COMMISSION FOR CHILDREN AND YOUNG PEOPLE

CCYPD/18/6625

Ms Megan Mitchell
National Children's Commissioner
Australian Human Rights Commission

[redacted]

Dear Ms Mitchell Megan

**United Nations Committee on the Rights of the Child review of Australia's progress in implementing the Convention on the Rights of the Child**

The Victorian Commission for Children and Young People (the Commission) welcomes this opportunity to contribute to the National Children's Commissioner's report to the Committee on the Rights of the Child review of Australia's progress in implementing the Convention on the Rights of the Child (CROC).

**The Commission's functions in relation to children and young people**

The Commission is an independent statutory body established to promote improvement and innovation in policies and practices affecting the safety and wellbeing of Victorian children and young people. We have a particular focus on vulnerable children and young people as defined in the *Commission for Children and Young People Act 2012* (CCYP Act).

Under the CCYP Act, the Commission:

- provides independent scrutiny and oversight of services for children and young people, particularly those in out of home care, child protection and youth justice
- advocates for best practice policy, program and service responses to meet the needs of children and young people
- supports and regulates organisations that work with children and young people to prevent abuse and makes sure these organisations have child-safe practices
- brings the views and experiences of children and young people to the attention of government and the community
- promotes the rights, safety and wellbeing of children and young people.

As a public authority, the Commission must act in ways that are compatible with the rights articulated in the *Charter of Human Rights and Responsibilities Act 2006* (Charter of Human Rights). These rights inform and guide the Commission in relation to its functions.

Consistent with its functions, the Commission has undertaken a number of systemic inquiries relating to vulnerable children and young people, which serve to illustrate Victoria's progress, or lack of progress, in achieving specific rights.

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- that as a result of systemic failings, Aboriginal children and families were inadequately consulted in the policy formulation or implementation of processes or programs affecting them
- lack of compliance with legislative and practice requirements resulting in inadequate engagement with Aboriginal children, family and community in decision making processes
- the child protection system in Victoria fails to preserve, promote and develop cultural safety, identity and connection for Aboriginal children in out of home care
- Aboriginal children in out of home care have high levels of contact with the criminal justice system
- family violence, in combination with parental alcohol and/or drug abuse, is the leading cause of Aboriginal children's entry to care.

*Neither seen nor heard* and *Safe and wanted* inquiries found:
- child and family services (including child protection services) rarely engaged children directly and so their right to be heard was rarely upheld
- a significant number of children in out of home care experienced a high number of placement changes and instability
- among a sample of cases studied, concerns or allegations of child sexual abuse were frequently overlooked by service providers
- there remains widespread non-compliance with the requirements for culturally safe case planning for Aboriginal children.

Family environment and alternative care (articles 5, 18, 9-11, 19-21, 25, 27)

*In the child's best interests* and *Always was, always will be Koori children* inquiries found:
- a general lack of compliance with the Aboriginal Child Placement Principle results in an increasing number of Aboriginal children being placed away from family and community
- high numbers of Aboriginal children in out of home care are separated from their siblings and not provided with adequate opportunity to have contact with them
- poor attention to physical, mental health and general wellbeing of children in out of home care.

*Neither seen nor heard* and *Safe and wanted* inquiries found:
- early data (from January 2017) indicated that the rate at which the Department reunifies Aboriginal children in out of home care with their parents declined by nine per cent following the commencement of the permanency amendments, while the rate of Aboriginal children entering out-of-home care increased by seven per cent
- the inclusion of adoption in the permanency objectives hierarchy above permanent care, particularly for Aboriginal children, is concerning and at odds with a child's right to have their identity and family relations preserved, as well as their right to maintain relationships with parents
- a need for intensive and continuing help for children and families with complex needs, and more specialised help to deal with intergenerational trauma and violence
- the risk of family violence on children was massively underestimated and the impact of family violence on children not addressed
- children rarely received therapeutic or other assistance to recover from the trauma of family violence
- limited early intervention support for children and families
- limiting contact between parents and permanently placed children to four times per year is a rigid approach and in some instances, will not be in a child's best interests
- a number of barriers exists that prevent children from being safely reunified with their parents within the legislated timeframes introduced by the permanency amendments.

Special protection measures (articles 22, 30, 38, 39, 40, 37 and 32-36)

*The same four walls* found:

- widespread use of restrictive practices that lead to confinement and isolation of children, despite evidence suggesting that such practices can exacerbate harm and hinder rehabilitation, particularly for children and young people who have suffered trauma
- Aboriginal children were over-represented among those placed in isolation
- children in isolation had limited access to sanitation, access to materials or personal possessions that could assist in de-escalating or occupying them
- the use of Separation Safety Management Plans resulted in children being confined to their rooms or cells for 22 or 23 hours per day
- children in the youth justice system who are acutely mentally unwell do not have access to a designated treatment facility or adequate care.

**Actions arising from the systemic inquiries**

It is positive that recommendations arising from the Commission's inquiry work continue to be largely accepted or accepted in principle by government, although action on certain areas is slow. The Commission continues to actively monitor implementation of the recommendations via regular formal updates.

**Progress (in a Victorian context) yet to be achieved**

Age of criminal responsibility (article 1)
The Commission supports an increase in the age of criminal responsibility from the current 10 years to at least 12 years of age and has advocated in a number of forums for this change to occur. Both Commissioners for Aboriginal Children and Young People have identified that the low age of criminal responsibility has significant adverse impact on Aboriginal children and young people.

Transfer of children to adult prison (article 37(c))
Children in Victoria aged 16 and 17 years can be transferred from youth justice to adult prisons. In early 2018, two children aged 17 years were transferred to adult corrections, where they were detained with adults. The transfers of children to adult prison were the first in Victoria since 2012. In March 2018, I expressed strong concern to the Minister for Families and Children regarding the resumption in practice of transferring children to adult prison.

The Commission supports the previous recommendation of the Committee for the Rights of the Child that Australia withdraw its reservation to article 37(c) of the CROC.[1]

Please do not hesitate to contact me should you wish to discuss the matters in this submission.

Yours sincerely

Liana Buchanan
**Principal Commissioner**
8 June 2018

[1] Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia,* 60th session, CRC/C/AUS/CO/ (28 August 2012 7 [29]