

Submission to the National Children's Commissioner

On Australia's progress under the Convention on the Rights of the Child

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1. Introduction

The Benevolent Society welcomes the opportunity to provide a submission to the National Children's Commissioner on Australia's progress under the Convention on the Rights of the Child.

While Australia is a comparatively prosperous nation, there remains a significant cohort of children and young people who are denied the full enjoyment of their rights. In this submission, we outline a number of areas in which Australian governments can and must improve policies, laws and practice to fulfil the rights of children.

Our submission is based on the experience of our practice staff working with children and families and is focussed on the following specific clusters of rights within the Convention on the Rights of the Child:

- General measures of implementation (articles 4, 42)
- Violence against children (articles 19, 34 and 39)
- Family environment and alternative care (articles 5, 9, 10, 18, 20, 21, 25)
- Disability (article 23)

2. About The Benevolent Society

The Benevolent Society is Australia's first charity. We have helped people, families and communities achieve positive change for over 200 years. We are a secular not-for-profit organisation with 1,615 staff and 658 volunteers. In 2016-2017, we supported more than 54,000 children and adults in 71 locations across New South Wales and Queensland. Our revenue in 2016-17 was \$108,454 million.

The Benevolent Society's work is guided at all times by a commitment to the best interests of the child. The Benevolent Society offers a range of services to children and families, including parenting support and coaching, early childhood development programs, specialist support when challenges arise, and post-adoption support services.

3. General Measures of Implementation (articles 4, 42, 44[6])

National Plan of Action

The Benevolent Society strongly supports the recommendation of the UN Committee on the Rights of the Child (the UN Committee) that Australia 'develop and implement a comprehensive strategy, in consultation with children and civil society, for the overall realization of the principles and provisions of the Convention.'¹ We regret that there has been negligible progress in achieving this in the time since Australia last reported to the UN Committee.²

We acknowledge the inter-jurisdictional cooperation achieved under the auspices of the *National Framework for Protecting Australia's Children (2009–2020)* (the National Framework), as noted in the Australian Government's report to the UN Committee.³ However, activity under the National Framework is primarily focussed on child safety and reducing the likelihood of children entering the child protection system, and does not respond to the full range of rights necessary to ensure that children are able to thrive and meet their full potential.

We also note that the National Framework is currently in its final phase and will expire in 2020. As yet there has been no indication of the National Framework's future. The Benevolent Society believes that the collaboration and coordination achieved under the framework's unique tri-partite governance structure should not be allowed to lapse. The completion of the National Framework's term of work represents an important opportunity to evaluate the successes and limitations of activities under the framework and to consider expanding the next iteration of the National Framework into a National Plan for Children, with a more comprehensive mandate covering all areas of children's rights.

4. Violence against children (articles 19, 34 and 39)

The Benevolent Society is gravely concerned by the rising numbers of children receiving child protection services in Australia.⁴ The data suggest that the current policy and funding efforts are not directed at ensuring children in Australia are able to grow up free from violence, abuse and neglect.

The National Framework for Protecting Australia's Children

The Benevolent Society acknowledges the important efforts being made under the National Framework to implement a nationally coordinated approach to preventing child abuse and neglect using a public health model approach. However, in the nine years since it commenced, progress towards fulfilling the ambitious goals of the National Framework has been limited.⁵ Given the unique opportunity for inter-jurisdictional cooperation engendered by the framework, we are concerned by the lack of progress in developing nationally consistent best practices approaches within child protection services, such as nationally standardised tools for assessing child maltreatment.

Inadequate funding, inconsistent government staffing, and a lack of prioritisation within COAG and federal and state governments have hampered current efforts of accountability in relation to the intended outcomes of the National Framework. The lack of publically available National Framework annual reports since the 2013-14 Annual Report makes it difficult to evaluate the effectiveness of the framework.

The National Framework has not been appropriately funded to bring about the public health model for child safety it was established to achieve. The \$2.6 million of Australian Government funding available each year to support the Third Action Plan initiatives⁶ is a stark contrast to the \$63 million

in funding that was provided to support the First Action Plan.⁷ With dwindling amounts of Australian Government funding allocated to the National Framework each year, activities under the framework have successively been reduced to a series of small pilots or trial initiatives. In this year's federal budget there was no indication of funding for the Third Action Plan or forward estimate provisioning for the Fourth Action Plan.

The weakening of governance structures established to deliver the National Framework over the past ten years has also compromised outcomes. The disbanding of the Standing Council on Community and Disability Services and its advisory councils within COAG has undermined accountability and oversight. The lack of consistency in government and bureaucratic representation within the National Framework's governance and lack of authority of personnel to drive the required change has limited the capacity to bring about the necessary systemic change.⁸

Finally, federal and state governments have not sufficiently prioritised the work required to deliver on the intent of the National Framework, meaning that much needed processes to coordinate efforts to improve child safety and wellbeing in Australia have not happened. If Australian governments are committed to achieving the worthwhile objectives of the National Framework they must increase investment in the framework and improve efforts to measure progress against the National Framework's indicators of change.

5. Family environment and alternative care (articles 5, 9, 10, 18, 20, 21 and 25)

Family environment

The Benevolent Society believes that Australia's current response to children and families experiencing complex challenges occurs too late, resulting in families not receiving the support they need to ensure the wellbeing and safety of their children.

Significant evidence indicates that it is far better to intervene early to prevent problems occurring in the lives of children and their families than to try to address them once they've become entrenched.⁹ Early intervention, Intensive Family Support, resources and timely decision-making at critical junctures in a child's interaction with the child protection system can have a significant positive impact on removal and reunification outcomes for the child and their family, and reduce the need for permanent long-term care.

The Benevolent Society has direct experience as a service provider in delivering intensive family support programs across NSW and in Queensland. We are best able to demonstrate the effectiveness of family support programs through the rigorous outcomes measures established under our Social Benefit Bond: Resilient Families. Resilient Families is an intensive family support service designed to keep children with their families where safe to do so and away from out of home care. Progress made by families referred to the program is compared against progress made by a control group who receive standard support provided by the NSW Family and Community Services Department. Over the life of the Social Benefit Bond, Resilient Families has delivered an 89% preservation rate (children remaining at home with parents) for all families referred to the program.¹⁰ In comparison with the department's control group, 32% fewer children from Resilient Families entered out-of-home care.¹¹ Resilient Families and other successful, evidence-based program¹² clearly illustrate the efficacy of family support services and the need to implement these approaches more widely.

Despite commitments at the state and federal level to support family preservation and restoration, Australian child protection systems remain heavily geared towards reactive rather than supportive and preventative responses to child abuse and neglect, with only 17.4% of national child protection expenditure dedicated to Family Support and Intensive Family Support services at the secondary and tertiary end of the system.¹³

The need for early intervention must also be targeted at addressing issues external to the child protection system that have a significant bearing on the prevalence of child maltreatment. The Benevolent Society is concerned that systemic strain and underfunding of adult-focused services that address the 'toxic trio' of mental health, alcohol and other drug abuse and family violence is further contributing to the rates and incidence of child abuse and neglect.¹⁴ These systems are not sufficiently child-focused as their mandate remains oriented towards delivering services to parents as adults, with no accountability or incentive to address the needs of children or families holistically.¹⁵

This means the current system misses valuable opportunities to identify families at risk and offer support before they reach crisis point. The gap in prevention leads to an increased need for crisis intervention measures, primarily the removal of children from their parents into the out of home care system. The Benevolent Society believes that Australian governments must direct greater investment and focus to early intervention and prevention strategies that support families before neglect or abuse occurs, as recommended in the UN Committee's 2012 Concluding Observations.¹⁶

Structural and societal issues

Many of the poor outcomes experienced by vulnerable families are either caused or exacerbated by the conditions under which they are raising their children.¹⁷ For families living in poverty, the cumulative stress on parents to provide a secure and healthy home environment for their children can undermine the care they provide, resulting in poorer outcomes for their children. This is particularly the case for Aboriginal and Torres Strait Islander children and their families who are contending with over two centuries of trauma, poverty and racial discrimination.

To break the cycle of disadvantage, it is essential that key risk factors for poor child outcomes are recognised and tackled. As part of their responsibilities under the Convention on the Rights of the Child to ensure that every child enjoys an adequate standard of living,¹⁸ Australian governments need to work across jurisdictions to implement effective and supportive policies that create sustainable employment, provide adequate income support, family support services, and access to affordable housing, education and healthcare.

The lack of access to secure and affordable housing is a systemic issue that is increasingly pushing low income families to crisis point. Our practice staff have reported the difficulty of supporting positive family functioning when families are in unsafe environments and under extreme stress because they have no stable accommodation. Children often bear the brunt of this instability, with the relative safety and stability of school compromised by constant accommodation moves that also necessitate changing schools.

There is also a significant link between unstable housing and women and children experiencing family violence. A defining feature of safety in situations of family and domestic violence is appropriate and secure housing to which the perpetrator does not have access. In NSW, programs like Staying Home Leaving Violence are improving the safety and wellbeing of women and their children by assisting them to remain in their family home. However, important programs such as these are not funded for every community and women and children in rural and remote regions have particularly limited access.

The Benevolent Society believes that child protection policy and family intervention responses that continue to ignore social, geographic and economic factors and focus only individual behaviours will continue to put children at risk. Preventing children from living in poverty provides an important protective layer that will enhance their safety and wellbeing.

Service delivery issues

Lack of integration

The Benevolent Society believes that better outcomes for children and families will only be achieved if the full range of government agencies, community and non-government organisations including health, education, early childhood education and care, housing, and police are included in a whole-of-system response to children's safety, welfare and wellbeing.

Services can only be effective if they are being used by the people who need them. To ensure a more seamless service system for children and families, and more effective planning and resource management, a much greater level of collaboration between different government departments, different levels of government and between government and non-government services is needed. The service system needs to become better integrated with key services such as maternal and paediatric health, parenting education, family support, early learning playgroups and preschool co-located to promote accessibility and acceptance.

While there have been some examples of effective program delivery and successful collaboration between services, such as the federal government's Communities for Children initiative,¹⁹ The Benevolent Society continues to see ongoing communication barriers and lack of integration between and across government and non-government agencies, and missed opportunities to provide wraparound services to children and families who need them.

A key example reported by our practice staff is schools and teachers not recognising child misbehaviour in a child maltreatment context. Children are identified as having behavioural issues, with a lack of awareness that misbehaviour may be a manifestation of children dealing with complex trauma. A fully qualified intermediary role with an understanding of child maltreatment and trauma is needed within school contexts to support teachers' mandatory reporting responsibilities and work with external agencies.

Service gaps

The statutory system is overburdened with notifications of alleged child abuse and neglect. Our practice staff report that the strain on the child protection system is leading to situations where families that do not require statutory intervention but are in need of family support services are being overlooked. This can lead to children experiencing greater levels of cumulative harm over a longer period of time than if the system had been equipped to provide support earlier.

Our services identified that children aged between 9-18 are particularly underserved in this regard. Our staff report encountering official attitudes that deem teenaged children to have more resilience and personal resources available to them to deal with unsafe situations and therefore were able to 'fend for themselves'. This ignores the numerous ways in which young people are still dependent on their parents for care and support. In situations where parental capacity and family functioning is not strong, teenaged children are left to fall through the gaps. Our staff gave the example of one family with a young person who needed to access a mental health service but her mother wasn't answering the phone when the service called. The young person was not receiving support to help cope with her anxiety and as a result was not going to school.

Our services also work with teenagers who are themselves parents, many of whom have lived in out-of-home care or experiences various forms of disadvantage while growing up. We find that these young people are still processing their own trauma and need a tailored and targeted response to support them to build positive family functioning.

Limited timeframes

Families that are disadvantaged are often dealing with complex intersecting issues. Families may need services that are ongoing and which change as particular issues arise and require particular responses. Block funded models of service provision provide little flexibility to tailor services to individual families' needs. The need for individual responses is recognised in areas such as disability and long-term health service provision and needs to be recognised for family and child services. Withdrawing support at a critical juncture can mean that the positive results that have been painstakingly achieved can fall away. Australian governments must recognise that service supports may be required over a sustained period of time.

Children deprived of their family environment

The Benevolent Society believes that there has been little progress to address the UN Committee's concerns in regard to the number and situation of children living in out-of-home care.²⁰ In the time since Australia last reported to the UN Committee in 2012, the number of children in out-of-home care has continued to increase, with 47,915 children now in out-of-home care nationally.²¹ While the numbers of children in out-of-home care has stabilised since the rapid rises earlier this decade, children and young people are staying longer in out-of-home care, with higher numbers never leaving and returning home.²²

The Benevolent Society acknowledges that a number of substantial reforms are underway in all jurisdictions to address the inadequacies within the out-of-home care system.²³ However, to date these reforms have yet to reduce the rate of children in out-of-home care; significantly improve their long-term life outcomes;²⁴ or reverse the over-representation of Aboriginal and Torres Strait Islander children in the system.²⁵

Despite the fact that the vast bulk of child protection funding continues to be targeted at the tertiary end of the system,²⁶ there is still significant underfunding of ongoing services for children in out-of-home care, their carers and birth families, and little targeted funding to enable the reunification of children with their families.

There is significant evidence that in general children removed from their families and placed in out-of-home care experience more serious physical, mental and emotional health problems than children who have never been in care.²⁷ Many of these health issues are undiagnosed and untreated on entry into care.²⁸ The failure to provide adequate services to mitigate trauma contributes significantly to the poorer outcomes for children in out-of-home care. Having failed to intervene early to prevent child maltreatment in the first place, the system often fails a second time by not providing adequate and appropriate services and supports to children, their carers and their birth families.

Governments must resource high quality, supportive and stable out-of-home care that is reinforced by ongoing best practice casework and appropriate services to mitigate against the negative effects of trauma and removal on children and young people. These supports must be intensified at critical transition points in a child's life, such as the period after entering a placement, the transition to school, the transition to high school and when leaving school education, and also when leaving care.

Bureaucratic barriers

The Benevolent Society believes that federal and state jurisdictions should take greater steps to ensure that children and young people in out-of-home care have priority access in having their health, dental, housing and education needs met.

Our staff report facing pervasive bureaucratic inconsistencies and inefficiencies within the out-of-home care system, which have ongoing detrimental impacts on the children and young people we work with. A lack of responsiveness within government departments to address these recurring issues places the onus on non-government agencies to navigate complex bureaucratic systems to ensure a child's needs are fulfilled.

Access to services

Inefficient bureaucratic systems present significant barriers to children in out-of-home care having their health needs met. Our staff report incidences where medical procedures exceeding the funded allowance for medical needs entail additional paperwork that result in long delays. For example, one young person had to wait six months before they were authorised to have much needed orthodontic work. In another situation, a young person needed an operation to have grommets implanted. The statutory child protection department had consented to this procedure but had neglected to complete the specific paperwork relating to a secondary part of the operation to remove the child's adenoids. The department could not be reached on the day of the operation, meaning that this part of the procedure was left undone. Non-government service providers do not have the authority to approve or expedite these processes, meaning that children in out-of-home care recurrently have their right to the highest standard of health impeded by departmental inefficiencies.

Access to information

Ongoing challenges in obtaining adequate and relevant information from statutory child protection departments and other government agencies make it difficult for non-government out-of-home care service providers to effectively respond to a child or young person's safety and wellbeing needs. Our practice staff describe a siloed approach to information-sharing whereby the child protection department has access to detailed information about a child's life story and related information from other government agencies such as Police and Health, while non-government agencies that make requests for additional information are only provided with limited, selected details that obscure a holistic view of a child's situation. There are also significant inconsistencies in the type and level of information that is made available to non-government service providers due to a lack of clarity and guidance within governments on how to balance privacy requirements with a child's safety and wellbeing needs. The Benevolent Society believes government need to implement better data-collection and information sharing processes to inform system planning and accountability, to enable better outcomes for children and their families.

Access to identity documents

As has been identified by the National Children's Commissioner,²⁹ children and young people in out-of-home care face additional barriers in accessing critical identity documents.

Our staff describe processes that are subject to lengthy delays and plagued by a lack of communication and clarity within and between different government agencies. Staff report that simple things like requesting a cover letter from the statutory child protection department when applying for a passport can take months, and information provided about which forms are need to apply for a child's passport is inconsistent between different government agencies and offices.

Similarly, in relation to applying for Medicare cards and birth certificates, our staff have received conflicting information from different government departments as to whether they have the authority and responsibility to make these applications on behalf of children in out-of-home care resulting in lengthy delays.

These system delays have a direct and ongoing impact on the children affected, resulting in exclusion from family holidays or delays in receiving health care. The Benevolent Society believes that government statutory child protection departments need to take greater responsibility for ameliorating these issues and streamlining processes for children in out-of-home care to obtain critical identity documents.

Aboriginal and Torres Strait Islander children in out-of-home care

'They don't understand, they take the kids away from family, from their culture, their everything. They take everything away from them, and they expect them to live from there on with people who don't give them anything. And then, they turn 18 and they just drop you. You don't have your real family, they've ruined it, and your foster family doesn't want you anymore because you're 18 and they don't get paid for you anymore, so they don't want you.' - Statement made by a young Aboriginal woman who has left out-of-home care, regional NSW

In its 2012 Concluding Observations, the UN Committee noted their concern about the large numbers of Aboriginal and Torres Strait Islander children being separated from their homes and communities and placed into care that does not adequately facilitate the preservation of their cultural and linguistic identity.³⁰ This situation has not abated in the time since Australia last reported to the UN Committee. Nationally, Aboriginal and Torres Strait Islander children make up roughly 36% of all children in out-of-home care with the numbers predicted to treble in the next decade if radical action is not taken.³¹

The Benevolent Society is concerned that the expertise of Aboriginal and Torres Strait Islander peak bodies, community controlled organisations and communities is currently not being respected in child protection practices. Aboriginal and Torres Strait Islander people must be seen as the experts on issues relating to Aboriginal and Torres Strait Islander children. Governments must work in genuine partnership with them and be guided by them on issues relating to Aboriginal and Torres Strait Islander children. Evidence supports Aboriginal and Torres Strait Islander people's strong advice that Aboriginal and Torres Strait Islander children need ongoing, assured connections to their family, kin, community and culture for their wellbeing.

The impact of removal for Aboriginal and Torres Strait Islander children, families and communities can be mitigated to some degree by adherence to the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle; *prevention, partnership, placement, participation and connection* which provide the appropriate framework to achieve stability and permanency for Aboriginal and Torres Strait Islander children.

While state and territory governments have committed to the Aboriginal and Torres Strait Islander Child Placement Principle in legislation and policy, adherence to the principle in child protection practices is mixed at best. We note that the *Family Matters Report 2017* found that the rate of placement of Aboriginal and Torres Strait Islander children with family and kin or other Indigenous carers has dropped significantly over the last 10 years from 74.8% in 2006 to 66.8% in 2016.³² This suggests that current efforts to implement the Aboriginal and Torres Strait Islander Child Placement

Principles are insufficient. Our practice staff have reported that statutory child protection departments commonly lack connections to Aboriginal and Torres Strait Islander communities, which prevents them from identifying and effectively engaging with extended family and kinship networks.

The Benevolent Society believes that greater government investment in the capacity of Aboriginal Community Controlled Organisations (ACCOs) to deliver child and family services is crucial to ensuring culturally embedded service delivery and community accountability, as well as strengthening Aboriginal self-determination within the service system.³³ The model being implemented in Victoria provides a successful example of how collaboratively working with ACCOs and Aboriginal communities can lead to significantly better outcomes for Aboriginal children.³⁴ Staged and planned investment by the Victorian Government has helped to build the capacity of Aboriginal organisations to assume and exercise functions and powers in relation to Aboriginal children.³⁵ This Victorian model is consistent with the principles of Aboriginal self-determination and cultural authority that have been articulated by Aboriginal people as the key steps to preventing Aboriginal children and young people from entering into out-of-home care and provides a best practice model for implementation by other Australian states and territories.

Reunification

The Benevolent Society believes that every effort should be made so that children can remain with or return to their families of origin wherever possible. However, reports from our practice staff suggest that across the child protection system there are insufficient resources and services dedicated to family reunification. The prevalence of forensically dominated responses within child protection practices means that parents' efforts to regain the care of their children are critically monitored and scrutinised rather than assisted and encouraged. While the responsibility for addressing safety issues is rightly placed on parents, there is little acknowledgement of broader social and structural disadvantages, such as poverty and discrimination, these parents may need to overcome in order to resolve these issues. Clinical assessments of parents' behaviours do not take into account how experiences of grief, loss and shame compound the difficulty of addressing other issues. Our staff describe situations where parents who have had previous involvement with the criminal justice or child protection systems are highly stigmatised. There is a systemic reluctance to consider restoration for these parents, which precludes any consideration of how their behaviour may have changed. The Benevolent Society believes there is a need for a more concerted, therapeutic government response for promoting the reunification of children with their families.

Adoption

In response to the increasing numbers and length of stay of children in out-of-home care, governments are increasingly turning their policy focus to legislated timeframes and other legal arrangements to achieve permanency for children unable to return to their parent's care.

The Benevolent Society is concerned by this emerging policy trend and strongly opposes the promotion of permanent legal orders such as adoption or third party guardianship as a means of driving down the numbers and government costs of children in the child protection system. The Benevolent Society cautions that streamlining and fast-tracking adoption processes through broad overarching mechanisms such as targets and mandated timeframes are not grounded in the child's best interests and may result in unintended and harmful consequences to individual children and families.

As per the UN Convention on the Rights of the Child, the best interests of the child must be the primary consideration in all decisions affecting their lives. The Benevolent Society recognises the importance of achieving permanency for children involved in the child protection system. However, The Benevolent Society's view is that permanency is only one approach to achieving the best interests of children and forms part of a continuum when planning long-term for children. It is not a given that permanency will always be in a child's best interests or that only adoption can provide a child with permanency and stability. Prioritising legal permanency at the expense of relational permanency risks failing to consider the unique needs and best interests of individual children and may block pathways to ongoing family relationships and reunification. Legislation and policy must direct parties to consider all possible forms of care that might be appropriate for the child and consider the child's unique and individual circumstances and experiences.

The Benevolent Society does not support the prioritisation of permanency options such as adoption where the system has failed to provide appropriate intervention earlier for families. Families should not be required to bear the cost of system failures. The Benevolent Society believes that adoption for children in out-of-home care should only be considered where care within the family unit or Guardianship is not feasible. For these children, The Benevolent Society advocates for early pathways and processes that prioritise and reflect each child's individual needs and best interests. Considerations of the child's best interests must always assess both current and future impacts on a child and their right to ongoing relationships with their birth family.

Given the increasing political focus on adoption for children in out-of-home care, The Benevolent Society believes there is a pressing need to develop nationally consistent statutory guidelines that outline key considerations for determining the best interests of the child in permanency arrangements.

The voice of children in adoption arrangements

The Benevolent Society believes that children subject to adoption must be given the opportunity to actively participate in the process to the full extent of their capacity. As the UN Committee noted in its 2012 Concluding Observations not all jurisdictions in Australia require the consent of a child (as of 12 years of age) prior to adoption.³⁶ While there is an obligation for courts to see the views of child in these decisions, there are a number of ways this can be dispensed with. The Benevolent Society strongly supports the involvement of children in adoption processes in a manner that reflects their age and abilities. This includes giving children the opportunity to present their views and preferences on their adoption in a child-friendly forum and have these considered in decision-making. Courts must be provided with substantial evidence that efforts were made to engage the child in decision-making in an age appropriate way, before confirming any adoption plan.

Similarly, every child has the right to information to help make sense of and understand their experiences in out-of-home care and the reason for their adoption. Children should be kept informed in an open and honest way that promotes the development of their emotional, mental, physical and social wellbeing, with due regard to their age and ability to understand. For example, a child-friendly and easily understandable version of a finalised adoption plan should be given to the child and opportunities provided to explain and answer questions about this document.

Ongoing support services to children who are adopted

Evidence shows that children adopted from out-of-home care are likely to have ongoing support needs related to past abuse, neglect and attachment disruption; and to support relationships with their biological parents.³⁷ Children, their parents and carers, subject to adoption, permanent care orders and third party orders have limited or no ongoing access to government support services.

Currently, formal support for adoptive placements tends to end when an adoption order is finalised at 12 months after a child is placed with an adoptive parent. This provides a significant cost saving to government, at the expense of the child's health and wellbeing.

Policy responses should recognise that the psychological, social and emotional effects of an adoption may be felt long after an order is made. Navigating the complex relationships between the adopted person, birth and adoptive families is a challenging and ongoing process that will often require additional professional support. The varying impacts of adoption are likely to be felt at different life stages or be triggered by particular life events (for example, adolescence, forming relationships, birth of children, death of parents), requiring tailored support responses. Ultimately, the impact of adoption will affect people in different ways, requiring a continuum of support options to meet different individual needs 'from the first point of information-seeking, to the lifelong need by some people to "move in and out of" varying levels of support.'³⁸

Our experience, and overwhelming feedback from those impacted by adoption, is that universal services are not effective at addressing the unique experiences arising from adoption. These services lack understanding of the complexities and dynamics of adoption – often involving complex emotions relating to loss, grief, trauma and shame – and may overlook these in specific interventions for issues such as drug and alcohol addiction, depression, anxiety and other mental health issues.

The Benevolent Society believes it is critical that ongoing post adoption allowances and support services are made readily available and accessible to adopted children, and their birth and adoptive families, and that support is provided across the life span.

6. Disability and health (article 23)

Children with disabilities

The Benevolent Society supports the system-level reform in the disability sector through the implementation of the National Disability Insurance Scheme (NDIS). We fully endorse the rights-based principles of individual choice and control that underpin the NDIS reform. We also acknowledge that the scale and complexity of the scheme will inevitably create implementation issues. However, The Benevolent Society is concerned by a number of issues that have arisen through the NDIS rollout that we believe will have an ongoing impact on the rights and wellbeing of children with disability and their families.

Information and Communication

A major issue that we have identified is the lack of information on how to access the NDIS and how best to manage a plan once a child is deemed eligible for the NDIS. It is difficult for the parents of children with disability to the services and supports that best fulfil their child's individual needs without adequate information to make informed choices.

It is our experience that many families expected to be able to receive the same types and amount of services and supports for their child after their transition to the NDIS but were not aware of the supporting documentation they needed to provide to ensure these supports were maintained in their child's plan. As a result of not providing adequate evidence for existing supports, families have had the funded hours for these supports significantly reduced. It is unlikely that families will be able to regain this funding except through incremental increases after successive plan reviews.

Many families currently have limited understanding of the options and ways of managing their children's plans. Choosing to involve a Plan Manager or the self-management of plans would enable them to have greater choice and control in accessing their chosen health professionals, however this option is currently underutilised by people accessing the NDIS.

We have heard anecdotal evidence that suggests low income families who are grappling with a range of challenges are finding it particularly difficult to navigate the NDIS system, and even those families who are better resourced are struggling to understand and meet the requirements of the system in order to gain support for their children.

There is also a distinct lack of information and assistance provided to families from culturally and linguistically diverse backgrounds to understand the system requirements and supports available. Language barriers and differing cultural attitudes towards disability create distinct challenges for children and families from culturally and linguistically diverse communities to join and use the NDIS.

We believe there is a need for more targeted NDIS outreach programs to culturally diverse communities, more extensive translation services and information about the translation services that are currently available, and more designated personnel from culturally and linguistically diverse backgrounds to engage with relevant communities and facilitate their inclusion into the NDIS. Tailored NDIS support services are particularly necessary for children and families from refugee backgrounds who have complex intersecting needs and require specialised support.

The Benevolent Society believes that there is an acute need for governments to provide greater support and information to families to build their capacity to navigate the NDIS system and equip them with the skills necessary to work effectively with NDIA planners.

We also believe that the system needs to incorporate greater flexibility for taking into account how changes in family circumstances will impact on the adequacy of a child's NDIS plan. For example, if parents separate or when children become older and need to take care of their own plans, children and their families will again need support and capacity-building to successfully manage their plan.

Voluntary relinquishment into out-of-home care

The NDIS is intended to support the rights of all people with disability to choose the supports which best meets their needs. However, as the scheme rolls out we are seeing that it is struggling to provide adequate support for people with the most complex needs. This is particularly the case for children with disability who have been relinquished into state care.

'Voluntary relinquishment' is the term used to describe situations where families feel they are no longer able to safely care for their child and surrender the day-to-day care of their child to the state. The difficult decision to relinquish care of child is commonly driven by a family's unmet need for services, in terms of facility-based respite or in-home support for a child with high support needs.³⁹

The previous system provided a more holistic array of supports for families of children with disability.⁴⁰ The NDIS only provides specific supports that relate to a child's disability rather than broader support for the whole family. Under the new scheme the type of support is determined by the categories of services included in an NDIS plan. This means in some cases there is less flexibility in the type of services a family of a child with disability can access which can place more pressure on families and pushed them closer towards crisis and relinquishment. The Benevolent Society believes Australian governments need to provide more holistic and flexible responses to these families that meet to the whole family's needs.

Even with the supports provided by the NDIS, there will inevitably still be situations where parents do not have the resources available to them to cope with the pressures of caring for a child with severe disability. The implementation of the NDIS has created a lack of clarity as to who holds primary responsibility for the care of a child with disability who has been relinquished.

In NSW, the transfer of disability services to non-government providers prompted by the NDIS has drastically reduced the dedicated government staff resources and budget to manage these circumstances and the system capacity to provide emergency accommodation. Our practice staff report instances where statutory child protection services have declined to assume responsibility, indicating that voluntary relinquishment is not an option for these children because responsibility for their care and support needs falls under the NDIS.

Typically, these children have not been funded for ongoing daily residential care in their NDIS plans. This creates situations where NDIS respite service providers are rapidly expending the limited funding allocated for a child's respite accommodation and facing the predicament of how to provide unfunded accommodation to an extremely vulnerable young person.

The lack of clarity and guidance around the appropriate protocols means that current placement arrangements for children with a disability who have been relinquished are extremely variable and unstable. Practice staff describe instances where individual advocacy and ad hoc decision-making have meant the difference between a young person who has been relinquished receiving ongoing accommodation or being exited from respite care and left homeless. This lack of stable accommodation options is particularly intolerable for children with disabilities such as autism who require highly stable and consistent environments.

The Benevolent Society believes there is an urgent need to improve the interface between child protection systems and the NDIS to ensure that child with high support needs have their rights to stable and secure accommodation, consistent support services and meaningful relationships with their families met.

7. Endnotes

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