

**Submission -
Children's Rights report on implementing the
Convention on the Rights of the Child**

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*“The defeated and the down-trodden come to lack the courage to desire things that others, more favorably treated by society, desire with easy confidence”
(Sen, 1987, p.10).*

Since 1877 Berry Street has been committed to the right for all children to have a safe and happy childhood. Berry Street provides a range of services for children including Out-of-Home Care (OOHC) (foster, kinship and residential), family violence services and community based services that support vulnerable children and families.

Berry Street recognises that the most vulnerable children have specific needs when it comes to their rights. As such, Berry Street welcomes the opportunity to present a submission on the state of children’s rights in Australia. This submission has been developed with the input of our clients and staff who work directly with vulnerable children, such as those who have experienced early disadvantage, family violence and placement away from family.

Berry Street works closely with two groups of children and young people in Australia that are particularly vulnerable:

- Aboriginal and Torres Strait Islander children and young people
- Children and young people that are or have been in the care of State or Territory Child Protection.

In the case of Aboriginal and Torres Strait Islander children and young people, the ongoing impact of colonisation, dispossession and past policies of family separation have created a form of intergenerational trauma and disadvantage that warrants specific monitoring and intervention.

Children and young people in state care remain among the most vulnerable despite persistent State and Territory legislative overhauls, parliamentary inquiries and Ombudsman reports. Berry Street contends that when the state takes on the role of parent it is critical that the highest levels of scrutiny are applied to the appropriateness of the state care provided and the outcomes achieved for children and young people. Notably, from this cohort, is the additionally at-risk group of those who are exiting state care, in many cases into homelessness and trajectories of poor mental health, incarceration and physical ill health.

This submission is structured using the Charter’s clusters of rights, with a focus on those that are relevant to our perspective as an organisation working with vulnerable communities, families and children.

The submission begins with two case studies provided by young people who experienced deprivation of their rights during childhood. It then provides a brief overview of the impact on children of growing up in impoverished communities. Children growing up in these communities have their right to growing and developing in a safe and nurturing environment compromised. The submission then outlines further examples of deprivation of rights for children as the statutory child protection system intervenes to address the deficits that have become overwhelming for families and children in these impoverished communities.

Children's Rights to Protection, Participation and Development: Y-Change Case Studies

With the support of philanthropic partners, Berry Street has developed the *Y-Change Program* to train, support and assist young people who have experienced significant disadvantage in childhood to become advocates for change. Graduates from the program are supported to work as consultants and safely share their experiences and reflections on how to improve the rights of children and young people so that others are less likely to experience the disadvantage that impacted them.

Two participants from Y-Change provided case studies based on their childhood experiences.

Y-Change Case Study One: Surviving Childhood Abuse

I am part of the Y-change team from Berry Street and through that I have been given this opportunity to reflect on my experiences as a young person growing up in an unsafe and abusive environment and give suggestions that may help to prevent others living through a similar situation.

I grew up in an environment where I and other members of the family were constantly subjected to physical, emotional and psychological abuse. Rather than seek outside help, the members of my family who witnessed this abuse tried to manage it from within the family unit, but this only served to enable the abusers.

As a young child who had no other experiences to compare, and with no indication from the family unit that anything was wrong, I grew up believing my experience was "normal" and had no idea I had actually suffered abuse until I was in my early twenties. However, even though I was not conscious of it, the abuse that I suffered led to severe mental health problems throughout adolescence and, since they were never addressed, continued and worsened into adulthood. Because I didn't understand what was happening, I didn't know how to seek help. Moreover, there were several instances where outside witnesses had the chance to intervene but, for whatever reason, didn't.

Though the abuse that occurred was mostly kept within the family unit, there was at least one instance where it became dangerous enough that police were called. The police came and diffused the situation, although as far as I'm aware there wasn't any kind of follow up, and although the abuse was effectively prevented for that one night, afterwards it continued.

In terms of my mental health, there were multiple times where people expressed concern and noticed symptoms of mental illness; this came from fellow students, teachers and even my family GP, however no action was ever taken nor support offered. The family doctor verbally diagnosed me with depression and anxiety but made no official diagnosis and, besides suggesting multivitamins, gave no options for medication, therapy or anything to help manage the symptoms, and there was no follow up.

Unfortunately, I am not alone in this experience. There are many rights that children should have, including the right to be safe and feel safe, but who is monitoring these rights and ensuring they are met? Too often, it is left to the family.

The family units, in particular the parents or caregivers, are often in control of all resources a child might use to ensure their rights are being met, such as access to education and physical and mental health care. Reflecting on this, I have a few suggestions which may aid in less children falling through the cracks of the system, as I did.

Firstly, children and young people should be better educated about different forms of abuse (physical, emotional, psychological and sexual) and how to identify abusive behaviours.

This education must come from outside the family unit; if abuse is occurring within the home, it is difficult for a child to recognise it as such because for most children, at that point in their lives, the family home is all they've known so anything that occurs within that environment is automatically perceived as "normal". However, if they are taught what to look for they have a better chance of being able to see their family unit through an objective lens and determine whether their home environment is a healthy one or not.

As well as education about abuse, children and young people should also have access to better education about mental health issues. Statistics show that one in five Australians aged 15-19 will meet the criteria for serious mental illness (according to the 2014 Mission Australia's Youth Survey) and the number of deaths by suicide in Australians aged 15-24 is the highest it has been in decades.

There is a stigma surrounding mental health in our country, that it is something that shouldn't be talked about, but this is only making the problem worse. Young people need to know about mental illness, including how to recognise

symptoms of mental illness (such as depression, anxiety, PTSD, bipolar disorder and many others) in themselves and others, what kind of tools can be used to prevent or manage mental illness (such as different forms of therapy and/or counselling, medication, changes in lifestyle etc.), what kind of support is available and how to find it.

But education alone isn't enough. Without the proper resources to support young people, simply being made aware that they're in a bad situation could in fact be more harmful. We need to empower young people to feel confident, safe and in control of their life. These resources could include free access to counselling and/or therapy (for the child individually or for the family), information about what to do and where to go if they are feeling unsafe, legal advice, access to medical services and access to social services.

It is important that these resources are accessible outside of the family unit and that parents or caregivers will not be automatically notified if a child requests these resources as these are the kind of resources that are usually restricted and monitored by abusive families at the expense of the child.

Of course, the child should not be the sole person responsible for their own wellbeing. With this in mind, I believe it would be greatly beneficial for teachers, doctors, therapists, police and any other professional who may have contact with children and young people to be better trained to recognise signs of abuse, neglect and/or mental illness, with proper procedures put in place for how to approach the subject that emphasises support for the child involved. This should include follow ups with the child to assess if and how their situation is improving, and whether or not they are feeling safe.

Thank you for giving me this opportunity to share my experience and to speak up on behalf of children and young folk who may be stuck in abusive situations.

Y-Change Case Study Two: Surviving Residential Care

I have been (was) in Out-of-Home-Care since the age of 4 and in residential care until the age of 18. I have been involved with Berry Street Victoria since then.

I saw a lot of fucked up stuff whilst in Out-of-Home-Care and have dealt with workers who should have never been employed because they didn't know what they were doing or were horrible people. Examples:

- Worker not knowing how to make a 6 year olds bed
- A worker who almost burnt down the kitchen because they had never cooked before and put a kilo of rice in a pot with two cups of water
- A worker who left clients in the car for 45 minutes repeatedly while they went into KFC to get food at 7 p.m.
- A worker throwing out a client's PlayStation because they could not get it to work
- Workers who are obvious sociopath's threatening clients
- Workers getting into a physical altercation with clients
- Workers forgetting to repeatedly pick clients up from school

Being in resi care with workers coming on and off (shift) so much and them not knowing who you are or what's going on with you was exhausting and infuriating.

At one of the units I was in we were not allowed out of our rooms after a certain time and I got in trouble multiple times because I needed to go to the bathroom or get a drink of water after bedtime.

Workers also often didn't look into things if one client said something was going on and the other clients said the opposite.

One example..... all the bedrooms (in the unit) were connected with heating, there was no individual settings for each room for a very long period of time the heater would be turned on for all the rooms and my room in particular would overheat.... no one believes me cuz everyone else's rooms was fine up....until the point a light burnt-out from the heat and smoke alarms went off

We were not allowed at home, (in the residential unit), alone.....ever....for any period of time no matter the circumstances.....until it was too much hassle (for the worker) to do a school run I was not allowed out by myself

no matter what. Which has affected my growth, confidence in public transport, directional skills and feeling comfortable going out on my own anywhere.

I could go on and on if I had the time; there were good parts and bad parts but all I really want to say right now is that kids in residential care need to be prepared for when they're leaving care.

And that kids in residential care need a worker who knows what's going on for that kid and their relationships with other clients.

These two case studies highlight a number of areas where the rights of children are not being acknowledged and acted upon by systems that have obligations under the UN Convention on the Rights of the Child.

In the first case study, *Surviving Childhood Abuse*, the child's right to express their views on all matters that affect them (Article 12) was not acted upon by Police. Police could have sought their views on what was happening in the home and by doing so, identified the abuse. As an outcome of this their rights to protection and to access to treatment and support following maltreatment (Articles 19 & 39) were denied to them.

In this case study, opportunities to listen to and respect the views of the child were missed by Police, education and health authorities; arguably these systems do not seek out the views of children as standard practice and do not pay due regard to the views of children. Failure to do so compromises the rights of children to development including Articles 24, 27, 28, 29 and 39.

In the second case study, *Surviving Residential Care*, the child's right to express their views and have their views be given due regard (Article 12) was severely compromised. That this denial of rights occurred within the child protection and Out-of-Home Care system is particularly troubling. The environment described by the young person has stark reminders of the now discredited institutional care systems that predominated Australia's child welfare system in the 20th century.

Residential care, as experienced by this young person, was institutional, rigid, unsafe, lacked child centred care and failed to provide an environment in which the young person was supported to develop. The failure of the system to act upon the rights of the child to development and prepare children for leaving care is also highlighted. The experiences of this young person would not be unique. They highlight that their rights under Articles 12, 19, 24, 27, 28, 29 and 39 were not met. In addition, their rights under Article 31 to rest, leisure and to engage in play and recreational activities were severely compromised.

General Principles

Right to development (article 6) and right to standard of living including right to nutrition, clothing and housing (article 27)

All children have the right to an adequate standard of living and of education.

Communal disadvantage can get in the way of this right. It is now widely accepted that the experience of poverty in childhood can severely impact on a wide range of physical, learning, social and emotional outcomes for children (**Final report of the Australian Children's Wellbeing Project, Are the kids alright? (2016)**).

This report suggests that poverty (demonstrated in children going hungry and lacking of suitable clothing) has a deeply shaming effect on children and can affect their positive connection to education. The report suggests that 1 in 10 children in year 8 go to bed hungry (p.253). The report quotes the finding from the Australian Council of Social Service that 18 per cent of children under 15 are living in poverty.

What impact does this have on the right of children to healthy development and education?

The **Australian Early Development Census (AEDC), 2015** measures, across five developmental domains (e.g. health and well-being, language and cognitive skills), vulnerabilities. In Victoria 9.9 per cent of children are vulnerable on two or more of the five developmental domains. This is below the Australian average of 11.1 per cent. However, the AEDC outcomes can be measured by post codes. This provides an alarming spotlight on concentrated pockets of poverty and disadvantage. For example (these are all post codes in Victoria); in Morwell 38 per cent of children are vulnerable on two or more domains, in Broadmeadows it is 23, in Mooroopna 21.5 per cent.

In other words, there are identified areas in Victoria (Australia) where it is known that the children who grow up in these areas are more likely to have their childhood development severely impeded.

Further evidence of pockets of disadvantage is contained in the Jesuit Social Services report **Dropping off the Edge (2015)**. This report uses 22 different indicators of disadvantage that reflect factors that may limit opportunities for social wellbeing, community safety, access to housing, education and employment. Its key findings were that:

- disadvantage is concentrated in a small number of communities within Victoria;
- these communities experience a complex web of disadvantage and bear a disproportionately high level of disadvantage within the state;
- a number of these communities have been depressed for a long time demonstrating the persistent nature of the disadvantaged experienced by those living in these communities.

There is a high correlation between the **AEDC's** post code locations of increased children's vulnerabilities and the **Dropping off the Edge** findings of community disadvantage. For example Morwell, Mooroopna and Broadmeadows figure highly in both studies. These communities also carry the high rates of reporting to Child Protection (**Protecting Victoria's Vulnerable Children Inquiry, 2012**).

In these communities children are not provided with the same opportunities for development as children in other Victorian communities. This can be seen as a fundamental denial of children's rights.

These are also the children who largely make up the population of the youth justice and child protection service. The circumstances of these children and young people will now be discussed.

Respect for the views of the child (article 12)

Article 12 states that a child has the right to express their views on all matters that affect them.

Berry Street works with children who for various reasons may not be able to live at home with their family. The legal basis for this decision and for the rights of the child to be heard are established in Victoria by the **Children, Youth and Families Act 2005**. Currently the legislation, as amended in 2013, restricts the rights of children in care and protection matters to independent legal representation. Prior to this amendment children under the age of 10 could be separately legally represented. The Children's Court was empowered to make a judgment about the maturity and the capacity of the child under 10 to give instructions.

Berry Street refers to an illustrative Children's Court case from 2007 [DOHS vs Mr & Mrs B; 2007 Vic Children's Court Hearing date 03-06/12/2007, Presiding Magistrate Peter T Power]. This case highlights the importance of young children being heard in Children's Court processes and it highlights some of the enduring impediments and complexities associated with permanent care which the 2014 permanency reforms have not resolved.

In this case, transcript available from Children's Court website, a seven year old child, the oldest of three siblings, gives clear directions to her counsel and articulates very effectively her needs and those of her siblings, including for appropriate contact arrangements with their parents and each other.

In the afternoon of the third day legal counsel had spoken to AB (seven year old girl and eldest of 3 children all in care) in his chambers. In response to questions about residence and access AB said that:

She would like to see her father once each school holiday. She said I don't like Mum when she scares me. She wants to decide when she sees her parents. She does not want to live with Mum, Dad or Grandma.

She knew that she could not live long-term with her current carer and seemed to accept that without apparent sadness. **She wants to live with CB & MB (her siblings) and whoever their carer would be.** She does not want to live with the paternal aunt and if CB stays with her she would like to see CB every Sunday when they don't have anything on. She would also like to see her maternal grandmother.

AB also said to counsel that she did not care who signed consent forms for excursions and the like: I don't care who signs them. Dad or the carer can sign them - it doesn't matter.

A reading of the transcript illustrates a number of things that are directly relevant to supporting the rights of children to participate in decisions being made about themselves.

It is clear that this seven year old child is able to give effective instructions to her legal counsel and that she was well placed to communicate her siblings' needs and advocate for them. Under current Victorian legislation, a child in these circumstances today would not have the right to have her views heard by the Children's Court.

Despite the fact that many Out-of-Home-Care agencies (including Berry Street) have policies on children's rights and the importance of children participating in decisions about their future, there are times when young people are excluded from these conversations. The following are comments from Berry Street staff.

Frequently young people have decisions made without their involvement or without considering their wishes.

Sometimes decisions about where a young person is placed are based on the regional boundaries of Child Protection rather than the best option in terms of proximity to family or cultural connection. The case of a young Aboriginal male comes to mind. In this case the young person's family lived close to the boundaries of adjoining DHHS regions. Despite his plea to be placed close to family (but outside region that was managing his care) he was placed at a facility some hours' drive away.

Sometimes the risk of harm a child or a young person experiences in care is greater than that they experienced at home. I also cannot recall a time when a young person has chosen to be placed in their residential care unit or had any say over who else was placed in the unit.

Therapeutic specialists are required to assess each young person in a unit and develop an individualised support plan. There is no opportunity for a young person to have input into how they are to be supported in Out-of-Home-Care and thus their right to have their views listened to and respected is ignored. A collaborative plan developed with the young person would be less likely to be met with defiance or poor engagement.

These case studies are illustrative of the inability of the child protection system, through faulty legislation and procedural and practice deficiencies, to listen to the voice of children and young people in circumstances where significant life events are being decided.

Much has been written about the state of youth justice in Victoria. Two recent reports outline the violence that is being perpetrated against some young people in detention in our youth justice system.

The first report is from Victoria's Commission for Children and Young People, **The same four walls (2017)**. This inquiry began amid concerns that children and young people in detention were being isolated and locked down for extended periods without regard to relevant legislation or procedural rules. The review concluded that prolonged isolation was being used as a form of punishment; children and young people were enclosed alone between four walls with limited access to fresh air, human interaction, stimulation, psychological support and, in some circumstances, basic sanitation.

The report also noted that 2/3 young people in detention are victims of abuse, violence or neglect, 2/3 are subject to a child protection order, 1/3 have mental health issues and 1/4 have below average functioning.

The second report, Armytage and Ogloff **Youth Justice and Strategy Review (2017)**, commissioned by the Victorian State Government in response to broad community concern about the direction of youth justice, confirmed that young people involved in youth justice and youth detention were particularly vulnerable. 34 per cent of children on youth justice orders are in "Out-of-Home-Care" and on orders to the Department of Health and Human Services. The report estimated that 50-80 per cent of young offenders are exposed to chronic trauma.

Disadvantage begets disadvantage: Aboriginal young people in Victoria comprise 0.7 per cent of the 10-19 population group. Yet this group make up 16% of youth justice orders.

Gloomily the report notes that the re-offending rate of those placed on youth justice orders is 75 per cent (p.8). The reoffending rate for the youngest cohort of children and young people who are sentenced is even more alarming. Information from the Sentencing Advisory Council (2015) notes that the re-offending rate for the age group 10-14 years is 81 per cent (quoted in Berry Street **Submission to Victorian Parliamentary Legal and Social Issues Committee Inquiry into Youth Justice Centres (2017)**).

These factors, not unique to Victoria, point to the impact on children - especially younger children - of abuse, neglect and a range of negative life events at a time of particular vulnerability: childhood. These factors may also help to explain why the highest rates of reoffending are directly linked to being a younger age when first sentenced.

"...the younger children were, at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and to be sentenced to imprisonment in an adult court before their 22nd birthday... younger offenders are more likely to have been exposed to violence, abuse, neglect and chaotic dysfunctional lifestyles". (Reoffending by children and young people in Victoria. Sentencing Advisory Council, 2016 quoted in Berry Street 2017).

In Australia the minimum age for criminal responsibility is 10. The median international age for criminal responsibility is 13.5 (quoted in Berry Street submission to the **Parliamentary Legal and Social issues Committee, Inquiry into Youth Justice Centres in Victoria 2107**). This submission also noted the advice from the United Nations Committee on the Convention on the Rights of the Child (2007) that:

A minimum age of criminal responsibility below the age of 12 is considered by the Committee not to be internationally acceptable.

Solutions are complex, time consuming and sometimes politically unpalatable. Solutions will include:

- increasing the age of criminal responsibility from 10 to 14 to keep pace with our increasing knowledge of neuro-biology
- addressing the issues of adverse life circumstances by early and intensive family interventions
- increasing the number of youth diversion programs.

These are our most vulnerable young people. Currently the system whose purpose is to care and rehabilitate them, has failed and denied them their most basic right: freedom from abuse.

Children from vulnerable communities and families bring this vulnerability into our Child Protection and out of home services. Across Australia the numbers of reports to Child Protection and the numbers of children in out of home care are increasing. For example in Victoria reports to Child Protection have increased by 34 per cent since 2012 (**Australian Institute of Health and Welfare 2017**) and the number of children in out of home care has grown by 40 percent (**Productivity Commission 2017**). What happens to these children?

Two recent reports, Commission for Children and Young People **...safe and wanted... (2017)** and Ombudsman Victoria, **Financial support to kinship carers (2017)**, into the state of Child Protection in Victoria suggest that these children's rights to a family and to a stable childhood are not being met.

In Victoria (at August 2016) 944 children had more than four placement changes.

Significant numbers of children on court orders have no allocated DHHS worker. This number increased by 30 percent from 2015 to 2016. This includes children on the following orders:

- Family preservation (499 children)
- Family reunification (378)
- Care to Secretary orders (274)

Over 25 per cent of children do not have a complete case plan and 82 percent of Aboriginal children in Out-of-Home-Care have no cultural support plan (Figures are all from **...safe and wanted...**).

Without an allocated worker there is no possibility of purposeful case work with children and their families. How can a child be re-united with his/her family if there is no case plan and no work being done to address the issues that brought the child into care in the first place? In Victoria there are legislated timelines for the reunification of children and young people with their families. The intent of this legislation, to provide timelines for targeted work and timely decision making to ensure placement security, is commendable. But it needs to be backed up by resources and competent case practice.

Berry Street case workers have many examples of the cost of not providing timely and purposeful case practice.

"Gina" is a 15 year old Child Protection client. Her mother had significant mental health issues. Gina spent 18 months in care without any support services being put in place to assist and assess Gina's mother's capacity to resume care. To meet the two year time line and legislative intent of the Reunification order, Gina was returned home without adequate assessment and no follow up support. Gina returned to care a few months later.

"Jimmy" has four siblings who are all living with his parents. Jimmy is the middle child, with behavioral and mental health issues which led him to be out of his parents care. Jimmy has had a number of placements over a two year period. His behavior escalated and all contact with his family ceased. His aggression and ice use increased. Jimmy was placed in a secure setting. He was told that because he had been out of his parents care for over two years he was "never going home". Jimmy is currently in a residential unit waiting to be "transitioned to Lead Tenant".

Berry Street case workers also have many examples of permanent care being pursued as a procedural priority rather than in the best interests of children.

A foster family with four of their own children undertook care of two sisters with significant developmental trauma. Significant resourcing has been required in order to sustain the placement and to assist the girls in their recovery and emotional well-being. One of the sisters requires increasing levels of support as she gets older. The carers have made it clear that they are available as long term carers for the children but will require a consistent level of resourcing as the placement continues.

Despite this, following the implementation of the permanency reforms there is now constant pressure from the Department for these carers to offer permanent care. The carers and Berry Street have highlighted that if the carers agree to care for the girls under a permanent care order, financial and other supports will be significantly reduced and the care available to the girls will not meet their needs.

DHHS is pressuring Berry Street to convince the carers to agree to a permanent care order for the girls. Berry Street is not willing to coerce carers to agree to a permanent care order and supports the position of the carers that doing so is not in the best interests of the girls.

The matter remains unresolved and the carers are experiencing significant stress, pressure and uncertainty which creates additional burdens on them, their family and the girls in their care. The placement has been destabilised for no other reason than Child Protection pursuing a procedural approach to permanency rather than a client centred approach.

These examples suggest that:

- Children are being sent home, in order to comply with the court order without the necessary re-unification tasks being attended, often leading to a return to care.
- Children are being pushed in to permanent care because of legal time lines (permanency care amendments to Children, Youth and Families Act) without the opportunity for re-unification work, at the very least, to be attempted.
- Children and their placements with carers are managed as units of administration with little consideration being given to tailored individual planning.

Berry Street staff and clients have raised issues of unsafe client matching and loss of connection from family. These concerns highlight the “wicked” practice of treating placements of young children as “bed vacancy management” instead of seeking and/or creating a placement that meets the needs of the young person. The following case examples illustrate this difficulty.

Matching:

At times, a young person or a child has been placed in a particular residential care unit simply because there is no other available option. Little thought is given to matching to the needs of the other young people in the unit. For example, a young person was recently placed in a residential care unit with 3 co-clients. The young person had just been exited from a secure placement (Secure Welfare) due to the unreasonable risk of physical harm to Secure Welfare staff. Yet he was placed in an open unit with other vulnerable young people. The risk of harm to the existing residents of this unit did not seem important.

Connection with family and sibling separation:

In rural areas, an out of care placement may not be available. In a recent example, children from a rural area have been placed in a metro region. Connection with family, school and friends has essentially been cut off.

In another example, three siblings have been placed together in a foster family. The family has received additional supports and increased care giver payments to help with the children’s needs. As with other stable placements, DHHS has recently sought agreement from the carers to convert the placement to a permanent care placement, even though this would precipitate the loss of significant financial and other support.

As with other cases, the carers feel conflicted, pressured and are finding it difficult to resist the pressure from the Department to agree to a permanent care order. DHHS have also sought and expected Berry Street to exert similar pressure on the carers. Berry Street’s practice is not to coerce or pressure carers into placement arrangements that are not likely to be viable or in the children’s or carers best interests.

Berry Street is also cognisant of the difficulty in finding placements for siblings groups of three or more children, particularly those with high or complex needs. In this case should the carers not agree to a permanent care order for the sibling group, DHHS is obliged to try and recruit alternative permanent carers for the three children. Given the difficulty in finding permanent carers for sibling groups and the

diminished financial and other support available in permanent care, DHHS may look to **separate the siblings** into a number of permanent care placements.

Under the 2014 permanency amendments contact between separated siblings may be a condition of permanent care orders however the amendments place no onus on the Department to place siblings together and provide no power to the Children's Court to order the co-placement of siblings.

Should the carers not agree to a permanent care order this opens up the possibility that the three siblings will be separated into different placements. Should they agree to a permanent care order the resources required to care well for the children will be withdrawn.

The State, when it removes a child from the care of his/her parents, has an obligation to do a better job than the child's parents, to this point, have been able to do. By removing a child, the State assumes the rights and responsibilities of the parent. These rights to act in the best interests of children are often not being taken seriously by the State.

The rights of the child to a safe and stable childhood while in State care need to be upheld.

Disability, health and health services

Health and health services, in particular primary health care (article 24)

Children have the right to comprehensive health care. Ensuring this right for children in out of home care raises challenges.

Children in Out-of-Home-Care exhibit a higher prevalence of chronic and complex conditions involving physical, neurological developmental, psychological and behavioral difficulties when compared to the average child in Australia (Royal Australian College of General Practitioners, 2012 p.819).

Identifying and treating children in out of home can be complicated by placement changes and a complete medical record may not be easy to access. Berry Street acknowledges that the state Department of Health and Human Services has done much to ensure that all children coming into out of home care have health checks and that outstanding health matters are followed up (Ibid, p.820).

However of particular concern is the absence in Victoria of a diagnostic clinic for Fetal Alcohol Disorders. Fetal Alcohol Spectrum Disorder (FASD) is a diffuse brain injury that causes extensive functional impairment. FASD disproportionately affects children in child protection and youth justice (McLean and McDougall 2014).

Berry Street staff advise that without diagnosis children will not receive appropriate support. Victoria needs a diagnostic clinic.

Berry Street notes that the **Australian Human Rights Commission Submission to the Committee on the Rights of the Child** (2011) recommended that: *the Australian Government should continue to support the Aboriginal and Torres Strait Islander communities to address Fetal Alcohol Spectrum Disorders (recommendation 28).*

Education, Leisure and cultural activities

Right to education (article 28)

The **Australian Children's Wellbeing Project** report (2016) discussed the connection between school engagement and children experiencing poverty. Material deprivation, hunger and not having the right clothes to fit are all associated with lower levels of school engagement.

As previously noted poverty is an indicator for child protection involvement. The trend for poor school engagement and lower educational outcomes continues for children in out of home care.

A recent study of care leavers (Muir and Hand, 2018) suggests only 25 per cent of the 72 care leavers in the study had completed Year 12 and 27 per cent had not completed Year 10.

The study noted that education planning for young people in the study appears to have been inconsistent. The Victorian Department of Education and Training (DET) stipulates that schools should develop Individual Education Plans for all out-of-home care students. However, less than half of the young people in Beyond 18 had heard of Individual Education Plans and only 19 per cent of young people reported that they had one.

The right to education remains an aspiration for those children from marginalised communities and who then enter out of home care. Sustained efforts from state departments of Human Services are needed to ensure that joined up services are provided to better connect children and families to supportive schools

Cultural rights of children belonging to Indigenous and minority groups (article 30)

The Convention on the Rights of the Child states that Aboriginal children have the right, in community with other members of their group, to enjoy their identity and culture, to maintain and use their language, to maintain their kinship ties and to maintain their distinctive spiritual, material and economic relationship with land, water and other issues

The impact of colonization and subsequent government policies has created a high degree of intergenerational trauma and disadvantage for our Aboriginal and Torres Strait Islander population. This is unfortunately very evident in the lives of many indigenous children.

The Commission for Children and Young People has completed a recent report, **Always was, always will be Koori children** (2017), examining the experience of Aboriginal children in out of home care. This shows some very concerning trends.

- Aboriginal children are 13 times more likely to be in “Out-of-Home-Care” than non-Aboriginal children (p.26).
- 88% of Aboriginal children have experience of family violence (p.47).
- 60% of Aboriginal children are placed with non-Aboriginal carers (p.70).
- 40% of children with siblings are separated in placement from their siblings (p.70).
- Less than 60% of children managed by a community services agency had contact with their Aboriginal family (p.57).
- 80% of Aboriginal children in care do not have a cultural support plan (...**safe and wanted**... p.189).

The experience of Aboriginal children growing up in care remains discriminatory; their rights to culture, family and country are, in many cases, being denied.

Summary and Conclusion

Marginalised communities have been identified in Victoria (these communities exist across Australia). These are communities of impoverishment. In these communities children are not provided with the same opportunities for development as children in other Victorian communities. This can be seen as a fundamental denial of the rights of children (**articles 6 and 27**) for equal opportunity to health, educational and cultural outcomes.

Some children with these experiences enter the child protection and Out-of-Home-Care services. The deficiencies that confronted them in their communities persist. For many children in our statutory systems the needs they bring with them remain.

This submission has provided some case examples of this situation. The submission has also made reference to multiple reports that have recorded these deficiencies. This submission argues that these deficiencies are a denial of some of the rights of the child as set out in the Convention. Briefly the submission suggests that:

The exclusion of young people, in the care of the State, from involvement in decisions that are made about their wellbeing, including their living arrangements, is a denial of **article 12**.

The characteristics of young people in the youth justice system are representative of the challenges children present who have grown up in impoverished communities. Using isolation as a means of punishment is a breach of **articles 19 and 39**.

The experience of Aboriginal children growing up in care remains discriminatory; their rights to culture, family and country are, in many cases, being denied (**article 30**).

Children and young people growing up in State care often lack safety and stability without purposeful and timely work being done to secure permanency. This is a denial of **articles 9 and 10**.

Children in State care continue to struggle to achieve an adequate educational standard that will equip them for transition into the adult world. This is a denial of **article 28**.

It is clear that not all children in Australia have equal rights to safety, stability, family connection, health, education and social development. There are two challenges facing policy and decision makers in dealing with this issue of inequality.

Firstly how to reduce the impact on children of growing up in impoverished communities? The case for strengthening early intervention and prevention services has been well made by the National Framework for the Protection of Children. The Framework has currency only till 2020.

It is important that the next iteration of the Framework continue beyond this date and has much stronger emphasis on early and prevention services and that the investment required to implement the Framework be provided. An agreed set of outcomes measures and data relating to children's wellbeing is a major gap at the national level which prevents proper measuring progress in meeting children's rights to development.

Secondly how can the systems responsible for providing services to these vulnerable children (such as those described above) be held accountable? Accountability requires consistent and accurate data reporting on agreed measures of outputs and outcomes. This can only be done by reporting into systems of regulation and accountability.

The complexity of reporting on these matters is further complicated by Australia's federal system of government with state/territory based legal frameworks and regulatory systems.

The Australian Government's National Standards for Out of Home Care is one attempt to achieve a nationally consistent data collection across agreed measures. However there remain significant gaps in data collection and analysis against the national standards and they appear to be having little or no impact on the care experiences of children currently in OOHC.

Another example of failed accountability for an agreed framework is the failure of States and Territories to comply with the Aboriginal and Torres Strait Child Placement Principles that have been endorsed by all State and Territory governments. Compliance data about the implementation of the principles is simply not collected and the consequences of non-compliance fall only on Aboriginal and Torres Strait Islander children and families.

Recommendations

That the National Children's Commissioner highlight to the UN Committee on the Rights of the Child the need for:

- The Australian and all State and Territory Governments to extend the National Framework for Protecting Australia's Children beyond 2020.
- The Australian and all State and Territory Governments to fully fund implementation of the National Framework for Protecting Australia's Children

The Australian and all State and Territory Governments to develop agreed accountability frameworks including outcome measures and data to transparently measure compliance with the following :

- National Standards for Out of Home Care
- The Aboriginal and Torres Strait Islander child placement principle
- The Australian and all State and Territory Governments to collaboratively develop a nationally agreed outcomes measurement system for Children's Wellbeing and Development

References

- Armytage, P. and Ogloff, J. (2017): **Meeting Needs and Reducing Offending, Youth Justice Strategy Review**
- Berry Street (2017): Submission to Victorian Parliamentary Legal and Social Issues Committee Inquiry into Youth Justice Centres (2017).
- Commission for Children and Young People (2017): **Always was, always will be Koori children**
- Commission for Children and Young People (2017): **...safe and wanted...**
- Commonwealth of Australia (2009): **National Framework for Protecting Australia's Children, 2009-2020**
- Commonwealth of Australia (2011): **An Outline of National Standards for Out of Home Care**
- Commonwealth of Australia (2015): **Australian Early Development Census**
- Cummins, P, Scott, D. and Scales, B (2012): **Protecting Victoria's Vulnerable Children Inquiry Volume 1.** Department of Premier and Cabinet Melbourne Victoria
- McLean, S. and McDougall, S. (2014): **Fetal Alcohol Spectrum Disorder: Current issues in awareness, preventions and intervention.** Child Family Community Australia Community Exchange (AIFS)
- Muir, S and Hand, K. (2018): **Beyond 18; The Longitudinal Study of Leaving care, wave 1, research report Transition Planning and preparation,** Melbourne, AIFS
- Ombudsman Victoria (2017): **Investigation into the financial support provided to kinship carers**
- Sen, A. (1987): *The Standard of Living*, Cambridge University Press, Cambridge
- Redmond, G., Skattebol, J. et al (2016): *Are the kids alright? Young Australians in their middle years: Final report of the Australian Child Wellbeing Project*, Flinders University, University of New South Wales and Australian Council for Educational Research
- Royal Australian College of General Practitioners (2012): **Children and Young people in out of home care**
- Vinson, T. (2015): **Dropping off the edge.** Jesuit Social Services