

Ms Megan Mitchell

National Children's Commissioner

By email to: kids@humanrights.gov.au

31 May 2018

Dear Megan,

Submission reflecting on the state of children's rights in Australia

Thank you for the opportunity to contribute to this important review of Australia's progress in observing and promoting children's rights. There is no better measure of a nation's humanity than the way it treats its children.

We believe significant progress has been made in the last five year reporting period, particularly in Victoria. There are, however, areas in which Australia can and must do better. Notably, it is our considered view that welfare reform measures, including punitive conditionality requirements, are contrary to Australia's obligations under the Convention on the Rights of the Child. This policy approach exacerbates the financial stress of parents and/or requires them to divert their attention from the appropriate care of their children. There is evidence this approach is causing harm. It is likely the impacts of this harm will be carried into adulthood, amplifying its adverse consequences.

If you would like to discuss or clarify any of the elements of this submission please do not hesitate to contact me.

Again, thank you for the opportunity to contribute.

Yours sincerely,



Deb Tsorbaris
Chief Executive Officer

Submission to the National Children’s Commissioner on the State of Children’s Rights in Australia

The Centre for Excellence in Child and Family Welfare (the Centre) welcomes the opportunity to make this submission to the National Children’s Commissioner on how Australia (with a particular focus on Victoria) is progressing or not progressing in terms of implementing the Convention on the Rights of the Child.

As the peak body for child and family services in Victoria for over 100 years, the Centre have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care. The Centre believes in the right of all children to grow up in a safe and nurturing environment as part of a family, and emphasises the importance of child-centred practice in decision making affecting children. This must be a focus in considering ‘the best interests’ of the child.

The Australian Government’s latest report under the United Nations Convention on the Rights of the Child (UNCRC) notes that the State and Territory Governments, through the policies they do or do not progress, contribute significantly to children’s ability to reach their full potential and have their rights realised, as set out in the UNCRC and Optional Protocols.¹

The Victorian Government has pursued significant reform across its child and family services, youth justice and education sectors over the last four years. The Centre welcomes many of the policy changes and initiatives that have emerged in Victoria as a result of the two Royal Commissions and the Government’s reform agendas, but we know there is still much more work that needs to be done in progressing the rights of Victoria’s children. There are large inequities in outcomes for Victoria’s Aboriginal children, and those who are from lower socio-economic backgrounds or in contact with Child Protection. We also have strong concerns over the ‘law and order’ culture present in political and media discourse, and the implications of this for youth justice and children’s rights. Furthermore, punitive federal government welfare policies threaten to increase poverty, housing instability and child neglect, with a flow-on impact for Victoria’s child and family services policies that are trying to create positive progress.

This submission will consider a selection of the 2012 Concluding Observations of the Committee on the Rights of the Child (the Committee), including the extent to which Victoria has addressed the recommendations under the following clusters:

- **General measures of implementation**

¹ Australian Government (2018) [Australia’s joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict](#), p. 1.

- General principles
- Civil rights and freedoms
- Violence against children
- Family environment and alternative care
- Disability, basic health and welfare
- Special protection measures

General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

Reservations (Concluding Observation 10)

The Centre shares the Committee's concern that the Commonwealth Government is maintaining its reservation on Article 37(c) of the Convention. We do not support the detention of children with adults under any circumstances, including the offshore refugee detention facilities on Nauru, where 22 children remain detained with adults, being denied their rights under Article 37(c) of UNCR. ²

The Commission for Children and Young People (CCYP) 2017 report on the use of isolation, separation and lockdowns in Victoria's youth justice system found that denial of visitation rights was a common feature of Separation Safety Management Plans in practice, despite departmental policy stipulating continued access to education and visits when plans are in place. ³ The Centre supports the CCYP recommendation:

That DJR amends youth justice policy to specifically articulate that all young people on Separation Safety Management Plans are entitled to personal visits. ⁴

Denying children in detention access to visits or correspondence contradicts UNCR Article 37(c) and the Centre strongly encourages the Commonwealth Government to enact the Committee's recommendation that:

the State party continue and strengthen its efforts towards a full withdrawal of its reservation. ⁵

² Asylum Insight (2018) [Statistics](#). Accessed on 17/05/18.

³ CCYP (2017) [The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian justice system](#), p. 15.

⁴ Ibid, p. 18.

⁵ United Nations Convention on the Rights of the Child (2012) [Considerations of reports submitted by States parties under article 44 of the Convention - Concluding Observations: Australia](#), p. 3.

General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination (Concluding Observation 30(a) and (d))

In Victoria, Aboriginal children are 16 times more likely to be in out-of-home care OOHC than non-Indigenous children.⁶ A quarter of Victoria's Aboriginal children had contact with the Child Protection system in some way in 2016-17, compared to only 3% of Victoria's children generally.⁷ Despite momentum and good will within the Victorian Government to improve outcomes for children, considerably more investment is needed in resourcing and facilitating self-determination of Aboriginal and Torres Strait Islander communities (at both Commonwealth and state level) to address deeply entrenched poverty, inequality and intergenerational trauma if we are to see disparities in children's outcomes reduced.

The Victorian Government has made considerable progress on **Concluding Observation 30(d)**. The Centre is proud to have contributed to the recently launched *Wungurilwil Gaggapduir*: Aboriginal Children and Families Agreement, a historic, tripartite agreement between the Government, the Aboriginal community and the child and family services sector to have a shared commitment to improve outcomes for Aboriginal children and families, with a focus on self-determination. The Children, Youth and Families Act 2005 was amended in 2017 to legislate that the care and decision making through case management for all Aboriginal children in OOHC must be transferred from Child Protection and community service organisations (CSOs) to Aboriginal Controlled Community Organisations (ACCOs).

Respect for the views of the child (Concluding Observation 34)

Section 60C of the Family Law Act requires courts to have regard to the views of the child when deciding their best interests; however this requirement is qualified by a stipulation that children are not required to express their views.⁸ In many cases a final decision is made in parenting matters without the court having received any independent information about the views of the child. The Centre strongly supports measures that will provide all children and young people in the family law system with the opportunity to contribute their view, whether through an audio-recording, picture, written letter or another medium, and that will also explain court orders and written decisions to children and young people.

From our consultations with young people in OOHC and young care leavers, the Centre knows that young people in the Child Protection system are routinely excluded from the decision making processes that affect them, notably the care team meetings between Child Protection, OOHC agencies and their carers. This is highly dis-empowering and frustrating for young people who are

⁶ AIHW (2018) [Data Tables: Child Protection Australia 2016-17](#), Table S43.

⁷ Ibid, Table S3.

⁸ Australian Government (1975) [Family Law Act 1975](#).

capable of shaping their own futures and have the right to agency over their own lives wherever possible, as stipulated by Article 12 of UNCRC.

For children in contact with both the Child Protection and the family law system in Victoria, the Centre supports the remarks of the Committee that, although the legislation is in place, the Government must work harder on implementing the child's right to be heard in decision making that affects them.⁹ Adequately complying with Article 12 of UNCRC will require the 'meaningful and empowered participation of all children'¹⁰ and the Victorian and Commonwealth Governments have more work to do in the practical operation of legislation that achieves this.

Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)

Preservation of identity (Concluding Observation 38)

The pivotal importance of preservation and promotion of cultural identity and connection to Country and kin underpins all Victorian Government policies regarding Aboriginal children and families in child and family services and Child Protection. Despite policy, Victoria is still failing many of its Aboriginal children in not actively preserving and promoting their identities, and we share the Committee's concerns and recommendations on this matter. A CCYP Inquiry in 2016 into compliance with the Aboriginal Child Placement Principle (ACPP) found that the Victorian Child Protection system only partially complied with its obligations to correctly determine a child's Aboriginal status,¹¹ partially complied with the ACPP placement hierarchy for carers of Aboriginal children¹² and minimally complied with completion of Cultural Safety Plans (CSPs) or case plans that focus on maintaining contact with kin, community and culture.¹³

Since this inquiry, greater effort and strides have been made by government, CSOs and other stakeholders within the child and family services sector to promote cultural awareness, safety and preservation of identity for Aboriginal children in Victoria. The transfer of case management responsibility for Aboriginal children in OOHC from CSOs to ACCOs is currently taking place under the Section 18 amendment of the Children, Youth and Families Act 2005. The Centre has strong hopes that the process and the end goal of this amendment will considerably increase the cultural safety of case planning for Aboriginal children in OOHC and place much greater emphasis on the preservation of their identity.

⁹ United Nations Convention on the Rights of the Child (2012) [Considerations of reports submitted by States parties under article 44 of the Convention - Concluding Observations: Australia](#), p. 8.

¹⁰ Ibid.

¹¹ CCYP (2016) [In the Child's Best Interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria](#), p. 93.

¹² Ibid, p. 132.

¹³ Ibid, p. 152.

Violence against children (arts. 19, 39, 24 (3), 37 (a), 28 (2) and 34 of the Convention)

Abuse and neglect (Concluding Observation 47 and 56)

Since the 2016 Victorian Royal Commission into Family Violence, Victoria has led the way in Australia in reforming the way government and services respond to the growing problem of family violence. The Victorian Government agreed to implement all 227 recommendations of the Commission. It has begun the process of completely overhauling pathways into services and the ways in which services work together, increased family violence training and the number of specialist officers in Victoria Police and strengthened the focus on perpetrator behavior management.

Throughout these reforms, the Centre has remained concerned about the safety and wellbeing of children in family violence situations, and wishes to see a more focused lens on children as victims in their own right. At least 62% of children and young people known to Child Protection who died in 2016-2017 had previously experienced or witnessed family violence.¹⁴ That these children and young people were left (often unsupported by services) in violent home situations contravenes Articles 6 and 19 of UNCRC; their rights to life and to be free from violence.

We know that Child Protection's workforce capacity and resources are stretched, and that children witnessing family violence are considered 'low risk' compared to other reports,¹⁵ but where children are found to be present in a situation of family violence, we want to see consistent responses from Child Protection in the form of referrals to family services. Family violence frequently co-occurs with parental mental illness and substance abuse, which can perpetrate further violence and the need for service intervention.¹⁶ When Child Protection refers a family to a service for family violence, the follow through on these referrals is inconsistent and children and young people can be lost in the gaps and become invisible victims.¹⁷ We support the Committee's **Concluding Observation 47(c)** that more effective intervention and service follow up is needed for children exposed to violence.

Sexual exploitation and sexual abuse

Both the Royal Commission into Institutional Responses to Child Sexual Abuse and the Victorian Betrayal of Trust Inquiry cast a damning light on the extent of child sexual abuse occurring in institutional settings. The reports recommended the formation of Child Safe Standards, a scheme which Victoria has implemented, and the Centre has been active in working with the CCYP to provide

¹⁴ CCYP (2017) [Annual Report 2016-17](#), p. 26.

¹⁵ Zannettino, L. McLaren, H. (2012) *Domestic violence and CP: towards a collaborative approach across the two service sectors* p. 422 in *Child and Family Social Work* 19 pp. 421-431. DOI: 10.1111/cfs.12037.

¹⁶ Frederico, M. Jackson, A. Dwyer, J. (2014) *CP and Cross-Sector Practice: An analysis of child death reviews to inform practice when multiple parental risk factors are present* p. 106 in *Child Abuse Review* 23 pp. 104-115 DOI: 10.1002/car.2321

¹⁷ CCYP (2016) [Neither Seen nor Heard – Inquiry into issues of family violence in child deaths](#), p. 8.

training on the Scheme to organisations. Australia has failed for decades to adequately protect children from sexual exploitation and abuse, particularly within institutions charged with responsibility for their care and welfare, directly contravening Article 34 of UNCRC. The adoption of a Child Safe Standards scheme in Victoria is a step in the right direction in terms of fulfilling the state's obligations under Article 34, but the Centre wishes to see Child Safe Standards schemes implemented nationally in every state and territory.

Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Children deprived of their family environment (Concluding Observation 52)

The number of children entering OOHC and the number of Substantiated Child Protection reports continue to rise in Victoria, despite the threshold increasing for the level of risk required before Child Protection will intervene. This means that the complexity of the cases that Child Protection and child and family services are seeing is also increasing. Services are stretched, and as this submission has already noted, children and young people continue to be lost in the cracks between services.

Whilst the Centre supports many of the Victorian Government reforms and initiatives (such as the Aboriginal Children in Aboriginal Care policy) the outcomes for children and young people in contact with Child Protection continue to be poor. We share many of the specific concerns outlined in the Committee's observations.

Notably, **Concluding Observation 52(a)** recommends that Australia:

Periodically review placements as required under article 25 of the Convention and in doing so to pay particular attention to signs of maltreatment of children¹⁸

The Victorian Government's 2014 permanency amendments to the Children, Youth and Families Act 2005 aimed to:

- promote more timely, permanent outcomes for children, either with their birth family or with an alternative permanent carer
- strengthen cultural support for Aboriginal children in out-of-home care
- address barriers to permanent care orders being made.

The Centre supports the objectives of the policy, noting that it increases the state's compliance with Article 20(3) of the UNCRC on the 'desirability of continuity in a child's upbringing'.¹⁹ However, a recent CCYP inquiry into the permanency amendments found:

¹⁸ United Nations Convention on the Rights of the Child (2012) [Considerations of reports submitted by States parties under article 44 of the Convention - Concluding Observations: Australia](#), p. 13.

*significant operational and implementation issues that have diminished the potential impact of the permanency amendments.*²⁰

Most notably, the Child Protection workforce has high attrition rates and is under-resourced and too over-burdened to handle the increasing volume of caseloads in a manner that protects children's rights to a stable, adequately assessed placement, under Articles 20 and 25 of UNCRC.²¹ We welcome the Victorian Government's funding in its 2018-19 Budget for 450 additional Child Protection workers, but this funding covers one year only and may not be enough to compensate for increasing demand.

Recent permanency amendments to the Children, Youth and Families Act 2005 altered the permanency objectives hierarchy to include adoption above other forms of permanent care. Adoption rather than an alternative permanent care option may be at odds with children's best interests, causing particular concern amongst Aboriginal communities where adoption policies are reminiscent of the Stolen Generations.²² In practice however, Victoria does not pursue adoption readily as an option for children who are removed from their family environment. There have been no adoption orders issued in Victoria for children known to Child Protection since the 2014 amendments.²³ There seems no reason to keep this amendment to the hierarchy in the legislation, when department policy in action does not reflect it, and alternative permanency arrangements allowing children to maintain contact with parents reflect more strongly the UNCRC Article 9(3). We support the CCYP recommendation that adoption be removed from the hierarchy of permanency objectives in Victoria,²⁴ as it can still be pursued under the Adoption Act 1984 when it is in the child's best interests.

Concluding Observation 52(f) recommends that Australia:

*Adequately prepare and support young people prior to their leaving care by providing for their early involvement in the planning of transition as well as by making assistance available to them following their departure.*²⁵

The Centre continues to advocate strongly for the extension of the leaving care age from 18 to 21 years. Young people at 18 who leave care in Victoria often have no support systems in place and frequently end up in contact with youth justice and experience poverty, hardship and homelessness.²⁶ Given that the majority of Australians under the age of 20 still live at home with their parents²⁷; the state needs to make sure that young people in its care receive a fair chance at a similar start to

¹⁹ United Nations (1990) [Convention on the Rights of the Child](#). Accessed 23/05/18.

²⁰ CCYP (2017) [Safe and Wanted: Inquiry into the implementation of the Children, Youth and Families amendment \(Permanent Care and Other Matters\) Act 2014](#), p. 14.

²¹ Ibid, pp. 14-15.

²² CCYP (2017) [Safe and Wanted: Inquiry into the implementation of the Children, Youth and Families amendment \(Permanent Care and Other Matters\) Act 2014](#), p. 16.

²³ Ibid, p. 23.

²⁴ Ibid.

²⁵ United Nations Convention on the Rights of the Child (2012) [Considerations of reports submitted by States parties under article 44 of the Convention - Concluding Observations: Australia](#), p. 13.

²⁶ Mendes, P. (2016) [Young people transitioning from out-of-home care and Housing/Homelessness](#). Home Stretch. Accessed: 23/05/18.

²⁷ Capuano, G. (2017) [Are children staying at home for longer?](#) Accessed 23/05/18.

independent life. The Centre has heard from young people in care and care leavers that policies in place to ensure OOHC agencies assist young people to plan for leaving care are inadequate and too late in a young person's care experience. CSOs also report strong concerns about the adequacy of post-care support for young people, who often end up returning to the birth family they were removed from as a child when they exit care.²⁸ By not adequately supporting young people in OOHC to prepare for independent living, the Victorian Government is contravening Article 27 of UNCRC. They are not providing 'in accordance with national conditions and within their means...appropriate measures'²⁹ of support for young people, where the 'national conditions' are that young people remain home with their parents beyond the age of 18 years.

The Centre wishes to see Victoria invest more heavily in implementation and realisation of policies on Leaving Care Plans and preparing young people to transition to independence, more quality monitoring of agencies' compliance with these policies,³⁰ and more investment in post-care support.

Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Mental health (Concluding Observation 65)

Mental health services do not have funding parity with physical health services in Australia,³¹ despite mental distress and illness being the leading health issue for children and young people.³² Research has revealed around 23% of 15-19 year olds have a 'probable serious mental illness'³³ and a third of all deaths of 15-19 years olds in 2016 were by suicide.³⁴ As noted in **Concluding Observation 65(b)**, there is a need for earlier intervention services for children and young people to tackle mental distress before it reaches a crisis point (such as self-harm or suicide) in order to fulfil Article 24 of UNCRC. There is also a need to tackle the underlying causes of increasing rates of mental distress in young people (commonly anxiety and depression), and fostering better mental health overall, by addressing the potential harm of excessive technology and social media use in line with Article 17(e) of UNCRC – the obligation to protect children from harmful information, material and exchanges. For particular cohorts, such as Aboriginal children and young people³⁵, LGBTI young people³⁶ and those living rurally

²⁸ Victorian Auditor General's Office (2014) [Residential Care Services for Children](#), pp. 19-20.

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³⁰ McDowall, J. (2018) [Report Card: Transitioning from Care](#), p. 51.

³¹ Gregory, K. (2015) [Australia lagging on funding for mental health services, says Mental Illness Fellowship](#). Accessed 29/05/18.

³² AIHW (2016) [Australia's Health 2016: 3.1 Burden of disease and injury in Australia](#), p. 5.

³³ Mission Australia (2017) [Youth Mental Health Report: Youth Survey 2012-16](#), p. 3. Black Dog Institution.

³⁴ ABS (2017) [Causes of Death, Australia, 2016: Intentional self-harm \(suicide\) \(Australia\)](#), Table 11.8.

³⁵ ABS (2016) [National Aboriginal and Torres Strait Islander and Torres Strait Islander Social Survey, 2014-15](#). Accessed: 24/05/18.

³⁶ Rosenstreich, G. (2013) [LGBTI People: Mental Health & Suicide, 2nd ed.](#), p. 3. National LGBTI Health Alliance.

and remotely³⁷, rates of mental illness are higher and access to services worse, so more nuanced funding and service delivery is required to meet their needs.

We welcome the Victorian Government's \$705m investment in mental health funding in their 2018-19 Budget, but Commonwealth Government funding needs to also increase to bring mental health service provision on a par with physical health.

Standard of living (Concluding Observation 69 and 71)

In Victoria, there has been extensive reform and expenditure in child and family services, but the state system is operating against a backdrop of punitive, regressive welfare reforms on a federal level, rising costs of living and an increasingly unaffordable housing market. These factors all contribute to increasing poverty, housing stress and family breakdown.³⁸ 17% of Australian children live in poverty (below 50% of median income), but this figure rises starkly to over 40% of children in lone parent households.³⁹

Federal government welfare policies based on harsh compliance (such as *ParentsNext* which obliges parents to complete employment or education plans, or face cancellation of Parenting Payments) threaten children's rights under Article 26 of the UNCRC. There is no acceptable way to cancel Parenting Payments that would not negatively affect a child's right to safety and adequate provisions. Research has found that there is little evidence to suggest Welfare to Work programs increase parent and child wellbeing or provide a route out of poverty. Rather, these programs have been shown to decrease parental psychological health and financial wellbeing, thereby eroding the rights of their children.⁴⁰ The Centre shares the concern of the wider community services sector and others that cutting welfare spending through harsher compliance will increase homelessness.⁴¹

In regards to **Concluding Recommendation 71**, therefore, the Centre is concerned that the rates of families with children who are homeless or in housing distress is increasing.⁴² Over a quarter of the clients served by Victorian Specialist Homelessness Services in 2016-17 were families with children.⁴³ The chronic lack of available social housing in Victoria does not meet Article 27(3) of UNCRC in providing adequate housing assistance to families with children who are in housing distress.

Parental mental distress, poverty and housing instability are common risk factors for families coming into contact with Child Protection. For the Commonwealth Government to tackle child neglect and

³⁷ ABS (2015) [National Health Survey, First Results 2014-15](#), Table 4: Long-term health conditions by population characteristics.

³⁸ CHP (2017) [Anti-Poverty Week 2017: A perfect storm of housing \(un\)affordability and welfare cuts](#). Accessed 29/05/2018.

³⁹ Australian Council of Social Service (2016) [Poverty in Australia](#), p. 23.

⁴⁰ Brady, M. Cook, K. (2015) [The impact of welfare to work on parents and their children](#), p. 2. In Evidence Base 3.

⁴¹ Homelessness Australia (2018) [Briefing note on Welfare Reform Bill – February 2018](#), p. 1.

⁴² AIHW (2018) [Homelessness Services](#), Data tables: Vic 2014-15, 2015-16, 2016-17. Table VICCLIENTS.5.

⁴³ AIHW (2018) [Homelessness Services](#), Data tables: Vic 2016-17. Table VICCLIENTS.5.

abuse effectively, it needs to review its punitive welfare policies to avoid pushing more families into poverty and housing distress.

Child Support Payments (Article 18(1) and Article 27(4))

Articles 18(1) and 27(4) of UNCRC require Australia to ensure that best efforts are made in the recognition of shared parental responsibility for children, and the recovery of child maintenance payments. Australia's outstanding, un-paid Child Support debt is in excess of \$1 billion, and the federal Child Support agency has relatively little power or will to collect this debt owed to thousands of children.⁴⁴ The Council for Single Mothers and their Children notes that:

Payment plans for child support in arrears are established based on the financial circumstances of the payer with little or no consideration of the financial impact this will have on the receiving parent and the children involved. Sanctions appear to be brought only when the failure to pay is chronic or when it involves tax fraud through undeclared income. Smaller debts are regularly dismissed as insignificant and are often not followed up by Child Support.⁴⁵

The Centre supports the Council's calls for Child Support to be paid to children regardless of whether the non-primary care giver has paid or not, and the onus should fall on Child Support to pursue those debts. Children should not lose their right under Article 27(4) to be supported by both parents, regardless of their parents' circumstances, and the government should act as guarantor in upholding that right.

Special Protection Measures (arts. 22, 30, 32, 32, 35, 36, 37 (a), 37 (b-d), 28, 29, 40 of the Convention)

Administration of juvenile justice (Concluding Observation 84)

The Centre shares many of the Committee's concerns regarding Australia's juvenile justice system. In Victoria, the criminal age of intent is 10 years, meaning that children between the ages of 10 and 17 years are held together in youth detention. The developmental stages of children and young people at the extremes of this age range are vastly different, and we do not consider it a safe policy to detain children with young people who are almost adults. The Centre wishes to see the minimum age of criminal responsibility rise to 12, not 10, in line with the UNCRC, and for the Victorian Government to more exhaustively pursue alternative, diversionary pathways away from youth justice and detention for young people who have contact with the police.

⁴⁴ Council of Single Mothers and their Children (2014) [Submission to the Parliamentary Enquiry into the Child Support Program](#), p. 5.

⁴⁵ Ibid, p. 6.

In 2015-16, 53% of all children and young people under youth justice were also in the Child Protection system,⁴⁶ and 17% were Aboriginal,⁴⁷ an over-representation rate of nearly 10 times the 1.6% of Victoria's entire population of 10-16 year olds that are Aboriginal.⁴⁸ Dramatically higher rates of detention for Aboriginal children and young people, and children and young people in contact with Child Protection, reflect a system that is not respectful of Article 39 of UNCRC. These children and young people frequently have histories of abuse, neglect, poverty and/or trauma and the government's focus on a 'law and order' rhetoric and more punitive measures, rather than a trauma-informed, rehabilitative lens is counter-productive (youth detention has been shown to facilitate re-offending)⁴⁹ and contrary to their rights.

The Centre wants to see a much more nuanced and trauma-informed approach by the police and courts in the manner in which these children and young people's cases are handled, such as more consistent use of cautioning, group conferencing, community-based and Aboriginal specific diversion programs and early intervention through other community services.⁵⁰

⁴⁶ AIHW (2017) [Data tables: Young people in child protection and under youth justice supervision 2015](#), Table S3.

⁴⁷ Ibid.

⁴⁸ Ibid, Table S14.

⁴⁹ Derkley, K. (2017) [Lawyers fear youth crackdown](#). Law Institute of Victoria. Accessed 23/05/18.

⁵⁰ Parliament of Victoria Legal and Social Issues Committee (2018) [Inquiry into Youth Justice Centres in Victoria: Final report](#), pp. 34-49.