



Children's rights, wellbeing and protection: A new paradigm

IMPLEMENTING THE SUCCESSOR PLAN TO THE NATIONAL FRAMEWORK FOR PROTECTING AUSTRALIA'S CHILDREN

Submission to Department of Social Services

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ACKNOWLEDGEMENT

Save the Children Australia and Child Wise acknowledge Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of the land on which we work. We pay our respect to their Elders past, present and emerging.

FURTHER INFORMATION

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About Save the Children and Child Wise

Save the Children aims to protect, promote and fulfil the rights of all children in Australia, as Australia's leading child rights organisation. We are guided by the United Nations Convention on the Rights of the Child and our extensive experience in translating child rights into practice across policy reform and service delivery.

Save the Children has worked in Australia for over 65 years, advocating for children's rights and delivering services for children and families in every State and Territory, including in many of Australia's most marginalised, disadvantaged and remote communities. Across our policy work, advocacy, research and services, we focus on promoting and realising children's rights and enhancing children's lives, especially those who most need support.

In 2020, our services directly reached over 19,000 children and adults in around 500 locations across Australia.¹ We support children and families in their communities through our integrated, place-based early childhood, family support, school engagement and youth services. This includes specialist intensive family support, domestic and family violence, youth justice, migrant settlement, emergency response and recovery, and child rights programming services.

In many cases, our services and programs are provided through long-standing partnerships with Aboriginal and Torres Strait Islander communities and community-controlled organisations, or working closely with local representatives and leaders within culturally and linguistically diverse communities.

Child Wise became part of the Save the Children Australia group in 2018, to pursue a shared vision where children are safe from harm. Based on the principles of capacity building and prevention, Child Wise collaborates with public, private and not-for-profit organisations across Australia and the world, to create and maintain a culture where child safety is front of mind and organisations are empowered to prevent children ever being abused or harmed. Our work is driven by a foundational commitment to children's rights, and a belief that children must have a voice, participate and contribute to decision-making in all spaces which impact their lives.

Child Wise first introduced child safety standards as a framework for preventing harm to children, and detecting and responding to harm when it does occur.² In 2018 we welcomed the Australian Government's endorsement of the National Principles for Child Safe Organisations,³ which reflect our pioneering work and provide the bedrock of our practice. As a leading child safety organisation for over 30 years, Child Wise has been a part of an ever-evolving safeguarding landscape, and is committed to further advancement in this space. As such, we welcome the opportunity to contribute to this submission on implementing the successor plan to the National Framework for Protecting Australia's Children.

¹ This number was affected by COVID-19 and the restrictions that the pandemic required for face to face service delivery for large parts of 2020. For more detail about our Australian services, see: Save the Children, *2020 annual report*, available at <https://www.savethechildren.org.au/getmedia/e8f5d074-b235-4388-93fb-d1dc7045fa81/Annual-Report-2020-print.aspx>.

² Child Wise, *Choose with Care® – Training Manual & 12 steps to a child safe organisation*.

³ Australian Human Rights Commission, 2018, *National Principles for Child Safe Organisations*, available at <https://childsafe.humanrights.gov.au/national-principles>.

1. Introduction and executive summary

Save the Children and Child Wise are pleased to make this joint submission on implementing the successor plan to the National Framework for Protecting Australia's Children.

The need for a paradigm change in children's policy in Australia

The National Framework for Protecting Australia's Children 2009-2020 (**National Framework**) set out worthy goals and had some notable achievements, including the establishment of the National Children's Commissioner, coordination of implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, and ensuring that child welfare has been visible in the national policy conversation.

Yet, 12 years since the National Framework was established, there has been little real progress for Australia's children. Rates of substantiated neglect and abuse, children in out-of-home care, and over-representation of Aboriginal and Torres Strait Islander children in out-of-home care have all increased over the lifespan of the National Framework.⁴ Children continue to die in Australia's child protection system.

These are unacceptable facts. We are failing these children and their families.

The National Framework has failed to coordinate the policy agenda for children. It has failed to achieve systemic improvement in children's wellbeing and safety. It has failed to shift the child protection system's harmful and discriminatory propensity to intervene intrusively and late, and it has failed to drive a genuine focus on preventing harm to children before it occurs.

At the heart of these failures are the National Framework's narrow primary focus on statutory child protection systems and the absence of anything like a holistic approach to upholding children's rights. The National Framework either excludes or deals entirely inadequately with most structures, systems and causes that directly affect children's wellbeing and safety. These include – to name just a few – youth justice systems, domestic and family violence, and underlying causes of child neglect and abuse including material hardship, child poverty and, crucially, the intergenerational trauma and harm of dispossession, racism and systemic violence experienced by Aboriginal and Torres Strait Islander communities that continues today.

The systemic lack of attention to underlying causes of harm is a damaging blind spot. Particularly damaging is the systemic failure to recognise the significant differences between different types of child maltreatment – physical, emotional and sexual abuse, neglect, and exposure to domestic and family violence – including their different causes and the different appropriate ways to prevent and respond to them.

In relation to neglect, poverty is such a strong risk indicator that no society should, in good conscience, remove a child from their family unless every possible step has previously been taken to prevent and address the family's poverty, as the root cause of the harm. Yet, in Australia,

⁴ Comparison between 2007-08 data, which was the most recent available when the National Framework was established, and 2019-20 data, which is the most recent currently available: Australian Institute of Health and Welfare (AIHW), 2021, *Child protection Australia 2019-20*, Child welfare series no. 74, cat. no. CWS 78. Accurate comparisons over time are difficult, given the lack of robust and comparable child protection data across Australia, and differences in policies and approaches to child protection matters across jurisdictions and over time. Nonetheless, on the best available data, substantiation, out-of-home care, and Aboriginal and Torres Strait Islander over-representation rates all appear to have worsened, in some cases significantly, over time. See also the findings of PwC's evaluation: PwC Australia, 2020, *Evaluation of the National Framework for Protecting Australia's Children 2009-2020*, p iv.

children are enmeshed in the child protection system every day because their families are trapped in poverty without the assistance they need to escape.

In relation to domestic and family violence, protective parents – nearly always women – and their children need safe and secure housing and economic security following violence. Instead, too often protective parents instead face secondary victimisation and children are harmed – including by removal from their parent – by the system's propensity to hold the parent who is actually protecting their child responsible for the impact of the perpetrator's actions on the child and their family, while failing to support the protective parent to meet their child's needs.

As a result of these interrelated failings, Australia's child protection systems remain overwhelmingly dominated by a model that emphasises individual responses and interventions where a substantiated risk of harm is assessed as existing, based on inadequate and culturally biased assessments, rather than preventing harm or providing support before the crisis point. The result is a dramatic over-emphasis on statutory interventions and the removal of children from their families in circumstances where this could – and should – have been avoided.

Too often, Australia's child protection systems cause and reinforce trauma, rather than ameliorating or healing it. They have demonstrated a profound inability to reckon with the structural forces of poverty and social disadvantage that make it impossible for many families to meet their children's needs. At the same time, children who are caught in other systems that affect their wellbeing – most notably, Australia's youth justice systems – face severe and systemic maltreatment that would rightly be seen as completely unacceptable if it occurred in a family context. The harm to children, their families and communities is staggering – not to mention the enormous broader costs to society and governments over generations.⁵

At a deeper level, this failing reflects a fundamental misconception about what works to promote children's wellbeing and safety. Following national consultation about the successor plan, Families Australia concluded: 'All consultations identified, as a priority, continuing the rights-based approach underpinning the National Framework in the successor plan. Participants emphasised the strong link between upholding children's rights and delivering better safety and wellbeing outcomes.'⁶ There can be no doubt that this is correct. Upholding children's rights makes children safer.

Yet Australia is far from a child rights-based approach. Instead, Australia continues to operate on an outmoded model of childhood and child development that assumes children's vulnerability and inability to affect their own lives and adopts a narrow focus on 'protecting' children without regard to the wider contexts in which their safety and healthy development can be promoted. This is a fundamental barrier to improving children's safety.

More of the same will not work. The successor plan to the National Framework will be a critical test of the commitment of all Australian governments – Federal and State – to real change.

To achieve the goal of promoting children's wellbeing and safety, and systemically protect them from harm, the successor plan must reflect and drive a paradigm change in how society and

⁵ See, eg, Australian Institute of Family Studies (AIFS), 2018, *The economic costs of child abuse and neglect*, CFCA Resource Sheet, September 2018; Teager, W., Fox, S. and Stafford, N., 2019, *How Australia can invest early and return more: A new look at the \$15b cost and opportunity*, Early Intervention Foundation, The Front Project and CoLab at the Telethon Kids Institute; Social Ventures Australia, 2019, *The economic case for early intervention in the child protection and out-of-home care system in Victoria*; Deloitte Access Economics, 2019, *The economic cost of violence against children and young people*, NSW Office of the Advocate for Children and Young People.

⁶ Families Australia, 2020, *Beyond 2020: Towards a successor plan for the National Framework for Protecting Australia's Children 2009-2020*, p 20.

governments engage with children and respond to their needs. Australia needs a new national approach based on upholding children's rights.

A child rights-based approach would entail the adoption of a public health model for children's wellbeing and safety aimed at preventing harm, and a comprehensive focus on enhancing children's agency and voice in all decisions that affect them. It would put children at the centre of all decision-making about them and all services that have an impact on them. It would include and address all systems and factors that shape children's lives.

Ultimately, a child rights-based approach would not only better keep children safe from neglect and abuse, but also actively promote all children's wellbeing. By centring children's rights, we can enable all children to develop healthily and thrive.

Overview of recommendations

To achieve these aims, our key recommendations are that the successor plan to the National Framework should:

1. **Be based on a child rights approach to children's wellbeing and safety**, rather than the vulnerability-based approach of current child protection systems.
2. **Make clear that governments are responsible for ensuring that the conditions are in place so that children can live in a safe and supportive family environment**, including supporting families to provide such an environment.
3. **Recognise that the best interests of the child are best served through primary prevention of harm, promotion of family functioning, and investment in a child-centred and integrated support system for children and families**, and that removal of a child from their family is, in almost all cases, a sign of failure by governments to ensure the child's best interests are met.
4. **Establish and drive a public health model, as a key element of an overall child rights-based approach to children's wellbeing and safety**, and in doing so should:
 - (a) develop a national policy on children, with the core goal of promoting children's wellbeing and safety and upholding their rights;
 - (b) provide a cross-sectoral coordinating framework to ensure that all policies, programs and services with the potential to affect children are developed and implemented with an awareness of their impact on children's wellbeing and safety, and that service systems are holistic and provide a whole-child response to children's needs;
 - (c) address underlying causes of harm to children, especially poverty, including a commitment by all Australian governments that no child will be removed from their family due to poverty or before demonstrating that all possible measures have been taken to address the underlying cause of poverty;
 - (d) focus on better differentiating between different types of maltreatment, including a specific focus on the link between poverty and neglect;
 - (e) focus on supporting families to meet children's needs, including material needs and parenting and family functioning support;
 - (f) invest in understanding the individual needs of children and their families and what will be effective in meeting those needs, and in making available a continuum of supports, services and interventions that reflect accurate assessments of need;

- (g) invest in more robust data on child wellbeing and safety outcomes, including prevalence and characteristics of neglect and abuse; and
 - (h) better recognise the impact of neglect and abuse on children and their communities, including intergenerational impacts.
5. **Establish arrangements for children's voices to be systematically heard** and taken into consideration in all decisions affecting their wellbeing, safety and protection, including in policy-making, governance and decisions affecting them and their families individually.
6. **Recognise and address the impact of domestic and family violence on children**, including by ensuring that:
- (a) all services that have contact with children who have been exposed to domestic and family violence are appropriately skilled and resourced to understand the effects of this violence on children and work with children in ways that are trauma-informed and trauma-responsive, including being developmentally appropriate and culturally safe;
 - (b) children's voices are heard about their experiences of domestic and family violence in ways that are safe, appropriate and meaningful; and
 - (c) policy and funding decisions are made with an awareness of the benefits of avoiding intergenerational transmission of violence by effectively supporting children who have been exposed to violence.
7. **Provide a coordinating framework to:**
- (a) **drive integration between child protection and domestic and family violence responses** at the level of policy and practice;
 - (b) **monitor and oversee outcomes and actions that are shared between the successor plan and other aligned frameworks, strategies and plans** including the National Plan to Reduce Violence against Women and their Children 2010-2022 and its successor; and
 - (c) **address the lack of appropriate housing for women and children who have experienced domestic and family violence.**
8. **Provide a coordinating framework to address the care and protection of children who are in contact with the criminal justice system**, including a focus on ending the crossover between child protection and youth justice services.
9. **Give full weight to Aboriginal and Torres Strait Islander people's collective right to self-determination**, including by fully implementing all elements of the Family Matters Roadmap and the Aboriginal and Torres Strait Islander Child Placement Principle.
10. **Be directed to driving an evidence-based public discussion** – in the media and more broadly – about the best ways to promote children's wellbeing and safety, including preventing harm to children and the underlying causes of this harm.

The reasons for these recommendations and more detail about them are outlined in our submission. If adopted and implemented, these recommendations could, at last, bring about the fundamental changes that are so clearly needed to enable all children in Australia to be safe, develop to their potential, and thrive through childhood and in life.

2. Child rights and child development are integrally linked

The Convention on the Rights of the Child reflects a strong international consensus about what children's rights are and what they mean. In force since 1990, it is the most ratified human rights treaty. It is comprehensive and supported by exhaustive analysis translating its provisions into practice. It articulates the things that all children should have in order to reach their potential and flourish, how those things can best be ensured, and governments' obligations to ensure them.

At the same time, we have never better understood child development. Based on extensive evidence, we know that healthy child development requires the holistic development of children's social, emotional, cognitive and physical capacities to provide a foundation for learning and wellbeing throughout life. We increasingly understand how adverse childhood experiences and toxic stress affect lifelong development and outcomes, and how these harms are transmitted intergenerationally.

Child rights and child development practice are each extensive bodies of knowledge with strong theoretical and practical foundations. They have the same ultimate goal of maximising the wellbeing of all children. They converge in their recognition that:

- **Children's wellbeing has multiple dimensions.** For children to flourish, a 'whole-child' focus is required to address children's needs holistically, taking into account how those needs evolve as children develop and mature.
- **Children must be understood ecologically.** This means recognising that children live, learn and grow in the context of their families, communities, and broader factors including policies, laws, culture and structural forces such as poverty and social disadvantage. All of these strongly shape children's development and wellbeing and all must be the targets of efforts to improve children's wellbeing, including through a contextual approach to safeguarding children.

A contextual approach to safeguarding

By understanding and responding to children ecologically, we can begin to safeguard them contextually; that is, not merely focusing on individual child level risks and vulnerabilities, but ensuring all contexts that impact them and shape their development are safe and responsive. A contextual approach to safeguarding children aims to understand and respond to risk beyond children's families, and involves more than tertiary level protective responses when risk meets a particular threshold. Contextual safeguarding is inherently children's rights-focused, considers all of the contexts that impact children – families, schools, friendship groups and online spaces, to name a few – and works to engage all of these contexts in an integrated, coordinated protective response.⁷

- **Children's wellbeing depends on having their basic needs met and being safe.** This includes material, emotional, cultural and educational needs and it includes being safe from violence and abuse of all kinds.
- **Services and responses that affect children must be centred around children.** This means taking children seriously as subjects and actors in their own right, rather than as objects to be acted upon. It means seeing the world from children's perspectives, developing shared languages with children, hearing and understanding children's experiences and views, and designing and delivering services accordingly.

⁷ Contextual Safeguarding Network, 2020, <https://contextualsafeguarding.org.uk/>.

- **Some children face particular risks to their healthy development.** These children and their families should receive support that is calibrated to their circumstances and needs. Pathways into and out of these services should be seamless and well-coordinated with primary or universal services such as schools, childcare centres and health services, and all services should be alert to the signs and indicators of risk, knowledgeable about service pathways, and empowered to contribute to coordinated support plans, including when children and their families conclude secondary (targeted support to reduce risk) and tertiary (child protection responses) interventions.⁸
- **Governments have a responsibility to support families to meet children's needs.** This has significant implications for policy-making, service systems and decision-making. One key implication is that children should be removed from their families only as a truly last resort.
- **All tiers of the service sector – from primary to tertiary – should be trauma-informed and trauma-responsive.** Services should recognise the prevalence of trauma, understand its impacts, and design and deliver services to minimise the risk of re-traumatisation and promote recovery, resilience and protective factors.⁹ A trauma-informed and trauma-responsive approach also recognises that adults who care for children may have experienced trauma, and may require appropriate supports to help them care for their children.

⁸ Bromfield, L. and Holzer, P., 2008, *A national approach for child protection: Project Report*, AIFS.

⁹ Substance Abuse and Mental Health Services Administration, 2014, *SAMHSA's concept of trauma and guidance for a trauma-informed approach*.

3. A child rights approach can fundamentally improve children's wellbeing and safety

Children's rights, like human rights more broadly, provide a conceptual framework that can guide policies and other action aimed at children's wellbeing, as well as revealing the assumptions that underpin existing policy and service settings. A child rights approach can provide a rigorous and comprehensive framework for addressing children's wellbeing and safety in a way that is genuinely child-centred and aligned with contemporary understandings of child development.

Through a child rights lens, it is clear that Australia currently has a strongly **vulnerability-based approach to children and their wellbeing**. Children are seen as vulnerable, lacking in capability, unable to shape their own lives, and needing protection from harm. Children have less power than adults and are less included in decisions about them, despite their stake in those decisions and the legitimacy of their perspectives. Consequently, protective responses all too often aim to address and mitigate perceived vulnerabilities in children, rather than working to make children's contexts – families, schools, communities, services, online spaces – safer.

These assumptions about children are deeply embedded but they do not reflect an accurate understanding of children and their capacities. They do not take seriously children's equal worth and dignity to adults. They do not recognise the importance of agency in everyone's life – that is, the ability to understand, influence and make decisions about one's own life. And they do not take into account children's capacity to participate in decisions that affect them and contribute a valuable and needed perspective.

This vulnerability-based approach is especially obvious in Australian child protection systems. As their name suggests, child protection systems are strongly oriented towards protecting children by removing them from situations where they are at immediate risk of harm, rather than establishing the conditions so that children can thrive within their family and community environments and exercise agency in their own lives. Ultimately, this is to the detriment of children and their families and communities.

By contrast, a **child rights-based approach to children and their wellbeing** starts with respect for children's inherent equal worth to adults. It recognises that children are people and they have rights. Children are different from adults but not lesser than adults. They are just as entitled as adults to pursue meaningful and fully-realised lives – in their own capacities as children, and not just as future adults.

Respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights-bearing person should be established and championed as the pre-eminent goal of [national] policies concerning children. ... It requires a paradigm shift away from child protection approaches in which children are perceived and treated as "objects" in need of assistance rather than as rights holders entitled to non-negotiable rights to protection.¹⁰

A child rights-based approach recognises that:

- Like all members of society, children can only live meaningful and fulfilled lives if they can exercise agency in their lives. Indeed, children's participation in decisions about them is itself part of their development and maturing.¹¹

¹⁰ UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, [59].

¹¹ See, eg, International Institute for Child Rights and Development, 2007, *A developmental child rights approach*, available at https://www.iicrd.org/sites/default/files/resources/A_Developmental_Child_Rights_Approach_%281%29_0.pdf.

- Children should have the opportunity to shape their own lives, be involved in decisions that affect them, and fully exercise their capacities in order to fulfil their potential.
- Children's agency and ability to reach their potential is limited by laws, policies and social structures that restrict children's power in relationships with adults and wrongly assume children's capacities are lower than they really are.
- Children's competency and capacities should not be defined only in relation to adult standards. Children are entitled to exercise agency at all stages of their development – not only once they have attained 'adult' levels of capability upon turning 18.
- Children's capacities evolve over time, and their entitlement to agency should take this evolution into account. Their entitlement is not to always make decisions about their own lives, but it is to participate and be taken seriously in such decisions.

A child rights-based approach reminds us that our adult-centric society's current relationship with children is not unchangeable. Indeed, it implies that this relationship should change in order to fully recognise children's rights and enable them to reach their potential.

Rather than assuming children's lack of capability and their limitations, policy settings and service systems should enable children to exercise their existing capabilities and further develop those capabilities through the exercise of agency.

Ultimately, this requires reimagining all systems affecting children's wellbeing, including existing child protection systems, to truly centre children's rights, agency and capabilities, based on a holistic understanding of child development.

Reframing based on rights, agency and capabilities, not deficits and limitations

People with disability have identified that traditional ways of seeing disability are based on a medical model of disability. This model sees disability as something that is wrong with an individual or a problem or abnormality to be fixed.

By contrast, the social model of disability sees disability as 'the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers'.¹² It focuses on the whole person, not just their disability. It implies that society must change so that people living with impairments can participate in society on an equal basis with other people.

This is a powerful reorientation. It recognises that people with disability have the same inherent dignity and are entitled to the same opportunities as all other people, and that society is responsible for changing to enable this – such as removing barriers to full participation. It reflects the approach in the UN Convention on the Rights of Persons with Disabilities, and is a possible source of inspiration for reimagining society's engagement with children.

Recommendation 1

The successor plan to the National Framework should be based on a child rights approach to children's wellbeing and safety, rather than the vulnerability-based approach of current child protection systems.

¹² People with Disability Australia, 2018, <https://pwd.org.au/resources/disability-info/social-model-of-disability/>.

4. Implementing a child rights approach

A child rights approach to children's wellbeing and safety has four key implications for the successor to the National Framework. Such an approach:

- (a) clarifies the **responsibilities of governments, service providers, communities and families** to ensure children's wellbeing and safety;
- (b) allows a proper understanding and application of the frequently misused concept of '**the best interests of the child**';
- (c) reinforces the importance of a **public health model** for promoting children's wellbeing and preventing harm; and
- (d) highlights the need for a significantly increased emphasis on respecting and supporting **children's agency and voice** in decisions about them.

These issues are considered in turn below.

(a) Children's rights and the responsibilities of governments, service providers, communities and families

A child rights framework makes clear that governments, children's services (universal, targeted and tertiary), communities and families all have responsibilities to ensure children's wellbeing and safety. As the Convention on the Rights of the Child states:

*... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community ...*¹³

*For the purpose of guaranteeing and promoting the rights set forth in [the Convention], [governments] shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*¹⁴

Ultimately, governments are responsible for ensuring that the social, material and supporting conditions are in place so that children can access their right to develop in a safe and supportive family environment. This includes taking all necessary measures to support families so that they can provide such an environment for their children, given that the family is the natural and best environment for realising children's rights and promoting their wellbeing. As part of protecting children from harm, governments have a responsibility to put in place supports for children and their families. It also includes allocating resources to fund accessible, child-centred, responsive and well-coordinated services which enable children and their families to flourish. Such services should aim to amplify family strengths by providing proportionate supports.

Families (including extended families and other forms of family-type care arrangements) have the greatest potential to protect children and to prevent violence. Families can also support and empower children to protect themselves. The need to strengthen family life, support families and work with families with challenges must therefore be a priority child protection activity at every

¹³ Convention on the Rights of the Child, preamble.

¹⁴ Convention on the Rights of the Child, article 18(2).

stage of intervention, particularly prevention (through establishing good child caregiving) and in early intervention.¹⁵

Importantly, 'family' has a broad meaning that can vary according to the cultural context and reflect extended family structures, such as those in place for many Aboriginal and Torres Strait Islander peoples.

At the same time, parents and other family members who care for children have responsibilities to ensure children's wellbeing and safety. They are expected to discharge these responsibilities provided that governments have created the conditions, and provided the supports, needed for them to do so. These responsibilities are also associated with rights, including parents' and families' rights and duties to guide children in exercising and realising the child's rights, consistent with the child's evolving capacities and developing maturity over time, and taking into account the child's culture and context.¹⁶ As John Tobin and Judy Cashmore have highlighted:

[Under the Convention] there is an expectation that the realization of children's rights will be deeply connected to and interdependent with the exercise of parental rights, responsibilities and local customary practices. The family, and indeed the community and culture in which a child lives, provide the context in which their rights will be understood, mediated and enjoyed. This relational conception of rights is consistent with children's own conception of their relationship with adults.¹⁷

Where it is not safe for children to remain in the care of their families, it is essential that governments invest in child-centred, culturally safe, trauma-informed and trauma-responsive alternatives, including kinship arrangements and out-of-home care that provide security and permanence and, critically, ensure children meaningfully participate in decisions about their care. Such alternative care must be supported by the broader service sector and seamlessly integrated into wraparound therapeutic responses to children. With over one-third of all children leaving out-of-home care each year having experienced two or more placement changes,¹⁸ it is clear that more must be done to ensure stable, secure and well-matched out-of-home care alternatives.

Whilst governments undoubtedly have a responsibility to ensure a legislative, policy and budgetary context that promotes effective service delivery, the children's services sector – universal through to tertiary – also has responsibilities to ensure children's safety and wellbeing. This includes ensuring all services are delivered in accordance with the National Principles for Child Safe Organisations, a framework which centres the rights of children to participate in decisions affecting them. A successor plan to the National Framework that was based on children's rights would align to the National Principles, and as such contribute to a consistent and unequivocal message about the importance of meaningful engagement with children. A successor plan aligned to the National Principles would also facilitate broader engagement with, and adherence to, the National Principles as a framework for establishing safe, child-focused organisational culture.

Governments and service providers also have responsibilities to equip staff delivering services at any point in the child protection system with appropriate and requisite skills to do so effectively. A successor plan underpinned by children's rights would provide a framework for ensuring that

¹⁵ UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, [72](d).

¹⁶ Convention on the Rights of the Child, article 5.

¹⁷ Tobin, J. and Cashmore, J., 2020, 'Thirty years of the CRC: Child protection progress, challenges and opportunities', *Child Abuse & Neglect* 110, p 4.

¹⁸ NFPAC Indicator 4.2 / NOOHCS Indicator 1.1: Children aged 0-17 years exiting out-of-home care during the year who had 1 or 2 placements. AIHW, 2018-19, available at: <https://www.aihw.gov.au/reports/child-protection/nfpac/contents/national-framework-indicators/4-2-placement-stability>.

service providers at any stage of the child protection system would have proportionate knowledge and skills, including about child development, to practise in ways which protect and promote children's rights.

Recommendation 2

The successor plan to the National Framework should make clear that governments are responsible for ensuring that the conditions are in place so that children can live in a safe and supportive family environment, including supporting families to provide such an environment.

(b) Children's rights and the best interests of the child

A child rights approach casts light on one of the most frequently misunderstood and misused concepts in child protection: 'the child's best interests'.

This is a principle from the Convention on the Rights of the Child, which unequivocally states that children have a right to their best interests being a primary consideration in all decisions affecting them.¹⁹ Importantly, the principle of the child's best interests includes a requirement that societies must establish the conditions, and provide sufficient resources and support, for families to enable their children's safe and healthy development.

Regardless of whether violence takes place, [governments] have a positive and active obligation to support and assist parents and other caregivers to secure, within their abilities and financial capacities and with respect for the evolving capacities of the child, the living conditions necessary for the child's optimal development'.²⁰

Given the importance of the family to children's development and wellbeing, a child's best interests will only very rarely be satisfied by removing them from their family. Children should only be removed from their families when it is truly a last resort. The removal of a child from their family will, in almost all cases, indicate that governments have failed in their obligation to support the family to enable a safe and nurturing home environment for the child.

Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration.²¹

The best interests of the child is both an individual and a collective right. This has particular significance for understanding the best interests of Aboriginal and Torres Strait Islander children, which should be interpreted in the context of those children's cultural rights and their entitlement to exercise those rights collectively with others who share their culture.²²

It is also important to understand the concept of the best interests of the child in the context of the Convention on the Rights of the Child. The Convention is based on four general principles, all of which should shape the approach to children's wellbeing, safety and protection. These are:

- **Non-discrimination.** This means that all children are equally entitled to protection and special measures need to be taken to ensure this for children facing inequality or

¹⁹ Convention on the Rights of the Child, art 3(1).

²⁰ UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, [5].

²¹ United Nations, General Assembly, *Guidelines for the Alternative Care of Children*, resolution adopted 18 December 2009, published 24 February 2010, A/RES/64/142, [14].

²² UN Committee on the Rights of the Child, *General comment No. 11 (2009): Indigenous children and their rights under the Convention*, 12 February 2009, CRC/C/GC/11, [30]-[33].

marginalisation, which includes children already in contact with the child protection system for any reason.

- Best interests of the child. As noted above, this means that the child's best interests should be a primary consideration in all decisions affecting them, and includes an obligation on governments to ensure that this is possible by supporting families to provide a safe and nurturing environment for their children.
- Right to life, survival and development. This means that all children should have the opportunity to develop to their potential, in a sense that is positive and builds on strengths as well as in being free from harm. It emphasises the importance of supportive environments for children and that families have responsibilities and duties towards children.
- Respect for the views of the child. This means that children have a right to participate in decisions affecting them, which includes in relation to their protection and decisions affecting their families.²³

Putting this another way, children's rights to protection, provision (which includes support for families) and participation are all equally important and inter-related.²⁴ Taking children's rights seriously requires fully accounting for both their entitlement to protection, and their entitlement to being treated as equals and supported to shape and affect their lives in a way that reflects their stage of development and actively supports that development.

Recommendation 3

The successor plan to the National Framework should recognise that the best interests of the child are best served through primary prevention of harm, promotion of family functioning, and investment in a child-centred and integrated support system for children and families, and that removal of a child from their family is, in almost all cases, a sign of failure by governments to ensure the child's best interests.

(c) Children's rights and a public health model

Public health approaches improve population level outcomes by focusing on social determinants of health – that is, non-medical factors affecting population health.²⁵ At its core, a public health approach to children's wellbeing and safety is about preventing harm by promoting children's wellbeing and addressing the underlying causes of harm to children at a society-wide level.

A child rights approach strongly aligns with the use of a public health model. The United Nations Committee on the Rights of the Child has put this emphatically:

... child protection must begin with proactive prevention of all forms of violence ... Prevention includes public health and other measures to positively promote respectful child-rearing, free from violence, for all children, and to target the root causes of violence at the levels of the child, family, perpetrator, community, institution and society. Emphasis on general (primary) and targeted (secondary) prevention must remain paramount at all times in the development and

²³ For useful discussions of the CRC's four general principles and their application to children's protection and safety, see Bessell, S. and Gal, T., 2009, 'Forming partnerships: The human rights of children in need of care and protection', *International Journal of Children's Rights* 17: 283-98; Gal, T., 2011, *Child victims and restorative justice*, ch 2, pp 29-43.

²⁴ Waldo, T., 2016, 'Theorising children's rights and child welfare paradigms', *International Journal of Children's Rights* 24: 304-29. See also Moore, T., 2017, *Protection through participation: Involving children in child safe organisations*, CFCA Practitioner Resource.

²⁵ Shi, L., Tsai, J., and Kao, S., 2009, 'Public health, social determinants of health, and public policy', *Journal of Medical Sciences* 29(2): 43-59.

implementation of child protection systems. Preventive measures offer the greatest return in the long term.²⁶

The need for a public health model

There is a compelling case for adopting a **public health model** for child wellbeing and safety in Australia. A public health model would provide universal preventive support to all children and families and progressively gradated early intervention and more targeted support for those at risk, along with tertiary services for those whose more complex needs are not met by other supports.

Any public health model is underpinned by a focus on preventing harm by identifying and addressing risk and addressing underlying causes of harm. A public health model for child wellbeing and safety would focus on addressing all forms of abuse and neglect, including the significant impact of exposure to domestic and family violence, and delve deeper, considering and responding to underlying factors which create conditions for harm to occur and exacerbate risk.

Underlying causes of harm to children

Underlying causes of child maltreatment and harm include but are not limited to: social and economic inequalities such as poverty, lack of access to appropriate housing, and a resultant inability of families to meet children's needs; health inequality, including lack of access to services; mental health issues; intergenerational trauma; problematic alcohol and drug use; and the context of gendered privilege and patriarchy which underpins family and domestic violence.

Importantly, a public health model for child wellbeing and safety would recognise the differences between the different types of child maltreatment – physical, emotional and sexual abuse, neglect, and exposure to domestic and family violence. While recognising that co-occurrences of these types of maltreatment are common, a public health model would emphasise understanding the different underlying causes and risk factors associated with each maltreatment type, as well as the implications for effective prevention and response for each maltreatment type. As described below, this has particular implications for addressing neglect, which cannot be understood, prevented or responded to without an understanding of the context of poverty.²⁷

A public health model can be contrasted to the **clinical or forensic model** which dominates Australian child protection systems. This approach emphasises individual responses and interventions where a substantiated risk of harm is assessed as existing. It is heavily tilted towards tertiary (acute) interventions through statutory child protection services rather than preventive measures or earlier intervention, and is characterised by a lack of connection between different 'levels' and types of services.

In its work with primary/universal child-focused organisations, Child Wise regularly hears from service providers that pathways into and out of secondary and tertiary services are complex, not well understood and sometimes fractured, which ultimately impacts children's health, safety and long-term outcomes. Whilst the commitment to contribute to effective safeguarding may be present in primary/universal services, such as schools, systemic failings related to resourcing, capacity, design and communication, mean that the protective capacity of primary/universal services may be under-utilised.

²⁶ UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, [46].

²⁷ See, eg, Scott, D., 2014, *Understanding child neglect*, CFA Paper No. 24, April 2014.

A public health model has become particularly important as the scope of what is dealt with through the statutory child protection system has broadened, the threshold for intervention has lowered, and reports of exposure to domestic and family violence have increasingly been dealt with by statutory systems over time.²⁸

The current National Framework aspires to a public health model.²⁹ Unfortunately there is a vast gap between this aspiration and the reality of the last 12 years. PwC's evaluation describes the National Framework's actual engagement with the public health model as 'limited' and states 'the transition to the public health model was not able to be substantially progressed' from 2009 to 2020.³⁰ The evaluation highlights a number of reasons for this failure to achieve a shift to a public health model, including competing priorities of broader government and departments, a lack of buy in beyond child protection portfolios, a lack of involvement by those broader portfolio areas in the National Framework, federalism barriers, other structural barriers including 'the long-term effects of colonisation and intergenerational trauma experienced by Aboriginal people, families and communities experiencing poverty and the standing of / respect for children within Australian society' and the existence of a large number of other frameworks and strategies that affect the wellbeing of children but have not been developed with the National Framework in mind.³¹

Without a genuine paradigm shift, it is unrealistic to expect that the next 10 years will see any real change compared to the 12 years just passed.

Priorities for establishing a public health model

To underpin a public health model, Australia needs to **develop a national policy on children, with the core goal of promoting children's wellbeing and safety and upholding their rights**. This should **provide a cross-sectoral coordinating framework** to ensure that:

- all policies, programs and services with the potential to affect children are developed and implemented with an awareness of their impact on children's wellbeing and safety; and
- service systems are holistic and provide a whole-child response to children's needs, along a continuum of intensity responding to the nature of those needs.

While it has had some achievements, the expiring National Framework has been too narrow to provide such a coordinating framework. It has not adequately addressed underlying causes of harm to children or policies and services beyond child protection systems that directly affect and harm children. The successor plan must take a broader view.

Governments and service systems need to **address underlying causes of harm to children, especially poverty, including a commitment by all Australian governments that no child will be removed from their family due to poverty or before demonstrating that all possible measures have been taken to address the underlying cause of poverty**. There is a strong evidence base about this. Child maltreatment is primarily driven by well-known factors including poverty, homelessness, alcohol and other drug misuse, mental health challenges, and domestic and family violence. Preventing harm to children requires addressing these underlying factors, and neglect in particular is inextricable from the context of poverty.

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a

²⁸ Higgins, D., Lonne, B., Herrenkohl, T. and Scott, D., 2019, 'The successes and limitations of contemporary approaches to child protection', in *Re-visioning public health approaches for protecting children*, pp 3-17.

²⁹ National Framework for Protecting Australia's Children 2009-2020, pp 7-8.

³⁰ PwC, above n 4, pp 52, 54.

³¹ PwC, above n 4, pp 40-1.

child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.³²

In focusing on underlying causes of harm, a public health model would entail a systemic **focus on better differentiating between different types of maltreatment** – physical, emotional and sexual abuse, neglect, and exposure to domestic and family violence. This would include the different causes and risk factors associated with different maltreatment types, and the different ways in which they can be best prevented and responded to. It would include a specific focus on **the link between poverty and neglect**, given the particular impact that poverty has on children's wellbeing and in driving children's and families' contact with child protection systems.

Addressing underlying causes requires a **focus on supporting families to meet children's needs, including material needs and parenting and family functioning support**. This involves investing in the areas of foundational support for families and the conditions that enable families to provide a nourishing and safe environment at home. To promote wellbeing, prevent harm and truly intervene early, before there is already significant risk of harm and statutory services are triggered, governments must ensure that families have adequate income support to remain out of poverty, access to appropriate housing, transport options to access employment and services, and the means to provide food, clothing, utilities and other essentials for their children.

In turn, this requires broadening the understanding of what services and supports relate to promoting children's wellbeing and safety and protecting children from harm. For example, an income support safety net that is adequate to keep families out of poverty, including through a sufficiently increased rate of payments such as JobSeeker, Youth Allowance, and parenting payments, and with particular calibration towards enabling families to meet children's needs, is a foundational and crucial component of protecting children.

The family being the fundamental group of society and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members. [Governments] should ensure that families have access to forms of support in the caregiving role.³³

Universal, targeted and tertiary services should be seamless, wrapping around families and communities to enable services to be deployed in timescales which give the best chance of positive outcomes. Central to such an approach is the need to bolster, empower and build the capacity of universal and targeted services to play a proactive, outcome-focused role in the lives of children and families, to prevent unnecessary escalation into tertiary services. This approach could also prevent children's re-entry into child protection systems following a tertiary intervention, as universal and targeted sector services may be more capable of providing effective support services.

Governments and service systems must **invest in understanding the individual needs of children and their families and what will be effective in meeting those needs, and in**

³² United Nations, General Assembly, *Guidelines for the Alternative Care of Children*, resolution adopted 18 December 2009, published 24 February 2010, A/RES/64/142, [15].

³³ United Nations, General Assembly, *Guidelines for the Alternative Care of Children*, resolution adopted 18 December 2009, published 24 February 2010, A/RES/64/142, [3].

making available a continuum of supports, services and interventions that reflect accurate assessments of need. In practice, this means:

- understanding what will be most effective for each child in the circumstances, including whether statutory intervention and potential removal of the child is truly the most likely option to leave the child better off;
- more effective assessment, that considers cumulative risk and prognosis for change, enabling child protection systems to take more timely action earlier in a child's life or earlier in the emergence of a challenge for the family in providing for the child;
- creating meaningful alternative options for the system to engage with families other than statutory intervention and removal, reflecting the level and nature of support that best meets the child's needs and the family's circumstances. This will entail significant investment and capacity building to ensure universal, targeted and tertiary services have the capability to respond to children's needs at appropriate times without the need for unnecessary escalation in interventions;
- avoiding the current situation in which families often only receive services in the form of intensive interventions after a report is made to a child protection agency (and removing the stigma associated with such services);
- ensuring that statutory and non-statutory child protection services are connected and integrated with other supports, including community-based supports and resources;
- establishing better arrangements for families to 'step down' and 'step up' through supports as their capacities are built and their needs and circumstances change; and
- overall, investing more in secondary supports and better targeting tertiary interventions.

As part of this investment and reform, governments should recognise that the traditional 'screening and escalation' model of child protection services does not reflect the reality of families' circumstances and interactions with the child protection system.

As Leah Bromfield has highlighted, the existing system is based on the assumption that the best way to identify serious child protection concerns and intervene effectively is by screening reports to identify families and children in need of intervention, with an escalating intensity of support being provided to increasingly smaller numbers of families where the greatest risk and complexity is present.

Yet there is evidence that these assumptions are incorrect. Bromfield's research suggests that families with the most complex needs are in fact being reliably identified by reporting, and families with multiple and complex needs are in fact the largest population known to child protection (rather than being only a relatively small proportion of the total number of families which are the subject of reports).³⁴ The unavoidable implication is that more and better calibrated services are required for families with such needs.

There is also a continuing need to **invest in more robust data on child wellbeing and safety outcomes, including prevalence and characteristics of neglect and abuse.** This is a long-standing deficiency in Australia that requires proper attention. Additional investment should, of course, build on existing data and connect to research such as the Australian Child Maltreatment Study of the prevalence of child maltreatment that is currently underway.³⁵

³⁴ Bromfield, L., 2021, 'Rethinking child protection system design assumptions for families with multiple & complex needs', Tri-Peaks Webinar, 4 May 2021, available at <https://www.cfecfw.asn.au/wp-content/uploads/2021/05/Bromfield-Vic-Tri-Peaks-VWebinar-EIRD-Research-May21.pdf>.

³⁵ See <https://www.australianchildmaltreatmentstudy.org/>.

To underpin these system-level changes, we need to **better recognise the impact of neglect and abuse on children and their communities, including intergenerational impacts.**

This means understanding the toxic stress and trauma caused by neglect and abuse and acting to promote protective factors and healthy coping behaviours among children and their families and communities where neglect and abuse has occurred. This includes specific therapeutic and trauma-informed and trauma-responsive support for children in every setting where they may be encountered, including specialist domestic and family violence services. A trauma-informed and trauma-responsive approach also means responding to the needs of traumatised adults who may be caring for children.

Recognising the impact of child maltreatment and its intergenerational effects also means recognising that, too often, children involved in the child protection system grow up to become parents whose children also become known to child protection, and more likely to be removed from their families, perpetuating this harm through generations.

Recommendation 4

The successor plan to the National Framework should establish and drive a public health model, as a key element of an overall child rights-based approach to children's wellbeing and safety, and in doing so should:

- (a) develop a national policy on children, with the core goal of promoting children's wellbeing and safety and upholding their rights;
- (b) provide a cross-sectoral coordinating framework to ensure that all policies, programs and services with the potential to affect children are developed and implemented with an awareness of their impact on children's wellbeing and safety, and that service systems are holistic and provide a whole-child response to children's needs;
- (c) address underlying causes of harm to children, especially poverty, including a commitment by all Australian governments that no child will be removed from their family due to poverty or before demonstrating that all possible measures have been taken to address the underlying cause of poverty;
- (d) drive a systemic focus on better differentiating between different types of maltreatment, including a specific focus on the link between poverty and neglect;
- (e) focus on supporting families to meet children's needs, including material needs and parenting and family functioning support;
- (f) invest in understanding the individual needs of children and their families and what will be effective in meeting those needs, and in making available a continuum of supports, services and interventions that reflect accurate assessments of need;
- (g) invest in more robust data on child wellbeing and safety outcomes, including prevalence and characteristics of neglect and abuse; and
- (h) better recognise the impact of neglect and abuse on children and their communities, including intergenerational impacts.

(d) Children's rights, agency and participation

A child rights approach involves a holistic and comprehensive approach to protecting children and ensuring their best interests. As described earlier in this submission, this includes the recognition that the best way to ensure children are safe and protected is to uphold their rights, including rights relating to provision of services and supports, and rights relating to participation in decisions, as well as rights directly relating to protection. This holistic approach is especially important for children in vulnerable situations.³⁶

A key implication is that children must be supported to exercise genuine agency, including having their voices heard and their participation and involvement enabled, in all decisions affecting them. This must include all decisions affecting their care and protection, outside as well as within statutory child protection systems.

The purpose of children's participation in decision-making

Children's participation in decisions affecting them has significant benefits in all contexts, for the children themselves and for the quality and effectiveness of the decisions being made.

In relation to decisions about children's wellbeing, safety, care and protection, children's participation has particular importance – as a right, for its intrinsic value for children's wellbeing, and as a contributor to more effective and successful services and interventions.³⁷

Children's participation in these decisions aligns with a public health model (as summarised above), as it strongly supports prevention of harm. It directly enhances children's wellbeing and resilience through the increased sense of efficacy and confidence that arises from being genuinely involved in decisions – which itself is part of a healthy process of development – and enables specific risks to safety to be identified by children and acted upon.³⁸

Children's participatory rights are also the foundation for realising their other rights. As noted above, all children's rights, as enshrined in the Convention on the Rights of the Child, are underpinned by four principles, including the right to participation. Each of the other principles – the child's best interests, the right to non-discrimination, and the right to full development – are themselves underpinned by the child's right to participate. Only when children's participation is substantive and meaningful can their best interests be met, non-discrimination guaranteed, and their full development enabled so that all of their rights are fully realised.³⁹

Principles for meaningful children's participation

The underlying principles for meaningful children's participation in decisions affecting them have been comprehensively laid out by the United Nations Committee on the Rights of the Child.

In summary, these principles require that all processes in which a child or children are heard and participate must be: transparent and informative; voluntary; respectful; relevant; child-friendly; inclusive; supported by training; safe and sensitive to risk; and accountable.⁴⁰

³⁶ The rights in the Convention on the Rights of the Child are often categorised in this way – as rights of protection, provision and participation.

³⁷ Skaug, B., Storhaug, A. and Marthinsen, E., 2021, 'The what, why and how of child participation – A review of the conceptualization of "child participation" in child welfare', *Social Sciences* 10: 54, pp 8-12.

³⁸ Commonwealth Government, 2017, *Final report of the Royal Commission into Institutional Responses to Child Sexual Abuse*, Vol 2, pp 200-4, Vol 6, pp 157-64 and Vol 13, pp 151-8 & 216-22.

³⁹ See generally Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, CRC/C/GC/12, 1 July 2009.

⁴⁰ Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, CRC/C/GC/12, 1 July 2009, [133]-[134].

Detailed and authoritative guidance is available to assist with implementing these principles in practice, including from the Committee itself and from Save the Children, built on a foundation of what children have shared with adults over many years.⁴¹ The Appendix to this submission provides more detail.

The successor plan to the National Framework should incorporate, apply and implement these principles across all decisions affecting children's wellbeing, safety and protection.

Children's involvement in developing the National Framework

Children should be meaningfully involved in the development of the successor plan to the National Framework, including in decisions about its implementation. It is important that this includes children with lived experience of the child protection system, including out-of-home care, and reflecting a diversity of circumstances and experiences, including by age.

Save the Children and Child Wise note that the National Children's Commissioner is engaging with children across Australia to enable their views and experiences to inform implementation of the successor plan. We urge all Australian governments to take seriously what children report to the Commissioner and to act in accordance with what they hear from children when implementing the successor plan.

Children's participation in decisions about their wellbeing, safety and protection

The successor plan to the National Framework has a real opportunity to drive change by meaningfully embedding children's participation in all decisions affecting their wellbeing, safety and protection. It can do this by making clear how all systems that affect children's wellbeing and safety can meaningfully engage children as active participants and decision-makers. This includes, but is wider than, children's involvement with the child protection system.

Being involved in any stage of the child protection system can bring uncertainty and a sense of powerlessness. Children have a different perception and understanding of being safe and feeling safe to that of adults. Adults may also make incorrect assumptions about how and to whom children wish to communicate.

Children need to have confidence that if they do speak up, they will be believed and supported and what happens next will be discussed with them in age-appropriate, understandable ways. They also need to have confidence that what they say will not be disclosed to parents in ways that fail to recognise the complexity of the child's situation or fail to respect the importance of the child's relationship with their parents and the attachment between the child and each parent.

It is vital to ensure the system itself facilitates a range of inclusive, age-appropriate ways for children to participate in all decisions and processes affecting their wellbeing and safety. Such approaches must take into account age, ability, language and culture, and must be trauma-informed and trauma-responsive. In practice, this means facilitating children's engagement and creating opportunities for them to voice their opinions and concerns by developing accessible and considered mechanisms for their participation. This can be achieved in a range of ways including:⁴²

- Creating arrangements for children to be part of the governance and oversight of the successor plan to the National Framework, to ensure their perspectives are present

⁴¹ Save the Children, 2021, *The nine basic requirements for meaningful and ethical children's participation*, available at https://resourcecentre.savethechildren.net/node/19385/pdf/basic_requirements-english-final.pdf.

⁴² For further discussion of a number of these actions, including the evidence base supporting them, see Kosher, H. and Ben-Arieh, A., 2020, 'Children's participation: A new role for children in the field of child maltreatment', *Child Abuse & Neglect* 110.

throughout, including in monitoring progress towards the objectives of the successor plan, and in being involved at every stage of evaluation of the successor plan and the programs and activities undertaken as part of the successor plan. An overarching aim should be creating accountability to children for all activities under the successor plan that are aimed at promoting children's wellbeing and safety and upholding their rights.

- Enabling children's meaningful participation in measures aimed at primary and secondary prevention of harm to children, including in policy-making and service design and encompassing children's perspectives on both problems and solutions.
- Developing shared language and definitions with children about child maltreatment, in ways which genuinely reflect children's different understandings of safety, harm, and risk and protective factors in their own contexts, and acting on this through changes such as improved assessment tools and processes.
- Developing age-appropriate, accessible ways of ensuring children of all ages are clear about their rights and opportunities for participation in the child protection system, including understanding what is at stake, how their participation will affect them and their families, and how they will be kept safe when participating.
- Facilitating children's access to culturally safe, independent advocacy as a means of safeguarding their rights. This is particularly crucial for children in out-of-home care who may feel like they do not have a voice in their long-term care plans.
- Driving systemic change which centralises children's participation in the child protection process, ensuring that there is the requisite policy framework, operating environment, culture and capacity to meaningfully engage with children. In practice, this means that staff involved in the child protection system have the appropriate training, capacity, tools and resources to engage with children effectively.
- Researching and commissioning digital solutions which offer accessible, child-focused ways for children to engage with safe adults of their choosing.
- Commissioning participatory research with children which strengthens the evidence base around the critical importance of children's participation. As part of this, it is vital to create opportunities for dialogue between children and policy-makers and other leaders in the child protection system, so children's voices may influence systemic change.
- Empowering families as active participants in the child protection system, engaging them in decision-making and ensuring they have access to culturally safe advocacy.
- Aligning the successor plan to the National Principles for Child Safe Organisations, which make clear the need for all child-focused organisations to promote the participation of children and families, and promote equity, accessibility and inclusion.

Recommendation 5

The successor plan to the National Framework should establish arrangements for children's voices to be systematically heard and taken into consideration in all decisions affecting their wellbeing, safety and protection, including in policy-making, governance and decisions affecting them and their families individually.

5. Domestic and family violence

The relationship between domestic and family violence and child neglect and abuse is complex and important. This submission does not seek to address that relationship comprehensively, and instead briefly highlights a small number of issues that are particularly relevant to the successor plan to the National Framework.

(a) The impact of domestic and family violence on children

Children's experiences of domestic and family violence are complex, commonly harmful, and often traumatic. This can lead to immediate and long-term harm to children's psychological, social, emotional, physical and cognitive wellbeing, functioning and development.⁴³ These experiences and harmful effects on children should be recognised and addressed in their own right, not just as an adjunct to adults. Yet the impact of domestic and family violence on children is dramatically under-recognised in policy, programs and practice.⁴⁴

One consequence of this under-recognition is that, as ANROWS has highlighted: 'There is a service gap in addressing the impact of DFV [domestic and family violence] on children. Historically, CP [child protection] and DFV sector agencies have treated DFV as a problem between adults only. This has meant that vulnerable families have been left unsupported in trying to address the effects on children'.⁴⁵

All agencies and service providers that have contact with children who have been exposed to domestic and family violence should be appropriately skilled and resourced to understand the effects of this violence on children and work with children in trauma-informed and trauma-responsive ways. This entails adopting a child-centred approach that is developmentally appropriate and culturally safe for the child.⁴⁶

A trauma-informed and trauma-responsive approach helps to understand the child's perspective and experiences, and the impacts of domestic and family violence on the child and their parent. It also helps with hearing children's voices in ways that are safe, appropriate and meaningful.

Additionally, a focus on children's experiences of domestic and family violence, and on supporting children to work through these experiences, can assist with addressing the intergenerational transmission of violence. Childhood exposure to domestic and family violence is linked with future perpetration,⁴⁷ associated with the complex trauma and cumulative harm that arises from such violence and its co-occurrence with other forms of abuse. Where children are supported early and appropriately, this can be one important contributor to reducing the likelihood that they will engage in such violence themselves as adults.

Recommendation 6

The successor plan to the National Framework should recognise and address the impact of domestic and family violence on children, including by ensuring that:

- (a) all services that have contact with children who have been exposed to domestic and family violence are appropriately skilled and resourced to understand the effects of this

⁴³ Campo, M., 2016, *Children's exposure to domestic and family violence: Key issues and responses*, CFCA Paper No 36 of 2015, AIFS.

⁴⁴ AIHW, 2018, *Family, domestic and sexual violence in Australia 2018*, Cat. no. FDV 2.

⁴⁵ ANROWS, 2018, *Research summary: The impacts of domestic and family violence on children*, 2nd ed, ANROWS Insights 11/2018, p 3.

⁴⁶ Winkworth, G., 2006, *Principles of child centred practice: Timely, developmentally appropriate, participatory and collaborative*, Institute of Child Protection Studies, available at https://www.acu.edu.au/-/media/feature/pagecontent/richtext/about-acu/institutes-academies-and-centres/icps/docs/child_centred_report_final.pdf?la=en&hash=0B4643FDCC8AD0BAE6C4701EB3A9264E.

⁴⁷ Campo, above n 43, p 10.

- violence on children and work with children in ways that are trauma-informed and trauma-responsive, including being developmentally appropriate and culturally safe;
- (b) children's voices are heard about their experiences of domestic and family violence in ways that are safe, appropriate and meaningful; and
 - (c) policy and funding decisions are made with an awareness of the benefits of avoiding intergenerational transmission of violence by effectively supporting children who have been exposed to violence.

(b) Domestic and family violence and the child protection system

Exposure to domestic and family violence is a form of child maltreatment in its own right, with unique characteristics, causes and harmful effects on children.⁴⁸ It also commonly co-occurs within families with other forms of abuse and neglect.⁴⁹

Yet domestic and family violence is very poorly handled by the child protection system. All too often, this has dire consequences for protective parents – nearly always women – and their children. These parents are placed in the impossible position of trying to keep their child safe while navigating the complex and harmful dynamics of domestic and family violence and the conflicting requirements of the child protection system.

The child protection system is strongly oriented towards holding parents responsible for their children's safety. In practice, in families where domestic and family violence occurs, it is protective parents – who are also the adult victims and survivors of that violence – who are held responsible in this way. Where the child protection system deems that the parent is not doing enough to keep their child safe and protected – for example, by remaining with the child in a home where violence is occurring – intervention is common, including the threat of removal of the child from their protective parent's care.

No child should lose their protective parent due to domestic and family violence. Yet this is exactly what the child protection system causes.

In seeking to protect children, there needs to be a shift from focusing on the actions of the adult survivor of violence to instead focusing on the impact of the perpetrator's actions on the child and on family functioning, and holding the perpetrator responsible for those impacts.

A focus on perpetrator accountability is a crucial step in better integrating child protection and domestic and family violence services. Importantly, this should include more services for perpetrators of violence, including in primary and secondary prevention, aiming to educate and rehabilitate perpetrators in order to enable children to safely maintain contact and relationships with them where this is in children's best interests, in ways which are accountable to children and to adult survivors of violence.

The additional difficulties and harm created by the operation of the family law system and its inability to deal appropriately with child protection or domestic and family violence concerns and allegations have also been well documented, and should be a focus of attention.⁵⁰

⁴⁸ Australian Institute of Family Studies, 2018, *What is child abuse and neglect?*, CFCA Resource Sheet, September 2018.

⁴⁹ Holt, S., Buckley, H. and Whelan, S., 2008, 'The impact of exposure to domestic violence on children and young people: A review of the literature', *Child Abuse & Neglect* 32: 797-810.

⁵⁰ See, eg, Family Law Council, 2015, *Families with complex needs and the intersection of the family law and child protection systems: Interim report – June 2015 (Terms 1 & 2)*.

It is beyond the scope of this submission to deal with these issues comprehensively. However, some other priority actions would include:

- Establish provisions for information sharing between child protection and domestic and family violence services, to assist with bridging the disconnect between the two systems.
- Focus on strengthening the child protection workforce's understanding of domestic and family violence in practice, as it exists in specific communities and cultural contexts (such as culturally specific dimensions of domestic and family violence in Aboriginal and Torres Strait Islander communities), including increasing local representation in workforces.
- Focus on early identification and early intervention, including through education in schools and other settings, to prevent violence and address it at an early stage.
- Ensure appropriate accommodation is available for women and children who have experienced domestic and family violence (see below).

(c) Domestic and family violence, child protection and housing

One of the most damaging manifestations of the disconnect between child protection and domestic and family violence services relates to housing.

Every child should have a safe and secure place to live. Yet in seeking to protect their children, many women are forced to choose between staying in an unsafe environment with a violent perpetrator (along with their child or children) or fleeing to become homeless or live in insecure and low quality housing that does not meet their child's needs or their own. The housing insecurity faced by women and children who leave their homes due to domestic and family violence, and the lack of suitable accommodation for them, is well known.⁵¹

This is appalling in its own right. Domestic and family violence is the leading cause of child homelessness in Australia.⁵² The accommodation that is available is often grossly unsuitable, and typically makes no provision for the particular needs of children who have experienced domestic and family violence. No child should grow up in refuge. Children are resilient, but they cannot learn or develop healthily without a safe, secure roof over their heads that they can rely on. This stability and security is vital for children, especially those facing significant adversity like violence within their own families.

This already dire situation is made worse by the child protection system. A woman who remains in her home with her child and a perpetrator of domestic and family violence risks being assessed as failing to provide a safe environment for her child. Yet if she leaves in order to protect her child and herself, there is every chance that she will be unable to access suitable housing and become subject to child protection intervention and potentially removal for that reason. The situation is made worse by the financial hardship that many women face when experiencing domestic and family violence – which is, for many, exacerbated by leaving their home.

To meet the wellbeing and safety needs of children who have been exposed to domestic and family violence, it is crucial that appropriate and affordable crisis, transitional and longer-term accommodation be available for them and their protective parent.

⁵¹ Special Taskforce on Domestic and Family Violence in Queensland, 2015, *Not now, not ever: Putting an end to domestic and family violence in Queensland*; State of Victoria, 2016, *Royal Commission into Family Violence: Report and recommendations*, Volume II, chapter 9; ANROWS, 2019, *Domestic and family violence, housing insecurity and homelessness: Research synthesis*, 2nd ed, ANROWS Insights, 07/2019.

⁵² Campo, above n 43, p 5.

Recommendation 7

The successor plan to the National Framework should provide a coordinating framework to:

- (a) drive integration between child protection and domestic and family violence responses at the level of policy and practice;
- (b) monitor and oversee outcomes and actions that are shared between the successor plan and other aligned frameworks, strategies and plans including the National Plan to Reduce Violence against Women and their Children 2010-2022 and its successor; and
- (c) address the lack of appropriate housing for women and children who have experienced domestic and family violence.

6. Youth justice

Any meaningful national plan to protect children and their rights must include oversight and coordination of the reform of all systems that suppress and fail to protect children and their rights. The expiring National Framework comprehensively fails this test. Its selectivity and narrow focus on child protection services, without meaningful focus on other key systems, is a large part of the reason for its overall failure to improve children's outcomes.

The youth justice system, as it operates in every State and Territory, is the starkest example of a system that consistently infringes children's rights while doing the opposite of protecting children.

Children experiencing existing disadvantage are disproportionately likely to have contact with the youth justice system.⁵³ This is a clear indication that the system is operating discriminatorily and reinforcing disadvantage. Damningly, there is significant crossover between children who have received child protection services in particular and those in contact with the youth justice system. Aboriginal and Torres Strait Islander children – who are overall far more likely to have their rights infringed – are far more likely than other children to have contact with the youth justice system, as well as being disproportionately represented among the 'crossover' cohort.⁵⁴

Children in the criminal justice system are subject to severe, systemic breaches of their rights, as highlighted by numerous independent inquiries over many years. The institutional racism, degradation, physical and humiliating punishment and other flagrant breaches of children's rights – in facilities that were found to be unsuitable for children to inhabit, let alone be rehabilitated within⁵⁵ – that were highlighted by the Royal Commission into the Protection and Detention of Children in the Northern Territory were, and continue to be, appalling. Yet they are far from an outlier across Australia's youth justice systems.

Across Australia, children as young as 10 can be criminalised. This is despite clear evidence that forcing children of this age through criminal legal processes during their formative developmental phases causes them immense harm, is inappropriate to their stage of brain development, does not work to change behaviour or make the community safer (and in fact increases reoffending and makes the community less safe), disproportionately affects Aboriginal and Torres Strait Islander children, and is out of step with international standards, human rights requirements and recommendations from foreign governments.⁵⁶

The successor plan to the National Framework will not succeed if it ignores the harm being done to children by the youth justice system – harm which would unquestionably be recognised as abuse and neglect if it occurred within a family home, yet is overlooked when inflicted by governments through the criminal justice system. Protecting children and their rights requires engaging with all systems that affect children, and especially those causing active harm. The successor plan to the National Framework must meet this challenge directly by addressing the care and protection of children who are in contact with the youth justice system.

⁵³ Centre for Policy Development, 2020, *Partners in crime: The relationship between disadvantage and Australia's criminal justice systems*, available at <https://cpd.org.au/wp-content/uploads/2020/12/CPD-Report-Partners-in-Crime.pdf>; AIHW, 2021, *Youth justice in Australia 2019-20*, Cat. no. JUV 134, pp 10-14.

⁵⁴ Baidawi, S. and Sheehan, R., 2019, 'Crossover kids': *Offending by child protection-involved youth*, Trends & issues in crime and criminal justice, No. 582, December 2019, Australian Institute of Criminology; AIHW, 2020, *Young people under youth justice supervision and in child protection 2018-19*, Data linkage series no. 26, Cat. no. CSI 28.

⁵⁵ *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, tabled 17 November 2017, Volume 2A, p 101.

⁵⁶ For a compilation of the evidence about why Australia's minimum age of criminal responsibility of 10 is too low and should be raised to at least 14, including Save the Children's position on this issue, see <https://www.raisetheage.org.au/cag-submissions>. Most recently, in July 2021, 30 countries called on Australia to raise its minimum age of criminal responsibility from 10 at the United Nations Human Rights Council, as part of a review of Australia's human rights record: United Nations, General Assembly, Report of the Working Group on the Universal Periodic Review: Australia, A/HRC/47/8, available at <https://undocs.org/A/HRC/47/8>.

Recommendation 8

The successor plan to the National Framework should provide a coordinating framework to address the care and protection of children who are in contact with the criminal justice system, including a focus on ending the crossover between child protection and youth justice services.

7. Aboriginal and Torres Strait Islander children and families

Save the Children and Child Wise welcome the co-design process being undertaken in partnership with the Aboriginal and Torres Strait Islander Leadership Group, SNAICC – National Voice for our Children and State and Territory governments in relation to Aboriginal and Torres Strait Islander peoples and their role in the successor to the National Framework.

The continuing over-representation of Aboriginal and Torres Strait Islander children in out-of-home care is a true national shame. As the *Family Matters Report 2020* highlighted:

- Aboriginal and Torres Strait Islander children are 9.7 times more likely to be removed from their families than non-Indigenous children, and this over-representation has increased consistently over the last 10 years.
- Aboriginal and Torres Strait Islander children represent 37 per cent of all children that have been removed from their parents, comprising over 20,000 children, despite being only 6 per cent of the total population of children in Australia.
- Without urgent action, the number of Aboriginal and Torres Strait Islander children in out-of-home care is projected to double by 2029.⁵⁷

This is the case despite generations of compelling advocacy led by Aboriginal and Torres Strait Islander peoples in the face of historical and present-day violence, dispossession, deprivation of rights and structural racism – advocacy that has drawn attention not only to the harm and injustice of the child protection system, but also to effective solutions. Such solutions have been echoed by the United Nations Special Rapporteur on the Rights of Indigenous Peoples during her visit to Australia in 2017⁵⁸ and the Committee on the Elimination of All Forms of Racial Discrimination in concluding observations issued in 2017.⁵⁹

Save the Children and Child Wise make the following brief comments, in a spirit of respect, with an awareness of our responsibility to support Aboriginal and Torres Strait Islander voices, and informed by the privilege of having partnered with and learned from Aboriginal and Torres Strait Islander-led and controlled organisations and communities across Australia over many decades:

- In realising the rights of Aboriginal and Torres Strait Islander children, including the right to protection, the Convention on the Rights of the Child should be read in conjunction with the UN Declaration on the Rights of Indigenous Peoples and give full weight to Aboriginal and Torres Strait Islander people's collective right to self-determination.
- Decisions about Aboriginal and Torres Strait Islander children, including application of the 'best interests of the child' principle, should give full weight to the cultural rights and needs of children, including the right of all children to remain connected to their culture.
- Governments should act on priorities and solutions identified by Aboriginal and Torres Strait Islander peoples and communities to improve their children's wellbeing and safety.

⁵⁷ SNAICC, the Family Matters campaign, University of Melbourne, Griffith University and Monash University, 2021, *The Family Matters Report 2020: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*.

⁵⁸ Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia*, A/HRC/36/46/Add.2, 8 August 2017, available at: <https://undocs.org/A/HRC/36/46/Add.2>.

⁵⁹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, CERD/C/AUS/CO/18-20, 26 December 2017, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAUS%2fCO%2f18-20&Lang=en.

- Governments should support and fully fund Aboriginal and Torres Strait Islander community controlled service delivery for families and children.
- Governments should commit to fully implementing the Family Matters Roadmap and all elements of the Aboriginal and Torres Strait Islander Child Placement Principle, in policy and in practice.
- As part of fully implementing the Family Matters Roadmap, governments should ensure there are adequately resourced Aboriginal and Torres Strait Islander peak bodies for child and family welfare in each jurisdiction and dedicated roles for Aboriginal and Torres Strait Islander children's commissioners.⁶⁰
- Governments should support the establishment of a dedicated national commissioner for Aboriginal and Torres Strait Islander children and young people, as called for by SNAICC and other peak Aboriginal and Torres Strait Islander organisations.⁶¹
- As part of fully implementing the Aboriginal and Torres Strait Islander Child Placement Principle, governments should support and invest in kinship care, including the wraparound support required to ensure this care can be provided without harm or trauma to the child wherever possible.
- Child protection systems should recognise and address the subjectivity and inadequacy of current assessments of risk and safety, arising from cultural bias and inappropriate negative assumptions embedded in current tools and practices and across current systems. This is a broader issue but especially acute in relation to Aboriginal and Torres Strait Islander children and families.
- Aboriginal and Torres Strait Islander children should have a voice and participate in all decision-making about them, including in family support and child protection services, in ways that are culturally safe and appropriate.

We also highlight comments made by Cindy Blackstock, Muriel Bamblett and Carlina Black in reviewing the over-representation of Indigenous children in out-of-home care in Canada and Australia, which we believe draw together a number of crucial contextual considerations:

[While] Australia's Stolen Generations (the racist legislations, policies and practices that legitimised the forced removal of Indigenous children from their families, communities, language and culture) ... have formally ended ... child protection systems imbued with western ontologies continue to legitimize the removals of First Nations children from their families and communities. ... Neglect driven by poverty, poor housing, and substance abuse is the child maltreatment type most associated with First Nations children. However, contemporary definitions of neglect fail to recognize the structural contributors such as the colonial drivers of poverty, inequitable service provision, and lack of culturally-based interventions. The structural drivers of Indigenous child removal are amplified by the imposition of western structured decision-making tools that codify structural risks as a parental, and in some cases, cultural deficit.

...

[Australia tends] to promote Indigenous managed services that are embedded in western laws and approaches. While these services augment culturally appropriate services for Indigenous children they fall far short of respecting Indigenous self-determination that has been linked with improved

⁶⁰ SNAICC, 2016 (revised and reprinted 2017), *The Family Matters Roadmap*, Building Block 4, p 19.

⁶¹ See <https://www.familymatters.org.au/whos-with-us/join-our-call-for-a-national-commissioner-for-aboriginal-and-torres-strait-islander-children-and-young-people/>.

socio-economic conditions. Additionally, governments often under-fund these services leaving Indigenous service providers in an untenable position of trying to offer culturally-based services to a higher needs population without the resources to do it.⁶²

Recommendation 9

The successor plan to the National Framework should give full weight to Aboriginal and Torres Strait Islander people's collective right to self-determination, including by fully implementing all elements of the Family Matters Roadmap and the Aboriginal and Torres Strait Islander Child Placement Principle.

⁶² Blackstock, C., Bamblett, M. and Black, C., 2020, 'Indigenous ontology, international law and the application of the Convention to the over-representation of Indigenous children in out-of-home care in Canada and Australia', *Child Abuse & Neglect* 110, p 3.

8. Public discussion of child wellbeing, safety and protection issues

Public discussion of child wellbeing, safety and protection issues should be welcomed. These are matters of public interest in every sense. In particular, the media can play a valuable role in drawing public attention to the importance of children's wellbeing, the prevalence and harmful consequences of neglect and abuse, and the need for reform.

However, in practice much media coverage and public discussion of these issues is in response to individual cases where neglect or abuse has occurred, often in shocking circumstances, and reinforces inaccurate and unhelpful views about the causes of such harm. Often, this takes the form of blaming parents while criticising the child protection system for its failings and calling for greater emphasis on investigations and removing children from unsafe homes. Given the understandable emotionality of these issues, such calls can be influential, leading to changes that in fact reinforce the current system's harmful orientation towards statutory intervention at the expense of preventive and earlier intervention measures.

The successor plan to the National Framework should aim to spark an evidence-based public understanding and conversation about child maltreatment and its underlying drivers that is about more than detection of and response to harm, and instead focuses upon how children, families, communities, services and governments can cohesively contribute to genuine harm prevention.

An evidence-based public discourse around child protection could enable a contextual approach to safeguarding that moves us beyond merely addressing individual child level risk and vulnerability, towards systemically driving change across all the contexts which impact children's lives – families, communities, schools, services and digital spaces. It could also enhance the public's understanding of the importance of children's rights and what, in practice, is most effective to promote children's wellbeing and safety and uphold their rights, including what families and other actors can do to support this – including by ending child poverty.

One practical step would be a national public communications and information campaign to raise awareness of the best ways to promote children's wellbeing and prevent harm to them, especially be addressing underlying causes and upholding children's rights. This should be undertaken in partnership with State and Territory governments and non-government sector experts, and informed by and including the perspective of children and young people with lived experience of the child protection system. Importantly, while the campaign would include information and education aimed at supporting and empowering parents to engage in positive parenting behaviour (building on existing resources and information), it would include an equally strong focus on educating the community as a whole about what works to promote children's wellbeing and safety, in order to drive a more mature and evidence-based conversation about these issues.

The success of Our Watch in driving nationwide change in culture and behaviour to prevent violence against women and their children since its establishment in 2013 could provide inspiration for such a campaign. While there would be some differences in this context, it could provide one model for how a similar strategy addressing children's wellbeing, safety and protection could be developed and carried forward. Notably, Our Watch was itself established in 2013 under the National Plan to Reduce Violence against Women and their Children 2010-2022.

Recommendation 10

The successor plan to the National Framework should be directed to driving an evidence-based public discussion – in the media and more broadly – about the best ways to promote children's wellbeing and safety, including preventing harm to children and the underlying causes of this harm.

9. Conclusion

The development of the successor plan to the National Framework is a genuine opportunity to create meaningful change for the children in Australia who are most in need of it.

An incremental update to the status quo will not achieve this. What is needed is a genuine paradigm shift in how we promote children's wellbeing and safety in Australia.

Children's rights should be at the centre of the successor plan. We can better protect children by upholding their rights. As set out in this submission, a child rights-based approach offers a set of guiding principles that can readily be implemented.

Save the Children and Child Wise hope that all Australian governments take the opportunity to put in place these much needed reforms. Our children deserve no less.

Appendix: Requirements for meaningful children's participation

Basic requirements for meaningful and ethical children's participation

The United Nations Committee on the Rights of the Child has outlined nine basic requirements for meaningful and ethical children's participation:

If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-off event. Experience since the Convention on the Rights of the Child was adopted in 1989 has led to a broad consensus on the basic requirements which have to be reached for effective, ethical and meaningful implementation of article 12 [the right of the child to be heard and taken seriously]. ...

All processes in which a child or children are heard and participate, must be:

- (a) Transparent and informative – children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact;*
- (b) Voluntary – children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage;*
- (c) Respectful – children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socioeconomic, environmental and cultural context of children's lives. Persons and organizations working for and with children should also respect children's views with regard to participation in public events;*
- (d) Relevant – the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important;*
- (e) Child-friendly – environments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities;*
- (f) Inclusive – participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved ... Children are not a homogenous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities;*
- (g) Supported by training – adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation; they require capacity-building to strengthen their skills in, for example, effective participation awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy;*
- (h) Safe and sensitive to risk – in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation. Action necessary*

to provide appropriate protection will include the development of a clear child protection strategy which recognizes the particular risks faced by some groups of children, and the extra barriers they face in obtaining help. Children must be aware of their right to be protected from harm and know where to go for help if needed. Investment in working with families and communities is important in order to build understanding of the value and implications of participation, and to minimize the risks to which children may otherwise be exposed;

- (i) *Accountable – a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children's participation needs to be undertaken, where possible, with children themselves.*

Source: All italicised text directly quoted from Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, UN Doc CRC/C/GC/12, 1 July 2009, [133]-[134]. The Committee's comments are an authoritative statement of how children's right to be heard should be interpreted.

Implementing the basic requirements

Save the Children has developed a detailed guide to applying and implementing the nine basic requirements in practice. The guide describes each of the nine basic requirements in plain English and gives practical and concrete examples of what they look like when applied.

For example, the first requirement is that processes be 'transparent and informative'.

The guide briefly describes this requirement:

The first requirement means that children clearly understand their right to express their views and that they will be heard and valued. Children know why they are involved in a given project/programme/activity, what their participation will help to achieve and the types of decisions and plans that their participation will influence. Children have access to useful information and resources to help them understand the project, programme, organisation(s), key terminology and the processes/activities with which they will be involved. Specifically, children understand what they are being asked to do, what will happen with the information they share and who will have access to the information. Children understand they can freely ask questions, seek clarification, raise concerns and/or express ideas and recommendations.

The guide then explains what the requirement means in practice:

- Opportunities and limitations are clearly defined with children
- Children's roles and responsibilities are clearly defined
- Children understand how they/their community/their projects/their peers might benefit from the activity
- Child-friendly information is provided in appropriate and accessible languages/formats
- Child-friendly information is provided in a timely manner
- Children clearly understand the relevant policies and procedures to ensure their meaningful participation
- Children's views will influence, shape and inform decisions/plans in a timely manner
- Facilitators are honest and open with children
- Facilitators do not steer or manipulate children
- Children are free to ask questions and know how to get more information, if they wish
- Facilitators adapt and respond to unexpected changes/challenges and explore options with children
- Problem solving is undertaken together with children

Source: Save the Children, 2021, *The nine basic requirements for meaningful and ethical children's participation*, available at https://resourcecentre.savethechildren.net/node/19385/pdf/basic_requirements-english-final.pdf.