

Communique of the Australian and New Zealand Children's Commissioners and Guardians meeting 12 and 13 November 2018

The biannual meeting of the Australian and New Zealand Children's Commissioners and Guardians (ANZCCG) has been held in Adelaide.

These independent statutory officers are mandated to promote the best interests of children and young people and ensure that their views and interests are heard and influential, noting that Aboriginal and Torres Strait Islander and Maori children and young people often experience disproportionate disadvantage.

The following Commissioners and Guardians:

- Commissioner for Children and Young People Helen Connolly (SA)
- Guardian for Children and Young People Penny Wright (SA)
- Children's Commissioner Colleen Gwynne (NT)
- Interim Commissioner for Children and Young People David Clements (TAS)
- Principal Commissioner for Children and Young People Liana Buchanan (VIC)
- Public Advocate and Children & Young People Commissioner Jodie Griffiths-Cook (ACT)
- Public Guardian Natalie Siegel-Brown (QLD)
- Commissioner for Aboriginal Children and Young People Justin Mohamed (VIC)
- Commissioner for Children and Young People Colin Pettit (WA)
- Advocate for Children and Young People Andrew Johnson (NSW)
- NSW Children's Guardian Janet Schorer (NSW)
- National Children's Commissioner Megan Mitchell (CMLTH)
- Children's Commissioner Judge Andrew Becroft (NZ)

of the ANZCCG highlight the following matters:

Responding to the overrepresentation of Indigenous children and young people in disadvantage

ANZCCG calls for the appointment of Commissioners in each jurisdiction who are Indigenous and can provide particular leadership on issues disproportionately affecting Aboriginal and Torres Strait Islander, or Maori, children and young people (respectively).

Child focussed oversight (Optional Protocol to the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment)

As a matter of principle, the oversight bodies charged under the OPCAT with inspecting and visiting facilities detaining children and young people should have a specialist focus on children and children's rights and be appropriately resourced. Where this is not possible, they should be informed by child-centred expertise and adopt a child-rights framework.

Age of criminal responsibility

Currently, the age of criminal responsibility across Australia and New Zealand is 10. The ANZCCG recommends the age of criminal responsibility should be no lower than the internationally acceptable minimum age of 12, and should ultimately be raised to at least 14 years.

Children and young people needing greater attention

The Commissioners, Advocates and Guardians are concerned that some children and young people living in highly vulnerable circumstances require much greater policy attention and access to specialist and mainstream program support.

These include children and young people who:

- are unaccompanied and homeless;
- have been involved with the child protection system but not subject to an order;
- have a disability that falls outside current service planning/provision; and/or
- have neuropsychological issues such as intellectual disabilities, FASD or trauma-related disability and behaviours of concern.

Detention of children and young people in police facilities, in breach of minimum acceptable standards

ANZCCG notes that the fundamental rights of the child under the *Convention on the Rights of the Child* and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) are being breached in relation to detention practices in some jurisdictions, particularly in Queensland and New Zealand. These include:

- inappropriate use of police watch houses/police cells to hold children and young people, including for extended periods; and
- denial of basic rights with respect to practices such as solitary confinement, poor hygiene facilities, inadequate food, no access to outside air, and appropriate support.

Being held in police watch houses/police cells for extended periods can quickly lead to physical, mental, and emotional harm, and a real risk of self-harm.

Further, the collective voice of the Australian members of the ANZCCG highlighted the following matters:

Royal Commission into Institutional Responses to Child Sexual Abuse

Australian Children's Commissioners and Guardians (ACCG) acknowledges the National Apology to Victims and Survivors of Institutional Child Sexual Abuse and notes that significant and sustained effort is required to implement all of the recommendations from the Royal Commission.

As child abuse in institutions is not just an historical phenomenon but continues today, a strong focus on prevention is needed to protect children and young people from harm now and in the future. The group will convene a special meeting to monitor progress on the recommendations in February 2020.

Children and young people in immigration detention

ACCG notes that all children and young people, irrespective of immigration status, are entitled to the protections identified in the *Convention on the Rights of the Child*.

Notably, no child or young person should be held in detention or separated from their family as a result of their immigration status.

Children and young people who are criminalised for behaviours related to disability or trauma

The ACCG notes that many children and young people in residential care face criminal charges and detention in the youth justice system due to minor incidents or behaviours that are related to the presence of disability or their previous exposure to trauma.

ACCG members recommend that, where this has not already occurred, jurisdictions develop and implement protocols between residential care providers, child protection agencies and the police to ensure that children and young people are not unnecessarily brought into contact with the youth justice system, detained, or remanded in custody.