

cannot effectively shape or administer detailed policies because of its remoteness from the recipients.¹³

There is a strong case in Australia for the opposite view, that central government and control is crucial to social welfare provision. Historically local government has not played a major role in the welfare arena with evidence this arm of government has always been dependent on government finance and has been unable to cope during recessions. State governments have tended to provide a patchwork of services and, in general, have not had the resources to expand their services significantly (although a GST might change that). Many commentators believe State and local government can only ever hope to *respond* to crises and therefore the task of planning and overall promotion of national welfare must rest principally with a national government, with local organisations acting to carry out the general plans of the central government.

There is a powerful case for Commonwealth involvement in the provision of services in Australia, especially services for children and families with children. The terms most commonly used to describe overall service provision are: fractured, fragmented, patchwork, uncoordinated, categorical. Australia has a collection of activities, a collection of diverse funding mechanisms and different patterns of development that have resulted in this fragmented patchwork of programs and services. Little is known about the content of many programs and services due to woeful data collections by most authorities. Such small increments in service provision as occur do so often as a response to local conditions and not as part of a broad policy framework and thus, while well meaning and filling perceived gaps, these increments are uneven and ad hoc and contribute further to fragmentation. Thus the picture is one of the current structure having evolved from different federal, State and local government, charitable and private funding sources, a collection of activities that has evolved over time from separately enacted pieces of legislation at State and federal levels, with competition existing among these sectors for the funding dollar. A further significant and serious limitation in provision is lack of evaluation — program development has consistently outstripped program evaluation and therefore there is very little evidence to indicate what works and for whom and when and how and why.

In examining the relevant sections of the Constitution, the amendments made to it, and the potential for expansion of Commonwealth involvement by means of the external powers made available through the government becoming signatory to international agreements and treaties, difficulties surrounding the formation of social policy and its implementation become clear. Within the complex tangle of constitution, federalism and different political approaches, it is clear that pathways can be found for the Commonwealth to rectify current problems of fragmentation, categorisation, unevenness and inconsistency by assuming the crucial role of provider of social services in Australia. Greater Commonwealth involvement and the adoption by it of a primary coordinating role, consistently and uncontroversially, through use of the treaty power, would go far in solving current problems of jurisdiction.

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Dear Editor

In her brief 'Human rights: Craig Minogue v Human Rights and Equal Opportunity Commission' in the October issue [(1998) 23(5) *Alt.LJ* 244], Jude McCulloch has misrepresented the Commission's position with respect to prisoners incarcerated pursuant to State law.

The Human Rights and Equal Opportunity Commission Act 1986 (1986) limits the complaint consideration powers of the Commission with respect to complaints of violation of human rights to acts and practices for or on behalf of the Commonwealth. This is the reason for the Commission's 'refusal' to deal with Mr Minogue's complaint.

It is a matter of regret that Ms McCulloch did not make this statutory limitation clear. Your readers, if properly informed, would be in a good position to suggest to government that the Commission's powers should be extended to ensure that all Australians have a remedy when their human rights are violated, regardless of the jurisdiction of the alleged perpetrator.

Chris Sidoti
Human Rights Commissioner