

AUSTRALIA'S 2020 UPR – NGO COALITION FACT SHEET: CHILDREN

In 2015, Australia received over 50 recommendations directed at children's rights or matters that particularly affect children (such as access to education). Concluding Observations from the Committee on the Rights of the Child, and reports by other UN committees and special rapporteurs, continue to highlight significant deficiencies in protection and promotion of children's rights in Australia. Many issues have been consistently raised over multiple years.

Incorporation of human rights obligations and national framework

Australia has ratified the Convention on the Rights of the Child (CRC) but has not incorporated the CRC into domestic legislation and policy. Australia has no coherent or overarching strategy, plan or framework for protecting children's rights. There are large gaps in Australia's laws, contributing to significant ongoing rights violations.

The National Framework for Protecting Australia's Children 2009-2020 aimed to establish a long-term, national approach to help protect all Australian children. However, the Framework is limited to protecting children from abuse and neglect and does not aim to comprehensively protect children's rights and promote children's wellbeing. It does not focus on children's economic, social and cultural rights, non-discrimination, and participatory rights. The Framework's implementation has lacked a genuine focus on early intervention to prevent harm to children.

Children experiencing significant violations of rights

Aboriginal and Torres Strait Islander children and youth are:

- disproportionately likely to be below national minimum standards in reading and numeracy (about 1 in 4 are below in reading and nearly 1 in 5 are below in numeracy, compared to about 1 in 20 other children);
- over 10 times more likely to be removed from their families than other children;
- 23 times as likely to be in detention as other children; and
- 17 times as likely to have had contact with both child protection and juvenile justice.

There is no national human rights institution with a dedicated focus on Aboriginal and Torres Strait Islander children. Australia does not have a national program to prevent Aboriginal and Torres Strait Islander child protection involvement or keep children connected to families and culture. Many services are delivered by mainstream organisations rather than Indigenous community controlled organisations.

Children who are refugees or seeking asylum in Australia are subject to mandatory detention in regional processing centres and in Australia, contravening Australia's obligations under Article 37(b) of the CRC. The CRC Committee has called upon Australia to prohibit such detention under law, but the Australian government has failed to act. Mandatory detention harms the wellbeing of children, especially mental health.

Children with disability commonly experience segregated education, violating the right to inclusive education under the CRC and other treaties. A quarter of students with disability are restrained or secluded in educational settings, particularly segregated schools, in breach of the rights to liberty

and security of the person and freedom from torture and cruel, inhuman or degrading treatment or punishment.

Children's lack of participatory rights

Australia fails to adequately protect and promote children's right to be heard and taken seriously about matters affecting them under Article 12 of the CRC

Many children do not have access to effective individual advocacy to intervene quickly when needed, due to inadequate government support and funding for direct advocacy support services. As a result, children often do not have a voice in processes affecting them, or access to remedies where they may be experiencing legal and human rights violations, including in family, out of home care, education, health, justice and other settings.

Government is not required to consult with children, take into account their views, or take into account any recommendations of the independent National Children's Commissioner (NCC) on children's behalf. The NCC does not have a mechanism or resources to consult with children about all matters affecting them and have their views taken into consideration in law and policy-making.

Proposed Recommendations (refer to this fact sheet for more detail):

- Australia must fully incorporate the CRC into domestic legislation and policy within three years.
- Australia must develop a National Plan for Children which comprehensively protects children's rights, and which is at least consistent with the National Plan to Eliminate Violence against Women and Their Children, within 18 months.
- Australia must establish a national prevention, early intervention and reunification program to prevent child protection involvement by Aboriginal and Torres Strait Islander children, with significant Aboriginal and Torres Strait Islander community-controlled service provision, within two years.
- Australia must establish a national commissioner for Aboriginal and Torres Strait Islander children and young people within one year.
- Australia must undertake legal reform to provide mechanisms for children to participate and be heard, and provide all necessary funding to services that support direct advocacy for children, within two years.
- Australia must legislate to mandate consultation between the National Children's Commissioner and children on matters affecting them, while ensuring the Commissioner has adequate resources, within one year.
- Australia must immediately legislate to prohibit detention of asylum-seeking, refugee and migrant children.
- Australia must develop a national Action Plan for Inclusive Education and urgently end restraint and seclusion of children with disability.

Recommendations affecting children's rights are also detailed in other fact sheets, including:

- Australia must raise its minimum age of criminal responsibility to at least 14 within one year.
- Australia must withdraw its reservation to CRC Article 37(c) regarding children in detention.
- Australia must ratify the CRC's Third Optional Protocol enabling individual complaints.