

# Rights of Children and Young People

Volume | 469



Edited by Justin Healey

**ISSUES**  
**IN SOCIETY**

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Volume | 469

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# INTRODUCTION

**Rights of Children and Young People** is Volume 469 in the 'Issues in Society' series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

## KEY ISSUES IN THIS TOPIC

Children and young people have a fundamental right to be heard and taken seriously about matters affecting them. They have the same general human rights as adults, but also possess specific rights that recognise their special needs and potential.

This book explains how these rights are set out in the United Nations *Convention on the Rights of the Child* – the most widely ratified human rights treaty in history. It also examines the state of children's rights in Australia, where there have been some positive developments, but also a number of critical issues and mixed results. The latest progress reports recommend that Australia improves its treatment of vulnerable children in certain areas, including reducing youth detention, raising the age of criminal responsibility, supporting youth mental health, advancing outcomes for Aboriginal and Torres Strait Islander children, caring for asylum seeker and refugee children, addressing child abuse and neglect, and eliminating youth poverty. What are the rights of parents in relation to raising their children, and why is it still legal for adults to hit children as punishment?

A gap remains between the rights Australia has promised vulnerable children and how those rights are implemented. Are the human rights of our children and young people at risk?

## SOURCES OF INFORMATION

Titles in the 'Issues in Society' series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the 'Issues in Society' series lies in its diversity of content and perspectives.

**The content comes from a wide variety of sources and includes:**

- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

## CRITICAL EVALUATION

As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

## EXPLORING ISSUES

The 'Exploring issues' section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

## FURTHER RESEARCH

This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The 'Web links' section at the back of this book contains a list of useful websites which you can access for more reading on the topic.

## CHILD RIGHTS AND WHY THEY MATTER

### UNICEF EXPLAINS THE IMPORTANCE OF CHILDREN'S RIGHTS

#### EVERY RIGHT, FOR EVERY CHILD

Children and young people have the same general human rights as adults and also specific rights that recognise their special needs. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights.

The *Convention on the Rights of the Child* sets out the rights that must be realised for children to develop to their full potential.

The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognising children's rights in this way, the Convention firmly sets the focus on the whole child.

The Convention recognises the fundamental human dignity of all children and the urgency of ensuring their wellbeing and development. It makes clear the idea that a basic quality of life should be the right of all children, rather than a privilege enjoyed by a few.

#### THE IMPORTANCE OF CHILDREN'S RIGHTS

There are many reasons for singling out children's rights in a separate human rights Convention:

##### **Children are individuals**

Children are neither the possessions of parents nor of the state, nor are they mere people-in-the-making; they have equal status as members of the human family.

##### **Children start life as totally dependent beings**

Children must rely on adults for the nurture and guidance they need to grow towards independence. Such nurture is ideally found from adults in children's families, but when primary adult caregivers cannot meet children's needs, it is up to the State as the primary duty bearer to find an alternative in the best interests of the child.

##### **The actions, or inactions, of government impact children more strongly than any other group in society**

Practically every area of government policy – from education to public health – affects children to some degree. Short-sighted policymaking that fails to take children into account has a negative impact on the future of all members of society.

##### **Children's views should be heard and considered in the political process**

Children generally do not vote and do not traditionally take part in political processes.

Without special attention to the opinions of children – as expressed at home and in schools, in local communities and even in governments – children's views go unheard on the many important issues that affect them now or will affect them in the future.

##### **Many changes in society are having a disproportionate, and often negative, impact on children**

Transformation of the family structure, globalisation, climate change, digitalisation, mass migration, shifting employment patterns and a shrinking social welfare net in many countries all have strong impacts on children. The impact of these changes can be particularly devastating in situations of armed conflict and other emergencies.

##### **The healthy development of children is crucial to the future wellbeing of any society**

Because they are still developing, children are especially vulnerable – more so than adults – to poor living conditions such as poverty, inadequate health care, nutrition, safe water, housing and environmental pollution. The effects of disease, malnutrition and poverty threaten the future of children and therefore the future of the societies in which they live.

##### **The costs to society of failing its children are huge**

Social research findings show that children's earliest experiences significantly influence their future development. The course of their development determines their contribution, or cost, to society over the course of their lives.



UNICEF. *Child rights and why they matter*. Retrieved from [www.unicef.org](http://www.unicef.org) on 6 November 2020.

# Simplified version of the United Nations Convention on the Rights of the Child

The *Convention on the Rights of the Child* sets out the rights that must be realised for children to develop to their full potential. This version of the Convention from UNICEF explains it all concisely

## Article 1

Everyone under 18 years of age has all the rights in this Convention.

## Article 2

The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from.

## Article 3

All organisations concerned with children should work towards what is best for each child.

## Article 4

Governments should make these rights available to children.

## Article 5

Governments should respect the rights and responsibilities of families to guide their children so that, as they grow up, they learn to use their rights properly.

## Article 6

Children have the right to live a full life. Governments should ensure that children survive and develop healthily.

## Article 7

Children have the right to a legally registered name and nationality. Children also have the right to know their parents and, as far as possible, to be cared for by them.

## Article 8

Governments should respect a child's right to a name, a nationality and family ties.

## Article 9

Children should not be separated from their parents unless it is for their own good. For example, if a parent

is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might harm the child.

## Article 10

Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

## Article 11

Governments should take steps to stop children being taken out of their own country illegally.

## Article 12

Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.

## Article 13

Children have the right to get and to share information, as long as the information is not damaging to them or to others.

## Article 14

Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide children on these matters.

## Article 15

Children have the right to meet with other children and young people and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

## Article 16

Children have the right to privacy. The law should protect them from attacks against their way of life, their good name, their family and their home.

## Article 17

Children have the right to reliable information from the media. Mass media such as television, radio and newspapers should provide information that children can understand and should not promote materials that could harm children.

## Article 18

Both parents share responsibility for bringing up their children and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.

## Article 19

Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

## Article 20

Children who cannot be looked after by their own



family must be looked after properly by people who respect their religion, culture and language.

#### **Article 21**

When children are adopted the first concern must be what is best for them. The same rules should apply whether children are adopted in the country of their birth or if they are taken to live in another country.

#### **Article 22**

Children who come into a country as refugees should have the same rights as children who are born in that country.

#### **Article 23**

Children who have any kind of disability should receive special care and support so that they can live a full and independent life.

#### **Article 24**

Children have the right to good quality health care, clean water, nutritious food and a clean environment so that they will stay healthy. Richer countries should help poorer countries achieve this.

#### **Article 25**

Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.

#### **Article 26**

The Government should provide extra money for the children of families in need.

#### **Article 27**

Children have the right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this.

#### **Article 28**

Children have the right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthier countries should help poorer countries achieve this.

#### **Article 29**

Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, their cultures and other cultures.

#### **Article 30**

Children have the right to learn and use the language and customs of their families, whether or not these are shared by the majority of the people in the country where they live, as long as this does not harm others.

#### **Article 31**

Children have the right to relax, play and to join in a wide range of leisure activities.

#### **Article 32**

Governments should protect children from work that is dangerous or that might harm their health or education.



#### **Article 33**

Governments should provide ways of protecting children from dangerous drugs.

#### **Article 34**

Governments should protect children from sexual abuse.

#### **Article 35**

Governments should make sure that children are not abducted or sold.

#### **Article 36**

Children should be protected from any activities that could harm their development.

#### **Article 37**

Children who break the law should not be treated cruelly. They should not be put in a prison with adults and should be able to keep in contact with their family.

#### **Article 38**

Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

#### **Article 39**

Children who have been neglected or abused should receive special help to restore their self-respect.

#### **Article 40**

Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

#### **Article 41**

If the laws of a particular country protects children better than the articles of the Convention, then those laws should override the Convention.

#### **Article 42**

Governments should make the Convention known to all parents and children.

**The Convention on the Rights of the Child has 54 articles in all. Articles 43-54 are about how adults and governments should work together to make sure that all children get all their rights. Go to [www.unicef.org/crc](http://www.unicef.org/crc) to read all the articles.**

UNICEF Australia. *A simplified version of the United Nations Convention on the Rights of the Child.* Retrieved from [www.unicef.org.au](http://www.unicef.org.au) on 6 November 2020.

# Frequently asked questions on the Convention on the Rights of the Child

## YOUR QUESTIONS ON THE CONVENTION ANSWERED BY UNICEF

### **What is the Convention on the Rights of the Child?**

**T**he *Convention on the Rights of the Child* is an international treaty that recognises the human rights of children, defined as persons up to the age of 18 years.

The Convention establishes in international law that States Parties must ensure that all children – without discrimination in any form – benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner.

### **How was it decided what should go into the Convention on the Rights of the Child?**

The standards in the *Convention on the Rights of the Child* were negotiated by governments, non-governmental organisations, human rights advocates, lawyers, health specialists, social workers, educators, child development experts and religious leaders from all over the world, over a 10-year period.

The result is a consensus document that takes into account the importance of tradition and cultural values for the protection and harmonious development of the child. It reflects the principal legal systems of the world and acknowledges the specific needs of developing countries.

### **How does the Convention on the Rights of the Child protect children's rights?**

On some issues, States are obliged to provide for minimum ages, such as the age for admission into employment and completion of compulsory education; but in other cases the Convention is unequivocal in prohibiting life imprisonment without possibility of release or capital punishment for those under 18 years of age.

### **How does the Convention on the Rights of the Child define a child?**

The Convention defines a “child” as a person below the age of 18, unless the relevant laws recognise an earlier age of majority.

### **What are the Convention's guiding principles?**

The guiding principles of the Convention are: non-discrimination; the best interests of the child as a primary consideration in all actions concerning children; the child's inherent right to life, and State Parties' obligation to ensure to the maximum extent possible the survival and development of the child; and the

child's right to express his or her views freely in all matters affecting the child, with those views being given due weight.

### **What is the vision of the child in the Convention on the Rights of the Child?**

The Convention provides a universal set of standards to be adhered to by all countries. It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and a member of a family and a community, with rights and responsibilities appropriate to his or her age and stage of development. Recognising children's rights in this way firmly sets a focus on the whole child.

### **How is the Convention on the Rights of the Child special?**

The Convention:

- Is the most widely ratified human rights treaty in history – in force in virtually all countries of the world, thus providing a common ethical and legal framework for the realisation of children's rights.
- Was the first time a formal commitment was made to ensure the realisation of child rights and monitor progress on the situation of children.
- Indicates that children's rights can no longer be perceived as an option, as a question of favour or kindness to children or as an expression of charity. Children's rights generate obligations and responsibilities that we all must honour and respect.
- Has been recognised by non-state entities.
- Is a reference for many organisations working with and for children – including NGOs, and entities within the UN system.
- Reaffirms that all rights are equally important and essential for the full development of a child and that each and every child is important.
- Reaffirms the notion of State accountability for the realisation of human rights and the values of transparency and public scrutiny that are associated with it.
- Promotes an international system of solidarity designed to achieve the realisation of children's rights. Donor countries are called upon to provide assistance in areas where particular needs have been identified; recipient countries are called upon to direct overseas development assistance to that end too.
- Highlights the role of society, communities and families to promote and protect children's rights.

## How many countries have ratified the Convention on the Rights of the Child?

The *Convention on the Rights of the Child* is the most rapidly ratified human rights treaty in history. More countries have ratified the Convention than any other human rights treaty in history – 196 countries have become State Parties to the Convention as of October 2015. Only the United States of America has not ratified the Convention. By signing the Convention, the United States has signalled its intention to ratify, but has yet to do so.

## How does the international community monitor and support progress on the implementation of the Convention?

The Committee on the Rights of the Child, an elected body of independent experts that monitors the Convention's implementation, requires governments that have ratified the Convention to submit regular reports on the status of children's rights in their countries. The Committee reviews these reports and makes recommendations to States. Where necessary, the Committee calls for international assistance from other governments and technical assistance from organisations like UNICEF.

See more on *Implementing and monitoring the Convention*: [www.unicef.org/child-rights-convention/implementing-monitoring](http://www.unicef.org/child-rights-convention/implementing-monitoring)

## What steps do the Convention on the Rights of the Child and the Committee on the Rights of the Child encourage governments to undertake?

Through its reviews of country reports, the Committee urges all levels of government to use the Convention as a guide in policy-making and implementation, including: having a national plan for children, monitoring how much of the budget is spent on children, conducting regular impact assessments throughout every government department using reliable data about children's lives, and having an independent children's ombudsman.

## What are some of the areas in which the Convention on the Rights of the Child has been most effective?

In the 30 years since the adoption of the Convention, the lives of millions of children have been improved through the progressive realisation of rights and fulfilment of obligations enshrined within the Convention and its three Optional Protocols.

The Convention has inspired changes in all parts of the world, including:

- Incorporating child rights principles into legislation
- Establishing interdepartmental and multidisciplinary bodies to address child rights
- Developing national agendas for children
- Promoting ombudspersons for children or commissioners for children's rights
- Restructuring of budgetary allocations for the realisation of children's rights

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- Interventions targeting child survival and development
- Addressing discrimination and other barriers to the realisation of child rights including socio-economic disparities among children
- Creating opportunities for children to express their views and be heard
- Expanding partnerships for children
- Assessing the impact of measures on children.

## How does UNICEF use the Convention on the Rights of the Child?

UNICEF is the UN organisation mandated to protect the rights of every child, everywhere, especially the most disadvantaged.

As expressed in our Mission Statement, “UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.”

UNICEF is the only organisation specifically named in the *Convention on the Rights of the Child* as a source of expert assistance and advice. The Convention provides UNICEF with guidance as to the areas to be assessed and addressed, and is a tool to measure the progress achieved in those areas. In addition to maintaining a focus on child survival and development, UNICEF must consider the situation of all children, analyse the economic and social environment, develop partnerships to strengthen the response (including the participation of children themselves), support interventions on the basis of non-discrimination and act in the best interests of the child.

UNICEF. *Frequently asked questions on the Convention on the Rights of the Child*. Retrieved from [www.unicef.org](http://www.unicef.org) on 6 November 2020.

# HISTORY OF CHILD RIGHTS

International standards for children's rights have advanced dramatically over the past century. **UNICEF** invites you to explore these historical milestones.

In the industrialised countries of the early twentieth century, there were no standards of protection for children. It was common for them to work alongside adults in unsanitary and unsafe conditions. Growing recognition of the injustices of their situation, propelled by greater understanding of the developmental needs of children, led to a movement to better protect them.

International standards on child rights have advanced dramatically over the past century, but gaps remain in meeting those ideals.

## TIMELINE OF CHILD RIGHTS

**1924**

The League of Nations adopts the *Geneva Declaration on the Rights of the Child*, drafted by Eglantyne Jebb, founder of the Save the Children Fund. The Declaration articulates that all people owe children the right to: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation; and an upbringing that instils social consciousness and duty.

**1946**

The United Nations General Assembly establishes the International Children's Emergency Fund, UNICEF, with an emphasis on children throughout the world.

**1948**

The United Nations General Assembly passes the *Universal Declaration of Human Rights*, in which Article 25 entitles mothers and children to 'special care and assistance' and 'social protection'.

**1959**

The United Nations General Assembly adopts the *Declaration of the Rights of the Child*, which recognises, among other rights, children's rights to education, play, a supportive environment and health care.

**1966**

With the *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights*, United Nations Member States promise to uphold equal rights – including education and protection – for all children.

**1968**

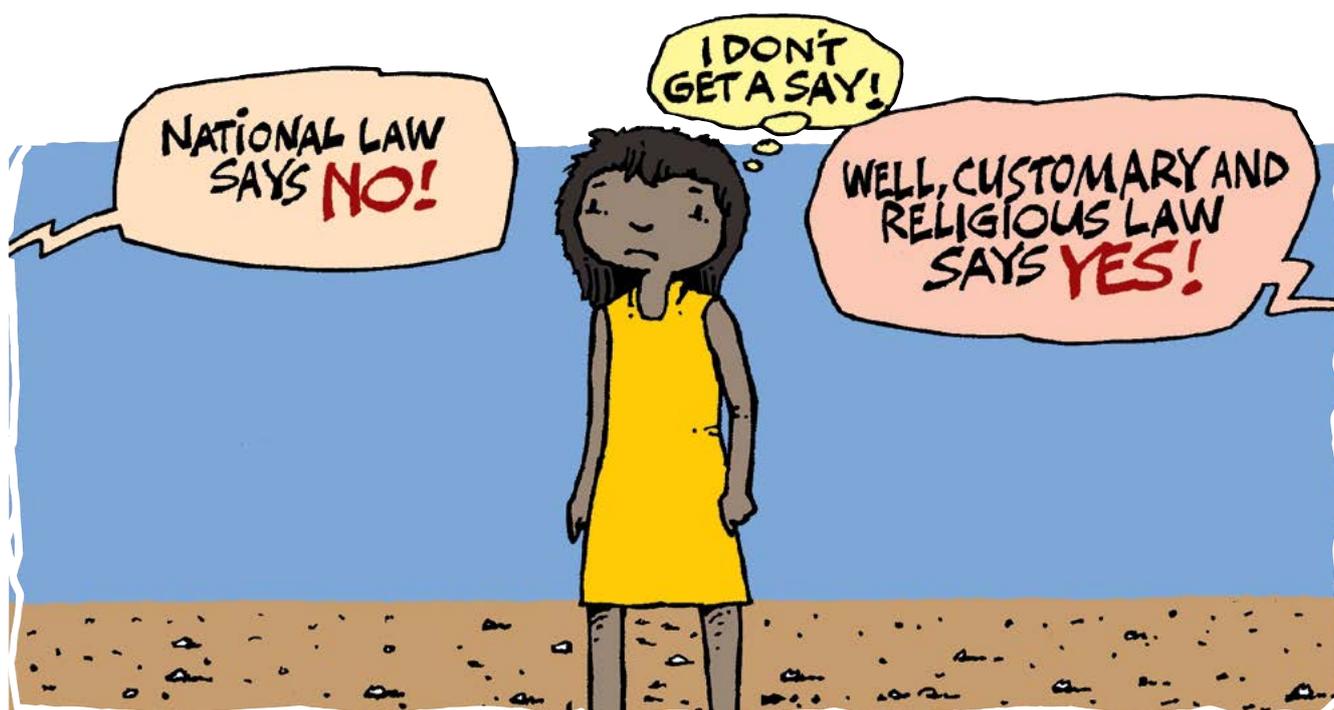
The International Conference on Human Rights is convened to evaluate the progress made by countries in the 20 years since the adoption of the *Universal Declaration of Human Rights*. An agenda for future work is drafted and national commitments to upholding human rights are bolstered.

**1973**

The International Labour Organization adopts Convention 138, which sets 18 as the minimum age for undertaking work that might be hazardous to a person's health, safety or morals.

**1974**

Concerned about the vulnerability of women and children in emergency and conflict situations, the General Assembly calls on Member States to observe the *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*. The Declaration prohibits attacks against or imprisonment



of civilian women and children, and upholds the sanctity of the rights of women and children during armed conflict.

### 1978

The Commission on Human Rights puts forth a draft of a *Convention on the Rights of the Child* for consideration by a working group of Member States, agencies and intergovernmental and non-governmental organisations.

### 1979

To mark the twentieth anniversary of the 1959 *Declaration of the Rights of the Child*, the United Nations General Assembly declares 1979 as the International Year of the Child, in which UNICEF plays a leading role.

### 1985

The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* detail the principles of a justice system that promotes the best interests of the child, including education and social services and proportional treatment for child detainees.

### 1989

The *Convention on the Rights of the Child* is adopted by the United Nations General Assembly and widely acclaimed as a landmark achievement for human rights, recognising the roles of children as social, economic, political, civil and cultural actors. The Convention guarantees and sets minimum standards for protecting the rights of children in all capacities. UNICEF, which helped draft the Convention, is named in the document as a source of expertise.

### 1990

The World Summit for Children is held in New York. The *Guidelines for the Prevention of Juvenile Delinquency* outline strategies for preventing criminality and protecting young people at high social risk.

### 1991

Experts from UNICEF, Save the Children, Defence for Children International and other organisations meet to discuss data gathered from the reporting process of the *Convention on the Rights of the Child*. The meeting leads to the formal establishment of the Child Rights International Network (CRIN) in 1995.

### 1999

The International Labour Organization (ILO) adopts the Worst Forms of Child Labour Convention, calling for the immediate prohibition and elimination of any form of work that is likely to harm the health, safety or morals of children. UNICEF has been working with the ILO since 1996 to promote the ratification of international labour standards and policies concerning child labour.

### 2000

The United Nations General Assembly adopts two Optional Protocols to the 1989 *Convention on the Rights of the Child*, obligating State Parties to take



key actions to prevent children from partaking in hostilities during armed conflict and to end the sale, sexual exploitation and abuse of children.

### 2002

At the United Nations Special Session on Children, child delegates address the General Assembly for the first time. The World Fit for Children agenda was adopted outlining specific goals for improving the prospects of children over the next decade.

### 2006

UNICEF co-publishes the *Manual for the Measurement of Juvenile Justice Indicators* with the United Nations Office on Drugs and Crime. The manual enables governments to assess the condition of their juvenile justice systems and make reforms as necessary.

### 2010

The United Nations Secretary-General issues the *Status of the Convention on the Rights of the Child*.

### 2011

A new Optional Protocol to the 1989 *Convention on the Rights of the Child* is adopted. Under this Optional Protocol on a communications procedure, the Committee on the Rights of the Child can field complaints of child rights violations and undertake investigations.

### 2015

Somalia and South Sudan ratify the Convention. The Convention is the most widely ratified international instrument with 196 States. Only the United States has not ratified to date.

UNICEF. *History of child rights*. Retrieved from [www.unicef.org](http://www.unicef.org) on 6 November 2020.

# THE RIGHTS OF CHILDREN

All children have human rights. **Parentline** looks at what those are, how to teach kids their rights and what to do if those rights are violated.

## What are rights and why do we have them?

**H**uman rights are necessary in order for people to live full lives. They are ethical and moral guidelines for our standard of living, and are based around the recognition of the inherent value of each person, regardless of who they are, where they live or how wealthy they are.

These rights are universal and inalienable, which means they apply to everyone and can't be taken away.

## What are children's rights?

The *Convention on the Rights of a Child* is an international, legally binding text that protects the rights of children and young people aged under 18. In 1989, it was ratified by governments in many countries around the world, including Australia.

The convention outlines 42 articles about the rights of children, as well as how adults and governments should work together to protect children and their rights. In Australia, many of these rights are also protected through legislation and other acts of parliament.

Children's rights include:

- **The right to education.** Children have a right to an education, including going to school and accessing information and mass media without censorship.
- **The right to privacy.** Children have a right to keep information private and to be protected from harm that can be caused by lack of privacy.
- **The right to participate.** This includes the right

to meet with and be involved with other young people, and to have a say and be heard, especially for issues that directly affect them.

- **The right to wellbeing.** Children also have a right to play, as this is essential for their wellbeing. This also includes their right to be happy.
- **The right to safety.** Having a safe home and being protected (by adults) from things that might cause them harm, like violence, abuse and exploitation.
- **The right to health.** Child health is dependent on nourishment and protection from disease. Children have a right to healthy and nutritious food, safe drinking water and medical care.
- **Legal rights.** Children have a right to freedom from discrimination and to access legal information and support if needed.
- **Cultural rights.** Cultural expression and religious freedoms are protected by law.

As parents, we have a responsibility to protect our children's rights, and to help our children understand and stand up for their own rights. We also have the responsibility to help our children understand their responsibility towards others – that they do not have a right to interfere with or violate someone else's rights.

## Teaching kids about rights

Teaching kids about rights isn't something that happens once. It's the little things we do each and every day that allow them to develop a sense of right or wrong,



understand respect and safety, have empathy for others, and feel empowered to stand up for their rights.

The best way to teach kids about their rights is to role-model loving, safe and respectful relationships that meet their emotional needs.

This includes doing things like:

- Listening to your child's thoughts, ideas and opinions and asking questions to understand those, e.g. "Hmm, why do you think he said/did that?"
- Valuing who they are as a person and the things they value, e.g. "Yesterday when your brother was upset, you were very considerate of his feelings, which is one of the things I love about who you are."
- Role-modelling fairness, justice and equality when given the opportunity to do so, e.g. "What if everyone took turns on the play equipment?"
- Role-modelling assertive communication and adaptive conflict resolution strategies, e.g. "It sounds like your friend was upset that no one else wanted to play the game she did. How could you handle that situation next time so that things are fair and everyone is happy?"
- Showing empathy towards others, e.g. "It must be



hard for the new person at your school to make friends. How do you think you might feel if you didn't have any friends?"

- Using world events, news, and our media as opportunities for discussion (in a developmentally appropriate way), e.g. "Why do you think those people on the news are protesting? What do you think discrimination means?"

## What are children's rights?

- As well as the human rights laid out in the *Universal Declaration of Human Rights*, children and young people are entitled to additional rights recognising they have special needs in order to survive and develop to their full potential. Children also have the right to special protection due to their vulnerability to exploitation and abuse.
- The specific rights of children are laid out in the 1989 *Convention on the Rights of the Child* (CRC).
- The CRC defines a child as "any human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier".
- Children's rights include the right to association with both parents; the right to basic needs for physical protection, food, universal state-paid education, health care, and criminal laws appropriate for the age and development of the child; equal protection of civil rights, and freedom from discrimination on the basis of the child's race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity, or other characteristics.
- Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse. Other definitions include the rights to care and nurturing.
- In international law, there are no definitions of other terms used to describe young people e.g. adolescents, teenagers, youth. The children's rights movement is considered distinct from the youth rights movement.

**Sources:** Australian Human Rights Commission, *What are Children's Rights?*, <https://humanrights.gov.au/our-work/education/what-are-childrens-rights>; Wikipedia, *Children's rights*, [https://en.wikipedia.org/wiki/Children's\\_rights](https://en.wikipedia.org/wiki/Children's_rights) (Accessed 23 February 2021).

## What should I do if I think a child's rights have been violated?

If you think a child's rights are being violated, it's important to seek professional support. The type of support might depend on how their rights were violated.

Here are some places that can help:

- Legal services, such as Youth Law Australia and Family Legal Aid
- The Australian Human Rights Commission protects and promotes human rights and can provide information and support
- Services that support and protect children, such as GPs, Kids Helpline or the relevant child protective service in your state and territory
- Specialist groups and organisations that provide support and advocacy for different rights, and represent different groups, e.g. the Disability Advocacy Rights Service.

## Helping your kids to understand their rights doesn't have to be complicated

If you've got questions, we're here to help. Need guidance on how to talk to your kids about their rights? Give us a call on 1300 30 1300 (QLD & NT). We're open from 8am-10pm. Not in QLD or NT? Check out our list of Parentline services in your state or territory.

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Parentline. *The rights of children* (Last reviewed 21 July 2020). Retrieved from <http://parentline.com.au> on 6 November 2020.

# UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: CHILDREN'S RIGHTS

While the *UN Convention on the Rights of the Child* remains the most widely ratified human rights treaty, it is not without its critics. For many, it remains a problematic document whose design promotes as the norm a static and idealised vision of western childhood.

Associate Professor Katrina Lee-Koo explains

Alongside the 70th anniversary of the *Universal Declaration of Human Rights* (UDHR) is the 30th anniversary of the General Assembly's adoption of the *United Nations Convention on the Rights of the Child* (UNCRC). The Convention now stands as the most ratified UN convention with the US being the only UN member state that has not signed. Children's rights, apparently, are virtually uncontested. And this is matched by political rhetoric. Across the world, we hear political leaders echo the 1997 sentiments of Nelson Mandela that "the true character of society is revealed in how it treats its children."

Yet, the past 30 years have seen the rights of children continually marginalised, misunderstood and maligned in liberal and illiberal states alike. The rate of ratification of the UNCRC has not been matched by commitment to its implementation. The anniversaries of the UDHR and the UNCRC provide us with opportunities to reflect upon the state of children's rights, and consider what Australia might do to promote children's rights at home and globally.

## THE STATE OF CHILDREN'S RIGHTS

In his most recent report to the UN Security Council, the UN Secretary-General claimed that there had been a large increase in the reported number of violations of children's rights in conflict-affected zones. He reported

in 2017 that there had been 6,000 verified violations of the rights of children by government actors, and over 15,000 violations by non-state actors. These included the killing and maiming of children, their recruitment into armed forces, sexual violence and their abduction. The Secretary-General named a further 68 state and non-state groups that had participated in grave violations of children's rights.

But of course, violations of children's rights are not isolated to illiberal or conflict-ridden states. There are also widespread violations of children's rights inside liberal states. In Australia, Canada and the US, Indigenous children, children in care, and children seeking asylum experience multiple breaches of their rights, including detention, and institutional abuse.

For example, the 2017 *Final Report of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse* found that "tens of thousands of children have been sexually abused in many Australian institutions. We will never know the true number. Whatever the number, it is a national tragedy, perpetrated over generations within many of our most trusted institutions."

## THE ROLE OF THE UNCRC

While the UDHR implicitly designates children as beneficiaries of human rights (as human beings) it makes only brief mention of children. Article 25 notes that motherhood and childhood should be afforded special care and assistance and that children should be afforded social protection regardless of whether they are born in or out of wedlock.

Furthermore, the rights of parents to choose the



kind of education children receive is protected under Article 26. In this sense, the UDHR assumes an adult-centric – and gendered – bias in terms of how rights for children are described and determined.

The UNCRC – arriving some four decades after the UDHR – is an important addition to the human rights regime for two reasons. First, it explicitly lays out rights and duty bearers as they relate specifically to children. This takes into consideration their unique positionality within the human experience, particularly with reference to their age and evolving capacities, and their place within the family and community. Most importantly, it requires the state to always be guided by the best interests of the child in all actions concerning them (*Article 3*).

Second, while the UNCRC is not the first declaration of children’s rights, it is the first one to attempt to recognise children as active participants in their communities. The 1989 Convention included Article 12 which covers the child’s right to have their views heard and to participate in any decisions affecting them. It further protects their right to freedom of expression (*Article 13*), freedom of thought, conscience and religion (*Article 14*) and freedom of association and peaceful assembly (*Article 15*). While these articles – and *Article 12* particularly – remain poorly implemented around the world, they nonetheless provide a stronger foundation than that afforded by the UDHR for the active participation of children in realising their rights.

While the UNCRC remains the most widely ratified human rights treaty, it is not without its critics. For many, it remains a problematic document whose design promotes as the norm a static and idealised vision of western childhood.

In this vein Watson argues that, “the existing body of international law adheres to an idealised notion of childhood, which employs an (affluent) Western view of it, as opposed to one that could manage to incorporate an actual portrayal of (poor) children in the South.” Critics argue that despite the inclusion of *Article 12*, the UNCRC maintains the historical precedent that sees children as ideally separate from political roles and responsibilities.

Many argue that this – in fact – acts to ignore or deny children’s agency. For this reason, the contributions of children (both positive and negative) to global political life often go unacknowledged, or are seen as abnormal. Consequently, children are often seen only ever as innocent victims of political life rather than a more nuanced combination of victims, witnesses, bystanders, agents, and actors in global change.

## AUSTRALIA AND THE GLOBAL PROTECTION OF CHILDREN’S RIGHTS

As a current member of the UN Human Rights Council, Australia is in a unique position to promote the rights of children. Australia signed the UNCRC in 1990 and has identified child protection as one of nine priority global themes in its foreign policy, however, it has not



been a strong theme of either its candidacy or activities while on the HRC.

Of the five pillars and priorities upon which Australia builds its membership, children’s rights are largely absent. It is noted in the commitment to “advancing the right of women and girls” with specific reference to ending violence against women and girls, and is arguably implicit in other pillars, however, it is not explicitly referenced. Indeed, there is barely a mention of children’s rights in the 2017 voluntary pledges that Australia made to the Council and no mention of children as stand-alone rights bearers. While Australia does acknowledge that it is a party to the seven core human rights treaties (of which the UNCRC is one), there is no further commitment to uphold or promote the implementation of the UNCRC and its principles.

This apathy is matched by its activities since being elected to the Council where we find an overall failure to mainstream the rights of children throughout relevant issues. While this represents a number of missed opportunities, there has been some engagement with the issue. Notably, in the 37th HRC session (March 2018), Australia urged the international community to be more accountable for children in humanitarian and conflict-affected situations, highlighting during the High-Level Panel on the Human Rights of Children in Syria its stated commitment of \$433 million to supporting the needs of Syrian children.

While its contribution to the HRC highlights Australia’s general – if not especially strong or consistent – commitment to promoting children’s rights around the world, this needs to be juxtaposed to actions and activities within its own jurisdiction. Here, a number of issues have come to the fore over recent years. At the forefront of these issues perhaps is the treatment of children seeking asylum who have been detained in offshore detention facilities. At the end of May 2018, the Australian Human Rights Commission reported that there were 137 children in the off-shore detention facility in Nauru who were still subject to third country

processing arrangements, the majority of whom were under the age of 12, and had been on Nauru for at least four years.

As a result of public and political pressure – and claims by professionals that the children suffered significant mental, emotional and physical healthcare issues – these children were slowly transferred to the Australian mainland throughout 2018, with the last being reported to have left Nauru in February 2019.

A further concern has been the treatment of juvenile offenders in detention facilities on the Australian mainland. The 2017 *Report of the Royal Commission into the Protection and Detention of Children* found that “children and young people were subjected to regular, repeated and distressing mistreatment in detention and there was a failure to follow the procedures and requirements of the law in many instances.”

Additionally, the failure to provide systematically or sustainably for the health and wellbeing of Indigenous children is highlighted annually in the Government’s *Closing the Gap* reports and the 2019 findings of a coronial inquest into the high rates of child suicide among indigenous populations.

The issue of child, early and forced marriage was also recently raised, with Australia revising its 2013 law that declared forced marriage to be illegal. Since then, the Australian Federal Police had received 232 referrals on the matter. However, the 2013 legislation required those contacting authorities to work with the police, which may often lead to the investigation of the child’s parents. Advocates argued that this was a concern for girls who did not want to see their parents arrested.

In 2018, Labor introduced reform that would decouple government support from the need to work with a police process. The legislative change would also allow protection to be extended to all potential victims of forced marriage, even if they were no longer children.

Finally, like a number of liberal democracies, Australia is faced with issues surrounding the potential return of children under the guardianship – or born to – foreign fighters. The Attorney-General’s Department has confirmed 70 known cases and indicated that it will address each child on a case-by-case basis, according to the risk that they may pose. In each of these issues,

Australia has been challenged to uphold its commitment to the “best interests of the child” while navigating other perceived national and international interests.

Moving away from the protection agenda, the November 2018 decision by Australian school children to walk out of their classrooms and stage protests on the lack of government action on climate change brought into focus the right of children to be heard – and taken seriously – in issues affecting them. While reactions to the protests were mixed, the response of the Government was largely patronising and hostile.

In response, Prime Minister Scott Morrison stated that: “We don’t support our schools being turned into parliaments. What we want is more learning and less activism in schools.” Such statements are at odds with the fundamental ethic that children can show both agency and rationality in the political sphere, and are entitled to participate in decision-making that affects them.

As the brief examples above demonstrate, the implementation of children’s rights often sits uncomfortably amongst national and international interests. Australia, the United States, the United Kingdom and other liberal democracies currently find themselves struggling to reconcile their commitments to uphold the “best interests of the child” with hard-line policies regarding immigration and asylum claims, the treatment of the children of foreign fighters and other returnees, and the sheer volume of the humanitarian need of children trapped in crises around the world.

In light of the widespread abrogation of children’s rights, the 30th anniversary of the UNCRC and the 70th anniversary on the UDHR should act as timely reminders of our obligations to act in the best interests of the child.

**Katrina Lee-Koo** is an associate professor in international relations at Monash University and deputy director of Monash GPS (Gender, Peace and Security).

This is an extract from an article titled ‘The Universal Declaration of Human Rights at 70: Children’s Rights’, originally published in the *Australian Journal of International Affairs*.

Lee-Koo, K (30 January 2020). *The Universal Declaration of Human Rights at 70: Children’s Rights*. Retrieved from [www.internationalaffairs.org.au](http://www.internationalaffairs.org.au) on 6 November 2020.



# 1 IN 6 CHILDREN LIVES IN EXTREME POVERTY

An estimated 1 in 6 children – or 356 million globally – lived in extreme poverty before the pandemic, and this is set to worsen significantly, according to a new World Bank Group-UNICEF analysis

**G**lobal Estimate of Children in Monetary Poverty: An Update notes that Sub-Saharan Africa – with limited social safety nets – accounts for two-thirds of children living in households that struggle to survive on an average of \$1.90 a day or less per person – the international measure for extreme poverty. South Asia accounts for nearly a fifth of these children.

The analysis shows that the number of children living in extreme poverty decreased moderately by 29 million between 2013 and 2017. However, UNICEF and the World Bank Group warn that any progress made in recent years is concerningly slow-paced, unequally distributed, and at risk due to the economic impact of the COVID-19 pandemic.

“1 in 6 children living in extreme poverty is 1 in 6 children struggling to survive,” said Sanjay Wijesekera, UNICEF Director of Programmes. “These numbers alone should shock anyone. And the scale and depth of what we know about the financial hardships brought on by the pandemic are only set to make matters far worse. Governments urgently need a children’s recovery plan to prevent countless more children and their families from reaching levels of poverty unseen for many, many years.”

Although children make up around a third of the global population, around half of the extreme poor are children. Children are more than twice as likely to be extremely poor as adults (17.5 per cent of children vs. 7.9 per cent of adults). The youngest children are the worst off – nearly 20 per cent of all children below the age of 5 in the developing world live in extremely poor households.

“The fact that one in six children were living in extreme poverty and that 50% of the global extreme poor were children even prior to the COVID-19 pandemic is of grave concern to us all,” said Carolina Sánchez-Páramo, Global Director of Poverty and Equity for the World Bank.

“Extreme poverty deprives hundreds of millions of children of the opportunity to reach their potential, in terms of physical and cognitive development, and threatens their ability to get good jobs in adulthood. In the wake of the massive economic disruption caused by the pandemic, it is more crucial than ever that governments support poor households with children now and rebuild their human capital during the recovery.”

Extreme poverty among children has not fallen as much as it has for adults; a larger share of the global poor were children in 2017, compared with that in 2013. All regions of the world experienced varying levels of decline in extreme poverty among children, apart from Sub-Saharan Africa, which saw a 64 million increase in the absolute number of children struggling to survive



on \$1.90 a day, from 170 million in 2013 to 234 million in 2017.

Child poverty is more prevalent in fragile and conflict-affected countries, where more than 40 per cent of children live in extremely poor households, compared to nearly 15 per cent of children in other countries, the analysis says. The analysis also notes that more than 70 per cent of children in extreme poverty live in a household where the head of the house works in agriculture.

The ongoing COVID-19 crisis will continue to disproportionately impact children, women and girls, threatening to reverse hard-won gains towards gender equality. Social protection measures have a crucial role to play to mitigate coping mechanisms by the poor and vulnerable in both the immediate COVID-19 response as well as the longer-term recovery.

World Bank and UNICEF data suggest that most countries have responded to the crisis by expanding social protection programs, particularly cash transfers. Cash transfers provide a platform for longer-term investments in human capital. Particularly when combined with other child development measures and coupled with high-quality social service provision, cash transfers have been shown to address both monetary and multidimensional poverty and improve children’s health, nutrition, cognitive and non-cognitive outcomes.

However, many of the responses are short-term and not adequate to respond to the size and expected long-term nature of the recovery. It is more important than ever for governments to scale up and adjust their social protection systems and programs to prepare for future shocks. This includes innovations for financial sustainability, strengthening legal and institutional frameworks, protecting human capital, expanding child and family benefits for the long term as well as investing in family-friendly policies, such as paid parental leave and quality child care for all.

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World Bank (20 October 2020). *1 in 6 children lives in extreme poverty, World Bank-UNICEF analysis shows*. Retrieved from [www.worldbank.org](http://www.worldbank.org) on 12 November 2020.

## CHAPTER 2

# Children's rights in Australia

## The wellbeing of Aussie kids varies by family circumstances and where they live

*Children in Australia are generally happy, healthy and safe, according to a new report from the Australian Institute of Health and Welfare. But children's experiences and outcomes can vary depending on where they live and their families' circumstances.*

The report, *Australia's children*, brings together data about children and their experiences at home, school and in their communities, along with statistics on important influences such as parental health, family support networks and household finances. The report focuses generally on children aged 0-12, spanning infancy, early childhood and primary school years.

"From an early age, most Australian children have the foundations to support good health and wellbeing as they grow up," said AIHW spokesperson Louise York.

In 2017, just under 1 in 10 mothers smoked during their pregnancy, compared to 1 in 8 mothers in 2011. In 2016 35% of women drank alcohol during pregnancy, down from 42% in 2013. In 2018, about 9 in 10 children aged 2 were fully immunised.

Deaths among infants and children are uncommon, having fallen markedly over the past 2 decades. Injury and cancer are the leading causes of death for children aged 1-14 years – however, the death rates for both have reduced significantly.

Most parents share stories with their infants, with almost 4 in 5 children aged 0-2 read to or told stories by a parent regularly in 2017, and 90% of eligible children enrolled in a preschool program in the year before they entered full-time school.

In some areas, children in Australia show signs of healthy lifestyles – for example, in 2017-18, almost three-quarters (72%) of children aged 5-14 eat enough fruit every day. Despite this, very few (4%) eat enough vegetables and almost half (42%) usually consumed sugar sweetened drinks at least once a week.

Around 65% of children aged 5-8, 78% of children aged 9-11 and 72% of children aged 12-14 participated in organised physical activities outside of school hours at least once per week in 2018. However, other data sources included in the report suggest that in 2011-12, less than one-quarter (23%) of children aged 5-14 undertook the recommended 60 minutes of physical activity every day and less than one-third (32%) met the screen-based activity guidelines (to limit screen-based activity to

no more than 60 minutes per day). Planned updates to these data under the Intergenerational Health and Mental Health Study will be useful.

"In 2017-18, about a quarter of children aged 5-14 were overweight or obese, similar to 2007-08. The likelihood of a child being overweight or obese is greater if they live outside major cities, in one-parent families, or if they have a disability," Ms York said.

*"It is important to gather more evidence about children's own perspectives on issues affecting their lives and development, to ensure children's views are heard."*

Literacy and numeracy are fundamental building blocks for children's educational achievement, lives outside school, engagement with society and future employment prospects. In 2018, almost all Year 3, 5 and 7 students achieved at or above the minimum standards for reading and numeracy. However, results were lower among some groups of children. For example, Year 5 students in more remote areas of Australia were less likely to meet the minimum standards, as were Indigenous students.

Between 2008 and 2018, the proportion of Indigenous students in Year 5 at or above national minimum standards for reading rose from 63% to 77%, and for numeracy rose from 69% to 81%.

While school years can provide positive experiences for children, bullying is an issue for many. In 2015, almost 3 in 5 Year 4 students reported that they experienced bullying monthly or weekly during the school year. The rise of the internet has also enabled bullying to spread online.

"In 2016-17, receiving unwanted contact and content was the most commonly reported negative online experience for children aged 8-12, experienced by about a quarter of all children," Ms York said.

Most children say they look to their parents for support in difficult times – in 2016, 9 in 10 children aged 12-13 said they would talk to their mum and/or dad if

# Australia's children: executive summary

Childhood is an important time for healthy development and learning, and for establishing the foundation blocks of future wellbeing, but it is also a time of vulnerability. While a positive start in life helps children to reach their full potential, a poor start increases the chances of adverse outcomes for the individual, society and possibly future generations. *Australia's children* examines the most recent data on children and their families across the 7 domains of the Australian Institute of Health and Welfare people-centred data model – health, education, social support, household income and finance, parental employment, housing, and justice and safety.

The report shows that most Australian children are healthy, safe and doing well, but there is scope for further gains in some areas. It also includes some data collected directly from children giving them a voice on their wellbeing.

## How are Australia's children faring on national indicators?

### Doing well

- Death rates among Australia's infants and children have dropped substantially. Between 1998 and 2017, infant deaths dropped from 5.0 to 3.3 deaths per 1,000 live births. Child deaths halved from 20 to 10 deaths per 100,000 children.
- Less mothers are smoking during the first 20 weeks of pregnancy. Between 2011 and 2017, the proportion of mothers smoking fell from 13% to 9.5%.
- The proportion of Year 5 students achieving at or above the national minimum standard for reading and numeracy increased between 2008 and 2018. Reading increased from 91% to 95% and numeracy from 93% to 96%.
- The rate of children aged 10-14 under youth justice supervision decreased between 2008-09 and 2017-18, from 95 to 73 per 100,000 children.

### Could be better

- Around 1 in 4 children aged 5-14 are overweight or obese, with the proportion remaining relatively stable between 2007-08 (23%) and 2017-18 (24%).
- Most children (96%) aged 5-14 do not eat enough vegetables, with the proportion meeting the guidelines for vegetable consumption only increasing slightly between 2014-15 (2.9%) and 2017-18 (4.4%).
- In 2016-17, there were around 66,500 hospitalised injury cases for children aged 0-14, slightly higher than 10 years earlier. The rate was relatively stable between 2007-08 and 2016-17 (1,419 and 1,445 per 100,000, respectively).
- Around 19,400 (0.4%) of children aged 0-14 were homeless on Census night in 2016, similar to the proportion in 2006 (0.5%).

### What do Australia's children say?

- Most children (91%) aged 12-13 felt safe in their neighbourhood in 2015-16.
- 1 in 5 Year 4 students experienced bullying on a weekly basis in 2015.
- Most children (94%) in years 4, 6 and 8 spent quality time doing at least one of talking, having fun or learning with their family most days in the week in 2014.
- 97% of children aged 12-13 had someone to talk to if they have a problem in 2016.
- Almost 9 in 10 children aged 12-13 would talk to their mum and/or dad if they had a problem in 2016.
- For children in years 4, 6 and 8, health ranked as the second most important domain, after family, for having a good life in 2014.

Australian Institute of Health and Welfare.  
*Australia's children* (Last updated 3 April 2020).  
Retrieved from [www.aihw.gov.au](http://www.aihw.gov.au) on 12 November 2020.

they had a problem.

In 2013-14, an estimated 314,000 children aged 4-11 (almost 14%) experienced a mental disorder, with boys more commonly affected than girls (17% compared with 11%).

“Attention Deficit Hyperactivity Disorder (ADHD), was the most common mental disorder for children (8.2%), followed by Anxiety Disorders (6.9%),” said Ms York.

Household finances – including whether adults in the household have a job – can affect a child's health, emotional wellbeing, education and ability to take part in social activities. In 2017-18, there were 2 million low-income households in Australia, about a quarter of which had at least 1 dependent child aged 0-14.

Ms York said there is always more to learn about children and their experiences, including how children transition through major developmental stages and how longer-term outcomes may vary depending on childhood circumstances.

“In particular, it is important to learn more about

how certain groups of children are faring, including those with a disability, those from culturally or linguistically diverse backgrounds, and those who identify as lesbian, gay, bisexual, trans and gender diverse, or children who have intersex variations,” Ms York said.

“It is also important to gather more evidence about children's own perspectives on issues affecting their lives and development, to ensure children's views are heard.”

***Australia's Children* is the AIHW's first comprehensive report on children since 2012. It updates and extends data about Australia's children and provides suggestions for how to fill known information gaps.**

Australian Institute of Health and Welfare (17 December 2019).  
*The wellbeing of Aussie kids varies by family circumstances and where they live* (Last updated 18 December 2019).  
Retrieved from [www.aihw.gov.au](http://www.aihw.gov.au) on 12 November 2020.

# UNITED NATIONS CALLS ON AUSTRALIA TO DO MORE FOR CHILDREN

The **Australian Human Rights Commission** offers an update on the latest UN review into Australia's obligations to protect children and young people

The UN Committee on the Rights of the Child is calling on Australia to prioritise raising the age of criminal responsibility as part of its Concluding Observations on Australia's performance in protecting the country's children and young people. This comes at a time when there is a strong push around the country to improve our responses to juvenile offending and do more to divert children from criminal justice systems.

The current age of criminal responsibility in Australia is ten. The Committee has proposed raising it to fourteen.

*A number of areas of concern were raised, including: the high number of children in care and justice systems; the continuing practice of forced sterilisation of children with disability; and the lack of opportunities for children to participate in decision making.*

"After more than six years in this role, it is clear to me that Australia needs robust and tangible leadership to build a comprehensive strategy to advance children's rights and interests. The Committee has pointed to this major gap in our commitment to children, without which we continue to pursue piecemeal policies that fail to acknowledge the interrelatedness of rights and wellbeing issues for children," said Australia's National Children's Commissioner, Megan Mitchell.

Australia appeared before the Committee on the Rights of the Child in Geneva in September, in the year of the 30th anniversary of the *Convention on the Rights of the Child*. The appearance, which takes place every five years, gave the Committee an opportunity to review Australia's progress and included reports and submissions from the Australian Human Rights Commission, the Australian Government, and civil society organisations. The National Children's Commissioner addressed the Committee prior to the Australian Government's appearance.

The Committee considered Australia's progress in meeting its obligations to children under the *Convention on the Rights of the Child*.

The Concluding Observations call for a comprehensive national strategy to advance the rights of children to include:

- Improvements in data to monitor child wellbeing;
- Addressing homelessness and poverty among children;
- Measures to address the mental health needs of children; and
- Prioritising investments in prevention and diversionary programs.

The new National Data Commissioner, the appointment of an Assistant Minister for Children and Families, the establishment of National Children's Commissioner, and the National Framework for Protecting Australia's Children were referenced in the Committee's Concluding Observations as positive measures taken by the Australian Government in meeting its obligations under the Convention.

"The Committee has struck an appropriate balance between recognising the many good policies and developments in Australia to foster the wellbeing of our children while also highlighting the critical human rights concerns facing children in our communities," said Commissioner Mitchell.

However, Commissioner Mitchell says a number of areas of concern were raised by the Committee, including: the high number of children in care and justice systems; the continuing practice of forced sterilisation of children with disability; and the lack of opportunities for children to participate in decision making.

Another key area of concern was the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care and juvenile justice, and the need for greater support for Aboriginal controlled services for children. The Committee also called on the Government to end the arbitrary detention of child



refugees and asylum seekers.

The Concluding Observations highlight the need for robust, coordinated monitoring and reporting against the domains of the Convention, in line with Australia's stated commitments.

*Another key area of concern was the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care and juvenile justice, and the need for greater support for Aboriginal-controlled services for children. The Committee also called on the Government to end the arbitrary detention of child refugee and asylum seekers.*

Commissioner Mitchell said Australia needed to redouble its efforts to ensure that the rights articulated in the Convention were embedded by governments at every level in policies, programs and laws – at national, state and territory levels.

“Investing in children in the ways suggested by the Committee is in Australia's interests, and will result in happier, healthier children, and a safer, more productive and cohesive society,” said the Commissioner.

Ms Mitchell is calling on the Australian Government to provide a response to the Committee's observations and how it is implementing the reforms needed to advance children's rights in Australia within one year.

“I will be presenting a report to the Government later in the year on the state of children's rights in Australia, highlighting the Committee's observations and pointing to areas where Australia needs to take urgent action. This report will also showcase the views of the many thousands of children I consulted with in the lead-up to Australia's appearance,” she said.

The next periodic report by Australia under the Convention is due on 15 January 2024.

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Australian Human Rights Commission (4 October 2019). *UN calls on Australia to do more for children*. Retrieved from <http://humanrights.gov.au> on 6 November 2020.

## AUSTRALIAN CHILDREN'S RIGHTS AND THE UNITED NATIONS

### The reporting process explained by the **Australian Child Rights Taskforce**

#### Reporting on the *Convention on the Rights of the Child*

- ▶ Countries that have ratified the United Nations *Convention on the Rights of the Child* and its Optional Protocols are periodically reviewed by the UN Committee on the Rights of the Child to ensure governments are upholding the rights of their children.
- ▶ The *Convention on the Rights of the Child* is the only international human rights treaty that expressly gives non-government organisations a role in monitoring its implementation (under article 45a) and in Australia, the Australian Child Rights Taskforce plays a key role in this process.
- ▶ This is an important and powerful way for the Australian Child Rights Taskforce to monitor and help improve children's rights in Australia, as it ensures that the experiences of Australia's children and young people are heard before the Committee.

#### About the UN Committee on the Rights of the Child

- ▶ The UN Committee on the Rights of the Child is a body of 18 experts from around the world set up to monitor the implementation of the *Convention on the Rights of the Child* and its Optional Protocols – children in armed conflict; the sale of children, child prostitution and child pornography; and establishing an international complaints procedure for violations of children's rights – in countries that have ratified the *Convention on the Rights of the Child*.
- ▶ The Committee sits periodically in Geneva to consider reports presented by ratifying countries. In its deliberations, the Committee examines the report submitted by the

country concerned. It can ask the government for further information or clarification. The Committee also encourages non-government organisations to provide an alternative report to the official government report so that it has a more rounded view of a country's progress. The Committee can also ask UN accredited agencies, such as UNICEF, to provide information about a particular country.

- ▶ The Committee then considers the reports and briefing received from Government, civil society and children and young people, and releases recommendations, known as the Concluding Observations. These recommendations explain how the Australian Government can improve implementation of the *Convention on the Rights of the Child*, uphold the rights of all children and identify the children at most risk in Australia.

#### Australia's role in the reporting process

- ▶ Australia ratified the *Convention on the Rights of the Child* in December 1990, which means that Australia has a duty to ensure that all children in Australia enjoy these rights. The Australian Government presented its last report to the UN Committee on the Rights of the Child in 2018. The next periodic report by Australia under the Convention is due in January 2024.
- ▶ While the Government has responsibility to consider what the Committee says and to make its laws, policies and processes better for children and young people, it cannot be forced to do this.

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Australian Child Rights Taskforce. *Reporting on the Convention on the Rights of the Child*. Retrieved from [www.childrights.org.au](http://www.childrights.org.au) on 2 March 2021.

# A CHILDREN'S RIGHTS FRAMEWORK

## The Australian Human Rights Commission explains why Australia should introduce a comprehensive children's rights framework

### Background

The *Convention on the Rights of the Child* (CRC) requires that countries put in place comprehensive laws, policies, systems and plans to realise the promises made to children in the CRC. In Australia, there are few laws and policies at the national level that protect human rights, and specifically children's rights.

In 2018, Australia submitted its combined 5th and 6th periodic report on children's rights to the UN Committee on the Rights of the Child. In September 2019, the Committee issued its Concluding Observations on Australia's progress. The Committee recommended that 'the Australian Government adopt a national comprehensive policy and strategy on children that encompasses all areas of the Convention, with sufficient human, technical and financial resources for implementation'.<sup>1</sup>

In February 2020, the National Children's Commissioner released her statutory report – *In Their Own Right: Children's Rights in Australia* – which highlights the Committee's Concluding Observations and recommends that Australia introduce a comprehensive children's rights framework.

### Key issue – a nationwide children's rights framework

Apart from the activities of the National Children's Commissioner, there is no national platform from which to advance children's rights across the domains of the CRC.

### AUSTRALIA'S THIRD UNIVERSAL PERIODIC REVIEW

- The Universal Periodic Review is a peer-review dialogue undertaken by the United Nations (UN) Human Rights Council and all 192 Member States of the UN.
- Every 5 years, the UPR considers the progress of every country in the realisation of all human rights. It identifies human rights achievements and challenges, with countries making recommendations to the country undergoing review.
- The UPR is an opportunity to: take stock of how well we are protecting the human rights of all people in Australia; inform the international community of the human rights situation in Australia; engage with other countries about specified steps Australia will take to improve the enjoyment of human rights in Australia.
- Australia has undergone two reviews, in 2011 and 2015. Australia's third cycle review was held at the 37th Session of the UPR Working Group in January-February 2021.
- Reviews take place on the basis of three documents:
  - The national report prepared by the Australian Government
  - The United Nations human rights report
  - The stakeholders report which includes contributions by the AHRC and NGOs from Australia.

Australian Human Rights Commission. *Australia's Third Universal Periodic Review*. Retrieved from <http://humanrights.gov.au> on 24 February 2021.

For example:

- The legal protections of children's rights in Australia are not comprehensive and do not provide an effective remedy for violations. While the Parliamentary Joint Committee on Human Rights assesses whether new legislation, including the CRC is consistent with Australia's human rights obligations, the committee has limited capacity and has not been able to review all relevant bills.
- There is no national level coordination of the many policy initiatives that exist across all governments relating to children. Existing national initiatives concentrate on challenges facing specific groups of children. For example, the National Framework for Protecting Australia's Children (2009-2020) primarily focuses on child abuse and neglect.
- Australia does not have budgeting processes that specifically track the allocation of resources to all children.
- There are significant and serious gaps in the data that is collected and is publicly available on children.
- Independent monitoring of children's rights, including the ability for children to make complaints, is limited. The Australian Government has indicated that it is not planning to ratify the Optional Protocol to the CRC on a Communications Protocol, which provides that individual children can submit complaints to the UN Committee about specific violations of their rights.
- No ministerial council has direct accountability for the wellbeing of Australia's children. In 2018, the Australian Government created the role of Assistant Minister for Children and Families within the Social Services portfolio. However, without a senior Minister equipped with relevant resources and mandate, nor a dedicated cross-jurisdictional council, children's issues may not be able to be advanced in a meaningful, coordinated way.
- Although the National Children's Commissioner and the Australian Human Rights Commission develop educational resources for schools, human rights education modules are not a mandatory part of the national school curriculum.

### Recommendation

Government fully incorporate the CRC into Australian law; develop a National Plan for Child Wellbeing and a national children's data framework, using the CRC as its foundation; and create a Cabinet-level Minister with overall responsibility for children's rights.

### ENDNOTES

1. United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (30 September 2019) para 8.

Australian Human Rights Commission. *A Children's Rights Framework*. Retrieved from <http://humanrights.gov.au> on 6 November 2020.

# Children's commissioners and guardians

*This resource sheet from **Child Family Community Australia** outlines the role and duties of children's commissioners and guardians, and their functions in each Australian jurisdiction*

Children have a special need for protection and policies. Australia recognises this as a signatory to the *Convention on the Rights of the Child* (United Nations, 1989). The convention states that actions concerning children's lives, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, must be undertaken with a specific understanding of their needs and rights.

One of the ways Australia meets this and other obligations under the convention is through the establishment of children's commissioners and guardians. These independent bodies have been in place in Australian states and territories since 1996 and are integral to providing a voice for children in decision making.

## WHAT IS A COMMISSIONER AND WHY ARE THEY IMPORTANT?

A commissioner for children and young people works within an independent statutory body, known as a children's commission. Their primary role is to advocate for children's rights, and to examine and review legislation, policy and practices that affect the health, welfare, care, protection and development of children. Commissioners also report and make recommendations to their state parliament or legislative assembly on issues concerning children and young people.

The establishment of children's commissions, or their equivalent, in all states and territories has been

important for providing children with an independent voice that aims to uphold children's rights. A commission's independence from government is important for providing children with a representative body solely concerned with protecting and promoting their rights, without other political influences.

As well as a commissioner or guardian in each state or territory, Australia also has a National Children's Commissioner and an e-Safety Commissioner. After several campaigns to establish a National Children's Commissioner, Megan Mitchell was appointed in March 2013. The appointment of a national commissioner was also identified as a key outcome of the National Framework for Protecting Australia's Children 2009-2020 (*Council of Australian Government, 2009*).

The National Children's Commissioner sits within the Australian Human Rights Commission, an independent statutory body for human rights. As National Children's Commissioner, Ms Mitchell plays a key role in promoting the rights of Australian children in policy and practice, and her role complements that of existing state and territory commissioners.

The *Enhancing Online Safety Act 2015* established the office of the Children's e-Safety Commissioner within the Australian Communications and Media Authority. The Commissioner's role was initially set up to cover the promotion and enhancement of online safety for children but, in 2017, the act was amended to expand the Commissioner's remit to all Australians, with the



office becoming known as the e-Safety Commissioner (*Office of the e-Safety Commissioner, 2018*).

Julie Inman Grant was appointed to the role in January 2017 for a five-year term. The e-Safety Commissioner's key role is to promote and enhance online safety for all Australians. This includes: running a complaints service for young Australians who have experienced cyber-bullying; providing reporting options, support and resources for victims of image-based abuse; and investigating complaints on prohibited online content (*Office of the e-Safety Commissioner, 2018*).

Twice a year, the various commissioners, guardians and advocates across Australia meet together as the Australian Children's Commissioners and Guardians (ACCG).

The group aims to:

- Promote and protect the rights, safety and wellbeing of children and young people
- Ensure children are considered, and have a voice in public policy and program development
- Drive systemic improvement in areas that impact on the rights, interests and wellbeing of children and young people (*ACCG, 2017*).

### WHAT IS THE DIFFERENCE BETWEEN A COMMISSIONER AND A GUARDIAN?

A children's commissioner works to improve and ensure better services for all children. A children's guardian works solely to help improve the services for children in the care of a department. Not all states and territories have a commissioner and a guardian. In most states and territories, the commissioner also acts as the guardian. Queensland, South Australia and New South Wales have separate commissioners and guardians.

### HOW IS A COMMISSIONER APPOINTED?

The National Children's Commissioner is appointed by the Governor-General, once the Prime Minister is satisfied that the person has the appropriate qualifications, knowledge or experience. The e-Safety Commissioner is appointed by the Minister of Communications.

In each jurisdiction, the governor or administrator of a state or territory government appoints a commissioner and/or guardian. The role of a commissioner or guardian is established in accordance with a state or territory act of parliament (*details of each state and territory act can be found in Table 1*).

### WHO ARE THE COMMISSIONERS AND WHAT LEGISLATION GOVERNS THEM?

Table 1 provides a national overview of children's commissions in Australia, identifying the relevant body in each jurisdiction, along with the legislation providing for the commission and the current commissioner and/or guardian.

### WHAT DO OFFICES OF COMMISSIONERS AND GUARDIANS DO?

The role and activities of children's commissions and guardians differ between jurisdictions. Some take a broad focus and represent all children and young people, while others focus on children and young people who are at risk or those who come into contact with child protection systems.

As well as advocating for children's rights and reviewing legislation, children's commissioners and guardians may also:

- Provide community education
- Promote child-safe environments



**TABLE 1: COMMISSIONS, RELEVANT LEGISLATION AND COMMISSIONER/GUARDIAN DETAILS IN AUSTRALIA**

Jurisdiction	Details	Act	Head/officeholder
<b>National</b>	The National Children’s Commissioner is an independent statutory office within the Australian Human Rights Commission.	<i>Australian Human Rights Commission Amendment (National Children’s Commissioner) Act 2012 (Cth)</i>	Anne Hollands
<b>National</b>	The Office of the e-Safety Commissioner is an independent statutory office within the Australian Communications and Media Authority.	<i>Enhancing Online Safety Act 2015 (Cth)</i>	Julie Inman Grant
<b>ACT</b>	The Children and Young People Commissioner is an independent statutory office within the ACT Human Rights Commission.	<i>Human Rights Commission Act 2005 (ACT)</i>	Jodie Griffiths-Cook, Commissioner
<b>NSW</b>	The NSW Advocate for Children and Young People is an independent statutory office reporting directly to the NSW Parliament.	<i>Advocate for Children and Young People Act 2014 (NSW)</i>	Andrew Johnson, Advocate
<b>NSW</b>	The NSW Children’s Guardian is an independent statutory office within the NSW Office of the Children’s Guardian and reports directly to the Minister for Family and Community Services and to the NSW Parliament.	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	Janet Schorer, Guardian
<b>NT</b>	The Children’s Commissioner works within the Office of the Children’s Commission NT. The commission is an independent statutory body reporting to the NT Legislative Assembly through the Attorney-General and Minister for Justice.	<i>Care and Protection of Children Act 2007 (NT); Children’s Commissioner Act 2013 (NT)</i>	Colleen Gwynne, Commissioner
<b>QLD</b>	The Principal Commissioner and the Commissioner work within the Queensland Family and Child Commission is a statutory body reporting to the Minister for Child Safety.	<i>Family and Child Commission Act 2014 (Qld)</i>	Cheryl Vardon, Principal Commissioner Phillip Brooks, Commissioner
<b>QLD</b>	The Office of the Public Guardian is an independent statutory body reporting to the Minister for Justice and the Attorney-General.	<i>Public Guardian Act 2014 (Qld); Guardianship and Administration Act 2000 (Qld)</i>	Shayna Smith, Public Guardian (Acting)
<b>SA</b>	The Commissioner for Children and Young People is an independent statutory body that reports to the Minister for Child Protection.	<i>Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)</i>	Helen Connolly, Commissioner
<b>SA</b>	The Guardian for Children and Young People works within the SA Office of the Guardian for Children and Young People. This is an independent body that reports to the Minister for Child Protection.	<i>Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)</i>	Penny Wright, Guardian
<b>Tas.</b>	The Commissioner for Children and Young People is an independent, statutory office responsible to the Parliament of Tasmania.	<i>Commissioner for Children and Young People Act 2016 (Tas.)</i>	David Clements, Commissioner
<b>Vic.</b>	The Principal Commissioner for Children and Young People works within the Children’s Commission and reports to the Minister for Families and Children.	<i>Commission for Children and Young People Act 2012 (Vic.)</i>	Liana Buchanan, Principal Commissioner
<b>Vic.</b>	The Commissioner for Aboriginal Children and Young People works within the Children’s Commission and reports to the Victorian Parliament.	<i>Commission for Children and Young People Act 2012 (Vic.)</i>	Justin Mohamed
<b>WA</b>	The Commissioner is independent and reports to the WA Parliament.	<i>Commissioner for Children and Young People Act 2006 (WA)</i>	Colin Pettit, Commissioner

- Administer child death inquiries or reviews
- Provide pre-employment screening for people in child-related employment
- Conduct research on issues affecting the safety and wellbeing of children.

Table 2 provides a summary of the main activities and the role of each state and territory commission.

For further information regarding state legislation, readers are encouraged to visit state and territory commissioner websites (see Table 1).

**TABLE 2: SPECIFIC ROLES AND ACTIVITIES OF COMMISSIONERS AND GUARDIANS**

Jurisdiction	Role of commissioner/guardian
<b>National</b>	The commissioner's role is to promote respect and understanding of the human rights of children in Australia through research, education and discussion; and to ensure government policy and legislation recognises and protects the human rights of children ( <i>Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012</i> ).
<b>ACT</b>	The commissioner's role is to: consult with children and young people on issues that are important to them and support others to consult with children and young people; ensure the commission is accessible to children and young people; resolve complaints and concerns; and review systemic issues that affect children and young people such as changes in policy or legislation, new research findings or service improvements ( <i>Australian Human Rights Commission Act 2005</i> ).
<b>NSW</b>	The advocate's role is to: consult with and promote the participation of children and young people in decision making; make recommendations to legislation, policies, reports and practices that affect children and young people; conduct research and inquiries into issues that affect children and young people; and work with the minister to prepare NSW's strategic plan for children and young people ( <i>Advocate for Children and Young People Act 2014</i> ). The guardian's role is: to promote the rights and interests of children and young people in out-of-home care; implement and monitor the Working With Children Check; and administer accountability measures for child employment, carers, adoption services, out-of-home care services and the <i>Child Sex Offender Counsellor Accreditation Scheme</i> ( <i>Children and Young Persons (Care and Protection) Amendments Act 2006</i> ).
<b>NT</b>	The commissioner's role is: to protect and care for vulnerable children through investigating complaints, undertaking inquiries and monitoring responses to complaints and inquires; monitor the <i>Care and Protection of Children Act 2007</i> (NT) and Territory Families' response to abuse allegations; convene the Child Deaths Review and Prevention Committee; and promote awareness of the rights, interests and wellbeing of vulnerable children ( <i>Children's Commissioner Act 2016</i> ; Northern Territory Government, 2018a). The Royal Commission into the Protection and Detention of Children has recommended changes to these roles, recommending that the Children's Commissioner be replaced by a new Commission for Children and Young People. It was recommended that this new body has greater remit and powers than the current commission and that it covers all children and young people, not just those defined as vulnerable (Royal Commission, 2017). The Northern Territory Government has announced that it will implement the intent and directions of these recommendations and will establish the new commission within three years following a consultation process to determine its final design and responsibilities (Northern Territory Government, 2018b).
<b>QLD</b>	The principal commissioner and the commissioner have a number of functions that enables the commission to promote the safety, wellbeing and best interests of children and young people in Queensland. These are: overseeing and improving the child protection system; ensuring the community is informed about services for children and families; coordinating research to inform policy and practice; advising on legislation, policy, practice and service delivery; and working to build capacity and increase collaboration to improve services for children, young people and families ( <i>Family and Child Commission Act 2014</i> ). The Office of the Public Guardian supports children in care through two programs; the community visitor program and the child advocacy program. The community visitor program provides children in out-of-home care with face-to-face visits where a community visitor works with the child to ensure their rights and interests are met. Within the child advocacy program, child advocates are lawyers who provide support and representation on legal matters to children or young people in the child protection system ( <i>Family and Child Commission Act 2014</i> ; <i>Public Guardian Act 2014</i> ; Queensland Government, 2016).
<b>SA</b>	The commissioner's role is to promote and advocate for the rights, interests and wellbeing of children and young people. This is done through: making recommendations to government and examining systemic issues relating to children and young people; conducting research and producing reports; and ensuring that South Australia meets its international obligations. The commission also seeks to engage children and young people to encourage their participation in decision making that affects their lives (Government of South Australia, 2018; <i>The Children and Young People (Oversight and Advocacy Bodies) Act 2016</i> ). The guardian's role is to: advocate for, monitor and promote the best interests of children and young people under guardianship of the minister, and to advise the minister about whether their needs are being met; and to conduct inquiries and advise the minister about systemic reform to the out-of-home care system (Government of South Australia, 2005).

<b>Tas.</b>	The commissioner's role is to: monitor, promote and advocate for the rights, interests and wellbeing of children and young people; promote and encourage the participation of young people in decision making; support policy development on matters that relate to children and young people; and assist Tasmania to meet national and international obligations around children and young people ( <i>Commissioner for Children and Young People Act 2016</i> ; Government of Tasmania, 2018).
<b>Vic.</b>	The Principal Commissioner and the Commissioner for Aboriginal Children and Young People lead the Commission for Children and Young People. The commission has three main functions: undertaking policy analysis, research and communicating findings on issues relevant to children and young people; conducting child death and other inquiries, and informing systemic reform in the child protection and broader service system; and monitoring out-of-home care and other services for vulnerable children and young people, including receiving reports of serious incidents ( <i>Commission for Children and Young People Act 2012</i> ).
<b>WA</b>	The commissioner's role is to advocate on behalf of children and young people; consult with children, young people, families and relevant organisations and promote their participation in decision making; undertake and commission research and inquiries to do with children and young people's wellbeing; monitor children and young people's complaints made against government agencies and the investigation of these complaints; and review legislation, policies, practices and services that affect children and young people ( <i>Commissioner for Children and Young People Act 2006</i> ).

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**This information is provided as a guide only – it is current up to the date of publication. Individuals are encouraged to check the currency of any information that is provided by contacting relevant departments or organisations.**

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# UN child rights report card on Australia shows governments are failing kids

*UN child rights experts have called on all Australian Governments to raise the age at which they can lock children up from 10 to 14 years and to ban the use of solitary confinement and the use of force, including restraints, on children. Report by the **Human Rights Law Centre***

**S**hahleena Musk, Senior Lawyer at the Human Rights Law Centre, said that all Australian governments need to act immediately to change laws and policies which have been shown to harm children.

“Prisons are hard cold places that do nothing to help children turn their lives around. All children should be protected from practices that impair and disrupt their healthy development, such as the use of restraints and solitary confinement.”

“Ten-year-old kids belong in schools and playgrounds, not in prisons, but Australia’s archaic laws are ripping children from their families, community and culture and throwing them into concrete cells. Decent politicians would raise the age of criminal responsibility to prevent harm to vulnerable children behind bars,” said Musk.

The UN child rights experts said that Australian Governments should be doing more to protect and promote child rights, and expressed serious concern over:

- ‘the low age of criminal responsibility’;
- ‘the enduring over representation of Aboriginal and Torres Strait Islander children’ in the justice system;

- Abuse and mistreatment of children in detention including being ‘frequently subjected to verbal abuse and racist remarks’, ‘deliberately denied access to water’, ‘restrained in ways that were potentially dangerous’, and ‘subjected to isolation excessively’; and
- The high number of children in detention, particularly on remand.

The Human Rights Law Centre, child rights advocates and health experts across Australia are all calling for changes to laws and policies that would prevent harm to vulnerable children.

“Raising the age is common sense, but it is also backed up by the science. Kids of this age just don’t have the emotional or mental maturity to fully grasp the consequences of their actions. It’s up to us adults to help kids to learn and develop responsibly rather than dumping them into the quicksand of the criminal legal system. We can and must do better by our kids,” said Musk.

## Background to the Convention on the Rights of the Child review

The UN *Convention on the Rights of the Child* is an international human rights agreement adopted in 1989 by the UN General Assembly. It sets out the rights for children, taking into account their need for special assistance and protection due to their status and vulnerability.

In ratifying the agreement, Australia accepted responsibility to take all steps to protect, respect and fulfil children’s rights in Australia. As part of this framework, a Committee called the Committee on the Rights of the Child – a panel of experts on child rights – monitors implementation, and reviews compliance with the Convention. Australia’s previous review was in 2012.

The HRLC submitted a report, *Justice for Children*, to the Committee in November 2018, which can be downloaded at: <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5bda4cba0e2e72d16720f38c/1541033153730/HRLC+CROC+Shadow+Report++Australia+2018.pdf>

The Concluding Observations of the Committee on the Rights of the Child can be found at: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/CRC\\_C\\_AUS\\_CO\\_5-6\\_37291\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/CRC_C_AUS_CO_5-6_37291_E.pdf)

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# 'The Australian government is not listening': HOW OUR COUNTRY IS FAILING TO PROTECT ITS CHILDREN

The UN said it was 'seriously concerned' about the rise in mental health problems among children in Australia, including those from refugee and asylum-seeking families. By **Faith Gordon** and **Noam Peleg**

Last month, Australia appeared before the UN Committee on the Rights of the Child in Geneva for a five-year assessment of the government's progress in protecting the rights of children. The hearing included submissions from the Australian government, the Australian Human Rights Commission and civil society organisations on everything from youth justice issues to children's health and wellbeing.

Among those who spoke at the hearing was 12-year-old Djujan Hoosan from Arrernte and Garrwa country in central Australia, who called on the Australian government to stop imprisoning 10-year-olds, support Aboriginal-led education programs, and respect the culture and rights of all children in Australia.

*I came here to speak with you because the Australian government is not listening. Adults never listen to kids like me. But we have important things to say.*

He is believed to be the youngest person ever to address the UN Human Rights Council.

On Friday, the UN committee handed down its report – and it paints a gloomy picture. The committee was extremely critical of the Australian government on a range of issues. These included the high numbers of children in care and the criminal justice system, the continued forced sterilisation of children with disabilities, the government's treatment of refugee and asylum-seeking children, and the lack of meaningful opportunities for children to participate in decision-making on policies that affect their lives.

Many of the recommendations go to the heart of the ingrained political, cultural and legal inferiority of children in Australia.

## Children and the criminal justice system

The Australian government played a major role in the drafting and passage of the UN *Convention on the Rights of the Child* nearly 30 years ago and was among its first signatories. The convention is one of the most ratified human rights treaties in history. It plays an important role in defining and upholding the rights of children.

Despite this, Australia still does not have a national strategy to ensure the implementation of appropriate protections of children's rights.

The youth justice system in Australia, for example, has been described for some time as being in crisis. In 2017, the Royal Commission into the Protection and Detention of Children in the Northern Territory shone a light onto some of the most serious violations in Australia's youth justice system. It found that over the past decade, children in the NT were frequ-



The committee was extremely critical of ... the high numbers of children in care and the criminal justice system, the continued forced sterilisation of children with disabilities, the government's treatment of refugee and asylum-seeking children, and the lack of meaningful opportunities for children to participate in decision-making on policies that affect their lives.

ently mistreated, abused, humiliated and left alone for long periods. The local government has done little to address the issues since then.

Queensland's youth justice system is now under scrutiny, after media reports earlier this year found that children as young as 10 were being housed in adult watch houses. Nationally, media reports and official statistics show the rising numbers of children being remanded in prison rather than being granted bail. This is contrary to international guidelines, which say that prison should only be used as a "last resort".



The UN committee report made a number of major recommendations on criminal justice issues, including urging the Australian government:

- To immediately raise the minimum age of criminal responsibility from 10 to an internationally acceptable age of 14
- To immediately implement the 2018 recommendations of the Australian Law
- Reform Commission to reduce the high rates of Indigenous children who are imprisoned
- To prohibit the use of isolation and force against children in detention, including the use of restraints, and immediately investigate all cases of abuse and mistreatment of children in detention
- To urge the Northern Territory and Western Australia to review and repeal mandatory minimum sentences for children.

Some of these recommendations were tabled over a year ago by the royal commission, but no major steps have been taken since.

The committee also urged Australia to explicitly prohibit corporal punishment of children in all settings, including homes, schools, detention centres and alternative care. It also called for laws in states and territories that permit “reasonable chastisement” to be repealed.

These laws currently allow adults to physically discipline children as long as it is “reasonable” in the circumstances. As campaigners against the practice rightly argue, “reasonable” is a vague term and open to interpretation. The UN committee wants it banned, as has recently taken place in Scotland.

### Mental health and suicide

The committee also said it was “seriously concerned” that the number of Australian children with mental health problems was on the rise. This is particularly so for children in Aboriginal and Torres Strait Islander communities or alternative care, those who are homeless, living in rural and remote areas or asylum seekers, those from culturally diverse backgrounds and LGBTI children.

The report noted that almost one in seven children were assessed with mental health problems, with suicide being the leading cause of death for those aged 15-24.

Among its recommendations to the government were:

- Prioritising mental health service delivery to children in vulnerable situations, such as those groups listed above
- Strengthening measures to ensure the side effects of certain drugs for ADHD are fully communicated to parents/guardians and children and that they are prescribed “as a measure of last resort”
- Continuing to provide children with education on sexual and reproductive health as part of the mandatory school curriculum.

### Political attitudes toward children

Finally, the committee also addressed the ways in which Australian politicians responded to children who took part in recent climate strikes. Prime Minister Scott Morrison brushed off children’s demands for climate action, while others made patronising comments about them being better off in the classroom than on the streets protesting.

The committee emphasised that the effects of climate change have an undeniable impact on children’s rights and expressed “its concern and disappointment” that the children’s climate change protests received a strongly worded negative response from those in authority, which demonstrates disrespect for their right to express their views on this important issue.

### Time for change

None of these changes will happen without political will. Civil society, human rights groups and state children’s commissioners have crucial roles to play in continuing to advocate on behalf of children and speak up when they are being mistreated and their rights are being infringed.

The committee’s report card is not a badge of honour, and it puts Australia on a list of countries that have the necessary resources to support their next generation, but are failing to do so.

### DISCLOSURE STATEMENT

Noam Peleg led, together with the Diplomacy Training Programme and UNSW Law, a Children’s Rights Monitoring Capacity Building Programme since 2017. Faith Gordon does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond her academic appointment.

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## THE CONVERSATION

Gordon, F, and Peleg, N (8 October 2019). *‘The Australian government is not listening’: how our country is failing to protect its children.* Retrieved from <http://theconversation.com> on 6 November 2020.

# WE MUST DO BETTER ON CHILDREN'S RIGHTS

Australia's first Children's Commissioner, Megan Mitchell has launched her final report – one of the most comprehensive assessments of children's rights ever produced in Australia, explains the **Australian Human Rights Commission**

The report makes clear that the mental health of Australian children is not being cared for sufficiently and that governments must do more to ensure children's wellbeing.

Commissioner Mitchell said: "Not only do children require better access to mental health services, but they also need earlier intervention and higher quality care."

The report calls on the Federal Government to develop a National Plan for Child Wellbeing and to appoint a Cabinet level Minister with responsibility for children's issues at the national level.

National data shows one in seven children aged four to 17 were diagnosed with mental health disorders in a 12-month period, and rates of suicide and self-harm are increasing. Suicide was the leading cause of death for children aged five to 17 in 2017, and Indigenous children accounted for almost 20% of all child suicides. There were 35,997 hospital admissions for self-harm in the ten years to 2017.

Other urgent concerns highlighted in the report include that, from 2013 to 2017 there was a 27% increase in reported substantiations of child abuse and neglect. The number of children in out-of-home care has increased by 18% over the last five years. Also, approximately 17% of children under the age of 15 live in poverty.

Commissioner Mitchell said: "The increase in neglect and abuse of children is a particularly worrying trend, as is the increase in children living in out-of-home care. We must do better."

The report shows children in vulnerable situations suffer most through a lack of government focus. This includes Indigenous children, children with a disability, those from culturally and linguistically diverse backgrounds, and LGBTI children.

*"There is a gap between the rights we have promised vulnerable children and how those rights are implemented. It is vital that we address the gap in order to better protect children's rights."*

Children's Commissioner, Megan Mitchell

Commissioner Mitchell said: "There is a gap between the rights we have promised vulnerable children and how those rights are implemented. It is vital that we address the gap in order to better protect children's rights."

Attorney General Christian Porter tabled the report in Parliament on Thursday, 6 February. The report is a culmination of the work Commissioner Mitchell has done throughout her seven-year term, which ends next month.

Australian Human Rights Commission (10 February 2020).  
*We must do better on children's rights*. Retrieved from  
<http://humanrights.gov.au> on 6 November 2020.



# CHILDREN'S RIGHTS: HOW IS AUSTRALIA PROGRESSING?

A brief overview from the Children's Rights Report 2019 – 'In Their Own Right', produced by the **National Children's Commissioner**

## POSITIVE DEVELOPMENTS

- *Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT)* was ratified in 2017.
- Establishment of the Office of the National Data Commissioner in 2018.
- Establishment of the Office of the e-Safety Commissioner in 2013.
- Since 2008, the number of infant deaths (children less than one year of age) has decreased.
- Australian transgender and gender diverse children can now access Stage 2 medical treatment without requiring court authorisation.
- Royal Commission into Institutional Responses to Child Sexual Abuse issued its final report in 2017. The Australian Government has accepted or accepted in principle most recommendations directed at it.
- Forced marriage criminalised under federal law in 2013.
- National Action Plan to Combat Human Trafficking and Slavery 2015-2019.
- *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012 (Cth)*.



- Child deaths by suicide and hospitalisations for intentional self-harm have increased.
- Significant inequalities in health, education, justice and child protection outcomes for Aboriginal and Torres Strait Islander children.
- Approximately 17% of children under the age of 15 live in poverty.
- 27% increase in reported substantiations of child abuse and neglect (2012-13 to 2016-17).
- The number of children in out-of-home care has increased by 18% over the last five years.
- Immigration detention remains mandatory for all unlawful non-citizens, including children.
- The age of criminal responsibility is ten, which is low compared to other countries.
- National security measures limit children's rights disproportionately.

## MIXED RESULTS

- No comprehensive national plan, policy, legislation or budgeting processes to support children's rights in Australia.
- Australia has not ratified the *Optional Protocol to the Convention on the Rights of the Child on a Communications Protocol*.
- Insufficient disaggregated national data that meet the requirements set out by the UN Committee.



- Establishment of the National Disability Insurance Scheme in 2013, but there are concerns about its implementation.
- Changes to the family law system better protect women and children, but children's voice and articles of the CRC require further prioritisation.
- National Redress Scheme for survivors of child sexual abuse in institutions commenced on 1 July 2018, but excludes some groups of survivors, including children currently under eight years of age.



Australian Human Rights Commission (October 2019). *Children's Rights Report 2019 – In Their Own Right: Children's Rights in Australia*, p.12. Retrieved from <http://humanrights.gov.au> on 6 November 2020.



# A BLUEPRINT FOR REFORM – KEY ACTIONS

These comprehensive recommendations bookend a report by the **Australian Human Rights Commission** entitled 'Children's Rights in Australia: a scorecard'

## WHAT IS NEEDED TO ENSURE CHILDREN'S RIGHTS IN AUSTRALIA ARE FULLY PROTECTED?

- The Australian Government should fully incorporate into Australian law its human rights obligations to children, by bringing its domestic laws and practice into conformity with the principles and provisions of the CRC, including by ensuring that effective remedies are available.
- The Australian Government should introduce child rights and wellbeing impact assessments on legislative changes that affect children's rights.
- The Australian Government should review the parliamentary human rights scrutiny of bills process to ensure it is properly resourced and ensures avenues for public input.
- The Australian Government should ensure training about human rights, and children's rights specifically, for all public servants and parliamentarians.
- The Australian Government should commit to establishing a formal Ministerial Council that has primary carriage for advancing the National Plan for Child Wellbeing as well as appointing a senior Minister with responsibility for children's issues.
- The Australian Government should ratify the *Optional Protocol to the CRC on a Communications Protocol* (the third Optional Protocol).
- Australian Governments, in conjunction with the Office of the National Data Commissioner, the Australian Bureau of Statistics and the Australian Institute of Health and Welfare, should develop a national children's data framework to ensure appropriate data collection that supports monitoring and policy making on children's rights issues.  
This should:
  - Address the key data gaps relating to children's rights and wellbeing
  - Be consistent with the requirements set out by the Committee on the Rights of the Child in its Guidelines on the inclusion of statistical information and data in periodic reports
  - Enable disaggregation by developmental phases and age groupings, and priority population groups such as Aboriginal and Torres Strait Islander children
  - Ensure national coverage of data collection, addressing gaps in current collection methods.
- The Australian Government should publicly report data on the implementation of the Sustainable Development Goals and indicators, including goals and indicators relating to children's rights.
- The Australian Government should support regular programs of education of children and adults about children's rights and the CRC, through schools, the Australian Public Service, and other settings.



## CHILDREN'S VOICES

- The Australian Government should resource the National Children's Commissioner to conduct consultations with children on decisions that affect them at the national level on an ongoing basis.
- The Australian Government should review and amend all relevant Commonwealth laws to require that children are provided with an opportunity to express their views in all matters that affect their rights or interests.

## CIVIL RIGHTS

- The Australian Government should adopt measures to promote birth registration of Aboriginal and Torres Strait Islander children, including education and awareness raising about the importance of birth registration.
- The Australian Government should insert a clearer definition of 'parent' into the *Family Law Act 1975* (Cth) for the purpose of clarifying the parent/child relationship for children born from surrogacy arrangements.
- The Australian Government should repeal section 38(c) of the *Sex Discrimination Act 1984* (Cth) which allows religious institutions to refuse education services to children on the basis of their sexuality, marital status and pregnancy.
- The Australian Government should amend the *Australian Citizenship Act 2007* (Cth) to stipulate that loss of citizenship by conduct should not be possible in the case of children and to increase the

age for loss of citizenship as a result of a criminal conviction to at least 14 years.

- The Australian Government should increase education activities targeted to children to promote an understanding of privacy and prevent image-based abuse and exposure to pornography.
- The Australian Government should ensure digital accessibility for children with disabilities, particularly in relation to online content, audio description and captioning to foster participation in wider society and education.

## SAFETY

- The Australian Government should increase prevention measures and responses to family violence that address the distinct impacts on children.
- Australian Governments should provide child-specific therapeutic intervention, counselling and early intervention programs for child victims of family and domestic violence, delivered across a range of services.
- Australian Governments should remove legal defences for the use of corporal punishment across all education, care and private settings, and implement educational programs for parents, carers and educators.
- The Australian Government should amend the *Family Law Act 1975* (Cth) to require that children are provided with an opportunity to express their views in all matters that affect their rights or interests. A child should not be compelled to express a view but should be provided with the

opportunity to do so in a manner appropriate to their age and maturity.

- Australian Governments should ensure all children receive respectful relationships education targeted to different group needs.
- The Australian Government should implement a nationally consistent, standardised model for checking the suitability of people in child-related work across all jurisdictions.
- The Australian Government should support the National Children's Commissioner and others to promote implementation of the National Principles in organisations working with and for children.
- The Australian Government should develop a federal victims compensation scheme for victims of trafficking, slavery and slavery-like conditions, including children.
- Australian Governments should achieve consistency between surrogacy laws and include criteria directed at the suitability of intended parents. If international surrogacy arrangements are to be permitted, such checks should also form part of the regulation of those arrangements. The Australian Government should:
  - Continue to engage with the Hague Conference on Private International Law in relation to the potential for an international convention dealing with the regulation of parentage and surrogacy
  - Engage with countries where Australians enter into surrogacy arrangements, for the purpose of determining whether bilateral agreement can be reached on the regulation of parentage and surrogacy
  - Undertake a systematic review of the structure and enforcement of regulatory regimes in countries where Australians enter into surrogacy arrangements.
- The Australian Government should consider including child marriage in definitions of family and domestic violence for the purposes of data collection, monitoring and access to service delivery, including prevention programs.
- The Australian Government should consider reviewing the *Marriage Act 1961* (Cth) to eliminate any exception to the minimum age of marriage of 18.
- Australian Governments should harmonise laws that criminalise female genital mutilation, and conduct awareness education for health professionals and communities.

## FAMILY LIFE

- Australian Governments should urgently prioritise:
  - Prevention and early intervention programs to reduce the number of children entering child protection systems
  - Removing barriers to sustained reunification of children with their families by strengthening services and supports leading up to and post-reunification.
- Australian Governments should ensure that data



gaps relating to outcomes for children in or having left child protection services are addressed in the national children's data framework.

- The Australian Government should widely publicise the availability of the Transition to Independent Living Allowance for children in out-of-home care, making it available for all care leavers leaving home up to the age of 25, and directly accessible from Centrelink.
- Australian Governments should improve exit planning, supports and monitoring of outcomes for young people leaving out-of-home care, including consideration of increasing the age of leaving out-of-home care.

## HEALTH

- The Australian Government should develop a dedicated strategy to communicate and engage with children and young people about the National Disability Insurance Scheme, including to receive their feedback.
- The Australian Government should introduce legal protections to prevent sterilisation of children with disability without consent.
- The Australian Government should expand and fund the delivery of child-targeted mental health and other necessary support services.
- The Australian Government should establish a national research agenda on children and young people engaging in intentional self-harm and suicidal behaviour to improve our ability to prevent and respond to these behaviours. The agenda should prioritise:
  - Understanding the multiplicity of risk factors for intentional self-harm and suicidal behaviour to effectively target and support children and young people
  - Understanding the impact and interrelated nature of protective factors
  - Direct participation of children and young people in research
  - Understanding the incidence of and mechanisms leading to intentional self-harm without suicidal intent
  - Evaluating effectiveness of services after a suicide death
  - Investigating ways to restrict access to the means used for intentional self-poisoning
  - Finding effective ways to encourage children and young people to access appropriate help or support for early signs and symptoms of difficulties.
- The Australian Government should support implementation of the National Fetal Alcohol Spectrum Disorder Strategic Action Plan 2018-2028 and address the recommendations made by the Senate Inquiry into Effective Approaches to Prevention, Diagnosis and Support for Fetal Alcohol Spectrum Disorder.
- The Australian and New Zealand Child Death Review and Prevention Group should be supported to

continue its work in relation to the development of a national child death database, in conjunction with the Australian Institute of Health and Welfare.

- Australian Governments should ensure health systems and services meet the specific sexual and reproductive health needs of adolescents, including access to prescribed medical forms of contraception, safe abortion services and sexual health information.

## LIVING STANDARDS

- The Australian Government should develop a national poverty reduction plan that explicitly focuses on children.
- Australian Governments should work to increase social housing stock and affordable housing with a specific focus on the needs of homeless children and young people. This should form part of the overall strategy for advancing children's rights.
- Australian Governments should include children under 12 years of age in the Reconnect Program.
- The Australian Government should address inequality experienced by children living in regional and remote Australia through targeted measures.

## EDUCATION, LEISURE AND CULTURAL ACTIVITIES

- Australian Governments should commit to the National Quality Framework and support the Australian Children's Education and Care Quality Authority beyond 2020.
- Australian Governments should commit to enhancing universal access to quality early childhood education and care services.
- Australian Governments should monitor the progress of children who are developmentally vulnerable, especially in relation to whether changes to subsidies negatively impact on their experiences.
- The Australian Government in its Nationally Consistent Collection of Data on School Students with Disability should include children that do not qualify for support or do not have access to mainstream schools.
- The Australian Government should commission an investigation into the use of restrictive practices in Australian schools and strategies to promote inclusive education for children with disability.
- Australian Governments should ensure that data gaps relating to suspensions and expulsions are addressed in the national children's data framework.

## YOUTH JUSTICE

- The Australian Government should withdraw its reservation to article 37(c) of the CRC.
- Australian Governments should explicitly prohibit the use of isolation practices and force as punishment in youth justice facilities. These practices should only be permitted when necessary

to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted.

- Australian Governments should review existing systems of monitoring and inspection of youth justice facilities for compliance with OPCAT and amend their legislative frameworks accordingly.
- The Australian Government should establish a children's sub-group of the National Preventive Mechanism in Australia to ensure those with expertise and experience of working with children can provide specialist advice, information and recommendations.
- Australian Governments should better implement the principle of detention as a last resort by identifying and removing barriers for young offenders accessing diversionary programs, in particular for Aboriginal and Torres Strait Islander children.
- Australian Governments should expand the availability and range of diversionary programs for young offenders, including community-controlled and culturally-safe programs.
- Australian Governments should review bail laws for their impact on the number of children on remand in detention and ensure non-custodial options.
- Australian Governments should abolish mandatory minimum sentencing laws that apply to children.
- Australian Governments should raise the minimum age of criminal responsibility to at least 14 years.
- Australian Governments should ensure that laws that allow for children to be detained following a finding of unfitness to stand trial, or a verdict of not guilty by reason of mental impairment:
  - Impose effective limits on the total period of detention
  - Require regular reviews of the need for detention
  - Require a plan to be put in place, including actions to be taken for the child's rehabilitation to facilitate their transition into progressively less restrictive environments, and eventually out of detention.
- The Australian Government should:
  - Ensure that whenever a control order is imposed in relation to a person under 18 years of age, any obligations, prohibitions and restrictions imposed constitute the least interference with the child's liberty, privacy or freedom of movement that is necessary in all the circumstances
  - Amend national security laws so that the best interests of the child is:
    - A primary consideration at all stages in proceedings relating to the potential issue of an interim or confirmed control order
    - Not made subject to any higher order 'paramount consideration'.
  - Amend the *Crimes Act 1914* (Cth) so that minimum non-parole periods do not apply to children
  - Amend the *Crimes Act 1914* (Cth) so that presumptions against bail for persons accused of certain Commonwealth offences do not apply to children.

## ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

- Australian Governments should commit to targets to overcome the health disadvantage experienced by Aboriginal and Torres Strait Islander children (including child mortality, ear disease, obesity, mental health and sexual health) and adopt special measures to address the disparities in the enjoyment of rights, with the effective engagement of their communities, as part of the Closing the Gap Refresh process.
- The Australian Government should commit to a national statistical profile of ear disease and associated hearing loss for Aboriginal and Torres Strait Islander children based on diagnostic assessment.
- The Australian Government should support Aboriginal-controlled organisations and, where appropriate, their partners, to develop and implement a comprehensive sexual health education strategy for children and young people.
- The Australian Government should include education and prevention programs directed at younger children under the Fourth National Sexually Transmissible Infections Strategy 2018-2022.
- Australian Governments should resource Aboriginal and Torres Strait Islander organisations to prevent and respond to family violence and its impacts on children.
- Australian Governments should prioritise prevention and early intervention programs to reduce the number of Aboriginal and Torres Strait Islander children entering child protection systems, and remove barriers to sustained reunification of children with their families, by strengthening services and supports leading up to and post-reunification.
- Australian Governments should ensure Aboriginal and Torres Strait Islander voices are present at all levels of policy and practice decision making in relation to child protection interventions.
- Australian Governments should invest in Aboriginal and Torres Strait Islander specific programs in early childhood education and care, school attendance and retention, and literacy and numeracy.
- Australian Governments should invest in the teaching and maintenance of Indigenous languages in schools.
- Australian Governments should:
  - Identify and remove barriers for young offenders accessing diversionary programs, in particular for Aboriginal and Torres Strait Islander children
  - Establish a national, holistic and whole of government strategy to address Aboriginal and Torres Strait Islander imprisonment rates
  - Commit to introducing national justice targets for Aboriginal and Torres Strait Islander adults and children as part of the Closing the Gap Refresh.



### ASYLUM SEEKER AND REFUGEE CHILDREN

- The Australian Government should amend the *Migration Act 1958* (Cth) to prohibit placing children in closed immigration detention and use alternative community-based measures.
- The Australian Government should include in its immigration detention statistics all children residing in closed immigration detention facilities and alternative places of detention.
- The Australian Government should review current care, protection and support arrangements for children seeking asylum.
- The Australian Government should resettle all children and their families previously held on Nauru and removed to Australia for medical reasons, as a matter of urgency.
- The Australian Government should ensure that no child is sent to offshore detention for processing. Children should be able to reside in community-based accommodation and have their human rights respected while their claims for protection are being processed.
- The Australian Government should introduce legislation to amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to create an independent guardian role so that the Minister for the Department of Home Affairs is no longer the legal guardian of unaccompanied children seeking asylum.
- The Australian Government should implement the recommendations included in the Australian Human Rights Commission's *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload' Report 2019*, including by:
  - Granting permanent protection to all temporary protection visa holders who are determined to be in ongoing need of protection
  - Expediting the processing of the legacy caseload visa applications, including renewal of Bridging Visas
  - Establishing a dedicated support service for families

and children in the legacy caseload

- Ensuring those facing financial hardship remain eligible for income support under the Status Resolution Support Services program (including those whose applications are deemed 'finally determined')
- Increasing income support payments under the Status Resolution Support Services
- Implementing measures to facilitate family reunion for children and families.
- The Australian Government should provide appropriate and specific physical and psychological rehabilitation for all children arriving in, or returning to, Australia, who may have been involved in armed conflict.

### MOVING FORWARD

- The Australian Government should provide an interim public response on its implementation of the 2019 Concluding Observations made by the Committee on the Rights of the Child within twelve months, including actions it and state and territory governments will take in response to the Concluding Observations. This response should be developed in consultation with children.
- The Australian Government should develop a National Plan for Child Wellbeing using the CRC as its foundation. The development of the next phase of the National Framework for Protecting Australia's Children may provide a basis for this.
- The Australian Government should appoint a Cabinet level Minister with overall responsibility for driving children's issues at the federal level.

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Australian Human Rights Commission (20 November 2019). *Children's Rights in Australia: a scorecard*, pp. 29-40. Retrieved from <http://humanrights.gov.au> on 6 November 2020.

# Ten-year-olds do not belong in detention. Why Australia must raise the age of criminal responsibility

*At a time when there is so much attention on the need to end the racism in our justice system, raising the age of criminal responsibility is more important than ever, asserts **Chris Cunneen***

In Australia, children as young as ten can be held criminally responsible for their actions. This means they can be arrested by police, remanded in custody, convicted by the courts and imprisoned.

Next week, Australia's state and federal attorneys-general will meet to discuss raising the age of criminal responsibility. They cannot pass up this critical opportunity to change the way we treat vulnerable and marginalised children.

## **How Australia compares**

In Australia, the age of criminal responsibility is just ten years old. This is seriously out of step with international standards. In 2019, the United Nations Committee on the Rights of the Child recommended 14 years as the minimum age of criminal responsibility.

While the United Kingdom also has a minimum age of ten, most European nations have a minimum age of 14 years or higher.

## **Hundreds of children are locked up**

There is no available, recent national data on the number of young people who appear before children's courts, broken down in the ten to 13 age group. But several thousand children under 14 are estimated to appear on criminal matters each year, based on individual courts'

annual reports and earlier figures.

According to the Australian Institute of Health and Welfare, in 2018-19, 773 children under 14 were placed on court orders requiring supervision in the community by youth justice officers. More than 570 were placed in juvenile detention. Some 65% of these two groups were Aboriginal and Torres Strait Islander children.

## **Why we need to boost the age**

There are many well-founded and compelling reasons for increasing the minimum age of criminal responsibility in Australia to 14.

These include:

- The dramatic and devastating impact on Aboriginal and Torres Strait Islander children, given the high numbers of Indigenous children, aged ten to 13 in the youth justice system.
- Child development evidence showing children under 14 lack impulse control and have a poorly developed capacity to plan and foresee consequences.
- The disproportionate number of children coming from the child protection system into youth justice. According to a 2017 Australian Institute of Health and Welfare report, three in five children aged ten at the time of their first youth justice supervision were also in child protection.
- The high numbers of children in the youth justice system with mental health issues and cognitive impairment. A 2018 study found nine out of ten young people in Western Australian youth detention were severely impaired in at least one area of brain function. This obviously affects whether they can understand rules and instructions.
- The evidence also showing the earlier a child enters the justice system, the greater the likelihood of lifelong interaction with the justice system.
- The fact that young children in the justice system have high rates of pre-existing trauma and are "physically and neuro-developmentally vulnerable". Unsurprisingly, criminalisation and imprisonment have a further negative impact on a child's development. As the Royal Australasian College of Physicians notes:

*Young children with problematic behaviour, and their families, need appropriate healthcare and protection. Involvement in the youth justice system is not an appropriate response to problematic behaviour.*



## ***Do we really believe ten-year-olds know what they are doing?***

If we really believed ten-year-olds have the knowledge and developmental capacity to make life-changing decisions about what is right and wrong to a standard of criminal responsibility, then we would also treat them differently in other aspects of life.

We would have a much younger age for when children can engage in consensual sex, leave school, get married, sign a contract and vote. But we don't. We prefer to protect, assist and guide young children and adolescents into adulthood.

## ***Community, expert pressure to act***

There is a growing community campaign, calling on our leaders to raise the age of criminal responsibility to at least 14.

## ***Kids belong in classrooms and playgrounds, not in handcuffs, courtrooms or prison cells.***

Through my research on youth justice, colleagues and I have interviewed youth workers, detention centre managers, magistrates and solicitors and have never spoken to anyone who thinks bringing a ten-year-old child into the justice system is a good outcome.

One of the few sites of opposition to raising the minimum age has been from some police forces, who prefer to rely on the 14th century common law protection of *doli incapax*. The doctrine holds that if a child is between the ages of ten and 14, they are presumed not to be capable of forming criminal intent and the prosecution are required to rebut that presumption.

Overwhelming evidence shows *doli incapax* does not protect young vulnerable children and is not fit for purpose.

## ***There are other options***

There is widespread agreement among legal and medical experts that we can respond to children who are in conflict with the law in a far more supportive manner. Organisations such as the Law Council of Australia and College of Physicians have noted we need greater emphasis on support services, treatment, early intervention, prevention, justice reinvestment initiatives and community-led diversion programs, which are built on Indigenous authority and culture.

We also have the substantial experience of European jurisdictions to draw on, where welfare agencies focus on the wellbeing and safe development of children in situations where we would currently resort to police, courts and punishment.

## ***Historic opportunity***

In November 2018, the Council of Attorneys-General agreed to examine whether to raise the age of criminal responsibility. After commissioning a review, they are expected to discuss the issue at their July 27 meeting. There are no clear commitments about what might happen beyond this.

This cannot be just another meeting of politicians.\*

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## **RAISING THE AGE OF CRIMINAL RESPONSIBILITY**

**The age of criminal responsibility in Australia is the age below which a child is deemed incapable of having committed a criminal offence.**

All states and self-governing territories of Australia have adopted 10 years of age as a uniform age of criminal responsibility.

In 2019, the United Nations Committee on the Rights of the Child recommended 14 years as the minimum age of criminal responsibility. Concerns have been raised about the effects of criminalisation of such young children, and in particular the effects on Aboriginal Australians and Torres Strait Islander people, who are disproportionately represented in the statistics, often reflecting as well as increasing a cycle of disadvantage.

Since 2019, the Council of Attorneys-General Age of Criminal Responsibility Working Group has been tasked with considering submissions from a range of organisations and experts of various backgrounds regarding raising the age to 14.

In mid-2020 the Council indicated that more work needed to be done on alternative forms of punishment before they could make their recommendations.

Compiled by The Spinney Press.

It is a group of powerful policymakers with a historic opportunity to change the way we treat vulnerable and marginalised children. And in particular, to improve the way we treat Indigenous children and their development.

At a time when there is so much attention on the need to end the racism in our justice system, raising the age of criminal responsibility is more important than ever.

### **\* EDITOR'S NOTE**

Since 2019, the Council of Attorneys-General Age of Criminal Responsibility Working Group has been tasked with considering submissions from a range of organisations and experts of various backgrounds regarding raising the age to 14. In mid-2020 they indicated that more work needed to be done on alternative forms of punishment before they could make their recommendations.

### **DISCLOSURE STATEMENT**

Chris Cunneen receives funding from the Australian Research Council.

Chris Cunneen is Professor of Criminology, University of Technology Sydney.

## **THE CONVERSATION**

Cunneen, C (23 July 2020). *Ten-year-olds do not belong in detention. Why Australia must raise the age of criminal responsibility.* Retrieved from <http://theconversation.com> on 12 November 2020.

# WHY IS IT STILL LEGAL FOR ADULTS TO HIT CHILDREN AS PUNISHMENT?

It is still legal for parents and guardians to physically punish children in Australia, and in some states corporal punishment of pupils by teachers is also legally permitted, explains **Patrick Lenta** in this opinion piece for ABC News

In some states there is a common law defence permitting parents (and sometimes teachers) lawfully to administer “reasonable” corporal punishment, while in other states the defence is contained in legislation. That corporal punishment of children is legally tolerated is unfortunate.

## It’s time to change attitudes

All corporal punishment, no matter how mild or infrequently administered, irrespective of whether it is administered by parents or teachers, regardless of whether it is religiously or culturally motivated, what part of the child’s body is targeted or whether it is administered with an implement or the flat of the hand, is morally wrong and ought to be legally prohibited.

The most effective way to abolish corporal punishment by parents and teachers is to repeal the defence of “reasonable” corporal punishment to a charge of assaulting a child by enacting legislation that removes this defence and explicitly declares all corporal punishment in all settings to be unlawful.

The principal aim of legally proscribing corporal punishment should not be to criminalise parents, still less to send them to prison. The primary goal should be to alter people’s attitudes such that over time increasing numbers of them come to see it as morally wrongful.

In many countries in which corporal punishment has been legally proscribed, including Sweden and

New Zealand, the incidence of corporal punishment has been brought down appreciably in precisely this way.

Using the law as a tool effectively to reduce the incidence of corporal punishment also depends on providing education campaigns that explain why physical punishment is wrong. It also requires making parents aware of effective disciplinary alternatives – such as time-outs, extra chores or suspension of privileges.

## Will parents go to jail?

Parents may worry about being exposed to the risk of criminal liability for legitimate uses of force such as placing their child in a chair for a five-minute “time-out” or forcibly restraining a child who is attempting to run into the street.

But it is possible legally to ban corporal punishment while allowing care-givers to apply some force to the body of a child in their care for these purposes.

In New Zealand, the 2007 legislative amendment repealing the defence of corporal punishment allows care-givers to use force necessary for the purposes of preventing harm befalling children under their care and of “performing the normal daily tasks that are incidental to good care and parenting”.

Parents may also be concerned about being exposed to the risk of criminal punishment for smacking their child. But by using corporal punishment in violation of the legal prohibition, they show that they have not internalised the message communicated through the law that corporal punishment is wrong and should not be resorted to. And so we may in some cases need to persuade them more forcefully, through punishment, not to use it.

But that need not entail sending parents to prison, which would usually be worse for children than continuing to suffer corporal punishment. One possibility is to require corporal punishers to attend, as punishment, specialised programs focused on family violence, with a view to bringing home to them the nature and effects of corporal punishment.

## Psychological damage can be lifelong

Many people, including some parents and teachers, will oppose the prohibition of corporal punishment on the ground that it is not really wrongful. They are mistaken. Among the reasons to oppose all corporal punishment of children is that even relatively mild physical punishment carries the risk of serious psychological harm to children.



There is strong, if not entirely conclusive, evidence associating parental smacking with the risk of a range of undesirable behaviours and outcomes in children.

The findings of a 2016 analysis of the then-existing studies on the psychological effects of corporal punishment by two researchers, Elizabeth Gershoff and Andrew Grogan-Kaylor, reveal that parental spanking is associated with increased aggression, antisocial behaviour, mental health problems and low self-esteem in children, as well as negative parent-child relationships.

The evidence suggests that some of these undesirable psychological effects extend into adulthood.

Added to this is a risk that corporal punishment could – as it sometimes does – escalate into child abuse, that is, physical injury beyond short-lived physical pain, including bruising, loosened skin, broken limbs, disfigurement or internal injuries.

### The legal line is vague

To be sure, the legal authorisation of physical chastisement, whether by parents or teachers, is in all Australian states conditional upon its being ‘reasonable’ in the circumstances.

But “reasonable” is a vague term.

It gives parents and teachers no clear guidance about what severity of physical force they may safely and lawfully inflict on children in their care so that parents may inadvertently cross an ill-defined line that separates corporal punishment and abuse.

This leaves children, a vulnerable group, at risk of physical injury. It also exposes parents and teachers to the risk of criminal prosecution.

Sometimes efforts are made to provide clearer guidance concerning permissible corporal punishment.

In New South Wales, for example, the permissibility of parental corporal punishment is stated in the *Crimes Amendment (Physical Protection-Physical Mistreatment) Act 2001* No 89 to be conditional not only upon its being “reasonable” but also upon its not being inflicted on the child’s head or neck and on the harm it inflicts not lasting “for more than a short period”.

But a degree of vagueness remains. Parents are left to interpret what “a short period” amounts to, for example, and when their interpretation is at odds with that of legal officials they risk being criminally prosecuted.

Then there is the consideration that corporal punishment teaches children the wrong lesson about violence.

### Children are confused

Corporal punishment may be interpreted by children as an endorsement of the use of violence as a way of dealing with people who displease one or of whose conduct one strongly disapproves.

To combat the pressing social problem of recourse to violence we need as far as possible to discourage it. Abolishing practices such as corporal punishment will



Corporal punishment is a form of violence. And it degrades children by communicating to them the message that they lack sufficient worth to be treated with the respect accorded to adults.

go some way towards achieving that aim.

One of the weightiest considerations in favour of legally prohibiting corporal punishment is that it violates children’s rights under international law.

The United Nations *Convention on the Rights of the Child*, which Australia has ratified, accords children rights against “all forms of violence” and against degrading treatment or punishment.

Corporal punishment is a form of violence. And it degrades children by communicating to them the message that they lack sufficient worth to be treated with the respect accorded to adults, corporal punishment of whom we consider morally and legally unacceptable.

Sometimes corporal punishment degrades children in other ways too, as when, as a result of the physical pain visited upon them and anxiety elicited in anticipation of it and fear experienced during it, children lose control over their elementary human functioning, so that they soil themselves. They may experience great shame as a result.

When children internalise the message that they are “second-class citizens”, the result may be a loss of self-esteem – and that is something that children and society as a whole can ill afford.

**Patrick Lenta** is Associate Professor in the Law Faculty at University of Technology Sydney (UTS). His monograph, *Corporal Punishment: A Philosophical Assessment*, was published by Routledge.

Lenta, P (18 April 2019). *Why is it still legal for adults to hit children as punishment?* Retrieved from [www.abc.net.au](http://www.abc.net.au) on 6 November 2020.

# RIGHTS OF PARENTS AND CHILDREN

This public sector guidance sheet by the federal **Attorney-General's Department** is helpful in framing the respective rights of parents and their children

## What are the rights of parents and children?

In addition to the rights enjoyed by all persons under human rights treaties, parents and children enjoy special rights, particular to their status.

The rights cover:

- Best interests of the child
- Responsibilities, rights and duties of parents
- Separation of children
- Adoption of children
- Right of children to be heard
- Children in the criminal process
- Refugee children
- Families and disability.

Under the *Convention on the Rights of the Child* (CRC), children are persons under the age of eighteen.

## Where do the rights of parents and children come from?

Australia is a party to seven core international human rights treaties. The rights of parents and children are contained in article 3 of the *Convention of the Rights of the Child* (CRC) and article 24(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

See also articles 5, 9, 12, 18, 20, 21, 22 and 40 of the CRC, article 14(4) of the ICCPR, article 16 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and articles 3(h), 7, 18(2) and 23 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

## When do I need to consider the rights of parents and children?

You will need to consider the particular rights accorded to parents and children when you are working on legislation, a policy or a program that:

- Relates to any aspect of the care of children, including children with a disability, by parents or other guardians or informal carers
- Relates to any aspect of the welfare of children, such as child-care arrangements
- Relates to the care of children by people with disability
- Provides for the removal of children from parents or other persons responsible for their care
- Relates to any situation that would result in splitting up a family, or a parent and child, for example by forcing them to live apart or become separated
- Makes provision regarding the arrangements for children of parents who are imprisoned or detained
- Relates to the adoption, foster care, guardianship, permanent care and informal care of children within Australia
- Relates to inter-country adoption

- Relates to surrogacy
- Relates to any situation that would result in preventing the reunification of the child with their family and/or parent(s)
- Relates to any aspect of out-of-home care
- Relates to any aspect of the treatment of children in the criminal process, and/or
- Relates to the treatment of children who are refugees or who claim refugee status.

*This list should not be regarded as exhaustive.*

## What is the scope of the rights of parents and children?

The particular rights accorded to parents and children need to be considered in a number of policy contexts.

### **Best interests of the child**

Under the CRC, countries are required to apply the principle of best interests of the child. The principle applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and wellbeing, as well as measures to support and assist parents and others who have day-to-day responsibility for ensuring recognition of children's rights.

It requires all legislative, administrative and judicial bodies and institutions to systematically consider how children's rights and interests are or will be affected directly or indirectly by their decisions and actions.

### **Responsibilities, rights and duties of parents**

Under the CRC, countries are required to respect the responsibilities, rights and duties of parents or other persons who have responsibility for the child to provide direction and guidance in the child's exercise of the rights recognised in the CRC.

Countries are also required under the CRC to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child and to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, in particular to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible. Countries should ensure that parents and legal guardians are aware of their rights to access information on payments and services to which they are entitled to for the benefit of children.

Under the CRPD, countries are required to ensure the rights and responsibilities of people with disability with regard to guardianship and adoption of children and to render appropriate assistance to people with disability in the performance of their child-rearing responsibilities.

Under CEDAW, countries are required, as a measure to eliminate discrimination against women, to ensure on a basis of equality of men and women, the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, and the same rights and responsibilities with regard to guardianship and adoption of children.

### **Separation of children**

Under the CRC, countries are required to ensure that children shall not be separated from their parents against their will, except when competent authorities determine, subject to judicial review and in accordance with the law, that separation is necessary for the best interests of the child.

In any proceedings regarding the separation of children, all interested parties must be given an opportunity to participate. Where separation results from any action by the country against a parent, such as imprisonment, countries are required, on request, to provide the parents and the child with information concerning the whereabouts of the absent family member unless this would be detrimental to the wellbeing of the child.

A child temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance provided by the country, such as foster placement or placement in suitable institutions for the care of children.

### **Adoption of children**

Under the CRC, countries have particular responsibilities in relation to the adoption of children. Adoption can only be authorised by competent authorities who determine that the adoption is permissible.

Inter-country adoption may be considered if the child cannot be suitably cared for in the child's country of origin. A child who is subject to inter-country adoption must enjoy safeguards and standards equivalent to those existing in the case of national adoption. Countries are required to engage in international cooperation to ensure that the placement of the child in another country is carried out by competent authorities.

### **Right of children to be heard**

Under the CRC, children who are capable of forming their own views have the right to express those views freely, and those views are to be given due weight in accordance with the age and maturity of the child. This right includes the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.

### **Children in the criminal process**

Under the ICCPR, criminal proceedings involving children must take account of their age and the desirability of promoting their rehabilitation. The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

Under the CRC, countries are required to recognise

the right of a child accused of a criminal offence to be treated in a manner consistent with the promotion of the child's sense of dignity and which takes into account the child's age and the desirability of promoting the child's reintegration into society.

The same protections regarding fair trial rights that apply to all persons under article 14 of the ICCPR apply to children. In addition, countries must establish a minimum age for criminal capacity, which must not be unreasonably low. Countries must also seek to promote measures for dealing with children without resorting to judicial proceedings, such as care, guidance and supervision orders, counselling, probation, foster care and education and vocational training programs.

### **Refugee children**

Under the CRC, countries must take appropriate measures to ensure that a child who is seeking refugee status or who is considered to be a refugee, whether unaccompanied or accompanied by his or her parents or by any other person, receives the protection provided for in the CRC and human rights or humanitarian treaties, such as the *Convention relating to the Status of Refugees*.

Countries are required to cooperate with the UN and other international bodies to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

### **Families and disability**

The CRPD enshrines the right to family in various ways for people with disability. It requires countries to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children, and that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.



The CRPD protects the right to marry, rights of reproduction, a right to retain fertility, a right to rear children, and have a united family unit on an equal basis with the rest of the community. Countries are required to respect the family by supporting people with disability to realise their rights. The Convention also provides that, where the immediate family is unable to care for a child with disabilities, efforts be made to provide alternative care within the wider family, and failing that, within the community in a family setting.

### **Declaration on the Rights of Indigenous Peoples**

The *Declaration on the Rights of Indigenous Peoples* contains provisions relevant to the rights of parents and children. The Declaration does not create legally binding obligations, but informs the way governments engage with and protect the rights of Indigenous people.

### **Can the rights of parents and children be limited?**

Human rights treaties recognise that countries may establish their own rules regarding matters, such as adoption, provided those rules respect the fundamental principles provided for in the treaties.

### **Derogation**

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the protection of children under article 24(1), 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'.

Such measures may only be taken 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with

their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

### **Limitation**

There may be circumstances in which the best interests of the child under the CRC can be outweighed by other primary considerations. Examples of other primary considerations may include public security considerations, and whether the costs of an action taken in the best interests of the child would be so disproportionately expensive so as to outweigh the potential benefits for the child.

### **Which domestic laws relate to the rights of parents and children?**

Commonwealth legislation regarding child care is contained in the *Child Care Act 1972*.

The current framework for family assistance comprises a range of payments and is primarily governed by two statutes: *A New Tax System (Family Assistance) Act 1999* and *A New Tax System (Family Assistance) (Administration) Act 1999*. Such payments comprise a range of types, including the child care benefit and child care rebate.

Division 3 of Part XIII A of the *Family Law Act 1975* and the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* govern inter-country adoption.

The *Family Law Act* also covers children born as a result of artificial conception procedures and surrogacy arrangements (see sections 60H and 60HB).

Sections 7.1 and 7.2 of the *Criminal Code Act 1995* and sections 4M and 4N of the *Crimes Act 1914* provide that a child under 10 years of age is not criminally responsible and that a child between 10 and 14 years of age can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.

Other laws make particular provisions regarding children in the criminal process. For instance, Part 1AD of the *Crimes Act* provides for the protection of children in proceedings for sexual offences.

The *Immigration (Guardianship of Children) Act 1946* makes provision for the guardianship of unaccompanied non-citizen children who arrive in Australia.

State and Territory laws provide for care provided by non-parent carers (unrelated foster carers, and relative or kinship carers who are mainly grandparents) of children who cannot live with their parents. This may be as a result of a child protection intervention, or where parents are incapable of providing adequate care, or where alternative accommodation is needed during times of family conflict.

### **What other rights and freedoms relate to the rights of parents and children?**

The rights of parents and children may be relevant to:

- The right to freedom from arbitrary or unlawful interference with the privacy of the family under article 17 of the ICCPR



- The right to protection of the family under article 23 of the ICCPR
- Fair trial and fair hearing rights under article 14 of the ICCPR
- The obligation to separate children accused of criminal offences from adults in article 10(2) of the ICCPR
- Minimum guarantees in criminal proceedings in article 14 of the ICCPR, and/or
- The right to protection against exploitation, violence and abuse.

## Articles from relevant Conventions

### *Convention on the Rights of the Child*

#### Article 3:

- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- States Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### *International Covenant on Civil and Political Rights*

#### Article 24(1):

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

See also: CRC articles 5, 9, 18, 20, 21, 22, 40; ICCPR article 14(4); CRPD articles 3(h), 7, 18(2), 23; CEDAW article 16.

### Where can I read more about the rights of parents and children?

- United Nations, Office of the High Commissioner for Human Rights, Human Rights Bodies, [www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx) (human rights treaty bodies that monitor implementation of the core international human rights treaties)
- UN Human Rights Committee General Comment No 17, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CCPR/GEC/6623&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CCPR/GEC/6623&Lang=en)
- UN Committee on the Rights of the Child General Comment No 10 (on children's rights in juvenile



justice), <https://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo10.pdf>

- UN Committee on the Rights of the Child General Comment No 6 (on treatment of unaccompanied and separated children outside their country of origin), <https://www2.ohchr.org/english/bodies/crc/docs>
- Intercountry Adoption Australia, <https://www.intercountryadoption.gov.au>
- UN Rules for the Protection of Juveniles Deprived of their Liberty, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx>
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), <https://humanrights.gov.au/our-work/human-rights-brief-no-2>
- Protecting Children is Everyone's Business: the National Framework for Protecting Australia's Children 2009-2020, <https://www.dss.gov.au>
- National Plan to Reduce Violence Against Women and their Children 2010-2022, <https://www.dss.gov.au>

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This material is provided to persons who have a role in Commonwealth legislation, policy and programs as general guidance only and is not to be relied upon as legal advice. Commonwealth agencies subject to the *Legal Services Directions 2005* requiring legal advice in relation to matters raised in this Guidance Sheet must seek that advice in accordance with the Directions.

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Attorney-General's Department. *Rights of parents and children*. Retrieved from [www.ag.gov.au](http://www.ag.gov.au) on 6 November 2020.

# FIVE CHALLENGES FACING CHILDREN AND YOUNG PEOPLE

To mark the 30th anniversary of the United Nations *Convention on the Rights of the Child*, children and young people from Australia and the Pacific met to identify key areas of concern for governments and policymakers to address. Mercy Chipo Jumo, senior policy advisor on child rights at **World Vision Australia**, shares their top five issues in this contribution to *Pro Bono News*

**W**orld Vision Australia recently published a statement by children and young people who met to reflect on the status of children's rights in Australia and the Pacific, 30 years after the United Nations *Convention on the Rights of the Child* (CRC) was established.

All world governments except one have ratified the convention, making it the most popular UN treaty. However, while some progress has been made, governments' enthusiasm has not necessarily translated into action. More must be done to ensure that children, particularly the most vulnerable, are protected, provided for and supported to participate in the lives of their communities.

Children and young people are citizens, rights holders and consumers of services who are often left out of key decision-making processes. It is important for children and youth to be consulted, to be heard, and for their opinions to inform policy decisions.



The *Child and Youth Statement* identifies COVID-19, climate change, Indigenous children's rights, citizenship and mental health as issues of concern to children and young people. In the statement children and youth position themselves as agents for change. They consider themselves part of the solution and want a smart partnership with adults and policymakers to help resolve the problems facing society.

COVID-19 has brought uncertainty into the lives of children and young people. School has gone online, and social distancing is the new normal. Beth, a year 12 student, speaks to the challenges of writing final year exams from home and is grateful that she enjoys easy access to the internet and support that some students in and outside Australia do not have.

Indigenous young people call out racism and their overrepresentation in negative statistics in comparison to other ethnicities. They demand respect for their language, culture and history, and call for a refreshed and balanced school curriculum.

Concern over rising oceans around Pacific Island countries and burning fires in Australia are cited as indicators for climate change and need for urgent climate action.

The children and young people say they are, and want to be, part of the solution to problems they identified. They want their lived experiences and opinions to be considered in policy discussions. Children and young people are citizens, rights holders and consumers of services who are often left out of key decision-making processes. It is important for children and youth to be consulted, to be heard, and for their opinions to inform policy decisions.

If children's rights and wellbeing are to be realised, and the sustainable development goals (SDGs) are to be achieved, children and young people must not be left behind.

As Kaycee from Vanuatu aptly says in the *Child and Youth Statement*: "Policymakers must listen to us. They should involve us and value the ideas, concerns, and hopes of children and young people."

The CRC30 conference was convened by World Vision Australia, the University of Melbourne, the Child Rights Taskforce and the Australian Human Rights Commission. The National Children's Commissioner launched *Children's Rights in Australia: A scorecard* at the conference.

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Jumo, M.C (24 August 2020). Five challenges facing children and young people. Retrieved from <http://probonoaustralia.com.au> on 6 November 2020.

# CHILD AND YOUTH STATEMENT: rebuild better, renew commitments and re-centre policy around the child

*This statement from **World Vision Australia** goes beyond identifying problems to offering solutions in the form of “calls to action” that children and young people want governments and decision-makers to implement across Australia and the Pacific region*

Marking the 30th anniversary of the United Nations *Convention on the Rights of the Child* (CRC), children and young people from Australia and the Pacific region meeting in Melbourne identified key areas of concern for governments and policymakers to address. The unexpected arrival of the COVID-19 pandemic a month later ushered in new challenges for children and young people and exacerbated many of the risks and vulnerabilities they already faced.

The top five challenges or issues facing young people are:

1. Children, young people and COVID-19
2. Climate change
3. Indigenous children's rights
4. Youth and citizenship
5. Mental health and resilience.

This statement goes beyond identifying problems to offering solutions in the form of “calls to action” that children and young people want governments and decision-makers to implement.

This statement is made in the spirit of progressing children and young people's rights and wellbeing, and the realisation of the Sustainable Development Goals and the Imagination Declaration.

## INTRODUCTION

This statement represents the views of the children and young people who attended the 30th anniversary of the United Nations *Convention on the Rights of the Child* (CRC). Held on 20 November 2019, the conference provided an opportunity to Review progress, Renew commitments and Re-centre policy around the child. Currently, the health, social and economic implications of COVID-19 are reversing much of the progress made for children. This statement is an opportunity to Rebuild better during and after COVID-19, Renew commitments to child rights and to Re-centre policy on children and youth.

Although the CRC is the most widely accepted of all international treaties, ratified by all countries except the USA, many governments fall short when it comes to implementing their promise to children. Over half the world's children experience violence; 152 million children are working – half of them are doing hazardous work – and girls are still victims of child marriage and female genital mutilation.

In Australia, children and young people generally enjoy

a good life, but the 2019 Scorecard, published by the Office of the National Children's Commissioner, shows children's rights are not widely understood. Anxiety and mental health issues are occurring earlier in children's lives and increasing numbers of children are exposed to family violence. Many children are removed from home and placed into care. The age of criminal responsibility remains 10 years old and evidence shows that Aboriginal and Torres Islander children are over-represented in the out-of-home care and criminal justice systems.

This statement is a message that children and young people are part of the solution to the challenges the world faces today. It is important for policymakers to consult and listen to the voices of children and young people so that their lived experiences help to inform policy making. The Australian Government should lead a national action plan that enables the voices of children and youth and supports them to stand up for, claim and realise their rights. Governments of Pacific Island Countries too should consult with children and young people and protect and support them to reach their highest potential. The World Bank says one of the smartest investments a country can make is to invest in children and adolescents.

The views presented here are those of the authors and do not necessarily reflect the views of the sponsoring organisations. The CRC30 conference was a collaboration between World Vision, the University of Melbourne, the Child Rights Taskforce and the Australian Human Rights Commission (National Children's Commissioner).

## COVID-19

Crises like COVID-19 exacerbate existing vulnerabilities and create new ones. Since the pandemic, schools have been closed, social life disrupted and children and young people have largely been confined to their homes. Many children and young people are grappling with increased stress, and many caregivers have lost their livelihoods and incomes, limiting their ability to provide for children.

## Why is it important to young people?

*How it affects children in Australia and the Pacific*  
COVID-19 has significantly disrupted the education of children and young people. During school closures, education went online and great pressure placed on young people to keep up with their lessons.

Not all children, however, have full internet conn-

activity. Some children are receiving radio lessons, while others have materials dropped off at home. There is concern that student achievement will slide and that not every parent or caregiver is well equipped to supervise or support home learning.

### **BETH'S STORY**

*As a student in year 12, the COVID-19 pandemic has been a great source of upheaval and change in my life. Online schooling and exams from home have been a challenge in understanding content and has therefore been a source of much stress in what is already one of the most stressful years we have experienced. However, I am very grateful for the access I have to the internet which has been one of the most useful tools when adjusting to the changed circumstances. For those with poor or no access to internet, continuing a quality education would be very difficult to achieve and many do not have a quiet place to study. Times such as these are greatly disruptive and challenging on all people, including children with limited access to learning resources.*

Many young people are employed in the hospitality, retail and tourism industries. COVID-19 lockdowns or limited operations have increased the unemployment numbers of young people.

### **What do children want to see done?**

#### **Potential solutions**

It is important for governments to acknowledge the challenges faced by children and young people and to use their experiences to influence policy. Measures to control the spread of the pandemic should be child and youth friendly, making sure that children are protected

from harm and have access to health and social services. Child protection services and social workers must be classified essential and be well resourced to respond to the needs of children and young people during and after COVID-19.

The Australian Government should scale up programs to end violence against children in the Pacific. Children, young people and their families must be cushioned from the economic impact of the pandemic. Young people who are working and living independently should be effectively and expediently supported to meet their day-to-day needs.

Action is needed now to address the pandemic's impacts on children and to stop the echoes of COVID-19 from permanently damaging our shared future. The Australian Government and governments of Pacific Island Countries must make children and young people a central focus of the response and recovery to COVID-19. Investing in children and young people brings a triple dividend of development benefits: it immediately improves the lives of vulnerable children, builds their health, capacity and productivity for future life stages, and lays the foundations for strong development outcomes for the next generation.

### **CLIMATE CHANGE AND SUSTAINABLE ENVIRONMENTS**

Climate change threatens the very existence, health and wellbeing of children and young people. Severe weather manifesting in Australia's raging fires, droughts, cyclones, rising sea levels slowly eroding and sinking islands in the Pacific, and changes to ecosystems caused by human consumption are a threat to life, food production and impact negatively on their

### **JESSIKA'S STORY**

*The COVID-19 pandemic has made me incredibly uncertain about my future. I live out of home and work casually in retail and as a result my hours were cut down from 25 to 5-10 hours a week as our store had to close. As a student, my applications for support from Centrelink were continually delayed as new programs took preference in processing. My application took nine weeks instead of the usual six to process my Youth Allowance as I did not qualify for JobSeeker as I was still technically employed. This delay put immense pressure on myself both financially and mentally, both from the stress and additionally, that I could not afford sessions with my therapist at a time where I needed them the most. I, like many of our friends, asked for a temporary reduction in our rent during the period and were dismissed by our realtor and instead forwarded applications for Centrelink, despite having a positive history of always paying rent on time for over a year. I am set to finish my undergraduate degree this year but I am unsure as to whether I should do my masters with the proposed changes in university fees affecting my area of study and concern if either way, there will be a position in my sector for me. I was planning on completing work experience in my sector this year however that has been put on pause with the office working from home which also effects my future employability. My boyfriend and I both tested positive for COVID-19 a week*

*before Melbourne started its second lockdown. We had been doing all the right things, washing our hands regularly, limiting public transport, leaving the home only for essentials and wearing masks when outside since the original lock down. We weren't at the pub every weekend with our friends or out at house parties; we were just unlucky.*

*What we were lucky for, is that our symptoms were mild and similar to a common cold. The worse of it was the aches during the first week and migraines which meant we both had to take a week off work to recover. I also lost both my taste and smell which I am yet to recover. We were vigilant, we went and got tested quickly and isolated while we waited for results, the whole thing happened incredibly quickly and felt surreal as I hadn't shown any symptoms and my boyfriend only had a sore throat. We felt guilty, as our close contacts also had to go into quarantine like us for two weeks in case they developed the virus. I got cleared on Monday, having no contagious symptoms for over 72 hours however I now feel anxious going for a walk or to the shop that I could still spread the virus as there is no test yet to say whether or not the COVID is active or inactive. I am incredibly concerned for my health long term as it is unknown whether I can get the virus again. I am young, but the virus is unpredictable and that doesn't mean it won't be deadly if I get it again.*

habitat. Children and young people want immediate and decisive action from governments to mitigate the negative effects of climate change.

## Why is it important to young people?

### *How it affects children in Australia and the Pacific*

In the Pacific, children and young people are a fast-growing population accounting for up to 70 per cent of the total population. Children in Vanuatu are witnessing the oceans from where their food comes choking up with plastic which is also destroying sea life. In Australia, some school children have taken the initiative to train to be fire volunteers and are leading fire education awareness programs. It is not only children and young people that are affected by climate change. Their families and communities also experience it. Climate change sometimes means shortage of food, loss of home, parent/caregiver unemployment, or loss of family income and livelihood.

*“The most important issues are climate change, pollution, microplastics, that’s a massive problem because we are eating polluted food, and climate change because of this drought we’re having bushfires. Where I’m from, we are trying to tell old people what the problems are from our perspective not like politicians.” – Jordan Lambert, 14, NSW*

*“In my community, climate change is my biggest concern ... we’ve gotten our voice out with the strikes, but now we need action because now you are aware of what is going on and how concerned we are. It’s not about having politicians telling us to go back to school but about supporting groups that can help fight climate change.” – Beth Dewhurst, Year 11 student*

*“Each Thursday at 2pm, two teams of students from our group go out to the two set sites in our school ground and take measurements. We measure the moisture in the top layer of leaf litter and the layer below. We check the moisture level in the soil and the earth beneath a piece of fallen timber. We record the air temperature in the shade and check the cloud formation above. All of this information is taken, using specific tools we are familiar with and confident using, and it’s recorded on a special data sheet, which is scanned and sent through to the CFA. We are using our skills and contributing to a real assessment of the daily fire danger risk in our area.” – Liam Brereton, Grade 6 student*

## What do children want to see done?

### *Potential solutions*

Children and young people should be consulted and involved in housing, transport and infrastructure planning. Urban developments should promote nature-based solutions and include green spaces essential for people, animals and biodiversity. Green spaces improve community and are important in flood control. They help to clear stormwater run-off and reduce urban heat during heatwaves. Children and young people want to see more creative safe spaces like foot and bike paths which encourage people to meet, exercise or grow



food. The Australian and Pacific Island governments should establish better waste management programs, support recycling initiatives and ban single use plastics. Governments should also create policies that actively limit carbon emissions.

*“We all live in a high bushfire risk area and we all need to know how to prepare for the fire season. We go home, after learning all this stuff and talk to our families. We pretty much talk to anyone who will listen. We run presentations each year to share information ... We’ll launch our new short films for this year and talk to the community, and a whole lot of experts who come along, about what we’ve been up to. Each year our film or book is based around getting a message out there to build community understanding of fire danger.”*

*– Rory Gravette, Grade 6 student*

*“Our program is all about learning and leadership and building resilience ... This year, we were recognised in the Resilient Australia Awards, with our 2018 project winning the top award in the Victorian Education section and ... with the National Award for Australia.”*

*– Safari McNamara, Grade 6 student*

*“Respect yourself, respect others’ is our motto. Policymakers must listen to us. They should involve us and value the ideas, concerns, and hopes of children and young people.” – Kaycee Nimoho, 17, Vanuatu*

## INDIGENOUS CHILDREN’S RIGHTS

Australian First Nations children are concerned about discrimination, mental health and lack of voice. Many Indigenous children have at one time or another felt excluded, experienced racism and loss of identity. They have difficulty accessing services, register lower rates of attendance and have lower literacy and numeracy than students from other ethnic groups.

Indigenous children experience high levels of family violence; large numbers are placed in out-of-home care often outside their communities and they experience high levels of incarceration. The suicide rate for Indigenous children is five times that of their non-Indigenous peers. Overall, Indigenous children have poorer outcomes than any other group in all areas of wellbeing, health, education and development.

## Why is it important to young people?

### *How it affects children in Australia and the Pacific*

Indigenous children have the same rights as any other children. In fact, their unique culture and history are further recognised and protected through the United Nations Declaration on the Rights of Indigenous Peoples. Several initiatives – many of them Indigenous-led – help to build confidence, self-worth and leadership skills among Indigenous children and youth drawing from their Aboriginal heritage, language, and ways of learning and acquiring knowledge.

*“One in five Aboriginal and Torres Strait Islanders between 15 and 19 years of age reported that discrimination is a personal concern.”*

– Children’s report, Child Rights Taskforce, 2018, p.13

*“When kids are not given opportunities, they get disengaged.”*

– Calvin Hunter and Kristen Smith, Derby, Australia

## What do children want to see done?

### *Potential solutions*

The Australian Government must always act in the best interest of the child. The government should take on board advice from the UN Committee on the Rights of the Child which recommends adequate early intervention support services be provided to children and families to avoid underperformance in education, imprisonment and separation of children from their families. Child rights, Aboriginal history and culture, and civic education must be embedded in the compulsory components of the school curriculum.

The CRC states that a “child should be fully prepared to live an individual life in society, and brought up ... in the spirit of peace, dignity, tolerance, freedom, equality and solidarity ... a child ... who is indigenous shall ... enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”.

*“I was one of the few Indigenous people in my school, suffered discrimination and felt shame. I felt empowered when I spoke about the issue of reconciliation.” – Calvin Hunter, West Kimberley, Derby – Impact Club leader*

*“Being Indigenous is something to be proud of. Young Mob has empowered me to teach my language in schools. It’s helped everyone in the program, from being loud and rude to being respectful, keen, excited, a complete turnaround. It’s the cultural connection that helps. It’s boosted my confidence and pride of my culture and identity. I used to be ashamed.” – Jordan Lambert, 14, Young Mob Program participant, World Vision Australia*

**Of the 31,800 children in out-of-home care for two years or more, 40 per cent were Aboriginal and Torres Strait Islander children (2017-18).**

– Children’s Rights in Australia: A Scorecard, p.23

**Aboriginal and Torres Strait Islander children aged 4-17 years accounted for 19.2 per cent of child deaths due to suicide between 2005-2015.**

– Children’s Rights in Australia: A Scorecard, p.23

*“We do not want to inherit a world that is in pain. We do not want to stare down huge inequality feeling*

*powerless to our fate. We do not want to be unarmed as we confront some of the biggest problems faced by the human race, from rising sea levels, which will lead to significant refugee challenges, to droughts and food shortages, and our own challenges around a cycle of perpetuated disadvantage. It’s time to think differently.”*

– Excerpt from the Imagination Declaration read by James Hood, Year 9

## YOUTH AND CITIZENSHIP

Legal frameworks are important for supporting children and their development. The CRC defines children as all people under the age of 18 and the UN definition of youth ranges from 13 to 24 years. However, different institutions and services define children and young people in various ways. They have different developmental stages that include adolescence and have significant age-specific needs which must be recognised and considered in policy making. The irony is that children and young people are most often left out of the decision.

## Why is it important to young people?

### *How it affects children in Australia and the Pacific*

Children and adolescents are disenfranchised citizens although they are significant users and consumers of local, national or federal government services. However, children are not homogenous and have different developmental milestones and needs that must be considered as they progress to the age of 18. The adolescence phase in childhood is a period of big physical and emotional changes. Adolescents are legally permitted to work and to marry with parental or judicial consent at the age of 16. Regardless of these adult entitlements and responsibilities, youth are considered too young to vote until they reach the age of 18. Transgender children face challenges to seek legal recognition of their gender identity and some children in out-of-home care experience difficulties in accessing their legal identity documents.

Child and youth citizenship is a right, a method, practice and way of life that enables participation in the economic, political and civil aspects of society. The voting age should be lowered to 16 years to enfranchise a key segment of citizens who want to be heard and who will bring a different perspective, unique to their experience as LGBTIQ, out-of-home-care young people or otherwise. Although many children and young people are already engaged in leading or contributing to issues that matter in their communities, the absence or low status of children in the policy making arena is disturbing.

## What do children want to see done?

### *Potential solutions*

Children and young people want to be recognised as equal citizens and the age definition of “child” should be clear and consistent with no exceptions. They want to learn about their rights at school.

Children and young people want elected representatives to appreciate the diversity of children and that their concerns and needs are based on context which elected representatives should seek and listen to with

respect, recognising their capability to influence, provide solutions, and to be leaders. Structures that support children's voices at state and federal government and international levels must be established and adequately resourced.

*“Children and young people should be allowed into the decision-making rooms, be able to share their voices and their influences because young people are very smart. We spoke to a lot of young people from 5, 7, 10, 17-year old’s. They were so excited to share their opinion because they were finally asked and they knew we would take those opinions to government. We tend to get stuck in our bubbles of problems – it is hard to answer what matters to young people, so diversity is key.”*

– Eva Massey, Year 12 student, UNICEF Ambassador

## CREATING ENVIRONMENTS THAT SUPPORT MENTAL HEALTH AND RESILIENCE

Evidence shows a large increase in children and young people within the 10-14 age group seeking mental health support. Some of the drivers of mental health issues are bullying, loneliness and anxiety, family violence, homelessness, drug and alcohol abuse, and discrimination based on race or ethnicity, gender and disability. Asylum seeker, refugee and Indigenous children and young people are more likely to experience exclusion and bullying. Interventions should include culturally appropriate, community driven healing methods drawing on Aboriginal, Pacific and migrant heritage.

### Why is it important to young people?

#### *How it affects children in Australia and the Pacific*

In the Pacific, girls experience high levels of sexual abuse, with 1 in 10 adolescent girls experiencing sexual abuse.<sup>1</sup> In Australia, suicide is the leading cause of death of children and young people<sup>2</sup> with higher numbers of Aboriginal children and young people committing suicide than any other ethnic group.

Lesbian, gay, bisexual, transgender/transsexual, intersex, queer/questioning (LGBTIQ) children and young people face social and legal identity challenges that make them five times more likely to attempt suicide and twice as likely to engage in self-harm than their peers of a similar age. It is important to create suitable and well-resourced environments to support children and young people’s resilience and wellbeing.<sup>3</sup>

*“In comparison to where I was born and raised, Australia is doing good with anti-discrimination and equality. I have seen the opposite coming from a nation raged by war and ethnic violence. Australia has done well, but there is still work to do.”*

– Shadab Safa, CMY, student, former refugee from Afghanistan

*“In the Aboriginal community the problems are suicide, drug and alcohol abuse. To see my mates die of suicide is not easy. Within Derby a lot of their deaths are preventable, and that’s where we should start, it’s a chain generational effect, they don’t have enough role models. The leaders are*

*taking wrong paths, that’s why I hope to change that, stop that cycle, suicide shouldn’t be happening, a lot of them are young people. Incarceration too is a big issue for me.”*

– Calvin Hunter, Yamatji and Nginika young person, Derby

## What do children want to see done?

### Potential solutions

Children and young people want to see programs that support integration, resilience and strong sense of identity, participation and wellness. Sports and outdoor activities are examples in point. Resourcing of appropriate mental health, legal and community services for children and young people and funding for life transforming evidence-based programs proven to promote opportunity, participation and cultural integration should also be improved.

## REBUILD, BETTER, RENEW COMMITMENTS AND RE-CENTRE POLICY AROUND THE WORLD

The governments of Australia and the Pacific are commended for ratifying the CRC and are encouraged to implement and monitor it fully. The Australian Government and businesses must show leadership at home by establishing a national plan for children in Australia and ensuring Australian Aid helps to achieve the same in partner countries.

Governments and policymakers must prioritise children and youth and put them at the centre of decision making. This means consistently acting in the best interests of children and youth, ensuring that they are informed and consulted on matters that concern them, and enabled to contribute to important conversations in their families and communities. Government leadership is critical to the realisation of children’s rights and decision makers should bear in mind that children and youth are part of the solution.

### Everyone has a role to play.

#### This statement has been formed by the below children and young people:

Amran Abdi, Liam Breerton, Josh Brittain, Beth Dewhurst, Brodie Donoghue, Rory Gravette, Scarlett Harrison, James Hood, Calvin Hunter, Sharice Jackson, Vanessa John, Jordan Lambert, Eva Massey, Safari McNamara, Kaycee Nimoho, Shadah Safa, Lachlan Seckold, Jessika Swarbrick.

#### Supporting organisations

Australian Child Rights Taskforce, AIME & the Imagination Declaration, Australian Human Rights Commission, Centre for Multicultural Youth (CMY), Melbourne University, Multicultural Youth Advocacy Network (MYAN), Strathewen Primary School, UNICEF, World Vision Australia.

1. *Unseen, unsafe, the underinvestment in ending violence against children in the Pacific and Timor-Leste*, ChildFund, Plan International, Save the Children, World Vision Australia, 2019.
2. *Children’s report*, Child Rights Taskforce, Australia, 2018.
3. *Ibid*, p.46.

World Vision Australia. *Child and Youth Statement – Rebuild better, Renew commitments and Re-centre policy around the child*. Retrieved from [www.worldvision.com.au](http://www.worldvision.com.au) on 6 November 2020.

# COVID-19 AND CHILDREN'S RIGHTS IN AUSTRALIA: A CALL TO ACTION

**Save the Children** calls for urgent action to address the impact of COVID-19 on children and their rights in Australia

## Key points

- Save the Children is calling for urgent action to address COVID-19's impact on children and their rights in Australia.
- We have the opportunity to emerge from this crisis a stronger, fairer and more resilient society – one in which all children are included, valued and heard.
- Now more than ever, we must ensure that all children in Australia continue learning, are safe and remain developmentally on track – especially those experiencing the greatest disadvantage.
- We should act now to build back better from this crisis. We must act now to protect a generation.

## BUILDING BACK BETTER FROM COVID-19

**C** COVID-19 is fundamentally changing our world. For no one is this more true than children. The COVID-19 crisis is transforming the environments within which children grow, learn and develop – in families and communities, in the systems supporting children's safety and wellbeing, and across society as a whole. It is children who will be most exposed to COVID-19's long-term economic and social consequences and effects on individual wellbeing – for better and for worse.

Australia has reached a fork in the road. Will we emerge weakened by the pandemic, and still riven by patterns of disadvantage that deny too many a fair go?

## COVID-19 causes widening inequality for children worldwide

**Pro Bono News** reports that Save the Children has conducted the largest global survey of its kind since the COVID-19 pandemic was declared.

**C**hildren from the poorest households are missing out on access to education, healthcare and food during COVID-19, while facing greater exposure to violence at home, a new global survey reveals.

Save the Children interviewed 8,069 children and 17,565 adults across 37 countries for the survey – the largest of its kind since the pandemic began – and uncovered the disproportionate impact of the crisis on vulnerable kids.

More than nine in 10 households (93 per cent) that lost over half of their income due to the pandemic reported problems accessing health services.

Two thirds of the children have had no contact with teachers at all during lockdown; leaving eight in ten students feeling like they had learned little or nothing since schools shut.

Meanwhile the reported rate of violence at home doubled during school closures – from 8 per cent to 17 per cent.

Researchers found that the pandemic has widened inequalities for poorer families. Poorer households were more likely to suffer income losses (82 per cent) than those not classified as poor (70 per cent).

And less than 1 per cent of poorer children had access to internet for remote learning, compared with 19 per cent for non-poor households.

Inger Ashing, the CEO of Save the Children International, said COVID-19 has had a devastating impact on children's access to healthcare, food, education and safety.

"To protect an entire generation of children from losing out on a healthy and stable future, the world needs to urgently step

up with debt relief for low-income countries and fragile states, so they can invest in the lives of their children," Ashing said. "The needs of children and their opinions need to be at the centre of any plans to build back what the world has lost over the past months, to ensure that they will not pay the heaviest price."

The crisis has particularly hurt Australia's nearest neighbours in the Pacific, with 77 per cent of parents or caregivers in the Solomon Islands and Papua New Guinea reporting they had trouble paying for food.

These findings come amid the Australian aid sector's #EndCOVIDForAll campaign, which calls on the Australian government to contribute its fair share of global humanitarian funding and increase support to crisis areas.

Save the Children Australia CEO Paul Ronalds said Australia needed to give better support to its neighbours.

"While Australia has responded to the global COVID-19 crisis by deploying health experts, providing medical supplies and financial support to Pacific Islands governments, the scale of the crisis has not been matched by the type of vision and action needed," Ronalds said.

"Even though there is so much happening at home, we must look beyond our shores. Our Pacific neighbours are in crisis. "Not only would strong intervention by Australia protect our own interests, but it will literally save lives and livelihoods among our neighbours."

**Luke Michael** is a journalist at **Pro Bono News** covering the social sector.

Michael, L (14 September 2020). *COVID-19 causes widening inequality for children worldwide*. Retrieved from <http://probonoaustralia.com.au> on 6 November 2020.

Or will we take the opportunity in this crisis to build a better society – one where all children are included, valued and heard, and can count on the support they need to overcome adversity and thrive in their lives?

We have the chance to create systemic change in how we relate to some of the most vulnerable members of our community. Right now, by centring children's rights, we can lay the foundation for more resilient communities and a stronger, fairer society – today and into the future.

Save the Children believes this change is possible. That belief underpins our vision for Australia's future. Rather than aiming only to mitigate or remedy the harm caused by COVID-19, we can and must build back better from this crisis. This aspiration should be at the heart of Australia's COVID-19 response and recovery plan.

We can take heart from what has already been achieved. While challenges remain, to date Australia has been relatively successful in managing the immediate health-related challenges of COVID-19. Significant measures are being taken to address the associated economic impacts. Old assumptions are being discarded in favour of better solutions.

We have seen the level of change that is possible when governments work together and with the Australian community-in policy, investment and society-wide behaviour. Now is the time to direct this power towards the building blocks of our long-term recovery, and to Australia's future: our children, in this generation and the next.

We know that many children face particular difficulty in accessing their rights in practice – typically children experiencing complex disadvantage arising from the cruelly compounding effects of poverty, social and economic exclusion, and, all too commonly, family backgrounds involving child abuse, neglect, violence, alcohol and other drug abuse, untreated mental ill-health, and criminality.

COVID-19's hidden toll is falling hardest on these children. Largely unheard and overlooked, they are the reason for our call to action. We now have a choice: to let COVID-19 cement these children's life trajectories, or to use the power we know we collectively have to create real change.

Save the Children is calling for urgent action by Australian governments, working in partnership with the Australian community, to address COVID-19's impacts on children. This will mean rethinking the type of society we want to be, and believing that we can build back better from this crisis. It will mean placing children's rights at the centre of policy, service delivery and investment decisions affecting their futures.

To protect a generation of children, these are the priorities.

## 1. ENSURE CHILDREN'S CONTINUITY OF LEARNING

Maintaining children's continuity of learning throughout the COVID-19 crisis and as we rebuild is crucial.

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Continuity of learning underpins children's development and future life opportunities, and Australia's future economic and social wellbeing.

Academic progress and children's broader development – including social and emotional learning – are integrally related. UNESCO has recommended that, to ensure continuity of learning, governments prioritise solutions to address psychosocial challenges before teaching. The emotional and social foundations must be in place for children's successful learning. This learning occurs in early childhood education and care settings, schools, and homes.

Both during school closures, and as schools gradually reopen, some children are particularly at risk of significant learning loss. There is a real danger that many will not return to school, turning a temporary disruption into a permanent loss of opportunity.

We must target support to children facing particular barriers to accessing education or successfully reengaging when they return to school. To do this, we must:

- Keep at-risk children and families connected to education and other services they need
- Maintain children's engagement with learning through interventions aimed at those who are at risk of disengagement or already disengaged, with individual support and follow-ups
- Support parents to provide good home learning environments, with individualised approaches reflecting different family backgrounds and circumstances
- Promote children's mental health and social and emotional wellbeing through psychosocial support both within the home and in schools, including access to child-centred and trauma-informed health, wellbeing and recovery services

- Overcome digital, technological and other barriers to learning facing children and families, at home and at school, through additional support and resources for schools, teachers and parents
- Understand and address the learning loss that is inevitable among some children, including its relationship to student engagement, wellbeing and recovery.

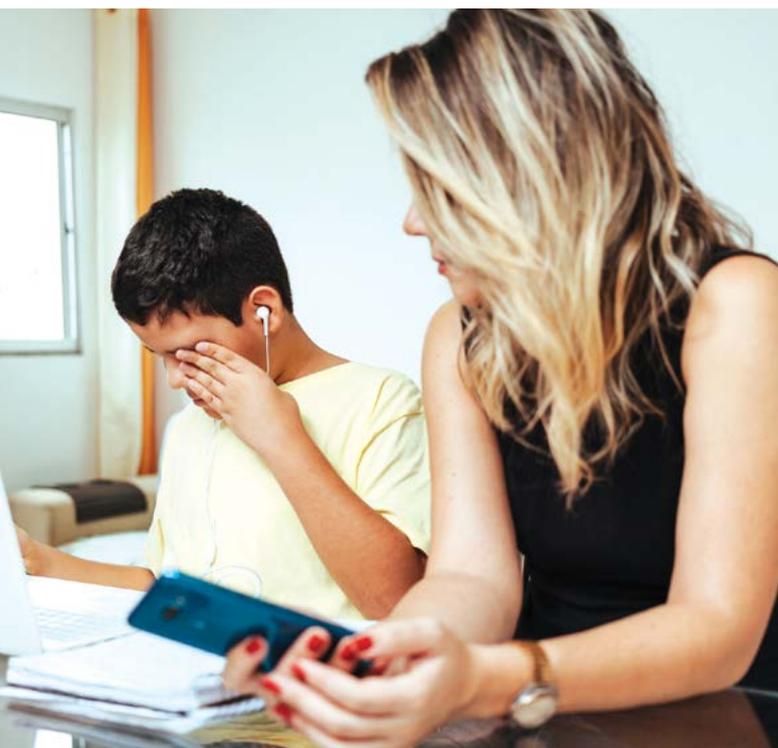
## 2. KEEP CHILDREN SAFE AND DEVELOPMENTALLY ON TRACK

Most people in Australia would agree that nothing is more important than our children's safety and wellbeing. Yet our actions as a society do not reflect this belief – not least because children who are not doing well are too often hidden from view and unable to be heard.

COVID-19 is putting severe pressure on children's wellbeing – especially those facing significant disadvantage. School closures, social distancing measures and growing stress on families – especially financial stress – are creating a toxic cocktail of risks to children's safety in their homes. Simultaneously, services enabling early detection and addressing of child wellbeing issues, as well as child protection services, are constrained and disrupted.

Just when we most need society's eyes on children, our normal mechanisms to protect children's safety and wellbeing have been severely compromised.

Rates of violence and abuse of children in their homes are certain to increase, although reporting will lag due to the isolation which cloaks much of this harm. Equally concerning, the increased stress and economic hardship facing families will drive increased neglect as children's basic needs for food and shelter go unmet despite parents' best efforts.



To protect all children's safety, wellbeing and healthy development through this crisis, we must:

- Identify children whose wellbeing and safety are at risk in their homes, with efforts continuing through all phases of the COVID-19 response and recovery
- Ensure that children and families have access to mental health and psychosocial support to support children's wellbeing, including throughout the 'long tail' of COVID-19's impacts
- Scale up and adapt family support services to avoid separation of children from parents wherever consistent with children's wellbeing and safety
- Over time, shift systemic expenditure from statutory child protection services to preventive and early intervention measures
- Ensure that statutory child protection services can expand and adapt to meet need
- Support solutions developed by Aboriginal and Torres Strait Islander peak organisations to keep Indigenous children connected to family and culture and eliminate their shameful over-representation in out of home care and in the youth justice system
- Ensure that frontline staff in domestic and family violence services are trained in trauma-informed approaches to supporting children who have been exposed to violence
- Ensure there is appropriate emergency accommodation for women and children who have experienced domestic and family violence, with facilities that meet children's needs.

## 3. PROTECT CHILDREN WHO ARE PARTICULARLY AT RISK

Some children are particularly exposed to COVID-19's effects, including on children's health and wellbeing. These children's rights and interests require particular attention.

Aboriginal and Torres Strait Islander children face particular risks from infection by COVID-19, especially those living in remote communities, both directly and if family members become unwell.

Aboriginal and Torres Strait Islander people are the experts about their children. Save the Children urges the importance of acting on the priorities for action identified by Aboriginal and Torres Strait Islander leaders, including peak organisations and in communities, including to:

- Prioritise Aboriginal community-controlled service provision to Aboriginal people
- Support Aboriginal health and early years services to continue operating safely and sustainably
- Ensure food security and good infant and young child nutrition in all communities
- Support Aboriginal and Torres Strait Islander families experiencing violence.

Children of CALD backgrounds, particularly recent humanitarian migrants, are frequently left unapp-



orted in the face of COVID-19. Save the Children has a unique perspective on the challenges these children face, as one of the few organisations that works with refugees in source, transit and destination countries, including supporting settlement across Australia.

Many recent migrants are amongst the most marginalised members of our community. COVID-19 is exacerbating their exclusion. These children are our future. We must do all we can to support them.

Children in detention, many of whose rights are already being violated through detention, are highly exposed to COVID-19. This includes children trapped in the criminal justice system – among whom Aboriginal and Torres Strait Islander children are far over-represented – and unwillingly detained during their families’ immigration.

Detention of children must always be a last resort. With COVID-19’s spread, we must:

- Release children in detention wherever possible, with appropriate safeguards
- Establish arrangements for the safety of any children in detention and for regular contact with their families
- Raise the minimum age of criminal responsibility across Australia from 10 to at least 14 years of age.

Children who have been impacted by natural hazards and disasters, such as bushfires, are particularly vulnerable to COVID-19’s adverse effects. The pandemic is compounding the challenges that bushfires, drought and other disasters had already created for children’s learning, safety, health and wellbeing.

To support children who are affected by major disasters – both past and future – in addition to COVID-19, we must:

- Maintain a focus on the short- and long-term effects on children who have experienced bushfires or other community trauma, and how these harmful effects are being compounded by COVID-19
- Ensure that children’s safety and wellbeing is protected during crises, including by ensuring that Child Friendly Spaces are established in every evacuation, relief and recovery centre during bushfires and other emergencies
- Support children’s mental health and psychological, social and emotional wellbeing in coping with, and recovering from, the effects of disasters, including through specialist school-based services
- Support children’s participation in emergency management, including planning and preparedness, response and recovery, resilience-building, and prevention and mitigation.

#### **4. ESTABLISH STRUCTURES TO SUPPORT FAMILIES AND COMMUNITIES**

Economic circumstances and underlying structures profoundly shape children’s wellbeing, life outcomes, and ability to access their rights. COVID-19 is exacerbating the effects of economic and social inequality in Australia, while pushing many families into severe financial hardship and poverty.

As economic recession deepens, children will be hurt by rising levels of poverty and malnutrition. Child poverty has immediate and lifelong effects from which many never recover. The United Nations has highlighted that the COVID-19 pandemic is a fundamentally dis-equalising event for children in particular. In Australia, as globally, those least able to cope are being hit first and hardest.

Save the Children supports calls to establish the structural supports that families need to get through this crisis, including to:

## EMPOWER CHILDREN BY SUPPORTING THEIR RIGHT TO BE HEARD

Children have a fundamental right to be heard and taken seriously about matters affecting them. Children's safe and meaningful participation in decisions about their own lives is inherently valuable. It also underpins children's ability to access other rights, such as the rights to education, healthcare and protection. Children's participation and involvement is a crucial part of the pathway to achieving all of the goals in this call to action. We must hear from children to learn what they want and need.

Participating is particularly important for the children whose rights are most at risk, yet particularly difficult for them to do. COVID-19 is making this worse. Many children who were already marginalised have received little if any meaningful information about the disease, and have no way to be heard even about decisions made within their own families, let alone decisions of government drastically shaping their futures.

Our efforts to support children's voices to be heard must have a particular focus on those whose existing exclusion has only been further entrenched by COVID-19.

**To support children's right to participate in the society-wide response to the pandemic, and in the recovery that follows, we must:**

- Ensure that measures in response to COVID-19 are informed by assessments of children's needs and by children's views
- Release information on COVID-19 that is accessible, adapted for children (including children with specific needs), and available on a variety of trusted channels
- Engage with children and families meaningfully, ethically and safely to enable them to remain visible, take part in public discussions (including through direct engagement with policy-makers), and engage in building solutions
- Recognise the role that children are playing in the global response to COVID-19, including helping through their channels – in their communities and through active solidarity
- Adopt the institutional reforms needed to place children's rights, interests and views at the heart of public decision making, from national policy-making to locally within children's own communities.

- Permanently and adequately raise income supports and social security payments to protect children and their families, scaling these up and strengthening them wherever possible
- Ensure affordable housing is available to families in need, including expanded social housing, so that no child suffers or is separated from their parents due to inadequate housing
- Support charities to continue providing critical services to families and children, including through flexibility in how those services are provided and funded, and through other regulatory, operational and financial measures.

The challenges faced by many families during the COVID-19 crisis, as well as by governments and charities in supporting them, have also brought into stark relief the long-standing difficulties with the service system for families and children. Taken as a whole, existing services are too often fragmented, confusing and difficult to access, especially for the people who most need support. Despite widespread recognition of these problems, change has been slow to come.

A fundamental shift towards a 'place-based' model of service provision is needed, with services genuinely joined up and organised around people and communities, and reflecting local priorities and needs. This need is particularly pressing in communities facing the greatest challenges, in regions where disadvantage is increasingly entrenched across generations.

### ABOUT SAVE THE CHILDREN

**As Australia's leading child rights organisation, Save the Children is doing everything in our power to protect children and defend their rights in the face of COVID-19. Our vision**

**of a world in which every child attains the right to survival, protection, development and participation has perhaps never been more important than now.**

**Like all we do, our response to COVID-19 is guided by the United Nations *Convention on the Rights of the Child*. We have extensive experience in Australia and globally in translating children's rights into practical policy change and direct services for children and their families, including in times of crisis.**

**Save the Children is advocating strongly for children's rights throughout this crisis, including supporting children's voices to be heard. We are also continuing to work directly with Australia's most marginalised and at-risk children and families through our extensive services, interventions and partnerships, delivered across every State and the Northern Territory. These are being adapted as needed in response to COVID-19.**

**With a focus on intervening early with integrated support to prevent harm, Save the Children's services span early childhood development, family support, domestic and family violence, school-age education, youth programs, settlement support, youth justice, child rights programming, collective impact initiatives, and emergency response and recovery.**

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Save the Children Australia (September 2020).  
*COVID-19 and Children's Rights in Australia: A Call To Action*.  
Retrieved from [www.savethechildren.org.au](http://www.savethechildren.org.au) on 6 November 2020.

# EXPLORING ISSUES

## WORKSHEETS AND ACTIVITIES

The Exploring Issues section comprises a range of ready-to-use worksheets featuring activities which relate to facts and views raised in this book.

The exercises presented in these worksheets are suitable for use by students at middle secondary school level and beyond. Some of the activities may be explored either individually or as a group.

As the information in this book is compiled from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Is the information cited from a primary or secondary source? Are you being presented with facts or opinions?

Is there any evidence of a particular bias or agenda? What are your own views after having explored the issues?

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Brainstorm, individually or as a group, to find out what you know about the rights of children and young people.

**1. What are human rights, and why do we need them? Include examples in your answer.**

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**2. What are children's rights, and why do children have specific rights?**

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**3. What is the UN *Convention on the Rights of Children*? Who created it, when and why?**

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**4. Explain the difference between a 'right' and a 'want'? Include examples in your answer.**

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## WRITTEN ACTIVITIES

Complete the following activities on separate sheets of paper if more space is required.

Consider the statements below, and in the spaces provided write two to three paragraphs discussing how they relate to the rights set out in the *UN Convention on the Rights of the Child*. In your answer, identify any specific right, or rights, that you feel are relevant. Also, explain whether you feel these specific rights are important to you and why.

In November 2018 Australian school children made the decision to walk out of their classrooms and stage protests on the lack of government action on climate change. While reactions to the protests were mixed, the response of the Government was largely patronising and hostile.

Lee-Koo, K, *Universal Declaration of Human Rights at 70: Children's Rights*.

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Many Indigenous children have at one time or another felt excluded, experienced racism and loss of identity. They have difficulty accessing services, register lower rates of attendance and have lower literacy and numeracy than students from other ethnic groups.

World Vision Australia, *Child and Youth Statement – Rebuild better, Renew commitments and Re-centre policy around the child*.

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National data shows 1 in 7 children aged 4 to 17 were diagnosed with mental health disorders in a 12-month period, and rates of suicide and self-harm are increasing. Suicide was the leading cause of death for children aged 5 to 17 in 2017, and Indigenous children accounted for almost 20% of all child suicides.

Australian Human Rights Commission, *We must do better on children's rights*.

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## MULTIPLE CHOICE

Complete the following multiple choice questionnaire by circling your preferred responses. The answers are at the end of this page.

- 1. The United Nations *Convention on the Rights of the Child* is one of the most widely ratified human rights treaties in history. Which of the following countries has NOT ratified the convention?**
  - a. Australia
  - b. India
  - c. The United States
  - d. Israel
  - e. New Zealand
  - f. The United Kingdom
  - g. Canada
- 2. The *Convention on the Rights of the Child* defines a 'child' as a person below what age?**
  - a. 8
  - b. 10
  - c. 12
  - d. 14
  - e. 16
  - f. 18
  - g. 21
- 3. In what year did Australia ratify the *Convention on the Rights of the Child*?**
  - a. 1924
  - b. 1959
  - c. 1960
  - d. 1989
  - e. 1990
  - f. 2002
- 4. Which of the following would NOT be considered a child's right? (Select any that apply)**
  - a. The right to education
  - b. The right to play
  - c. The right to buy a new bicycle
  - d. The right to have access to water
  - e. The right to have their views heard by adults
  - f. The right to their own bedroom
  - g. The right to have access to nutritious food
- 5. In Australia, at what age can a child or young person currently be held criminally responsible for his or her actions?**
  - a. 8
  - b. 10
  - c. 12
  - d. 14
  - e. 16
  - f. 18
  - g. 21

### MULTIPLE CHOICE ANSWERS

1 = c; 2 = e; 3 = f; 4 = a, c, f, g; 5 = b

- Children and young people have the same general human rights as adults and also specific rights that recognise their special needs. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights (UNICEF, *Child rights and why they matter*). (p.1)
- The *Convention on the Rights of the Child* sets out the rights that must be realised for children to develop to their full potential (UNICEF Australia, *Simplified version of the United Nations Convention on the Rights of the Child*). (p.3)
- The *Convention on the Rights of the Child* defines a 'child' as a person below the age of 18, unless the relevant laws recognise an earlier age of majority (UNICEF, *Frequently asked questions on the Convention on the Rights of the Child*). (p.4)
- The *Convention on the Rights of the Child* is the most widely ratified human rights treaty in history – in force in virtually all countries of the world (*ibid*). (p.4)
- In the industrialised countries of the early twentieth century, there were no standards of protection for children. It was common for them to work alongside adults in unsanitary and unsafe conditions (UNICEF, *History of child rights*). (p.6)
- It was reported that in 2017 that there had been 6,000 verified violations of the rights of children by government actors, and over 15,000 violations by non-state actors. These included the killing and maiming of children, their recruitment into armed forces, sexual violence and their abduction (Lee-Koo, K, *Universal Declaration of Human Rights at 70: Children's Rights*). (p.10)
- Violations of children's rights are not isolated to illiberal or conflict-ridden states. There are also widespread violations of children's rights inside liberal states. In Australia, Canada and the US, Indigenous children, children in care, and children seeking asylum experience multiple breaches of their rights, including detention, and institutional abuse (*ibid*). (p.10)
- At the end of May 2018, the Australian Human Rights Commission reported that there were 137 children in the off-shore detention facility in Nauru who were still subject to third country processing arrangements, the majority of whom were under the age of 12, and had been on Nauru for at least 4 years (*ibid*). (pp. 11-12)
- An estimated 1 in 6 children – or 356 million globally – lived in extreme poverty before the pandemic (World Bank, *1 in 6 children live in extreme poverty*). (p.13)
- Child poverty is more prevalent in fragile and conflict-affected countries, where more than 40% of children live in extremely poor households, compared to nearly 15% of children in other countries (*ibid*). (p.13)
- The current age of criminal responsibility in Australia is 10. The UN Committee on the Rights of the Child has proposed raising it to 14 (AHRC, *UN calls on Australia to do more for children*). (p.16)
- Independent monitoring of children's rights, including the ability for children to make complaints, is limited in Australia (AHRC, *A Children's Rights Framework*). (p.18)
- In 2019, 12-year-old Djuwan Hoosan from Arrernte and Garrwa country in central Australia, addressed the UN committee on the Rights of the Child in Geneva. He called on the Australian government to stop imprisoning 10-year-olds, support Aboriginal-led education programs, and respect the culture and rights of all children in Australia. He is believed to be the youngest person ever to address the UN Human Rights Council (Gordon, F, and Peleg, N, '*The Australian government is not listening: how our country is failing to protect its children*'). (p.25)
- National data shows 1 in 7 children aged 4 to 17 were diagnosed with mental health disorders in a 12-month period, and rates of suicide and self-harm are increasing (AHRC, *We must do better on children's rights*). (p.27)
- In Australia, children as young as 10 can be held criminally responsible for their actions. This means they can be arrested by police, remanded in custody, convicted by the courts and imprisoned (Cunneen, C, *Ten-year-olds do not belong in detention. Why Australia must raise the age of criminal responsibility*). (p.34)
- According to the AIHW, in 2018-19, 773 children under 14 were placed on court orders requiring supervision in the community by youth justice officers. More than 570 were placed in juvenile detention. Some 65% of these two groups were Aboriginal and Torres Strait Islander children (*ibid*). (p.34)
- In some Australian states there is a common law defence permitting parents (and sometimes teachers) lawfully to administer 'reasonable' corporal punishment, while in other states the defence is contained in legislation (Lenta, P, *Why is it still legal for adults to hit children as punishment?*). (p.36)
- In many countries in which corporal punishment has been legally proscribed, including Sweden and New Zealand, the incidence of corporal punishment has been brought down appreciably (*ibid*). (p.37)
- Over half the world's children experience violence; 152 million children are working – half of them are doing hazardous work – and girls are still victims of child marriage and female genital mutilation (World Vision Australia, *Child and Youth Statement – Rebuild better, Renew commitments and Re-centre policy around the child*). (p.43)
- Evidence shows a large increase in children and young people within the 10-14 age group seeking mental health support. Some of the drivers of mental health issues are bullying, loneliness and anxiety, family violence, homelessness, drug and alcohol abuse, and discrimination based on race or ethnicity, gender and disability (*ibid*). (p.47)
- A new global survey reveals children from the poorest households are missing out on access to education, healthcare and food during COVID-19, while facing greater exposure to violence at home (Michael, L, *COVID-19 causes widening inequality for children worldwide*). (p.48)

## Age of criminal responsibility

The age below which a child is deemed incapable of having committed a criminal offence. All states and self-governing territories of Australia have adopted 10 years of age as a uniform age of criminal responsibility. In 2019, the UN Committee on the Rights of the Child recommended 14 years as the minimum age of criminal responsibility. Concerns have been raised about the effects of criminalisation of such young children, and in particular the effects on Indigenous Australians, who are disproportionately represented in the statistics, and increasing a cycle of disadvantage. Since 2019, the Council of Attorneys-General Age of Criminal Responsibility Working Group has been considering submissions from a range of organisations and experts regarding raising the age to 14. In mid-2020 they indicated that more work needed to be done on alternative forms of punishment before they could make their recommendations.

## Child, definition of

The United Nations *Convention on the Rights of the Child* defines child as “a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. The term child may also refer to someone below another legally defined age limit unconnected to the age of majority.

## Child participation

One of the core principles of the United Nations *Convention on the Rights of the Child*, asserting that children and young people have the right to freely express their views and that there is an obligation to listen to children’s views and to facilitate their participation in all matters affecting them within their families, schools, local communities, public services, institutions, government policies and judicial procedures.

## Children’s commissioners

Children have a special need for protection and policies. Australia recognises this as a signatory to the *Convention on the Rights of the Child*, which states that actions concerning children’s lives, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, must be undertaken with a specific understanding of their needs and rights. One of the ways Australia meets its obligations under the Convention is through children’s commissioners and guardians. These independent bodies have been in place in Australian states and territories since 1996 and are integral to providing a voice for children in decision making.

## Children’s rights

A subset of human rights with particular attention to the rights of special protection and care afforded to minors. Children’s rights include their right to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and criminal laws appropriate for the age and development of the child, equal protection of the child’s civil rights, and freedom from discrimination on

the basis of the child’s race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity, or other characteristics.

## Convention on the Rights of the Child

The United Nations *Convention on the Rights of the Child* sets out the rights that must be realised for children to develop to their full potential. It is an international treaty that recognises the human rights of children, defined as persons up to the age of 18 years. The Convention establishes in international law that States Parties must ensure that all children – without discrimination in any form – benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner. The Convention outlines 42 articles about the rights of children, as well as how adults and governments should work together to protect children and their rights. In Australia, many of these rights are also protected through legislation and other acts of parliament.

## Corporal punishment

Use of physical force towards a child for the purpose of control and/or correction. It is a disciplinary technique applied to the body with the intention of causing some degree of pain or discomfort, however light. Also known as physical punishment, smacking, spanking, belting or hitting.

## Human rights

The rights people are entitled to simply because they are human beings, irrespective of their citizenship, nationality, race, ethnicity, language, sex, sexuality, or abilities. Human rights become enforceable when they are codified as conventions, covenants, or treaties, or as they become recognised as customary international law.

## Parental responsibility

The authority to make decisions concerning and affecting the care, welfare and proper development of the child. Family law in Australia defines the responsibilities that parents have in relation to bringing up their children. These include: to protect your child from harm; to provide your child with food, clothing and a place to live; to financially support your child; to provide safety, supervision and control; to provide medical care; to provide an education.

## UN Committee on the Rights of the Child

United Nations body of 18 experts from around the world which monitors the implementation of the *Convention on the Rights of the Child* and its Optional Protocols – children in armed conflict; the sale of children, child prostitution and child pornography. The committee also handles an international complaints procedure for violations of children’s rights in countries that have ratified the *Convention on the Rights of the Child*.

## Websites with further information on the topic

Amnesty International Australia [www.amnesty.org.au](http://www.amnesty.org.au)  
 Australian Child Rights Taskforce [www.childrights.org.au](http://www.childrights.org.au)  
 Australian Human Rights Commission [www.humanrights.gov.au/our-work/childrens-rights](http://www.humanrights.gov.au/our-work/childrens-rights)  
 Australian Institute of Family Studies [www.aifs.gov.au](http://www.aifs.gov.au)  
 Australian Institute of Health and Welfare [www.aihw.gov.au](http://www.aihw.gov.au)  
 Defence for Children International <https://defenceforchildren.org>  
 Human Rights Law Centre [www.hrlc.org.au](http://www.hrlc.org.au)  
 Human Rights Watch [www.hrw.org](http://www.hrw.org)  
 Kids Helpline [www.kidshelpline.com.au](http://www.kidshelpline.com.au)  
 Raise the Age [www.raisetheage.org.au](http://www.raisetheage.org.au)  
 Save the Children [www.savethechildren.org.au](http://www.savethechildren.org.au)  
 UNICEF [www.unicef.org](http://www.unicef.org)  
 World Vision [www.worldvision.com.au](http://www.worldvision.com.au)  
 Youth Law Australia [www.yla.org.au](http://www.yla.org.au)

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- UNICEF
- World Vision
- Save the Children
- Australian Institute of Family Studies
- Australian Human Rights Commission
- Australian Institute of Health and Welfare.

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