
How well does Australia stack up internationally on child protection?

by Sue Howard

This article provides summary details of an analysis into the extent to which each State and Territory and the Commonwealth Governments have addressed three international standards that relate to child protection. It also reviews the directions of similar nations (Canada, New Zealand, US) to provide further suggestions on the scope of a national child protection policy.

National child protection policy

There is no national policy on child protection in Australia, as pointed out by Moira Rayner in 1996 (ABC, Law Report Transcript, 2006) and again in the non-government report to the United Nations Committee on the Rights of the Child in 2005 (DCI, 2005). There are increasing signs, however, that a national policy is on the agenda; for example, in July 2006, the then Minister for Child Safety in Queensland, the Hon Mike Reynolds, announced that a national child protection policy was on the agenda for the next Community and Disability Services Ministers Conference (Queensland Government, Ministerial Media Statement, 25 July 2006).

The UN Committee on the Rights of the Child has shown an interest in and asked a series of questions on Australia's child protection legislation, policy and practice. The Committee sought written information about new policies and institutions that relate to the Convention (Part III) and verbal information in Part IV on:

1. the national plan of action for children
2. children in care
3. domestic violence, including corporal punishment and sexual abuse of children, and
4. Aboriginal and Torres Strait Islander children

(Concluding Observations of the Committee on the Rights of the Child: Australia. CRC/C/Q/AUS3, June 2005, p. 6).

The Australian government's written response to the Committee (August 2005) cited as evidence of the national direction both the *Stronger Families and Communities Strategy* and the *National Agenda for Early Childhood* (note *Early Childhood*, not children and young people).

The Commonwealth Department of Family and Community Services and Indigenous Affairs released the *Stronger Families and Communities Strategy 2000 - 2004* with an emphasis on linking projects to build community and family capacity to face the issues of contemporary family life and a commitment to a National Agenda for Early Childhood. The strategy was refined in 2004 as a result of the national agenda consultations. It now includes initiatives in communities for promoting the wellbeing of children, *Early childhood – Invest to Grow* initiatives, local answers for early childhood issues and interventions, and, choice and flexibility in child care (Department of Community and Family Services and Indigenous Affairs 2006, p. 2).

So, how well do the policies of the States and Territories and the Australian government's response meet the requirements of the United Nations in upholding the rights of the child, including cultural rights and rights for those in care?

Do we address the scope of issues in child protection?

A definition of child protection, based on the Child Protection Continuum presented by Queensland after the CMC report in 2004 (Queensland Government, 2004), provides a useful basis for this analysis. This continuum has the following characteristics:

- It covers the range from prevention through early intervention to intensive intervention with a range of matched primary, secondary and tertiary interventions.

- Primary interventions focus on the general population and cover a wide scope of general family support services aimed at enhancing the self-sufficiency of families eg access to health care, improving coordination of social services, and preventing the birth of unwanted children.

- Secondary interventions focus on early intervention for families and children at risk, where there is substance abuse, poverty, young parental age, and mental health concerns. Secondary interventions include home visitation programs, parent education programs and respite care.

- Tertiary interventions focus on intensive intervention with families where some adverse outcomes have already occurred or been clearly identified, mostly under statutory provisions. Tertiary interventions include intensive case planning with families to prevent further maltreatment of children, alternative out-of-home care for children at high risk and crisis care services of children whose families are in crisis.

Given the concerns of the UN in its response to Australia's last report, the *Draft UN Guidelines on Alternative Care* (FGO Working Group on Children without Parental Care, 2006) and the *Draft Declaration on the Rights of Indigenous Peoples* (United Nations Commission on Human Rights, 1993) were used with the UN *Convention on the Rights of the Child* as standards to assess the scope and adequacy of child protection policies and the legislative provisions for each State and Territory and the Commonwealth's Stronger Families and Communities Strategy policy.

The analysis focused on three main questions:

1. What are the main child protection provisions contained in the three international statements?
2. Do the child protection policies and strategies of the Australian States and Territories contain

aspects related to the articles in the three international statements?

3. Does this national direction relate to the three international statements?

The main findings

There is coverage of the majority of the child protection standards identified in the international statements by each of the Australian States and Territories.

Some States and Territories did not refer specifically to provisions for kinship care as a first option for all children, however, they clearly state this in their legislation for Indigenous children under the Aboriginal (and Torres Strait Islander) Child Placement Principles.

Most States and Territories did not refer to specific provisions in their policies for disabled children. It may be that these provisions are contained in separate policies of their departments/offices/branches or sections which administer their State or Territory disabilities legislation but it signals that children with disabilities are seen first in terms of their disability rather than their status as children.

Each State and Territory provided clear evidence of provisions for upholding the rights of children in alternative care, including most States and Territories having a Children's Guardian or Children's Commissioner – though not necessarily independent as in Victoria – for children in care.

All States and Territories have policies that work across the child protection continuum and therefore cover the scope of child protection from prevention, early intervention through to tertiary (statutory) child protection.

The Commonwealth's Stronger Families and Communities Strategy and the Ministerial Taskforce on Indigenous Affairs policies show considerable gaps in relation to secondary and tertiary interventions. The gaps are in the following areas:

- no reference to the rights of the child or the

best interests of the child in practice and decision-making,

- no reference to taking all measures to protect children
- no reference to right of the child to identity, nor to separation without appropriate authority and judicial review
- no reference to the right of the child to participate and express their views
- little reference to cultural aspects of child protection including Indigenous people having children removed
- little reference to any aspects of protection of children in care, disabled children, victims of abuse or prevention of torture.

There are also gaps in the Australian Government's initial policy outline for the Ministerial Taskforce on Indigenous Affairs in relation to the Rights of Indigenous peoples, especially in relation to living in freedom as Indigenous peoples and participation in devising the legislative and administrative processes that affect them.

These reflect the issues identified by the Committee on the Rights of the Child.

What does this mean for national policy in child protection?

These findings indicate that the States and Territories in Australia are addressing international obligations and standards. But the States and Territories are not the member states of the United Nations. The country is the member state and the national policy is far from addressing the scope of international obligations and standards.

Current coverage of Australia's children's policy needs to:

1. cover the full continuum of child protection from prevention (primary intervention), early intervention (secondary intervention) and tertiary intervention (intensive intervention including

statutory intervention). Research clearly shows that child protection services cannot operate effectively in isolation from family and child welfare systems (Tomison, 2004, p. 19), hence the need to ensure that full scope is included in the policy.

2. ensure there are means for the views of children to be included in decisions and directions made about their welfare
3. ensure that the views of Indigenous people are included in the decision-making and policy development in ways that uphold their rights and respect their cultural identity
4. ensure that the best interests of the child are paramount.

What are the main objections on a national child protection policy?

The main bone of contention is around the jurisdiction for child protection. It seems to be argued by the Commonwealth that they do not need to address the secondary or tertiary end child protection, as it is the States and Territories who have primary jurisdiction. Hence, the development of the *Stronger Families and Communities Strategy*. But taking national direction provides the means for States and Territories to develop consistency in child protection without encroaching on the rights of the States and Territories to enact their own legislation and uphold their constitutional responsibilities (DCI, 1996, p. 38).

Such has been the call by national politicians following the revelations of abuse of Indigenous children leading to the recent national summit on child abuse in Indigenous communities (SNAICC, 2006a; SNAICC, 2006b). Like many responses of the Commonwealth to issues in child protection and Indigenous affairs, this was a reactive rather than proactive stance.

The Secretariat for National Aboriginal and Islander Child Care (SNAICC) has called on governments to work cooperatively and holistically rather than focus on matters of jurisdiction (SNAICC 2006a;

SNAICC 2006b). Interestingly, the Commonwealth's communiqué from the summit states:

...many of the issues requiring attention necessarily rest with the States and Territories, a concerted national response depends on agreed actions across jurisdictions, with the active support of the Australian Government". (Hon Mal Brough, Communiqué 26 June 2006 p. 1).

What could constitute such "active support"?

Perhaps we could look to like nations for some guidance. Both the United States and Canada have national governments as well as State or provincial governments and both have Indigenous populations. New Zealand does not have any state or provincial government, but does have a significant Indigenous population and has provided models for child protection that both Queensland and Tasmania have adopted.

The United States model

National legislation (*Keeping Children and Families Safe Act* of 2003) has been in place in various forms in the US since 1974 (*Child Abuse and Prevention and Treatment Act*). The federal roles sit mainly in research, evaluation, data collection, the Office of Child Abuse and Neglect, the national clearing house, the minimum definition of child abuse, and in providing a grants framework for funding and directions for the States (National Clearinghouse on Child Abuse and Neglect, 2006). While the National Clearinghouse on Child Protection and the Australian Institute of Health and Welfare does some work around (aggregate) data collection and dissemination of research and publications, the federal government has no direct role in funding or 'quality control' for services. The UN has been consistently critical of the lack of policy direction, appropriate data and a suitable grants framework for Australia (Concluding observations of the Committee on the Rights of the Child: Australia, 10/10/97, p. 2).

The US Advisory Board on Child Abuse and Neglect developed a national policy in 1993/4 with a four

pronged focus of integrating and coordinating roles, being child-centred, taking a family focus and being neighbourhood-based (US Advisory Board on Child Abuse and Neglect, 1993). Again, while some of the initiatives of the *Stronger Families and Communities Strategy* have a similar focus, there is still little evidence of a child-centred approach and no consistent processes for devolution of grants for child protection in Australia.

The Indian Welfare Act 1978 in the USA regulates welfare for Native American children and works with the policy that covers the full child protection continuum and includes Indigenous people in decision-making at both system and practice levels, and outsources to relevant Indigenous agencies through intergovernmental child welfare agreements (Cunneen & Libesman, 2002, pp. 7-8, Libesman, 2004, pp. 6-8). It includes a 'placement principle' which is similar to the Child Placement Principle in each of the child protection acts in Australia for Indigenous Australian children (Cunneen & Libesman, 2002, p. 7).

Some of the aspects of the US model of cross-jurisdiction in child welfare and protection, in operation for over 30 years in that country, may provide lessons for Australia though there are some aspects which would not be advisable ('targets' for adoption and 'freeing children for adoption) to meet funding requirements.

The Canadian Model

Like Australia, Canada has no national child protection legislation but Canada has developed national policies on both child protection and youth justice (Bennett, 2005, p. 10). In 2002 Canada launched the Early Childhood Development Strategy (Canadian Inter-government Conference Secretariat, 2002) and in 2005 a comprehensive national policy on family violence which has integrated a great deal of child protection and supported this through funding and delegation of initiatives to provinces (see www.justice.gc.ca for details of this family violence initiative). Both of these policy directions provide for strengthening families, improving parenting and family support at all appropriate levels of intervention and strengthening communities through outsourced funding and agreements on service provisions.

In the 1980s, the Canadian Government developed policy to enable tripartite agreements for First Nations child protection agencies to be established and provided with the mandate for fully managing child protection matters (Cunneen & Libesman, 2002, p. 2).

Canadian national policy therefore provides for directions and services in child protection and family violence across the continuum of child protection, and including, in the case of First Nations peoples, healing processes. There are lessons in this approach for Australia.

New Zealand model

The responsibility of the New Zealand government for child protection is spelt out the *Children, Young Persons and their Family Act 1989*, which incorporates directions in child-focused practice, stronger links with government and non-government service providers and specific provisions to improve practice in working with Indigenous Maori families (Cunneen & Libesman, 2002, p. 8). The New Zealand government has followed this up with detailed policy guidance for working cooperatively to prevent and address child abuse (Department of Child, Youth and Family, 2001a, pp. 5-40) which enhances the rights of the child through a comprehensive complaints system and the establishment of the Commission for Children (Department of Child, Youth and Family, 2001a, p. 47).

New Zealand responded to the World Summit for Children Plan of Action launched in 1990. Their report outlined a children's policy, a youth development strategy and a research agenda for children and youth wellbeing and protection (NZ Government, 2001b, p. 6). These initiatives covered the entire child protection continuum, with initiatives for strengthening families, providing culturally appropriate interventions with varying intensities and addressed the root causes of family dysfunction (NZ Government, 2001b, pp. 8 -10).

After the review of the Department of Child, Youth and Families by Mick Brown in 2000, the New Zealand Government launched *te pounamu manaaki tamariki manaaki whanau* (Department of Child, Youth and Families, 2001c, pp. 1-3) a

specific strategy for Indigenous children includes new directions in self-determination by Maori people in regard to children, New Deal funding arrangements and partnerships with service providers. This strategy supported the 2000 launch of the policy directed towards building wellbeing with young people and addressing cultural issues, especially in relation to youth suicide. (Department of Child, Youth & Family, 2000).

Again, New Zealand's policy covering all dimensions of the child protection continuum and its provisions for the cultural maintenance of its Indigenous children and young people could provide the Australian government with guidance on the appropriate scope of national child protection policy.

What does this mean for national policy in child protection?

In addition to the earlier points (ensuring the full continuum of child protection, that the best interests of the child are paramount, and catering for the views of children and ensuring the full involvement of Indigenous peoples), our national policy should provide:

5. a clear means to ensure that jurisdictional divisions are not an argument for preventing further development of an national policy or strategy.
6. structures whereby the rights of children are upheld, such as through a national Commission and Commissioner for Children and Young People with a mandate to direct public policy and provide reports on the situation for children in Australia; and that such a Commission has representation and participation of our Indigenous peoples.

Such a policy, modeling content and process from other like nations (and even our own efforts in areas such as anti-discrimination) might give substance to the term 'active support of the Australian Government' cited by the Federal Minister (Hon Mal Brough, Communique 26 June 2006 p. 1) and go some way to ensuring that Australia's actions in protecting children are comprehensive and meet our international obligations.

References

ABC Radio National, Law Report Transcript Tuesday 4 June 1996 *Children's Rights under the Law* viewed 5 August 2006:

<http://www.abc.net.au/rn/talks/8.30/lawrpt/1stories/lr040696.htm>

Cunneen C & Libesman, T 2002 *A Review of International Models for Indigenous Child Protection. A report prepared for the NSW Department of Community Services.* <http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/IndigLRes/2002/1/original.html>

Defence for Children International (Australia) 1996 *Australia's Promises to Children – the Alternative Report* viewed 25 September 2006:

<http://www.dic-au.org.html>

Department of Child, Youth & Family 2001a *Let's stop child abuse together. An Interagency Guide to Breaking the Cycle* New Zealand Government, Wellington.

Department of Child, Youth & Family 2001b *Follow-up to the UN World Summit for Children 1990. New Zealand Government Report* New Zealand Government, Wellington.

Libesman, T 2004 *Child Welfare approaches for Indigenous Communities: International perspectives.* National Child Protection Clearinghouse Issue 20, Australian Institute of Family Studies, Melbourne.

National Children's and Youth Law Centre & Defence for Children International (Australia) 2005 *The Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia* viewed 25 September, 2006:

http://www.crin.org/docs/resources/treaties/crc.40/Australia_ngo_report.pdf

Secretariat of National Aboriginal and Islander Child Care (SNAICC) 2006a *Briefing for Minister for Families, Community Services and Indigenous Affairs Abuse and Neglect of Aboriginal and Torres Strait Islander children* 18 May 2006, presented to the Executive meeting SNAICC, July 13&14, 2006, Melbourne.

Secretariat of National Aboriginal and Islander Child Care (SNAICC) 2006b *Briefing for State and Territory Governments Development of an Action Plan for Aboriginal and Torres Strait Islander communities to prevent and respond to child abuse and neglect* 18 May 2006, presented to the Executive meeting SNAICC, July 13&14, 2006, Melbourne.

Secretariat of National Aboriginal and Islander Child Care (SNAICC) and Aboriginal and Torres Strait Islander Services Working Group (ATSISWG) 2006 *Growing them up Strong and Keeping them Safe: A working paper*

provided to SNAICC National executive meeting, June 15 and 16, 2006, Melbourne.

Tomison, A 2004 *Current Issues in child protection policy and practice: Informing the NT Department of health and Community Services child protection review* National Child Protection Clearinghouse, Australian Institute of Family Studies Melbourne.

United Nations, NGO Working Group on Children without Parental Care 2006 *Draft UN Guidelines on Alternative Care*, Geneva Switzerland.

United Nations Committee on the Rights of the Child 1997 *Concluding Observations of the Committee on the Rights of the Child: Australia 10/10/97. CRC/C/15/Add.79. (concluding Observations/Comments)* viewed 17 September 2006:

[http://www.unhcr.ch/tabs/doc.nsf/\(Symbol\)/6f6879be758d0ec12570d9003340ba?OpenDocument](http://www.unhcr.ch/tabs/doc.nsf/(Symbol)/6f6879be758d0ec12570d9003340ba?OpenDocument)

United Nations Commission on Human Rights 1993 *UN Draft Declaration on the Rights of Indigenous Peoples* viewed 2 July 2006:

[http://www.unhchr.ch/huridocda/juridoca.nsf/\(Symbol\)E.CN.4.SUB.2.RES.1994.45En?OpenDocument](http://www.unhchr.ch/huridocda/juridoca.nsf/(Symbol)E.CN.4.SUB.2.RES.1994.45En?OpenDocument)

United Nations General Assembly, November 1989, *Convention on the Rights of the Child* <http://www.unhchr.ch/thml/menu3/b/k2crc.thm>

US Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau October 2003 *Major Legislation Concerned with Child Protection, Child Welfare, and Adoption* National Clearinghouse on Child Abuse and Neglect viewed 29 July 2006:

<http://nccanch.acf.hhs.gov>

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