

Your Ref:
Our Ref: 727

1 June 2018

Ms Megan Mitchell
National Children's Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

By Email: kids@humanrights.gov.au


Dear Ms Mitchell

Re: Submission to inform the Australian Human Rights Commission's Report to the United Nations Committee on the Rights of the Child

Thank you for the opportunity to provide comment on Australia's progress to implement the United Nations *Convention on the Rights of the Child* (the Convention).

At the outset, I wish to acknowledge the significant progress that has been achieved since 1990 when Australia ratified the Convention. There is, however, always more work to be done to ensure that we promote the rights of children that are guaranteed in the Convention. In this way we also work towards ensuring children and young people have the basic conditions they need in order to thrive and flourish.

Focus of this Submission

In accordance with your call for submissions, my comments focus on the General Measures of Implementation as set out in Articles 4 and 42 of the Convention. These Articles provide as follow:

Article 4

- States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 42

- States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.



Statutory Recognition and Investment

In Tasmania, the independent statutory office of the Commissioner for Children and Young People is established by the *Commissioner for Children and Young People Act 2016* (Tas) (CCYP Act).

Consistent with my statutory functions, as the Interim Commissioner I have responsibility for advocating for all children and young people in Tasmania generally, and for promoting, monitoring and reviewing their wellbeing.

In carrying out my functions, I may investigate and make recommendations in respect of the systems, policies and practices of organisations that provide services that affect children and young people.¹ I may also investigate and make recommendations in respect of the effects of any legislation, proposed legislation, documents, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people.²

Importantly, I have a specific function to assist in ensuring that the State satisfies its national and international obligations with respect to children and young people generally.³ When performing a function or exercising a power under the CCYP Act, I must –

- (a) do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- (b) observe any relevant provisions of the United Nations Convention on the Rights of the Child.⁴

The legislative provisions described above clearly provide a mandate for me to advocate for and to promote the wellbeing of Tasmania's children and young people through the lens of a child-rights framework. By providing this mandate, and by allocating resourcing to my office, the Tasmanian Government has acknowledged the importance of ensuring the Convention is embedded and promoted as a framework by which to inform and guide the development of legislation, policy, practices or procedures which have the potential to affect children and young people in Tasmania.

Consistent with the general measures of implementation in the Convention, I support continued investment in the human, technical and financial resources necessary to adequately embed, monitor, report on, and evaluate the implementation of the Convention in Australia.

Using the Convention as a framework to guide responses to local issues

As an example of how my office has used a child-rights framework to guide local responses to issues impacting children and young people, I refer you to a report titled [Children and Young People's Unique Experiences of Family Violence](#) published by the

¹ *Commissioner for Children and Young People Act 2016* (Tas) s11 (2)(c).

² *Commissioner for Children and Young People Act 2016* (Tas) s11 (2)(d).

³ *Commissioner for Children and Young People Act 2016* (Tas) s 8.

⁴ *Commissioner for Children and Young People Act 2016* (Tas) s 3.



former Commissioner for Children and Young People, Mr Mark Morrissey, in September 2016. A copy of this report is **attached**.

This Report highlights the fundamental principle of the Convention that every young person has the right to live their life free from all forms of violence, abuse and neglect and that this right should be a fundamental element of family violence related policy and practice. It firmly positions family violence (and responses to it) as a child-rights issue. It also acknowledges that children's rights are 'indivisible, interrelated and interdependent' and that when children experience family violence, a number of other rights are engaged including:

- The right to non-discrimination - Article 2
- That the best interests of the child must be a primary consideration in all decisions relating to them - Article 3
- That all children have the right to express their views freely on all matters affecting them and to have their opinions taken into account - Article 12
- The right to development - Article 6(2)
- The right to the highest attainable standard of physical and mental health - Article 24 (1)
- The right to leisure and play - Article 31
- The right to education - Article 28

Consistent with Article 12, this Report was directly informed by the views of Tasmanian high school students involved in Big hART's Project O and includes drawings, poems and other writings produced by clients of the Children and Young People Program (delivered by the Tasmanian Government's Family Violence Counselling and Support Service). A [child-friendly version of the Report](#) was produced by the Commissioner with considerable assistance from the young women involved with Big hART's Project O and 20+20.

In its [formal response to the Report](#), the Tasmanian Government signalled broad support for its findings, acknowledged it as being foundational to future work to address the impact of family violence on children and young people, and committed to developing a Family Violence Practice Guide to strengthen understanding of family violence and referral pathways in Tasmania. The [Practice Guide](#), which was released by the Tasmanian Government in mid-2017, reflects many of the key findings of the Report.

This Report demonstrates how applying a child-rights lens to a significant social problem such as family violence can assist to promote children's rights with a view to improving outcomes for children and young people.

Conclusion

As previously stated, I believe there has been significant progress in Tasmania in acknowledging the importance of children's rights, and of the benefits of considering policies and legislative development from the perspective of their potential to affect the health and wellbeing of children and young people, however there is always more that we can do.



I look forward to continuing to support this important work.

Yours sincerely

David Clements

Interim Commissioner for Children and Young People

Attachment:

1. Commissioner for Children and Young People Tasmania, *Children and Young People's Unique Experiences of Family Violence*, September 2016.

cc: *Premier Will Hodgman*

cc: *Minister for Human Services*

cc: *Minister for Disability Services and Community Development*