

# LEGAL STUDIES

## Essay: Evaluate the effectiveness of domestic law in protecting children in Australia

DATE SUBMITTED: \_\_\_ / \_\_\_ / \_\_\_

If late, has a 'show cause' form been submitted? Yes / No

**Task Check List:**

- o Point form summary of speech, a copy of the speech or copy of palm cards are to be attached top this page & submitted on 14<sup>th</sup> June.
- o Speech is in the time limit 5 – 8 minutes

Marks	1 – 2	3 – 4	5 – 6	7 – 8	9 – 10
<b>MATTER</b> <b>Content</b>	- Presents a basic description only  - Very little use of legal terminology.	- Presents a reasonable description but with little to no analysis  - Examples not used to support argument. Minimal legal terminology used.	- Presents a limited descriptive analysis of the issue.  - Makes simple use of examples incorporating some legal terms	- Presents a clear, analysis of the issue  - Identifies some examples to support argument  - Provides adequate and accurate information incorporating some legal terms	- Presents a well-structured and engaging analysis of the issue  - Uses specific examples to support argument  - All information is relevant and accurate. Appropriate legal terminology used.
<b>MANNER</b> <b>Eye contact, Voice, presentation</b>	- Speech was largely read with very little eye contact  - Spoke too quietly, too quickly, too loudly & or used a monotone tone  - Poor personal presentation, posture and or inappropriate gesture used. Swinging & swaying.	- Occasional eye contact with audience  - A few problems with volume, speed or tone of voice  - No use of appropriate facial or hand gesture.	- Some meaningful eye contact  - Mostly good, but with a weakness in either volume, speed or tone  - An attempt to use facial and hand gesture.	- Regular eye contact with the audience  - Good volume, slow speed and varied tone used  - Some use of natural facial and/or hand gesture.	- Sustained eye contact with the audience  - Volume, speed and tone are used in a natural and engaging manner  - Natural facial and hand gestures aided communication.
<b>METHOD</b> <b>Structure &amp; visual aids</b>	- Speech is incoherent and does not follow logically  - No use of visual aids.	- Some attempt to structure speech, but is difficult to follow in parts  - Aids not used as a speaking aid but simply used as 'decoration' in the background	- Speech is basically structured to assist the audience's understanding  - Aids used poorly to illustrate content presented in speech.	- Speech is quite logically structured and is easy to understand  - Satisfactory use of visual aids to illustrate content presented in speech but may be erratic or involve periods of reading from aids.	- Speech is logically structured, interesting, easy to understand and well-adapted to the aims of the task.  - Speaker effectively uses visual aids to illustrate main content presented in speech.

88

9

81

TOTAL: 25 / 30

0.6

Time \_\_\_\_\_ minutes 6 seconds 51

### *Evaluate the effectiveness of domestic law in protecting children in Australia*

Children can be defined as those under the age of 18, and like adults, they have certain rights which should be protected and maintained. There are a range of domestic laws in place that aim to protect children in Australia, as children are vulnerable and in need of great care and protection, especially since they are generally dependent on their parents or guardians. The UN Conventions of the Rights of the Child, The Family Law Act 1995, the Children and Young Persons (Care and protection) Act 1998 (NSW) and the Department of Community Services (DOCS) aim to protect children's rights, safety and wellbeing; however, cases such as the Marion and Ebony's case, show the different results of the law, therefore the inconsistencies of the law in protecting children. Ebony's case greatly impacted the legislations regarding child protection, as the government responded with a range of reforms and plans, such as the Keep them safe: A shared approach to child wellbeing scheme and the establishment of the Special Commission of inquiry into child protection services in NSW. Each of these changes highlights the changes that took place in response to the limited effectiveness of domestic law in protecting children in Australia.

In 1990, Australia ratified the UN Conventions of the Rights of the Child (CROC) which was established in 1989. Australia's ratification of the CROC was a promise to implement domestic legislation that would promote the basic human rights for all children, which has resulted in many domestic law reforms. The four main key components of the convention include:

- the states obligation to protect children from any form of discrimination
- all children have the right to have their own views expressed and heard
- actions concerning the child should be made in the 'best interests of the child'
- every child has the right to life, survival and development

With this, The Family Law Act 1975 (CWLTH) was reformed in order to incorporate the CROC principles, where the Act originally included a child's welfare is of 'paramount consideration' which was changed by specifically stating the 'best interest of the child' in the statute. This Law reform demonstrates the ineffectiveness of the previous legislation in protecting children, where changes have been made in order to comply with CROC's principles, therefore resulting in the Family Law Reform Act 1995 (CWLTH). Marion's case is an example of Australia's involvement with CROC being used within domestic legislation. The CROC was used in this case by the High court, to rule against parents who wanted to have their intellectually disabled daughter sterilised, however the High court decided that since sterilisation was not required to preserve the girl's life, it was unnecessary. This highlights the effectiveness of the Family Law Reform Act 1995 as the 'best interest of the child' was considered, since the parents decision was not accepted due to the principle of children having the right to life, survival and development. Through this case, the reforms taken place due to the ineffectiveness of the Family Law Act 1975 (CWLTH) in protecting children in Australia, can be seen as effective due to the consideration of the 'best interest of the child' in the Family Law Reform Act 1995.

Another domestic legislation that has been reformed is the Children and Young Persons (Care and protection) 1998 (NSW) which replaced the Children (Care and Protection) Act 1987, where the Act states the 'safety, welfare and well being of the child or young person be paramount consideration' It defines abuse against children as physical or sexual assault and includes passive abuse such as



psychological and emotional harm. This Act also expects those who have a duty of care towards children to notify the Department of Community Services (DOCS) if they have reasonable grounds to suspect that a child is being abused. These people include doctors, social workers and teachers. Under this Act, a child who has been physically, sexually or emotionally abused or neglected, for instance, inadequate accommodation, poor diet and poor hygiene, can be taken away from their families. However, this act has shown some ineffectiveness in protecting children, which is evident in Ebony's case.

In Ebony's case, a 7 year old died at 9kg due to starvation and neglect in 2007. Although the parents were arrested, the prevention of harm and protection for the child was inadequate, demonstrating the ineffectiveness of the law in protecting children. The Department of Community Services had been involved with the family since 1992, and although they received many notifications and reports, they did not find the reports a 'risk assessment'. This highlights the government agencies failure in protecting Ebony from neglect and mistreatment, especially as they closed the report in 2006 due to 'competing priorities', consequently leading to Ebony's death the following year. On the other hand, due to this case, there have been many actions taken place in response to the law. For example the media exposure and the establishment of the Special Commission of inquiry into child protection services in NSW was created and in December 2008, the NSW government announced a five year plan to reform child protection through the Keep them safe: A shared approach to child wellbeing scheme. This aims to make child protection a 'shared responsibility' where all relevant government agencies will have certain responsibilities for ensuring the wellbeing of children. Also, the five government agencies that were involved with Ebony's parents were expected to give the ombudsman a report with administrative changes regarding child protection. These government agencies include:

- Department of community services (DOCS)
- Department of education and Training (DET)
- Department of ageing, disability and home care (DADHC)
- Housing NSW
- NSW police force

This is another attempt to improve the protection of children's rights in Australia and enhance the safety and wellbeing of those being abused and mistreated.

The death of Ebony highlights many issues in relation to the failure of the government and agencies to pursue legal and administrative reform. These amendments have demonstrated the government's actions in providing better care for children due to the limited effectiveness of previous legislation and government agencies. The actions and reforms taken place regarding Marion and Ebony's case highlights the effectiveness of the government in order to protect children, which demonstrates the effectiveness of domestic law, however it is only effective to an extent, as there are still inconsistencies within the law.