



## Factsheet: Rights of the Child

### Background Information

Since 2011, Australia has appeared before the UN Committee on the Rights of the Child,<sup>1</sup> a National Children's Commissioner has been established in the Australian Human Rights Commission,<sup>2</sup> the Royal Commission to investigate Institutional Responses to Child Sexual Abuse has been established and extended,<sup>3</sup> and the second three-year action plan under the National Framework for Protecting Australia's Children 2009-2020 has been implemented.<sup>4</sup> The *Family Law Act 1975* (Cth) has also been amended to strengthen protection of the rights of the child, especially in violent situations.<sup>5</sup> The Commission congratulates the Government on this positive progress in protecting and promoting the rights of the child.

The National Children's Commissioner has tabled two annual statutory reports since her appointment. The *Children's Rights Report 2013* examined the Convention on the Rights of the Child (CRC) and its implementation in Australia, and referred to the outcomes of the national listening tour, the *Big Banter*, from which the Commissioner identified her priorities for action.<sup>6</sup> The *Children's Rights Report 2014* investigated how the human rights of children and young people engaging in intentional self-harm, with or without suicidal intent can be better protected.<sup>7</sup> The third statutory report of the Commissioner will investigate the impact of domestic and family violence on children and children and business. The report will be released in late 2015.

### Key Issue – Third Optional Protocol to the CRC

The Australian Government completed a public consultation into the ratification of the Third Optional Protocol on 10 April 2012.<sup>8</sup> As yet the Australian Government has not formed a formal position on the Third Optional Protocol.

### Recommendation

***The Australian Government develop a formal view on the Third Optional Protocol as a matter of priority.***

## **Key Issue – Children in out of home care**

The Productivity Commission produces an annual Report on Government Services which provides information on the equity, effectiveness and efficiency of government services in Australia.<sup>9</sup> The Report reveals that the number and rate of Aboriginal and Torres Strait Islander children and non-Indigenous children aged 0–17 years in out-of-home care has increased progressively since 2009.<sup>10</sup> Nationally, 14 991 Aboriginal and Torres Strait Islander children and 27 827 non-Indigenous children were in out-of-home care at 30 June 2014. In 2009 the numbers were 11, 468 and 24,279 respectively. The rate of children in out-of-home care per 1000 children was 51.4 for Aboriginal and Torres Strait Islander children and 5.6 for non-Indigenous children.<sup>11</sup>

## **Recommendation**

***The Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection and out-of-home care.***

## **Key Issue – Child offenders in adult prisons**

Child offenders have sometimes been held in the same correctional centres as adults. In particular, children have been held in adult detention facilities in Western Australia and Victoria. These transfers have been examined through litigation in which the Commission intervened.<sup>12</sup> The National Children Commissioner raised this concern in her inaugural Children’s Rights Report 2013.<sup>13</sup> The Commission notes that some jurisdictions have progressed the use of non-custodial measures and strengthened diversionary programs.<sup>14</sup>

## **Recommendation**

***The Commission recommends that Australian governments expand the use of diversionary programs for juveniles, raise the minimum age of criminal responsibility and cease detention of children in adult facilities.***

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- <sup>1</sup> United Nations Committee on the Rights of the Child,
- <sup>2</sup> Australian Human Rights Commission, 'Commission welcomes inaugural Children's Commissioner', (Media Release, 25 February 2013). At <https://www.humanrights.gov.au/news/media-releases/commission-welcomes-inaugural-children-s-commissioner> (viewed 17 June 2015).
- <sup>3</sup> Attorney-General for Australia, Minister for the Arts and Minister for Social Services, 'Child Abuse Royal Commission granted a two year extension', (Media Release 2 September 2014). At <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/ThirdQuarter/2September2014-ChildAbuseRoyalCommissionGrantedATwoYearExtension.aspx> (viewed 17 June 2015).
- <sup>4</sup> Centre for Excellence in Child and Family Welfare Inc., *National Framework for Protecting Australia's Children*. At <http://www.cfecfw.asn.au/news/2015/03/national-framework-protecting-australias-children> (viewed 17 June 2015).
- <sup>5</sup> The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) introduced changes to the *Family Law Act 1975* (Cth) that better ensure the safety of children by expanding the definition of 'family violence' to include socially and financially controlling behaviour and exposing a child to family violence and making it easier for victims to report violence.
- <sup>6</sup> Australian Human Rights Commission, *Children's Rights Report 2013*. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2013> (viewed 17 June 2015).
- <sup>7</sup> Australian Human Rights Commission, *Children's Rights Report 2014*. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014> (viewed 17 June 2015).
- <sup>8</sup> Attorney-General's Department, *Human Rights Treaty Body Reporting - Convention on the Rights of the Child and its two Optional Protocols*. At <http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Pages/default.aspx> (viewed 17 June 2015).
- <sup>9</sup> Productivity Commission, *Report on Government Services (2015)*. Available at <http://www.pc.gov.au/research/recurring/report-on-government-services> (viewed 17 June 2015).
- <sup>10</sup> Productivity Commission, *Report on Government Services (2015)*, Table 15A.18. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volume-f-chapter15.pdf> (viewed 17 June 2015).
- <sup>11</sup> Productivity Commission, *Report on Government Services (2015)*, p 15.13. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volume-f-chapter15.pdf> (viewed 17 June 2015).
- <sup>12</sup> *Wilson v Joseph Michael Francis, Minister for Corrective Services for the State of Western Australia* [2013] WASC 157 (3 May 2013), and a Victorian Ombudsman investigation, *Investigation into Children Transferred from the Youth Justice System to the Adult Prison System* (2013). At <https://www.ombudsman.vic.gov.au/getattachment/6a579e49-212e-42b0-9d3c-791e2d60e102/reports-publications/parliamentary-reports/investigation-into-children-transferred-from-the-y.aspx> (viewed 22 June 2015).
- <sup>13</sup> *Children's Rights Report 2013* (2013), p 33. At <https://www.humanrights.gov.au/publications/childrens-rights-report-2013> (viewed 22 June 2015).
- <sup>14</sup> The Australian Human Rights Commission's consultations in the lead up to the UPR identified successful diversionary initiatives in Victoria, the ACT and Tasmania.