

Children First - The Rights of Our Children and Young People

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The topic - Children First - The Rights of Our Children and Young People - is such an extensive one that in the time available it is desirable that I should concentrate on two or three aspects only.

Children in our society have, or should have, many rights - rights to health and education, the right to be heard and to be represented, the right to a promising future.

But I propose to confine my comments largely to a specific right of children about which there ought to be no controversy, the right to protection from abuse and neglect.

We ought to be able to say at least two things in this context about Australian society. The first is that a basic criterion of any civilized society is the extent to which it is prepared to provide protection for the most vulnerable members of its community. There is no doubt that children and young persons are among the most vulnerable sections of the community and they are entitled to grow up at least free of abuse and neglect at the hands of their caregivers. They are, of course, entitled to much more than that but it does seem to me to be beyond controversy that this is a bedrock right. Secondly, where that is absent or is not guaranteed in a realistic way it calls into question the very structures of the society itself.

The unfortunate circumstance is that children and young persons in Australia are not guaranteed this right, they are not free of abuse and neglect. There are in Australia approximately 100,000 reports by the community to the State or Territory departments of abuse or neglect each year. This is particularly strikingly illustrated in Victoria; greater publicity and the introduction of limited mandatory reporting has led to an increase in the number of reports per annum from about 20,000 to about 30,000. This is a remarkable increase of nearly 50% in a little over eighteen months and represents a figure of about 100 reports per day. Investigations of those reports do not support concerns that they are without foundation or are malicious. The rate of substantiation by the Department of the increased notifications is about the same as the substantiation rate was in early years for much lower numbers.

Reports represent the tip of the iceberg. It is apparent that we have a vast problem of only partially disclosed abuse of children. The remarkable increase in recent times in reports or disclosures of sexual abuse of young children, often many years ago, could in itself attract a separate discussion and is illustrative of the basic problems that we are concerned with.

When one speaks of abuse or neglect we are not talking of questionable standards of parenting, questionable standards of nurture and general care; we are talking of abuse in ways which would shock the average person in the community and neglect to a degree where it threatens the future life or long-term well-being of that child.

I propose to concentrate on two or three aspects. I do that because it would be impractical to cover the whole spectrum of child protection in the time available, particularly in Australia where the picture varies considerably from State to State.

National approach

Those introductory comments lead me to the first and, I think, most fundamental issue, which is that we need in Australia a national approach to the scourge of child abuse. The reasons for that

have become increasingly obvious as time has gone by. Traditionally child protection has been a matter for the States and Territories. The first legislation was passed by the various Colonies in the 19th Century, and administrative structures and community connections developed exclusively within States.

But a most remarkable circumstance is that there is still little connection between the legislation and administration of one State compared with that of another. The Departments in each of the States seem largely to proceed in isolation from each other. Legislation varies significantly from State to State. The most marked difference is in attitude and in the ethos of the administration. The standards of protection vary markedly. The consequence of that is that we have a situation where a child may be protected if he or she is being brought up in Albury but will not be protected from the same abuse if that child were being brought up in Wodonga.

There has in recent times been increasing agitation for this unsatisfactory situation to be redressed and I think the time has now well past when Australia must have a national approach to child protection. That is, it must have national, uniform, model legislation which applies to every child in Australia, and there must also be a guarantee of at least minimum administrative and practice standards wherever the child may be.

It would not, I think, be practical to suggest that the administration should become a federal matter. The logistics of doing so and practical realities of attempting to pursue such a course are obvious. The State structures exist, although many of them are inadequate. In addition, there are advantages in having the structures and systems as close as possible to the community which it serves and to have close links with the non-government organizations which in Australia perform such magnificent work.

The important point is to require the States to bring their standards up to standards which guarantee the fundamental right to protection. Realistically this can only be done by uniform legislation and standards. There is little point in the Federal Government signing Conventions about the rights of children if in reality it takes no step to enforce the most fundamental of rights uniformly in Australia. Otherwise some States will continue to provide a second-rate service as is the current position in Victoria.

United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child was adopted by the General Assembly of the United Nations in November 1989. It recognises the basic rights of children. They are predicated upon the basis that the best interests of the child is the paramount consideration, and provide a list of fundamental rights which children are entitled to have respected and protected in our society - the right to life itself, survival and development, the right to identity, to be brought up within a family environment, to have his or her wishes respected and acted upon, the right to education, health, freedom from arbitrary, legislative and administrative activity.

That Convention was ratified by the Australian Government in 1991. At that time that appeared to be a most encouraging step forward in the quest for the rights of children. Unfortunately, four years later the position remains the same, namely that Australia has ratified the Convention but it has not implemented it in any way into Australian domestic law.

This is a very disappointing approach. By its active recognition, Australia represented to the international community its attachment to the principles of the protection of children contained in that Convention and raised the expectation, both internationally and nationally, that those rights would be enforced in Australia in a practical way. However, it has proved to be largely an empty gesture.

The legal position is quite clear. Ratification of the Convention does not introduce the Convention into Australian domestic law either at a federal or at a State level; it does not give Australian children any of the rights which are so grandly set out in that Convention.

The recent comments by the Chief Justice of the High Court underline the haphazard and unsatisfactory way that Conventions and Treaties are treated by the Federal Executive, and I need not elaborate upon that.

At the time of and for some years after Australia's act of ratifying the Convention there was some euphoria in Australia; it was seen as a major step. However, it has been increasingly appreciated in recent times that it has been an empty gesture. Consequently, the time has come for Australia to put into effect the obligations which it was understood it had assumed at the time of ratifying the Convention. There is no real point to the Convention at present in Australia. We can either accept that or continue to agitate for it to be implemented into Australian law both at a federal and at a state level.

I emphasize a state level in particular because it is at those levels in the child protection area where the rights of children guaranteed by the Convention are most frequently neglected and where the duties of legislative and administrative bodies are most frequently disregarded.

There is little doubt about the power of the Commonwealth to implement the Convention in a practical way in Australia. The Australian Government has done so by the use of its external affairs power on a number of occasions when it suited it to do so. The Hague Convention on the International Abduction of Children is a practical example of the implementation into Australian domestic law of an international Convention directed to the rights of children.

On the other hand, the proposed response by the Federal Government to the High Court decision in [Teoh](#) is a severe blow to those who hope for the implementation into Australian law of these basic rights.

Other federal issues

In 1992 the Federal Government appeared to make a positive intervention into child protection when it established, with something of a flourish, the National Child Protection Council. Although the Council has done useful work in areas of research, it has, to many of us, been disappointing. Its recent report suggesting that the Commonwealth not become involved federally in child protection was extremely disappointing, and it was additionally disappointing to find that the report, after its publication had been delayed for some time, has apparently now been accepted, or at least acquiesced in, by the Minister, Senator Crowley.

The membership of the Council is too State orientated and needs to be altered and its horizons expanded if it is to do any effective work.

The Commonwealth should go further and establish a Commissioner for Children or other like position which can provide the Australian community with an effective overview of the rights of children. Until steps of that nature are taken the subject will continue to be fragmented and children will suffer as a consequence.

An area which can readily be reformed is the relationship between the State Children's Courts and the Family Court of Australia. It is only Australia that this dichotomy of powers and functions exist. In England, one Court structure deals with all of those matters, the level of Court involvement depending upon the nature and gravity of the case. In New Zealand both areas are

dealt with by the same Court, and in the United States one almost invariably sees in each of the States the Court designated such as the Family and Juvenile Court of the particular State.

The reality is that some cases straddle both jurisdictions and there are at times demarkation problems and the risk of parallel proceedings. In addition, appeals from the Children's Court go in Victoria to the County Court and the Supreme Court. It would be preferable if the expertise of the Family Court were utilized so that one could have a unified and integrated system. Although these problems arise from the vagaries of our Constitution, they are readily capable of being rationalized. At the minimum level this could be done by providing for appeals to go from the Children's Court to the Family Court. More satisfactory would be a cross-vesting arrangement empowering each Court to exercise the powers of the other, it being understood that normally cases would be dealt with within their own natural forum. This would produce an integrated professional system which is so sadly lacking at the present time.

Issues Outstanding in Victoria

It is two years since I provided the State Government with a report about the child protective system in this State.

Although some modest improvements have been made, due principally to the efforts of middle management and the child protection workers themselves, the major issues of concern identified at that time remain the same.

The major issues then were:-

- A. Adolescents.
- B. The non-government sector and funding cuts.
- C. The Children's Court.

Adolescents

There is no doubt that in Victoria adolescents have virtually been abandoned by the Department since 1991 when it adopted policies which have largely led to its turning its back upon the hundreds of street children in Victoria. It has imposed that responsibility on non-government organizations whose funds it cut. Thus we see nightly increasing numbers of young children in the age range of 10 to 16 roaming the streets, leading lives of corruption and danger.

A number of these children, under guardianship and other orders with the Department, have died from over-dosing or other forms of suicide or acting out. Under the government guidelines since at least 1989 independent inquiries should have been held. Under the present system of secrecy no inquiries have been held. The reason is that they may provide objective verification of these concerns.

The protection of these young persons is not easy. They are often their own worst enemies. However, the consequences of not doing so are appalling. For the young people it means a life of destruction, leading almost inevitably to the criminal justice system and then a round of gaols and institutions, aside altogether from the absence of employment and education which are so important in modern society. From the community's point of view this situation should be seen as morally and socially unacceptable; but even at the lowest level of concern the long-term cost to the community of ignoring these problems is enormous.

Non-government organizations

There is no doubt that the most devastating blow to the integrity of the child protection system in Victoria was the savage financial cuts made to the non-government sector in 1992. The non-government organizations have historically been the backbone of child protection in Victoria. The callous way in which their funds were cut and the attitude of intimidation which has in recent years replaced the former co-operative relationship has dealt severe blows to the integrity of those organizations. They find it extremely difficult to get their experienced voices heard in the decision making process and they face the threats of budget cuts without explanation, a particularly disconcerting circumstance at the present time as, because of the increase in the number of reports, the work performed by these organizations has in many cases doubled. The result has been that families remain in crisis but untreated, there are long waiting lists for basic services, and children are moved from one temporary care situation to another without any long term planning or capacity to provide long term planning.

Children's Court

The Children's Court is a most important Court in Victoria. It makes decisions every day which vitally influence the lives of very young people who frequently come from deprived backgrounds. The Court is overcrowded, the facilities are inadequate, long delays occur, and children find their cases adjourned from week to week whilst a search is made for accommodation and whilst their parents battle with the department to determine whether the child should have been removed in the first place.

When I prepared the report in 1993 almost everybody concerned in that area was agreed about the reforms which were needed to the Court and my report reflected these views. Indeed, they were also supported by the Department and by the Minister who wrote to me at the time agreeing to those proposals. However, nothing has happened; the same situation has continued. It would appear that the Minister, although well-meaning, has been overruled by the Attorney-General who has direct control over the Court. The consequence is nothing has been done.

Overall

All of these are matters which are capable of being remedied in a relatively short time. The government and its departments have shown great energy in areas such as the Grand Prix, the ever-expanding Casino, and highway reforms, and any amount of money has been made available to achieve these changes. If a fraction of that energy and a miniscule proportion of that money was directed to reforms in child protection and allied areas we could have a first class system in this State within twelve months; unfortunately, that appears unlikely to happen.

The Casino example is particularly disconcerting. Increased gambling opportunities lead directly to increased child neglect. Yet the former is being actively encouraged whilst little is done to meet the inevitable problems.

It seems that energy and money are available at the top end of society, whilst little of that energy or of that money is directed towards those who, through no fault of their own, constitute the bottom end of the market, living in circumstances of neglect and abuse. If monuments are necessary for this State for the year 2000, then the best monument would be to be able to say that we have a system which adequately and fully protects children.