

Education Rights

CASE STUDY

School closures

In 1994, when Jordan was 6 years old and in Year 2, his primary school in rural North-East Victoria was closed. He liked his school and teacher, even though there were only 20 other students at the school. Since then Jordan has had to travel one hour each way to get to the closest school. When he was younger he was often so tired by the time he got to school that it was hard to concentrate.¹

Research shows that 20–25% Victorian students in Years 9 and 10, many of whom were affected by school closures and increased class sizes in 1993–1995, have reading and maths skills below the state’s minimum standard.²

CASE STUDY

Access to education

Brother and sister, Marguerite and Paul, attend a public high school in the western suburbs of Melbourne. In 2003, they were in Years 8 and 9, but were not allowed to use the school computers during or outside class time because they had not paid the computer fee of \$180 each the school required. While their mother, a single parent earning a low income, received a government subsidy of \$127 per child, it wasn’t enough to cover the cost of uniforms, books, school camp and computers. All the other students in Marguerite and Paul’s classes did their assignments on the computer. They felt singled out because they couldn’t afford the fees.³

The right to education in international conventions

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.”

Universal Declaration of Human Rights, Article 26.

Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) establishes that governments must provide:

- compulsory and free primary education
- secondary education that is available and accessible and progressively made free
- higher education that is equally accessible to everyone, and progressively free; and
- intensified education for those who have not completed primary education.

While the goal is for all forms of education to be provided free of charge, this can be achieved progressively – starting with primary schooling and later extending this to secondary and higher education.⁴

The United Nations’ Committee on the Rights of the Child explains that the right to education rests on access and curriculum content and quality.⁵ Governments need to establish mandatory minimum educational standards, which recognise “that every child has unique characteristics, interests, abilities, and learning needs”.⁶ The UN Committee on ICESCR states that these educational standards should be:

- *available* – delivered through functioning and quality educational institutions
- *accessible* – non-discriminatory, physically within reach, affordable by all and progressively free of charge
- *acceptable* – using

curriculum and teaching which is culturally appropriate and of good quality; and

- *adaptable* – responsive to the needs of changing societies, communities and students.

Current Australian education policy

In Australia, the legal responsibility for education rests largely with the states and territories. Broadly following the scheme of the ICESCR, Australian education policy includes a major emphasis on primary-level schooling. The various state and territory education policies set out the:

- rules for the establishment of schools
- age of compulsory school attendance
- parents’ responsibility for sending their children to school; and
- establishment of minimum school curriculum.

School curriculum objectives are based on the National Goals for Schooling.⁷ These set out that:

- schooling should fully develop the talents and capacities of all students
- students should attain high standards of knowledge, skills and understanding through a comprehensive and balanced curriculum; and
- schooling should be non-discriminatory and should promote understanding of diversity.



A number of the states and territories make provision for “special” schools, which are intended to provide appropriate schooling to children with special needs. In some cases there is provision made for home schooling.

Rights not protected in Australia

Australian laws provide a narrower entitlement to education than the ICESCR or the *Convention on the Rights of the Child* and provide limited protection for an individual’s right to education. For example, in NSW the law emphasises the obligation of parents to ensure children attend school, rather than the government’s responsibility to provide schooling that meets the needs of all students.⁸

All state and territory governments allow the exclusion (i.e. suspension or expulsion) of children who have been judged not to conform with behavioural standards. This exclusion means that the fundamental right to education for these children is being breached. Children who do not receive quality education are at risk of unemployment and may face barriers to fully participating in society. Indigenous students receive a disproportionate number of long suspensions and expulsions.⁹

Many Australian governments fail in their obligation to make schooling available and free of charge. The NSW *Education Act 1990* stipulates that tuition in government schools shall be free, yet current policy encourages “voluntary” fees. Many governments encourage public schools to charge fees, though sometimes only for certain subjects. Most governments target “overseas” students for “full” tuition fees. In all cases, schools charge for excursions, materials and equipment. This can make it difficult for students from low-income backgrounds to participate in these activities.

Inequality of schooling outcomes persists in Australia. There is a considerable gap in the proportion of boys and girls who start high

school and stay to finish Year 12 – 70% for boys and 81% for girls. However, the rate for Indigenous students is only 39%.¹⁰

The cost of tertiary education for students in Australia continues to rise. This makes it increasingly difficult for low-income families to afford tertiary education for their children. Participation by students from low socio-economic backgrounds actually declined during the 1990s.¹¹ The number of both working-class and Indigenous people in Australian universities remains very low compared to the general population.

Public funding of fee-charging non-government schools can reduce the funds available for public schools. The ICESCR gives parents the right to choose non-government schools for religious reasons.¹² However, in Australia “private” schools (religious and secular) receive more than half their total income from public sources – 57% in 2001.¹³ This funding comes at the expense of the public system.

International example of education rights protection

In Germany in the 1970s, several universities put a limit on the number of students they would admit. A complaint was made by students who failed to gain entry to medical school.¹⁴ It was claimed that the criteria used to select students were arbitrary and that it was a violation of their right to choose both where they studied and their occupation.

While the court refused to rule on whether the state had a constitutional obligation to provide sufficient educational capacities for all courses of study, it held that the government was required to prove that the number of spaces available was the maximum possible and must cease using arbitrary criteria for selection.

Improving education rights in Australia

While Australia has a policy of compulsory school attendance and a minimum school curriculum, there

are few guarantees of the quality, accessibility and affordability of education for all. Indeed, Australia is increasingly moving away from the provision of free tertiary, secondary and primary education. The United Nations Committee on Economic, Social and Cultural Rights has stated that any reduction or move away from progressively improving the right to education must be carefully considered and fully justified.

Protection of education rights in line with international standards is required to ensure that all people are guaranteed a quality, accessible education.

“What form should the protection of human rights take?”

➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N^o 1: **Background to Human Rights**

REFERENCES

- ¹ Case study provided by the Victorian Council of Social Service.
- ² Victorian Education and Training Department, *Annual Report 2002–2003*.
- ³ Case study provided by the Victorian Council of Social Service.
- ⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment 13, “The right to education”, 8/12/1999, UN Doc. E/C.12/1999/10, para 14.
- ⁵ Committee on the Rights of the Child, General Comment No. 1, “The Aims of Education”, 17/4/2001, UN Doc CRC/GC/2001/1, para 3.
- ⁶ As footnote 5, para 9.
- ⁷ Developed by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), the full text is at www.curriculum.edu.au/mceetya/nationalgoals/natgoals.htm (accessed on 2/4/2004).
- ⁸ *Education Act 1990* (NSW) s 4.
- ⁹ Gonczi, A. and Riordan, G. *Measuring and Reporting on Discipline and Student Suspensions in NSW Government Schools*, University of Technology, Sydney, September 2002, p 4.
- ¹⁰ Australian Bureau of Statistics, *Schools, Australia*, cat. no. 4221.0, 2004, www.abs.gov.au (accessed on 9/3/2004).
- ¹¹ DETYA, *Equity in Higher Education*, Occasional Paper Series, Higher Education Division, Department of Education, Training and Youth Affairs, March 1999, Table 15, p 57.
- ¹² ICESCR, Article 13(3).
- ¹³ 2001 Commonwealth Budget Paper No. 1, cited in Australian Education Union, *What Money Do Public and Private Schools Get?* AEU Federal Election Factsheet No. 3, September 2001.
- ¹⁴ *Numerus Clausus I* case, German Constitutional Court (1972) 33 BverfGE 303.