

June 5, 2018

Ms Megan Mitchell,
National Children's Commissioner,
Australian Human Rights Commission,
GPO Box 5218
SYDNEY NSW 2001

Dear Ms Mitchell,

Re: Australia's implementation of the Convention on the Rights of the Child

Barnardos Australia welcomes the opportunity to provide our views on how Australia is or is not progressing in terms of implementing the Convention on the Rights of the Child (CRC), and the extent to which Australia has progressed specific rights against the 2012 Concluding Observations of the United Nations Committee on the Rights of the Child (CRC/C/AUS/CO/4) over the past five years.

Background

Barnardos is a family support and out-of-home care (OOHC) agency, which assists over 11,000 children and their families in New South Wales (NSW) and the Australian Capital Territory (ACT) each year and maintains 1,550 children in NSW and the ACT in foster and kinship care. In our family support work we aim to reach vulnerable children at risk of separation from their families, and we work in areas with significant Aboriginal populations such as Central West NSW, the South Coast and Inner Sydney. We are committed to supporting families in caring for their children and to ensuring permanency for children who cannot safely live at home. In 2016-17 we achieved 43 adoptions from care, which represented 33% of the 127 adoptions in NSW and 30% of all adoptions from care nationally. Of the 16 adoptions from care in other Australian states and territories in the same period, Barnardos achieved eight in the ACT. As we are experts in the area, we have focused most of our comments on adoptions from OOHC.

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

Legislation (CRC/C/AUS/CO/4, paras. 11-12)

In our view inconsistencies between Australian states and territories adoption legislation have not been systematically examined and addressed (see our comments on CRC/C/AUS/CO/4, paras. 53-54 below). Consequently, adoption is an area in which children in similar situations remain subject to variations in the fulfilment of their rights depending on the state or territory jurisdiction in which they reside.

Resources for the Rights of the Child–Responsibility of States (arts. 2, 3, 4 & 6 of the Convention)

Data collection (CRC/C/AUS/CO/4, paras. 21-22)

We believe that work still needs to be undertaken by the Australian Institute of Health & Welfare (AIHW) to strengthen the existing mechanisms of child protection data collection. Published data on re-notifications to state and territory welfare departments, re-entry to care, and stability in care (as measured by the number of placements experienced by each child when they finally exit care) remain sparse or unavailable. In order to accurately estimate and analyse progress against implementation of the relevant areas of the CRC comprehensive data needs to be collected and made available.

To improve the mechanisms of data collection for children in situations requiring special protection, we recommend the following: that the AIHW be requested to provide data on placement stability by state and territory; that counting rules for stability be reviewed and all placements over one week recorded; that sibling separation be recorded; and that the AIHW provide the same data on the characteristics of known child adoptions as is currently provided for local infant and inter-country adoption.

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

Best interests of the child (CRC/C/AUS/CO/4, paras. 31-32)

In our view the understanding and application of the principle of the best interests of the child needs to be strengthened for children and young people who have been in care for two years or longer, and those who have experienced more than two placements. We believe consideration needs to be given to their right to a permanent family.

Stability rates for these young people are poor, although as we note later, data collection in this area requires strengthening (see our comments on CRC/C/AUS/CO/4, paras. 21-22 above).

- Of the 47,915 children in OOHC at 30 June 2017, 83% had been continuously in OOHC for one year or more (AIHW, 2018)¹. This included 27% who had been in OOHC for two to five years; and 41% who had been in OOHC for five years or more.
- In 2016, the AIHW report on *Permanency Planning in Child Protection: A Review of Current Concepts and Available Data* noted that, of children who had been continuously in care for two or more years in 2015, 17% had two care placements, 13% had three or four placements, and around 9% had five or more placements.
- The most recent NSW estimates are that young people had experienced 5 to 8 placements on leaving care (Cashmore & Paxman, 1996)² and these have been shown to be significantly worse in other state and territory jurisdictions.

¹ Australian Institute of Health & Welfare. (2018). *Child protection Australia 2016–17*. Canberra: AIHW.

² Cashmore, J., & Paxman, M. (1996). *Wards Leaving Care: A Longitudinal Study*. Sydney: NSW Department of Community Services.

- In Queensland, Western Australia, South Australia and Victoria, very disturbed children had experienced an average of 11 foster placement moves—30% had 10-15 placements already, 5% had 20-30, and 7% recorded 31-55 placements (Osborn & Delfabbro, 2006)³.

While adoption will not be appropriate for every child in OOHC, some children (particularly very young children) cannot ‘wait’ for adults to solve their personal problems and sort out their lives. For example, drug and alcohol rehabilitation can take many years, often with numbers of failed attempts—yet the rapid rate of brain development in the early years means that a baby or toddler cannot wait this long.

The biggest risk to children in care is lack of permanency planning and unstable care—that is, moving around in foster care from place to place and never finding a ‘forever family’. Three years with a stable family on the way to adoption is far less risky than being placed in impermanent foster care. When children drift in the care system, without adequate planning and consideration of their developmental needs, we risk damaging them further by making them wait.

To ameliorate the impact of these risk factors on abused and neglected children we believe adequate consideration needs to be given to children’s time frames in OOHC. We believe a national adoption code be established which 1) specifies how children’s time frames in OOHC should be considered and 2) outlines procedures to enable states and territories to regularly report on children’s lengths of time in OOHC. We also believe funds should be provided for the states and territories to examine how many children could be adopted from OOHC using existing legislation. This client and performance reporting would enable national and cross-national comparisons that could inform policy and operational decision-making.

Respect for views of the child (CRC/C/AUS/CO/4, paras. 33-34)

In our view the implementation of the right of the child to be heard would be strengthened by addressing their right from age 12 to consent to their own adoption. To our knowledge this is currently only available in NSW (see our comments on CRC/C/AUS/CO/4, paras. 53-54 below).

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

Preservation of identity (CRC/C/AUS/CO/4, paras. 37-38)

We draw your attention to the importance of kinship care as a means by which Aboriginal children can preserve their cultural and linguistic identity. Despite its importance, the provision of kinship care has been negatively impacted by inadequate resources, in particular by the provision of extremely low levels of support to Aboriginal kin carers.

There is also a long history of poor financial and casework support for these carers (Yardley, Mason, & Watson, 2009)⁴. A 2018 study showed that the vast majority of carers were female, had an average age of 53 (with 6% aged 70 or over), and with many having multiple children in their care. The majority of carers

³ Osborn, A., & Delfabbro, P. H. (2006). *National comparative study of children and young people with high support needs in Australian out-of-home care*. Adelaide: University of Adelaide.

⁴ Yardley, A., Mason, J., & Watson, E. (2009). *Kinship Care in New South Wales* Retrieved from www.acwa.asn.au

had gross average household incomes of less than \$60,000, with one-fifth relying on less than \$30,000 (Australian Institute of Family Studies, 2018)⁵.

To ensure full respect for the rights of Aboriginal children to their identity, name, culture and family relationships, our agency's priority is to see the provision of voluntary, high quality support and increased funding to kin care placements for supporting Aboriginal communities⁶.

Violence against children and women (CRC/C/AUS/CO/4, paras. 46-48)

In our view high levels of violence against children and women continues to be a matter of grave concern. In relation to violence in the home, police across Australia dealt with 239, 846 incidents in 2015. More than half of the affected women had children in their care⁷. In 2015-16, 106,000 people sought support from Specialist Homeless Services because of family violence.⁸

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 (CRC/C/AUS/CO/4, para. 51-52)

To address continuing inadequacies within Australia's system of OOHC we recommend:

- strengthening national data collection (see our comments on CRC/C/AUS/CO/4, paras. 21-22);
- improving application of the principle of the best interests of the child as it relates to children and young people who have been in care for two years or longer and/or experienced more than two placements, and increasing consideration of the right to a permanent family and children's time frames in OOHC (see our comments on CRC/C/AUS/CO/4, paras. 31-32); and
- addressing the poor level of support given to kin carers, especially Aboriginal families (see our comments on CRC/C/AUS/CO/4, paras. 37-38 above).

⁵ Australian Institute of Family Studies. (2018). A survey of foster and relative/kinship carers. Retrieved from <https://aifs.gov.au/media-releases/grandparents-caring-vulnerable-children-say-they-need-more-support>. Accessed 23th May 2018.

⁶ Barnardos understands and respects the position of a number of Aboriginal groups which are reluctant to consider the adoption of Aboriginal children given the recent history of poor casework, inadequate 'family finding' options and poor resourcing of kinship care. We are also aware of the impact of the Stolen Generations based on race and non-judicial processes with limited recognition of 'identity' issues for the children. Barnardos has therefore chosen to not take referrals for Aboriginal children for open adoption.

⁷ See <http://www.domesticviolence.com.au/pages/domestic-violence-statistics.php>

⁸ Australian Institute of Health & Welfare. (2018). *Specialist Homelessness Services Annual Report 2016-2017*. Canberra: AIHW.

Adoption (CRC/C/AUS/CO/4, paras. 53-54)

Barnardos believes that many Australian states and territories need to examine their adoption legislation to facilitate the adoption of children from care. All Australian states and territories have legislation allowing adoption from OOHC but vary in how the legislation facilitates adoption from care.

While adoption from care is possible in each state and territory, there are features which have the potential to facilitate adoption which are not always present. What is required in some states and territories are clear pathways through which a child's consent and meaningful relationships are formally recognised. We believe that NSW has two provisions which if included in all jurisdictions would encourage adoption to be actively pursued by practitioners and potentially adoptive parents. First, the grounds for adoption should not create an insurmountable barrier of the birth parent's consent and, second, children over the age of 12 need to be able to consent to their own adoption.

In some states and territories the main ground for Dispensation of Parental Consent rests on children's safety at the time of the court adoption hearing. Given that the children are in foster care at the time of their court appearance, it can be extremely difficult to succeed in gaining dispensation. This hurdle has been most effectively overcome in NSW, where dispensing with parental responsibility relates to adoption by known foster parents who are able to demonstrate love and ongoing commitment to the foster child. This legal framework enables adoption to be based on the needs of the child.

We believe that listening to children of all ages is important and respectful of children as experts on their own lived experience of being in OOHC. We have many examples at Barnardos of children aged between 12 and 15 consenting to their own adoption. Children overwhelmingly have chosen adoption when they are legally able to do so. In a 10-year study of 65 children who were adopted, all children over the age of 12 consented to their own adoption (Tregeagle & Voigt, 2014)⁹. This process has been well established and is ready to be taken up by other jurisdictions.

In our view, there is a need for improvements in legislation in Western Australia, South Australia, Tasmania, Victoria, Queensland, Northern Territory and ACT. This would be best achieved by aligning state and territory legislation to the standards of NSW where children's consent and the new relationship with the carer are grounds for dispensation of parental consent.

To further strengthen conformity between the states and territories adoptive laws and practices with the principles and provisions of the CRC, we recommend the development and establishment of a National Framework for Adoption incorporating the following solutions.

- The National Framework for Protecting Australia's Children 4th Action Plan 2018- 2020, currently being developed, also presents an opportunity for the Australian Government to influence adoption reform across the states and territories. It should include the option of open adoption as a key strategy area for achieving stability and permanency for children in OOHC.
- Commonwealth financial assistance should be provided in each state and territory to establish

⁹ Tregeagle, S., and Voigt, L. (2014). 'Overcoming the pain of never belonging: The case for open adoption for severely abused and neglected children.' *Australian Journal of Adoption (online)*, 8(1), 1–15.

internal teams in statutory agencies in order to promote adoptions by systematically reviewing caseloads and identifying young children who would benefit from the option of adoption.

- A national action research project should be funded by the Federal Government to study Australian worker, manager and administrator attitudes and beliefs that block or facilitate the use of open adoption. From these initial findings, a further action research phase should be implemented to engage Australian workers, managers and administrators in actively pursuing adoptions from care.
- A Federally-funded national conference should be convened to influence welfare workers' mindsets by disseminating evidence-informed best practice principles for open adoption. It is acknowledged that in the past there have been ongoing national adoption conferences; however, they have been dependent on the time and resources of state governments or non-government agencies. Ongoing support and resources for such conferences need to be consistently provided and funded. The provision of ongoing training programs should also be addressed. Development and implementation of such programs by the University of Sydney's Institute of Open Adoption Studies should be funded by the Australian Government.
- All education, health and welfare professional studies should equip degree graduates to be able to work with children who have a background of complex trauma, attachment issues and physical and mental damage caused by abuse and neglect. The program of study should include content on child development, the impact of a history of trauma on children, and trauma-informed practice when working with children who are living in care, including the psychological impact of failure to meet the developmental time frames of children.
- A national adoption code should prioritise resourcing for the establishment of specialist adoption teams (separate and distinct from statutory child protection teams).
- A national adoption framework should specify requirements to consider children's time frames in OOHC, require states and territories to report on lengths of time in OOHC, and provide funds for states and territories to examine how many children could be adopted from OOHC using existing legislation (see our comments on CRC/C/AUS/CO/4, paras. 31-32 above).
- Improvements in legislation should be made (see our comments in this section above) and data collection strengthened (see our comments on CRC/C/AUS/CO/4, paras. 21-22 above).

Abuse and neglect (CRC/C/AUS/CO/4, para. 55-56)

While progress has been made in the expansion of early intervention programs, this does not appear sufficient to have stopped the growth of children entering care and their staying longer. We would draw your attention to evaluation of the Brighter Futures Program, which found that participant families with drug and alcohol problems and where domestic violence existed showed the smallest reduction in reports over time. The evaluation also found that families who were relatively more disadvantaged socially and economically, families with substance misuse or intellectual disability, families with children reported for

neglect, families with a long reporting history and Indigenous families were less likely to achieve their case planning goals and thus benefit from the program (Social Policy Research Centre, 2010)¹⁰.

While we would wish to support families at all stages of their childrearing, we believe more intense services are needed for families struggling with chronic poverty, racism, drug addiction, mental health and cognitive impairment, as children reach the point at which they may enter care. The provision of high quality supported housing and crisis/restoration foster care services play critical roles here in our view.

To inform better policy and practice decision making, we also note the need to strengthen data collection (see our comments on CRC/C/AUS/CO/4, paras. 21-22).

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

Standard of living (CRC/C/AUS/CO/4, para. 68-71)

We are concerned that poverty remains persistent and entrenched in the lives of just over 17% of children (affecting 731,300 children). There has been a 2% rise in child poverty between 2000-2014. Children in lone-parent households are most affected with a poverty rate of nearly 41% (a rise from just under 37% in 2012). Overall, more than 13% of Australians (2.99 million people) live in poverty, the majority of whom are receiving social security payments. Unemployed households experience poverty at a rate of just over 63%¹¹. On average Indigenous people have half the gross average weekly income of other Australians¹².

In relation to efforts to address the issue of homelessness, we note that over 43,165 young people presented to specialist homelessness services in 2015-16 (representing 1.8 per 1,000 young people). Of these, 23% were aged between 15-17 years, 62% were female and 15% were sole parents¹³. The rate of Indigenous young people in these services has increased and is now one in four¹⁴. Further, we are concerned that nearly two out of three (63%) of 400 homeless youth surveyed had been exited from care (MacKenzie, Flatau, Steen & Thielking, 2016).¹⁵

To keep vulnerable young people safe and secure, Barnardos would welcome giving every young person in OOH, irrespective of which state or territory they live in, the legislated option of extended support until at least the age of 21, or optimally aged 25.

¹⁰ Social Policy Research Centre. (2010). *The Evaluation of Brighter Futures, New South Wales Community Services Early Intervention Program: Final Report*. Sydney: SPRC.

¹¹ Poverty line defined as below 50% of median income of \$895 per week for a couple with children. See <http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>

¹² See https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_SJNTR_2016.pdf

¹³ Australian Institute of Health & Welfare. (2018). *Specialist Homelessness Services Annual Report 2016-2017*. Canberra: AIHW.

¹⁴ <http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2015-16/presenting-alone/>

¹⁵ MacKenzie, D., Flatau, P., Steen, A., & Thielking, M. (2016). *The Cost of Youth Homelessness in Australia: Research Briefing*. Melbourne, Vic.: Swinburne University of Technology.

Children of incarcerated parents (CRC/C/AUS/CO/4, para. 72-73)

Barnardos has operated a trial program to reduce re-incarceration of Aboriginal mothers. Research by the Western Research Institute (WRI) points to this being a cost-effective model which reduces recidivism, and as a result, separates fewer Aboriginal children from their mothers.

The Beyond Barbed Wire (BBW) program was developed by Barnardos Western NSW to provide support services for women with children, most of whom are ATSI, who are returning to their home in Western NSW following release from the Wellington Correctional Centre. The aim of BBW is to reduce re-incarceration and recidivism rates of mothers in contact with the criminal justice system, and the negative flow-on effect to ATSI children.

Although BBW was run as a pilot program from 2013, in February 2017 funding was secured through a NSW Department of Family and Community Services (FACS) grant, allowing the program to continue and develop over a further two-year period including accepting referrals for women with children leaving any NSW Correctional Centre and returning to live in Western NSW.

Research by the Western Research Institute (WRI) shows that at July 2017, of the 81 women who have participated in BBW only 7% have re-offended. This suggests a favourable comparison with the high rate of recidivism among Aboriginal people who have come into contact with the criminal justice system.

This evidence shows that the BBW program model, by supporting women who are returning home following release from custody and helping them to stop re-offending, represents an excellent strategy for supporting the maintenance of the relationship between mother and child.

Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

Education, including vocational training and guidance (CRC/C/AUS/CO/4, para. 74-75)

It is well recognised that children growing up in OOHC are more likely to experience poor education outcomes including poor grades, early leaving, high suspension and expulsion rates and non-attendance (AIHW, 2015; ACWA, 2017)¹⁶. Research conducted by the Association of Children's Welfare Agencies (ACWA) paints a concerning picture of widespread educational disengagement among children and young people living in OOHC. Their study found that one in five school-aged children in care are absent from school at any given time and one in three school-aged children in care did not have an Individual Education Plan (ACWA, 2017).

In our view, greater focus on and coordination between the child welfare and education systems is required to address the poor educational outcomes attained by children in care. First, we call for the systematic and regular collection of data by education departments from each state and territory focusing on attendance by children in OOHC and the education outcomes they experience. Second, we call for these

¹⁶ Australian Institute of Health & Welfare. (2015). *Educational Outcomes for Children in Care: Linking 2013 Child Protection and NAPLAN Data*. Canberra: AIHW. Association of Children's Welfare Agencies. (2017). *Snapshot: Educational Engagement of Children and Young People in Out of Home Care in NSW Preliminary Findings*. Sydney: ACWA.

data to be made available to relevant stakeholders through a regular annual reporting process.

Early childhood care and education (CRC/C/AUS/CO/4, para. 76-77)

Barnardos Australia is very concerned with changes to be introduced in July 2018 which will significantly reduce the ability of highly vulnerable children to access childcare. For those children, whose mother or carer is not volunteering the availability of childcare services will be reduced to one day per fortnight.

Our childcare services have assessed the impact of these changes on our client group in suburban Sydney. The most concerning situations that have been identified are where mothers are experiencing mental health problems and not in a position to volunteer, but whose children urgently need care.

At the present time it is not known how much State funding will be made available to keep these at-risk children in childcare.

Yours sincerely,



Deirdre Cheers
Chief Executive Australia