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 Inviting your Critical Engagement

Photos used throughout this publication are sourced from Shutterstock (http://www.shutterstock.com). They have been selected to highlight the diversity of ways in which children and childhood can be represented.

We encourage you to engage critically with these images as you reflect on the idea that 'childhood' is socially constructed. Ask yourself, 'What message about children or childhood is being conveyed through this image'? ‘How do these images challenge my understandings of children and childhood’?
Introduction

Child protection is a difficult and often emotional issue. In thinking about the ways in which societies, governments and legal frameworks can protect children there are very few right or wrong answers. A great deal of what is considered good practice is based on values and beliefs - even today, when evidence-based practice is increasingly emphasised.

This Background Briefing will not provide the answers as to how we might promote children’s protection and participation. Rather it aims to lay out the history of child protection – which is important in understanding why we have the systems we do today – and the contemporary debates.

I am writing from the perspective of a political scientist and so I am particularly interested in issues of power; in who speaks for whom, and whose values prevail. I am also persuaded by the view that protection and participation are closely intertwined. I have argued, in much of my work, that forms of protection that are genuinely in children’s best interests must be predicated on the right to participation. This is, in part, a normative position. A normative position is about how a person thinks things should be and what values are important. It is also a position that I have reached as a result of empirical, qualitative research with working children (or child labourers), with children in out-of-home care and with children who I have engaged with in relation to what makes good quality education and safe and supportive communities.

You will read very little about children’s participation in the first sections of this Background Briefing. This reflects the fact that children’s right to express a view on matters affecting them was not recognised until the 1990s – and remains a controversial subject. Today, protection and participation are increasingly recognised as reinforcing one another.

A number of recent policy developments in the area of child protection in Australia recognise the importance of children being able to have a say on decision made about their lives. Yet, in practice, many children within the child protection system today feel they have no say and that no one listens. An increasing body of evidence tells us that we should keep attempting to bridge the gap between rhetoric and practice.
During the 1980s and 1990s the appalling and widespread abuse of children in orphanages and other institutions responsible for their care was exposed. That abuse was able to continue because children had no avenue for complaint – they were told to be silent by their abusers and had no way of breaking that silence. As Gerison Landsowne (2001, p.7) reminds us ‘adults can only act to protect children if they know what is happening in children’s lives – only children can provide that information.’

Equally importantly, children have knowledge, experience and insights into their own lives – and into society – that adults do not have. Listening to children’s views, taking them seriously and acting upon them is enriching not only for children, but for adults and society as a whole.

This Background Briefing is divided into eight sections, which flow almost chronologically. You may want to read it from beginning to end – or you may prefer to dip in and out of sections, depending on your interest.

**Section 1: The Child Protection in Historical Context**

**Early approaches to children in Australia**

The treatment of children in the earliest decades of British colonial rule in Australia was generally harsh. Juvenile convicts, the children of convicts and indigenous children made up the majority of the child population during those early decades.

The treatment of young convicts was severe and unforgiving; youth offered no protection against severe corporal punishment and hard labour. The rationale behind the transportation of juvenile convicts, like that behind the transportation of adults, was punishment rather than care, development or rehabilitation. Between 1788 and 1868, 15 percent of all convicts transported to Australia were under the age of 18 years (Kociumbas, 1997, p.21). There are several documented cases of the transportation of twelve year old children.

The story of Mary Wade has come to exemplify the way in which the law dealt with ‘delinquents’. The child of a poverty stricken single mother, in 1788 Mary was arrested for assaulting an 8 year old girl and stealing from her a dress, scarf and cap. She was 11 years at the time. Mary was tried at the Old Bailey in London in January 1789, found guilty and sentenced to death by hanging. In March 1789, King George III, celebrating his recovery from mental illness, commuted the sentences of all women on death row to transportation to Australia.

In July 1789, Mary – along with 225 other female convicts – set sail for Australia on the Lady Juliana, a journey that would last 309 days. Mary was later transported to the labour colony at Norfolk Island, where she gave birth to the first of 21 children when she was 16 years.

At the time of her death, Mary Wade had 300 living descendents, and her remarkable story has entered popular mythology. Her extreme youth at the time of her sentencing – and the harshness of that sentence – demonstrate age was not considered a mitigating factor in cases involving children. Mary was not the only young child, or indeed the youngest, to be transported to Australia.

The Pass Room at **Bridewell** where Mary was first imprisoned. From http://en.wikipedia.org/wiki/File:Pass_Room_Bridewell_Microcosm.jpg
That juvenile convicts were generally treated in a manner similar to adults is not surprising. Across Western Europe, children contributed to the family, became economically active and largely independent at an age that would be considered early today. Heywood (2001, p.37) identifies the age of seven years as an ‘informal turning point when the offspring of peasants and craftsmen were generally expected to start helping their parents.’ Heywood goes on to note that:

...by their early teens [children] were likely to be working beside adults or established in an apprenticeship. They might well have left home to become a servant or apprentice...

For children of the poor and working classes, childhood offered little protection or special consideration.

If juvenile convicts received harsh treatment during Australia’s earliest decades, Indigenous children fared even worse. Kociumbas (1997, p.11) has documented the explicit targeting of Indigenous women and children by some early white settlers, who considered murder the ‘most certain method of getting rid of the race.’ Violent rape of young Indigenous girls was widespread.

As the abuses meted out to Indigenous children by elements of newly arrived white society became known, missionaries sought to save Indigenous children – not only from the ravages of white settlers, but also from their own ‘primitive’ culture. The removal of Indigenous children from their families became a key strategy for church and charitable organisations (Bessell, 2010), and one that continued well into the second half of the twentieth century. This left deep scars on many generations of Indigenous families.

Very early in the life of the Australian colonies, the neglect and abandonment of young children emerged as a social problem – not surprisingly given the number of children transported as convicts themselves, or with their mothers who had been sentenced to transportation. Fogarty (2008, p.56) has noted that Governor Phillip, the first governor of the settlement in New South Wales, responded by establishing a system of boarding-out children in the homes of families deemed suitable, together with the establishment of orphanages.

In Australia’s early colonies, as in England at the time, childhood – particularly the childhood of the poor – was marked by violence and suffering. Concepts of protection were only tentatively emerging and concepts of children’s participation were unimaginable.
Different Kinds of Childhood

While juvenile convicts and Indigenous children received little ‘special treatment’ as a result of their youth, in middle class Australia a very different kind of childhood emerged. During the nineteenth century new ideas arose around child welfare and child rearing.

Kociumbas (1997, p.95) has argued that some of these ideas were quite peculiar to Australia, as middle class approaches to child rearing began to take on characteristics that were markedly different from common practice in England. Kociumbas (1997, p.95) has described middle class child rearing in England as based on the belief that ‘children should be treated like one’s best table clothes, brought out only when spotlessly clean and absolutely necessary’. In Australia, Kociumbas has argued that children were more likely to be cared for by their mothers, rather than nannies and to have opportunities to play and engage with adults. By contemporary English standards, this was remarkably child-centred.

Race, class and social status then, as now, shaped the nature of childhood – and it is difficult to generalise about ‘childhood’ during any particular period of history. These elements are critical in shaping the kind of childhood an individual will experience. Cutting across each of these is gender, which has been of fundamental importance in shaping the ways in which children experience childhood.

Robert van Krieken (1992, p.1), a sociologist who has written widely on the history of childhood in Australia, makes the important point that not only does gender shape childhood, but ‘state intervention into family life... is a profoundly gendered process...’ Van Krieken traces the history of children’s welfare interventions from the early 1800s, noting the strong focus on ensuring that girls upheld accepted moral values and did not fall into prostitution or other immoral sexual behaviour.

Van Krieken notes that orphanages and institutions were established for girls before similar institutions were opened for boys. This, he argues, reflects the concern that girls were sexually vulnerable and should be steered along an appropriate Christian path towards domesticity. While boys were considered in danger of falling into crime or exhibiting disobedience, the perceived danger for girls focused squarely on morality, resulting in restrictions ‘on their everyday activity and especially on their “modesty”’ (van Krieken, 1992, p.8). Van Kreiken argues that sexually active girls were considered particularly vulnerable – and particularly threatening to moral values.

As we will see later in this briefing paper, the perceived need to control the ‘wayward’ behaviour of girls continued until the 1960s. Yet the institutionalisation of girls on the basis of moral danger did not always provide them with protection. We now know that children were vulnerable within institutions, and some children – both girls and boys – suffered severe abuse at the hands of those charged with their care.
Saving Children, Saving Society

An important development in the history of child protection was the emergence of the ‘child saving’ movement. Today, the notion of ‘child saving’ has a paternalistic ring and sits uneasily with concepts of children’s rights and children’s agency (which we will discuss later). In the late 1800s, however, child-saving organisations were not only progressive, but often radical. Responding to the abuse, neglect and exploitation of children, the efforts of child-savers resulted in the first child protection laws being adopted and provided the earliest foundation for the modern child protection framework.

The efforts of child saving organisations were instrumental in bringing about a degree of public recognition of the terrible treatment that some children endured at the hands of parents, carers and employers. Yet the results of child saving interventions were sometimes mixed, at best.

In the book entitled Confronting Cruelty, Dorothy Scott and Shurlee Swain (2002) have documented the history of the child-savers in Australia in the late nineteenth and early twentieth centuries. Scott and Swain note that the removal of children from ‘inappropriate’ families – often resulting in the institutionalisation of children and sometimes the incarceration of mothers – was generally viewed as a successful outcome. Yet the outcome was often an unhappy one for children who were separated from their families and institutionalised. The emerging framework for child protection often failed to protect children within institutions. Most notably, children themselves rarely had any say on their removal from their families or on the place to which they were removed. Once in institutions, the prevailing rule was that children should be ‘seen but not heard.’

One of the first ‘child saving’ organisations was the New York Society for the Prevention of Cruelty to Children. The origins of the NYSPCC can be traced to 1873 when a church worker named Etta Wheeler became aware of the severe abuse of eight year old Mary Ellen McCormack at the hands of her foster mother. Wheeler sought the support of various individuals and organisations to help save Mary Ellen from her plight, but was met with refusals. She finally turned to Henry Bergh, who had founded the American Society for the Prevention of Cruelty to Animals in 1866. Bergh and his colleague Eldridge Gerry took Mary Ellen’s case to court – resulting in Mary Ellen’s removal and her foster mother’s prosecution.

Mary Ellen’s testimony in court moved public sentiment and is acknowledged as an important catalyst for the reforms that followed:

My father and mother are both dead. I don’t know how old I am. I have no recollection of a time when I did not live with the Connollys. Mamma has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip—a raw hide. The whip always left a black and blue mark on my body. I have now the black and blue marks on my head which were made by mamma, and also a cut on the left side of my forehead which was made by a pair of scissors. She struck me with the scissors and cut me; I have no recollection of ever having been kissed by any one—have never been kissed by mamma. I have never been taken on my mamma’s lap and caressed or petted. I never dared to speak to anybody, because if I did I would get whipped. I do not know for what I was whipped—mamma never said anything to me when she whipped me. I do not want to go back to live with mamma, because she beats me so.

Unlike many children, Mary Ellen’s story is said to have ended happily when she was place with a caring family. Her case is a landmark in the history of child protection, leading directly to the establishment in 1875 of the New York Society for the Prevention of Cruelty to Children – the first such organisation.

Mary Ellen’s story and the history of the New York Society for the Prevention of Cruelty to Children is documented at http://www.nyspcc.org/nyspcc/history/
Section 2: Ideas that Influenced Early Approaches to Child Protection

So far, we have talked about the treatment of children during the early decades of colonial Australia and about emerging approaches to child protection, in Australia and in the US. But what ideas and beliefs underpinned the ways in which children were treated? What drove early approaches to child protection?

The earliest child welfare policies in Australia (as in the industrialising countries of England, Western Europe and the United States) were based on two sets of values. The first was grounded in ideas about the purity and innocence of childhood that emerged in the late 18th century, and were popularised by Romantic poets and authors, who contrasted an idyllic childhood of the past with the evils and dangers of industrialisation. References to ‘dark satanic mills’ where children toiled and to the poverty and depravity of the city streets where children lived painted a picture of childhood betrayed. The idea that childhood should be a time of innocence created a desire to protect poor children from confronting the worst burdens of their class at a ‘tender’ age. These burdens included early entry to work and exposure to what was considered to be immoral behaviour.

The second set of values held a less romantic view of childhood, emphasising the unruly behaviour and potential criminality of working class children. The provision of minimal services, including education, was considered necessary to civilise poor children and keep the working classes in check.

Each of these sets of values centred on protection – but very different interpretations of who needed protection and from what. The first set of values, driven largely by charity and pity, centred on the protection of poor children from the risks associated with poverty and inappropriate family and community environments. What poor children should be protected from – and how – was determined by middle class adults.

Poor families were often viewed with some suspicion by the middle and upper classes. The second set of values was created largely out of concern for public order. Here, protection centred on the protection of middle class society from immoral or socially unacceptable behaviour. Children from inappropriate backgrounds were seen as potentially threatening to public order. Indeed, not only child protection but also early
approaches to education for children of the poor, were driven by these dual sets of values.

Concern about immoral behaviour was closely related to the roles that men and women played and ideas about the ‘right’ kind of family. During the 19th century, and into the 20th century, single mothers were considered to be of immoral character and shunned by ‘decent’ society. They and their children were often subject to arbitrary intervention in their lives. Poor women who had been abandoned by their husbands or widowed were often the subjects of pity, but also of suspicion – with the concern that their children would become unruly.

While the language of the child’s best interests had entered child-related laws and policies from the 19th century and became increasingly popular in the 20th century, those interests were determined by people outside the children’s life and often placed greatest priority on the maintenance of social values.

The Child as a Tabula Rasa

Alongside the conflicting views of the child as inherently innocent or inherently wilful was another influential idea – the idea that children are born without any ability to process information and without existing mental content. Tabula rasa means blank slate – and the central idea here is that when children are born they are essentially a blank page, on which knowledge, values, the ability to reason and emotion can be inscribed.

This view of childhood has been influential throughout history, and has crossed many cultures. One of the first to describe human beings in this way was the ancient Greek philosopher Aristotle. According to the 11th century Persian philosopher and physician, Ibn Sina, at birth human intellect is ‘pure potentiality’, which is actualised through education and familiarity with the world. These ideas were later taken up by the Western Philosopher John Locke, who argued that humans are born with no innate knowledge. Knowledge is developed from our experiences of the world around us and from our internal reflection.

Underpinning the tabula rasa view of childhood is the idea that children are not born ‘good’ or ‘evil’; rather children’s environment and up-bringing is central to forming their character. From this perspective, education becomes very important.

The tabula rasa perspective has contributed to a belief that children lack knowledge and capability until they have sufficient experience of the world and have been taught the things they need to know. The age at which human beings attain knowledge and competency has long been the subject of debate. However, the idea that children below a certain age have neither has long been the rationale for paying little (or no) attention to children’s views or priorities – including on matters that directly affect their lives. The idea of children’s participation, which we will discuss later in this Background Briefing, is very difficult to imagine if we think of children only as blank pages, to be filled with knowledge and values by adults.
The Emergence of Child Protection as a Social and Policy Issue

Dorothy Scott and Shurlee Swain (2002, p.4) have observed that the large movements of people and social upheaval caused by the gold-rushes of the second half of the nineteenth century resulted in unsupervised children of working people becoming more visible on the streets. In response, colonial governments became increasingly involved in child welfare, particularly in the growing urban centres. The presence of working class children on the streets was considered to be a nuisance at best, and likely to result in criminal activity at worst. Between 1864 and 1874 all Australian colonies introduced legislation giving the state the right to remove these children from their parents and place them in state care (Scott & Swain, 2002, p.4).

These laws represent the first legal response to neglect. Significantly, they were developed within the framework of criminal law with the aim of preventing delinquency, rather than within a child or family welfare framework with the aim of supporting children and families. For example, the law enacted in Victoria in 1864 was called the Victorian Neglected and Criminal Children’s Act.

As noted earlier, child saving organisations, such as the Victorian Society for the Prevention of Cruelty to Children (established in 1894 and later renamed the Children’s Protection Society), were highly influential in the adoption of laws against cruelty to children. By the end of the 19th century laws were in place cross Australia protecting children from the most obvious and extreme forms of maltreatment. The response to such cases was generally to remove children from the abusive situation and place them in institutions or with families who were assessed as being of good character.

Tomison (2001, p.49) has noted the importance of non-government or community-based organisations in the development of government responses to child welfare and child protection in the 1800s. Throughout the nineteenth and twentieth centuries, non-government organisations (primarily charities and faith-based organisations) operated institutions for children removed from their families. Today, non-government organisations continue to play a vital role within the child protection system, with responsibility for managing children’s placement in foster care and for providing ongoing supervision and support.

The development of laws against child neglect and abuse was, however controversial. There was much debate as to the extent to which the State should intervene in family life – which was generally considered to be private and beyond the reach of the law. When children were considered to be a public nuisance, they moved from the private realm of the family to the public realm of social and legal regulation and State intervention triggered relatively little controversy. The maltreatment of children within the context of their families was, however, a different matter. The view that parents had the right – and indeed duty – to raise their children without outside interference clashed with
the view that children should be protected from cruelty, including cruelty from family members.

Families were what we call patriarchal, meaning that the male head of household held power and authority over other family members, particularly children and women. Children, and indeed women, had little recourse or protection in cases of domestic violence. As Fogarty (2008, p.54) has observed ‘The father’s position was effectively unchallengeable other than in the most exceptional cases.’ Moreover, the phrase ‘spare the rod and spoil the child’ was (for some) a basic rule of parenting.

These debates – while taking on a different character over time - have not been fully resolved. The rights of parents and the appropriate role of the State remain hotly debated issues. Today, those debates include consideration of the human rights of children – as we will discuss later.

Section 3: The Institutionalisation of Children in the 20th Century

Lamont and Bromfield (2010) have noted that ‘the first half of the twentieth century was not known for big changes in child welfare in Australia.’ John Fogarty, a former Justice of the Family Court of Australia (2008, p.57) describes the situation in the early twentieth century as follows:

*After the initial drive towards child protection at the end of the 19th century and into the 20th century, the subject seems to go off the public agenda for many decades. Although government agencies and voluntary organisations continued their work, particularly directed to physically abused and neglected children, neither government nor the general public evinced great interest in it.*

Yet practices on the part of both government agencies and non-government organisations had dramatic impacts on the lives of some children – and raise fundamental issues around the nature of child protection. This was particularly so in terms of the institutionalisation of children and the treatment of Indigenous children from the beginning of the twentieth century until the 1960s and early 1970s.

Institutionalisation was a common feature of early child welfare systems in the nineteenth century. By the end of the nineteenth century orphanages and other children’s institutions were publicly exposed as providing appalling levels of care for children. In
1874 a New South Wales Royal Commission into such institutions described them as ‘a legalised gateway to hell’ (quoted in Fogarty, 2008, p.57). As a result of such inquiries, the popularity of institutions gradually declined throughout the final decades of the 1800s.

By the 1920s, however, large-scale institutions for children re-emerged; growing again in popularity in the 1950s. It is estimated that approximately 500,000 children were placed in institutions and other forms of out-of-family care during the twentieth century (Forgotten Australians Report, 2004). These children are now referred to as the Forgotten Australians.

Children were placed in institutions for a range of reasons. In some cases parents initiated or requested removal. Most commonly, children were placed in institutions due to family poverty, orphanhood, being born to a single mother, physical or mental illness of a parent (particularly a mother), or family breakdown (Forgotten Australians Report, 2004).

These reasons tell us a great deal about the social values that lay behind the institutionalisation of children. Poverty was often considered a moral weakness and this was particularly the case when the family was headed by a single woman. It is notable that parental abuse is not listed among these reasons, a point which was identified by an Australian Senate inquiry into the institutionalisation of children in 2004.

We also need to keep in mind that poor families had little government assistance in raising their families. Non-government and religious organisations provided ‘hand-outs’, but State welfare was not well developed. The Australian welfare state was progressively developed in the post-World War Two period, but welfare provisions were not generous to single mothers or families who were not considered deserving.

The federal government funded a widows’ pension in 1941, when Australia was at war and large numbers of male breadwinners were losing their lives. It was not until the 1970s that federal welfare payments were made available to a wider cross section of people. In 1973, as social values around marriage and family began to shift, the supporting mothers’ pension was introduced for single mothers not entitled to the widows’ pension. In 1977, this was extended to fathers, including widowers and divorcees, and was renamed the supporting parents benefit.

**Children’s Experiences in Institutions**

It is now a matter of public record that systematic harassment, physical violence and sexual and psychological abuse was relatively common-place in many institutions, perpetuated by those with responsibility for looking after children and often covered up by state, church and other organisational hierarchies (see Bessant & Hill, 2005).
In 1999, the Government of Queensland established a commission of inquiry to examine whether there had been any abuse, mistreatment or neglect of children in Queensland institutions between 1911 and 1999 (Forde, 1999). More than 150 orphanages and detention centres were investigated, with over 300 individuals providing information.

The Inquiry found that a range of abuse had occurred, from physical, psychological and sexual abuse and excessive use of corporal punishment to inadequate provision of food and clothing and failure to provide adequate education (Forde, 1999). In seeking to explain how such shocking abuses could have been allowed to occur, the Forde Report noted that, prior to the 1960s, ‘there was little understanding of the emotional needs of children, and even less understanding of the impact that harsh emotional and physical treatment has on children in later life’ (Forde, 1999, p. vii). This, we will recall, was the period when very little attention was paid to child protection at the policy level or within the community. Social values and political priorities created a context whereby abuse could occur with impunity.

In 2003 the Australian Senate initiated an inquiry into the care and treatment of children in institutions run by either state or non-government organisations. The report, released in August 2004, documented the abuse, assault and neglect that some children had experienced. In many cases children had been victims of criminal and sexual assault. The report concluded that ‘such abuse and assault was widespread across institutions, across States and across the government, religious and other care providers’ (Senate Community Affairs References Committee, 2004, p.xv). The Report went on to note that:

...the overwhelming response as to treatment in care, even among those that made positive comments was the lack of love, affection and nurturing that was never provided to young children at critical times during their emotional development.

The Experiences of British Child Migrants

It was not only Australian-born children who were institutionalised during the twentieth century. Between the late 1920s and 1967 it is estimated that between 6,500 and 10,000 British children, and a small number from Malta, were sent to Australia as unaccompanied child migrants. That the number of child migrants is unknown tells us a great deal about way in which the system operated and the lack of accountability.
Child migration was seen by both the British and Australian governments as a means of dealing with children and families who were perceived as social problems in Britain while also providing a much needed future labour force for Australia (Buti, 2002; Hill, 2007). While some children were sent to board with families, most went to institutions run by non-government, charitable or religious organisations. Parents of child migrants were told that their children would be given an education and level of care that they themselves could not hope to provide. In some cases it was suggested to parents, particularly single mothers, that they should take such an opportunity if they loved their children (Hill, 2007).

Like the Forgotten Australians, many child migrants suffered terrible abuse, neglect and sub-standard education. Some were forced to work without pay, or for very little compensation, in harsh conditions and for long hours within the institutions. A series of government inquiries in Australia and the United Kingdom have documented the maltreatment, abuse and neglect to which many child migrants were subjected. The Australian Parliament’s 2001 Senate inquiry into child migration concluded:

_The Committee received evidence of the life-long impact on former child migrants that has arisen from their migration experiences: they felt rejection, abandonment, despair and loneliness. Many had been placed in homes where, at best, there was little attention to their emotional needs, and, at worst, there were deeds of emotional cruelty, physical and sexual abuse and criminal assault._

**The Stolen Generations**

As we discussed early in this Background Briefing paper, Indigenous children probably suffered more profoundly than any other group of children in the early decades of white settlement in Australia. During the twentieth century, Indigenous children and their families continued to bear the brunt of racist policies that have left lasting scars across generations. Key amongst these policies was the removal of Indigenous children from their families, with children of mixed Indigenous and European parentage most vulnerable.

Sociologist Robert van Krieken (1999) describes the twin aims behind the removal of mixed-race children (who were referred to as ‘half-castes’). Firstly, such policies aimed to separate mixed-race children from Aboriginal societies and assimilate them into ‘white’ Australia, while ‘full blood’ Indigenous people continued ‘down the path to extinction’ (van Krieken 1999). The second aim was to ‘rescue’ Indigenous children from their own race, culture and families.

The removal of Indigenous children was, as Bessant and Hill (2005, p.99) have argued, justified on the grounds of child welfare and ‘part of a larger and systemic pattern of officially condoned practices’ – practices that lead to the institutionalisation of the Forgotten Australians. Fundamentally, however, the removal of Aboriginal children was driven by a racist agenda. The policy of removing children was aimed at assimilating children of mixed parentage into white society, rather than by child protection concerns (Silburn et al, 2006; HREOC, 1997).

Silburn et al (2006) have noted that ‘separation took three general forms: putting children into government run institutions; the adoption of children by white families; and the fostering of children into white families’. In each case, the objective was to disconnect children from their

In 1995 the Australian Human Rights and Equal Opportunity Commission commenced an inquiry into the removal of Indigenous children from their families; children known as the Stolen Generations. In 1997 the Inquiry’s report ‘Bringing Them Home’ was released – documenting the trauma of forced separation, the shocking mistreatment of some children, and the on-going, intergenerational grief and loss suffered by those who were taken from their families.

The Failure to Protect

As we have discussed, little attention was paid to child protection in Australia from the beginning of the twentieth century until the 1960s. Yet many thousands of children in the care of the state or of organisations acting with endorsement from, or the support of, the State (including by non-government, charitable or religious organisations) were exposed to terrible abuses, to neglect and to exploitation.

How can we make sense of this situation?

Several factors were important in creating this situation whereby children had no protection whatsoever within institutions ran by the State, or on behalf of the State. First, we see an ongoing tension between the perceived protection of social values and the protection of children. In each of the cases described here, the protection of social values prevailed. Second, institutions operated without any mechanisms of accountability. There was no outside scrutiny of their management or their treatment of children.

Finally, children were entirely powerless within institutions. Children who were subjected to abuse had no avenue for complaint. In some cases, nor did their parents. Judith Ennew (2005) has demonstrated that orphaned children have often – across time and across societies – been ‘prisoners of childhood’, institutionalised for no reason other than their youth and lack of an adult carer. The three groups of children discussed here, despite having parents, can also be described as prisoners of childhood. It was not until the children involved reached adulthood that some were able to call attention to the wrongs committed against them.
Section 4: The Re-Emergence of Child Protection as an Issue of Concern

During the 1960s, child protection re-emerged as an issue of policy and social importance – not because of the abuses being suffered by children in the care of the State, but because of the research of a team of US medical professionals. The ‘rediscovery’ of child abuse has been described by Dorothy Scott (1995) as the second wave of the child rescue movement (the first wave being the child saving organisations of the late 1800s).

In 1962, Henry Kempe, Frederic Silverman, Brandt Steele, William Droegemueller and Henry Silver published an article in the Journal of the American Medical Association entitled ‘The Battered-Child Syndrome’. The article argued that serious physical abuse (battered child syndrome) should be considered a possibility in any young child presenting to medical practitioners with fractures, bleeding, bruising, soft tissue swelling or failure to thrive. Physical abuse was also identified as a possible cause of sudden death among young children or when the type of injury does not correspond with the history given by parents or carers.

The article is widely considered to represent the first formal recognition of child abuse by the medical profession. It also generated considerable media coverage. Only a week after the article was published, Time Magazine ran an article on Battered-Child Syndrome, which began with the following paragraphs:

To many doctors, the incident is becoming distressingly familiar. A child, usually under three, is brought to the office with multiple fractures—often including a fractured skull. The parents express appropriate concern, report that the baby fell out of bed, or tumbled down the stairs, or was injured by a playmate. But X rays and experience lead the doctor to a different conclusion: the child has been beaten by his parents. He is suffering from what last week’s A.M.A. Journal calls “the battered-child syndrome.”

There is no indication that the ancient ritual of child beating has been mitigated by modern theories of child raising. Parents continue to kick and punch their children, twist their arms, beat them with hammers or the buckle end of belts, burn them with cigarettes or electric irons, and scald them with whatever happens to be on the stove (Time Magazine, 20 July 1962).

It is, perhaps, little wonder that the discovery – and subsequent media reporting – of battered child syndrome triggered widespread public concern.

Dorothy Scott (1995, p.77) has argued that increased concern about child abuse created the social expectation that the State respond to the problem. Moreover, there was an expectation that medical and social work professionals be ‘called to account for their apparent failure when a child is injured or killed at the hands of its family’. We have continued to see, in recent years, media and public outrage when it appears that social work professionals and relevant government departments have failed to protect children. As has been well documented (Scott, 1995; Tomison, 2001) from the 1960s a formal system of child protection was developed in a number of industrialised countries, including Australia.
Children’s Needs and Child Protection

As child protection emerged as an issue of social and policy importance, responses became increasingly professionalised. In their article on Battered-Child Syndrome, Kempe and his colleagues had unambiguously identified medical practitioners as having a duty and responsibility to look for, and respond to, child abuse. As child protection systems were developed, other professionals – particularly social workers – became important.

The concept of need, which shaped the earliest approaches to child protection and welfare, continued to be a central theme among professionals dealing daily with the problems of child abuse (see Bessell, 2007). This focus on need had – and continues to have – important consequences for the way children (reconceptualised as clients) are dealt with, and for the way in which decisions are made about their best interests.

Percy (2000, p.78) has suggested that, with the professionalisation of social work, the needs of clients – regardless of age – were increasingly determined by experts according to their professional knowledge, values and ideologies, combined with their personal views and tempered by caseloads and availability of resources.

The term ‘normative need’ is used to describe needs that are identified by an ‘expert’. Normative needs are contrasted with felt needs, which are based on the client’s experience and expectations (Bradshaw, 1972). While felt need is an acknowledgement of the client, it does not necessarily translate into valuing a client’s perspectives and priorities – particularly in situations when a client’s felt need and expert normative need are in conflict.

If expert assessment of need tends to outweigh and adult client’s perspectives and priorities, what happens when the client is a child?

I have suggested elsewhere (Bessell, 2007) that when children are in contact with welfare and protection systems they generally encounter the range of power and relational dynamics that shape the experiences of all welfare recipients: professional versus lay opinion and experience; middle class versus disadvantaged status; service provider versus service recipient. When youth and inexperience (versus adult and expertise) are added to the mix, it is likely that children will be especially powerless. Added to these unequal power structures is the fact that children – by the very fact of entering the protection system – have recently suffered some level of trauma. The focus on expert determined need may overshadow the priorities and concerns of children – making it difficult to establish what is genuinely in an individual child’s best interests.

Mandatory Reporting

One of the important policy and practice developments to emerge out of the renewed focus on child abuse and neglect in the late twentieth century is mandatory reporting. Under mandatory reporting requirements, it is a legal requirement that certain groups of people (normally those working with children or with a professional duty of care to children) report any suspicion of abuse or neglect.

Mandatory reporting laws were first enacted in the United States between 1963 and 1967, largely as a response to the discovery of battered child syndrome. The first laws focused on medical professionals. In 1973 federal legislation was
adopted in the United States, and state laws were extended to include more professional groups (and, in some states, all citizens). The focus of mandatory reporting was also expanded from physical abuse to include sexual, emotional and psychological abuse and neglect (Mathews & Kenny, 2008).

Mandatory reporting exists in all Australian states and territories – but each has different requirements around who is mandated to report. The Northern Territory has the most wide ranging requirement with ‘any person with reasonable grounds’ given formal responsibility to report suspected abuse or neglect (Higgins, et al., 2010). Appendix 1 provides an overview of the mandatory reporting laws in each Australian State and Territory.

The Commonwealth Family Law Act 1975 also requires specified groups of people to report. These are registrars, family counsellors, family dispute resolution practitioners or arbitrators, and lawyers independently representing children’s interests. The inclusion of the last group raises significant issues about the role of children’s legal representatives. While it is arguable that a child’s lawyer has a duty to protect his or her client, the legal requirement to report suspected (or indeed actual) abuse or neglect may be seen as a breach of lawyer-client confidentiality. Moreover, children who develop a relationship of trust with their lawyer may not be aware that any discussion they have may need to be reported to the relevant authorities.

Mandatory reporting has been the subject of intense debate. Supporters argue that it is necessary to protect children. For example, the website of the New South Wales Department of Community Services states:

Reporting your concerns about a child or young person’s safety or wellbeing is an important step in preventing or stopping the abuse and protecting children from further harm. It also gives Community Services the chance to help families in situations where a child or young person may be at risk. [http://www.community.nsw.gov.au/preventing_child_abuse_and_neglect/protecting_children.html]

Yet serious concerns have been raised about the level of resources that mandatory reporting requires, pointing to the possibility of child protection systems being overwhelmed by the sheer number of reports (Lau, Krase and Morse, 2008). About half of all reports made under mandatory reporting requirements in the United States are not substantiated (Lau, Krase and Morse 2008). In Australia, there were 286,437 notifications of suspected abuse or neglect in 2009/10 (although not all of these were necessarily from mandatory reporters), with 46,187 (about 16%) substantiated (Lamont, 2011).
Section 5: New Theoretical Approaches

A needs-based approach to child protection remains the most influential way of thinking about child protection in most – if not all – countries. In the past two decades, however, there have been important shifts in thinking about children generally, and about child protection specifically.

Two developments are central in explaining these shifts. First, over the past fifteen to twenty years, childhood studies has emerged as a discipline independent of psychology, social work and – to some extent – sociology (or at least socialisation theory). One result of this has been theorising and research around children’s agency. Second, values of children’s rights have become widely recognised – if not embraced – largely as a result of the United Nations Convention on the Rights of the Child.

Children as Social Actors

The 1990 book, Constructing and Reconstructing Childhood, co-edited by Alan Prout and Alison James is arguably one of the most influential contemporary publications on childhood. The book was published as the sociology of childhood was emerging as a distinct sub-discipline, and contributed significantly to emerging debates.

In the introduction to the book, Prout and James suggest that the relationship between individual agency and structure in social life – a major theoretical debate within sociology over recent decades – has particular significance for understanding childhood. Traditionally, the practice of child welfare has considered social structures (particularly family and class) to be of greatest importance in shaping children’s lives. The exclusive focus on social structures led to the view that children could be saved from poverty or immoral behaviour if removed from their environment. Children themselves were considered to be passive within – and often victims of – the contexts in which they lived. The idea that children might be capable of acting on their own, or making or contributing to decisions, was simply not considered until quite recently.

Indeed, the idea of the child as tabula rasa, which has remained remarkably resilient, is at odds with the idea of children exercising any level of agency. Moreover, theories of child development, largely based in the discipline of psychology, were extremely influential in shaping ideas about children’s capacity. While a range of diverse and often competing views fall under the banner of child development or child psychology, a central idea is of childhood as a journey towards the end destination of adulthood. Within this journey, children’s capacity to act was extremely limited – evolving as children neared adult maturity.
Stainton-Rogers (2004, p. 128) argues that developmental psychology, although encompassing a diverse range of theoretical perspectives, is based around three common assumptions. First, children are considered to lack the adult capacities of autonomy, reason and responsibility. Second, children are not only physically dependent, but also psychologically and emotionally dependent. Third, children’s development is predicated on certain ‘scientifically’ determined needs being met. When these needs are not met, a child’s development will be undermined resulting in a dysfunctional adult.

Stainton-Rogers (2004), then, identifies three consequences that flow from these assumptions, each of which have been important in shaping systems, policies and approaches to child protection.

First, children are yet to develop the capacity to make good (or perhaps any) decisions and are unable to determine their own needs. Thus, providing children with choice would be a folly, placing upon children greater burden that they can be expected to bear.

Second, given children’s dependence on adults, concepts of children’s agency make little sense.

Third, children’s needs can be determined independently via scientific investigation – both theoretical and empirical. There is no need to seek children’s perspectives and priorities as adult experts already know what is necessary.

As a result, Stainton-Rogers and others have argued, protection came to be something that was done to children (usually by adults that are not known to the children involved) rather than being done with children. Children have been considered to be unable to exercise agency, their opinions and preferences have not only been ignored; they have often been entirely unknown.

It would, of course, be naive – and perhaps foolish – to suggest that children who have come into contact with child protection systems by virtue of actual or potential abuse or neglect are able to fully act of their own accord and in line with their own wishes and preferences. Yet, it seems equally problematic to assume that children have no capacity to act (no agency).

In Theorizing Childhood (1998, p.198-99), James, Jenks and Prout aim to move beyond an unhelpful agency versus structure impasse. They emphasise the inextricable link between ideas about ‘the child’ and values about social order, normative behaviour and moral acceptability. Yet they argue that children – individually and collectively – inscribe their own meaning and contribute to the lived experiences of their own childhoods. Without abandoning the role of social structure in shaping childhood, James, Jenks and Prout propose a theoretical model whereby ‘the child is conceived of as a person, a status, a course of action, a set of needs, rights or differences – in sum a social actor’ (1998, p.207).
A growing number of empirical studies have explored the ways in which children actively contribute to the maintenance of familial relationships (for example Mayall, 1994; 2002) and to their own social worlds (Thorne, 1993; Morrow, 2005). Studies have suggested that, even in situations that may well be described as abusive, children often make active choices within the options open to them (for example Montgomery, 2001; Bessell, 2009; Bessell, 2011). This work has been important in helping us to rethink where children are placed within child protection systems and the ideas and values that underpin those systems.

**Children’s Human Rights**

If developments within scholarship on childhood have been important in presenting alternatives to needs-based approaches, so too have political developments around the human rights of children. Indeed, developments in thinking about children’s rights have had a far greater impact on policy and practice than have theoretical developments within academia.

In 1989, after more than a decade of debate and political manoeuvring, the United Nations General Assembly adopted the Convention on the Rights of the Child. The treaty was ratified by governments with astonishing speed, quickly becoming the most ratified of all international human rights treaties. Today, only two countries – the United States and Somalia – have not yet ratified the Convention.

The Convention (or UNCRC) by no means abandons traditional concepts of needs. The provision of basic needs and adoption of minimum standards are central concepts. The Convention is often described as being based on four principles: children’s right to **survival**; children’s right to **develop** to their fullest potential; children’s right to **protection** from abuse, neglect and exploitation; and children’s right to **participation**.

**The Right to ‘Participation’**

Of the key principles, the most radical right, is ‘participation’. As I have noted throughout this Background Briefing, the views and priorities of children have been given little attention throughout the history of child protection. Adults have been considered the only source of information on children’s lives and able to act on behalf of children. As we saw in the case of institutionalisation and the removal of Indigenous children from their families, this sometimes led to interventions that were themselves abusive.

A particularly significant aspect of the UNCRC is participation, which is embodied in several articles, the most significant of which is Article 12, which calls on states parties to respect the views of the child. Article 12 states:

*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
The Convention leaves open considerable room for debate over when, and under what circumstances, a child is capable of forming his or her own views. The reference to age and maturity can be used to limit the seriousness with which children’s views are considered. Nevertheless, the inclusion of this article in an international human rights treaty has placed the idea of children being entitled to express their view on decisions made about their lives on both national and international agendas.

Other articles of the Convention also support the concept of children’s participation, including Article 13 (freedom of expression); Article 14 (freedom of thought conscience and religion); Article 16 (freedom of association) and Article 17 (right to information). Particularly important for our purposes here, is Article 10, which states:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

While Article 10(2) does not explicitly refer to children, they are clearly an ‘interested party’. Moreover, when put together with Article 12 it is clear that children have a right to express their views.

Best Interests

Another key concept of the UNCRC is that of ‘best interests’. This principle has a very long history, particularly in relation to the custody of children. The UNCRC in Article 3 requires that, in all actions concerning children, ‘the best interests of the child shall be a primary consideration’. Notably, this article frames the child’s best interests as a primary consideration, not the primary consideration. The article goes on to refer specifically to social welfare institutions, courts of law, administrative authorities and legislative bodies as being required to give primary consideration to the best interests principle.

Responses to the Idea that Children are Bearers of Human Rights

The idea that children are human beings, entitled to human rights and dignity like any other – older – group of human beings was arguably one of the most significant ideational shifts of the twentieth century. The idea that children have rights has led to marked changes in policy rhetoric, and a new way of thinking about children. A range of scholarly disciplines that are foundations for thinking about child protection, including psychology, social work and sociology, have all been influenced by the concept of children’s human rights (see Lee, 2001; Cashmore 2002).

The idea has also been enormously controversial in most countries, including Australia (Bessell, 2010). A major criticism of the UNCRC is that it fails to recognise the rights of parents and the importance of families. These criticisms persist despite the clear recognition in the preamble of the Convention that:

...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.
So, what are the major protection issues facing children in 21st century Australia? This section provides definitions for the major ‘categories’ of child maltreatment, before discussing some important child protection issues.

Definitions of Child Maltreatment

In providing these definitions, this section draws heavily on those provided by the National Child Protection Clearinghouse (Holzer & Bromfield, 2010). Holzer and Bromfield define maltreatment as the non-accidental causing of harm to another. They identify and define five forms of maltreatment:

**Physically Abusive Behaviour:** Non-accidental aggression towards a child, which may be intentional or the inadvertent result of physical punishment

**Sexually Abusive Behaviour:** Any sexual activity between a child and an adult or older person (five or more years older than the child)

**Neglectful behaviour:** The failure to provide for a child’s basic physical needs, usually on the part of a parent.

**Psychologically abusive or neglectful behaviour:** Such behaviour as rejection, isolating, ignoring, terrorising, belittling or withdrawing love and attention.

**Witnessing family violence:** A child seeing and/or hearing a parent or sibling being subjected to physical abuse, sexual abuse or psychological mistreatment

The above definitions give us a sense of what is meant by the various terms. In Australia, however, legal definitions vary from state to state. Indeed, Australia’s federal system means that, in effect, there are eight distinct child protection systems rather than a single system (Bessell, 2010).
Some Issues

A narrow interpretation focuses attention on abuse and neglect – critical issues, to which we will return shortly. First, however, it is thought provoking to consider protection in a somewhat broader sense.

The social context within which children live may either enhance or reduce protective factors. Yet often, little attention is paid to the way in which the big picture – political, economic and social trends – impacts on child protection, broadly defined.

A recent study carried out by the Australian Institute of Family Studies and The Benevolent Society found that unemployment has a significant negative effect on children. Children in jobless families were found to be at a significantly increased risk of behavioural and emotional problems (Taylor, Edwards & Gray, 2010). The study draws attention to the impact of macro-economic downturns on children – something not always considered.

While the macro-context is important if children are to be protected from a range of harms, the immediate context of their lives remains crucial. A 2006 study with over 3000 children from 9 countries in Southeast Asia and the Pacific (not including Australia) demonstrated the widespread nature of physical and emotional punishment (Beazley, et al, 2006). In some cases, children were subjected to punishments that amount to abuse. Notably, the most dangerous places for children, in terms of exposure to violent punishment, was first the home (with mothers most likely to carry out physical punishment) and then school. The study showed the relationship between violent punishment (both physical and emotional) and abuse. It also demonstrated the powerless position that children occupy in many societies.

In many contemporary societies, including Australia, substance abuse is closely associated with child abuse and neglect. Substance abuse among parents has been shown to be associated with problems within families and increased levels of notifications of abuse or neglect to child protective services (Wolock & Magura, 1996). Trifonoff et al (2010, p.1) make the important point that:

while having a parent with an alcohol and/or drug-related problem does not automatically imply harm to the child, there is a strong body of research that indicates that these children are at higher risk of abuse and neglect, developmental and behavioural problems, or of developing an alcohol or other drug problem.
Indigenous Children and Families in Contemporary Australia

The disadvantage faced by Indigenous children and their families in Australia has been well documented. This disadvantage is deeply connected to the historical legacy of racist policies of the past – some of which have been discussed already.

In contemporary Australia, Indigenous children do less well on almost any indicator of well-being. For example, Indigenous children are more likely than other Australian children to be born with low birth weight and are 1.9 times more likely to be hospitalised for preventable diseases and injuries (Steering Committee for the Review of Government Service Provision, 2009, p.527).

Overcrowding in housing has been identified as a major issue in Indigenous communities – sometimes identified as contributing to domestic tensions and violence (Steering Committee for the Review of Government Service Provision, 2009, p.92). Access to clean water, sewerage and electrical services – taken for granted in most of Australia – is not available in many remote and rural Indigenous communities (Steering Committee for the Review of Government Service Provision, 2009, p.92). Here, the statistics point to the broad (macro) social, political and economic context that creates a gap between Indigenous and non-Indigenous Australians – with serious consequences for child protection broadly defined.

Indigenous children also do less well when we use narrower, more traditional definitions of child protection. In 2007 the Little Children are Sacred report was released, following the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. The report documented the shocking extent of abuse in some Indigenous communities and made 97 recommendations for action. The report triggered widespread attention, and lead to the Northern Territory National Emergency Response. The NTNER included wide-ranging changes to law enforcement and welfare provisions, as well as restrictions on alcohol and efforts to limit the use of pornography in some indigenous communities.

The NTNER was highly controversial – welcomed as necessary in some quarters and condemned as continuing racist polities of the past in others. One of the most significant criticisms of the NTNER, for our purposes here, is that it failed to place children at the centre of responses, but used child protection as a justification for a range of unrelated measures.
Section 7: Responding to Child Abuse and Neglect in Contemporary Australia

There have been a number of important developments in response to child abuse and neglect in Australia in recent years. The majority of these focus on the family, rather than the broader social, political or economic contexts. For example, despite the relationship between substance abuse (particularly alcohol) and child protection, governments in Australian have not been prepared to adopt measures that might curb excessive alcohol use. Arguably, the exception here is the Northern Territory Emergency Intervention. Yet, as discussed, that initiative has been criticised for not focusing sufficiently on children and child protection.

At the level of the family, however, there have been significant shifts away from earlier approaches that often punished poor or disadvantaged families. Two of these are public health models and strengths-based approaches.

Public Health Models

The work of Dorothy Scott has been especially important in focusing policy and services on support for families as a whole – an approach encapsulated in the title to her 2009 article ‘Think Child, Think Family’. Scott has noted the importance of universal maternal and child health services, early childhood education, formal child care and schools in preventing abuse and neglect. She notes that

...universal children’s services are seen as unstigmatised platforms from which to reach the most vulnerable families in holistic ways and to reduce risk factors such as poor parent-child attachment and social isolation’ (Scott, 2009).

Scott has argued that:

...while a legal model of child protection is necessary to protect a small number of abused and neglected children, a public health model has much greater potential to reduce the level of child abuse in the community’ (2006, p.11).

By ‘public health model’, Scott refers to universal and multi-stranded child health and education services, designed to support all families, and engage, in particular, with those where child abuse or neglect is of greatest risk.
Strengths-based Approaches

Important within the shift in responses to child protection issues is the idea of strengths-based approaches. Traditional approaches to child protection and family support have tended to be based on expert identification of need, as discussed earlier in this Background Briefing. This has often been referred to as a deficit model.

Since the 1990s, strengths-based approaches have come to the fore, based on the belief that ‘all families have strengths they can build on and use to meet their own needs, to accomplish their own goals and to promote the well-being of all family members’ (Powell et al, 1997, p.4). Powell and her colleagues identify several principles that underlie strengths-based approaches:

1. Promoting long-term family well-being
2. Fostering the independence of families
3. Encouraging reciprocity whereby families are not just receivers of services but as contributors to society
4. Building partnerships between families and professionals and breaking down unequal power relations between ‘providers’ and ‘clients’
5. Supporting families to drive the agenda
6. Tailoring support to the needs of individual families

In assessing the effectiveness of parent education programs in preventing child maltreatment, Holzer, Bromfield and Richardson (2006, p.6) found that successful programs included four features:

- Targeted recruitment
- A structured program
- A combination of interventions/strategies
- A strengths-based approach

In particular, Holzer and her colleagues found that parent education programs that adopted a strengths-based approach were more effective in addressing risk factors for child maltreatment than deficit models. However, they also noted that families that maltreat children and those at greatest risk of maltreating children:

...tend to be faced with long term, chronic and multiple challenges. It may be more difficult for practitioners and families to identify strengths in these contexts (Holzer et al, 2006, p. 10).

Strengths-based approaches have been demonstrated to have positive practical effects, and are aimed explicitly at shifting the balance of power from experts to families. The literature around strengths-based approaches tends, however, to pay less attention to children’s participation than might be expected. The focus on families may, at times, conceal different interests and priorities among family members which are difficult to reconcile.
Mandatory Reporting

As noted earlier, mandatory reporting of child abuse and neglect – currently used in all Australian States and Territories – is a much debated strategy. Arguably, mandatory reporting – particularly when accompanied by investigative and legal responses – sits uncomfortably with both public health models and strengths-based approaches.

Mandatory reporting does, however, appear to have had a marked impact on child protection services in Australia. In particular, there has, over the past decade, been a marked increase in reporting – but a somewhat smaller increase in substantiations and in the number of children on protection orders and in out-of-home care. Figure 1 shows the trends between 2000 and 2010.

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What are care and protection orders?

Care and protection orders are issued by a court of law – usually the Children’s Court – when a claim of abuse or neglect has been substantiated and child protection authorities consider it necessary to provide ongoing supervision. Care and protection orders are usually made when a child’s parents resist supervision and counselling from child protection authorities.

What is out-of-home care?

Out-of-home care is when a claim of abuse or neglect has been substantiated and considered sufficiently serious that a child should be removed from his or her family.

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Figure 1: Trends in Child Protection in Australia

Out of Home Care

For some children, serious and substantiated (proven by law) abuse or neglect results in them entering out-of-home care. In 2009, 94 per cent of all children in out-of-home care were in family based care, of whom 48 per cent were in foster care, 45 per cent in kinship care and one per cent in some other form of home-based care (AIFS, 2009). The exposure of past abuses has resulted in the demise of large-scale institutions.

The Australian Institute of Family Studies data shows there has been a significant increase in the number of children in out-of-home care in Australia over the past decade, as represented in Figure 2 shows. In June there were 34,069 children in out-of-home care in Australia, almost double the number in care a decade earlier.

![Figure 2: Number of children in out of home care (Australia 2000-02 to 2009-10)](image)


Out-of-home care remains an extremely vexed policy issue. The dramatic increase in the number of children in out-of-home care has put enormous pressure on the child protection systems in all Australian States and Territories. These systems are periodically subject to intense media scrutiny, generally when a child known to the relevant child protection agency dies or is found to have been severely neglected or abused. At times, Australia’s child protection systems have been described as systems in crisis.
Several recent studies have revealed the problems facing children and young people in out-of-home care. The ground-breaking work of Judy Cashmore and Marina Paxman (1996) revealed the difficulties facing young people as they exit the out-of-home system. Cashmore and Paxman’s research indicated that young people leaving care were generally unprepared for independent living, but received very little (often no) support from state or territory government upon leaving care. This work was influential in changes to policy and practice, whereby several states extended support to young people leaving care beyond the age of eighteen.

Other studies indicate that out-of-home care is not a happy place for many children. Internationally, recent studies suggest that, once in out-of-home care, children and young people face serious difficulties (Doyle, 2007), which are exacerbated by placement instability (Rubin, 2007). In Australia, children in care appear to fare worse on educational indicators (Barber, Delfabbro & Cooper, 2000; CREATE Foundation, 2006; Delfabbro & Barber, 2003), are more vulnerable to mental health issues (Tarren-Sweeny & Hazell, 2006), and face a difficult transition to independent living (Cashmore & Paxman, 2006).

While in care, children are likely to be worried and anxious (Fernandez, 2006), despite studies indicating that a significant proportion of children and young people are satisfied with their care arrangements (Gilbertson & Barber, 2002; O’Neill 2004; Fernandez 2006). Instability and regular changes in placement are features of out-of-home care (O’Neill, 2004).

A notable finding of recent research is that many children and young people feel entirely excluded from the decisions that are made about their lives, including decisions about where they live, with whom they live and where they go to school (Mason, Urquhart & Bolzan, 2003; Tregeagle & Mason, 2008; Bessell, 2011). The literature demonstrates the extent to which children and young people in care feel powerless, isolated and often afraid.

While there have been major changes to the way in which children who are removed from their parents are treated and cared for, there appears to have been minimal progress in terms of children’s participation. Past experience, as discussed in this Background Briefing, seems to clearly suggest that children identified by the State as in need of protection remain vulnerable if they have no opportunity to express their views. Today, that opportunity has been reframed as a human right. Much of the literature suggests it is a right that is yet to be fulfilled.
Section 8: Opportunities and ongoing silences

In recent years, there has been – once more – a renewed focus on child protection in Australia, both in the past and in the present.

In 2008 the Prime Minister Kevin Rudd apologised to the Stolen Generations, in late 2009 he apologised to the former British Child Migrants and to the Forgotten Australians. The National Apologies followed a series of apologies by State governments to those who had been abused as children while in State care. While receiving something of a mixed response, the National Apologies signaled recognition of past wrongs and a determination not to repeat past mistakes. As such, the apologies can be seen as creating opportunities to deal differently with child protection issues.

While the apologies are symbolic, there have also been important policy developments around child protection in recent years. Over the past decade, all Australian states and territories have introduced new legislation, often as a result of formal inquiries into various aspects of the care and protection system. In a shift from earlier legislation, the various Acts, to varying degrees, recognise children as being entitled to a range of rights (Bessell, 2010). Moreover, all States and the Australian Capital Territory have adopted Charters of Rights for Children and Young People in Care. The content and nature of these Charters vary markedly from state to state, but all entitle children to safety while in care, to education, and to be consulted, have a say, or take part in decisions made about their lives (Bessell, 2010). The Charters of Rights are a direct result of the dramatic changes in thinking about child protection and the treatment of children who are removed by their families by the State.

At the Federal level too there have been important developments. In 2009, the Council of Australian Governments launched the National Framework for Protection of Australia’s Children 2009-2020 (Protecting Children is Everyone’s Business). The Framework adopts explicitly a rights-based approach to child protection. Children’s right to be safe, valued and cared for is identified as a guiding principle. Australia is identified as having a ‘responsibility to protect children, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community’ as part of its obligations as a signatory to the Convention on the Rights of the Child (Bessell, 2010). The National Framework also draws on new ideas stemming from strengths-based approaches and public health models, adopting a preventative approach.
In 2010, the Commonwealth, state and territory Community and Disability Services Ministers endorsed National Standards for Out-of-Home Care. The National Standards require that Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people. This development was celebrated by the Secretariat of National Aboriginal and Islander Child Care – the national peak body representing Indigenous children and their families. The National Standards, like the National Child Protection Framework, reflect the influence of ideas about children as bearers of human rights and are a world away from the ideas that shaped child welfare and protection during the nineteenth and much of the twentieth century.

The silences of the past have been broken and opportunities now exist in Australia for approaches to child protection that are genuinely in the best interests of the children – and that support families. Yet the experiences of children in out-of-home care today, as discussed here, suggest there is still a significant gap between policy and practice – and a great deal of work to do. Many children – particularly those in out of home care – may say that the greatest problem they face today is their own continuing silence; a silence that is not of their choosing. Much needs to be done to make participation real.

This Background Briefing has sought to trace the history of child protection and participation. It aims not to be definitive, but to provide an introduction to the issues and challenges facing those working in child protection today. It also aims to help you to think critically about those issues and to encourage you to think creatively about how to overcome continuing problems in ways that protect children and ensure they are able to have their say in a meaningful way.
Appendix 1: An Overview of Mandatory Reporting Requirements in Australian States and Territories


<table>
<thead>
<tr>
<th>Who is mandated to notify?</th>
<th>What is to be notified?</th>
<th>Maltreatment types for which it is mandatory to report</th>
<th>Relevant sections of the Act/Regulations</th>
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<tr>
<td>ACT</td>
<td>A belief, on reasonable grounds, that a child or young person has experienced physical abuse or sexual abuse or non-accidental physical injury; and the belief arises from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid)</td>
<td>Physical abuse, Sexual abuse</td>
<td>Section 356 of the Children and Young People Act 2008 (ACT)</td>
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<td>Reasonable grounds to suspect that a child is at risk of significant harm; and those grounds arise during the course of or from the person's work</td>
<td>Physical abuse, Emotional/psychological abuse, Neglect, Exposure to family violence</td>
<td>Sections 23 and 27 of the Children and Young Persons (Care and Protection) Act 1998 (NSW)</td>
</tr>
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<td>NSW</td>
<td>A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children</td>
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ACT: Australian Capital Territory

A person who is: a doctor; a dentist; a nurse; an enrolled nurse; a midwife; a teacher at a school; a person providing education to a child or young person who is registered, or provisionally registered, for home education under the Education Act 2004; a police officer; a person employed to counsel children or young people at a school; a person caring for a child at a child care centre; a person coordinating or monitoring home-based care for a family day care scheme proprietor; a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families; the public advocate; an official visitor; a person who, in the course of the person’s employment, has contact with or provides services to children, young people and their families and is prescribed by regulation

NSW: New South Wales

A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children.
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<td>NT</td>
<td>Any person with reasonable grounds</td>
<td>A belief on reasonable grounds that a child has been or is likely to be a victim of a sexual offence; or otherwise has suffered or is likely to suffer harm or exploitation</td>
<td>Physical abuse</td>
<td>Sections 15 and 26 of the Care and Protection of Children Act 2007 (NT)</td>
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<td>Sexual abuse</td>
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<td>Reasonable grounds to believe a child aged 14 or 15 years has been or is likely to be a victim of a sexual offence and the age difference between the child and offender is greater than 2 years</td>
<td>Sexual abuse</td>
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<tr>
<td>Registered health professionals</td>
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<td>Section 26 of the Care and Protection of Children Act 2007 (NT)</td>
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<td>Qld</td>
<td>An authorised officer, employee of the Department of Communities (Child Safety Services), a person employed in a departmental care service or licensed care service</td>
<td>Awareness or reasonable suspicion of harm caused to a child placed in the care of an entity conducting a departmental care service or a licensee</td>
<td>Physical abuse</td>
<td>Section 148 of the Child Protection Act 1999 (Qld)</td>
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<td>Sexual abuse or exploitation</td>
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<td>Emotional/psychological abuse</td>
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<td>Neglect</td>
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<td>A doctor or registered nurse <em>(Public Health Act 2005, s158)</em></td>
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<td>Awareness or reasonable suspicion during the practice of his or her profession of harm or risk of harm</td>
<td>Physical abuse</td>
<td>Sections 191-192 and 158 of the Public Health Act 2005 (Qld)</td>
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<td>Neglect</td>
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<tr>
<td>The Commissioner for Children and Young People</td>
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<td>A child who is in need of protection under s10 of the Child Protection Act (i.e. has suffered or is at unacceptable risk of suffering harm and does not have a parent able and willing to protect them)</td>
<td>Physical abuse</td>
<td>Section 20 of the Commission for Children Young People and Child Guardian Act 2000 (Qld)</td>
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<td>Sexual abuse</td>
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<td><strong>SA</strong></td>
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| Doctors; pharmacists; registered or enrolled nurses; dentists; psychologists; police officers; community corrections officers; social workers; teachers; family day care providers; employees/volunteers in a government department, agency or instrumentality, or a local government or non-government agency that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children; ministers of religion (with the exception of disclosures made in the confessional); employees or volunteers in a religious or spiritual organisation | Reasonable grounds that a child has been or is being abused or neglected; and the suspicion is formed in the course of the person’s work (whether paid or voluntary) or carrying out official duties | Physical abuse  
Sexual abuse  
Emotional/psychological abuse  
Neglect | Section 11 of the *Children’s Protection Act 1993 (SA)* |
| **Tas.**                  |                        |                                 |                                     |
| Registered medical practitioners; nurses; dentists, dental therapists or dental hygienists; registered psychologists; police officers; probation officers; principals and teachers in any educational institution; persons who provide child care or a child care service for fee or reward; persons concerned in the management of a child care service licensed under the *Child Care Act 2001*; any other person who is employed or engaged as an employee for, of, or in, or who is a volunteer in, a government agency that provides health, welfare, education, child care or residential services wholly or partly for children, and an organisation that receives any funding from the Crown for the provision of such services; and any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons | A belief, suspicion, reasonable grounds or knowledge that: a child has been or is being abused or neglected or is an affected child within the meaning of the *Family Violence Act 2004*; or there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides | Physical abuse  
Sexual abuse  
Emotional/psychological abuse  
Neglect  
Exposure to family violence | Sections 13 and 14 of the *Children, Young Persons and Their Families Act 1997 (Tas.)* |
| **Vic.**                  |                        |                                 |                                     |
| Registered medical practitioners, registered nurses, a person registered as a teacher under the *Education, Training and Reform Act 2006* or teachers granted permission to teach under that Act, principals of government or non-government schools, and members of the police force | Belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(c) or 162(d), formed in the course of practising his or her office, position or employment | Physical abuse  
Sexual abuse | Sections 182(1) a-e, 184 and 162 c-d of the *Children, Youth and Families Act 2005 (Vic.)* |
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| WA Court personnel; family counsellors; family dispute resolution practitioners, arbitrators or legal practitioners representing the child’s interests | Reasonable grounds for suspecting that a child has been: abused, or is at risk of being abused; ill treated, or is at risk of being ill treated; or exposed or subjected to behaviour that psychologically harms the child. | Physical abuse  
Sexual abuse  
Emotional/psychological abuse  
Neglect | Section 160 of the *Western Australia Family Court Act 1997* (WA); |
| Licensed providers of child care or outside-school-hours care services                      | Allegations of abuse, neglect or assault, including sexual assault, of an enrolled child during a care session | Physical abuse  
Sexual abuse  
Neglect | Regulation 20 of the Child Care Services Regulations 2006;  
Regulation 19 of the Child Care Services (Family Day Care) Regulations 2006;  
Regulation 20 of the Child Care Services (Outside School Hours Family Day Care) Regulations 2006;  
Regulation 21 of the Child Care Services (Outside School Hours Care) Regulations 2006 |
| Doctors; nurses and midwives; teachers; and police officers                               | Belief on reasonable grounds that child sexual abuse has occurred or is occurring | Sexual abuse | Section 124B of the *Children and Community Services Act 2004 (WA)* |
References


About the Centre for Children and Young People

The Centre for Children and Young People (CCYP) was established at Southern Cross University in 2004. The CCYP works collaboratively with organisations, particularly in regional and rural areas, to enhance policy and practice related to the well-being of children and young people.

The Centre has three priority areas: Research, Education and Advocacy.

For more information about the CCYP, visit ccyp.scu.edu.au

About the Course

The Graduate Certificate, Graduate Diploma and Master of Childhood and Youth Studies are awards which have been developed collaboratively by the Centre for Children and Young People and the School of Education at Southern Cross University, Australia. The awards meet a recognised need, expressed by a range of professionals, for contemporary knowledge and skills to assist them to work more effectively with children, young people and their families.

The course seeks to be an innovative, professionally relevant, practical and interdisciplinary qualification for people working, or intending to work, with children, young people and their families. Applicants can enrol in any one of the awards or complete individual units as professional development.

Units are delivered externally so that students can successfully study at a distance. Each unit has authentic and professionally relevant assessment and the five core units involve optional but highly recommended summer/winter intensive workshops of 2 days duration. Students who are unable to attend are able to engage with workshop content and processes live online or via recorded formats.

The course incorporates innovative and appropriate use of technology to support students’ learning, opportunities for regular engagement with tutors and fellow students and (where appropriate) multimedia elements.

The course is underpinned by a deep respect and regard for children and young people and for their views and perspectives. It also incorporates an understanding that children and young people can benefit immensely from positive relationships with adults – parents, teachers and the myriad professionals with whom they may engage over the course of their childhood. The course embraces multidisciplinary perspectives in the belief this can enhance service provision and lead to improved outcomes for children and young people.

For more information about these awards, visit www.scu.edu.au/childhoodstudies
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