opportunities if their parents cannot pay.

### ***Quality of education***

There are concerns about the quality of education provided at Government schools, as reflected in a growing move of children to the private school sector. Quality issues include facilities, class sizes, teacher training and remuneration, and curriculum development.

Children from low-income families, Indigenous children, immigrant children and children of minority cultural groups are likely to suffer educational disadvantage, while schools in higher income areas tend to attract better teachers, offer superior facilities and can more easily raise money from families for extra resources. Children in care often suffer further disruptions and instability in their education.

### ***Discipline***

Corporal punishment is still practised in government schools in Queensland and the Northern Territory and is permitted in private schools everywhere other than in New South Wales and Tasmania.

Children may also be denied procedural fairness in the use of other disciplinary measures such as suspension and expulsion. There is little Government control over the disciplinary policies used in many non government schools.

The NSW Government in 2004 is considering a plan to curb truancy through the introduction of “leave passes” for high school students. These leave passes must be presented to police or truant officers if requested.

### ***Human Rights Education***

The UN Committee recommended that the Convention be included as part of the curriculum for secondary students. However to date, while the Government has provided some funding for a National Committee on human rights education, the Convention has not been included as a compulsory subject for secondary students (compared with ‘civics’ education).

### **Questions**

1. Do you have any concerns about the quality or accessibility of education provided to children in your State or Territory? Please give case studies or other examples.
2. Do you have concerns about the methods of discipline or procedural fairness of discipline in schools in your State or Territory? Please give case studies or other examples.
3. Is the Convention taught as part of the curriculum in your State or Territory? Please provide details.

## HEALTH AND DISABILITY: ARTICLES 23, 24

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### ***Rights under the Convention***

“All children have the right to the highest attainable standard of health care.” (Article 24)

“Disabled children have the right to services and assistance to ensure a full and decent life and active participation in the community, ensuring that their abilities are fully developed and that their dignity is respected.” (Article 23)

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### ***Concerns of the UN Committee***

- The UN Committee was concerned over the level of health care provided to Indigenous and Torres Strait Islander children, and other disadvantaged groups of children.
- It was also concerned over the level of youth suicide in Australia.
- The UN Committee advocated the need to prohibit female genital mutilation.

### ***Australian Government Report 2003***

- The Government acknowledges the high infant mortality rate of Indigenous children compared with other Australian children. It cites Federal funding given to the WA Indigenous Child Health Survey (\$1.5 million), and State funding for initiatives such as the NSW Indigenous Health Strategic Plan (\$1.5 million).
- It cites general health care initiatives including:
  - Public health nutritional programs for children and pregnant women
  - Breastfeeding promotion strategies
  - A National Injury Prevention Plan, including child safety on farms
  - A National Youth Suicide Prevention Strategy which ran from 1995 – 1999, and was then replaced with a National Suicide Prevention Strategy
- It notes programs implemented by States for disabled children, citing the Options Coordination program in SA.
- It cites the National Action Plan for Promotion Prevention and Early Intervention for Mental Health, which identifies adolescents as a priority group.
- It notes that legislation has now been implemented in all States and Territories (except WA - pending) banning female genital mutilation.

## **Health and Disability - Some Current Issues**

### ***Health***

In general most Australian children have access to free government health care of reasonable quality through the Medicare system, but this system is gradually being eroded.

However the health status and available health care for children in Indigenous families remains at levels unacceptable in a first world country.



It is also apparent that indicators of physical and mental health for all children across Australia, such as birth weight, level of behavioural disorders and readiness for school, show a downward trend. It appears that this deterioration and its causes are not being adequately addressed by the Government, and that services are being cut back.

There is also clear evidence of poorer health among Australian children in socio-economically disadvantaged families, in single parent families, families where no parent is in paid employment and for children who are homeless.

In general, children face difficulties in accessing health services confidentially. A child is not able to have a separate Medicare card until they reach the age of 15 and cannot normally access medical advice or treatment without the involvement of their parents. Confidentiality is particularly important for contraception and sexual health services.

Obesity and lack of fitness are growing problems in Australia, as in other first world nations, and are attributable to poor nutrition, lack of exercise, growing consumption of fast foods and television advertising directed at children.

Australian children have a high rate of injury and death from motor vehicle crashes, drowning, tractor accidents and work related accidents. In particular, many young children are killed or injured by family members backing out of driveways, often in 4WD vehicles.

### ***Mental health***

Despite the Government Report which indicates a greater emphasis on mental health services for adolescents, studies suggest that services in this area are still far from adequate.

While the suicide level has fallen slightly, Australia still has a high level of youth suicide. Services need to ensure that young people at particular risk of suicide such as gay and lesbian youth, young people in rural communities and Indigenous youth receive appropriate and specific responses.

### ***Disability***

Despite anti-discrimination legislation, children with disabilities continue to face a range of subtle discrimination practices, such as presumptions of incapacity, which result in failure to seek their opinions or denial of opportunities.

It also appears that State and Territory assistance programs for disabled children are inadequately resourced, with children having to meet strict eligibility requirements. Children face a particular disadvantage in their need for new physical equipment as they grow, with replacement programs typically based on adult needs.

### **Questions**

1. Are you aware of particular areas of concern or inadequate services in the areas of health, mental health or disability? Please provide case studies and details.

## CHILD PROTECTION: ARTICLES 3, 9, 19, 20, 25, 30

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### ***Rights under the Convention***

“The Government must protect children from all forms of abuse and neglect, and should provide support and prevention services for families.” (Article 19).

“Care and protection services must be monitored and comply with appropriate standards.” (Article 3)

“A child must not be separated from his or her parents against his or her will, except where necessary for the best interest of the child. When this happens the child has the right to maintain regular contact with parents, provided it is in their best interest.” (Article 9)

“Placements should respect the need for continuity in a child’s upbringing and the child’s cultural background.” (Article 20)

“Children in care have the right to a periodic review of their treatment and placement.” (Article 25)

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### ***Concerns of the UN Committee***

- The UN Committee was concerned at the spread of homelessness amongst young people, and feared that homeless children were at risk of involvement in prostitution, drug abuse, pornography and other forms of delinquency and economic exploitation.

### ***Australian Government Report 2003***

- The Government Report notes that inquiries into the care and protection system have been conducted in Queensland, WA and Victoria since the last report, and that changes to services have been initiated in accordance with recommendations of the inquiries.
- It cites funding given to programs and initiatives for Indigenous families such as children and family centres in remote Indigenous communities to provide early intervention and support to at risk families; this includes the Waltja Tjutanku Palyapayi organisation which is developing culturally appropriate children’s services in Central Australia, along with Indigenous parenting and family wellbeing projects initiated in response to the Bringing Them Home report.
- The Government also reports having committed \$50 million since 1997 to Partnerships Against Violence Program to tackle domestic violence, including a \$6.2 million Indigenous Grants Program. It reports on various ATSIC programs to address family violence in Indigenous communities.

### ***Care and Protection - Some Current Issues***

Recent inquiries have revealed serious systemic problems in terms of prevention, investigation, intervention, placement and the proper monitoring of children in care. As yet, many of the recommendations of these and other inquiries have not been fully implemented.

Even where positive developments are occurring in some States and Territories, there is no consistency in the care systems throughout the country, so children in other areas will not benefit from these initiatives. The lack of consistency or shared records can also mean that children can be moved interstate to avoid intervention by the care system.

Certain groups of children are over-represented in care proceedings, such as Indigenous children and children with a disability, and further resources are needed to support these vulnerable families from the outset.

It is questionable whether children are being fully informed about decisions which are being made about their care and whether they have an opportunity to express their views and have them taken into account.

The right of children in care to have regular contact with birth parents is not widely respected by the care systems despite evidence that maintaining relationships with birth parents is a predictor of positive outcomes.

Similarly, the right of a child in care to a periodic review of their placement is not systematically implemented.

### **Questions**

1. Do you agree that adopting a uniform care and protection system across all States and Territories would be helpful to improve the quality of care provided to children?
2. Do you have concerns about the adequacy of the care and protection system in your State and Territory, or the implementation of recommendations from inquiries into that system? Please give case studies or other examples.
3. Do you consider that children in the care and protection system in your State or Territory are adequately informed about decisions affecting them, and have an opportunity to express their views and have them respected?
4. Do you think that the care and protection system in your State or Territory respects the rights of children in care to have regular contact with natural parents and a periodic review of their placement? Please provide details.
5. Are there any other issues to do with child protection that you think should be highlighted in the NGO Report? If so, what could be done to deal with the problem?

## CHILDREN AND THE FAMILY: ARTICLES 3, 5, 11, 18, 21, 27

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### ***Rights under the Convention***

“As a general principle parents should share responsibility for the upbringing and development of the child. Their guidance should recognise the child’s evolving capacities.” (Article 5)

“The Government must provide assistance to parents to fulfil their parental responsibilities.” (Article 18)

“The best interests of the child must be a primary consideration in any case involving children, and must be the paramount consideration in adoption.” (Articles 3 and 21)

“Children have the right to maintain regular contact with both parents after any separation, unless contrary to the child’s best interests.” (Article 9)

“The Government must take action to recover maintenance for the child, and to stop children being taken overseas illegally.” (Articles 27 and 11)

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### ***Concerns of the UN Committee***

- The UN Committee expressed concern that women working in the private sector are not systematically entitled to maternity leave. It was also concerned about the existence of child abuse and violence within the family.

### ***Australian Government Report 2003***

- The Government is currently considering the HREOC Report on paid maternity leave. It says that employees can negotiate family friendly working conditions under the Workplace Relations Act 1997 (Cth).

It cites general family support provisions as follows:

- The Stronger Families and Communities Strategy has funding for \$240 million until 2004, with \$20 million earmarked for projects targeting Indigenous families.
- State-based telephone information and counselling services for parents in most States and Territories (except Tasmania and NT).

In relation to family law matters, the Government notes:

- The establishment of 35 Children’s Contact Points for safe handovers across the country, and the Contact Orders Pilot program for parents in high conflict.
- The expansion of non-adversarial dispute resolution programs.
- The entry into the Hague Convention regarding the collection of child maintenance abroad.

## **Children and the Family - Some Current Issues**

### ***Family law***

There has been an increasing level of litigation about where children will live and how and when they will have contact with their parents. In these disputes, the Court does not appoint a lawyer for the child as a matter of course, so it is difficult to determine whether children’s views are being heard and respected.

Even where a child's lawyer is appointed, they must advocate for the child's best interests, rather than acting on the child's instructions about what they want. There is also generally a cap on Legal Aid funding, so the child's lawyer may be discontinued part way through long-running disputes.

Although the increase in alternative dispute resolution is generally positive, children are even less likely to be represented in mediations so their views may not be objectively sought or taken into account in decision-making between their parents.

It is also concerning that in many cases contact orders are still being made in favour of a violent parent with a history of domestic violence. Such orders can place the non violent parent and the child at great risk. The proposed changes to introduce a presumption of 'shared residence' could make it even harder to seek orders restricting contact with the violent parent.

### ***Child care***

Although child day care is generally available for working parents, it is not always affordable, nor always available to the children at greatest risk. In particular, children with disabilities are often disadvantaged by a lack of facilities and services.

### ***Adoption laws and donor conception***

It is not clear that the interests of the child are treated as paramount in all cases of adoption, or that children subject to adoption have the opportunity to express their views and have them taken into consideration. There have been particular concerns over the use of adoption as a permanent placement strategy in some care and protection cases, thus depriving children of the right to have a relationship with their birth families.

An emerging issue is the rights of children conceived as the result of donor sperm or eggs to know the identity or details of their biological parent.

### **Questions**

1. Do you consider that children have an opportunity to express their views and have them taken into account in family law proceedings and or alternative dispute resolution processes? Please provide details or case studies.
2. Do you have concerns about contact orders where there has been a history of violence between parents? What could be done about this issue? Please provide details or case studies.
3. Are there particular issues of concern in relation to children subject to adoption or born as a result of donor conception? Please provide details or case studies.
4. Are there any other issues relating to children and the family that you think should be highlighted in the NGO Report? If so, please provide details and recommendations.

## EMPLOYMENT: ARTICLES 32, 36

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### ***Rights under the Convention***

“Children have the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education or development.

The Government must regulate the minimum age and conditions of employment.” (Articles 32, 36)

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### ***Concerns of the UN Committee***

- The UN Committee was concerned that the Government had not ensured a minimum age for employment and that school age children were able to be employed.

### ***Australian Government Report 2003***

- The Government noted the UN Committee’s concerns, but considered that children were adequately protected from economic exploitation. Children are prohibited in all States and Territories from working within school hours.

### **Employment – Some Current Issues**

It is arguable that children suffer economic exploitation in being paid junior wages under industrial awards and workplace agreements. Such provisions are exempt from anti-discrimination legislation. As a result, children do not generally receive equal pay for equal work.

Children may be at greater risk of abuse and exploitation where employed in small or family businesses or in domestic work such as babysitting. However these forms of employment may also provide children with some income and independence.

Children who work in factories, shops or farms have a higher rate of work-related injuries than adults. This is undoubtedly due to their lack of maturity and work experience. There are few provisions in industrial safety legislation setting special protections for young workers.

### **Questions**

1. Do you think children should be paid the same wages as adults for the same job?
2. Do you support the Convention requirement that there be a minimum age below which children cannot enter paid employment? Should there be any exceptions? Please provide details or case studies.
3. Do you consider that children in your State or Territory are adequately protected from risks of injury arising from their youth and inexperience? Please provide details or case studies.
4. Are there any other issues relating to children in employment that you think should be highlighted in the NGO Report? If so, please give details and recommendations.

## ADEQUATE STANDARD OF LIVING: ARTICLES 26, 27

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### ***Rights under the Convention***

“Every child has the right to a standard of living adequate for the child’s physical and personal development, and the right to benefit from social security where needed.” (Articles 26, 27)

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### ***Concerns of the UN Committee***

- The UN Committee was concerned over the living standards of Indigenous children and children from non-English speaking backgrounds, and at the spread of homelessness amongst young people.

### ***Australian Government Report 2003***

- Cites 89 ‘Reconnect’ services established throughout Australia to support children at risk of homelessness. The Government also funds Family Homelessness prevention pilot programs and demonstration projects.
- Cites initiatives to increase access to social security through Family Tax Benefits, Childcare Benefits and Baby Bonus.
- Notes current budget of \$300 million each year for Indigenous housing, with additional funding allocated from 2001-2004, and supplementary programs of ATSIIC for community housing, infrastructure and home ownership.

### **Standard of Living - Some Current Issues**

Although some progress has been made, homelessness continues to be a serious issue for children in Australia. There remains a lack of affordable safe accommodation for families in crisis and for young people who can no longer live at home, and for those children with special needs such as drug rehabilitation. There is a high level of Centrelink debt among homeless young people.

Social security benefits available to children reflect an inaccurate assumption that the cost of living for children (even those living independently) is less than that of adults. Youth Allowance rates are totally inadequate at 33% below the poverty line. Contracts’ for Youth Allowance and harsh breaching practices further impact on children trying to survive on Government benefits.

The standard of living of Indigenous children remains at a very low level compared with other Australians, and it is apparent that existing programs are not adequately redressing this issue.

### **Questions**

1. Is there sufficient accommodation and other services for homeless children and families at risk in your State or Territory?
2. Do you have any concerns over the level of social security benefits for children or the conditions imposed on recipients of social security?
3. How could the living standards of Indigenous children be improved?
4. Are there other issues in relation to standard of living that should be addressed in the NGO Report? Please provide examples or details.

## IMMIGRATION: ARTICLES 10, 22, 37, 39

All of the rights under The Convention apply to every child in Australia (including asylum seekers) and not just to citizens. There are also specific rights about immigration and detention.

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### ***Rights under The Convention***

“A child who is a refugee or seeking refugee status has the right to protection and humanitarian assistance from the Government.” (Article 22)

“The Government must assist the recovery of any child who has been a victim of abuse, torture, neglect or armed conflict, in an environment which promotes health, self-respect and dignity.” (Article 39).

“Detention or imprisonment of a child shall be used only as a measure of last resort, for the shortest possible time. Children in detention have the right to legal and other assistance.” (Article 37)

“Applications for family reunification must be dealt with in a positive, humane and expeditious manner.” (Article 10)

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### ***Concerns of the UN Committee***

- The UN Committee was concerned about the treatment of asylum seekers and refugees and their children, and their placement in detention centres. It also noted that in some instances, children can be deprived of their citizenship where one of their parents loses citizenship.

### ***Australian Government Report 2003***

- The Government recognises that Australia's immigration detention policy is of concern to NGO's and the UN Committee, but maintains that this policy is consistent with the Convention.
- It states that programs are run in detention facilities which contribute to children's development and quality of life including education, cultural classes and sporting activities. It claims that necessary medical and other health care is provided to all detainees.
- It notes the alternative detention arrangements which allow some women and children in Woomera to live in supervised “family style” accommodation (although separated from adult male family members). Children are also able to apply for bridging visas to live in the community where it is in their interests to be separated from family members or country people.

### **Immigration - Some Current Issues**

Children seeking asylum in Australia are categorised by the Government as “lawful” or “unlawful” entrants. Those who arrive in Australia “unlawfully” are generally held in immigration detention while their claim for refugee or other immigration status is determined. Even if found to be refugees, “unlawful” immigrant children are usually granted only a temporary protection visa, which does not give them a right to permanent residence in Australia, and denies them access to many Government benefits and services.

It is apparent that the imprisonment of any child seeking asylum cannot be in the best interests of the child and is contrary to the Convention. Detention for indeterminate periods has been shown to create a climate of despair leading to psychological disorders amongst detainees. Such imprisonment breaches the Government's obligation to rehabilitate and reintegrate children who have suffered trauma in their home countries or in the journey to Australia.



Children in detention have limited access to quality education, recreational and cultural activities and are denied the right to participate in the life of the community. It is not possible for children to experience a normal family upbringing and to develop to their full potential within a detention environment.

Unaccompanied children face even greater hardship in the immigration system, which they must navigate alone. In the initial interview conducted by DIMIA, unaccompanied children are expected to explain their fears of persecution to the satisfaction of officials, without any support or assistance, or risk being “screened out” and deported.

Unaccompanied children are also unable to apply for permanent residence where they have spent their formative years in Australia, in contrast to “innocent illegal” children who arrived with their parents.

Children who are citizens or permanent residents of Australia can also suffer as a result of harsh migration policies affecting their parents. For example, a child born to an Australian father and migrant mother may be separated from his or her mother if he/she is not sponsored to stay.

In other cases children who have permanent residency may need to support their parents who are on temporary visas and have restricted access to social security benefits.

### **Questions**

1. Do you support the Government's policy of immigration detention for children and their families? What alternatives would you suggest?
2. Do you have any specific concerns over the conditions and opportunities available for children in immigration detention? Please provide details or case studies.
3. Are you aware of any other features of the immigration system which impact harshly on children? Please provide details or case studies.
4. Are there any other issues which should be raised in the NGO Report in relation to immigration?

## JUVENILE JUSTICE: ARTICLES 37, 40

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### ***Rights under the Convention***

“Children should not be held responsible for crime below a minimum age.” (Article 40)

“Children have rights to fairness and due process.” (Article 40)

“Sentencing should promote reintegration and rehabilitation. Special programs should be created to divert, young offenders away from Court where appropriate, but these must safeguard children’s legal rights.” (Article 40)

“Detention must be used only as a last resort and for the shortest appropriate period of time. Children should not be detained with adults, must have access to legal assistance, and the right to maintain contact with family.” (Article 37)

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### ***Concerns of the UN Committee***

- Children in juvenile detention, particularly the disproportionate number of Indigenous children in juvenile detention and the refusal of bail to Indigenous children.
- Mandatory detention laws and their effect on Indigenous children.
- The low age of criminal responsibility in Australia.
- The reservation made by the Australian Government about detaining children separately from adults and having contact with families in regional and remote areas.

### ***Australian Government Report 2003***

The Government cites:

- Federal funding for crime prevention under the National Crime Prevention Program and Youth Crime and Family Strategy.
- Diversionary schemes in most jurisdictions, including a federally funded scheme in the NT, and the proven success of conferencing programs. It notes the increased focus on culturally appropriate diversion schemes for Indigenous young people and anticipated changes to legislation in WA to make diversion options more accessible to Indigenous young people.
- Strategies in most States and Territories to reduce incarceration rates of Indigenous Australians, including crime prevention programs, diversion programs, Youth Justice Service Officers in QLD and Indigenous Program Support Officers in NSW and Indigenous Community Patrols in NSW taking young people home at night.
- The repeal of mandatory sentencing in NT and the review which showed justification for retaining mandatory sentencing in WA.

### **Juvenile Justice - Some Current Issues**

Juvenile crime is an emotive issue which is often the subject of political rhetoric and mis-information. These “law and order actions” can lead to punitive laws which do not accord with the Government’s stated aims of crime prevention and rehabilitation.

While some efforts have been made to reduce the number of Indigenous children in detention, they have had very limited success. Indigenous children continue to make up a disproportionate percentage of children in detention in all States and Territories. It appears that a much greater level of commitment is needed in terms of funding and policy for crime prevention and social equity programs for Indigenous communities, as part of a larger commitment to reconciliation and self-determination for Indigenous people.

Most Australian States and Territories have adopted diversionary programs for young offenders, generally focusing on cautioning and on conferencing between the victim and offender. Research in New South Wales and New Zealand demonstrates that conferencing has a positive influence in reducing re-offending.

While generally a very positive trend, improvements are still needed to make these programs accessible to all children, particularly those in regional and remote areas. Further safeguards are also needed to ensure that children receive legal advice before consenting to diversion.

There are some concerning inequities in the juvenile justice systems across States and Territories. In particular, although there is now a standard minimum age of criminal responsibility of 10 years old across all States, some states such as Victoria and Queensland treat 17 year olds as adults for criminal matters. The Northern Territory does not have specialist children's courts, instead children are dealt with in adult courts without any protection of their privacy. The availability of Legal Aid to children also varies markedly between States.

#### **Questions:**

1. What do you think the Government can and should do to reduce the over-representation of Indigenous young people in juvenile detention?
2. Do you consider that crime prevention programs are adequate in your State or Territory?
3. Are diversionary programs accessible to all children in your State or Territory? Are there sufficient safeguards for children's legal rights?

Do you have any particular concerns about the juvenile justice system in your State or Territory? Please provide details.

Thank you.

We look forward to receiving your submissions, comments and ideas. Remember to have a look at the Background Briefing Paper for a more detailed consideration of the issues raised in this Consultation Paper.

# glossary

<b>"ATSIC"</b>	the Aboriginal and Torres Strait Island Commission. ATSIC was established to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them.
<b>"Committee"</b>	the United Nations Committee on the Rights of the Child. This body monitors how well States are meeting their obligations under CROC. The Committee is comprised of 18 independent experts from 18 different countries and receives information on a State's compliance from the State's own report and from other sources.
<b>"the Convention"</b>	the United Nations Convention on the Rights of the Child, ratified by Australia in December 1990.
<b>"CROC"</b>	the United Nations Convention on the Rights of the Child, ratified by Australia in December 1990.
<b>"DCI"</b>	Defence for Children International, which is a global chain of children's rights agencies recognised by the United Nations.
<b>"NCYLC"</b>	the National Children's and Youth Law Centre. The National Children's and Youth Law Centre was established around 10 years ago and is the only national community legal centre working exclusively, for and with, Australia's children and young people.
<b>"NGO"</b>	a non-government organisation.
<b>"Observations"</b>	the Concluding Observations of the Committee on the Rights of the Child dated 10/10/1997 in relation to Australia's initial report on CROC compliance. The observations can be found at <a href="http://www.unhchr.ch/html/menu2/6/crc/doc/past.htm">http://www.unhchr.ch/html/menu2/6/crc/doc/past.htm</a> .