# FAMILY VIOLENCE, CHILD PROTECTION AND FAMILY LAW

Children and families are entering the child protection system with increasingly complex family circumstances, including domestic and family violence. Victims/survivors of domestic and family violence often do not receive the support they need to maintain or re-establish their caring roles while building lives that are safe from violence. The aim of this page is to provide a guide to some available policy reports, information and links on the intersection of domestic and family violence, child protection and family law. This resource does not compile existing recommendations or make new ones, although many of the reports referred to do contain proposals for reform. The content is relevant for June 2017.

If you have any feedback or wish to comment on the material listed here, please contact info@awava.org.au

**Relevant legislation and jurisdictions**

Work in the intersection of domestic and family violence, child protection and family law is complicated by overlapping jurisdictions, e.g. there may be State/Territory interventions (child protection) at the same time as interventions at the Federal level (family law).

These overlapping jurisdictions and services are outlined in a report on *Collaborative work across the child protection and specialist domestic and family violence interface* by Cathy Humphries and Lucy Healey for ANROWS’s PAThways and Research Into Collaborative Inter-Agency practice – PATRICIA project: <https://d2c0ikyv46o3b1.cloudfront.net/anrows.org.au/Patricia_Horizons_final.pdf>

The relevant pieces of legislation in Australian jurisdictions are outlined in the table below:

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| Jurisdiction | Legislation |
| Federal | Family Law Act 1975Family Law (Child Protection Convention) Regulations 2003 |
| NSW | Children and Young Persons (Care and Protection) Act 1998Children and Young Persons (Care and Protection) Amendment Bill 2009Children and Young Persons (Care and Protection) Amendment (Parental Responsibility Contracts) Act 2006Child Protection (Offenders Registration) Act 2000 Crimes Act 1900 Commission for Children and Young People Act 1998 The Ombudsman Act 1974  |
| ACT | Children and Young People Act 2008 Adoption Act 1993 Human Rights Act 2004Human Rights Commission Act 2005 Public Advocate Act 2005  |
| NT | Care and Protection of Children Act 2007Information Act 2006 Disability Services Act 2004 Criminal Code Act 2006  |
| QLD | Child Protection Act 1999 Child Protection Reform Amendment Act 2014 Public Guardian Act 2014 Family Child and Commission Act 2014 Education (General Provisions) Act 2006 Public Health Act 2005 Commission for Children and Young People and Child Guardian Act 2000 Adoption of Children Act 1964  |
| SA | Children's Protection Act 1993Children's Protection Regulations 2006Young Offenders Act 1994 Adoption Act 1988 Family and Community Services Act 1972  |
| TAS | Children, Young Persons and their Families Act 1997 Children, Young Persons and their Families Amendment Act 2009 The Family Violence Act 2004  |
| VIC | Children, Youth and Families Act 2005 Working with Children Act 2005Child Wellbeing and Safety Act 2005The Charter of Human Rights and Responsibilities Act 2006The Commission for Children and Young People Act 2012 |
| WA | Children and Community Services Act 2004Working with Children (Criminal Record Checking) Act 2004Family Court Act 1997 Adoption Act 1994 Child Care Services Act 2007 |

**National Policy Context**

The two key national policy frameworks are:

The National Framework for Protecting Australia's Children 2009–2020

<https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>

and

The National Plan to Reduce Violence Against Women and their Children 2010-2022

<https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>

Also relevant is the Royal Commission into Institutional Responses to Child Sexual Abuse

<https://www.childabuseroyalcommission.gov.au/>

**Key reports, inquiries and submissions**

Australian Human Rights Commission. Children’s Rights Report (2016) <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>

Australian Institute of Family Studies (2016) Child Abuse and Neglect Statistics <https://aifs.gov.au/cfca/publications/child-abuse-and-neglect-statistics>

Australian Institute of Family Studies (2015) What is child abuse and neglect? CFCA Resource Sheet <https://aifs.gov.au/cfca/publications/what-child-abuse-and-neglect>

Australian Institute of Family Studies (2011) Joining the dots: Child protection systems in Australia <https://aifs.gov.au/cfca/publications/child-protection-and-family-law%E2%80%A6-joining-dots/child-protection-systems-australia>

Australian Institute of Health and Welfare. List of child protection agencies by states and territories. <http://www.aihw.gov.au/child-protection/agencies>

AustralianLaw Reform Commission (2010) Final Report Family Violence—A National Legal Response. Chapter 19 The Intersection of Child Protection and Family Laws <https://www.alrc.gov.au/sites/default/files/pdfs/publications/19.%20The%20intersection%20of%20Child%20Protection%20and%20Family%20Laws.pdf> and Chapter 4. Purposes of Laws Relevant to Family Violence. Child protection law <https://www.alrc.gov.au/publications/4.%20Purposes%20of%20Laws%20Relevant%20to%20Family%20Violence/child-protection-law>

Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group (2011) An outline of National Standards for Out‐of‐home Care A Priority Project under the National Framework for Protecting Australia’s Children 2009 – 2020 <https://www.dss.gov.au/sites/default/files/documents/pac_national_standard.pdf>

Domestic Violence NSW (2016) Submission to the NSW Parliamentary Inquiry into Child Protection <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/55898/0072%20Domestic%20Violence%20NSW.pdf>

Family Court of Australia (2016) Child abuse allegations: Magellan Case Management <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/child-abuse-allegations/>

Family Law Council (2016) Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. The Final Report <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF>

Family Law Council (2016) Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. The Interim Report <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>

Federal Circuit Court (2013) Exposure to family violence and its effect on children <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/exposure-to-family-violence-and-its-effect-on-children>

Senate Community Affairs Committee report on Out-of-Home Care (2015) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Report>

Women’s Legal Service NSW (2016) Submission to the NSW Parliamentary Inquiry into Child Protection <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/55905/0073%20Women%27s%20Legal%20Service%20NSW.pdf>

Women’s Legal Services Australia (2017) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence <http://www.wlsa.org.au/uploads/submission-resources/6_-_Womens_Legal_Services_Australia.pdf>

# Child protection and Aboriginal and Torres Strait Islander Children

Aboriginal and Torres Strait Islander children are overrepresented in child protection, with a recent inquiry report noting: “In 2013, peak Aboriginal and community service organisations warned the Victorian government that the rate of Aboriginal child removal in Victoria was exceeding levels seen at any time since white invasion”[[1]](#footnote-1).  A Family Law Council report[[2]](#footnote-2) states that from 1999-2000 to 2009-2010, the substantiation rate of notifications in relation to Aboriginal and Torres Strait Islander children increased from 15 to 37 per 1000 children, compared with four to five per 1000 children for non-Indigenous children.  At 30 June 2015, the rate of Aboriginal and Torres Strait Islander children on orders was 9 times that for non-Indigenous children.[[3]](#footnote-3)

Some relevant resources:

Aboriginal and Torres Strait Islander Healing Foundation. Bringing Them Home 20 years on: an action plan for healing <http://healingfoundation.org.au/bringing-them-home/>

Australian Human Rights Commission 1997 Bringing Them Home: “The Stolen Children” Report <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/bringing-them-home-stolen>

Australian Institute of Family Studies 2016. Child Protection and Aboriginal and Torres Strait Islander Children. <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>

Commissioner for Children and Young People, Victoria (2016) Always Was, Always Will Be Koori Children Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria (2016) <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>

Family Law Council 2012 Improving The Family Law System For Aboriginal And Torres Strait Islander Clients A report to the Attorney-General <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20for%20Aboriginal%20and%20Torres%20Strait%20Islander%20Clients.pdf>

Judicial Council on Cultural Diversity (2016) The Path to Justice: Aboriginal and Torres Strait Islander Women’s Experience of the Courts <http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf>

Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007) <http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf>

# Children from culturally and linguistically diverse backgrounds

Unique challenges experienced by families from culturally and linguistically diverse backgrounds are migration and acculturation stress, displaced sense of belonging and cultural identity, perceived or actual racism and discrimination, intergenerational conflict, low English proficiency, insufficient awareness of institutional systems and local services available, lack of extended family/community support, poor settlement experience in the period after arrival and socio-economic disadvantage.

Some relevant reports surveying the issues include:

Australian Churches Refugee Taskforce (2014) Protecting the Lonely Children. <http://www.australianchurchesrefugeetaskforce.com.au/wp-content/uploads/2014/07/ProtectingTheLonelyChildren.pdf>

Ethnic Communities Council QLD (2011) Resourcesfor Culturally and Linguistically Diverse (CALD) Clients and Child Protection <http://www.eccq.com.au/what-we-do/policy/child-protection/resources-for-cald-clients-and-child-protection>

Judicial Council on Cultural Diversity 2016. Migrant and Refugee Women’s Experience of the Courts <http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf>

Kaur, J (2012). Cultural Diversity and Child Protection: Australian research review on the needs of culturally and linguistically diverse (CALD) and refugee children and families. Queensland, Australia [http://www.jkdiversityconsultants.com.au/Cultural\_Diversity\_&\_Child\_Protection\_Kaur2012\_A4.pdf](http://www.jkdiversityconsultants.com.au/Cultural_Diversity_%26_Child_Protection_Kaur2012_A4.pdf)

Losoncz, I. (2015) Building safety around children in families from refugee backgrounds: Ensuring children's safety requires working in partnership with families and communities. Australian National University <http://www.sciencedirect.com/science/article/pii/S0145213415003166>

Saunders, V., Roche, S., Prof. McArthur, M., Prof. Arney, F., Dr Ziaian, T. (2015) Refugee Communities Intercultural Dialogue: Building Relationships, Building Communities. Institute of Child Protection Studies, Australian Catholic University, University of South Australia <https://www.dss.gov.au/sites/default/files/documents/11_2016/refugee_communities_intercultural_dialogues_building_relationships_building_communities_report.pdf>

Sawrikar, P, (2009) Culturally appropriate service provision for culturally and linguistically diverse (CALD) children and families in the New South Wales (NSW) child protection system (CPS). Social Policy Research Centre, University of New South Wales<http://www.community.nsw.gov.au/__data/assets/pdf_file/0004/321637/research_cald_families.pdf>

Sawrikar, Pooja and Katz, Ilan Barry (2014) Recommendations for Improving Cultural Competency When Working with Ethnic Minority Families in Child Protection Systems in Australia, Child and Adolescent Social Work Journal, 2014, 31, 5, 393 <http://onlinelibrary.wiley.com/doi/10.1111/cfs.12088/abstract>

Victorian Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16). <http://www.rcfv.com.au/Report-Recommendations>

Williams, Charlotte RMIT University Enhancing service delivery for culturally and linguistically diverse children and families <http://www.childhoodinstitute.org.au/Assets/352/1/CharlotteWilliams.pdf>

# Children raised by same-sex or transgender parents

Policies and practices to support same-sex parented families in the Australian health, education, child protection and foster care systems have been assessed in the following reports:

*\* Note: Resources suggested below does not take into account the most recent (2017) legislative change, that adoption by same-sex couples is legally available in all jurisdictions of Australia – except for the Northern Territory.*

Dempsey, D. (2013) Same-sex parented families in Australia. CFCA PAPER NO. 18. Australian Institute of Family Studies <https://aifs.gov.au/cfca/sites/default/files/cfca/pubs/papers/a145197/cfca18.pdf>

Hayes, A., & Higgins, D. (Eds.). (2014). Families, policy and the law: Selected essays on contemporary issues for Australia. Melbourne: Australian Institute of Family Studies p.89-99 https://aifs.gov.au/sites/default/files/publication-documents/fpl.pdf

Riggs, D.W. (2011). Australian lesbian and gay foster carers negotiating the child protection system: Strengths and challenges. Sexuality Research & Social Policy, 8(3), 215-226. <https://aifs.gov.au/cfca/pacra/australian-lesbian-and-gay-foster-carers-negotiating-child-protection-system>

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# Children with disabilities and child protection

Submissions by leading disability advocacy organisations to the Senate Community Affairs inquiry into Out-of-Home Care have argued that child protection systems do not provide adequate support for families with disability or families of children with disability to maintain care of their children. [[4]](#footnote-4) The following reports outline some of the issues involved:

Breckenridge, J and Flax, G (2016) Service and support needs of specific population groups that have experienced child sexual abuse, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. <http://www.childabuseroyalcommission.gov.au/getattachment/02b01abe-2350-43fa-829b-3fdf6c7772f4/Service-and-support-needs-of-specific-population-g>

Child Protection Systems Royal Commission, The life they deserve: Child Protection Systems Royal Commission Report, Volume 1: Summary and Report, Government of South Australia, 2016. <https://agdsa.govcms.gov.au/sites/g/files/net2876/f/complete_report_child_protection_systems_royal_commission_report.pdf?v=1494388953>

Llewellyn, G, Wayland, S, Hindmarsh, G (2016) Disability and child sexual abuse in institutional contests, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney<http://www.childabuseroyalcommission.gov.au/getattachment/0f4f0eb9-2a04-4f5b-967d-6e658a5db53c/Disability-and-child-sexual-abuse-in-institutional>

McConnell, D, Llewellyn, G, Ferronato, L. (2000) Parents with a disability and The NSW Children’s Court, University of Sydney <http://sydney.edu.au/health-sciences/afdsrc/docs/mcconnell-parents.pdf>

Robinson, S (2016) Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016. [http://www.childabuseroyalcommission.gov.au/getattachment/d0f79922-0dc6-4c60-b170-3aa1de43f321/Feeling-Safe,-Being-Safe](http://www.childabuseroyalcommission.gov.au/getattachment/d0f79922-0dc6-4c60-b170-3aa1de43f321/Feeling-Safe%2C-Being-Safe)

1. ALWAYS WAS, ALWAYS WILL BE KOORI CHILDREN. Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria <http://www.ccyp.vic.gov.au/downloads/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>  [↑](#footnote-ref-1)
2. Improving the family law system for Aboriginal and Torres Strait Islander clients. A report to the Attorney-General prepared by the Family Law Council 2012 [↑](#footnote-ref-2)
3. Children Protection 2014-2015 AIHW [↑](#footnote-ref-3)
4. Intellectual Disability Rights Service, Submission 21; Endeavour Foundation, Submission 43; National Disability Services, Submission 54; ACT Disability, Aged and Carer Advocacy Service (ADACAS), Submission 71; People with Disability Australia (PWDA), Submission 74; Children with Disability Australia (CDA), Submission 80. All submissions are made into the Out-of-Home Care Inquiry by the Senate Community Affairs Committee Secretariat. [↑](#footnote-ref-4)