

grandparents
V I C T O R I A



**GRANDPARENTS CALL ON AUSTRALIA TO
IMPROVE ITS IMPLEMENTATION OF THE UN
CONVENTION ON THE RIGHTS OF THE CHILD**

**SUBMISSION TO THE NATIONAL CHILDREN'S COMMISSIONER
REGARDING AUSTRALIA'S PROGRESS IN IMPLEMENTING THE UNITED
NATIONS CONVENTION ON THE RIGHTS OF THE CHILD**

Over the years the United Nations Convention on the Rights of the Child has been one of the central documents on which GPV/KCV has based its policies, and is the benchmark on which GPV/KCV judges all changes to legislation, policy and practice affecting children and families.

Protection of human rights is important work and GPV/KCV believes that the best place to start is with protection of children's and family rights.

GPV/KCV believes that Australia needs to improve its observation and support of children rights.

GPV/KCV submits the following observations of the state of children's rights in Australia. Specifically, GPV/KCV's expertise relates to the state of children's rights in Victoria, in the context of child protection and out-of-home care, particularly kinship care.

In the interests of avoiding repetition, where an article has been listed in multiple clusters in the Commissioner's call for submissions, GPV/KCV has commented only in the cluster under which it has the most relevance to the work and experiences of GPV/KCV staff.

About Grandparents Victoria

Grandparents Victoria (GPV) was founded in 2001 as a state-wide not-for-profit organisation of grandparents who believe that grandparents have a role to play in supporting families, particularly children.

<http://grandparents.com.au>

About Kinship Carers Victoria

Kinship Carers Victoria (KCV) was formed by GPV in 2010 to:

- Help kinship carers in Victoria be supported in their role according to their needs and the needs of the children they care for
- Identify, promote and represent the views of kinship carers in decision-making processes
- Inform and train carers to enable them to better perform their role as carers
- Advocate the needs of kinship carers with decision-makers
- Promote and assist in the delivery of programs designed to support kinship carers.

www.kinshipcarersvictoria.org.au

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Cluster 3 – General principles

Article 3 – Responsibilities of Institutions

In 2015 GPV/KCV formalised its concerns that the Children’s Youth and Families Amendment Act 2013 (Vic.) (CYF) breached this article.

According to Justice Alastair Nicholson AO RFD QC¹, speaking before a Children’s Matters forum² in 2016 “the Act contravenes Article 3 by interfering with the Court’s ability to determine an individual child’s best interests on a case by case basis”.

Complaints received by GPV/KCV about DHHS also show that section (3) of this article is not being adhered to, particularly the stipulation about the ‘number and suitability of their staff’. Carers regularly contact GPV/KCV to report that they have difficulty getting a response from DHHS workers, and carers are often referred to GPV/KCV for answers to questions that DHHS workers should be able to answer.

Article 12 – Children’s Own Voice

GPV/KCV has long held concerns that Victorian legislation has restricted the ability for children to voice their opinions in matters affecting their own lives. In his 2016 address, Justice Nicholson noted that:

The Justice Act 2013³ (Vic.) assumes that a child under 10 is incapable of giving instructions of any kind, without regard to considering the individual child and removes their right to be heard. The CYF Act 2013⁴ also has the effect of reducing the child’s opportunity to be heard.

GPV/KCV believes that all children have the right to have their views represented in decisions which impact on their lives. Further, all children have the right to representation in decision making processes from an independent advocate such as a lawyer or guardian ad litem.

¹ *The rule of law and the importance of judicial oversight in care arrangements.* Keynote address made to the Children’s Matters Seminar, 29 February 2016.

² Children’s Matters is a forum of organisations concerned about changes to the Children Youth and Families Act passed in 2014/14 and brought into force in March 2016. The members are: Law Institute of Victoria, Berry Street, Victorian Aboriginal Child Care Agency, Office of the Public Advocate, Mental Health for Youth and their Families, and Kinship Carers Victoria

³ Justice Legislation Amendment (Cancellation Of Parole And Other Matters) Act 2013, Section 3: amendments relating to the legal representation of children

⁴ Children, Youth And Families Amendment Act 2013

Cluster 4 – Civil Rights and Freedoms

Article 7 – Registration and the Right to a Name, Nationality and Care

Article 8 – Identity

These Articles both relate to one of the child’s most basic human rights, the right to have a strong sense of identity, and are of particular concern to GPV/KCV in the context of adoption and the ‘legal’ alterations made to a child’s identity at that time.

Many adoptees of the past have reported that they felt a loss of sense of identity, both through being deprived of their original birth name, and the loss of connection with their extended family and that family’s culture⁵. The risk of this sense of loss is particularly acute in cases of international adoptions.

GPV/KCV believes that the inclusion of adoption in the hierarchy of permanency objectives in the 2014 amendments to the *Children, Youth and Families Act 2005* puts the rights to their name and identity at risk for some children.

Cluster 5 – Violence against Children

Article 19 – Protection from Violence, Abuse, Maltreatment

In relation to Article 19, and in particular the need to provide protection and support for the child, Justice Nicholson states that:

This article states a primary responsibility of DHHS, but it is hardly consistent with [the article] to make arbitrary provisions without regard to the needs of the individual child as this legislation⁶ does. The 2014 Act seems more directed at the convenience of the Department than considerations of the child’s individual need or to promote the child’s relationship with parents.

Article 24 – Health and Treatment of Illness

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

GPV/KCV abhors the practice of Female Genital Mutilation (FGM) and supports measures to eradicate this harmful practice. GPV/KCV intends to campaign against the continued practice of FGM in 2018 and beyond.

⁵ *Impact of past adoption practices: A report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs.* Australian Institute of Family Studies, March 2010.

⁶ Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

Article 37 – Children and Liberty

In 2017 GPV/KCV became concerned by a number of reports into the juvenile justice system, particularly the operation of Youth Justice centres.⁷

Concerns raised in relation to this article of the UNCRC included:

- Children in residential care facilities being reported to police and charged for minor infractions
- Children kept in isolation in adult prisons
- Children kept in lockdown for 23 hours a day due to inadequate supervision
- Children having inadequate access to educational and mental health programs to assist in rehabilitation

GPV/KCV believes that corporal punishment is never appropriate, as it can cause lasting physical and mental damage to children, and normalises violence in the home, which is completely unacceptable.

Cluster 6 – Family environment and alternative care

Article 9 – Separation from Parents

This article was noted by Justice Alastair Nicholson as having been breached by changes to Victorian legislation that came into full effect in March 2016. Justice Nicholson noted that:

The CYF Act 2014⁸ (Vic.) is in serious breach of the requirements of this Article, as are the two 2013 Acts in question⁹. The operative words in Article 9.1 are that competent authorities must decide that such separation is in the best interests of the child and most importantly, that decisions must be subject to judicial review.

He further noted that:

All of the relevant Acts are in breach of Article 9.2 requiring that all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

GPV/KCV believes that it is the right of every child to participate in making decisions about their own lives. It is also essential to have input from a variety of sources close to the child, including parents, grandparents and other extended family members, educators, medical professionals and child protection practitioners.

⁷ "Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system". Legal Aid, January 2017

"Report on youth justice". Victorian Ombudsman, February 2017

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

⁸ Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

⁹ Children, Youth and Families Amendment Act 2013

Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013, (particularly Section 3: amendments relating to the legal representation of children)

Article 10 – Family reunification

Although the specific details of this article refer mainly to the need for governments to regulate their borders in a way that is sympathetic towards families who live in different countries, GPV/KCV supports the sentiment behind it.

Where possible, children should be able to keep in close contact with members of their extended families, except in cases where this contact may place the child in danger of physical or mental harm. GPV/KCV believes that more can be done from a child protection perspective to ensure that all avenues for keeping children within their extended families are explored before the decision is made to place a child in foster or residential care.

Article 18 – Child-Rearing Responsibilities

This article was one of a number of Articles of the UNCRC that were noted by Justice Alastair Nicholson as having been breached by changes to Victorian legislation. Justice Nicholson noted that:

Article 18.2 is important for present purposes because of the obligation to support parents. It can hardly be consistent to provide, as this legislation does that after 12 months, or in exceptional circumstances 24 months, the obligation to support parents or guardians ceases.

GPV/KCV agrees that in cases where the child is unable to live with their parents, the Government and DHHS should be responsible for supporting carers to keep children together within the family home, or that of the extended family. This support may take the form of financial assistance, or services such as counselling.

In 2017/18, the provision of childcare services for kinship carers is an emerging issue.

Article 20 – Protection by the State

Section (3) of this Article provides that “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”.

GPV/KCV believes that the best way to ensure this continuity is to place children with members of their extended family if they cannot remain with their parents.

This article is important in the case of indigenous children. 2018 marks the tenth anniversary of the federal government’s apology to the stolen generations, and yet statistics show that more children are being removed from indigenous families today than were removed at the height of the stolen generations era.¹⁰

¹⁰ <https://www.theguardian.com/australia-news/2018/jan/25/indigenous-children-in-care-doubled-since-stolen-generations-apology>

Article 21 - Adoption

In 2016 GPV/KCV concerns about adoption were heightened.

A report into adoption practices in Australia¹¹ found that adoptees frequently reported a loss of sense of identity after learning that they were adopted, along with feelings of mistrust and difficulty connecting with others.

Further, GPV/KCV continues to hold concerns for the loss of connection to family and culture that arises when children are adopted away from the community and family in which they were born.

The UNCRC insists that among other safeguards that should be established before an adoption takes place, it should be ensured that “persons concerned have given their informed consent”. This is inconsistent with the practice of placing children for stranger adoption for reasons of child protection, and is also of concern because while parents may be asked for their consent, there are no provisions in the current Victorian adoption legislation for grandparents or other extended family members to consent to an adoption.

In the ‘...Safe and wanted...’ report, the Victorian Commissioner for Children and Young People made a recommendation that:

[I]n light of the widespread community concern, particularly for Victoria’s Aboriginal community, and the evidence that adoptions are not occurring in practice, the Commission recommends that it be removed from the hierarchy of permanency objectives.¹²

This request comes in the light of fears that a second Stolen Generation might be created by placing adoption at the top of the hierarchy of permanency objectives.

Cluster 7 – Disability, basic health and welfare

Article 24 – Health and Treatment of Illness

GPV/KCV strongly supports the provision of adequate health care for children. Within the framework of this article, GPV particularly supports the demand that states “shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

GPV/KCV is aware of many cases in Victoria where families struggle to meet the costs of health care for children – especially in cases where the children have higher needs or mental health issues.

¹¹ *Impact of past adoption practices: A report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs.* Australian Institute of Family Studies, March 2010.

¹² ‘...Safe and wanted...’ *Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 – Commission for Children and Young People, June 2017.*

In 2013 KCV received record numbers of complaints about DHHS about:

- Funding for special needs
- Inadequate assessments

This trend continues to this day.

Article 26 – A Child’s Right to Social Security

This article is linked closely to the issue of poverty. GPV/KCV supports the right of children and families to have access to welfare benefits where these are necessary to sustain the health and wellbeing of the child. This article is also closely linked to Article 27, as GPV/KCV believes in the responsibility of government and DHHS to support families to meet the physical needs of children.

Article 27 – Standard of Living

In 2016 Justice Nicholson noted that:

Article 27 says that children have the right to a standard of living that is good enough to meet their physical and mental needs and that the Government should help families to provide this.

GPV/KCV agrees that the Government and DHHS should be responsible for supporting carers to keep children together within the family home, or that of the extended family. This support may take the form of financial assistance, or services such as counselling.

This article came to prominence again 2017 after the release of the Victorian Ombudsman’s report detailing the issues faced by kinship carers in Victoria obtaining reimbursement payments from DHHS.¹³

Cluster 8 – Education, leisure and cultural activities

Article 28 – A Child’s Right to Education

GPV/KCV has long championed this Article, as education is one of the most essential factors in setting up a child for future success in life.

Of particular concern to GPV/KCV recently has been the difficulties faced by children in kinship care families, who are not always fully funded and supported to achieve success in education. While LOOKOUT centres are now operational in Victoria to assess the special needs of children in OOHC, this does not always

¹³ Investigation into the financial support provided to kinship carers. Victorian Ombudsman, December 2017.

translate to additional supports. Kinship carers often face difficulties in obtaining increased funding for supports such as speech therapy or additional tuition.

Additionally, kinship carer families sometimes have difficulties in meeting the costs of essential educational supplies, such as uniforms, textbooks, electronic devices (such as tablets) and excursions.

Article 30 – A Child’s Right to Enjoy Minority Group Culture

In 2012 GPV/KCV identified this article as particularly important in the context of the stolen generations and international adoption.

GPV/KCV believes that children have the right to maintain connections with the community in which they were born, and that removing them from these communities in the name of child protection should be used only as a last resort.

Article 31 – A Child’s Right to Play

In 2014 GPV/KCV conducted a survey of grandparents which found that grandparents are concerned about the quality of play activities enjoyed by today’s children. Most apparent was the observation that many children do not enjoy enough outdoors adventure play.

GPV/KCV continues to campaign for government programs which encourage better access to outdoor/adventure play opportunities for children, and funding for therapeutic play groups for children with special needs and/or recovering from trauma.

Cluster 9 – Special protection measures

Article 22 – Refugee Status

In 2014 GPV/KCV campaigned for the removal of refugee children from detention centres under Australian control, whether on Australian soil or offshore. GPV/KCV deplores any policy that mandates the forced separation of asylum seeking children from their families during what is already a very stressful time for them.

Article 32 – Children and Employment

This article requests that children be protected from undertaking paid work at the cost of their education, but GPV/KCV notes that in developing nations, some children face such extreme poverty that they must choose between undertaking paid work or starvation. To a lesser extent, this same issue exists in Australia, where some teens from lower income families, including kinship care families, must make the choice to enter paid employment because they cannot afford the high costs of further education.

Article 40 – Children and Legal Proceedings

In particular, GPV/KCV holds concerns about the implementation of section (4) of Article 40 in Victoria. This section asks that alternatives to institutional care be considered when dealing with children facing criminal charges, and that counselling and educational programs (among others) be made available to children in the youth justice system.

Article 39 – Recovery and Reintegration

GPV/KCV is aware of an increasing number of cases where children being raised by kinship carers continue to suffer symptoms of trauma for years after being removed from the situation of neglect or abuse in which they were being raised.

In many of these cases the support services offered to children, including counselling and other medical treatments, are either inadequate for the children's needs, or are not fully funded, leaving kinship carers to cover the gap out of their own pockets.