

THE HONG KONG FAMILY LAW ASSOCIATION

POSITION ON THE JUVENILE OFFENDERS (AMENDMENT) BILL 2001

1. The FLA supports the raising of the age of criminal responsibility. The FLA's position was explained in detail in the submission to the LRC, a copy of which is provided herewith (at "A").
2. In short, the FLA is in favour of the age being raised to 14, with the presumption of *doli incapax* being abolished, the latter course being dependent on the former.
3. In addition to the points made in the paper, the FLA further notes
 - 3.1 That one of the reasons given in the Legislative Council Brief for rejecting the proposed minimum age of 14 years is the "perceived increase in youth crime". No particulars are given as to the origins or bases of this perception.
 - 3.2 That there is no specific mechanism for the expunging of a juvenile criminal record, no matter how relatively minor the offence. Other jurisdictions with 10 as the age of criminal responsibility have either legislated for such mechanism, or had this seriously suggested. See, for example, Australian Law Reform Commission report #84 on Children in the Legal Process, which recommended *inter alia*:

"Recommendation 253. Criminal convictions of young offenders should be expunged after a period of two years or when the young person attains the age of eighteen years, whichever is earlier, except where further convictions have been recorded. Exceptions to this requirement may be appropriate in relation to particularly serious offences, some sexual offences and certain other categories."
and

“Recommendation 254. Police records of young offenders should be retained for five years and then destroyed where no further offence has occurred and subject to the same exceptions noted at recommendation 253.”

3.3 The Security Bureau Brief comments (at paragraph 10) that the UN Committee did not stipulate a specific age which should be adopted. The Bills Committee should be aware that the UN Committee on the Rights of the Child has been critical of countries prosecuting children as young as 10: see for example the following:

3.3.1 *Report of the Committee on the Rights of the Child: Sixth to Eleventh Sessions* UN New York 1996, in which the UN Committee criticized the UK’s minimum age of 10 as too low and suggested that serious consideration be given to raising the age;

and

3.3.2 *Concluding observations of the Committee on the Rights of the Child: Australia. 10/10/97* (copy attached at “B”) in which the UN Committee expressed its deep concern at the minimum age of 7 to 10 years (depending on the State).

7th September 2002

HKFLA

"A"

香港家庭法律協會

THE HONG KONG FAMILY LAW ASSOCIATION

29th March, 1999

The Secretary
The Law Reform Commission
20th Floor, Harcourt House
39 Gloucester Road
Wanchai
Hong Kong

Dear Sir,

Age of Criminal Responsibility

Thank you for seeking the views of the Hong Kong Family Law Association in respect of the above topic.

Enclosed please find the Association's position paper which recommends that the age be raised to 14 and which also makes some recommendations in respect of the handling of children up to the age of 18 who commit offences.

We trust that the paper, which has been compiled by a working group of the Association convened by Mrs. Pam Baker in consultation with members, will be a useful contribution to discussion of this important issue for the future of Hong Kong children.

Yours sincerely,



Camilla Fusco (Miss)
Assistant Secretary

CF/TJM/ac
Ltr-1801

Correspondence:

Secretary
c/o 38th Floor, Asia Pacific Finance Tower
Citibank Plaza, 3 Garden Road
Central, Hong Kong

**FAMILY LAW ASSOCIATION
SUBMISSION TO THE LAW REFORM COMMISSION ON THE
AGE OF CRIMINAL RESPONSIBILITY**

March 1999

The Family Law Association submits this paper in response to the Law Reform Committee's Consultation Paper of January 1999.

The Law Reform Commission reviews the law as it stands and the *doli incapax*¹ presumption, and sets forth the possible options for reform.

It is important to state at the outset that the approach to reform should be towards provision of the best possible framework for the rehabilitation of a child who has fallen foul of the law, rather than from a knee-jerk reaction to one or two infamous crimes committed by young people.

1. DEFINITIONS.

- (1) In the *Juvenile Crimes Ordinance* a child is defined as a person under the age of 14.
- (2) A "young person" is differentiated from a child as being aged between 14 - 16.
- (3) A child of 7 can be convicted of a crime in Hong Kong.

For the purposes of this paper the definition of a child under the *Convention on the Rights of the Child* - "every human being below the age of 18 years" - is adopted.

2. BACKGROUND

DOLI INCAPAX

- (1) The subject of the presumption is addressed in detail in the LRC consultation paper.
- (2) Hong Kong's age of criminal responsibility is among the lowest in the world. It was set at seven while Hong Kong was a British Colony and was below or the same as the age in England, Scotland and Ireland.

¹ The *doli incapax* presumption is a rebuttable presumption in the child's favour that he is not capable of appreciating that his act is seriously wrong.

- (3) Until now, both in Hong Kong and in those other jurisdictions, a rebuttable presumption has existed to the effect that a child aged thirteen or less was not capable of forming criminal intent. This presumption could be rebutted by the prosecution. In England and Wales, where the age of criminal responsibility is now 10, the presumption was repealed in 1998. We do not recommend following that change.

The Family Law Association submits the following:-

- A. This presumption gives rise to inconsistency of interpretation, and we submit that the Courts may not be qualified to decide if a child understands the seriousness of the alleged offence.
 - B. The existence of the presumption implies that there is recognition of the fact that children aged thirteen or less should not be considered criminally responsible.
 - C. Community Service Orders are only legislated for those children over 14, further demonstrating the official view that a child would be too young to benefit from such correction.
 - D. Child offenders up to 14 are put in the charge of Social Welfare Department, not Correctional Services Department. This is further recognition of their perceived immaturity.
 - E. The relevant legislation indicates acknowledgement that a child under 14 is incapable of criminal intent.
- (4) We note the historical development of the *doli incapax* presumption as set out in the LRC consultation paper, and the overall impression which is left in the mind of the reader is that the presumption has given rise to great difficulties for the Courts and has outlived its usefulness. We are, however, in favour of retaining the presumption should the age of criminal responsibility be raised to an age less than 14, as a protection for children between the raised age and 14.

The FLA supports the view that the presumption be repealed, as expressed in Option B of the LRC paper, provided the age of criminal responsibility is raised to 14, to take account of the period previously covered by the presumption.

- (5) The present political climate in common law jurisdictions is affected by the pro Law & Order lobby. This is largely attributable to the natural revulsion of society to a very few horrifying cases in which children not yet in their teens have committed murder. Governments are expected to do

something about it, and their response is a completely reactionary one. They tend towards taking away any concessions to the youth of offenders, forgetting that the vast majority of offences committed by juveniles are of a minor nature. This leads to a hard line approach, and more custodial sentences.

- (6) Our submission is that more convictions and more custodial sentences will not solve the problem of young people who go off the rails, the very reverse is likely to occur. The detrimental effect of criminalising young people cannot be over emphasised.
- (7) Nevertheless, there are serious concerns about the best approach to juvenile offenders, and the task confronting the Association has been to find ways in which the requirements of society can be reconciled with the needs of the children, both present and future, to the benefit of all concerned.
- (8) We do not deny the fact of offences committed by juveniles, rather our recommendations are made with a view to utilising all those facilities presently available in Hong Kong which are designed to inculcate in children a sense of their responsibility for their own actions, and a clear awareness of the consequences of them, and thus to fulfil the overriding purpose of rehabilitation without branding a child a criminal.
- (9) Our recommendations are predicated on a more enlightened view of the best and most effective ways in which to deal with minor juvenile offences, outside the criminal Court system.

3. CUSTODIAL SENTENCES FOR CHILDREN

There are four purposes of incarceration which are accepted as the rationale of any prison sentence:-

- A. To keep the offender out of circulation and thus prevent a repeat of the offence, ie **prevention**,
- B. To set an example to other prospective offenders, a warning; ie **deterrence**
- C. society's **retribution** for the offence and
- D. **rehabilitation** of the offender.

When it comes to juvenile offenders the most important of these aims is rehabilitation. Once that is achieved the aim of prevention is also fulfilled. Society

gains a recruit to civic usefulness rather than seeking revenge, and the more such a route is taken the more other children will benefit from the experience gained. In order to get a child back on the right lines after he or she has committed an offence it is not necessary to charge, try and sentence the child. It is necessary to bring a variety of remedies into play, and to ensure that the facilities which exist in Hong Kong are widely known and used.

Some social workers have been reported as saying they would prefer that the age of criminal responsibility remain at 7. This apparently shocking statement is easily explained. The social worker feels that in the present system the child cannot be assisted towards rehabilitation unless he is "caught". In other words, calling the police in order to get assistance for a child in trouble is the way the system works at present. This state of affairs requires thorough examination and reform.²

4. PREVENTION

- (1) It is recommended that the Commission on Youth be invited to consider and coordinate efforts of Government bodies and NGOs to ensure the provision of alternative remedies other than criminalisation for children in trouble through Government and NGOs provision of services for young people in trouble.
- (2) A variety of services for children and youth in Hong Kong are available in schools and youth centres. The promotion of civic awareness, motivation and counselling are all available for children through various channels. Help and advice for families can be obtained through the Family Services Centres both within SWD and provided by NGOs. These provisions should be widely promoted and those who need them should be directed to them.
- (3) At school, teachers, school social workers and student guidance officers in primary schools are on the lookout for children in difficulties; they should be proactive in timely intervention and should have proper channels of communication with the parents. There are resources for taking preventive action in cooperation with parents before children get into trouble with the law. This is particularly important in Hong Kong where the triads recruit amongst the students.
- (4) Some, if not all, schools have visits and talks from the police on a variety of subjects, such as triads, drugs and being wary of keeping "bad" company. The Hong Kong Police are rightly proud of their Junior Police

² A visit to the Juvenile Magistracy reveals that the police are in charge of both juvenile offenders and subjects of care and protection orders.

Call.

- (5) There is a sizeable number of students who are truants from school. Although the Education Ordinance makes certain provisions in the case of truancy these are evidently ineffective and relate mainly to holding the parents responsible. These children are very vulnerable to temptation of all sorts. Outreach teams come across some of them, (See Exhibit 1) but for many their first chance of attracting attention may be when they commit a minor offence.
- (6) Before this point is reached, for these and all children up to the age of 18, there must be a system in place through which the parents can first be contacted as to the child's truancy or other problems, and assisted to come to terms with the situation so that they can take the child's care properly in hand. An appropriate system, for instance, where a child has been playing truant, would be a visit to the parents by the school social worker. This would be an immediate reaction to the truancy, not a delayed process through the Education Ordinance. If a minor offence has been committed, the police should have a system of referral to a social worker who could approach the parents for their cooperation in controlling their child.
- (7) If it appears to the social worker that the parents have control of the child the parents can, in a trivial case, surely deal with the matter. A follow up visit from the social worker would be useful.
- (8) The social worker must assess the situation where no cooperation is forthcoming from the parents. If a child is beyond control to the point where he or she is a danger to him or herself, or to the community, a care and protection order can be sought in the Court. Within that care and protection order certain conditions can be imposed, ensuring that appropriate help be given to the child and the parents. Should it be impossible for the child to stay at home there are children's homes and hostels in Hong Kong; in particular children should be cared for in small group homes or in foster care rather than large impersonal institutions wherever possible.
- (9) The Community Support Service Scheme would be an excellent facility to arrange projects for such children, building their confidence, civic awareness and motivation. A condition of a care and protection order could be participation in such a project.

5. SUPERINTENDENT'S DISCRETION

- (1) The existing system relies upon Superintendent's caution as prevention. This entails the child admitting that s/he committed the offence, showing remorse and being scolded by the Superintendent with the parent or guardian present. The Superintendent's caution is used at present for children from 7 to 17. If our recommendation is adopted and children aged thirteen or less cannot be held criminally responsible, the Superintendent's caution would be available for children between 14 and under 18. This is acceptable, in appropriate circumstances.
- (2) But the matter does not stop there, because the caution remains on the child's record. It will be brought up to a Magistrate on any subsequent appearance of the child. We recommend that this should be changed. As it is an alternative to charging the child and no trial takes place there is no rationale for a caution to remain on the record.
- (3) Our argument against reliance on the Superintendent's caution as the only preventive measure is that it puts pressure on the child to admit something he may not have done, as an alternative to facing a charge and a trial. The police can as easily refer a minor matter through a social worker as outlined above without further detriment to the child's record.

6. RETRIBUTION

- (1) The public demands that the offender pay his "debt to society". Without much thought this is represented by a custodial sentence in the public mind.
- (2) More constructively a child should make amends to victims for damage the child has caused, possibly through theft or vandalism. This could be achieved by means of projects arranged by social workers or through the Community Services programmes. The important thing would be for the child to understand that he or she is making restitution for damage done. Although Community Service Orders are only available for those over the age of 13 under the legislation, and follow a criminal proceeding, a version thereof for younger children could be instituted.
- (3) If children aged 14 to 18, or their parents, failed to cooperate the child could be referred to the police, for consideration of the Superintendent's caution.
- (4) If the parents do not have control of their child, as outlined above, the social worker involved would give the family assistance and counselling. Should that not prove effective, further measures would have to be considered such as care and protection orders, or supervision orders.

7. REHABILITATION

- (1) There is no reason why a child who has got into trouble cannot be rehabilitated without entering the criminal system, or being charged with an offence or being convicted.
 - A. There are social welfare facilities, should the problem warrant separation from family under a Care and Protection Order, where the child can have standards of behaviour inculcated and can have his or her education enhanced. Such disposition would be subject to regular review, at least as frequently as six monthly.
 - B. There can be supervision by a social worker to whom the child and the parents must report at intervals. This could be combined with reports from the school social worker, to ensure that the child has not become, or has ceased to be, a truant from school.
- (2) In respect of children over the age of 14, the Correctional Services Department in Hong Kong has always been proud of the rehabilitation of offenders aspect of its work. This has been made increasingly difficult by the numbers of illegal immigrants imprisoned in CSD facilities, who do not require to be rehabilitated but who take up so much space. This applies in juvenile institutions and reduces the effectiveness of CSD's attempts to rehabilitate offenders. See Exhibit 2. Although this editorial is dated a year ago, it is still relevant today.

With these alternatives available the FLA recommends the abolition of the presumption, dependent upon the raising of the age of criminal responsibility to 14.

8. THE FLA RESPONSE TO THE OPTIONS IN THE LRC PAPER

(1) OPTION A

The first, the maintenance of the *status quo*, is not an option for reform and the FLA strongly disagrees with such a solution.

The reasons given by legislators in Hong Kong or parliamentarians in Westminster for retaining a very early age will not withstand scrutiny. For example, the reason given by a Hong Kong legislator in 1973, and echoed by Hong Kong Government's response to the Committee on the Rights of the Child in 1996, that children below the age of criminal

responsibility will be used by adults to commit offences (drug running, smuggling etc) so the age must not be raised, as this would make more children available. Why a crook would care whether a child gets into trouble for doing his bidding escapes us. Any child, of whatever age, being caught performing such acts would undoubtedly attract the attention of either law enforcement officers or social workers, depending on his or her age. There are many ways to cope with this child as detailed in our paper, apart from criminalisation.

One speaker in the House of Commons remarked that if a child of tender years commits an offence "appropriate punishment and effective intervention" will prevent the child becoming tomorrow's adult criminal. We strongly disagree. This speaker has more faith in the rehabilitative effect of early conviction and punishment than is warranted by the figures on recidivism. Other methods, outlined above, will, we submit, be more effective in showing a child the error of his actions and how to become an effective part of society.

9. OPTION B

The second option is to raise the age of criminal responsibility and to abolish *doli incapax*. The FLA strongly recommends adopting this option provided the age to which responsibility is raised is set at 14.

- (1) The first part of this Option is the decision to abolish the presumption. The presumption presently relates to children between the ages of 7 and 14 in Hong Kong. The legal rationale for abolition is set out in the judgement of Laws J, in *re C (a minor) v DPP* [1994] 3WLR 888, as detailed in the LRC's consultation paper at Page 41 *et sequi*. This has been followed in England and Wales in 1998 by legislation abolishing the presumption.
- (2) The FLA agrees with the abolition of the presumption only if the age of criminal responsibility is raised to 14 and the presumption becomes unnecessary as a protection. The presumption is conceptually obscure, in that the necessity to show that a child knows his or her actions are "seriously wrong" is barely capable of definition, and that the presumption is inconsistently applied. However, we would support its retention if the age should be set lower than 14, as a means of protection. This leads to an unsatisfactory state of affairs, and would be only a compromise.
- (3) When considering abolition of the presumption, the crucial question arises as to the age at which criminal responsibility is to be set if the presumption were to be abolished. The logical conclusion is that, provided always that the system has appropriate alternatives to the rigours of the criminal law for children under 14, 14 should be the age at which a child should be held criminally responsible.

- A. Our arguments in support of our recommendation are as follows:
- B. There has always been acknowledgement that a child under 14 may not be aware of the seriousness of what he or she has done. Provided always that there are suitable remedies to deal with an under-age "offender" it is of no advantage to the child or to society that he be criminalised.
- C. If the presumption is to go, it is illogical to set the age of criminal responsibility at some other age, under 14. That would entail retention of the presumption for a more limited age group, with all its disadvantages.
- D. The further arguments which relate particularly to Hong Kong's circumstances are those of inconsistency of treatment of children within the law. For instance, a child under 14 is not considered capable of giving evidence on oath, but a child between 7 and 14 can be convicted of an offence.
- E. It would also mean retention of prison like facilities for child offenders under 14. These facilities are called "homes", but are run like prisons. It is inappropriate for such places to be run as correctional facilities by the Social Welfare Department, as they presently are.
- F. If no child under 14 can be sentenced to a period of "reform" for an offence, these facilities can become homes of treatment and rehabilitation in the true sense of the word, for children who are the subject of care and protection orders. Children whose problems cannot be controlled at home, even with supervision and assistance to the family, can be sent to these "homes" for the care and guidance that they need. Their progress would be monitored with a view to returning them to their families as soon as possible. This does not mean enormous change with resource implications, simply a change in attitudes and removal of many locks and keys.
- G. The superintendent's caution could remain in use, for children between the ages of 14 and 18, as it has proved to be a useful alternative to prosecution. We maintain that this caution should not be put on the child's record.
- H. If a child is criminally responsible for his or her actions at 14 the police and the Courts will use their experience and knowledge in dealing with the charge and trial appropriately. The offender would be treated as a juvenile, not as an adult.

- (4) We note the comment in the LRC Consultation Paper at Page 49 Para 5.9 that the abolition of *doli incapax* would deprive children between the revised age and 14 of the protective mechanism for their immaturity. We agree. Should the age not be raised to 14 the *doli incapax* provision must be retained for under 14 year olds. This is yet another argument in favour of raising the age to 14, when these misgivings need not arise.

10. **OPTION C**

We do not agree that this option is to be preferred to Option B, provided the age is raised to 14. It is however to be preferred to Option D, because it affords more protection for the child. The burden of proof that a child is capable of committing a crime remains on the prosecution under this Option. The arguments against it are that it is illogical, and as the LRC paper implies, a compromise which is in no one's best interests.

11. **OPTION D**

Option C, though an undesirable compromise, is to be preferred to Option D. In Option D the burden of proof rests with the defence to show, on a balance of probabilities, that the child below the age of 14 was not aware of the seriousness of his actions. Admittedly the burden is less than that on the prosecution in the existing presumption, where the proof is to a criminal standard. One of the drawbacks would be a lack of proper representation by experienced defence lawyers. There are unacceptable risks to the child inherent in this Option.

12. **CONCLUSION**

The FLA supports Option B of the LRC paper, on condition the age of criminal responsibility is raised to 14. This amendment would bring Hong Kong's age of criminal responsibility up to the level of our Sovereign power and a dozen other jurisdictions. The age of 14 is the average amongst all recorded jurisdictions. This would be in line with the advice of the UN Committee on the Rights of the Child to Hong Kong to review its existing provision upwards.

The FLA is wholeheartedly in favour of raising the age of criminal responsibility to 14.



**Convention on the
Rights of the Child**

Distr.

GENERAL

CRC/C/15/Add.79
10 October 1997

Original: ENGLISH

***Concluding observations of the Committee on the Rights of the Child :
Australia. 10/10/97.
CRC/C/15/Add.79. (Concluding Observations/Comments)***

Convention Abbreviation: CRC

COMMITTEE ON THE RIGHTS OF THE CHILD

Sixteenth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the
Rights of the Child: Australia

1. The Committee considered the initial report of Australia (CRC/C/8/Add.31) at its 403rd to 405th meetings (CRC/C/SR.403-405) on 24 and 25 September 1997, and adopted* the following concluding observations:

A. Introduction

2. The Committee expresses its appreciation to the State party for its extensively detailed report, which has been prepared in full conformity with the Committee's guidelines, and for the submission of written replies to its list of issues (CRC/C/Q/AUS/1). The Committee notes with satisfaction the constructive and open dialogue it had with the delegation of the State party, and the detailed replies it received from the delegation during the dialogue. The Committee also notes the supplementary information provided by the delegation during and following the consideration of the report. The Committee regrets, however, that the State party did not include full information in its report on the External Territories that are administered by it. The Committee notes that article 2 of the Convention requires States parties to ensure the implementation of the Convention for areas under their jurisdiction, which therefore includes the obligation to report on progress achieved in all its territories.

B. Positive aspects

3. The Committee appreciates the State party's firm commitment to adopting measures for the implementation of the rights of the child as recognized in the Convention. The Committee notes specifically the wide range of welfare services for the benefit of children and their parents, the provision of universal and free education and the advanced health system.
4. The Committee notes the efforts by the State party in the field of law reform. The Committee welcomes the recent amendments to the Family Law Act, 1975 and the Crimes (Child Sex Tourism) Amendment Act, 1994.
5. The Committee welcomes the intention of the State party to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.
6. Noting the long-standing efforts made by the State party in the field of international cooperation, the Committee would like to encourage the State party to achieve the 0.7 per cent of GDP target for international assistance to developing countries.

C. Principal subjects of concern

7. The Committee is concerned that although the Convention on the Rights of the Child has been declared a relevant international instrument under the Human Rights and Equal Opportunity Act, 1986, which enables the Human Rights and Equal Opportunity Commission to refer to the Convention when it is considering complaints, this does not give rise to legitimate expectations that an administrative decision will be made in conformity with the requirements of that instrument. The Committee is also concerned that there is no right of citizens to launch complaints in the local courts on the basis of the Convention on the Rights of the Child.
8. The Committee notes with concern the reservation made by the State party to article 37 (c) of the Convention. The Committee notes that this reservation might impede the full implementation of the Convention.
9. The Committee is concerned about the absence of a comprehensive policy for children at the federal level. It is also concerned by the lack of monitoring mechanisms at federal and local levels. Such mechanisms are of essential importance for the evaluation and promotion of the development of policies and programmes for the benefit of children. Disparities between the different states' legislation and practices, including budgetary allocations, are of concern to the Committee.
10. The Committee notes that the Convention and its principles are not generally known to the public, although the notion of rights is. The Committee regrets that there seems to be lack of adequate understanding in some quarters of the community of the principles of the Convention, as well as its holistic and interrelated approach, and the importance that the Convention places on the role of the family.
11. The Committee also expresses its concern that employment legislation on the federal level, as well as in all the states, does not specify minimum age(s) below which children are not allowed to be employed. The law also does not prohibit the employment of children who are still in the compulsory education. The Committee is deeply concerned that the minimum age of criminal responsibility is generally set at the very low level of 7 to 10 years, depending upon the state.

12. The Committee is concerned that the general principles of the Convention, in particular those related to non-discrimination (art. 2) and the respect for the views of the child (art. 12) are not being fully applied.

13. While noting the information provided by the delegation of the State party on a number of programmes to raise health standards for Aboriginal and Torres Strait Islander children and the State party's intention to start a two-year anti-racism campaign, the Committee is nonetheless concerned about the special problems still faced by Aboriginals and Torres Strait Islanders, as well as by children of non-English-speaking backgrounds, with regard to their enjoyment of the same standards of living and levels of services, particularly in education and health.

14. The Committee is concerned that in some instances, children can be deprived of their citizenship in situations where one of their parents loses his/her citizenship.

15. The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28 (2), 37 (a), (c), and 39. The Committee is also concerned about the existence of child abuse and violence within the family.

16. The Committee is also concerned by local legislation that allows the local police to remove children and young people congregating, which is an infringement on children's civil rights, including the right to assembly.

17. The Committee is concerned that women working in the private sector are not systematically entitled to maternity leave, which could result in different treatment between children of State employees and those working in other sectors.

18. While noting the support services that are provided to homeless children, including housing, education and health services, the Committee remains concerned at the spread of homelessness amongst young people. The Committee is worried that this puts children at risk of involvement in prostitution, drug abuse, pornography, or other forms of delinquency and economic exploitation. The incidence of suicide among young people is an additional cause of concern to the Committee.

19. The Committee is concerned about the continued practice of female genital mutilation in some communities, and that there is no legislation prohibiting it in any of the states.

20. The Committee is concerned about the treatment of asylum seekers and refugees and their children, and their placement in detention centres.

21. The situation in relation to the juvenile justice system and the treatment of children deprived of their liberty is of concern to the Committee, particularly in the light of the principles and provisions of the Convention and other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

22. The Committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system, and that there is a tendency normally to refuse applications for bail for them. The Committee is particularly concerned at the enactment of new legislation in two states, where a high percentage of Aboriginal people live, which provides for mandatory detention and punitive measures of juveniles, thus resulting in a high percentage of

Aboriginal juveniles in detention.

D. Suggestions and recommendations

23. In the light of the Vienna Declaration and Programme of Action of 1993, the Committee encourages the State party to review its reservation to article 37 (c) with a view to its withdrawal. The Committee emphasizes that article 37 (c) allows for exemptions from the need to separate children deprived of their liberty from adults when that is in the best interests of the child.

24. The Committee recommends that the State party create a federal body responsible for drawing up programmes and policies for the implementation of the Convention on the Rights of the Child, and monitoring their implementation. The Committee suggests that cooperation in the field of the rights of the child between the authorities and non-governmental organizations as well as Aboriginal and Torres Strait Islander communities should also be further strengthened.

25. The Committee encourages the State party to allocate special funds in its international cooperation programmes and schemes to children. The Committee also encourages the State party to use the principles and provisions of the Convention as a framework for its programme of international development assistance.

26. The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment in private schools and at home. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention. The Committee also believes that cases of abuse and ill-treatment of children, including sexual abuse within the family, should be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken. Further measures should be taken with a view to ensuring the physical and psychological recovery and social reintegration of the victims of abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention.

27. The Committee recommends that awareness-raising campaigns on the Convention on the Rights of the Child be conducted, with a particular focus on its general principles and on the importance the Convention places on the role of the family. The Committee suggests that the Convention be disseminated also in languages that are used by Aboriginals and Torres Strait Islanders, and by persons from non-English-speaking backgrounds. The Committee also suggests that the rights of the child be incorporated in school curricula. It further recommends that the Convention be incorporated in the training provided to law enforcement officials, judicial personnel, teachers, social workers, care givers and medical personnel.

28. The Committee believes that there is a need for an awareness-raising campaign on the right of the child to participate and express his/her views, in line with article 12 of the Convention. The Committee suggests that special efforts be made to educate parents about the importance of children's participation, and of dialogue between parents and children. The Committee also recommends that training be carried out to enhance the ability of specialists, especially care givers and those involved in the juvenile justice system, to solicit the views of the child, and help the child express these views.

29. The Committee recommends that specific minimum age(s) be set for employment of children at all levels of government. The Committee suggests that there is also a need for clear and consistent regulations in all the states on maximum allowed work hours for working children who are above the minimum employment age. The Committee also encourages the State party to consider ratifying ILO

Convention No. 138 concerning minimum age for employment. While acknowledging the fact that the federal Government is planning to harmonize the age of criminal liability and raise it in all the states to 10 years, the Committee believes that this age is still too low.

30. The Committee recommends that legislation and policy reform be introduced to guarantee that children of asylum seekers and refugees are reunified with their parents in a speedy manner. The Committee also recommends that no child be deprived of his/her citizenship on any ground, regardless of the status of his/her parent(s).

31. The Committee encourages the State party to review its legislation and make paid maternity leave mandatory for employers in all sectors, in the light of the principle of the best interests of the child and articles 18 (3) and 24 (2) of the Convention.

32. The Committee encourages the State party to take further steps to raise the standards of health and education of disadvantaged groups, particularly Aboriginals, Torres Strait Islanders, new immigrants, and children living in rural and remote areas. The Committee is also of the view that there is a need for measures to address the causes of the high rate of incarceration of Aboriginal and Torres Strait Islanders 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 because of their ethnic origin may be contributing factors.

33. The Committee recommends that further research be carried out to identify the causes of the spread of homelessness, particularly among young persons and children, including, inter alia, the socio-economic background of the child and his/her family, and to identify any link between homelessness and child abuse, including sexual abuse, child prostitution, child pornography, and trafficking in children. The Committee also encourages the State party to adopt further policies of poverty alleviation, and to further strengthen the support services that it provides to homeless children.

34. The Committee recommends that specific laws be enacted to prohibit the practice of female genital mutilation and to ensure adequate implementation of the legislation. The Committee also recommends that further awareness-raising campaigns be conducted, in cooperation with the different communities, to sensitize them about the dangers and harm that result from this practice.

35. Finally, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the initial report and written replies presented by the State party be made widely available to the public at large and that the reports be published, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

* At the 426th meeting, held on 10 October 1997.