

**grandparents**  
V I C T O R I A



 Kinship  
Carers  
V I C T O R I A

**GPV/KCV calls for child  
impact statements and public  
support for the United Nations  
convention on the rights of the  
child**

**This paper is issued by Grandparents Victoria and Kinship Carers Victoria (GPV/KCV) to commend the UN Convention on the Rights of the Child to its members and the wider public.**

**Protection of human rights is important work and GPV/KCV believes the best place to start is with the protection of children's and family rights.**



Kinship Carers Victoria is supported by the Victorian Government.

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*As the National Children’s Commissioner, my role is to champion and monitor the rights and wellbeing of all children in Australia ... When the UN Convention on the Rights of the Child came into force in 1990, children were recognised as rights-bearers for the first time in international human rights law. The Convention recognises that children have the same basic human rights as adults, while also needing special protection due to their vulnerability as children.*

**Megan Mitchell**  
**National Children’s Commissioner**  
**Australian Human Rights Commission<sup>1</sup>**

*The Commission [for Children and Young People] is an independent statutory agency tasked with advocating for the safety and human rights of Victorian children and young people, particularly those who are vulnerable and marginalised ... Central to our work is the importance of promoting the human rights of children and young people – comprehensively reflected in the United Nations Convention on the Rights of the Child. This includes rights to safety, education, healthcare and cultural identity, among others. Importantly, it also includes a right to family ties.*

**Liana Buchanan**  
**Victorian Commissioner for Children and Young People<sup>2</sup>**

*Australia signed the CRC [Convention on the Rights of the Child] on 22 August 1990, ratified it on 17 December 1990 and it has since been ratified by every country in the world except the United States. When I became Chief Justice of the Family Court of Australia in February 1988 I welcomed its advent as opening new doors to courts dealing with children in furthering their safety, welfare and development.*

**Justice Alastair Nicholson**  
**Former Chief Justice of the Family Court of Australia**  
**Chair of Children’s Rights International Network<sup>3</sup>**

*Our work is grounded in the UN Convention on the Rights of the Child. [Our goal is] A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy. Our work is based on five core beliefs:*

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves

**Child Rights International Network<sup>4</sup>**  
**CRIN is a global research, policy and advocacy organisation.**

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<sup>1</sup> Kinship Carers Victoria occasional paper: Celebrating Grandparents as Kinship Carers. Edited from a speech given on 15 May 2015.

<sup>2</sup> Kinship Carers Victoria occasional paper: Care through Kinship – Safeguarding children and their rights. Edited from a speech given on 4 August 2017.

<sup>3</sup> CRC 25 – Australian Child Rights Progress Report. Australian Child Rights Taskforce.

<sup>4</sup> Adapted from <https://www.crin.org/en/home/about>

## International Support for the Convention

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The Convention on the Rights of the Child (UNCRC) is an international treaty adopted by the United Nations on 20 November 1989. It establishes global standards to ensure the protection, survival and development of all children, without discrimination.

Countries that ratify the treaty pledge to protect children from economic and sexual exploitation, violence, and other forms of abuse, and to advance the rights of children to education, health care, and a decent standard of living.

The convention also addresses other rights, including children's rights to a name and nationality, their right to be heard, their right to be fairly treated when accused of offenses and when deprived of parental care.

The UNCRC has been the most widely (and most rapidly) ratified human rights treaty, with only two countries, Somalia and the United States, not ratifying it. Somalia was unable to proceed to ratification, as it had no recognised government. America signed the Convention in 1995 but never ratified it because the process for treaty ratification is difficult in America: the president must send treaties to the Senate, where these require approval by a two-thirds majority.

Australia signed the UNCRC on 22 August 1990 and ratified it on 17 December 1990.

## Australia's performance in relation to children and youth

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One measure of Australia's performance in addressing the issues covered by the UNCRC is rating Australia's performance amongst OECD countries. A recent report, *Report card: The Wellbeing of Young Australians (2018)*, by the Australian Research Alliance for Children and Youth (ARACY) describes Australia's performance in comparison with other OECD<sup>5</sup> countries. Overall, Australia performs only moderately in relation to child and youth wellbeing indicators.

- Australia is ranked in the top third of OECD countries for around one-third of these indicators, including areas such as low youth smoking rates, the amount of time parents spend with their children daily, and life expectancy at birth.
- Australia is ranked in the middle third of OECD countries for just over one-third of indicators. This includes areas such as the length of paid paternity leave and the performance of year 4 students in maths and science.
- Australia is ranked in the bottom third of OECD countries for just under one-third of the indicators. Areas of concern include levels of bullying experienced by year 4 students, food insecurity, low and declining immunisation rates, and the cost of childcare.

### Findings of particular concern in the ARACY report to GPV/KCV

In relation to issues of particular concern to GPV/KCV, the ARACY report states that:

- the number of children in out of home care (OOHC) has been moving in an upward trajectory, with 8.6 children per thousand in OOHC in 2016, up from 7.3 in 2011 and 6.2 in 2008. When viewed separately, Aboriginal and Torres Strait Islander children are almost 20 times more likely to be in OOHC.
- in 2014, 17.4 percent of children aged up to 14 were living in households earning less than half the national median household earnings, a figure up from 17.3 in 2010. In 2014–15, 31.6 per cent of Aboriginal and Torres Strait Islander children aged up to 14 lived in households that had run out of money at least once for basic living expenses in the previous 12 months.
- Australia trails the OECD in preschool attendance, with this country ranked 35 of 40 nations in 2014. The percentage of 4–5 year-olds who usually attend preschool has fallen from 85 per cent in 2011 to 83.3 per cent in 2014.
- the share of children aged 10–17 years in detention on an average day has been trending downwards and was sitting at 0.3 children per 1000 in 2015–16. At the same time, the proportion of youth aged 18–24 years in prison has been increasing, reaching 2.7 children per 1000 in 2016. When viewed separately, Aboriginal and Torres Strait Islander children are 25 times more likely to be in detention than non-Indigenous children, and Aboriginal and Torres Strait Islander youths are about 15 times more likely to be in prison than non-Indigenous youths.

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<sup>5</sup>The Organisation for Economic Co-operation and Development is an intergovernmental economic organisation with 36 member countries, founded in 1961 to stimulate economic progress and world trade. It is a forum of countries describing themselves as committed to democracy and the market economy, providing a platform to compare policy experiences, seeking answers to common problems, identify good practices and coordinate domestic and international policies of its members. Most OECD members are high-income economies with a very high Human Development Index and are regarded as developed countries. As of 2017, the OECD member states collectively comprised 62.2% of global nominal GDP and 42.8% of global GDP at purchasing power parity. OECD is an official United Nations observer.

- the percentage of children who have been fully immunised has fallen from 92.7 percent in 2008 to 90.5 percent in December 2017. In 2015 Australia ranked near the bottom in the OECD for measles immunisation (in 33rd place of 35 countries) and was 31st of 35 for whooping cough vaccination rates.
- suicide rates continue to increase amongst youth aged 15–24, rising from 10.3 per 100,000 people in 2007 to 12.7 in 2016. Aboriginal and Torres Strait Islander youth were more than three times more likely to take their own lives, at a rate of 39.2 per 100,000 people in 2016, up from 33.0 in 2007.
- in 2014, 55 percent of year 8 girls and 47.1 percent of year 8 boys reported feeling some, or a lot of, pressure from schoolwork. Australia is ranked 24 of 26 nations in this indicator.
- mental health is a growing issue for young Australians. In 2014–15, 15.4 percent of Australians aged 18–24 years suffered high or very high psychological distress—up from 11.8 percent in 2011.

### **GPV/KCV has found some heartening trends in the ARACY report**

- In 2016 more than four in 10 adults who had experienced violence from their partner had a child in their care at the time. This is a reduction from 50.9 per cent in 2012.
- The percentage of children up to the age of 14 living in homes where no one has a job fell from 15 percent in 2010 to 12.8 percent in 2016. Australia’s OECD ranking on this measure remains in the bottom third, with this country slipping from 22 of 27 nations in 2008 to 29 of 32 in 2014.
- Overall, the rates of substance abuse and smoking are falling amongst young Australians aged 12–24.
- Rates of youth violence have declined since 2009.
- Helping parents be part of their children’s education is a cost-effective way to improve outcomes. Research shows it can equate to two to three years of extra education. One measure, reading to or telling a story to a child aged two or less, has remained stable, rising from 80.0 percent in 2008 to 80.08 percent in 2014. Amongst Indigenous communities the increase is higher, rising from 67.2 per cent in 2008 to 70.3 per cent in 2014–15 for children aged 4–14 years.
- Between 2011 and 2017 Aboriginal and Torres Strait Islander year 12 retention rates improved faster than the average, increasing by 28 percent (from 48.7 percent to 62.4 per cent). Generally, year 12 retention rates improved by seven percent over the same period (from 79.3 per cent to 84.8 per cent).
- Australia is a world leader in terms of the percentage of young people voting, with 85.4 percent of those aged 18–24 years enrolled as at June 2017. (Note: this figure was recorded before the electoral rolls closed on 24 August for the Same Sex Marriage postal survey)

Visit [bit.ly/reportcard2018](https://bit.ly/reportcard2018) for more information on the ARACY report.

## GPV/KCV Support for the Convention

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GPV/KCV believes that the work to keep the convention front and centre in the discourse about what is needed to keep children safe and well is crucial.

GPV/KCV also believes that Australia needs to improve its observation and support of children's rights, especially given it is a well-developed country.

Over the years GPV/KCV has reviewed articles within the United Nations Convention on the Rights of the Child (UNCRC) in order to identify those articles that have most connection with the lives of children and their families. Whenever a challenging issue presents itself GPV/KCV looks to the convention for guidance. Over the years GPV/KCV has reviewed the UNCRC in the context of contemporary issues confronting families.

- 2012 The articles emphasised in this year focus on ongoing concerns for GPV/KCV. For example, children's right to education is one of the founding issues upon which GPV/KCV bases its work.
- 2013 The articles emphasised in this year were flagged at an international meeting, hosted in London by GPV/KCV, of kinship care organisations from several countries. This meeting led to the issuing of the Woking Declaration on Kinship Care, a declaration outlining the articles most affecting the work of kinship carers from the five countries represented at the meeting.
- 2014 The GPV/KCV Board agreed to conduct a postcard campaign protesting against the detention of refugee children by the Australian Government.
- As a result of GPV/KCV's membership of the International Play Association, another campaign was begun based on Article 31, regarding a child's right to play.
- 2015 GPV/KCV was concerned with the changes to Victorian legislation regarding permanency objectives in out of home care. GPV/KCV was particularly disturbed by suggestions that the changes to permanency guidelines might lead to an increase in children in out of home care being placed for adoption or put in permanent placements away from their biological families.
- 2016 At a Children's Matters forum<sup>6</sup> a number of the articles from the UNCRC were noted by Justice Alastair Nicholson, AO RFD QC<sup>7</sup> as having been breached by changes made to Victorian legislation that came into full effect in March 2016. The legislation affected included the:
- Children, Youth and Families Amendment Act 2013
  - *Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013*, (particularly Section 3: amendments relating to the legal representation of children)
  - Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

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<sup>6</sup> Children's Matters is a forum of organisations concerned about changes to the *Children, Youth and Families Act* passed in 2014 and brought into force in March 2016. The members are the Law Institute of Victoria, Berry Street, the Victorian Aboriginal Child Care Agency, the Office of the Public Advocate, Mental Health for Youth and their Families, and Kinship Carers Victoria

<sup>7</sup> 'The Rule of Law and the Importance of Judicial Oversight in Care Arrangements.' Keynote address made to the Children's Matters Seminar, 29 February 2016.

- 2017 A number of reports were published into issues regarding child protection in Victoria, beginning with three reports in the early months of the year on issues relating to youth justice, and ending with three reports on kinship care. These reports included:
- *Care not Custody* – A new approach to keep kids in residential care out of the criminal justice system. Legal Aid, January 2017.
  - *Report on Youth Justice*. Victorian Ombudsman, February 2017.
  - *The Same Four Walls* – An inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system. Commission for Children and Young People, March 2017.
  - *Safe and Wanted* – An Inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Commission for Children and Young People, June 2017.
  - *Child Protection Legal Aid Services Review*. Victoria Legal Aid, October 2017.
  - Investigation into the financial support provided to kinship carers. Victorian Ombudsman, December 2017.

### **GPV/KCV and the Woking Declaration on Kinship Care and the formation of the Kinfamilies International Network (KIN)**

On 2–4 October 2014 GPV/KCV hosted a meeting of 15 delegates drawn from five countries: Australia, Ireland, Netherlands, the United Kingdom and the United States. The group met to identify those matters related to kinship care which should be addressed on an international basis.

All delegates agreed that the time was right for international perspectives and action to highlight the role played by kinship carers in raising children.

Primary amongst the interest of the delegates was the misguided perception of kinship care as another form of out-of-home care on the continuum of foster care and adoption. It was resolved that there is a need to consider the biological connection kinship carers have to children and to think about it as a form of extended family care.

Delegates prioritised a number of clauses from the UNCRC that affect the work of kinship carers and that are in need of most immediate attention.

- Article 12 – Respect for Views of the Child
- Article 20 – Children Deprived of Family Environment
- Article 27 – A Child’s Right to Adequate Standard of Living
- Article 7 – Birth Registration, Name, Nationality and Right to Be Cared for by Parents
- Article 8 – Preservation of Identity

## The importance of family in the UNCRC

Central to the beliefs of GPV/KCV is the right of children to know and be cared for by their family. The UNCRC underlines the rights of children to maintain close contact with their families in various articles. The Convention includes phrases such as:

- **‘The child ... shall have ... the right to know and be cared for by his or her parents.’** From Article 7 – Registration and the Right to a Name, Nationality and Care.
- **‘States Parties undertake the right of the child to preserve ... family relations as recognized by law without unlawful interference.’** Article 8 – Identity.
- **‘A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents.’** Article 10 – Family Reunification.
- **‘When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing ...’** Article 20 – Protection by the State.
- **‘States Parties shall provide ... co-operation to assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.’** Article 22 – Refugee Status.
- **‘Every child deprived of liberty ... shall the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.’** Article 37 – Children and Liberty.

A number of articles also require that states develop programs to assist families to remain together by providing financial assistance for items such as education, health care, child care, nutrition, clothing, and housing, where the child’s parents or carers cannot afford to provide these.

GPV/KCV notes with some concern that changes to the *Children’s Youth and Families Act* in Victoria in 2016 have resulted in fewer families being reunited, as cited by the Victorian Commission for Children and Young People:

***“The Commission is concerned that the permanency amendments have not led to an increase in reunifications. Rather, there was an 11 percent decrease in the number of children reunified with their parents by the Department following the commencement of the permanency amendments.”***<sup>8</sup>

## Poverty in the UNCRC

While the word ‘poverty’ does not appear in the UNCRC, it is made clear that children have the right to an enabling standard of living, and that states have the responsibility of ensuring that standard is met. The UNCRC uses phrases such as:

- **‘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 4 – Undertaking Appropriate Measures.
- **‘States Parties shall ensure to the maximum extent possible the survival and development of the child.’** Article 6 – A Child’s Inherent Right to Life.

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<sup>8</sup> Safe and Wanted – An inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Commission for Children and Young People, June 2017.

- **‘States Parties ... shall take appropriate measures ... to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.’**  
Article 24 – Health and Treatment of Illness.
- **‘States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.’** Article 26 – A Child’s Right to Social Security.
- **‘States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.’** Article 27 – Standard of Living.
- **‘States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.’** Article 32 – Children and Employment.

Further to this, Articles 9, 19, and 39 refer to guidelines for protecting children from ‘neglect’ and for helping victims to recover.

## GPV/KCV Calls for Widespread Use of Child Impact Statements

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GPV/KCV scrutinises law, policy and practice, asking: what is best for all children and what effect will the decisions we take today have on their futures?

GPV/KCV recognises that guidelines exist for the creation and use of Family Impact Statements (FIS) when putting proposals to local, federal or State government councils or cabinets<sup>9</sup> but is disappointed in the underutilisation of these statements and their lack of public visibility.

GPV/KCV calls on all levels of government in Australia to pay specific attention to the potential impact that changes to legislation will have on outcomes for children. Every piece of legislation, as well as all changes to regulations and practices should be accompanied by a 'Child Impact Statement' (CIS) consisting of an analysis predicting the potential outcomes for child wellbeing in both the short and long term.

GPV/KCV contends that each CIS must measure the extent to which any policy or practice contributes enhances adherence to the following rights for all children:

- not be raised in poverty
- to know, and spend quality time with, their extended biological family
- to affordable, quality health care, and early intervention in mental health issues
- to be safe from emotional and physical harm
- to a free, comprehensive, quality education
- to participate in leisure activities
- to a sense of identity
- to connect with the languages and religious beliefs of their family of origin
- to be paid fairly for fair work, and the right to safe working environments
- to participate in decisions affecting their own lives
- to be treated fairly and humanely within the justice system

## GPV/KCV Calls on All Citizens to Act in Support of the UNCRC

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GPV/KCV calls on all levels of government in Australia to change their policies and practices to better and more visibly comply with the UNCRC. Furthermore, GPV/KCV calls on all Australian community groups and individual citizens to act to support children's rights as set out in the UNCRC and to promote the Convention in the wider community. Simple actions will make a difference. Some ideas GPV/KCV has already employed include:

- a morning tea at which you give your guests a copy of the convention (GPV/KCV has documents)
- placing an item in your agency's newsletter
- choosing a few clauses of most interest to you or your agency and promoting them in a letter to local decision-makers such as a mayor

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<sup>9</sup> Family Impact Statements (FIS) were introduced in 2005. An election commitment in 2007 promised that FIS would become a compulsory part of policy proposals submitted to the Cabinet, and would be given higher priority in decision-making. Their purpose is to advise Cabinet about the potential impact on families of changes to government policies.

## Articles Critical to GPV/KCV

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The UNCRC articles outlined below are those identified by GPV/KCV, in the years from 2004 and 2018, to be most crucial.

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<b>Article 3</b> <b>Responsibilities of Institutions</b>	<p>In 2015 GPV/KCV formalised its concerns that the <i>Children’s Youth and Families Amendment Act 2013 (Vic) (CYF)</i> breached this article. According to Justice Alastair Nicholson, ‘The Act contravenes Article 3 by interfering with the Court’s ability to determine an individual child’s best interests on a case-by-case basis.’</p> <p>Complaints received by GPV/KCV about DHHS also show that section 3 of this article is not being adhered to, particularly the stipulation in the article about the ‘number and suitability of their staff’. Carers regularly contact GPV/KCV to report that they have difficulty getting a response from DHHS workers, and are often referred to GPV/KCV for answers to questions that DHHS workers should be able to answer.</p>
<b>Article 4</b> <b>Undertaking Appropriate Measures</b>	<p>This article requests that signatory states to the UNCRC take all possible steps to ensure that children’s rights are respected and upheld – a sentiment echoed by GPV/KCV.</p>
<b>Article 6</b> <b>A Child’s Inherent Right to Life</b>	<p>Featured in this article is an exhortation for states to ‘ensure to the maximum extent possible the survival and development of the child’.</p> <p>GPV/KCV feels that this article reinforces the responsibility of governments to ensure that children are provided with the basic necessities of life, including nutrition, housing and clothing, as well as educational programs and health care.</p>
<b>Article 7</b> <b>Registration and the Right to a Name, Nationality and Care</b>	<p>In 2012 Articles 7 and 8 were affirmed by GPV/KCV because they both relate to one of the child’s most basic human rights – the right to have a strong sense of identity. These articles are of particular concern to GPV/KCV in the context of adoption, and the ‘legal’ alterations made to a child’s identity at the time of adoption.</p>
<b>Article 8</b> <b>Identity</b>	<p>Many adoptees of the past have reported that they felt a loss of sense of identity, both through being deprived of their original birth name, and the loss of connection with their extended family and that family’s culture. The risk of this sense of loss is particularly acute in cases of international adoptions.</p>
<b>Article 9</b> <b>Separation from Parents</b>	<p>This article was endorsed by GPV/KCV in 2016 after a Children’s Matters forum at which Justice Alastair Nicholson AO RFD QC<sup>10</sup> noted that a number of the articles of the UNCRC had been breached by changes to Victorian Government legislation that had come into full effect. Justice Nicholson noted that:</p>

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<sup>10</sup> *The rule of law and the importance of judicial oversight in care arrangements*. Keynote address made to the Children’s Matters Seminar, 29 February 2016.

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*The CYF Act 2014 (Vic) <sup>11</sup> is in serious breach of the requirements of this Article, as are the two 2013 Acts in question. The operative words in Article 9.1 are that competent authorities must decide that such separation is in the best interests of the child and, most importantly, that decisions must be subject to judicial review.*

*All of the relevant Acts are in breach of Article 9.2, requiring that all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*

GPV/KCV believes that it is the right of every child to participate in making decisions about their own lives. It is also essential to have input from a variety of sources close to the child, including parents, grandparents and other extended family members, educators, medical professionals and child protection practitioners.

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**Article 10**  
**Family**  
**Reunification**

Although the specific details of this article refer mainly to the need for governments to regulate their borders in a way that is sympathetic towards families who live in different countries, GPV/KCV supports the sentiment behind it.

Where possible, children should be able to keep in close contact with members of their extended families, except in cases where this contact may place the child in danger of physical or mental harm.

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**Article 12**  
**Children's Own**  
**Voice**

This article was first endorsed by GPV/KCV at a meeting in London in 2013 and subsequently reendorsed in 2016 when Justice Nicholson noted that:

*The Justice Act 2013 (Vic)<sup>12</sup> assumes that a child under 10 is incapable of giving instructions of any kind, without regard to considering the individual child and removes their right to be heard. The CYF Act 2013<sup>13</sup> also has the effect of reducing the child's opportunity to be heard.*

GPV/KCV believes that all children have the right to have their views represented in decisions which impact on their lives. Further, all children have the right to representation in decision-making processes by an independent advocate such as a lawyer or guardian *ad litem*.

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<sup>11</sup> Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014.

<sup>12</sup> Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013, Section 3: amendments relating to the legal representation of children.

<sup>13</sup> Children, Youth and Families Amendment Act 2013.

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**Article 18**  
**Child-Rearing**  
**Responsibilities**

This article was endorsed by GPV/KCV in 2016, after a Children’s Matters forum at which Justice Alastair Nicholson AO RFD QC<sup>14</sup> noted that a number of the articles of the UNCRC had been breached by changes to Victorian legislation that had come into full effect. Justice Nicholson noted that:

*Article 18.2 is important for present purposes because of the obligation to support parents. It can hardly be consistent to provide, as this legislation does, that after 12 months, or in exceptional circumstances 24 months, the obligation to support parents or guardians ceases.*

GPV/KCV agrees that in cases where a child is unable to live with his or her parents, the Victorian Government and DHHS should be responsible for supporting carers to keep children together within the family home, or that of the extended family. This support may take the form of financial assistance, or services such as counselling.

In 2017–18, the provision of childcare services for kinship carers is an emerging issue.

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**Article 19**  
**Protection from**  
**Violence, Abuse,**  
**Maltreatment**

In 2013 KCV received record numbers of complaints about DHHS about:

- funding for special needs
- inadequate assessments

At the forum Justice Nicholson stated that:

*This article states a primary responsibility of DHHS, but it is hardly consistent with it to make arbitrary provisions without regard to the needs of the individual child, as this legislation does. The 2014 Act seems more directed at the convenience of the Department than considerations of the child’s individual need or to promote the child’s relationship with parents.*

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**Article 20**  
**Protection by**  
**the State**

This article was first endorsed by GPV/KCV at a meeting in London in 2013. Section 3 provides that ‘... due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’.

GPV/KCV believes that the best way to ensure this continuity is to place children with members of their extended family if they cannot remain with their parents.

This article is important in the case of Indigenous children. The year 2018 marks the tenth anniversary of the Federal Government’s apology to the Stolen Generations, and yet statistics show that more children are being removed from Indigenous families today than were removed at the height of the Stolen Generations era.<sup>15</sup>

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<sup>14</sup> ‘The Rule of Law and the Importance of Judicial Oversight in Care Arrangements.’ Keynote address made to the Children’s Matters Seminar, 29 February 2016.

<sup>15</sup> <https://www.theguardian.com/australia-news/2018/jan/25/indigenous-children-in-care-doubled-since-stolen-generations-apology>

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**Article 21****Adoption**

In 2016 GPV/KCV concerns about adoption heightened.

A report into adoption practices in Australia<sup>16</sup> found that adoptees frequently reported a loss of their sense of identity after learning that they had been adopted, and reported having feelings of mistrust and difficulty connecting with others.

Further, GPV/KCV continues to hold concerns for the loss of connection to family and culture that arises when children are adopted away from the community and family in which they were born.

The UNCRC insists that among other safeguards that should be established before an adoption takes place, it should be ensured that ‘persons concerned have given their informed consent’. The practice of placing children for adoption by strangers is inconsistent with this safeguard. The practice is also of concern because whilst parents may be asked for their consent, there are no provisions in the current Victorian adoption legislation for grandparents or other extended family members to consent to an adoption.

In the Safe and Wanted report, the Victorian Commissioner for Children and Young People stated that, ‘[I]n light of the widespread community concern, particularly for Victoria’s Aboriginal community, and the evidence that adoptions are not occurring in practice, the Commission recommends that it be removed from the hierarchy of permanency objectives.’<sup>17</sup>

This request comes in light of fears that a second Stolen Generation might be created through placing adoption at the top of the hierarchy of permanency objectives.

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**Article 22****Refugee Status**

In 2014 GPV/KCV campaigned for the removal of refugee children from detention centres under Australian control, whether those centres were on Australian soil or offshore.

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**Article 24****Health and Treatment of Illness**

GPV/KCV strongly supports the provision of adequate health care for children. Within the framework of this article, GPV particularly supports the demand that states parties ‘... shall strive to ensure that no child is deprived of his or her right of access to such health care services.’

GPV/KCV is aware of many cases in Victoria where families struggle to meet the costs of health care for children – especially in cases where the children have greater needs or mental health issues.

Section 3 of this article states: ‘States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.’ GPV/KCV abhors the practice of female genital mutilation (FGM) and supports measures to eradicate this harmful practice.

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<sup>16</sup> Impact of Past Adoption Practices – A report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs. Australian Institute of Family Studies, March 2010.

<sup>17</sup> Safe and Wanted – An inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Commission for Children and Young People, June 2017.

<b>Article 26</b> <b>A Child's Right to Social Security</b>	This article is linked closely to the issue of poverty. GPV/KCV supports the right of children and families to have access to welfare benefits where these are necessary to sustain the health and wellbeing of the child.
<b>Article 27</b> <b>Standard of Living</b>	<p>This article was first endorsed by GPV/KCV at a meeting in London in 2013 and subsequently reindorsed in 2016 when Justice Nicholson noted that:</p> <p style="padding-left: 40px;"><i>Article 27 says that children have the right to a standard of living that is good enough to meet their physical and mental needs and that the Government should help families to provide this.</i></p> <p>GPV/KCV agrees that the Victorian Government and DHHS should be responsible for supporting carers to keep children together within the family home, or that of the extended family. This support may take the form of financial assistance, or services such as counselling.</p> <p>This article came to prominence again in 2017 after the release of the Victorian Ombudsman's report detailing the issues faced by Victorian kinship carers in obtaining reimbursement payments from DHHS.<sup>18</sup></p>
<b>Article 28</b> <b>A Child's Right to Education</b>	<p>In 2012 GPV/KCV identified this article as one of the most essential factors in setting up a child for future success in life.</p> <p>Article 28a is of particular note, as it concerns the appropriate type of disciplining of children in schools, which should be 'administered in a manner consistent with the child's human dignity'.</p>
<b>Article 30</b> <b>A Child's Right to Enjoy Minority Group Culture</b>	<p>In 2012 GPV/KCV identified this article as particularly important in the context of the Stolen Generations and international adoption.</p> <p>GPV/KCV believes that children have the right to maintain connections with the community in which they were born, and that removing them from these communities in the name of child protection should be used only as a last resort.</p>
<b>Article 31</b> <b>A Child's Right to Play</b>	<p>In 2004 GPV/KCV first identified the right to play as a critical article in the UNCRC.</p> <p>In 2014 conducted a survey of grandparents the findings of which showed that grandparents are concerned about the quality of play activities enjoyed by today's children. Most apparent was the observation by grandparents that many children do not enjoy enough outdoors adventure play.</p>
<b>Article 32</b> <b>Children and Employment</b>	<p>Article 32 insists that states set guidelines around the employment of children in order to protect them from dangerous working environments or exploitation.</p> <p>This article requests that children be protected from undertaking paid work at the cost of their education, but GPV/KCV notes that in developing nations, some children face such extreme poverty that they must choose between undertaking paid work or starvation. To a lesser extent this is true in Australia,</p>

<sup>18</sup> Investigation into the Financial Support Provided to Kinship Carers. Victorian Ombudsman, December 2017.

	where some teens must make the choice to enter paid employment because they cannot afford the high costs of education.
<b>Article 34</b> <b>Protection from Sexual Exploitation</b>	In 2016 GPV/KCV identified this issue as one of the most pressing. The uncovering of the extent of sexual abuse of children across Australia was alarming and cause for strong action across the nationwide.
<b>Article 37</b> <b>Children and Liberty</b>	<p>In 2017 Articles 37 and 40 were endorsed by GPV/KCV after concerns were raised by a number of reports into the juvenile justice system, particularly the operation of Youth Justice Centres.<sup>19</sup></p> <p>Concerns in relation to this article included:</p> <ul style="list-style-type: none"> <li>• Children in residential care facilities being reported to police and charged for minor infractions</li> <li>• Children being kept in isolation in adult prisons</li> <li>• Children being kept in lockdown for 23 hours a day due to inadequate supervision</li> <li>• Children having inadequate access to educational and mental health programs.</li> </ul> <p>GPV/KCV holds concerns about the implementation of Section 4 of UNCRC Article 40 in Victoria. This section asks that alternatives to institutional care be considered when dealing with children facing criminal charges, and that counselling and educational programs be made available to children in the youth justice system.</p> <p>Article 37 also raises the issue of torture, inhuman or degrading treatment. GPV/KCV considers FGM as coming under this heading, and in 2018 intends to campaign against this practice.</p> <p>GPV/KCV believes that corporal punishment is never appropriate, as it can cause lasting physical and mental damage to children, and normalises violence in the home, which is completely unacceptable.</p>
<b>Article 39</b> <b>Recovery and Reintegration</b>	In 2016 this article was noted by GPV/KCV, as the organisation became aware of increasing numbers of cases where children being raised by kinship carers continue to suffer symptoms of trauma for years after being removed from the situation of neglect or abuse in which they were being raised.
<b>Article 40</b> <b>Children and Legal Proceedings</b>	See notes for article 37.

<sup>19</sup> As listed in the notes on the articles selected.

## The Articles in Overview

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The articles in the UNCRC in snapshot are as follows (those articles shaded are the ones GPV/KCV has acted on in recent years). Please note Articles 1-5 deal with administrative matters only.

- Article 6 - A Child's Inherent Right to Life
- Article 7 - Registration and the Right to a Name, Nationality and Care
- Article 8 - Identity
- Article 9 - Separation from Parents
- Article 10 - Family Reunification
- Article 11 - Illicit Transfer of Children
- Article 12 - Children's Own Voice
- Article 13 - Freedom of Expression
- Article 14 - Freedom of Beliefs and Religion
- Article 15 - Freedom of Association
- Article 16 - Protection of Privacy
- Article 17 - Access to Information and Media
- Article 18 - Child-Rearing Responsibilities
- Article 19 - Protection from Violence, Abuse, Maltreatment
- Article 20 - Protection by the State
- Article 21 - Adoption
- Article 22 - Refugee Status
- Article 23 - Disabled Children
- Article 24 - Health and Treatment of Illness
- Article 25 - Review of Treatment and Other Circumstances
- Article 26 - A Child's Right to Social Security
- Article 27 - Standard of Living
- Article 28 - A Child's Right to Education
- Article 29 - General comment on Implementation of Education
- Article 30 - A Child's Right to Enjoy Minority Group Culture
- Article 31 - A Child's Right to Play
- Article 32 - Children and Employment
- Article 33 - Protection from Narcotic Drugs
- Article 34 - Protection from Sexual Exploitation
- Article 35 - Prevention of the Abduction and Trafficking of Children
- Article 36 - Other Protection
- Article 37 - Children and Liberty
- Article 38 - Children and Armed Conflict
- Article 39 - Recovery and Reintegration
- Article 40 - Children and Legal Proceedings

