

Data Availability and Use
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

ELECTRONIC SUBMISSION ONLY

14 December 2016

Dear Commissioners Harris and Cilento,

RE: Productivity Commission Inquiry – Data Availability and Use

This letter has been prepared by UNICEF Australia on behalf of the Steering Committee of the Australian Child Rights Taskforce (CRTF Steering Committee). The Australian Child Rights Taskforce is Australia's peak child rights network, made up of more than 100 organisations advocating for the protection, promotion and fulfilment of the rights of children in Australia. The Steering Committee is comprised of UNICEF Australia, the National Children's and Youth Law Centre (NCYLC), SNAICC – National Voice for our Children, the Human Rights Law Centre, National Aboriginal and Torres Strait Islander Legal Services (NATSILS), King & Wood Mallesons and James McDougall, consultant.

We welcome the Productivity Commission's inquiry into Data Availability and Use, and we are grateful for the opportunity to submit on this important topic.

The Data Availability and Use Inquiry is particularly timely as Australia looks to report to the United Nations Committee on the Rights of the Child in 2018 and implement the 2030 Agenda for Sustainable Development, including the 17 sustainable development goals and the 169 targets within those goals. The measurement and tracking of these targets will undoubtedly require new and improved data collection and monitoring across Australia and throughout the world, and the reforms now under consideration have the potential to contribute to these ends.

This brief letter has been prepared to highlight some key observations of the CRTF Steering Committee regarding the collection of data about children, primarily to inform government policy and service provision. We outline concerns about existing data collection and availability which largely focus on the statutory systems relating to out of home care (OOHC), youth justice and child protection (as opposed to data generated from online activity of a consumer). As such, this letter is most relevant to the information request regarding public sector datasets regarding children that are of national interest and that could feasibly be designated as such under the process proposed.

Current data gaps affecting public policy and service provision for children

The collection and use of accurate, relevant, timely data is critical to formulate evidence-based policy and to direct government investment and service delivery where it is most needed. It is also required to help monitor, evaluate and improve policies and service provision over time. Such information, particularly non-personal, non-confidential and/or de-identified information, must be publicly available to aid governments, policy makers, civil society, researchers and the private sector to understand the problems facing children and families, and develop informed and evidence-based responses.

The CRTF Steering Committee observes that current systems of data collection and use are not fit for purpose, particularly for children. In some instances, this can result in serious risks to individual

children, including a failure for relevant authorities to be alerted to heightened risk of neglect or abuse.¹

In other instances, systems can fail to highlight macro-level issues relating to key areas of policy relevant to children, including, for example, health, education, child protection and youth justice. As such, the rights of children could be further realised through improvements in data collection, availability and use.

The *Convention on the Rights of the Child*² requires governments to adopt general measures of implementation which, in practice, aid in the protection, promotion and fulfilment of children's rights (article 4). One of these measures includes comprehensive data collection.³

However, since 2005 the United Nations Committee on the Rights of the Child has observed gaps in Australia's data collection regarding children and has recommended that Australia strengthen data collection, particularly regarding special protection and vulnerable groups.⁴ Specifically, it has called on Australia to "strengthen its existing mechanisms of data collection in order to ensure that data are collected on all areas of the Convention in a way that allows for disaggregation, inter alia by children in situations that require special protection. In that light, the Committee specifically recommends that the data cover all children below the age of 18 years and pay attention to ethnicity, sex, disability, socio-economic status and geographic location."⁵

Similarly, the National Children's Commissioner, Ms Megan Mitchell, also observed in 2014 that:

*[t]he jurisdictional challenges that come with our federated structure have led to an often incoherent narrative about the status and wellbeing of our children and young people. The ABS Census and a range of health and wellbeing data is not presented in ways that relate to the policy development needs of children and young people relative to their age and developmental stages. Further, data about children and young people is collected differently across states and territories. This means that it cannot be used reliably to draw comparisons. Some of the basic information required to monitor the wellbeing of Australia's children and young people is not available. Too often, the administrative datasets which are available reflect the operations of various programs rather than measures of actual wellbeing.*⁶

¹ Family Law Council, *Family Law Council Report to the Attorney-General on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, Final Report – June 2016 (Terms 3, 4 & 5) states "[o]ne dilemma facing the family law system, and particularly the family courts, is the lack of any consistent process of identifying and assessing risk to the child when a family enters the system" p. 22.

² Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

³ Committee on the Rights of the Child, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)*, 27 November 2003, 34th sess, [9] and [48]-[50].

⁴ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 40th sess, UN Doc CRC/C/15/Add.268 (20 October 2005), paras 19-20.

⁵ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012), paras 21-22.

⁶ National Children's Commissioner, *Children's Rights Report 2014*, 2014, Recommendation 5, p. 20.

The CRTF Steering Committee shares these concerns and believes there is a lack of comprehensive, consistent, child-focused data collection to help inform policy and service provision for children and families across Australia.

Specifically, we have observed the following shortcomings of data and information collection relating to children:

- 1) **A lack of data relating to a child’s individual experiences.** Rather, a child’s experiences can be included as part of a data entry regarding an adult, for example, in the data collected as part of the Australian Bureau of Statistics National Data Collection and Reporting Framework.⁷
- 2) **Inconsistent terminology, collection and public reporting of data, which inhibits national analysis and jurisdictional comparisons.** For example, Western Australia and the Northern Territory provide “non-standard” data which is inconsistent with the National Minimum Data Set on Juvenile Justice.⁸ There are also concerning inconsistencies and shortcomings regarding the collection of other data, including, for example, regarding the operation of youth justice systems and important data which would aid accountability and transparency, such as number of assaults in custody.⁹ Inconsistent terminology and definitions are used across state and territory jurisdictions (for example, regarding children affected by family and domestic violence)¹⁰ which can make comparisons difficult or impossible.
- 3) **A lack of data to inform important areas of children’s policy.** It is essential that key areas of public policy affecting the lives of children should be subject to national and standard measurement, and that such information is made publicly available. However, this is lacking in many areas. For example, there is still no agreed and consistent national data set for school attendance. Public authorities remain content to focus on enrolment and transitions without critically and comparatively examining the significant numbers of children that drop out of the formal school system. Similarly, the measurement of the reasons for removal of children from their families is challenged by a lack of agreed national data sets and measurement tools.
- 4) **A lack of disaggregated data to inform policy development and targeted program measurement (including regarding the experiences of particular groups of children, including Aboriginal and Torres Strait Islander children, children with a disability, culturally and linguistically diverse children and children who are gay, lesbian, bisexual, trans and intersex).** In relation to the safety and removal of Aboriginal and Torres Strait Islander children for example, vast data gaps exist, including information about:
 - a. Reunification rates of Aboriginal and Torres Strait Islander children in out of home care (OOHC);
 - b. Aboriginal and Torres Strait Islander child entry and re-entry to OOHC;
 - c. Expenditure in child protection and family support both provided to Aboriginal and Torres Strait Islander children and provided by community-controlled services;

⁷ For example, National Children’s Commissioner, *Children’s Rights Report 2015*, 2015, pp. 117-119.

⁸ See, for example, Australian Institute of Health and Welfare, *Youth Justice in Australia 2014-15*, Bulletin 133, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554930>> April 2016, p. 4.

⁹ Productivity Commission, *Report on Government Services 2016*, Chapter 16 Youth Justice Services, p. 10.

¹⁰ National Children’s Commissioner *Children’s Rights Report 2015*, 2015, pp. 113-114.

- d. Aboriginal and Torres Strait Islander access to family support and intensive family support services; and
- e. Nationally consistent measures of compliance with the Aboriginal and Torres Strait Islander Child Placement Principle aligned with its intent and five distinct elements.

See the **attached *Family Matters Report*** (2016) for a full analysis of the data gaps relating to Aboriginal and Torres Strait Islander child safety and removal.

- 5) **The non-publication of data which should be disclosed as a matter of public interest.** It is essential that much public sector data (which is non-personal and non-confidential) is made public for several aims, including to enhance transparency and accountability. For example, data regarding the use of restraints, use of force and use of isolation within youth detention settings are not uniformly made public in every jurisdiction across Australia.¹¹ This is a concerning gap in accountability for children.
- 6) **A lack of sharing of data and information across and within jurisdictions.** Information is often not shared which should, subject to appropriate safeguards, be shared across and between public authorities and other authorised agencies to respond to children with holistic, interdisciplinary, timely and child-centred responses across services. This is particularly important for children at risk of neglect or abuse. These problems exist at the following levels:
- a. An inter-governmental level (for example, between the federal family law jurisdiction and the state/territory care and protection systems,¹² and between states and territories); and
 - b. An intra-governmental level (for example, between law enforcement, education, health and child protection authorities).

For children transitioning from one jurisdiction to another, there can also be serious disadvantages due to the lack of sharing of information between jurisdictions. In relation to education for example, this can mean that important information regarding a child's learning support and disability needs, behavioural supports and interventions will not follow the child and inform teachers and others in the new location. This can result in children missing out on available and necessary support services.

- 7) **A lack of data regarding outcomes for children.** For example, outcomes of youth justice systems and processes, such as outcomes of case plans etc.¹³ Similarly in out of home care, there is a lack of data to measure the situation of, causes and responses to the over-representation of Aboriginal and Torres Strait Islander children in out of home care.¹⁴ The

¹¹ The National Children's Commissioner has outlined in the *Children's Rights Report 2016*, 2016, that in Western Australia for example, that "There does not appear to be any requirement to make the registers on use of force and use of restraint accessible to external bodies or to report publicly on them, nor does there appear to be any public reporting on them in practice" p. 242.

¹² See, for example, Family Law Council, *Family Law Council Report to the Attorney-General on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, Final Report – June 2016 (Terms 3, 4 & 5) which states "...as noted by Council in its 2002 report, *Family Law and Child Protection*, the private law nature of family law proceedings means that when concerns about child safety are raised in parenting disputes, the issue of the child's protection can 'become a matter for the parents to prove or disprove on their own'. This circumstance can leave considerable scope for arrangements to be made that leave children at risk." p.53.

¹³ National Children's Commissioner, *Children's Rights Report 2016*, 2016, p. 157.

¹⁴ University of Melbourne, the Centre for Evidence and Implementation, SNAICC – National Voice for our Children and Save the Children Australia, *The Family Matters Report*, p. 11.

collection of point in time data which is not linked to other data, is not disaggregated and is not in longitudinal format also inhibits analysis for specific groups of children.¹⁵

- 8) **Where data is collected, it is often collected on key demographic information only and not regarding broader issues which could help inform evidence-based responses.** Such information would potentially include risk factors, behaviours and cause/circumstances surrounding contact with statutory systems such as youth justice or child protection. Without such information, there are limits to inferences regarding explanatory pathways to contact.
- 9) **Inaccurate and/or out of date information kept about children.** For example, the Computer Operational Policing System (COPS) used by NSW Police which resulted in children being unlawfully imprisoned due to incorrect and unreliable bail information.¹⁶
- 10) **A lack of priority and resources given to the collection of key data, analysis and public reporting regarding children.** For example, the decision to cease funding *A picture of Australia's children* which was prepared by the Australian Institute of Health and Welfare and which provided important information on the health and wellbeing of Australia's children aged 0–14.¹⁷
- 11) **A lack of national frameworks to inform measurement and data collection.** For example, Australia lacks an official measure of poverty and therefore fails to collect data to identify those living below that measure.

As such, the CRTF Steering Committee is supportive of improvements which could be made to current data collection, use and availability which could help address these shortcomings. Although the collection and, where appropriate, sharing or public reporting of data will not alone lead to improvements in the protection and promotion of the rights of children, it is an essential precursor to further research and analysis, informed and evidence-based policy decisions, and improved service provision to individual children, families and communities. We are particularly supportive of an open, inclusive, transparent and accessible way through which datasets can be designated “National Interest Datasets” and see the improved collection and use of public sector data as a benefit of these reforms.

Data generated by or about children through online activity

Although there is an urgent need to address the data gaps identified above to improve the protection and realisation of children's rights, there are also risks to children presented by the wider collection, availability and use of data. Some risks might be similar to the risks faced by other (adult) community members, but some risks might be heightened by a child's status as a minor and/or their ability to respond and enforce their rights might be reduced. Such risks could include anything from exposure to inappropriate and harmful marketing and advertising practices, to heightened risk of exposure to violence or abuse facilitated through digital technologies. The UN Special Rapporteur on the Right to Privacy has, for example, observed that “...while consumers may be aware of the user-generated content that they themselves consciously put on-line they are much less aware of the

¹⁵ Ibid, p. 22.

¹⁶ Public Interest Advocacy Centre, *Court win for wrongful imprisonment of children*, 27 September 2013 <<https://www.piac.asn.au/2013/09/27/court-win-for-wrongful-imprisonment-of-children/>>.

¹⁷ National Children's Commissioner, *Children's Rights Report 2014*, 2014, p. 19. See Australian Institute of Health and Welfare, *A Picture of Australia's Children*, 2012 <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737423340>>.

quantity, the quality and the specific uses of the metadata they generate when surfing, chatting shopping and otherwise interacting online...There is some evidence that the commodification of personal data, especially in sectors traditionally considered to be sensitive such as that of medical and health data, has increased to an extent where the private individual is neither conscious nor consenting to the sale or multiple re-sales of his or her data.”¹⁸ We suggest that this is particularly the case for children.

Any reforms must therefore include safeguards and supports specifically for children and particularly vulnerable groups. Such reforms must recognise children as rights holders and ensure special protection where appropriate. Consideration should specifically be given to increased protections and safeguards which might be required to help ensure that both marketing and advertising practices and product development facilitated by an increased availability of data does not have an adverse impact upon children’s rights. Additional safeguards might also be required to ensure that children are always informed when information or data about them is being collected and of the way it will be used.

Key considerations

In the circumstances, the CRTF Steering Committee wishes to highlight to the Productivity Commission the following key considerations for children which we hope will help shape the new framework:

- 1) National Interest Datasets should be designated through a process which allows for open, accessible and transparent consultation with the community and relevant stakeholders. A parliamentary committee could provide for this, provided always that sufficient time is given for submissions to be made by stakeholders and these to be considered by the committee.
- 2) Key areas of public policy affecting children should be designated National Interest Datasets and should be made publicly available. These include those outlined in key international human rights instruments such as the *United Nations Convention on the Rights of the Child* (including, but not limited to, child protection (including out of home care and separation from family), experiences of violence, access to health care, early years learning, education and development, youth justice, birth registration, experiences of violence (including family violence) and discrimination) and the *Sustainable Development Goals*. These National Interest Datasets should provide for both longitudinal and place-based analysis.¹⁹
- 3) There is a need to improve information regarding national cohorts and data links between jurisdictions.
- 4) The new framework should be accompanied by the development of a comprehensive data strategy for children that identifies research priorities and which leads to the commissioning of research in priority areas for children. Such research should form part of a National Plan for Children which seeks to develop, coordinate and implement a comprehensive strategy

¹⁸ Human Rights Council, *Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci*, 31st sess, UN Doc A/HRC/31/64, 8 March 2016, para. 9.

¹⁹ The National Children’s Commissioner has recommended, for example, “[t]hat the Australian Government establishes relevant data holdings and analytics covering all the key domains of children’s rights outlined in the Convention on the Rights of the Child, including comparable data across jurisdictions, which the National Children’s Commissioner can use to monitor the enjoyment and exercise of human rights by children in Australia.” National Children’s Commissioner, *Children’s Rights Report 2014*, 2014, Recommendation 5 p. 19.

for the realisation of the rights of children as outlined in the *Convention on the Rights of the Child*.

- 5) The new framework should enable the improved collection and sharing of identifiable information on children, with the aim of enhancing child centred service provision. This is particularly required in the context of care and protection, provided always that such sharing improves the provision of services for children experiencing vulnerability.
- 6) The proposed Comprehensive Right for consumers should include due consideration of persons who might need special protection and assistance to understand and enforce their rights, such as children (and caregivers to children). The National Data Custodian (and/or other appropriate regulatory body/mandate holder) should have a mandate which allows for a pro-active function to investigate and act regarding the use of data (and privacy) of potentially vulnerable or marginalised groups such as children.
- 7) If such reforms are to be made, sufficient resources should be dedicated for educational programs for members of the public, including children, to help increase understanding of rights under the new framework and to promote informed consent. Such education should be accessible, age-appropriate and take into consideration cultural and linguistic factors.

A new framework which incorporates such measures, and/or which creates enabling structures and processes for them, would help address the recommendations made by the UN Committee on the Rights of the Child outlined above and, importantly, also help inform a National Plan for Children.

If you have any questions or if we can be of further assistance, please contact Alison Elliott, Senior Policy Adviser, on (02) 8917 3247 or aelliott@unicef.org.au.

Kind regards,

Members of the Steering Committee of the Australian Child Rights Taskforce



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