



Australian  
Human Rights  
Commission

# Children's Rights Report 2015

NATIONAL CHILDREN'S COMMISSIONER



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**Australian  
Human Rights  
Commission**

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14 October 2015

Senator the Hon George Brandis QC  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney

**Children's Rights Report 2015**

I am pleased to present to you the Children's Rights Report 2015, in accordance with section 46MB of the Australian Human Rights Commission Act 1986 (Cth) (the Act). The Act requires that I submit a report relating to the enjoyment and exercise of human rights by children in Australia on an annual basis.

This report covers the period from 1 July 2014 to 30 June 2015.

Chapter 1 reports on the work I have undertaken throughout the past year to promote discussion and awareness of matters relating to the human rights of children and young people in Australia. It also discusses the progress of the recommendations that I made in my Children's Rights Reports in 2013 and 2014.

Chapter 2 reports on how children's rights have been considered in legislation and court proceedings.

Chapter 3 reports on my project about business and children's rights, and includes two recommendations.

Chapter 4 reports on my national consultation about how children are affected by family and domestic violence, and includes fourteen recommendations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Megan Mitchell'.

Megan Mitchell  
**National Children's Commissioner**

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About the

# National Children's Commissioner

Legislation establishing the position of National Children's Commissioner was passed by the federal Parliament on 25 June 2012.

Ms Megan Mitchell was appointed as the inaugural National Children's Commissioner on 25 February 2013 and commenced in the role on 25 March 2013.

Section 46MB of the *Australian Human Rights Commission Act 1986* (Cth) (the Act) describes the functions that are to be performed by the National Children's Commissioner. Under the Act, the National Children's Commissioner is specifically required to:

- submit a report to the Minister as soon as practicable after 30 June in each year. This report must deal with matters, relating to the enjoyment and exercise of human rights by children in Australia, as the National Children's Commissioner considers appropriate; and may include recommendations that the Commissioner considers appropriate as to the action that should be taken to ensure the enjoyment and exercise of human rights by children in Australia
  - promote discussion and awareness of matters relating to the human rights of children in Australia
  - undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia
  - examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia, and to report to the Minister the results of any such examination.
- In performing these functions, the National Children's Commissioner may give particular attention to children who are at risk or vulnerable.
- Under the Act, the National Children's Commissioner is able to compel the production of documents and information held by the Commonwealth.
- The United Nations Convention on the Rights of the Child underpins the work of the National Children's Commissioner. In addition to having regard to the Convention on the Rights of the Child, the National Children's Commissioner must have regard to a range of human rights instruments:
- *Universal Declaration of Human Rights*
  - *International Convention on the Elimination of All Forms of Racial Discrimination*
  - *International Covenant on Economic, Social and Cultural Rights*
  - *International Covenant on Civil and Political Rights*
  - *Convention on the Elimination of All Forms of Discrimination Against Women*
  - *Convention on the Rights of Persons with Disabilities*
- and such other instruments relating to human rights considered relevant.

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Megan Mitchell

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*National Children's Commissioner*



All Australian states and territories have Children's Commissioners and/or Guardians and/or Advocates. The legislative functions of these roles differ between jurisdictions. Some have a broad focus, which include all children, whereas others have specified responsibilities relating to children who are at risk or who are vulnerable. Their primary focus is on issues concerning children within their individual jurisdictions. The National Children's Commissioner works collaboratively with the state and territory Children's Commissioners, Guardians and Advocates through the Australian Children's Commissioners and Guardians Group.

#### **Previous roles and qualifications**

Commissioner Mitchell has extensive experience working with children from all types of backgrounds, including practical expertise in child protection, juvenile justice, and children's services. Previous roles include, NSW Commissioner for Children and Young People, Executive Director of the ACT Office for Children, Youth and Family Support, Executive Director for Out-of-Home Care in the NSW Department of Community Services, and CEO of the Australian Council of Social Service.

Commissioner Mitchell has qualifications in social policy, psychology and education: a Bachelor of Arts from the University of Sydney (1979), a Diploma of Education from the Sydney Teachers College (1980), a Master of Arts (Psychology) from the University of Sydney (1982), and a Master of Arts (Social Policy) from the University of York (1989).

For information on the work of the National Children's Commissioner, please visit: <http://www.humanrights.gov.au/our-work/childrens-rights>.

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National Children's Commissioner with a student from The King's School

Wigan Mitchell  
National Children's Commissioner

# Overview

It is with great pleasure that I present my third annual Children's Rights Report as the National Children's Commissioner. This report details how I have fulfilled my statutory functions, outlined in Section 46MB of the *Australia Human Rights Commission Act 1986* (Cth) (the Act) during the 2014–15 period.

At the core of my role is the promotion and protection of children's rights, in line with Australia's commitments under the United Nations Convention on the Rights of the Child, and other international laws and conventions where children's lives are affected.

The work I do in this role is for all of the 5.2 million children aged 0-17 years across the nation,<sup>1</sup> with a particular focus on issues that arise when children's rights are denied, disputed, neglected or violated, and where their voices largely go unheard.

In this report, you will read about, and I hope be encouraged by, the progress made in delivering a society that sees children and young people as citizens now, rather than citizens in waiting and as rights holders on their own behalf – a society whose members are committed to realising those rights and supporting their fulfilment.

I hope that you will be inspired by what you read in this year's report, including the results of two new projects on the impact of family and domestic violence on children, and on children's rights and business.

This could not be achieved without the efforts of the staff of the Australian Human Rights Commission, who have worked tirelessly to support me over the year and to deliver this report. Nor could I do my job without the generous support of the many individuals and agencies across government and community who care about and care for children and young people. And most importantly my heartfelt thanks to all the fabulous children and young people I have been able to engage with, learn from and be inspired by.

## **Chapter 1: My work to promote discussion and awareness of children's rights in Australia**

Chapter 1 examines the work I have undertaken throughout the past year to promote discussion and awareness of matters relating to the human rights of children and young people in Australia. It also discusses the progress of recommendations that I made in my Children's Rights Report 2013 and 2014.

<sup>1</sup> Australian Institute of Health and Welfare, Australia's Welfare 2015 – In brief (2015) 12 <<http://www.aihw.gov.au/publication-detail/?id=60129552016>>.

## **Chapter 2: Child rights in legislation and court proceedings**

Chapter 2 reports on my survey of the comments made by the Parliamentary Joint Committee on Human Rights regarding how the human rights of children and young people were taken into account by the Statements of Compatibility with Human Rights accompanying Bills introduced to Parliament during the reporting period. Where the Australian Human Rights Commission examined Bills in more detail and made submissions about these Bills, I have included a summary of our position.

## **Chapter 3: Business and Children's Rights**

Chapter 3 details the work and research that I undertook in 2015, into the rights of children within the Australian business and consumer context, focusing on children as consumers of goods and services. As part of this work, an extensive literature review was undertaken, and I consulted with financial advice services, the National Children's Youth and Law Centre, and 120 students and young people, from a total of seven schools and youth groups.

Through my work, I found that children are very active as consumers, including in the online environment. However relatively little is known about how children are affected as consumers, or of potential opportunities to pursue greater safeguards.

I recommend that research be supported in the Australian context to better understand children's experiences as contemporary consumers, and how existing regulatory frameworks are shaping business efforts to raise awareness among children of their rights as consumers.

## **Chapter 4: "All I want is a life free from violence" – the impact of family and domestic violence on children**

Chapter 4 details the national consultation I undertook in 2015 into the impact of family and domestic violence on the human rights of children and young people under the age of 18 years. As part of my consultation, I held roundtables in all state and territory capital cities across Australia with experts in family and domestic violence, and received 62 responses to my call for submissions. I also sourced previously unpublished data from the Australian Bureau of Statistics, the National Centre for Longitudinal Data, and the Kids Helpline.

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The primary finding from my consultation is that while the evidence base about the harmful effects of family and domestic violence is strong, much less is known about the variability in impact and the accessibility of or effectiveness of interventions.

Comprehensive, quality data and research at a national level is required to improve our understanding of both the prevalence and impact of family and domestic violence on children. Early intervention and education is also urgently needed to prevent violence and provide better protection for children.

I make 14 recommendations which provide direction for moving forward.

### **Support Services**

If you are feeling distressed or are experiencing family and domestic violence and would like to talk to someone, please contact:

- Kids Helpline on 1800 55 1800 or [www.kidshelp.com.au](http://www.kidshelp.com.au)
- Headspace on 1800 650 890
- Lifeline on 13 11 14 or [www.lifeline.org](http://www.lifeline.org)
- 1800 RESPECT on 1800 732 732 or [www.1800respect.org.au](http://www.1800respect.org.au)
- MensLine Australia on 1300 78 99 78 or [www.mensline.org.au](http://www.mensline.org.au)
- Police and ambulance services on 000

# Recommendations

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<b>Recommendation 1:</b>	The Australian Government provide guidance to business and industry on how it can better respect and support children's rights.
<b>Recommendation 2:</b>	The Australian Government resource the Australian Human Rights Commission to undertake research on the relationship between business and children's rights in the Australian context, particularly in relation to high risk areas such as the online consumer environment.
<b>Recommendation 3:</b>	The Annual Progress Reports of the National Plan to Reduce Violence against Women and their Children should detail how all jurisdictions are working towards implementing the Australian Bureau of Statistics National Data Collection and Reporting Framework.
<b>Recommendation 4:</b>	Data about a child's experience as a victim of family and domestic violence should be recorded as a separate entry in the Australian Bureau of Statistics National Data Collection and Reporting Framework, and not just part of an adult entry.
<b>Recommendation 5:</b>	Data about lesbian, gay, bisexual, transgender and intersex status should be recorded in the Australian Bureau of Statistics National Data Collection and Reporting Framework.
<b>Recommendation 6:</b>	The Annual Progress Reports of the National Plan to Reduce Violence against Women and their Children should detail how the Australian Bureau of Statistics Personal Safety Survey is working towards surveying adequate sampling sizes across vulnerable groups.
<b>Recommendation 7:</b>	Support for the Australian Longitudinal Study on Women's Health (ALSWH) project by the Australian Government Department of Health is extended after 30 June 2016 and support for the Mothers and their Children's Health (MatCH) project by the Australian Government Department of Health is also extended after its National Health and Medical Research Council grant expires in 2017.
<b>Recommendation 8:</b>	Support for the 'Improving the developmental outcomes of Northern Territory children: a data linkage study to inform policy and practice in health, family services and education' currently being conducted in the Northern Territory by Menzies School of Health Research is provided by the Australian Government Department of Social Services after its National Health and Medical Research Council grant expires in 2017.

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1 Australian Institute of Health and Welfare, *Australia's Welfare 2015 – In brief* (2015) 12 <<http://www.aihw.gov.au/publication-detail/?id=60129552016>>.

<b>Recommendation 9:</b>	The Council of Australian Governments prioritise the development of a child-focused policy framework for responses to family and domestic violence.
<b>Recommendation 10:</b>	A review of the criteria for entry into the Magellan program should be undertaken by the Family Court of Australia or another appropriate entity. Regard should be given to the findings and recommendations of the Victorian Royal Commission into Family Violence and also the Family Law Council Inquiry into families with complex needs and the intersection of the family law and child protection systems.
<b>Recommendation 11:</b>	The Australian Bureau of Statistics Personal Safety Survey should extend its collection of information from men and women aged 18 years and over about their experiences of abuse from the ages of 0-15 years to the ages of 0-17 years.
<b>Recommendation 12:</b>	The Australian Bureau of Statistics prioritise working with state and territory jurisdictions to achieve national consistency in the coding of offender relationships to child victims.
<b>Recommendation 13:</b>	Options for data collection on screening for family and domestic violence during pregnancy through the National Perinatal Data Collection are progressed by the Australian Institute of Health and Welfare.
<b>Recommendation 14:</b>	The Australian Government Department of Social Services support the work of Professor Arabena and the Indigenous Health Equity Unit at the University of Melbourne to progress the early intervention research agenda under the First 1000 Days initiative.
<b>Recommendation 15:</b>	The next ANROWS (Australia's National Research Organisation for Women's Safety) Research Program should include research into sibling violence.
<b>Recommendation 16:</b>	The next ANROWS (Australia's National Research Organisation for Women's Safety) Research Program should include research into female children aged 15 to 17 years affected by family and domestic violence.

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# Chapter 1:

My work  
to promote  
discussion and  
awareness of  
children's rights  
in Australia



National Children's Commissioner with one of the participants at a launch event with Early Childhood Australia

# Chapter 1: My work to promote discussion and awareness of children's rights in Australia

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## 1.1 Introduction

This chapter reports on the work that I have undertaken in the period 1 July 2014 to 30 June 2015 to promote the discussion and awareness of children's rights in Australia.

I also report on the progress of the recommendations made in my 2013 and 2014 statutory reports to federal Parliament.

When I started my term as National Children's Commissioner in 2013, I conducted a national listening tour (*the Big Banter*) to identify the main human rights issues affecting Australia's children and young people.

From my consultations with children and young people, key stakeholders, academics, and service providers, I identified five key themes.

These were:

1. **A right to be heard:** children's voice and participation in decision-making processes; specifically involving children in issues that affect them; and ensuring that existing mechanisms for resolving disputes are accessible and available to children.
2. **Freedom from violence, abuse and neglect:** ensuring safe environments and respect for the dignity of the child; specifically making sure that the commitments made in national frameworks are achieved and built upon, through adequate resourcing and action; encouraging a proactive approach to issues of child safety that places a premium on prevention, through enabling safe communities and environments for children; and building resilience among our children.
3. **The opportunity to thrive:** safeguarding the health and wellbeing of all children in Australia, which includes promoting and supporting children through early intervention and prevention; and identifying and focusing on the most marginalised and vulnerable children.
4. **Engaged citizenship:** promoting civic engagement and active citizenship through education and awareness-raising.
5. **Action and accountability:** taking deliberate and proactive steps to protect the wellbeing and rights of children, specifically by collecting comprehensive national data about the wellbeing and human rights of Australia's children; progressing a national vision for Australia's children through intergovernmental partnerships and agreements; developing outcome-based reporting and monitoring of government service delivery and policy development; and developing a children's impact assessment process for law, policy and practice.

These key themes guide my priorities, strategic advocacy, research, and engagement with stakeholders. This chapter outlines my work for the year according to these five key themes.

My speaking engagements are detailed in Appendix 1, my meetings with stakeholders are listed in Appendix 2, and my memberships of advisory groups and ambassadorships are provided in Appendix 3. These demonstrate the broad base of my strategic advocacy for children and young people and the level of my engagement with stakeholders.

## 1.2 A right to be heard

One of the core aspects of my work as National Children's Commissioner is to ensure that the voices of children are meaningfully incorporated into the decisions and processes that affect them.

Respect for the views of children is one of the four guiding principles of the Convention on the Rights of the Child, as stated in article 12:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.<sup>1</sup>

I seek to involve children and young people in my work in a variety of ways. I work with other organisations to assist them to directly consult with children and young people; I consult independently with children and young people; and I ask children and young people to co-present with me at speaking engagements.

In all my work, I advocate for the voices of children and young people to be directly heard.

### 1.2.1 The voice of the child in the Third Action Plan of the National Framework for Protecting Australia's Children (National Framework)

The *National Forum for Protecting Australia's Children* is a collaborative body of Commonwealth, state and territory governments and non-government organisations overseeing the implementation of the *National Framework for Protecting Australia's Children 2009–2020* (the National Framework). In 2014, I officially became a member of this group.

The National Framework is a landmark initiative which brings together all jurisdictions in a sustained commitment and effort to keep Australia's children safe and well, by reforming and enhancing systems and programs that impact on children. The implementation of the National Framework occurs through three year action plans. This year, I have participated in the development of the National Framework's Third Action Plan, covering the period 2015 to 2018.

Early work against the National Framework primarily focused on improving the quality and consistency of the out-of-home care system, data development and exchange of information about children at risk of abuse. The actions in the Third Action Plan are designed to build early intervention and prevention responses across the service sector, and break the cycle of intergenerational disadvantage.

Through my involvement, I have encouraged the inclusion of children's and young people's voices in the development of the Third Action Plan.

I worked in partnership with the Department of Social Services to facilitate two roundtables with young people to assist in the development of the Third Action Plan. This is the first time that the perspectives and ideas of children and young people have been directly sought in the development of an action plan.

Consultations took place in Lismore and Melbourne and involved a total of 17 young people with a care experience, ranging in age from 14 to 25 years. The young people came from diverse backgrounds and all either had been in, or were currently in, out-of-home care. This included kinship care, foster care and residential care. Their time in out-of-home care varied from 2-3 years up to 15-16 years.

The young people who participated in these consultations highlighted the importance of having a say in decision-making processes.

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One Melbourne participant stated '[we need] more understandable forums like this, so that young people can say what they need in a supportive environment'. Another said that 'young people's voices should be heard through CREATE and forums like this'. Another Lismore participant stated it was important that adults 'check with us, ask us, see if that's OK'.

I commend those involved in the National Framework for recognising the need for ongoing engagement with children on the development and implementation of actions under the National Framework.

Work under the National Framework also includes a national survey of children in out-of-home care. This survey provides a means of directly engaging with young people in out-of-home care and monitoring their ongoing wellbeing.

Data collection for the survey is due to be completed this year and will be reported in the first *National Report into the Views of Children and Young People in Out-of-Home Care* in 2016.

## **1.2.2 The voice of the child in the family law system**

The Convention on the Rights of the Child specifically provides for children and young people to have a say in legal matters affecting them, stating that:

The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.<sup>2</sup>

In Australia, the majority of family law matters are resolved through family dispute resolution before reaching the family law courts. Those that reach the courts are handled by the Federal Circuit Court of Australia and the Family Court of Australia. Some cases are complex, characterised by child protection and family violence concerns.

As part of my work as National Children's Commissioner, I have advocated for improvements to the family law system to allow for the increased participation of children and young people in family law matters.

In March 2015, I addressed the Coalition Backbench Policy Committee on Communications, Legal Affairs and Industry on matters relating to children's rights and the family law system.

I emphasised the need to listen to the voices of the children involved when making legal rulings. Professor Richard Chisholm, a former Family Law Court judge, accompanied me for this appearance.

I also participated in a facilitated discussion hosted by the Attorney-General's Department, as part of the Garran Strategy Series, on the topic of 'The Family Law Act and the Changing Shape of the Family'. This workshop focussed on policy gaps in this area and explored ways of shaping positive policy responses.

During the year I received a number of representations from people who had direct experiences in the family law system.

Some children and young people met with me to relay personal stories of their interactions with the family law system. Their insights helped me to understand how their experiences had impacted on their safety, relationships and self-esteem.

These children and young people pointed to areas of the legal system where there should be greater consideration of children's rights. They emphasised the importance of improving the system's capacity to provide children with relevant information and allow them to participate in meaningful ways.

The children and young people who spoke to me also highlighted the ways they provide support and assistance to each other.

### **1.2.3 The voice of the child in complaints processes**

Since commencing my role, I have called for the development of accessible and child-friendly complaint mechanisms as an important means of empowering children and young people to claim their rights and be involved in decisions and processes that affect them.

Under Australia's federal anti-discrimination and human rights legislation, the Australian Human Rights Commission can investigate and conciliate complaints of discrimination, harassment and bullying based on a person's sex, disability, age and race. The Commission can also investigate and conciliate complaints alleging sexual harassment, racial hatred and breaches of human rights by the Commonwealth.

In the 2014–2015 reporting year, the Investigation and Conciliation Service at the Australian Human Rights Commission received 278 complaints involving children. That is complaints by a child or on behalf of a child, or an issue concerning a child. This represents around 12% of all complaints received during this period.

The main area of complaint involving children was allegations of breaches of human rights by the Commonwealth relating to immigration detention. This was followed by complaints alleging disability discrimination in the provision of education. The third most common area of complaint was allegations of disability discrimination in the provision of goods and services.

The complaint handling role is vested solely in the President of the Australian Human Rights Commission. I do not have a complaint-handling role or a role in dealing with individual children's cases.

However I do regularly meet with the Investigation and Conciliation Service to discuss the general types of issues raised with them in relation to children and young people. I take the opportunity in these meetings to reinforce the importance of listening directly to children and young people. The Investigation and Conciliation Service is continually seeking to refine its information and complaint services to ensure that they are accessible and appropriate to the different communities and stakeholders who use them, including children and young people.

The Investigation and Conciliation Service's approach to complaints involving children is one of maximum appropriate involvement with reference to the age of the child or young person and the presenting situation.

The nature of the participation is assessed on a case by case basis and can include discussions with the parent, guardian or support person to make sure that the views of the child are sought and understood. It can also involve the child or young person attending the conciliation conference or the child's representative reading out a statement from the child at the conference.

Feedback to the Investigation and Conciliation Service from a respondent party to a conciliation process in relation to a young person's involvement in the process stated:

The service in this matter was excellent. This matter was a disability discrimination complaint in education involving a young person (aged sixteen). Arrangements were made for the young person to express his experience of the issues leading to the complaint, and his feelings about the issues, during the conciliation conference. This was a particularly empowering and beneficial experience for the young person, and greatly assisted him and his family in moving forward.

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I would like to sincerely thank the Investigation and Conciliation Service for its support to me throughout the year.

### **1.2.4 Children's and young people's voices on consumer rights**

This year I spoke with over 100 children about their knowledge of their consumer rights as part of my work on children's rights and business. In these consultations, children and young people emphasised the empowering effect of having their views solicited and heard. I report on this in detail in Chapter 3.

## **1.3 Freedom from violence, abuse and neglect**

The right of children to be free from all forms of violence, abuse and neglect is one of the central themes guiding my work as National Children's Commissioner.

The responsibility to protect children from all forms of violence, abuse and neglect is outlined in article 19 of the Convention on the Rights of the Child, which states that:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.<sup>3</sup>

During 2014, I examined suicide and self-harm among children and young people, to shine a light on what we know about this issue, and to identify areas for action.

### **1.3.1 Self-harm and suicidal behaviour in Aboriginal and Torres Strait Islander children and young people**

In my *Children's Rights Report 2014*, I highlighted the ways in which Aboriginal and Torres Strait Islander children and young people are disproportionately affected by intentional self-harm and suicidal behaviour.<sup>4</sup>

Data from the Australian Bureau of Statistics (ABS) shows that in 2014 Aboriginal and Torres Strait Islander children and young people accounted for 28.1% of all the recorded deaths of children and young people under 18 years of age due to intentional self-harm.<sup>5</sup>

One of the major recommendations in my 2014 report was the need for focused national research in a range of areas that would inform the development of an effective suite of interventions for children and young people, in particular for Aboriginal and Torres Strait Islander children and young people, including universal resilience building through to clinical treatments.<sup>6</sup>

At the beginning of the year, I became a member of the National Advisory Committee for the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP).

ATSISPEP is an important national initiative, funded by the Australian Government, to evaluate the effectiveness of existing suicide prevention programs and services in combatting the high levels of suicide in the Aboriginal and Torres Strait Islander population. Given the unique set of issues faced by Aboriginal and Torres Strait Islander children, the work of ATSISPEP is critical.

As part of my involvement in the National Advisory Committee for ATSISPEP, I participated in a Youth Roundtable to discuss suicide prevention in Aboriginal and Torres Strait Islander communities.

The roundtable was held in Canberra with 20 Aboriginal and Torres Strait Islander young people from across Australia. Key messages from the roundtable were that young people want to be part of the solutions; links with effective mental health services are vital; and that developing cultural connectedness and a sense of personal identity is essential to effective suicide prevention strategies.

One participant said:

Growing up in a community with issues that White mobs don't have you come to know about mental health and impacts from alcohol and drugs from a very young age.

In talking about protective factors, a participant stated:

We are all part of the healing, doing the healing with family and friends around us. It's everyone's bit to do what we can to prevent suicide.

Another young person stated that:

Protective factors need to be developed on how to positively influence self-esteem, how to connect with family, community and culture. We can use culture to harness positive influence, harnessing our cultural practices as links to community, family, building resilience.

The ATISPEP final report will be released in December 2015 and will describe the characteristics of successful Aboriginal and Torres Strait Islander suicide prevention programs, identify existing programs that appear to be most effective, and deliver a culturally appropriate evaluation framework that can be used by governments to inform future funding decisions.

This year I also became an industry partner with the NHMRC Centre of Research Excellence in Suicide Prevention (CRESP). This partnership involves working as part of an Australia-wide research community group, to consider how research on suicide in Australia can be better targeted, understood and translated.

In collaboration with my colleague, Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, we contributed an article to the Indigenous Law Bulletin which highlighted the findings of my *Children's Rights Report 2014* and emphasised the need to promote Aboriginal and Torres Strait Islander children's rights in suicide prevention research.<sup>7</sup>

Through my participation in these important forums, and partnerships with key stakeholder organisations, I will continue to advocate for research and other initiatives relating to self-harm and suicidal behaviour which adequately prioritise the needs of Aboriginal and Torres Strait Islander children and young people.

The National Mental Health Commission's *Report of the National Review of Mental Health Programmes and Services*, released in April 2015, has also drawn attention to the high rates of suicide and comparatively poor mental health of Aboriginal and Torres Strait Islander peoples.<sup>8</sup>

The National Mental Health Commission recommended a dedicated plan to close the mental health gap based on the renewed *National Strategic Framework for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Wellbeing*. The report further pointed to the need for the urgent implementation of the *National Aboriginal and Torres Strait Islander Suicide Prevention Strategy*,<sup>9</sup> and a target to reduce suicide rates by 50% over the next decade.<sup>10</sup>

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### **1.3.2 The impact of family and domestic violence on children and young people**

One of the key findings of my 2014 examination into intentional self-harm and suicidal behaviour in children and young people was that family and domestic violence was a contributing risk factor that required further research.

As a result of this, in 2015, my major project has been to examine how family and domestic violence impact on the human rights of children. The findings of this project are detailed in Chapter 4.

## **1.4 Opportunity to thrive**

The opportunity to thrive is another overarching theme that informs my work. This involves promoting the health and wellbeing of all children and young people in Australia and in particular addressing the unequal life opportunities that exist for vulnerable groups of children and young people.

Children who experience poverty, abuse, marginalisation and discrimination are the most likely to encounter barriers to realising their rights.

In my work, I pay particular attention to promoting the rights of these children.

### **1.4.1 Protecting the rights of children in need of care and protection**

The latest information from the Australian Institute of Health and Welfare indicates that during 2013–14, there were 51,539 children in out-of-home care.<sup>11</sup> Nationally, the rate of children in out-of-home care rose from 7.1 per 1,000 children in 2010 to 8.1 per 1,000 children in 2014.<sup>12</sup>

The number of children who were the subject of substantiated reports of child abuse or neglect has also increased over time. In 2013–14, 40,844 children were the subjects of substantiated reports, an increase of 31% from 31,295 in 2009–10.<sup>13</sup>

As well as the difficult, often traumatic, circumstances that lead to children and young people being removed from their families, many children and young people in out-of-home care also experience poorer life outcomes than other children and young people, particularly in the areas of health, education and employment.<sup>14</sup>

In 2012, in their concluding observations of Australia's progress under the Convention on the Rights of the Child, the United Nations Committee on the Rights of the Child strongly critiqued Australia's performance in the area of out-of-home care. The Committee specifically raised concerns about the increasing number of children placed in care and the absence of data documenting the criteria and processes leading to these placements.<sup>15</sup> It also recommended measures to strengthen programs for family support by targeting the most vulnerable families.<sup>16</sup>

### **Membership of the National Forum for Protecting Australia's Children under the National Framework for Protecting Australia's Children**

Much of the national work relating to improving out-of-home care is being completed under the remit of the National Framework.

As a member of the National Forum for Protecting Australia's Children, I am an active advocate for children and young people involved with care and protection systems. My work with the Department of Social Services in directly seeking the views of children and young people with an out-of-home care experience in the development of the Third Action Plan associated with the National Framework is detailed earlier in this chapter.

### **Senate Community Affairs References Committee inquiry into out-of-home care**

In February 2015, I appeared and gave evidence at a public hearing of the Senate Community Affairs References Committee inquiry into out-of-home care. The focus of this inquiry was to look at the reasons behind increasing numbers of children being placed into out-of-home care; outcomes for children in out-of-home care; ways of improving the current models and practices in out-of-home care; and opportunities for early intervention.

In giving evidence, I drew attention to the lack of permanency, stability and high quality support for many children in out-of-home care and the need for more effective early intervention and prevention programs. Since my first report to Parliament in 2013, I have consistently drawn attention to the lack of evidence-based early intervention services for vulnerable families across the country.

Building and supporting safe, resilient families where children can grow and thrive is fundamental to ensuring children's rights are upheld. It will also stem further growth of out-of-home care and interrupt the cycle of intergenerational disadvantage.

The Senate Committee released its final report in August 2015<sup>17</sup> and I am very pleased its findings and recommendations seek to promote a child-centred approach to out-of-home care in Australia.

### **The Royal Commission into Institutional Responses to Child Sexual Abuse**

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was established in 2012 to investigate the sexual abuse of children within private, public and non-government institutions.

In July this year, I appeared before the Royal Commission as part of its inquiry into preventing child sexual abuse in out-of-home care.

At this appearance, I stressed the need for an enhanced evidence base through improved data collection.

In order to address the root causes of child abuse and neglect, there is a critical need for more comprehensive and standardised systems for the collection of national data.

While there is some information on reports of children abused in out-of-home care, data collection practices differ across the state and territory jurisdictions.<sup>18</sup>

I also highlighted to the Royal Commission the importance of strengthened oversight mechanisms to enhance accountability. Greater efforts should be made to develop child-centred oversight systems within out-of-home care, including external monitoring and child-friendly complaints mechanisms.

In addition, the Royal Commission consulted with me in private sessions on ways to improve working with children checks to deliver greater consistency across jurisdictions. The Royal Commission's report on this issue was publically released in August 2015 and made 36 recommendations.<sup>19</sup>

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## **Identity documents for children and young people in out-of-home care**

Foster and kinship carers often experience difficulties in obtaining timely access to identity documents, such as Medicare cards and passports, for the children and young people in their care.

Aboriginal and Torres Strait Islander children and young people can face additional hurdles with different Commonwealth agencies requiring different sets of documents as proof of identity.

The differential treatment created by the lack of identity documents significantly affects a child's sense of identity and belonging; and the quality of their relationships with their carers.

It may also impact on accessing health services through Medicare, enrolling in school, undertaking international travel and missing out on other important opportunities.

Article 8 in the Convention on the Rights of the Child states:

where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.<sup>20</sup>

As part of my advocacy on this matter I have written to both the Minister for Social Services and the Chair of Senate Community Affairs References Committee, encouraging both the Minister and the Senate Committee to take active steps to ameliorate this issue. Children's Commissioners, Guardians and Advocates at the state and territory level are also working within their jurisdictions to ensure children in out-of-home care have improved access to identity documents.

## **Rights of children and young people in the justice system**

During 2014–15, as part of the collective work of the Australian Commissioners and Guardians Group (ACGG), a model charter of rights for children and young people in the justice system was developed.<sup>21</sup>

At the May 2015 meeting of the ACGG, state and territory Children's Commissioners, Guardians and Advocates updated each other on actions taken within their jurisdictions to implement the charter. The ACGG will continue to monitor implementation of, and compliance with, the charter.

### **1.4.2 Promoting the rights of Aboriginal and Torres Strait Islander children and young people in the National Framework**

In the 2012 review of Australia's progress under the Convention on the Rights of the Child, the United Nations Committee on the Rights of the Child raised numerous concerns about the situation of Aboriginal and Torres Strait Islander children in Australia. The Committee noted:

the serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children, including in terms of provision of and accessibility to basic services and significant over-representation in the criminal justice system and in out-of-home care.<sup>22</sup>

In the three years since the Committee made this comment, there has been a regrettable lack of progress in addressing the systemic disadvantage experienced by Aboriginal and Torres Strait Islander children and young people. In 2013–14, the incarceration rate for Aboriginal and Torres Strait Islander children and young people aged 10–17 years in the juvenile justice system was 24 times higher than non-Indigenous children and young people,<sup>23</sup> and Aboriginal and Torres Strait Islander children and young people were 9 times more likely than non-Indigenous children and young people to be in out-of-home care.<sup>24</sup>

This year, as part of my involvement in the development of the Third Action Plan for the National Framework and in collaboration with the Department of Social Services, I co-chaired an Indigenous Roundtable with Commissioner Mick Gooda. The aim of this roundtable was to ensure that a broad range of perspectives from Aboriginal and Torres Strait Islander representatives were incorporated into the formulation of the Third Action Plan.

The roundtable was held in Sydney in May 2015 and was attended by approximately 25 participants. A focal point for discussion at the roundtable was the alarming over-representation of Aboriginal and Torres Strait Islander children in the child protection system and the need for genuine and meaningful engagement with Aboriginal and Torres Strait Islander communities and families to address this.

Commissioner Gooda and I will continue to work with the Department of Social Services on ways to prioritise the rights and needs of Aboriginal and Torres Strait Islander children in the Third Action Plan for the National Framework.

## 1.5 Engaged citizenship

One of my statutory responsibilities is to promote discussion and raise awareness of matters relating to the human rights of children in Australia.

As well as raising awareness of children's rights broadly in all the work that I do, I promote knowledge of children's rights amongst children and young people through my engagement with schools and youth groups.

I also make presentations at conferences and forums, and prepare or contribute to submissions to government inquiries, which promote awareness of, respect for and the protection of children's rights.

### 1.5.1 Co-presenting with a young person to Australian Public Service employees

In February 2015, I addressed Australian Public Service employees about the ways that the public service can champion children's rights, as part of the broader program of human rights education offered by the Australian Human Rights Commission.

As part of this event, I invited a youth representative from the CREATE Foundation, the peak body representing children and young people living in out-of-home care, to co-present with me.

The young person spoke about her interactions with government agencies and ways to improve government services to children. In particular she pointed out the importance of having people who are willing to persevere and listen to young people:

It's hard to have your voice heard. It's hard for people to notice you. I was never really noticed until about a year ago. I think I want to help kids get noticed a lot earlier – so they can get the help they need at a much quicker rate.

Dr Tim Moore, Senior Research Fellow, Institute of Child Protection Studies, and Phil Brown, Acting Group Manager, Families, Department of Social Services, also presented with us and I would like to thank all three speakers for their valuable contributions.

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## 1.5.2 Encouraging human rights education in schools

The importance of human rights education is recognised in a number of international human rights treaties, including the Convention on the Rights of the Child. In 2011, the United Nations General Assembly adopted the Declaration on Human Rights Education and Training, a milestone declaration which affirmed that human rights education is both a right in itself, as well as a way of protecting human rights.

Promoting awareness of and respect for human rights is one of the core functions of the Australian Human Rights Commission.

The development and implementation of a national education curriculum in Australia has presented the Australian Human Rights Commission with an important opportunity to create targeted school education resources to help children and young people build a critical understanding of human rights and responsibilities, and develop the attitudes, behaviours and skills to apply human rights in everyday life.

In December 2014, the Australian Human Rights Commission launched seven new *RightsED* school resources promoting the rights of people with disabilities and raising awareness of racism and ways to combat it.

In June 2015, to mark the 800th year of Magna Carta, the Australian Human Rights Commission released a video, an interactive infographic and a teaching resource on the evolution of human rights. The Magna Carta has an enduring legacy in shaping and advancing the principles of freedom, justice, the rule of law and government by consent.

All of the Australia Human Rights Commission's new resources have been mapped to the Australian Curriculum. The resources are targeted at students in Years 5 to 10 and include the curriculum areas of History, Geography, Civics and Citizenship, Health and Physical Education, and Mathematics.

## 1.5.3 Submissions

In this reporting period, the Australian Human Rights Commission made 10 submissions which included consideration of children's rights:

- Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Cth), Submission to the Parliamentary Joint Committee on Intelligence and Security (2 October 2014)<sup>25</sup>
- Inquiry into the Guardian for Unaccompanied Children Bill 2014 (Cth), Submission to the Senate Legal and Constitutional Affairs Legislation Committee (23 October 2014)<sup>26</sup>
- Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth), Submission to the Senate Legal and Constitutional Affairs Legislation Committee (28 October 2014)<sup>27</sup>
- Inquiry into the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, (Cth), Submission to the Senate Legal and Constitutional Affairs Legislation Committee (31 October 2014)<sup>28</sup>
- Inquiry into the Australian Citizenship and Other Legislation Amendment Bill 2014 (Cth), Submission to the Senate Legal and Constitutional Affairs Legislation Committee (6 November 2014)<sup>29</sup>

- Inquiry into the adequacy of existing residential care arrangements for young people with severe physical, mental or intellectual disabilities in Australia, Submission to the Senate Community Affairs References Committee (6 February 2015)<sup>30</sup>
- Australia's Universal Periodic Review, Submission to the United Nations Human Rights Council Working Group (15 April 2015)<sup>31</sup>
- Inquiry into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 (Cth), Submission to the Senate Legal and Constitutional Affairs Legislation Committee (16 April 2015)<sup>32</sup>
- Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services, Submission to the Senate Finance and Public Administration References Committee (27 April 2015).<sup>33</sup>

## 1.6 Action and accountability

Throughout the year, I have encouraged action and accountability through my project work, strategic advocacy and engagement with key stakeholders.

In my statutory reports, I make specific recommendations to advance the wellbeing and rights of children and young people in Australia. I monitor the progress of these recommendations in subsequent reports.

Sections 1.6.1 and 1.6.2 show the status of progress towards the recommendations that I made in my 2014 and 2013 reports.

### 1.6.1 Recommendations made in the *Children's Rights Report 2014*

#### ***Children's Rights Report 2014***

##### **Recommendation 1**

Establish a national research agenda for children and young people engaging in non-suicidal self-harm and suicidal behaviour through the new National Strategic Framework for Child and Youth Health. This should be supported by the soon to be established National Centre for Excellence in Youth Mental Health.

##### **Progress of Recommendation 1**

Progress has primarily been advanced through the National Centre for Excellence in Youth Mental Health (Orygen) which was allocated \$18 million in 2014. The National Strategic Framework for Child and Youth Health is still in development and has not yet been released into the public domain.

Communication with the Minister for Health and the Executive Director of Orygen indicates that while a national research agenda specifically on suicide and self-harm has not been initiated to date, Orygen has instigated a number of positive activities to progress research in this area.

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## **Children's Rights Report 2014**

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### **Progress of Recommendation 1 (continued)**

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Orygen has been commissioned by the Australian Government to lead the development of a *National Research Priorities and Implementation Framework* for youth mental health research in Australia. This Framework aims to realise a more coordinated approach within Australia to mental health research and infrastructure.

Orygen has also undertaken a number of research studies within the suicide research program, including: studies on increasing help seeking for suicide related behaviour among high school students; mapping suicide clusters in Australian young people; and the safety and efficacy of online platforms for suicidal and self-harming young people.

In addition to this, Orygen produced a policy paper for the Australian Government on young people and self-harm. This paper supported many of the findings of my *Children's Rights Report 2014*, including the need to focus on improving data collection, responding to evidence gaps, improving cross-service responses to self-harm, and involving young people with lived experience, and their families, in research and policy development. A further policy paper on young people and suicide prevention is expected to be completed by June 2016.

I welcome Orygen's efforts to meaningfully engage with young people affected by mental health issues through the appointment of a Youth Partnerships in Research Coordinator to engage and consult with young people and the establishment of a Youth Research Council, of eight young people with a lived experience of mental ill-health to help inform the direction and design of future research.

It should also be noted that the National Mental Health Commission's *Report of the National Review of Mental Health Programmes and Services*, released in April 2015, recommended renewed focus on children and young people, in particular in terms of mental health research, promotion and early intervention.

In addition, Suicide Prevention Australia as the lead agency of the National Coalition for Suicide Prevention, launched the first national action plan for suicide research in September 2015 and called on the Australian Government to provide \$12 million in funding to initiate this research.

I look forward to the Government's response to the proposals emerging from these initiatives.

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### **Recommendation 2a**

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Strengthen and develop surveillance of intentional self-harm, with or without suicidal intent, through:

The Australian Government funding an annual report on deaths due to intentional self-harm involving children and young people aged 0-17 years using the agreement reached between the Australian Bureau of Statistics; the Registrars of Births, Deaths and Marriages; and state and territory coroners on the dissemination of unit record data.

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## **Children's Rights Report 2014**

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### **Progress of Recommendation 2a**

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Important work is being conducted by the National Committee for Standardised Reporting on Suicide (NCSRS) which is seeking to develop a National Minimum Data Set (NMDS) for suicide.

This work is being led by Suicide Prevention Australia, with the Australian Bureau of Statistics (ABS), the Australian Institute of Health and Welfare (AIHW) and the National Coronial Information System providing guidance and support.

The NCSRS brings together stakeholders involved in the collection, analysis and reporting of suicide information, enabling a system-wide approach to data enhancement.

I welcome the efforts of the NCSRS to develop the NMDS as a positive step towards strengthening and developing data collection around suicide.

Through communications with the Parliamentary Secretary to the Treasurer and the Australian Statistician, I was pleased to learn that the ABS intends to report on suicide deaths of children and young people on an annual basis. This commitment has been made with existing ABS resources with no additional funding allocated.

I welcome the addition of six new data tables in the latest issue of the ABS data catalogue 3303.0 *Causes of Death*, which included data on suicide deaths of children aged 5-17 years, including one focussing on Indigenous children.

I have been informed by the Australian Statistician that the ABS is investigating the possibility of including additional age breakdowns which would enhance the value of these tables.

The lack of national disaggregated data for children and young people under the age of 18 years who are engaging in intentional self-harm and suicidal behaviour is a pivotal issue.

Ideally, the data should be disaggregated by six age ranges: 0-3, 4-9, 10-11, 12-13, 14-15 and 16-17, which is equivalent to the data provided by the National Coronial Information System as part of my examination last year.

Detailed disaggregation by age and other demographic factors could add depth to Australia's surveillance of intentional self-harm in children under 18. Without comprehensive surveillance, early intervention and prevention strategies cannot be properly planned, targeted or evaluated.

I am greatly appreciative of the ongoing cooperation and assistance provided by the ABS and I look forward to seeing further positive developments in this area.

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### **Recommendation 2b**

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Strengthen and develop surveillance of intentional self-harm, with or without suicidal intent, through:

The Australian Institute Health and Welfare including a section using disaggregated data about hospitalisations for intentional self-harm involving children and young people aged 0-17 years in its regular series on hospitalisations for injury and poisoning in Australia.

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## **Children's Rights Report 2014**

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### **Progress of Recommendation 2b**

The AIHW indicated that it could not extend its coverage of data on hospitalisations for children under 10 years of age. Reasons for this included difficulties in determining a suitable age at which self-inflicted acts can be interpreted as an intentional act of self-harm and small numbers in the age groups under 10 years can affect the reliability of estimates and may compromise confidentiality.

The AIHW indicated that it has the capacity to report on the 14-17 years cohort. However, this did not occur in its report *Trends in hospitalised injury, Australia: 1999-00 to 2012-13* which was published in August 2015.

I will continue to advocate for the representation of children and young people aged 0-17 years in all future reporting.

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### **Recommendation 2c**

Strengthen and develop surveillance of intentional self-harm, with or without suicidal intent, through:

The Australian and New Zealand Child Death Review and Prevention Group continuing its work in relation to the development of a national child death database, in conjunction with the Australian Institute of Health and Welfare, and providing an annual progress report.

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### **Progress of Recommendation 2c**

Through communication with the Chair of the Australian and New Zealand Child Death Review and Prevention Group (ANZCDR&PG), I understand that ANZCDR&PG is continuing its valuable work to establish a national child death and injury database, as per recommendation 2c.

I was pleased to learn that the AIHW and ABS have both indicated to the ANZCDR&PG their commitment to be actively involved in achieving this goal.

I look forward to continuing to support the ANZCDR&PG in their efforts to enhance the availability of information in this critical area.

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### **Recommendation 3a**

Collect national data on children and young people who die due to intentional self-harm through:

The use of the standardised National Police Form, in all jurisdictions, by 2015. This should include an electronic transfer to the National Coronial Information System. A plan to monitor the outcomes of all jurisdictions using the standardised National Police Form should be developed, and the possibility of incorporating a range of demographic, psychosocial and psychiatric information specific to children and young people should be investigated.

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## **Children's Rights Report 2014**

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### **Recommendation 3b**

Collect national data on children and young people who die due to intentional self-harm through:

The Standing Council on Law, Crime and Community Safety putting the issue of standardisation of coronial legislation and/or coronial systems on its agenda. Standardisation should require that where all state and territory coroners find a death under investigation to be caused by an action of the deceased, the coroner must make a further finding of intent, based on the evidence, to clarify whether the deceased intended to take the action which caused his or her death; the deceased lacked capacity to recognise that his or her action would cause his or her death but death was a reasonably foreseeable consequence of the action; or it is not clear from the evidence whether the deceased intended to cause his or her death.

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### **Progress of Recommendations 3a and 3b**

The Attorney-General has informed me in writing that the Australian Government is supportive of efforts to improve the consistency of suicide reporting and collection of data.

The Attorney-General stated that any work to develop nationally consistent forms and legislation should be led by the states and territories as coronial matters fall within their responsibilities.

The Attorney-General also advised me that the Victorian Attorney-General will be raising the issue of standardisation at the Standing Council on Law, Crime and Community Safety meeting on 5 November 2015.

I encourage the Australian Government to take a leadership role in lifting the quality and consistency of data relating to children and young people who die due to intentional self-harm. I commend the Victorian Attorney-General for progressing this matter.

I look forward to engaging with the Standing Council on Law, Crime and Community Safety further on the issues of standardised police forms and coronial legislation.

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### **Recommendation 4**

The Royal Australian and New Zealand College of Psychiatrists should review and, where appropriate, update its *Guidelines for the Management of Deliberate Self Harm in Young People* (2000).

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### **Progress of Recommendation 4**

In March this year, I learned that the Royal Australian and New Zealand College of Psychiatrists intended to update their *Guidelines for Management of Deliberate Self Harm in Adults*, leading to the inclusion of a new section on Children and Adolescents. As part of this update, I was invited to provide feedback on the draft guidelines for this new publication.

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## ***Children's Rights Report 2014***

### **Progress of Recommendation 4 (continued)**

The reissue of updated *Guidelines for the Management of Deliberate Self Harm*, with the inclusion of a section on Children and Adolescents, is a welcome development and I greatly appreciated the opportunity to provide feedback on its content.

I have been informed that there are no current plans to review or update the *Guidelines for the Management of Deliberate Self Harm in Young People* (2000), as aspects of this publication have now been included and updated in the new *Guidelines for Management of Deliberate Self-Harm*. Additionally, due to the inclusion of the Children and Adolescent section, the term 'adult' will not be used in the new publication's title.

Despite this welcome update, I remain of the view that a stand-alone publication devoted to children and young people is warranted and encourage the Australian Department of Health to fund a review and update of the *Guidelines for the Management of Deliberate Self Harm in Young People*.

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## **1.6.2 Recommendations made in the *Children's Rights Report 2013***

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### ***Children's Rights Report 2013***

#### **Recommendation 1**

That the Australian Government responds formally to the Concluding Observations of the United Nations Committee on the Rights of the Child on Australia's fourth report of progress under the Convention on the Rights of the Child and its Optional Protocols.

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#### **Progress of Recommendation 1**

Not implemented.

In 2014, the Attorney-General informed me that there was no formal requirement to respond to the Concluding Observations of the United Nations Committee on the Rights of the Child on Australia's fourth report of progress, and that Australia's next report to the United Nations Committee on the Rights of the Child will detail how Australia has implemented the 2012 Concluding Observations.

The Australian Government convened a roundtable discussion about the Concluding Observations in December 2012, which the Government noted would inform future policy development.

More than three years have passed since the United Nations Committee on the Rights of the Child issued its Concluding Observations to Australia, and Australia's next report to the United Nations Committee on the Rights of the Child is not due until 15 January 2018.

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## **Children's Rights Report 2013**

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### **Progress of Recommendation 1** (continued)

It is my view that the wellbeing of Australia's children and young people would be significantly enhanced if the Australian Government responded to the Concluding Observations with a plan to monitor, prioritise and implement the recommendations made by the United Nations Committee on the Rights of the Child.

I will continue to engage in constructive dialogue with the Attorney-General in relation to this.

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### **Recommendation 2**

That the Australian Government accedes to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCP) and ratifies the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

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### **Progress of Recommendation 2**

Not implemented.

In 2014, the Attorney-General indicated to me that the Australian Government had not yet formed a formal position on OPCP and OPCAT.

In 2015, the Attorney-General informed me that the Australian Government's position has not changed in relation to this recommendation.

I hope that the Australian Government, as a matter of priority, will develop a formal view on OPCP and OPCAT, given their importance in protecting the rights and welfare of children and young people both in Australia and around the world.

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### **Recommendation 3**

That the Australian Government finalises its review of Australia's reservations and withdraws its reservation under article 37(c) of the Convention on the Rights of the Child which relates to the obligation to separate children from adults in prison.

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### **Progress of Recommendation 3**

Not implemented.

In 2014, the Attorney-General stated that state and territory governments were reluctant to remove Australia's reservation to article 37(c).

The Attorney-General also stated that new detention facilities would need to be constructed in geographically remote areas in order to separate children from adults in detention, and this would be a costly undertaking.

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## **Children's Rights Report 2013**

### **Recommendation 4**

That the Australian Institute of Health and Welfare (AIHW) extends its current cohort of Australian children in *A picture of Australia's children* from 0 to 14 years to 0 to 17 years, consistent with the *Convention on the Rights of the Child* definition of the child.

### **Progress of Recommendation 4**

As I reported in the Children's Rights Report 2014, the Australian Government Department of Health ceased funding for *A picture of Australia's children*.

### **Recommendation 5**

That the Australian Government establishes relevant data holdings and analytics covering all the key domains of children's rights outlined in the *Convention on the Rights of the Child*, including comparable data across jurisdictions, which the National Children's Commissioner can use to monitor the enjoyment and exercise of human rights by children in Australia.

### **Progress of Recommendation 5**

Not implemented.

In 2014, the Attorney-General indicated that the Australian Government remains committed to collaborating with state and territory governments via its cross-jurisdictional Early Childhood Data Subgroup, to implement further improvements to data collection and enhance research capability into the future.

The Attorney-General indicated that this should provide the building blocks for data linkage capability across sectors, including health, early childhood and schools, which in turn will allow multi-dimensional research as well as longitudinal analysis.

In May 2014, I sought advice from the AIHW on what would be required to implement my 2013 recommendation. The AIHW estimated that it would require 4-5 months of scoping work, followed by data analysis at a cost of approximately \$150,000.

As the National Children's Commissioner, I do not have the funds to progress this. I approached a number of Australian Government departments for assistance but, to date, no funding could be sourced.

In September 2015, the AIHW released a new set of data through the National Youth Information Framework, an interactive data portal which includes, for the first time, a breakdown of data for children aged 12-17 years.

The data portal covers 38 indicators of health and wellbeing for children and young people aged 12-24 years, including: death and disease; substance abuse; suicide and self-harm; obesity; physical activity rates and educational outcomes.

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**Children's Rights Report 2013**

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**Progress of Recommendation 5 (continued)**

I welcome this initiative and will continue to encourage the AIHW to provide further disaggregated data on children aged 0-17 years and groups of children such as Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds, children with disability and children with diverse sexual orientations and gender identities.

Coverage of all the key domains contained in the Convention on the Rights of the Child will provide an accurate picture of the rights and wellbeing of Australia's children. This will highlight progress as well as gaps in our implementation of the Convention on the Rights of the Child, and would constitute an important component of Australia's periodic review by the United Nations Committee on the Rights of the Child, next scheduled for 2018.

I will continue to advocate and seek support for this project.

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**Recommendation 6**

That the Australian Government includes in its regular monitoring and evaluation of national policy reforms and initiatives, a component that reports on how it is giving effect to the articles of the Convention on the Rights of the Child.

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**Progress of Recommendation 6**

Not implemented.

In 2014, the Attorney-General indicated to me that monitoring and evaluating national policy initiatives against the rights contained in the Convention on the Rights of the Child would require an additional layer of reporting outside the periodic reporting to the United Nations Committee on the Rights of the Child.

The Attorney-General advised this would be a resource intensive exercise cutting across multiple jurisdictions and multiple programs and policies.

I consider comprehensive and regular monitoring on the status of children's rights in Australia to be a fundamental aspect of Australia's commitments under the Convention on the Rights of the Child.

I will continue to advocate for the inclusion of children's rights in all national policy reforms and initiatives.

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## 1.7 Acknowledgments

I would like to sincerely thank Professor Anne Graham, Director of the Centre for Children & Young People at Southern Cross University, and Ms Noelle Hudson, National Policy and Advocacy Manager at the CREATE Foundation, for their generous assistance in arranging consultations with young people with an out-of-home care experience.

I would like to thank Professor Richard Chisholm for his contribution and support in addressing the Coalition Backbench Policy Committee on Communications, Legal Affairs and Industry on matters relating to children's rights and the family law system in March 2015.

I sincerely thank all those children and young people who spoke to me during the year for their courage in telling me their stories in order to help improve outcomes for children.

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# Chapter 2:

## Examining Child rights in legislation and court proceedings



National Children's Commissioner with a participant at the South East Corridor Youth Partnership Project Youth Summit

# Chapter 2: Examining Child rights in legislation and court proceedings

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This chapter of my report describes how the Parliamentary Joint Committee on Human Rights (PJC) has considered the child rights compatibility of Bills introduced to federal Parliament during my reporting period of 1 July 2014 to 30 June 2015. I also refer to written submissions made by the Australian Human Rights Commission in relation to Bills examined by the PJC.

This chapter also describes how the Australian Human Rights Commission has promoted the human rights of children through a recent intervention in a Federal Circuit Court case, *Bateman & Kavan* [2014] FCCA 2521.<sup>1</sup>

## 2.1 The PJC's consideration of child rights

The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires that all Bills introduced to federal Parliament contain a Statement of Compatibility with Human Rights (Statement of Compatibility) and be examined by the PJC for human rights compatibility.<sup>2</sup>

For the purposes of the Statements of Compatibility and the PJC, human rights are defined as the rights and freedoms contained in the seven core human rights treaties to which Australia is a party, including the Convention on the Rights of the Child.<sup>3</sup>

Statements of Compatibility for Bills introduced by an Australian Government Minister are normally drafted by public servants from the agency developing the Bill for the approval of the Minister. Statements of Compatibility for non-government Bills are usually prepared by the Member of Parliament introducing the Bill.

The PJC has published two Guidance Notes<sup>4</sup> about human rights assessments and its requirements for Statements of Compatibility. The PJC has also published the *Guide to Human Rights*<sup>5</sup> to provide a short and accessible overview of the key rights it considers when examining legislation.

The Attorney-General's Department and the Australian Human Rights Commission have also published resources to assist proponents of Bills with the assessment of human rights compatibility. The flowchart on page 42, for example, was published by the Attorney-General's Department to assist in undertaking an initial assessment of human rights compatibility.

The PJC is composed of ten members, five from the House of Representatives and five from the Senate. The list of current members can be found on the Committee Membership website.<sup>6</sup>

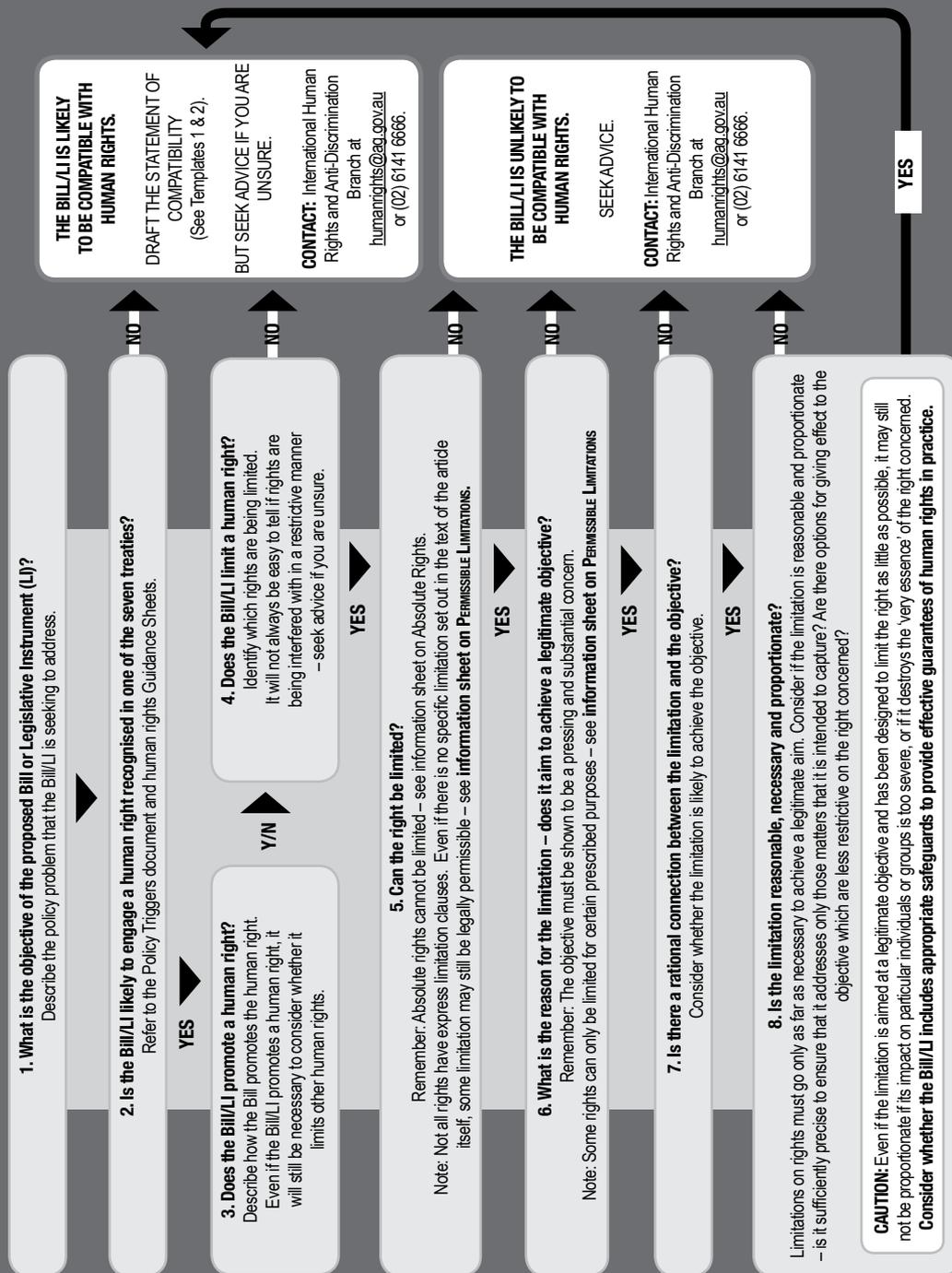
The PJC considers that Statements of Compatibility are essential to the examination of human rights in the legislative process.<sup>7</sup> The PJC relies on Statements of Compatibility to set out the analysis of the Bill's compatibility with Australia's human rights obligations.<sup>8</sup>

Where the PJC reports that a Bill limits a human right, and the Statement of Compatibility does not include a reasoned and evidence-based assessment, the PJC may seek additional and further information about the Bill's compatibility.<sup>9</sup> Where further information is not provided or is inadequate, the PJC will conclude its assessment based on its original analysis, which may include a conclusion that measures contained in the Bill are incompatible with Australia's international human rights obligations.<sup>10</sup>

Reports by the PJC are tabled in both Houses of Parliament and can be found on the Committee Reports website.<sup>11</sup>

## Flowchart for assessing the human rights compatibility of bills and legislative instruments<sup>12</sup>

### FLOWCHART FOR ASSESSING THE HUMAN RIGHTS COMPATIBILITY OF BILLS AND LEGISLATIVE INSTRUMENTS



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## 2.2 Bills that had a substantially positive impact on child rights

The PJC considered six Bills introduced to federal Parliament during my reporting period that had a substantially positive impact on children's rights.

### 2.2.1 Guardian for Unaccompanied Children Bill 2014 (Cth)

The Guardian for Unaccompanied Children Bill 2014 (Cth) was sponsored by Senator the Hon Sarah Hanson-Young and introduced to the Senate on 16 July 2014.<sup>13</sup> The Bill proposed to establish an independent statutory office of the Guardian for Unaccompanied Non-citizen Children.<sup>14</sup> It was proposed that the statutory office would advocate for the best interests of non-citizen children who arrive in Australia or an Australian external territory seeking humanitarian protection, in cases where the child was not accompanied by their parents or another responsible adult.<sup>15</sup>

In August 2014, the PJC commented that the Bill promotes the rights of children and is compatible with human rights.<sup>16</sup>

On 28 August 2014, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.<sup>17</sup> In its submission to the Senate inquiry, the Australian Human Rights Commission recommended that an independent guardian be appointed for all unaccompanied children in immigration detention, and recommended that the Bill be passed.<sup>18</sup>

In the *Children's Rights Report 2013*, which was my first statutory report to federal Parliament, I highlighted the conflict of interest where the legal guardianship of unaccompanied minors is vested in the Minister for Immigration and Border Protection.<sup>19</sup> The Australian Human Rights Commission's report, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, also recommended that an independent guardian be appointed for unaccompanied children seeking asylum in Australia.<sup>20</sup>

The final report of the Senate inquiry was released on 9 February 2015 and recommended that the Bill not be passed.<sup>21</sup> Additional comments were provided in the final report by Labor Senators, expressing support for further consideration of the matters explored in the Bill.<sup>22</sup> A dissenting report was also provided by the Australian Greens, recommending that the Bill be passed with amendments.<sup>23</sup>

The Bill is still before the Senate.<sup>24</sup>

### 2.2.2 Australian Education Amendment Bill 2014 (Cth)

The Australian Education Amendment Bill 2014 (Cth) was sponsored by the Australian Government's education portfolio and introduced to the House of Representatives on 25 September 2014.<sup>25</sup> The Bill proposed to allow payment of additional funding in 2014 to schools with large numbers of Aboriginal and Torres Strait Islander children boarding from remote areas.<sup>26</sup>

The Bill also proposed to prevent funding cuts to students with disabilities and to other students in some independent special schools and special assistance schools that would otherwise have occurred from 1 January 2015.<sup>27</sup>

In October 2014, the PJC commented that the Bill promotes the rights of children to education and is compatible with human rights.<sup>28</sup>

The Bill passed both Houses of Parliament on 18 November 2014.<sup>29</sup>

### **2.2.3 Social Security and Other Legislation Amendment (Caring for Single Parents) Bill 2014 (Cth)**

The Social Security and Other Legislation Amendment (Caring for Single Parents) Bill 2014 (Cth) was sponsored by Senator the Hon Rachel Siewert and introduced to the House of Representatives on 22 October 2014.<sup>30</sup> The Bill proposed allowing single parents to access the parenting payment until their youngest child turns 16 years of age and to provide an enforceable right to request flexible work arrangements for those with caring responsibilities, including single parents.<sup>31</sup>

In December 2014, the PJC commented that the Bill promotes the rights of children to family and development under articles 18 and 20 of the Convention on the Rights of the Child, and is compatible with human rights.<sup>32</sup>

The Bill is still before the Senate.<sup>33</sup>

### **2.2.4 Enhancing Online Safety for Children Bill 2014 (Cth) and the Enhancing Online Safety for Children (Consequential Amendments) Bill 2014 (Cth)**

On 5 September 2013, the Coalition released its pre-election policy to enhance online safety for children.<sup>34</sup> In December 2013, I was invited by the Hon Paul Fletcher MP to become a member of the Australian Government's Online Safety Consultative Working Group (CWG) and through this role I contributed to the development of associated policy and the Bills.

The Enhancing Online Safety for Children Bill 2014 (Cth) and the Enhancing Online Safety for Children (Consequential Amendments) Bill 2014 (Cth) were sponsored by the Australian Government's communications portfolio and introduced to the House of Representatives on 3 December 2014.<sup>35</sup> The Bills proposed to establish the Children's e-Safety Commissioner and a complaints system for cyber-bullying material targeted at Australian children.<sup>36</sup>

The Statement of Compatibility accompanying the Bills stated that the Bills would promote the rights of children to privacy and to protection from unlawful attacks.<sup>37</sup>

On 4 December 2014, the Senate referred the Bills to the Senate Environment and Communications Legislation Committee for inquiry and report.<sup>38</sup> The final report of the Senate inquiry was released on 3 March 2015 and recommended that the Bills, subject to a proposed amendment, be passed.<sup>39</sup>

In February 2015, the PJC commented that the Bills did not require additional comment as they did not raise human rights concerns.<sup>40</sup>

The Bills passed both Houses of Parliament in March 2015.<sup>41</sup>

### **2.2.5 Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 (Cth)**

The Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 (Cth) was sponsored by the Australian Government's Attorney-General's portfolio and introduced to the House of Representatives on 19 March 2015.<sup>42</sup> The Bill proposed, among other things, to expand the definition of forced marriage and increase the penalties for forced marriages.<sup>43</sup>

The Statement of Compatibility accompanying the Bill stated that the Bill would promote children's rights by increasing protection against forced marriage for children who do not have the capacity to provide free and full consent to marriage.<sup>44</sup>

The PJC did not comment on the measures contained in the Bill relating to forced marriage.

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On 26 March 2015, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.<sup>45</sup> In its submission to the Senate inquiry, the Australian Human Rights Commission recommended that the measures contained in the Bill relating to forced marriage should be passed.<sup>46</sup>

The final report of the Senate inquiry was released on 16 June 2015 and recommended that the Bill be passed, subject to the federal, state and territory governments reviewing underage sex offences to make sure of consistency with the federal offences of forced marriage.<sup>47</sup>

The Bill passed the Senate on 19 August 2015 with amendments to other parts of the Bill and has been returned to the House of Representatives.<sup>48</sup>

## 2.3 Bills that had a substantially negative impact on child rights

The PJC considered four Bills introduced to federal Parliament during my reporting period that had a substantially negative impact on children's rights.

### 2.3.1 Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth)

The Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth) was sponsored by the Australian Government's immigration and border protection portfolio and introduced to the House of Representatives on 24 September 2014.<sup>49</sup> The Bill proposed, among other things, to expand visa cancellation powers.<sup>50</sup>

On 25 September 2014, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.<sup>51</sup> In its submission to the Senate inquiry, the Australian Human Rights Commission expressed concern that the Bill lowered the threshold to refuse and cancel visas and increased the personal visa cancellation powers held by the Minister for Immigration and Border Protection.<sup>52</sup>

The Australian Human Rights Commission suggested in its submission that the Bill could lead to unjustified interference in family life, including the separation of children from their family,<sup>53</sup> and recommended that the Bill not be passed.<sup>54</sup>

The final report of the Senate inquiry was released on 25 November 2014 and recommended that the Bill be passed, subject to amendments.<sup>55</sup>

A dissenting report was provided by the Australian Greens, which recommended that the Bill not be passed.<sup>56</sup> The dissenting report suggested that the threshold for visa refusal or cancellation should require the individual to pose a significant risk, that visa cancellation and refusal decision-making processes should be subject to independent merits review, and that the limitations on reviewing how Ministerial discretion is exercised should be examined.<sup>57</sup>

The Bill passed both Houses of Parliament on 26 November 2014.<sup>58</sup>

In March 2015, the PJC commented that the expansion of visa cancellation powers limits the right to liberty.<sup>59</sup> The PJC commented that it will seek advice from the Minister for Immigration and Border Protection as to whether the proposed measures are aimed at achieving a legitimate objective, are rational, and are reasonable and proportionate.<sup>60</sup>

### **2.3.2 Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth)**

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth) was sponsored by the Australian Government's immigration and border protection portfolio and introduced to the House of Representatives on 25 September 2014.<sup>61</sup> The Bill proposed to, among other things, designate children born to parents who arrived by sea after 13 August 2012 as 'unauthorised maritime arrivals' (UMAs).<sup>62</sup>

On 25 September 2014, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.<sup>63</sup> In its submission to the Senate inquiry, the Australian Human Rights Commission recommended that the Bill not be passed<sup>64</sup> and expressed concern that measures contained in the Bill would require children born in Australia to asylum seeker parents, who arrive by boat, to be detained and transferred to Nauru.<sup>65</sup>

The final report of the Senate inquiry was released on 24 November 2014 and recommended that the Bill be passed, that the operation of the Bill be reviewed in three years and that the birth registration process be completed before any child born in Australia is removed to a regional processing country.<sup>66</sup>

A dissenting report was provided by the Australian Labor Party<sup>67</sup> and the Australian Greens,<sup>68</sup> with the Australian Greens commenting on how the measures contained in the Bill would affect newborn babies:

With retrospective effect, the Bill would also classify babies born in Australia to asylum seeker parents as 'Unauthorised Maritime Arrivals (UMAs)'. These children were born in Australian hospitals, yet the Bill seeks to classify them as if they arrived by boat.<sup>69</sup>

In October 2014, the PJC commented that the designation of a child as a UMA potentially limits the obligation to consider the best interests of the child as a primary consideration.<sup>70</sup>

The PJC indicated that it would seek advice from the Minister for Immigration and Border Protection as to whether the proposed measures are aimed at achieving a legitimate objective, are rational, and are reasonable and proportionate.<sup>71</sup>

The Bill passed both Houses of Parliament on 5 December 2014.<sup>72</sup>

### **2.3.3 Australian Citizenship and Other Legislation Amendment Bill 2014 (Cth)**

The Australian Citizenship and Other Legislation Amendment Bill 2014 (Cth) was sponsored by the Australian Government's immigration and border protection portfolio and introduced to the House of Representatives on 23 October 2014.<sup>73</sup> The Bill proposed, among other things, to give the Minister for Immigration and Border Protection a discretionary power to revoke a person's citizenship, including the citizenship of children, up to 10 years after citizenship was first granted.<sup>74</sup>

To revoke citizenship, the Minister must be 'satisfied' that the person became an Australian citizen as a result of fraud or misrepresentation by themselves or a third party.<sup>75</sup>

The Bill proposed no requirement that the allegations of fraud or misrepresentation in relation to the citizenship application be proven in court or that a person be convicted.<sup>76</sup>

On 30 October 2014, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.<sup>77</sup> In its submission to the Senate inquiry, the Australian Human Rights Commission referred to the rights of children to nationality under article 8 of the Convention on the Rights of the Child and expressed concern about the potential for children to become stateless.<sup>78</sup> The Australian Human Rights Commission recommended that the Bill not be passed.<sup>79</sup>

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The final report of the Senate inquiry was released on 1 December 2014 and recommended that the Bill clarify the discretionary nature of the Minister's power to revoke citizenship.<sup>80</sup> The Senate's final report commented on whether the Bill could result in making children stateless and suggested that the Bill be clarified:

The committee notes the perceived inconsistency between the Bill and the [Explanatory Memorandum] on the question of whether the fraud of a third party could be used to revoke a child's citizenship and thereby makes them stateless. The EM suggests that it could not, but the Bill states that it could. The committee suggests that the Bill should clarify the discretionary nature of the minister's power.<sup>81</sup>

In June 2015 the PJC commented on the measures contained in the Bill to revoke citizenship without a court finding.<sup>82</sup> The PJC members did not reach consensus about the compatibility of the Bill with the right of children to have their best interests taken as a primary consideration and commented that:

Some committee members noted the minister's advice that the measure does not limit the obligation to consider the best interests of the child as a primary consideration and consider that the expanded power to revoke citizenship for fraud or misrepresentation is justified to ensure the integrity of the citizenship system.

On the other hand, the previous report concluded that the proposed expanded power to revoke a child's citizenship without a court finding limits the obligation to consider the best interests of the child. Some committee members considered that the statement of compatibility had not provided sufficient information to justify that limitation for the purposes of international human rights law, and the minister's response has not provided any further information to justify the limitation. The revocation power is able to be exercised regardless of whether or not there has been consideration of the best interests of the child. Some committee members therefore consider that the power to revoke a child's citizenship without a court finding is incompatible with the obligation to consider the best interests of the child.<sup>83</sup>

The Bill is still before the Senate.<sup>84</sup>

### **2.3.4 Migration Amendment (Strengthening Biometrics Integrity) Bill 2015 (Cth)**

The Migration Amendment (Strengthening Biometrics Integrity) Bill 2015 (Cth) was sponsored by the Australian Government's immigration and border protection portfolio and introduced to the House of Representatives on 5 March 2015.<sup>85</sup> The Bill proposed, among other things, to remove existing restrictions on the collection of biometric data from minors and allow collection from children under the age of 15 without the presence or consent of a parent, guardian or independent person.<sup>86</sup>

Biometric data includes fingerprints, handprints, measurements of height and weight, photographs or images of a person's face and shoulders, an audio or visual recording of a person, an iris scan, a person's signature or other identifiers specified by the associated regulation.<sup>87</sup>

On 5 March 2015, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.<sup>88</sup> The final report of the Senate inquiry was released on 5 June 2015 and recommended that the Bill be passed.<sup>89</sup> The Senate's final report commented that departmental policies could provide adequate safeguards in relation to collecting biometric data from children under the age of 15:

The committee considers that the measures in the Bill designed to enhance the department's ability to collect biometric information from minors are warranted, given ongoing concerns in relation to human trafficking and the emerging threat of young people seeking to become involved in terrorist activities overseas.

The committee also considers that the collection of personal identifiers from minors must be consistent with recognised rights of children and should not separate children from a parent or guardian unnecessarily; these issues should be adequately addressed in the department's policies and guidelines.<sup>90</sup>

A dissenting report was provided by the Labor Senators, which commented that safeguards for children must be provided in law, not departmental policy:

Whilst the majority report did note that the collection of personal identifiers from minors must be consistent with recognised rights of children, and noted that such issues would be addressed in the department's policies and guidelines, Labor Senators believe that only legislative measures will adequately provide the required safeguards.<sup>91</sup>

In August 2015, the PJC commented that the measures contained in the Bill would limit the rights of children and may be incompatible with human rights:

The committee considers that removing the current restrictions on the collection of personal identifiers on minors engages and limits the obligation to consider the best interests of the child as a primary consideration. As noted above, the minister's response has not sufficiently justified this limitation for the purposes of international human rights law. The committee therefore considers that the power to collect personal identifiers from minors without the presence of their parent or guardian may be incompatible with the obligation to consider the best interests of the child.<sup>92</sup>

The PJC also commented on the need for child rights safeguards to be included in legislation, not policy:

The committee notes that the minister's response explains that the department will implement additional policy guidelines to guide officers on how the new power to collect personal identifiers is to be exercised. The committee welcomes such guidance. However, international human rights law generally requires that appropriate safeguards be included in legislation. The committee remains concerned that the Bill gives a broad discretionary power to collect personal identifiers from minors with few statutory safeguards.<sup>93</sup>

The Bill passed both Houses of Parliament on 13 August 2015.<sup>94</sup>

## 2.4 Bills initially considered to have had a negative impact on children's rights but later considered to be compatible

The PJC initially considered that two Bills introduced to federal Parliament during my reporting period would have a negative impact on children's rights, but later considered that the two Bills would be compatible with children's rights.

### 2.4.1 Telecommunications Legislation Amendment (Deregulation) Bill 2014 (Cth)

The Telecommunications Legislation Amendment (Deregulation) Bill 2014 (Cth) was sponsored by the Australian Government's communications portfolio and introduced to the House of Representatives on 22 October 2014.<sup>95</sup> The Bill proposed to, among other things, deregulate the supply of telephone sex services.<sup>96</sup>

In November 2014, the PJC commented that telephone sex services were initially regulated to address community concerns that they were too easily accessed by children, and that deregulation may expose children to a risk of harm.<sup>97</sup>

The Bill passed both Houses of Parliament on 25 March 2015.<sup>98</sup>

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In June 2015, the PJC later commented that the regulation of telephone sex services provided only certain limited consumer protections and did not contain provisions specifically designed to protect children from harm.<sup>99</sup> The PJC concluded that the Bill would be compatible with the rights of children.<sup>100</sup>

#### **2.4.2 Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Cth)**

The Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Cth) was sponsored by the Australian Government's Attorney-General's portfolio and introduced to the Senate on 24 September 2014.<sup>101</sup> The Bill proposed to, among other things, provide for the cancellation of a number of social welfare payments for individuals on security grounds.<sup>102</sup>

On 24 September 2014, the Attorney-General referred the Bill to the Parliamentary Joint Committee on Intelligence and Security for inquiry and report.<sup>103</sup> In its submission to the parliamentary inquiry, the Australian Human Rights Commission referred to the right of children to social security under article 26 of the Convention on the Rights of the Child and expressed concern about the potential for children to be affected by the cancellation of welfare payments.<sup>104</sup> The Australian Human Rights Commission recommended that the discretion to cancel social welfare payments include consideration of the effect of welfare cancellation on all relevant parties, including children.<sup>105</sup>

The final report of the parliamentary inquiry was released on 17 October 2014 and recommended that the Bill be amended to require consideration of the likely effect of the cancellation of welfare payments on any dependents, including children, and what alternative arrangements might apply.<sup>106</sup>

The Bill passed both Houses of Parliament on 30 October 2014<sup>107</sup> with amendments to require consideration of the likely effects of welfare cancellation on dependents.<sup>108</sup>

In March 2015, the PJC commented that the amendments to the Bill are likely to be compatible with the obligation to consider the best interests of the child.<sup>109</sup> The PJC included a copy of advice provided by the Attorney-General about the Bill's compatibility with the child's right to have their best interests taken as a primary consideration:

The Committee may wish to note that, on the recommendation of the [Parliamentary Joint Committee on Intelligence and Security], the Bill was amended to include specific factors to which the Attorney-General must have regard when considering whether to issue a Security Notice to cancel an individual's welfare. The Attorney-General must consider the extent (if any) that any welfare payments of the individual who is the subject of the notice, are being, or may be, used for a purpose that might prejudice the security of Australia or a foreign country, and the likely effect of welfare cancellation on the individual's dependants. This amendment clarified the circumstances where the power may be exercised. In this way, the amendments to the Bill ensure the rights and interests of the child (where applicable) are appropriately factored into the decision-making process.<sup>110</sup>

## 2.5 The Commission's intervention in Bateman & Kavan [2014] FCCA 2521

The Australian Human Rights Commission has a function to intervene, with a court's leave, in proceedings involving issues of discrimination<sup>111</sup> or human rights.<sup>112</sup> Guidelines about the Commission's intervention function and how the Commission will exercise that function are available online.<sup>113</sup>

On 22 April 2014, an order was made by the Federal Circuit Court extending an invitation to the Australian Human Rights Commission to intervene in the case of *Bateman & Kavan* [2014] FCCA 2521.<sup>114</sup> The Commission accepted the invitation and orders were granted with the consent of all parties to join the Commission to the proceedings.<sup>115</sup>

The case dealt with the parentage of a child born as a result of an artificial conception procedure. At issue was whether the biological father of the child was a 'parent' for the purposes of paying child support.

Previous cases from 1996 suggested that the meaning of 'parent' in the child support legislation was narrower than in the family law legislation. If those cases had been followed, the biological father would have been a parent for the purposes of access but not for the purposes of child support.

The Commission's submission focussed on amendments to the child support legislation since those cases, and the importance of interpreting the amendments in light of human rights principles.

The parties settled the matter by consent, agreeing that the biological father was a parent and was liable for child support. Judge Harman delivered reasons for making the consent orders. Judge Harman considered that it was important to deliver written reasons because of the implications for other child support cases.<sup>116</sup>

The Court accepted that there should be consistency in law and its application between the meaning of 'parent' in family law legislation and child support legislation.

Judge Harman's written reasons reproduce the whole of the Commission's written submission at paragraph 28. There is then some consideration of the human rights of the child in this particular case, in paragraphs 55-61.

Judge Harman commented on the value of the Commission's intervention:

These issues ... speak to the rights-based approach which I am urged by the Australian Human Rights Commission to adopt. In this case I accept that such an approach has some real force and application.

... I am satisfied, as is submitted by the Australian Human Rights Commission, that the changes brought to the child support legislation by section 29 are such that this earlier body of case law can be distinguished.

... [The child] is born of two known individuals who acknowledge that fact. The child has a right to know that and a right to be financially supported by both in accordance with the means of those individuals and in accordance with law.

I do not propose to canvass the arguments otherwise raised within the submissions of the Australian Human Rights Commission ... save to indicate that they are accepted in their totality.

... What is abundantly clear from the various provisions of the *International Convention on the Rights of the Child* as are identified in the submissions is that this young child has rights. Indeed, children born into this world, irrespective of how that may have occurred, have equal and universal rights. The child's rights include the right to know his parentage socially, psychologically, emotionally, medically and financially.

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... There should be no distinction between this child and any other child whose donator of genetic material is clearly known and based upon a distinction drawn purely on the means by which fertilisation of a human egg occurred. The child has a right to know his parentage and, as is indicated by the submissions of the Australian Human Rights Commission and those of the mother, a right to receive financial support from his parents.<sup>117</sup>

## 2.6 Conclusion

The PJC has described its scrutiny role as ‘primarily preventative in nature and directed at minimising risks of new legislation giving rise to breaches of human rights in practice’.<sup>118</sup> The PJC also considers that it has an educative role, including by raising awareness of laws that promote human rights.<sup>119</sup>

My description of the PJC’s consideration of child rights compatibility in this chapter, as well as my description of the Commission’s parliamentary submissions and intervention in the Federal Circuit Court, seeks to advance these preventative and educative objectives, specifically as they relate to the human rights of children in Australia.

## Chapter 2: Endnotes

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National Children's Commissioner with children and young advocates from the Multicultural Youth Advocacy Network

# Chapter 3: Business and children's rights



National Children's Commissioner with students during a consultation about business and children's rights at Keilor Heights Primary School

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## 3.1 Introduction

We live in a completely different culture and economic times. The last 10 years have seen ridiculous changes in living standards and expectations. We are now an instant society which adults were not brought up in. (Boy, 16 years old)<sup>1</sup>

In the past few decades we have witnessed the rapid globalisation of business and the widespread uptake of technology across communities.<sup>2</sup> One issue which has emerged during this period, and that now demands our attention, is the evolving and increasingly complex relationship of children to business. Within this changed environment, questions arise as to how children's human rights fare.

International responses to this issue have been surprisingly recent. Formal consideration of the relationship of business to human rights occurred between the United Nations and the international business sector through the 1990s.<sup>3</sup>

In June 2011, the United Nations Human Rights Council unanimously adopted the *Guiding Principles on Business and Human Rights* (the Guiding Principles). The Guiding Principles provide a global standard for addressing and preventing human rights impacts associated with business activity. The Principles operate on a three pillar framework, known as the Protect, Respect, Remedy Framework.<sup>4</sup>

However a specific focus on the impact of business on the human rights of children only occurred in 2012 with the release by UNICEF, Save the Children and the UN Global Compact of the *Children's Rights and Business Principles* (the Business Principles).<sup>5</sup> The Business Principles offer guidance to business on how it can respect and support children's rights.<sup>6</sup>

In 2013, the United Nations Committee on the Rights of the Child (the Committee) released the *General Comment on State Obligations Regarding the Impact of the Business Sector on Children's Rights* (General Comment).<sup>7</sup> The General Comment includes a framework for the implementation of children's rights in the business sector and details specific measures for States to undertake in protecting the rights of children in relation to business activities.<sup>8</sup>

While these documents are non-binding,<sup>9</sup> they provide a valuable lens through which to consider how the Australian business context relates to children and their human rights. It also provides us with an opportunity to hear what children in Australia have to say about their experiences. These international initiatives have also forged an important precedent for a partnership-based approach with business. There is little reason to doubt that the goodwill evident within the international business sector will be similarly reflected at the domestic level in ensuring that the rights of Australian children are upheld as consumers of goods and services.

### 3.1.1 Why is business a child rights issue?

All children have rights everywhere and at all times.<sup>10</sup>

Children's rights are universal, indivisible, interdependent and interrelated.<sup>11</sup> Children's rights transcend all groupings and institutions – they are relevant everywhere, including in the sphere of business. The global and transnational nature of business has made its scope, impact and influence much greater than in the past.<sup>12</sup> It has been reported that as far back as 2000, the revenues of the largest corporations exceeded the gross domestic product of some countries.<sup>13</sup>

Given children under the age of 18 years account for almost one third of the world's population,<sup>14</sup> children emerge as both rights-holders and as key stakeholders in the activities of business.<sup>15</sup> As detailed in the Business Principles, children interact with business in many ways including as consumers; family members of employees; young workers and as future employees and business leaders.<sup>16</sup> Children are also active members of communities within which businesses operate.<sup>17</sup> It is for these reasons I have chosen to focus on the human rights issues relating to children's interactions with business.

The United Nations Committee on the Rights of the Child identifies four general principles<sup>18</sup> that should guide any decisions and actions (including by the private sector) that concern children.<sup>19</sup> These are the right to non-discrimination;<sup>20</sup> the best interests of the child;<sup>21</sup> the right to life; survival and development<sup>22</sup> and the right of the child to be heard.<sup>23</sup>

The application of these guiding principles to the activities of business raise issues as varied as poor work conditions for children;<sup>24</sup> inflexible work environments for parents and carers;<sup>25</sup> environmental and product safety;<sup>26</sup> use of child-appropriate marketing and advertising<sup>27</sup> and protection of children in emergency situations.<sup>28</sup>

It is clear that business, whatever the size, and whether directly or indirectly, impacts on the rights of children on a daily basis. Like family, school, and work, business has become an 'institution' in the lives of most people. It is difficult to imagine how, in modern life, interactions with business could be avoided. Rather, all sectors that form part of our contemporary society, whether it be government, business or civil society, are now major actors in protecting children and advancing their rights.

Issues such as environmental hazards, product safety and child labour have been central to discussions on children's rights and business to date. The issue that has remained on the periphery, and which will be the focus of this chapter, is children as consumers.

### **3.1.2 Children as consumers**

It can be disconcerting to conceive of children as active 'consumers' in contrast with the idea of a naïve, passive childhood empty of all consumer urges. But research, and indeed the practices of the business sector itself, reveals a very different reality.

Children's participation as consumers has been mapped in detail by business across different markets, precisely because they are key players in these markets. Bodies of academic research exist<sup>29</sup> on the 'consumer socialisation of children' which analyses the processes by which children 'acquire skills, knowledge and attitudes relevant to their functioning as consumers in the market place'.<sup>30</sup> Children have been identified not only as active individual consumers but as major influencers of parental purchases<sup>31</sup> and as potential future consumers.<sup>32</sup>

As a point of comparison, a US report published in 2001 found that children's spending had 'doubled' during each decade of the 1960s, 1970s and 1980s and had 'tripled' in the 1990s.<sup>33</sup> At around the same time, estimates placed the value of the US children's market at approximately \$115 billion.<sup>34</sup> In Australia, a 1996 report of the Australian Law Reform Commission (ALRC) similarly noted that children 'are significant consumers of goods and services' with 'markets in toys, fast food, entertainment and clothes...directed explicitly at children'.<sup>35</sup>

Children are active citizens, and being part of an 'active citizenry' includes engaging with business as consumers. What this situation raises is the question of how to 'ethically' engage with the 'child consumer'.

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This has given rise to academic research and advocacy focused on a number of policy issues ranging from junk food advertising to product safety to the sexualisation of children in advertising. Yet one factor that has led to unparalleled change within the landscape of business and its impact on children's lives has been the advent of the internet.

### **3.1.3 The impact of the internet**

While the internet itself may no longer be considered 'new', its ongoing impact across areas of public and private life have created new and untested frontiers, the implications of which will continue to evolve. The internet has redefined not only what it means to be a business, but what it means to be a customer. It has aided the globalisation of business and facilitated the emergence of children as online consumers in particular.

The internet houses the new global shopfront, with consumer outlets finding their way off streets, out of shopping centres and straight into Australian homes. In 2012-13, over three-quarters (76%) or three out of four of Australia's 15.4 million internet users bought something online.<sup>36</sup> Of particular note within the online context is the high level of internet use by children in Australia.

The Australian Bureau of Statistics reports that 90% of children aged 5 to 14 years accessed the internet in the 12 months to April 2012.<sup>37</sup> This reflects a steady increase from 65% in 2006 and 79% in 2009.<sup>38</sup> Generally, the proportion of children accessing the internet increased with age with 79% of children aged 5 to 8 years having accessed the internet, 96% of 9 to 11 year olds and 98% of 12 to 14 year olds.<sup>39</sup>

An increasingly important part of this context is the use of multiple internet-enabled devices such as mobile smart phones. In relation to children and mobile smart phone use, concerns have typically centred on contractual difficulties children have in understanding the terms and conditions of phone contracts (and issues of debt recovery).<sup>40</sup>

Yet an emergent issue is how access to the internet itself has now proliferated across multi-functional devices offering users a 'mobile' platform. Research has found that 37% of 8 to 9 year olds and 51% of 10 to 11 year olds have at some time accessed the internet via a mobile smart phone.<sup>41</sup> Apart from desktop and lap top computers, other internet enabled devices include iPads (tablets), iPods and game consoles.<sup>42</sup>

While children use the internet for a variety of purposes such as study; listening to music; playing games and social networking<sup>43</sup> it is also being used as an information channel to research products and to shop online.<sup>44</sup> Purchases are being made either directly by children or indirectly by others on their behalf<sup>45</sup> through a 'mobile' platform.

It has also been reported that as of 2011 there were over a million apps available<sup>46</sup> with a corresponding increase in games that are available as apps.<sup>47</sup> Where businesses opt to offer or exclusively use online mobile platforms to sell goods and services (such as through apps), choices about how customers shop are being made for them.

As the consumer context undergoes rapid and fundamental change, issues arise as to whether children are adequately equipped to navigate this changed environment. The active participation of children as online consumers raises pressing questions about whether existing regulation remains relevant, balanced and adequate.

### 3.1.4 An identified need for further investigation

There is growing recognition and acceptance of the relevance of business to human rights.<sup>48</sup> The United Nations Committee on the Rights of the Child highlights the specific role of national human rights institutions in raising awareness of the provisions of the Convention on the Rights of the Child within the business sector.<sup>49</sup> An impetus exists to take stock of how children are treated within the Australian consumer environment.

As a signatory to the Convention on the Rights of the Child, the Australian Government has an obligation to comply with its provisions. Business has a responsibility to uphold the human rights of children within its operations, as well as complying with relevant regulation that ensures this occurs.

While the business sector has emerged as a key feature of Australian society, children's role as 'online consumers' remains peripheral to both consumer and cyber discourses. It has attracted little research or data collection both domestically and internationally.

It remains unclear what problems children are experiencing as online consumers and whether current regulation is sufficient to the task of ensuring children's human rights are adequately safeguarded. Given this situation a need exists for further investigation into this issue.

Section 46MB(1)(c) of the *Australian Human Rights Commission Act 1986* (Cth) provides that the National Children's Commissioner may:

Undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia.

Utilising this function, I undertook an initial examination into issues relating to the impact of business on the human rights of children and young people (under the age of 18 years) as consumers, with a particular focus on the online environment.

Children are entitled to be active and empowered participants in all areas of public life, including as consumers. It is our responsibility as a community to ensure that this occurs in a manner that respects and realises the human rights of children.

I hope that this examination will contribute to the start of a national discussion about children's rights as consumers, on their activities and experiences, and on options to work collaboratively with business to further improve the online and offline consumer context for children and young people.

### 3.1.5 A child rights-based approach

The United Nations Committee on the Rights of the Child actively promotes the adoption of a child rights-based approach,<sup>50</sup> which is consistent with the Commission's own objective of applying 'a human-rights-based approach to its work'.<sup>51</sup>

According to the Committee, a child rights-based approach conceives of children as rights-holders with non-negotiable rights to protection.<sup>52</sup> It is seen as distinct from 'child protection approaches' where children are treated as passive 'objects' in need of assistance.<sup>53</sup>

A child rights-based approach aims to develop the capacity of duty bearers (such as governments) to meet their obligations and to build the capacity of rights-holders (children) to claim their rights.<sup>54</sup> It is guided by four general principles<sup>55</sup> that the Committee has specifically applied to the business context which are summarised below:

- *The right to non-discrimination (article 2)* – in relation to business, the State Party must ensure that all legislation, policies and programmes that deal with business issues do not discriminate (intentionally or unintentionally) against children.<sup>56</sup> States Parties should collect statistical data and other information to identify discrimination against children, raise awareness of it within the private sphere and provide a mechanism for redress.<sup>57</sup>
- *The best interests of the child (article 3)* – the State Party has an obligation to ensure that the best interests of the child are a primary consideration in decisions and actions taken by the private sector that impact on a child.<sup>58</sup> States Parties must apply the ‘best interests’ principle to all legislative, administrative and judicial proceedings concerning business activities that impact on children.<sup>59</sup> This includes explaining how the best interests of the child have been weighed against other policy considerations in government decision-making.<sup>60</sup>
- *The right to life, survival and development (article 6)* – ‘development’ is defined as a ‘holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development’.<sup>61</sup> In the business-specific context, a child’s healthy development may be impacted on by certain forms of marketing and advertising, or products.<sup>62</sup> Where this is the case, States Parties have an obligation to consider preventative measures such as effective regulation and monitoring of industry.<sup>63</sup>
- *The right of the child to be heard (article 12)* – States Parties should provide children with the opportunity<sup>64</sup> to be heard when developing national and local-level business related laws and policies that may affect them.<sup>65</sup> The State Party should encourage children to form ‘a free view’ and provide an environment that enables children’s ability to be heard.<sup>66</sup> The broadest interpretation should be applied to matters that could impact on children in order to assist with their inclusion in the social processes of their community and society.<sup>67</sup> Pertinently for business, the Committee specifically refers to the necessity of procedures for complaints, including access to remedies or redress.<sup>68</sup> Further to this, children’s voices also have a critical part to play as engaged customers in the design process, as expert users of goods and services, to the benefit of the long term health of a business.<sup>69</sup>

These rights do not sit in isolation from each other and often intersect. For example, the right to be heard (article 12) can be linked with the right to freedom of expression (article 13) as can the child’s right to information (article 17) which to a large degree, is a prerequisite to the ability to express one’s views.<sup>70</sup>

What must also be taken into account is that children are not a homogenous group and that this diversity must be incorporated into any assessment of the best interests of the child.<sup>71</sup> While children share basic universal needs, the expression of those needs can be affected by the sex, sexual orientation, national origin, religion and beliefs, cultural identity and/or personality of the child.<sup>72</sup>

Informed by this approach, the chapter includes an international survey of existing literature as well as a summary of key regulatory issues that emerge within the domestic legal context. Also included are the findings from a series of consultations I have undertaken with children on their experiences as consumers.

For the purposes of this examination ‘consumer’ will be defined as ‘those who purchase goods and services for personal or household use’.<sup>73</sup>

### Summary

- International initiatives provide a valuable lens through which to consider children's rights in the Australian business context
- It is clear that business impacts on the rights of children on a daily basis
- Children are active citizens which includes being consumers
- The internet has redefined business and facilitated children as online consumers
- Pressing questions are raised about whether existing regulation remains relevant, balanced and adequate
- This issue has attracted little research or data collection both domestically and internationally
- A need exists for further investigation using a child rights-based approach.

## 3.2 Literature review

There is limited Australian research on children and business. While existing research largely reflects international sources, it has been undertaken in comparable countries with similar levels of technology saturation and as such offers valuable insights into our own domestic context.

### 3.2.1 Children and the consumer market

Within the academic discipline of marketing research there is 'little disagreement' that children are both 'stakeholders in business' and 'also consumers'.<sup>74</sup> Children have an increased ability to make consumer choices, including a significant role in influencing parental purchasing patterns, and have exposure to media, technology and brands at quite early ages.<sup>75</sup>

The fact that children are an identified part of the 'global teen market'<sup>76</sup> seems evident in the numerous marketing strategies directed specifically at children. Within the European Union context, research has identified three distinct markets that are relevant to children as consumers: the primary market (the direct spending of money); the parental market (influence over parental purchasing) and the future market (where consumer habits are seeded in childhood).<sup>77</sup>

Other approaches include the theory of 'consumer socialisation', which describes 'processes by which young people acquire skills, knowledge and attitudes relevant to their functioning as consumers in the market place'.<sup>78</sup>

According to this approach, children pass through three stages: the 'perceptual' stage (ages 3 to 7 years) where children display familiarity with 'brands or retail stores'.<sup>79</sup> The 'analytical' stage (ages 7 to 11 years) is where 'products and brands are analysed and discriminated' on the basis of a number of factors, including advertiser's motives.<sup>80</sup> The final stage is the 'reflective' stage (ages 11 to 16 years) where marketplace concepts such as 'branding and pricing' becomes increasingly 'nuanced and more complex'.<sup>81</sup> The latter stage sees children moving into adolescence with the growing need to 'shape their own identity and conform to group expectations'.<sup>82</sup>

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Related to this is 'adolescent consumption autonomy'<sup>83</sup> which is described as part of the shift into 'adulthood', learning to exercise consumer decisions independent from parents and guardians.<sup>84</sup> Such decisions build 'confidence to define their goals independent of the wishes of parents' replaced instead with an increasing dependence on close peer relationships.<sup>85</sup> Business is able to use this information to formulate effective strategies for 'targeting and serving adolescent consumers' based on the degree to which consumption autonomy has been attained.<sup>86</sup>

### 3.2.2 Children and the online consumer market

While research on internet use largely relates to adults, children are seen 'as one of the fastest growing online niches'.<sup>87</sup> A survey of available data reveals very high internet access and usage by children in Australia.<sup>88</sup> Proliferation has been further driven by the availability and use of multiple internet-enabled devices (such as mobile smart phones, iPads, game consoles).<sup>89</sup> While the internet is used by children for a variety of purposes,<sup>90</sup> one commentator notes 'if you can get someone to click on your site, it creates a relationship between product and consumer'.<sup>91</sup>

Research from the United Kingdom reveals a number of reasons why children buy products online<sup>92</sup> including the inability to purchase the product locally and the idea of 'exclusivity' (the ability to access a range of products that peers would not possess).<sup>93</sup>

Other research reveals that after education, 'playing games is the most popular online activity for children between the ages of 5 and 14'.<sup>94</sup> Apps are becoming increasingly popular with children in the context of the significant growth in games available exclusively as apps.<sup>95</sup>

The internet platform has also enabled more creative forms of consumption. One commentator argues that as 'traditional barriers between "content and commerce" disappear'<sup>96</sup> the result is the emergence of a 'children's digital media culture'<sup>97</sup> where 'new levels of intimacy are built between marketers and children'.<sup>98</sup>

For example, an extension of the 'online gaming' model is where children purchase access to 'virtual worlds' in which they create content and ideas within a virtual context, in effect aiding the development of the game.<sup>99</sup> Businesses can incorporate contractual clauses that waive all intellectual property rights children possess to the work they produce online and claim it as the property of the business.<sup>100</sup>

Online virtual platforms have enabled a type of consumer situation where children are paying for the ability to develop the product of the business for free. Another area where there appears to be a similar coalescing of consumer and business objectives is in the area of online advertising.

### 3.2.3 Online advertising

Peer pressure and it is like the adverts are on all the time saying what you should own – all the time even stuff in films. (Female, 13 years)<sup>101</sup>

The importance of advertising within the online context is underscored by the fact that the internet is used to research purchases regardless of whether the actual purchase ultimately occurs offline.<sup>102</sup> One United Kingdom study in 2003 found that 41% of children 'used the Internet for this activity, finding it a valuable method for gathering product information'.<sup>103</sup> It was seen as aiding an 'informed' consumer choice even where the purchase itself was commonly made offline.<sup>104</sup>

I like skating and body boarding and surfing and stuff, and I've seen ads that come up and actually offer skating and body boarding and surfing. I'm not sure if it's just me or they were placing those surfing ones [ads] on everyone's MySpace or just mine. (Male, 16 years)<sup>105</sup>

Part of the online advertising context can involve the use of tracking software and spyware, without the child's knowledge.<sup>106</sup> This software allows marketers to know who is visiting their websites and can allow them to create an 'extensive data file about individual user's preferences for places and products'.<sup>107</sup> Such amassed information can potentially be used for 'one-on-one relational marketing strategies directed at specific individuals'<sup>108</sup> (for example, targeted advertising on social networking sites).

An emerging practice in online marketing is where advertising becomes deeply embedded and integral to the online content or product purchased<sup>109</sup> or even becomes the product itself. New ways to market to children and young people are being explored through online media and wireless devices which can involve the use of stealth techniques.<sup>110</sup> Child consumers are 'immersed in branded environments frequently without knowing that they are being exposed to sophisticated marketing campaigns'.<sup>111</sup> These stealth techniques aim to create 'favorable views and memories of specific products'.<sup>112</sup>

There are innumerable commercial game sites that offer children 'compelling and entertaining online spaces in which to build communities, create content and play games'.<sup>113</sup> However the same sites 'award "points", virtual currency, or similar incentives to players who fill out marketing surveys, visit sponsored sites, and participate in simple point and click "advergames"'.<sup>114</sup>

Advergames are games created by companies for their clients for the specific purpose of advertising products.<sup>115</sup> The brand can become 'the hero of the game' while entertaining the player at the same time.<sup>116</sup> The overriding objective is that, by the end of the game, the player should have learnt something of the brand/product.<sup>117</sup> In the advergaming context the advertisement is the product being consumed – there is no tangible difference between the two.

### **'Neopets' – advergaming example**

The Neopets website has more than 50 million registered users. It is a free online site where members create or adopt a 'NeoPet' to look after and explore the community of 'Neopia'.<sup>118</sup> Looking after the pet requires the acquisition of currency ('NeoPoints') which is gained by 'playing various games, exchanging or selling items, filling out marketing surveys and entering contests and games of chance'.<sup>119</sup> Users are also encouraged to buy 'a variety of related merchandise and collectables, which includes trading cards, plush toys, and numerous product tie-ins and licensed spin-offs'.<sup>120</sup> 'Immersive advertising' is used where products and brand names are integrated within the games and features of 'Neopia'.<sup>121</sup> A substantial part of Neopets revenue is generated by providing 'market research and consumer studies of its users'.<sup>122</sup>

You sometimes go on to browse on these sites and you get emails saying fantastic sale, you click on and see what they are and you think that's really cheap I might just get that, you haven't actually thought of buying it. (Male, 16 years)<sup>123</sup>

A number of commentators raise concerns about the susceptibility of young children to advertising where, cognitively speaking, they are less likely to identify strategies used to influence product choice.<sup>124</sup> Aggressive marketing strategies can also actively encourage children to use 'pester power' on guardians in order to influence purchasing decisions.<sup>125</sup>

While there is significant research on the influence of television advertising on children of various ages, there is little research on online advertising and its impact on children, particularly given the nature of new digital technologies.<sup>126</sup>

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These practices also raise questions about online privacy and whether this ‘research into children’ (or data mining) is occurring by ‘stealth’.<sup>127</sup> This is in contrast to the approach adopted by institutions such as academia and government where strict ethical guidelines have been established for such purposes. Such guidelines closely regulate research conducted on children and ensure fully informed consent is secured from children and their guardians.<sup>128</sup>

### **3.2.4 Online privacy concerns**

If contemporary children’s culture is truly ‘inseparable from media use’,<sup>129</sup> it is also intimately familiar with emerging forms of media surveillance.<sup>130</sup> The use of tracking software and spyware such as cookies<sup>131</sup> can be used to construct very detailed consumer profiles of a demographic group that is otherwise very difficult to gain access to.<sup>132</sup> It also facilitates the tailoring and strategic placement of advertisements on the screen page while the child is active on the website.<sup>133</sup>

Quite apart from individual websites collecting personal information, there is also the broader issue of data mining. Data mining algorithms search across raw data, identifying trends ‘and constructing generalisations and categories’.<sup>134</sup> This data is then cross-collated with other databases to produce a ‘truly staggering amount of consumer information’.<sup>135</sup> In this sense it is not so much the creation of children’s data footprints that is the issue as is the collection and use of such material by other parties, which can be for purposes completely unrelated to the original purpose.<sup>136</sup>

Other related online privacy concerns include receiving unsolicited emails; access to private files; loss of anonymity online, unauthorised sharing or disclosure of information and misuse of personal financial details.<sup>137</sup> Notably, one research study revealed that the problems children saw with online shopping involved the security of online transactions, providing personal details online and the subsequent junk emails received from companies.<sup>138</sup>

Despite these issues, a lack of research in this area has been identified where ‘policy makers have typically neglected children and youth, despite their online presence’ in e-commerce discussions.<sup>139</sup>

### **3.2.5 Regulatory issues**

With what has been called the ‘commercialisation’ of the internet, particularly for children,<sup>140</sup> questions arise as to whether existing regulation has kept up with the rapidly changing consumer environment as it impacts on children. It is argued that there is a pressing need to ‘acknowledge children’s needs and emerging rights as “digital citizens”’<sup>141</sup> within the online context in particular.

The picture revealed is of children who have ‘spending power to utilize their skills’ but who still lack the ability to make more informed choices.<sup>142</sup> The idea of the adept ‘cyber-kid’ contrasts with the findings of studies that suggest children’s knowledge of the processes and issues associated with online use might actually be ‘quite superficial and limited’.<sup>143</sup> Everything from the lack of attention to privacy policies to children’s limited understanding of key legal and economic concepts suggest the need for further inquiry ‘into children’s actual (as opposed to assumed) cyber-literacy’.<sup>144</sup>

In the internet era, children can no longer be insulated and protected from ‘the outside’ world as arguably this no longer exists. Instead, childhood has become inseparable from media use and media surveillance.<sup>145</sup> Amid these fundamental social shifts in how children participate, the challenge is to ensure children emerge, not just as competent users of technology, but also as active, empowered and consumer literate participants.<sup>146</sup>

Contractual complexity is noted as an issue in, for example, children's knowledge of privacy policies and how companies track, collect and use their personal information on the internet.<sup>147</sup> Similar issues arise where children agree to end-use license agreements which are mostly written in inaccessible language and easily bypassed or agreed to.<sup>148</sup> These agreements put the onus on the child to seek parental consent<sup>149</sup> and can act to waive children's rights to any content they create.<sup>150</sup>

The use of 'parental consent' in the online context is a widely understood safeguard of children and their rights, yet it has emerged in a number of studies that the process of securing informed parental consent is largely inadequate.<sup>151</sup> Research demonstrates that the securing of parental consent 'is rarely strictly enforced by site operators, and can often be easily by-passed by child users'.<sup>152</sup> This is of particular relevance in light of recent Australian data suggesting an increase in internet access by children at friend's houses,<sup>153</sup> away from direct parental supervision.

A clear example of this is in the context of apps where parents may not even be aware of 'the need to supervise children's use of mobile applications' hosted on their mobile phones.<sup>154</sup> This is acutely the case with the use of the 'freemium' app model where a game is advertised as 'free' but often requires the purchasing of digital or 'virtual' currencies in order to work effectively.<sup>155</sup> This can lead to situations where 'children may make a number of in-app purchases without the knowledge of their parents'.<sup>156</sup> This is in part because children often 'do not understand that they are spending real money, or how much they are spending (for example, in the popular game Smurf Village a "wagon" of 2000 "Smurfberries" costs \$109.99)'.<sup>157</sup> Other concerns raised within the app context include marketing strategies being inappropriate to the age of users and apps targeted at children that simulate gambling.<sup>158</sup>

Suggested reforms to the app consumer market include ensuring consumers make greater use of 'existing settings and controls' in safeguarding appropriate use by children.<sup>159</sup> The adoption by business of a 'best practice' industry approach to ensure appropriate use of apps by children was also recommended.<sup>160</sup> Further research and continued monitoring of children's consumer experiences with apps was considered necessary.<sup>161</sup>

Everything is nice as written, but companies only aim at earnings. (Young person, Brazil)<sup>162</sup>

However, criticisms have been levelled at the adoption of voluntary 'best practice' or self-regulatory approaches, as failing to guarantee that all businesses would abide by relevant standards.<sup>163</sup> For example, where business adopts codes of conduct limiting 'traditional' forms of advertising to children (such as television), the perceived risk was that investment would be diverted to forms of 'new media' not yet covered by such codes.<sup>164</sup>

Concerns have also been raised about regulation only targeting 'misleading' advertising in a situation where 'perfectly truthful advertisements' can send messages that are inconsistent with public policy goals.<sup>165</sup> In other words, 'self-regulation cannot prevent marketing that works' – that is, sustained and targeted advertising to children.<sup>166</sup> Instead it is argued that the very aims of self-regulation have to be reconfigured to continue to support business needs, and to protect against commercial practices that gain an unfair competitive advantage.<sup>167</sup>

Accordingly, consumers, particularly vulnerable consumers such as children, need to be protected by 'restricting exposure to, and the impact of, certain forms of marketing'.<sup>168</sup> Amadine Garde argues it is counter-intuitive to place the onus on business to curtail promotion of products that are lawfully placed on the market.<sup>169</sup> In a regulatory sense, stakeholders are seen as having 'different roles', with government responsible for developing policy and providing leadership in implementation, monitoring and evaluation of these practices.<sup>170</sup>

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One approach to improved privacy regulation suggested in the literature involves an ‘explicit and clear campaign of awareness regarding the uses to which data’ may be stored and mined, placing the onus of responsibility on those who wish to use personal data in this manner.<sup>171</sup> Arguably, this knowledge or awareness would give people the opportunity to ‘resist or negotiate the uses of their information’.<sup>172</sup> It was also considered ‘especially vital that appropriate guidelines were established for ensuring truly informed consent from a child’.<sup>173</sup> Child research protocols used by academic and government institutions were recommended as offering a possible framework.<sup>174</sup>

Reference was also made to the United States approach where specific regulatory requirements are placed on children’s websites that knowingly gather information from children (under the age of 13 years).<sup>175</sup> Businesses are required to give notice to parents about data collection activities and obtain verifiable consent from parents prior to collecting any information from children.<sup>176</sup> They must also provide parents with access to any information collected from their children together with the opportunity to prevent the data being used for any other purpose.<sup>177</sup>

The proposed European Union General Data Protection Regulation recommends incorporating a consent requirement where personal data is being processed for children under the age of 13 years.<sup>178</sup> The consent must be verifiably given by parents on behalf of the child.<sup>179</sup> This has not yet been implemented. Like Australia, privacy laws in Singapore, Hong Kong,<sup>180</sup> New Zealand and Canada do not make specific provisions for protecting the personal data of children (minors).<sup>181</sup>

Another important procedural issue that is consistently raised is the need for an effective complaints system. A number of commentators note the importance of effective complaints and remediation systems,<sup>182</sup> with one study finding that ‘only nine out of 22 sites’ responded to complaints submitted by children seeking assistance.<sup>183</sup>

Sandra Calvert raises the issue of regulatory consistency, asking regulators ‘to address the issue of consistent regulation between newer online marketing activities and traditional television and film guidelines’.<sup>184</sup> Given the increasing convergence of ‘varying forms of technologies together under one umbrella’<sup>185</sup> it is seen as ‘sensible to have uniform standards for marketing to children across varying media platforms’.<sup>186</sup>

The fact that the online environment is not constrained solely by domestic law poses additional regulatory challenges.<sup>187</sup> For example, ‘setting up an online shop in a different country...can insulate users from prosecution for violating a number of laws’ that would otherwise apply in the domestic context.<sup>188</sup>

As online communities (of which consumer activities are a part) become ‘increasingly important arenas for social development and cultural participation’ the opportunities these provide to both users and business ‘will continue to expand’.<sup>189</sup> So too, it is argued, will the underlying tensions between ‘human rights and current market-research practices’.<sup>190</sup> The aim of regulation is to address such tensions and provide a balance to often competing policy objectives.

A number of key regulatory issues that emerge within the Australian legal context are considered below, the review of which was assisted by analysis from King & Wood Mallesons.

### Summary – Literature review

- Children are seen as one of the fastest growing online niches
- Online advertising can involve the use of tracking software and embedded advertising that is integral to the online content or product purchased
- These practices raise questions about online privacy and whether this 'research into children' (or data mining) is occurring by stealth
- Little research exists on children and online advertising/privacy in relation to new digital technologies
- Studies suggest children's knowledge of issues associated with online use is superficial and limited
- Contractual complexity is an issue, as is the inadequacy in the process of securing informed parental consent
- Perceived risks with self-regulation were identified, with suggested reform including placing the onus of responsibility on those who wish to use personal data
- The literature suggests that appropriate guidelines for ensuring truly informed consent from a child, together with an effective complaints system, should be established
- The online environment is not constrained solely by domestic law, which poses additional regulatory challenges.

## 3.3 Australian consumer protection and children

Many different laws regulate the online consumer space. For example, consumer laws cover unfair contracts, product safety and misleading and deceptive conduct, and provides for options for redress.<sup>191</sup> Privacy laws also apply to the online marketplace as does the regulation of online forms of marketing and advertising.

Given the breadth of laws involved in the regulation of online consumer activities, in this examination two issues have been singled out as case studies. The aim is to highlight how laws operate domestically and the extent to which they operate to specifically protect (if at all) the rights of children as online consumers. The first of these is privacy law. The second is consumer law – specifically the ability of children to enter into contracts, unfair contracts and misleading and deceptive conduct.

### 3.3.1 Case study: children and online privacy

In Australia, both state and federal laws exist in relation to privacy. The main source of information privacy regulation in Australia is the federal *Privacy Act 1988* (Cth) (the Privacy Act). In a 2008 review of the Privacy Act, the Australian Law Reform Commission (ALRC) identified a number of issues relating to children and their expectations of privacy and the disclosure of their personal information.<sup>192</sup> A particular issue of concern was the actual capacity of children to genuinely consent to or otherwise make decisions that affect their rights.<sup>193</sup>

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The Privacy Act does not set a minimum age at which a child is able to consent to decisions about their privacy and the use of their personal information. In the absence of a set minimum age, an individual assessment on the ability to consent would need to be made of each child on a case by case basis.<sup>194</sup> This would include assessing the child's ability to fully comprehend the meaning of the decision.<sup>195</sup> Until that time it is assumed that a parent or guardian will make these decisions on behalf of the child.<sup>196</sup> In a practical sense, the ability of business to make such an assessment would be difficult to undertake, particularly in the context of online commerce.

The ALRC drew specific attention to the impact of 'direct marketing' on children and young people.<sup>197</sup> A number of laws regulate 'direct marketing' practices including the *Spam Act 2003* (Cth) and the *Do Not Call Register Act 2006* (Cth). With respect to the Privacy Act, the ALRC concluded that children did not have the ability to 'comprehend the nature of an ongoing [consumer] relationship or have sufficient understanding to have a "reasonable expectation" of receiving direct marketing material as a result of that continuing relationship'.<sup>198</sup>

To address this issue, the ALRC recommended that parental consent be a prerequisite to the use of personal information for direct marketing purposes for children under the age of 15 years.<sup>199</sup> For children and young people over the age of 15 years, the ALRC proposed a change to the law that allowed organisations to presume that children over the age of 15 years possess the capacity to consent.<sup>200</sup> If organisations wished to rely on this presumption then reasonable steps had to be undertaken to confirm the person was over 15 years of age.<sup>201</sup> This recommended change to the law has not been adopted by the Australian Government.<sup>202</sup> A further review by the ALRC in 2014 into *Serious Invasions of Privacy in the Digital Era* highlighted similar concerns and recommended a cause of action provision be included in the legislation in relation to serious breaches of privacy.<sup>203</sup>

The Office of the Australian Information Commissioner (OAIC) has published guidelines on its interpretation of the Australian Privacy Principles set out in the Privacy Act. The guidelines state that where it is not reasonable for a regulated entity to perform a case-by-case assessment of the capacity of an individual under the age of 18, the entity may presume that an individual over the age of 15 has capacity to consent unless there is something to suggest otherwise.<sup>204</sup> While these guidelines are in line with the ALRC's proposed changes to the law, they are not legally binding and serve only to indicate the OAIC's approach to regulation.

No significant change to Australian privacy laws has occurred in relation to children and young people since the publication of the ALRC report in 2008. Given the high levels of internet use by children in Australia it may now be a timely opportunity to revisit the ALRC's recommendations on the online privacy of children in Australia.

In 2015, the OAIC along with 28 other privacy enforcement authorities around the world took part in the third Global Privacy Enforcement Network (GPEN) Privacy Sweep.<sup>205</sup> A number of child-targeted websites and apps were examined for the collection of children's personal information.<sup>206</sup> This included consideration of whether parental involvement was sought, the ease of deletion of personal information, whether users were redirected off the site and the tailoring of privacy information to children.<sup>207</sup>

The OAIC found that a number of websites/apps targeting children under 12 years either did not collect, or limited the collection of, children's personal information.<sup>208</sup> However deficiencies existed in the incorporation of child-appropriate privacy measures (including the tailoring of privacy information to children) and the re-directing of children away from sites.<sup>209</sup> Facilitating parental involvement was considered a key measure to protecting children's privacy along with protective controls in respect of collection and deletion of personal information and redirection.<sup>210</sup> The OAIC is currently considering the results for any further follow-up action.<sup>211</sup>

### 3.3.2 Case study: consumer contracts and children<sup>212</sup>

A contract is enforceable where both parties have the 'capacity' to enter into a contract. Certain parties may be exempt from what would otherwise be a binding contract if they are considered to 'lack capacity'. Those considered to 'lack capacity' include children (minors).<sup>213</sup>

While the ability to understand commercial matters varies between individuals, Australian law sets the age of an adult at 18 years of age for most purposes.<sup>214</sup> People under the age of 18 years are 'minors' who are generally not bound to obligations arising out of contracts due to their presumed 'lack of capacity' to fully understand the obligations they have entered into.

The common law<sup>215</sup> allows for one exception to this general rule where a minor will be bound to contracts for goods and services that are considered 'necessary' to the minor's way of life.<sup>216</sup> Determining whether something is 'necessary' will depend on individual circumstances including his/her age, means, requirements and whether the minor was provided with these goods or services from alternative sources.<sup>217</sup>

Legislation on contracting with minors also exists at the state and territory level. It largely mirrors the common law position that minors under the age of 18 years cannot be bound to contracts with the exception of contracts for goods and services considered 'necessary'<sup>218</sup> (or in the case of NSW – considered 'beneficial').<sup>219</sup>

Similar to the Privacy Act, general consumer laws (known as the 'Australian Consumer Law') do not contain any child-specific provisions.<sup>220</sup> The law does however include provisions that are generally relevant to children's online consumer activities such as the prohibition of unfair terms in consumer contracts and the prohibition of misleading and deceptive conduct.<sup>221</sup>

For a term in a contract to be unfair it must: cause a significant imbalance between the parties' rights and obligations; be unreasonable and unnecessary to protecting the legitimate interests of the party who has gained the advantage; and caused detriment to the disadvantaged party.<sup>222</sup> While the age of a party is not specifically considered within these provisions, arguably a young person could be at greater risk of falling victim to unfair contractual terms owing to their relative lack of capacity.

The test for whether something is misleading or deceptive is whether a reasonable person in the category of consumers likely to be affected (here young people) would consider the conduct to be misleading or deceptive.<sup>223</sup> While the law does not have specific provisions relating to children, it is flexibly applied to different categories of people. For goods and services specifically targeted at young people the relevant category to consider would be 'young consumers' and the conduct would be assessed against the understanding or comprehension of an 'ordinary young person'.<sup>224</sup> To this extent, the law recognises and makes allowances for the particular issues children may have in this context.

One of the practical difficulties presented by modern commerce is the use of the internet to conduct business by parties resident in different countries. It is unclear which country's laws apply to such transactions. The application of the Australian Consumer Law (such as unfair contractual terms) to overseas business has not yet been determined.<sup>225</sup> It has, however, been determined that representations made on the internet by overseas entities can constitute misleading and deceptive conduct for the purposes of Australian law.<sup>226</sup>

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While Australian consumer law has the capacity to consider the particular issues that children as a 'category' may possess, it still only offers a reactive, court-based solution in situations where children wish to enforce their rights. Pursuing such an action in court is costly and time-consuming for most people. The ability of children (even where represented by a parent/guardian) to avail themselves of this option in a practical sense is questionable, particularly where any monetary loss incurred involved a relatively small amount. In the absence of preventative and/or child-accessible enforcement options, this could lead to a situation where children disproportionately bear the loss of such transactions/misconduct.

In the absence of a minimum age, the use of parental consent as a safeguard of children's rights in the online privacy context needs to be reconsidered. It is clear that both business and children/guardians face practical difficulties in assessing a child's individual ability to provide meaningful consent. It is suggested that clear guidance be provided on what is being consented to, even where guardians are involved.

Additionally, any general review of such regulations and safeguards must be applicable within the transnational online context to ensure any options for redress are able to be enforced.

### **Summary – Australian consumer protection and children**

- A particular issue of concern is the actual capacity of children to genuinely consent to or otherwise make decisions that affect their rights
- An individual assessment on the ability to consent to privacy related-decisions would need to be made of each child on a case by case basis
- Practically speaking the ability of business to make such an assessment would be difficult to undertake in the context of online commerce
- The OAIC considers facilitating parental involvement as a key measure to protecting children's privacy
- People under the age of 18 years are generally not bound to contractual obligations due to their presumed 'lack of capacity'
- A young person could be at greater risk of falling victim to unfair contractual terms owing to their relative lack of capacity
- Where online commerce occurs by parties resident in different countries it is unclear which country's laws apply to such transactions
- The law still only largely offers a reactive, court-based solution in situations where children wish to enforce their rights
- The absence of preventative and/or child-accessible enforcement options could lead to situations where children disproportionately bear the loss of such transactions/misconduct.

## 3.4 Consultations – what do children say?

### 3.4.1 Financial advice services

As part of the examination into this issue, I was able to liaise with a number of financial advice services, as well as the National Children's Youth and Law Centre, to ascertain whether children were using these services to seek consumer advice.

Almost uniformly the responses received made it clear children were either not availing themselves of these services for this purpose or were grossly underrepresented.<sup>227</sup> In some instances data was not disaggregated by the age of the complainant<sup>228</sup> or where the guardian was named in a contract on the child's behalf, the record of complaint was in the guardian's name and recorded age.<sup>229</sup> This practice had the consequence of effectively masking the role of the child as the actual complainant.

Disaggregated data by age is necessary in identifying problems children are experiencing within the consumer context and organisations should be supported to routinely collect this type of information. In terms of a child's right to be heard, it raises broader questions of children's awareness of such organisations and the accessibility of such services to children.

### 3.4.2 Consultations with schools and youth organisations

As part of a formal consultation process, I met with a total of 7 schools and youth groups. 120 students/young people were consulted, with age groups ranging from Year 6 up to Year 12 age students. The schools consulted with represented a cross-section of diversity, gender and socio-economic background. The children and young people participated in general discussion, scenario-based exercises and completed a short individual survey.

Given the lack of research on this issue, the aim of the consultations was to learn directly from children about their experiences as consumers within the Australian business context. Given the small sample size, the consultations represent a starting point for discussion and to flag issues identified by children for further detailed consideration.

The analysis includes a summary of a number of children's rights relevant to each issue identified, in keeping with the guiding principles of the Convention on the Rights of the Child.

### 3.4.3 Children as consumers online

[It's] easier online and going shopping can be annoying. (Year 8 student)<sup>230</sup>

It is clear from consultations that children are significant users of the internet as consumers, with 62.5% of participants saying that they used the internet to purchase products. Reasons for online purchasing included 'ease and convenience', cheaper online prices and product availability. Most products purchased online were for leisure/entertainment purposes (clothing, shoes and digital entertainment such as games and apps) and for the purchase of technology (phones, computers, game consoles and technology accessories). Some variations in age group were noted in terms of the type of products being purchased.

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The focus on leisure and entertainment reflects the importance of access to such products by children, particularly when guided by the principle on the child's right to development. Where the internet becomes the sole platform for access to a number of social and educational opportunities, the ability to purchase technology itself contributes to understanding children's consumer choices online. In the past this arguably would have been cast as the right of children to have access to books, leisure activities (such as team sports) and cultural activities as an important part their 'holistic development'. Now many of these 'products' and activities are easily accessible online.

### **3.4.4 Influence of family/friends on purchasing**

Find out what Paulo thinks. (Year 6 student)<sup>231</sup>

The most commonly cited influence on purchasing decisions were friends and family members.

Generally, 'family members' referred to 'parents' as opposed to other family members and nearly all children surveyed said they often or always informed their parents about making online purchases. The influence of parents in the online shopping context may be linked to children relying primarily on parent's credit cards to make purchases. This is in contrast to offline purchases where other sources of payment featured (allowance, income from job and/or trading goods, gift money). Specific reference was made to the use of 'debit cards' or 'pre-paid Visa cards' by children over 16 years, the use of which would not require a guardian's knowledge or consent.

Apart from parents, siblings were also mentioned in the context of influencing purchases as well as in facilitating the purchase.

Some children mentioned certain friends when talking about why they might make purchases. This was particularly the case with gaming where purchases seemed to follow general trends as well as what friends had purchased. Research has linked the role of the adolescent peer group in purchasing to assertions of individuality and independence, though it was difficult to clearly ascertain how much of a factor this played in decision-making. Where such activities do contribute to a child's burgeoning assertion of their individuality and independence (and in this context particularly where access to such activities and products can only occur online) this can be similarly informed by the guiding principle on the right to development.

While circumventing direct parental influence through the use of other forms of payment can be seen as an assertion of independence, issues arise as to whether these payment practices are occurring in a manner that is consistent with the best interests of the child. This is particularly the case where regulatory safeguards in the online context often assume the consent of guardians as a safeguard.

### **3.4.5 Impact of advertising**

Ads can trick you [by] making it [the product] look awesome. (Year 6 student)<sup>232</sup>

Although some of the participants were of the view that they were generally not influenced by advertising and 'popular trends', 'ads' were the next most commonly cited factor influencing decisions after family and friends. Further, many of the children and young people said that brands influenced their decision-making when considering a purchase. Some participants referred to specific brands and companies when discussing their purchasing habits and, in some instances, demonstrated in depth knowledge of developers of products.

The principle on the right to development has been interpreted by the Committee to include consideration of how a child's 'healthy development' may be impacted on by certain forms of marketing and advertising.<sup>233</sup> In addition to this, the principle on the best interests of the child obliges government to ensure that the child's best interests is a primary consideration in actions taken by the private sector.<sup>234</sup> Guided by these principles, a detailed review into the type and level of advertising targeted at children within the Australian online consumer context should be considered.

### 3.4.6 Internet as a market research tool

You can go online and do a bit of researching. (Young person, HighWater Theatre Program)<sup>235</sup>

It emerged that the internet was being used by children as a type of 'market research' tool. This was particularly so with children who seemed to possess high levels of digital literacy. For example, students spoke of going online and looking at forums and Facebook pages to see if people had written negative comments about products they were interested in purchasing. The significance of this online 'consumer activity' is two-fold – first that it focuses on the process of selection (regardless of whether the product itself is purchased online or offline). Second, this practice reinforces the impact and significance of certain forms of online advertising, such as company sponsored product reviews and information sites.

Again the child's right to development and the best interests of the child are principles that should guide consideration of this issue. This is particularly the case where such marketing and advertising is capable of misleading children who may lack the capacity to distinguish between sponsored and independent reviews of products.<sup>236</sup> The Australian Government may wish to monitor this situation to ensure that proper regulation of this issue is in keeping with the best interests of the child.<sup>237</sup> An additional consideration might be a child's right to access information and material from a diversity of sources.<sup>238</sup> In this context, the Australian Government could consider developing appropriate guidelines to ensure the protection of the child from material that may be considered 'injurious' to their wellbeing.<sup>239</sup>

A child's right to privacy<sup>240</sup> is also relevant to the use and regulation of the internet as a market research tool. Regardless of whether a product is actually purchased, information can be gathered on a child's site visits and compiled as part of market research. This information can be on-sold to other companies for marketing purposes or to specifically target children with tailored online advertisements.

### 3.4.7 Consumer experiences

I don't know why she would expect, you know, not to get ripped off...if they are all the way on the other side of the planet or something it's probably not the best idea to give them your money. (Year 9 student)<sup>241</sup>

The problems children experienced in purchasing products online ranged from receiving products that were unfit for purpose (in poor condition, non-functioning/incompatible); receiving the wrong product (wrong colour/style) to not receiving the product at all. In older age groups, problems included issues with warranties and hidden terms and conditions in contracts (for example receiving phone bills charging for extra data usage). In most situations, steps were taken by the child (and/or their parent/friend/sibling) to address the issue through internal company processes and the problem was resolved. In a smaller number of cases no action was taken and the situation remained unchanged.

Apart from 'lack of necessity', the main reason identified by children who did not use the internet to purchase products were issues with 'security' and/or privacy. There was a reluctance to provide personal information and suspicions about the process being a 'scam' that could result in funds being fraudulently removed from a parent's account.

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A number of the consumer issues that children experienced online could be in part addressed by the provision of clear information on their consumer rights. Relevantly for business, the Committee has commented that the guiding principle on the right to be heard includes the ability of children to access information 'in formats appropriate to their age and capacities on all issues of concern to them'.<sup>242</sup> This includes the provision of information on their rights<sup>243</sup> (such as contractual rights). In practical terms this would mean providing contracts that are easy to understand in accessible formats, including information on the returns process.

I get at my email address all these weird messages from all these weird sites...and it's really disturbing sometimes because they send photos. (Year 10 student)<sup>244</sup>

Another consideration in this context is the child's right to privacy where they are entitled to protection of the law against breaches of their privacy.<sup>245</sup> The relevance of this issue is to the children who avoid using the internet as a consumer platform (and in doing so denying themselves access to the same opportunities as other consumers) because of concerns about the security of their information. These concerns could be alleviated in part with the provision of accessible and easily enforceable privacy policies that clearly state children's privacy rights within the consumer context.<sup>246</sup> This would in turn assist in upholding the principle to the right to development in relation to an otherwise excluded group of children.

### **3.4.8 Knowledge of consumer rights**

You could waste like half of your day just reading the terms and conditions. (Year 6 student)<sup>247</sup>

About half of the participants said that they knew they had consumer rights and knowledge of basic options available to them (for example, needing a receipt in order to return an item). Yet while participants seemed generally more confident and knowledgeable about processes involved in returning purchases to shops, this did not seem to translate to the online consumer context.

Consultations revealed a general tendency to believe that the onus to fix the problem was with the consumer. For example, in a scenario where a young person bought a pair of jeans online that were ripped, one of the most commonly suggested solutions was for the person to 'sew up the jeans' themselves. Similarly in scenarios involving game apps that didn't work, some participants suggested the person bear the cost of fixing the problem by simply re-purchasing the app.

Even where the products involved were more expensive, solutions suggested by children continued to place the onus on the young person to resolve the problem themselves. In a scenario where an iPad purchased on a parent's credit card failed to arrive, a suggested solution was to 'pay back' the money to the parent. Similarly, where a young person was locked into a phone plan with 'hidden costs' one suggested solution was to 'save up money for a new contract'.

The majority of participants were often unsure of how to proceed in situations where online refunds and exchanges had been denied. Few children understood their right to a product of a certain standard that was 'fit for purpose'. When prompted about available consumer options once the returns period had elapsed on a faulty product, most children thought nothing could be done. A student summed up the general view with - 'bad luck!'. Another student joked 'go home and cry'.

A similar attitude of 'personal culpability' or 'luck' emerged in the idea that they were the victims of 'scams'. A situation where a young person's details were handed out to other companies was described as a 'scam' as was a situation where an iPad purchased online failed to arrive. In the latter scenario, as it was perceived to be the result of a 'scam' it was thought 'the child might be too scared to tell the parent because they might get in trouble'.

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Say online 'it's very bad – 0 stars'. (Year 6 student)<sup>248</sup>

Interestingly, a number of participants suggested 'reputational' as opposed to 'consumer rights-based' options for redress. This ranged from 'protesting outside the factory' to using online rating sites to 'contacting television channels' and 'spreading the word'. As one young person stated, 'tell everyone to never buy something from there'.

Situations that could have been addressed pursuant to consumer rights protections were instead perceived as situations where the child had been 'tricked' or 'caught out' and was at fault. What this attitude shows is a vacuum of knowledge about avenues of redress that exist as part of a child's consumer rights. Similarly the 'reputational redress option' raises questions about whether children are 'choosing' that option or whether it is seen as the only option available to them.

The guiding principle on the right of the child to be heard stresses the importance of information on children's rights being provided in child appropriate formats.<sup>249</sup> In the online context, this would include both consumer rights and privacy rights (in terms of the appropriate use of personal information).<sup>250</sup> The concept of 'child appropriate formats' may need to extend beyond the mere simplification of legal terms to consideration of how to effectively bring such terms and conditions to the attention of the child and their guardian. Importantly, the guiding principle on the right to be heard emphasises the provision of accessible complaints procedures, including access to remedies or redress.<sup>251</sup>

### 3.4.9 Knowledge of consumer assistance

Complain to a system above the shop. (Year 9 student)<sup>252</sup>

But this is like online, so....don't really know. (Year 10 student)<sup>253</sup>

While participants seemed aware that formal avenues existed for addressing breaches of consumer rights, they were unclear of any specific options. This was particularly evident among younger children.

Many of the Year 6 students suggested calling the police, 'suing' the company or involving the government in some way as appropriate avenues for redress. Responses ranged from 'get the government and shut the company down'; 'call government helpline' to 'complain to the children's rights commissioner and see what they can do'. The ability to enforce rights in a transnational context was also commented on. There seemed to be little confidence in the ability to seek redress where the company was hosted in another country. In a scenario where a faulty iPad was purchased from a Hong Kong-based company, this lack of confidence was revealed in comments such as 'call the Chinese police' and 'catch a plane to Hong Kong'.

Even among older participants there was a lack of knowledge as to the most appropriate agencies to contact. The 'Human Rights Commission' was one suggested option as were vague references to a complaint system existing outside of the shop's internal processes. Only two participants suggested approaching an ombudsman or 'fair trading'.

In a practical sense the knowledge of rights requires knowledge of how to implement those rights through relevant complaints resolution bodies. The guiding principle on the right of the child to be heard requires access to child-appropriate information relating to appeals and complaints procedures.<sup>254</sup> Both business and government have key roles to play in raising awareness and in ensuring the accessibility of such processes for children.<sup>255</sup> In addition to this children should have the opportunity to have access to a representative or appropriate body in proceedings affecting them.<sup>256</sup> Governments could usefully assist in raising awareness of such organisations among children and their guardians.

### 3.4.10 How can business assist?

Businesses should translate from 'terms and conditions' to English. (Year 6 student)<sup>257</sup>

Most companies don't help. (Year 9 student)<sup>258</sup>

A number of children and young people expressed low expectations about the likelihood that business would assist them within the consumer context. Sentiments included that companies simply 'don't help' either because 'they think they can get away with things because we are children' or that they 'won't do much about it' because they 'already have lots of money'. It was stated that business shouldn't 'take advantage' of young people being unaware of consumer rights and should instead assist customers with the provision of easily accessible information and take active steps to resolve problems that arise.<sup>259</sup>

Suggestions as to how companies could assist children predominantly concerned the provision of information on consumer rights. Most participants suggested providing more information to young people, in a clearer format within the consumer context including 'child-friendly' formats. Information needed to be 'clearly explained', particularly about their 'rights' where companies should try and 'help' children to make information (terms and conditions, warranties, contracts, policies) 'easier to understand'.

What is striking about these suggestions is how closely they mirror the considerations arising out of the guiding principles to be heard, to develop and to act in a child's best interests. Implementation of a number of these suggested measures could assist business in ensuring that the rights of children are being upheld within the online consumer context.

It also provides business with the opportunity to change children's opinions about how business is viewed and provides governments with the opportunity to support business in these actions by ensuring that the best interests of the child are being met by the private sector within the consumer context.<sup>260</sup>

#### **Summary – Consultations: what do children say?**

- Children are either not availing themselves of financial advice services for this purpose or were grossly underrepresented
- Consultations revealed that children are significant users of the internet as consumers
- The focus on leisure and entertainment reflects the importance of access to such products by children in light of their right to development
- Advertisements were the next most commonly cited factor influencing decisions after family and friends
- The internet was being used by children as a type of 'market research' tool, reinforcing the significance of certain forms of online advertising and online privacy concerns
- While participants seemed more knowledgeable about offline returns processes this did not seem to translate to the online consumer context
- There was a general tendency to believe that the onus to fix a problem was on the consumer

### **Summary – Consultations: what do children say?** (continued)

- While there was awareness of formal avenues for redress, participants were unclear of any specific options
- There was little confidence in the ability to enforce rights in a transnational context
- There was a belief that companies should assist children and make information (terms and conditions, warranties, contracts, policies) easier to understand.

## 3.5 Conclusion: summary and key concerns

The globalisation, not only of business, but of technology across communities necessitates a re-evaluation of children's relationship with business. This is particularly pressing in light of the impact of the internet on redefining business operations and in facilitating the emergence of children as online consumers.

The internet is being used by children as an information channel to research products and to shop online with access proliferating through fixed and mobile platforms. It has also led to more 'creative' forms of consumption that blur the lines between advertiser and product as well as purchaser and seller.

Research describes the importance of consumer activities to children as integrally linked to the shift into 'adulthood' in learning to exercise decisions independently from parents/guardians. The outcomes of consultations with children undertaken for this examination support this focus on children's independent identity in the types of online products purchased primarily for leisure/entertainment purposes. The internet also facilitates wider access to such options through increased availability and cheaper online prices.

Some commentators have suggested that the transforming of the internet into an increasingly 'commercialised space' has simultaneously occurred with the rise in its significance as an arena for social development and cultural participation. Within this context, questions arise as to whether existing regulation has kept up with the rapidly changing online consumer environment as it relates to children.

It remains unclear what problems children are experiencing as online consumers and whether current regulation remains adequate. Children's role as 'online consumers' remains peripheral to both consumer and cyber academic discourses. Even international responses to the issue of children's human rights and business have been surprisingly recent.

While non-binding in nature, the significance of the Business Principles and General Comment is in sending a clear signal about the relevance of children's human rights to business. These initiatives also usefully provide a child rights-based framework within which to take stock of how children are treated within the Australian consumer environment and in particular, the online consumer environment.

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### **3.5.1 Key concern: privacy and advertising**

Initial consultations with children showed the importance of brand advertising, particularly where the internet was being used to research purchases regardless of whether the actual purchase occurred offline.

Issues exist around the potential use of tracking software and spyware, without the child's knowledge and the concern that this 'research into children' (or data mining) is occurring by 'stealth'. Other related online privacy concerns include receiving unsolicited emails; access to private files; loss of anonymity online; unauthorised sharing or disclosure of information; and misuse of personal financial details.

While there is research on the influence of television advertising on children of various ages, there is little research on online advertising and its impact on children. In terms of breaches of privacy this is an issue of particular significance to the children who avoid using the internet as a consumer platform altogether (and in doing so deny themselves access to the same opportunities).

The ALRC considered a number of these privacy issues and made recommendations (detailed earlier) which may need to be reconsidered in light of children actively using the internet as online consumers.

### **3.5.2 Key concern: contractual complexity**

The issue of contractual complexity was also raised, with 'parental consent' in the online context widely understood to be a safeguard of children and their rights. Yet it has emerged in a number of international studies that the process of securing informed parental consent is largely inadequate.

Currently in Australia, an individual assessment of the ability to consent would need to be made of each child on a case by case basis. This would include assessing the child's ability to fully comprehend the meaning of the decision which for business, in a practical sense, is difficult to undertake – particularly in the online context.

The concept of 'child appropriate formats' may need to extend beyond the mere simplification of legal terms to consideration of how to effectively bring such terms and conditions to the attention of children and their guardians.

Legislative and policy reforms undertaken in other comparable overseas jurisdictions may offer some useful guidance in reviewing the use of the 'parental consent' safeguard within the Australian online context (for example the United States model detailed earlier).

### **3.5.3 Key concern: enforcement and redress**

Consultations revealed that a majority of children were often unsure of how to proceed in situations where online refunds and exchanges had been denied. Instead a tendency existed to suggest that the onus to fix the problem was with the consumer, involving 'personal culpability' or 'luck'. What this attitude reveals is a vacuum of knowledge about avenues of redress.

Similarly using 'reputational' tactics to elicit a response from business raises questions about whether children are choosing that option or whether it is seen as the only option available to them.

It seemed that a number of the consumer issues that children experienced online could in part be addressed by the provision of clear information on their consumer rights and who they can contact if they have a problem or issue. While children spoke of using internal company processes to resolve problems, this confidence did not seem to translate to the online consumer context.

Consultations with financial advice services revealed almost uniformly that children were either not availing themselves of these services for this purpose, or were grossly underrepresented.

A further complicating factor was the enforcement of contracts within the online environment where it is not solely determined by Australian law. The ability to enforce rights in a transnational context remains unclear, not only to children and other consumers, but as a matter of law.

### **3.5.4 Key concern: education and research**

Numerous reform options were raised within research and from consultations. These ranged from legislative and policy-based reforms, the adoption of 'best practice' industry approaches, awareness-raising campaigns in respect of consumer rights, as well as the need for an effective complaints system. Certainly businesses' perspective on the effectiveness of different forms of regulation within the online context would be instructive, particularly as it relates to children and the issues they experience.

It is my view that the best approach to these options is to assess them against a child rights-based approach.

What is striking about suggestions for improvement made by children themselves is how closely they mirror the considerations arising out of the guiding principles of the Convention on the Rights of the Child to be heard, to healthy development and to act in a child's best interests.

Using a child rights-based approach, it is clear that further research is required on children's experience as online consumers with research deficiencies notable in the online privacy, advertising and e-commerce contexts. Existing data collection practices by financial advice agencies were inconsistent, with data either not disaggregated by the age of the complainant or where the guardian was named in a contract on the child's behalf, the record of complaint being made in the guardian's name and recorded age.

Both business and government have key roles to play in raising awareness and in ensuring the accessibility of such processes for children. It also provides business with the opportunity to change children's opinions about how business is viewed and provides government with the opportunity to support business in these actions.

This chapter provides a starting point for a national approach to engaging with children and considering their concerns as contemporary consumers and working collaboratively with business to improve the experiences and safeguards for children in the consumer context.

As part of my ongoing focus on business and children's rights, I will be co-hosting a one-day conference on Universal Children's Day, 20 November 2015, on the 'Rights of the Child Consumer'. The aim of this conference is to better understand the contemporary rights issues confronting children as consumers.

The conference will seek to identify opportunities for businesses, government and the not-for-profit sector to work together to improve children's experiences as active consumers, and to highlight areas where better protection for children's rights may be needed. Of particular focus will be businesses involved in media and entertainment, telecommunications, gaming and online purchasing, all areas where children are particularly active as consumers.

As well as representatives from government and the corporate sector, the conference will also feature children and young people who will share their personal insights and experiences as consumers.

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## 3.6 Recommendations

### **Recommendation 1:**

**The Australian Government provide guidance to business and industry on how it can better respect and support children's rights.**

### **Recommendation 2:**

**The Australian Government resource the Australian Human Rights Commission to undertake research on the relationship between business and children's rights in the Australian context, particularly in relation to high risk areas such as the online consumer environment.**

## 3.7 Acknowledgments

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- 2 Committee on the Rights of the Child, *General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights*, UN Doc CRC/C/GC/16 (17 April 2013) [1].
- 3 Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN GAOR, 17th sess, Agenda Item 3, UN Doc A/HRC/17/31 (21 March 2011) [1].
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National Children's Commissioner consulting with students about their rights

# Chapter 4:

“All I want is a life free from violence”<sup>1</sup> – the impact of family and domestic violence on children



A selection of photos from roundtables and consultations about the impact of family and domestic violence on children

# Chapter 4: “All I want is a life free from violence”<sup>1</sup> – the impact of family and domestic violence on children

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## 4.1 Introduction

Family and domestic violence is causing significant damage in Australia.

It is widespread and destroying lives and families. While women are predominately the victims of violence within the family context,<sup>2</sup> many of these women have children. It is also the case that children can be victims of violence within the family. Its effect has consequences in the immediate term and cumulatively over many years and through the generations.

In early 2015, I chose to focus this year's Children's Rights Report on **how children aged 0 to 17 years are affected by family and domestic violence**. Children who live in homes characterised by violence are often the silent, forgotten, unintended, invisible victims.<sup>3</sup>

Children directly raised with me **the importance of living free from all forms of violence** during my listening tour in 2013. My statutory report in 2013 identified the protection of children from violence as a priority issue for my term as National Children's Commissioner.<sup>4</sup>

The impact of family and domestic violence was again raised with me in 2014 in my examination of intentional self-harm, with or without suicidal intent, among children aged 0 to 17 years.

For example, in one jurisdiction, a police representative at a roundtable stated that 'every child who suicided in the last 12 months came from a domestic violence family'.<sup>5</sup>

In June 2014, the Australian Crime Commission concluded its eight year investigation of abuse in Aboriginal and Torres Strait Islander communities and similarly reported that 'there are clear links between suicide and self-harm and domestic violence'.<sup>6</sup>

My statutory report in 2014 identified the **intersection of intentional self-harm and family and domestic violence** as a research priority.<sup>7</sup>

Over the last two years the impact of family and domestic violence on women and their children has increasingly been the subject of media attention and policy initiatives.

Through this research, I am seeking to ensure that the voices and needs of children are an explicit focus in the important national conversation currently underway. Children's experiences of violence must be central to all measures that we take to prevent violence and to deal with the consequences where it has occurred.

### 4.1.1 Terminology: Family and domestic violence

I use the term 'family and domestic violence' throughout my report.

The use of the term 'family and domestic violence' is more inclusive of all those who are affected by it, including children.

The Australian Bureau of Statistics (ABS) also uses the term 'family and domestic violence' because it:

reflect[s] the mixed use of the terms 'Family Violence' and 'Domestic Violence' and is a combination of the various contextual elements implicit in these individual terms, including relationships, location of offences, and/or domestic arrangements.<sup>8</sup>

I acknowledge, however, that in Aboriginal and Torres Strait Islander communities the term 'family violence' is more commonly used. This reflects the lateral nature of violence in many of these communities.

Consistent with the ABS, I use the term ‘family and domestic violence’ to describe: physical violence, sexual abuse, emotional abuse, verbal abuse and intimidation, economic and social deprivation, damage of personal property, and abuse of power which can occur within spouse and de-facto relationships, ex-spouse and ex-de-facto relationships, cultural and kinship relationships, parent-child relationships, sibling relationships, and foster and guardian relationships.<sup>9</sup>

### 4.1.2 Current measures to address family and domestic violence

There are two significant national policy measures in Australia to protect children and reduce violence: the **National Framework for Protecting Australia’s Children 2009–2020** (the National Framework) and the **National Plan to Reduce Violence against Women and their Children 2010–2022** (the National Plan).

The gendered nature of family and domestic violence is recognised in the National Framework and the National Plan. Both also identify family and domestic violence as a major risk factor associated with child abuse and neglect<sup>10</sup> and commit to reducing family and domestic violence and its impact on children.<sup>11</sup>

The **National Framework** is Australia’s long-term plan to promote and enhance the safety and wellbeing of Australia’s children. It is being implemented through a series of three year Action Plans.

The Third Action Plan is due to be released in late 2015. Three overarching strategies and two cross-cutting focus areas form the basis of the Third Action Plan. Strategy 1: Early Intervention with a focus on the early years, particularly the first 1000 days for a child includes specific reference to family and domestic violence as does the cross-cutting focus area, Aboriginal and Torres Strait Islander Children and Families.

Progress under the Third Action Plan will be monitored through a governance arrangement comprising state, territory and federal governments and the non-government sector, as well as annual reports.

The **National Plan** is being implemented through four successive three-year Action Plans up to 2022.<sup>12</sup> It specifically identifies reducing the proportion of children exposed to their mothers’ or carers’ experiences of domestic violence as a national priority.<sup>13</sup>

### National Plan to Reduce Violence against Women and their Children 2010–2022



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As National Children's Commissioner, I have welcomed these important initiatives and have personally participated in the development of the Action Plans attached to each of them.

The then Prime Minister, the Hon Tony Abbott MP, launched the Second Action Plan of the National Plan to Reduce Violence against Women and their Children in June 2014. New initiatives in the Second Action Plan included:<sup>14</sup>

- \$3.3 million for CrimTrac to **develop and test a prototype for a National Domestic Violence Order (DVO) Scheme**, to strengthen the identification and enforcement of DVOs across state and territory borders.
- \$1.7 million to take the next steps in **developing a national data collection and reporting framework** by building a more consistent basis from which to gather, analyse and use data on all aspects of violence against women and their children. This includes \$300,000 for the Australian Bureau of Statistics to augment data sets on victims and offenders.
- More than \$1 million for 1800RESPECT, Australia's first national professional telephone and online counselling service for people experiencing the effects of sexual assault, domestic or family violence, to expand its service. The **new funding for 1800RESPECT** is in addition to government investment of \$28 million over the next four years to support existing services.

Other work is also underway. For example:

- On 26 June 2014, **the issue of domestic violence in Australia was referred by the Australian Government to the Senate Finance and Public Administration References Committee** for inquiry and report. The Senate Committee's final report was released on 20 August 2015.
- In January 2015, retiring Victoria Police Chief Commissioner Ken Ley and 2015 Australian of the Year, Rosie Batty were appointed as founding members of an **advisory panel** to guide the Council of Australian Governments (COAG) in its work to address family and domestic violence.
- On 28 February 2015, the report and recommendations of **'Not Now, Not Ever' – Putting an End to Domestic and Family Violence in Queensland** was released. Dame Quentin Bryce led the investigative taskforce, which examined how soaring rates of domestic violence in Queensland should be tackled. Queensland Premier Annastacia Palaszczuk announced that the Queensland Government will implement all 140 recommendations made in the report. In September 2015, Premier Palaszczuk announced that Dame Quentin Bryce would lead the committee implementing the recommendations.
- The **Victorian Royal Commission into Family Violence** was announced in February 2015 and is due to report by 29 February 2016.
- On 10 August 2015, the **NSW Government announced a review of the sentencing of domestic violence offenders**. The NSW Sentencing Council will analyse the sentences handed down for domestic violence offences and compare them to other states. It will also examine whether domestic violence offenders are more likely to re-offend than people convicted of other types of assault. The NSW Sentencing Council will report back to the NSW Government by the end of 2015.

In April 2015, **COAG agreed to a national, cooperative effort to reduce family violence** and identified it as an issue of major public concern impacting on communities across Australia.<sup>15</sup> By the end of 2015, COAG has committed to:

- Agreeing on a national domestic violence order (DVO) scheme, where DVOs will be automatically recognised and enforceable in any state or territory of Australia.
- Reporting on the progress made on the development of a national information system that will enable courts and police in different states and territories to share information on active DVOs. New South Wales, Queensland and Tasmania will trial the system.
- Considering national standards to ensure perpetrators of violence against women are held to account at the same standard across Australia, for implementation in 2016.
- Considering strategies to tackle the increased use of technology to facilitate abuse against women, and to ensure women have adequate legal protections against this form of abuse.
- Jointly contributing \$30 million for a national campaign to reduce violence against women and their children and potentially for the associated increase of services to support women seeking assistance. The campaign aims to be based on research, with a focus on high-risk groups, including Aboriginal and Torres Strait Islander women.

At the **Sixth Education Council Meeting** in September 2015 the request from COAG regarding initiatives to help reduce violence against women and children was discussed.

Recognising the importance of this issue and the role that education can play in influencing the attitudes of young people to violence, Ministers requested that officials provide advice on linking learning areas of the Australian Curriculum to anti-violence programs, and the delivery of such programs to students at key stages of their schooling and development. Ministers will provide an update to COAG on this matter later in 2015.<sup>16</sup>

Clearly there is significant work being undertaken in the area of family and domestic violence in Australia. **My contribution lies in making the unique experiences and needs of children a critical focus.**

## 4.2 What did we know about children and family and domestic violence before starting this examination?

The impact of family and domestic violence on children generally has been identified as an emerging issue in research.<sup>17</sup>

The 2012 Personal Safety Survey (PSS) by the ABS estimates that 17% of women and 5% of men in Australia over 15 years of age have experienced violence by a partner.<sup>18</sup> **The 2012 PSS reveals that much of the partner violence reported by women and men is seen or heard by children in their care.**<sup>19</sup>

The 2006 World Report on Violence against Children for the United Nations Secretary-General found that violence against women in the home is often linked with violence against children.<sup>20</sup>

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Children are witnesses, bystanders and direct victims of violence in the home. The physical and emotional injuries children sustain are both immediate and far-reaching, and **the experience of children witnessing or being exposed to family and domestic violence has been increasingly recognised as a form of child abuse.**<sup>21</sup>

**Children living with family and domestic violence are also at an increased risk of experiencing emotional, physical and sexual abuse.**<sup>22</sup> In Australia there is no national data on the proportion of child protection notifications that relate to family and domestic violence.<sup>23</sup> It is estimated, however, that family and domestic violence is present in 55% of physical abuses and 40% of sexual abuses against children.<sup>24</sup>

During 2013–14, 40,844 children were the subjects of substantiated child protection notifications in Australia, with 40% for emotional abuse, 19% for physical abuse and 14% for sexual abuse.<sup>25</sup>

Data made available by the Tasmanian Government has indicated that from July 2014 to March 2015, 1,036 children were present at family violence incidents where there was police intervention. For the same period, Tasmanian Police responded to 1,929 family violence incidents.<sup>26</sup>

The ABS Crime Victimization publication (2013–14) shows that significant numbers of children and young people are victims of physical assault. For example, young people aged 15 to 19 years experienced the third highest physical assault victimisation rate (3%), after persons aged 20 to 24 years (4%) and persons aged 25 to 29 years (3.7%).<sup>27</sup> Data from the year earlier (2012–13) showed that children and young people aged 15 to 19 years experienced the highest physical assault victimisation rate (5.1%).<sup>28</sup>

The Western Australian Police: Office of Assistant Commissioner Judicial Services has reported that a 2014 study of 100 Aboriginal children in custody showed that 81 of these children had experienced family violence and half of these children had either been witness to or a victim of child abuse/sexual offences.<sup>29</sup>

Homelessness is a common experience of children affected by family violence. Data from the Australian Institute of Health and Welfare shows that of the 254,001 clients who were assisted by specialist homelessness services in 2013–14, 59% were female, and more than a quarter (just under 70,000) were children. 16% were under ten years of age. 24% of these clients reported family and domestic violence as the main reason for seeking assistance.<sup>30</sup>

#### **4.2.1 Aboriginal and Torres Strait Islander children**

Family and domestic violence disproportionately affects Aboriginal and Torres Strait Islander children. As far back as 2002, *Putting the Picture Together*, also known as the ‘Gordon Report’ stated that:

The true prevalence of Aboriginal family violence is unknown. What is known is that the violence is endemic and presents an extremely troubling picture of the situation in many Aboriginal communities.<sup>31</sup>

Thirteen years later, the problem remains. Nationally, in 2012–13, Aboriginal and Torres Strait Islander women were 34.2 times more likely and men 28.3 times more likely to be hospitalised for non-fatal family violence-related assaults than non-Indigenous females and males.<sup>32</sup>

In 2012–13, family and domestic violence was the second most common main reason both Aboriginal and Torres Strait Islander and non-Indigenous people sought Specialist Homelessness Services (24.0% and 22.4% respectively), after accommodation difficulties (30.6% and 30.1% respectively).<sup>33</sup> The proportion where family and domestic violence was the main reason for seeking assistance increased as remoteness increased.<sup>34</sup>

Aboriginal and Torres Strait Islander children aged 0 to 17 years accompanying clients of Specialist Homelessness Services who were escaping family and domestic violence attended a Specialist Homelessness Services agency at a rate of 443 per 10,000 population, more than 30 times the rate for non-Indigenous children (14 per 10,000 population).<sup>35</sup>

In 2012–13, the rate of female Aboriginal and Torres Strait Islander clients of Specialist Homelessness Services aged 10 years and over escaping family violence (359 clients per 10,000 population) was 10 times the rate for female non-Indigenous clients (34 clients per 10,000 population).<sup>36</sup>

In 2013–14, Aboriginal and Torres Strait Islander children were seven times as likely as non-Indigenous children and young people to be receiving child protection services (136.6 per 1,000 children compared with 19.0 per 1,000 for non-Indigenous children).<sup>37</sup>

## 4.2.2 Other vulnerable groups of children

Other groups of children, such as those from culturally and linguistically diverse backgrounds, children with disability, children who are lesbian, gay, bisexual, transgender and intersex, and children living in rural and remote areas of Australia may also be disproportionately represented. However, data sets for these children are either not collected or not publically available. As pointed out by the Australian Institute of Family Studies:

‘Lack of knowledge about the specific circumstances of these groups is particularly striking’.<sup>38</sup>

## 4.2.3 Children as homicide victims of family and domestic violence

The Australian Institute of Criminology (AIC) released a report earlier this year on characteristics of family and domestic homicides for the 10-year period 2002–2012.

Its data showed that **children comprised the second most frequent group of victims of family and domestic homicides** (21%) after intimate partner homicides (56%).<sup>39</sup>

Of the 238 filicide cases (homicides where the victim is the child of the offender), 229 of these were children under 18 (96%).

51% of all filicide cases were attributed to children aged between 1 to 9 years, 32% for children under the age of one; 11% for children aged 10 to 14 years; and 2% for children aged 15 to 17 years.

In all age categories for children under 18 (under 1, 1-9, 10-14, 15-17) filicide was the most common form of family and domestic homicide, except for 15 to 17 year olds where intimate partner homicide was more common.<sup>40</sup>

Victims of filicide were slightly more likely to be male (56%) than female (44%).<sup>41</sup>

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The report also found that while males accounted for the majority of offenders in domestic/family homicides, in cases of filicides, offenders were slightly more likely to be female (52%) than male (48%).<sup>42</sup> Relatively little is known about the precipitating factors behind filicide for the different genders.

In addition to this, the report shows that 85% of the 27 intimate partner homicides which involved multiple victims, also involved the death of one or more children. Of the 17 filicide incidents that involved one child and multiple offenders, in all but one of the cases both offenders were the parents of the child involved.<sup>43</sup>

The AIC report provides valuable information in terms of building an accurate picture about children under 18 years experiencing family and domestic violence which can be used to guide policy development and service provision.

Further disaggregation of this data is highly desirable. For example, Aboriginal and Torres Strait Islander status, cultural background, disability, and geographical location.

#### **4.2.4 Intersection between family and domestic violence and the family law system**

Through representations made to me personally, media reporting and academic research papers, I was also aware of the interface between **family and domestic violence and the family law system**. The post-separation period, including children's contact arrangements, were identified as periods of time where there was heightened risk of family and domestic violence.

### **4.3 Why is family and domestic violence a child rights issue?**

Children's exposure to family and domestic violence has clearly been identified as a human rights issue.<sup>44</sup>

The United Nations Committee on the Rights of the Child (UN Committee) last reported on Australia's implementation of children's rights in 2012. At this time, **the UN Committee expressed grave concern at Australian children's exposure to family and domestic violence, the high levels of violence against women and children, and the particular situation of Aboriginal and Torres Strait Islander women and children.**<sup>45</sup>

Australia has taken on obligations under the United Nations Convention on the Rights of the Child (CRC) to prevent family and domestic violence as follows:

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**Article 6(2)** States Parties shall ensure to the maximum extent possible the survival and development of the child.

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**Article 19** States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

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**Article 23(1)** States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

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**Article 24(1)** States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

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**Article 27(1)** State Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

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**Article 39** States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

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The CRC requires Australia to use a child rights-based approach to address family and domestic violence<sup>46</sup> so that:

- vulnerable and marginalised groups of children are protected
- the best interests of children are prioritised
- the views of children are respected, and
- measures consider the impact of family and domestic violence in terms of children's development.<sup>47</sup>

The UN Committee calls for comprehensive and integrated protective measures to address family and domestic violence, including measures for prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement and effective procedures to make sure there is enforcement, quality, relevance, accessibility, impact and efficiency.<sup>48</sup>

It also requires educational measures, which consistently promote positive, non-violent relationships to parents, carers, teachers and all others who work with children and families.<sup>49</sup>

## 4.4 National examination into the impact of family and domestic violence on children

During 2015 I conducted a national examination into the impact of family and domestic violence on children. This included a literature review, written submissions, roundtables, a webinar, data analysis, and engagement with children and young people through supported processes.

### Consultation overview

- 62 written submissions were received from individuals, government, private, and non-government organisations (see Appendix 5).
- Eight roundtables were held with 147 people invited (see Appendix 6).
- One webinar was hosted by 1800RESPECT with 153 participants.
- Seven individual consultations were held (see Appendix 7).

#### 4.4.1 Written submissions

I asked for written submissions from individual experts, government, private and non-government organisations on key issues.

When hearing about my examination, a number of organisations and individuals approached me about making submissions. These were all accepted.

I used the results from the 2013 work undertaken by ABS, which aligned and distilled over 100 research and policy questions about family and domestic violence, as a foundation to identify **key areas of interest relating to how children are affected by family and domestic violence.**<sup>50</sup>

ABS completed this work as an initiative under the National Plan. I used it to guide the nature of submissions, and discussions at my roundtables and the webinar. **These key areas of interest** were:

- What are the definitional issues in relation to family and domestic violence affecting children?
- What do we know about the prevalence and incidence of family and domestic violence affecting children, including who is involved in family and domestic violence events?
- What are the impacts on children of family and domestic violence?
- What are the outcomes for children engaging with services, programs and support?
- What are the outcomes for children of public policy approaches and educational campaigns targeting family and domestic violence?
- What are the surveillance and data gaps/needs in relation to children affected by family and domestic violence?

I received 62 written submissions, which are listed in Appendix 5. The submissions can be viewed online at <https://www.humanrights.gov.au/publications/childrens-rights-report-2015>.

#### **4.4.2 Roundtables, individual consultations and the 1800RESPECT webinar**

During 2015 eight **roundtables** were held with experts in family and domestic violence and child development in all capital cities across Australia.

The Perth roundtable focused specifically on Aboriginal and Torres Strait Islander children. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda, co-chaired this roundtable.

In order to stimulate discussion, up to two experts presented at each roundtable. Appendix 6 includes a list of the expert presenters and participants who attended the national roundtables.

Seven consultations with **individuals**, including with 2015 Australian of the Year, Rosie Batty, were held. These are included in Appendix 7.

Ms Kristy McKellar provided a personal submission and met with me. Ms McKellar courageously shared her personal experience of family and domestic violence including how it impacted on her daughter.

An **interactive webinar hosted by 1800RESPECT** was also conducted. 1800RESPECT hosts free, informative webinars for workers and professionals covering key issues on responding to sexual assault, domestic and family violence.

The webinar provided the unique opportunity for 153 workers and professionals to participate in my national consultation.

#### **4.4.3 Custom data requests from the Australian Bureau of Statistics (ABS)**

**Appendix 8 presents the custom data based on the ABS Recorded Crime – Victims publication**

This appendix presents data about children aged 0 to 17 years who were victims of physical assault and sexual assault offences at a residential location that came to the attention of and were recorded by police during the four year period between 2010 and 2013.

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There are some important caveats to note about this data.

The custom data about police recorded child victims of physical assault and sexual assault based on the ABS Recorded Crime – Victims publication does not include aggregated national data about child victims of physical assault and sexual assault due to some jurisdictions not complying with the National Crime Recording Standard (NCRS)<sup>51</sup> and/or the data quality requirements for national reporting of Aboriginal and Torres Strait Islander status.

As a result, police recorded assault data about child victims was provided to me only for those jurisdictions that are deemed to be in compliance with the national crime recording standard. This currently includes New South Wales, Western Australia, South Australia, and the Australian Capital Territory.

The relationship of offender to child victim data is not available for Western Australia, so it is not possible to provide Western Australian physical assault and sexual assault data broken down by family member offender.

Aboriginal and Torres Strait Islander status data based on the ABS Recorded Crime – Victims publication could not be provided about child victims of physical assault in the Australian Capital Territory or child victims of sexual assault in Victoria, South Australia, Tasmania, the Northern Territory or the Australian Capital Territory.

The ABS recommends refraining from describing this data using the language of family and domestic violence. Whilst disaggregating this data by relationship to offender and location can provide a proxy measure for family and domestic violence incidents, not all occurrences of family and domestic violence are necessarily being represented or captured in this data.

Descriptions of this data should be framed in terms of child victims of physical assault and sexual assault by a family member in a home location, rather than child victims of family and domestic violence.

I note that the ABS is currently working with police jurisdictions to develop and incorporate a family and domestic violence indicator into its recorded crime collections, which will make it possible to more clearly identify all incidents of violence that occur in a family and domestic context.<sup>52</sup>

### **Appendix 9 presents the custom data based on the ABS 2012 Personal Safety Survey**

This appendix presents prevalence estimates about children's experience of physical abuse and sexual abuse before the age of 15 in Australia. The estimates in this appendix are based on survey data collected between February and December 2012 from Australian men and women aged 18 years and over who responded to survey questions about their experience of physical abuse and sexual abuse before the age of 15.<sup>53</sup>

Much of this data has not been published before and provides valuable insights.

I also attempted to obtain custom data about children aged 15 to 17 years based on the ABS Crime Victimization Survey. The ABS advised me that the data set was not robust enough for output when broken down by relationship to family perpetrator and location and so was not provided to me. This is a clear opportunity for data improvement which could generate information about children experiencing violence.

#### 4.4.4 Research summaries provided by the National Centre for Longitudinal Data

Both *Growing Up in Australia: The Longitudinal Study of Australian Children* (LSAC) and *Footprints in Time: The Longitudinal Study of Indigenous Children* (LSIC) include items (over the waves of each study) that relate to family and domestic violence.

Information captured by LSAC and LSIC about children’s experiences of violence in the home was not made available to me.

The National Centre for Longitudinal Data provided research summaries on partner violence for my statutory report.

Results of the LSAC and LSIC research summaries are provided in **Appendix 10**.

#### 4.4.5 Accessing children’s experiences through BoysTown and Kids Helpline

Hearing directly from children about their experiences is critical to my work. However in terms of family and domestic violence, this presents two main dilemmas:

The dilemma of how to include children and young people’s perceptions of the effects of domestic violence, whilst respecting parents’ rights to consent to their children’s involvement in research. Further to this is the dilemma of asking children about their experiences of domestic violence and then not necessarily being able to provide immediate access to appropriate counselling and support.<sup>54</sup>

In the case of this work, I wanted to hear from children in a way that was safe and supportive. I did not want to place those living in violent households at further risk of harm or risk their re-traumatisation.

Given this, I accessed the voices and stories of children through BoysTown and the Kids Helpline. This was the safest, most confidential and sensitive way of hearing from them.

**BoysTown invited me to visit its safe house.** This provided me with the opportunity to meet with their clients and speak directly with professional staff about the programs that they provide and to hear about the resourcing challenges that they face. While at the safe house, with the consent of the mothers and their children, I joined an informal play session. I thank all those involved for the privilege of this opportunity.

The Kids Helpline is Australia’s only national 24/7, confidential support and counselling service specifically for children and young people aged 5 to 25 years. It offers counselling support via phone, email and a real-time web platform.

**The Kids Helpline supplied me with a detailed report of contacts received from children and young people aged 5 to 17 years** between January 2012 and December 2014, who directly raised family or domestic violence as their main concern or as their second significant concern.

A total of 120,408 contacts were received from children and young people aged 5 to 17 years, of these 603 (0.5%) raised family and domestic violence as their main concern and a further 396 (0.3%) raised it as their second significant concern. In 62% of contacts where family and domestic violence was raised as the main concern, no secondary concern was recorded.<sup>55</sup>

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These figures are based on the number of contacts and not individuals.<sup>56</sup> Between January 2012 and December 2014, there were 999 contacts where family and domestic violence was raised as either the main or secondary concern.<sup>57</sup>

Less than 1% of all contacts with the Kids Helpline involved concerns about family and domestic violence.<sup>58</sup>

The Kids Helpline data is not indicative of prevalence. It only represents those who are actively seeking help. Many children and young people do not seek help. The Kids Helpline pointed out that a low number of contacts may mean that children and young people do not see the Kids Helpline as an appropriate source of help and may be seeking help elsewhere.<sup>59</sup>

The Kids Helpline states that:

These data sets are designed to give the child a voice; hence they provide a snapshot of information that children and young people chose to disclose to counsellors. The number of contacts coded as 'exposure to family violence' is a measure of how often young people raise this issue with the Helpline. It is not a measure of how often young people experience this issue, nor of how many young people experience this issue.<sup>60</sup>

Data provided in the Kids Helpline submission is based on the experiences and views of children and young people who are actively seeking help.

**Appendix 11** presents the Kids Helpline data about children's experiences of family and domestic violence.

Page 112 contains a selection of the of the data I obtained from the ABS Recorded - Crime Victims publication, the ABS 2012 Personal Safety Survey, the National Centre for Longitudinal Data and the Kids Helpline.

Appendices 8 to 11 present the data I obtained from the ABS Recorded Crime – Victims publication, the ABS 2012 Personal Safety Survey, the National Centre for Longitudinal Data and the Kids Helpline. A selection of the data is presented below.

The data I obtained makes it clear that children’s experiences of family and domestic violence are widespread and serious.

**ABS Recorded Crime – Victims data between 2010 and 2013 about the number of police recorded child victims of physical assault and sexual assault in a residential location aged 0 to 17 years:**<sup>61</sup>

- There were 14,048 police recorded child victims of physical assault by a family member in New South Wales, South Australia, the Northern Territory and the Australian Capital Territory.
- There were 12,073 police recorded child victims of sexual assault by a family member in New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory.

**ABS 2012 Personal Safety Survey estimated data about the number of adults who first experienced physical abuse and sexual abuse when they were aged 0 to 14 years:**<sup>62</sup>

- It was estimated there were 839,400 adult women and 596,400 adult men who first experienced physical abuse by a family member as a child aged between 0 to 14 years.
- It was estimated there were 515,200 adult women and 97,800 adult men who first experienced sexual abuse by a family member as a child aged between 0 to 14 years.

**National Centre for Longitudinal Data research summaries:**<sup>63</sup>

- Approximately 6% of mothers participating in the Longitudinal Study of Australian Children reported that they had been afraid of their current partners.
- Remoteness was the single biggest predictor of partner violence in the Longitudinal Study of Indigenous Children.

**Kids Helpline data about the number of contacts received from children aged 5 to 17 years between January 2012 and December 2014 where family or domestic violence was raised as the main concern or as a second significant concern:**<sup>64</sup>

- Of the 999 contacts where the main or secondary concern raised was family or domestic violence, 34% were from children aged 10 to 13 years.
- The largest proportion of the 999 contacts (40%) were in relation to exposure to violence between parents, or between a parent and a partner or ex-partner.

My examination of the impact of family and domestic violence on children and young people aged between 0-17 years has been welcomed by a cross-section of government and non-government bodies as well as by academics and individuals.

**Save the Children Australia** thanks the National Children's Commissioner for facilitating the DFV roundtable last week. It was wonderful to be part of an energetic discussion focused on the impact of DFV on children.

**Children with Disability Australia** applauds the National Children's Commissioner for her commitment to further investigation in this area.

**The Western Australian Aboriginal Family Law Services** welcomes the opportunity to have input into the Australian Human Rights Commission on the Examination of Children Affected by Family and Domestic Violence.

**Australian Psychological Society (APS)** welcomes the opportunity to make a submission. . . The APS recognizes every child's right to safety and wellbeing, and to live free from all forms of violence, and affirms that greater protection of children who are exposed to and witness family and domestic violence is required.

**The Royal Australian & New Zealand College of Psychiatrists (RANZCP)** welcomes the opportunity to provide feedback into the Australian Human Rights Commission's examination of children affected by domestic and family violence. As the national conversation on family violence grows it is essential that the voices of children are heard and their support needs met. . . The RANZCP commends the Australian Human Rights Commission for ensuring that the experiences and needs of children & young people are included in the growing national conversation on family violence.

**North Australian Aboriginal Family Legal Service (NAAFLS)** welcomes this invitation to make a submission to the Australian Human Rights Commission to assist in its examination of how children are affected by family and domestic violence. NAAFLS recognises that family and domestic violence, is a significant issue-affecting children, particularly in Indigenous communities.

**The NSW Government** welcomes the opportunity to contribute to the Australian Human Rights Commission's examination into children affected by domestic and family violence. . . The examination by the Australian Human Rights Commission is an opportunity to harness the momentum of recent media and policy attention on domestic and family violence to ensure that the safety of children remains a key focus of our responses. The NSW Government thanks the Australian Human Rights Commission for engaging in this important piece of work.

**National Aboriginal & Torres Strait Islander Women's Alliance** thanks the National Children's Commissioner for the opportunity to provide our submission. . . we owe it to these children to find a better way of dealing domestic and family violence.

## 4.5 What did we find out about children’s experiences of family and domestic violence?

### 4.5.1 Definitional challenges in relation to children affected by family and domestic violence and how this impacts on the data that is collected about them

Family and domestic violence is acknowledged as a national issue in Australia. However across the jurisdictions, there are no consistent definitions, legal frameworks or common methods used to identify it. Combined with this, different terms are used to describe the wide range of behaviours associated with it.

State and Territory governments are responsible for law enforcement in relation to the policing and prosecuting of family and domestic violence.<sup>65</sup> Each respond within their own legislative and policy contexts, which vary in nature. Family law legislation requires the assessment of safety issues for women and their children in determining family law matters.

The 2015 report by the Queensland Government, *Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland*, pointed out that:

Many different terms are used to define domestic and family violence. It has become a conceptual problem, which is exemplified by the different definitions in each jurisdiction in Australia. Defining domestic and family violence has significant implications for how the criminal justice system, as well as the human services sector, and the broader community, recognise, understand, and respond to this issue.<sup>66</sup>

The ABS further points out that:

The multi-dimensional nature of family, domestic and sexual violence, and the development of legal and service responses to the problem over time, have led to a variety of definitions and a lack of comprehensive quality data to support effective evidence-based policy, services and responses for victims and perpetrators.<sup>67</sup>

Participants at my roundtables and those who made written submissions used varying terms, including domestic violence, family violence, family and domestic violence and intimate partner violence. They also used different definitions.

**The use of varied terms, different definitions and the disparate means of identifying family and domestic violence was raised as problematic in terms of establishing prevalence at the national level and challenging for those working in the field.**

The submission made by the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) suggests that:

In order to get a more accurate picture of the prevalence of family and domestic violence and its impact on children better data is required, which will need to be predicated on common understandings or definitions of family and domestic violence and related terms<sup>68</sup>...Standardised national definitions for family and domestic violence, and national standard definitions for the relevant variables, are needed for reporting on these issues.<sup>69</sup>

The submission by Relationships Australia (NSW) advises that:

Definitional differences, or inconsistencies, tend to negatively affect the collaborative practice of professionals working across agencies and services. They also impact the client’s access to targeted programs.<sup>70</sup>

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**The lack of national demographic data about certain groups of children affected by family and domestic violence was consistently raised** in written submissions and by roundtable participants.

In its submission, Children with Disability Australia pointed out that:

There is a great paucity in local data as to the prevalence and impact of family and domestic violence upon children with disability in Australia. International research indicates that children with disability are 3.4 times more likely to experience maltreatment than children without disability, however this data is not specific as to the location of the abuse (i.e.: in the family home or an institutional setting). Research to determine the number of children and young people with disability impacted by family and domestic violence in Australia is essential.<sup>71</sup>

Mr Andrew Jackomos PSM, the Victorian Commissioner for Aboriginal Children and Young People stated in his submission to me that:

Overrepresentation of Aboriginal children is known in homelessness, poor educational outcomes, health and mental health issues, school suspensions and expulsions and youth justice; however connecting these to family violence is generally anecdotal. We need to have better data and systems across portfolios that talk to each other to understand family violence impacts in a holistic way.<sup>72</sup>

The National Aboriginal and Torres Strait Islander Women's Alliance told me that:

The data we collect must be disaggregated, and a matrix must be developed whereby we can be sure that the data we are collecting identifies key elements, similarities, gaps and strengths...A well-developed Matrix data collection will assist in identifying the impacts of Domestic/Family Violence on individual children thus identifying the gamut of resources and/or specialists that must be implemented to assist these children in reaching their full potential. Disaggregated data will also indicate the workforce and training required to address this issue. The data we have available to us at the moment at its best is piecemeal and already out-dated.<sup>73</sup>

The Western Australia Aboriginal Family Law Services argued that:

Data related to the prevalence and impact of any policy related to Aboriginal people in Western Australia to date tends to be piecemeal and is not evidence based. This has resulted in unreliable data that does not clearly state the issues that impact Aboriginal communities... Aboriginality needs to be recorded by all services if we are to monitor, evaluate and improve policies and services to Aboriginal people. We currently understand there are some major government and non-government agencies who choose not to ask their clients for this information, as they believe that it may not be relevant to the service they deliver. While this may be the case on the face of it, if we do not understand the use of services – whether under or over use – by Aboriginal people we may not be providing the most appropriate or accessible services possible. Therefore, data collection needs to be standardised and disaggregated in order for it to be of most use.<sup>74</sup>

The National Aboriginal and Torres Strait Islander Services informed me that:

There is a vast divergence in the way that ethnicity of offenders and victims is recorded between states and territories. It is noted that a number of states' and territories data in this regard is of insufficient quality to be included in national data. This makes obtaining an accurate national picture of how these issues relate to Aboriginal and Torres Strait Islander peoples as a distinct sub-set of the population difficult, and an accurate picture in these states impossible. In this respect, the data of Western Australia, Victoria, Tasmania and the Australian Capital Territory is heavily compromised or non-existent and therefore not included in data provided by the Australian Bureau of Statistics.<sup>75</sup>

The submission by the National LGBTI Health Alliance pointed out that:

In Australia, we have limited to non-existent reliable, nationally representative data on the prevalence, incidence, and factors involved in family and interpersonal violence affecting LGBTI young people... ‘family and domestic violence’ events experienced by LGBTI young people typically involve additional people beyond parents, biological relatives, and those who cohabit with young people. Some of the many flaws that limit the utility of Australian data are the categorical exclusion of people with intersex characteristics and people of non-binary experience; the treatment of trans as an identity when many people of trans experience identify simply as girls/women or boys/men; the conflation of sexuality, genders, and bodies to item phrasing.<sup>76</sup>

The ABS, which has been tasked with developing a **national data collection and reporting framework** (DCRF) as part of the Second Action Plan in the National Plan, suggests that:

Behaviour-based definitions of family, domestic or sexual violence can be used to bridge the gap between objective and subjective definitions. They can also provide the basis for comparability by enabling definitions to be derived from behavioural descriptions, rather than legal definitions that can vary across states and territories.<sup>77</sup>

Mr William Milne, ABS Director of the National Centre for Crime and Justice Statistics predicts that:

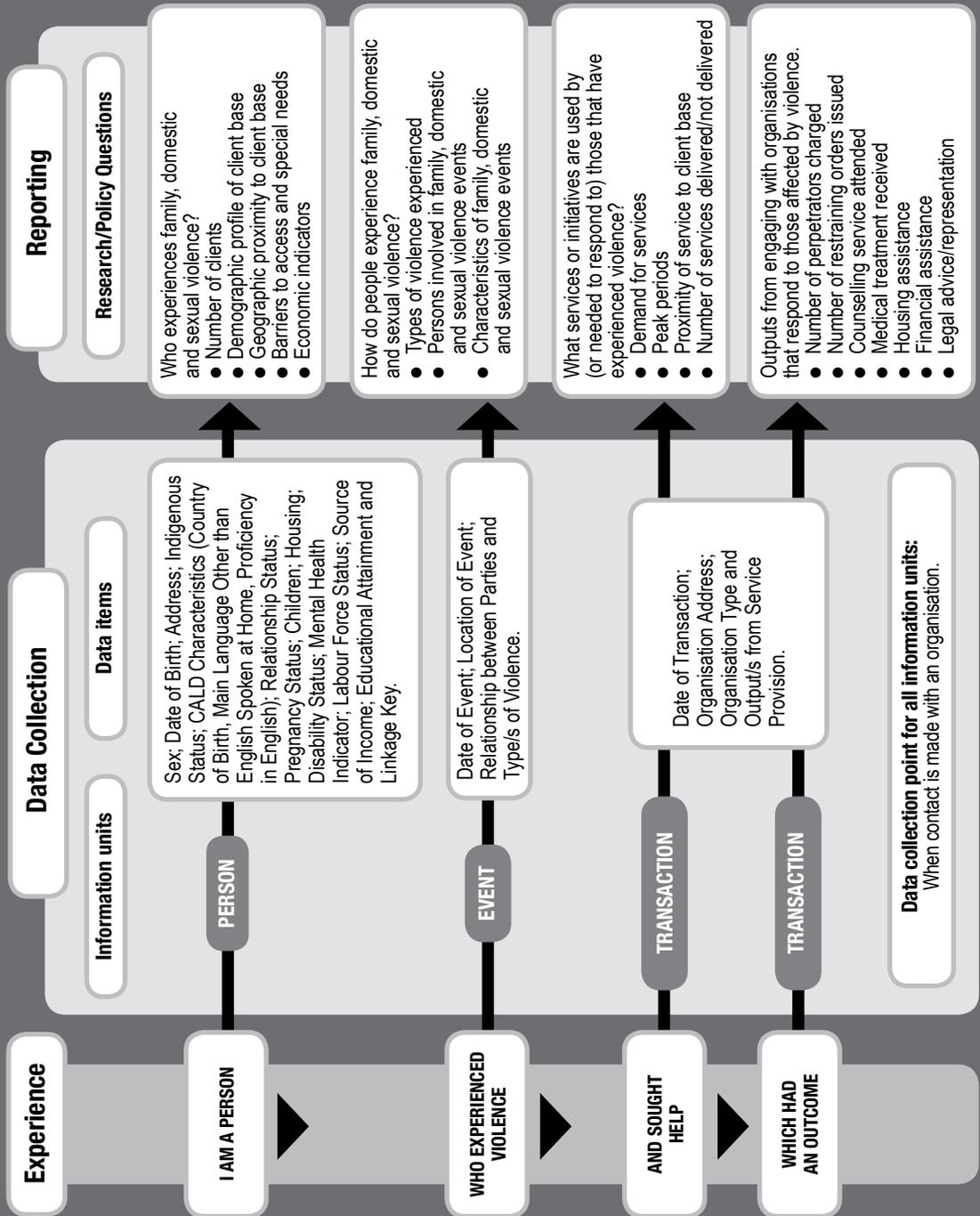
When the national data collection and reporting framework is in place, researchers will be able to better identify common characteristics of family and domestic violence incidents...

They’ll be able to create demographic and economic profiles, see family relationships, the types of violence and frequency of events, as well as look at resulting outcomes such as court proceedings, need for medical treatment or use of services such as housing assistance or counselling at the local, jurisdictional and national levels.<sup>78</sup>

ABS provides a foundation to support a common language which can be used to measure family, domestic and sexual violence. The purpose of a definition in this context is to assist in the collection of data.<sup>79</sup>

The DCRF focuses on improving the quality and consistency of the inputs (data collection) in an effort to lay the basis for answering research and policy questions (reporting).<sup>80</sup> A diagram describing the DCRF is included on page 117.

# Foundations for a National Data Collection and Reporting Framework (DCRF)<sup>81</sup>



The DCRF will capture information and data through three ‘information units’: person, event and transaction. This breakdown helps create an understanding of individual experiences of family, domestic and sexual violence, as well as a broader picture of trends and at risk groups that can be targeted for intervention and prevention measures.

The ‘person’ unit collects information about the individual experiencing the violence, for example; their age, sex, location, Indigenous status, CALD background, relationship, and economic status. This data will help create a greater understanding of who experiences or is exposed to family, domestic and sexual violence, the prevalence of it and common risk factors. It also allows for assessment of barriers that stand between individuals and their access to support services, such as language, finances, and proximity.

The ‘event’ unit provides information on how, when and where family, domestic and sexual violence occurs. It identifies the types of relationships and situations in which family, domestic and sexual violence is more likely to occur, assisting in improving the delivery and operations of support services. Understanding the environment where family, domestic and sexual violence occurs can also help to develop more accurate and targeted education and prevention initiatives.

Finally, the ‘transaction’ unit comprises two sets of data – the types of services sought by individuals experiencing violence and the outcome of the interactions with the services. This data can help in assessing demand for services and those services which are best placed to deal with experiences of violence. Combined with the first two information units, it can also inform on the issues surrounding service delivery, such as the proximity of the individual to support services, including areas where there are insufficient services or resources to respond to the demand and needs of individuals experiencing violence.

This foundation work by ABS was developed in consultation with researchers, frontline contacts such as state and territory justice agencies, and supporting organisations like hospitals and accommodation providers.<sup>82</sup>

The ABS asserts that:

Adoption of the key data items outlined in the DCRF will provide the foundations for the creation of strong reporting frameworks, at the local, jurisdictional and national levels.<sup>83</sup>

The challenge now is for all those working across the jurisdictions to adopt the foundations of the ABS National Data Collection and Reporting Framework.

The ABS is currently working with agencies and jurisdictions towards adopting the foundations of its framework.<sup>84</sup>

COAG has endorsed having the ABS National Data Collection and Reporting Framework operational by 2022 under the National Plan to Reduce Violence against Women and their Children.<sup>85</sup>

### **Recommendation 3:**

**The Annual Progress Reports of the National Plan to Reduce Violence against Women and their Children should detail how all jurisdictions are working towards implementing the Australian Bureau of Statistics National Data Collection and Reporting Framework.**

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While I strongly support the work of the ABS, it is imperative that the DCRF and its users record a child's experience of family and domestic violence as a separate entry in the Australian Bureau of Statistics National Data Collection and Reporting Framework, and not just part of an adult entry.

The need to separately record data about children's experiences of family and domestic violence was raised by the NSW Government in its submission:

Given the extent of the impact of domestic and family violence on children, it is important that they are considered victims in their own right so that policy and operations are reflective.<sup>86</sup>

Improvements are needed in how domestic and family violence is identified and flagged in relevant data sets across the areas of child protection, health, housing, and police and justice systems. This is a particular challenge in terms of capturing information about children affected by violence, as they are often not recorded as a victim or the recipient of services or service referrals. Better and wider flagging of domestic and family violence at a program level across the service system (for example, as a vulnerability where children and families are accessing or affected by services) would build our understanding of how children are affected by domestic and family violence.<sup>87</sup>

The submission by the NSW Advocate for Children and Young People reinforces this point:

It may be helpful to consider children's experience of violence in the home in its own right and not only as it relates to witnessing or being part of domestic and family violence/ intimate partner violence experienced by adults in the home.<sup>88</sup>

Academic, Nicky Stanley, maintains that:

Children's involvement in domestic violence is intimate and central rather than peripheral.<sup>89</sup>

The submission by the Melbourne Research Alliance to End Violence against Women and their Children argues:

The issues for children living with DFV are critical but frequently marginalised in our current response.<sup>90</sup>

During the course of my examination, I met with Ms Kristy McKellar. Ms McKellar shared with me her personal experience of family and domestic violence including how it impacted on her daughter.

**Extract from Ms McKellar's written submission<sup>91</sup>**

We must remain dedicated and advocate for children exposed to family violence, ensuring their experiences are validated and that they are acknowledged to be victims of these violent crimes, even if they are not at a developmental age to articulate their experiences.

Initially I was the only one deemed as a primary victim of the crime. The system failed to view or recognise my daughter and her suffering. It took one year of fighting for her rights and being her voice for the Victims of Crime Assistance Tribunal to acknowledge that she too was also a primary victim of the crime and the tribunal then officially deemed her as so.

If the DCRF is to be inclusive of children, some changes to the proposed guidelines will be required. For example, the data item 'educational attainment' where people self-report their highest level of educational attainment should include categories such as 'currently participating in early childhood education', 'currently participating in primary school education' and 'currently participating in secondary school education' as part of its choice list.

**Recommendation 4:**

**Data about a child’s experience as a victim of family and domestic violence should be recorded as a separate entry in the Australian Bureau of Statistics National Data Collection and Reporting Framework, and not just part of an adult entry.**

It is also important to recognise that the ABS currently excludes LGBTI status in the DCRF on the basis that there is no current agreed standard for measurement.<sup>92</sup> The ABS acknowledges this identification as a priority.<sup>93</sup>

**Recommendation 5:**

**Data about lesbian, gay, bisexual, transgender and intersex status should be recorded in the Australian Bureau of Statistics National Data Collection and Reporting Framework.**

I also note that the **ABS 2012 Personal Safety Survey does not provide prevalence estimates of physical abuse and sexual abuse experienced by vulnerable groups of children**, including Aboriginal and Torres Strait Islander children, children living with disabilities, children from culturally and linguistically diverse backgrounds, asylum seeking or refugee children, children with a past or current involvement with child protection services, children living in regional, rural and remote areas, and lesbian, gay, bisexual, transgender and intersex children.

The Senate Finance and Public Administration References Committee released its report about domestic violence in Australia mid-way through my national examination.<sup>94</sup>

The Senate Committee’s report specifically recommended that vulnerable groups be included in the next ABS Public Safety Survey:

The Australian Bureau of Statistics, along with Commonwealth, state and territory bodies involved in the development of the Personal Safety Survey consider the concerns raised during this inquiry about the adequacy of sampling sizes of particular subgroups within the community, such as women with a disability, women from culturally and linguistically diverse backgrounds, immigrant and refugee women, and Indigenous communities and endeavour to address these issues prior to the conduct of the next PSS.<sup>95</sup>

**Recommendation 6:**

**The Annual Progress Reports of the National Plan to Reduce Violence against Women and their Children should detail how the Australian Bureau of Statistics Personal Safety Survey is working towards surveying adequate sampling sizes across vulnerable groups.**

## Summary

### **Definitional challenges in relation to children affected by family and domestic violence and how this impacts on the data that is collected about them**

A key challenge in addressing family and domestic violence and its impact on children and young people is the lack of consistent terms and definitions used across the state and territory jurisdictions.

Under the National Plan to Reduce Violence against Women and their Children, work is being done by the ABS to implement a national data collection and reporting framework (DCRF). This framework uses behaviour-based definitions of family, domestic or sexual violence to capture cohesive national data about family and domestic violence.

Invariably, the definitional issues are complex and while the approach of the ABS in terms of the potential of behaviour-based definitions offers promise, much work remains to be done to achieve behaviour-based definitions that are fully inclusive of children.

As a nation, we must be able to consistently identify those children affected by family and domestic violence. Where children are identified, more information must be recorded and collected to inform our evidence-base.

## 4.5.2 How do children experience family and domestic violence?

Children's experiences of family and domestic violence are typically described as 'witnessing violence', 'being exposed to violence', and 'being directly abused in the context of family and domestic violence'.<sup>96</sup>

The experiences of children **witnessing violence** are said to include:

- hearing the violence
- being used as a physical weapon
- being forced to watch or participate in assaults
- being forced to spy on a parent
- being informed that they are to blame for the violence because of their behaviour
- being used as a hostage
- defending a parent against the violence
- intervening to stop the violence.<sup>97</sup>

The experiences of children **exposed to violence** are described as:

- having to telephone for emergency assistance
- seeing a parent's injuries after the violence and having to assist in 'patching up' a parent
- having their own injuries and/or trauma to cope with
- dealing with a parent who alternates between violence and a caring role
- seeing the parents being arrested
- having to leave home with a parent and/or dislocation from family, friends and school.<sup>98</sup>

Many participants at my roundtables and numerous submissions argued that differentiating between witnessing violence, being exposed to violence, and/or being directly abused in the context of family and domestic violence is not helpful.<sup>99</sup>

The negative outcomes for children, as a consequence of their witnessing and exposure to family and domestic violence, is increasingly being considered as abuse and reportable to child protection authorities.<sup>100 101</sup>

The submission made by the Royal Australian and New Zealand College of Psychiatrists maintains that:

Even when the child does not directly witness family violence, maternal stress and the overall environment of fear is known to have deleterious impacts on the child’s mental health, with 80-90% of children estimated to suffer from vicarious trauma even if they do not witness the incident directly.<sup>102</sup>

Relationships Australia makes the point in its submission that:

The term ‘witness’ and ‘exposed to’ also has the effect of minimising the child’s experience.<sup>103</sup>

Combined with this, research is progressively showing **a co-occurrence of exposure to family and domestic violence with the direct abuse of children.**<sup>104</sup> It is argued that:

Distinguishing children who suffer abuse in the home from those who are ‘only’ exposed to domestic violence presents a considerable methodological and conceptual challenge, as these two phenomena are rarely discrete.<sup>105</sup>

In terms of its prevalence, research by Richards asserts that:

The rate of co-occurrence of Australian children experiencing *physical* abuse and being exposed to domestic violence, and experiencing *sexual* abuse and being exposed to domestic violence have been estimated at 55% and 40% respectively.<sup>106</sup>

### **The intersection between family and domestic violence and child protection**

Family and domestic violence poses a significant challenge to state and territory child protection systems. Many submissions noted that child protection services are not well equipped to deal with the scale of this problem and have not been designed to accommodate the complexities arising from the co-existence of an adult and child victim.

The submission by the Melbourne Research Alliance to End Violence Against Women and their Children suggests that:

While some children undoubtedly are at risk of significant harm and require a referral to child protection, there are problems routing *all* affected children through this pathway.<sup>107</sup>

Academic, Professor Cathy Humphries from the University of Melbourne asserts that statutory child protection systems across Australia are not capable of managing the influx of referrals of all children affected by family and domestic violence.

She maintains that where family and domestic violence cases are referred to child protection systems, many children do not receive a service.<sup>108</sup>

Her examples of this include the L17 Triage Project conducted in Melbourne between November 2012 and November 2013 where of 1,960 police referrals to child protection, only 13.9% resulted in a child protection investigation.<sup>109</sup>

Similarly in 2008, the NSW Special Commission of Inquiry into Child Protection Services reported that of the 76,000 reports where domestic violence was the primary reason for reporting, only 5,000 (6.5%) of these cases were substantiated and even these substantiated cases were not necessarily provided with assistance.<sup>110</sup>

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Australian researchers Bromfield, Arney, and Higgins warn that:

Child protection services have increased their scope of responsibility without conducting a critical appraisal of whether a residual response system continues to be the best fit to address the size and nature of the problem.<sup>111</sup>

The submission from No To Violence Male Family Violence Prevention Association told me that:

Child protection systems are extremely ill-equipped to deal with the problem in a comprehensive, holistic, family-centred manner. The systems weren't designed with this problem in mind and continue to be flummoxed around how to truly respond in a child-centred manner.<sup>112</sup>

Professor Cathy Humphries argues that:

'Grafting' domestic violence onto the extant child protection system can push an already vulnerable situation towards system failure...issues specific to domestic violence need to be addressed if a more effective intervention is to occur for children affected by domestic violence.<sup>113</sup>

The submission by the National Aboriginal and Torres Strait Islander Legal Services points out that:

The interaction between child protection interventions and family and domestic violence is extremely complex because of the risk to both the child and the non-abusive parent/carer.<sup>114</sup>

One of the fundamental issues in family and domestic violence is the co-existence of the adult victim and the child victim.

Within the context of child protection, mothers can often be assessed as non-protective of their children if they do not leave the perpetrator and this can result in children being removed and placed in out-of-home care.

The fear of this happening can also be a significant barrier to women with children seeking help. This particularly affects Aboriginal and Torres Strait Islander women.

The Australian Psychological Society told me that:

While in some situations there is a clear case for referral to child protection for children directly harmed by family violence, developing policy or legislative responses which mandate referral for all children who experience or witness violence is unlikely to be in the best interests of the child, or the child and protective parent relationship.<sup>115</sup>

At my roundtables and in submissions, I was told that differential response approaches had been adopted in many Australian jurisdictions.

This type of approach uses assessment tools to gauge risk of harm to children and identify low and high-risk families.<sup>116</sup> In cases where family and domestic violence is assessed as low risk and does not require a response from child protection authorities, referrals are made to non-government and community sector organisations.<sup>117</sup>

Bromfield, Arney, and Higgins suggest that while the Australian strategy of adopting differential response approaches to better respond to families has been a pragmatic and sensible addition to child protection services, a more proactive method towards implementing a comprehensive public health model is required.<sup>118</sup>

Public policy approaches and educational campaigns targeting family and domestic violence are discussed further below (see section 4.5.5).

Research on differential response approaches conducted in Canada suggests that difficulties can emerge where community-based services do not have adequate funding for preventative services and intervention programs, and are not able to appropriately respond.<sup>119</sup>

The submission made by Melbourne Research Alliance to End Violence Against Women and their Children emphasises the need for increased funding to make sure that those children diverted from child protection receive support services; and that workers in women’s services and family support services are trained to intervene with both sets of victims.<sup>120</sup>

## Summary

### How do children experience family and domestic violence?

Children’s experiences of family and domestic violence are typically described as ‘witnessing violence’, ‘being exposed to violence’, and ‘being directly abused in the context of family and domestic violence’. These three categories have traditionally been treated as separate entities.

Witnessing and exposure to family and domestic violence are increasingly being recognised as forms of abuse that can be reported to child protection authorities.

It is clear that statutory child protection systems across Australia are not well equipped to manage the large numbers of children affected by family and domestic violence.

In particular, child protection systems have not been designed to consider the co-existence of an adult victim and child victims, leading to an absence of cohesive family-centred approaches.

### 4.5.3 What is the impact of family and domestic violence on children?

There is general agreement about the ways in which family and domestic violence manifests itself in children. These include:

- mood problems including depression
- anxiety
- trauma symptoms
- increased aggression
- antisocial behaviour
- lower social competence
- temperament problems
- low self-esteem
- the presence of pervasive fear
- loneliness
- school difficulties
- peer conflict
- impaired cognitive functioning, and
- increased likelihood of substance abuse.<sup>121</sup>

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The Kids Helpline provided me with the thoughts and feelings of children through an examination of its case notes. These comprise:

- fear for their own safety, the safety of their sibling(s), and for the safety of the victim of abuse
- anxiety
- isolation and loneliness
- anger towards both the perpetrator and the victim
- sympathy for the victim, and sometimes the perpetrator
- confused feelings towards the perpetrator (e.g., both anger and love for a violent father)
- guilt over having 'bad thoughts' about the perpetrator (e.g., wishing he would die)
- feelings of responsibility to protect the family or take action to stop the violence.<sup>122</sup>

Little research into family and domestic violence, however, has involved the participation of children. As academic, Nicky Stanley advises:

Research that captures children's perspectives is...limited.<sup>123</sup>...Research with children and young people could usefully explore the extent to which they perceive themselves to be implicated in domestic violence and how this perception affects them.<sup>124</sup>

The submission by Families Australia advocates for research that allows the voices of children and young people to be heard in relation to their experience of family and domestic violence and interventions.<sup>125</sup>

Research also suggests that **the effects of family and domestic violence may manifest differently depending on the developmental stages of the children.**<sup>126</sup>

This was particularly reinforced to me in submissions made by the NSW Government,<sup>127</sup> the Australian Psychological Society<sup>128</sup> and the Royal Australian and New Zealand College of Psychiatrists.<sup>129</sup> Suggested effects at the different developmental stages are:

#### **Infants and toddlers**<sup>130 131</sup>

- delayed language
- delayed toilet-training
- sleep disturbance
- emotional distress and a fear of being left alone
- disrupted attachment.

#### **Pre-school children**<sup>132</sup>

- aggressive behaviour
- temper tantrums
- sleep disturbance
- anxiety
- despondency
- poorer verbal abilities.

#### **School-aged children**<sup>133</sup>

- conduct disorders
- quiet and withdrawn or loud and aggressive.

### Adolescence<sup>134</sup>

- mental health diagnosis
- delinquency
- anger to peers or parent
- depression
- fear, sadness and loneliness, including suicidal feelings.

Clearly there is growing understanding about how family and domestic violence manifests itself in children.

However as academic, Nicky Stanley explains:

The impact of domestic violence on children is not straightforward.<sup>135</sup>

Family and domestic violence is multi-dimensional with many variables simultaneously interacting.<sup>136</sup>

**Variables influencing the impact of family and domestic violence** include:

- The severity and extent of children’s exposure to family and domestic violence.<sup>137</sup> Exposure to an isolated incident is clearly a different experience from regular exposure.<sup>138</sup> Cumulative exposure over time produces profoundly serious problems which can be resistant to change.<sup>139</sup>
- Family and domestic violence often occurs in contexts of other disadvantage and interacts with other family problems to harm children’s health and wellbeing. It is difficult for both practitioners and researchers to disentangle the dynamics and effects of family and domestic violence on children and young people from other family problems.<sup>140</sup>

The joint submission made to me by the Australian Institute of Family Studies (AIFS) and Australia’s National Research Organisation for Women’s Safety Ltd (ANROWS) reinforced this:

Family violence occurs across a spectrum of severity but there is a dearth of evidence on the implications of this for children.<sup>141</sup>

DFV often occurs alongside a host of other risk factors, such as parental substance abuse, poverty, family dysfunction, other forms of child abuse and neglect, mental ill-health, and social isolation...It is consequently difficult to separate the effects of these factors from the effects of exposure to DFV.<sup>142</sup>

The Kids Helpline stated that:

Children living in families experiencing domestic violence typically experience multiple disadvantages and other forms of adversity (e.g., low socio-economic status, parental unemployment, low parental education, parental alcohol and substance abuse, child abuse), making it difficult to isolate the effects of exposure to [family and domestic violence].<sup>143</sup>

Family and domestic violence can also occur in families who do not have these characteristics.

During my roundtables and in submissions, **certain groups of children were identified as being particularly vulnerable.**

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The submission by the National Aboriginal & Torres Strait Islander Women's Alliance pointed out:

The nature, history and context of family violence in **Aboriginal and Torres Strait Islander communities** is different to domestic violence experienced in mainstream communities and populations. Aboriginal and Torres Strait Islander people continue to suffer the intergenerational effects of past welfare practices including the forced removal of their children and dislocation from their communities, country and culture, as well as experiencing higher levels of poverty and social disadvantage compared to other Australians. The combined effects of past practices and current disadvantages present extreme challenges to families.<sup>144</sup>

The Western Australian Aboriginal Family Law Services advised me:

For **Aboriginal** communities the prevalence and impact of family and domestic violence is understood in terms of loss of connection to family, culture and self. The development of a sense of belonging and self may be severely compromised when raised out of one's own family. The circumstances of the removal, the quantity and quality of ongoing contact with parents and the ability to adapt to the new living situation will impact on the child's development. The child's ability to meet developmental milestones will be challenged and almost certainly impaired by the trauma of the removal and any consequent placement shift – as well as from the predisposing circumstances of abuse and trauma.<sup>145</sup>

The submission by InTouch, the Multicultural Centre against Family Violence in Victoria indicated that:

**Culturally and linguistically diverse** children may experience the additional impact of being displaced from other countries, spending time in refugee camps, witness torture and trauma, unsafe travel to Australia and/or loss of extended family and community networks. CALD children may have additional pressures to learn at school while acquiring a second language and navigating new social rules. They may also experience discrimination and racism in the wider community.

The intersection for CALD children of pre-existing loss and grief, adjustment disorders, displacement and post-traumatic stress and the additional trauma of family violence is critical.<sup>146</sup>

Children with Disability Australia informed me that:

In the case of **children with disability**, changes in behaviour have an increased tendency to be pathologised as attributable to the child's disability, rather than a demonstration of distress. This can reduce a child's access to the appropriate support options to protect from further harm and support from trauma.<sup>147</sup>

**Many participants at my roundtables and in submissions also raised the importance of understanding resilience and protective factors.**

The Australian Psychological Society told me that:

Not all children are equally affected by the violence they witness or live with, with some at serious risk of harm, even death, others are not as impacted due to specific protective factors.<sup>148</sup>

The submission made by the Australian Institute of Family Studies (AIFS) and Australia's National Research Organisation for Women's Safety Ltd (ANROWS) pointed out that:

There are considerable divergences in outcomes and impacts in different populations of children...and resilience in children is not well understood. The literature suggests that there are several factors that may mitigate children's exposure to violence, including the extent of children's peer and social support; their relationship with their mother or other primary caregiver; whether the violence was ongoing or short-term; age of child when the DFV occurred; and whether children received an adequate response/treatment following the DFV.<sup>149</sup>

Fehlberg, Kaspiw, Millbank, Kelly and Behrens supported this:

Negative impacts are not uniform or inevitable. Some research suggests a degree of resilience, or ability to recover, among some groups of children; however, the factors that support resilience and recovery are not well understood. Factors such as age, temperament and wider family—including the quality of relationships between the child and non-violent family members—play a role.<sup>150</sup>

The submission by the Royal Australian and New Zealand College of Psychiatrists recommended to me that:

Resilience should be investigated in those children exposed to family violence as a potential source of evidence to inform health promotion and child protection initiatives.<sup>151</sup>

The joint submission by the Australian Institute of Family Studies (AIFS) and Australia’s National Research Organisation for Women’s Safety Ltd (ANROWS) reinforced this:

From a resilience perspective, there is a need for more research that examines the variability in impact and sheds light on the factors and interventions that mitigate negative effects and support recovery.<sup>152</sup>

The submission by the Northern Territory Department of Children and Families argued that:

While Department of Children and Families’ practitioners see many negative impacts of family and domestic violence on children, it is possible that interventions may ultimately be more effective if they can be informed by a stronger evidence base about factors related to children’s resilience.<sup>153</sup>

Academic Nicky Stanley asserts that:

Exposure to domestic violence does not invariably result in substantial harm to children’s health or development. Understanding which factors make for resilience and distinguish those children who will not experience adverse effects is key to targeting resources effectively...Perhaps because resilient children are less likely to come to the attention of services, research has tended to focus on identifying and exploring risk factors for children’s exposure to domestic violence. Less is therefore known about what makes for resilience that is specific to children’s experiences of domestic violence.<sup>154</sup>

In this context, I have sought out Australian research, which may be able to contribute towards the differentiating factors inherent in resilience.

Two ongoing longitudinal studies that have the potential to answer some of our questions include the data linkage study currently being conducted in the Northern Territory and the Australian Longitudinal Study on Women’s Health.

Two of the principal researchers on these studies have provided descriptions of their work for my report. These are provided on the following pages. Some of the findings of these studies will be publically available in 2016.

### **Improving the developmental outcomes of Northern Territory children**

This research partnership aims to advance scientific, policy and community understanding of the main drivers of developmental disadvantage in the Northern Territory (NT).

It is combining data usually retained separately by health, education, child protection, police and justice agencies. This will enable more integrated service planning and evaluation of the impact of initiatives aimed at reducing gaps between Indigenous and other children's health, education and other life outcomes.

Record-linkage will combine data on over 60,000 NT children. These data will also be linked with community-level data enabling longitudinal analyses not previously possible to investigate how early life health status and local socio-demographic factors are jointly related to four developmental outcomes of key policy concern:

1. Early childhood development and readiness for school learning (AEDC).
2. School attendance, literacy and numeracy at ages 8, 10, 12 & 14 years (NAPLAN)
3. Children's involvement with the child protection system
4. Youth involvement with the juvenile justice system.

The police data include information on all individuals involved in investigated incidents: perpetrators, victims and witnesses. This will enable the study of children's exposure to violence as a risk factor of later adverse outcomes, such as juvenile offending behaviour.

Economic modelling of the costs of outcomes 1-4 and the cost-benefit of evidence-based preventative interventions are also being undertaken.

Findings will be widely disseminated through a) publication of separate research monographs on issues 1-4 above; b) research-to-practice stakeholder workshops and community forums; c) scientific journals publications & conference presentations.

The project partners are Menzies School of Health Research (Centre for Child Development and Education), Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) and the NT Departments of Education, Health and Children & Families. This project is funded up to 2017.

National Health and Medical Research Council Partnership Project #109149.1

**Statement by Doctor John McKenzie about longitudinal research by the Menzies School of Health Research on improving the developmental outcomes of Northern Territory children: a data linkage study to inform policy and practice in health, family services and education.**

**The Australian Longitudinal Study on Women’s Health (ALSWH)** offers a rich source of data concerned with women’s wellbeing across the life course. ALSWH was first funded in 1995. It began as a mailed longitudinal survey of over 40,000 women in three cohorts who were aged 18-23 (born 1973–78), 45-50 (born 1946–51) and 70-75 (born 1921–26) when data were first collected in 1996. In 2012-13, over 17,000 women aged 18-23 (born 1989–95) were recruited to form a new cohort.

Participants complete regular surveys that collect qualitative and quantitative information on physical and mental health, health behaviour, health service use, and psychosocial aspects of health such as demographics and life experiences. ALSWH survey data are routinely linked to administrative datasets, including the State-Based Cancer Registry (NSW, QLD, WA, SA, ACT and VIC), Perinatal (NSW, QLD, WA, SA and ACT) and Admitted Patients datasets (NSW, QLD, WA, SA and ACT), and Medicare (Medicare Benefits Schedule, Pharmaceutical Benefits Scheme) and Aged Care datasets.

Data collection for the third survey of the 1989–95 cohort and the seventh survey of 1973–78 cohort are underway. In 2015, data concerned with women’s experiences of adversity in childhood, including the witnessing of domestic violence, is being collected. The eighth survey for the 1946–51 cohort and the fourth survey for the 1989–95 cohort will be pilot tested in 2015 and rolled out in 2016.

The **Mothers and their Children’s Health (MatCH)** project is a sub-study, which is currently recruiting the children of the women in the Australian Longitudinal Study on Women’s Health 1973–78 cohort. It is collecting data from **the male and female children** of the women participating in the survey. This includes measures of the health and social wellbeing of children, as well as different aspects of parenting. The project will investigate the relationship between the mothers’ health history and the family environment to the children’s health and social outcomes, and health service utilisation. The children’s data will be linked to their mother’s data, as well as administrative datasets for early child development and educational outcomes, such as the National Assessment Program – Literacy and Numeracy (NAPLAN).

Together<sup>155</sup> ALSWH and MatCH data will offer the opportunity to conduct powerful analyses to measure the impacts of adversity in childhood across the life course and inter-generationally, and to identify and evaluate factors that might mitigate these impacts.

Data from the 2015 surveys of the 1989–95 and 1973–78 cohorts will be available in 2016. Data from the MatCH survey is expected to be available towards the end of 2016. These datasets will enable examination of the impact of childhood adversity, including witnessing domestic violence, on factors such as later experiences of abuse (e.g. bullying, domestic violence); physical health, including diagnosed conditions, symptoms, bodily pain; health service use including consultations, Medicare funded/subsidised services, medication use, hospitalisations; mental health, including suicidal ideation, self-harm, depression, anxiety; pregnancy experiences and outcomes, including parenting style; flow on effects to the next generation.

ALSWH and MatCH are conducted collaboratively by staff and investigators based at the University of Newcastle and the University of Queensland. ALSWH is funded by the Australian Government Department of Health until 30 June 2016 and MatCH is funded by a National Health and Medical Research Council project grant (2014–2017).

**Statement from Associate Professor Deborah Loxton and Natalie Townsend**

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Data in the ALSWH and MatCH projects offer the opportunity to analyse and measure the impacts of adversity in childhood across the life course and inter-generationally, and to identify and evaluate factors that might mitigate these impacts.

For example, women in the 1973–78 cohort who experienced adversity during childhood can be tracked to see how those experiences impacted on their subsequent lives (e.g. education; domestic violence; health service use; physical and mental health) including influences on pregnancy, breastfeeding and parenting style. It will also be possible to examine the impact on their children's outcomes (e.g. social functioning; bullying; health behaviour). The data provided by the male and female children will offer insights which have not previously been available in Australia, and possibly internationally.

It will be very important to continue to follow these women and their children to better understand how experiencing adversity during childhood influences health and wellbeing across the life course and into the next generation.

**Recommendation 7:**

**Support for the Australian Longitudinal Study on Women's Health (ALSWH) project by the Australian Government Department of Health is extended after 30 June 2016 and support for the Mothers and their Children's Health (MatCH) project by the Australian Government Department of Health is also extended after its National Health and Medical Research Council grant expires in 2017.**

**Recommendation 8:**

**Support for the 'Improving the developmental outcomes of Northern Territory children: a data linkage study to inform policy and practice in health, family services and education' currently being conducted in the Northern Territory by Menzies School of Health Research is provided by the Australian Government Department of Social Services after its National Health and Medical Research Council grant expires in 2017.**

## Summary

### What is the impact of family and domestic violence on children?

While negative outcomes are well recognised and documented, factors that mitigate the impacts of family and domestic violence and promote resilience are less well understood.

Differences in outcomes and impacts for children in different populations highlight the need for more in-depth research on the factors and interventions that enhance children’s resilience and ability to cope with experiences of family and domestic violence.

Efforts to understand children’s experiences are complicated by the difficulties of isolating the impacts of family and domestic violence from other detrimental environmental factors, such as poverty, parental substance abuse, family dysfunction and mental ill-health.

The impact of family and domestic violence on some groups of children is further compounded by experiences of discrimination and marginalisation. In this context, groups of children and young people who are particularly vulnerable include Aboriginal and Torres Strait Islander children, children with disability, children from culturally and linguistically diverse backgrounds and children who are lesbian, gay, bisexual, transgender and intersex.

It has also been observed that the effects of family and domestic violence manifest differently depending on the developmental stages of the children.

### 4.5.4 What services, programs and supports currently exist for children experiencing family and domestic violence?

Participants at the roundtables and also in written submissions described services and programs used to support children experiencing family and domestic violence. These included:

- services helping children and their protective parent to be physically safe
- therapeutic services assisting children to manage the trauma associated with family and domestic violence; including programs that focus on the reparation of parent-child relationships
- perpetrator interventions for behaviour change.

#### 4.5.4.1 Services helping children and their protective parent to be physically safe

The need to improve and expand housing options available to children and their mothers escaping family and domestic violence was raised throughout my examination.<sup>156</sup>

As stated in the submission made by the Australian Psychological Society, there is:

A lack of alternatives for women wishing to exit an unsafe relationship with their children. There is a serious and chronic shortage of affordable housing, and women exiting such relationships are typically under 40 and have dependent children; this reduces the capacity to access paid work or private rental. Refuge housing is a last resort and more women than not are turned away due to shortages.<sup>157</sup>

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Families Australia highlighted some of the issues children and their mothers can face when attempting to escape violence:

The involvement of police, a traumatic move to a refuge or to relatives, and the subsequent dislocation from family, friends and education. Many women's refuges do not accept boys over the age of 15.<sup>158</sup>

Aboriginal Family Law Services also pointed out that:

While a woman may approach a legal service for assistance with a restraining order against her violent partner, her immediate physical safety may depend on whether the local women's refuge has a bed available, will agree to accommodate her teenage son, or will accept her in her intoxicated state – and this all assumes the community she lives in has a refuge or safe place she can stay.<sup>159</sup>

Berry Street also raised issues of limited access and restrictive entry criteria to refuge accommodation as a concern:

For many women and children, refuge accommodation is a supported and safe alternative to remaining at home or with family or friends; however, due to the scarcity of beds, the access criterion has become increasingly narrow. Sometimes women who are at extreme risk, are rendered ineligible, because the most recent incident of violence was more than a week ago.

The criteria can prevent the use of preventative placement, for example, when a person who has used violence is about to be released from remand or jail. Scarcity of beds can result in women with disabilities or mental health issues or mothers with older sons being unable to access refuge due to insufficient vacancies in tailored models that can adequately support them.<sup>160</sup>

The Western Australian Government raised in its submission the benefits of the 'cluster model' refuge which:

enables larger families to be accommodated, including women with older boys and provides more privacy and independence to women and children.<sup>161</sup>

During my consultations, I visited a cluster model refuge and observed the benefits inherent in this model.

Berry Street indicated to me that it has supported women and children who have been in transitional housing for extended periods of time. In some cases, these mothers and their children have waited months and years for a permanent placement.<sup>162</sup>

Berry Street promotes the federal initiative, *A Place to Call Home*, as an example of an effective brokerage program to help families recover from violence and enable their transitional housing to become their permanent home.<sup>163</sup>

Providing accommodation services that help children and their protective parent to be physically safe at home, both in the short and the longer term, must be prioritised.

The Senate Committee's recent report on family and domestic violence recognised that the longer-term housing needs of children and their mothers must be addressed, and recommended that:

... the Commonwealth Government take a lead role in the provision of affordable housing solutions in Australia to meet long-term needs for those made homeless by domestic and family violence and in order to address the backlog of victims who cannot access affordable housing which stakeholders have identified during the inquiry.<sup>164</sup>

#### 4.5.4.2 Therapeutic services assisting children to manage the trauma associated with family and domestic violence; including programs that focus on reparation of parent-child relationships

Therapeutic interventions targeted at children who experience family and domestic violence are widely recognised as positively influencing outcomes for them.

Participants at my roundtables and written submissions raised issues about the affordability, accessibility and availability of therapeutic services for children. The Dawn House Women’s Refuge in the Northern Territory, for example, stated that:

A significant barrier to service accessibility for children affected by DV&FV tends to be the relatively complicated and protracted process for accessing affordable services that cover a child’s holistic needs.<sup>165</sup>

A child with psychological, behavioural or developmental issues may require a multitude of specialist intervention, including: general practitioners for referrals, occupational therapy, speech pathologists, special education services and school intervention, complex paediatric assessments and diagnosis, child development services, medications, play therapists, counsellors or psychologists, recreational services, disability support services, respite and child care. Many services work in silos and have varying wait list times.<sup>166</sup>

The submission made by the New South Wales Government raised the need for family and domestic violence services to operate from a trauma-informed framework.<sup>167</sup>

The submission made by Berry Street reinforced the need for:

Therapeutic options to aid children’s recovery from any traumatic impact of family violence<sup>168</sup>...clinical interventions targeting children living in families where there is pregnancy, high risk incidents and post-separation violence are lacking.<sup>169</sup>

Ms Emma Gierschick, a mother of a child with disability, also pointed out to me that:

It has often taken a long time to establish a suitable support network for a child with therapists, medical services and educational supports. There are often long waiting lists for such services.

This is a consideration a mother has to make about relocating. It isn’t as easy as just going to a refuge and finding a new therapist.<sup>170</sup>

The NSW Government submission to my examination highlighted some of the factors impeding children’s engagement with services; including:

- Location: access to services vary with children in metropolitan areas more likely to have better access than those in rural and remote areas
- Ethnicity: difficulties in accessing culturally appropriate services for Indigenous children and those from migrant and refugee backgrounds
- Socio-economic status where the costs of services can restrict ongoing access
- Social isolation
- Lack of integrated service models for mothers and their children which obstructs their access.<sup>171</sup>

In terms of therapeutic interventions, **the importance of a supportive relationship for the child** was consistently raised. Mostly, but not solely, this related to the **mother/child relationship**.<sup>172</sup>

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Relationships Australia told me:

It is extremely challenging for a child to feel safe in an environment where they are aware that their mother or care-giver may be in danger. Family violence has a significant impact on the mother/child relationship, which in turn can affect a child's physical, emotional and intellectual development.<sup>173</sup>

The Kids Helpline emphasised to me that:

The quality of the mother-child attachment relationship is compromised in situations of DFV. Both exposure to trauma and poor quality attachment relationships have serious long term negative impacts on children's social, emotional and cognitive functioning, including difficulties with emotional self-regulation, impulse control, learning delays, low self-esteem, and difficulty understanding, trusting, and relating to others.<sup>174</sup>

The submission by Melbourne Research Alliance to End Violence Against Women and their Children highlighted that:

Strengthening the mother-child relationship in the aftermath of family violence is a key point of intervention. A significant aspect of family violence is the systematic attack on the mother-child relationship as one of the major tactics of abuse.

This may be a direct attack – coercing children to insult their mothers, undermining the woman's mothering through criticism and actions which make it difficult for her to parent, ensuring that women are 'punished' for spending time with children particularly if it takes attention away from the man's needs.

It also can be an indirect attack which disables the mother physically or emotionally so that she is unable to parent appropriately.

Interventions which work to actively strengthen the mother-child relationship in the aftermath of abuse are still in the early stages of development, although it is an area gaining traction.

Evidence is emerging that the most effective intervention response in the post-crisis period for both women and children is for them to work together, either in parallel children's and women's groups... and joint mother-child rather than individual counselling.<sup>175</sup>

The submission provided by Relationships Australia informed me that:

Child development and parenting research in the domestic violence context strongly cautions on the disadvantages of counselling and advocacy services working separately with mothers and children and that positive outcomes for mother and child can be achieved by working with them together to restore and repair the mother/child relationship that has been disrupted by the father's abuse, denigration of the mother and control over the mother-child relationship. Keeping mother and child domestic violence services separate in fact replicates the separation and distancing and divisive effect of the father's abuse to the family.<sup>176</sup>

The Judith Lumley Centre at La Trobe University stressed to me that:

Silo operations where women are offered assistance through FDV services that offer a woman centred approach differ from child protection services that are child centred. Feminist researchers argue for interventions to help heal the mother-child relationship rather than offer separate child and parent therapies. The World Health Organisation now recommends children who have been subjected to intimate partner violence undergo both individual and group psychotherapeutic treatment sessions with their mothers. Unfortunately, previous group work (in Melbourne) with mothers and children has not been sustained due to lack of funding. More research and intervention work is needed to support the mother-child bond in the aftermath of FDV.<sup>177</sup>

The submission made by Dawn House Women’s Refuge in Northern Territory reinforced this to me:

We find there are limited therapeutic services that can work with women and children on attachment and relationship strengthening. The same sentiment applies to sibling attachment relationships, which are often also negatively affected. Services tend to be targeting at individual needs, without engaging the entire family system. Women may also see this type of service as low down on the priority scale with so many other competing needs.<sup>178</sup>

The Public Health Association of Australia suggested to me that:

Based on the evidence to date, supporting and strengthening relationships between the protective parent or protective caregiver/s may be helpful. Reducing the impact of FDV on the protective parent may also increase their capacity to parent and also reduce the likelihood of the protective parent engaging in risk-taking behaviour such as alcohol and drug misuse.<sup>179</sup>

BoysTown uses the Expressive Therapies Program, a trauma and attachment informed program of creative arts and play therapy. It provides one-on-one support to children and their protective parent to facilitate children’s social-emotional wellbeing and competence, behavioural adjustment, attachment relationship with the parent, and self-esteem.

The Expressive Therapies Program was evaluated by BoysTown in 2015. Fifty-six children were assessed at entry to the refuge using the Child Behaviour Checklist, which provides a measure of internalising and externalising behaviours.

On entry, over 60% of the children who completed the program fell into the clinical range for problem behaviours. At exit from the program, their parent reported significant improvement, with the number of children in the clinical range dropping to 23%.

BoysTown acknowledges that it cannot directly link the children’s improvement with the Expressive Therapies Program given that it did not have a control group to compare with. However, qualitative insights from parents and therapists suggest connections between specific elements of the Expressive Therapies Program and changes in the children’s behaviour and wellbeing.<sup>180</sup>

Ms Wendy Bunston, PhD candidate and Associate Lecturer at La Trobe University, submitted a summary of evaluations relating to four infant/child and parent interventions to address family and domestic violence. Ms Bunston provided evaluation summaries about The Peek-a-Boo Club, Dads on Board, Parents Accepting Responsibility Kids are Safe, and Building Up Bonds (BuBs) On Board.<sup>181</sup>

Ms Bunston reported there were some positive indicators in a number of these programs in terms of child-wellbeing and functioning, and parent/child relationships.

Again, the small sample sizes and lack of control groups prevent definitive conclusions about efficacy.<sup>182</sup>

While programs and services to support children affected by family and domestic violence were raised throughout my examination, relatively little information is available about the extent of children’s access to such services or evidence of actual outcomes for children.

A recent review of family violence prevention, early intervention and response services found that in Australia there is limited evidence for the efficacy of programs for children aged 0 to 8 years.<sup>183</sup>

Work by Bromfield, Arney, and Higgins indicated that:

In Australia, there is a significant gap between “what we know and what we do”, with many family support services being funded without a clear practice or program model and without being underpinned by an evidence base.<sup>184</sup>

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The implications of this are very serious in terms of making sure that interventions are adding value to children's lives.

As the joint submission made by the Australian Institute of Family Studies (AIFS) and Australia's National Research Organisation for Women's Safety Ltd (ANROWS) noted that:

Overall, there is a lack of evidence about the outcomes for children affected by DFV who engage with services, programs and support. This is largely due to a lack of rigorous evaluation of DFV services. DFV services often lack the resources to undertake or participate in evaluation. There is, however, a significant amount of high quality practice knowledge within the sector about the best approaches to take with children affected by DFV.<sup>185</sup>

Academic, Nicky Stanley points out that:

While the accumulating body of evidence concerning the harmful effects of domestic violence on children's emotional well-being and development has been widely disseminated, there is much less knowledge and understanding of how children can be protected from those effects or which interventions are most successful in ending domestic violence.

It is increasingly recognised that interventions that only target the victim or even those aimed at mothers and children may 'miss the mark' by omitting to engage with fathers who are the perpetrators of the most severe and frequent forms of domestic violence.<sup>186</sup>...interventions aimed at protecting children from domestic violence should focus on promoting mother-child attachments. Other supportive adults, such as grandparents, aunts or older siblings, can also offer supportive relationships that convey continuity, security and a sense of being loved.<sup>187</sup>

#### **4.5.4.3 Perpetrator interventions for behaviour change**

In the main, men who use family and domestic violence 'remain a strong presence in the lives of their children'.<sup>188</sup>

Given this reality, the role of perpetrator interventions to create opportunities for behaviour change was raised in a number of submissions and also at my roundtables. For example, Relationships Australia noted in its submission:

Research suggests that timely interventions can create opportunities for behaviour change. This includes fathers' desires to maintain and improve relationships with their children which can be a significant leverage point through which the impact of their violent behaviour can be realised and confronted.<sup>189</sup>

The Melbourne Alliance to End Violence Against Women and their Children argued that:

primary prevention strategies which support respectful and equal relationships between men and women and their children are central to family violence intervention. We recognise that this work is of primary importance and foundational to an effective response to family violence.<sup>190</sup>

An example of a men's behaviour change program was described by Relationships Australia New South Wales in its submission to me:

Taking Responsibility, a Men's Behaviour Change Program, [developed] over the past twenty years... is one of the leading programs in this state, with robust referral pathways in place via judges and magistrates, police professionals, family law professionals, and clinical service providers.

Significantly, a large proportion of our clients self-direct to this program, and our clients are therefore made up of both voluntary and mandated clients. The program is guided by nearly ten years of research based evaluations, and this activity has helped us develop the clinical objectives and expertise for our Family Safety Programs.<sup>191</sup>

Relationships Australia New South Wales further indicated that its research about men’s behaviour change programs shows that:

... the most personally meaningful changes the men had made, and those that they were most proud of, related to improved relationships with their children...The engagement of men in behaviour change programs therefore appears to have flow on benefits for their children, not only in terms of improved father child relationships, but also the motivation to continually invest in these relationships and maintain positive interactions.<sup>192</sup>

The submission by the North Australian Aboriginal Family Legal Service recommended that attendance at accredited behaviour change programs be court mandated for perpetrators.<sup>193</sup>

Court mandated parenting and male behaviour change programs were also supported by the Australian Association of Social Workers (AASW) in its submission to me.<sup>194</sup>

Additionally, the AASW submission referred to a study of violent men’s perceptions of themselves as fathers, which:

... uncovered a disturbing picture of what these men understood as good fathering.

A number of violent men who were involved in men’s behaviour change programs were interviewed. The study found that they continued to blame their partners for their violence. These men did not display any insight into their behaviour nor the impact it may have had on the partner or the children. Instead they were self-absorbed and felt a sense of entitlement.

All but one of the fathers believed they had been and were good fathers to their children while at the same time minimising the impact of their own violence. Their perception of themselves as good fathers was directly related to their ability to economically provide for the children and did not relate to support, nurture or care.<sup>195</sup>

In its submission to me, the Government of Western Australia referred to research currently underway to ‘investigate how and under what circumstances fathers who use violence are parenting and what the key fathering issues are that need to be addressed within these programs’.<sup>196</sup>

This research is being conducted by the Universities of Western Australia, Melbourne and South Australia, with approximately 30 industry partners, and is funded until 2016. I look forward to reading the findings from this important work.<sup>197</sup>

## Summary

### **What services, programs and support currently exist for children experiencing family and domestic violence?**

While there appears to be a number of promising initiatives to support children affected by family and domestic violence, limited information exists about the extent that these are made available to or accessed by children, or of the outcomes for children who utilise such services.

In the main, children are supported in the context of the needs of the parent escaping family and domestic violence, rather than in response to their specific therapeutic needs.

Evidence is emerging that suggests strategies to engage men as fathers may motivate behaviour change and prevent further acts of violence.<sup>198</sup>

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#### **4.5.5 What are the current public policy approaches and educational campaigns targeting children's experiences of family and domestic violence?**

Both the National Framework for Protecting Australia's Children and the National Plan to Reduce Violence against Women and their Children aim to adopt a public health approach.

The Public Health Association of Australia outlined the importance of a public health approach in relation to family and domestic violence:

A public health approach to reducing violence against women and children would mean preventing violence in the first place. A public health approach includes primary prevention (before any violence has occurred), secondary prevention (support and services for at-risk populations) and tertiary prevention (support to reduce effects of violence and prevent recurrence).

The ideal is primary prevention, which aims to bring about a cultural shift toward gender equality, changing cultural norms toward non-acceptance of violence against women and redistributing resources to promote access to services for all. Public health education campaigns may be useful, but other public health approaches that lead to structural change are needed to support attitudinal change.

Arguably, the needs of children affected by family and domestic violence have been somewhat incidental or peripheral to the public policy approach to family and domestic violence, and increasingly folded into child protection responses.

As researchers, Bromfield, Arney, and Higgins argue:

The degree to which the rhetoric of Australia's public health approach to child protection actually equates with a public health model is debatable. Its apparent failure is a function of the limited forms in which a public health approach has been applied to child protection rather than the public health approach per se... The key elements of a public health approach need to be re-examined as it pertains to child welfare reform in Australia, and missing elements need to be systematically implemented to complement existing reforms.<sup>199</sup>

It is my view that children's experiences of family and domestic violence must be understood in their own right and not just as part of an adult situation.

Save the Children commented on the need for public policy approaches to adopt a greater focus on primary prevention to improve outcomes for children, for example, through education, awareness raising activities and the promotion of equality in our society:

...there is no one-size-fits-all solution to issues of family violence. There are many complex issues, including why women may not leave a violent relationship.

Unless we start taking a primary prevention approach to eliminating family violence in our community, the work of Save the Children and many other organisations to support women and their children will remain reactive not preventative.<sup>200</sup>

Relationships Australia stated in its submission that:

Public policy approaches should be clear about the behaviours they are aspiring to change and the outcomes they are seeking to achieve. For example, general public awareness campaigns that feature women successfully leaving violent relationships may place victims still living in these relationships in greater danger, especially when delivered without links to appropriate support services.<sup>201</sup>

Berry Street emphasised the need for a public health approach to family and domestic violence:

The response to family violence in the public health model of prevention includes a sustained and balanced primary, secondary and tertiary response with significant and sufficient investment at each point of this continuum.<sup>202</sup>

The submission made by the NSW Government told me that:

Given the intergenerational transference of domestic and family violence, successful outcomes for children are affected by the availability of co-occurring primary, secondary and tertiary prevention strategies. Early identification and response to children is critical in order to protect and prevent further violence.

A service system which is invested in all three types of prevention is most likely to succeed in addressing the immediate needs of children and influencing their future relationship choices and behaviours.<sup>203</sup>

The joint submission by the Australian Institute of Family Studies (AIFS) and Australia’s National Research Organisation for Women’s Safety (ANROWS) emphasised the need for:

A comprehensive and coherent policy framework to support understanding and practice of [family and domestic violence] responses, prevention and early intervention for children affected.<sup>204</sup>

AIFS and ANROWS also stated in their joint submission that:

Throughout Australia, there are differing levels of integration of approaches to the issue of DFV and related service provision...

The DFV Children Report suggests a significant need for better integration of services for children, including better communication and integration between family violence services and other systems, including the child protection system, the state-based justice system, family support systems such as those that deliver maternal and child health services, and the education system.

A clear and coherent policy framework is needed at state and federal levels to support understanding and practice of DFV responses, prevention and early intervention to better enable discrete service sectors to work towards common goals and ensure children’s needs are met across the various sectors.<sup>205</sup>

#### **Recommendation 9:**

**The Council of Australian Governments prioritise the development of a child-focused policy framework for responses to family and domestic violence.**

### **4.5.5.1 Educational policies and campaigns**

In April 2015, COAG agreed to a national campaign for reducing violence against women and their children. In July 2015, COAG agreed that the national campaign would focus on:

galvanising the community to change the attitudes of young people to violence. This campaign focus responds to worrying data on young people’s attitudes. Currently, for example, one in four young men believe that controlling and violent behaviour is a sign of male strength...

COAG agreed to hear expert advice at its next meeting on the campaign messaging and how to target it. The campaign will be tailored to address the circumstances in each state and territory.<sup>206</sup>

Earlier in the year, when first announcing the new national campaign, Senator the Hon Michaelia Cash reinforced the need for attitudinal change within the community by emphasising that violence is a crime regardless of whether there is a ‘domestic’ or ‘family’ in front of it. She stated: ‘violence is violence. It’s a crime. Full stop’.<sup>207</sup>

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My examination has therefore provided a timely opportunity to canvas the views of experts about the nature and value of educational campaigns and their potential role as part of a broader public health approach to family and domestic violence.

I will continue to engage with Senator Cash and the Australian Government about the outcomes of the national campaign, including for children.

The Australian Association of Social Workers suggested that public policy approaches will 'fail' children affected by family and domestic violence if they do not 'lead to wide attitudinal and behavioural change in society'.<sup>208</sup>

The need to lift community understanding is evidenced by recent research commissioned by OurWatch in 2015 which confirms a significant number of young people continue to hold views that accept or tolerate violence. This survey of 3000 young people aged between 12 and 24 shows, for example, that one in four young men believe that controlling and violent behaviours are signs of male strength, and one in four young people do not think it is serious if a guy, who is normally gentle, sometimes slaps his girlfriend when he is drunk and they are arguing.<sup>209</sup>

A report released by VicHealth in September 2015 also found that young Australians aged between 16 and 24 had a higher level of attitudinal support for violence against women than those aged 35-64, as well as:

...a lower level of understanding that violence is more than physical violence and forced sex, and are less likely to support gender equality in relationships.<sup>210</sup>

Relationships Australia highlighted some of the difficulties with achieving and monitoring positive outcomes from educational campaigns, stating that it is:

...challenging to ascertain whether any positive outcomes are specifically related to educational campaigns at school or increased community awareness through the current featuring of domestic violence in the media.

Similarly, these difficulties in assessing impact of education programs exist at the community level. Funding rarely includes a component for evaluation, and service delivery experts do not have the resources or skills to conduct rigorous evaluation and research and this has resulted in an incomplete evidence base on which to inform future campaigns.<sup>211</sup>

Participants at my roundtables and written submissions warned against a one-size fits all approach to public education campaigns about family and domestic violence. The need to target approaches to certain community groups was consistently raised, for example, Aboriginal and Torres Strait Islander children and families, culturally and linguistically diverse children and families and those who are LGBTI.

The Menzies School of Health Research provided information about social marketing campaigns and community approaches to promoting the safety of children in the Northern Territory:

Families, communities and practitioners require more information about what constitutes child abuse and neglect, its impact and how it can be prevented. Due to the over-representation of Aboriginal children in the NT statutory child protection system it is imperative that community education strategies resonate with Aboriginal families and communities.<sup>212</sup>

The Aboriginal Family Law Services (WA) also identified the need for targeted campaigns:

...focussing on the impact of family and domestic violence on Aboriginal men, women and children. We realised the gap in existing campaigns which focused on gender issues, were mainstream in their approach and may not have had the reach that an Indigenous specific campaign could achieve.<sup>213</sup>

The National LGBTI Alliance also reinforced the need for nuanced approaches targeting groups with different experiences and needs:

Our respondents identified multiple adverse outcomes of public policy approaches and educational campaigns that claim to address family and domestic violence without addressing the needs of LGBTI young people. Similarly, many respondents felt that LGBTI specific resources did not consistently or adequately address the family and domestic violence needs of LGBTI young people.<sup>214</sup>

The submission from the NSW Government highlighted the key elements of its effective child protection and parenting education practices for newly arrived migrant and refugee communities:

- grassroots, including engagement with key community members. An example of a successful program is the nationally recognised We All Say No project funded by FACS
- use of experienced casework practitioners or experts who have knowledge of an area such as child protection in partnership with workers who are well connected with the target community and culture
- training and use of bilingual community educators to deliver information.<sup>215</sup>

The Interim Report on domestic violence in Australia prepared by the Finance and Public Administration References Senate Committee released in March 2015 included a recommendation supporting the inclusion of respectful relationships education in the national curriculum.<sup>216</sup>

The Senate Committee’s Final Report released in August 2015 recommended that:

The Commonwealth Government consider focusing on work that reinforces the value of school based education across all age groups on respectful relationships and responses to domestic and family violence.<sup>217</sup>

The Australian Institute of Family Studies (AIFS) and Australia’s National Research Organisation for Women’s Safety Ltd. (ANROWS) state in their joint submission:

Most school-based prevention programs are delivered in secondary schools. There is little evidence about effective practice with younger children; however, there is a strong argument for primary prevention to begin in pre- and primary school levels given that attitudes towards gender and violence may already be ingrained by the time children reach secondary school age.<sup>218</sup>

In its submission to me, the NSW Government also noted the lack of evidence about effective education campaigns for younger children:

The rationale for primary prevention work with children, including education campaigns, is premised on the theory that attitudes to gender equality and violence are formed in early childhood. However, there is relatively little evidence for the efficacy of primary prevention programs for children, as most evaluated programs are delivered to secondary school students.<sup>219</sup>

Submissions referred to a range of existing programs that promote healthy relationships to school-aged children.

The National Association for the Prevention of Child Abuse and Neglect (NAPCAN), for example, runs LOVEBiTES, which is a school based family and domestic violence and sexual assault prevention program for 15 to 17 year olds. Respectful Relationships, also run by NAPCAN, offers programs for preschool, primary school and high school.

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The submission from the North Australian Aboriginal Family Legal Service is supportive of programs like LOVEBITES:

A more integrated program, such as the Love Bites program offered by NAPCAN is recommended for delivery in schools throughout the Northern Territory. Ideally, respectful relationships programs should commence as early as possible in primary school and progress in an age appropriate manner throughout each child's schooling years.<sup>220</sup>

An evaluation of the LOVEBITES program (among Year 10 students) and Respectful Relationships program (among Year 7 students) reported 'uneven findings' based on the 135 survey responses collected from students and suggested that the programs are 'more effective in changing students' attitudes in some domains than in others'.<sup>221</sup>

The evaluation reported, for example, that:

The LOVEBITES and Respectful Relationships programs had a significant and positive impact on students' attitudes towards domestic violence, attitudes towards gender relations, and skills in having respectful relationships. Students who participated in the two violence prevention programs showed significant improvements in their attitudes and skills in these areas.

On the other hand, the programs had little or no impact on Year 7 or Year 10 students' attitudes towards aggression and alternatives to aggression, no impact on Year 10 female students' attitudes towards dating violence and a mixed impact on males' attitudes, a mixed impact on Year 10 students' perceptions of various abusive or coercive behaviours as violence, and a negative impact on Year 7 female students' attitudes towards bullying.<sup>222</sup>

I welcome the joint-announcement by the Prime Minister, Senator Cash, Rosie Batty and Ken Lay on 24 September 2015 that respectful relationships programs will be rolled out in schools across Australia from Kindergarten to Year 10 no later than 2017.<sup>223</sup>

I am pleased that respectful relationships programs will commence as early as Kindergarten and continue through to secondary schooling.

School-based educational programs alone, however, cannot address attitudinal change. Certain groups of children and their families will require targeted community-led and community based initiatives to effect change in attitudes and behaviours.

Programs to influence the values and behaviours of children should directly involve children in their design, delivery and evaluation, and be grounded in a child rights framework that promotes dignity and respect.

## Summary

### **What are the current public policy approaches and educational campaigns targeting children’s experiences of family and domestic violence?**

Overall there is no coherent public policy approach to children affected by family and domestic violence. This results in uncoordinated and poorly directed responses to children who experience family and domestic violence.

Children’s experiences of family and domestic violence must be understood in their own right and not just as part of an adult situation.

Most school-based prevention programs are delivered in secondary schools. There is little evidence about effective practice with younger children.

Children and young people should be directly involved in the development and evaluation of programs designed to achieve attitudinal and behavioural change.

## **4.5.6 Children affected by family and domestic violence who are involved with the family law system**

Since beginning my term as National Children’s Commissioner in March 2013, the issue of family and domestic violence in the context of the family law system has been raised with me by children, by adults on behalf of children, and by adults reflecting on their childhood experiences.

Concerns about family and domestic violence in relation to the family court system were raised in 18 submissions provided to my current examination.

Expert participants at each of my eight roundtables raised similar concerns.

The types of concerns raised in my examination included: a lack of understanding and inappropriate responses to family and domestic violence by those working in the family law system;<sup>224 225 226</sup> a conflict between the right of parental contact and the rights and best interests of the child and their non-violent parent;<sup>227 228</sup> court decisions which do not yet fully reflect the amendments to the Family Law Act in 2012;<sup>229</sup> and the inappropriate use of mediation for these families.<sup>230 231</sup>

Also highlighted was the manipulation of court decisions by some perpetrators of family and domestic violence as a means to continue to control and inflict abuse and violence on their ex-partner which invariably impacts on their children, often for prolonged periods.<sup>232</sup>

Post-separation violence in families was identified as a serious problem.<sup>233 234 235 236 237</sup>

The submission by Melbourne Research Alliance to End Violence Against Women and their Children suggested that:

The pathway to children’s safety through separation is currently marred by the Family Law response which is frequently unresponsive to the on-going dangers and threats to the well-being of children who are continuing to live with post-separation violence.<sup>238</sup>

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The submission by the NSW Government stated:

In abusive relationships, domestic and family violence does not end with separation and in fact can escalate to lethal violence. Children may be subjected to increased exposure to domestic and family violence after separation, since this may be the only context in which the violent partner has access to his victim. As such, it is vital that the family law system identifies and responds appropriately to domestic and family violence to ensure the safety and wellbeing of women and children.<sup>239</sup>

The submission made by the Australian Association of Social Workers cautioned me that:

Care should be taken when there are high levels of threats and violence to limit the contact between the violent parent and any children.<sup>240</sup>

During my consultations, I met with Ms Kristy McKellar. Ms McKellar shared with me her personal experiences with the family court system.

**Extract from Ms McKellar's written submission<sup>241</sup>**

On the final assault the perpetrator raised a glass vase lid above my daughter whilst she lay in her cot, gesturing to throw it at us, I stood with my arms outstretched across the cot as I was shaking knowing that if he was to throw it at us, it would hit me and hopefully I could protect the majority of the impact for my daughter. Further on the final assault he threw a book at the wall next to my daughter's cot, this book landed in her cot hitting her feet.

After the final assault I was too terrified to apply for an intervention order, the police actioned a complaint and warrant intervention order on behalf of myself and my daughter for one year in 2012 and then I obtained a 5 year intervention order for both my daughter and I, as the perpetrator was found guilty of contravening this family violence intervention order on six occasions.

#### **4.5.6.1 Family Violence Amendments in 2012**

The *Family Law Legislation Amendment (Family Violence and Other Measures) Act* was passed by the Senate on 24 November 2011 and the amendments came into effect on 7 June 2012.

The amendments, which commenced on 7 June 2012, apply to proceedings issued on or after that date. Where proceedings commenced prior to 7 June 2012, the majority of amendments do not apply.

The 2012 amendments included:

- a broader definition of family violence (section 4AB)
- a broader definition of abuse (section 4(1))
- giving greater weight to child safety (section 60CC2A)
- requiring the court to actively ask each party about family violence (section 69ZQ(1)(aa))
- empowering courts to arrange for children to see a family consultant (section 11F(1))
- removing 'friendly parent' provision (repealed section 60CC(3)(c), (4) & (4A))

- new consideration of parental involvement (section 60CC(3)(c) and (ca))
- broader scope of family violence orders (section 60CC(3)(k))
- new advisors applications (section 60D)
- disclosure of family violence (repeal of section 60K and adding of sections 67ZBA & 67ZBB)
- new requirement to disclose child protection matters (section 60CH & section 60CI)
- removal of mandatory cost orders (repeal of section 117AB)
- immunity from costs order for state, territory or commonwealth child protection authorities (section 117)
- giving effect to the Convention on the Rights of the Child (section 60B).

In the context of the 2012 amendments, Fehlberg, Kaspiew, Millbank, Kelly and Behrens note that:

It remains to be seen how this recognition of the exposure of children to family violence will play out in practice.<sup>242</sup>

Recently, the Australian Institute of Family Studies (AIFS) completed a project evaluating the 2012 Family Violence Amendments. The project has three parts:

- Responding to Family Violence – A survey of family law practices and experiences, which primarily involve online surveys of professional practices and perspectives
- A Survey of Recently Separated Parents 2014, based on a large-scale survey of parents' experiences and perspectives
- A Court Outcomes Project involving:
  - » a quantitative analysis of patterns in orders for parental responsibility and time made in the Family Court of Australia (FCoA), the Federal Circuit Court of Australia (FCCoA) and the Family Court of Western Australia (FCoWA)
  - » a national analysis of court filings data provided by the FCoA, the FCCoA and the FCoWA
  - » an analysis of published judgments.

A report on the results of this project was provided to the Commonwealth Attorney General at the beginning of August 2015.

The AIFS evaluation report was publicly released on 12 October 2015, two days before I transmitted my report to the Attorney-General.

AIFS acknowledges that its evaluation occurred two years after the family law reforms were implemented and notes that ‘this is a comparatively short period of time for change to unfold’.<sup>243</sup>

The AIFS report concluded that:

Practice continues to evolve and it is likely that greater effects of the reforms will unfold over time.<sup>244</sup>

I look forward to reading the report in full, especially the issues it raises in relation to children’s safety and the family law system.

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#### 4.5.6.2 The Magellan Program

Another issue brought to my attention is the operation of the Magellan Program<sup>245</sup> in the Family Court of Australia.<sup>246</sup> At present this program includes children who have experienced ‘serious physical abuse or sexual abuse’ only. The Family Court of Australia’s Annual Report 2013–2014 states that:

Magellan cases involve allegations of serious physical abuse or sexual abuse of a child and undergo special case management. When a Magellan case is identified, it is managed by a small team consisting of a judge, a registrar and a family consultant. Magellan case management relies on collaborative and highly coordinated processes and procedures. A crucial aspect is strong interagency coordination, in particular with state and territory child protection agencies. This ensures that problems are dealt with efficiently and that high-quality information is shared. An independent children’s lawyer is appointed in every Magellan case, for which legal aid is uncapped... not all notices will necessarily result in the case being classified as a Magellan matter. The Court assesses and determines from the issues raised the matters that are managed under the Magellan program.<sup>247</sup>

Given the known impact of all types of family and domestic violence on children, and the complexity of cases that now present to the Family Court of Australia and the Federal Circuit Court of Australia, consideration should be given to expanding the Magellan program to incorporate the broader definitions of family violence and abuse as reflected in the 2012 amendments.

This approach is supported by Professor Eastaerl and Dimian Grey who argue that:

Exposure to family violence, or its after effects, does not seem to be attributed the same level of potential harm to children as direct abuse, especially sexual interference with a child... This is despite research clearly showing that exposure to family violence is extremely harmful to children and that family violence is correlated with a heightened risk of child abuse<sup>248</sup>... The Magellan program should be expanded to include family violence matters in which the harms of exposure are an issue. A uniform integrated response would better ensure that informed investigation of individual cases would take place, translating into more in-depth and uniform child welfare expert evidence to better inform judicial perceptions of risk of harm.<sup>249</sup>

While I understand that amending the criteria for access to the Magellan program has resource implications for child protection agencies and the family law system, it also has the capacity to promote and protect the wellbeing of significantly more children affected by family violence.

#### **Recommendation 10:**

**A review of the criteria for entry into the Magellan program should be undertaken by the Family Court of Australia or another appropriate entity.**

**Regard should be given to the findings and recommendations of the Victorian Royal Commission into Family Violence and also the Family Law Council Inquiry into families with complex needs and the intersection of the family law and child protection systems.**

### 4.5.6.3 The work of the Family Law Council

Currently, the Family Law Council is preparing a report on families with complex needs and the intersection of the family law and child protection systems. An interim report was released by the Commonwealth Attorney General on 21 August 2015, with the final report due by 30 June 2016.

In its Interim Report, the Family Law Council, through its review of research data and submissions, found that two aspects of the current legal system impede the protection of children. These are:

- (1) the increasingly public law nature of the parenting order work of the family courts, which were designed to deal with private law matters; and
- (2) the separation of courts and systems dealing with parenting orders, child protection and family violence matters.<sup>250</sup>

Specifically, the Interim Report noted that:

The family courts have no capacity to compel a child protection department to intervene in a family law case or to investigate the family court’s concerns, and the family law system has no independent investigative body akin to a child protection department that can provide the courts with a forensic assessment of child risk issues. These limitations mean that the risk of harm to children in family law cases is managed by judicial officers within a framework designed for ‘private’ disputes about the child’s care time with each parent, rather than a child protection framework. Although the family courts are not strictly bound by the proposals of the parties, there will rarely be an option available to a judicial officer beyond making a parenting order in favour of the ‘least detrimental’ of the proposals presented to the court.<sup>251</sup>

The Interim Report focuses on the prospect of having a streamlined, coherent and integrated approach to improve the overall safety of families and in particular children, while involved in the family law, child protection and family violence jurisdictions.

The Family Law Council made six recommendations in its Interim Report to the Attorney-General. The Family Law Council indicates that these issues will be further considered and addressed in its final report.<sup>252</sup>

The Interim Report by the Family Law Council states that its recommendations:

Represent the first step in a larger program of reform to address the wider systemic issues. In particular, the Council’s recommendations are designed to build on the stated priorities of the National Framework for Protecting Australia’s Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022.<sup>253</sup>

The intent of the Family Law Council to be inclusive of the existing work of the National Framework for Protecting Australia’s Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022 is very welcome.

As a member of the National Forum for Protecting Australia’s Children, I look forward to engaging with the Family Law Council as it progresses towards its final report and recommendations.

I also advocate that the Family Law Council directly consults with children as part of its work. Hearing the views of those most affected by the decisions that the courts make is fundamental to any program of reform.

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#### 4.5.6.4 The joint Family Court/Federal Circuit Court Children's Committee

In 2012, the Chief Justice of the Family Court and the Chief Judge of the Federal Circuit Court established a joint Children's Committee to:

explore what...work needs to be undertaken with respect to the involvement of children in parenting cases and how the courts might ascertain whether children feel their voices have been heard in proceedings that addressed their living arrangements.<sup>254</sup>

According to the Chief Justice of the Family Court, one of the factors leading to the establishment of the Family Court/Federal Circuit Court Children's Committee was the need to explore the issue of whether the voice of the child was being appropriately heard in parenting cases.<sup>255</sup>

In 2012, the joint Family Court/Federal Circuit Court Children's Committee asked the ACT Children and Young People Commissioner to undertake a consultation with children and young people about their participation in court proceedings.<sup>256</sup>

The consultation involved 15 children aged between 11 and 13 years. 13 of 15 children, in a show of hands, felt that children and young people should have a say in Family Court matters. The ACT Children and Young People Commissioner recommended that further consultations should occur with larger numbers of children and young people.

The joint Family Court/Federal Circuit Court Children's Committee has indicated that it would like to engage with me in my role as National Children's Commissioner in order to advance its objectives.<sup>257</sup>

Given my statutory responsibility to promote the human rights of all children in Australia, and the representations that have been made to me about children's safety and involvement in the family law system, particularly throughout my examination of family and domestic violence, I am pleased to offer my assistance to the Joint Children's Committee.

I am aware of the Family Violence Plan 2014–16 which is being implemented in the Family Court of Australia and the Federal Circuit Court.<sup>258</sup> The updated *Family Violence Best Practice Principles* used in both courts provides sound guidance to judicial officers.

I acknowledge the commitment of both courts to children's safety and wellbeing, and the early identification and management of matters where violence, or the risk of violence, is alleged.

## Summary

### **Children affected by family and domestic violence who are involved with the family law system**

The issue of family and domestic violence in the context of the family law system was consistently raised throughout my examination.

Key concerns about the family law system were:

- lack of understanding and inappropriate responses to family and domestic violence by those working in the family law system
- a conflict between the right of parental contact and the rights and best interests of the child
- court decisions which do not yet fully reflect the amendments to the Family Law Act in 2012
- the inappropriate use of mediation for some families.

In this context, the Australian Institute of Family Studies recently completed a project evaluating the 2012 amendments to the Family Law Act, which included greater consideration of children’s exposure to family violence. This evaluation examines how these changes have effected court decisions and outcomes for families.

Similarly, the Family Law Council, an independent advisory body which provides family law policy advice to the federal Attorney-General, is undertaking a review of the intersection of family law and child protection systems, and ways of improving assistance to families with complex needs.

I look forward to the public release of these reports and their recommendations on how to improve the overall safety of children and their families.

Another issue brought to my attention is the Magellan Program, which operates in the Family Court of Australia. Magellan cases are those where a child has experienced ‘serious physical abuse or sexual abuse’ and undergo special case management.

Given the known impact of all types of family and domestic violence on children, and the complexity of cases that now present to the Family Court and the Federal Circuit Court, consideration should be given to expanding the Magellan program to incorporate the broader definitions of family violence and abuse as reflected in the 2012 amendments.

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## 4.6 Key issues arising out of my examination

The aim of my national examination and my report is to make children an important focus in the current conversation about family and domestic violence.

Despite the lack of helpful national data about the prevalence and impacts of family and domestic violence on children aged 0 to 17 years, a number of issues emerged from my consultation.

### 4.6.1 National and disaggregated data about children affected by family and domestic violence is not readily available

The lack of reliable national data about children affected by family and domestic violence was raised throughout my consultation.

The data gaps undermine our ability to understand the full impact of family and domestic violence on our most vulnerable children. It is very difficult to build a national picture about children impacted by family and domestic violence.

Ensuring Australia has adequate data holdings to monitor child wellbeing is critical and forms part of our obligations under the Convention on the Rights of the Child. Without this we cannot understand the extent or nature of the impact of family and domestic violence on children, nor identify the most effective ways to address it.

The adoption of the ABS National Data Collection and Reporting Framework across all jurisdictions is critical to address the current gaps in understanding about the prevalence and incidence of family and domestic violence.

I urge all agencies and jurisdictions to work with the ABS towards adopting the foundations of its framework.<sup>259</sup>

#### 4.6.1.1 Limited breakdown on the age of child victims

The custom data provided to me based on the ABS Recorded Crime – Victims publication about child victims of physical assault and sexual assault could not be disaggregated beyond the age groupings of 0 to 9 years, 10 to 14 years and 15 to 17 years.<sup>260</sup> The limitation is because police data received by ABS is coded in terms of the three groupings, rather than in a single year format.<sup>261</sup>

The current age groupings about child victims of physical assault and sexual assault are too broad to be particularly helpful. For example, the developmental stages of children under 2 years of age and children aged 7 years are very different, yet they are included in the one age group.

I am encouraged that, for the next cycle of data collection, ABS will be requesting that police jurisdictions provide information on the dates of birth of victims. It will be possible to derive the exact age of victims in future releases of the Recorded Crime – Victims publication.

The custom experiences of childhood abuse data provided to me by ABS based on its 2012 Personal Safety Survey was disaggregated by four age groups (0 to 4 years, 4 to 9 years, 10 to 11 years and 12 to 14 years). The ABS was not able to provide data about people's experiences of childhood abuse between the age of 15 and 17 years because the 2012 Personal Safety Survey only collected information from respondents about experiences of abuse before the age of 15. Experiences of childhood abuse between the ages of 15 and 17 was not collected in the survey.

**Recommendation 11:**

**The Australian Bureau of Statistics Personal Safety Survey should extend its collection of information from men and women aged 18 years and over about their experiences of abuse from the ages of 0-15 years to the ages of 0-17 years.**

#### **4.6.1.2 Limited data about offenders**

The custom data about offender types provided to me by ABS based on its Recorded Crime – Victims publication cannot be used in any aggregated or comparative way due to discrepancies in definitions and ways the data is recorded in different jurisdictions.

For example, there are inconsistencies in the coding of current and former boyfriends and girlfriends as offenders:

Boyfriend/girlfriend:

- for New South Wales, Victoria, Queensland, South Australia and Tasmania, boyfriend and girlfriend are coded to ‘boyfriend/girlfriend’
- for the Northern Territory, some boyfriends and girlfriends may be included in ‘Other non-family member not elsewhere classified’ or in ‘Partner’
- for the Australian Capital Territory, boyfriend and girlfriend are coded to ‘Partner’

Ex-boyfriend/ex-girlfriend:

- for Queensland, Victoria, South Australia and Tasmania ex-boyfriends and ex-girlfriends are coded to ‘ex-boyfriend/ex-girlfriend’
- for New South Wales, ex-boyfriends and ex-girlfriends are coded to ‘Boyfriend/girlfriend’
- for the Northern Territory and the Australian Capital Territory, ex-boyfriends and ex-girlfriends are coded to ‘Ex-partner’.<sup>262</sup>

I anticipate these present inconsistencies may be resolved when the ABS National Data Collection and Reporting Framework is adopted by all jurisdictions.

In the meantime, gaining national consistency in the coding of all offender relationships to child victims should be prioritised. Accurate data about types of offenders will assist in the development and evaluation of prevention initiatives to reduce the number of child victims of physical and sexual assault.

**Recommendation 12:**

**The Australian Bureau of Statistics prioritise working with state and territory jurisdictions to achieve national consistency in the coding of offender relationships to child victims.**

#### 4.6.2 The need for early intervention

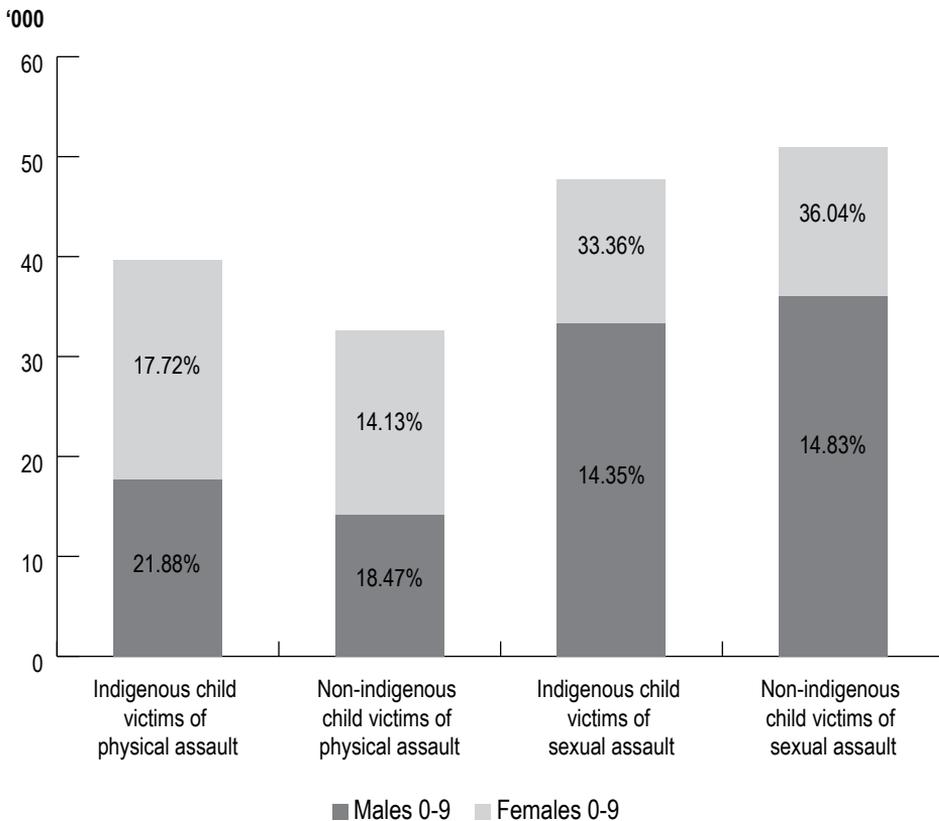
Consistently I was told that early intervention must be a priority for children affected by family and domestic violence.

The need for early intervention was reinforced by the data provided by the ABS and Kids Helpline, which showed that children in the younger age groups were predominately victims of violence.

The custom data I obtained from the ABS, based on its Recorded Crime – Victims publication, about police recorded child victims of physical assault and sexual assault in a residential location shows that **male and female children aged 0 to 9 years** accounted for a significant proportion of child victims who **reported the offender was their parent**.

Based on the custom report provided to me by ABS, I was able to compare the proportion of both Indigenous and non-Indigenous child victims of physical assault and sexual assault by parents in the state of New South Wales only:

**Figure 1: Proportion of child victims who reported the offender was their parent, by child victims aged 0 to 9, by the victim’s sex and and by Indigenous status (New South Wales, 2010–2013)**



The custom ABS 2012 Personal Safety Survey data about children who first experienced physical abuse and sexual abuse before the age of 15 also shows the vulnerability of young children, for example:

Of the 504,900 **male children** aged 0 to 14 years whose first incident of **physical abuse was perpetrated by a parent**, 302,000 (59.8%) were aged between 4 and 9 years when the incident occurred.

Of the 431,900 **female children** aged 0 to 14 years whose first incident of **physical abuse was perpetrated by their father**, 246,900 (57.16%) were aged between 4 and 9 years when the incident occurred.

Of the 150,700 **female children** aged 0 to 14 years whose first incident of **sexual abuse was perpetrated by their father/stepfather**, 62,700 (41.6%) were aged between 4 and 9 years when the incident occurred.

Of the 296,000 **female children** aged 0 to 14 years whose first incident of **sexual abuse was perpetrated by some other male relative or in-law**, 162,000 (54.72%) were aged between 4 and 9 years when the incident occurred.

With respect to the Kids Helpline, when comparing its family and domestic violence contacts with the demographic characteristics of all contacts to the Kids Helpline, there was a higher rate of contact about family and domestic violence by children aged 5 to 11 years.

Having said this, it should be noted that less than 1% of all contacts with the Kids Helpline involved concerns about family and domestic violence.<sup>263</sup> As the Kids Helpline submission stated:

It may be that children do not see Kids Helpline as an appropriate source of support for this situation, that they are seeking support elsewhere, or that they are not seeking support at all.<sup>264</sup>

Research<sup>265</sup> into neuroscience has shown that:

Early experiences influence the developing brain. From the prenatal period through the first years of life, the brain undergoes its most rapid development, and early experiences determine whether its architecture is sturdy or fragile. During early sensitive periods of development, the brain’s circuitry is most open to the influence of external experiences, for better or for worse.<sup>266</sup>

Ms McKellar shared her experience of family and domestic violence including how it escalated during her pregnancy and how it impacted on her daughter in the early years.

#### **Extract from Ms McKellar’s written submission<sup>267</sup>**

Obligation sits with all of us to understand and prioritise the relationship between early life experiences and cognitive, social, emotional, and physical health and the consequences of chronic exposure to violence for the unborn child and in early childhood.

My daughter’s brain development was heavily focussed on strengthening its strategies for survival in her hostile world, which disrupted her attachment and compromised her right to feel safe, calm, protected and nurtured.

The family violence my daughter suffered resulted in her developing hypervigilance, feeling highly sensitive, overreacting to triggers and nonverbal cues that other children would find non-threatening.

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I had to prioritise my daughter's early intervention and recovery, whilst acknowledging and addressing my own recovery, to ensure I could support and nurture her in reducing the negative physical, cognitive, emotional, and social growth impacts from her early exposure to family violence.

I hope to assist in providing a wider appreciation of the devastating impact of family violence on the unborn and developing child, influencing decisions that will create a safer, more predictable and enriching world for children.

**Information on family and domestic violence in pregnancy was identified as a key information gap in the National Maternity Data Development Project.<sup>268</sup>**

No jurisdiction collects information on family and domestic violence as part of its Perinatal Data Collection. Currently, some jurisdictions do routinely screen women for family and domestic violence in pregnancy while others screen on a case-by-case basis.<sup>269</sup>

A participant at my Perth Roundtable, Ms Sharon Cooke, Australian Association for Infant Mental Health West Australian Branch indicated that:

In the last 30 years we have seen a marked erosion in quality coordinated continuous care of families from pregnancy to school-age...It's a critical window of time that can most significantly impact the trajectory of an individual's life – maximising brain development, regulating their stress response (HPA axis) and creating psychological, social/emotional and physical wellbeing...Recent breakthroughs in how we understand brain development and epigenetics point towards early intervention as the best long-term outcome for all.<sup>270</sup>

The Royal Australian and New Zealand College of Psychiatrists pointed out that:

Pregnancy is a time of heightened risk for mother and child. Doctors must ensure they screen women for family violence and be familiar with appropriate responses.<sup>271</sup>

I am very encouraged by the 2015 Australian Institute of Health and Welfare's report on *Screening for domestic violence during pregnancy – Options for future reporting in the National Perinatal Data Collection*.<sup>272</sup>

The report discusses barriers to, and opportunities for, the collection of data on screening for family and domestic violence during pregnancy. The report proposes options for data collection through the National Perinatal Data Collection.

A mother of a child with disability who experienced family and domestic violence during pregnancy and after giving birth provided me with a submission from which I have taken this extract.

**Extract from Ms Emma Gierschick's written submission<sup>273</sup>**

I have absolutely NO photos of ——— smiling at all in the first 20 months of her life – and just thought I had an unanimated quiet withdrawn child who would look startled with big wide eyes most of the time – who didn't smile. She rarely cried, but also didn't engage much and certainly never laughed or giggled with happiness or joy. It was only upon leaving that I discovered what a giggly, energetic bundle of mess, noise and mischief I have who is always very 'busy' and loves dancing, singing and laughing. She wakes with a smile on her face now or a giggle.

Future screening will enable women experiencing family and domestic violence to have an increased chance of receiving support. I will monitor progress for the screening of family and domestic violence during pregnancy.

**Recommendation 13:**

**Options for data collection on screening for family and domestic violence during pregnancy through the National Perinatal Data Collection are progressed by the Australian Institute of Health and Welfare.**

Participants at a number of my roundtables and numerous submissions<sup>274</sup> reinforced the importance of the first 1000 days between conception and two years of age, and the value of investing in the early years.

Experiences of family and domestic violence have been linked to detrimental consequences for brain development of children during pregnancy and early childhood.

Families Australia emphasised that:

In order to reduce the negative impact on children, who experience family and domestic violence, to improve their life outcomes, and to break the intergenerational cycle of violence, it is vital that comprehensive support be available as early as possible, and on a long-term basis if necessary.<sup>275</sup>

The submission from the Australian Association for Infant Mental Health West Australian Branch reinforced this:

For infants and young children who experience developmental trauma, prevention and early intervention is of crucial importance given the immediate and long-term impact on development and the compelling evidence for the impact of intervening early.<sup>276</sup>

Researchers, Fehlberg, Kaspiew, Millbank, Kelly and Behrens point out that:

... a growing field of neurodevelopmental research show[s] that exposure to family violence may have permanent effects on the development of the brain in young children, especially in the absence of therapeutic intervention.<sup>277</sup>

The National Framework for Protecting Australia’s Children is committed to early intervention. Its Third Action Plan will be incorporating a First 1000 Days Strategy, which is supported by all states and territories in Australia.

The focus on the early period of child development will hopefully drive improved awareness and understanding of its importance and the critical role of parenting.

As a member of the National Forum for the National Framework and its Third Action Plan, I will continue to advocate for laws, policies and programs that prioritise investment in the early years and early intervention initiatives for children.

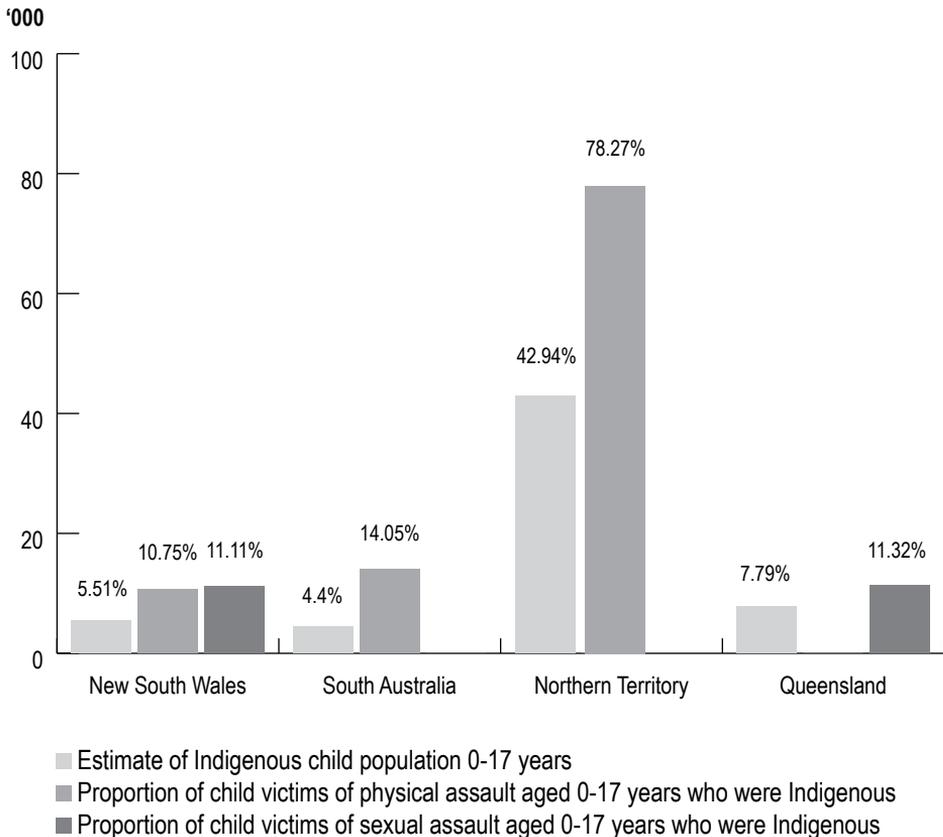
### 4.6.3 Aboriginal and Torres Strait Islander children are over represented

The over-representation of Aboriginal and Torres Strait Islander children in the context of family and domestic was raised in written submissions, at all of my roundtables and in many of the individual consultations I conducted.

The custom data I obtained from ABS based on its Recorded Crime – Victims publication about police recorded child victims of physical assault and sexual assault in a residential location shows that Aboriginal and Torres Strait Islander children are overrepresented as child victims.

The physical assault and sexual assault data about child victims provided to me by ABS based on its Recorded Crime – Victims publication is likely to be an underestimate of the actual number of victims. The ABS data only includes offences that come to the attention of police.<sup>278</sup>

**Figure 2: Estimate of Indigenous child population aged 0 to 17 years compared with proportion of police recorded child victims of physical assault and sexual assault aged 0 to 17 years who were Indigenous, by jurisdiction (2010–2013)**



In Victoria, the Taskforce 1000 initiative is examining the circumstances facing Aboriginal and Torres Strait Islander children in out-of-home care.<sup>279</sup> Victorian Commissioner for Aboriginal Children and Young People and Co-Chair of the Taskforce 1000 Steering Committee, Mr Andrew Jackomos, told me that:

After reviewing and discussing over 400 (out of approximately 1300) Aboriginal children in out of home care; the primary driver into child protection for Aboriginal children is Family Violence, and it is often accompanied with alcohol and drug misuse. This has been in approximately 85% of cases. Specific data collected in the T1000 is the responsibility of DHHS and has not been published.<sup>280</sup>

The need for a spectrum of primary, secondary and tertiary interventions to overcome the disadvantages faced by Aboriginal and Torres Strait Islander children and families was raised in my national examination.

The Third Action Plan of the National Framework for Protecting Australia’s Children has a cross-cutting strategy to focus on Aboriginal and Torres Strait Islander children and families.

The Third Action Plan’s focus on early intervention will seek to address the needs of Aboriginal and Torres Strait Islander children and families dealing with complex issues, including family and domestic violence.

It is intended that a new Aboriginal and Torres Strait Islander working group will be established to support the implementation of the Third Action Plan and report on progress and outcomes.

While the Third Action Plan will have a cross-cutting strategy to address the needs of Aboriginal and Torres Strait Islander children, and a focus on early intervention, the Indigenous Health Equity Unit at the University of Melbourne has established a Scientific Committee to progress a research agenda on the impact of a First 1000 Days approach.<sup>281</sup>

The research agenda for the First 1000 Days approach is coordinated by Professor Kerry Arabena, Chair of Indigenous Health from the University of Melbourne’s School of Population and Global Health. Professor Arabena is also the Director of the Onemda VicHealth Koori Health Unit.

Professor Kerry Arabena has provided me with a description of the work underway, as it relates to family and domestic violence.

Professor Arabena’s statement can be found on page 159.

Professor Arabena believes that ‘a radical change is required in how we think about and enhance the early outcomes for Aboriginal and Torres Strait Islander children in Australia.’

It is crucial that our interventions achieve sustained change by investing in the early years, rather than the default position of intervention at the point of crisis.

The current funding for Professor Arabena’s project is from the Onemda VicHealth Koori Health Unit, which will cease on 30 June 2016.

#### **Recommendation 14:**

**The Australian Government Department of Social Services support the work of Professor Arabena and the Indigenous Health Equity Unit at the University of Melbourne to progress the early intervention research agenda under the First 1000 Days initiative.**

### **Statement from Professor Kerry Arabena and the importance of the First 1000 Days**

A radical change is required in how we think about and enhance the early outcomes for Aboriginal and Torres Strait Islander children in Australia. Too many children and young people do not have the start in life they need. As our understanding of developmental science improves, it becomes clearer and clearer that adverse events in a child's life lead to structural changes in brain development that have life-long and societal ramifications. We now also know these ramifications are intergenerational. Not intervening will affect not only this generation of children, but also the next. Those who suffer adverse childhood events achieve less educationally, earn less and have worse health outcomes – all of which makes it more likely that the cycle of harm is perpetuated in the following generation.

The First 1000 Days Scientific Symposium was a call to consider the implementation of new interventions founded in rigorous science, and to consider the cultural protective factors needed to support mothers, fathers and their children in the 'critical window of opportunity' from conception to the age of two. International research shows that early intervention programs during pregnancy and in the early months and years of a child's life have tremendous positive impacts on health later in life. The physiological, educational and emotional environment of the child in this 'First 1000 Days' has been shown to exert a profound impact on long-term developmental and life trajectories.

The Symposium considered how to develop and apply high-quality evidence to the issue of childhood vulnerability in Aboriginal and Torres Strait Islander populations that is grounded both in the neuroscience of early brain development and in the complex effects of social and community environments on children's development.

Addressing family violence was identified as one of many possible research themes for the First 1000 Days approach.

Research into family violence and violence interventions has direct implications for child protection and child deaths. There is a need to find out what works in family violence interventions, and to use an approach that recognises the spectrum of violence and addresses both physical and emotional violence. For example, empowerment is inversely related to levels of violence, but empowerment does not change negative attitudes to women.

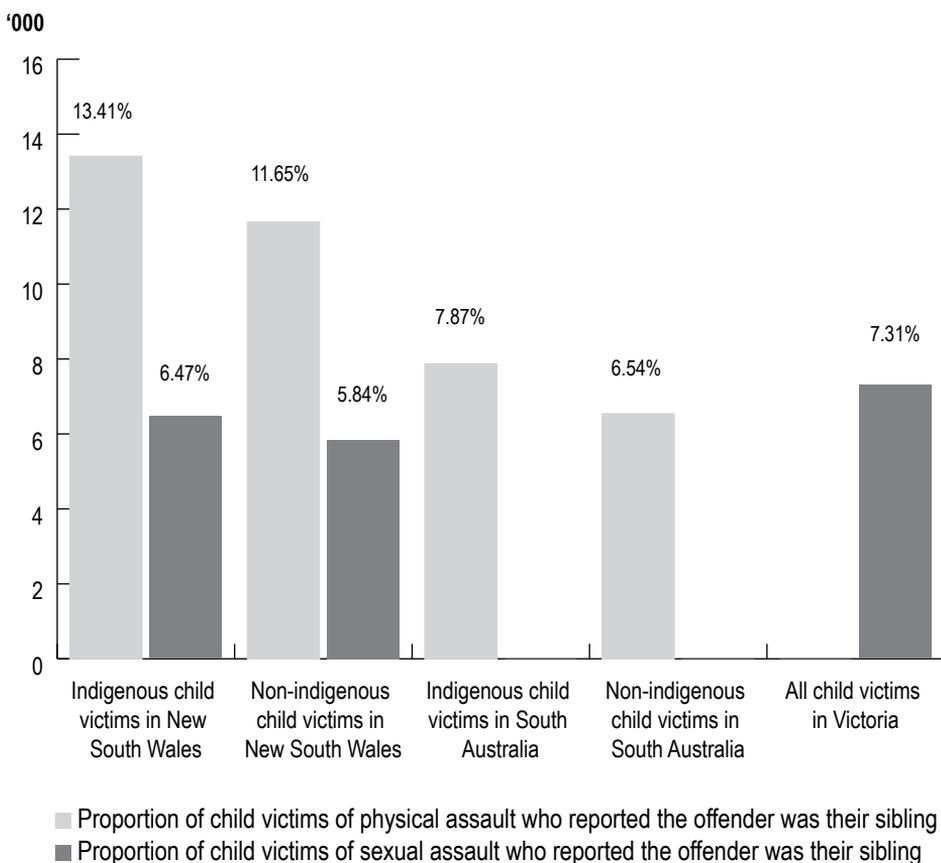
An in-depth investigation into communities' needs and goals is required along with a scoping of what people are already doing in Aboriginal and Torres Strait Islander communities. Such an approach would enable a project to be tailored to the geographic area in which it is being implemented and address the community's needs and goals. This project could be integrated with, but not limited to, drug and alcohol services and housing services specific to the area in which it is being implemented in partnership with industry organisations and communities.

To assess barriers and current knowledge on family violence and violence interventions, a thorough literature review is required to identify gaps in this area, previous successful interventions and different models. Community consultation is needed to ensure that the community has input on their needs and goals, which are then included and embedded in the interventions. There could be an application of the same model in different contexts or with a different focus that is tailored to specific geographic areas.

### 4.6.4 Sibling violence

The custom data I obtained from ABS based on its Recorded Crime – Victims publication about police recorded child victims of physical assault and sexual assault in a residential location shows siblings accounted for a sizable proportion of offenders.

**Figure 3: Proportion of child victims who reported the offender was their sibling, by Indigenous status and by jurisdiction (2010–2013)**



The extent of sibling violence against children aged 0 to 17 years is not known at the national level. Preliminary research suggests that **disclosure** of sibling sexual abuse is rare:

The small number of qualitative studies into disclosure in cases of sibling sexual abuse consistently shows that disclosure is extremely rare, especially during or soon after the abuse had occurred.<sup>282</sup>

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Sibling violence was identified as an emerging concern by participants at some of my roundtables and in some of the written submissions. The Kids Helpline, for example, pointed out that:

Nearly 14% of DFV contacts to Kids Helpline involved violence by siblings, and many children reported that their parents were either unwilling or unable to address the issue. It is our view that this form of family violence is under researched. There would be considerable value in undertaking research in regard to this issue to better inform the development and implementation of preventative strategies.<sup>283</sup>

**The need for greater research about sibling violence** was reinforced in the submission made by Australian Psychological Society:

Another area that is often overlooked is the impact on children of their siblings who may be violent towards one or both parents or stepparents. The complex aetiology of such violence is embedded in family violence research, with power differentials operating often during the younger years of the violent adolescents, and the change with growth and impulse control evident, even with the filicide data... This area of violence towards parents and younger siblings is an emerging area of research that needs attention.<sup>284</sup>

The Kids Helpline provided this case study of one contact to highlight the reality of sibling violence:

#### **Extract from the BoysTown / Kids Helpline submission**

I'm 15 and live in a small country town in Australia. I have recently been abused by my older brother. He was throwing me across rooms, slamming me into walls, punching me in the face and threatening me with knives. After that I started self-harming and I lost all my friends except my best friend. I had told my best friend, family and even the police and nothing is still done about it. He comes up every month for about 2 weeks. That whole 2 weeks, I have to, either leave the house and stay at a friends', or stay locked in my room.<sup>285</sup>

Sibling violence is an area that requires further investigation. The Australian National Research Organisation for Women's Safety (ANROWS) has identified sibling sexual abuse as an area where there is a research gap.<sup>286</sup>

#### **Recommendation 15:**

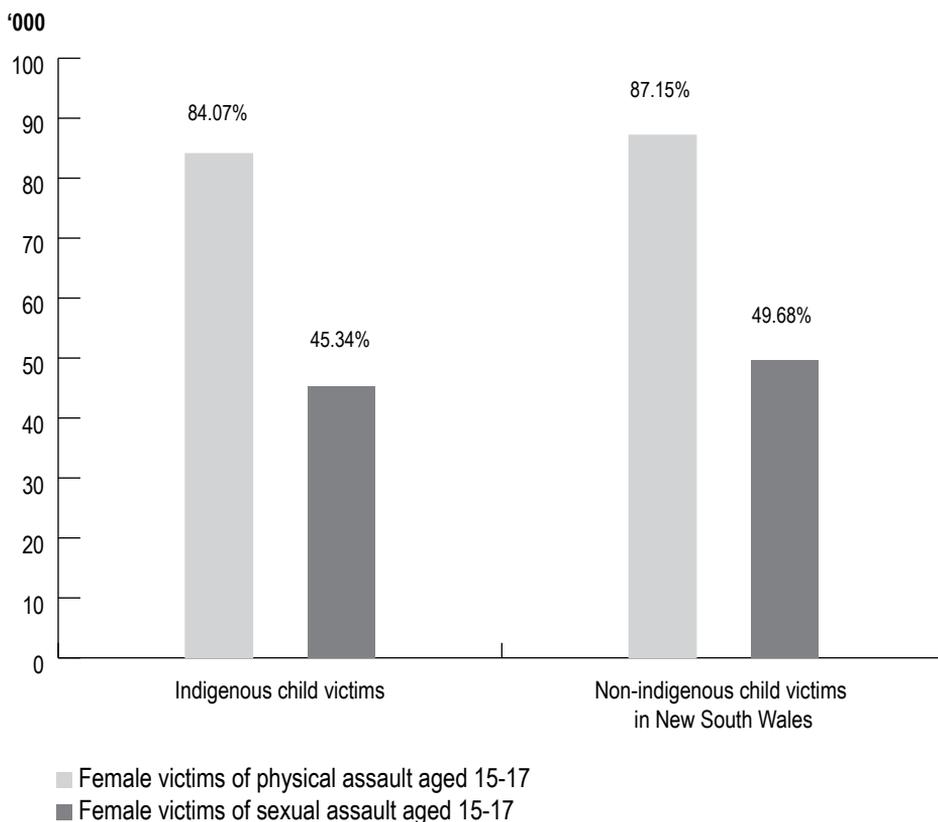
**The next ANROWS (Australia's National Research Organisation for Women's Safety) Research Program should include research into sibling violence.**

### **4.6.5 Female children aged 15 to 17 years subjected to physical assault and sexual assault by their partners**

The custom data I obtained from ABS based on its Recorded Crime – Victims publication about police recorded child victims of physical assault and sexual assault in a residential location shows that female children aged 15 to 17 years accounted for a significant proportion of child victims who reported the offender was their partner.

Based on the custom data provided to me by ABS, I was able to compare the proportion of both Indigenous and non-Indigenous female child victims aged 15 to 17 of physical assault and sexual assault by partners in the state of New South Wales only:

**Figure 4: Proportion of child victims who reported the offender was their partner, by female child victims aged 15 to 17 years and by Indigenous status (New South Wales, 2010–2013)**



The custom report provided to me by ABS based on its 2012 Personal Safety Survey did not provide physical abuse or sexual abuse prevalence estimates for children aged 15 to 17 years.

Evidence I gathered through my roundtables and written submissions also indicated that an increasing number of female children aged 15 to 17 years are experiencing and seeking help for violence perpetrated by their partners.

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The Northern Territory Department of Children and Families pointed out in its submission to me that:

Frontline practitioners have observed a growing cohort of young people experiencing violence within their relationships. Typically, they are teenage girls partnered with teenage boys or young men, and include cases where the teenage girl is still technically a child and already has children of her own. The girls and their children may be the subject of child protection interventions. They may be 'self-placing', removing themselves from a child protection placement and relocating to another place of their own choosing, typically with their boyfriend and/or his family, which both reflects and reinforces inter-generational trauma related to family and domestic violence.<sup>287</sup>

In its submission, Relationships Australia also raised the issue of emerging service gaps for this vulnerable group:

We are seeing a trend of an increasing number of children aged 15-17 years who are seeking support through our domestic violence programs. Older adolescent males are either mandated or voluntarily seeking support to stop using abuse in their relationships with women. Older adolescent women are seeking support as the victim of domestic violence from relationships with young men at school and in the community. At present we do not have sufficient resources to tailor additional services for this age group.<sup>288</sup>

It is important that we take steps to better meet the needs of and understand at the national level the situation of female children aged 15 to 17 years who are experiencing violence by their partners.

**Recommendation 16:**

**The next ANROWS (Australia's National Research Organisation for Women's Safety) Research Program should include research into female children aged 15 to 17 years affected by family and domestic violence.**

The Australian Institute of Family Studies and ANROWS brought to my attention the fact that:

... The current commitment of funding for ANROWS expires six years before the end of the National Plan. A longer term funding commitment (at least to the end of the National Plan in 2022) is necessary to enable ANROWS to fulfil its potential, including providing support for longer term research projects, which are crucial in understanding, for example, the effects of perpetrator intervention programs.

To illustrate this point, the open grants applications process conducted by ANROWS for its Research Program 2014–2016 resulted in 50 applications for research projects to address current gaps in the evidence base, with a total value of approximately \$15 million; however, ANROWS has been able to fund a Research Program valued at \$3.5 million.<sup>289</sup>

I encourage the Australian Government to commit to funding ANROWS to at least the end of the National Plan to Reduce Violence against Women and their Children in 2022.

## Summary

### Key issues – the impact of family and domestic violence on children

A number of key issues emerged from my national examination:

- National and disaggregated data about children affected by family and domestic violence is not readily available, including limited breakdown on the age of child victims and limited data about offenders and perpetrators.
- There is a need for early intervention, especially in the first 1,000 days between conception and the age of two years and a need for better information on family and domestic violence in pregnancy.
- Aboriginal and Torres Strait Islander children and families in the context of family and domestic violence are over represented.
- There is a need for targeted research into sibling violence, and family and domestic violence experienced by female children aged 15 to 17 years.

## 4.7 Conclusion

On 28 September 2015, the Victorian State Coroner, Judge Ian Gray, delivered written findings into the death of Luke Batty and made 29 recommendations.

28 of the recommendations were directed to the State of Victoria and its agencies. Each state and territory jurisdiction in Australia, however, has the potential to review its own laws and policies and make lasting improvements based on the findings from Luke Batty’s death.

Clearly much remains to be done to make sure that children aged 0 to 17 years can live free from family and domestic violence.

While the evidence-base about the harmful effects of family and domestic violence on children’s wellbeing is growing, much less is known about the variability in impact and the effectiveness of interventions.<sup>290</sup>

The definitional and data issues are complex. As a nation, however, we must be able to consistently identify those children affected by family and domestic violence. Where children are identified, more information must be recorded and collected.

Comprehensive data about children is required to improve our understanding about the prevalence and impact of family and domestic violence on children at the national level. As a first step, the ABS National Data Collection and Reporting Framework should be used by all jurisdictions.

I welcome the recent policy and research initiatives which aim to promote greater understanding. For example, the importance of the First 1000 Days initiative and its focus on investing in the critical period of child development between conception and the age of two.

I also welcome the Council of Australian Governments agreement to fund a national campaign to reduce violence against women and their children. I strongly encourage the direct participation of children and young people in the campaign’s development. It is critical that the campaign be tailored to address the circumstances and diverse population groups in each state and territory.

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I hope that by conducting this examination I have contributed to making the experiences of children an explicit focus in the broader national discussion currently underway.

I look forward to reporting on the progress of my recommendations in my next statutory report to federal parliament about the human rights of children in Australia.

## 4.8 Acknowledgments

I sincerely thank the following people and organisations for their support and contribution to my examination:

- Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda.
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- Ms Kristy McKellar for meeting with me and for also providing a personal submission to my examination.
- Professor Kerry Arabena for providing me with information about her First 1000 Days research program.
- Doctor John McKenzie for providing me with information about the longitudinal research by the Menzies School of Health Research.
- Associate Professor Deborah Loxton and Natalie Townsend for providing me with information on Australian Longitudinal Study on Women's Health (ALSWH) and the Mothers and their Children's Health (MatCH) project.
- Everyone who took the time to make a written submission (see Appendix 5).
- Those who presented at the roundtables in order to stimulate discussion and all participants (see Appendix 6).
- Those State and Territory Children's Commissioners/Guardians who participated in my roundtables and those who made written submissions.
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- The federal Department of Social Services who hosted my roundtables in Canberra, Adelaide, and Perth.
- The Tasmanian Department of Premier and Cabinet who hosted my roundtable in Hobart.
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- Doctor Helen Rogers and those working on LSAC and LSIC at the National Centre for Longitudinal Data for providing their research summaries for my report.

## 4.9 Recommendations

<b>Recommendation 3:</b>	The Annual Progress Reports of the National Plan to Reduce Violence against Women and their Children should detail how all jurisdictions are working towards implementing the Australian Bureau of Statistics National Data Collection and Reporting Framework.
<b>Recommendation 4:</b>	Data about a child’s experience as a victim of family and domestic violence should be recorded as a separate entry in the Australian Bureau of Statistics National Data Collection and Reporting Framework, and not just part of an adult entry.
<b>Recommendation 5:</b>	Data about lesbian, gay, bisexual, transgender and intersex status should be recorded in the Australian Bureau of Statistics National Data Collection and Reporting Framework.
<b>Recommendation 6:</b>	The Annual Progress Reports of the National Plan to Reduce Violence against Women and their Children should detail how the Australian Bureau of Statistics Personal Safety Survey is working towards surveying adequate sampling sizes across vulnerable groups.
<b>Recommendation 7:</b>	Support for the Australian Longitudinal Study on Women’s Health (ALSWH) project by the Australian Government Department of Health is extended after 30 June 2016 and support for the Mothers and their Children’s Health (MatCH) project by the Australian Government Department of Health is also extended after its National Health and Medical Research Council grant expires in 2017.
<b>Recommendation 8:</b>	Support for the ‘Improving the developmental outcomes of Northern Territory children: a data linkage study to inform policy and practice in health, family services and education’ currently being conducted in the Northern Territory by Menzies School of Health Research is provided by the Australian Government Department of Social Services after its National Health and Medical Research Council grant expires in 2017.
<b>Recommendation 9:</b>	The Council of Australian Governments prioritise the development of a child-focused policy framework for responses to family and domestic violence.

<b>Recommendation 10:</b>	<p>A review of the criteria for entry into the Magellan program should be undertaken by the Family Court of Australia or another appropriate entity.</p> <p>Regard should be given to the findings and recommendations of the Victorian Royal Commission into Family Violence and also the Family Law Council Inquiry into families with complex needs and the intersection of the family law and child protection systems.</p>
<b>Recommendation 11:</b>	<p>The Australian Bureau of Statistics Personal Safety Survey should extend its collection of information from men and women aged 18 years and over about their experiences of abuse from the ages of 0-15 years to the ages of 0-17 years.</p>
<b>Recommendation 12:</b>	<p>The Australian Bureau of Statistics prioritise working with state and territory jurisdictions to achieve national consistency in the coding of offender relationships to child victims.</p>
<b>Recommendation 13:</b>	<p>Options for data collection on screening for family and domestic violence during pregnancy through the National Perinatal Data Collection are progressed by the Australian Institute of Health and Welfare.</p>
<b>Recommendation 14:</b>	<p>The Australian Government Department of Social Services support the work of Professor Arabena and the Indigenous Health Equity Unit at the University of Melbourne to progress the early intervention research agenda under the First 1000 Days initiative.</p>
<b>Recommendation 15:</b>	<p>The next ANROWS (Australia's National Research Organisation for Women's Safety) Research Program should include research into sibling violence.</p>
<b>Recommendation 16:</b>	<p>The next ANROWS (Australia's National Research Organisation for Women's Safety) Research Program should include research into female children aged 15 to 17 years affected by family and domestic violence.</p>

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- 285 BoysTown (Kids Helpline), Submission No 14 to Australian Human Rights Commission, *National Children's Commissioner's examination into children affected by family and domestic violence, 2 June 2015, 13*.
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National Children's Commissioner conducting a consultation

## Appendix 1: Speaking engagements

Date	Engagement	Location
07.07.14	53rd Annual UN Youth Australia National Conference – Opening Address	Canberra, ACT
15.07.14	National Summit on ‘Behaviour in Australian Schools: Current Trends and Possibilities’	Adelaide, SA
23.07.14	Association of Women Educators Annual Dinner	Brisbane, QLD
25.07.14	Generation Next 2014: The Mental Health and Wellbeing of Young People	Gold Coast, QLD
08.08.14	<i>Children as Citizens</i> Book Launch	Adelaide, SA
20.08.14	Association of Children’s Welfare Agencies 2014 Conference. Children in a changing world: Challenges for families and communities	Sydney, NSW
05.09.14	The National Children’s Law Awards 2014	Sydney, NSW
07.09.14	Early Childhood Australia National Conference	Melbourne, VIC
09.09.14	NAPCAN National Child Protection Week breakfast event	Darwin, NT
11.09.14	National Child Protection Week – Gala Dinner	Alice Springs, NT
23.09.14	United Nations Association of Australia: Young Professionals panel event	Sydney, NSW
08.10.14	16th National Family Law Conference	Sydney, NSW
09.10.14	Headspace Board of Directors Meeting	Sydney, NSW
16.10.14	Newington College Preparatory School – Parents & Friends’ Association: Annual General meeting	Sydney, NSW
17.10.14	Official Launch of Children’s Week	Adelaide, SA
20.10.14	National Children’s Week Council Showcase event	Canberra, ACT
21.10.14	2014 National Kidsafe Day	Sydney, NSW
24.10.14	Multicultural Youth Advocacy Network: FUSE – National Multicultural Youth Summit	Sydney, NSW
03.11.14	Australian Youth Representative to the United Nations Report Back Lecture	Sydney, NSW
06.11.14	FRSA Wellbeing of Children, Families and Communities – Future Policy, Program and Practice Conference	Adelaide, SA

<b>Date</b>	<b>Engagement</b>	<b>Location</b>
19.11.14	Early Childhood Association Victorian Branch, Annual General Meeting	Melbourne, VIC
25.11.14	Ethnic Child Care, Family and Community Services Co-operative, 35th Anniversary and Annual General Meeting	Sydney, NSW
28.11.14	Australian Injury Prevention Network – Injury Prevention in Aboriginal and Torres Strait Islander People: Prevention Across the Lifespan	Sydney, NSW
11.02.15	APS Human Rights Network – How the public service can champion child rights	Sydney, NSW
25.02.15	Complaint Handlers' Information Sharing and Liaison (CHISaL) Seminar: Children and Young People as Complainants	Sydney, NSW
02.03.15	Coalition Backbench Legal Affairs Committee: presentation on the Family Law System	Canberra, ACT
05.03.15	Bathurst Child and Family Network: Big Banter – our children, their future	Bathurst, NSW
21.03.15	YMCA 2015 National Children's Services Conference	Melbourne, VIC
27.03.15	Australian and New Zealand Child Death Review and Prevention Group Annual Meeting (Manager of the Monitoring and Reporting Team at Australian Human Rights Commission attended on behalf of the Commissioner)	Melbourne, VIC
31.03.15	Early Childhood Australia: Statement of Intent Launch	Brisbane, QLD
15.04.15	Save the Children Australia. Speak out for Change: Youth Voices on Youth Issues Summit	Perth, WA
20.04.15	Kids Helpline: Insight Report Launch	Sydney, NSW
01.05.15	Building Bridges Conference 2015: Resilience, Risk Taking and Responsibility – The shared responsibilities in supporting calculated, thoughtful risk-taking to foster resilience	Wodonga, VIC
15.05.15	Grandparents Victoria and Kinship Carers Victoria: Celebrating Grandparents as kinship carers	Melbourne, VIC
18.05.15	Families Australia: Child Aware Approaches Conference 2015	Melbourne, VIC
23.05.15	Network of Community Activities: Enriching Childhood Conference 2015	Sydney, NSW
29.05.15	Settlement Services International: Caring for Children booklet launch	Sydney, NSW

## Appendix 2: Face to face meetings and teleconferences about issues affecting children and young people

Date	Meeting	Location
01.07.14	Organisation Intersex International Australia	AHRC, NSW
02.07.14	National Aboriginal and Torres Strait Islander Leadership in Mental Health (NATSILMH)	AHRC, NSW
03.07.14	The Hon Kevin Andrews MP, Federal Member for Menzies	Melbourne, VIC
08.07.14	Iftar Roundtable for Muslim Community Leaders with Affinity Intercultural Foundation	AHRC, NSW
09.07.14	CREATE: Gift presentation to National Children's Commissioner	AHRC, NSW
21.07.14	Beverly Hills Intensive English Centre	Beverly Hills, NSW
23.07.14	Online Safety Consultative Working Group, Department of Communications, Cyber Safety and Policy Coordination	Sydney, NSW
24.07.14	Professor Clare Tilbury, School of Human Services and Social Work, Griffith University	Sydney, NSW
28.07.14	Steve Armitage, Interim Principal Commissioner, Queensland Family and Child Commission	AHRC, NSW
28.07.14	Dr Jon Jureidini, Child Psychiatrist, Women's and Children's Hospital, Adelaide	AHRC, NSW
28.07.14	Georgie Harman, Chief Executive Officer, and Brian Graetz, Deputy Chief Executive Officer, BeyondBlue	AHRC, NSW
28.07.14	Professor Elizabeth Handsley, President, Australian Council on Children and the Media	AHRC, NSW
29.07.14	Jennifer Evans, Chair, NSW Children's Week Council, and Robyn Monro Miller, Chief Executive Officer, Network of Community Activities	AHRC, NSW
31.07.14	Coralie Alison, Director of Operations, Collective Shout	AHRC, NSW
04.08.14	Helen Scales, Nicole Kyrkou and Tim Crowley, Department of Education and Children's Services South Australia	Sydney, NSW
11.08.14	Professor Jennifer Llewellyn, Dalhousie University; Brian Babington, Chief Executive Officer, Families Australia; and Stella Conroy, Deputy Chief Executive Officer, Families Australia	Canberra, ACT
12.08.14	Laura John, UN Youth Representative to the United Nations	AHRC, NSW
13.08.14	David Fredericks, Deputy Secretary, Civil Justice and Legal Services Group, Department of the Attorney-General	AHRC, NSW

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
15.08.14	Associate Professor Judith Cashmore, University of Sydney	Sydney, NSW
21.08.14	Meredith Kiraly, Research Fellow, Child, Youth and Family Research Program, University of Melbourne	Sydney, NSW
21.08.14	Wendy McCarthy, Chair, headspace	AHRC, NSW
22.08.14	Jim Davies, Chief Executive Officer, Principals Australia Institute	AHRC, NSW
01.09.14	Gabrielle Kelly, Director, South Australian Health and Medical Research Institute, Wellbeing and Resilience Centre	AHRC, NSW
01.09.14	Judge Michael Baumann, Federal Circuit Court of Australia	AHRC, NSW
04.09.14	Dr Nicola Murdock, President of the Paediatrics and Child Health Division of the Royal Australasian College of Physicians	AHRC, NSW
04.09.14	Nadine Liddy, National Coordinator, Multicultural Youth Advocacy Network (MYAN)	AHRC, NSW
04.09.14	Roslyn Dundas, Chief Executive Officer, Australian Dance Council and Ausdance Inc.	AHRC, NSW
22.09.14	Amy Lamoin, Advocacy Manager, and Mia Cox, Youth Engagement Officer, UNICEF Australia	AHRC, NSW
22.09.14	Jennifer Evans, National Project Lead Child Protection, Red Cross Australia	AHRC, NSW
02.10.14	Jane Farnsworth, Special Counsel, Pro Bono & Community, King & Wood Mallesons	AHRC, NSW
07.10.14	Professor Patrick McGorry AO, Executive Director, and Kerryn Pennell, Director, Strategy & Development, Orygen – The National Centre of Excellence in Youth Mental Health	AHRC, NSW
07.10.14	Jeremy Lasek, Chief Executive Officer, National Australia Day Council	AHRC, NSW
13.10.14	Cate McKenzie, Group Manager, Multicultural, Settlement Services and Communities Group, and Kris Cala, Branch Manager, Settlement Branch, Department of Social Services	AHRC, NSW
14.10.14	Jayne Meyer Tucker, Good Beginnings	AHRC, NSW
15.10.14	Obesity Policy Coalition	AHRC, NSW
16.10.14	Jacqui Reed, Chief Executive Officer, and Noelle Hudson, National Policy and Advocacy Manager, CREATE Foundation	AHRC, NSW

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
17.10.14	Professor Elizabeth Handsley, President of the Australian Council on Children and the Media	Adelaide, SA
20.10.14	The Hon Mark Dreyfus QC MP, Shadow Attorney-General, Shadow Minister for Arts, Federal Labor Member for Isaacs	Sydney, NSW
22.10.14	Professor Richard Chisholm AM, Australian National University	Sydney, NSW
29.10.14	Liz Hefren-Webb, A/g Group Manager, Families Group, Department of Social Services	Sydney, NSW
30.10.14	Greg PRIORITY, Deputy Director General, Department of Education New South Wales; Jim Davies, Chief Executive Officer, Principals Australia Institute; and Suzanne Curyer, Director of Programs, Principals Australia Institute	Sydney, NSW
06.11.14	Kate Strohm, Director, Siblings Australia Inc.	Sydney, NSW
07.11.14	Dr Robyn Mildon, Director, and Warren Cann, Chief Executive Officer, Parenting Research Centre	AHRC NSW
10.11.14	Marvin Bernstein, Chief Policy Advisor/Conseiller Principal en Matière de Politiques, UNICEF Canada	Sydney, NSW
13.11.14	Tarina Russell, Policy and Strategy, Royal Commission into Institutional Responses to Child Sexual Abuse	AHRC, NSW
14.11.14	Anne McLeish, Director, Grandparents Victoria	AHRC, NSW
14.11.14	Dr Terry Harding, General Manager, Schools Department, Christian Education Ministries	AHRC, NSW
17.11.14	Jodie Christinat, Coordinator, and Glen Gerreyn, Director, The Roar Effect	AHRC, NSW
19.11.14	Professor Alan Hayes, Director, Australian Institute of Family Studies	Melbourne, VIC
20.11.14	Catherine Lynch, General Manager, Policy and Research Branch, Royal Commission into Institutional Responses to Child Sexual Abuse	AHRC, NSW
21.11.14	Chryne Griffiths, Aboriginal and Perinatal & Infant Social & Emotional Wellbeing Consultant, NSW Government Health, South Western Sydney Local Health District	AHRC, NSW
21.11.14	Claire Robbs, Chief Executive, Life Without Barriers and Mary McKinnon, Director Practice & Service, Life Without Barriers	AHRC, NSW
26.11.14	Reuben Cunningham, Operations Manager, Angels Goal	AHRC, NSW

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
26.11.14	Lynne Coulson Barr, Mental Health Complaints Commissioner	AHRC, NSW
27.11.14	Julie Hamblin and Jenny Owen, Consultants to the Royal Commission into Institutional Responses to Child Sexual Abuse, WestWood Spice	AHRC, NSW
02.12.14	Lyndal Ryan, National Vice President, and Rachel Colbourne-Hoffman, Early Childhood Education and Care Campaign Coordinator, United Voice	AHRC, NSW
04.12.14	Senate Standing Committee for Community Affairs	Canberra, ACT
04.12.14	Dr Susan Cochrane, Advisor for the Office of the Attorney-General and Minister for the Arts	Canberra, ACT
04.12.14	Dr Kirthana Sharma, Co-Founder, Doctors Against Pollution	AHRC, NSW
04.12.14	Murray Hansen, Chief of Staff to The Hon Julie Bishop MP, Minister for Foreign Affairs	Canberra, ACT
04.12.14	The Hon Craig Laundy MP, Federal Member for Reid	Canberra, ACT
08.12.14	Catherine Burn, NSW Deputy Police Commissioner, with Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner	AHRC, NSW
09.12.14	Gabrielle Vuletich, Chair, and Rod Ellinson, Trustee, Sabemo Foundation	AHRC, NSW
09.12.14	Ron Mell, Chief Executive Officer, YMCA	AHRC, NSW
10.12.14	Online Safety Consultative Working Group, Department of Communications, Cyber Safety and Policy Coordination	Sydney, NSW
11.12.14	Briony Scott, Principal, Wenona Girls School	AHRC, NSW
22.12.14	Brian Babington, Chief Executive Officer, Families Australia	Canberra, ACT
12.01.15	Marc Bryant, Program Manager, Hunter Institute of Mental Health	AHRC, NSW
19.01.15	Robyn Monro Miller, Chief Executive Officer, Network of Community Activities	Sydney, NSW
21.01.15	Niki Norris, Vice Chairperson, National Child Protection Alliance	AHRC, NSW
22.01.15	Claire Robbs, Chief Executive, Life Without Barriers	AHRC, NSW
22.01.15	Tammy Solonec, Indigenous People's Rights Manager, Amnesty International	AHRC, NSW

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
23.01.15	Magdalena Madden, Principal Consultant, Council for the Care of Children in South Australia	AHRC, NSW
27.01.15	Pam Simmons, Guardian for Children and Young People, Office of the Guardian for Children and Young People in South Australia	AHRC, NSW
02.02.15	Commissioner Lindiwe Mokate, South African Commissioner for Children's Rights and Basic Education	AHRC, NSW
02.02.15	Dr Ruth Rudge and Dr John Rudge, Clinical Psychologists, Southern Cross Clinical Psychology Services	AHRC, NSW
03.02.15	Samantha Yorke, Public Policy and Government Affairs, Google Australia	AHRC, NSW
05.02.15	National Advisory Committee for the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP)	AHRC, NSW
09.02.15	Ian Baker, Director, Education Policy and Programs, NSW Catholic Education Commission, and Ross Fox, Executive Director, National Catholic Education Commission	AHRC, NSW
11.02.15	Professor Deborah Mitchell, Australian Demographic and Social Research Institute, Australian National University	Canberra, ACT
12.02.15	Professor Elizabeth Handsley, President of the Australian Council on Children and the Media	AHRC, NSW
16.02.15	Andrew Johnson, NSW Advocate, Advocate for Children and Young People	AHRC, NSW
19.02.15	Professor Patrick McGorry AO, Executive Director, Orygen – The National Centre of Excellence in Youth Mental Health	AHRC, NSW
23.02.15	Dr Susan Cochrane, Advisor for the Office of the Attorney-General and Minister for the Arts	Canberra, ACT
23.02.15	Natasha Cole, Advisor to The Hon Sussan Ley MP, Minister for Health, Minister for Sport	Canberra, ACT
23.02.15	Senator The Hon Penny Wright, Senator for South Australia, Australian Greens	Canberra, ACT
25.02.15	Dr Kirthana Sharma, Co-Founder, Doctors Against Pollution	AHRC, NSW
25.02.15	Philip Brown, A/g Group Manager, Families, Department of Social Services	AHRC, NSW

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
26.02.15	Natasha Scully and Helen Freeland, project for establishing Australia's first national sovereign wealth fund for children	AHRC, NSW
26.02.15	Eddie Cubillo, Executive Officer, National Aboriginal & Torres Strait Islander Legal Services	AHRC, NSW
06.03.15	Ashley Hill, Project Officer and Consultant, Ethnic Child Care, Family and Community Services Co-operative Ltd	AHRC, NSW
10.03.15	Child Rights Taskforce Meeting	Sydney, NSW
11.03.15	John Shevlin, Project Executive Officer, Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP)	AHRC, NSW
13.03.15	Professor Anne Graham, Director, Centre for Children & Young People, Southern Cross University	AHRC, NSW
18.03.15	Nick Rushworth, Executive Officer, Brain Injury Australia	AHRC, NSW
18.03.15	Philip Brown, A/g Group Manager, Families, Department of Social Services	AHRC, NSW
19.03.15	Tracy Adams, Chief Executive Officer, and John Dalgleish, Manager, Strategy and Research, BoysTown	AHRC, NSW
23.03.15	James McAdams, Advisor to The Hon Sussan Ley MP, Minister for Health, Minister for Sport	Canberra, ACT
23.03.15	Kate Pope PSM, First Assistant Secretary, Children and Community Services Division, and Hawari Badri, Assistant Secretary, Child Protection and Wellbeing Branch, Department of Immigration and Border Protection	Canberra, ACT
23.03.15	The Hon Philip Ruddock MP, Chair, and The Hon Laurie Ferguson MP, Deputy, Parliamentary Joint Committee on Human Rights	Canberra, ACT
24.03.15	Lara Purdy, Branch Manager, Financial Capability and Children's Policy, Department of Social Services and Professor Anne Graham, Director, Centre for Children & Young People, Southern Cross University	AHRC, NSW
25.03.15	Maree Walk, Deputy Secretary, Programs and Service Design, NSW Department of Family and Community Services	Sydney, NSW
26.03.15	Professor Elizabeth Handsley, President, Australian Council on Children and the Media	AHRC, NSW
26.03.15	Anania Tagaro, Senior Project Officer, Save the Children Australia	AHRC, NSW

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
30.03.15	Professor Fiona Arney, Director, Australian Centre for Child Protection, University of South Australia, and Magdalena Madden, Principal Consultant, Council for the Care of Children	AHRC, NSW
01.04.15	Nicole Mayo, Chief Operating Officer, CRIMTRAC	AHRC, NSW
01.04.15	Morgan Carpenter, President, Organisation Intersex International Australia, with Tim Wilson, Human Rights Commissioner	AHRC, NSW
02.04.15	Sarah Court, Commissioner, Australian Competition & Consumer Commission	AHRC, NSW
09.04.15	Professor Elizabeth Handsley, President, Australian Council on Children and the Media	AHRC, NSW
14.04.15	Melissa Stewart, Senior Advisor, Child Protection & Trafficking in Persons, World Vision Australia, and Aivee Robinson, Head of Advocacy, UNICEF Australia	AHRC, NSW
23.04.15	Philip Brown, A/g Group Manager, Families, Department of Social Services	AHRC, NSW
27.04.15	Graham Tardif, Director, Australia Program, World Vision Australia	AHRC, NSW
27.04.15	Susan Murray, Chief Executive Officer, Suicide Prevention Australia	AHRC, NSW
28.04.15	Justice Jenifer Coates, Judge of the Family Court of Australia, Royal Commission into Institutional Responses to Child Sexual Abuse	AHRC, NSW
30.04.15	Philip Brown, A/g Group Manager, Families, Department of Social Services; Brian Babington, Chief Executive Officer, Families Australia; and Adele Cox, Member, Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Advisory Group	Albury, NSW
08.05.15	Paul McDonald, Chief Executive Officer, Anglicare Victoria	AHRC, NSW
11.05.15	Professor Elizabeth Handsley, President of the Australian Council on Children and the Media, and Melanie Mclean, King & Wood Mallesons	AHRC, NSW
11.05.15	David Griffith, Principal, ACIL Allen Consulting	AHRC, NSW
12.05.15	Sandie de Wolf, Chief Executive Officer; Marg Hamley, Director; and Dr Sarah Wise, Berry Street Childhood Institute	Melbourne, VIC
19.05.15	Michael Gallus, Founder/Director, The Footys4All Foundation	Melbourne, VIC

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
25.05.15	Timothy Pilgrim, Privacy Commissioner, Office of the Australian Information Commissioner	AHRC, NSW
25.05.15	Rohan Buettel, Assistant Secretary Consumer Protection, Department of Communications	AHRC, NSW
27.05.15	The Hon Scott Morrison MP, Minister for Social Services	Canberra, ACT
27.05.15	Josh Faulk, Chief of Staff, and Dr Susan Cochrane, Advisor for the Office of the Attorney-General and Minister for the Arts	Canberra, ACT
27.05.15	James McAdams, Advisor to The Hon Sussan Ley MP, Minister for Health, Minister for Sport	Canberra, ACT
01.06.15	Amy Prendergast, Director, Policy & Coordination, Family Safety Taskforce, Department of Social Services	Canberra, ACT
29.06.15	Senator The Hon Marise Payne, Senator for Western Sydney, Minister for Human Services	Sydney, NSW

## Appendix 3: Memberships of advisory groups and ambassadorships

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- National Forum for Protecting Australia's Children
- National Advisory Committee for the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP)
- Centre of Research Excellence in Suicide Prevention (CRESP)
- Online Safety Consultative Working Group
- Australian Children's Commissioners and Guardians
- National Families Week Ambassador, 2015
- National Advisory Group for the Statement of Intent on Children's Rights in Early Childhood Education and Care, since April 2014
- Bourke Justice Reinvestment Strategic Advisory Group, since May 2014
- Justice Reinvestment Champion, since May 2013
- Advisory Group to the Preventing Anxiety and Victimization through education (PAVe) Project, since December 2013
- Foster and Kinship Care Spokesperson, since 2013
- Children's Week National Ambassador, 2014

## Appendix 4: Consultations about business and children's rights

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Date	Consultation	Location
21.03.15	YMCA youth group	Melbourne, VIC
30.04.15	Highwater Theatre Program	Albury, NSW
06.05.15	Holroyd High School	Sydney, NSW
14.05.15	Marrickville West Primary School	Sydney, NSW
19.05.15	Keilor Heights Primary School	Melbourne, VIC
15.07.15	Canterbury Boys High School	Sydney, NSW

## Appendix 5: Submissions to my examination of family and domestic violence affecting children

62 written submissions were received in response to the National Children’s Commissioner’s examination into family and domestic violence.

Submissions were received from individuals, government, private and non-government organisations.

Some submissions are redacted to protect privacy and confidentiality.

Submission No	Submission by
1	Professor Patricia Easteal
Attachment 1.1	Patricia Easteal AM and Dimian Grey, ‘Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary’ (2013) 27 <i>Australian Journal of Family Law</i> 59.
Attachment 1.2	Patricia Easteal, ‘Violence Against Women in the Home: Kaleidoscopes on a Collision Course?’ (2013) 3(2) <i>QUT Law &amp; Justice Journal</i> 250.
2	Professor Belinda Fehlberg
Attachment 2.1	Belinda Fehlberg, Rae Kaspiw, Jenni Millbank, Fiona Kelly and Juliet Behrens (eds), <i>Australian Family Law: the contemporary context</i> (Oxford University Press, 2 <sup>nd</sup> ed, 2014) ch 5–8.
3	inTouch Multicultural Centre against Family Violence
Attachment 3.1	InTouch Multicultural Centre Against Family Violence and Safe Futures Foundation, <i>Making Childhood Memories; “CALD Children in Refuge Matter” Holiday Program 2014 Evaluation report</i> (2014).
Attachment 3.2	Immigrant Women’s Domestic Violence Service, <i>What about the Children? The Voices of Culturally and Linguistically Diverse Children affected by Family Violence</i> (2008).
4	Wendy Bunston
Attachment 4.1	Wendy Bunston, ‘Summary of Evaluation (Quantitative and Qualitative) of 4 Infant/Child and Parent Interventions to Address Family Violence’.
Attachment 4.2	Wendy Bunston, Kathy Eyre, Anthony Carlsson and Kristen Pringle, ‘Evaluating relational repair work with infants and mothers impacted by family violence’ [2014] <i>Australian &amp; New Zealand Journal of Criminology</i> 1.
Attachment 4.3	Wendy Bunston and Alexandra Heynatz (eds), <i>Addressing Family Violence Programs: Groupwork Interventions for infants, children and their parents</i> (The Royal Children’s Hospital Mental Health Service, 2006).
Attachment 4.4	Wendy Bunston, “‘BuBs’ On Board: (Building Up Bonds) Family violence and mother/infant group work in women’s shelters Report on the Pilot of the “BuBs On Board” program in Five Women’s Shelters in Tasmania’ (2008) 3 (Spring) <i>The Quarterly, DVRC</i> .

Submission No	Submission by
Attachment 4.5	Wendy Bunston, “‘What about the fathers?’ Bringing “Dads on Board™” with their infants and toddlers following violence’ (2013) 19(1) <i>Journal of family Studies</i> 70.
Attachment 4.6	Wendy Bunston, <i>parkas: parents accepting responsibility kids are safe</i> (Royal Children’s Hospital Mental Health Service, 1998)
Attachment 4.7	Wendy Bunston and Julie Stone, <i>Submission to Royal Commission into Family Violence</i> (VIC), 2015.
5	Australian Association of Social Workers (AASW)
6	Australian Institute of Family Studies (AIFS) and Australia’s National Research Organisation for Women’s Safety (ANROWS)
7	Save the Children Australia
Attachment 7.1	Save the Children Australia, <i>Fact sheet – Queensland Future Parents Program, Save the Children Australia</i>
8	Public Health Association of Australia (PHAA)
9	St Vincent de Paul Society National Council
10	National Aboriginal and Torres Strait Islander Services (NATSILS)
11	Andrew Johnson, Advocate for Children and Young People NSW
12	National Rural Health Alliance (NHRA)
13	Tasmanian Government (Jacqui Petrusma MP, Minister for Women)
Attachment 13.1	Tasmanian Government, Submission No 117 to Senate Finance and Public Administration References Committee, <i>Inquiry into Domestic Violence in Australia</i> , 12 August 2014.
14	BoysTown (Kids Helpline)
15	VicHealth
16	Queensland Family and Child Commission
17	Victims of Crime Assistance League (VOCAL) Inc NSW
Attachment 17.1	Elsbeth McInnes, ‘Madness in Family Law: Mothers’ Mental Health in the Australian Family Law System’ (2013) 21(1) <i>Psychiatry, Psychology and Law</i> 78.
18	Melbourne Research Alliance to End Violence Against Women and their Children, University of Melbourne

Submission No	Submission by
Attachment 18.1	Ravi K. Thiara and Cathy Humphreys, 'Absent presence: the ongoing impact of men's violence on the mother-child relationship' (2015) <i>Child and Family Social Work</i> .
Attachment 18.2	Cathy Humphreys, <i>Domestic Violence and child protection: Challenging directions for practice</i> (2007) Issue paper 13, Australian Domestic & Family Violence Clearinghouse, UNSW.
Attachment 18.3	Nicky Stanley and Cathy Humphreys, 'Multi-agency risk assessment and management for children and families experiencing domestic violence' (2014) 47 <i>Children and Youth Services Review</i> 78.
19	Children with Disability Australia
20	Government of South Australia (Gail Gago MLC, Minister for the Status of Women)
21	National Council of Single Mothers and their Children (NCSMC)
22	Families Australia
23	Women's Legal Service Queensland
24	Baptistcare
25	WEAVE Inc
Attachment 25.1	Elspeth McInnes, 'Domestic Violence and its impact on children's development' (Presentation delivered at the Department of Community Services' Fourth Domestic Violence Forum, NSW Parenting Centre, Glebe, 24 September 2002)
Attachment 25.2	Annette Streeck-Fischer and Bessel A. van der Kolk, 'Down will come baby, cradle and all: diagnostic and therapeutic implications of chronic trauma on child development' (2000) 34 <i>Australian and New Zealand Journal of Psychiatry</i> 903.
26	Relationships Australia
27	No To Violence Male Family Violence Prevention Association
28	The Deli Women and Children's Centre
29	Aboriginal Family Law Services (WA)
30	Judith Lumley Centre, La Trobe University
31	Lynda Diagne, Womens Council for Domestic and Family Violence Services (WA)

<b>Submission No</b>	<b>Submission by</b>
32	Domestic Violence NSW and Hazell Cowan, Specialist Family Court Support Worker, Domestic Violence Service Management (DVSM)
33	Women's Legal Services NSW
34	Government of Western Australian, Department for Child Protection and Family Support
Attachment 34.1	Department for Child Protection (WA), <i>Family and Domestic Violence Background Paper (2012)</i>
Attachment 34.2	Department for Child Protection (WA), <i>Family and Domestic Violence Policy (2012)</i>
Attachment 34.3	Western Australia's Family and Domestic Violence Prevention Strategy to 2022
35	Andrew Jackomos, Victorian Commissioner for Aboriginal Children and Young People
36	Relationships Australia, New South Wales
37	Royal Australian and New Zealand College of Psychiatrists (RANZCP)
38	Australian Psychological Society
39	CONFIDENTIAL
40	Berry Street
41	National Family Violence Prevention Legal Services
42	National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA)
43	Families and Relationship Services Australia
44	Office of the Children's Commissioner Northern Territory
45	Aboriginal Child, Family and Community Care State Secretariat (AbSec)
46	North Australian Aboriginal Family Legal Service (NAAFLS)
47	Menzies School of Health Research, Centre for Child Development and Education
48	Dawn House Women's refuge, Northern Territory
49	National LGBTI Health Alliance
50	Emma Gierschick

Submission No	Submission by
51	New South Wales Government
52	Northern Territory Department of Children and Families
53	Multicultural Centre for Women's Health
54	Anne-Marie Laslett, Centre for Alcohol Policy Research
55	Foundation for Alcohol Research and Education (FARE)
Attachment 55.1	FARE, <i>Australian Fetal Alcohol Spectrum Disorders Action Plan 2013-2016</i> (2013).
Attachment 55.2	FARE, <i>National framework for action to prevent alcohol-related family violence</i> (2015).
56	Dr Anita Morris
Attachment 56.1	Safety and resiliency at home. Thesis Abstract
Attachment 56.2	A Morris, C Humphreys and K Hegarty, 'Children's views of safety and adversity when living with domestic violence' in N Stanley and C Humphreys (eds) <i>Child Protection and Domestic Violence: New Challenges and Developments</i> (Jessica Kingsley Publications, 2015)
Attachment 56.3	A Morris, K Hegarty and C Humphreys, 'Ethical and safe: Research with children about domestic violence' (2012) 8(2) <i>Research Ethics</i> 125.
Attachment 56.4	A Morris et al., 'Extending the reach: a timely and tailored approach to children experiencing family violence' (2011) 24(8) <i>Parity</i> 37.
57	Northern Territory Government, (Bess Price, Minister Women's Policy; John Elferink, Attorney-General, Minister for Justice)
Attachment 57.1	Northern Territory Government, <i>Safety is Everyone's Right: Northern Territory Domestic and Family Violence Reduction Strategy 2014-2017 Overview</i> (2014).
Attachment 57.2	Northern Territory Government, Submission No 158 to the Senate Finance and Public Administration Committee, <i>Inquiry into Domestic Violence in Australia</i> , November 2014.
Attachment 57.3	Bruce Wilson, <i>A Share in the Future: Review of Indigenous Education in the Northern Territory</i> (2013).
Attachment 57.4	Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse

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<b>Submission No</b>	<b>Submission by</b>
58	Australian Association for Infant Mental Health, West Australian Branch
59	Kristy McKellar
60	Sharon Cooke
61	CONFIDENTIAL
62	National Centre for Longitudinal Data, Laura Bennetts Kneebone (LSIC) Helene Shin and Helen Rogers (LSAC)

# Appendix 6: National roundtables for my examination of family and domestic violence affecting children

National roundtables were held as part of the National Children’s Commissioner’s examination into children affected by family and domestic violence.

In order to stimulate discussion, up to two expert participants presented at each roundtable.

Date	Roundtable	Location
19.05.15	<p>People who were invited to attend the Victoria roundtable included:</p> <ul style="list-style-type: none"> <li>• Dr Monica Campo, Senior Research Officer, Australian Institute of Family Studies (Presenter)</li> <li>• Samantha McNally, Assistant Director, National Centre for Crimes and Justice Statistics, Australian Bureau of Statistics (Presenter)</li> <li>• Associate Professor Deborah Loxton, Deputy Director, Australian Longitudinal Study on Women’s Health</li> <li>• Associate Professor Dr Jan Coles, Acting Director of Research and Research Studies, School of Primary Health Care, Monash University</li> <li>• Leesa Hooker, Lecturer in Nursing, Department of Rural Nursing and Midwifery, La Trobe University</li> <li>• Professor Jan Nicholson, Inaugural Roberta Holmes Professorial Chair, Judith Lumley Centre, La Trobe University</li> <li>• Adele Murdolo, Chief Executive Officer, Multicultural Centre for Women’s Health</li> <li>• Alison MacDonald, Policy and Program Manager, Domestic Violence Victoria</li> <li>• Paul Linnossier, Chief Executive Officer, OurWATCH</li> <li>• Antoinette Braybrook, Chief Executive Officer, Aboriginal Family Violence Prevention &amp; Legal Service Victoria</li> <li>• Laura Vines, Aboriginal Family Violence Prevention &amp; Legal Service Victoria</li> <li>• David Giles, Manager, Quality Practice and Policy, Anglicare Victoria</li> <li>• Julie Oberin, Chair, Women’s Services Network (WESNET)</li> <li>• Mark Morrissey, Commissioner, Tasmanian Commission for Children</li> <li>• Winnie Bridie, Information, Membership &amp; Policy Support Officer, Children with Disability Australia</li> <li>• Soo-Lin Quek, Knowledge and Advocacy Manager, Centre for Multicultural Youth</li> <li>• Bernadette Marantelli, Centre for Multicultural Youth</li> <li>• Emma Toone, Senior Clinician, Infant, Child &amp; Parent Program, Northern Family Violence Team, Berry Street</li> </ul>	Melbourne, VIC

Date	Roundtable	Location
19.05.15 (continued)	<ul style="list-style-type: none"> <li>• Liz Murphy, Senior Project Officer, Preventing Violence Against Women, VicHealth</li> <li>• Cara Gleeson, Senior Project Officer, Generating Equality and Respect, VicHealth</li> <li>• Dr Angela Spinney, Research Fellow, Swinburne University of Technology</li> <li>• Geraldine Atkinson, Victorian Aboriginal Education Association</li> <li>• John Burton, Manager, Policy and Resources, Secretariat of National Aboriginal and Islander Child Care</li> </ul>	Melbourne, VIC
22.05.15	<p>People who were invited to attend the Queensland roundtable included:</p> <ul style="list-style-type: none"> <li>• Dr Samantha Jeffries, Senior Lecturer, Bachelor of Criminology and Criminal Justice Honours Program Director, Griffith University (Presenter)</li> <li>• John Dalglish, Manager of Strategy and Research, BoysTown/ Kids Helpline (Presenter)</li> <li>• Tracey Adams, Chief Executive Officer, BoysTown/Kids Helpline</li> <li>• Professor Robert Lonne, Professor of Social Work, Faculty of Health, Queensland University of Technology</li> <li>• Steve Armitage, Principal Commissioner, Queensland Family and Child Commission</li> <li>• Cathy Taylor, Deputy Director General, Child , Family and Community Services, Queensland Department of Communities, Child Safety and Disability Services</li> <li>• Dr Annabel Taylor, Director, Queensland Centre for Domestic and Family Violence Research</li> <li>• Angela Lynch, Community Legal Education Lawyer, Queensland Women's Legal Services</li> <li>• Rebecca Shearman, Operations Manager (DVAC) and Co-Convenor of DVCAN, Domestic Violence Action Centre</li> <li>• Janet Wright, Director, Youth Advocacy Centre</li> <li>• Peta Nichol, Queensland Programs Manager, Save the Children Australia</li> <li>• Trudi Peters, National Programs Manager, National Association for Prevention of Child Abuse and Neglect (NAPCAN)</li> <li>• Eddie Cubillo, Executive Officer, National Aboriginal and Torres Strait Islander Legal Services (NATSILS)</li> <li>• Natalie Lewis, Chief Executive Officer, Queensland Aboriginal and Torres Strait Islander Child Protection Peak</li> </ul>	Brisbane, QLD

Date	Roundtable	Location
29.05.15	<p>People who were invited to attend the New South Wales roundtable included:</p> <ul style="list-style-type: none"> <li>• Lara Fergus, Director of Policy and Evaluation, OurWATCH (Presenter)</li> <li>• Heather Nancarrow, Chief Executive Officer, Australia’s National Research Organisation for Women’s Safety (ANROWS) (Presenter)</li> <li>• Anne Hollonds, Co-Chair, NSW Domestic and Family Violence Council</li> <li>• Jennifer Evans, National Project Lead, Child Protection, Australian Red Cross</li> <li>• Rebecca Gray, Manager of Research and Evaluation, Relationships Australia NSW</li> <li>• Catherine Yeomans, Chief Executive Officer, Mission Australia</li> <li>• Dr Jess Cadwallader, Advocacy Project Manager, People with Disability Australia</li> <li>• Marilyn Chivers, Executive Director, NSW Department of Family and Community Services</li> <li>• Sandra Heirot, Director of Practice Quality and Clinical Support, NSW Department of Family and Community Services</li> <li>• Christine Foran, Executive Director, Women NSW</li> <li>• Dr Kyllie Cripps, Acting Director, Indigenous Law Centre</li> <li>• Dr Jane Wangmann, Senior Lecturer, Faculty of Law, University of Technology, Sydney</li> <li>• Kate Smithers, Senior Project Officer, NSW Ombudsman</li> <li>• Luke Freudenstein APM, Redfern Local Area Command, NSW Police</li> <li>• Moo Baulch, Chief Executive Officer, Domestic Violence NSW</li> <li>• Martha Birch, Coordinator, Perinatal and Infant Mental Health Program, NSW Institute of Psychiatry</li> </ul>	Sydney, NSW
01.06.15	<p>People who were invited to attend the Australian Capital Territory roundtable included:</p> <ul style="list-style-type: none"> <li>• Dr Samantha Bricknell, Research Manager, Violence and Exploitation, Australian Institute of Criminology (Presenter)</li> <li>• Dr Sue Packer AM, Member, ACT Domestic Violence and Prevention Council (Presenter)</li> <li>• Paula Mance, National Policy Manager, Relationships Australia</li> <li>• Alison Brook, National Executive Officer, Relationships Australia</li> </ul>	Canberra, ACT

Date	Roundtable	Location
01.06.15 (continued)	<ul style="list-style-type: none"> <li>• Cate McKenzie, Group Manager, Family Safety Taskforce, Department of Social Services</li> <li>• Amy Laffan, Managing Director, Family Safety Taskforce, Department of Social Services</li> <li>• Philip Brown, Acting Group Manager, Families, Department of Social Services</li> <li>• Dr Helen Rodgers, Section Manager, Longitudinal Study of Australian Children, Department of Social Services</li> <li>• Christine Craik, Vice-President, Australian Association of Social Workers</li> <li>• Marilyn Wright, Principal Solicitor, ACT Women's Legal Centre</li> <li>• Elena Rosenman, Chief Executive Officer, ACT Women's Legal Service</li> <li>• Brian Babington, Chief Executive Officer, Families Australia</li> <li>• Station Sergeant Joanne Cameron, Officer in Charge - Tuggeranong Patrol, ACT Policing</li> <li>• Nicola Palfrey, Clinical Psychologist and Research Co-Ordinator, Child and Adolescent Mental Health Service, ACT Health</li> <li>• Amanda Harris, Director, Australian Child and Adolescent Trauma, Loss and Grief Network</li> <li>• Professor Karen Healy, Research Director for the School of Social Work and Human Services, Queensland University of Technology</li> <li>• Gordon Gregory, Chief Executive Officer, National Rural Health Association</li> <li>• Graham West, National President, St Vincent de Paul Society</li> <li>• Ron Mell, Chief Executive Officer, Young Men's Christian Association (YMCA) Australia</li> <li>• Scott Holmes, YMCA Australia</li> <li>• Sue Ella Jarvis, Head of Community Programs, Young Women's Christian Association (YWCA).</li> <li>• Dr Susan Cochrane, Advisor, Office of the Attorney-General and Minister for the Arts</li> <li>• Colin McCormack, A/g Senior Legal Officer, Office of the Attorney-General and Minister for the Arts</li> </ul>	Canberra, ACT

Date	Roundtable	Location
04.08.15	<p>People who were invited to attend the Northern Territory roundtable included:</p> <ul style="list-style-type: none"> <li>• Joanne Sangster, Director, Domestic Violence Directorate Department of the Attorney-General and Justice (Presenter)</li> <li>• Dr John McKenzie, Senior Research Officer, Centre for Child Development and Education Menzies Institute (Presenter)</li> <li>• Colleen Gwynne, Acting Commissioner, Northern Territory's Children's Commission</li> <li>• Jared Sharp, North Australian Aboriginal Justice Agency (NAAJA)</li> <li>• Andrea Mason, Co-coordinator, NPY Women's Council</li> <li>• Natasha O'Connell, Aboriginal Peak Organisations NT (APONT)</li> <li>• Gabby Brown, Department of Attorney-General and Justice</li> <li>• Ruth Brebner, Department of Attorney-General and Justice</li> <li>• Kimberly Jonsonn, Dawn's House Women's Shelter</li> <li>• Regina Bennett, Darwin Aboriginal and Islander Women's Shelter (DAIWS)</li> <li>• Louise Weber, Larrakia Nation</li> <li>• Vanessa Lethlean, Top End Women's Legal Service</li> <li>• Lesley Taylor, National Association for Prevention of Child Abuse and Neglect</li> <li>• Joanne Lau, Northern Australian Aboriginal Family Violence Legal Service</li> <li>• Naomi Brown, Melaleuca Refugee Centre</li> <li>• Michelle Barry, Territory Co-ordinator, CREATE Foundation</li> <li>• Anne Bradford, Chief Executive Officer, Department of Children and Families</li> </ul>	Darwin, NT
07.08.15	<p>People who were invited to attend the Tasmania roundtable included:</p> <ul style="list-style-type: none"> <li>• Dr Romy Winter, Tasmanian Institute of Law Enforcement Studies, University of Tasmania (Presenter)</li> <li>• Teresa Pocket, Principal, East Derwent Primary School, Jordan River Learning Federation (Presenter)</li> <li>• Mark Morrissey, Commissioner, Tasmanian Commission for Children</li> <li>• Annie McLean, Senior Policy Consultant, Commissioner for Children Tasmania</li> <li>• Rebecca Davis, Senior Sergeant, Tasmania Police</li> </ul>	Hobart, TAS

Date	Roundtable	Location
07.08.15 (continued)	<ul style="list-style-type: none"> <li>• Siubhan MacDonald, Family Violence Counselling and Support Service Department of Health and Human Services</li> <li>• Amanda Johnson, Community Corrections</li> <li>• Suzanne Pennicott-Jones, Department of Education</li> <li>• Associate-Professor Roberta Julian, University of Tasmania</li> <li>• Dr Peter Lucas, University of Tasmania</li> <li>• Nell Kuilenburg, Trainer in Safe from the Start Program, Salvation Army</li> <li>• Susan Fahey, Executive Officer and Principal Solicitor, Women's Legal Service</li> <li>• Amy Robertson, Policy Analyst, Department of Premier and Cabinet</li> <li>• Pene Snashall, Senior Adviser, Children &amp; Youth, Office of the Minister for Human Services Office of the Minister for Women</li> </ul>	Hobart, TAS

Date	Roundtable	Location
13.08.15	<p>People who were invited to attend the South Australia roundtable included:</p> <ul style="list-style-type: none"> <li>• Professor Leah Bromfield, Australian Centre for Child Protection (Presenter)</li> <li>• Ginny Cisneros, Director of Service Development, Central Domestic Violence Service (Presenter)</li> <li>• Sarah Williamson, Child and Youth Advocate Eastern Adelaide Domestic Violence Service (Presenter)</li> <li>• Pam Simmons, Guardian for Children and Young People, Office of the Guardian for Children and Young People in South Australia</li> <li>• Assistant Commissioner Paul Dickson, SA Police</li> <li>• Superintendent Joanne Shanahan, SA Police</li> <li>• Inspector Deborah McLean, SA Police</li> <li>• Magdalena Madden, Principal Consultant, Council for the Care of Children</li> <li>• Professor Fiona Arney, Director, Centre for Child Protection</li> <li>• Gabrielle Canny, Director, Legal Services Commission of South Australia</li> <li>• Prema Joy, Nunga Mi Minar Women’s and Children’s Centre</li> <li>• Milenka Vasekova, Migrant Women’s Support Service</li> <li>• Megan Hughes, Executive Officer, Southern Domestic Violence Service</li> <li>• Sue Underhill, Southern Domestic Violence Service</li> <li>• Adjunct Associate Professor Dale Bagshaw, School of Psychology, Social Work &amp; Social Policy, University of South Australia</li> </ul>	Adelaide, SA
13.08.15 (continued)	<ul style="list-style-type: none"> <li>• Heidi Ehrat, Senior Research Officer (Domestic Violence), SA Coroners Court and Office for Women</li> <li>• Professor Phillip Slee, Professor in Human Development, Flinders University</li> <li>• Robert Croser, Senior Solicitor, Child Protection, SA Legal Service Commission</li> <li>• Nerida Saunders, Executive Director, Aboriginal Affairs and Reconciliation, South Australian Government</li> <li>• Judge Elizabeth Bolton, Chief Magistrate, Magistrates Court Adelaide</li> </ul>	Adelaide, SA

Date	Roundtable	Location
14.08.15	<p>People who were invited to attend the Western Australia roundtable included:</p> <ul style="list-style-type: none"> <li>• Tracey Currie, Chief Executive Officer, National Aboriginal &amp; Torres Strait Islander Women's Alliance (Presenter)</li> <li>• Dr Mick Adams, Senior Research Fellow, Australian Indigenous Health Info Net (Presenter)</li> <li>• Jenni Perkins, Acting Commissioner for Children and Young People Western Australia, Australian Children's Commissioners &amp; Guardians (WA ACCG)</li> <li>• Trish Heath, Senior Policy Officer, WA ACCG</li> <li>• Mariette Cowley, Chief Executive Officer, Aboriginal Family Law Services</li> <li>• Andrea Smith, Aboriginal Family Law Services</li> <li>• Lynda Diagne, Programme Co-ordinator, Women's Council for Domestic and Family Violence Services (WA)</li> <li>• Alan Campbell, Research Fellow in the School of Occupational Therapy and Social Work, Curtin University</li> <li>• Detective Sergeant Ron Fyneman, Western Australia Police</li> <li>• Victoria Hovane, Board Member and PhD candidate, National Research Organisation for Women's Safety (ANROWS)</li> <li>• Sherrilee Mitchell, Director and WA ANROWS Research Representative, Family and Domestic Violence Unit, WA Department of Child Protection</li> <li>• Dr James Fitzpatrick, McCusker Clinical Research Fellow in Aboriginal Child Health, Telethon Kids Institute</li> <li>• Dr Glenn Pearson, Head Aboriginal Research Development, Telethon Kids Institute</li> <li>• Hannah MacGlade, The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)</li> <li>• Professor Dawn Bessarab, AIATSIS</li> </ul>	Perth, WA
14.08.15 (continued)	<ul style="list-style-type: none"> <li>• Mandy Gadsdon, Executive Director, Aboriginal Engagement and Coordination Unit, Department for Child Protection and Family Support</li> <li>• Dot Bagshaw, Vice-President, Derbarl Yerrigan Health Service</li> <li>• Brenda Boland, Chief Executive Officer, Commission for Children and Young People (Victoria)</li> <li>• Mary Anne Williams, Aboriginal Health Council of SA Inc. (AHCSA)</li> <li>• Sharon Cooke, Australian Association for Infant Mental Health West Australian Branch (AAIMHI WA)</li> </ul>	Perth, WA

## Appendix 7: Individual consultations with stakeholders relating to my examination of family and domestic violence affecting children

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Date	Consultation	Location
19.03.15	Tracy Adams, Chief Executive Officer, BoysTown and John Dalglish, Manager, Strategy and Research BoysTown	AHRC, NSW
25.03.15	Maree Walk, NSW Department of Family and Community Services	Sydney, NSW
01.04.15	Nicole Mayo, Chief Operating Officer, CRIMTRAC	AHRC, NSW
01.06.15	Amy Prendergast, Director, Policy & Coordination, Family Safety Taskforce, Department of Social Services	Canberra, ACT
09.07.15	Rosie Batty, 2015 Australian of the Year, Advocate	AHRC, NSW
21.07.15	Kristy MacKellar, Advocate	Melbourne, VIC
06.08.15	Professor Catherine Humphries, Professor of Social Work, University of Melbourne	Melbourne, VIC

## Appendix 8: ABS Recorded Crime – Victims data about children aged 0 to 17 years who were victims of physical assault and sexual assault

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The data in this appendix is drawn from Tables 1-9 of the customised report I obtained from ABS about the ABS Recorded Crime – Victims publication.

This appendix presents data about children aged 0 to 17 years who were victims of physical assault and sexual assault offences at a residential location that came to the attention of and were recorded by police during the four year period between 2010 and 2013.

The data that ABS supplied me with was disaggregated by each of the four years between 2010 and 2013. I have presented the data in this appendix in its aggregate form as one four-year period derived from the data ABS provided.

The data does not capture incidents that never came to the attention of police or incidents that occurred in a location other than a residential location.

The data presented in this appendix does not count the number of unique child victims. A single child can appear in multiple offence categories and so it is not meaningful to aggregate the number of child victims across the physical assault and sexual assault offence types.<sup>1</sup>

The same child can also be counted as a victim multiple times for the same offence within a single year as well as over the course of the four year period between 2010 and 2013.

For these reasons, the physical assault and sexual assault data is presented separately.

A residential location is defined by ABS as any location containing a permanent or semi-permanent dwelling used for private or commercial residential purposes. This definition may encompass any surrounding land/yard connected to the dwelling, together with any other structures existing at the location.<sup>2</sup>

The ABS defines assault as the direct (and immediate/confrontational) infliction of force, injury, or violence upon a child or children, or the direct (and immediate/confrontational) threat of force, injury or violence where there is an apprehension that the threat could be enacted.<sup>3</sup>

Sexual assault is defined by ABS as physical contact, or intent of contact, of a sexual nature directed toward another person where that person does not give consent, gives consent as a result of intimidation or deception, or consent is proscribed (i.e. the person is legally deemed incapable of giving consent because of youth, temporary/permanent (mental) incapacity or there is a familial relationship).<sup>4</sup>

The data presented in this publication has been confidentialised to prevent identification of victims. Table cells containing small values have been randomly adjusted to avoid releasing confidential information. Due to this randomisation process, totals may vary slightly across tables. These adjustments do not impair the value of the tables as a whole.<sup>5</sup>

A small number of child victims for whom sex was not specified are not counted in the males/females part of the data but are counted in the persons part. This is why when you add males plus females it will sometimes fall short of the total persons count.

The physical assault and sexual assault data presented in this appendix describes the offender's relationship to the child victim. The offender's relationship to the child victim is recorded by police as that perceived by the child at the time of the offence.<sup>6</sup>

In some cases the total number of child victims of physical assault and sexual assault is greater than the sum of the separate offender categories because the total sum includes 'no offender identified' and 'not stated/inadequately described'.

There are some inconsistencies in the coding of offender types between current and former boyfriends and girlfriends across the jurisdictions, which should be taken into account when making comparisons:

Boyfriend/girlfriend:

- for New South Wales, Victoria, Queensland, South Australia and Tasmania, boyfriend and girlfriend are coded to 'boyfriend/girlfriend'
- for the Northern Territory, some boyfriends and girlfriends may be included in 'Other non-family member not elsewhere classified' or in 'Partner'
- for the Australian Capital Territory, boyfriend and girlfriend are coded to 'Partner'

Ex-boyfriend/ex-girlfriend:

- for Queensland, Victoria, South Australia and Tasmania ex-boyfriends and ex-girlfriends are coded to 'ex-boyfriend/ex-girlfriend'
- for New South Wales, ex-boyfriends and ex-girlfriends are coded to 'Boyfriend/girlfriend'
- for the Northern Territory and the Australian Capital Territory, ex-boyfriends and ex-girlfriends are coded to 'Ex-partner'.<sup>7</sup>

The data presented in this appendix is disaggregated by the type of offender:

- parent
- partner (includes boyfriend/girlfriend in some states and territories)
- sibling
- other family member (includes sibling for some states and territories)
- non-family member known to the victim (includes ex-partner, ex-boyfriend/girlfriend for some states and territories, and other non-family members not related to the victim such as foster parents, teachers, acquaintances, colleagues and friends).
- stranger.<sup>8</sup>

The data in this appendix is also disaggregated by the sex of the child victim (male and female) and their age (0 to 9 years, 10 to 14 years and 15 to 17 years).

Due to some jurisdictions not complying with the National Crime Recording Standard (NCRS)<sup>9</sup> and the data quality requirements for national reporting of Aboriginal and Torres Strait Islander status, ABS was not able to provide the data about child victims in a uniform or consistent way between the physical assault and sexual assault data.

Physical assault data is provided for New South Wales, South Australia, the Northern Territory and the Australian Capital Territory only. Aboriginal and Torres Strait Islander status data about child victims of physical assault was not provided for the Australian Capital Territory. Data about sibling offenders of physical assault was provided for New South Wales and South Australia only.

Similarly, sexual assault data is provided for New South Wales, Queensland, Victoria, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory only. Aboriginal and Torres Strait Islander status data about child victims of sexual assault was not provided other than for New South Wales and Queensland.

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The level of detail able to be released for the offender categories varies across the state and territories. Data about sibling offenders of physical assault, for example, was provided for New South Wales and Victoria. Data about sibling offenders of physical assault, however, could not be outputted for the Northern Territory or the Australia Capital Territory without there being a risk of identifying individuals.

The ABS provided me with the most detailed data possible about child victims of physical assault and sexual assault. This appendix presents the data that ABS provided me with.

## 8.1 ABS data about child victims of physical assault in a residential location aged 0 to 17 years

The physical assault data in this appendix is drawn from Tables 1-4 of the customised report I obtained from ABS about the ABS Recorded Crime – Victims publication.

### 8.1.1 New South Wales data about child victims of physical assault in a residential location

In New South Wales between 2010 and 2013 there were **17,602 police recorded child victims of physical assault in a residential location**:

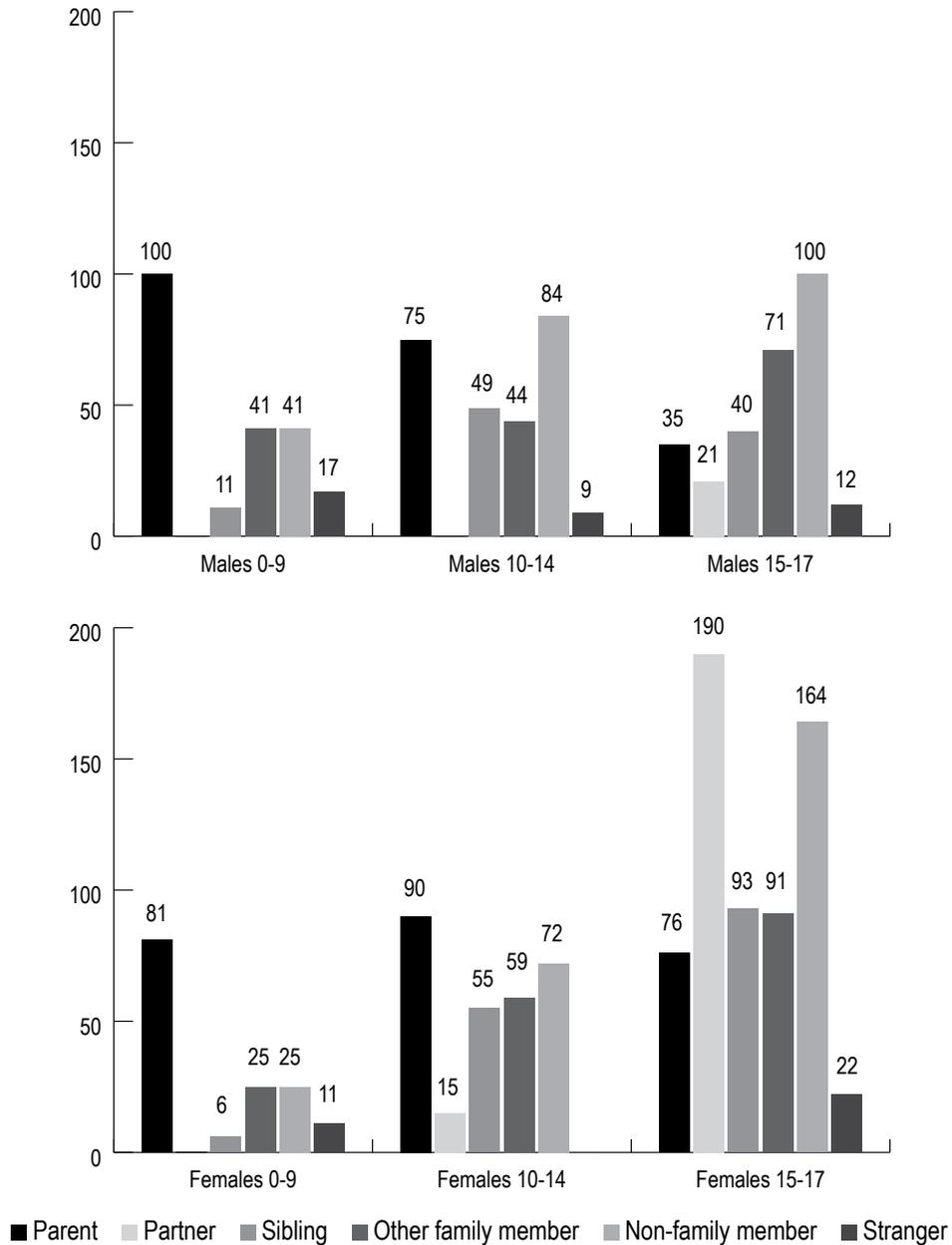
- **Aboriginal and Torres Strait Islander children accounted for 10.75%** or 1,893 victims.
- **Non-Indigenous children accounted for 80.88%** or 14,238 victims.
- **The Indigenous status was unknown for 8.35%** of children or 1,471 victims.

#### 8.1.1.1 Aboriginal and Torres Strait Islander children who were victims of physical assault in a residential location

In New South Wales between 2010 and 2013 there were **1,893 police recorded Aboriginal and Torres Strait Islander child victims of physical assault in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (25.67% or 486 victims), followed by **parents** (24.14% or 457 victims), then **other family members** (17.48% or 331 victims), then **siblings** (13.41% or 254 victims), then **partners** (11.93% or 226 victims), and then **strangers** (3.75% or 71 victims).
- **Male children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was their parent** (21.88% or 100 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their partner** (84.07% or 190 victims), their **sibling** (36.61% or 93 victims), a **non-family member known to the victim** (33.74% or 164 victims), a **stranger** (30.99% or 22 victims), and some **other family member** (27.49% or 91 victims).

**Figure 1: Number of Aboriginal and Torres Strait Islander child victims of physical assault, by offender type, by the victim’s sex and by the victim’s age (New South Wales, 2010–2013)**

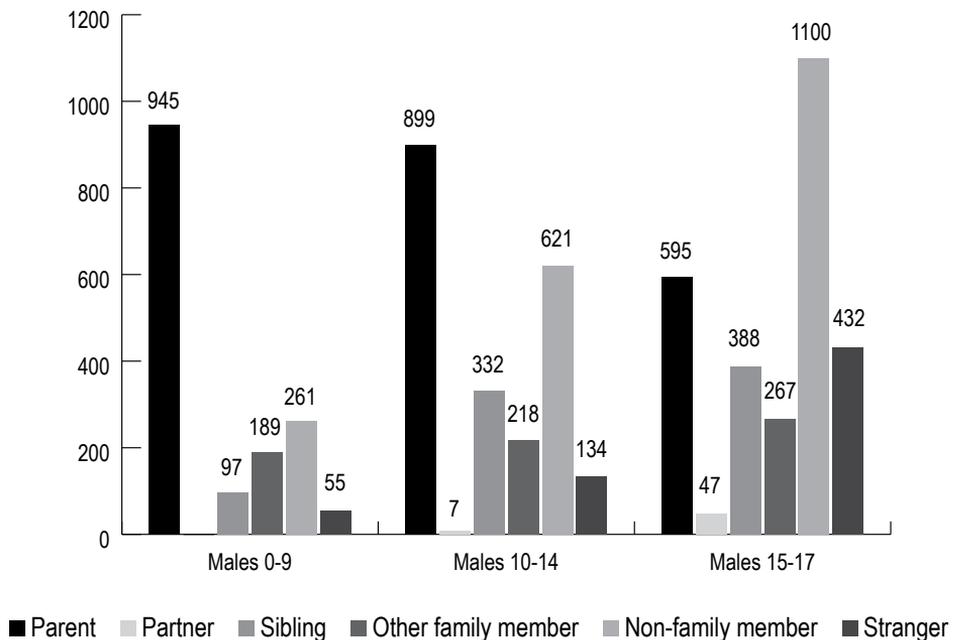


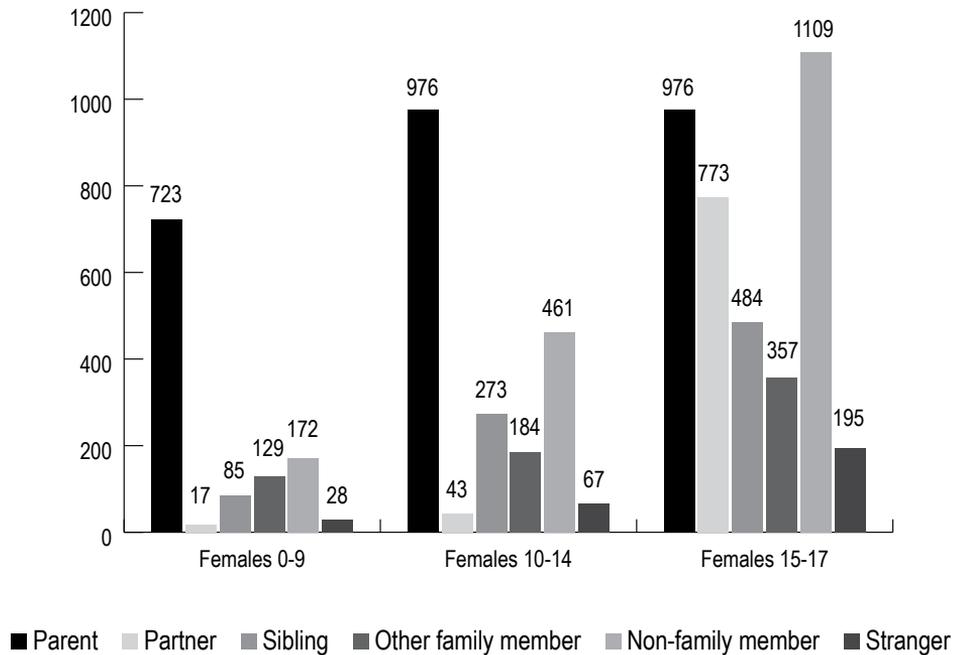
### 8.1.1.2 Non-Indigenous children who were victims of physical assault in a residential location

In New South Wales between 2010 and 2013 there were **14,238 police recorded non-Indigenous child victims of physical assault in a residential location**:

- **Parents** accounted for the largest proportion of offenders (35.91% or 5,114 victims), followed by **non-family members known to the victim** (26.15% or 3,724 victims), then **siblings** (11.65% or 1,659 victims), then **other family members** (9.43% or 1,344), then **strangers** (6.39% or 911 victims), and then **partners** (6.22% or 887 victims).
- **Male children aged 15 to 17 years** accounted for the largest proportion of child victims who reported the offender was a **stranger** (47.42% or 432 victims).
- **Female children aged 10 to 14 years and female children aged 15 to 17 years** accounted for the largest and equal proportion of child victims who reported the offender was their **parent** (19.08% each or 976 victims each).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who reported the offender was their **partner** (87.15% or 773 victims), a **non-family member known to the victim** (29.78% or 1109 victims), their **sibling** (29.17% or 484 victims), and some **other family member** (26.56% or 357 victims).

**Figure 2: Number of non-Indigenous child victims of physical assault, by offender type, by the victim's sex and by the victim's age (New South Wales, 2010–2013)**



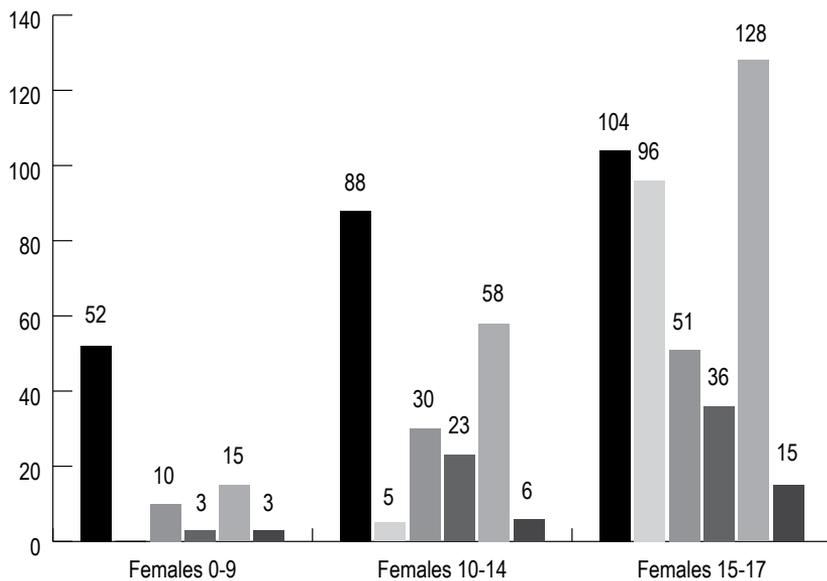
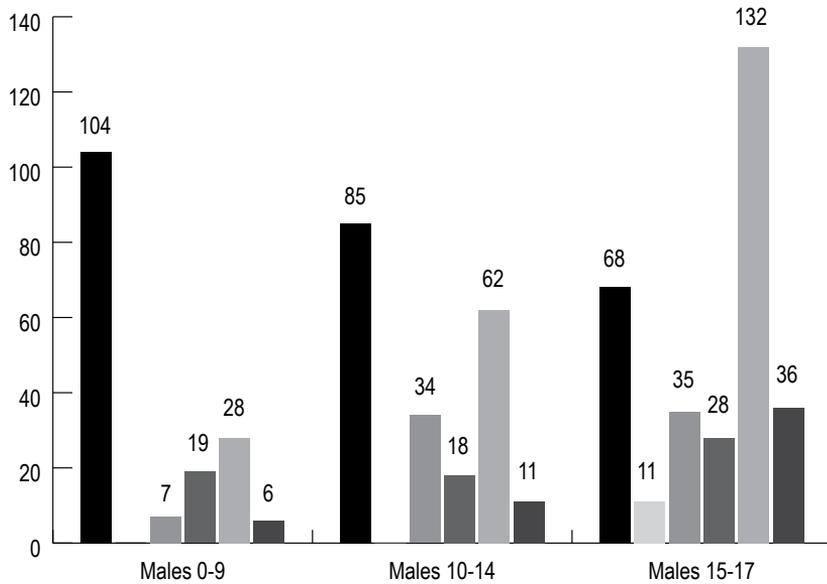


### 8.1.1.3 Aboriginal and Torres Strait Islander status unknown for child victims of physical assault in a residential location

In New South Wales between 2010 and 2013 there were **1,471 police recorded child victims of physical assault with Indigenous status unknown in a residential location**:

- **Parents accounted for the largest proportion of offenders** (34.05% or 501 victims), followed by **non-family members known to the victim** (28.75% or 423 victims), then **siblings** (11.35% or 167 victims), then **other family members** (8.63% or 127 victims), then **partners** (7.61% or 112 victims), and then **strangers** (5.23% or 77 victims).
- **Male children aged 0 to 9 years and female children aged 15 to 17 years** accounted for the largest and equal proportion of child victims who **reported the offender was their parent** (20.76% each or 104 victims each).
- **Male children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a stranger** (46.75% or 36 victims), and a **non-family member known to the victim** (31.21% or 132 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their partner** (85.71% or 96 victims), their **sibling** (30.54% or 51 victims), and some **other family member** (28.35% or 36 victims).

**Figure 3: Number of child victims of physical assault where Aboriginal and Torres Strait Islander status is unknown, by offender type, by the victim's sex and by the victim's age (New South Wales, 2010–2013)**



Parent
  Partner
  Sibling
  Other family member
  Non-family member
  Stranger

## 8.1.2 South Australian data about child victims of physical assault in a residential location

In South Australia between 2010 and 2013 there were **3,073 police recorded child victims of physical assault in a residential location**:

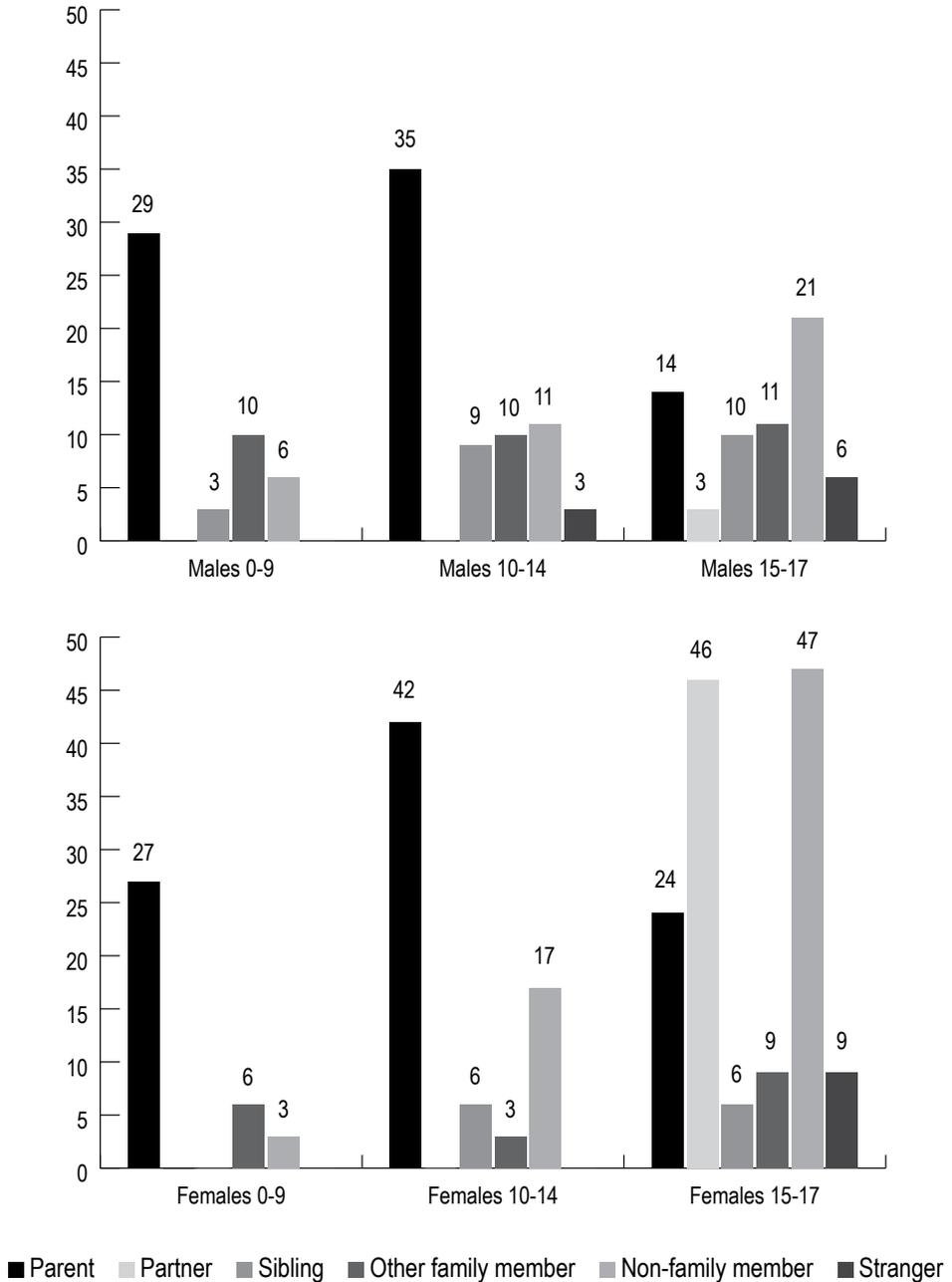
- **Aboriginal and Torres Strait Islander children accounted for 14.05%** or 432 victims.
- **Non-Indigenous children accounted for 82.98%** or 2,550 victims.
- **The Indigenous status was unknown for 2.96%** of children or 91 victims.

### 8.1.2.1 Aboriginal and Torres Strait Islander children who were victims of physical assault in a residential location

In South Australia between 2010 and 2013 there were **432 police recorded Aboriginal and Torres Strait Islander child victims of physical assault in a residential location**:

- **Parents accounted for the largest proportion of offenders** (39.58% or 171 victims), followed by **non-family members known to the victim** (24.3% or 105 victims), then **partners and other-family members** (11.34% each or 49 victims each), then **siblings** (7.87% or 34 victims), and then **strangers** (4.16% or 18 victims).
- **Male children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their sibling** (29.41% or 10 victims), **followed closely by male children aged 10 to 14 years** (26.47% or 9 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was their parent** (24.56% or 42 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their partner** (93.88% or 46 victims), a **stranger** (50% or 9 victims), and a **non-family member known to the victim** (44.76% or 47 victims).

**Figure 4: Number of Aboriginal and Torres Strait Islander child victims of physical assault, by offender type, by the victim's sex and by the victim's age (South Australia, 2010–2013)**

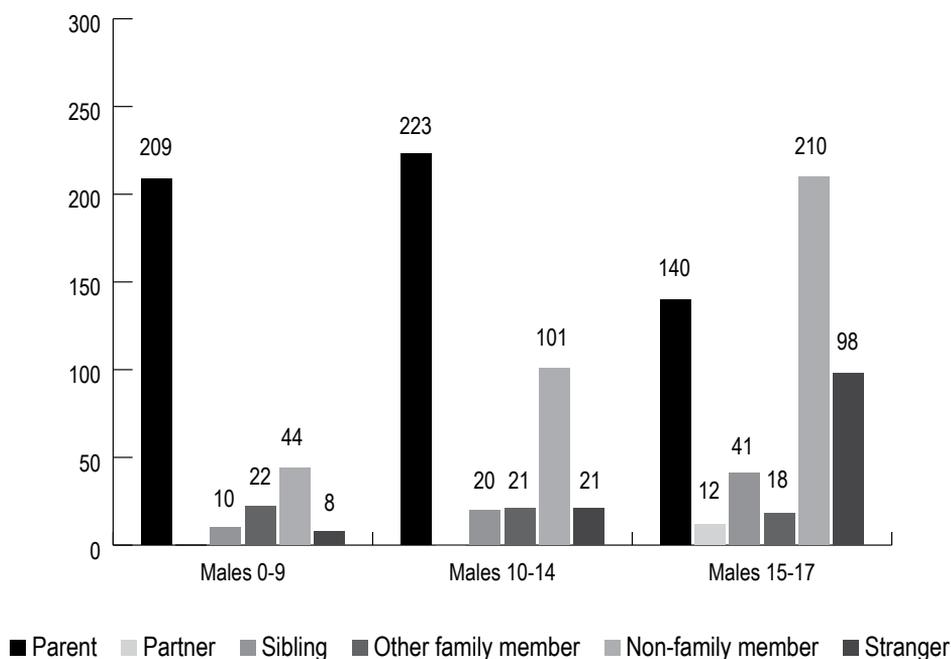


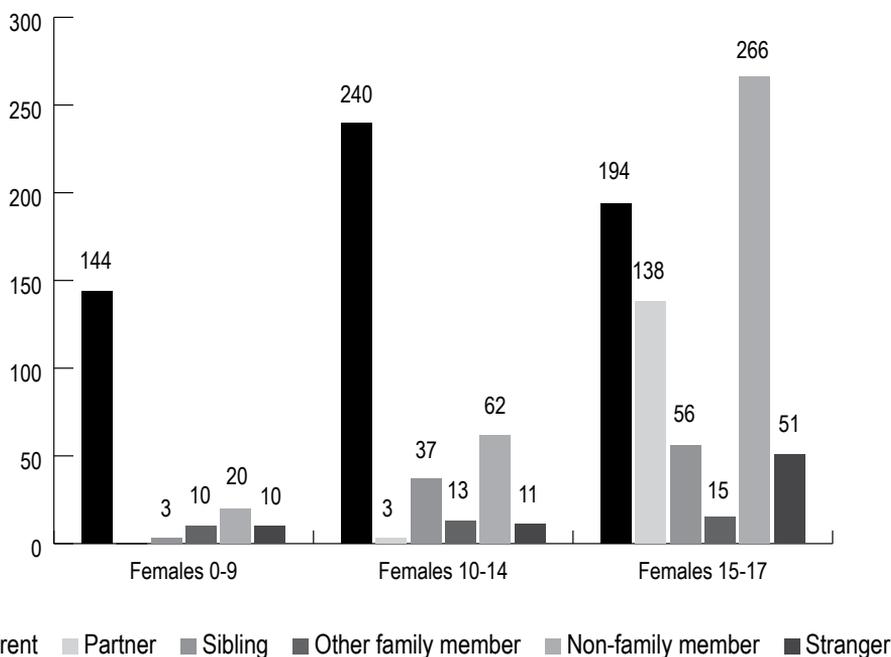
### 8.1.2.2 Non-Indigenous children who were victims of physical assault in a residential location

In South Australia between 2010 and 2013 there were **2,550 police recorded non-Indigenous child victims of physical assault in a residential location**:

- **Parents accounted for the largest proportion of offenders** (45.09% or 1,150 victims), followed by **non-family members known to the victim** (27.56% or 703 victims), then **strangers** (7.8% or 199 victims), then **siblings** (6.54% or 167 victims), then **partners** (6% or 153 victims), and then **other family members** (3.88% or 99 victims).
- **Males children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was some other family member** (22.22% or 22 victims), **followed closely by male children aged 10 to 14 years** (21.21% or 21 victims).
- **Male children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a stranger** (49.25% or 98 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was their parent** (20.87% or 240 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their partner** (90.2% or 138 victims), their **sibling** (33.53% or 56 victims), and a **non-family member known to the victim** (37.83% or 266 victims).

**Figure 5: Number of non-Indigenous child victims of physical assault, by offender type, by the victim’s sex and by the victim’s age (South Australia, 2010–2013)**



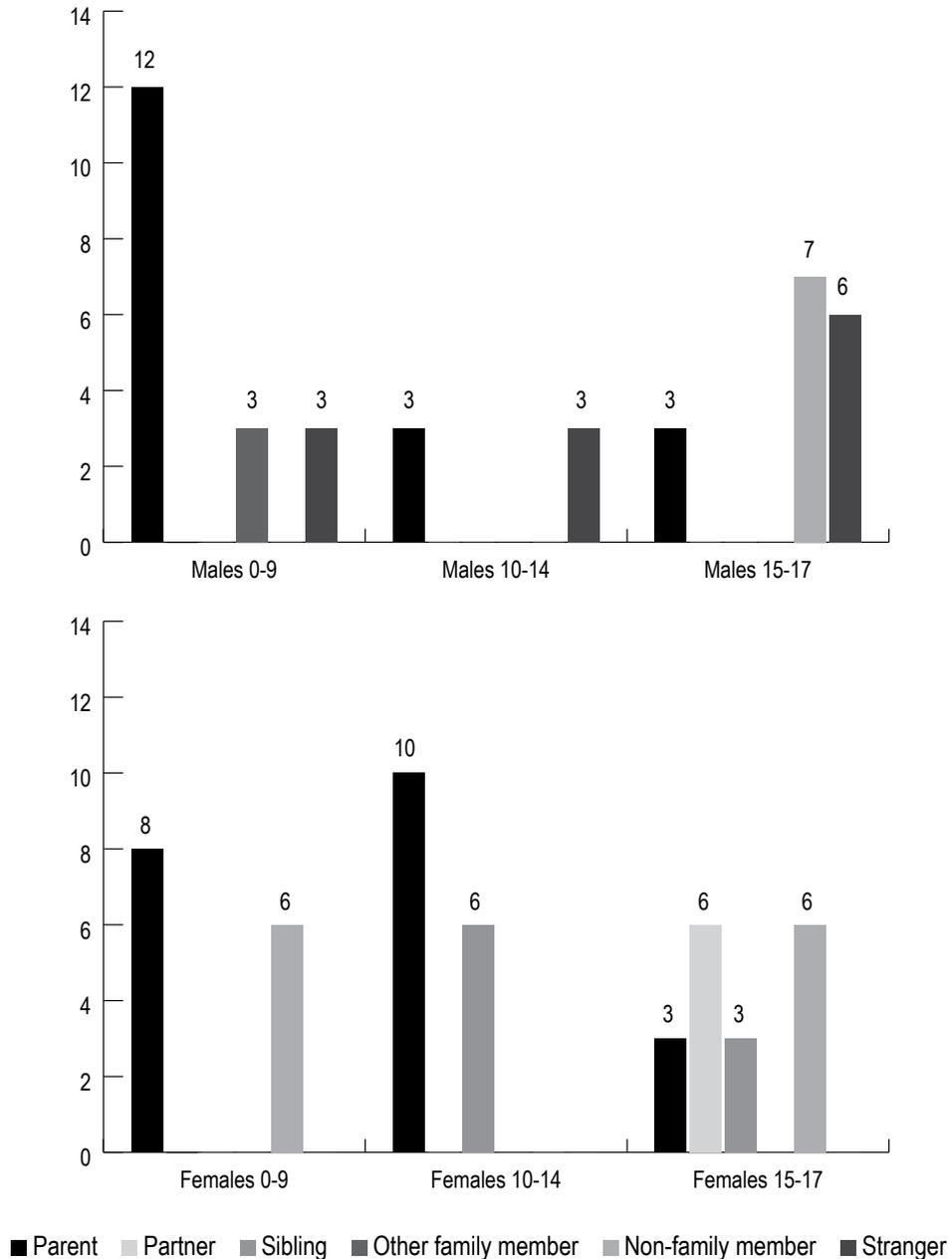


### 8.1.2.3 Aboriginal and Torres Strait Islander status unknown for child victims of physical assault in a residential location

In South Australia between 2010 and 2013 there were **91 police recorded child victims of physical assault with Indigenous status unknown in a residential location**:

- **Parents accounted for the largest proportion of offenders** (42.85% or 39 victims), followed by **non-family members known to the victim** (20.87% or 19 victims), then **strangers** (13.18% or 12 victims), then **siblings** (9.89% or 9 victims), then **partners** (6.59% or 6 victims), and then **other family members** (3.29% or 3 victims).
- **Male children aged 0 to 9 years** accounted for the largest proportion of child victims who reported the offender some other family member (100% or 3 victims) and their parent (30.76% or 12 victims).
- **Male children aged 15 to 17 years** accounted for the largest proportion of child victims who reported the offender was a stranger (50% or 6 victims) and a non-family member (36.84% or 7 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who reported the offender was their sibling (66.66% or 6 victims).
- **Female children aged 15 to 17 years** accounted for all of the child victims who reported the offender was their partner (100% or 6 victims).

**Figure 6: Number of child victims of physical assault where Aboriginal and Torres Strait Islander status is unknown, by offender type, by the victim’s sex and by the victim’s age (South Australia, 2010–2013)**



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### 8.1.3 Northern Territory data about child victims of physical assault in a residential location

In the Northern Territory between 2010 and 2013 there were **824 police recorded child victims of physical assault in a residential location**:

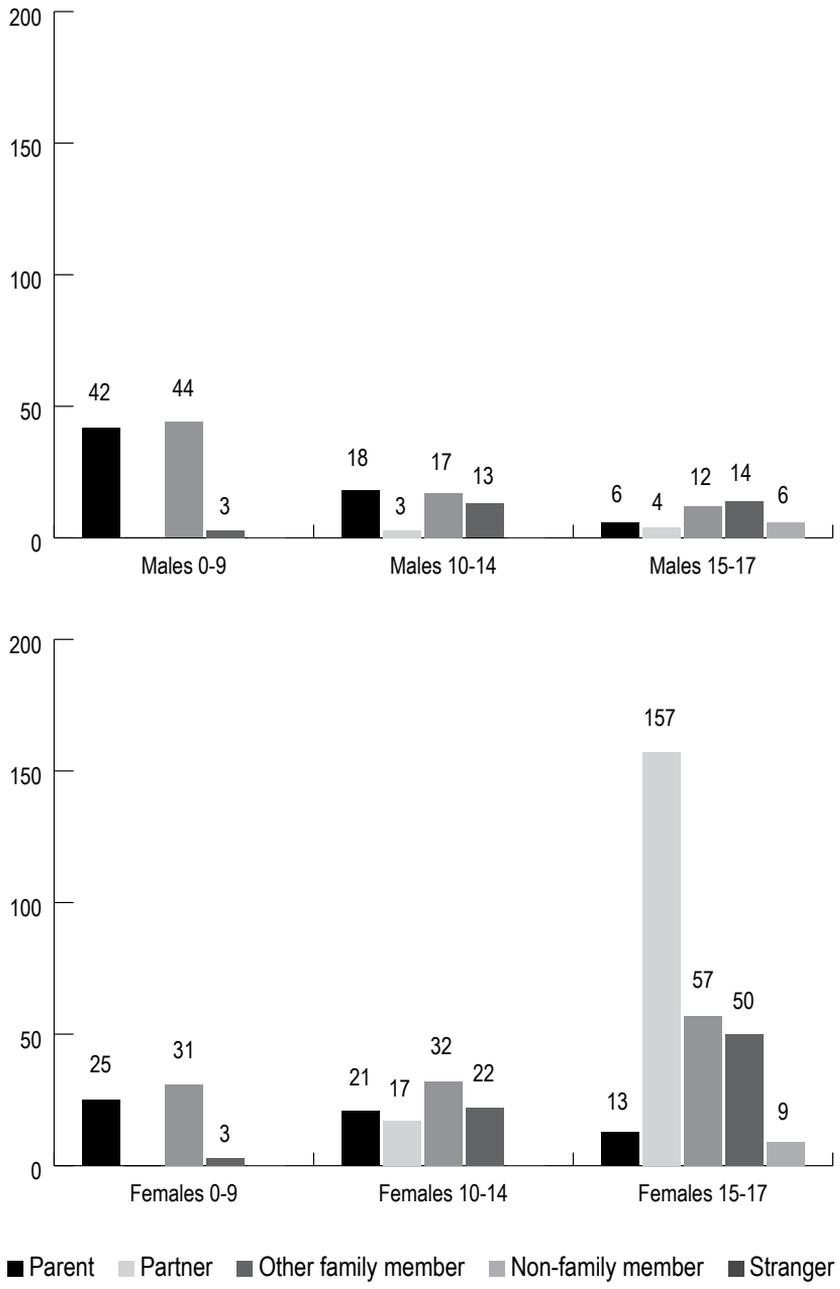
- **Aboriginal and Torres Strait Islander children accounted for 78.27%** or 645 victims.
- **Non-Indigenous children accounted for 17.83%** or 147 victims.
- **The Indigenous status was unknown for 3.88%** of children or 32 victims.

#### 8.1.3.1 Aboriginal and Torres Strait Islander children who were victims of physical assault in a residential location

In the Northern Territory between 2010 and 2013 there were **645 police recorded Aboriginal and Torres Strait Islander child victims of physical assault in a residential location**:

- **Other family members accounted for the largest proportion of offenders** (29.92% or 193 victims), followed by **partners** (28.06% or 181 victims), then **parents** (19.37% or 125 victims), then **non-family members known to the victim** (16.27% or 105 victims each), and then **strangers** (2.32% or 15 victims).
- **Male children aged 0 to 9 years** accounted for the largest proportion of child victims who reported the offender was their **parent** (33.6% or 42 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who reported the offender was their **partner** (86.74% or 157 victims), a **stranger** (60% or 9 victims), a **non-family members known to the victim** (47.62% or 50 victims), and some **other family member** (29.53% or 57 victims).

**Figure 7: Number of Aboriginal and Torres Strait Islander child victims of physical assault, by offender type, by the victim’s sex and by the victim’s age (Northern Territory, 2010–2013)**

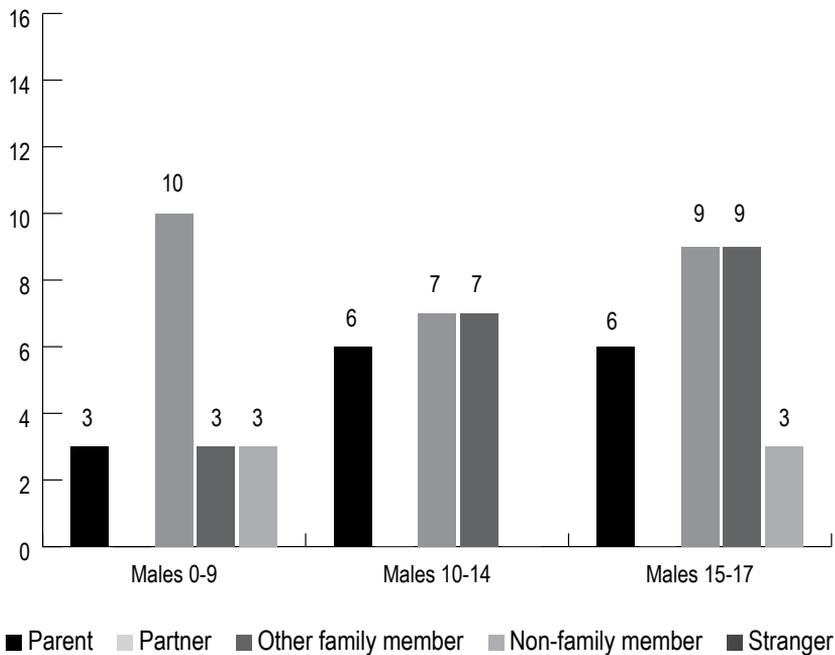


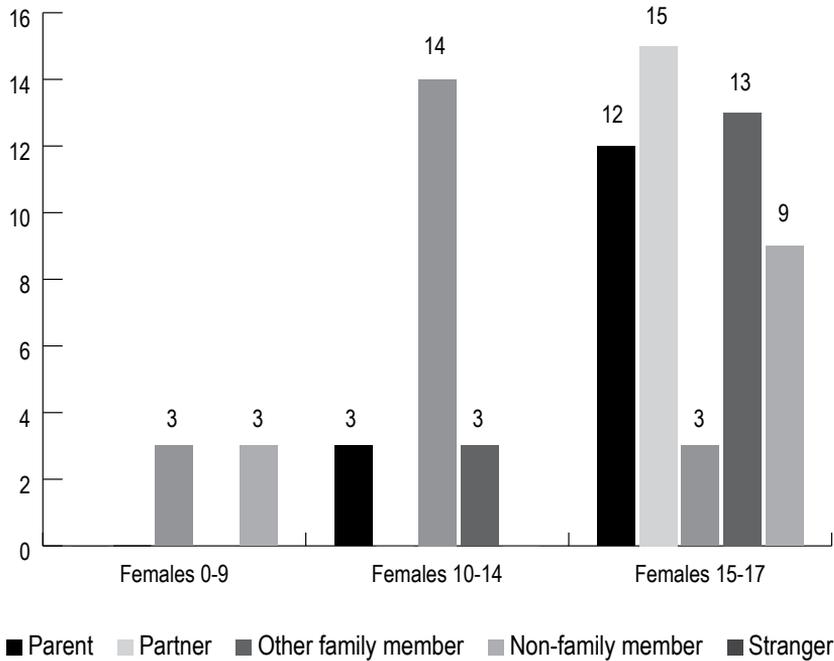
### 8.1.3.2 Non-Indigenous children who were victims of physical assault in a residential location

In the Northern Territory between 2010 and 2013 there were **147 police recorded non-Indigenous child victims of physical assault in a residential location**:

- **Parents** accounted for the largest proportion of offenders (20.40% or 30 victims), followed by **other family members** (31.29% or 46 victims), then **non-family members known to the victim** (23.8% or 35 victims), then **strangers** (12.24% or 18 victims), and then **partners** (10.2% or 15 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who reported the offender was **some other family member** (30.43% or 14 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who reported the offender was **their partner** (100% or 15 victims), a **stranger** (50% or 9 victims), their **parent** (40% or 12 victims), and a **non-family member known to the victim** (37.14% or 13 victims).

**Figure 8: Number of non-Indigenous child victims of physical assault, by offender type, by the victim's sex and by the victim's age (Northern Territory, 2010–2013)**



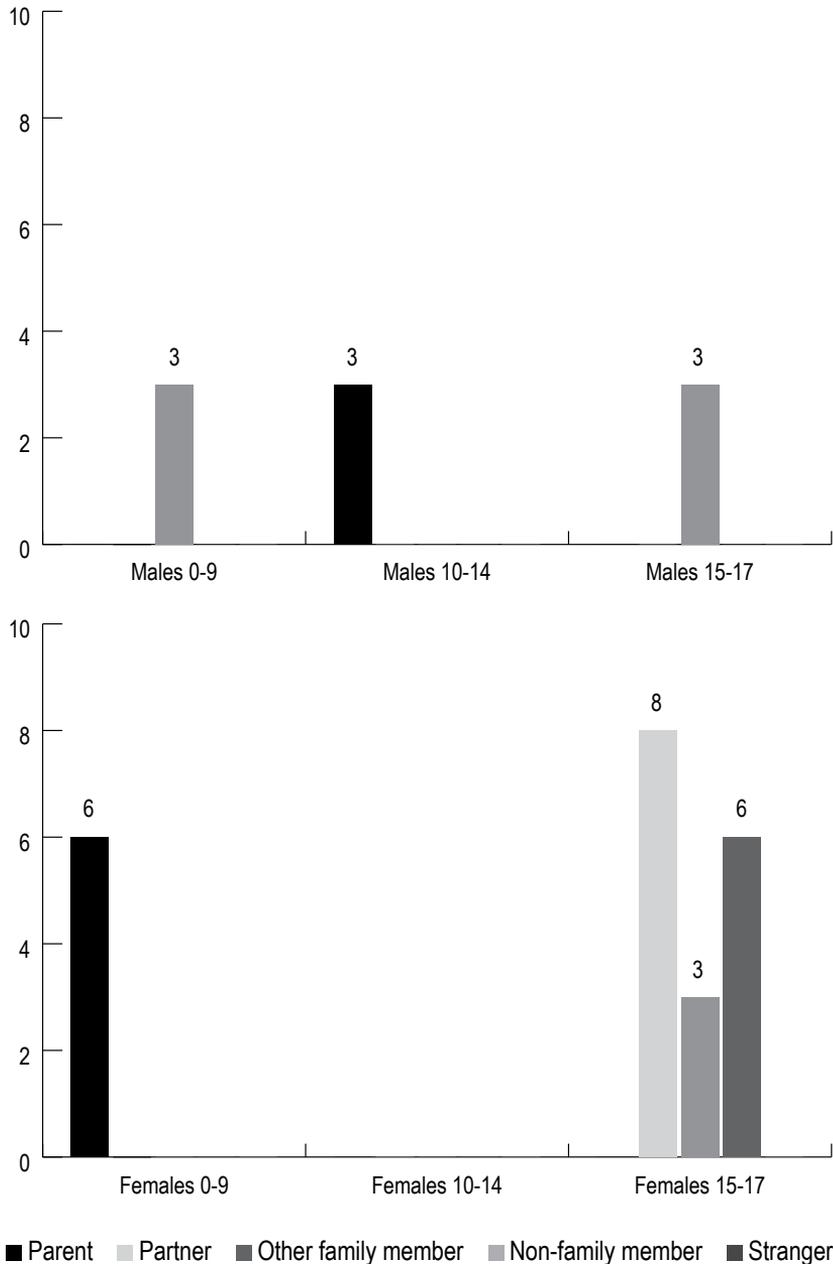


### 8.1.3.3 Aboriginal and Torres Strait Islander status unknown for child victims of physical assault in a residential location

In the Northern Territory between 2010 and 2013 there were **32 police recorded child victims of physical assault with Indigenous status unknown in a residential location**:

- **Parents accounted for the largest proportion of offenders (32.35% or 9 victims), followed by other family members (26.47% or 9 victims), then partners (25.53% or 8 victims), then non family members known to the victim (17.65% or 6 victims).**
- **Male children aged 0 to 9 years, male children aged 15 to 17 years and female children aged 15 to 17 years account for the largest and equal proportion of child victims who reported the offender was some other family member (33.3% each or 3 victims each)**
- **Female children aged 0 to 9 years accounted for the largest proportion of child victims who reported the offender was their parent (66.66% or 6 victims).**
- **Female children aged 15 to 17 years accounted for all child victims who reported the offender was their partner (100% or 8 victims), and a non-family member (100% or 6 victims).**

**Figure 9: Number of child victims of physical assault where Aboriginal and Torres Strait Islander status is unknown, by offender type, by the victim's sex and by the victim's age (Northern Territory, 2010–2013)**

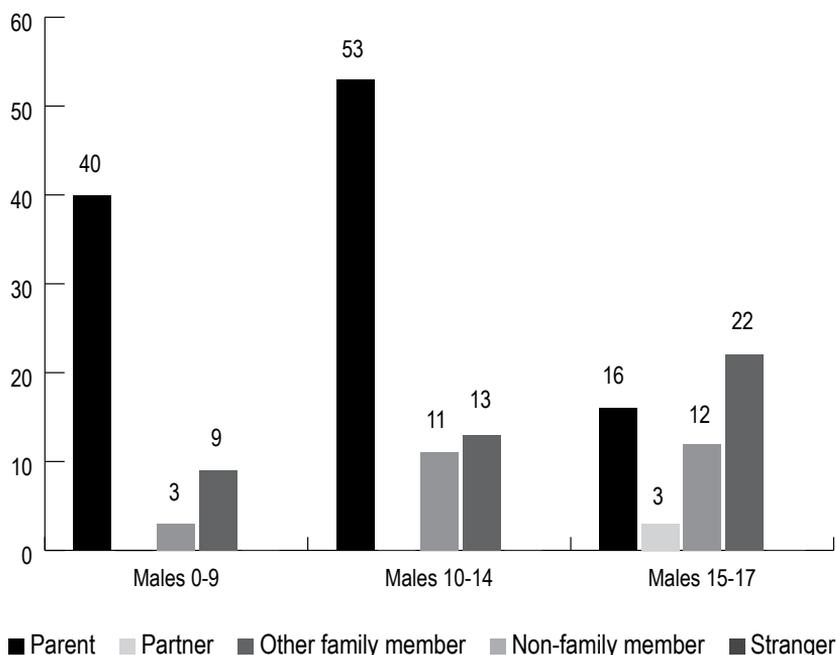


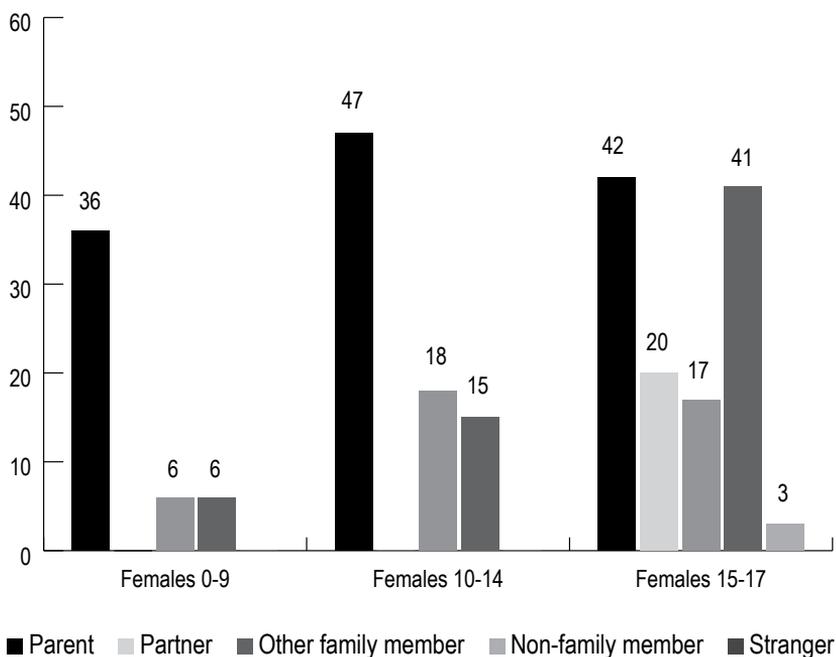
### 8.1.4 Australian Capital Territory data about child victims of physical assault in a residential location

In the Australian Capital Territory between 2010 and 2013 there were **449 police recorded child victims of physical assault in a residential location**:

- **Parents accounted for the largest proportion of offenders** (52.11% or 234 victims), followed by **non-family members known to the victim** (23.6% or 106 victims), then **other family members** (14.92% or 67 victims), then **partners** (5.12% or 23 victims), and then **strangers** (0.66% or 3 victims).
- **Male children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was their parent** (22.65% or 53 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was some other family member** (26.87% or 18 victims), followed closely by **female children aged 15 to 17 years** (25.37% or 17 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a stranger** (100% or 3 victims), **their partner** (86.96% or 20 victims), and a **non-family member known to the victim** (38.68% or 41 victims).

**Figure 10: Number of child victims of physical assault, by offender type, by the victim's sex and by the victim's age (Australian Capital Territory, 2010–2013)**





## 8.2 ABS data about child victims of sexual assault aged 0-17 years

The sexual assault data in this appendix is drawn from Tables 5-9 of the customised report I obtained from ABS about the ABS Recorded Crime – Victims publication.

The ABS provided me with data about child victims of sexual assault aged 0 to 17 years for New South Wales, Queensland, Victoria, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory.

Aboriginal and Torres Strait Islander status data was only provided for New South Wales and Queensland.

### 8.2.1 New South Wales data about child victims of sexual assault in a residential location

In New South Wales between 2010 and 2013 there were **11,669 police recorded child victims of sexual assault in a residential location**:

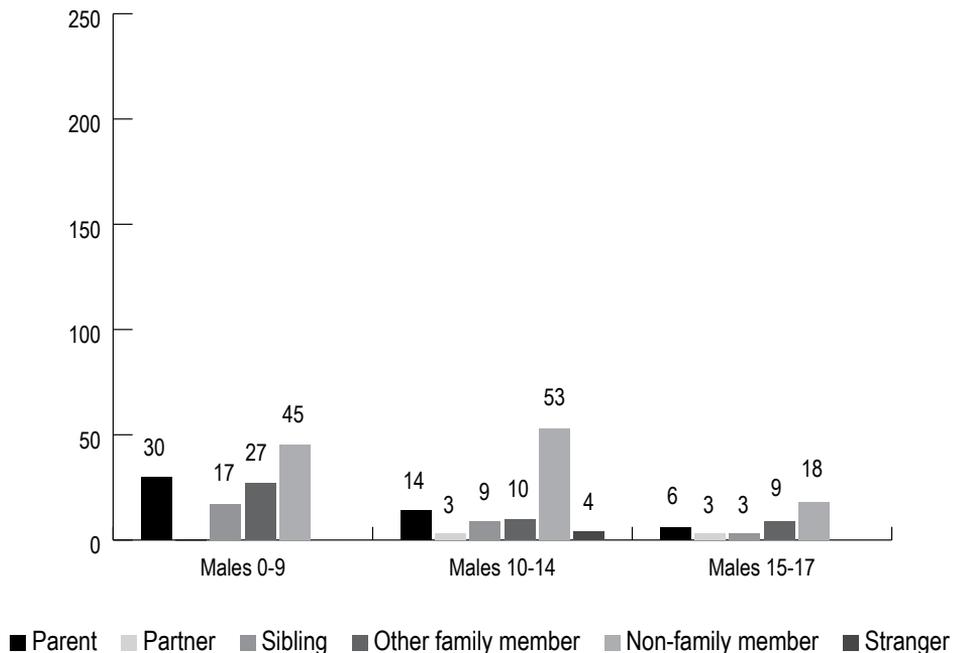
- **Aboriginal and Torres Strait Islander children accounted for 11.11%** or 1,297 victims
- **Non-Indigenous children accounted for 80.5%** or 9,394 victims
- **The Indigenous status was unknown for 8.38%** of children or 978 child victims.

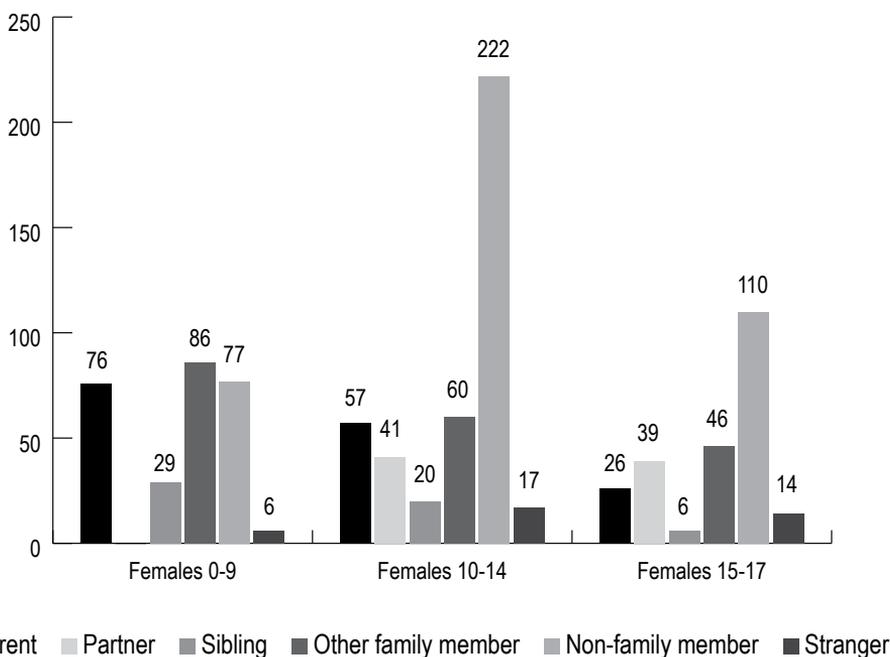
### 8.2.1.1 Aboriginal and Torres Strait Islander children who were victims of sexual assault in a residential location

In New South Wales between 2010 and 2013 there were **1,297 police recorded Aboriginal and Torres Strait Islander child victims of sexual assault in a residential location**:

- **Non-family members** accounted for the largest proportion of offenders (40.47% or 525 victims), followed by **other family members** (18.35% or 238 victims), then **parents** (16.11% or 209 victims), then **partners** (6.63% or 86 victims), then **siblings** (6.47% or 84 victims), and then **strangers** (3.16% or 41 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who reported the offender was their parent (36.36% or 76 victims), some **other family member** (36.13% or 86 victims), and a **sibling** (34.52% or 29 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who reported the offender was their partner (47.67% or 41 victims), a **non-family member known to the victim** (42.29% or 222 victims), and a **stranger** (41.46% or 17 victims).

**Figure 11: Number of Aboriginal and Torres Strait Islander child victims of sexual assault, by offender type, by the victim’s sex and by the victim’s age (New South Wales, 2010–2013)**



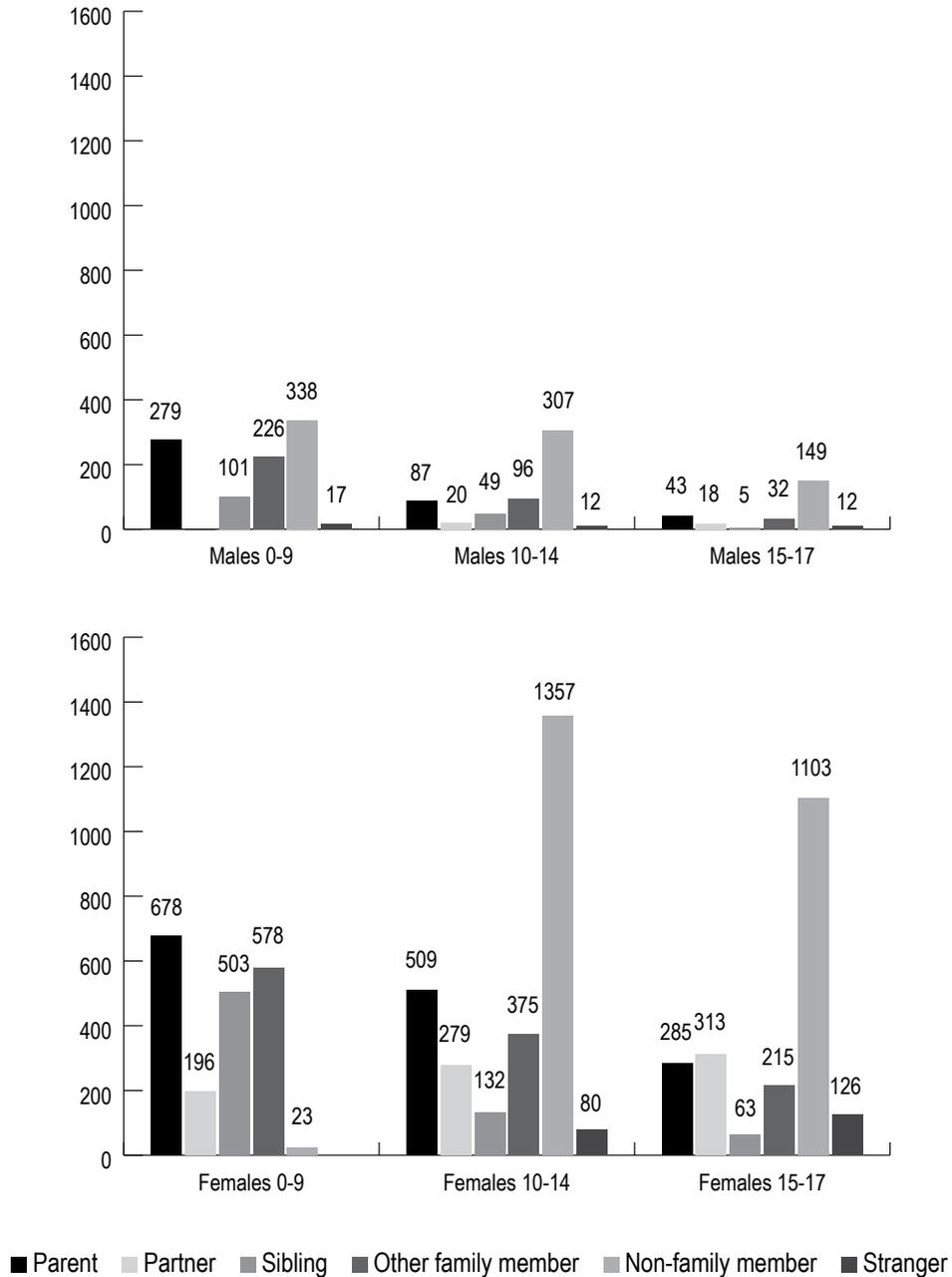


### 8.2.1.2 Non-Indigenous children who were victims of sexual assault in a residential location

In New South Wales between 2010 and 2013 there were **9,394 police recorded non-Indigenous child victims of sexual assault in a residential location**:

- **Non-family members known to the victim** accounted for the largest proportion of **offenders** (40.79% or 3,832 victims), followed by **parents** (20.02% or 1,881 victims), then **other family members** (15.4% or 1,447 victims), then **partners** (6.7% or 630 victims), then **siblings** (5.84% or 549 victims), and then **strangers** (2.87% or 270 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was their parent** (36.04% or 678 victims), their **sibling** (35.7% or 196 victims), and some **other family member** (34.76% or 503 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was a non-family member known to the victim** (35.41% or 1,357 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their partner** (49.68% or 313 victims), and a **stranger** (46.67% or 126 victims).

**Figure 12: Number of non-Indigenous child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (New South Wales, 2010–2013)**

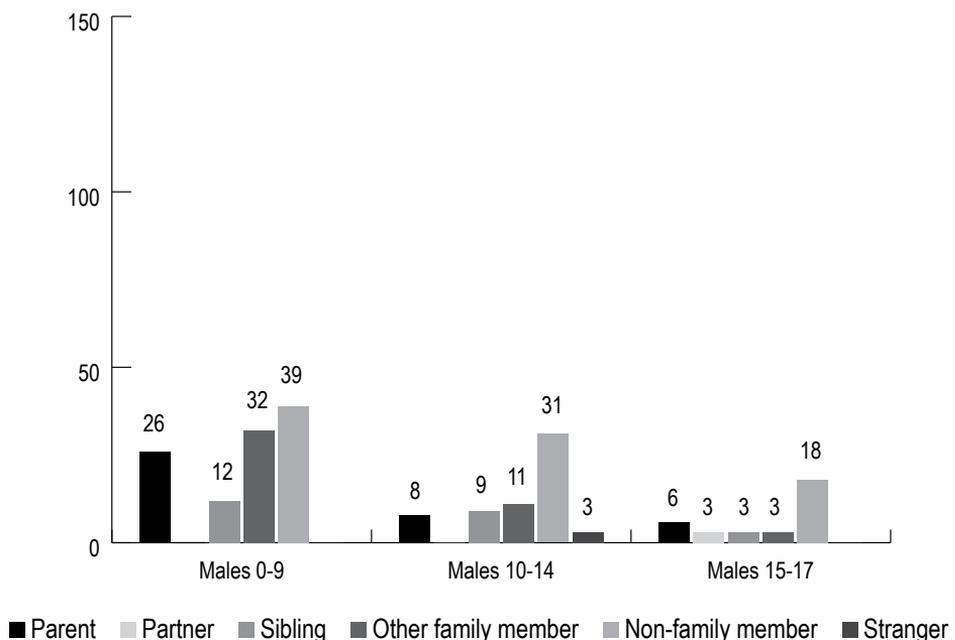


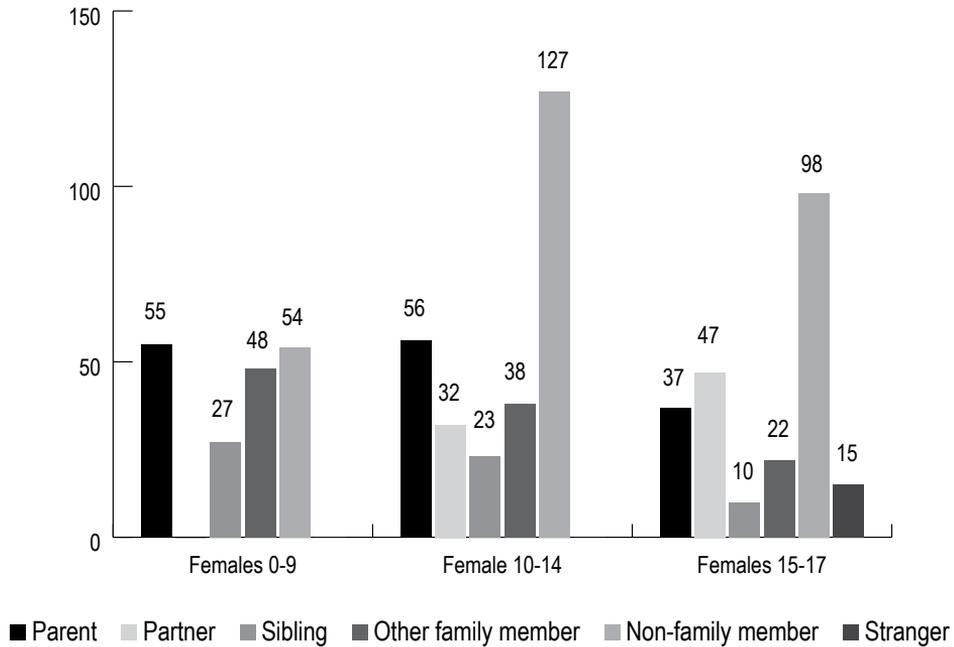
### 8.2.1.3 Aboriginal and Torres Strait Islander status unknown for child victims of sexual assault in a residential location

In New South Wales between 2010 and 2013 there were **978 police recorded child victims of sexual assault with Indigenous status unknown in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (37.52% or 367 victims), followed by **parents** (19.22% or 188 victims), then **other family members** (15.74% or 154 victims), then **siblings** (8.58% or 84 victims), then **partners** (8.38% or 82 victims), and then **strangers** (1.84% or 18 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was their sibling** (32.14% or 27 victims), and some **other family member** (31.17% or 48 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was a non-family member known to the victim** (34.6% or 127 victims), and their **parent** (29.79% or 56 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a stranger** (83.33% or 15 victims) and their **partner** (57.32% or 47 victims).

**Figure 13: Number of child victims of sexual assault where Aboriginal and Torres Strait Islander status is unknown, by offender type, by the victim's sex and by the victim's age (New South Wales, 2010–2013)**





## 8.2.2 Queensland data about child victims of sexual assault in a residential location

In Queensland between 2010 and 2013 there were **7,727 police recorded child victims of sexual assault in a residential location**:

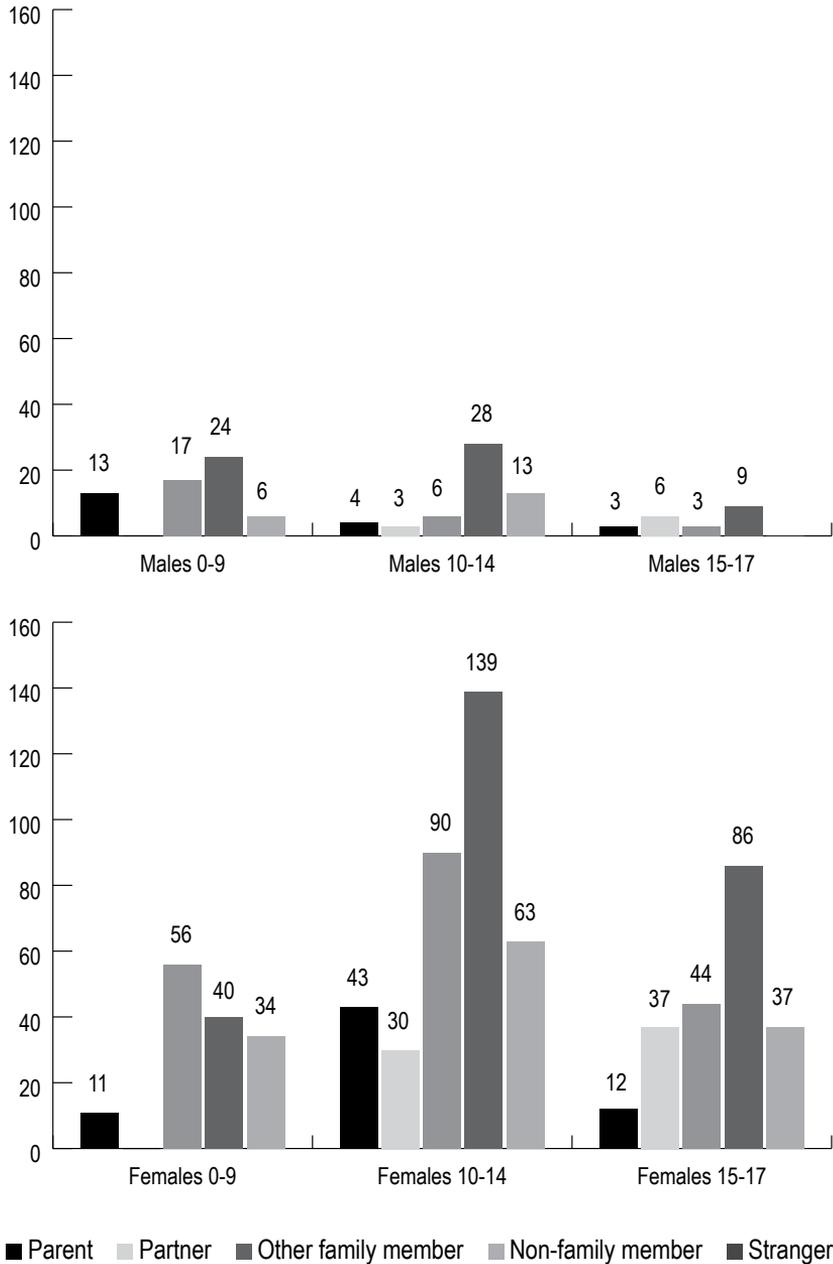
- **Aboriginal and Torres Strait Islander children accounted for 11.32%** or 875 victims
- **Non-Indigenous children accounted for 67.21%** or 5,194 victims
- **The Indigenous status was unknown for 21.45%** of children or 1,658 child victims.

### 8.2.2.1 Aboriginal and Torres Strait Islander children were victims of sexual assault in a residential location

In Queensland between 2010 and 2013 there were **875 police recorded Aboriginal and Torres Strait Islander child victims of sexual assault in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (38.04% or 326 victims), followed by **other family members** (25.2% or 216 victims), then **strangers** (17.85% or 153 victims), then **parents** (10.04% or 86 victims), and then **partners** (8.87% or 76 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was their parent** (50% or 43 victims), a **non-family member known to the victim** (42.64% or 139 victims) some **other family member** (41.67% or 90 victims), and a **stranger** (41.18% or 63 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was their partner** (48.68% or 37 victims).

**Figure 14: Number of Aboriginal and Torres Strait Islander child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (Queensland, 2010–2013)**

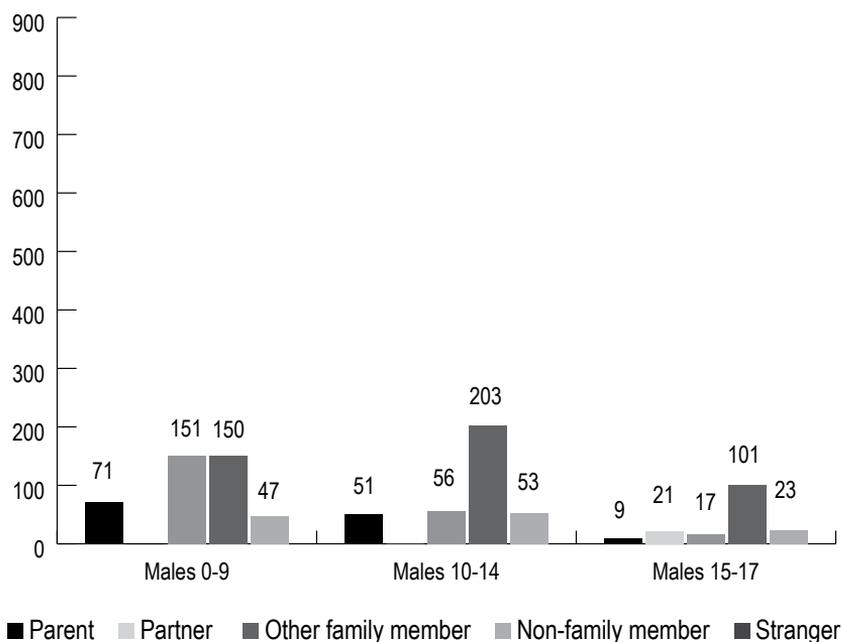


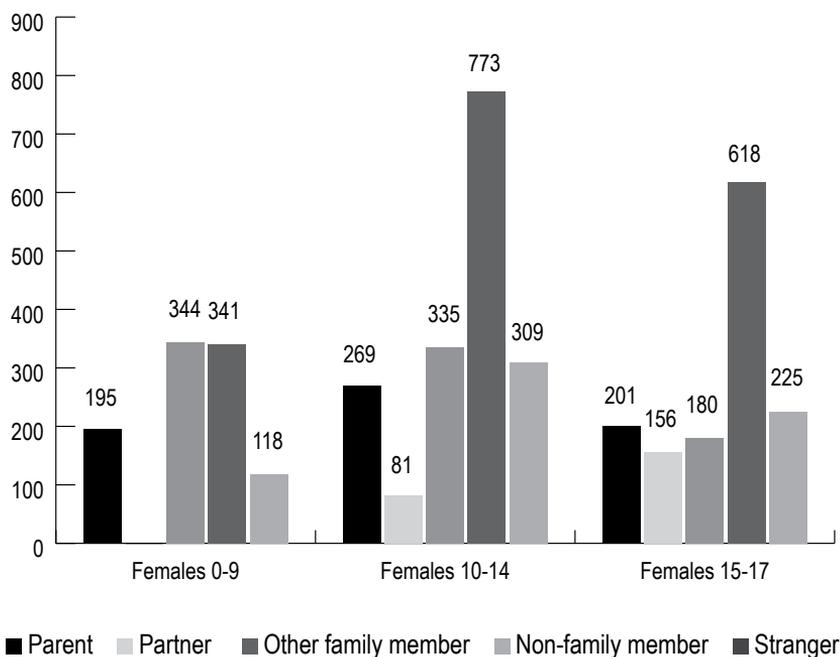
### 8.2.2.2 Non-Indigenous children who were victims of sexual assault in a residential location

In Queensland between 2010 and 2013 there were **5,194 police recorded non-Indigenous child victims of sexual assault in a residential location**:

- **Non-family members accounted for the largest proportion of offenders** (42.08% or 2,186 victims), followed by **other family members** (20.85% or 1,083 victims), then **parents** (15.32% or 796 victims), then **strangers** (14.92% or 775 victims), and then **partners** (4.96% or 258 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was some other family member** (31.76% or 344 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was a stranger** (39.87% or 309 victims) a **non-family member known to the victim** (35.36% or 773 victims) and their **parent** (33.79% or 269 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a partner** (60.47% or 156 victims).

**Figure 15: Number of non-Indigenous child victims of sexual assault, by offender type, by the victim’s sex and by the victim’s age (Queensland, 2010–2013)**



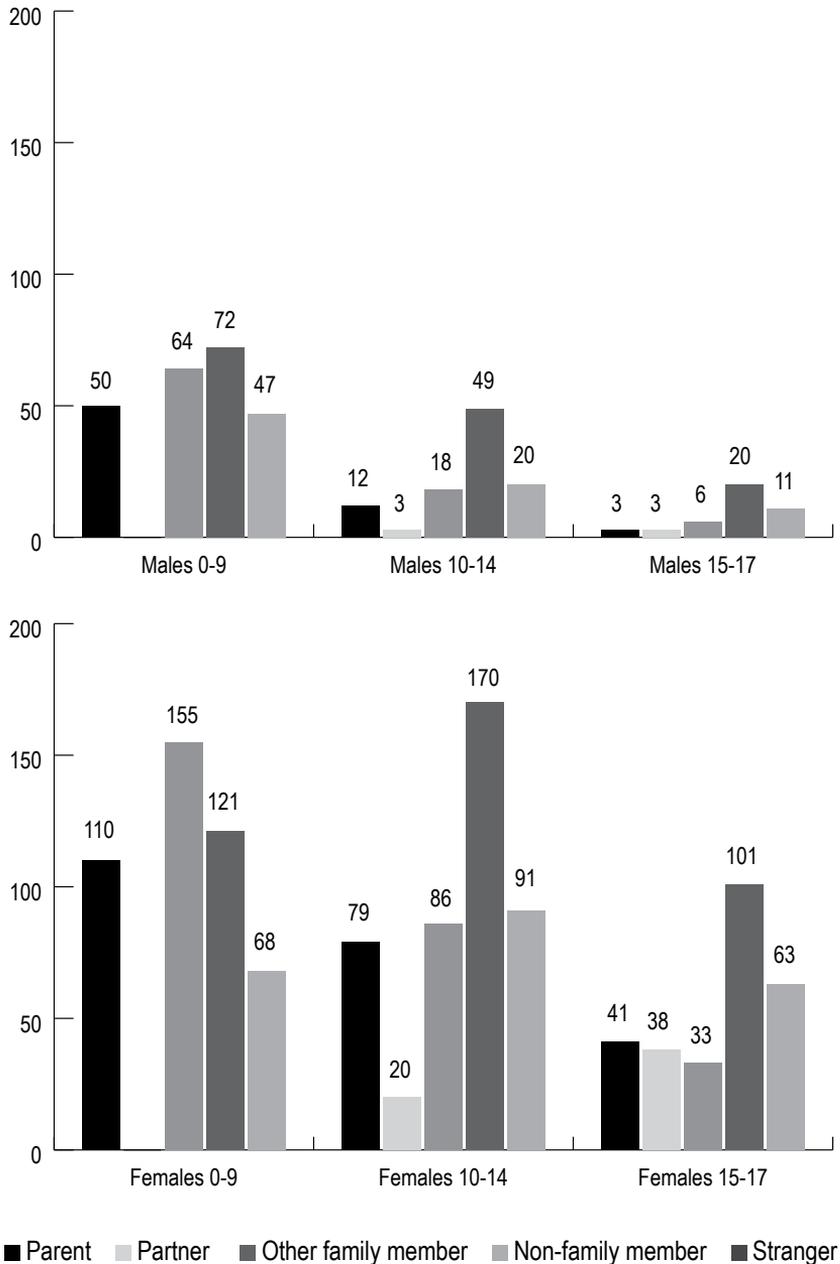


### 8.2.2.3 Aboriginal and Torres Strait Islander status unknown for child victims of sexual assault in a residential location

In Queensland between 2010 and 2013 there were **1,658 police recorded child victims of sexual assault with Indigenous status unknown in a residential location**:

- **Non-family members** accounted for the largest proportion of offenders (32.14% or 533 victims), followed by **other family members** (21.83% or 362 victims), then **strangers** (18.09% or 300 victims), then **parents** (17.79% or 295 victims), and then **partners** (3.86% or 64 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who reported the offender was **some other family member** (42.82% or 155 victims) and their **parent** (37.29% or 110 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who reported the offender was a **non-family member** (31.89% or 170 victims), and a **stranger** (30.33% or 91 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who reported the offender was a **partner** (59.38% or 38 victims).

**Figure 16: Number of child victims of sexual assault where Aboriginal and Torres Strait Islander status is unknown, by offender type, by the victim's sex and by the victim's age (Queensland, 2010–2013)**

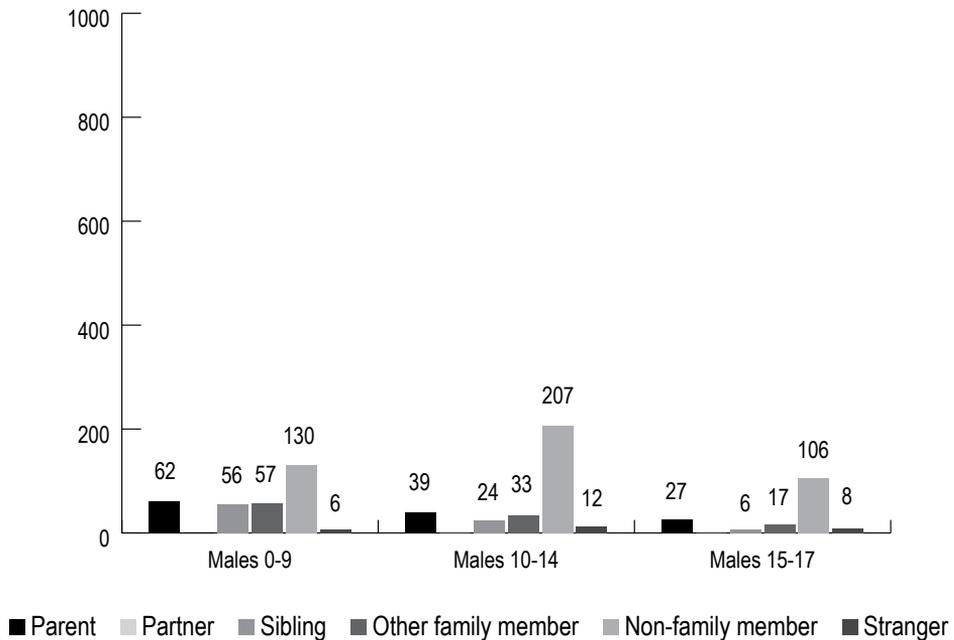


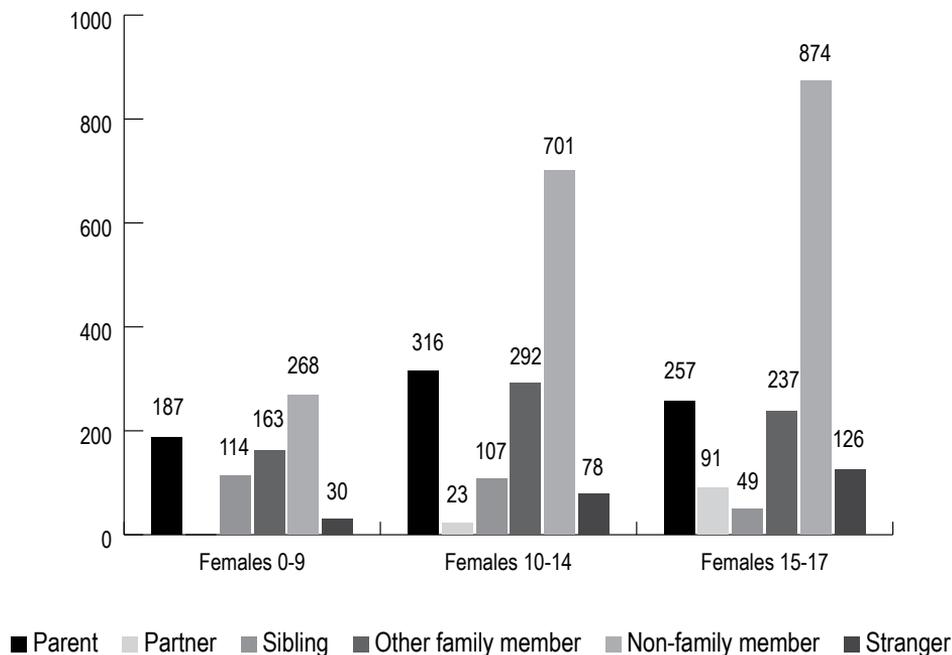
### 8.2.3 Victoria data about child victims of sexual assault in a residential location

In Victoria between 2010 and 2013 there were **4,864 police recorded child victims of sexual assault in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (46.99% or 2,286 victims), followed by **parents** (18.25% or 888 victims), then **other family members** (16.42% or 799 victims), then **siblings** (7.31% or 356 victims), then **strangers** (5.34% or 260 victims), and then **partners** (2.34% or 114 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was a sibling** (32.02% or 114 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was a parent** (35.59% or 316 victims), and some **other family member** (36.55% or 292 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a partner** (79.82% or 91 victims), a **stranger** (48.46% or 126 victims), and **non-family member known to the victim** (38.23% or 874 victims).

**Figure 17: Number of child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (Victoria, 2010–2013)**



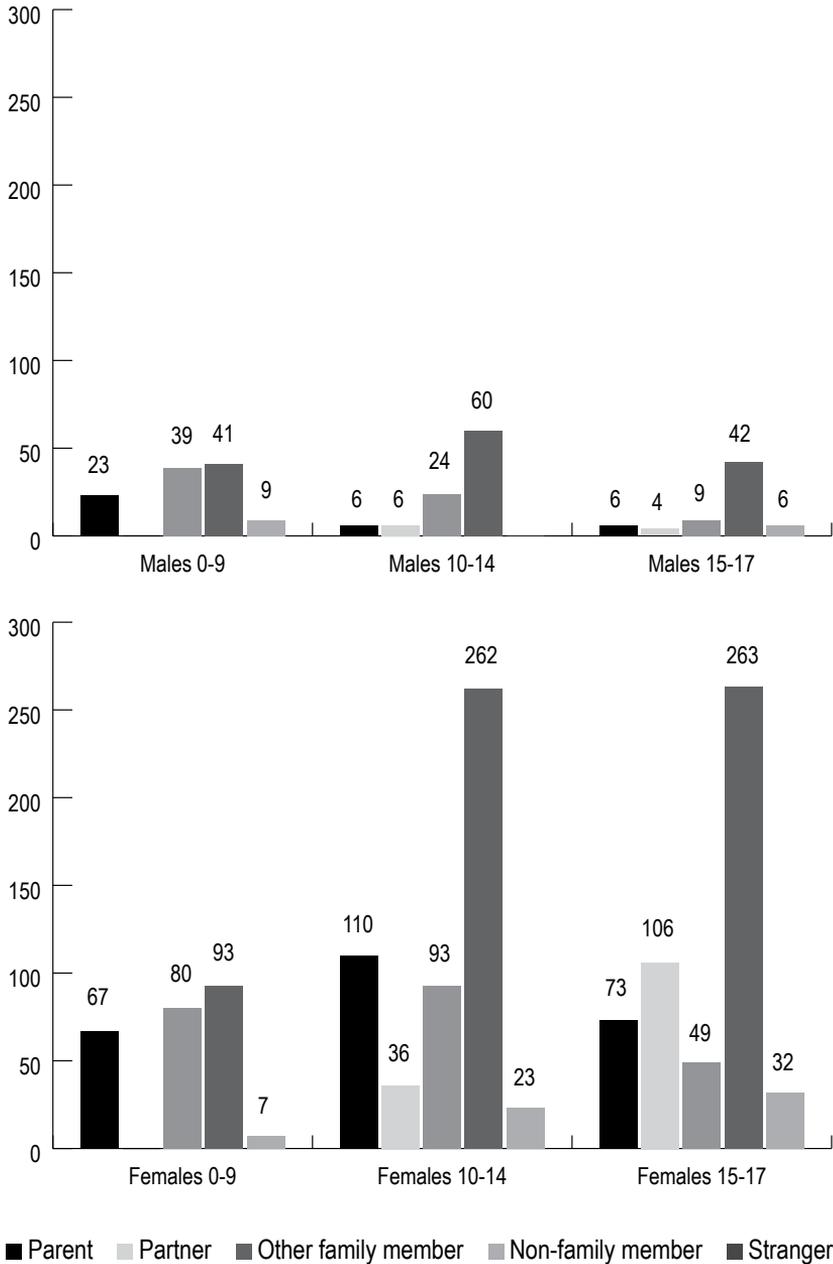


#### 8.2.4 South Australian data about child victims of sexual assault in a residential location

In South Australia between 2010 and 2013 there were **1,605 police recorded child victims of sexual assault in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (48.5% or 761 victims), followed by **other family members** (18.74% or 294 victims), then **parents** (18.16% or 285 victims), then **partners** (9.69% or 152 victims), and then **strangers** (4.91% or 77 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was a parent** (38.6% or 110 victims), and some **other family member** (31.63% or 93 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a partner** (69.74% or 106 victims), and a **stranger** (41.56% or 32 victims).
- **Female children aged 15 to 17 years** also accounted for the largest proportion of child victims who **reported the offender was a non-family member known to the victims** (34.56% or 263 victims), **followed closely by female children aged 10 to 14 years** (34.43% or 262 victims).

**Figure 18: Number of child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (South Australia, 2010–2013)**

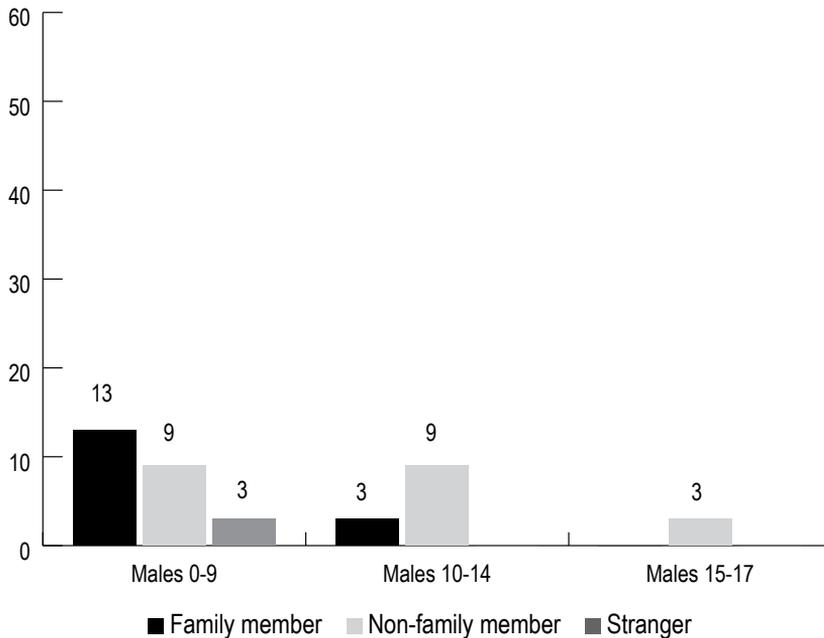


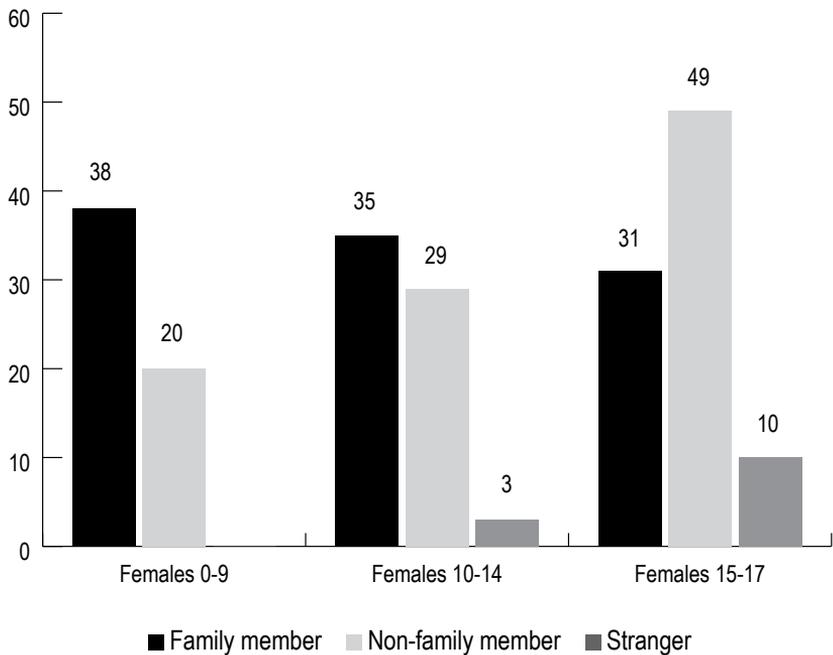
### 8.2.5 Tasmania data about child victims of sexual assault in a residential location

In Tasmania between 2010 and 2013 there were **258 police recorded child victims of sexual assault in a residential location**:

- **Family members** accounted for the largest proportion of offenders (46.51% or 120 victims), followed by **non-family members known to the victim** (46.12% or 119 victims), and then **strangers** (6.2% or 16 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was a family members** (31.66% or 38 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a non-family member known to the victim** (41.17% or 49 victims), and a **stranger** (62.5% or 10 victims).

**Figure 19: Number of child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (Tasmania, 2010–2013)**



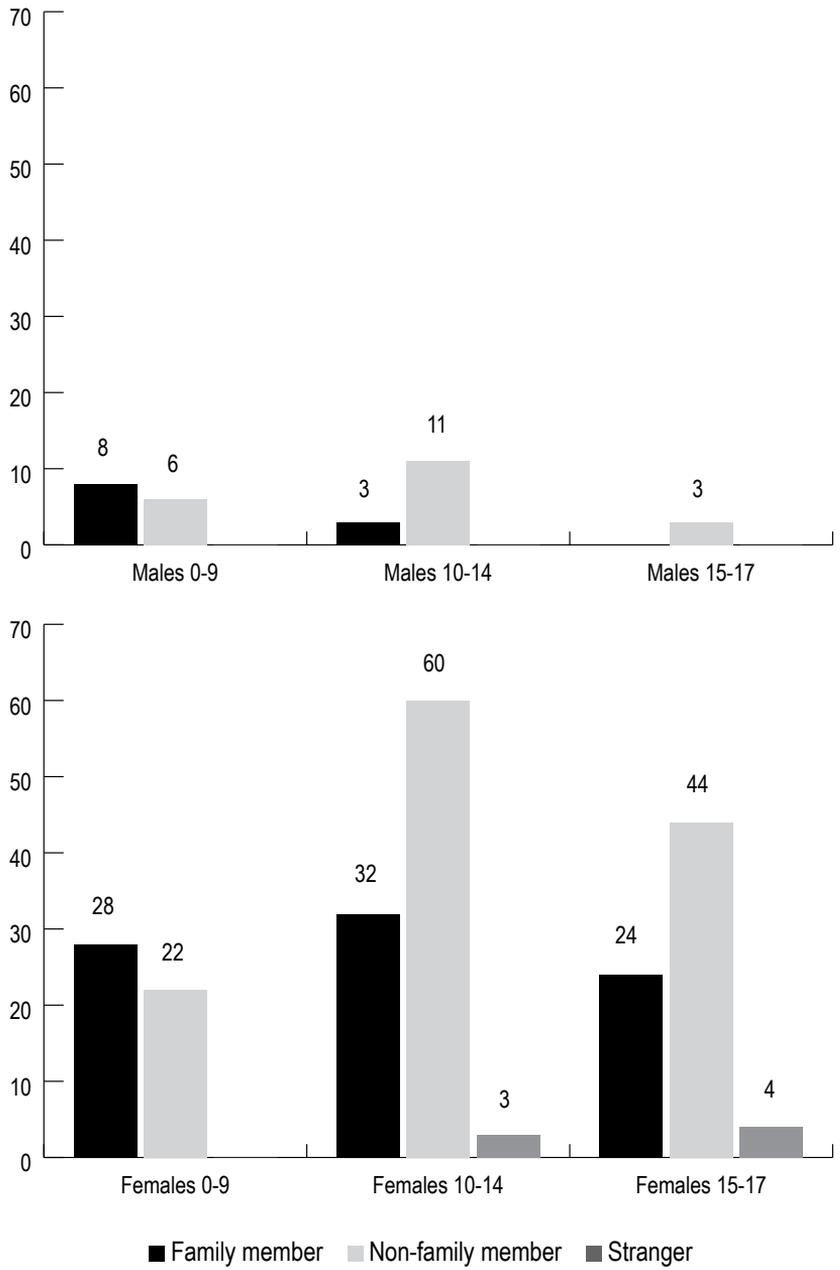


### 8.2.6 Northern Territory data about child victims of sexual assault in a residential location

In the Northern Territory between 2010 and 2013 there were **288 police recorded child victims of sexual assault in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (58.87% or 146 victims), followed by **family members** (37.25% or 95 victims), and then **strangers** (2.82% or 7 victims).
- **Female children aged 10 to 14 years** accounted for the largest proportion of child victims who **reported the offender was a family member** (33.68% or 32 victims), and **non-family members known to the victim** (41.09% or 60 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a stranger** (57.14% or 4 victims).

**Figure 20: Number of child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (Northern Territory, 2010–2013)**

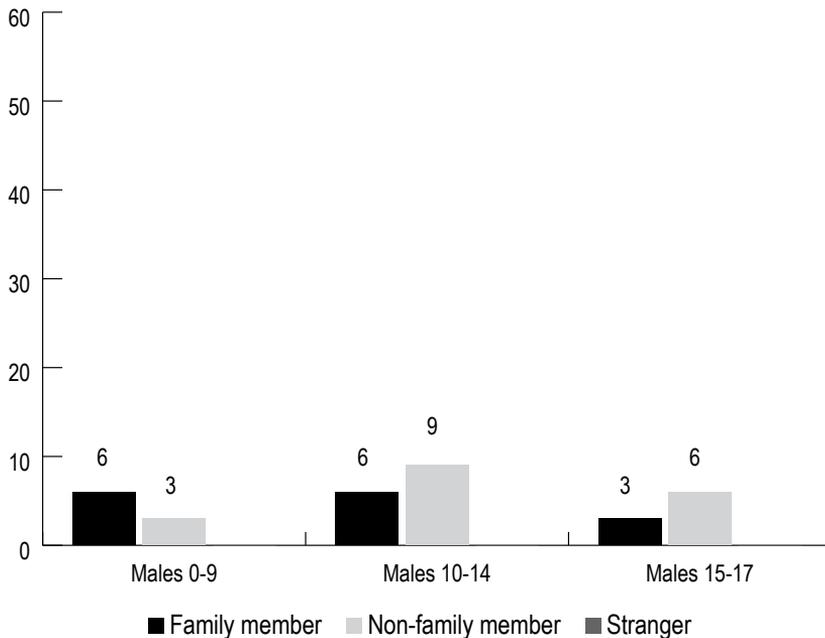


## 8.2.7 Australian Capital Territory data about child victims of sexual assault in a residential location

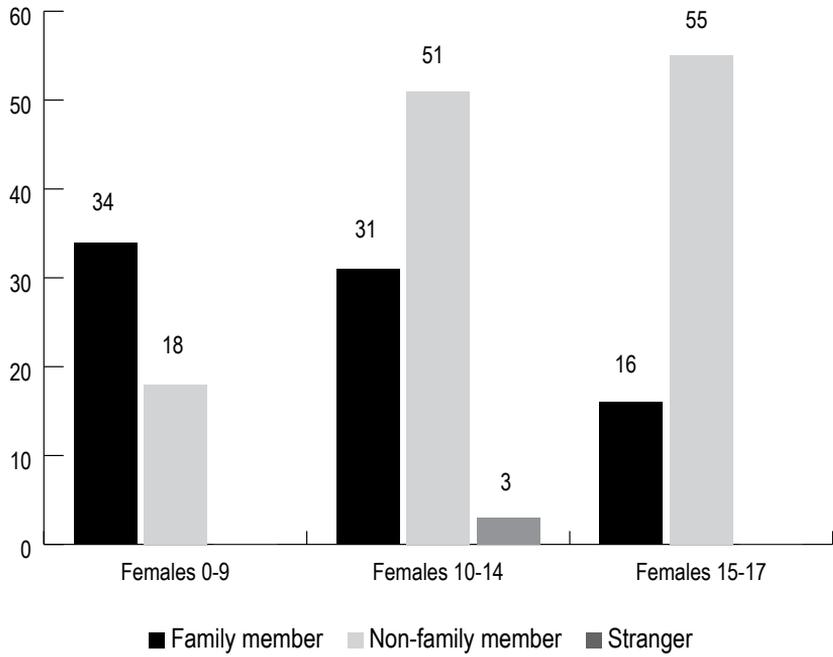
In the Australian Capital Territory between 2010 and 2013 there were **247 police recorded child victims of sexual assault in a residential location**:

- **Non-family members known to the victim accounted for the largest proportion of offenders** (57.48% or 142 victims), followed by **family members** (39.86% or 96 victims) and then **strangers** (1.21% or 3 victims).
- **Female children aged 0 to 9 years** accounted for the largest proportion of child victims who **reported the offender was a family member** (35.41% or 34 victims).
- **Female children aged 10 to 14 years** accounted for all of the child victims who **reported the offender was a stranger** (100% or 3 victims).
- **Female children aged 15 to 17 years** accounted for the largest proportion of child victims who **reported the offender was a non-family member** (38.73% or 55 victims).

**Figure 21: Number of child victims of sexual assault, by offender type, by the victim's sex and by the victim's age (Australian Capital Territory, 2010–2013)**



Appendix 8: ABS Recorded Crime – Victims data about children aged 0 to 17 years who were victims of physical assault and sexual assault



## Appendix 9: ABS Personal Safety Survey data about children aged 0 to 14 years who experienced physical abuse and sexual abuse

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The estimated data in this appendix is drawn from Tables 10-12a of the customised report I obtained from ABS about the ABS 2012 Personal Safety Survey.

This appendix presents prevalence estimates about children's experience of physical abuse and sexual abuse before the age of 15 in Australia. The estimates in this appendix are based on survey data collected between February and December 2012 from Australian men and women aged 18 years and over who responded to survey questions about their experience of physical abuse and sexual abuse before the age of 15.<sup>10</sup>

The estimates presented in this appendix may differ from the actual prevalence of physical abuse and sexual abuse before the age of 15 in the Australian community because the estimates are based on information obtained from a sample of persons, and are therefore subject to sampling error. Indications of the level of sampling error are measured by Relative Standard Errors (RSEs).<sup>11</sup>

In its statement about data quality, the ABS considers that estimates derived from the Personal Safety Survey with a relative standard error of less than 25% are considered sufficiently reliable for most purposes.<sup>12</sup> Only estimates of such precision are referred to in the text of this report, unless otherwise noted.

For the purposes of the ABS Personal Safety Survey, incidents of violence experienced by a person before the age of 15 years from any adult (male or female), including the person's parents, is defined as abuse, not assault.<sup>13</sup> Emotional abuse is excluded.<sup>14</sup>

The ABS defines physical abuse as any deliberate physical injury (including bruises) inflicted upon a child (before the age of 15 years) by an adult. Discipline that accidentally resulted in an injury is excluded.<sup>15</sup>

Sexual abuse is defined by the ABS as any act by an adult involving a child (before the age of 15 years) in sexual activity beyond their understanding or contrary to currently accepted community standards.<sup>16</sup>

The physical abuse and sexual abuse data presented in this appendix describes the perpetrator's relationship to the victim. The perpetrator's relationship to the victim is identified by the survey respondent.<sup>17</sup>

If multiple perpetrators were involved in the first incident of physical abuse or sexual abuse experienced by the survey respondent before the age of 15 years then the incident would be counted separately for each type of perpetrator but only once in the aggregated totals. Components therefore may not add to the totals.

The data presented in this appendix is disaggregated by the type of perpetrator:

- Family member – includes father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, and other relative or in-law.
- Other known person – includes family friend, acquaintance/neighbour, doctor, teacher, and priest/minister/rabbi.
- Stranger.

The data presented in this appendix is also disaggregated by the sex of the person who experienced abuse before the age of 15 (male and female) and the age of the person at the first incident of abuse (less than 4 years, 4 to 9 years, 10 to 11 years, 12 to 14 years and "unknown/refusal").

Some of the estimated data contained in the customised report provided to me by ABS aggregated data about perpetrator type to improve the reliability of the data so that it could be released.<sup>18</sup> The level of detail at which the ABS Personal Safety Survey data can be outputted varies depending on estimates about male/female victims or physical/sexual abuse, which reflects differences in prevalence rates.<sup>19</sup>

Fathers, mothers, siblings, other relatives or in-laws, non-family members known to the victim and strangers, for example, were provided to me as separate perpetrator types in the estimated data about all male physical abuse victims aged 0 to 14 years. None of these perpetrator types were provided separately, however, in the estimated data about male physical abuse victims by the four different age categories (under 4, 4 to 9, 10 to 11 and 12 to 14).

Similarly, fathers and stepfathers were provided to me as two separate perpetrator types in the estimated data about all female sexual abuse victims aged 0 to 14 years. The perpetrator type is aggregated to a single father/stepfather category, however, in the estimated data provided to me about female sexual abuse victims by the four different age categories (under 4, 4 to 9, 10 to 11 and 12 to 14).

The ABS provided me with the most detailed estimated data possible about children's experience of physical abuse and sexual abuse before the age of 15. This appendix presents the data that ABS provided me with.

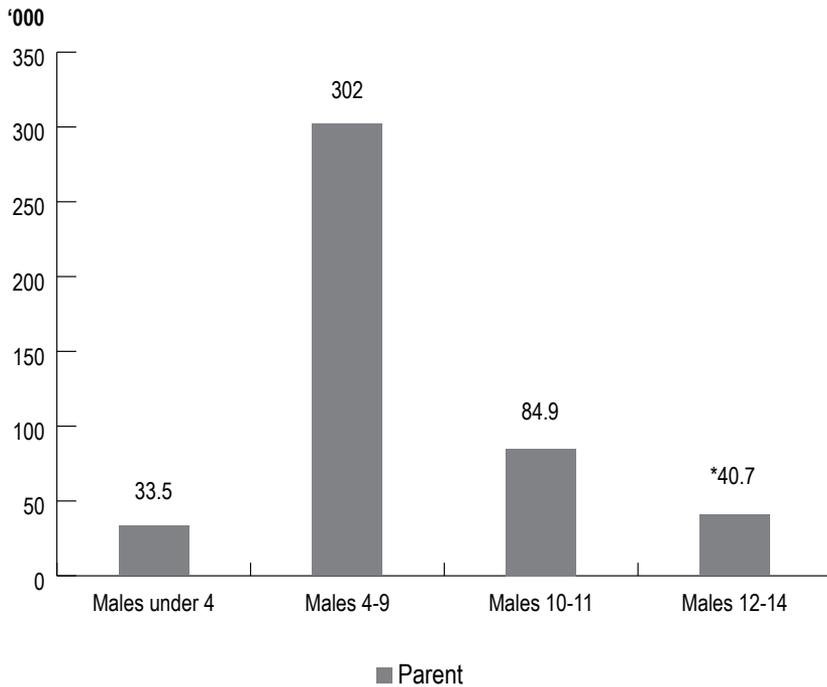
## 9.1 Estimated number of children who experienced physical abuse

### 9.1.1 Males experiences of physical abuse before the age of 15

According to the 2012 Personal Safety Survey data, it was estimated there were **824,300 adult men who first experienced physical abuse as a child aged between 0 to 14 years:**

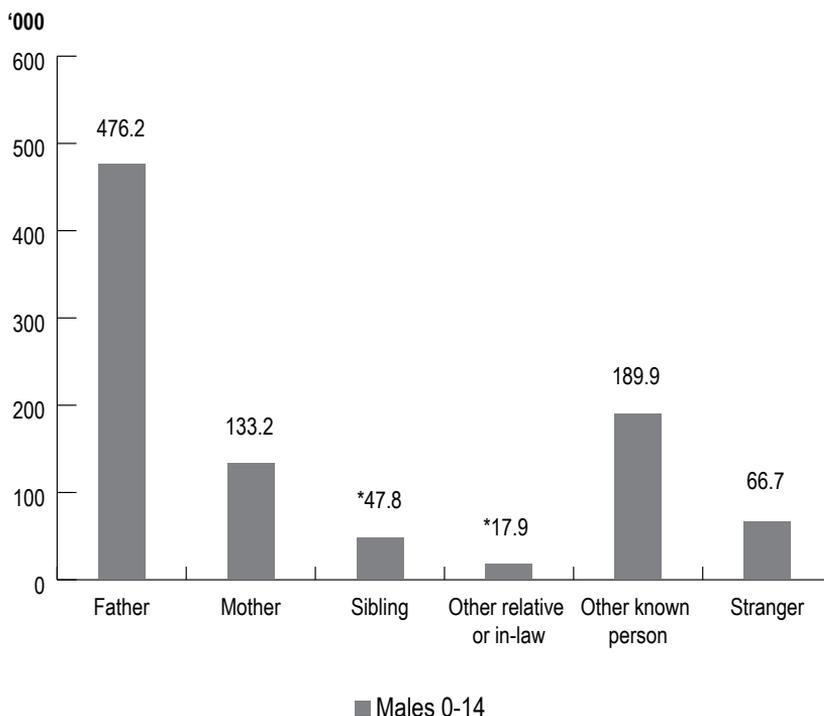
- **Fathers/stepfathers are estimated to account for the largest proportion of perpetrators** in the first incident of physical abuse experienced by male children (57.77% or 476,200), followed by **non-family members known to the victim** (23.03% or 189,900), then **mothers/stepmothers** (16.15% or 133,200), and then **strangers** (8.12% or 66,700).
- Of the 504,900 male children aged 0 to 14 years whose first incident of **physical abuse was perpetrated by a parent, 302,000 (59.8%) were aged between 4 and 9 years** when the incident occurred.

**Figure 1: Estimated number of adult men who first experienced physical abuse as a child by a parent, by the victim's age at the first incident of physical abuse**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

**Figure 2: Estimated number of adult men who first experienced physical abuse as a child, by perpetrator type**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

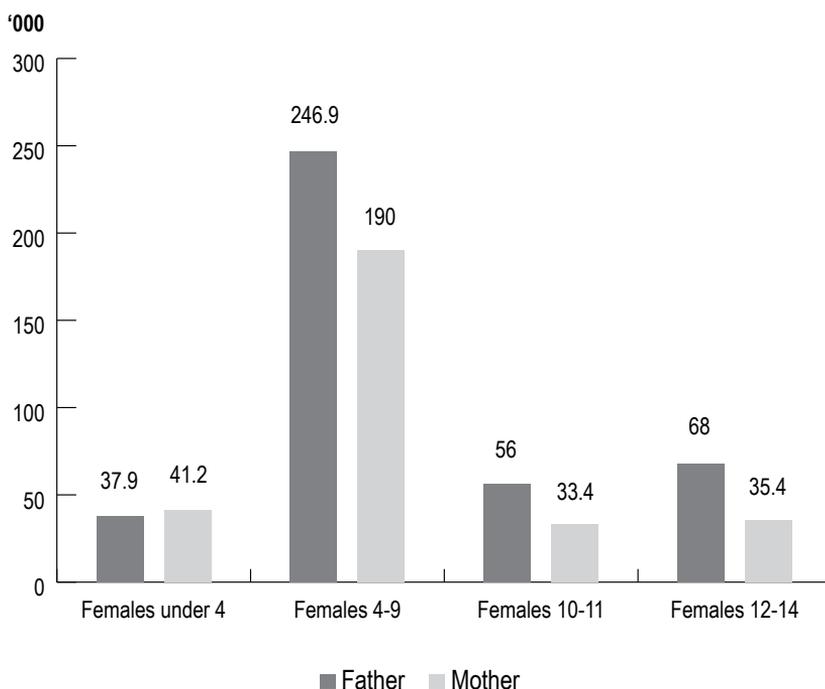
### 9.1.2 Females experiences of physical abuse before the age of 15

According to the 2012 Personal Safety Survey data, it was estimated there were **935,600 adult women who first experienced physical abuse as a child aged between 0 to 14 years:**

- **Fathers are estimated to account for the largest proportion of perpetrators** in the first incident of physical abuse experienced by female children (46.16% or 431,900), followed by **mothers** (34.05% or 318,600), then **non-family members known to the victim** (9.87% or 92,400), then **stepfathers** (7.25% or 67,900), then **other relatives or in-laws** (6.13% or 57,400), then **brothers/stepbrothers** (4.82% or 45,100), and then **stepmothers** (1.89% or 17,700).

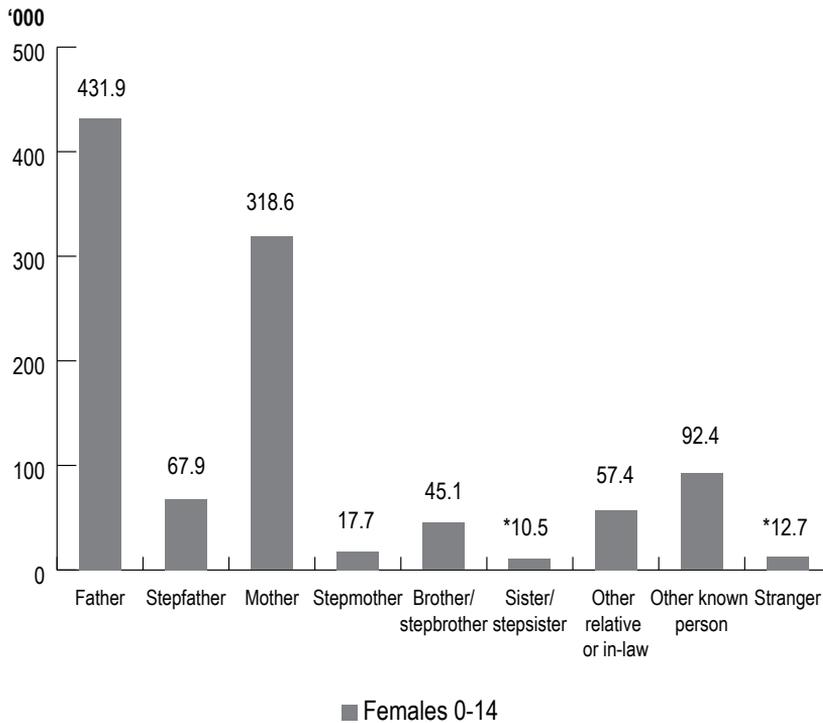
- Of the 431,900 female children aged 0 to 14 years whose first incident of **physical abuse was perpetrated by their father, 246,900 (57.16%) were aged between 4 and 9 years** when the incident occurred.
- Of the 318,600 female children aged 0 to 14 years whose first incident of **physical abuse was perpetrated by their mother, 190,000 (59.63%) were aged between 4 and 9 years** when the incident occurred.

**Figure 3: Estimated number of adult women who first experienced physical abuse as a child by a parent, by the victim's age at the first incident of physical abuse**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

**Figure 4: Estimated number of adult women who first experienced physical abuse as a child, by perpetrator type**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

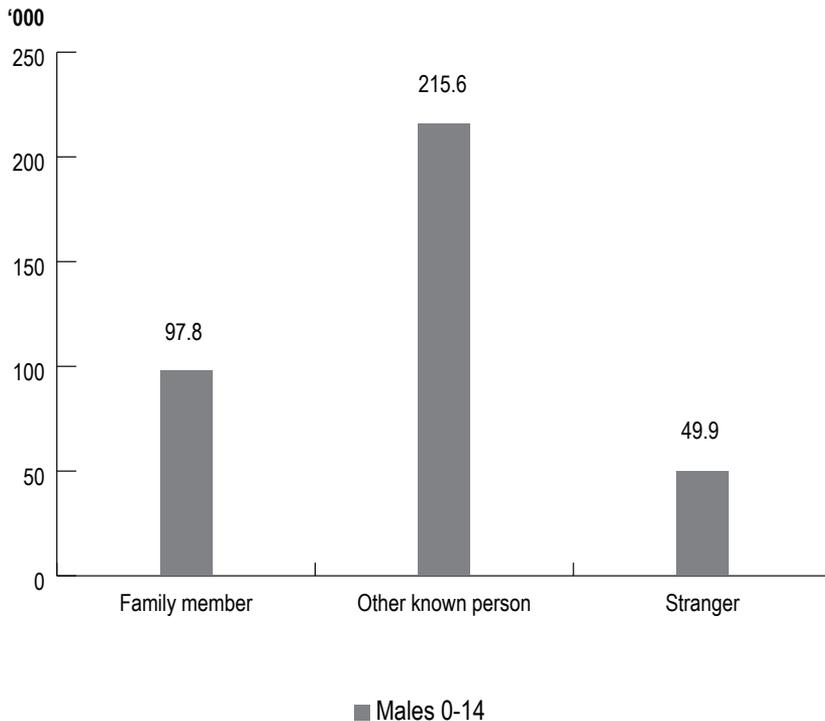
## 9.2 Estimated number of children who experienced sexual abuse

### 9.2.1 Male experiences of sexual abuse before the age of 15

According to the 2012 Personal Safety Survey data, it was estimated there were **354,100 adult men who first experienced sexual abuse as a child aged between 0 to 14 years:**

- **Non-family members known to the victim are estimated to account for the largest proportion of perpetrators** in the first incident of sexual abuse experienced by male children (60.88% or 215,600), followed by **family members** (27.61% or 97,800), and then **strangers** (14.09% or 49,900).

**Figure 5: Estimated number of adult men who first experienced sexual abuse as a child, by perpetrator type**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

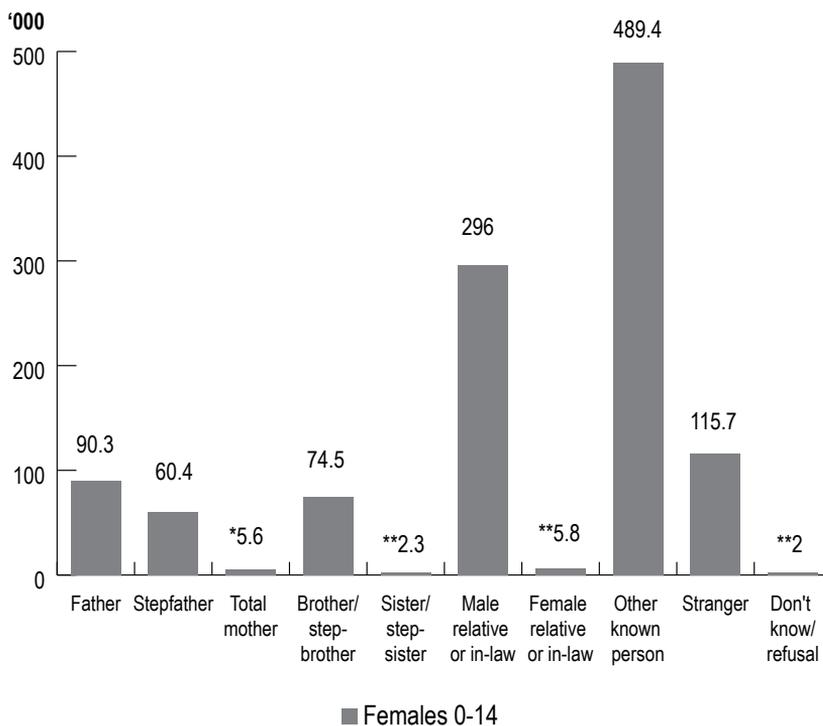
## 9.2.2 Female experiences of sexual abuse before the age of 15

According to the 2012 Personal Safety Survey data, it was estimated there were **1,092,200 adult women who first experienced sexual abuse as a child aged between 0 to 14 years:**

- **Family members are estimated to account for the largest proportion of perpetrators** in the first incident of sexual abuse experienced by female children (47.17% or 515,200), followed by **non-family members known to the victim** (44.8% or 489,400), and then **strangers** (10.59% or 115,700).
- **Male relatives or in-laws are estimated to account for more than half of the family member perpetrators** (57.45% or 296,000), followed by **fathers** (17.52% or 90,300), then **brothers/stepbrothers** (14.46% or 74,500), and then **stepfathers** (11.72% or 60,400).
- Of the 150,700 female children aged 0 to 14 years whose first incident of **sexual abuse was perpetrated by their father/stepfather, 62,700 (41.6%) were aged between 4 and 9 years** when the incident occurred.

- Of the 74,500 female children aged 0 to 14 years whose first incident of **sexual abuse was perpetrated by their brother/stepbrother**, **42,300 (56.77%)** were aged between **4 and 9 years** when the incident occurred.
- Of the 296,000 female children aged 0 to 14 years whose first incident of **sexual abuse was perpetrated by some other male relative or in-law**, **162,000 (54.72%)** were aged between **4 and 9 years** when the incident occurred.

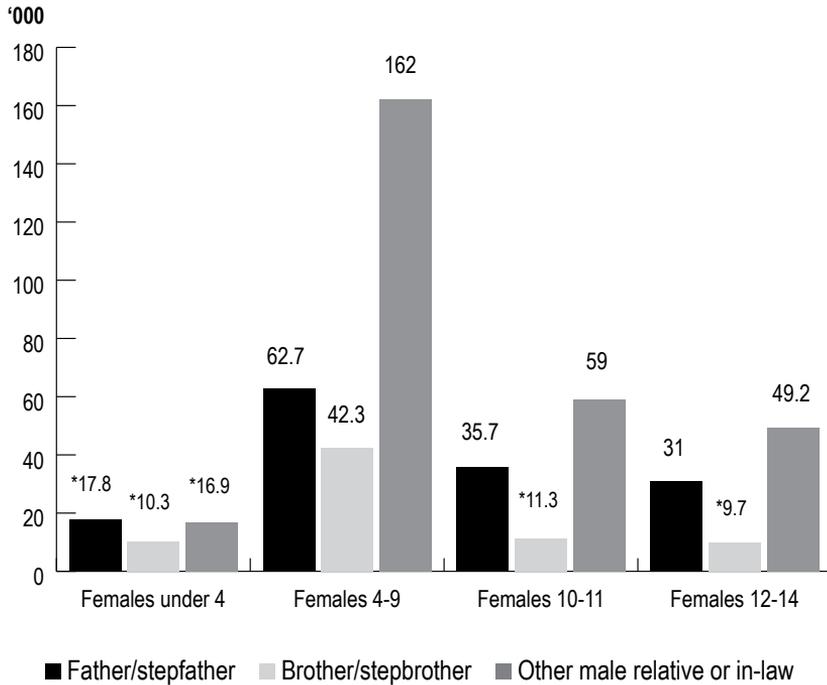
**Figure 6: Estimated number of adult women who first experienced sexual abuse as a child, by perpetrator type**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

\*\* Estimate has a relative standard error of greater than 50% and is considered too unreliable for general use.

**Figure 7: Estimated number of adult women who first experienced sexual abuse as a child, by perpetrator type and by the victim's age at the first incident of sexual abuse**



\* Estimate has a relative standard error of 25% to 50% and should be used with caution.

# Appendix 10: National Centre for Longitudinal Data research summaries

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Submission 62 contains the complete research summaries on partner violence provided to me by the National Centre for Longitudinal Data. Extracts are included below.

## 10.1 Growing Up in Australia: The Longitudinal Study of Australian Children (LSAC)

Growing Up in Australia: The Longitudinal Study of Australian Children (LSAC) has followed the development of 10,000 children, young people and families from all parts of Australia since 2004. The survey collects information from children and their families. LSAC has not collected direct measures of domestic violence but has included some indicators. These include:

1. How often is there anger or hostility between you and your partner? (Collected since Wave 1)
2. How often do you have arguments with your partner that end up with people pushing, hitting, kicking or shoving? (Collected since Wave 1)
3. Have you ever been afraid of your current partner? (Collected since Wave 4).

LSAC recognises the indicator 'Have you ever been afraid of partner' as a good domestic violence indicator.<sup>20</sup>

It used this indicator in conjunction with data collected in Wave 5 in 2012 when children were 8-9 years (B cohort) and 12-13 years (K cohort) to provide information on partner violence for my statutory report.<sup>21</sup>

206 of the 3,376 mothers of children aged 8-9 years in the B cohort reported they had been afraid of their partner (6.1%).

199 of the 3,116 mothers of children aged 12-13 years in the K cohort reported they had been afraid of their partner (6.4%).

## 10.2 The LSAC key findings

- Approximately 6 per cent of mothers reported they had been afraid of their current partners. Those mothers were more likely to report higher levels of hostility and physical violence between them and their partners compared to mothers who had not been afraid of their partners.
- Compared to mothers in relationships not characterised by domestic violence (DV), mothers who reported they had been afraid of their partners reported lower levels of family cohesion. A similar pattern was found in the child's report on family cohesion.
- Compared to mothers not experiencing DV, mothers experiencing DV were much more likely to be in a DV situation in future years, but were also much more likely to be single in future years.

- Most of the demographic characteristics investigated were not related to the occurrence of DV. Demographic characteristics included: state of residence, remoteness, socio-economic status indicator, number of siblings, mother's age, father's age, mother's country of birth, father's country of birth, mother's year of arrival in Australia, mother's year of arrival in Australia, mother's language spoken at home, father's language spoken at home, child's language spoken at home, mother's indigenous status, father's indigenous status, mother's education level, father's education level, mother's employment, father's employment, mother's medical condition, father's medical condition. However, partners of mothers experiencing DV were more likely to have a long-term (that is, 6 months or more) medical condition(s) compared to their counterparts.
- Compared to mothers and their partners' not experiencing domestic violence, those experiencing DV were more likely to suffer psychological distress.
- Mothers experiencing DV were also more likely to rate their neighbourhood as unsafe, to report less social support and to face higher numbers of stressful life events and more financial hardship.
- Mothers experiencing DV were more likely to report lower levels of parenting efficacy and their children were more likely to have social and emotional problems compared to their counterparts.

## 10.3 Footprints in Time: The Longitudinal Study of Indigenous Children (LSIC)

**Footprints in Time: The Longitudinal Study of Indigenous Children (LSIC)** includes two groups of Aboriginal and/or Torres Strait Islander children who were aged 6 to 18 months (B cohort) and 3½ – 5 years (K cohort) when the study began in 2008.

LSIC has interviewed the families of between 1,200 and 1,700 Aboriginal and Torres Strait Islander children every year since 2008. They live in urban, regional and remote areas of Australia. While all of the children in the study are Indigenous, not all the primary carers or their partners are Indigenous.

The research summary provided by LSIC included data collected in Wave 3 (2010) in conjunction with the question:

How often do you have arguments with your partner that end up with people pushing, hitting, kicking or shoving?

833 mothers of children aged mostly 3 or 6 years in Wave 3 (2010) were asked whether they have arguments with their partner that end up with people pushing, hitting, kicking and shoving.

769 mothers answered the question and 86.2% reported that arguments 'never' included physical violence, 10.3% reported they 'rarely' did, 3.3% reported they 'sometimes' did, and 0.3% reported they 'often' did.

After taking into account children living in a single parent household, around 8% of Indigenous children in the sample live in households where parents' arguments occasionally end up with people pushing, hitting, kicking or shoving (combining responses 'rarely', 'sometimes' and 'often').

## 10.4 The LSIC key findings

- Mothers who had arguments that included physical violence were much more likely to be in a partner violence situation in future waves, but were also much more likely to be single in future waves.
- Demographic characteristics related to employment, education and financial hardship were related to partner violence. Remoteness was the single biggest predictor of partner violence in LSIC.
- Children were more likely to have social and emotional problems if they had been upset by family arguments and/or if their parents have had violent arguments.
- Mothers experiencing partner violence were more likely to rate family violence as a big problem in their community.

# Appendix 11: Kids Helpline data about children's experiences of family and domestic violence

The information provided in this appendix is based on Submission 14 from BoysTown about its Kids Helpline service.

The Kids Helpline supplied me with a detailed report of contacts received from children and young people aged 5 to 17 years between January 2012 and December 2014, who directly raised family or domestic violence as their main concern or as their second significant concern.

A total of 120,408 contacts were received from children and young people aged 5 to 17 years, of these 603 (0.5%) raised family and domestic violence as their main concern and a further 396 (0.3%) raised it as their second significant concern. In 62% of contacts where family and domestic violence was raised as the main concern, no secondary concern was recorded.<sup>22</sup>

These figures are based on the number of contacts and not individuals.<sup>23</sup> Between January 2012 and December 2014, there were 999 contacts where family and domestic violence was raised as either the main or secondary concern.<sup>24</sup>

Kids Helpline records information about each contact made by a child or young person, including:

- Demographic details
- Concerns raised by the young person
- Case notes about the content of the contact.

Kids Helpline contacts are coded according to the concerns raised by the child, not the issues identified by the counsellor.<sup>25</sup>

## 11.1 Demographic and geographic characteristics

In terms of contacts by children concerned with family and domestic violence, 80% (n=798) were female and 18% (n=182) were male. 2% were unknown. This is consistent with the demographic characteristics of all contacts with the Kids Helpline.

Of these contacts, 8% (n=75) were in the 5-9 age bracket; 11% (n=108) were in the 10-11 age bracket; 23% (n=233) were in the 12-13 age bracket; 32% (n=322) were in the 14-15 age bracket and 26% (n=261) were in the 16-17 age bracket. When comparing this with the demographic characteristics of all contacts with the Kids Helpline, there was a higher rate of contact about family and domestic violence by children in the 5-11 age bracket and, to a lesser degree, in the 12-13 age bracket.

Only 2% (n=16) of contacts in relation to family and domestic violence were made by Indigenous children. This is consistent with the demographic characteristics of all contacts with the Kids Helpline. The Kids Helpline points out that:

The low level of Kids Helpline usage by Indigenous Australian children highlights the need for specialist services to engage Aboriginal and Torres Strait Islander children, families, and communities.<sup>26</sup>

14% (n=142) of contacts were made by children from CALD backgrounds. When comparing this with the demographic characteristics of all contacts with the Kids Helpline, there was a higher rate of CALD contacts in relation to family and domestic violence. It is important to note that cultural background is not known in approximately 70% of contacts.<sup>27</sup>

The Kids helpline indicated that there was no difference between contacts about family and domestic violence and all other contacts in terms of the geographical region where the child lived (city, regional, remote).<sup>28</sup> Most contacts were from major cities, followed by inner regional, outer regional and remote.<sup>29</sup>

## 11.2 Method of contact to the Kids Helpline

The Kids Helpline indicated that there were no significant differences between family and domestic violence contacts and all other contacts to the Kids Helpline in terms of the contact method (phone, email, or web).<sup>30</sup>

Of all contacts to the Kids Helpline, 68% of male contacts were by phone, while approximately 16% were by email and 15% used web counselling. 48% of female contacts were by phone, 28% were by email and 24% used web counselling.<sup>31</sup>

In terms of contacts where family and domestic violence was a concern, this pattern remained the same for females. Males contacting about family and domestic violence were more likely to use the phone than other males, with 79% of contacts coming by phone.<sup>32</sup>

## 11.3 Specific nature of contacts

The Kids Helpline indicated that in relation to the specific nature of contacts, the data showed no clear differences related to gender, age or cultural background.<sup>33</sup>

### 11.3.1 Exposure to violence by parents

The largest proportion of contacts (40%) was in relation to exposure to violence between parents, or between a parent and a partner or ex-partner.<sup>34</sup>

Family and domestic violence contacts were 88% more likely than other contacts to be from a child living in a single parent, blended family, or shared custody arrangement.<sup>35</sup>

23% of these contacts also raised concerns about physical child abuse and 12% raised concerns about emotional child abuse.<sup>36</sup>

An examination of case notes by the Kids Helpline showed that approximately 60% of contacts from children living in a blended family involved violence between the child's biological parents, rather than violence within the new family.<sup>37</sup>

For children living in a single parent family, approximately 85% of contacts related to violence between biological parents, rather than the single parent and a new partner.<sup>38</sup>

### 11.3.2 Impact of past exposure to violence

16% of contacts were seeking support to deal with the impact of past exposure to violence was also a common concern. These contacts were most likely to have been made by children living in a single parent family, or other situation away from parents (e.g., with other carers, in an institutional setting).<sup>39</sup>

The Kids Helpline suggests that this could indicate that children are aware that exposure to family violence has affected them and are seeking support even after the exposure has ceased.<sup>40</sup>

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### 11.3.3 Violence by siblings

A total of 138 contacts relating to family and domestic violence involved violence by siblings. This was 14% of all family and domestic violence contacts with the Kids Helpline. Approximately 32% were made by children in a single parent family, while 36% were from children living with both parents.<sup>41</sup>

Examination of case notes by the Kids Helpline showed that approximately 14% of contacts about sibling violence also involved family and domestic violence between parents. Approximately 17% of these contacts indicated that they were also currently experiencing abuse by a parent.<sup>42</sup> No case notes mentioned previous abuse of the sibling perpetrator.<sup>43</sup>

In approximately half of the contacts that included detailed case notes, children reported that their parent was aware of the violence, but was either unwilling or unable to prevent it. In some contacts, it was clear that parents had attempted to intervene, but were either scared themselves or ineffectual and took no further action. Some parents actively ignored or downplayed the severity of the issue.<sup>44</sup>

Data from the Kids Helpline indicated that children were more likely to call about sibling violence towards themselves rather than about sibling violence towards a parent.<sup>45</sup>

Examination of Kids Helpline case notes indicated that violence towards siblings and towards parents often co-occurred. Contacts were typically about physical violence. The severity of the violence varied, but many children reported bruising, and a small number had been threatened with weapons such as knives. In many cases, children reported fearing for their safety.<sup>46</sup>

### 11.3.4 Co-existence of family and domestic violence and other concerns

At the Kids Helpline counsellors are able to record up to four different concerns raised in each contact. This provides the opportunity to investigate patterns of co-existence among concern types.<sup>47</sup>

Of all contacts where family and domestic violence was raised as a concern (n=999):

- 72 (7.2%) also involved current thoughts of suicide
- 119 (11.9%) also involved self-injury
- 166 (16.6%) were by a child assessed as having a mental health disorder by the counsellor.<sup>48</sup>

In 245 (24.5%) of the contacts about DFV, the child contacting the Helpline also reported experiencing abuse themselves. This included:

- 168 (16.8%) contacts raising concerns about physical abuse
- 93 (9.3%) contacts raising concerns about emotional abuse
- 22 (2.2%) contacts raising concerns about neglect
- 17 (1.7%) contacts raising concerns about sexual abuse (by a family member).<sup>49</sup>

## Appendices: Endnotes

- 1 Australian Bureau of Statistics, 'Recorded Crime – Victims, Australia, 2014 – Introduction' (4510.0, 22 July 2015) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2014~Main%20Features~Introduction~3>>.
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- 4 Australian Bureau of Statistics, 'Recorded Crime – Victims, Australia, 2014 – Glossary' (4510.0, 22 July 2015) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4510.0Glossary12014?opendocument&tabname=Notes&prodno=4510.0&issue=2014&num=&view>>.
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- 8 Australian Bureau of Statistics, 'Recorded Crime – Victims, Australia, 2014 – Glossary' (4510.0, 22 July 2015) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4510.0Glossary12014?opendocument&tabname=Notes&prodno=4510.0&issue=2014&num=&view>>.
- 9 Australian Bureau of Statistics, 'Recorded Crime – Victims, Australia, 2014 – Explanatory Notes' (4510.0, 22 July 2015) [17-21] <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4510.0Explanatory%20Notes12014?opendocument&tabname=Notes&prodno=4510.0&issue=2014&num=&view>>.
- 10 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012 – Introduction' (4906.0, 11 December 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter1002012>>.
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- 13 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012 – Introduction' (4906.0, 11 December 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter1002012>>.
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National Children's Commissioner  
conducting a visit in Perth

## Further Information

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