



AUSTRALIAN
CHILD RIGHTS
TASKFORCE

CRC25 Australian Child Rights Progress Report

A report on 25 years of the
UN Convention on the Rights
of the Child in Australia

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CHAPTER 1: CRC IN AUSTRALIA

James McDougall, Consultant; Natasha Godwin, Project Officer, NCYLC; Rebecca Greenwood, Project Officer, NCYLC; Amy Lamoin, Chief Technical Advisor, UNICEF Australia.

CHAPTER 2: FAMILY AND CARE

- 2.1 James McDougall, Consultant
- 2.2 Noelle Hudson, National Policy and Advocacy Manager, CREATE Foundation; Alex Cahill, Policy Officer, CREATE Foundation; Dr Joseph McDowall, Executive Director of Research, CREATE Foundation
- 2.3 Oliver Jacques, Principal Policy Officer, Uniting Centre for Research, Innovation and Advocacy, Uniting; Tom McClean, Manager, Uniting Centre for Research, Innovation and Advocacy, Uniting; Jacqui Nash, Policy Officer, Uniting Centre for Research, Innovation and Advocacy, Uniting
- 2.4 Ngila Bevan, Manager Advocacy Projects and Communications, People with Disability Australia on behalf of the Australian Cross Disability Alliance
- 2.5 Dr Patricia Fronek, Senior Lecturer, School of Human Services and Social Work, Griffith University; Professor Denise Cuthbert, Dean School of Graduate Research, RMIT

CHAPTER 3: LEARNING AND DEVELOPMENT

- 3.1 Emma Sydenham, Deputy CEO, SNAICC
- 3.2 Chris Steel, Policy and Research Manager, Early Childhood Australia
- 3.3 Martha Tattersall, with special thanks to Ani Wieregna and the Dusseldorp Forum

CHAPTER 4: PROTECTION AND SAFETY

- 4.1 Tara Broughan, Advocacy Manager, UNICEF Australia
- 4.2 Tara Broughan, Advocacy Manager, UNICEF Australia
- 4.3 Natasha Godwin, Project Officer, NCYLC; Rebecca Greenwood, Project Officer, NCYLC

CHILDREN IN FOCUS

Emma Sydenham, Deputy CEO, SNAICC; Nadine Liddy, National Coordinator, Multicultural Youth Advocacy Network; Edmee Kenny, Policy Officer, Multicultural Youth Advocacy Network; Amy Lamoin, Chief Technical Advisor, UNICEF Australia; Ngila Bevan, Manager Advocacy Projects and Communications, People with Disability Australia on behalf of the Australian Cross Disability Alliance; Micah Scott, CEO, Minus18 Foundation; Sally Goldner, Executive Director, Transgender Victoria

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CHAPTER 5: HEALTH

- 5.1 Professor Les White AM, Professor of Paediatrics, UNSW
- 5.2 Professor Sharon Goldfeld, Royal Children's Hospital and Murdoch Children's Research Institute; Dr Sue Woolfenden, Senior Staff Specialist, Sydney Children's Hospital Network; Associate Professor Harriet Hiscock, Royal Children's Hospital and Murdoch Children's Research Institute
- 5.3 Fiona Robards, Senior Research Officer, Department of General Practice Westmead, Sydney Medical School, University of Sydney
- 5.4 Professor Elizabeth Jane Elliott AM, Professor of Paediatrics and Child Health, University of Sydney

CHAPTER 6: JUSTICE

- 6.1 Ben Schokman, Director of Advocacy, Human Rights Law Centre
- 6.2 Alison Elliott, Legal & Research Advisor, UNICEF Australia
- 6.3 Natasha Godwin, Project Officer NCYLC; Rebecca Greenwood, Project Officer, NCYLC

CHAPTER 7: IDENTITY

- 7.1 James McDougall, Consultant
- 7.2 Philippa Collin, Senior Research Fellow, Western Sydney University
- 7.3 Paula Gerber, Professor & Deputy Director, Castan Centre for Human Rights Law, Monash University
- 7.4 Krista McMeeken, Solicitor, Jackson McDonald

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About the Australian Child Rights Taskforce

This report has been prepared by the Australian Child Rights Taskforce (the Taskforce), Australia's peak child rights network, made up of more than 100 organisations advocating for the protection, promotion and fulfilment of the rights of children in Australia. The Taskforce is co-convened by UNICEF Australia and the National Children's and Youth Law Centre (NCYLC).

The work of the Taskforce is guided by the *United Nations Convention on the Rights of the Child* (CRC) and our primary role is to hold the Australian Government to account on its commitment to the CRC.

This report is an opportunity to reflect on the 25 years of the CRC in Australia, acknowledge the significant progress made in that time, and highlight the entrenched issues that remain for the most vulnerable children.

REPORTING ON THE CRC

Australia is required to report to the UN Committee on the Rights of the Child every five years. At the end of each reporting cycle the UN Committee releases Concluding Observations, which identify both positive progress and areas in which child rights are not adequately protected in Australia. The most recent Concluding Observations were released in 2012. Australia's next reporting cycle is due to take place in 2018.

The CRC is the only international human rights treaty that expressly gives

specialised agencies organisations a role in monitoring its implementation. The Taskforce writes the civil society report to UN Committee on the Rights of the Child to ensure that the experiences of children in Australia are considered in Australia's reporting cycles and inform the Concluding Observations made to the Government. The Taskforce advocates for implementation of the CRC by the Australian government, and brings attention to the experiences of vulnerable children in Australia. The most recent of these alternative reports, entitled *Listen to the Children* was released in 2011 (Child Rights Taskforce 2011).

The Convention on the Rights of the Child (CRC)

The aim of the CRC is to build a better world for children. It calls on governments to take responsibility for children, by addressing specific aspects of child wellbeing and development – such as health, education, protection and participation – and by building better governance for children.



Opening Remarks by the Honourable Alastair Nicholson

AO RFD QC
Chair, Children's Rights International

"The topic of children's rights is a controversial one. While espousing the need to protect children, emphasising their vulnerability and identifying their importance as future adults, many individuals, organisations and nations either flout basic principles or balk at the conversion of rhetoric into action."

(Harrison 1990)

These remarks were prescient as this Report demonstrates.

Australia signed the CRC on 22 August 1990, ratified it on 17 December 1990 and it has since been ratified by every country in the world except the United States.

When I became Chief Justice of the Family Court of Australia in February 1988 I welcomed its advent as opening new doors to courts dealing with children in furthering their safety, welfare and development.

I naively assumed that Australia, as a major supporter of the UN from its inception and as one of the nations that was particularly active in the drafting of the CRC, would make great efforts to comply with it and support it with appropriate legislation. This did not happen and without domestic legislation, the treaty has no legislative force in Australian law.

The Australian legal approach to this issue has been described as "Janus Faced":

"The internationally-oriented face enjoys the international status it receives from being a party to the treaties; while the nationally-turned face refuses to acknowledge the domestic implications of its international obligations" (Charlesworth 2000).

This is not to say that the CRC has ceased to have influence, but its influence has waned as Governments come to realise that international treaties are of persuasive force only.

As a result, Australian Governments have consistently flouted the guiding principles of the CRC and other international instruments. That Governments at both the Federal and State level have consistently done so is evidenced by the 2012 report of the UN Committee on the Rights of the Child, which is not comfortable reading for Australians and neither is this report. Not surprisingly, this approach has attracted criticism from multiple UN sources.

The 2012 report criticised the *Migration Act* which permits mandatory detention of asylum seeker and refugee children without time limits or judicial review and failure to consider their best interests. Its recommendations included ensuring *adequate legal protections for asylum seekers and to conclusively abandon its attempted policy of so-called "offshore processing" of asylum claims and "refugee swaps"; and evaluate reports of hardship suffered by children returned without a best interests determination.*

Similarly, in relation to Aboriginal and Torres Strait Islander issues it expressed concern that racial discrimination remained a problem and particular concern at:

"Serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children, including in terms of provision of and accessibility to basic services and significant over-representation in the criminal justice system and in out-of-home care" (UN Committee on the Rights of the Child 2012).

The present report makes it clear that these and many other deficiencies have not been remedied and in many ways the situation may have even worsened.

It highlights a failure in public policy development to consider the impact on children and build preventative measures, exemplified by the recent reforms of child care benefits that do not provide for children of non-working parents. It also laments the failure to provide for a National Plan for Children recommended in the 2012 report. This deficiency has also been noted by the National Children's Commissioner.

The summary of recommendations covers important issues relating to children in care including the significant over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. (nearly one in five children of whom one third are placed with non-indigenous carers), the failure to place siblings together and to encourage children's participation in decision-making.

Others raise concerning trends in the criminal justice system and most importantly, the failure to use detention as a last resort for children, or to reduce the numbers of Aboriginal and Torres Strait Islander children in the justice system (29 times more likely to be in detention than non-indigenous children).

As to poverty and homelessness, the report comments that despite more than two decades of consecutive economic growth in Australia it is alarming that one child in six lives in poverty and 70,000 received assistance from specialist homelessness services in 2013-14.

With reference to asylum seeker children, this report refers to the Committee's 2012 recommendation, and to the significant findings as to the damaging effects upon children in detention, including serious deterioration of mental and emotional health and developmental deterioration contained in the Australian Human Rights Commission's report *The Forgotten Children: National Inquiry into Immigration Detention 2014* (AHRC 2014).

As at 31 January 2016 the average time spent by children in detention facilities was still 457 days.

The report refers to legislative changes in 2015 that directly flouted the Refugee Convention and the CRC, including a reclassification of babies born to asylum seeker parents in Australia or in offshore processing to have the same legal status as their parents and the reintroduction of the highly restrictive Temporary Protection and Safe Haven Enterprise Visas abolished by the previous Government.

This report makes it clear that since the early 1990's, successive Australian governments have consistently breached the CRC and show every intention of continuing to do so. This is an unacceptable situation and one about which all Australians should be concerned.

Alastair Nicholson
7 April 2016

Summary of Recommendations

See page numbers for full details

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

Reform for all Children

p 11

1. Assign a Commonwealth Ministry lead responsibility for policy regarding children and young people.
2. Establish a joint civil society and Commonwealth Interdepartmental Committee to coordinate and monitor implementation of the CRC.
3. Develop a National Plan for all children in Australia for the overall realisation and implementation of the CRC, from which states and territories could adopt similar strategies.
4. Conduct a baseline assessment for the implementation of the *UN Guiding Principles on Business and Human Rights*, and commit to a National Action Plan on Business and Human Rights.
5. Sign and ratify the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.
6. Ratify the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

Children in out-of-home care

p 15

1. Increase the age to which young people leaving care receive support to 25 years of age.
2. Address the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (OOHC) by strengthening culturally appropriate supports to families at risk and/or in crisis, investing in reunification where appropriate, involving children and young people in the decision-making process, and embedding Indigenous decision-making throughout all phases of the child protection system.
3. Increase resourcing to support transition from OOHC to independent living.
4. Ensure siblings are placed together wherever it is safe to do so. If this is not possible, establish mechanisms to facilitate regular contact between siblings whenever safe to do so.
5. Enhance policies for encouraging the genuine participation of children and young people in decision-making.

Poverty and Homelessness

p 17

1. Commit to an official measure of poverty and collect biannual data on the number of adults and children living below the poverty line.

2. Increase social security payments including Newstart and Youth Allowance to a level that is above the poverty line. Moreover, payments should be indexed in accordance with movements in median income to ensure those on welfare do not continue to fall behind the general population.

3. Fund research on effective housing models for young people experiencing or at risk of homelessness, and trial the most effective models as an alternative to crisis accommodation for homeless youth.

Care of children with disability

p 19

1. Ensure the Fourth Action Plan of the National Framework for Protecting Australia's Children includes comprehensive strategies for children with disability and parents with a disability.
2. Ensure the evaluation of the NDIS includes consideration of its success in ensuring that families are able to provide appropriate care and support to their children with disability so that they remain together as a family.
3. Ensure child protection systems collect consistent, cross-jurisdictional data about the relinquishment of children with disability by families and the removal of children with disability from their families.
4. Conduct an urgent national inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disability.
5. Collect appropriate statistical and research data on the number of parents with disability in contact with the child protection system and the number of children removed from parents with disability, disaggregated by gender, ethnicity, Aboriginal and Torres Strait Islander status and other relevant variables, in order to guide policy, funding, and service support.
6. Establish an independent, statutory, national protection mechanism that has broad functions and powers to protect, investigate and enforce findings related to violence, exploitation and abuse experienced by children and adults with a disability.

Adoption

p 21

1. Ensure children and their families are provided with effective access to adequate, long-term support services following adoption and into adulthood.

2. Ensure children are able to retain their birth names, and are supported to maintain contact with their birth families where possible.
3. Prohibit the advertising of children for adoption.
4. Strictly limit intercountry adoption to countries which are signatory to the Hague Convention.
5. Ensure that children's citizenship from their country of birth is not automatically revoked on adoption.

Early Childhood Education and Care p 26

1. Maintain and improve access to at least two days of quality preschool per week in the year before school, for all children.
2. Provide at least two days (20 hours) of subsidised quality early learning per week for particularly vulnerable children from birth to two years of age.
3. Provide sustainable and ongoing block funding to integrated early childhood services that supports improved outcomes for vulnerable families.
4. Provide early childhood services to Aboriginal and Torres Strait Islander children with opportunities for ongoing funding with a focus on providing free or affordable access.
5. Develop practical strategies and advice on how to support and promote children's rights by collaboration between the Australian Children's Education and Care Quality Authority, the National Children's Commissioner and the early childhood sector.
6. Implement the National Quality Framework for Early Childhood Education and Care as agreed by COAG, including child to staff ratio improvements for children 24 to 36 months old.
7. Apply the National Quality Framework for Early Childhood Education and Care to all services, including those currently out of scope.
8. Work with the early childhood sector to develop a new early years workforce development strategy.

Inclusive Education p 29

1. Strengthen existing systems of inclusive and alternative education by refiguring the role of policies and funding practices.
2. Strengthen service provision to engage with prospective learners and support learners to articulate and advocate for what they need.
3. Invest in a single stream, learner-focused model that recognises that education of young people happens in a variety of settings rather than only 'mainstream' and 'non-mainstream' settings.
4. Address gaps in the breadth and depth of service offerings in locations where data indicates a considerable unmet demand of students on waiting lists.
5. Invest in information sharing and coordination systems to enable service providers and learners to find the education and support services available in local areas.

6. Address direct and indirect constraints on flexibility in curriculum content and providing training and development to assist teachers.
7. Invest in culturally safe and respectful education environments for Aboriginal and Torres Strait Islander students and provide services that demonstrate cultural understanding.

Familial neglect, abuse and violence p 34

1. Adequately fund and prioritise implementation of the National Framework, including the Third Action Plan. Primary and secondary interventions should:
 - Target early intervention and provide intensive family support services for vulnerable children that strengthen families and are distinct from mandatory child protection mechanisms.
 - Include wide scale public education that raises awareness of the rights of children to bodily integrity and dignity, and for men and boys that respond to social norms regarding gendered violence in the family.
 - Strengthen parenting information and provision of home visiting programs through universal means such as health care, including culturally appropriate approaches.
2. Respond to causal drivers of familial violence and the complex intersection of factors contributing to risk including through:
 - Increasing access to integrated service delivery that takes a holistic approach to children and their families.
 - Increasing investment in support services addressing causal factors for children and their families including poverty, mental health, and drug and alcohol abuse.
3. Support children to have a full and effective participation in child protection, family law and intervention decision-making commensurate with their age, maturity and evolving capacity.
4. Support the development of comprehensive measures to ensure that research in child protection and into measures addressing violence against children includes the perspective of children as a matter of course.
5. Build on the resilience and culturally strong practice of Aboriginal and Torres Strait Islander communities to protect children. This would include:
 - Increased Aboriginal and Torres Strait Islander community-lead child protection mechanisms and systems.
 - Community lead holistic service supports for families based on local knowledge.
 - Access to culturally, strong, intensive family support services.
 - Universal access to Aboriginal and Family Decision-making process.
 - Embed healing informed practice in service delivery.
6. Strengthen data collection as recommended by the National Children's Commissioner 2015 report.
7. Ensure the Fourth Action Plan includes a comprehensive national strategy for responding to children with disability.

8. Undertake a review of the Australian Law Reform Commission's *Seen and Heard* report including progress in implementation of its recommendations and giving particular attention to the report's calls for widespread reform to Australia's child protection, education and legal systems to ensure children's participation in decision-making.

Bullying

p 37

1. Invest greater resourcing and capacity building in schools, police, legal advice centres and non-government organisations, and provide clarity regarding their role preventing, identifying, addressing and referring cyberbullying matters.
2. Invest in prevention, including focusing on strategies to effectively address both traditional school bullying and cyberbullying, and apply these strategies through legislative and policy implementation.
3. Amend the threshold of 'seriousness' explicit in the *Enhancing Online Safety for Children Act 2015* (Cth) to allow instances of cyberbullying that may not reach this threshold to be dealt with by the e-Safety Commissioner.
4. Invest in the coordination of the Department of Education and Training and the e-Safety Commissioner to develop best practice guidelines for responding to incidents of bullying, with the aim to ensure agencies examine best practice responses to all forms of bullying.
5. Ensure that the e-Commissioner works with young people, the key agents of change, and provides opportunities for children and young people to contribute and work intergenerationally to design and implement responses to cyberbullying.

Access to quality health services

p 63

1. Invest in early interventions such as nurse home visiting and high-quality early childhood development programs.
2. Invest in services that 'find' children and their families who may be 'hidden' from our current system, requiring a shift from the presumption that it is the family's responsibility to present to services and negotiate the system.
3. Provide integrated services for health and education.
4. Improve use of existing data to monitor quality, impact and access.

Access to quality mental health services

p 65

1. Ensure equity of access to mental health services at primary, secondary and tertiary levels, with special attention to vulnerable children and young people, especially Aboriginal and Torres Strait Islander, sexuality and gender diverse, and those living in remote areas.
2. Provide adequate mental health services to asylum seekers, refugees, and those from refugee or refugee-like backgrounds, including access to health interpreters and access to specialist assessment and treatment, by child and adolescent psychiatrists and other mental health specialists.
3. Further support the wide implementation of the Safe Schools program to counteract homophobia and transphobia in schools

to promote better mental health for gender and sexuality diverse young people.

4. Embed children's and young people's participation in the design of mental health services.
5. Enhance training and engagement of children, young people and health professionals regarding rights in health care and promotion of the Charter of Rights of Children and Young People in Healthcare.
6. Provide greater investment in the use of technology to help address gaps in access to services in rural areas and for hard-to-reach marginalised groups.
7. Invest in further research into intentional self-harm, with or without suicidal intent, by children and young people.

Physical Health

p 67

1. Introduce a national, coordinated, evidence-based approach to screening and management of disorders and evaluation of the effectiveness of interventions.
2. Implement a national plan for rare, chronic and complex diseases and a plan to address foetal alcohol spectrum disorders.
3. Articulate a long-term, holistic and whole-of-government approach to close the health gap between Aboriginal and Torres Strait Islander people and non-indigenous Australians, through COAG's Closing the Gap strategy.

Children in the Criminal Justice System

p 71

1. Commit to the full implementation of the recommendations of:
 - The Royal Commission into Aboriginal Deaths in Custody (1991).
 - The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing: Indigenous youth in the criminal justice system* report (2011).
 - The Senate Legal and Constitutional Affairs References Committee Value of a justice reinvestment approach to criminal justice in Australia report (2013).
2. Articulate a long-term, holistic and whole of government approach to implementing the recommendations outlined above through COAG's Closing the Gap strategy. This approach should include, among other things:
 - Recognition of the need to address underlying social and economic causes of children and young people coming into contact with the criminal justice system.
 - Establishing justice targets and strategies aimed at significantly reducing the number of Aboriginal and Torres Strait Islander children and young people in detention.
 - Developing a commitment to working in genuine partnership with Aboriginal and Torres Strait Islander communities, leaders and representative bodies.
 - Investing sufficient resources to ensure practical implementation.

3. Ensure that detention occurs as a last resort for any person up to and including the age of 17, including by:
 - Reforming sentencing and bail laws which limit judicial discretion to apply individual, fair and appropriate sentences and ensure that all relevant legislation includes the principle that detention must only be used as a last resort.
 - Ensuring the provision of appropriate accommodation options so that children are subject to remand only when necessary.
 - Increasing the availability and use of diversion and non-custodial sentences.
 - In Queensland, amending the Youth Justice Act 1992 (QLD) to ensure a child is defined as a person under the age of 18 years.
4. Review the current minimum age of criminal responsibility with a view to raising it to an internationally acceptable level.

Access to Justice for Children p 73

1. Establish youth specific legal centres in jurisdictions that currently do not have them (Tasmania and the Northern Territory) to ensure young people have access to legal services tailored to their specific needs.
2. Make a concerted effort to provide means by which children and others advocating on their behalf are supported to navigate complex legal systems, including funding culturally competent legal services delivered by Aboriginal and Torres Strait Islander community-controlled organisations.
3. Provide children with appropriate child-friendly complaint and reporting mechanisms to ensure more effective access to justice for children across the justice system.
4. Examine how the national curriculum might be engaged to educate children about their help seeking options.
5. Adequately fund and support Community Legal Centres, Legal Aid Commissions and Aboriginal and Torres Strait Islander Legal Services to engage with young people, and make their services more accessible to young people.

Participation, Identity and Citizenship p 77

1. Renew funding and support for mechanisms to improve understanding and build a culture of child-engaged policy making including:
 - Increasing support for the office of the National and State and Territory Commissioners and Guardians with a focus on child-engaged policy making.
 - Securing financial and institutional support for advocacy that is led by children and the sectors that support them.
 - Supporting a process for children and young people's participation in co-design of a civics curriculum that enhances the knowledge, skills and practices of children, parents, teachers, community members and policy makers.
2. Support the self-determination of Aboriginal and Torres Strait Islander children and young people together with

their communities to pursue economic, social and cultural development as defined in the UN Declaration on the Rights of Indigenous Peoples.

3. Repeal immigration and citizenship laws affecting dual-nationals, asylum seekers and those detained under criminal law that jeopardise the rights of children.

Birth Registration and Birth Certificates p 79

1. Increase awareness of birth registration as a human right, and emphasise the benefits that flow to children from having a birth certificate.
2. Develop more accessible mechanisms and processes for birth registration such as mobile birth registration units.
3. Invest in online processes and move away from purely paper forms of birth certificates in order to make the birth registration process more accessible to all.
4. Automatically issue the first birth certificate free-of-charge upon registration of Aboriginal and Torres Strait Islander births.

Connection to Culture p 81 Language, religion and spirituality

1. Review and implement the 15 recommendations of the *Indigenous Languages Programmes in Australian Schools A Way Forward* report.
2. Ensure Aboriginal and Torres Strait Islander culture is taught in schools and in professional training settings with advice and assistance from Aboriginal and Torres Strait Islander peoples.
3. Invest in wide scale public education and understanding of Aboriginal and Torres Strait Islander culture to alleviate racism.
4. Engage Aboriginal and Torres Strait Islander communities in all discussions and decisions that impact their communities and provide for meaningful participation.

Stolen Generations

5. Redress the trauma of the Stolen Generations by implementing the 54 recommendations of the *Bringing them Home* report.

Constitutional Recognition

6. Engage in widespread and meaningful consultation and education sessions on constitutional recognition with Aboriginal and Torres Strait Islander communities, including young people.

Remote communities

7. Engage in widespread and meaningful consultation and collaborative solution-generation with Aboriginal and Torres Strait Islander communities, including children and young people.
8. Implement sustainable and culturally appropriate services to manage any proposed transition of Aboriginal and Torres Strait young people from remote communities, including proper placement and mental health services.

Chapter One: Child Rights in Australia

In Australia, many children have received the historical benefits of a developed economy, a high functioning health system, accessible education, a good social welfare system and labour force protection for working families. Yet there are a significant number of children who have missed out on these 'safety net' benefits through entrenched poverty, discrimination, social exclusion and disadvantage.

Article 4 of the *Convention on the Rights of the Child 1989* (CRC) creates clear accountabilities to the duty bearers, particularly the State, to ensure the adequate and timely implementation of each of its provisions for the advancement of children's rights. In Australia, the absence of a CRC implementation framework, coordinating body and related whole of government targets and measures has meant that some children are left behind. Improved coordination is required to ensure that there is a central government understanding of the drivers of effective policy for children and the impact, or lack thereof of policies on the most marginalised children in Australia.

This report considers the significant progress, or lack thereof for children across a number of key social policy areas including family life, education, justice and health, and what this has meant for children.

The Australian Government should be commended for notable progress in some areas of policy and specific initiatives over recent years. The creation of the National Children's Commissioner marks a positive development, as does the introduction of the National Disability Insurance Scheme. Additionally, the recent Government announcement that it will conduct a national consultation on the implementation of the *UN Guiding Principles on Business and Human Rights* in 2016 is also a positive development. It represents an opportunity to ensure that the policy and legal frameworks applying to the operations of Australian registered businesses operating here and abroad are duly protective of children's rights.

However, throughout this report, we find that certain groups of children and young people may consistently face barriers to enjoying their rights and reaching their full potential, including Aboriginal and Torres Strait Islander children; children who are seeking asylum or who have refugee status; children and young people from culturally and linguistically diverse backgrounds;

children with disability; and children who are Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI). This report profiles the voices and experiences of children who identify with these groups, and sets out both the policy gaps and differential outcomes that have impacted on children and their broader communities in Australia.

A lack of progress for children and a relative underinvestment in their protection and wellbeing has been evidenced through a number of significant independent inquiries into the Stolen Generations, children in immigration detention, and child sexual abuse.

Australian Governments have, to their credit, worked cooperatively in a number of key areas, creating the National Plan to Reduce Violence against Women and their Children, the National Framework for Protecting Australian Children 2009-2020 and the National Early Childhood Development Strategy. However, in its 2012 Concluding Observations, the UN Committee on the Rights of the Child stated that:

"We are concerned at the absence of a comprehensive National Plan of Action....a comprehensive strategy, in consultation with children and civil society, for the overall realisation of the principles and provisions of the Convention....which can provide a framework for states and territories to adopt similar plans or strategies" (UN 2012, paragraphs 15 and 16).

These findings demonstrate again the need for long-term government cooperation and coordination through a National Action Plan or a cohesive agenda for children in Australia.

This report identifies the absence of a national research agenda for children, and persistent major data gaps. We currently have limited nationally agreed data sets to measure and compare the performance and effectiveness of core services for children. The sharing of best practice knowledge between governments in Australia is also often limited or ad hoc, resulting in policy and program gaps and the duplication of work.

Australia lags behind world leaders in our commitment to international frameworks that would further protect and promote the rights of children. Notably, Australia is yet to ratify the *Optional Protocol on the Convention Against Torture* or sign the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.

The observations in this report consistently show, more work remains to be done to fully realise the rights of children in Australia.

POLICY RECOMMENDATIONS

It is important that the Australian Government assess the effectiveness of governmental structures, processes and resource allocation in fulfilling the rights of children in Australia, particularly those who are marginalised and excluded.

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

Establish central coordination and leadership to drive policy effectiveness for children by:

1. Ensuring that a Commonwealth Ministry is assigned lead responsibility for policy regarding children and young people.
2. Establishing a joint civil society and Commonwealth Interdepartmental Committee to coordinate and monitor progress of implementation of the CRC.

Adopt a national policy agenda for children and young people by:

3. Developing a National Plan for all children in Australia. Develop and implement a comprehensive strategy, in consultation with children and civil society, for the overall realisation of the principles and provisions of the CRC and which can provide a framework for states and territories to adopt similar plans or strategies.
4. Conducting a baseline assessment to identify priority areas for the implementation of the *UN Guiding Principles on Business and Human Rights*, and commit to a National Action Plan on Business and Human Rights in Australia.

Extend Australia's international commitments by:

5. Signing and ratifying the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* to allow the UN Committee to hear complaints that a child's rights and the national legal system has not been able to provide a remedy for the violation.
6. Ratifying the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and developing a national preventative mechanism with the resourcing, powers and mandate necessary to carry out its functions where persons are or may be deprived of their liberty.

CHILDREN AND DIGITAL TECHNOLOGY

One of the most significant social and cultural changes over recent decades has been the way that children and young people engage with and utilise digital technology, and the impact that this had had on their lives. Since the time of ratification most children's homes in Australia have access to high speed Internet, the World Wide Web and hand held devices. This has transformed children's access to information, connection to their peers and communities, interface with duty bearers and created spaces for children to become the producers of rich digital content. Data from the Australian Bureau of Statistics shows that 86 per cent of households had access to the Internet at home in 2014-2015, up from 83 per cent in 2012-2013 (ABS 2016).

The recent *Children's Rights in the Digital Age: A Download from Children Around the World* outlined the increased risks inherent with increased access to digital media, including potential exposure to violence and bullying (see page 36), access to concerning content, excess usage and inhibited privacy (Third et al. 2014). However there is also great opportunity with unprecedented connectivity, direct access to mechanisms for participation and access to information for children.

The *Children's Rights in the Digital Age* report, guided by views of children and young people, found that there must be a focus on promoting digital literacy, resilience and cyber savvy. This builds on children and young people's expertise on their own experience online. A focus on equity of access, safety for all, digital literacy across generations, identity and privacy, participation and civic engagement is required (see page 77) (Third et al 2014, p.7).

There is an opportunity to utilise digital technology to more actively include children and young people directly in decision-making to inform policy development, particularly those children who live in regional and remote parts of Australia or who may be hard to reach. There is a further opportunity to encourage good digital citizenship as part of healthy childhood development.



Chapter Two:

Family and Care

2.1 Overview

Government policy for families is a critical tool for providing for and protecting children. Much policy development in Australia in the last 25 years has focused on ‘working families’, including important developments such as the introduction of a Federal Government Paid Parenting Leave Scheme and the current reforms to support child care. The Federal Government has also used the taxation system to provide payments or subsidies for families. However the lack of a child rights framework to guide and evaluate the benefits to all children has meant that children in some family settings miss out on having their basic rights fulfilled.

This chapter examines the groups of children that have continued to experience disadvantage through inadequate policy development or implementation.

Significant further work is required to ensure that children who have been separated from their families and placed in out-of-home-care (OOHC) are provided with appropriate care and safe and stable environments that respect their rights. In an all-too familiar story, Aboriginal and Torres Strait Islander children and young people are significantly over-represented in these settings.

Further on, this report will examine policy progress in preventing and protecting Australia’s children from experiences of violence, abuse and neglect, with attention given to the experiences of family violence and bullying (see Chapter 4).

Despite more than two decades of economic growth, many children still live in poverty in Australia and the number of homeless children is disturbingly high. One major concern is the inadequacy of social security payments. It is recommended that these be increased to a level that is above the OECD definition of poverty. This report shows that despite recommendations from the UN Committee on the Rights of the Child in 2005 and in 2012, Australia still has no defined poverty line.

This chapter also focuses on care and support for children with a disability and notes that while the National Disability Insurance Scheme will help address some of the gaps in services, more is required.

Children of people with disability – particularly those with intellectual and psychological disability – are removed

from their parents at a higher rate than the general population and often pre-emptively, with no evidence of neglect, abuse or parental incompetence.

The final section in this chapter examines adoption. It contrasts practices of intercountry adoption today with domestic adoptions from the mid 1980s and finds that the practice of intercountry adoption has remained immune from a rights-based approach. The current Inter-Country Adoption frameworks in Australia are inconsistent with the CRC and the *Hague Convention on the Protection of Children and Cooperation in Respect of InterCountry Adoption 1989*. There is concern regarding the erosion of protections for adopted children and their rights.

2.2 Children in Out-of-Home Care

25 YEARS OF THE CRC

Over the last 25 years, legislation, policies, and frameworks that govern the rights of children and young people in out-of-home care (OOHC) have greatly improved, with the establishment of an independent National Children's Commissioner, the National Framework for Protecting Australia's Children 2009-2020 (FaHCSIA 2009) and the National Standards for Out-of-Home Care (FaHCSIA, 2011). Based on extensive policy reform and evolving practice, by 2014 more than 93 per cent of children and young people lived in home-based care as recommended under Article 20 of the CRC, with only 6 per cent in institutional care. This is contrasted with 77 per cent in home-based care and 16 per cent in institutional care in 1991 (AIHW 1993, p. 166 ; AIHW 2015b, p. 48).

Despite this, the overall number of children and young people in OOHC has increased (see Table 2) and Australia does not have a system that is uniformly caring, safe, or stable. Important policy shifts towards a public health model under the National Framework for Protecting Australia's Children 2009-2020 have not yet translated into resource or strategic shifts; and expenditure on early intervention and intensive family support is just 17 per cent of the \$3.44 billion national child and family welfare investment (Productivity Commission 2015, p.1 of Table 15A.q).

Table 2: Australian children and young people in OOHC as at 30 June for years listed

Year	Children in OOHC	Total population of children	Rate per 1,000
1990	12,406	4,188,795	3.0
2000	16,923	4,766,920	3.6
2010	35,895	5,092,806	7.0
2014	43,009	5,286,449	8.1

Source: (AIHW 2001, 2011 cited in Higgins, 2011; AIHW 2015a)

The drivers for children and young people entering OOHC have shifted over the past 25 years. While the incidence of substantiated sexual abuse in the community has increased, its role as a driver for young people being in OOHC has decreased. Emotional abuse is now identified as the most common driver for removal (see Table 3). Other drivers include increased

poverty and social inequality and a societal failure to respond to underlying causes of child neglect and abuse. It can also be partly linked to a greater public awareness of the incidence of neglect and abuse, improved training of staff and their ability to respond to claims, and to mandatory reporting requirements.

Table 3: Percentage of children and young people entering OOHC as a result of the drivers listed

Driver	% 1990-91	% 2014
Physical Abuse	26	20
Emotional Abuse	25	39
Sexual Abuse	24	14
Neglect	25	27

Source: (AIHW 1993 and AIHW 2015)

ONGOING ISSUES AND CONCERNS

Over-representation of Aboriginal and Torres Strait Islander children and young people

Aboriginal and Torres Strait Islander children and young people are significantly over-represented in OOHC. Aboriginal and Torres Strait Islander children make up 5.5 per cent of all Australian children yet comprise 35 per cent of the care population (AIHW 2015, p.51). Repeated child protection inquiries reinforce two major government failures: a lack of early intervention measures to strengthen and support families; and a lack of genuine space for self-determination, cultural practice, or Aboriginal and Torres Strait Islander participation in child protection decision-making (SNAICC 2014, p. 4). For more information on the rates of Aboriginal and Torres Strait Islander children in child protection systems, please refer to the Children in Focus section of this report.

Listening to the views of children

Article 12 of the CRC requires that governments take into account the rights and views of children in all legislative and policy processes which directly impact upon their lives. In 2011, FaHCSIA introduced the National Standards for Out-of-Home Care, which requires that Commonwealth, state and territory governments measure "the proportion of children and young people who report that they have had opportunities to have a say in relation to the

decisions that impact on their lives and that they feel listened to" (FaHCSIA 2011, p. 8). Recent data measures for the National Standards shows 67 per cent of children reported that they usually get to have a say in what happens to them, and people usually listen to what they say (AIHW 2016). This aligned with an independent report conducted in 2013 which found that only 63 per cent of those sampled claimed they had been able to "have a say" on decisions affecting their lives (McDowall 2013a, p. xxi).

Charter of Rights

While the development of a Charter of Rights for Children and Young People in OOHC in all jurisdictions (AIFS, 2015a) has been a positive step, a number of the core requirements of the Charter have not been met. For example, CREATE found that less than one third of children in OOHC were familiar with their "care plan" (a legislative requirement in all jurisdictions) and only one third of those who knew about their plan had been involved in its preparation (McDowall 2013a, p. xix).

Children's Commissions

The introduction and appointment of Commissioners for children and young people has occurred at the state, territory, and Commonwealth level (with the exception of South Australia), with Victoria the only state to have a dedicated Commissioner for Aboriginal children and young people. Unfortunately, differences exist across the states and territories as to whether they have a Commission, Commissioner and/or an appointed Guardian. Different mandates and functions, as well as varying levels of resourcing and independence from government also limit their power and ability to critique the child protection and OOHC systems.

National Framework for Protecting Australia's Children and National Standards for Out-of-Home Care

The endorsement by all Australian governments of the National Framework for Protecting Australia's Children 2009-2020 has been a major development in the past 25 years. Under the framework, the National Standards for Out-of-Home Care were developed to deliver consistency

and drive improvements in the quality of care. A recent evaluation of seven of the 13 Standards did not reveal significant improvements. One major concern with this process is the decision to use government data to measure government standards, rather than an independent evaluation. The appropriateness of the data collection and reporting processes must be reviewed to ensure recorded changes represent real and tangible improvements to the OOHC system for children and young people.

Transition to independence

All young people in care are expected to transition to independence at 18 years of age. Currently four jurisdictions have set 21 years as the age at which support is no longer available; the others have extended it to 25 years. Ensuring young people's transition out of care is well planned and resourced is paramount to achieving positive outcomes. However, research by CREATE has found that 64 per cent of young people did not have a leaving care plan. After leaving care, 35 per cent were homeless in the first year, only 35 per cent completed Year 12, 29 per cent were unemployed (compared to the national average of 9.7 per cent), and 70 per cent were dependent on government welfare for some form of income (McDowall, 2009).

Sibling contact

Standards 9 and 10 of the National Standards for Out-of-Home Care refer to maintaining contact with birth family, be they parents, siblings or other family members (FaHCSIA 2011). Many young people have informed CREATE that their siblings are the people they contact most often, more than mothers and grandparents, with fathers being contacted the least. In a recent CREATE study, 36 per cent of children and young people in care reported being separated from their siblings; and only 29 per cent lived with all of their brothers and sisters in the same placement (McDowall 2015, p.32). Keeping siblings together when they are in OOHC, wherever possible, must be a priority to ensure positive wellbeing and continued family support post care.

POLICY RECOMMENDATIONS

Many previous recommendations of the UN Committee on the Rights of the Child have not been implemented fully and require urgent attention.

In particular, it is recommended that state, territory and Commonwealth Governments provide the necessary human, technical and financial resources to:

1. Increase the age to which young people leaving care receive support to 25 years.
2. Address the over-representation of Aboriginal and Torres Strait Islander children in OOHC by strengthening culturally appropriate supports to families at risk and/or in crisis, investing in reunification where appropriate, involving children and young people in the decision-making process, and embedding Aboriginal and Torres Strait Islander decision-making throughout all phases of the child protection system.
3. Increase resourcing to support transition from OOHC to independent living.
4. Ensure siblings are placed together wherever it is safe to do so. If this is not possible, establish mechanisms to facilitate regular contact between siblings whenever safe to do so.
5. Enhance policies for encouraging the genuine participation of children and young people in decision-making.

"Listen to kids
more about where
they want to live."

Male, 9 years old

2.3

Poverty and Homelessness

25 YEARS OF THE CRC

On 23 June 1987, the then Australian Prime Minister Bob Hawke pledged that “by 1990 no Australian child will be living in poverty” (Hawke 1987). Coincidentally, it was in 1990 that Australia ratified the CRC, which included Article 27 – All children have the right to an adequate standard of living (UN CRC 1989).

Nevertheless, poverty and homelessness among children persisted throughout the 1990s. In its 1997 Concluding Observations, the Committee on the Rights of the Child recommended the adoption of “further policies of poverty alleviation, and to further strengthen the support services that it provides to homeless children” (UN Committee on the Rights of the Child 1997).

In its 2005 Concluding Observations, the Committee noted that Australia “had not defined an official poverty line” and that “the impact of poor living conditions on the wellbeing and development of children is not adequately considered”. The Committee recommended that the Australian Government “address and systematically investigate the consequences of economic hardship on children, with a view to developing measures aimed at reducing its negative impact on children’s healthy development” and that Australia “intensify its efforts to address the urgent needs and rights of homeless children, especially with regard to their housing, health and education” (UN Committee on the Rights of the Child 2005, p.14).

Seven years later, there was still no official poverty measure, and the number of homeless children in Australia remained disturbingly high. In its 2012 Concluding Observations, the Committee recommended that the Australian Government review its efforts to address homelessness and use the findings to guide the development of a framework. It further recommended that specific strategies should be developed for disadvantaged groups and that social services should be improved to strengthen their responsiveness to the needs of children at risk of homelessness (UN Committee on the Rights of the Child 2012, p.17).

POVERTY

There is no official measure of poverty in Australia, however the one most commonly used by poverty researchers is the Organisation of Economic Development and Cooperation (OECD) relative measure. This defines households earning less than 50 per cent of median household income as living in poverty. By this measure, there were 603,000 children in Australia living below the poverty line in 2012 (ACOSS 2014, p.8), or around one in six Australian children. Research shows that social disadvantage in Australia is entrenched and has been concentrated in certain outer suburbs and rural areas for a long period of time (Vinson & Rawsthorne 2015, p.115).

It is quite alarming that despite more than two decades of consecutive economic growth in Australia, so many children still live in poverty. These children experience a range of disadvantages, including being at greater risk of poor health outcomes, social problems and poor academic performance (Engle & Black 2008). Families experiencing poverty are also more likely to suffer from conflict and violence (Engle & Black 2008).

HOMELESSNESS

Some 70,000 people under the age of 18 received assistance from specialist homelessness services in 2013-14 (AIHW 2014b, p.7), a slight increase from 65,000 in 2012-13 (AIHW 2013, p.7). Homelessness during childhood can have a range of adverse effects, which persist into adulthood, including on future socioeconomic status and wellbeing (AIHW 2011a). For example, adults who became homeless at or before the age of 15 have an employment rate of just 10 per cent (Zhu 2015). Young people who experience homelessness are also more likely to experience persistent homelessness in adulthood (Scutella et al. 2012).

ONGOING ISSUES AND CONCERNS

Major ongoing concerns related to poverty and homelessness include:

- The over-representation of young people leaving care.
- The over-representation of Aboriginal and Torres Strait Islander children.
- The inadequacy of social security payments to enable children and young people to live above the poverty line and secure stable housing.
- The failure of governments to develop appropriate ongoing care and shelter for vulnerable teenagers.

Young people leaving care

The number of care leavers transitioning into poverty and homelessness is extraordinarily high. A survey in 2015 found that nearly two-thirds (63 per cent) of homeless youth surveyed had been placed in some form of OOHC by the time that they had turned 18 (Flatau et al 2015, p.2). Lack of stability has been attributed to poor outcomes for young people leaving care.

Adults who became homeless at or before the age of 15 have an employment rate of just 10 per cent

(Zhu 2015)

Aboriginal and Torres Strait Islander children

In its 2005 Concluding Observations, the UN Committee on the Rights of the Child recommended that the Australian Government increase efforts to provide affordable housing options and that all possible measures to raise the standard of living of Aboriginal and Torres Strait Islander children should be taken. Despite this, in 2011, 19.3 per cent of the Aboriginal and Torres Strait Islander population were living in poverty, compared to 12.4 per cent of the total Australian population (ACOSS 2014, p.10). Aboriginal and Torres Strait Islander people account for 25 per cent of the homeless population, while making up just 2.5 per cent of the general population (ABS 2012a).

Welfare payments below the poverty line

The *Listen to Children* report in 2011, noted that "Youth Allowance is significantly less than the equivalent allowance for a person over 21 years of age, and falls far short of the generally accepted poverty line figure in Australia" (Child Rights Taskforce 2011). This continues to be the case. Youth Allowance is below the poverty line by \$193 per week (ACOSS 2014, p.10).

Lack of funding and appropriate housing models for young people

A study by the Australian Institute of Health and Welfare found that more than half of those who had a valid unmet request for immediate accommodation were under the age of 20 (AIHW 2011b, p.6). This reflects the fact that teenagers at risk of homelessness continue to fall into a significant service delivery gap. Many specialist homelessness providers refuse to accommodate children under 16. Further, those aged between 12 and 15 are often considered too old for appropriate foster care placements. Jurisdictions across Australia are grappling with the problem of how to provide this cohort with suitable accommodation and support.

Aboriginal and Torres Strait Islander people account for 25 per cent of the homeless population.

(ABS 2012a)

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Commit to an official measure of poverty and collect biannual data on the number of adults and children living below the poverty line.
2. Ensure social security payments including Newstart and Youth Allowance are increased to a level that is above the poverty line. Moreover, payments should be indexed in accordance with movements in median income to ensure those on welfare do not continue to fall behind the general population.
3. Fund research on effective housing models for young people experiencing or at risk of homelessness, and that the most effective model be trialled as an alternative to crisis accommodation for homeless youth.

2.4 Care of Children with Disability

Barriers to receiving adequate disability services and mainstream support for children with disability, their families, and children of parents with disability, continue to infringe upon children's rights. While the National Disability Insurance Scheme (NDIS) will go partway to redress this, more is required to reduce the high risk of violence and abuse faced by children with disability in out-of-home care (OOHC), and the risk of removal from their family.

The National Framework for Protecting Australia's Children 2009–2020 does not contain any recognition or commitment to the support required by children or parents with disability to protect their rights to family life. There is a significant lack of services for families with children with disability. This can lead to family breakdown and, in turn, families relinquishing the care of their child with disability to state or territory child protection agencies (People with a Disability Australia (PWD) 2010, p.11). Consistent, cross-jurisdictional data about the relinquishment of children with disability are not collected in Australia, yet the most conservative available statistics show that children with disability make up 14 per cent (Children with Disability Australia (CWD) 2015, pp. 22-3) of children in OOHC, almost double the prevalence rate of children with disability in the population (7.3 per cent) (ABS 2012).

In relinquishment cases, children usually end up in institutional style settings such as group homes. Child protection legislation, focusing on the care of children who have been removed from families due to abuse and neglect, does not contain protections to address issues where children with disability are in voluntary OOHC, such as respite or residential hospitals, because families have not received appropriate support to care for their children at home. Some governments view a child's disability as a 'risk factor' in family breakdown making children themselves, as opposed to the absence of family and disability supports, responsible for family dysfunction (CREATE Foundation 2012, p.11).

ONGOING ISSUES AND CONCERNS

Data on the removal of children with disability from families are also scant. However, available statistical and anecdotal evidence suggests children of people with disability, particularly those with intellectual and psychosocial disability, are subject to removal from their parents at a higher rate than the general population (Standing Committee on Social Issues 2002a, p.144, 126; Llewellyn et al. 2003, p.235; Frohmader 2009, pp.19-22). In many circumstances children are removed pre-emptively despite there being no evidence of any neglect, abuse and/or parental incompetence (McConnell & Llewellyn 2002, p.24). Moreover, approximately one in six children in OOHC has a parent with a disability, raising the serious concern that removal of children from parents with a disability is viewed in and of itself as in a child's best interest (Standing Committee on Social Issues 2002a, p.126). Children with disability who are removed from families are frequently placed with foster families who may then go on to relinquish the child as a result of inadequate disability support provision.

The introduction of the NDIS, which is expected to roll out across states and territories except Western Australia from July 2016, should result in improved disability support for children and parents with disability, and in turn increase the ability of families to thrive together. The NDIS will assist children with disability and their families to develop person-centred plans based on their individual disability support needs and goals. It will then provide funding directly to families so that they can realise those plans by exercising choice and control over who delivers support and when. This increased flexibility should mean that children and parents

with disability have their disability-related needs met, contributing to families being better supported to provide a more appropriate level of informal care as opposed to ongoing crisis support. However, the NDIS will not address failures in mainstream service provision, which impact family life and economic security, for example, children with disability isolated in the home due to a lack of accessible public transport, or parents unable to work because they cannot obtain appropriate childcare or because their child with a disability is being denied access to mainstream schooling.

Concerns about abuse in institutions coupled with social policy developments since the 1970s have reduced the rate of institutionalisation of children with disability (Richmond 1983) although not eliminated it (Australian Cross Disability Alliance (ACDA) 2015, p.27). When children with disability, particularly Aboriginal and Torres Strait Islander children with disability, are removed from the home they are still more often placed in inappropriate, successive OOHC care arrangements or remain for extensive periods of time in respite care or hospital facilities. This places them in situations of risk of harm and deprives them of an appropriate family environment (PWD & CWD 2010, p.20). Violence against people with a disability in institutional and residential settings is a national epidemic, with frequent sustained and repeated episodes of violence (National Cross-Disability Disabled People's Organisations 2014, p.4). Girls with disability are at far greater risk, particularly of sexual violence, and experience significantly higher levels of all forms of violence by a greater number of perpetrators compared to their peers (Frohman & Sands 2015, p.2). Children and young people with disability experience violence and abuse at approximately three times the rate of children without a disability (Robinson 2012, p. 7; Robinson & McGovern 2014, p.7).

This violence is very difficult to detect, investigate and prosecute, due to the 'closed' nature of institutional OOHC care settings, and failures to consider children with disability as credible witnesses to the violence they experience (French et al. 2009, p.32). Lack of reporting and cover up

by staff and management is a widespread problem and a significant factor in the lack of investigation, prosecution and conviction of perpetrators. (DPP v Vinod 'Johnny' Kumar [20 November 2013] VCC; Victorian Equal Opportunity and Human Rights Commission (VEOHRC) 2014, p. 8).

There have been numerous UN recommendations to Australia to address all forms of violence against people with disability, including violence in institutional settings and violence experienced by girls with disability (UN Committee Against Torture 2014; UN Committee on the Elimination of Discrimination against Women 2010; UN Committee on the Elimination of Discrimination against Women 2006; UN Committee on the Rights of the Child 2012; UN Human Rights Council 2012; UN General Assembly 2012). However there has been limited action to address these recommendations.

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Ensure the fourth action plan of the National Framework for Protecting Australia's Children includes comprehensive strategies for children with disability and parents with disability.
2. Ensure the evaluation of the NDIS includes consideration of its success in ensuring that families are able to provide appropriate care and support to their children with disability so that they remain together as a family.
3. Ensure child protection systems collect consistent, cross-jurisdictional data about the relinquishment of children with disability by families and the removal of children with disability from their families.
4. Conduct an urgent national inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disability.

5. Collect appropriate statistical and research data on the number of parents with disability in contact with the child protection system and the number of children removed from parents with disability, disaggregated by gender, ethnicity, Aboriginal and Torres Strait Islander status and other relevant variables, in order to guide policy, funding, and service support.
6. Establish an independent, statutory, national protection mechanism that has broad functions and powers to protect, investigate and enforce findings related to violence, exploitation and abuse experienced by children and adults with disability, and that addresses the multiple and aggravated forms of ill-treatment that result from the intersection of 'disability' with other characteristics, such as gender, age, Aboriginal and Torres Strait Islander status and racial, cultural or linguistic status.

Children and young people with disability experience violence and abuse at approximately three times the rate of children without a disability

(Robinson 2012, p. 7; Robinson & McGovern 2014, p.7)

2.5 Adoption

25 YEARS OF THE CRC

When Australia ratified the CRC in 1990, it marked a shift in public policy and service provision to a more rights-based approach for children. The CRC would compel legislatures to ensure that domestic adoption legislation made adequate provision for the wishes of children who were old enough to voice them. Concurrently, the adoption reform movement had already worked significant changes in both the policy and practice of domestic adoption. Former provisions for 'secret and sealed' adoptions which had prevailed up to the mid-1970s were challenged from several directions and parties to adoption other than adoptive parents – namely mothers and children – were accorded more rights under these reforms. Unfortunately, the rights-based reforms made to domestic adoptions in the mid 1980s were largely ignored when it came to inter-country adoption.

Australian states and territories placed children's rights at the forefront and focused on ensuring adoptions were legal, assessments professional, domestic relinquishments non-coercive, and that processes were designed to ensure the adoptive parents were best suited to raise particular children. National inquiries into the Stolen Generations, imperial child migrants, and institutionalised children focused attention on the failures of governments in the treatment of children and the marginalising of children's economic, social and cultural rights (HREOC 2013; Quartly, Swain & Cuthbert, 2013; Senate Community Affairs Reference Committee, 2001; 2007). Practices that enabled forced adoptions, the subject of a national apology in 2013, were more difficult by state control, safeguards, professional processes and an awareness of responsibilities regarding children's rights (Fronek & Cuthbert 2013).

However, since 2005 and the report of a Commonwealth parliamentary committee into intercountry adoption (House of Representatives Standing Committee on Family and Human Services 2005) there has been concerning evidence of a retrograde return towards a market approach to adoption which diminishes the focus on the best interests of children (Fronek 2009).

In 2014, an interdepartmental Committee on Intercountry Adoption was convened to develop the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014 which was passed into law with the purpose of making adoption an easier process for those hoping to adopt. Submissions universally expressed concerns about the erosion of protections for children and their rights. One outcome of these

changes was the opening of new programs with Poland and Latvia where institutionalised children usually have families (Knuiman et al. 2015). The numbers of children adopted from these countries is small and children are usually older with special needs.

Contrary to stated intent, emerging evidence suggests that intercountry adoption has little impact on the de-institutionalisation of children (Chou & Browne 2008). Domestically, there has been a rise in children adopted by foster carers, with the highest recorded in this decade in 2013-14 (89 adoptions). In New South Wales, for example, adoption functions have been outsourced to agencies whose philosophies promote adoption as a preferred option. These shifts are taking place in an environment of mandating adoption from care and cuts to welfare funding that support families, following overseas trends.

As Cregan and Cuthbert point out, the bestowing of individual rights on children who are unable to act on these rights by themselves often leaves adults to determine their best interests and to act for them (Cregan & Cuthbert 2014). Therefore, there are considerable obligations on governments to focus on the rights of children and not to allow these to be conflated with the interests or desires of adults, such as those seeking children for family formation.

New knowledge in the last two decades paints a complex picture of harms and benefits concerning domestic and intercountry adoptions. The voices of parents who have lost their children to adoption and those of adult adoptees draw attention to inadequate protections and processes particularly overseas, the importance of identity, culture and the maintenance of family contact, and the lack of lifelong post adoption support for those affected by government adoption policies (Fronek 2015).

Since 2014, the global decline in intercountry adoptions has intensified political attention on new sources of children overseas and within Australia. Overall, there has been a 76 per cent decline in all adoptions in the last 25 years with a 9 per cent decline (348 to 317 adoptions) from 2012-2013 to 2013-2014 (AIHW 2014a, p. vi). Reasons for the decline are attributed to a range of complex interacting social, legal and political factors. Overwhelmingly, the decline is constructed as a problem in public discourse rather than an indication that children's rights are being upheld: that is, it is a problem because those seeking children for adoption face challenges without due regard for the fact that fewer children

being adopted means more children are remaining within their families and communities of origin.

ONGOING ISSUES AND CONCERNS

The policy sands are shifting with differences between states and territories. Articles 7, 8 and 18 of the CRC promote the right of children to stay with their families and the responsibilities of governments to support families. Adoption cuts legal ties and the 'open adoption' system which focuses on information exchange rather than maintaining relationships and post-adoption participation, is at the discretion of adoptive parents. Failures with regard to Article 8 are related to identity where the preservation of a child's name is not upheld in post-adoption birth certificates and adoptive parents can choose a new name for a child adopted from overseas.

Article 18 gives children a say over what happens to them yet the emergent voices of adult adoptees in Australia are marginalised in Australian policy and practice. Research is not available on informed consent in new relinquishment processes and in mandated adoptions, and adoption information is rarely accurate or complete in overseas adoptions. Post-adoption service provision is inadequate and focused primarily on the immediate post-adoption phase, leaving the longer-term needs of adopted children and adults unaddressed.

Also of concern is the practice of advertising children for adoption. Children have been advertised online, displaying photographs, names and some of their personal stories. This commodification of children breaches Articles 2 (protection from discrimination), 8 (protecting identity) and 16 (privacy) of the CRC (Chou & Browne 2008)

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Ensure children and their families are provided with effective access to adequate, long-term support services following adoption and into adulthood.
2. Ensure children are able to retain their birth names, and are supported to maintain contact with their birth families where possible.
3. Prohibit the advertising of children for adoption.
4. Limit intercountry adoption to countries which are signatory to the Hague Convention.
5. Ensure that children's citizenship from their country of birth is not automatically revoked on adoption. The adoptive parents should be required to opt out of retaining birth citizenship once provided with accurate information about their options. Negative repercussions into adulthood including any potential risk of deportation or conscription should be considered.



Chapter Three:

Learning and Development

3.1 Overview

This chapter looks at access to and quality of early childhood education and care (ECEC) in Australia, as well as the current state of inclusive education. ECEC spans the delivery of services for children from birth to eight years of age across a variety of different settings including preschool, long day care, family day care, nanny care, outside school hours care, crèches, playgroups, mobile and integrated children's services.

In Australia, participation in ECEC by children who are three years old is below many comparable countries and requires urgent attention.

The most significant barrier to participation remains the affordability of ECEC services with childcare prices having increased significantly over the past 10 years. The major challenge facing Australia is to improve the participation of all children in high quality ECEC programs. This means addressing access and affordability issues and supporting the inclusion of key groups of children including Aboriginal and Torres Strait Islander children, children from lower socioeconomic backgrounds and children with disability.

This chapter also looks at inclusive learning and finds that increasing numbers of young people are saying they feel they do not belong in Australian schools. Research has shown that those who miss out in education are more likely to be from low socioeconomic backgrounds, Aboriginal or Torres Strait Islander or from rural areas. These patterns have not changed for decades. Education systems must be flexible and resourced to recognise learner diversity and provide learning opportunities that fit the learners, rather than require learners to fit the system. This means supporting young people to articulate and advocate for what they need - be that mainstream or alternative approaches to education.

3.2

Early Childhood Education and Care

25 YEARS OF THE CRC

At the time of ratification, there was strong hope that the CRC would shift attitudes to prioritise the benefits of quality early childhood services above parental workforce participation objectives (Ryan 1989, p.51; Cox 1989, p.41). There was also support for the CRC as the foundation for advocacy towards progressive improvements to government policy in the area of early childhood education.

In the following decade, the challenge was to meet the growing needs of working families, while also ensuring equity of access to high quality ECEC. In 1990, the Government extended funding (via fee subsidisation) to privately owned child care services. Participation in early childhood education and care expanded rapidly as a result, particularly in for-profit services, making up 75 per cent of long day care centres (Press and Wong 2013, p.79).

In the 1990s, the federal government stopped providing operational funding for community-based ECEC services (Press and Wong 2013, p.81). At the same time, the private sector expanded quickly – but unsustainably. This rapid growth in privately-owned services generated concerns about the quality of care. In response, in 1993, the Federal Government introduced the first national accreditation system for long day care services; the National Childcare Accreditation Council. Accreditation later extended to family day care and outside school hours care (Press and Wong 2013, p.79-80, 83).

The collapse of ABC Learning in 2008 focused national and international attention on the corporatisation of child care in Australia (Press and Wong 2013, p.87-88). Little has changed since then, however, with private for-profit providers still dominating provision of ECEC.

A national approach to ECEC was achieved in 2008. Investing in the Early Years – A National Early Childhood Development Strategy (NECD Strategy) presented the vision that “by 2020 all children have the best start in life to create a better future for themselves and for the nation” (COAG 2009, p.4). It also aims to ensure that children’s rights and needs are at the centre of policy development and service delivery (COAG 2009, p.7).

The Commonwealth and all states and territories also agreed to the National Partnership Agreement for the National Quality Agenda for Early Childhood Education and Care, one part of the NECD Strategy (Press and Wong 2013, p.88). This agreement led

to the introduction of Australia’s first national learning frameworks for early childhood (Early Years Learning Framework) and for outside school hours’ care (Framework for School Age Care). Under the umbrella of the National Quality Framework, most Australian ECEC services are now subject to the new National Quality Standard and Regulations, which set higher standards for curriculum and care, with an assessment and ratings system.

Another significant part of the NECD Strategy was the commitment by all governments to provide universal access to 15 hours of early childhood education in the year before school. As a result, preschool enrolments increased from 53 per cent in 2005 to 98 per cent in 2013 (Deloitte 2014, p.21) (OECD 2015, p.333). An Indigenous-specific target accompanied this commitment, to ensure that all Aboriginal and Torres Strait Islander children aged four years old in remote communities had access to early childhood education by 2013 (COAG 2008a, p.8). This was not met. In 2013, 74 per cent of Aboriginal and Torres Strait Islander children were enrolled in preschool in the year before full-time schooling, with 70 per cent attending, compared to 91 per cent enrolment and 89 per cent attendance for non-indigenous children (Productivity Commission 2014b, p.2). However, progress under a series of Indigenous-specific targets remains a focus of continued effort by Australian governments to ‘close the gap’ in disadvantage.

Through the National Quality Agenda, Australian governments have made considerable progress in recognising the central place of children’s rights in ECEC, including explicit support for the CRC.

The major challenge for Australia now remains shifting the focus to improving the participation of all children in high quality ECEC programs. This means addressing access and affordability issues and supporting the inclusion of key groups of children including Aboriginal and Torres Strait Islander children, children with disabilities and children from low socioeconomic backgrounds.

In 2015, following a Productivity Commission Inquiry, the Federal Government proposed new reforms with the aim of improving the affordability of child care to support parents’ workforce participation (House of Representatives 2015, p.14433-14437). This has raised concerns that parental workforce participation objectives are being put above child development and early education requirements. The sector and academics seem unanimous in their deep concern about reduced access and

affordability for children experiencing vulnerability through these reforms (ECA 2016; Mission Australia, 2016; Social Policy Research Centre 2016).

ONGOING ISSUES AND CONCERNS

Child care for children aged under three

Australia's child care system is a market service model, delivered largely by private, for-profit organisations. This places disincentives on service provision for younger children and babies, as services must operate as viable commercial enterprises and make decisions about location, costs and fees accordingly (ECA 2011, p.14). Higher staff-student ratios for babies and small children, and higher costs of service provision lead to reduced places and higher prices for this age cohort (Productivity Commission 2014a, pp.330-331). This is amplified for families experiencing disadvantage.

Approaches which support children's development and learning in the home are also important. The Home Interaction Program for Parents and Youngsters (HIPYP) is a two-year home-based parenting and early childhood program that helps parents and carers be their child's first teacher and currently operates in 150 locations across Australia (Department of Social Services (DSS) 2015a). The Abecedarian approach and Families as First Teachers-Indigenous Parenting Support Services Program in the Northern Territory also show significant promise in supporting child development through parent engagement in early learning.

The Commonwealth Government has proposed a new Community Child Care Fund program, which will support the integration of child care, maternal and child health and family support services in a number of disadvantaged communities (ECA 2015a).

Participation of children aged three to five years in quality early childhood education

While Australia has significantly improved access to preschool education for children in the year before school, participation by the age of three is below many comparable countries and requires urgent attention. Only 62 per cent of three-year-olds are enrolled in childcare and preschool settings compared with average enrolment in the OECD of 74 per cent (OECD 2015, p.333). Growth in the number of three-year-olds enrolled in preschool has declined by 2 per cent since 2005 (OECD 2015, p.333).

Research shows that children benefit from participating in sustained, quality, early education in the two years before formal schooling, establishing a strong basis for further policy development in this area.

(AIHW 2015)

Currently, Victoria and New South Wales are the only states to have programs that support vulnerable or disadvantaged three-year-olds in preschool.

The Australian Government's Child Care Benefit provides subsidies for up to 24 hours of child care per week without workforce participation requirements (Brennan and Adamson 2013). However, the Government's proposed Child Care Assistance Package (2015) could halve access to subsidised care unless both parents meet workforce participation, or other eligible activity (Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015 (Cth)).

While this may provide children of working parents the right to benefit from child care services under Article 18 of the CRC, it also creates an emerging tension with children's rights under Article 28, the right of the child to education. Without further effort to expand preschool programs, some families with children currently accessing services in the child care system may be forced to withdraw children due to subsidy eligibility issues.

The most significant barrier to participation remains the affordability of early childhood education and care services. Child care prices have increased significantly over the past 10 years (Senate Community Affairs Legislation Committee 2015, Question No: SQ15-000467). The Commonwealth Government forecasts that prices will continue to increase above inflation over the next four years, and therefore indexed subsidies will continue to decline in real terms over time (ABS 2016). Government funding should be designed to put downward pressure on prices and ensure net costs are affordable for families.

Adherence to the National Quality Framework for Early Childhood Education and Care

Australia has significantly improved the quality of care and education by bringing together licensing and accreditation systems and a National Quality Standard (NQS), with the ultimate goal of improving outcomes for children. By September 2015, 69 per cent of Australian ECEC services had been assessed against the new NQS. Of these, the proportion of services rated with a 'Meeting NQS' or 'Exceeding NQS' increased from 55 per cent in the first quarter of 2013 to 67 per cent in the third quarter of 2015 (ACECQA 2015, p.4). Meeting the remaining milestones will require quality maintenance and funding from state and federal government, along with political will.

The Government's Child Care Assistance Package will provide greater alignment between Commonwealth funding approvals with the National Quality Framework (NQF) (ECA 2015a). However, certain services will remain out of scope of the National Quality Framework. This includes home based nanny services,

occasional care and Budget Based Funded (BBF) services which will not be required to meet key structural or process quality standards, despite receiving funding from Government. The inclusion of BBF services within the NQF would provide quality improvements for Aboriginal and Torres Strait Islander children.

Access to quality early childhood education and care for Aboriginal and Torres Strait Islander children

Improving the participation of Aboriginal and Torres Strait Islander children in early childhood education and care should remain a focus of Australian governments. Aboriginal and Torres Strait Islander children make up 5.5 per cent of all Australian children, yet only 2.9 per cent of children participating in early childhood education and care programs are Indigenous (Productivity Commission 2014c, p.526). Integrated early childhood services – including health and cultural services – operated by Aboriginal and Torres Strait Islander communities enjoy strong support, but there is an estimated shortfall of 15,000 childcare places in these services (SNAICC 2015, pp.1-3).

The Government's proposed Child Care Assistance Package includes the Community Child Care Fund (CCCF), with designated grant funding of services for families who are socially or economically vulnerable. This includes \$10 million per year for the integration of services in disadvantaged Aboriginal and Torres Strait Islander communities (Commonwealth of Australia 2015, p.9). The program will also support BBF services (in the short term) to transition to mainstream subsidies (ECA 2015a, p.87). There are concerns that the transition from 'block' funding to subsidies will not provide a sustainable basis for programs that meet the needs of the local communities (Brennan 2013). Affordable or free provision would foster the participation of Aboriginal and Torres Strait Islander children.

Support for the early childhood development workforce

For the one-third of ECEC services not meeting the NQS, ongoing professional training for educators and leaders is essential. In December 2013 the Commonwealth directed \$200 million to professional development in long day care services through the Long Day Care Professional Development Program (DSS 2015b, p.8). This was a significant recognition of professional learning needs. However only long day care services have been able to access this funding. The program will finish on 30 June 2017, and no significant Commonwealth funding is available beyond July 2017 despite the remaining NQF milestones and the limited capacity in the sector to fund workforce development. Inclusion and professional support coordinators have also been removed. Future planning is required to support the ongoing professional learning needs of the sector to maintain quality improvement and building the early childhood profession.

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(Productivity Commission 2014c, p.526)

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Maintain and improve access to at least two days of quality preschool per week in the year before school, for all children.
2. Provide at least two days (20 hours) of subsidised quality early learning per week for particularly vulnerable children from birth to two years of age.
3. Provide sustainable and ongoing block funding to integrated early childhood services that support improved outcomes for vulnerable families.
4. Provide early childhood services to Aboriginal and Torres Strait Islander children with opportunities for ongoing funding with a focus on providing free or affordable access.
5. Develop practical strategies and advice on how to support and promote children's rights by collaboration between the Australian Children's Education and Care Quality Authority, the National Children's Commissioner and the early childhood sector.
6. Implement the National Quality Framework for Early Childhood Education and Care as agreed by COAG, including child to staff ratio improvements for children 24 to 36 months old.
7. Apply the National Quality Framework for Early Childhood Education and Care to all services, including those currently out of scope.
8. Work with the early childhood sector to develop a new early years workforce development strategy.

The collapse of ABC Learning in 2008 focused national and international attention on the corporatisation of child care in Australia.

(Press and Wong 2013, p.87-88).



3.3 Inclusive Education

25 YEARS OF THE CRC

It is well accepted at both policy and practice levels that participation in education has significant economic, social and civic benefits for individuals, families and communities (COAG 2008b). Education plays a critical role in providing young people with the personal, life and vocational skills they need to participate in the workforce.

The right to an inclusive education is articulated in both the CRC and the *Convention on the Rights of Persons with Disabilities* (UNCRPD 2006). Consistent with ratifying these conventions, the Australian Government expresses its commitment to inclusive education in an array of documents and policies, including the National Disability Strategy (COAG 2011), the Australian Curriculum (ACARA 2012), the Australian Professional Standards for Teachers (AITSL 2011), the National Quality Framework (ACECQA 2011) and the Early Years Learning Framework for Australia (COAG 2009). Each of these documents recognises the importance of responding to student diversity and ensuring the participation of all students as learners. Yet children with disability, children who have special needs and young people who are not able to adjust or are excluded from the mainstream school system, continue to be denied equal access to inclusive education from early childhood through to adulthood.

In the debates about inclusive schooling, which began more than two decades ago, inclusion was theorised as a democratic commitment through which all children, no matter what their particular needs might be, would be able to participate in the mainstream school experience (Slee 2001, p.167).

While that concept is stated to be for 'all students', it fails to recognise that not every child can be accommodated at all times in all schools.

Encouragingly, the Disability Standards for Education were introduced in 2005. These outline minimum requirements to ensure students with disability are able to access and participate in education on the same basis as other children. However, today, many thousands of children with disabilities are still educated in 'special schools' or 'special classes' within mainstream schools.

Different children have different needs. A notable opportunity for improvement is the extent to which young people are consulted and involved in deciding which approach to education they think would work best. This means supporting learners to articulate and advocate for what they need.

A notable opportunity for improvement is the extent to which young people are consulted and involved in deciding which approach to education they think would work best. This means supporting learners to articulate and advocate for what they need.

The concept of inclusive learning systems – systems that function cooperatively between schools or with other learning programs and that are facilitated and supported by the government – is already being successfully demonstrated in a number of state or regional programs. The flow-on benefits, both social and economic, to the individual students and the community are significant, and the innovative educators in these 'alternative' programs have much to offer the wider education community.

The government needs to better support the voice and engagement of children and young people to improve their ability to influence what and how education and learning opportunities are delivered. This means supporting children and young people to articulate and advocate for what they need and improving service providers' ability to engage with prospective learners.

Rather than simply a proliferation of programs, arguably what is needed is for powerful insights about supporting student engagement to inform the structure of all Australian schooling.

CURRENT ISSUES

Australia's current school-based education system is not meeting the needs of a significant number of young Australians. Each year thousands of young people leave school without completing Year 12; a significant proportion of those will never complete 12 years of schooling or equivalent vocational training (COAG 2012; FYA 2012). A further group of students stay at school but are not constructively engaged in learning. Of the current total Australian

student population, it is estimated that some 500,000 students are likely to leave school without the skills and knowledge needed to participate effectively in a globalised society (Thomson et al, 2009).

In a context where the national policy focus has been on increasing retention, of particular concern is those who are now staying in school but not achieving. International research shows that one in five Australian students, or another 20 per cent of young people who are actually in school, are disengaging, saying they feel they do not belong there (Thomson et al. 2012, p.25). In Australia, during the decade between 2003 and 2012, the share of students who reported that they felt like they belonged at school shrank by around 10 per cent. By way of contrast, the same measures in Switzerland revealed a more than 10 per cent increase (Thomson et al. 2012, p.45).

A wide variety of factors influence whether or not a young person remains in school, the level of achievement they attain and their preparedness for post-school life. Research patterns have shown that those who miss out in education are more likely to be from low socioeconomic backgrounds, Aboriginal and Torres Strait Islander or from rural areas (FYA 2013). Although the numbers have changed, these patterns have not changed for decades.

Equity is of significant concern (Thomson et al. 2012, p.26). In Australia, socioeconomic background has a greater impact on young people's educational outcomes than in other high performing OECD countries, such as Finland and Canada. In Australia, there is a 20 per cent gap between the highest and lowest socioeconomic status quartiles in attainment of Year 12 (MGSE 2011). Only 74 per cent of 20 to 24-year olds from low socioeconomic backgrounds complete Year 12 or equivalent, compared with 94 per cent of 20 to 24-year olds from high socioeconomic backgrounds (COAG Reform Council 2012, p.47). Internationally, Australia is recording above-average reading performance, but above-average impact of socioeconomic background on outcomes (OECD 2009, p.73).

Retention rates among Aboriginal and Torres Strait Islander students remain

considerably lower than non-indigenous school students. In the 2011 Census, one-quarter (25 per cent) of Aboriginal and Torres Strait Islander people aged 15 years and over reported Year 12 or equivalent as the highest year of school completed, compared with about half (52 per cent) of non-indigenous people. About one-quarter (26 per cent) of Aboriginal and Torres Strait Islander people aged 15 years and over reported a non-school qualification compared with about half (49 per cent) of non-indigenous people. The most common non-school qualification for Aboriginal and Torres Strait Islander people was at the Certificate level (65 per cent). Of these, 77 per cent were Certificate III or Certificate IV qualifications (ABS 2011).

Creating culturally safe and respectful education environments and providing services that demonstrate cultural understanding can help Aboriginal and Torres Strait Islander people feel included and welcome in education settings.

Many families of children with disability advise that their children have limited opportunities to be enriched and extended through education and the present system is 'awash with low expectations and standards for students' with disabilities (Gotlib 2011, p.4). A 2008 report by the Victorian Department of Education and Early Childhood and Development found that around 63 per cent of children with disability experience difficulties at school (VDEECD 2009, p.93).

Ill-informed attitudes and low expectations form a vicious cycle limiting opportunities for children who experience disability. Additionally, research has found that by age six, children demonstrate internalised cultural preferences and prejudices reflective of the communities in which they live, including making unsolicited prejudiced statements about community members.

In order to ensure that education is available for all young Australians, change is needed. At a time when international research evidence is signalling that increasing numbers of young people are saying they feel they do not belong in Australian schools it is crucial to focus on building more inclusive learning systems (OECD 2013, p.45).

Most importantly, education systems need to recognise learner diversity and provide learning opportunities that fit the learners, rather than require learners to fit the system.

Australia needs a cultural change away from the prevailing split system thinking to a broader, single system that recognises the different learning contexts as forming parts of a single learning system. This includes creating culturally safe environments for Aboriginal and Torres Strait Islander students.

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Strengthen existing systems of inclusive and alternative education by refiguring the role of policies and funding practices.
2. Strengthen service provision to engage with prospective learners and support learners to articulate and advocate for what they need.
3. Invest in a single stream, learner-focused model that recognises that education of young people happens in a variety of settings rather than only 'mainstream' and 'non-mainstream' settings.
4. Address gaps in the breadth and depth of service offerings in locations where data indicates a considerable unmet demand and thousands of students on waiting lists.
5. Invest in information sharing and coordination systems to enable service providers and learners to find the education and support services available in local areas.
6. Address direct and indirect constraints on flexibility in curriculum content and providing training and development to assist teachers.
7. Invest in culturally safe and respectful education environments for Aboriginal and Torres Strait Islander students and provide services that demonstrate cultural understanding.



Chapter Four:

Protection and Safety

4.1 Overview

Article 19 of the CRC requires governments to ensure that children are properly cared for and protected from violence, abuse and neglect. Violence that impacts directly or indirectly on children is pervasive, and constitutes a fundamental breach of their human rights.

Violence remains a very real part of childhood for many. For children who experience, or witness violence in their family, there are risks of ever increasing harm to their physical, social and emotional development. These children are far more likely to experience development challenges, low self-esteem, and physical and mental health conditions. There is risk of children repeating these behaviours as either victims or perpetrators when they become adults. The single best predictor of children becoming either perpetrators or victims of family and domestic violence in adulthood is whether they grow up in a home where there is domestic violence (UNICEF 2006, p.3).

Further to the immediate harm, the societal harm is far reaching with significant economic and social impacts (UNICEF 2014, p.7).

This chapter has a focus on children's experience of violence in the home, and the need for universal care and education for all families, and targeted early intervention for vulnerable families. In Australia, investigating and responding to children's experience of family and domestic violence is largely the responsibility of state and territory governments.

The strengthening of national coordination between governments, adequately funded services and appropriate family law processes is essential to prevent and protect children from domestic and family violence in Australia.

In addition to children's experiences of violence in home environments, this chapter highlights the ongoing challenges to keeping children safe in institutional settings. A brief snapshot notes the acute need for responses to high rates of institutional violence and the opportunity for the Royal Commission into Institutional Responses to Child Sexual Abuse to provide comprehensive policy guidance in 2017.

Children and young people's experience of bullying is discussed both in schools and other settings. The particular challenges of social media and online platforms with limited reprieve are discussed. Children and young people who identify as LGBTI experience particularly high rates of bullying and violence. This is discussed in this chapter with further detail in *Children in Focus*.

4.2

Familial Neglect, Abuse and Violence

This report defines family and domestic violence in accordance with Article 19 of the CRC. That is, “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.” Family and domestic violence is a global phenomenon that cuts across class, race, location and culture. While men are sometimes victims of family and domestic violence, women are most often affected.

25 YEARS OF THE CRC

When the CRC was ratified in 1990, the Human Rights and Equal Opportunity Commission (HREOC), along with ANU Centre for International and Public Law and the Australian Council of Social Service, conducted a review of the critical issues and aspirations for children in Australia. One aspiration was to achieve a comprehensive response to the prevalence of violence experienced by children within their family environment and to improve understanding of the right to bodily integrity and dignity denied children yet afforded to adults (Cater et al 1991, p.37). Since that time there has been a dramatic increase in both notifications and responses from the child protection system. Table 1 demonstrates the notifications to child protection services and Table 2 the number of children who have been removed from families and are living in out-of-home care (OOHC).

Table 1: Child protection notifications in Australia, children aged 0-17 years, 1989-90 to 2009-10

Year	Notifications	Total population of children	Rate per 1,000
1989-90	42,695	4,188,795	10.4
1999-2000	107,134	4,766,920	22.5
2009-10	286,437	5,092,806	56.2

Sources: ABS 2010; AIHW 2001, 2011; WELSTAT 1991; Bromfield et al 2014, p.122.

Table 2: Number of children on care and protection orders living in OOHC in Australia on 30 June 1990, 2000 and 2010

Year	Children in out-of-home care	Total population of children	Rate per 1,000
1990	12,406	4,188,795	3.0
2000	16,923	4,766,920	3.6
2010	35,895	5,092,806	7.0

Sources: AIHW 2001, 2011; WELSTAT 1992; Bromfield et al 2014, p.122.

It is not clear how much of this increase can be attributed to higher rates of familial violence versus changing child protection standards, including mandatory reporting, without a wide scale maltreatment survey such as the UK and US have conducted (Bromfield 2014).

However the known contributing factors include:

- Child protections systems were established at a time when interventions were made by professionals for children in acute crisis and with child removal the likely outcome (Bromfield et al 2014, p.123).
- An expanded view of the behaviours that define familial violence, and consideration of the cumulative impact of separate incidents, and a shift in defining when children require protection (Bromfield et al 2014, p.123 citing Bromfield & Holzer, 2008; Wood, 2008).
- Mandatory reporting requirements within the community including police, teachers, medical professionals for example (Higgins 2011, p.6).
- Professionalisation of the child protection systems as governments are increasingly expected to take on the primary role in ensuring children are safe while with their families (Higgins 2011, p.6).
- The clear and compelling evidence that demonstrates the significant and long-term impacts of violence on children (UNICEF 2014, p.6).

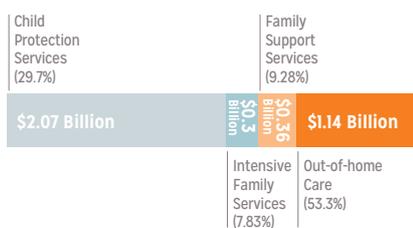
CURRENT AND ONGOING ISSUES

Today it is well understood that Australia's complex system of family law (generally the jurisdiction of the Federal Government) on the one hand and care and protection (generally the jurisdiction of states and territories) on the other has created both jurisdictional gaps and investigatory gaps. These gaps and complexities can compromise the safety of victims and result in significant financial and personal costs to the parties involved (Peel and Croucher, 2011).

The National Framework for Protecting Australia’s Children 2009-2020 and the National Plan to Reduce Violence against Women and their Children 2010-2022 have made notable progress. Both attempt to coordinate responses throughout Australia to strengthen responses to familial violence and address the causal factors of violence experienced by children (AHRC 2015, p.100). However, reform is inhibited and slow and this report will highlight four key critical areas of concern: the need to strengthen primary and secondary investment in the National Framework; lack of aggregated data for children; the complex intersection with family law; and lack of specific responses for vulnerable groups.

National Framework for Protecting Australia’s Children 2009-2020

The current child protection systems were established as tertiary crisis care, responding to family and domestic violence after it has occurred (Bromfield et al 2014). Current Australian Government spending demonstrates that the investment remains skewed at this end of protection, with high investment in the provision of OOH once children have been removed from their families. The following graph shows spending allocation in Australia in 2012/2013:



State and territory child protection systems in Australia cannot sustain the current demand for investigation and response (Bromfield et al 2014). Families with multiple or complex circumstances or problems such as substance abuse, domestic violence, and mental health concerns continue to drive the increase in the numbers of children entering care, and the demand for resources and funding at the tertiary end of the system (Child Rights Taskforce 2011). Investment in child and family welfare remains heavily weighted to tertiary level child protection interventions, with family support initiatives through early intervention and intensive programs representing only 17 per cent of overall expenditure (Productivity Commission 2015, Table 15A.1).

The National Framework represents significant progress in developing a structured approach to strengthen child protection systems in Australia and coordinate across jurisdictions. The Framework has six supporting outcomes which include that:

- Children live in safe and supportive families and communities.
- Children and families access adequate support to promote safety and intervene early.
- Risk factors for child abuse and neglect are addressed.
- Aboriginal and Torres Strait children are supported and safe in their families and broader communities.
- Child sexual abuse and exploitation is prevented and survivors receive adequate support (DSS, 2015).

The National Framework is based on a public health model that aims to balance investment in universal support for all families (primary), targeted early intervention for high risk families (secondary) and statutory crisis care (tertiary) (Child Rights Taskforce 2011). However, progress has been limited by the dramatic reform required to reconsider the role of primary and secondary interventions, and the significant funding investment required to a) address the causal factors for family and domestic violence and b) strengthen vulnerable families. The Third Action Plan (2015) of the Framework is focused on redistributing child protection intervention from tertiary, to secondary and primary interventions. The plan must now be prioritised and robustly funded so these objectives can be effectively realised.

Lack of disaggregated data

There are insufficient data on the children’s experience of violence, the impacts or the lasting effectiveness of the interventions through child protection and other support services. This is particularly detrimental to Aboriginal and Torres Strait Islander children; children from culturally and linguistically diverse backgrounds (CALD); children with disability and LGBTI children and young people (AHRC 2015, p.115). The data collected about both the incident and the individuals involved is not uniform across states and

territories. Definitions of domestic and family violence differ, and therefore the information regarding the crime differs. Children’s experience of domestic and family violence is not collected independently of the adult’s experience (AHRC 2015, p.119). Ethnicity, diversity in gender identity, disability and sexual orientation of family members are collected differently or not at all. There is inconsistent collection of information from secondary intervention and support services, such as homelessness services where the violence is not directly reported. These data are imperative to the development of best practice targeted prevention, early intervention and recovery services that are culturally appropriate, and specifically targeted to the needs to families with high vulnerability and existing barriers to accessing appropriate services (AHRC 2015, p.118).

Family law

The Australian Government has identified gaps in the area of family law and has taken steps in recent years in an attempt to better protect children and families at risk of violence and abuse. *The Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), which came into effect on 7 June 2012, sought to prioritise the safety of children in parenting matters and allow for better access to information. The Act further allowed for easier access of state and territory child protection authorities to participate in family law proceedings (Family Court of Australia 2015a). Further, in January 2015, COAG agreed to take “urgent collective action” and established the Advisory Panel on Reducing Violence against Women and their Children. Also in 2015, the Australian Standards of Practice for Family Assessments and Reporting (February 2015) (Family Court of Australia 2015b) and the Family Violence Best Practice Principles (December 2015) were introduced, which incorporate further measures to help address the complex and often problematic interaction between family law and child protection (Family Court of Australia 2015a).

The impact of a number of these initiatives is still to be seen. However, it is clear that significant concerns remain. An evaluation report of the 2012 family law amendments, published in 2015, found “data indicate

a greater emphasis on screening for family violence and child abuse concerns across the system, but particularly among lawyers and courts. This, however, has not translated into more parents considering that their concerns about both of these issues (especially safety concerns) were dealt with appropriately after the reforms” (AIFS 2015, p.xiii). Significant concerns have also been raised about chronic under-resourcing of the family courts and failures to replace retiring judges in a timely manner resulting in “unacceptable hold-ups in justice for at-risk children and families” (Law Council of Australia 2015), particularly outside metropolitan areas.

Children experiencing higher levels of risk

For particular groups there is greater risk of experiencing violence coupled with barriers to reporting or seeking support from services.

Many Aboriginal and Torres Strait Islander children have long benefited from strong and resilient communities and cultural connection. However, remnants of colonisation, dispossession and discrimination have resulted in higher rates of poverty; negative experiences in the justice system; and issues with alcohol and drug use, exposing children to unsafe environments. Intergenerational trauma from the Stolen Generations has resulted in mistrust of authorities and disrupted family connections, with those families less likely to seek support from formal systems (SNAICC 2015, p6).

Children and young people with a disability experience higher rates of violence and abuse than other children (Robinson 2013, p.10) and are three to four times more likely to experience sexual abuse than their peers and less likely to be believed (Coulson Barr 2012, p.9).

Children and their families from culturally and linguistically diverse backgrounds; children in remote and rural areas; and children who are LGBTI are less likely to seek support from law enforcement and other support services (Victorian Police 2014, p.5).

Read more about the experiences of these children in *Children in Focus*.

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Adequately fund and prioritise implementation of the National Framework, including the Third Action Plan. Primary and secondary interventions should:
 - Target early intervention and provide intensive family support services for vulnerable children that strengthens families and are distinct from mandatory child protection mechanisms.
 - Include wide scale public education that raises awareness of the rights of children to bodily integrity and dignity, and for men and boys that respond to social norms regarding gendered violence in the family.
 - Strengthen parenting information and provision of home visiting programs through universal means such as health care, including culturally appropriate approaches (Families Australia 2015).
2. Respond to causal drivers of familial violence and the complex intersection of factors contributing to risk including through:
 - Increasing access to integrated service delivery that takes a holistic approach to children and their families.
 - Increasing investment in support services addressing causal factors for children and their families including poverty, mental health, drug and alcohol abuse, housing and education while maintaining individual's right to decision-making autonomy.
3. Support children to have a full and effective participation in child protection, family law and intervention decision-making commensurate with their age, maturity and evolving capacity.
4. Support the development of comprehensive measures to ensure that research in child protection and into measures addressing violence against children includes the perspective of children as a matter of course.
5. Build on the resilience and culturally strong practice of Aboriginal and Torres Strait Islander communities to protect children. This would include:
 - Increased Aboriginal and Torres Strait Islander community lead child protection mechanisms and systems.
 - Community lead holistic service supports for families based on local knowledge (SNAICC 2015, p.11).
 - Access to culturally strong, intensive family support services (SNAICC 2015, p.14).
 - Universal access to Aboriginal and Family Decision-making process (SNAICC 2015, p.19).
 - Embed healing informed practice in service delivery (SNAICC 2015, p.25).
6. Strengthen data collection as recommended by the National Children's Commissioner 2015 report. This details use of Australian Bureau of Statistics Data Collection and Reporting Framework that captures details of identity (noting it needs to be strengthened with LGBTI status), incident, services provided and outcomes. This data can inform responses to measure who is at risk, direct primary support, early interventions and measure effective outcomes (AHRC 2015, p.118).
7. Ensure the Fourth Action Plan includes a comprehensive national strategy for responding to children with disability.
8. Undertake a review of the Australian Law Reform Commission's *Seen and Heard report* including progress in implementation of its recommendations and giving particular attention to the report's calls for widespread reform to Australia's child protection, education and legal systems to ensure children's participation in decision-making (ALRC 1997).

Institutional Abuse and Violence

It is now well recognised globally that there is widespread violence against children in institutions and in State-authorized bodies including schools, care centres, residential homes, religious institutions and justice institutions. This causes extreme harm which can amount to torture. Children in institutions are often marginalised, disadvantaged, discriminated against and do not have the protection of adults responsible for defending their rights and best interests (UN Committee on the Rights of the Child 2011).

Recent and ongoing inquiries are examining: the experiences of children and adult survivors of institutional violence; institutional repatriation and responses; and policy responses to support the healing of survivors and the strengthening of systems to protect children.

In 2013, the Australian Government established a six-member Royal Commission into Institutional Responses to Child Sexual Abuse. This Royal Commission:

- Is investigating how institutions managed and responded to allegations and instances of child sexual abuse.
- Is identifying failures of the systems.
- Will make recommendations on how to improve laws, policies and practices.

The Commissioners can look at any private, public or non-government organisation that is, or was in the past, involved with children (Royal Commission 2013). The Commission has tabled an interim report, and the Taskforce awaits final policy recommendations and a positive, proactive response from Government. Transformational reform is required; this must extend to systems that protect children in institutions; appropriate accountability of institutions, systemic mechanisms to ensure that children can safely report abuse and immediately access mechanisms of redress and protection should children experience violence.

The Taskforce notes the recent Senate inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability. This inquiry responds to the significant over-representation of children with disability experiencing institutional violence and the need for urgent reform. The Australian Cross Disability Alliance (ACDA) has called for a Royal Commission into violence against people with disability, an overhaul of the criminal justice system and the need to establish a national statutory watchdog (ACDA 2015).

VICTORIAN ROYAL COMMISSION

The report from the Royal Commission into Family Violence (Victoria) is a culmination of a 13-month inquiry into how to effectively:

- prevent family violence
- improve early intervention
- support victims
- make perpetrators accountable
- better coordinate community and government responses
- evaluate and measure strategies, frameworks, policies, programs and services (Royal Commission Victoria 2016)

The Royal Commission tabled its report on 30 March 2016. Its recommendations that impact directly on children include the establishment of support and safety hubs, increased and improved housing options, improved counselling and support services for children, an increase in culturally appropriate services and more professional training.

4.3 Bullying

25 YEARS OF THE CRC

There are variations in how bullying is described. For the purpose of this report, it is defined as “a form of aggressive behaviour in which there is an imbalance of power favouring the perpetrator(s) who repeatedly seek to hurt or intimidate a targeted individual” (Rigby and Smith 2011, p.442). Traditionally, bullying has mainly been addressed as an issue in schools. The effects of bullying can be both short and long-term, with impacts upon school attendance and academic performance, as well as self-esteem and mental health.

Since the ratification of the CRC there has been some progress in addressing bullying. Studies in the 1990s indicated that 23.5 per cent of eight to 17-year-olds reported being bullied at least once a week at school (Rigby 1998). In 2007, this figure had decreased slightly and it was found that 16 per cent of students aged nine to 14 reported being bullied at least once a week at school (Cross et al. 2009). This modest decrease is likely to be the result of continued efforts to address bullying in schools. The National Safe Schools Framework (2003; 2011) provides national guidelines and principles to address bullying in all state and territory education departments in Australia have anti-bullying strategies that state schools must adhere to.

However, it is unclear whether the reduction in traditional school bullying gives rise to a decrease in bullying overall, as cyberspace has emerged as a new forum in which bullying occurs. Cyberbullying includes all forms of cyber harm perpetrated against young people by other young people (in the context of online social relationships with both peers and strangers), including the practice of ‘sexting’ in circumstances where consensual images shared in a private relationship are used to humiliate (Katz et al. 2014, p.2). The issues that have arisen from ‘sexting’ are particularly concerning: as criminal sanctions contained in child pornography laws, that were originally intended to protect children from adult offenders, can apply to children and young people themselves.

A recent national report estimated that around 20 per cent of young Australians aged eight to 17 would be cyberbullied over a 12 month period (Katz et al. 2014, p.2). The lack of clarity surrounding the current legal frameworks for dealing with all cyberbullying, inter-jurisdictional legal issues and the range of sites potentially involved result in a complex set of issues which requires new and innovative responses.

The need to address cyberbullying has been recognised by the Australian Government with a Select Joint Committee on cyber-safety releasing a report on cyber-safety and young people in 2011. Another positive step has been the introduction of an e-Safety Commissioner in 2015 who has powers to promote online safety for children, including facilitating the removal of cyber-bullying material, defined by the *Enhancing Online Safety for Children Act 2015* (Cth) as material that would be likely to have the effect of ‘seriously threatening, seriously intimidating, seriously harassing or seriously humiliating the Australian child’.

ONGOING ISSUES AND CONCERNS

Traditional bullying

Although schools have taken steps to address bullying, there are still concerns regarding implementation of anti-bullying strategies. The National Children’s and Youth Law Centre reports that most education queries they receive deal with a lack of adequate and appropriate responses by schools to bullying. Bullying in education was also the most frequently reported civil legal problem which had a substantial impact reported by 15 to 17-year-olds in a nation-wide survey conducted in 2012 (Macourt 2013, p.5). Further, although the National Safe Schools Framework outlines guidelines and principles for ensuring safe learning environments, this is not currently mandated in Australian schools, and each state has different policies to address bullying rather than a uniform approach (Spears and Taddeo 2015).

The fact that children may be victims of both cyberbullying and traditional bullying is also of growing concern. Notably, in 2013, 72 per cent of schools indicated that at least one incident of cyberbullying was reported to their school (Katz et al. 2014, p.4), though it is unclear whether the bullying was also occurring ‘offline’.

Cyberbullying

Cyberbullying has been found to have a stronger link to suicidal ideation when compared with traditional bullying (Spears et al. 2014, p.50). Significantly, girls are more likely to report to be the victims of cyberbullying than boys, and Aboriginal and Torres Strait Islander children similarly report a higher rate of cyberbullying (Spears et al. 2014, p.49). The effects of cyberbullying are also

compounded in remote communities where there may be a lack of knowledge around safe use of the Internet, and relationships are such that members of the community are likely to know everyone.

Responses to cyberbullying are also more complex as intervention methods that resulted in progress in addressing traditional bullying, which occurs in a face-to-face context, do not necessarily translate into the cyber-sphere (Katz et al. 2014, p.5).

The response of young people to cyberbullying most frequently includes telling friends, school staff and family members, as well as blocking and ignoring the cyberbully. Where cyberbullying involves “coercive sexting, intimidation, blackmail, sharing revealing images and video, creating hate websites, and anonymous cyberbullying,” the response will often include referral to police (Katz et al. 2014, p.5). However, police officers find “cyber offences challenging to investigate because they are difficult to prove” and prefer these matters to be dealt with by schools or other agencies, although these agencies believe police involvement is necessary for a deterrent effect (Keeley et al. 2014, p.41). This resulting circularity and a lack of coordinated agency response can leave children without an effective and easily accessible response.

POLICY RECOMMENDATIONS

The overall approach to both traditional school bullying and cyberbullying should be preventative and proactive rather than reactive; it should not only rely on apprehending and dealing with ‘bullies,’ but should be aimed at creating safe and respectful environments for children and young people (Katz et al. 2014, p.15).

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Invest in capacity building in schools, police, legal advice centres and non-government organisations, and provide clarity regarding their role preventing, identifying, addressing and referring cyberbullying matters. Education and

training around best practice would be welcomed by all sectors, and could be one of the most effective interventions in this area (Katz et al. 2014, p.16).

2. Invest in prevention, including focusing on strategies to effectively address both traditional school bullying and cyberbullying, and apply these strategies through legislative and policy implementation.
3. Amend the threshold of ‘seriousness’ explicit in the *Enhancing Online Safety for Children Act 2015* (Cth) to allow instances of cyberbullying that may not reach this threshold to be dealt with by the e-Safety Commissioner.
4. Invest in the coordination of the Department of Education and Training and the e-Safety Commissioner to develop best practice guidelines for responding to incidents of bullying, with the aim to ensure agencies examine best practice responses to all forms of bullying. Effective approaches and referral points that have been identified by relevant agencies must inform the development of these guidelines.
5. Ensure that the e-Commissioner works with young people, the key agents of change, and provides opportunities for children and young people to contribute and work intergenerationally to design and implement responses to cyberbullying (Katz et al. 2014, p.15).



Children in Focus

Across the thematic areas outlined in this report, we find that certain groups of children and young people consistently face barriers to the fulfillment of their rights. In this section we put their experiences in focus and hear from four young people about growing up in Australia.



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Aboriginal and
Torres Strait
Islander children
and young people



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Children and
young people
from culturally
and linguistically
diverse (CALD)
backgrounds



50

Asylum seeker
and refugee
children



54

Children with
disability



58

Children and
young people
who are Lesbian,
Gay, Bisexual,
Transgender or
Intersex (LGBTI)

As at June 2015,
Aboriginal and
Torres Strait
Islander children
were 26 times
more likely to be in
juvenile detention

(AIHW 2015, p 11)





Aboriginal and Torres Strait Islander Children

The last 25 years have seen some important steps towards the realisation of rights for Aboriginal and Torres Strait Islander children. Despite recognition of past and ongoing concerns, progress towards the realisation of rights remains stalled or in regress across numerous critical indicators. Some 18 years after the *Bringing them home* report, many of its recommendations still remain unrealised (National Sorry Day Committee Inc. 2015, Appendix A).

There are 291,906 Aboriginal and Torres Strait Islander children aged 0 to 17 in Australia, representing 5.52 per cent of all Australian children (AIHW 2015a, p.113 Table A50; ABS 2014). Since 2009, a National Indigenous Reform Agreement (NIRA) has driven significant investments in access to health and wellbeing for Aboriginal and Torres Strait Islander children (NIRA 2011, p. 8). Among the most poignant of children's rights violations in Australia's history is the tragic forced removal of children from their families that caused the Stolen Generations. In 1997, the outcomes of a national inquiry into these events were detailed in the *Bringing them home* report (HREOC 1997a) that made 54 recommendations to redress the trauma experienced by former and current generations (HREOC 1997b). Much later, in 2008, then Prime Minister Kevin Rudd delivered a National Apology to the Stolen Generations.

In 2016, progress under NIRA is still not on track across all areas of reform (SCRGSP 2014), and many of the rights accorded under the CRC and United Nations Declaration on the Rights of Indigenous People remain unsupported in Australian legislation. Australia received international criticism in a review before the UN Committee on the Rights of the Child in 2012 for failing to provide access to essential services and for the alarming over-representation of Aboriginal and Torres Strait Islander children and youth in the criminal justice system and out-of-home care (SNAICC and NATSILS 2012; UN Committee on the Rights of the Child 2012).

Aboriginal and Torres Strait Islander children are more than twice as likely to be developmentally vulnerable than non-indigenous children (Australian Government 2013), yet national targets to ensure their access to early childhood education have not been met (SCRGSP 2014, p. 4.18, Table 4A.3.2, Table 4A.3.3). Nearly one in five Aboriginal and Torres Strait Islander children live away from their families in alternative care (AIHW 2015a). Despite the national adoption of an Aboriginal and Torres Strait Islander Child Placement Principle, 32.6 per cent of Aboriginal and Torres Strait Islander children are placed with non-indigenous carers (AIHW 2015a, p. 101). Investment in child and family welfare remains heavily weighted to tertiary level child protection interventions, with family support initiatives through early intervention and intensive programs representing only 17 per cent of expenditure (Productivity Commission 2015, Table 15A.1).

Despite a higher number of Aboriginal and Torres Strait Islander young people reporting being admitted to a psychiatric unit, more non-indigenous young people report being seen by a mental health nurse in the courts. The 2009 NSW Young People in Custody Health Survey calls for early detection programs to selectively target disadvantaged communities where young people have less opportunity to avoid contact with the criminal justice system and divert young people with mental health problems into treatment, prior to entering custody.

Some health indicators for Aboriginal and Torres Strait Islander children have shown marked improvement over recent years, including immunisation rates. For example, in 2013 the overall vaccination coverage rate for one-year-old Aboriginal and Torres Strait Islander children was only slightly lower than for other children of the same age (86.1 per cent compared to 90.3 per cent). For children aged two years and five years, rates were within one percentage of each other (SCRGSP 2014, Table 8A.1.25). However the rates of low birthweight babies and infant mortality remain unacceptably high (SCRGSP 2014, Table 2A.4.8 and Table 6A.4.1).

In 2015, the lives of Aboriginal and Torres Strait Islander children and their families remain uniquely shaped by the impacts of colonisation and resulting intergenerational trauma. Despite these challenges, the strengths of Aboriginal and Torres Strait Islander communities to care for their own children remain the dominant driving force in the realisation of children's rights. A rights-based response must draw on these cultural strengths to increase investment in support that heals and strengthens families and empowers communities and organisations to self determine responses. This will ensure that all decisions regarding the best interests of Aboriginal and Torres Strait Islander children are made with the participation of families, communities and children themselves.

Where we stand

Critical failures to protect the rights of Aboriginal and Torres Strait Islander children and young people.

FAMILY AND CARE

Aboriginal and Torres Strait Islander young people are



as likely to be receiving child protection services (AIHW 2015a, pp. viii and 51).

as likely to be in out of home care compared to non-indigenous people

LEARNING AND DEVELOPMENT



69.9 per cent of Aboriginal and Torres Strait Islander children were attending a preschool program, compared to 88.7 per cent for non-indigenous children (SCRGSP 2014, p. 4.18, Table 4A.3.3).

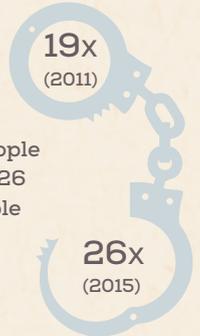
HEALTH



11.1 per cent of babies born in 2011 were of low birthweight, compared to 4.5 per cent of babies born to non-indigenous mothers (SCRGSP 2014, p. 6.29, Table 6A.4.1).

JUSTICE

From June 2011 to June 2015, the level of over-representation of Indigenous young people aged 10–17 in detention increased from 19 to 26 times the rate of non-Indigenous young people (AIHW 2015b, p 2).

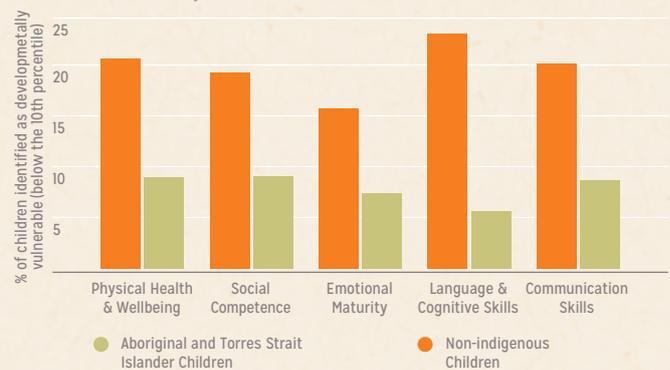


Children in Out-of-Home Care



(Data used to generate graph taken from AIHW 2015a, p.106)

Child Development

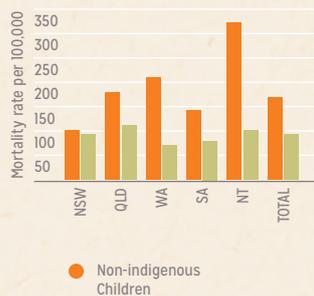


(Australian Government 2013)

Low Birthweight

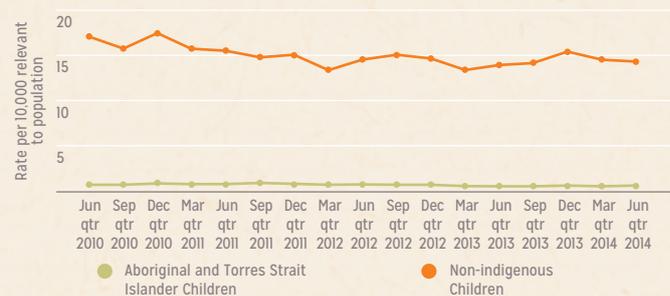


Child Mortality



(Steering Committee for the Review of Government Service Provision 2014)

Young People in Detention



(AIHW 2014)

Growing up in Australia

MELINDA'S REFLECTION

The *Convention on the Rights of the Child* is a key instrument for promoting the rights of Aboriginal children and young people. It emphasises the responsibilities of the government and community in keeping children safe and giving them every opportunity to fulfil their potential. For Aboriginal children, this includes keeping them strong in culture and identity and connected to their family and community: the people who will support them as they grow into adults and forge the future of our communities. This is important to vulnerable children, children who can't safely stay at home.

My childhood was very unstable. My family moved around a lot. I went to around four schools before Year 1. This unstable life was a result of my parents abusing drugs and alcohol. Police were present often, which led to my dad being incarcerated most of my life. When I was 5 the State removed me and my siblings. We were lucky enough to have a grandmother and aunties who sacrificed so much to raise us so we wouldn't disappear into foster care and grow up not knowing each other. As a young adult I now know why I couldn't stay at home, but throughout my childhood I wanted to know, which is why I returned home at 13. Living with my parents was not easy as it was when I was younger. Eventually after a year I returned to my aunty and she helped me finish school. My family stuck by me as I worked out who I was.

Family and community are so important to who I am, to who we are as Aboriginal people. Removing children from their parents and family should only ever be a last resort. I would like to see more done to help keep Aboriginal children including

those with disabilities, keep their identity and sense of belonging to their family and community. It is important to keep our children strong in their culture, something I am passing onto my own children.

It is also important, particularly for Aboriginal children, that family are able to participate in decisions about their care and upbringing. This is also essential for children just like me. I would like to see children have more involvement in what's happening with their lives, and for adults to listen to them and take them seriously.

Lastly I would also like to see more support for families to stay together, particularly for parents to get back on track, so that children are able to return home to where we belong.





Children and Young People from Culturally and Linguistically Diverse (CALD) backgrounds

Australia is a successful nation that has benefited greatly from the depth and breadth of its cultural and linguistic diversity. Almost half of Australia's population are either first or second generation migrants demonstrating how critical migration has been to this success and why migration continues to be considered intrinsic to future growth and prosperity (Australian Government 2015).

Between 2010 and 2015 one fifth of all permanent arrivals to Australia were aged between 12 and 24 (MYAN 2016). Migration has contributed to the growth of Australia's CALD youth population, which has grown at a faster rate when compared to the total population and the Australia-born population. Today, children from CALD backgrounds make up 25 per cent of Australia's young people aged 12 to 24 (MYAN 2014). While many CALD children and young people require support and assistance to establish their foundations, evidence shows that young people from CALD backgrounds make significant, long-term contributions to Australia. Their stories demonstrate how migration has been fundamental to Australia's social and economic development and why it will continue to be so into the future.

While there is no agreed definition, culturally and linguistically diverse or CALD, refers to Australian residents born overseas or born in Australia to overseas-born parents for whom English is not the main language and/or who have cultural norms and values different to the mainstream community.

People from CALD backgrounds represent a diverse group, including newly arrived humanitarian migrants, young people who have entered Australia on business or student visas or as dependents on

family visas, and second or even third-generation migrants. This means children and young people from CALD backgrounds have very different and often complex and multifaceted experiences and needs. These challenges are often compounded by services and systems ill-equipped to provide the specialist support needed for CALD children and young people to realise their rights and access opportunities.

Newly arrived young people entering Australia through the Refugee and Humanitarian Programme can face particular challenges accessing services and opportunities. This is because young people experience settlement in ways distinct from adults due to their age, developmental stage and position within the family, and often face additional and more complex transitions than their Australian-born counterparts (MYAN 2016b; AIFS 2015).

Over the last 25 years some important steps have been taken towards the realisation of rights for CALD young people and children in Australia. Federal, state and territory funding to groups such as the Multicultural Youth Advocacy Network (MYAN Australia) demonstrate commitment and investment in mechanisms that support CALD children and young people in decision-making. Such funding helps the development of targeted support

and tools – like the National Youth Settlement Framework (MYAN Australia 2016) – to build on programs to harness CALD children and young people's potential, and support their active participation in society. The introduction of targeted programs and campaigns, such as the national *Racism. It Stops with Me* campaign (2012) which was rolled out to Australian classrooms through the *Racism. No way!* project, and funding for programs to support successful transition of CALD young people from education to employment (CMY 2015), are further examples of systemic efforts contributing to such change. However, there is still some way to go to achieve full and equal realisation of rights and access to opportunities for CALD children and young people in Australia.

25 per cent of all young people aged 12-24 in Australia are from a CALD background.

(MYAN 2014).

EDUCATION

Many CALD children and young people continue to experience poorer outcomes in education than their non-CALD peers (Roberts 2014). This results in CALD children and young people being more vulnerable to non-enrolment, poor attendance, repetition and less likely to complete secondary level education (UN Committee on the Rights of the Child 2012, p. 18).

In addition, many more newly arrived CALD children and young people and their families have limited social capital, impacting understanding and exposure to educational and employment systems (CMY 2014a; Cardona et al. 2009; Capire Consulting Group 2015; Gifford et al. 2009).

RACISM AND DISCRIMINATION

Racism and discrimination are commonly identified as significant issues for children and young people from CALD backgrounds. An Australian Human Rights Commission (AHRC) study conducted in 2013 found that nine out of ten 13 to 17-year-olds experienced some form of racism or saw it happen to someone else; 43 per cent said they had experienced or witnessed racism at school; and 33 per cent said they had experienced or witnessed it on the Internet (AHRC 2013).

Racism and discrimination reported to be most commonly experienced: when young people look for work and in interview and selection processes (CMY 2014a); on public transport (Markus 2015, p24); at sporting clubs/events and in education and training settings (Markus 2015, p. 24); in the private rental market (CMY 2010b); within the justice system and interactions with police (Flemington & Kensington Community Legal Centre 2012); and in the media (AHRC 2012).

In recent years, research into the impacts of racism and discrimination upon children and young people in Australia has pointed to significant negative outcomes in health and wellbeing (Priest et al. 2013). It has been found to impact upon the ability to make effective transitions into adulthood (Mansouri et al. 2009), and threats to personal and cultural identity (ARACY 2007).

MENTAL HEALTH

Research has highlighted the importance of services demonstrating respect and understanding of a young person's cultural background, including cultural understandings of mental health.

Challenges include:

- Adapting to a new culture and language.
- Experience of racism and discrimination.
- Social support networks.
- Familiarity with Australia.

In addition, children can face barriers to accessing help because of stigma and poor understanding of mental health within families and communities. Research has highlighted the importance of services demonstrating respect and understanding of a young person's cultural background, including cultural understandings of mental health (Colucci et al. 2014).

FAMILY AND INTERGENERATIONAL ISSUES

The refugee and migration experience can significantly impact family structures and dynamics. Intergenerational issues can lead to family breakdown and homelessness for children and young people. CALD children and young people often juggle a complex range of pressures and relationships as they negotiate identity and sense of belonging in Australia. For some children and young people this 'juggle' becomes a valuable skill but for others, particularly newly arrived children and young people, it can be experienced as an enormous pressure, which can contribute to conflict with family and community (CMY 2014b; Skattebol et al. 2013).

Research suggests children and young people 'acclimate' (or acculturate) to new community values significantly more enthusiastically and at a faster rate than their parents or older family members and that this can increase conflict within families (CMY 2011b). The migration experience, even decades on, can affect family power dynamics as some children and young people are required to adopt adult roles and responsibilities complicating relationships which can

undermine parent authority and status, and significantly impact on family relationships. Often, children and young people also end up caring for (younger or older) family members or carry the responsibility for communication with institutions and services in Australia, primarily because many CALD children and young people become proficient with the English language more quickly than their parents or older relatives (CMY 2011).

While there are some positive examples of specific services developing programs to address these issues (for examples see ARACY 2008; CMY 2011; CMY 2014b; ECC NSW 2012), CALD children and young people require investment in initiatives that build the capacity of the youth and family sectors to support families to negotiate parenting in a cross-cultural context (including building better understanding of rights and responsibilities).

LACK OF DISAGGREGATED DATA

To address issues facing CALD children and young people, and the sectors supporting them, it is important to have accurate, relevant and up-to-date data on these population groups. Currently there is a lack of systematic data collection, analysis and reporting on outcomes for CALD children and young people in core areas, including education (CMY 2014b). This was noted by the UN Committee on the Rights of the Child in its 2012 Concluding Observations to Australia, which highlighted the concern that data is not disaggregated nor analysed regarding important areas of the CRC and are sparse or not available in areas such as ethnicity, refugee, migrant and internally displaced children (UN Committee on the Rights of the Child 2012, p. 5).

FORCED MARRIAGE

Forced marriage is an emerging issue in Australia. While it has no doubt existed for some time, it has only recently been recognised and responded to on a systemic level. The key response to date has been a legal one, with forced marriage becoming a specific criminal offence under Australian law in 2013 when the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth) amended the *Criminal Code Act 1995* (Cth) by introducing new offences, including forced marriage (*Criminal Code Act 1995, Division 270.7B*). The Act makes it an offence for a person to engage in conduct that “causes another person to enter into a forced marriage as the victim of the marriage”, as well as for the person (who is not the victim of the forced marriage) to be a party to the forced marriage (*Criminal Code Act 1995, Divisions 270.7A and 270.7B*). The *Criminal Code Act 1995* (Cth) protects people who are forced into marriage in Australia, as well as Australians who are taken overseas and married against their will (*Criminal Code Act 1995, Division 270.7A*). These offences carry a maximum penalty of seven years imprisonment (*Criminal Code Act 1995, Division 270.7B*).

In 2014, the Australian government released a Forced Marriage Community Pack designed to raise awareness of the issue and a number of community organisations have also created resources and are active in advocating to advance legal, policy and practice responses. For example, the National Children’s and Youth Law Centre produced a set of guidelines called ‘End Child Marriage’ (Jelenic and Keeley 2013) and Rosemount Good Shepherd published a casebook in 2014 (Rosemount Good Shepherd Youth and Family Services 2014).

A review of the impact of the legal response and greater community consultation are critical for building an effective response. Other recommended actions to address forced marriage are: education and information about the rights and protections available in law; a focus on making the safety of each woman a priority; and better protection of the rights of the child through consistency in the treatment of child protection issues across Australia (Good Shepherd Australia New Zealand 2012).

FEMALE GENITAL MUTILATION (FGM)

The practice of FGM in Australia varies significantly across and within CALD communities. While a lack of data means FGM prevalence is not entirely clear, the practice has gained attention in recent years. FGM is a crime in every state and territory and existing legislative measures are supported by community education, health and allied health services and women’s health support programs, which were bolstered from 2012 by Federal Government funding. However, a lack of awareness about the issue and its consequences in the community, coupled with lack of awareness about and accessibility to health services and information means the practice still continues (Mercy Health 2014; Chen & Quiazon 2014; Attorney-General’s Department 2013; Multicultural Centre for Women’s Health 2013; Vaughan et al. 2014).

CITIZENSHIP

Preservation of identity has been a noted concern of the UN Committee on the Rights of the Child, as a child’s Australian citizenship can be revoked when a parent renounces or loses citizenship. With reference to article 8 of the CRC, the UN Committee previously recommended that Australia undertake measures to ensure that no child is deprived of citizenship on any ground regardless of the status of his/her parents (UN Committee on the Rights of the Child 2012).

In a concerning move, the Commonwealth parliament passed the Australian Citizenship (Allegiance to Australia) Bill 2015 (Cth) in November 2015. This Bill amended the *Australian Citizenship Act 2007* (Cth) to allow for the cessation or revocation of the Australian citizenship of people who are also nationals or citizens of other countries in certain circumstances. These include, for example, for conviction of terrorism offences or through actions which are inconsistent with a person’s allegiance to Australia. A child who is a national or citizen of another country and who is aged 14 years or over can now risk losing their Australian citizenship due to conduct (s 33AA) or due to service in armed forces of an enemy country or a declared terrorist organisation (s 35).

A child convicted of a listed offence could have their citizenship ceased, however, a child could only be convicted if they are over the age of 10 years as children under that age are not criminally liable under the *Criminal Code Act 1995* (Cth) (Part 2.3, Division 7).

Although the Bill as passed was amended from its original form to include a requirement that the Minister consider both the age of a person potentially affected and, for a child, his or her best interests, as a primary consideration, the laws remain highly problematic. This is because (UNICEF Australia 2015):

- Children with dual citizenship can still be subjected to the law and therefore have their Australian citizenship removed in certain circumstances.
- The law is essentially punitive in nature without, in some instances, the procedural safeguards of a criminal court process.
- A child’s ability to challenge the removal of his or her citizenship will be practically limited.

In addition, others have highlighted the concerning “two class” system of citizenship created by these reforms, with Australians holding dual nationality being less secure than others. This, it is feared, could have a negative and corrosive impact on social cohesion (Parliament of Australia 2015, 4.29 – 4.35).

Growing up in Australia

SARAH'S REFLECTION

I was 13 years old when I arrived here in Australia. In many ways, I was still a child still trying to grasp the sudden change to a new life that was very different to the one I left behind. Everyone I met told me Australia is the land of freedom and opportunity and there was nothing to fear.

I suppose they forgot to tell me that the underlying issues of racism this country faces would impact me greatly as I grew up. It was everywhere I went - in school, on the streets and in public events. After a while, I became numb to it all. I passed it off as something 'casual'. I arrived here in Australia to escape from the horrors of war only to be subjected to countless comments on my ethnicity, my appearance and my culture. As a young person, I really believed that I would never belong and would never be accepted. Truth be told, I didn't feel like I belonged until I started university and learned that I can fight for my place here. I went through my high school years trying to deal with who I am when I never had to. Every time the media reported an attack there was always the need to defend myself - why?

As I'm looking through the *United Nations Convention on the Rights of the Child*, I can say that Australia treated me quite well as a young person. I was freely allowed to participate in my religion, Mandaeanism, without fear, I have been treated responsibly and was looked after during my difficult times. It wasn't until a while after that I realised that the rights I had were not simply a right but also a privilege. I say that because I started meeting those who identified as asylum seekers. They were my friends, people I met and suddenly it felt like there was a different side to the place I call home. I started to wonder, had my situation been different how would my life have turned out being denied my rights, my freedom and my hope as a child? As I join rallies and protests to advocate for the rights of the children locked up, I realise how unequal we are becoming thus making it difficult for me to embrace what I have been given. Because I was deprived of those rights long before I arrived in Australia, ignoring them now does not sit well with me.

For privacy reasons, this image is not a photo of the author of this section.



Asylum Seeker and Refugee Children

Children and families impacted
by Australia's asylum framework

"... by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, [Australia] has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment" (Special Rapporteur on Torture, 2015: paragraph 9).

OVERVIEW

In 1992, the Australian Government adopted a mandatory framework for immigration detention. Successive governments have shifted the policy setting towards a discretion-based approach to asylum claims and away from Australia's mainstream legal system. Key policy developments include mandatory, indefinite and non-reviewable detention, a reliance on temporary protection measures, offshore processing, the naval repulsion of people seeking asylum who arrive by boat and the excision of Australia's migration zone to preclude people from making asylum claims.

These developments mark a significant departure from Australia's international human rights obligations, notably the *Convention on the Rights of the Child 1989* (CRC), the *Convention Relating to the Status of Refugees 1951* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987*. Of particular importance is that the mandatory detention and offshore processing policies are sharply inconsistent with both the CRC and the Refugee Convention.

Developments over the last 20 years have, for the most part, narrowed the protection space for asylum seeker and refugee children, and limited children's rights,

particularly in relation to quality education, healthy development and the right to family life. Successive Governments have not, as is required under international law, made all decisions regarding asylum seeker and refugee children based on the best interest of the child.

LEGAL FRAMEWORK

In the context of immigration detention, the *Migration Act 1958* (Cth) is the primary piece of legislation governing the immigration detention of children and offshore processing policies. The Department of Immigration and Border Protection (the Department), and its designated contractors are responsible for the implementation of these policies and the Federal Courts are responsible for review. The Migration Regulations 1994 set out the classes of visas that are available to detainees. The *Immigration (Guardianship of Children) Act 1946* (Cth) (IGOC Act) is the legal mechanism by which guardianship of certain unaccompanied children is conferred on the Minister for Immigration and is therefore also relevant to children in immigration detention. The *Migration Act 1958* (Cth) must operate in concert with State legislation regarding child protection and welfare, and the Department should therefore cooperate with State child welfare bodies, education authorities and other State agencies.

In 2015 the Australian Government passed legislation to amend the *Migration Act 1958* and the *Maritime Powers Act 2013* (Cth). These key amendments included:

- An increase to executive powers to detain and transfer people at sea.
- A re-introduction of the Temporary Protection Visa category and Safe Haven Enterprise Visa.
- Fast track assessment processes and restriction of merits review.
- Babies born to asylum seeker parents in Australia or in offshore processing will have the same legal status as their parents.

Notably, the amendments removed most of the references to the *Convention Relating to the Status of Refugees 1951* from the *Migration Act 1958*, including the requirement to consider Australia's non-refoulement obligations.

OFFSHORE PROCESSING ARRANGEMENTS

In response to the MV Tampa affair and a reported rising number of boat arrivals in 2001, the Australian Government introduced the 'Pacific Solution'. The Pacific Solution required asylum seekers who were detected on unauthorised vessels to be intercepted and transferred to offshore processing centres on Nauru, and Manus Island in Papua New Guinea. This approach effectively denied asylum seekers access to Australian territory to lodge their claims. These arrangements were implemented under formal administrative agreements between the Australian Government and the respective governments of Nauru and Papua New Guinea. Prior to these arrangements being agreed, the Australian Government also approached a number of other offshore sites to negotiate processing options, including Palau, Tuvalu, Kiribati, Fiji and Tonga.

At this time the *Migration Act 1958* was amended to deem Christmas Island, off the coast of Western Australia, as an 'excised offshore place'. This amendment barred asylum seekers who arrived in the territory of Christmas Island from applying for protection from the Australian Government.

Under a policy decision on 19 July 2013, the Australian Government announced a return to regional 'resettlement' arrangements between Australia and the respective governments of Nauru and Manus. Post this date, it was decided all asylum seekers who arrived in Australia by boat would be sent offshore for assessment of their refugee status.

Developments over the last 20 years have, for the most part, narrowed the protection space for asylum seeker and refugee children.

The 'no advantage' principle was a central principle of the return to the Australian Government's regional resettlement approach. That is, there would be no advantage for asylum seekers who arrived in Australia or its territorial waters by boat and they would be required to wait considerable periods, like those refugees in camps and settlements, for a resettlement pathway.

Offshore processing arrangements in the Australian context have been criticised historically by United Nations bodies and civil society groups. There have been multiple independent inquiries and reviews of the public health, living conditions and access to essential support services in offshore detention. The United Nations High Commissioner for Refugees and a number of Special Rapporteurs have stated the importance of greater transparency regarding the conditions and operations of offshore detention. Australia's offshore detention also created family separation for those families who had some members arrive before and some after 19 July 2013.

A LAST RESORT? NATIONAL INQUIRY INTO CHILDREN IN IMMIGRATION DETENTION (2004)

In 2003 and 2004 the Human Rights and Equal Opportunity Commission (HREOC) conducted a national inquiry into children in immigration detention. *A Last Resort? National Inquiry into Children in Immigration Detention* was conducted under the functions set out in section 11(1)(e) and 11(1)(f) of the *HREOC Act 1986*. The Inquiry focused on two overarching areas as part of its investigation. First, it considered the immigration detention system and its compliance with Australia's international human rights obligations, namely the CRC. Second, it reviewed the impact of immigration detention on children with regard to safety, mental health, physical health, education, recreation and culture. *A Last Resort?* was significant because it was the first major investigation into the systemic impacts of immigration detention on children in the Australian context.

"The national inquiry found, as it applied to children (who were deemed unauthorised arrivals) from the period 1999-2002, that Australia's immigration detention laws were fundamentally inconsistent with the CRC in reference to the following:

- Detention is a measure of last resort, for the shortest possible period and subject to independent review procedures (CRC article 37(b), (d))
- The best interests of the child is a primary consideration in all actions concerning children (CRC, article 3(1))
- Children in immigration detention for extended periods of time are at a high risk of serious harm to their mental health, and this detention may amount to cruel, inhuman and degrading treatment of those children (CRC, article 37(a)).

At various times between 1999 and 2002 the HREOC found that children in detention were not able to enable to enjoy the following rights:

- The right to be protected from all forms of violence (CRC, article 19).
- The right of children with disabilities to enjoy a full and decent life with active participation in the community (CRC, article 23(1)).
- The right to a quality education (CRC, article 28).
- The right of unaccompanied children to receive special protection (CRC, article 20(1)).

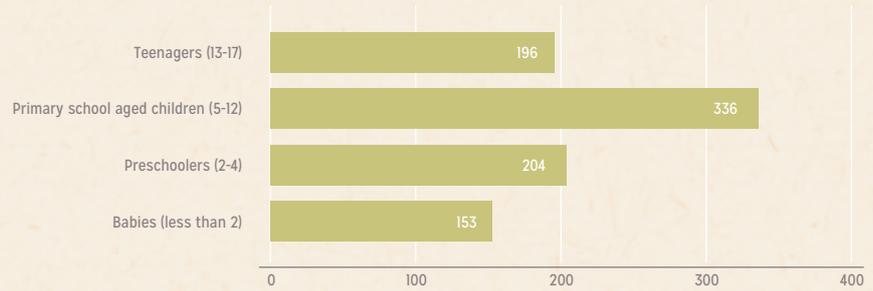
The Forgotten Children:

NATIONAL INQUIRY INTO CHILDREN IN IMMIGRATION DETENTION (2014)

In 2014, the Australian Human Rights Commission (AHRC) conducted a second national inquiry into children in immigration detention, *The Forgotten Children*. While there had been some changes across the policy settings, the AHRC remained concerned by the continuation of indefinite mandatory detention with no practical pathways to protection of settlement.

The terms of reference of the inquiry focused on the impacts of detention on the health, development and wellbeing of children. The inquiry considered the impacts of indefinite detention of children throughout the life cycle, and its impacts on parenting and family life. While detention is harmful to children, it can impact differently depending on their age and specific stage of development. As of 31 March 2014 the majority of children in detention were primary-school aged, followed by a significant cohort of pre-school aged children (AHRC 2014, p.53).

Age of children in detention by age as of 31 March 2014



In December 2003, at the time of the initial national inquiry the average length of immigration detention of a child was one year, eight months and 11 days. Many children were released within three months of initial detention, but some were detained for much longer (HREOC 2004, p19). As of 31 January 2016, the average period of time for people held in detention facilities was at 457 days (Department of Immigration and Border Protection 2016, p11).

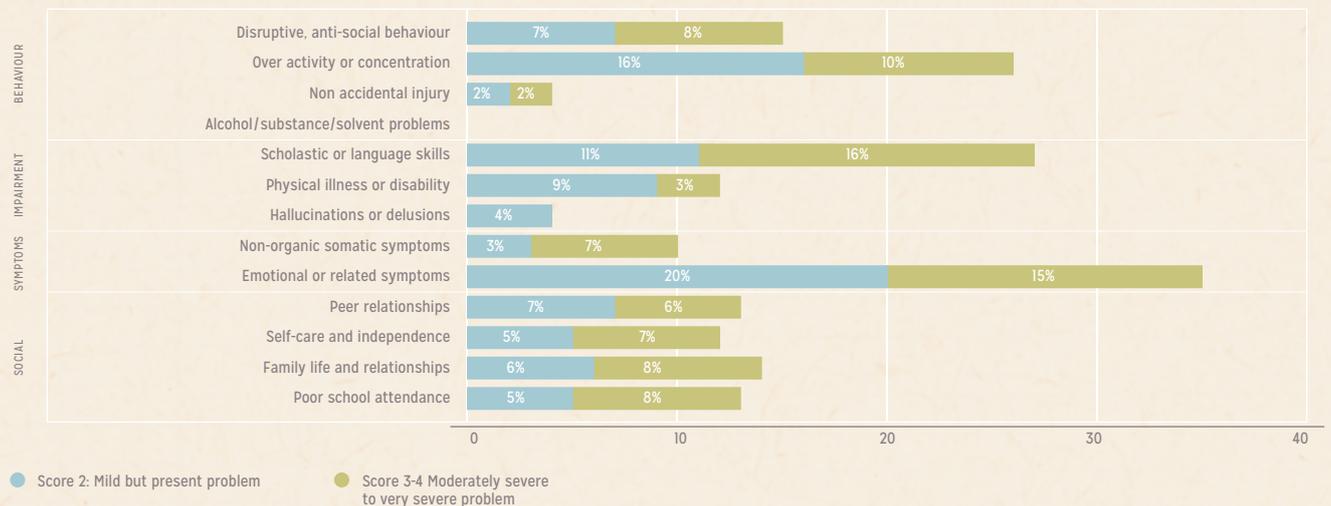
Average number of days in held immigration detention facilities only



Unlike the previous national inquiry into immigration detention, the methodology was highly reliant on child focused and expert clinical assessment tools. Data gathered by medical and mental health professionals during immigration detention visits was compared to national benchmark data for the general Australian population.

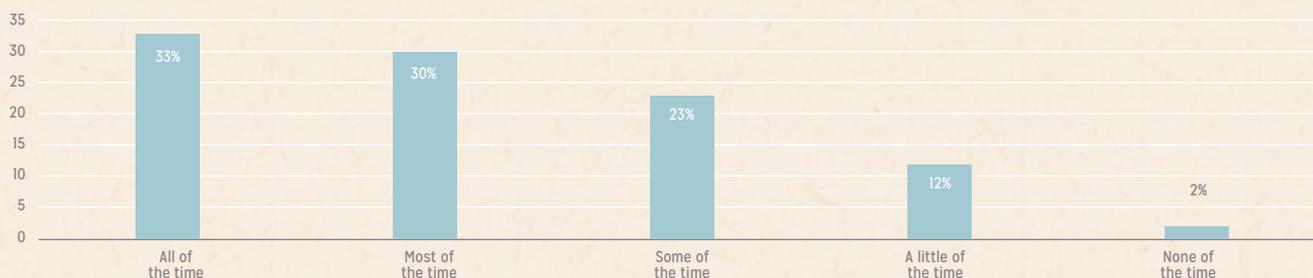
The Forgotten Children report reconfirmed the findings of the 2004 national inquiry into children in immigration detention, and presented alarming new data on the severity of children's mental health symptoms. It stressed the profound negative impacts of prolonged detention on the mental and emotional health, and the development of children.

Severity of mental health problems presenting in children in Australian immigration detention centres



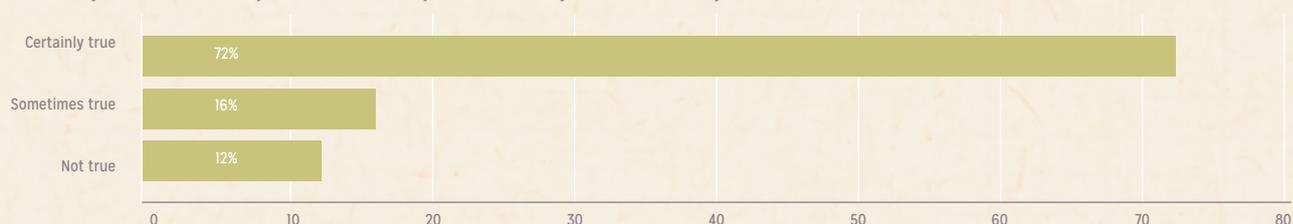
The inquiry also identified that parents in immigration detention settings are experiencing high rates of distress, poor mental health, and trauma. Significant levels of anxiety and depression among parents can exacerbate those same feelings in children. This may also reduce the capacity of parents to maintain positive family relationships. A cohort of parents were interviewed and their responses are below:

Responses by 253 parents to the question: How often do you feel depressed?



High numbers of children and parents indicated that they frequently feel worried in detention.

Responses by children and parents to the question: Do you have many worries or often feel worried?



The inquiry also identified that (AHRC 2014, p. 29):

- Longer periods of detention correlate with more acute mental health conditions.
- It is difficult for children to recover from past trauma or develop resilience necessary for adult life in detention settings.
- Detention impedes the capacity of mothers to bond with their babies.
- Detention may impede the learning, development, socialisation of pre-schoolers and prevent healthy attachment to family members.
- Detention may disrupt the healthy development of school aged children and presents unacceptable levels of harm for their safety and wellbeing.
- Detention puts adolescents at risk of mental illness, emotional distress and self-harming behaviour, and impedes their social and emotional maturation.

Detention is dangerous for children. The inquiry report identified that from January 2013 to March 2014 there were numerous assaults and self-harm incidents in the detention centres. These incidents included (AHRC 2014, p62):

- 57 serious assaults
- 233 assaults involving children
- 207 incidents of actual self-harm
- 436 incidents of threatened self-harm
- 33 incidents of reported sexual assault (the majority involving children); and
- 183 incidents of voluntary starvation/hunger strikes (with a further 27 involving children) (AHRC 2014, p. 29)

PROLONGED SEPARATION OF FAMILIES

The role of family is central in the successful resettlement, psychosocial wellbeing and economic participation of refugees. Policy changes over the last 15 years have resulted in only narrow opportunities for family reunion under the Australian Government's Humanitarian Program. Under current arrangements family members of protection visa holders in Australia receive the lowest priority for processing. For those people who arrived by boat post 19 July 2013, there are no options for family reunification including for unaccompanied minors. Prolonged periods of family separation can frequently cause extreme distress for families, and risk successful settlement for children and families. Additionally, civil society groups have expressed concerns that the Australian Government's definition of family is not sufficiently broad, that there are limited places available for family reunification, and the application process is unreasonably onerous and costly (Refugee Council of Australia, 2015).



Children with Disability

The last 25 years have seen progress in the promotion, protection and fulfilment of rights for children and young people with disability although many serious challenges remain.

The introduction of the *Disability Discrimination Act 1992* (Cth) made it unlawful to directly or indirectly discriminate against a person with disability in certain areas of public life including education and the provision of goods and services. The legislation has had a positive impact in improving social inclusion and accessibility for children with disability in a general sense, but there are serious limitations. For example, the process for addressing discrimination claims involves independent conciliation by the Australian Human Rights Commission as a first step, with matters going to court if conciliation cannot be reached. In practice, this means that it is possible for resolutions to breaches of children's rights to be settled confidentially rather than being resolved in open court, reducing the opportunity to address systemic discrimination and create progressive human rights jurisprudence through the legal system. The time it takes for resolution of matters may also mean that a child with disability has already missed out on opportunities to enjoy their rights, such as in lost school years, for example.

Moreover, the *Disability Discrimination Act 1992* exemption clauses continue to permit disability discrimination such as in the *Migration Act 1958*. Under s. 65 of the *Migration Act*, almost all visa applicants must satisfy the health requirement in order to be granted a visa. The current arrangements for the migration health test

mean that migrants and refugees with a disability are routinely refused entry to Australia as a result of an assessment of the potential health costs associated with their illness or disability (Ethnic Disability Advocacy Centre Inc 2009). This mandatory health requirement means that all members of a family group will be denied visas on the basis that one member has not been able to meet the health requirement. Consequently, many families have to make the difficult decision to leave behind a family member with a disability in order to build a life in Australia (Ethnic Disability Advocacy Centre Inc 2009).

EDUCATION

Following the introduction of the *Disability Discrimination Act 1992* (Cth) the landmark case of *Finney v The Hills Grammar School* successfully challenged the decision of a kindergarten to refuse five-year-old Scarlett Finney admission based on assumptions made about her condition as a child with spina bifida (*Finney v The Hills* 2000). The case was effective not only in setting a strong precedent in favour of inclusive education, but also in raising public awareness of the continuing segregation of children with disability from mainstream schooling. Subsequently, the Disability Standards for Education 2005 were introduced, outlining minimum requirements to ensure students with disability are able to access and participate in education on the

Children and young people with a disability experience higher rates of violence and abuse than other children, and often experience multiple and ongoing episodes of violence.

Robinson (2013, p. 10)

same basis as other children. Today, however, many thousands of children with disability are still educated in "special schools" or "special classes" within mainstream schools. Available evidence suggests this segregation is on the rise, particularly for children with autism or cognitive impairment. This is coupled with significant concern about the use of restrictive practices in both "special" and mainstream schools (Gearin 2011). While there are many wonderful teachers and aides doing one of society's most challenging jobs, there are reports across Australia that children are being tied to chairs, locked in isolation rooms, physically restrained and penned in outside areas under the guise of 'behaviour management'. Following a complaint of a student with disability being locked in a cage, the Australian Capital Territory Government (2015) announced an investigation into the incident.

INSTITUTIONAL CARE

A report released in August 2015 by the Victorian Commissioner for Children and Young People detailed a year-long investigation into sexual abuse of children in residential care in Victoria. It confirmed the appalling level of violence perpetrated against children and young people in these settings. Amongst other things, the investigation found:

- 75 per cent of children in residential care who had been subject to sexual abuse are female. (p. 51)
- Aboriginal children and young girls are significantly over-represented in the number of children in residential care facilities. (p. 53)
- Young children with disability are accommodated with older children with known sexually problematic or abusive behaviours. (p.14)
- Children, including those with disability, are subject to restrictive and intrusive care practices and deprivation-based practices. (Victorian Commissioner for Children and Young People 2015, p.18).



SOCIAL AND STRUCTURAL INCLUSION

The *UN Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Australia in 2008, embedded the social model of disability into the implementation of children's rights. Contrary to the medical model which takes a diagnostic approach to viewing children with disability as impaired or deficient and requiring care, the social model views disability as a result of social and structural barriers to inclusion. With this in mind, policy-reform initiatives in the child rights space are increasingly disability aware, although there is still significant room for improvement. For example, the National Framework for Protecting Australia's Children 2009 - 2020 (COAG 2009) includes a very limited number of initiatives that specifically focus on protecting children and young people with disability from violence and abuse. Only two of the five initiatives have a national focus, and none provide a comprehensive approach to identifying the incidence, prevention or response to violence, abuse and neglect experienced by children with disability.

DECISION-MAKING

Article 7 of the CRPD recognises the evolving capacities of children to participate in decision-making and their right to receive appropriate supports in order to do so; hence policy in the disability services space is increasingly child focused and age appropriate. However, children and young people with disability are not provided with adequate opportunities or accessible information to assist them to express their views freely in matters that affect them and there is no national, comprehensive approach to seek the views of children and young people with disability. A lack of communication aids and support from an early age are key barriers preventing children and young people with disability from participating in decision-making processes. Prevailing attitudes that assume that children and young people with disability do not have the same interests, issues and insights as other young people, and that they belong within a specialist disability sector continue to create a significant barrier to the participation of children with disability in community life.

FORCED STERILISATION

Forced sterilisation, particularly of girls with disability and children with intersex variations, is an ongoing practice in Australia (People With Disability Australia 2013, p.6; Women With Disabilities Australia 2013, pp.26-27; Organisation Intersex International Australia 2013, pp.3-4). State and territory guardianship legislation and some other child protection acts, such as the *Children and Young Persons (Care and Protection) Act 1998*, regulate and provide a degree of protection but there is no law explicitly prohibiting forced sterilisation of children, except where there is a serious threat to health or life (People with Disability Australia 2014, p.32). The ongoing practice of forced sterilisation has been identified as an act of violence, a form of social control, and a form of torture by the UN Special Rapporteur on Torture (United Nations General Assembly 2013, p.11), and as a form of violence by the UN Committee on the Rights of the Child (2011, p.10). Since 2005, UN human rights treaty bodies (United Nations Committee on the Rights of Persons with Disabilities 2013: p.5; UN Committee on the Rights of the Child 2012: p.14; United Nations Committee on the Elimination of Discrimination against Women 2010, p.8; UN Committee on the Rights of the Child 2005, p.10), UN special procedures (United Nations General Assembly 2013, p.23) and international medical bodies (Women With Disabilities Australia 2013, p.86) have made recommendations to Australia to enact national legislation to prohibit forced sterilisation. The Human Rights Council (United Nations General Assembly 2011, p.15) made similar recommendations as an outcome of the Universal Periodic Review of Australia in 2011 and again in 2015.

In September 2013, a Senate Community Affairs References Committee Inquiry into involuntary or coerced sterilisation of people with disability and children with intersex variations recommended the prohibition of forced sterilisation only if an adult with disability has the 'capacity' to provide consent, and that where a person with disability, including a child, does not have 'capacity' for consent, substitute decision-making laws and procedures may permit sterilisation (Senate Community

Affairs References Committee 2013a, p.ix). The Australian Government (2015) response to the Inquiry retained the focus on better regulation and non-binding guidelines rather than prohibition of forced sterilisation, effectively accepting current legislative and practical frameworks for the authorisation of forced sterilisation of children with disability in Australia.

JUVENILE JUSTICE

In 2005 the UN Committee on the Rights of the Child (2005, p.15) expressed concern about the over-representation of children with disability in the juvenile justice system in Australia. It recommended that Australia address issues for children and young people in conflict with the law "without resorting to judicial proceedings". Despite this recognition there has been no coordinated approach to research and implement measures to address this issue.

Children with disability are three to four times more likely to experience sexual abuse than their peers, with many not having the language or ability to communicate the abuse.

(Coulson Barr 2012, p. 9)

Growing up in Australia

ARIANE'S REFLECTION



My name is Ariane, I am 23 years old and newly engaged.

I have gone through a lot throughout the past 10 years, in regards to my right to a proper and fair education. I went through a lot of bullying that started when I was 13 years old and continued until my graduation from high school. Not from the people you suspect, but from those who were employed to assist me. I went through everything, from being called names to being told when I should and shouldn't go to the toilet. This also meant I had my human rights exploited to the point where I wet myself coming back from an excursion because I was too scared to ask my aids to take me to the toilet due to their attitudes towards the whole situation.

Since that day I have been asking myself the same question as to why people like this continue to work in the disability care and support industry when the rights of the children and young adults they're working with are not their main priority, rather their priority is to shame the person they are working with. Without the support of advocates around my family and me, I would not have made it through my high school years.

My intention now as a young adult is to make sure this does not happen to others with disabilities through my systemic advocacy. I've been an advocate since I was 14 years old and will continue to do it for as long as my determination allows. I am sick of young people constantly suffering because they feel there is no one to speak for them, I make a promise to every young person out there who's had their rights taken away to be their voice so that people with disability can live long and fulfilling lives without fear of anger or judgement from others.

I would like to take this opportunity to thank my mentors, George Talaporas (Youth Disability Advocacy Services), Trisha Maloney and the great Stella Young without whom I could not continue to do this. I would also like to express my love for a particular woman who saw the need to support children with cerebral palsy and their families and made an effort to make this come to life, the founder of the Cerebral Palsy Network Victoria, Joy Garner, aka my mum, without whom I would not be the determined person I am today to make change within society. I would also like to thank Women with Disabilities Australia (WWDA). The WWDA Youth Network only started in 2015, and I have already been able to participate in a Youth Disability Forum and video for the United Nations Population Fund. Thank you to WWDA for giving me this opportunity and I look forward to working with you more in the future.

"Without the support of advocates around my family and me, I would not have made it through my high school years."





Children and young people who are Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI)

The past 25 years have seen a significant shift in the perception, rights and experiences of LGBTI young people in Australia. While the rights and perceptions of same sex attracted people have seen a dramatic improvement through the repealing of laws that criminalise homosexuality, the introduction of protective legislation and greater representation in the media, the rights and public perception of transgender, gender diverse and intersex people still lag behind.

With the decriminalisation of homosexuality, all states and territories have applied age of consent laws equally to all sexual participants and practices. The exception to this is in Queensland, where the age of consent for vaginal and oral sex (16 years old) still differs for the age of consent for sodomy (18 years old) (*Criminal Code Act 1899* (Qld), s 208; s 215).

On August 1, 2013 *The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) inserted new grounds into the *Sex Discrimination Act 1984* (Cth) which make it unlawful to discriminate against a person on the basis of sexual orientation, gender identity and intersex status under federal law.

Despite this important step forward, LGBTI people in Australia still experience discrimination, harassment and hostility in many parts of everyday life: in public, at work and study, accessing health and other services and securing proper recognition of their sex in official documents (AHRC 2014).

State and Territory laws now require similar amendments to achieve consistency. Further work needs to continue regarding schools for trans, gender diverse and intersex young people, including access

to appropriate toilets, changing and shower facilities and where relevant, ensuring the ability to wear uniforms that most accurately reflect the person's sense of self. Bodies such as the Safe Schools Coalition, which exist nationally and in some states and territories, are making efforts to educate students and teachers about gender diversity and require greater support. The Victorian campaign Gender is Not Uniform has made some headway (Minus18 2014). The discussion promoted by the Tasmanian Anti Discrimination Commissioner seeking amendments to laws to recognise trans and gender diverse people in Tasmania is endorsed and it is recommended that similar amendments be adopted in all other states and territories (Anti-Discrimination Commissioner, Equal Opportunity Tasmania 2016).

For gender diverse and transgender young people, barriers that prevent access to medical treatment remain. Currently Family Court approval is required for gender reassignment treatment for children even in circumstances where the child and parents have given consent. Changes in 2013 removed this requirement for puberty-delaying medication as this is considered reversible. However the decision to prescribe irreversible adult hormones available at age 16 still

requires court approval. This can create unnecessary emotional distress for young people and their families. (Family Court of Australia 2013).

Religious exemptions to the anti-discrimination laws exist at the federal level (and in most states and territories with Tasmania being the major positive exception) and allow religious organisations, including religious private schools, to discriminate on the basis of religious beliefs. Faith based schools in New South Wales have reportedly defended their right to expel gay students (Tovey 2013).

The result of this abuse is increased rates of depression, anxiety, self-harm and suicide attempts (Hillier et. al. 2010, p. 50-53).

Despite these hardships, community recognition for the experiences of LGBTI young people is increasing, and young people themselves are displaying high levels of activism and community engagement (Smith et. al. 2014, p. 82-83). Reactive models to LGBTI youth support should not be the only approach. Preventative models designed to challenge broader homophobic and transphobic perceptions need to be employed, including youth advocacy services, health promotion campaigns and school engagement programs.

WHO IS LGBTI IN AUSTRALIA?



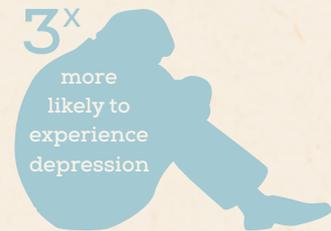
11 in 100 Australians are of diverse sexual orientation, sex or gender identity (AHRC 2014).

VERBAL AND PHYSICAL ABUSE



61 per cent of same sex and gender questioning young people report being **verbally abused** and 18 per cent report being **physically abused** because of homophobia (AHRC 2014).

MENTAL HEALTH

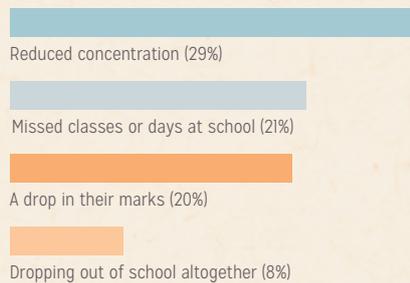


Gay, lesbian, bisexual and transgender people are **three times more likely to experience depression** compared to the broader population (AHRC 2014).



1.7% of children born in Australia are estimated to be intersex (a person whose chromosomal, gonadal or anatomical sex is not exclusively 'male' or 'female')

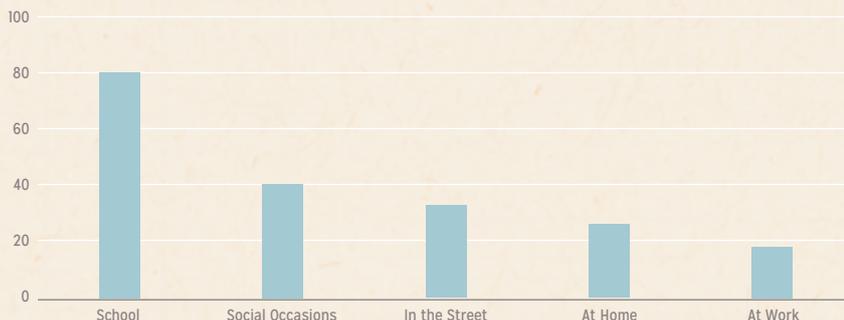
80 per cent report discrimination or abuse taking place in schools, leading to:



Birth Certificates

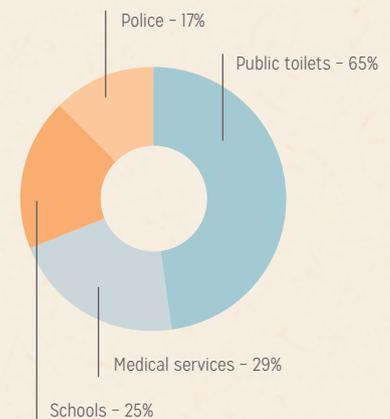
Having accurate documentation including birth certificates is of vital importance to young trans and gender diverse people. While significant progress was made federally in 2011 in relation to passports, progress across the states and territories with powers in relation to birth certificates has been slower.

Where does homophobia and transphobia take place for those who experience it?



(Hillier et. al. 2010, p. 45)

Places that transgender and gender diverse young people avoid



(Smith et. al. 2014, p. 61)

Growing up in Australia

RORY'S REFLECTION

I think I was four years old when I first told my best friend's mum that I was a boy. I remember her laughing and saying how that couldn't be true and how I was just a 'tomboy'. I felt happy enough to play with the other boys and have my hair short. I remember always being 'mistaken' for a boy during my childhood and how much it embarrassed my mum. Around the age of 12 to 13 I became really worried about how people perceived me. I was so scared of hitting puberty and having my body change in a way that felt irreversible and wrong. I began exercising

every night and at 12 began a pathway that would descend into a pretty serious and unhealthy addiction to exercise and later on, an eating disorder. I didn't learn the word 'transgender' and what it meant until I was 17 and by that time I'd been struggling through a puberty that felt wrong for me. Despite my parents being such a support in most areas of my life, they couldn't understand what I was going through and talking through my emotions and feelings inevitably became awkward and emotionally distressing. It took me years to finally research, discover and put words to my experiences and by that time I was an adult and had had years of my life taken up by needless anxiety, depression and feelings of loneliness. I'd had to stop doing sport and extra curricular activities while my academic study suffered as I became increasingly sick with an eating disorder at the age of 16. The medical professionals I had access to including my GP, school counsellor and psychologist

had little to no knowledge about LGBTI+ issues and that made the feelings of isolation so much worse. Professional psychologists and psychiatrists who were trained in gender diversity were expensive and difficult to access. If I or if any of the people around me had had the knowledge or understanding of LGBTI+ experiences, then I honestly believe that I would not have struggled so much with my own identity. Now that I have access to some amazing support structures and have met people who can relate to my experience, I've come to a point of reconciliation where I'm happy with my body and identity and honestly feel proud to be me. That said, medical treatments and changing name, gender and sex markers on legal documents are still determined by largely inaccessible and complex processes for a lot of gender diverse individuals, especially for people under the age of 18.



Chapter Five:

Health

5.1 Overview

Overall, the health care, health status and rate of mortality of Australian children has continued to improve in recent years, albeit not as dramatically as in earlier decades. Globally, Australia tends to rank in the middle of the cohort of developed countries, leaving ample room for improvement. Children from disadvantaged or vulnerable groups have poorer health and developmental outcomes. Such inequities in health care access and in health and developmental status set children on diverging trajectories with gaps that continue and often widen throughout life.

The CRC incorporates a number of Articles that directly or indirectly speak to the rights to health care and the opportunities for optimal health outcomes for all children. The most notable opportunity for further improvement is the extent to which children and young people are consulted and involved in their care and in the design of child- and youth-friendly facilities and service models.

This chapter looks at progress across three specific areas of health care in the 25 years since the CRC was ratified:

Access to Quality Health Services outlines how access to primary care is of particular importance to reducing inequities and improving outcomes in childhood and throughout one's lifetime. There is particular emphasis on inequity affecting Aboriginal and Torres Strait Islander populations and those of culturally and linguistically diverse backgrounds. Poverty is flagged as a pervasive and overlapping factor. Investment in early intervention programs, an integrated approach to care and better use of data are highlighted as important elements in continuing progress.

Access to Quality Mental Health Services describes how there has been increased awareness in the need for enhanced and more accessible mental health services in the last 25 years. This section highlights the importance of general practice and the role of Headspace in providing early intervention mental health services to 12 to 25 year olds. The emergence of social media offers new opportunities for effective and equitable engagement of children and young people.

Physical Health explains that infant and child mortality has been reduced over the past 25 years. Injury is noted to have decreased yet continues to remain the most common cause of death and hospitalisation for children and young people. There is increasing prevalence of a number of chronic conditions, most notably type 2 diabetes, corresponding with disturbing rates of obese and overweight children, with Aboriginal and Torres Strait Islander children being at substantially increased risk. Introduction of a multi-sector approach to early, effective screening and health interventions is recommended to disrupt the pathways to ill health.

5.2

Access to Quality Health Services

25 YEARS OF THE CRC

The widening gap between need and access

Child health and developmental inequities are unjust, unnecessary, systematic and preventable, and exist in all western countries (Whitehead 1999). Research from Growing up in Australia, the Longitudinal Study of Australia's Children, demonstrates that social disadvantage is associated with unequal outcomes across most measures of physical and developmental health. These are evident early in childhood, widen over time and have a clear social gradient with worse outcomes associated with increasing disadvantage (Nicholson et al. 2012). This can result in future inequity for the next generation of children (Braveman et al. 2011; Council on Community Paediatrics (COCP) and Committee on Native American Child Health (CNACH) 2010). The Australian Early Development Census shows that by the time children start school, there are clear inequities. According to the 2012 results, children who lived in the most disadvantaged areas in Australia were not equipped with the developmental skills they needed to flourish at school compared to children living in the most advantaged areas (Centre for Community Child Health and Murdoch Children's Research Institute, 2013).

Publications such as *The Spirit Level* (Wilkinson and Pickett 2010) reveal that countries with high degrees of income inequality have poorer child health and wellbeing outcomes. Internationally and in Australia disadvantaged children are more likely to have health and developmental problems, including cerebral palsy, obesity, learning difficulties, developmental delay,

intellectual disabilities, behavioural difficulties and be developmentally vulnerable (COCP and CNACH 2010; Berry et al. 2010; Brooks-Gunn and Duncan 1997; Flores and Committee On Pediatric Research 2010; Goldfeld et al. 2012; Heckman 2008; Reading 1993; Reading 1997; Spencer et al. 2009; Marmot 2010). The current health and education systems are fundamentally mismatched to address the prevalence of many of these conditions, particularly for those children living in more adverse circumstances.

Importance of access to health care to address inequities in child health

The right to equitable health naturally extends to the right to equitable health care (Hall and Taylor 2003; Schofield 2007) which includes access to, use of and quality of health care, from health promotion, prevention and early identification to timely intervention and treatment (Whitehead and Dahlgren 2006). Countries with good primary care have better health outcomes across one's lifespan from infant mortality and low birth weight to life expectancy (Starfield and Shi 2002).

We know that health care inequities occur where there is unequal access to services based on demographic variables rather than need (Braveman 2006; Whitehead 2000). In 1971, Tudor Hart coined the phrase 'the inverse care law', whereby "the availability of good medical care tends to vary inversely with the need for it in the population served" In other words, those with the best health have greater access to high quality health care than those with the worst health (Hart 1971, p.36).

ONGOING ISSUES AND CONCERNS

Challenges of access to health care for population groups

Families of low socioeconomic status or education and families from a minority ethnicity have been found to be associated with less access to primary and specialist health care when adjustments are made for health status (Whitehead 1999; Goddard and Smith 2001; Jolly et al. 1991; Pearce et al. 2007; van Doorslaer et al. 2006; Cass et al. 2005).

In Australia it has been found that children from culturally and linguistically diverse backgrounds who are socially disadvantaged, have more difficulty accessing primary health and early intervention services compared to their more advantaged peers. Reasons for this include waiting times, cost, lack of awareness, complexity of referral pathways and language barriers (Woolfenden et al. 2014a; Woolfenden et al. 2014b; Woolfenden et al. 2013; Carbone 2004). Children of refugees and asylum seekers face difficulties accessing health care services through both legislative and cultural barriers.

Children in out-of-home care are another group with higher rates of poor developmental, physical and mental health outcomes (RACP 2006). These inequities are not resolved on entering care and are compounded by frequent placements and changes of location. The transient nature of care results in a lack of continuity of high quality health care, despite huge needs (Cass et al. 2005). OOHHC pathways in NSW have attempted to ameliorate

this with health checks within 30 days of placement, but when children move placements disrupted continuity occurs (RACP 2006).

It is erroneous to claim that equitable health care can improve health on its own without consideration of the social determinants of health that lie outside the health care system (Marmot 2010; Marmot et al. 1997; Maynard 1999). For example, Aboriginal and Torres Strait Islander children in remote Northern Territory communities have some of the highest rates of contact with clinicians of any child in Australia, yet they continue to have poor health. Relying on healthcare services to provide clinical care for children when problems develop will be insufficient to close the gap in health outcomes (Bar-Zeev et al. 2012). There should be an equivalent emphasis on supporting families to mitigate the adverse effects of stress on maternal and child health, frequently related to issues such as housing, drug and alcohol problems, and family violence (AMA 2013).

EMERGING ISSUES

Lack of data to monitor variations in health care quality and distribution

There are scant national data on variation in quality in Australian paediatric healthcare. The 2015 Australian Atlas of Healthcare Variation provides some data for a handful of conditions, based on 2013 Pharmaceutical Benefit Scheme and hospital admitted data (Australian Commission on Safety and Quality in Health Care 2016). While a number of data sources capture care for children in primary and tertiary settings, they are not readily accessible, often lack key indicators and are largely unlinked. Furthermore, while the data sources for inpatient and Emergency Department (ED) care are reasonably robust, data on care provided by paediatricians and allied health professionals working in secondary care, including private practice, hospital outpatients, and community centres, are poor to non-existent.

Lack of access to GP's for children's health care

Over the past two decades, Medicare data show that children have made up an ever-smaller proportion of primary care visits and that there has been an absolute decrease in longer consultations for children (Freed et al. 2011). This has occurred despite a 12 per cent increase in the population of children in Australia over the same period (ABS 2014). Many children attend EDs, with children the fastest-growing group burdening this sector, outpacing adults (Freed et al. 2015). Nationally, outpatient waiting times for medical clinics are reported to have soared (although objective data to refute or support this have not been published). Outpatient clinic waiting times for relatively straightforward conditions (e.g. constipation, simple allergy, behavioural problems), range from three to 18 months.

This situation has a number of adverse impacts including:

- Overwhelming and unsustainable demand at public hospitals.
- Reduced access to public specialist care for children with more complex conditions.
- Deterioration of children's health placing further burdens on the child and their family, including more time away from school and work.
- Increased costs of care, given the high costs of hospital vs. primary care.
- Likely de-skilling of GPs, as children with more complex conditions are referred on for care.

Given that a well-trained primary care workforce underpins the health of a population, this has grave repercussions for the future health of Australian children and hence the health of the adults they will become (Starfield et al. 2005).

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Invest in early interventions such as nurse home visiting and high-quality early childhood development programs. These programs decrease mortality in low-income communities (Mays and Smith 2011) and reduce inequities in child health, wellbeing and development. In the long term they have been shown to reduce high school dropout rates and criminal behaviour, increase employment, and delay child rearing (Anderson et al. 2003; Shonkoff 2003; D'Onise et al. 2010; Guralnick, 1998; High et al. 2008; Ramey et al. 1999; National Research Council and Institute of Medicine 2000; Marmot 2010).
2. Invest in services that 'find' children and their families who may be 'hidden' from our current system, requiring a shift from the presumption that it is the family's responsibility to present to services and negotiate the system (Raman et al. 2007).
3. Provide integrated services for health and education. Models of more integrated approaches include multidisciplinary teams, co-location of services and care coordination. Key to an integrated approach is ensuring that everyone involved can participate in the consultation and planning process, which may require 'time off' from clinical duties; funding for training; and ensuring there are enough staff to make the model workable (Schmied et al. 2015).
4. Improve use of existing data to monitor quality, impact and access. For example, Australia's relative success in the area of immunisation (with almost no inequalities noted in the Picture of Australia's Children report 2012) is thought to have the Australian Childhood Immunisation Register data at the core of its success (AIHW 2012). Being able to outreach to unimmunised children – allowing parents and practitioners to easily note immunisation state and report regularly – has been key to improvement.

5.3

Access to Quality Mental Health Services

25 YEARS OF THE CRC

At the time the CRC was ratified in Australia in 1990, there was increased awareness of the need to do more for vulnerable youth. *Our Homeless Children*, known as 'The Burdekin Report' (HREOC 1989) drew attention to young homeless people, many of whom were experiencing mental health issues. As a result of the inquiry, funding for Innovative Health Services for Homeless Youth led to many of the first specialist health services in Australia (Department of Health and Ageing 2007).

A second enquiry into youth homelessness in 2008 found that numbers of homeless young people had doubled (National Youth Commission 2008). There is growing understanding of the issues that contribute to homelessness and mental health problems, especially trauma. Mandatory reporting laws in all states aim to protect children and young people from significant harm.

In 2015 the second Australian Child and Adolescent Survey of Mental Health and Wellbeing, titled *Young Minds Matter*, conducted between 2013 and 2014, found 13.9 per cent of four to 17 year olds were assessed as having a mental disorder in the previous 12 months (Department of Health 2015a, p. 4). Between the first (conducted between 1998 and 2000) and second surveys, the prevalence of depressive disorders for six to 17 year olds in Australia increased from 2.1 per cent to 3.2 per cent (Department of Health 2015a, p.14).

Mental health problems among young people aged 12 to 17 years are of even more concern and include psychological distress (25.9 per cent of females and 14.8 per cent males had high or very high levels), self-harm (10.9 per cent had previously self-harmed) and suicide-related behaviour (7.5 per cent had seriously contemplated suicide in the previous 12 months) (Department of Health 2015a, pp.9-12). The survey highlighted the need to better target services for young people at higher risk (Department of Health 2015a, pp.27-28).

Encouragingly, the more recent *Young Minds Matter* survey found services for mental health problems had almost doubled over a 15-year period. Service use was higher for children and adolescents with more severe disorders (Department of Health 2015a, p.iii). Since 2006, Headspace, the National Youth Mental Health Foundation providing early intervention mental health services to 12 to 25 year olds, has provided a system-based and networked

approach to providing youth mental health services while raising awareness of issues. One hundred Headspace centres, supplemented by online services via eHeadspace, have expanded access to community-based and rural mental health services for young people. An independent evaluation found Headspace could expand its reach of marginalised groups (Muir et al. 2009, p.xvii).

Investment in the Young and Well Cooperative Research Centre has increased understanding about how technology can be used to improve access to services for young people, particularly those who are marginalised and/or living in rural areas. The first Young and Well National Survey (Burns et al, 2013) found that although young men often do not seek help until they reach a crisis, technology presents an opportunity to engage them in healthcare and self-management of life stressors (Burns et al. 2013, p.6).

In December 2014, the National Mental Health Commission conducted a review of mental health programs for the Commonwealth Government. In November 2015 the Government provided its response on mental health reform: *Contributing Lives, Thriving Communities*. For children in their early years through to adolescence, the reform proposes:

- A school-based mental health program to help build resilience skills.
- Access for children and young people to telephone and web-based support through a digital mental health gateway and to stepped care arrangements through Primary Health Networks.
- A national workforce support initiative assisting clinical and non-clinical professionals and services that work with children.
- Partnership approaches at a regional level between clinical and non-clinical support services.
- Ongoing funding for Headspace (Department of Health 2015b, p.15).

The Federal Government reforms also aim to increase access to culturally sensitive mental health services for Aboriginal and Torres Strait Islander children and young people and a new national suicide prevention strategy is providing leadership and infrastructure to support a systematic regional approach to community-based suicide prevention.

ONGOING ISSUES AND CONCERNS

There are ongoing concerns for the mental health of children and young people from vulnerable groups, especially Aboriginal and Torres Strait Islander people, children and young people with disability, those who are sexuality and gender diverse, seeking asylum, experiencing socioeconomic disadvantage and/or living in rural areas (Department of Health 2015b, p.3).

From 2001 to 2010 suicide rates for Aboriginal and Torres Strait Islander females aged 15 to 19 years were 5.9 times higher than those for non-indigenous females and 4.4 times higher for males (ABS 2012).

Furthermore, the rate of over-representation of Aboriginal and Torres Strait Islander children and young people in the justice system continues to rise. From June 2011 to June 2015, the level of over-representation of Indigenous young people aged 10–17 in detention increased from 19 to 26 times the rate of non-Indigenous young people (AIHW 2015, p. 2). The mental health of young Aboriginal and Torres Strait Islander people suffers badly when they are imprisoned.

The 2014 Australian Human Rights Commission (AHRC) National Inquiry into Children in Immigration Detention, found 34 per cent of children in detention centres had serious mental health disorders, compared with 2 per cent in the Australian population (AHRC 2014a, p.2). High rates of serious mental health disorders were also noted among detained children a decade earlier in the report *A Last Resort? National Inquiry into Children in Immigration Detention* (HREOC 2004, pp.13-14).

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) has expressed ongoing concerns about the mental health of asylum seekers in detention. In the community, refugees and asylum seekers face considerable barriers to accessing mental health services, compounded by varied entitlements and supports, including a lack of, or lapse in, Medicare eligibility (Paxton 2015).

For gender and sexuality diverse young people, homophobia, transphobia and heteronormativity is having a serious impact on their mental health. A national

online survey found 41 per cent had thought about self-harm and/or suicide; 33 per cent had harmed themselves; and 16 per cent had attempted suicide (Robinson et al. 2014, p.v).

The Children's Rights Report 2014 highlighted the "absence of conclusive evidence about the types of programs and practices that work for children and young people" (AHRC 2014b p.99) and called for the evaluation of programs including online programs, digital technologies and helplines, taking into account the views of children and young people (AHRC 2014b p.102).

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Ensure equity of access to mental health services at primary, secondary and tertiary levels, with special attention to vulnerable children and young people, especially Aboriginal and Torres Strait Islander, sexuality and gender diverse, and those living in remote areas.
2. Provide adequate mental health services to asylum seekers and refugees, including access to health interpreters and access to specialist assessment and treatment, by child and adolescent psychiatrists and other mental health specialists (RANZCP 2015).
3. Further support the wide implementation of the Safe Schools program to counteract homophobia and transphobia in schools to promote better mental health for gender and sexuality diverse young people.
4. Embed children's and young people's participation in the design of mental health services.
5. Enhance training and engagement of children, young people and health professionals regarding rights in health care and promotion of the Charter of the Rights of Children and Young People in Healthcare (Children's Hospitals Australasia and Association for the Wellbeing of Children and Healthcare 2010).

6. Provide greater investment in the use of technology to help address gaps in access to services in rural areas and for hard-to-reach marginalised groups.
7. Invest in further research into intentional self-harm, with or without suicidal intent, by children and young people.

From 2001 to 2010 suicide rates for Aboriginal and Torres Strait Islander females aged 15 to 19 years were 5.9 times higher than those for non-indigenous females and 4.4 times higher for males.

(ABS 2012)

5.4 Physical Health

25 YEARS OF THE CRC

Overall, the physical health of Australian children has never been better. According to the Australian Institute of Health and Welfare (AIHW), deaths in Australian infants and children have decreased from 8.8 to 4.2 per 1,000 live births over the last two decades (AIHW 2010, p.300). Newborns have benefited from improved antenatal and neonatal health care, prevention and management of infection, and better treatment for congenital anomalies. In infants and young children, many deaths have been prevented as a result of increased awareness about risk factors for SIDS, and new universally-funded vaccination programs (Department of Health 2015c).

Funding of Hepatitis A and Influenza vaccines for Aboriginal and Torres Strait Islander young people offers further protection for this vulnerable group (Department of Health 2015c). In children aged 10 to 15 years, the introduction of new vaccines for varicella and human papillomavirus and use of the pertussis booster has reduced morbidity in young adults and will have long term impacts on the physical health of the population through decreasing future rates of cervical cancer and neonatal pertussis infection (Department of Health 2015c).

In children, death rates due to accidents, injury and poisoning decreased each year between 1999 and 2010 (AIHW 2015a, p vi), likely reflecting community education and legislation regarding the use of seat belts and bike helmets, hot water temperature control and pool fencing (AIHW 2015).

Injury remains the most common cause of death in children however, and there is potential for further reduction of preventable causes, including drowning deaths in children aged five and under in swimming pools. (AIHW 2015)

Particular attention should be paid to Aboriginal and Torres Strait Islander children for whom death rates from accident, injury and poisoning are two to three times higher than in non-indigenous children (AIHW 2015a, p vi).

Despite increased survival rates for very preterm babies and children with congenital anomalies, the rate of disability in Australia is stable at about 4 per cent. Some preventable disabilities are missed by these statistics, a case in point being foetal alcohol spectrum disorders, which are highly prevalent in some populations, including in remote Australia, but are not identified as a 'disability' (Fitzpatrick 2015).

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(AIHW 2015)

For the three most common chronic childhood diseases, the prevalence rate of asthma has decreased but rates of cancer and type 1 diabetes are stable (AIHW 2012, p.ix). Conversely type 2 diabetes in children has increased in association with overweight and obesity and approximately 400 new cases occur each year in those aged 10 to 24 years (AIHW 2014, p.viii). Prevalence is eight times higher in Aboriginal and Torres Strait Islander children aged 10 to 14 years and four times higher in those aged 15 to 19 years (AIHW 2014, p.viii). Few data are available for outcomes for thousands of rare, usually chronic and complex diseases that contribute to high morbidity and mortality and poor quality of life, and significantly impact our health system and resources (Anderson 2013).

A set of 56 national indicators is used to monitor key health and development outcomes in childhood and risk factors for adult ill-health. Some suggest room for improvement: rates of low birth weight (6 per cent) and overweight and obesity in children five to 14 years (23 per cent) are high, and rates of breastfeeding are low (15 per cent at six months) (AIHW 2012, p.x). On a positive note, there has been a fall in rates of tobacco use, passive smoking and alcohol misuse in children under 15 years. (AIHW 2012, p.x).

A limitation of national data is that it obscures disadvantage in some populations. For example, from 2008 to 2010 the risk of death in infancy or childhood was twice as high in Aboriginal and Torres Strait Islander populations and in children living in remote Australia compared with other Australians, and was increased

in children of low socioeconomic status (AIHW 2012, p.12). Data from the 2007 Child Dental Health Survey showed that decay was common, occurring in 45 per cent of children aged six years and 39 per cent of children aged 12 years (Mejia 2012, p.12). Rates of decay were approximately twice as high in children living in remote settings or in areas with low socioeconomic status and in Aboriginal and Torres Strait Islander children (AIHW 2012, p.34).

Similarly, low birth weight is twice as common in babies born to Aboriginal or Torres Strait Islander mothers (12 per cent) than non-indigenous mothers (AIHW 2012, p.58), while breastfeeding to four months of age is half as likely in Aboriginal and Torres Strait Islander infants (19 per cent) as in non-indigenous infants (AIHW 2012, p.31). Rates of passive smoking in the home are highest in Aboriginal and Torres Strait Islander children (22 per cent), those living in remote and very remote locations (10 per cent) and those disadvantaged socioeconomically (12 per cent) (AIHW 2012, p.64). These differences likely reflect poor maternal education, lack of access to services and social disadvantage.

Low birth weight is twice as common in babies born to Aboriginal or Torres Strait Islander mothers (12 per cent) than non-indigenous mothers.

(AIHW 2012, p.58)

Novel data from the first Australian Health Poll articulates the problems the Australian public perceive to be the most important for the health of Australian children and youth. These include: excessive screen time, obesity, inadequate physical activity, unhealthy diet, bullying, illegal drug use, family and domestic violence, internet safety, child abuse and neglect, and suicide (Rhodes, 2015).

ONGOING ISSUES AND CONCERNS

National data suggest that most Australian children enjoy good physical health but that there are unacceptable pockets of inequity. To optimise the health and wellbeing of future generations, attention must be paid to disrupting the causal pathway to ill health. This includes: promoting a healthy pregnancy; addressing the social determinants of health such as housing, access to health services and vaccination; increasing maternal health literacy; preventing emerging infectious diseases and injuries; and decreasing misuse of alcohol and drugs. Conditions relating to 'lifestyle', including foetal alcohol spectrum disorders, type 2 diabetes and obesity, and mental ill-health are contributing increasingly to poor physical health, particularly in Aboriginal and Torres Strait Islander children and a future challenge is to redress this disadvantage.

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Introduce a national, coordinated, evidence-based approach to screening and management of disorders and evaluation of the effectiveness of interventions. Many of the problems that stem from disadvantage extend beyond the health portfolio and their resolution requires inter-sectorial cooperation. For example, one component of the national strategy to address overweight and obesity includes education about healthy eating and physical activity programs in schools (Hetherington 2015).
2. Implement of a national plan for rare, chronic and complex diseases (Jaffe 2010) and a plan to address foetal alcohol spectrum disorders (Australian Government 2013).
3. Articulate a long-term, holistic and whole-of-government approach to close the health gap between Aboriginal and Torres Strait Islander people and non-indigenous Australians, through COAG's Closing the Gap strategy.



Chapter Six:

Justice

6.1 Overview

Children and young people come into contact with the justice system in various ways: being in conflict with criminal laws, as victims and witnesses, in asserting their civil rights, or in particular contexts such as the family law or child protection systems. As such, a very large number of the rights enshrined in the *Convention on the Rights of the Child* (CRC) are relevant to the operation of the justice system.

This chapter discusses issues relating to the operation of the juvenile justice system and concerns relating to access to justice. The over-representation of young Aboriginal and Torres Strait Islander people in the criminal justice system has been consistently increasing over the last 25 years and has reached a crisis point. This is emblematic of a number of issues with the criminal justice system, including the operation of certain criminal laws that impact on children and young people, a lack of appropriate sentencing options for young people and policing practices that target particular groups. At the heart of the problem is a failure to respond

appropriately to address the underlying issues of poverty and disadvantage faced by particularly vulnerable groups.

Despite the establishment of a number of important youth specific legal services, many young people face difficulties accessing or participating in the justice system. In addition to a lack of access to legal assistance and information for young people, many court processes do not cater appropriately for the participation of young people or ensure that the best interest principle is paramount in decision-making. These concerns are felt most acutely in the family law and child protection systems.

6.2

Children in the Criminal Justice System

25 YEARS OF THE CRC

While recent years have seen an overall decrease in the total number of young people in detention, there continues to be concerning trends of increasing over-representation of Aboriginal and Torres Strait Islander young people in juvenile detention and a substantial increase in the number of young people being remanded rather than sentenced (AIHW 2015, p. 1; AIC 2011, p.4). In June 2015, Aboriginal and Torres Strait Islander children aged 10 to 17 were, on average, 26 times as likely as non-indigenous children to be in detention (AIHW 2015, p.11). Of concern also is the alarming increase in numbers of children imprisoned in Queensland and the Northern Territory in recent years (AIHW 2015, p.13). The increase in disproportionate representation of young people in detention from vulnerable backgrounds can be largely attributed to an over-reliance on criminal justice approaches to responding to “at risk” or vulnerable children and young people.

In 1991, soon after Australia ratified the CRC, the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations to address the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system. The recommendations were largely directed at addressing the underlying reasons why people come into contact with the justice system in the first place. Although state and territory governments have reformed some aspects of law and policy since then, these steps forward have been matched in other instances by regressive and punitive measures, such as the criminalisation of minor offences, and mandatory sentencing which removes the discretion of judges to take into account the particular circumstances of each case (for example, s 401(4) *Criminal Code Act 1913* (WA)).

It is now widely understood that various forms of social and economic disadvantage can increase the likelihood of young people coming into conflict with the law. These include low education attainment and unemployment, substance misuse, intellectual disability, mental health conditions, child abuse, neglect and exposure to family violence (Higgins & Davis 2014, p.4). The criminal justice system is an inappropriate vehicle for addressing these social and economic issues faced by vulnerable and at risk young people.

Australian governments now have access to good information on what alternative approaches legislatures, social services, police, the judiciary and communities can and should be taking. Off the back of this information, a number of initiatives have

been introduced which recognise the underlying reasons why children and young people come into contact with the criminal justice system. These include youth specific courts; the availability of alternative sentencing options; public health models that target behaviour in young people and empower parents; ‘justice reinvestment’ initiatives focusing on localised, place-based decision-making; and programs providing police mentoring to young people (Higgins & Davis 2014, pp.6-9).

ONGOING ISSUES AND CONCERNS

Despite repeated calls for reform, Queensland continues to treat 17 year olds as adults in the criminal justice system (UN Committee on the Rights of the Child 1997; 2005; 2012). Although Tasmania and the Australian Capital Territory have raised the minimum age of criminal responsibility to 10 years in line with other states and territories, no action has been taken in any state or territory to raise the age of criminal responsibility to the lowest internationally accepted age of 12 years (UN Committee on the Rights of the Child 2007; 2012).

Additionally, programs aimed at addressing underlying social and economic determinants and community-led rehabilitation are limited in terms of size, location and resources (Higgins & Davis 2014, p.11). Undeniably, the political will to commit resources to upscale initiatives, and ensure systematic approaches across government, is limited. The result is that, instead of children and families being supported in the community in schools and in child and family support systems, children at risk are “increasingly dealt with by systems of control” and negative, punitive criminal justice interventions have become a norm (Baldry et al. 2015, p.19, 147).

Although state and territory criminal justice systems generally provide for a range of means through which children can be diverted away from formal interaction with the system (AIHW 2014, p.1), enduring practices and the introduction of some regressive measures continue to limit the degree to which young people benefit from such mechanisms. These include:

- Certain criminal offences, such as public order and motor vehicle offences, that disproportionately affect particular groups of people (Cunneen, C 2001, p.8).

- Policing practices including the over-policing of particular groups of young people (Baldry et al. 2015, p.150).
- Bail practices and increasing numbers of children detained on custodial remand (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011, [7.103] – [7.106]), often complicated by ‘welfare’ concerns and a lack of accommodation options for juveniles due to homelessness or housing instability (Richards 2011, p.5-6).

The Australian Law Reform Commission reported in 1997 on the variable physical standards of juvenile detention facilities. Although improvements have been made since then, ongoing concerns persist. For example, an investigation published by the Northern Territory Children’s Commissioner in August 2015 highlighted a range of ongoing concerns at one youth detention centre (Office of the Children’s Commissioner, Northern Territory 2015, p.6-51).

In 2013, the Senate Legal and Constitutional Affairs References Committee recognised that “[t]he consequences of the failure to effectively address criminal behaviour and the underlying causes of crime can be seen in the continued increase of incarceration rates and the failure to improve public safety” (SLCARC 2013, [6.76]). High levels of incarceration result in unjustifiable economic and social costs for individual children, families, communities and governments.

For Aboriginal and Torres Strait Islander communities in particular, the very fabric of community and identity is threatened by high levels of incarceration and failure of numerous governments to systematically and comprehensively address underlying social and economic causes of contact with the criminal justice system. Despite recognition that all governments must take a leadership role to address this problem through long-term commitment, working with communities, providing resources and reforming law and policy, children remain waiting for the political will to address this shocking and worsening crisis.

RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments, provide the necessary human, technical and financial resources to:

1. Commit to the full implementation of the recommendations of:
 - The Royal Commission into Aboriginal Deaths in Custody (1991).
 - The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing: Indigenous youth in the criminal justice system* report (2011).
 - The Senate Legal and Constitutional Affairs References Committee *Value of a justice reinvestment approach to criminal justice in Australia* report (2013).
2. Articulate a long-term, holistic and whole of government approach to implementing these recommendations through COAG’s Closing the Gap strategy. This approach should include, among other things:
 - Recognition of the need to address underlying social and economic causes of children and young people coming into contact with the criminal justice system (including, for example, lack of appropriate community care and support for children with cognitive disability and/or mental health issues, particularly in rural and regional areas).
 - Establishing justice targets and strategies aimed at significantly reducing the number of Aboriginal and Torres Strait Islander children and young people in detention.
 - Developing a commitment to working in genuine partnership with Aboriginal and Torres Strait Islander communities, leaders and representative bodies.
 - Investing sufficient resources to ensure practical implementation.
3. Ensure that detention occurs as a last resort for any person up to and including the age of 17, including by:
 - Reforming sentencing and bail laws which limit judicial discretion to apply individual, fair and appropriate sentences and ensure that all legislation includes the principle that detention must only be used as a last resort.
 - Ensuring the provision of appropriate accommodation options so that children are subject to remand only when necessary.
 - Increasing the availability and use of diversion and non-custodial sentences.
 - In Queensland, amending the *Youth Justice Act 1992* (QLD) to ensure a child is defined as a person under the age of 18 years.
4. Review the current minimum age of criminal responsibility with a view to raising it to an internationally acceptable level.

6.3

Access to Justice for Children

Children are involved in the legal system as family members, consumers, employees, tenants, students and drivers, as well as complainants, respondents, victims or offenders. They face the same barriers to access to justice as adults, but these are compounded due to their age and status as minors.

The 1997 *Seen and Heard: Priority for Children in the Legal Process* report examined issues surrounding children and legal processes in Australia in a broad context. The report disclosed evidence of the problems and failures of legal processes for children including:

- Consistent failure to consult with and listen to children in matters affecting them.
- Lack of coordination in the delivery of services to children, particularly due to issues of jurisdictional divisions between different agencies and levels of government.
- A concentration of specialist services and programs in metropolitan areas, disadvantaging children in rural and remote areas.
- Court processes which are bewildering and intimidating for children.
- School exclusion processes that do not include procedural fairness and natural justice.

These issues were found to be compounded due to children's reluctance to complain or seek redress when they had problems, often due to their lack of knowledge surrounding the procedures for seeking redress (ALRC 1997, p.95). Since the *Seen and Heard* report there has been some progress in areas relating to access to justice, including an increase in the number of child specialist community legal centres such as the National Children's and Youth Law Centre (NCYLC), the Youth Advocacy Centre in Queensland and Youthlaw (including Youthlaw Online) in Victoria.

State-wide legal aid services are generally provided in each state and territory for children as defendants in criminal matters. Representatives are appointed for children in some (not all) contested family law proceedings but operate under a 'best interests' model rather than direct representation.

Developments have been made with the aim of improving the experience of children who are required to come into contact with the justice system. These include the use of CCTV and other mediums for children to give evidence, physical modification of courtrooms, support persons for child witnesses and an increase in the use of alternative sentencing options, such as youth conferencing (Richards 2009).

In June 2012, the *Family Law Act 1975* (Cth) was amended to include a reference to the CRC (section 60B(4)). As an 'additional object', however, it only plays a role in the interpretation of the statute in the event of an ambiguity (Parkinson 2012), and does not have the effect of implementation into Australian law.

A recent initiative has seen the formation of an agreement between Commonwealth and state governments, the National Partnership Agreement on Legal Assistance Services, designed to "facilitate access to justice for disadvantaged people in Australia through the delivery of legal assistance services" (COAG 2015, p.1). However, there remains a lack of uniform national reform to ensure that children are informed of their legal rights, have access to legal advice and representation and come into contact with a child friendly and child appropriate legal system.

ONGOING ISSUES AND CONCERNS

Since the *Seen and Heard* report there has been a lack of focussed reporting on how children access legal advice and representation.

The LAW Survey (2012) found that 42.5 per cent of 15 to 17 year olds reported experiencing at least one legal problem in a 12 month period, while 18.4 per cent of 15 to 17 year olds reported experiencing at least one substantial legal problem in a 12 month period.

(Macourt 2013, p.2).

Higher rates of legal problems were reported for young people who had been homeless (89.6 per cent), had a mental or physical disability (79.9 per cent and 61.2 per cent respectively) or were Aboriginal and Torres Strait Islander (55.6 per cent) (Macourt 2013, p.5). However, only 36.5 per cent of those that did experience legal problems sought advice, much lower than the overall average of 51.1 per cent. A further 32 per cent handled their legal problems without advice and 31.4 per cent took no action at all (Coumarelos et al. 2012, p.105).

This suggests that children remain unlikely to seek legal advice or representation when faced with a legal problem. This is a significant issue, particularly given evidence that if left unaddressed civil

legal issues can escalate into criminal matters (Productivity Commission 2014, p.24). Accordingly, this raises the need for strategies designed with the experience and aptitudes of children in mind. Options might include social media, peer education networks and services experienced in working with young people. Notably, statistics provided by the NCYLC show that approximately 12 times as many children under 18 used its email advice service between 2010 and 2014, indicating that legal services tailored to the needs of children are more likely to be utilised than traditional types. Given the very over-representation of Aboriginal and Torres Strait Islander young people in juvenile justice, there is also a need for culturally competent legal services delivered by Aboriginal and Torres Strait Islander community-controlled organisations.

Funding of children's legal services is also an area of concern. The Productivity Commission's *Access to Justice Arrangements* report found that more than \$200 million a year is needed to narrow Australia's growing justice gap for people facing disadvantage and noted that the gap in independent lawyer services for children was particularly perturbing (Productivity Commission 2014, p.30).

The scope of Legal Aid's service provision to children nationally is confusing to both young people and people advocating on their behalf, particularly due to the fact that there are inconsistencies in services between jurisdictions within Australia. Further, there are significant barriers to access to non-legal services such as family relationship centres. In this context of complex referral systems, it is essential that children can more easily recognise legal problems and access advice and support.

POLICY RECOMMENDATIONS:

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Establish youth specific legal centres in jurisdictions that currently do not have them (Tasmania and the Northern Territory) to ensure young people have access to legal services tailored to their specific needs.
2. Make a concerted effort to provide means by which children and others advocating on their behalf are supported to navigate complex legal systems, including funding culturally competent legal services delivered by Aboriginal and Torres Strait Islander community-controlled organisations.
3. Provide children with appropriate child-friendly complaint and reporting mechanisms to ensure more effective access to justice for children across the justice system.
4. Examine how the national curriculum might be also engaged to educate children about their help seeking options.
5. Adequately fund and support Community Legal Centres (CLC), Legal Aid Commissions and Aboriginal and Torres Strait Islander Legal Services (ATSILS) to engage with young people, and make their services more accessible to young people. An appropriate approach could reflect the findings of the Law and Justice Foundation: providing legal assistance to disadvantaged people needs to be targeted to those most in need, joined-up with other services (non-legal and legal), and timely, to minimise the impact of problems and maximise utility of the service (Pleasant 2014).



Chapter Seven:

Identity

7.1 Overview

The right to identity defined in Article 8 of the CRC protects the personal characteristics, relationships, cultural connections and histories that make children who they are, and their ability to actively participate in society.

This chapter discusses what it means to be a citizen, and meaningfully enact that citizenship through participation in the home, community and government. The importance of access to organisations and institutions that can support this participation is discussed, as is the impact of recent changes to the Migration Act 1958 (Cth). We also look at how the Internet has both helped and hindered the rights of the child.

While for most, birth registration and certification is assumed, for many Aboriginal and Torres Strait Islander children this basic right has not been

fulfilled. This results in exclusion from activities and access to services as children and young people are unable to prove their identity or age.

Aboriginal and Torres Strait Islander children's connection to culture has been severely disrupted by many former and current Government policies. This chapter discusses the impact of land rights, language, the Stolen Generations, self-determination and closure of remote communities with recommendations that ensure the Aboriginal and Torres Strait Islander children can flourish and maintain a strong connection to culture.

7.2

Participation, Identity and Citizenship

25 YEARS OF THE CRC

The UN Committee on the Rights of the Child identified in its 2012 Concluding Observations that:

- Aboriginal and Torres Strait Islander children are significantly compromised in their pursuit of cultural and linguistic identity as a result of incarceration, removal from community and due to child protection interventions.
- Children who are detained or born into detention – even in community-based detention – face significant risks as a result of the *Migration Act 1958* (Cth), which requires all asylum seekers to be detained without time limits and judicial review.
- There are a significant number of children exposed to violence, who feel unsafe. Their experiences seriously affect the development of their identities, their ability to participate and their mental health and wellbeing.

Participation is more than 'having a voice'. Participation is about the right to 'be' recognised and respected – in a household, in a community, in institutions and within states.

(Macourt 2013, p.2).

This requires the broader community and decision-makers to place more value on children's views and experiences.

Progress in Australia has included:

- The establishment of a National Children's Commissioner, in 2013. This was in response to civil society and community campaigns and the recommendation of the National Framework for Protecting Australia's Children 2009-2020 (COAG 2009, p.16).
- Ongoing work of Children's Commissioners and Advocates in each state and territory responding to issues of concern to children (AIFS 2015).
- The establishment of a Children's e-Safety Commissioner, tasked with guiding children and young people toward safe experiences online and eradicating cyber-bullying (AIFS 2015).

ONGOING ISSUES AND CONCERNS

Some changes have contributed to worsening experiences of discrimination and exclusion for children and young people.

These include:

- The defunding of many federal youth initiatives including National Youth Week and the Australian Youth Affairs Coalition, compromising the mechanisms for ensuring young people and those who work with them to express and explore policy matters of importance or concern.
- The ongoing discrimination and disadvantage experienced by marginalised children including Aboriginal and Torres Strait Islander young people, young people living with disability and young carers (Listen to Children 2011).

- Increased access to digital technology; both a blessing and a curse, young people and guardians have to navigate the balance between protection from online harm and the benefits of digital technology.
- Children seeking asylum, who continue to be subject to immigration laws that prevent their permanent settlement in Australia. Children born to parents in immigration detention centres are particularly vulnerable (see Children in Focus).
- Recent changes to the *Australian Citizenship Act 2007* (Cth) as discussed in the section on Children and Young People from Culturally and Linguistically Diverse Backgrounds are also highly problematic.

While 'active citizenship' – people getting involved in their local communities and democracy at all levels, from towns to cities to nationwide activity – is a popular term, this idea often overlooks the institutional and generational barriers to children's participation in the civic, social, economic and political life of the community. As an example, the recent development of a National Curriculum did not allow for children to contribute. For citizenship to be meaningful for children, it requires change on the part of adults in positions of power across government, the legislature and in many of our institutions and communities.

We should also give particular attention to ensuring rights are conferred to those children without official citizenship – particularly those under the guardianship of the State, those interacting with the justice system and those seeking refugee status.

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

1. Renew funding and support for mechanisms to improve understanding and build a culture of child-engaged policy making including:
 - Increasing support for the office of the National Children's Commissioner with a focus on child-engaged policy making. These agencies should aim to maximise the opportunities of children for expression and participation while reducing their exposure to experiences that result in harm.
 - Securing financial and institutional support for advocacy that is led by children and the sectors that support them.
 - Supporting a process for children and young people's participation in co-design of a civics curriculum that enhances the knowledge, skills and practices of children, parents, teachers, community members and policy makers.
2. Support the self-determination of Aboriginal and Torres Strait Islander children and young people together with their communities. This includes the free determination of political status to pursue economic, social and cultural development as defined in the United Nations Declaration on the Rights of Indigenous Peoples.
3. Repeal immigration and citizenship laws affecting dual-nationals, asylum seekers and those detained under criminal law that jeopardise the rights of children. This encompasses laws relating to children's own conduct, as well as that of their parents.

7.3

Birth Registration and Birth Certificates

25 YEARS OF THE CRC

Most Australians take it for granted that they can prove their identity by producing their birth certificate. Under international and Australian law, birth registration is a fundamental human right and a key to citizenship. However, a significant number of Aboriginal and Torres Strait Islander people miss out on the benefits of citizenship and struggle to fully participate in society because their birth has never been registered, or if it was, they cannot produce a birth certificate to prove it (Onemda VicHealth Koori Health Unit 2013 p.1).

Without a birth certificate, it is near impossible to obtain a driver's licence, passport or Tax File Number. Schools require a birth certificate before they will enrol a child and sports clubs will not allow kids to play unless they can prove their age to ensure they are playing in the right age group (Onemda VicHealth Koori Health Unit 2013 p.1).

In 2013, the Closing the Gap on Indigenous Birth Registrations project began, with the aim of quantifying the number of births not registered in Victoria, Queensland, Northern Territory and Western Australia. The project also aims to analyse the length of time between a birth, and the registration of that birth for Aboriginal and non-Aboriginal birth registrations. (Onemda VicHealth Koori Health Unit 2013 p.1)

ONGOING ISSUES AND CONCERNS

In 2009, the Committee on the Rights of the Child published General Comment No. 11 on the rights of Indigenous children, and stated: "that indigenous [sic] children, to a greater extent than non-indigenous children, remain without birth registration", and recommended that registration should be free and universally accessible.

A significant number of Aboriginal and Torres Strait Islander people miss out on the benefits of citizenship and struggle to fully participate in society because their birth has never been registered, or if it was, they cannot produce a birth certificate to prove it.

(AIHW 2015)

WHY THIS MATTERS: CASE STUDIES

The impact of the under-registration of Aboriginal and Torres Strait Islander births is an ongoing problem in Australia (Castan and Gerber 2015).

In Victoria, the East Gippsland Driver Education Program was established to address unlicensed driving and other road safety problems within Aboriginal and Torres Strait Islander communities (Australian Indigenous Health Info Net 2010). The initiative involved providing driver training and education to enable Aboriginal and Torres Strait Islander people to acquire the skills necessary to obtain a driver's licence. However, for many Aboriginal and Torres Strait Islander people these efforts did not result in the desired outcome of obtaining a driver's licence, because they were unable to satisfy VicRoads' proof of identity requirements. It became apparent that the births of one in six of the program participants had never been registered, and 50 per cent of the participants did not have a birth certificate.

The experience of two 15-year-old Indigenous girls involved in an employment program is a further illustration of the problem. They could not obtain Tax File Numbers (TFNs) because they didn't have birth certificates and, as a consequence, were taxed at the highest tax rate, significantly reducing their take-home pay. By the time they finished their job placements, they were still embroiled in the lengthy and intimidating process of obtaining birth certificates and therefore their TFNs. Their low level of take-home pay left the girls disillusioned with mainstream employment, and they withdrew from the program (Castan and Gerber 2015, pp.15-16).

In its 2012 *Concluding Observations*, the UN Committee on the Rights of the Child indicated that it:

"is concerned about the difficulties faced by Aboriginal persons in relation to birth registration. The Committee urges [Australia] to review its birth registration process in detail to ensure that all children born in Australia are registered at birth, and that no child is disadvantaged due to procedural barriers to registration, including by raising awareness among the Aboriginal population on the importance of birth registration and providing special support to facilitate birth registration for illiterate persons. It further urges [Australia] to issue birth certificates upon the birth of a child and for free" (2012, pp.8-9).

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth Governments provide the necessary human, technical and financial resources to:

1. Review and reform the birth registration system across Australia to ensure that all Australians can realise their right to birth registration and a birth certificate. The following reforms are likely to help increase the birth registration rates among Aboriginal and Torres Strait Islander communities and facilitate the acquisition of a birth certificate:
 - Increase awareness of birth registration as a human right, and emphasise the benefits that flow to children from having a birth certificate. Although birth registration is recognised as a human right in international law, in Australia it is more often perceived as a responsibility, rather than a right.
 - Develop more accessible mechanisms and processes for birth registration such as mobile birth registration units. In most Australian jurisdictions, birth registration systems are capital-city centric and individuals can only obtain a birth certificate in person or by post.
 - Invest in online processes and away from purely paper forms of birth certificates in order to make the birth registration process more accessible to all. Digital birth registration systems exist in other countries (Bangladesh, Pakistan, Sierra Leone and Kenya), and we should be closely examining these to see if they can be adapted to Australia (Gerber and Castan 2015).
 - Automatically issue the first birth certificate free-of-charge upon registration of Aboriginal and Torres Strait Islander births. Fees are a known barrier to accessing birth certificates. This would reduce the administrative costs of the Registry in assessing applications for a fee waiver.

7.4

Connection to Culture

25 YEARS OF THE CRC

In the past 25 years, Aboriginal and Torres Strait Islander children have been impacted by systemic issues of law and policy, which has limited or prevented connection to culture and continued the cycle of inter-generational trauma. As outlined in the Children in Focus section of this report, among the most poignant of children's rights violations in Australia's history is the tragic forced removal of Aboriginal and Torres Strait Islander children from their families that caused the 'Stolen Generations'. Today, generations continue to be separated from their communities by imprisonment or placement in foster care.

Since 2008 there has been renewed efforts to address the significant disparity of outcomes between Aboriginal and Torres Strait Islander people and non-indigenous Australians. Campaigns and actions have included the national 'Close the Gap' targets, the campaign for constitutional recognition and attempts to implement 'best interests of the child' and 'Aboriginal child placement' principles in justice and care.

The significant level of public support for the Prime Minister's Apology to the Stolen Generations in 2008 was seen as an indication of the growing need to repair the damage suffered by Aboriginal and Torres Strait Islander peoples in the past in order to protect their future (Reconciliation Australia 2011). However, there are still significant failings in Australian society, which prevent Aboriginal and Torres Strait Islander children and young people from participating effectively in society and having their voices heard.

ONGOING ISSUES AND CONCERNS

Land rights

The *Native Title Act 1993* recognises the traditional rights and interests of Aboriginal and Torres Strait Islander people to land and waters. However some feel it has failed to provide a reliable and efficient system for Aboriginal and Torres Strait Islander communities to re-establish connection to their land. *The Social Justice and Native Title Report 2015* found that overwhelmingly Aboriginal and Torres Strait Islander peoples are not satisfied with

what the native title system has delivered for communities, and there is a need for a new dialogue with governments to better realise their inherent rights to land, water and resources through native title (AHRC 2015 p.69).

Barriers faced by Aboriginal and Torres Strait Islander people in realising their rights and benefits under land rights and native title include:

- Various tax and regulatory standards placed on Aboriginal and Torres Strait Islander communities in the post determination phase.
- Conflicts between individual and communal property interests.
- Issues arising from the conversion of title (AHRC 2015 p. 69)

Language, religion and spirituality

The Aboriginal and Torres Strait Islander concept of health is a holistic one, including the social, emotional and cultural wellbeing of the community. There has been a resurgence in the teaching of Aboriginal languages at a community level (on an ad-hoc and privately funded basis). However language is still not a part of the national curriculum and many languages face extinguishment.

While quantitative data is not plentiful and there is a need for longitudinal studies to be carried out, anecdotal evidence suggests that learning Indigenous languages increases self-esteem, sense of identity and pride in Aboriginal and Torres Strait Islander students (Williams 2010, p.7).

Teaching and learning of Indigenous languages and cultures also has a positive impact on individual and community health and wellbeing. It also has a positive impact on learning outcomes and attendance and participation in school (Williams 2010).

Saving Indigenous languages is a matter of great urgency and is crucial to ensuring the protection of the cultural identity and dignity of Indigenous peoples and safeguarding their traditional heritage (UN Permanent Forum on Indigenous Issues 2008). Loss of Aboriginal and Torres Strait Islander languages signifies not only the loss of traditional knowledge but also the loss of cultural diversity. Biological, linguistic and cultural diversity are inseparable and mutually reinforcing, so when an Indigenous language is lost, so too is traditional knowledge on how to maintain the

world's biological diversity and address climate change and other environmental challenges (United Nations Permanent Forum on Indigenous Issues 2008).

Widespread racism exists in Australia, as recently exemplified by the continued racial vilification of Adam Goodes, an Indigenous football player and former Australian of the Year (Moore 2015). For Aboriginal and Torres Strait Islander children and young people who remain connected to their culture despite the trauma of past government policies and also participate in mainstream society, they often feel they walk in two worlds and can feel disconnected from both (Pearson 2006).

Stolen Generations

As outlined in the *Bringing Them Home Scorecard Report 2015* (National Sorry Day Committee 2015, p.6), there has been a "failure to implement human rights based frameworks for the protection of Aboriginal and Torres Strait Islander children based on the principle of self-determination". Australian governments have largely failed to successfully implement the 47 recommendations from the original *Bringing Them Home* report (1997).

Constitutional Recognition

On 28 November 2012, the Australian Federal Parliament agreed to appoint a Joint Select Committee to report on steps that can be taken to progress towards a successful referendum on Indigenous constitutional recognition (Parliament of Australia 2012). A final report was submitted on 25 June 2015. As four Prime Ministers have taken office since 2012, it is unclear what the timeline for a referendum on this topic will be. Calls for treaty mechanisms as first steps towards more meaningful self-determination have also been unanswered. While there has been some community consultation, there is a need for increased government engagement with children and young people. The issue of appropriate recognition is central to self-determination and Aboriginal and Torres Strait Islander identity in Australia (Law Council of Australia 2011).

Remote communities

In late 2014, the Western Australian government flagged the closure of up to 150 of 274 remote Indigenous communities (formerly missions) "because the federal government will no longer fund essential services to them" such as power and water (Collins 2015). Living in these communities was described by then Prime Minister Tony Abbott as a "lifestyle choice" despite connection to country being fundamental to cultural identity (Collins 2015). The lack of consultation and the forcing of families from their homelands will cause significant trauma to the children affected.

POLICY RECOMMENDATIONS

It is recommended that state, territory and Commonwealth governments provide the necessary human, technical and financial resources to:

Language, religion and spirituality

1. Ensure Aboriginal and Torres Strait Islander culture is taught in schools and in professional training settings with advice and assistance from Aboriginal and Torres Strait Islander peoples.
2. Invest in wide scale public education and understanding of Aboriginal and Torres Strait Islander culture to alleviate racism.
3. Engage Aboriginal and Torres Strait Islander communities in all discussions and decisions that impact their communities and provide for meaningful participation. Protect and promote the right to self-determination among those communities as well as develop strong relationships with Indigenous peoples.
4. Review and implement the 15 recommendations of the *Indigenous Languages Programmes in Australian Schools A Way Forward* report (Purdie et. al. 2008).

Stolen Generations

5. Redress the trauma of the Stolen Generations by implementing the 54 recommendations of the *Bringing them Home* report (HREOC 1997a)

Constitutional Recognition

6. Engage in widespread and meaningful consultation and education sessions on constitutional recognition with Aboriginal and Torres Strait Islander communities, including young people.

Remote communities

7. Engage in widespread and meaningful consultation and collaborative solution-generation with Aboriginal and Torres Strait Islander communities, including children and young people.
8. Implement sustainable and culturally appropriate services to manage any proposed transition of Aboriginal and Torres Strait young people from remote communities, including proper placement and mental health services.

The recommendations included in both the Safety and Protection Chapter 4 and Juvenile Justice Chapter 6 are also particularly relevant to the ensuring sustained connection to culture for Aboriginal and Torres Strait Islander children.

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Glossary

A

Australian Child Rights Taskforce

The taskforce is Australia's peak child rights network advocating for the fulfilment of child rights in Australia.

ABS

The Australian Bureau of Statistics is Australia's national statistical agency that provides official statistics on a wide range of matters that are of importance to Australia.

ACOSS

The Australian Council of Social Service is the peak body of the community services and welfare sector and the national voice for the needs of people affected by poverty and inequality.

AHRC

The Australian Human Rights Commission was established in 1986 by an act of the Commonwealth Parliament. It is an independent statutory organisation and reports to the federal Parliament through the Attorney-General. It is responsible for investigating alleged infringements under Australia's anti-discrimination legislation. The Human Rights and Equal Opportunity Commission (HREOC) was renamed as the Australian Human Rights Commission in 2008.

AIFS

The Australian Institute of Family Studies is the Australian Government's key research body in the area of family wellbeing conducting original research.

AIHW

The Australian Institute of Health and Welfare is a major national agency set up by the Australian Government to provide reliable, regular and relevant information and statistics on Australia's health and welfare.

ARACY

The Australian Research Alliance for Children and Youth is a national peak body for child and youth wellbeing. We focus on bringing researchers, policymakers and practitioners together to turn the best evidence on 'what works' for child and youth wellbeing into practical, preventive action to benefit all young Australians.

B

BBF

The Budget Based Funded Programme provides funds to child care and early learning and school aged care services in regional, remote and Aboriginal and Torres Strait Islander communities.

C

CALD

Culturally and linguistically diverse.

CCTV

Closed Circuit Television.

CCCF

The Community Child Care Fund, which forms part of the Australian Government's proposed Child Care Assistance Package, aims to fund child care providers for families who are socially or economically disadvantaged. The Community Child Care Fund is scheduled to commence on 1 July 2017.

CMY

The Centre for Multicultural Youth is a Victorian not-for-profit organisation supporting young people from migrant and refugee backgrounds to build better lives in Australia.

CRC

The United Nations Convention on the Rights of the Child is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. Australia ratified the convention on 17 December 1990.

CREATE

CREATE Foundation is the national peak consumer body representing the voices of children and young people with an out-of-home care experience (including kinship care, foster care and residential care).

COAG

The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia. COAG's role is to promote policy reforms that are of national significance, or which need co-ordinated action by all Australian governments. The members of COAG are the Prime Minister, state and territory Premiers and Chief Ministers and the President of the Australian Local Government Association (ALGA). The Prime Minister chairs COAG.

D

Disability Standards for Education

The Disability Standards for Education outlines the minimum requirements to ensure students with disability are able to access and participate in education on the same basis as other children.

E

Early Childhood Australia

Early Childhood Australia advocates to ensure quality, social justice and equity in all issues relating to the education and care of children from birth to eight years.

ECEC

Early childhood education and care.

ED

Emergency Department

F**FaHCSIA**

The former Australia Department of Families, Housing, Community Services and Indigenous Affairs was a department of the Australian Government formed in 2007. In 2013 the Department of Social Services (DSS) was established and assumed most of the responsibilities of FaHCSIA; with indigenous affairs functions assumed by the Department of the Prime Minister and Cabinet.

G**GP**

General Practitioner

H**Hague Convention**

The Hague Convention on the Civil Aspects of International Child Abduction is the main international agreement that covers international parental child abduction. It provides a process through which a parent can seek to have their child returned to their home country.

Headspace

Headspace is a National Youth Mental Health Foundation that provides early intervention mental health services to 12-25 year olds.

HIPPY

The Home Interaction Program for Parents and Youngsters is a free and voluntary two-year home-based parenting and early childhood program that helps parents and carers to be their child's first teacher.

HREOC

The Human Rights and Equal Opportunity Commission (HREOC) was renamed as the Australian Human Rights Commission in 2008.

L**LGBTI**

This term collectively refers to people who are lesbian, gay, bisexual, transgender, and/or intersex.

Listen to Children

The *Listen to Children* report is the alternative report to the Government, submitted to the UN Committee on the Rights of the Child by the Australian Child Rights Taskforce in 2011.

M**Medicare**

Publicly-funded primary funder of health care in Australia, providing access to medical and hospital services for all Australian residents and certain categories of visitors to Australia.

MYAN

The Multicultural Youth Advocacy Network Australia is Australia's national peak body representing multicultural youth issues and supporting a consistent approach to addressing the unique needs of multicultural young people in policy and practice.

N**NATSILS**

The National Aboriginal and Torres Strait Islander Legal Services is a peak body advocating at the national level for the rights of Aboriginal and Torres Strait Islander peoples within the justice system and working to ensure equitable access to justice.

National Apology 2008

On February 13 2008 the former Prime Minister the Hon. Kevin Rudd made a national formal apology to the Stolen Generations, Aboriginal and Torres Strait Islander people who were forcibly removed from their families, by Australian Federal, State and Territory government agencies, and church missions, from the late 1800s to the 1970s.

National Children's Commissioner

Australia's National Children's Commissioner helps promote the rights, wellbeing and development of children and young people in Australia. The *Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012* (Cth) was passed on 28 June 2012 to establish the National Children's Commissioner position within the Australian Human Rights Commission.

Native Title

A form of land title that recognises the unique ties Aboriginal and Torres Strait Islander groups have to land. This is embedded in Australian law and recognises rights over land where there has been a continuous connection to the land and waters through tradition and custom prior to sovereignty.

NCYLC

The National Children's and Youth Law Centre is a Community Legal Centre dedicated to addressing human rights issues for children and young people in Australia through legal change and is the only community legal centre of its kind in Australia.

NDIS

The National Disability Insurance Scheme is a national healthcare scheme for Australians living with a disability.

NECD Strategy

The National Early Childhood Development Strategy is an initiative of the Council of Australian Governments that aims to ensure that children's rights and needs are at the centre of policy development and service delivery.

NIRA

The National Indigenous Reform Agreement is one of six National Agreements which frames the task of Closing the Gap in Indigenous disadvantage. It sets out the objectives, outcomes, outputs, performance indicators and performance benchmarks agreed by the Council of Australian Governments.

NQS

The National Quality Standard is a key component of the National Quality Framework that sets a national benchmark for early childhood education and care, and outside school hours care services in Australia.

O**OECD**

The Organisation for Economic Co-operation and Development aims to promote policies that will improve the economic and social wellbeing of people around the world.

OOHC

Out-of-home care refers to alternative accommodation for children and young people who are unable to live with their parents. In most cases, children in out-of-home care are also on a care and protection order. The types of accommodation include kinship care, foster care and residential care.

R**RANZCP**

The Royal Australian and New Zealand College of Psychiatrists is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The College's work includes advocating for people affected by mental illness and advising governments on mental health care.

S**SNAICC**

The Secretariat of National Aboriginal and Islander Child Care is a national non-government peak body in Australia which aims to promote the rights, needs, and aspirations of Aboriginal and Torres Strait Islander children and families. The Secretariat is governed by a national executive of Aboriginal and Torres Strait Islander people.

Stolen Generations

The term Stolen Generations describes the Aboriginal and Torres Strait Islander children who were forcibly removed from their families by Australian Federal, State and Territory government agencies, and church missions, from the late 1800s to the 1970s. These removals were carried out under Acts of their respective parliaments, and the children removed were sent either to institutions or adopted by non-indigenous families. The policies of child removal left a legacy of trauma and loss that continues to affect Indigenous communities, families and individuals.

T**TFN**

Tax File Number

U**UN**

The United Nations is an international organisation founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter.

UN Committee on the Rights of the Child

The Committee on the Rights of the Child is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

UNCPRD

The United Nations Convention on the Rights of Persons with Disabilities is an international instrument adopted by the General Assembly on 13 December 2006. This Convention aims to promote, protect and ensure full and equal enjoyment of all human rights by persons with disabilities. Australia ratified the Convention on 3 December 2008.

UNDRIP

The United Nations Declaration on the Rights of Indigenous Peoples is an international instrument adopted by the General Assembly on 13 September 2007, by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). The Declaration establishes a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world's indigenous peoples. Australia endorsed the Declaration in 2009.

UNICEF Australia

The United Nations Children's Fund is a leading humanitarian and development agency working globally for the rights of every child. UNICEF Australia was established in 1966 to raise funds for overseas programs, advocate for the rights of all children and work to improve public and government implementation of child rights and support for international development.

W**WWDA**

Women with Disabilities Australia aims to combine gender and discrimination issues to other rights such as civil, political and social rights. An organisation that is run by disabled women, for disabled women.

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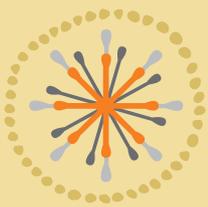
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For further information visit: www.childrights.org.au
Tara Broughan, UNICEF Australia, tbroughan@unicef.org.au
Matthew Keeley, NCYLC, matthew.keeley@ncylc.org.au



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