

FEMALE GENITAL MUTILATION

A report in the Illawarra Mercury (5/11/94) highlighted the difficulty of conflicting cultural aspects and legislating against female circumcision. "The Australian-Arabic Council has urged Federal and State governments not to legislate against female circumcision, saying jail terms would not solve the cultural issue.

A meeting of attorneys-general in Melbourne on Thursday agreed to introduce laws specifically banning female circumcision, with the exception of Western Australia.

All states, encouraged by Federal Attorney-General Michael Lavarch, also agreed to fund a national education campaign. While greater education was welcome, the secretary of the Australian-Arabic Council, Joe Watkim said legislation would be "an insult" to the affected communities.

He said "Legislation would certainly not be welcome because it's too much of a top-down response to a problem that requires more sensitive and patient treatment. They're not criminals, they're not barbaric, they're not people who willingly wish to hurt children".

Mr Watkim said legislation was only appropriate when people knowingly and intentionally did something hurtfully. People from countries where female circumcision was a custom were being unfairly generalised as barbaric.

He said the council had already run a number of education workshops which were the way to overcome the problem. "By simply appealing to them as parents and giving them well documented research on the long-term effects of this practice, a lot of the parents were actually very quickly persuaded (against circumcision).

Legislation doesn't really solve our problems," Mr Watkim said.

DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE

The department of Foreign Affairs has sent the DCI national office a copy of the Draft Declaration on the Rights of Indigenous Peoples, along with a covering letter providing background on the Draft and inviting comments.

The draft Declaration is currently in the process of being developed within the United Nations. It aims to recognise the rights of indigenous peoples and protect them against human rights violations. This is timely and the rights of Aboriginal children will be a focus for this newsletter next year.

The Australian Government has yet to adopt specific views in relation to any of the draft Declaration's provisions. Several articles raise issues which need to be clarified.

Self-determination

Article 3 of the draft Declaration covers self-determination. It states: "Indigenous peoples have the right of self-determination. By virtue of that right they freely pursue their economic, social and cultural development.

The Commonwealth Government with cross-party co-operation supports the principle of self-determination within the Australian nation. It does not support a right to **secession**.

Customary Law

Article 33 recognises the right of indigenous peoples 'to promote, develop and maintain their distinctive juridical customs, traditions, procedures and practices'.

The Australian Law Reform Commission had in 1986 recommended functional (but not unlimited) recognition of Aboriginal customary law in appropriate circumstances. In the **Mabo** case the High Court's decision was that the common law of Australia recognises a form of native land title - the contents determined in accordance with the traditional laws and customs of the indigenous peoples concerned. Further recognition of customary law in Australia raises many complex issues, it is still under consideration.

Cultural and Intellectual Property

Articles 12 and 13 of the draft Declaration deal with the protection of the cultural and intellectual property of indigenous peoples. The Standing Committee on Aboriginal and Islander Affairs is currently inquiring into these complex group of issues.

Land Rights

Articles 10, 25, 26, and 27 of the draft Declaration cover 'lands, territories and resources'. The position taken by Australia in relation to these articles is expected to be consistent with the Government's position adopted in relation to the **Native Title Act 1993** and the land fund.

A limitation of the draft Declaration, should it be adopted by the UN General Assembly in future, is that it will not carry the legal significance of an international convention or treaty, and has only moral force - it does not impose obligations on Australia under international law.

For further information contact Ms Olga Havman on (06) 2612069.

NEWS FROM THE BRANCHES

DCI-BRISBANE

DCI-Brisbane's **Conference on the Rights of the Young Child** on 21 October at Queensland University of Technology was attended by over 100 registrants. Nine papers on issues ranging from children's communication through art, to physical punishment to Aboriginal infant mortality were presented.

A hypothetical in child abuse led us through the story of a bruised child in a child care centre and the responses of various services and the court to her plight.

The Conference received coverage in the Courier-Mail.

The "**Pinkenba Affair**" appears to have moved on to the next stage with a recommendation that the police concerned be prosecuted.

More information can be obtained from Ron Frey (ph. 07-864-4612 or fax 07-864-4995)

DCI-CANBERRA

A two-day Conference on **The Rights of Children and Adolescents in the ACT** will be held on 9-10 March 1994 at Pilgrim House, Canberra. Three keynote speakers have accepted the invitation to give papers: Prof. Philip Alston of the Centre for International and Public Law at ANU, Justice John Fogarty AM of the Family Court in Victoria and Geraldine Doogue of the ABC National Radio's popular 'Life Matters' programme. Panel sessions, workshops, a hypothetical and an exhibition of children's art on children's rights are being planned.

More information can be obtained from Barbara Refshauge on 06-249-6176 or fax 06-247-0278.