



ANU: Community Capacity Building in Child Protection Project

*Upholding Rights and Protection:
rights-based approaches to what is in
'the best interest of the child'*

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EM and EL's Story

Aims to capture:

- The transfer of trauma across generations of families with child protection interventions
- The long-term impact of child removal on children
- The injustice of removal in cases where a parent is willing and able to parent but has insufficient support to sustainably look after a high needs child.
- The exacerbation of this injustice when that lack of support is a result of previous state actions.
- The issues for parents with disabled children

WHO HOLD RIGHTS?

EVERY INDIVIDUAL CITIZEN HOLDS RIGHTS

Children

Parents

Siblings

Grandparents

Aunties

Uncles

Workers

RIGHTS ARE INTER-RELATED

RIGHTS EMBODY DIGNITY,
EQUALITY AND MUTUAL RESPECT

RIGHTS ARE SHARED ACROSS
CULTURES, RELIGIONS AND
BELIEFS

***THE RIGHTS OF SOME RIGHT-
HOLDERS SUPERCEDE THOSE
OF OTHERS***

Australia – a signatory to:

Universal Declaration of Human Rights

International Convention on the Elimination of All Forms of Racial Discrimination

International Covenant on Economic, Social and Cultural Rights

International Covenant on Civil and Political Rights

Convention on the Elimination of All Forms of Discrimination Against Women

Convention on the Rights of the Child (CROC)

Convention on the Rights of Persons with Disabilities

Australian Capital Territory and Victoria

The ACT Human Rights Act 2004

Victorian Charter of Human Rights and Responsibilities Act, 2006.

‘GENERAL PRINCIPLES’ CONTAINED WITHIN THE CROC

Ratified by Australia: December 1990

Article 2

The right to non-discrimination

Article 3

The child’s best interests as a primary consideration

Article 6

The right to life, survival and development

Article 12

Respect for the views of the child

Civil Rights and Freedoms

Every child has a right to:

Birth registration, a name, a nationality, and to know and be cared for by the child's parents (Article 7)

Rights enshrined in the CROC: Obligations of the Australian State

Respect the rights, duties and responsibilities of parents, or where applicable the members of the extended family or community (Article 5)

Recognise that parents, or legal guardians, have the primary responsibility for the upbringing of a child and provide assistance to them in this responsibility (Article 10)

Rights enshrined in the CROC

Obligations of the Australian State

Ensure a child is not separated from the child's parents against their will, except when in the best interests of the child, and can maintain contact with both parents on a regular basis (Article 9)

Deal with family reunification applications in a positive, humane and expeditious manner (Article 9)

Special Protections:

Children belonging to an ethnic, religious or linguistic minority, or of indigenous origin (Article 30)

Respect for the child's parents, cultural identity, language and values (Article 29)

The right to enjoy, profess or practice the child's own culture, religion or language in community with other members of the child's own group (Article 30)

Rights enshrined in the CROC

Disabilities

The right of a child with mental or physical disabilities to enjoy a full and decent life in conditions which ensure dignity, self-reliance and promote their active participation in the community. Children with disabilities also have the right to special care (Article 23)

The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27)

“Respect for human rights is the cornerstone of strong communities in which everyone can make a contribution and feel included”.

Australian Human Rights Commission

Human Rights:

Recognise the inherent value of each person

Are based on principles of dignity, equality and mutual respect

Promote fairness and choice

Foster individual and community empowerment

Data source for all Human Rights Information:

Australian Human Rights Commission <https://www.humanrights.gov.au/>



SUFFERING CAN BE LIFELONG

HOMELESSNESS

TRANSIENCE

POOR MENTAL HEALTH

- **Stolen Generations**
- **Forgotten Australians**
- **Forced Adoptions**

SOCIAL ISOLATION

CRIMINALITY

SUBSTANCE MISUSE

DOMESTIC AND FAMILY VIOLENCE

POVERTY

“SQUARE PEG IN THE ROUND HOLE SYNDROME”

ALONG CAME EL

Multiple Disabilities:

- Cerebral Palsy
- Epilepsy
- Deficiencies in physical and neurological function
- Borderline Intellectual Disability



SURGERIES

SUBSTANCE USE

DISABILITY

SOCIAL ISOLATION

SOLE PARENT

DOCTORS

CENTRELINK

POVERTY

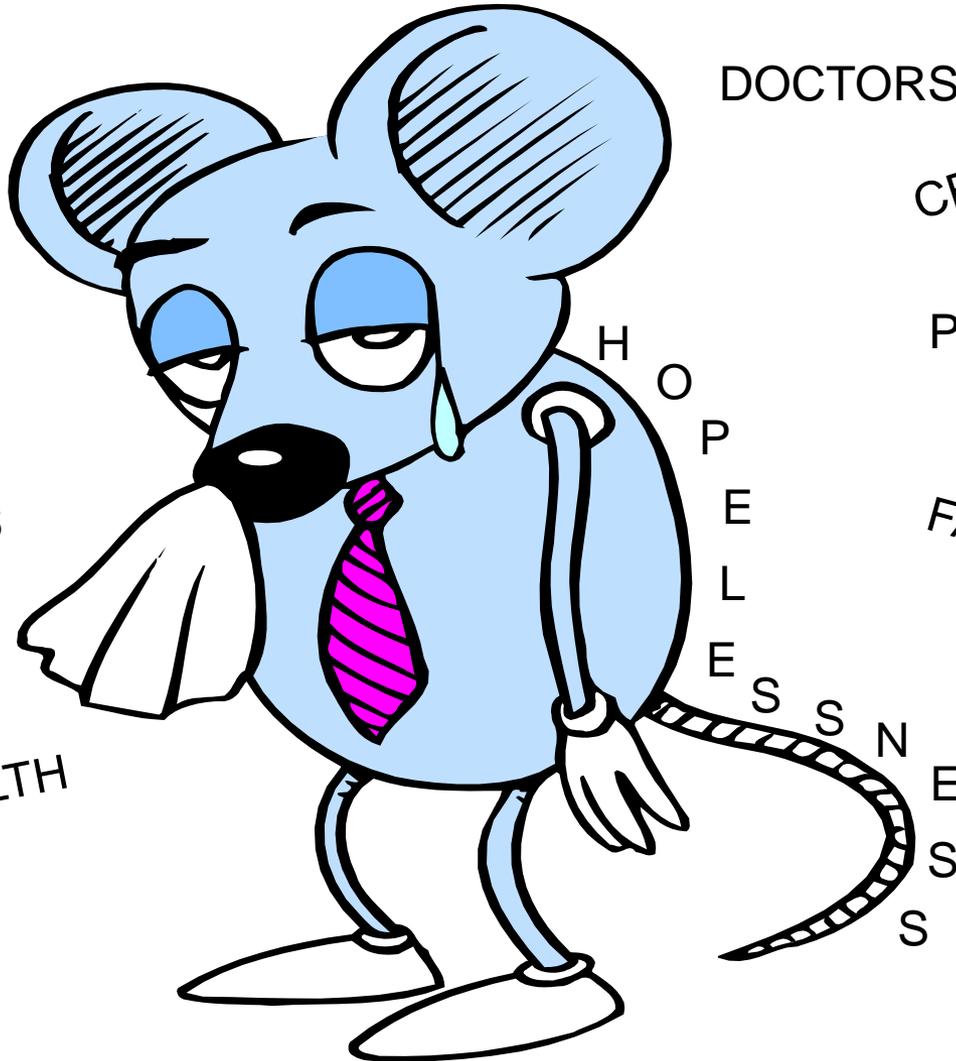
PUBLIC HOUSING

THERAPISTS

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FAMILY VIOLENCE

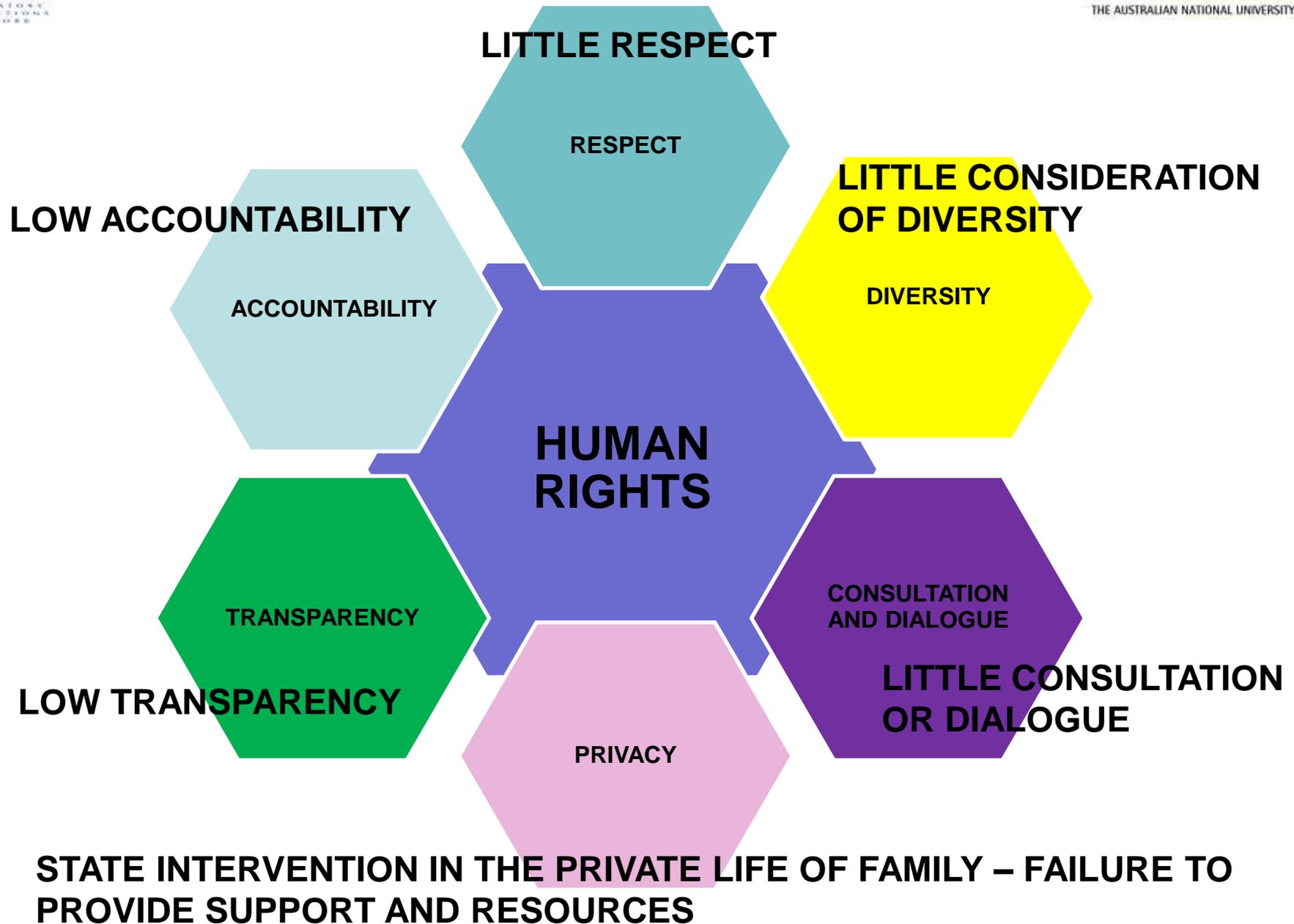
MENTAL HEALTH
ISSUES



‘The irony and the contradiction is that having adduced evidence of the parents’ incapacity/refusal to provide round-the-clock care and of signs of their advancing distress as evidence of their statutory “neglect” of the child, the State industriously sets about establishing the very out of home round-the-clock care the parents were asking for all along – but with the parents now demoralised and disempowered, in an opposing corner, their parental engagement with the child tightly constrained’

Paul Mason (2010). “*Parens Patriae Partnered Parenting*” - The Case for Less Adversarial Justice for Children in Need of Formal Disability Care.

How does the treatment of this family sit within a human rights framework?



CHARTERS

RIGHTS AND RESPONSIBILITIES

EMBRACING MUTUAL OBLIGATION AND MUTUAL RESPECT

“Parents are struggling in an adversarial system ... offers little support or advocacy and limited opportunities to participate in decision-making.

“a lack of a coordinated response to families’ support needs, little access to independent advocacy and a range of difficulties for parents in maintaining positive relationships with their children once they are placed in out-of-home care’.

Hinton, T. 2014 ‘Parents in the Child Protection System’ available:

<http://aifs.govspace.gov.au/2014/01/28/parents-in-the-child-protection-system/>

Support and Advocacy

Dedicated support and advocacy services
for parents and family members

www.finwa.org.au

Written information and resources

FINWA

FIN QLD (Townsville):

<http://www.fin-qldtsv.org.au/>

Why is all this important:

“The human quality of a society ought to be measured by the quality of life of its weakest members” - Zygmunt Bauman

