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# COMMISSION FOR CHILDREN AND YOUNG PEOPLE

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## **NEITHER SEEN NOR HEARD: ELEVATING CHILDREN IN OUR RESPONSE TO FAMILY VIOLENCE**

By Liana Buchanan

*This is an edited version of a speech given at the STOP Domestic Violence Conference on 3 December 2018.*

### **Acknowledgement**

Before I begin I'd like to take a moment to acknowledge the Traditional Owners of the land on which we meet today, the Yugambeh people, and note that this land always was, is and will be Aboriginal land. I pay my respects to their Elders past and present and to any Aboriginal or Torres Strait Islander people who are in the audience today.

I'd also acknowledge the harm that has been done to the First Peoples of this country, the legacy of which continues today. We see it daily in our work at the Commission for Children and Young People, noting that in my state of Victoria, Aboriginal children are 16 times more likely to be in out-of-home care and 12 times more likely to be in youth detention than their non-Aboriginal counterparts.

### **Introduction**

Today I will share my perspective on issues around children and family violence as someone with a long background in family violence work—as a lawyer, reformer and advocate—who is now Victoria's Commissioner for Children and Young People.

I will share what I see in my day-to-day work, whether sitting around advisory group tables or in ministerial meetings, participating in reform and policy discussions, or reviewing the cases of individual children whose lives have been marred by family violence.

And as you can tell from the title of my address, what I see is that often—too often—children who are victims of family violence are 'neither seen nor heard'.

### **About the Commission for Children and Young People**

The Commission for Children and Young People is an independent statutory agency established to promote children's interests, safety and wellbeing. We provide advice and advocate for improvements to laws, policies and services for children.

We have an oversight and monitoring role with a focus on children involved with the child protection, out-of-home care and youth justice systems. We monitor serious incidents, visit and inspect places children are housed and initiate inquiries into areas of concern, recommending change where it is needed. Where I consider it necessary for accountability or public awareness, we table the reports of these inquiries in Parliament.

In the wake of evidence about the extent of child abuse in churches, schools and other trusted institutions (and the extent to which some of those organisations have acted to conceal or minimise allegations of abuse) we have recently become a regulator responsible for enforcing new requirements for organisations to comply with Child Safe Standards. We also administer a reportable conduct scheme, allowing us to maintain oversight into how allegations and complaints are investigated and managed by organisations.

In fulfilling these functions, we adopt a child's rights framework, reflecting Australia's ratification of the Convention on the Rights of the Child. It is my view that although we ratified the Convention almost 30 years ago, we have a long way to go to fully understand the concept of children's rights, let alone embed these rights in ways that make them real for children.

### **A remarkable four years of change for victim-survivors of family violence**

The death of Luke Batty at a cricket ground in February 2014 stopped us in our tracks. His mother, Rosie, so quickly and articulately stepped into the public domain to characterise her son's homicide as an act of family violence and went on to take up an advocacy role in a way that managed to build on decades of effort by survivors and advocates to focus attention in family violence in an entirely new way.

I started as Commissioner in April 2016, a week after the final report of Victoria's Royal Commission into Family Violence was made public. I'd been active in family violence reform immediately prior to this and knew that I was stepping into the role at an important and exciting time.

And it has been. The last four-and-a-half years in Victoria have been remarkable for those of us who are long-term advocates against family violence.

Since then we have seen an unprecedented shift—in media reporting, in community understanding of the prevalence of family violence, in mainstream recognition that family violence is at its heart based in gender inequality and, importantly, in political attention and investment.

Family violence was the central law and order issue of the 2014 Victorian state election. When announcing its new Cabinet last week, the re-elected Government continued to describe it as the most serious law and order issue facing Victoria.

Over the last few years, we have had a Minister for the Prevention of Family Violence. A Royal Commission into Family Violence was initiated and completed and was immediately followed by the Government committing to act on all 227 recommendations. The two-and-a-half years since then have seen \$2.5 billion investment in family violence and a veritable flurry of reform activity.

The pace of reform and effort, the sudden focus on family violence within government, is not without challenges and risks, as many family violence specialists in Victoria would attest.

However, it remains a remarkable time, involving clear commitment to effect change and a sense that we may see genuine, once-in-a-generation transformation in preventing and responding to family violence.

### **Royal Commission into Family Violence**

I have been determined to make sure that this unique moment delivers real change for children.

The Royal Commission found that children and young people are too often the forgotten, silent and overlooked victims of family violence. In arriving at this view, it found that children subjected to family violence experience severe short and long-term effects to their health, wellbeing and quality of life. It put paid to the myth that children only suffer if they are directly targeted by acknowledging that witnessing violence, living in a climate of fear and experiencing the aftermath of violence is also profoundly damaging. It also confirmed that children affected by family violence are not receiving the care, attention and support they need and deserve.

There is a significant gap in specialist, therapeutic services available to meet the unique needs of child victims of family violence. Our family violence system has traditionally treated children and young people as extensions of their mother, rather than as victims in their own right. While a child's safety and needs are undoubtedly connected to their mothers', children and young people also have their own distinct experiences, issues and needs, and there is little in our service framework to respond to these. It also found that child-focused services (including Child Protection) have too often misunderstood the dynamics of family violence and responded in harmful ways.

It affirmed that most victims of family violence do not seek help from family violence services, making effective responses from universal services such as health services, maternal and child health services and schools vital. But these services often have not had the knowledge to identify when family violence is occurring or known what to do about it.

Overall, the Royal Commission revealed an unresponsive, fragmented system that placed the onus on women who experience violence to navigate a path to safety; a system that failed to hold perpetrators to account and let children slip through the cracks entirely. These findings reflect what we see in our work at the Commission for Children and Young People every day.

### ***Neither seen nor heard report***

One of our functions is to conduct an inquiry whenever a child dies in circumstances where they had recent Child Protection involvement. Eighty per cent of the children whose experiences we review in our Child Death Inquiry function have experienced family violence.

In these inquiries, I saw the failings highlighted in the Royal Commission again and again. To examine this more deeply, we took a sample of cases where children had experienced family violence for our *Neither Seen nor heard* inquiry to examine trends and themes.

A key theme was that the impact and risk of violence was grossly underestimated by Child Protection and all other services working with the children. It was evident that the myth that children witnessing violence are not seriously affected persists. We also saw too many cases where services know that the mother is experiencing family violence but do not appreciate the risk of violence to her baby—these cases come to attention when the infant is killed.

We also saw that little was done to understand the child's perspective of what was happening; to engage with them directly. The evidence is clear that in many instances, children and young people are in the best and most well-informed position to describe that they need to promote their safety and wellbeing. It was remarkable how few people, in Child Protection, refuges or other services, had sought to understand these children's experiences firsthand. This must change.

A separate inquiry revealed that Child Protection services did not consider family violence in the context of cumulative harm. In our report *Systemic inquiry into cumulative harm and suicide in child deaths*, we reviewed cases involving children who committed suicide after involvement with Child Protection over an eight-year period. Ninety-six per cent of these children had experienced family violence. Their childhoods featured multiple reports to Child Protection with effectively no intervention or support, exposing many missed opportunities to intervene.

This was despite stark indicators of harm. One boy was seen vomiting after witnessing his mother assaulted, another child seen taunted by their father after disclosing a sexual assault, yet another told a child protection practitioner: "I was awake, but I closed my eyes, so I wouldn't see things". Many male children we reviewed went on to use violence against their mothers, siblings or partners—a fact known by services but not acted upon.

Mothers were rarely given support to keep themselves and their children safe, or even referred to family violence services. Rather they were held responsible for their children's safety as the 'protective parent'. Perpetrators were rarely engaged in any way, and certainly not held to account for their use of violence.

In *Neither seen nor heard*, we saw themes in addition to those affirmed by the Royal Commission. The review exposed that responses to Aboriginal children and their mothers were especially poor. This is consistent with themes highlighted by other work undertaken by my colleague, the Commissioner for Aboriginal Children and Young People, Justin Mohamed. The number of Aboriginal children being removed from their parents is climbing rapidly—they have doubled in three years. Ninety per cent of these cases involve family violence. However, not only are Aboriginal children removed at unacceptable rates, but the system is failing dismally to keep these children connected to family, culture and community.

We also found that allegations or suspicions of child sexual abuse featured in almost half of the cases we reviewed (70 per cent of cases where the children were aged over five years). This abuse was overlooked and minimised in every case. We saw inadequate investigation, poor risk assessment, and an absence of psychological supports and intervention put in place in response to disclosures. Only one child received counselling—a single session. In short, we saw a pattern of responses that fail children and their non-violent caregivers.

We tabled that report in December 2016. In the two years since, I have reviewed the treatment of many more children who have died after being exposed to family violence. The themes have not changed.

Just last week, I reviewed the service response to a toddler and his eight-year-old sibling experiencing family violence. The first report to Child Protection was a year ago following a serious family violence incident where police attended in response to an assault on the mother by the father. The mother later described how the eight-year-old had physically intervened to protect her. In our review of this case, the children were literally invisible on the file. They did not feature in case notes, were not represented on the intervention order the police sought on the mother's behalf. Child Protection made no family violence referrals for the mother or for the children, either then or at any of the following three reports, despite information that the eight-year-old was showing high levels of aggression at school.

The bottom line is that services continue to underestimate harm done to children through family violence, children are still not provided with adequate responses, and we still see instances where family violence services risk missing the warning signs that a mother needs more support to be able to safely maintain her role caring for her child or children.

### **Looking beyond the current service response: is there hope?**

Is there cause for optimism for positive change, given the incredible reforms in train? My assessment is mixed. Of course, there is great potential.

We now have family violence workers working from 17 Child Protection offices. Training has been rolled out for 1,500 child protection workers. Revisions have been made to the practice guidance for child protection workers reflecting a contemporary understanding of family violence, with a focus on perpetrator accountability, the avoidance of perpetrator collusion and on supporting non-violent parents.

The development of Support and Safety Hubs, which bring together community child protection and specialist family violence workers, and the roll-out of a revised risk assessment framework across all parts of the system that work with children and families, both offer potential to bring together what I see as two disconnected paradigms for working with children and families affected by family violence. Aligning our child protection and family violence frameworks is vital. New information-sharing laws to support information to be shared about child wellbeing and family violence should enable services to better assess and respond to risk.

In addition, children will, of course, benefit from broader reforms—additional housing, counselling, better court responses, and training across multiple workforces that have contact with women and children— including hospital staff, maternal and child health nurses, early learning professionals.

There is some cause for optimism, but we cannot be complacent. While the Victorian Government has committed to implement all recommendations of the Royal Commission, many recommendations designed to benefit children have not been implemented.

This includes recommended investment in refuges so they can better meet the needs of children (although I will note 23 refuges were recently given one-off grants of up to \$150,000, this expenditure funded expenses such as buses...). It includes recommended prioritisation of funding for counselling and therapeutic support for child victims of family violence. It includes embedding a requirement that Child Protection ensure that no report is closed without safety plans for the child in place. It includes developing improved responses to adolescents who use violence in the home. None of these recommendations have had the requisite attention, action or investment to date.

The Commission's recommendations from the *Neither seen nor heard* report, which includes improving responses to child sexual abuse by ensuring training and services recognise the common presence of family violence and child sexual assault, have seen little attention in the two years since our report.

My experience throughout the policy and service design process has been one where it is repeatedly necessary for me to say: "and children". This is despite the fact that the Royal Commission into Family Violence was triggered by the death of a child, and his mother's subsequent advocacy. Adult policymakers are naturally inclined to understand and empathise with an adult perspective. In discussions, I continue to be struck by the fact that discussions of victims-survivors almost always relate to adults alone. Perhaps this default is even stronger when a sector, a movement, has spent decades rightly fighting for a focus on the rights of a particular group of adults—in this instance, women subjected to family violence.

### **Concluding remarks**

These are complex issues, and I don't mean to oversimplify or cast generalisations. But I do ask that we challenge ourselves to maintain focus on the youngest and most vulnerable victims of family violence; that we maintain an awareness of the common tendency to see children as appendages rather than individuals; that we avoid viewing our service system through an adult lens.

What does a child-centred approach to ending family violence mean? The answer is not simple, but in part, it means making sure children and young people are visible and audible in service responses designed to keep them safe and support their recovery. It means acting on what we know about the impact of family violence on children, from utero onwards. It means providing meaningful intervention when children are exposed to violence. It means improving our responses to sexual abuse and understanding the correlation between sexual abuse and family violence.

It means recognising children's connections connected to their non-violent parent while also recognising them as individuals with separate needs that are just as important. It means working with children and young people in a coordinated, integrated way that overcomes service and sector barriers and differences, applying a common understanding of family violence. It means thinking about how children should be given the right to have a say in the supports they need, and decisions designed to promote their safety.

I end with a plea. It has taken decades to achieve recognition of women's experiences and rights in the context of family violence—let's get there with children a little faster.