



COMMISSION FOR CHILDREN
AND YOUNG PEOPLE

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2017 Review of the Charter of Human Rights and Responsibilities Act 2006

Input from the Commission for Children and Young People

The Commission for Children and Young People (the Commission) welcomes the opportunity to provide input into the Victorian Equal Opportunity and Human Rights Commission's (VEOHRC) 2016 review of the operation of the Charter of Rights and Responsibilities (2016 Charter Review).

The Commission's vision is that the rights of all children in Victoria are recognised, respected and defended. We achieve our vision by

- providing independent scrutiny and oversight of services for children and young people, particularly those in the out-of-home-care, child protection and youth justice systems
- advocating for best practice policy, program and service responses to meet the needs of children and young people
- supporting and regulate organisations that work with children and young people to prevent abuse and make sure these organisations have child safe practices
- bringing the views and experiences of children and young people to the attention of government and the community
- promoting the rights, safety and wellbeing of children and young people.

Our work in 2017, particularly providing oversight, advocacy and advice to government on services to vulnerable children, highlighted the following significant human rights issues for children.

Transfer of parental responsibility for Aboriginal children in out-of-home care to Aboriginal Community Controlled Organisations (ACCOs)

In 2017, significant progress was made with two major projects that aim to promote the rights of Aboriginal children and their families to enjoy their cultural rights, as set out in section 19(2) of the Charter.

These two projects are the :

- Aboriginal Children in Aboriginal Care program
- transition of case management for Aboriginal children on child protection orders and in out of home care from the Department of Health and Human Services (DHHS) and Community Service Organisations (CSOs) to ACCOs.

Both these projects implement recommendations made by the Commission in its inquiry reports *Always Was Always Will be Koori Children* and *In the Child's Best Interests*.¹

Aboriginal Children in Aboriginal Care

Aboriginal Children in Aboriginal Care is progressing the self-determination goal of implementing section 18 of the *Children, Youth and Families Act 2005* (CYF Act). The project enables the Secretary of the Department of Health and Human Services (DHHS) to authorise an Aboriginal principal officer of an appropriately trained, supported and resourced ACCO to make decisions about Aboriginal children on protection orders that would normally be made by DHHS.

This is a shift in the role of ACCOs, from advisors to decision makers, allowing them to become responsible for case planning and support that matches the plan. The ACCOs work collaboratively with professionals, family and community to implement the case plan and provide culturally safe support.

The project has the following key aims:

- maintain Aboriginal children's cultural identity by preventing loss or disconnection from family, community and culture
- develop culturally safe responses for Aboriginal children to reunify with their parents or extended family
- maintain and develop connection to Country for Aboriginal children
- improve support and decision making for Aboriginal children.

At present, two organisations are implementing the Aboriginal Children in Aboriginal Care project. In November 2017, the Victoria Aboriginal Child Care Agency (VACCA) launched the Nugel program,² which has been funded to work with 36 families. Bendigo and District Aboriginal Co-operative (BDAC) is also running the 'As If' pilot, which focuses on rural families. As at October 2017, BDAC had worked with 25 clients (11 families).

Transition of case management for Aboriginal children to ACCOs

A related program aims to transfer the case management of Aboriginal children on child protection orders from DHHS and CSOs to ACCOs. Similar to the Aboriginal Children in Aboriginal Care program, this program would see ACCOs and members of the Aboriginal community central to decisions about the care of Aboriginal children.

Both programs promote self-determination for Aboriginal Victorians and the rights of Aboriginal people, including children, to, with other members of their community, enjoy their identity and culture, maintain their kinship ties and maintain their distinctive spiritual, material and economic relationship with Country.

The program is aiming to have 80 per cent of Aboriginal children transitioned to ACCOs by the end of 2018 and 100 per cent by the end of 2021. Progress towards these targets is being monitored by the Aboriginal Children's Forum.

Cultural rights of Aboriginal children in out-of-home care

On 1 March 2016, the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* came into effect (the permanency amendments). A key change brought about by the

¹ Victoria, Commission for Children and Young People, *Always Was Always Will Be Koori Children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria* (October 2016) rec 5.3; Victoria, Commission for Children and Young People, *In the Child's Best Interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria* (October 2017) rec 2.

² Nugel is a Wurundjeri word meaning 'belong'.



permanency amendments was the requirement for all Aboriginal children in out-of-home care to be provided with a cultural support plan that addresses their cultural support needs. Prior to the permanency amendments, a cultural support plan was only required for Aboriginal children subject to either guardianship to the Secretary orders or long-term guardianship to the Secretary orders, which was a low proportion of children in out-of-home care.

The purpose of this change was to support Aboriginal children to maintain and develop their Aboriginal identity and encourage their connection to Aboriginal community and culture. It can therefore be seen as aiming to promote the section 19(2) cultural rights of Aboriginal children.

In July 2016, the Commission was asked to conduct a review of the implementation of the permanency amendments. In June 2017, the Commission completed this inquiry and provided the inquiry report '*Safe and Wanted: Inquiry into the implementation of the Children, Youth and Families (Permanent Care and Other Matters) Act 2014*' (Safe and Wanted). Safe and Wanted was made public by the Victorian Government in December 2017.

The strengthening of cultural support requirements for Aboriginal children was universally welcomed by Aboriginal people and, more broadly, all stakeholders that the Commission consulted with during Safe and Wanted.

In Safe and Wanted, the Commission found that between March 2016 and August 2016, there were on average 81.2 per cent of Aboriginal children in out-of-home care without cultural support plans. The Commission acknowledges that this data is from 2016. However, through our involvement in the Aboriginal Children's Forum, we are aware that there is still a considerable proportion of Aboriginal children in out of home care without a cultural support plan. The Commission is also aware that resources are being directed towards ensuring more Aboriginal children have cultural support plans. We strongly support these efforts to promote the cultural rights of Aboriginal children.

Cultural rights of Aboriginal children in youth justice centres

Aboriginal children continue to be over represented in Victoria's youth justice centres. Incarcerating Aboriginal children damages their connection to the family, culture, community and Country. This infringes their section 19(2) cultural rights. Connection to family, culture and community are key markers of resilience for Aboriginal children.

Damaging these connections risks compounding the problem of over representation, because it undermines the resilience of Aboriginal children and their identity and is counterproductive to their risk of re-offending.

This is compounded by the fact that there are too few Aboriginal people working at all levels of Victoria's youth justice system, which compromises the connection that Aboriginal children in custody have with their community.

The operation and de-commissioning of the Grevillea Youth Justice Precinct in Barwon Prison

In November 2016, the Victorian Government established the Grevillea Youth Justice Precinct (Grevillea unit) in Barwon Prison. In May 2017, following a series of legal challenges, the Supreme Court found that the Victorian Government had acted unlawfully and contrary to the Charter by:

- establishing the Grevillea unit at Barwon prison as a youth justice centre
- transferring two of the children (who were plaintiffs in the case) to the Grevillea unit
- allowing the possession and use of OC spray and batons by Corrections Victoria staff working in the Grevillea unit.



Justice Dixon found that the following aspects of the children's detention and treatment while at Grevillea impacted adversely on their human rights:

- the children were regularly isolated for up to 23 hours a day in cells designed for adult male prisoners
- the children were handcuffed regularly and for routine activities
- there was a lack of consideration given to the risk of mental health problems likely to be experienced by the children at Grevillea
- their detention in the unit 'significantly limited' the children's emotional, intellectual and spiritual needs being met exposing them to further harm and reducing their chances of rehabilitation.
- continued use of isolation and seclusion in youth justice centres.

Use of isolation in youth justice centres

In March 2017, the Commission tabled *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*.³

The Commission found the 'widespread use of restrictive practices that led to the confinement and isolation of young people, despite evidence that such practices can exacerbate harm and hinder rehabilitation, particularly for children and young people who have suffered trauma'.⁴

The inquiry also revealed that children and young people 'were denied access to fresh air, exercise, meaningful activities, education, support programs and visits, sometimes for extended periods'.⁵ Children were isolated in rooms without sanitation, and were not consistently provided with cultural support or clinical staff.

The use of isolation can contravene a child's section 17(2) right to enjoy, without discrimination, such protection as is in his or her best interests and is needed by him or her by reason of being a child.

While the Commission has been advised that there has been a reduction in the use of isolation and seclusion since *The Same Four Walls* was completed, available data suggests that isolation is still used too often in Victoria's youth justice centres.

³ Victoria, Commission for Children and Young People, *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (March 2017).

⁴ Ibid, p 13.

⁵ Ibid.

