



29 April 2015

Senator Rachel Siewert
Chair
Senate Standing Committee on Community Affairs References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Siewert

I am writing as a follow-up to my appearance before the Senate Inquiry into Out-of-Home Care, to raise with the Committee the significant issue of access to identity documents and passports for children in care.

The problem

Foster carers frequently complain about not being able to secure timely access to identity documents, passports and Medicare cards for the children in their care. This may mean that a child is unable to receive timely treatment for health conditions, they miss out on sporting and other opportunities, can have difficulties enrolling in school, families are prevented from taking overseas holidays together, or the child in care is left in Australia when they do. In addition to healthcare cards and passports, there is also, in many cases, a broader issue in terms of basic proof of identity and citizenship for children who come into the care system which can have both immediate and long term negative impacts on them and their opportunities.

The problem relates to both state and federal administrations. For example, the state as Guardian through the relevant child protection department might not prioritise the early sourcing of identity documents or have an effective relationship with the state birth registrar or the federal departments responsible for granting citizenship (Department of Immigration and Border Protection), issuing Medicare cards (Department of Health) or issuing passports (Department of Foreign Affairs and Trade).

At the federal level, too, there are proof of identity and parental consent requirements that are unable to be met in some cases in order to issue passports or Medicare cards to children.

Clearly, this kind of differential treatment raises significant rights issues for children, including: the right to be recognised as Australian citizens; the right to access health services; and discriminatory treatment by the state as Guardian. It also significantly

impacts on children's sense of identity and belonging and the quality of their relationships with their carers.

This is an issue that is currently under active consideration by the group of Australian Children's Commissioners and Guardians (ACCG) and the subject of dialogue with the Department of Social Services in the context of the National Framework for Protecting Australia's Children 2009-2020. The matter has also been raised recently with me by the South Australian Council for the Care of Children, and I attach two case studies they provided to me for your information.

Proposed changes under the Australian Citizenship and Other Legislation Amendment Bill 2014

Finally, I wish to draw your attention to the proposed Australian Citizenship and Other Legislation Amendment Bill 2014 which is currently before the Senate and would likely further disadvantage some classes of children in care. At present a child who is born in Australia is automatically entitled to Australian citizenship if:

- one responsible parent was a citizen or permanent resident of Australia at the time of the child's birth; or
- the child spent the first 10 years of life in Australia.

Although sometimes difficult, child protection agencies can secure citizenship on the basis of proof of 10 years of residency using records that they may have.

Under the proposed amendments, in broad terms, the 10 year rule would not apply to a person born in Australia if:

- they were the children of diplomats;
- they had been an unlawful non-citizen at any time within that 10 year period (this will pick up children born in Australia to asylum seekers without a visa, and potentially also children of parents whose visa is cancelled);
- they left Australia at any time within that 10 year period and did not hold a visa permitting them to return to Australia;
- one of their parents did not hold a substantive visa at the time of their birth, that parent entered Australia before the person's birth, and at any time from the last entry into Australia until the child's birth the parent was an unlawful non-citizen (this will also pick up children born in Australia to asylum seekers before they are granted a Temporary Protection Visa or another substantive visa).

The Commission has previously raised concerns about the impact of these proposed amendments on the children of asylum seekers and the children of parents who have overstayed their visas.

Options for reform

The solutions I believe are threefold: the relaxation of proof of identity and parental consent requirements for children in care; the prioritisation and centralisation of passport and identity document sourcing within child protection departments; and identifying points of specialist contact within the Departments of Health, Foreign Affairs and Trade, and Immigration and Border Protection supported by an

agreement to fast track the recognition of citizenship, issuing of Medicare cards and issuing of passports for children in care.

I hope that the matter of identity documents and passports can be considered as part of your Inquiry. I would be happy to discuss this issue further with members of the Committee.

Yours sincerely

Megan Mitchell
National Children's Commissioner

cc Joshua Faulks, Deputy Chief of Staff, AGO
David Fredericks, Deputy Secretary, Civil Justice & Legal Services Group, AGD

John Reid, First Assistant Secretary, International Law and Human Rights Division, AGD
and
Paul Pfitzner, Assistant Secretary, Human Rights Policy Branch, AGD