

## INQUIRY INTO CHILD PROTECTION

**Organisation:** Origins NSW  
**Date received:** 4 October 2016

---

Partially  
Confidential



# **Origins Supporting People Separated by Adoption Incorporated**

**Submission to the Legislative Council  
General Purpose Standing Committee Number Two**

# **“Inquiry into Child Protection”**

---

Prepared by:

**Mrs Lily Arthur**  
Director ORIGINS

**Mr Brendan V. Loizou**  
Barrister-at-Law and consultant to ORIGINS

## A. INTRODUCTION

Dear Committee please accept our apologies for the lateness of our submission. We have only recently learned of the “Inquiry into Child Protection” New South Wales (the “Inquiry”) due to recent events in relation to out-of-home care we were compelled to make a submission to the Inquiry.

As an organisation that has been recently accessed by people affected by the issues relating to this Inquiry, Origins SPSA Inc has been advocating on behalf of and for people affected by past removal practices and policies that have included, forced adoption, Forgotten Australians and Stolen Generations for the past 21 years.

We have dealt with the issues of adoption, foster care and worked with Aboriginal people for many years. Our organisation has spent the last two decades researching the effects, legal, historical, and mental health issues of people who have been separated from their families. We would like to bring to your attention some of the matters that we have been dealing with and in particular over the past year.

Origins have been approached recently by people adversely affected by the institution of foster care. And in particular the effect that it has had on Aboriginal people in our local area.

In the past few months we have been approached by at least five Aboriginal families for support and advocacy in relation to children they have in foster care or as foster carers in their own right.

We will briefly cover a few cases that we have been working with. Only the initials of people will be used, names can be given if requested.

This submission firstly provides case studies involving both Family members, and carers, as well as, adoptee's perspectives.

The submission also deals with what Origins considers to be the failings of procedural mechanisms, support practices and policies that have been unsuccessful in directly providing for the children and their families. By failing to provide the required level of support Government and non-Government Agencies have not properly addressed the needs of carers and adoptees.

One of the main issues Origins seeks to draw the Inquiries attention to, is the concept and term "systems abuse". In so doing, Origins hopes that the Inquiry can consider in much more detail the issues affecting carers, families and importantly Aboriginal children who may be placed in care and thus, in the hands of the State and its authorities and agents.

## **B. SCOPE OF SUBMISSION**

The Inquiry sets out the terms of reference and thus the parameters of the Inquiry. The brief aim of this Submission is to engage with the parameters of the Inquiry specifically:

- *the capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm*
- *the adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres*
- *the support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers*

- *any other related matter.*

This submission is made with an understanding and acknowledgment of the Federal Governments position that *“Protecting Children is Everyone’s Business”*. This is the Federal Government’s National Framework for Protecting Australia Children 2009-2020.

This framework agreement sets out as its national goals and strategies as keeping within:

- *“In line with Australia’s obligations as a signatory to the UN Convention, the National Framework is underpinned by the following principles:*
  - *All children have a right to grow up in an environment free from neglect and abuse. Their best interest are paramount in **all** decisions affecting them.*
  - *Children and their families have a right to participate in decisions affecting them.*
  - *Improving the safety and wellbeing of children is a national priority.*
  - *The safety and wellbeing of children is primarily the responsibility of their families who should be supported by their communities and governments.*
  - *Australian society values, supports and works in partnership with parents, families and others in fulfilling their caring responsibilities for children.*
  - *Children’s rights are upheld by systems and institutions.*
- Policies and interventions are evidence based.” (p12)*

## C. SYSTEMS ABUSE

The concept “systems abuse” is a prevalent issue which requires an acknowledgment and greater awareness by care agencies, as well as, an engagement with the nature and outcomes of systems abuse as it affects children and parents.

### *What is ‘systems abuse’?*

Within a modern society like Australia, the nature, understanding and definition of ‘abuse’ is wide and varied. Recently, protecting children has become a national issue once again. The death of a young girl in foster care has unwittingly drawn attention to foster carers and children who are placed in foster care. But this is not simply an issue about foster carers and children placed in foster care, it is also about the role and function of agencies which are required to protect the rights and interests of children.

As noted by Marianne James in *“Child Abuse and Neglect: Part 1 – Redefining the Issues”*, “[t]he 1990s has witnessed the identification of additional forms of child abuse. These are diverse and, in some cases, not easily identifiable.” (p2)<sup>1</sup>

The then Federal Government issued a report to be undertaken by the Australian Law Reform Commission “Inquiry into children and the legal process”<sup>2</sup> (the “Report”), a report which dealt with the law as it then was in 1997. This Report still has resonance for today and into the future. At the Appendix has included recent updates and outcomes of this Report. Chapter 17, “Children’s involvement in the care and

---

<sup>1</sup> No. 146 Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice.

<sup>2</sup> Australian Law Reform Commission ALRC Report 84.

protection system” outlines fundamental issues. As Chapter 17 sets out:

#### *Introduction*

*17.1 Children who enter the formal care and protection system are among the most vulnerable children in Australia. They are victims of abuse, neglect or family breakdowns, may not have support from their extended family and are often educationally and socio-economically disadvantaged. The Inquiry received considerable evidence indicating that the support offered to children in care is grossly inadequate and too often fails to address their disadvantage. In fact, children in care may be at more risk of adverse contact with other legal systems than children who have had no contact with the care and protection system.*

This Report goes on to introduce the concept of “systems abuse” and sets out its possible form and characteristics:

#### ***“Systems Abuse***

*17.6 Children are traumatised not only by violence, neglect or physical or emotional abuse. Their trauma can also be perpetrated or exacerbated by insensitive, neglectful or exploitative practices within government and on-government agencies set up to assist and protect children. The phrase ‘systems abuse’ is used to describe this. It is defined as*

*preventable harm [that] is done to children in the context of policies or programs which are designed to provide care or protection. The child's welfare, development or security are undermined by the actions of individuals or by the lack of suitable policies, practices or procedures within systems or institutions.”*

The Report goes on to also include the following:



*"The Australian Association of Social Workers informed the Inquiry that '[t]here is little doubt that systems abuse occurs in all States and Territories. Claims that State and Territory family services departments are mismanaged, underfunded and fail to care adequately for children are consistently made in newspaper and professional publications throughout Australia."*

Further:

*"17.8 Systems abuse derives from poor management, lack of co-ordination and failure to take responsibility. Evidence to the Inquiry has shown that the failings frequently characterise care and protection systems. For example, one submission noted:*

*[a] young woman who is a ward of the state with serious behavioural problems was due to be released from a detention centre. It was clear that she had need for mental health support services on release. Neither DOCS nor Juvenile Justice could agree who was responsible for locating and paying for those services. Not surprisingly, the young woman has re-offended and is back in detention."*

*"17.9 Other contributions to systems abuse include delays in investigating or deciding placements for children, lack of information or services and inadequate or inaccessible services. The NSW Community Services Commission informed the inquiry that the manner in which some investigations or child abuse and neglect are conducted may also contribute to systems abuse and there is often a failure to provide counselling and support for children during and after investigation."*

The Report is quoted at length because Origins considers its focus on *systems abuse* to be highly relevant to identifying issues and problems within the child protection industry. In doing so Origins believes that in going forward, a better understanding of how systems abuse may occur is also of vital importance. The case studies below will highlight the effects of system abuse.

## **D. CASE STUDIES**

### ***Case Study (A)***

A 19 year old Aboriginal mother who gave birth to a baby less than 12 months ago, she was formerly suffering from an addiction and living with the father of her child. She gave up the drugs long before she gave birth to her baby. Her baby was taken from her in the hospital and fostered to a distant relative who moved not long after they took custody of the baby. The mother was left with no support following the removal of her baby. She has complied with the directions of FACs to regain custody of her child and is yet to have the child given back to her.

She is suffering by her own admission from trauma and serious issues of grief and loss. She is also contemplating having another child to replace the one she lost.

### ***Case Study (B)***

Involves another Aboriginal woman who is the grandmother of a child who was currently being fostered by a non-Aboriginal family the only relation to the child is a half brother whose father is deceased, the child has no biological relationship to anyone else in the foster family. The grandmother formerly had custody of the child but relinquished it when she wasn't receiving any support or counselling at the time the

child was placed into their care, she was at a point in her life where there was no expectation of bringing up a small child.

The grandmother has frequent contact with the child through weekend visitation and her visits go well, the child looks forward to seeing her grandmother each time.

She has been recently told that her visits are to be curtailed until she seeks psychological assistance; she believes that the situation that her grandchild is living in is abusive and she is helpless to be able to regain custody of the child again and to have the child grow up within the Aboriginal community.

### *Case Study (C)*

This is the situation that involves a large family with its roots firmly planted in the Stolen Generations history (J) Is the youngest daughter of the Stolen Generation elder, (J) had four children in foster care the youngest child ages 2 is in the care of J's sister M.

(J) Tragically passed away suddenly a few months ago, her sister lamented that due to foster care issues the only time (J)s children had all been together was at her funeral.

### *Case Study (D)*

Mr and Mrs (S) were first time foster carers Mrs. (S) with Aboriginal mother of two grown boys Mr. (S) was non-Aboriginal. The couple were approved by FACs and the day after their approval had three young aboriginal siblings placed in their care. The couple were not given any training before or after the placement. The management of

the foster care placement was taken over a few months later by an aboriginal foster care agency

They were not supported by the agency when the children started to show signs of trauma. A few months after their placement and anonymous call was made to the child abuse hotline and the children were removed from the care of Mr and Mrs. (S). Origins was asked by the couple for support and eventually their matter was taken NCAT tribunal. Origins seconded Mr. Brendan Loizou Barrister-at-Law to act on behalf of Mr and Mrs (S)

Following the allegations Origins obtained the case notes and discovered that the allegations were made by a relative of Mr. S's family who went on to be rushed through foster care approval by the agency and take custody of the children.

The tribunal subsequently threw out the allegations of abuse and was scathing of the conduct of the foster care agency.

Not only had Mr and Mrs (S) lost custody of three children who they dearly loved but also endured the humiliation of false allegations levelled at them, but were also stigmatised by having the children taken off them.

The tragedy of the situation meant that three traumatized children were again moved on a further two times the we know of and more than likely on to more placements.

The negligence of the foster care agency also came at a financial loss to the couple who were forced out of their home in a small country town and relocate to the city and the cost of legal representation etc.

On application to other foster care agencies they were informed that the original foster care agency refused to give them their case files and by falsely stating that they had in fact taken Mr and Mrs S to the tribunal

## **E. RELEVANT ISSUES TO BE ADDRESSED**

### *Interviews*

In relation to the Case Study D, it is possible to consider the investigation and relevant legal issues.

So, how would a child protection agency be expected to address or deal with investigating allegations of child abuse?

*In "Identifying and responding to child abuse and neglect" A Guide for Professionals (p21) Children and young people are most likely to disclose abuse to people they trust, so professionals working with them have a special responsibility.*

- *DO NOT ASK LEADING QUESTIONS, FOR INSTANCE "DID DADDY HIT YOU?"*
- *NEVER ASK QUESTIONS THAT MAY MAKE THE CHILD FEEL GUILTY OR INADEQUATE."*

However, the nature of the investigation carried out by \_\_\_\_\_ was flawed and raised questions as to the admissibility of the transcripts.

As submitted to the NSW Civil and Administrative Tribunal:

- *The interviews conducted by            and            were recorded on a phone. The interviews were not tape recorded.*
- *The transcripts were prepared by an unknown source. It is presumed that the transcripts were prepared by*

### ***Leading and Suggestive Questioning***

Suggestive and leading questions were put to the Children (            and            ) in the interviews. This can be found throughout the interview transcripts. Below are just some examples.

Throughout the transcripts there is editing and transcribing of events and reactions to questions through the use of the following terms:

(a) (nod)

- (b) (shaking head)
- (c) (girls? Inaudible)
- (d) (unable to understand                      reply, he's laughing a bit as he speaks)
- (e) (shakes his head no)

The use of these terms indicates editing of the transcript, which is inconsistent with an accurate transcription of the audio recording.

This editing of the audio recording raises questions as to the authenticity of the recordings and the accuracy of the transcripts. Without the audio recording it is not possible to ascertain the inflexions of the responses to the questions put to                      and

No proper medical investigation was conducted by                      when issues were raised when children interviewed. A proper investigation would have included a follow up with medical examinations of                      and

A medical examination should have been conducted and the nature of the injuries that                      is alleged to have suffered should have been properly investigated to ascertain the veracity of the statement.



### ***Audio Recording, Interviews and Transcripts Inadmissible***

Pursuant to section 166 of *Evidence Act 1995 (NSW)* proof of the contents of a “document” requires the ability of a party to the proceedings to test the document.

In these proceedings the “document” or “thing” is the audio recording from which the transcript has been produced. As is set out section 166 of the *Evidence Act 1995 (NSW)*:

*In this Division:*

*request means a request that a party (“the requesting party”) makes to another party to do one or more of the following:*

- (a) to produce to the requesting party the whole or a part of a specified document or thing,*
- (b) to permit the requesting party, adequately and in an appropriate way, to examine, test or copy the whole or a part of a specified document or thing,*
- (c) to call as a witness a specified person believed to be concerned in the production or maintenance of a specified document or thing,*
- (d) to call as a witness a specified person in whose possession or under whose control a specified document or thing is believed to be or to have been at any time,*
- (e) in relation to a document of the kind referred to in paragraph (b) or (c) of the definition of document in the Dictionary – to permit the requesting party, adequately and in an appropriate way, to examine and test the document and the way in which it was produced and has been kept,*
- (f) in relation to evidence of a previous representation – to call as a witness the person who made the previous representation.”*

It should also be noted that the investigators working for [REDACTED] were ex-police officers. Also, the investigators were considered experts in their field.

Origins can provide further material and a more detailed submission.

Despite international and professional recognition of children's rights and capacities to participate in legal processes affecting them, children are often ignored, marginalised - even mistreated - by the agencies and organisations that are supposed to assist them.

### **Key recommendations**

- A national children's summit of heads of all Australian governments should be held as a matter of urgency.
- A special national taskforce on children should be established.
- A federal Office for Children (OFC) should be created within the Department of Prime Minister and Cabinet, to advise on and coordinate national policy and programs.
- A Charter for Children in Care should be developed by the OFC, in conjunction with the Department of Health and Family Services and the relevant state and territory welfare agencies. It should be enacted in legislation at federal, State and Territory levels and should create a fiduciary duty in the relevant governments.
- A specialist state Family and Children's magistracy should be developed to exercise federal family law jurisdiction as well as to hear care and protection applications and juvenile justice matters, to overcome the duplication of family proceedings.
- The report's other recommendations include:
  - fair, transparent processes in schools when considering the expulsion of students;
  - measures to ensure the appropriate participation by children in family law and care and protection proceedings;
  - better procedures for child witnesses; and
  - child consumer protection strategies.

### **Implementation**

There has been no official federal government response to the findings and recommendations made by the ALRC and HREOC in the *Seen and Heard* report. A number of recommendations have been adopted by particular departments and agencies at state, territory and federal levels. The report has also been influential at a community level.

In November 2007, the National Children's and Youth Law Centre and Youthlaw held a workshop to examine and discuss the implementation of the *Seen and Heard* Report. A report examining the recommendations of *Seen and Heard*, and subsequent actions taken in relation to the recommendations, is expected to be available in mid-2008.

Some of the significant recommendations and actions to implement the recommendations are outlined below.

### **An Office for Children**

One of the key recommendations was for the establishment of an Office for Children, within the Department of the Prime Minister and Cabinet (Recommendation 3).

The Joint Standing Committee on Treaties report on the United Nations Convention on the Rights of the Child was tabled in Parliament in September 1998. The Committee supported Australia's ratification of CROC (although there were three dissenting members of the Committee with separate comments included in the report) and recommended the establishment of an Office for Children as an independent statutory authority attached to the Prime Minister's portfolio, with functions similar to those recommended in ALRC 84. The then shadow Attorney-General, Mr Robert McClelland MP, who was a member of that Committee, restated his support for the establishment of such an office in January 1999. A government response to the Committee's report, released in March 2003, indicated that the government did not support establishment of a separate Office for Children—it indicated that the Department of Family and Community Services and the creation of the position of Minister for Children and Youth Affairs had ensured an integrated approach across the spectrum of Commonwealth policies and programs for children. [There has been no Minister for Children and Youth Affairs since October 2004].

However, a national children's commissioner, and a number of other issues raised in the *Seen and Heard* Report, were canvassed by a newly elected Australian Government as part of its discussion paper *Australia's Children: Safe and Well – A National Framework for Protecting Australia's Children*, which was released for public consultation in May 2008.

In 2009, the Australian Government released *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020*. A number of the outcomes outlined in the Framework reflect recommendations in *Seen and Heard*, including:

- exploring the potential role for a National Children's Commissioner (*Seen and Heard*, Recommendation 3);
- national standards and monitoring of the out-of-home care system (*Seen and Heard*, Recommendation 161–162); and
- improvement in data collection (*Seen and Heard*, Recommendation 166).

Each state and territory has an Office within its community services portfolio that is focused on children, children and youth affairs, or children and families. Queensland,

Tasmania, New South Wales and the Northern Territory each have independent Children's Commissioners with various roles and powers.

## **Schools**

Chapter 10 of *Seen and Heard* contains a number of recommendations in relation to children and education.

Significant work has also been done to address bullying and harassment in schools (Recommendation 38), with the National Safe Schools Framework developed by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) in 2003, and various initiatives and policies implemented by education departments in the states and territories.

*Seen and Heard* recommended that national standards be developed for student support services in primary and secondary schools (Recommendation 42). This has been partially implemented in secondary schools with the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) adopting in 2001 the Framework for Vocational Education in Schools. Although focused on careers education, the framework incorporates the key element of providing support services to students, and linking them with support services in the wider community as they make the transition from school.

## **Consumers**

Chapter 11 of *Seen and Heard* contains a number of recommendations in relation to children as consumers.

Recommendation 63 called for international and Australian research on the effects of the media on children to be comprehensively reviewed and made available. In December 2007, the Australian Communications Media Authority published a report of a community research study of Australian children's use of electronic media and the way parents mediate that use. The Media and Communications in Families 2007 report also includes an up-to-date review of the academic research literature on the long-term influence of media on children and families.

Recommendations were also made to develop best practice guidelines for advertisers to protect children from harm (Recommendations 65, 66). In 1998 the Australian Association of National Advertisers adopted the Advertising to Children Code. This Code, in addition to other advertising codes, is used by the Advertising Standards Board when considering complaints about advertisements.

## **Legal representation of children**

*Seen and Heard* recommended the development of clear standards for the representation of children in all family law and care and protection proceedings (Recommendations 70-77). There has been no legislative change to support these recommendations. However, good guidelines for lawyers were developed in 1999 for the Children's Court of Victoria by the Victoria Law Foundation, and in October 2000, the Law Society of New South Wales released Representation Principles for Children's Lawyers (revised in March 2002). The NSW principles were drafted with the consideration of adopting uniform principles across all Australian jurisdictions, and although supported in other states and territories, have not been extended to other jurisdictions.

Recommendation 83 called for the creation of clinics, similar to the Children's Court Clinic in Melbourne, to be attached to all children's courts to provide expert advice on the best interests of the child. A Children's Court Clinic was established in Sydney (now Parramatta) in 1998 to provide assessments in relation to care and protection proceedings, and extended to making assessments in the criminal jurisdiction in 2003. No other states or territories have established a clinic, although a federal Child Protection Service to provide such assessments in family law cases was recommended by the Family Law Council in its 2002 report *Family Law and Child Protection*.

### **Children as witnesses**

Chapter 14 of *Seen and Heard* made a number of recommendations to enhance the collection and giving of children's evidence. The issue of improved treatment of children as witnesses has continued to receive attention. The Queensland Law Reform Commission released reports in 2000 and 2001 dealing with child witnesses, making findings and recommendations echoing those in *Seen and Heard*. A number of those recommendations have been implemented by the Evidence (Protection of Children) Amendment Act 2003 (Qld).

At the federal level, the Measures to Combat Serious and Organised Crime Act 2001 contained measures relating to child witnesses in federal sex offence trials, consistent with the recommendations of *Seen and Heard*. These include a limitation on the examination and cross-examination of child witnesses, provision for the use of closed-circuit television and restriction of the publication of details that could identify a child witness or child victim.

A number of issues relating to children's evidence were reviewed as part of the joint inquiry by the ALRC, NSW Law Reform Commission and Victorian Law Reform Commission on Uniform Evidence Law, completed in 2005. The Evidence Amendment Act 2008 (Cth), which implements most of the recommendations of the *Uniform Evidence Law* Report, also implements a number of recommendations in the *Seen and Heard* Report. These include:

- a new test for determining a witness' competence to give sworn and unsworn evidence that focuses on the ability of a person to act as a witness (Recommendation 98 of *Seen and Heard*);
- a prohibition on general warnings about the unreliability of children's evidence, instead permitting a warning to be given only upon request of a party and where the court is satisfied that there are circumstances particular to that child (other than the child's age) that affect the reliability of the child's evidence (Recommendation 100); and
- confirmation the court may seek expert opinion evidence to assist it to determine if a witness is competent to give evidence (Recommendation 101);

Other significant initiatives have included:

- the NSW Child Sexual Assault Specialist Jurisdiction Pilot Program, launched in 2003 and evaluated in 2005;
- creation of a Child Witness Service in Western Australia and Victoria;
- increased legislative support and practical use of CCTV or screens in most jurisdictions;
- work by the Australian Institute of Judicial Administration to draft a Child Witnesses Benchbook, which is hoped to be released in 2008.

## **Family Law**

Recommendations 78–81 and Chapter 16 focused on the representation of children and children's issues in family law proceedings. There have been changes to the law in relation to child representatives, case management process for children's matters, and dispute resolution services in the family law system, many of which are consistent with the recommendations of *Seen and Heard*. Major changes have included:

- a new Federal Magistrates Court, commencing operations in 2000, providing quicker and simpler processes for some family cases;
- a shift from providing dispute resolution and counselling services within the court to most services being delivered in the community, with changed requirements to register as a family dispute resolution practitioner;
- changes to the requirements for parenting plans, with registration no longer required and a greater emphasis to the involvement of dispute resolution to develop parenting plans, particularly with the establishment of Family Relationships Centres across Australia;
- the Magellan project in the Family Court of Australia (1998) and Columbus project in the Family Court of Western Australia (2001), each of which led to changes to the management of cases involving allegations of child abuse;

- the introduction of less adversarial trial management in the Family Court of Australia, initiated by the Children's Cases Program (2004) but given legislative basis with the Family Law Amendment (Shared Parental Responsibility) Act 2006(Cth);
- change to the role and responsibilities of children's representatives, including changing the title to 'Independent Children's Lawyer', initiated by the Family Law Amendment (Shared Responsibility) Act 2006 (Cth), based on recommendations of the Family Law Council report Pathways for Children: A Review of Children's Representation in Family Law (2004);
- extensive consultation between the Family Court of Australia and local Indigenous populations to enhance awareness of and access to the Court, particularly with the establishment of the Indigenous Family Consultants Program.

Recommendation 158 called for an awareness campaign to provide medical practitioners with information about legal requirements for approval for the conduct of sterilisation operations on young people with a disability. In 1998, new notes for guidance were added to the Medicare Benefits Schedule to alert medical practitioners to the legal requirements, and possible consequences, of sterilisation procedures on a person under the age of 18. This was followed in 2000 by an open letter from the Attorney-General of Australia to all medical practitioners addressing these issues.

### **Care and protection**

A large number of recommendations in the report were aimed at better coordination between federal and state and territory agencies with responsibility for child protection. In particular, Recommendation 124 stated that protocols for inter-agency co-operation between the Family Court, state and territory family services departments and the relevant children's courts should be developed where they do not apply already. On 8 August 2003, the Attorney-General announced that the Standing Committee of Attorneys General had agreed to establish a working group to look at ways to better coordinate the Commonwealth's family law system with child protection systems at state and territory levels. While this issue has not been pursued by SCAG, a number of individual memorandums of understanding have been developed between various courts and government agencies to enhance the sharing of information in appropriate cases.

Chapter 17 of *Seen and Heard* focused on issues in the child protection jurisdiction. A number of state and territory governments have been active in relation to care and protection issues.

Since conclusion of the *Seen and Heard* inquiry, new legislation relating to care and protection has commenced operation in NSW (Children and Young Persons (Care and



*Protection) Act 1998* ; Queensland (*Child Protection Act 1999*; the ACT (*Children and Young People Act 1999*; Tasmania (*Children, Young Persons and Their Families Act 1997, commenced operation in 2000*); Western Australia (*Children and Community Services Act 2004*; and the Northern Territory (*Care and Protection of Children Act 2007*). Some of the changes are consistent with recommendations in *Seen and Heard*—for example the inclusion of a Charter of Rights for Children in Care in the Queensland legislation—while others have not adopted the suggestions made by the *Seen and Heard* report, particularly in relation to the representation of children.

Key recommendations in this area were for the creation of national standards for legislation and practice in care and protection systems across Australia (Recommendations 161–162). This issue has been raised for discussion by the Australian Government as part of its discussion paper *Australia's Children: Safe and Well – A National Framework for Protecting Australia's Children*, which was released for public consultation in May 2008.

## **Criminal law**

Chapters 18, 19 and 20 of the *Seen and Heard* report considered issues in the juvenile justice jurisdiction. In relation to the fact that the age of criminal responsibility differed across the jurisdictions, Recommendation 194 urged that Tasmania and the ACT change the age of criminal responsibility from eight to 10 in line with all other Australian jurisdictions. With the commencement of the *Youth Justice Act 1997* (Tas) on 1 June 2000, and *Children and Young People Act 1999* (ACT) on 1 December 2000, a uniform age of criminal responsibility has been achieved.

Mandatory sentencing of juvenile offenders became a topic of widespread debate in 1999. The ALRC and HREOC supported repeal of the existing laws in Western Australia and the Northern Territory (Recommendation 242). Senator Brown of the Greens, with support from the Democrats and the Labor Party, introduced the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 into the Senate in August 1999. The Bill was premised on Australia's international obligations under the UN Convention on the Rights of the Child, and was intended to nullify any mandatory sentencing law in Australia as it applies to persons under the age of 18. While the federal government indicated it would not support legislation to overturn Western Australian or Northern Territory law, it did hold discussions with the Northern Territory on the issue. In April 2000, it was agreed that the Northern Territory would amend legislation to allow juveniles to be diverted into alternative programs prior to attracting charges that would attract mandatory sentences, and that the federal government would provide specific funds to support the development of appropriate diversionary programs. Following election of a Labor government in the Northern Territory, the mandatory sentencing regime applying to both adults and juveniles was

repealed in 2001. The Western Australian laws, which apply only to home burglaries, remain in place.

Key recommendations in this area were for the development of national standards for juvenile justice, covering investigation and arrest, bail conditions, sentencing and detention.

In 1999, the Australasian Juvenile Justice Administrators (AJJA) adopted the Standards for Juvenile Custodial Facilities, which are based on international obligations. However, the extent to which these standards have been implemented in each jurisdiction has varied greatly, preserving the lack of national consistency.

The ALRC gave further consideration to sentencing laws applying to juvenile federal offenders as part of its inquiry on Sentencing of Federal Offenders, which concluded in 2006, and made further recommendations for the development of national best practice guidelines for juvenile justice.

#### **Publications**

- Submission to NSW Legislative Council on the publication of names of children involved in criminal proceedings 12 December 2007
- Seen and heard: priority for children in the legal process (ALRC Report 84) 19 November 1997
- Speaking for Ourselves: Children and the Legal Process (IP 18) 19 July 1996
- Speaking for Ourselves: Children and the Legal Process - Kids Issues Paper (IP 17) 15 July 1996

#### **Related Information**

- ALRC revisits the legal rights of children and young people in Australia 1 October 2008

#### **ALRC revisits the legal rights of children and young people in Australia**

Published on 1 October 2008.

##### Media release

It is now a little over ten years since the Australian Law Reform Commission (ALRC) and the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) released the landmark 1997 report *Seen and Heard: Priority for Children in the Legal Process* (ALRC Report 84).

*Seen and Heard* represented the culmination of a major two-year inquiry exploring how children and young people are treated by Australia's legal system and Australia's international obligations under the *Convention on the Rights of the Child*.

In the wake of the tenth anniversary of this historic report, the ALRC today released *Reform* Issue 92, 'Children and Young People' which examines the current treatment of children and young people in the legal process, against the backdrop of the recommendations made in the ALRC and HREOC Report.

ALRC President Professor Weisbrot said "The anniversary provides a timely opportunity to review the impact of the Report—including the extent of any implementation by the Commonwealth, states or territories—as well as to explore current issues and controversies".

Articles in this edition of *Reform* address over a dozen key areas for consideration including:

- the rights and life chances of Indigenous children;
- the changes made to the Family Court and the family law system over the last decade—and the positive outcomes for children and young people in family dispute resolution and legal proceedings;
- the changing legal framework for inter-country adoption;
- the effectiveness of the legal process in protecting children and young people as consumers;
- bullying and violence against young people in the workplace; and
- the legal, social and ethical issues associated with genetic testing of minors.

*Reform* 92 also explores the progress made by federal Governments since the release of the ALRC's Report and discusses youth participation in the democratic process and the 2020 Youth Summit; legal regulation of the work of children and young people; and children and the law in the Solomon Islands.

"With our publication *Reform*, the ALRC seeks to stimulate high quality and constructive discussion and debate, to engender knowledge and understanding and to bring hot issues of law reform to the attention of the community. The opportunity to look back over the last decade at how children have fared within our legal system, to see how far we've come and where we still need to go reminds us of one of the most important areas in law reform," Professor Weisbrot said.

Commissioner-in-charge of *Reform* 92 'Children and Young People', Professor Rosalind Croucher said the edition included a wide range of legal professionals and judges,

academics, reformers and others working in various aspects of the law where there is an intersection with young people.

“We were extremely lucky to have contributors such as the Tom Calma the ATSI Social Justice Commissioner and Race Discrimination Commissioner, Chief Justice Diana Bryant; Justice Susan Kenny, who is also an ALRC Commissioner; and NSW Children’s Commissioner Gillian Calvert amongst our other learned and specialist colleagues.”

*Reform* also carries articles on the work of the ALRC and of other international and national law reform agencies. The journal *Reform* is published twice a year, in winter and summer. Views expressed in the journal are those of the authors and are not necessarily the views of the ALRC. Subscription information and articles from selected back issues are available online.”