

**John Southalan**  
Adjunct Academic, Barrister  
C6, 118 Railway Street, West Perth  
PO Box 3248, East Perth WA 6892  
P: 9226 0358 F: 9486 7663  
E: [john@southalan.net](mailto:john@southalan.net)

---

Mrs Robyn Clarke MLA, Chair  
Joint Standing Committee on the Commissioner for Children and Young People  
Parliament of Western Australia  
4 Harvest Terrace  
West Perth WA 6005

22 November 2022

Dear Chair

### **Appearance before Committee, 23 November 2022**

Thank for invitation to appear before the Committee to provide a legal perspective on Western Australia's obligations and responsibilities to address food insecurity as an aspect of child wellbeing, addressing:

- The operation of human rights standards in general and mechanisms under which they may be relevant to governments, including state governments, in Australia
- Specific children's rights related to wellbeing that may create obligations for governments, and state governments in particular
- Government responsibilities to address children's rights in relation to food insecurity and poverty, particularly state government responsibilities
- Actions that state governments can take to assist in relevant human rights standards being met.

The following are the details (and references) of points I seek to cover in my appearance before the Committee.

Key international standards relevant to children's wellbeing, food insecurity and poverty are detailed in the **attached table**, with full references in the bibliography at the end of this letter.

Identifying the relevant standards is the easy part. More complex is understanding the legal significance or implications of these standards, relevant to the Committee's inquiry. These standards are international-law obligations on the Australian nation, but they have a significance and importance in addition to that. It is *that* aspect that I will seek to expand and explain in my appearance before the Committee.

I remain available to the Committee, and its Secretariat, is there is anything further on which I can assist.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'JL Southalan', written over a horizontal line.

**JL Southalan**

## Bibliography

- CESCR Gen Com 12, 1999. Committee on Economic Social & Cultural Rights, *General Comment 12: The right to adequate food (Art.11)*, UN doc E/C.12/1999/5, 12 May 1999. Geneva (CHE): United Nations. Available <[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)> 23 Apr 2009.
- CRC, 1989. UN General Assembly, *Convention on the Rights of the Child*, (1577 UNTS 3 (in force 2 Sep 1990), 20 Nov 1989). Available <[www.un-documents.net/crc.htm](http://www.un-documents.net/crc.htm)> 16 Sep 2009.
- CRC Gen Com 4, 2003. Committee on the Rights of the Child, *General comment No. 4: Adolescent health and development*, UN doc CRC/GC/2003/4, 21 July 2003. Geneva (CHE): United Nations. Available <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en)> 21 Nov 2022.
- CRC Gen Com 15, 2013. Committee on the Rights of the Child, *General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, UN doc CRC/C/GC/15. Geneva (CHE): United Nations. Available <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en)> 21 Nov 2022.
- CRC Gen Com 16, 2013. Committee on the Rights of the Child, *General comment No. 16: State obligations regarding the impact of the business sector on children's rights*, UN doc CRC/C/GC/16, 17 April 2013. Geneva (CHE): United Nations. Available <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en)> 27 Oct 2014.
- CRC Gen Com 21, 2017. Committee on the Rights of the Child, *General comment No. 21 (2017) on children in street situations*, UN doc CRC/C/GC/21, 21 June 2017. Geneva (CHE): United Nations.
- CRC Gen Com 24, 2019. Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, UN doc CRC/C/GC/24, 18 September 2019. Geneva (CHE): United Nations. Available <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)> 21 Nov 2022.
- CRC Gen Com 25, 2021. Committee on the Rights of the Child, *General Comment No. 25 on children's rights in relation to the digital environment*, UN doc CRC/C/GC/25, 24 March 2021. Geneva (CHE): United Nations. Available <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f25&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f25&Lang=en)> 5 Jun 2022.
- CRPD, 2006. UN General Assembly, *Convention on the Rights of Persons with Disabilities*, (2515 UNTS 3 (in force 3 May 2008), 13 December 2006). Available <[www.un-documents.net/a61r106.htm](http://www.un-documents.net/a61r106.htm)> 16 Sep 2009.
- ICCPR, 1966. UN General Assembly, *International Covenant on Civil and Political Rights*, (999 UNTS 171 (in force 23 Mar 1976), 16 December 1966). Available <[www.un-documents.net/iccpr.htm](http://www.un-documents.net/iccpr.htm)> 26 Aug 2011.
- ICESCR, 1966. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, (993 UNTS 3 (in force 3 Jan 1976), 16 December 1966). Available <[www.un-documents.net/icescr.htm](http://www.un-documents.net/icescr.htm)> 26 Aug 2011.
- UDHR, 1948. UN General Assembly, *Universal Declaration of Human Rights*, (A/RES/3/217, 10 December 1948). Available <[www.un-documents.net/a3r217a.htm](http://www.un-documents.net/a3r217a.htm)> 13 May 2009.
- UN, 2012. Human Rights Council, *Guiding Principles on Extreme Poverty and Human Rights*, UN doc A/HRC/RES/21/11. Geneva (CHE): United Nations. Available <<https://www.ohchr.org/en/special-procedures/sr-poverty/guiding-principles-extreme-poverty-and-human-rights>> 20 Nov 2022.
- , 2015. General Assembly, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN doc A/RES/70/175, 17 December 2015. New York (USA): United Nations. Available <<https://undocs.org/Home/Mobile?FinalSymbol=A%2fRES%2f70%2f175&Language=E&DeviceType=Desktop&LangRequested=False>> 20 Nov 2022.

### International standards relevant to children's wellbeing, food insecurity and poverty

Reference	Document	Notes
UN 2012	Guiding Principles on Extreme Poverty and Human Rights	<p>'Based on international human rights norms and standards, the Guiding Principles provide ... global policy guidelines focusing specifically on the human rights of people living in poverty. They are intended as a practical tool for policy-makers to ensure that public policies (including poverty eradication efforts) reach the poorest members of society, respect and uphold their rights, and take into account the significant social, cultural, economic and structural obstacles to human rights enjoyment faced by persons living in poverty.'</p> <p>These Principles collate material under various headings, and relevant to the Committee's focus, there are sections on 'Rights of the child', 'Implementation requirements', 'Right to adequate food and nutrition', 'Rights to water and sanitation' and 'Role of non-State actors, including business enterprises'</p>
CRC Gen Com 15 2013	General Comment on right of the child to the enjoyment of the highest attainable standard of health	<p>Provides further detail on the requirements of the <i>Convention on the Rights of the Child</i>. This includes paragraphs on 'The Provision of Adequate Nutritious Foods':</p> <p>43. Measures for fulfilling States' obligations to ensure access to nutritionally adequate, culturally appropriate and safe food and to combat malnutrition will need to be adopted according to the specific context. Effective direct nutrition interventions for pregnant women include addressing anaemia and folic acid and iodine deficiency and providing calcium supplementation. ...</p> <p>44. Exclusive breastfeeding for infants up to 6 months of age should be protected and promoted and breastfeeding should continue alongside appropriate complementary foods preferably until two years of age, where feasible. States' obligations in this area are defined in the "protect, promote and support" framework, adopted unanimously by the World Health Assembly. States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children's right to health, including the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions, as well as the World Health Organization Framework Convention on Tobacco Control. ...</p> <p>45. Adequate nutrition and growth monitoring in early childhood are particularly important. Where necessary, integrated management of severe acute malnutrition should be expanded through facility and community-based interventions, as well as treatment of moderate acute malnutrition, including therapeutic feeding interventions.</p>

Reference	Document	Notes
		<p>46. School feeding is desirable to ensure all pupils have access to a full meal every day, which can also enhance children’s attention for learning and increase school enrolment. The Committee recommends that this be combined with nutrition and health education, including setting up school gardens and training teachers to improve children’s nutrition and healthy eating habits.</p> <p>47. States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children’s exposure to “fast foods” that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled. ...</p> <p>49. ... States should regulate and monitor the environmental impact of business activities that may compromise children’s right to health, food security and access to safe drinking water and to sanitation.</p> <p>The comment also addresses the ‘Private Sector’, relevantly noting:</p> <p>80. All business enterprises have an obligation of due diligence with respect to human rights, which include all rights enshrined under the Convention. States should require businesses to undertake children’s rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their negative impact on children’s right to health including across their business relationships and within any global operations. ...</p> <p>81. Among other responsibilities and in all contexts, private companies should: ... limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; ...</p>
CRC Gen Com 4 2003	General Comment on Adolescent health and development	Provides further detail on the requirements of the <i>Convention on the Rights of the Child</i> . This includes that States parties should ‘develop and implement legislation, policies and programmes to promote the health and development of adolescents by providing parents (or legal guardians) with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents, including, when needed, the provision of material assistance and support with regard to nutrition, clothing and housing: [12]
CRC Gen Com 16 2013	General comment on State obligations regarding the impact of the business sector on children’s rights	Provides further detail on the requirements of the <i>Convention on the Rights of the Child</i> . This includes ‘The Provision of Adequate Nutritious Foods’, noting: ‘The activities and operations of business enterprises can impact on the realization of article 6 [right to life, survival and development] in different ways. For example, environmental degradation and contamination arising from business activities can compromise children’s rights to health, food security and access to safe drinking water

Reference	Document	Notes
		and sanitation. Selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context. The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health. ...': [19]
CESCR Gen Com 12 1999	General Comment on the right to adequate food	Provides further detail on the requirements of the <i>International Covenant on Economic, Social and Cultural Rights</i> . Particularly relevant to the Committee's focus, there are sections addressing: <ul style="list-style-type: none"> <li>• Adequacy and sustainability of food availability and access</li> <li>• Obligations and violations; and</li> <li>• Implementation at the national level (including Benchmarks and framework legislation, Monitoring, Remedies and accountability)</li> </ul>
CRC Gen Com 21 2017	General Comment on children in street situations	Provides further detail on the requirements of the <i>Convention on the Rights of the Child</i> . This includes that 'States should ensure that all children have a standard of living adequate for their physical, mental, spiritual and moral development, to prevent them ending up in street situations and to fulfil the rights of children already in street situations. States shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. Those prescriptions leave no leeway for the discretion of States. The implementation of the above in accordance with national conditions and within the means of States parties should be interpreted in conjunction with article 4, that is, to the maximum extent of States parties' available resources and, where needed, within the framework of international cooperation, with particular regard to the obligations of States to fulfil the minimum core obligation for social, economic and cultural rights. In terms of material assistance, children in street situations prioritize the need for a safe place to live, food and free and accessible medical care and education, through State support to parents and caregivers, particularly in relation to subsidized, adequate housing and income generation. The interpretation of article 27 (3) is not limited to measures to assist parents and others responsible for the child. The obligation to provide material assistance and support programmes in case of need should be interpreted as also meaning assistance provided directly to children. This is particularly relevant for children in street situations with non-existent or abusive family connections. Direct material assistance to children in the form of services may be provided either by the State or via State support to civil society organizations...' [49]
CRC Gen Com 24 2019	General Comment on children's rights in the justice system	Further detail on the requirements of the <i>Convention on the Rights of the Child</i> . This includes: 95. ... in all cases of deprivation of liberty: ... (g) Any disciplinary measure is to be consistent with upholding the inherent dignity of the child and the fundamental objectives of institutional care.

Reference	Document	Notes
		Disciplinary measures in violation of article 37 of the Convention must be strictly forbidden, including ... and disciplinary measures should not deprive children of their basic rights, such as visits by legal representative, family contact, food, water, clothing, bedding, education, exercise or meaningful daily contact with others
CRC Gen Com 25 2021	General Comment on children's rights in the digital environment	Further detail on the requirements of the <i>Convention on the Rights of the Child</i> . This includes: 97. States parties ... should regulate targeted or age-inappropriate advertising, marketing and other relevant digital services to prevent children's exposure to the promotion of unhealthy products, including certain food and beverages, alcohol, drugs and tobacco and other nicotine products. Such regulations relating to the digital environment should be compatible and keep pace with regulations in the offline environment.
CRC 1989	<i>Convention on the Rights of the Child</i>	States Parties shall take appropriate measures to combat malnutrition, including through the provision of adequate nutritious foods and clean drinking-water; and to ensure parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition: art 24(2) States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development: art 27(1)
CRPD 2006	<i>Convention on the Rights of Persons with Disabilities</i>	States Parties shall prevent discriminatory denial of food and fluids on the basis of disability: art 25 States Parties recognize the right of persons with disabilities to an adequate standard of living including adequate food and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability: art 28(1) States Parties shall ensure equal access by persons with disabilities to clean water services: art 28(2)
UN 2015	Standard Minimum Rules for the Treatment of Prisoners	Every prisoner shall be provided by the administration with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served: para 20(1)
ICESCR 1966	<i>International Covenant on Economic, Social and Cultural Rights</i>	States Parties recognize the right to an adequate standard of living including adequate food. The States Parties will take appropriate steps to ensure the realization of this right: art 11(1)
ICCPR 1966	<i>International Covenant on Civil and Political Rights</i>	Every human being has the inherent right to life. This right shall be protected by law: art 6(1)
UDHR 1948	<i>Universal Declaration of Human Rights</i>	Everyone has right to standard of living adequate for health and well-being, including food: art 25(1)