

Editorial

Marie Veinberg*

Welcome to Issue 14 of the Court of Conscience, titled 'Rights and Representation: Children and the Law'. Court of Conscience has a proud history of exploring the impact of the legal system on vulnerable communities. In choosing this year's theme, we wished to explore a group of particular vulnerability that is universally present in all societies: children.

Although childhood is universal, the experiences of children are not identical; the articles in this Issue highlight the compounding effects that gender, minority status, and inequality have on childhood through an intersectional lens. Increased visibility for children's issues is essential given the long-term impacts that childhood experiences may have on an individual.

Drawing on Ton Liefwaard's paper published in 2019,¹ this Issue of Court of Conscience acknowledges the importance of protecting children's rights as fundamental but incomplete without appropriate representation to access justice and suitable remedies that supports a child's development. Discussions regarding access to justice are a constant in social justice discourse, and this year's issue highlights the particular difficulties that children often encounter due to their 'special and dependant status'.² Issue 14 encompasses this thesis by interspersing articles discussing the rights recognised under the United Nations *Convention on the Rights of the Child*³ ('the *Convention*') and their implementation in Australia with articles discussing how children can meaningfully gain the representation to access said rights. Ultimately, without the appropriate rights and representation, children cannot be properly protected by the law.

Issue 14 opens with a community submission, recalling their experience with the legal system as a child. I hope that this submission serves to ground the remainder of this issue, reminding readers that the articles that follow are not mere abstract analyses of the law but reflect realities of children's interaction with Australia's legal system.

The first article of this Issue is a comprehensive review of the history and development of child rights jurisprudence by John Tobin. Tobin provides context to the remainder of the issue by highlighting the importance of treating children seriously, as people, and allowing children to enjoy the rights granted to them under the *Convention*.

Tobin's sentiment is complimented by a trifecta of articles which examine how children's rights are currently applied in our legal system. Judge Peter Johnstone, the president of the Children's Court of NSW, draws on his experience in the Children's Court to highlight that a child's right to be heard and appropriately represented is paramount, although this can be undermined in practice. Barry Goldson et al write on the unique and profound vulnerabilities of children engaged in youth justice, particularly those belonging to Aboriginal and Torres Strait Islander communities. Hannah Klose closes this discussion by arguing youth

* Editor-in-Chief, Issue 14, 2020.

1 Ton Liefwaard, 'Access to Justice for Children: Towards a Specific Research and Implementation Agenda' (2019) 27 *International Journal of Children's Rights* 195.

2 Ibid 203.

3 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

- 4 In April 2019 the Attorney-General stated that Government was 'fully committed' to undergoing reform in family law: Catherine Lorimer, 'Reform of Family Law' (Briefing Book, Parliamentary Library, Parliament of Australia, July 2019).
- 5 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Interim Report, October 2020).

justice is not limited to children's interaction with the law and requires a holistic, multi-disciplinary public health approach. These three authors reveal that the ratification of the *Convention*, and the rights contained therein, are not enough in isolation to ensure children are properly protected when interacting with the law.

The relationship between children's rights and representation is continued through the lens of family law, which has undergone numerous reviews following the commencement of the *Family Law Act 1975* (Cth), and continues to be the subject of proposed reform.⁴ Henry Kha and Kailee Cross highlight the tension between ensuring the best interests of the child and equal shared parental responsibility—examining how a focus on parental rights can conflict those of children. Leanne Francia's article, exploring children's access to rights and representation following parental separation, serves as a companion piece to Kha and Cross. Michelle Fernando analyses children's rights to be heard and represented in international abduction proceedings in Australia.

Richard Chisholm and Adiva Sifris proceed to explore artificial conception and surrogacy: Chisholm offers a domestic focus on how Australia considers the impact of artificial conception methods and surrogacy when identifying the legal parents of a child—calling for reform to comply with Australia's *Convention* requirements. Sifris, in turn, explores the international legal position of children born overseas through compensated surrogacy arrangements under Australian law and argues the present system does not adequately provide for such children. Continuing this international perspective, Kathryn E van Door discusses the exploitation of children by the orphanage tourism industry and calls for international collaboration to address the structures perpetuating this industry.

Returning to Australia, Dominique Moritz and Simone Pearce as well as Sevda Clark explore how childhood vulnerability is often compounded for people with disability. Moritz and Pearce consider the challenges of disability in competitive sport, whilst Clark explores the barriers to education for children with disabilities requiring individualised supports. Ultimately, both articles consider how Australia can ensure children with disabilities may access activities enjoyed by able-bodied children without exclusion or segregation. I consider these articles to be particularly timely, as the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has very recently released its interim report at time of publication.⁵

Penny Crofts critiques Australia's efforts to combat child sexual assault, noting the narrowness of their application. Whereas, Rita Shackel discusses child representation in research as an extension of a child's right to be heard under the *Convention*.

Finally, Faith Gordon concludes our publication by discussing children's representation in the media. Noting the *Convention* did not anticipate the harms now present in the digital age, Gordon argues there are gaps in Australian law that require us to look forward to accommodate continuing technological advancements to adequately protect the rights of children.

In creating Issue 14, I am indebted to our anonymous peer reviewers, our designer, Alexander Tanazefi, and our featured artist, Samantha Bowen, who have all contributed greatly to ensure this Issue of Court of Conscience is of the highest quality.

To the 2020 Editorial Team, I would like to extend an enormous 'thank you'. This year alone, you have adjusted to online university learning, some may have experienced unforeseen changes in your work obligations, extra-curricular activities or personal commitments due to COVID-19. Despite this, you have diligently edited 15 articles, provided content for our social media pages, and maintained a positive and resilient attitude whilst doing so. It has been a true pleasure to have been your Editor-in-Chief.

I would also like to thank UNSW Law Society for their on-going support of Court of Conscience.

The authors have provided insightful analysis on the status of children's rights, their current means to access them, and their representation in Australia. As Australia looks forward and imagines a post-COVID-19 world, I invite readers to reflect on the articles contained herein and be reminded of the importance of considering children's rights and perspectives when shaping tomorrow's world. Afterall, it remains a fundamental truth that the children are indeed our future.

