

MEMBERS' BRIEFING PAPER 8.1 2009

United Nations Convention on the Rights of the Child General Comment No. 11 (2009)

Indigenous children and their rights under the Convention: Australian perspectives

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The United Nations Committee on the Rights of the Child observed that Indigenous children continue to experience serious discrimination contrary to Article 2 of the Convention in a range of areas including education. Aboriginal Victorians have for decades worked with Governments and education and training authorities to address such discrimination, but continue to face the marginalization of Aboriginal voices, identity and culture in the education system including the early childhood sector. A change of government gave Aboriginal Victorians cause for renewed hope in 2008 that saw an Apology made to Indigenous people by Australian Prime Minister Kevin Rudd who talked of closing the gap that lies between Indigenous and non Indigenous people in terms of educational achievement. Prime Minister Rudd also made a commitment to sign the UN Declaration on the Rights of Indigenous people (2007) that outlines Indigenous community's specific rights around education. Early Childhood Australia (2009) asks that the national significance of The Apology be highly visible in the Early Years Learning Framework, an initiative of the Commonwealth that is currently being trialed across Australia. Although this framework discusses the UN Convention on the Rights of the Child as one of its underlying principles, the rights of the Indigenous child are not discussed. The rights of Indigenous children in Victoria and across Australia need to be taken much more seriously if nation states such as Australia are to fulfill their obligations to an equitable society as discussed by the Committee on the Rights of the Child and advocated by early childhood practitioners across Australia.

As 2009 is the 20th anniversary of the United Nations Convention on the Rights of the Child it is timely to reflect on how children's rights are being implemented within early childhood programs in Australia. This paper calls on early childhood practitioners to reflect on how Indigenous children's rights in particular are being addressed in Victoria, where it is often assumed that Indigenous families are either assimilated or nonexistent.

Although it is a requirement for early childhood practitioners in Victoria to accept and respect cultural diversity and to reflect this in their curriculum (see

The Code of Ethics Early Childhood Australia, the National Child Care Accreditation Council and The Pre-school Quality Check List) the specific requirement to recognize and address the needs of Indigenous children, families and communities is minimal. For example:

- The Quality Improvement and Accreditation System (QIAS) lists 33 principles of quality practices for child care centers with only 2 principles connecting to broad statements around multiculturalism in which Indigenous inclusion is collapsed (National Child Care Accreditation Council, 2005). Although Indigenous Inclusion may be seen to sit within the broad requirements of engaging with inclusivity and social and cultural responsiveness, the Indigenous community has long argued that Indigenous perspectives must not be positioned within the broad sweep of multiculturalism. This argument is based on the right of Indigenous people as the original owners of Australia to self-determination including the right to determine the cultural education of their children. This is education in a cultural heritage that is unique to Australia, that deserves special status and that should be a frame of reference for all Australians.
- Early Childhood Australia's (ECA) Code of Ethics provides a framework for reflection about the ethical responsibilities of professionals (Early Childhood Australia, 2007). It highlights the rights of children as enshrined in the 1989 United Nations Convention on the Rights of the Child, and while the Convention provides some basis for recognizing the specific rights of Indigenous children to an education, it is limited and can be read as marginalizing Indigenous education to Indigenous specific spaces. Article 30 states: 'Indigenous children shall not be denied the right, in

community with other members of his or her group, to profess and practice his or her religion, or to use his or her own language'. The ECA Code of Ethics is at risk of marginalizing Indigenous education to Indigenous specific spaces through the embracing of this Article in this way.

In January 2009 the United Nation Committee on the Rights of the Child, after consultations with Indigenous communities, released General Comment No. 11 on Indigenous children and their rights under the Convention. The primary purpose of this document is to give direction to Nation States on their obligations to Indigenous children under the Convention. In relation to Article 30 for example it is acknowledged that this Article is 'expressed in negative terms' and concurs with the Human Rights Committee that positive measures to protect Indigenous children's rights are required instead. General Comment 11 provides points for those in early childhood education to consider and reconsider their work in relation to Indigenous children and Indigenous communities with the intent of broader recognition and acknowledgement of their rights. More specifically:

- Point 13 states that States must explore and investigate the 'specific challenges which impede indigenous children from being able to fully enjoy their rights'. This point asks that State funded structures, including educational institutions of which early childhood is a part, seek to determine how they affect the realization of Indigenous children's rights and work to ensure Indigenous children's rights are upheld. Further, Point 80 asks States to develop culturally sensitive policies in consultation with Indigenous communities and directly with Indigenous children. Point 82 urges States to adopt 'a rights based approach to Indigenous children'.
- Point 16 recalls Article 27 in which all children have rights to enjoy their own culture and use their own language. Point 16 however further discusses the rights of Indigenous children for 'recognition of the collective traditions and values of indigenous cultures'. In early childhood education, in honoring Indigenous children's rights, it is important to be respectful and embracing of culture and language of both the individual and the collective identities.
- Points 30-33 discuss the principle of the best interests of the child. These points outline that for Indigenous children, the determination of the best interests of the child must include both the right of the individual child as well as the rights as connected with the collective. They also state that the best interests of an Indigenous child must be determined in consultation with the Indigenous child and that child's Indigenous community. Point 33 specifically asks that the State, in order to effectively ensure Indigenous children's rights are upheld, provides training and awareness raising for all relevant professionals in the importance of 'considering collective cultural rights in conjunction with the determination of the best interests of the child'. These points of the General Comment require early childhood education to pause to think how Indigenous children's rights are supported in early childhood services across the nation in ways that are consultative and underpinned by the concerns and needs of Indigenous children and their communities.
- A number of points in the General Comment are directly related to education and Indigenous Children's rights. Point 25 reminds us that Indigenous children have a right to access culturally appropriate education services. Point 57 states that all education of Indigenous children must serve as 'an essential means of achieving individual empowerment and self-determination'. Point 58 expresses the need for representation of Indigenous peoples and cultures in all education settings be fair and accurate while Point 59 states that educational institutions must ensure Indigenous children are not faced with discrimination and racism in their educational setting. These collections of points pose many challenges for the early childhood field as the right of education for Indigenous children is underpinned by the aim of acknowledging early childhood settings are places where bias can exist and calls for educators to actively challenge all forms of bias and discrimination.

General Comment No. 11 poses many challenges for the Australian early childhood field if we are to take seriously the need for education of Indigenous children to be developed in partnership with Indigenous individuals and communities to ensure collective cultural needs are honored and acknowledged in our services and the aim of education for self-determination is achieved. This General Comment however is well placed to guide us in this work as it provides prompts for us to consider and reconsider how we move forward in this work.

Further resources

For further details of the General Comment go to:

<http://www.crin.org/ngogroup/infodetail.asp?ID=19552>

For further details on the ECA Code of Ethics go to:

http://www.earlychildhoodaustralia.org.au/code_of_ethics/early_childhood_australias_code_of_ethics.html

For further details on the NCAC Accreditation principles go to:

http://www.ncac.gov.au/resources/qias_pub.asp

For further details on the Early Years Learning Framework go to:

<http://www.deewr.gov.au/EarlyChildhood/OfficeOfEarlyChildhood/sqs/Pages/EarlyYearsLearningFramework.aspx>

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