



Australian
Human Rights
Commission

Children's Rights Report 2019

In Their Own Right: Children's Rights in Australia

NATIONAL CHILDREN'S COMMISSIONER • 2019



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Children's Rights Report 2019—*In Their Own Right: Children's Rights in Australia*

ISSN 2203-0948 (Print)

ISSN 2204-1176 (Online)

Acknowledgments

The *Children's Rights Report 2019—In Their Own Right: Children's Rights in Australia* was drafted by Susan Nicolson, Susan Newell, Victoria Flanagan, Hwei-See Kay, Helen Potts and Gabriela Sanchez.

The National Children's Commissioner thanks the following staff of the Australian Human Rights Commission: Padma Raman, Darren Dick and Leon Wild.

Design and layout Jody Rita Stocovaz

Printing Centrum

Cover photography

Photograph of three students participating in a consultation with the National Children's Commissioner
Photograph taken by Sarah Bamford (Communications Team, Australian Human Rights Commission)

Electronic format

This publication can be found in electronic format on the website of the Australian Human Rights Commission:
<https://www.humanrights.gov.au/our-work/childrens-rights/publications>.

Contact details

For further information about the Australian Human Rights Commission, please visit **www.humanrights.gov.au** or email **kids@humanrights.gov.au**.



**Australian
Human Rights
Commission**

28 October 2019

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

Children's Rights Report 2019

I am pleased to present to you the **Children's Rights Report 2019—*In Their Own Right***, in accordance with section 46MB of the *Australian Human Rights Commission Act 1986* (Cth) (the Act). The Act provides that I may submit reports relating to the enjoyment and exercise of human rights by children in Australia as I consider appropriate.

This report covers the work I have undertaken since I began my term in 2013.

It is based on my Report to the United Nations Committee on the Rights of the Child submitted in December 2018, updated to include the most recent available data. It reflects issues raised by the Committee when Australia appeared before the Committee in September 2019, and also includes the Committee's concluding observations on Australia's progress in meeting its obligations to children under the Convention on the Rights of the Child.

I look forward to discussing the report with you.

Yours sincerely

Megan Mitchell
National Children's Commissioner

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About the National Children's Commissioner

Legislation establishing the position of National Children's Commissioner was passed by the federal Parliament on 25 June 2012.

Ms Megan Mitchell was appointed as the inaugural National Children's Commissioner on 25 February 2013 and commenced in the role on 25 March 2013.

Section 46MB of the *Australian Human Rights Commission Act 1986* (Cth) (the Act) describes the functions that are to be performed by the National Children's Commissioner. Under the Act, the National Children's Commissioner is specifically required to:

- promote discussion and awareness of matters relating to the human rights of children in Australia
- undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia
- examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia, and to report to the Minister the results of any such examination.

In performing these functions, the Commissioner may give particular attention to children who are at risk or vulnerable. The Commissioner may consult with children, departments and authorities of the Commonwealth, and of the states and territories, non-governmental organisations, international organisations and agencies, and other organisations, agencies or persons.

The Act provides that the National Children's Commissioner may submit reports to the Minister that deal with matters relating to the enjoyment and exercise of human rights by children in Australia, as the Commissioner considers appropriate. A report may include recommendations that the Commissioner considers appropriate as to the action that should be taken to ensure the enjoyment and exercise of human rights by children in Australia.

The Commissioner is able to compel the production of documents and information held by the Commonwealth.

The United Nations *Convention on the Rights of the Child* (CRC) underpins the Commissioner's work. In addition to having regard to the CRC, the Commissioner must have regard to a range of human rights instruments:

- *Universal Declaration of Human Rights*
- *International Convention on the Elimination of All Forms of Racial Discrimination*
- *International Covenant on Economic, Social and Cultural Rights*

Megan Mitchell

National Children's Commissioner



- *International Covenant on Civil and Political Rights*
- *Convention on the Elimination of All Forms of Discrimination Against Women*
- *Convention on the Rights of Persons with Disabilities* and
- such other instruments relating to human rights considered relevant.

All Australian states and territories have Children's Commissioners, Guardians or Advocates. The legislative functions of these roles differ between jurisdictions. Some have a broad focus, which include all children, whereas others have specified responsibilities relating to children who are at risk or who are vulnerable. Their primary focus is on issues concerning children within their individual jurisdictions. The National Children's Commissioner works collaboratively with the state and territory Children's Commissioners, Guardians and Advocates through the Australian and New Zealand Children's Commissioners and Guardians group.

Previous roles and qualifications

Commissioner Mitchell has extensive experience working with children from all types of backgrounds, including practical expertise in child protection, juvenile justice, and children's services. Previous roles include NSW Commissioner for Children and Young People, Executive Director of the ACT Office for Children, Youth and Family Support, Executive Director for Out-of-Home Care in the NSW Department of Community Services, and CEO of the Australian Council of Social Service.

Commissioner Mitchell has qualifications in social policy, psychology and education: a Bachelor of Arts from the University of Sydney (1979), a Diploma of Education from the Sydney Teachers College (1980), a Master of Arts (Psychology) from the University of Sydney (1982), and a Master of Arts (Social Policy) from the University of York (1989).

For information on the work of the National Children's Commissioner, please visit: <http://www.humanrights.gov.au/our-work/childrens-rights>.

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Chapter 1:

Introduction



The National Children's
Commissioner reporting to the
Committee on the Rights of the Child
in Geneva.

As National Children's Commissioner, I want to see that all Australia's children grow up loved, safe and respected, are heard, and have every opportunity to realise their full potential. I believe that delivering on the rights of children, as enshrined in the *Convention on the Rights of the Child* (CRC), is fundamental to making children's rights real and Australia the best place in the world to grow up.

This year marks the 30th Anniversary of the CRC—the most complete statement of children's rights ever produced.

The CRC is also the most widely ratified human rights treaty in history. It covers all aspects of a child's life, and makes clear that every child has rights, irrespective of their circumstances, and that as a society we must work together to make sure all children can enjoy them.

This report—***In Their Own Right: Children's Rights in Australia***—tells the story of how well children's rights are protected and promoted across Australia. It tells us where we are doing ok, where we should be doing much better, and where we do not yet know enough to make an assessment of our performance.

It covers all the basic rights, domains and preconditions that children need to do well: like having a home and a family, getting a good education, being able to access quality health care, being safe from harm, and having a voice.

It does this in the context of significant data gaps which means that at present there is insufficient disaggregated national data to meet the monitoring requirements set out by the United Nations Committee on the Rights of the Child (the Committee).

While most Australian children live in safe and healthy environments and do well, there are some groups of children whose rights are not adequately protected, which impacts negatively on their wellbeing and ability to thrive.

This includes Aboriginal and Torres Strait Islander children, children with disability, those from culturally and linguistically diverse backgrounds, and lesbian, gay, bisexual, trans and intersex (LGBTI) children.

The circumstances of these children are discussed throughout this report, with Chapter 12 specifically focusing on Aboriginal and Torres Strait Islander children.

The role of the United Nations Committee on the Rights of the Child

The Committee is a United Nations body that monitors the implementation of the CRC and its Optional Protocols by State Parties to the Convention.

It is made up of 18 independent experts from a range of countries.

All governments who have ratified the CRC must report on their progress in implementing the CRC every five years.

The Committee can make suggestions and issue recommendations to governments, called Concluding Observations.

In Their Own Right is particularly timely as, in September 2019, Australia appeared before the Committee on the Rights of the Child to answer questions about how it is working to advance the rights of children in Australia.

This report includes information and findings from my report submitted to the Committee in December 2018 and the Committee's Concluding Observations issued in September 2019. Key recommendations made by the Committee urge the Australian Government to take action on protecting children from violence; out-of-home care; mental health; climate change; asylum seeking, refugee and migrant children; and the administration of justice. All of the Committee's Concluding Observations are included in the Appendix to this report.

In Their Own Right is intended to help me and others hold Australian governments to account for the wellbeing of our children, now and into the future.

The report includes many of the voices of the children and young people I have had the pleasure to meet and hear from along the way. They never fail to impress me with their energy, ideas and insights, and I extend my heartfelt thanks to all the children and young people in Australia for their generosity and support.



Children in Tasmania sharing their views with the National Children's Commissioner.

How is Australia progressing



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 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).



Critical issues

- 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.
- 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

- 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.

Recommendations

Chapter 3: A nationwide children's rights framework: What is needed to ensure children's rights in Australia are fully protected?

- ① 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.
- ① The Australian Government should introduce child rights and wellbeing impact assessments on legislative changes that affect children's rights.
- ① 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.
- ① The Australian Government should ensure training about human rights, and children's rights specifically, for all public servants and parliamentarians.
- ① 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.
- ① The Australian Government should ratify the Optional Protocol to the CRC on a Communications Protocol (the third Optional Protocol).
- ① 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.

Chapter 4: 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.

Chapter 5: 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.

Chapter 6: 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.
- ④ 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.
- ④ The Australian Government should consider reviewing the *Marriage Act 1961* (Cth) to eliminate any exception to the minimum age of marriage of 18.
- ④ Australian Governments should harmonise laws that criminalise female genital mutilation, and conduct awareness education for health professionals and communities.

Chapter 7: Family life

- ④ 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.
- ④ 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.
- ④ 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.
- ④ 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.

Chapter 8: 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.

Chapter 9: Living standards

- ④ The Australian Government should develop a national poverty reduction plan that explicitly focuses on children.
- ④ 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.
- ④ Australian Governments should include children under 12 years of age in the Reconnect Program.
- ④ The Australian Government should address inequality experienced by children living in regional and remote Australia through targeted measures.

Chapter 10: Education, leisure and cultural activities

- ④ Australian Governments should commit to the National Quality Framework and support the Australian Children's Education and Care Quality Authority beyond 2020.
- ④ Australian Governments should commit to enhancing universal access to quality early childhood education and care services.
- ④ 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.
- ④ 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.
- ④ 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.
- ④ Australian Governments should ensure that data gaps relating to suspensions and expulsions are addressed in the national children's data framework.

Chapter 11: 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.

Chapter 12: 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 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.

-
- ④ 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.
 - ④ Australian Governments should ensure Aboriginal and Torres Strait Islander voices are present at all levels of policy, practice decision making in relation to child protection interventions.
 - ④ 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.
 - ④ Australian Governments should invest in the teaching and maintenance of Indigenous languages in schools.
 - ④ 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.

Chapter 13: Asylum seeker and refugee children

- ④ The Australian Government should amend the *Migration Act 1958* (Cth) to prohibit placing children in closed immigration detention and use alternative community-based measures.
- ④ The Australian Government should include in its immigration detention statistics all children residing in closed immigration detention facilities and alternative places of detention.
- ④ The Australian Government should review current care, protection and support arrangements for children seeking asylum.
- ④ 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.

-
- ④ 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.
 - ④ 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.
 - ④ The Australian Government should abolish temporary protection visas and reintroduce permanent protection visas for all applicants determined to be in need of protection.
 - ④ 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.
 - ④ 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.

Chapter 14: 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.

Chapter 2:

Australia's children



Hearing the views of children living in NSW.

This chapter outlines who the children of Australia are, where they live, where they come from and who they live with.

2.1 How many children are there?

In 2018, there were over 5.5 million children under the age of 18 years in Australia.¹ However, the most recent estimated population data for Aboriginal and Torres Strait Islander peoples is only available from the 2016 Census.

HOW MANY CHILDREN ARE THERE?

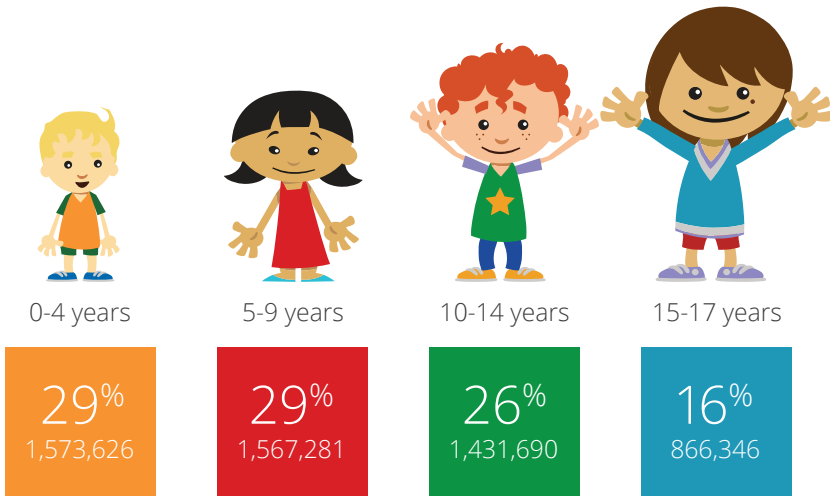


Figure 2.1: Sourced from the Australian Bureau of Statistics, 3101.0—*Australian Demographic Statistics*, June 2018, Estimated Resident Population, Single Year Of Age, Australia, Table 59.

In 2016, there were over 5.4 million children under the age of 18 years in Australia, representing 23% of the Australian population. Of these, over 320,000 (6%) were Aboriginal and Torres Strait Islander children.²

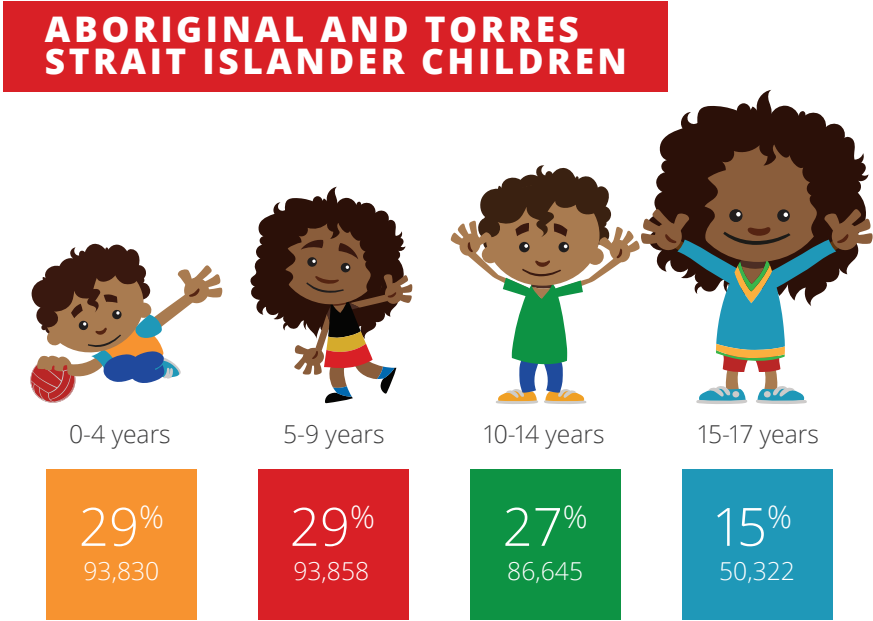


Figure 2.2: Sourced from the Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Population by Age and Sex*, June 2016 (2018).



2.2 Where do they live?

As at June 2016, 70.7% of children lived in major cities, 27% in regional areas and 2.3% lived in remote areas.³

Aboriginal and Torres Strait Islander children represent 3.1% of children in major cities, 10.2% in regional areas and 43.7% in remote areas.⁴

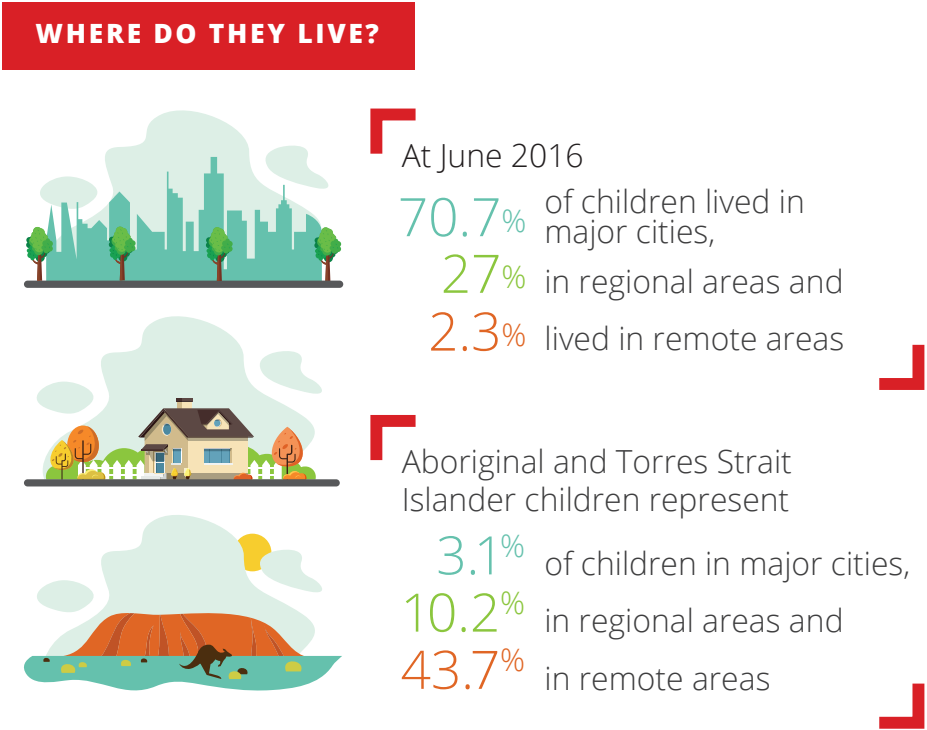


Figure 2.3: Sourced from Australian Bureau of Statistics, 3238.0.55.001—*Estimates of Aboriginal and Torres Strait Islander Australians*, June 2016 (2018), Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Remoteness Areas, Single year of age—30 June 2016, Table 1.

The following two figures provide age group breakdowns for all Australian children (Figure 2.4) and for Aboriginal and Torres Strait Islander children (Figure 2.5).

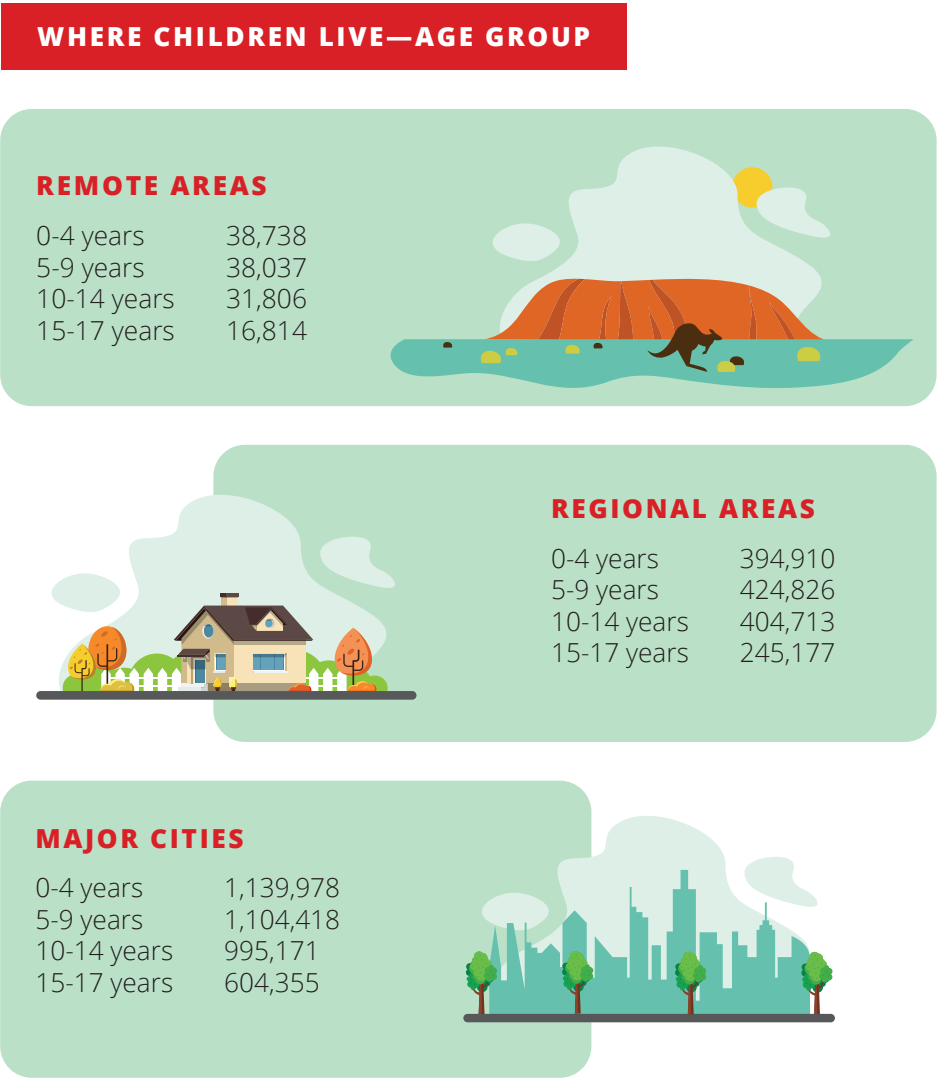


Figure 2.4: Sourced from the Australian Bureau of Statistics, 3238.0.55.001—*Estimates of Aboriginal and Torres Strait Islander Australians*, June 2016 (2018), Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Remoteness Areas, Single year of age—30 June 2016, Table1.

WHERE ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN LIVE—AGE GROUP

REMOTE AREAS

0-4 years	15,772
5-9 years	16,010
10-14 years	14,730
15-17 years	8,227



REGIONAL AREAS

0-4 years	42,708
5-9 years	43,662
10-14 years	40,058
15-17 years	22,999



MAJOR CITIES

0-4 years	35,350
5-9 years	34,186
10-14 years	31,857
15-17 years	19,096



Figure 2.5: Sourced from the Australian Bureau of Statistics, 3238.0.55.001—*Estimates of Aboriginal and Torres Strait Islander Australians*, June 2016 (2018), Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Remoteness Areas, Single year of age—30 June 2016, Table1.

2.3 Where do they come from?

Australia is a culturally diverse country. In 2016, 21% of people spoke a language other than English at home.⁵ Approximately 9% of children were born overseas.⁶



Figure 2.6: Sourced from Australian Bureau of Statistics, *Census of Population and Housing 2011 and 2016*.

In the 2016 Census, 93 languages were recorded as being spoken at home. A table of the top ten languages spoken at home in 2016 is set out in Table 2.1.⁷ It is difficult to identify the number of children who speak a language other than English at home as the data has not been distilled from the 2016 Census data.

Top ten languages spoken at home (2016)

Language	Number	Australia %
Mandarin	596,703	2.5
Arabic	321,720	1.4
Cantonese	280,943	1.2
Vietnamese	277,391	1.2
Italian	271,602	1.2
Greek	237,583	1.0
Hindi	159,637	0.7
Spanish	140,813	0.6
Punjabi	132,500	0.6
English only	17,020,417	72.7

Table 2.1: Sourced from Australian Bureau of Statistics, 2071.0—*Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016* (28 June 2017).

2.4 Who do Australia’s children live with?

In 2016, there were 1,470,937 couples with young children in Australia, comprising 16.6% of households.⁸ The HILDA Survey shows that in 2017 for children aged under 15:

- 76.5% lived with their couple parents and no others
- 13.5% lived with a single parent and no others
- 4.2% lived in a multiple-family household.⁹

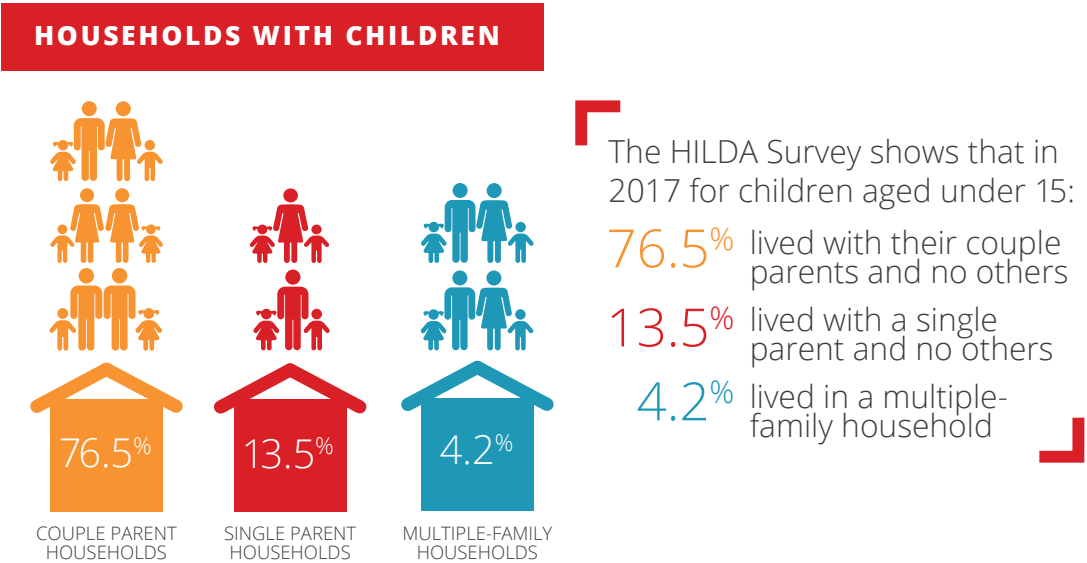


Figure 2.7: Sourced from Roger Wilkins, Inga Laß, Peter Butterworth and Esperanza Vera-Toscano, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 17* (2019).

The following table sets out data on households with children by life stage and includes:

- young children: children aged under 15 only
- mixed age children: one or more children under 15 and one or more children over 15 (must have 2 or more children)
- older children: children aged 15 and over only.¹⁰

Households with children by life stage

Australia - Households		2016		2011		Change	
Households with children	Number	%	Greater Capital Cities %	Number	%	Greater Capital Cities %	2011 to 2016
Couples with children	2,687,377	30.3	33.0	2,511,700	30.7	32.8	+175,677
Couples with young children	1,470,937	16.6	17.9	1,365,896	16.7	17.6	+105,041
Couples with mixed-age children	371,882	4.2	4.4	365,605	4.5	4.6	+6,277
Couples with older children	844,558	9.5	10.7	780,199	9.5	10.6	+64,359
Single parents with children	919,133	10.4	10.4	867,913	10.6	10.6	+51,220
Single parents with young children	339,100	3.8	3.6	342,867	4.2	3.9	-3,767
Single parents with mixed-age children	109,745	1.2	1.2	107,804	1.3	1.3	+1,941
Single parents with older children	470,288	5.3	5.6	417,242	5.1	5.5	+53,046
Total households with children	3,606,510	40.7	43.4	3,379,613	41.3	43.5	+226,897
Total households	8,861,642	100.0	100.0	8,181,750	100.0	100.0	+679,892

Table 2.2: Sourced from .id the population experts, *Australia Households with children*.

As of 30 June 2017, there were 47,915 Australian children living in out-of-home care. This has increased from 7.3 per 1,000 children at 30 June 2011,¹¹ to 8.7 per 1,000 children at 30 June 2017.¹²

The 2016 Census estimated that 15,872 (14%) children under the age of 12 years and 9,955 (9%) aged 12–18 years were homeless.¹³

CHILDREN LIVING IN OUT-OF-HOME CARE



As of 30 June 2017, there were **47,915** Australian children living in out-of-home care.

This has increased from **7.3 per 1,000** children at 30 June 2011, to **8.7 per 1,000** children at 30 June 2017.

The 2016 census estimated that **15,872 (14%)** children under the age of 12 years and **9,955 (9%)** aged 12–18 years were homeless.

Figure 2.8: Sourced from AIHW, *Child protection Australia 2016–2017* (2018).

Chapter 2: Endnotes

- 1 Australian Bureau of Statistics, *3101.0 – Australian Demographic Statistics, Dec 2018* (20 June 2019) Population by Age and Sex Tables.
- 2 Australian Bureau of Statistics, *3238.0.55.001 – Estimates of Aboriginal and Torres Strait Islander Australians, June 2016* (31 August 2018).
- 3 Australian Bureau of Statistics, *3238.0.55.001 – Estimates of Aboriginal and Torres Strait Islander Australians, June 2016* (31 August 2018).
- 4 Australian Bureau of Statistics, *3238.0.55.001 – Estimates of Aboriginal and Torres Strait Islander Australians, June 2016* (31 August 2018).
- 5 Australian Bureau of Statistics, *2071.0 – Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016* (28 June 2017).
- 6 Australian Bureau of Statistics, *Estimated resident population, Country of birth, Age and sex – as at 30 June 1996 to 2018*.
- 7 Australian Bureau of Statistics, *2071.0 – Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016* (June 2017).
- 8 id the population experts, *Australia Households with children* <<https://profile.id.com.au/australia/households-with-children?WebID=10>>.
- 9 Roger Wilkins, Inga Laß, Peter Butterworth and Esperanza Vera-Toscano, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 17*, Melbourne Institute: Applied Economic & Social Research, University of Melbourne (2019) 8 <https://melbourneinstitute.unimelb.edu.au/__data/assets/pdf_file/0011/3127664/HILDA-Statistical-Report-2019.pdf>
- 10 id the population experts, *Australia Households with children* <<https://profile.id.com.au/australia/households-with-children?WebID=10>>.
- 11 Australian Institute of Health and Welfare, *Child protection Australia 2010–2011* (Report, 2012) 31 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2011-12/contents/summary>>.
- 12 Australian Institute of Health and Welfare, *Child protection Australia 2016–2017* (Report, 2018) 45 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/contents/children-receiving-child-protection-services>>.
- 13 Australian Bureau of Statistics, *2049.0s Census of Population and Housing: Estimating homelessness, 2016, Table 1.1* (14 March 2018).

Chapter 3:

A nationwide children's rights framework:
What is needed to ensure children's rights in Australia are fully protected?



The National Children's Commissioner hearing the views of primary school children in Hobart.

The *Convention on the Rights of the Child* (CRC) asks that countries put in place comprehensive laws, policies, systems and plans to realise the promises made to children in the CRC.

By and large, in Australia, there are few laws and policies at the national level that protect human rights, and specifically children's rights.

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

3.1 Legislation

The legal protections of children's rights in Australia are not comprehensive and do not provide an effective remedy for violations.

Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), Australia established a Parliamentary Joint Committee on Human Rights (the PJCHR) to assess whether new legislation is consistent with Australia's human rights obligations. This includes the CRC.

All federal legislation is required to be accompanied by a 'Statement of Compatibility with Human Rights'. The PJCHR raises concerns when it considers that legislation places an unjustifiable limitation on human rights. However, the committee has limited capacity and has not been able to review all relevant bills. Additionally, there are minimal opportunities for public engagement in the process and legislators are under no obligation to amend bills to reflect concerns.¹

The Australian Government has indicated that state and territory governments are responsible for delivering many of the programs and services that give effect to Australia's obligations under the CRC, including in relation to matters such as education, health, youth justice and child protection. Given this, the Australian Government has concluded that Australia does not need a broad-based child rights law at the national level.

However, the internal mechanisms of a country, such as its system of government, should not be used to justify failure to comply with human rights. Countries that are federated cannot avoid responsibility for human rights by stating that responsibility for violations sits with a sub-national government rather than the national government.

Many countries have a national law to guide practice and approaches to children, even though services may be provided locally. There is nothing to prevent the Australian Government from showing leadership in advancing and monitoring the rights of Australia's children.

Already, the Australian Government makes major investments in child-related services, including through agreements with and tax transfers to the states and territories.

In addition, national initiatives have been developed with the states and territories in many areas considered to be national priorities.

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government enact comprehensive national child rights legislation fully incorporating the Convention and providing clear guidelines for its consistent and direct application throughout its states and territories.²

It also called on the Australian Government to ensure the PJCHR has enough resources to examine the impact of all legislation on children's rights and to guarantee that that all legislation is fully compatible with the CRC.³

3.2 Coordination and National Plan of Action

There is no national level coordination of the many policy initiatives that exist across all governments relating to children. Nor is there a national plan of action for the realisation of the principles and provisions of the CRC for children in Australia.⁴

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; and Closing the Gap addresses the needs of Aboriginal and Torres Strait Islander peoples, including children. Other initiatives acknowledge children, such as the National Plan to Reduce Violence against Women and their Children (2010–2022), but children are not the critical focus.

National initiatives in the form of Royal Commissions have occurred, for example, the Royal Commission into Institutional Responses to Child Sexual Abuse, established in 2013 and a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability established in 2019, which includes the circumstances of children with disability. While these types of initiatives are welcome, they are temporary and there is no mandate to implement any of the recommendations made by them.

No ministerial council has direct accountability for the wellbeing of Australia's children. However, in 2018, the Australian Government created the role of Assistant Minister for Children and Families within the Social Services portfolio. 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.

In its Concluding Observations (2019), the Committee on the Rights of the Child 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.⁵

It also called for the Assistant Minister for Children and Families to be provided 'with a clear mandate and sufficient authority to coordinate all activities related to implementation of the Convention at cross-sectoral, federal, state, territory and local levels, and with the necessary human, technical and financial resources for its effective operation'.⁶

3.3 Allocation of resources

Australia does not have budgeting processes that specifically track the allocation of resources to all children.

For example, while the Productivity Commission produces an Indigenous expenditure report, it is not possible to report on specific Aboriginal and Torres Strait Islander youth expenditure.⁷

In 2017, the Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission) pointed out that:

Knowing where expenditure is directed is a basic requirement for assessing community needs and planning service delivery in a coordinated and resource-efficient manner.⁸

Its recommendation for a review and audit of Commonwealth expenditure in the Northern Territory in the area of family and children's services, relevant to the prevention of harm to children,⁹ was supported by the Australian Government.¹⁰ The acceptance of this recommendation by the Australian Government shows that it understands the importance of tracking the allocation of resources for children, but suggests that it is unwilling to apply the same principle to track its own resource distribution.

The Committee on the Rights of the Child, in its Concluding Observations (2019), recommended that the Australian Government implement a tracking system to monitor the efficient use of resources on children and 'conduct regular assessments of the distributional impact of government investment in sectors supporting the realisation of children's rights with a view to addressing the disparities in indicators related to children's rights, with particular attention to Aboriginal and Torres Strait Islander children'.¹¹

3.4 Independent monitoring

Across Australia, state and territory Children's Commissioners/Guardians and Ombudsmen have independent monitoring powers within their own jurisdictions. These powers vary and can include oversight of child protection, out-of-home care, juvenile justice systems, and complaint handling.

The National Children's Commissioner does not have a mandate to monitor or deal with complaints about individual children.

While the Australian Human Rights Commission (the Commission) can investigate and conciliate complaints of breaches of rights set out in the CRC, recommendations made by the Commission are not legally enforceable.

The Commission also handles complaints under the sex, age, race and disability discrimination acts which may involve children. These are discussed in more detail in Chapter 5.

Since 2013, the National Children's Commissioner has recommended that the Australian Government ratify the *Optional Protocol to the CRC on a Communications Protocol* (the third Optional Protocol), which provides that individual children can submit complaints to the UN Committee about specific violations of their rights.¹²

Before a child or their representative could make a complaint to the Committee under the third Optional Protocol, they would be required to have exhausted domestic remedies that are available. This could assist in improving existing domestic remedies.

Ratification of the third Optional Protocol would provide new protections for children, and a similar level of accountability for children's rights as exist for adults under other United Nation treaties.

The Australian Government has indicated that it considers that children can utilise existing communication mechanisms under other international treaties and is not planning to ratify the Optional Protocol. This approach neglects the fact that mechanisms for other treaty bodies have not been designed for children. It also sends a message to children that breaches of their rights are not seen as having the same importance as breaches of adult rights.

3.5 Data

The Committee on the Rights of the Child monitors Australia's progress in fulfilling its obligations under the CRC. The Committee has guidelines that detail the type of information and statistical data that it requires.

During 2018–2019, the National Children's Commissioner asked a number of Commonwealth agencies, including the Australian Institute of Health and Welfare (AIHW), the Productivity Commission and the Australian Bureau of Statistics, for information about the extent to which they collected the data required by the Committee and whether it was publicly available in Australia.

The responses showed significant and serious data gaps. These data gaps impede Australia's capacity to monitor and report on child wellbeing, and its ability to understand when and how best to intervene in ways that will support all children to thrive.

A lack of data on children, disaggregated by age, location, socio-economic status, cultural background, disability, lesbian, gay, bisexual, trans and intersex (LGBTI) status, occurs across a range of health and wellbeing domains, such as:

- child deaths
- self-harm hospitalisations
- violence against children
- outcomes for children in or having left child protection services
- children with disability
- school expulsions and suspensions
- drug and substance abuse.

Submissions to the National Children's Commissioner in 2018 identified access to disaggregated data as a significant concern.¹³ For example, the Multicultural Youth Advocacy Network (MYAN) stated that:

The Department of Home Affairs (DHA), while reporting on migration categories of arrivals, does not report on different age cohorts, including the specific youth cohort (aged 12 to 24) which hampers efforts to ensure better planning and programming for the needs of young refugees and migrants arriving in Australia.¹⁴

The issue is also exemplified in the payment data in the National Disability Insurance Scheme (NDIS), where data is only provided in two cohorts, 0–9 years and 10–19 years. These cohorts include children across a wide range of developmental ages, as well as adults, and are too broad to be helpful.

The Longitudinal Study of Australian Children (LSAC) and the Longitudinal Study of Indigenous Children (LSIC), both initiatives of the Australian Government, are significant initiatives which contribute to understanding the issues facing children in Australia.

LSAC commenced in 2004 with two cohorts of children aged 0–1 year and 4–5 years. LSIC included two groups of Aboriginal and/or Torres Strait Islander children who were aged 6–18 months and 3½–5 years when the study began in 2008. Data experts advise that new cohorts of children are now needed, as the existing cohorts are now in their teens.

Currently, the AIHW is developing a Children's Compendium report, scheduled for release in late 2019. This aims to provide an overview of how Australia's children are faring over time, building on previous national reporting undertaken by AIHW.

The reporting framework underpinning the Children's Compendium is the AIHW's person-centred framework, which has seven domains: health, safety and justice, social support, housing, education, employment, and income and finance. In addition to population-level descriptive statistics, the AIHW will also include a summary of current data gaps/limitations.

The Children's Compendium report is being developed using AIHW funding and a one-off contribution from the Australian Government Department of Social Services (for the child safety component of the report).

While a range of headline indicators concerning children are generally available, they do not provide the intersectional information required for effective policy development. Further, such indicators only identify change over time and at a very broad level. For example, it is important to know what services children are accessing and what therapeutic dose (frequency and type) of service they receive to understand any impact service use may be having on changes in indicators.

Continued work is needed to identify lead indicators of children's vulnerability, which can identify children at risk before they come in contact with systems such as child protection or youth justice. It is critical to be able to understand the transitions of children through these systems to identify the best time and place for intervention.

In July 2018, the Australian Government created the Office of the National Data Commissioner. This office will oversee and monitor the integrity of Australia's data system and will be responsible for implementing a simpler data sharing and release framework. This initiative was well received. It is hoped the new framework will break down barriers preventing efficient use and re-use of public data.¹⁵

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government:

- **ensure that data collected on children's rights covers all areas of the Convention, in particular relating to violence, alternative care, natural disasters and children in conflict with the law, and is disaggregated by age, sex, disability, geographic location, ethnic origin, national origin, and socioeconomic background, and identifies those in situations of vulnerability, such as Aboriginal and Torres Strait Islander children, children with disabilities, and asylum-seeking, refugee and migrant children**
- **ensure that the data and indicators are shared among the ministries concerned and used for the formulation, monitoring and evaluation of policies, programs and projects for implementation of the Convention**
- **ensure that the Office of the National Data Commissioner has the resources necessary for its effective functioning.**¹⁶

3.6 Sustainable Development Goals

In 2015, Australia adopted the 2030 Agenda for Sustainable Development. As part of this commitment, Australia has international reporting responsibilities under the Sustainable Development Goals (SDGs) to outline its progress toward achieving the goals. The participation and engagement of children is crucial to tracking progress and achieving the SDGs (no poverty, zero hunger, good health and wellbeing, quality education, clean water and sanitation, affordable clean energy, decent work and economic growth, reduced inequalities, peace, justice and strong institutions).

SUSTAINABLE DEVELOPMENT GOALS



In the Concluding Observations (2019), the Committee on the Rights of the Child refers to specific targets of the Sustainable Development Goals. These targets include:

- **by 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being (SDG 3.4)**
- **by 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes (SDG 4.1)**
- **eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation (SDG 5.3)**
- **ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard (SDG 10.3)**
- **end abuse, exploitation, trafficking and all forms of violence against and torture of children (SDG 16.2)**
- **by 2030, provide legal identity for all, including birth registration (SDG 16.9).¹⁷**

Australia delivered its first Voluntary National Review (VNR) on the 2030 Agenda at the UN High Level Political Forum in July 2018. This voluntary participation is commended. In future reporting, it will be important to include Australia's progress in relation to these specific targets identified by the Committee on the Rights of the Child.

3.7 Dissemination, awareness-raising and training

Human rights education is a core part of the work of the Australian Human Rights Commission and the National Children's Commissioner.

It is also a commitment under article 42 of the CRC, which asks State Parties to educate both adults and children about children's rights. The Commission provides training, conducts public forums and produces human rights education resources.

Since 2010, the Commission has been involved with the development of the national school curriculum to provide opportunities for all children in Australia to develop an understanding of and appreciation for human rights. The Commission has mapped lesson plans against several learning areas, including English, Mathematics, Science, History, Health and Physical Education, Economics and Business, Civics and Citizenship, and Geography. These are not mandatory but at the discretion of schools and educators.

The National Children's Commissioner worked with Early Childhood Australia, a national peak early childhood advocacy organisation, to develop a *Statement of Intent on Children's Rights in Early Childhood Education and Care*, which outlines concrete steps that early childhood educators can take to reinforce children's rights in their daily practice.

The Commission also developed a toolkit, *Building belonging*, for early childhood educators on cultural diversity and responding to prejudice.

In 2017, the Australian Government asked the National Children's Commissioner to lead the development of National Principles for Child Safe Organisations. In February 2019, the National Principles were endorsed by members of the Council of Australian Governments. The National Principles are underpinned by a child rights, strengths-based approach. The Commission has developed practical tools to help organisations implement the National Principles for Child Safe Organisations. This is covered in more depth in Chapter 6.

In 2019, the Commission made an animated child rights video which is used for educating both children and adults about children's rights.



In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government ‘strengthen its awareness-raising programs on the Convention, including through greater media and social media engagement, in a child-friendly manner, promoting the active involvement of children in public outreach activities including measures targeting parents, social workers, teachers and law enforcement officials’.¹⁸

It also recommended that the Australian Government ‘include mandatory modules on human rights and the Convention in the school curriculum and in training programs for all professionals working with or for children, including all law enforcement officials, teachers, health personnel, social workers and personnel of childcare institutions, as well as State and local government officials’.¹⁹

3.8 The way forward

- Ⓡ 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).

- ④ 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.
- ④ 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.
- ④ 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.

Chapter 3: Endnotes

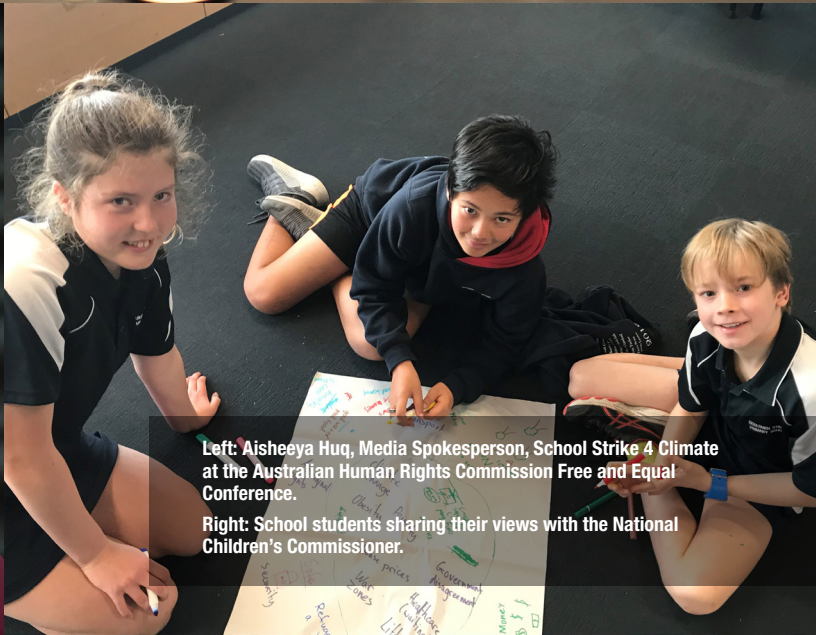
- 1 The NCC has included a chapter focused on the work of the PJCHR in each of her statutory reports: Australian Human Rights Commission, *Children's Rights Reports 2013–2017* <www.humanrights.gov.au/our-work/childrens-rights/projects/childrens-rights-reports>.
- 2 United Nations Committee on the Rights 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 7(a).
- 3 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 7(a)–(b).
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Chapter 4:

Children's voices



Young people sharing their views with Dr Michelle Bachelet, United Nations High Commissioner and the National Children's Commissioner.



Left: Aisheeya Huq, Media Spokesperson, School Strike 4 Climate at the Australian Human Rights Commission Free and Equal Conference.

Right: School students sharing their views with the National Children's Commissioner.

Article 12 of the *Convention on the Rights of the Child* (CRC) requires governments to ensure that children and young people have the opportunity to participate in decisions that affect them.¹

This is one of the guiding principles of the CRC because having a genuine voice and being heard is the gateway to claiming all other rights. This right is both safeguarding and empowering for children.

The participation of children is not a routine part of the development of laws or policy in Australia. However, there has been a noticeable trend over recent years towards creating mechanisms for the participation of children in a variety of contexts.

For example, child protection legislation in Australian jurisdictions supports involving children in decision-making to the extent that their age and maturity allows. At the policy development level, governments can engage with children through schools, youth advisory boards, youth parliaments and forums, and through Children's Commissioners.

There have also been some examples of facilitating the engagement of children and young people in the development of national initiatives, such as the National Framework for Protecting Australia's Children as well as the development of the National Principles for Child Safe Organisations, led by the National Children's Commissioner (see Chapter 6). Further, the state and territory Children's Commissioners and Guardians undertake consultations with children within their own jurisdictions on a range of issues.

Consultation with children is not a mandated part of the role of the National Children's Commissioner, and there is no dedicated budget for this activity.

Despite this, the National Children's Commissioner consults widely with children. Since commencing her role in 2013, it is estimated that the National Children's Commissioner has consulted with over 28,000 children. Each consultation has provided an invaluable opportunity to hear directly from children about the issues that affect them, what is most important to them, and the extent to which they know about children's rights.

“

Children are strong people and they deserve to be heard
(child, 10)

”

4.1 Consultations with children and young people—2018

In 2018, the National Children’s Commissioner sought children’s views about their rights, to convey these views to the Committee on the Rights of the Child. She heard from 22,700 children through an online national poll on children’s rights (Children’s Rights Poll) and consulted in person with approximately 450 children.

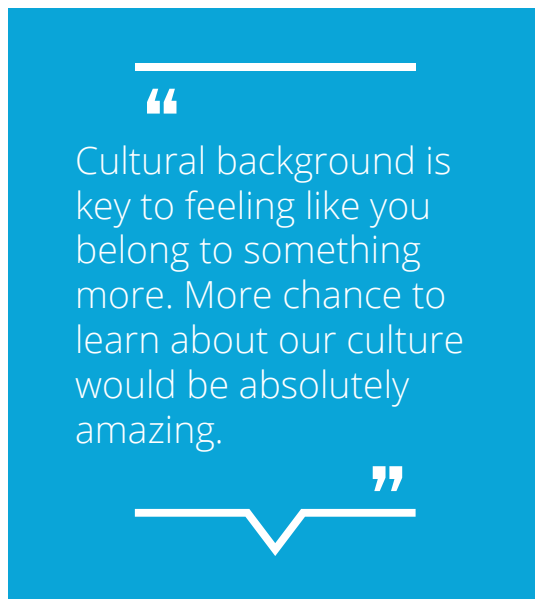


Through talking to children about human rights, and their rights in particular, it is clear that rights knowledge strengthens children's agency and capabilities, and also engenders respect for the rights of others.

The key themes that emerged from younger children (0–4 years) were that they enjoyed being with their families and friends, loved to play, and appreciated Australia's natural environment. Aboriginal and Torres Strait Islander children in this age group highlighted connection to culture and cultural activities as important, and those in remote communities emphasised the significance of a safe home.

Consultations with teenagers revealed that they have a keen understanding of areas in which the Australian Government could improve its performance in terms of its obligations under the CRC. They felt that Australia was generally a safe place to grow up and appreciated our weather, environment, and access to free education and health care. Many talked about our strong gun control laws as helping to keep them safe and feeling safe.

Young people cited mental health as a significant issue, with one young person saying, 'mental health for teenagers needs to be made a priority'. Another reflected on young people in detention, stating: 'I feel detention centres for youth ... need to be reconsidered and re-evaluated with more access to mental health benefits and changing living conditions'.



Other issues highlighted by teenagers included: the lack of education about rights in Australian schools; frustration about their inability to participate in politics; the lack of capacity for schools to respond to individual learning needs; and social structures that diminish the agency of children.

One young person said that a particular problem was, 'the stigma surrounding young people being "incapable" of making informed decisions about their own health and education'.

Aboriginal and Torres Strait Islander children talked about the importance of maintaining connections to culture and language.

4.2 The Children's Rights Poll

In July 2018, the National Children's Commissioner (in partnership with the University of Melbourne) ran an online survey that asked Australian children about their rights. The survey was available on the website of the popular television show, *Behind the News*.

Children were involved in designing the survey. The Commissioner consulted with two groups of children who helped identify key issues, which formed the basis of the survey questions.

“

Adults sometimes think kids don't know things and ignore their ideas

(child, 10)

”

“

All children should be able to have a say in things that matter

(child, 11)

”

“

Bullying is a major issue that contributes to not feeling safe

(child, 12)

”

Demographics of survey respondents

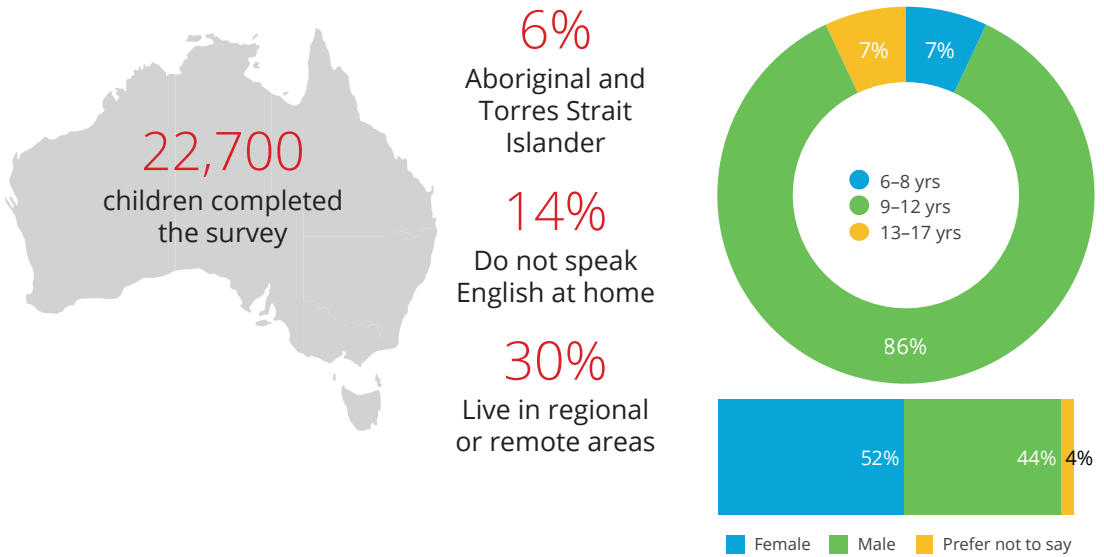


Figure 4.1: Children’s Rights Poll, Demographics of survey respondents.

(a) Survey results

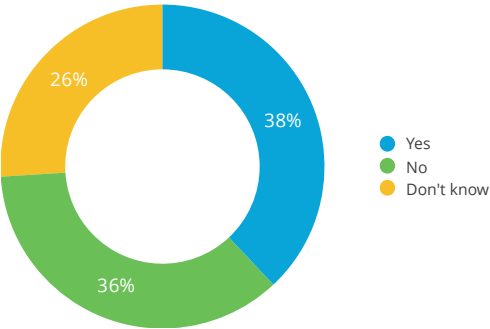
Children were asked to rank their top three rights. The top three rights were consistent across all subgroups, except for older children who ranked ‘getting an education’ as third.

Children were also asked which rights were ‘most true’ or ‘least true’ for them in their lives. When the survey data was disaggregated according to Aboriginal and Torres Strait Islander status, greater proportions of children reported that the listed rights were ‘a little’ or ‘not at all’ true for them in their life, compared to children who did not identify as Aboriginal or Torres Strait Islander. The same was true of children who indicated that they lived in regional or remote areas of Australia.

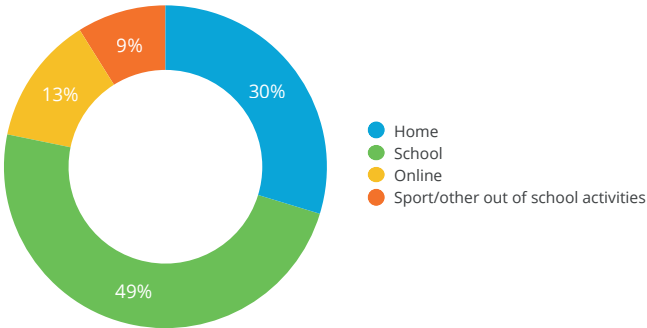


Figure 4.2: Children’s Rights Poll, Ranking of rights.

Do you think all children have these rights?

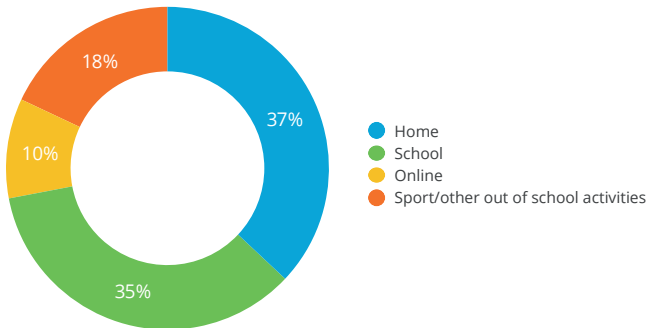


Where did you learn about your rights?



Can you participate in decisions affecting you in the following places?

*children who said yes



More **boys** than girls indicated that they could **participate in decisions online** (12% v 8%)

Do you think Australia does enough to help children?



Figure 4.3: Children's Rights Poll, Children's views on their rights.

(b) Aboriginal and Torres Strait Islander respondents

A significantly lower proportion of children who identified as Aboriginal or Torres Strait Islanders or preferred not to say, reported that they were able to participate in decisions affecting them at home, school or sport/other out of school activities. Children who identified as Aboriginal or Torres Strait Islanders also reported that they were less likely to be treated fairly than their non-Indigenous peers. In response to the statement, 'I am treated fairly', 14.9% of self-identified Aboriginal and Torres Strait Islander children answered, 'a little/not at all', compared with 4.5% of non-Indigenous respondents.

(c) Regional and rural respondents

A significantly lower proportion of children in regional and rural areas felt they could participate in decisions affecting them at home, online and sport/other out of school activities compared to children in major cities. Children in regional and rural areas also indicated that access to health care was a right less likely to be met for them than for those respondents from major cities. The statement, 'I can see doctors when I'm sick', was ranked second lowest by regional and rural respondents.

4.3 Participation

Although participation (or lack of it) is an issue frequently raised by children, measuring participation is problematic.



A 2018 poll conducted by the University of Melbourne and *Behind the News*, the *Kids Contribute Survey*, provides some insight into children's own views regarding the ways they contribute to their communities.

Approximately 11,000 children completed the poll, which found that 99% of children regularly contributed at home, at school and in clubs. The children who responded indicated that they greatly valued opportunities to contribute in the places where they live, learn and play. Overall, the poll revealed that girls contributed more and received fewer monetary rewards. About half of the respondents reported receiving pocket money but were motivated to contribute because of the rewards of feeling proud and helping others.

4.4 Children's views about safety

In developing the National Principles for Child Safe Organisations, the Australian Government supported the National Children's Commissioner in talking directly to a range of children about what promises organisations (like sports clubs, schools and youth groups) should make to them to keep them safe.

Children identified a number of promises they wanted from organisations to keep them safe—in particular—to be treated equally and fairly, to be welcome and feel they belong, for adults to help them with their hopes and dreams, to be responsive to individual needs, to be able to have a say and in multiple ways, for adults to be good at what they do, for the environment to be comfortable, accessible and clean, to be able to get care and help when they needed it, and for adults to not just listen but to act.

The things that children said were then used to develop a Charter of Commitment to Children and Young People. Organisations can use this to help them when developing their own Charter of Commitment.

Our promises to you...

Respect	We will treat everyone equally no matter where they are from or who they are. We will make sure everyone feels included and welcome.
Inform	We will give you information about your physical, emotional and online safety, and what to do if you feel unsafe.
Give you a voice	We will make sure there are lots of ways for you to have a say and be involved.
Help	We will listen and act on what you tell us. We will help you with your hopes and dreams as well as your worries and fears.
Trust	You can trust that we will care about your needs and feelings and will support you. We will continue to get better at what we do.
Safety	We will make our place happy and comfortable for you.

Name of organisation: _____ Date: _____



Figure 4.4: Charter of Commitment to Children and Young People, developed by the Australian Human Rights Commission, available at: <https://childsafe.humanrights.gov.au/tools-resources/practical-tools>.

“

It's not just about
feeling safe, it's
about feeling
included

”

“

I think Australia
needs to do more
about safety of
children

(child, 12)

”

“

I think we should
have some more
rules about safety

(child, 9)

”

4.5 Decision making in relation to family life

Submissions to the National Children's Commissioner in 2018, such as from the ACT Human Rights Commission, called for more opportunities for children's voices to be heard in the context of the family court system, on custody and related matters.²

Children who talked about their experiences of the family law system with the National Children's Commissioner told her that it needed to provide them with relevant information more often and allow them to participate in meaningful ways.

These views were reflected in a 2018 Australian Institute of Family Studies (AIFS) research report on children and young people in separated families. The report found that children and young people wanted to be kept informed about the legal processes of the family law system, including: 'knowing more about who was representing their parents; who was (if anyone) representing them; what the possible outcomes were; who was determining the parenting arrangements; what the steps were in the decision-making process; when would matters be decided; and when and how they would be able to express their opinion on matters'.³ See Chapter 7 for further discussion of children's experiences in the family law system.

“

Children don't get a very large say in divorce: like which parent they want to live with
(child, 12)

”



The National Children's Commissioner talking to children about their rights.

The Concluding Observations (2019) of the Committee on the Rights of the Child contain suggestions for improving children's participation in Australia, including the following:



- National Children's Commissioner be required to consult children and be resourced to do so⁴
- Outcomes of consultations be taken into account in law and policy making⁵
- Development of toolkits for public consultation with children on issues that affect them, including climate change⁶



- Children be informed about their rights under the CRC⁷
- Children actively involved in public outreach activities⁸



- Human rights and the CRC be mandatory in school curriculum⁹
- Training is provided to professionals working with children about the CRC¹⁰



- Attention be paid to enhancing the meaningful and empowered participation within family, community and schools of girls, children with disabilities, and Aboriginal and Torres Strait Islander children¹¹



- *Family Law Act 1975* (Cth) be amended to ensure respect for the views of the child in decisions that impact them¹²



- *Migration Act 1958* (Cth) be amended to ensure respect for the views of the child at all stages of the migration process¹³

4.6 The way forward

- ④ 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.
- ④ 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.



Children talking to the National Children's Commissioner about their health rights

Things in Australia that children and young people think are good, or that need to change:

Having fun and laughing

We have
Freedom

Safe, good education,
free healthcare

Racism
prevention

Australia
is good

Being able to make
our own Decisions
in life

Food and water

More support
for families

Poverty

Equal opportunities

Change bullying &
how it is dealt with

What's good about living in Aus:

- employment opportunities
- access to education
- access to health facilities (mental + physical)
- equality
- medicare & centrelink

Cultural background is key
to feeling like you belong
to something more

My friends

Improving
Education
in Remote
areas

Unsatisfactory:
The stigma surrounding young
people (<18) being 'incapable' of
making informed decisions about
their own health & education

Close knit
community

To be treated fairly &
get more of a say/more
cultural program in schools

Bad: Teachers should be better
informed of social media so as
to make more informed, accurate
decisions regarding intervention

Young, single mothers to have
more support, more financial help,
proper, safe housing, support to
young fathers – programs for them

As a young person,
I enjoy living and being in Australia due
to the freedoms and rights that I am enable to.
I go to school everyday without fear
and am comfortable doing activities by myself.
I am happy and proud to live hear and
I am so blessed and lucky
to have the life I do ❤️

Freedom
of speech
is dying

Everybody deserves
a home

Having a voice
that can be heard

Negative: The expectation to take on such large responsibilities at a young age e.g. criminal responsibility age (10)

The opportunity of easier access to education & university

Bad: our representation and lack of focus on ATSI children care to provide adequate education and proper support

Need to look at the disturbingly low progress of Closing the Gap. There is too little progress in the last 50 years since the Integration Act

Things to work on:
innocent children living on Manus Island in detention → basic human rights being denied, should be allowed to live freely in Australia

Bad: not enough benefits for transport for kids in school

Good: so much opportunity e.g. sport, careers, education and so many options for people growing up in Australia

NOT SO GREAT:

- Mental health in teens
- Bullying is a major issue

Chapter 4: Endnotes

- 1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990) art 12.
- 2 ACT Human Rights Commission, Submission No 97 to Australian Human Rights Commission, *Report under Article 44, Paragraph 1(b), on the Convention on the Rights of the Child*, 30 May 2018. 97.
- 3 Australian Institute of Family Studies, *Children and Young People in Separated Families: Family Law System Experiences and Needs* (Research Report, 2018) vii.
- 4 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 12(b).
- 5 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 12(b).
- 6 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 22(e).
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- 8 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 13.
- 9 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 14.
- 10 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 14.
- 11 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 22(d).
- 12 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 22(a).
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From The Voices Of Children & Young People

create
FOUNDATION



Photograph of a quilt made by children and young people at the CREATE Foundation. Presented to the National Children's Commissioner as a gift

Chapter 5:

Civil rights



The National Children's Commissioner congratulates Georgie Stone, winner of Young People's Human Rights Medal in 2017.



Mardi Gras.

CIVIL RIGHTS

BIRTH REGISTRATION, NAME AND NATIONALITY



Not all Aboriginal and Torres Strait Islander babies are registered at birth



Transgender children cannot always seek legal recognition of gender identity on birth certificates



Children in out-of-home care often experience difficulties in accessing documents

- Birth certificates
- Australian citizenship
- Passports
- Proof of Aboriginality

Lack of legal recognition of parentage for children born through surrogacy can affect their ability to access:



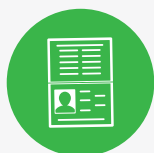
- Medical treatment and benefits

- Passports
- Citizenship
- Intestacy



- Workers' compensation entitlements
- Child support

CITIZENSHIP



Citizenship loss provisions

in the **Australian Citizenship Act** can apply to children with dual citizenship **14 years** and over who are Australian by birth + who have Australian parents + **who have never lived outside Australia**

FREEDOM OF EXPRESSION AND THE RIGHT TO SEEK, RECEIVE AND IMPART INFORMATION



Digital environment

97%

of Australian households with children under 15 have access to the internet (2016-17)



Accessibility issues for children with disability

- Not all content is accessible
- Audio description unavailable in Australia
- Captioning levels differ for the type of TV service and channel

This chapter covers a wide range of issues affecting the civil rights of children and young people in Australia. The civil rights that are protected under the *Convention on the Rights of the Child* (CRC) include rights associated with identity, such as the right to have their birth registered, the right to a name, the right to know who their parents are and the right to a nationality (article 7)¹. The CRC also protects a child's right to live a life free from discrimination (article 2)² and their right to access accurate information in writing, print or other media (article 13).³

5.1 Birth registration and identity documents

Not all babies in Australia are registered at birth, especially those born to Aboriginal and Torres Strait Islander parents.

Queensland Health reported in 2014 that 15–18% of births to Aboriginal and Torres Strait Islander mothers were not registered, compared with 1.8% of births to mothers who were non-Indigenous.⁴

Reasons for this disparity include fees and penalties for late registration of a birth and obtaining a birth certificate, and a lack of culturally appropriate information and support for the birth registration process.⁵

Birth certificates play an important role in ensuring that a child has access to education and other resources. Currently, birth registration is free in all states and territories. However, fees are charged for birth certificates (which are required for school enrolment). In terms of fees, Queensland charges a late processing fee of \$5.20 for births that are registered after 60 days, while in Victoria, section 18(1) of the *Births, Deaths and Marriages Registration Act 1996* enables a penalty of \$1650.20 to be imposed for registration that occurs more than 60 days after the birth.

Any strategies introduced to improve rates of birth registration should focus on assisting families rather than prosecuting or penalising them for failing to register a child at the time of their birth. Birth certificates should also be provided free of charge.

“

Well i think anyone who is transgender or growing up with gay couples should have rights too

(child, 17)

”

(a) Birth certificates of transgender and intersex children

It is not always possible for transgender children in Australia to seek legal recognition of their gender identity. The inability to change the sex marker on birth certificates can make the experience of attending school, for example, difficult for transgender children.

In 2019, Tasmania introduced landmark legislation that enables transgender adults and children to change the sex marker on their birth certificates. Previously, this had only been available to adults who could demonstrate that they had undergone sex reassignment surgery or had met other strict evidentiary requirements. The new legislation allows young people aged

16 years and over to change the sex marker on their birth certificates without parental consent. Applications to change the sex marker on a person's birth certificate must be supported by a statutory declaration that declares the person's identified gender and states that they wish to live as a person of that gender. The parents of children aged under 16 can make an application on behalf of their child.

The Australian Human Rights Commission (the Commission) is currently conducting a project that considers how best to protect the human rights of people born with variations in sex characteristics in the specific context of non-consensual medical interventions.⁶ It is anticipated that the project's final report will be published in 2020.

(b) Identity documents for children in care

Children in out-of-home care can experience difficulties in accessing identity documents, such as birth certificates, proof of Aboriginality, proof of Australian citizenship, and passports. A key strategy of the Third Three Year Action Plan, 2015–18⁷ under the National Framework for Protecting Australia's Children 2009–2020 is to help children in out-of-home care thrive in adulthood. Under this framework, the National Children's Commissioner has been involved in leading the development of cross-jurisdictional protocols to support more streamlined identification requirements and fast-tracked access to identity documentation for children with an out-of-home care experience. However, this continues to be an issue of ongoing concern for children in out-of-home care.

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that Australian governments ensure that all children, particularly Aboriginal and Torres Strait Islander children, children living in remote areas, and children in child protection services, are registered at birth and receive free birth certificates.⁸

(c) Legal recognition for parents of children born through surrogacy

Children born overseas through surrogacy can be granted citizenship by the Australian Government. However, it is the responsibility of parents to seek parentage orders. These orders are determined according to different criteria and processes in each state and territory. Currently, these processes lack both consistency and certainty.

Lack of recognition of legal parentage can affect the ability of children to access a variety of other rights relating to citizenship, medical treatment and benefits, inheritance, passports, child support and workers' compensation entitlements. Parents (biological or not) of children born through surrogacy arrangements should be given the opportunity to be legally recognised.⁹

In its Concluding Observations (2019), the Committee on the Rights of the Child asked Australia to ensure that children born through international surrogacy arrangements have access to a clear process with uniform rules throughout the country to obtain Australian nationality.¹⁰

The Committee further addresses the issue of children born through surrogacy by asking Australia to ensure that children born through assisted reproduction technologies, in particular through surrogacy, are able to access information about their origin, and that all involved are provided with appropriate counselling and support.¹¹ See Chapter 6 for further discussion of international surrogacy.

5.2 Discrimination

“

I really do think that absolutely everyone should be treated the same from all religions, cultures and beliefs

(child, 10)

”

Article 2 of the CRC protects a child's right to live a life that is free from discrimination of any kind.¹² The Committee on the Rights of the Child states that the obligation to ensure that children are not subject to discrimination requires governments 'to identify individual children and groups of children the recognition and realization of whose rights may demand special measures'.¹³ The Committee also highlights the need:

... for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.¹⁴

There are a number of significant groups of Australian children and young people who experience discrimination on the basis of their gender, sexual orientation, race, national or ethnic origin, and disability.

In its Concluding Observations (2019), the Committee on the Rights of the Child encouraged Australia to:

- **address disparities in access to services by Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care, asylum-seeking, refugee and migrant children, regularly evaluate the enjoyment by those children of their rights and prevent and combat discrimination¹⁵**
- **strengthen its awareness-raising and other preventative activities against discrimination, including through school curricula, and take affirmative action for the benefit of the groups of children mentioned above.¹⁶**

(a) Gender inequality

Women and girls make up just over half of the Australian population (50.7%), according to figures from the 2016 Census.¹⁷ Despite achievements in the quest for gender equality over recent decades:

- Australian girls are less engaged with, and outperformed by, boys in school subjects such as mathematics, which results in fewer women choosing careers in science, technology, engineering and maths.¹⁸
- Sixteen per cent of 15–17 year old girls reported experiencing sexual harassment in the 2018 National Sexual Harassment Survey.¹⁹
- Women and girls continue to earn less than their male counterparts, with the national gender pay gap currently at 15.3%.²⁰

(b) Racism

Two recent surveys of children and young people reveal widespread levels of racism and racial discrimination within Australia. The first national census of Australia's multicultural youth was conducted in 2017 and involved nearly 2,000 young people aged 15–25 from refugee and migrant backgrounds.²¹ The census revealed that 49% of refugee and migrant young people had experienced some form of discrimination or unfair treatment in the 12 months prior. 64% had witnessed someone else being unfairly treated or discriminated against. 66% of those who had experienced discrimination indicated that this was because of their race, while 25% attributed this discrimination to religion.²²

Types of discrimination experienced by multicultural young people aged 15–25

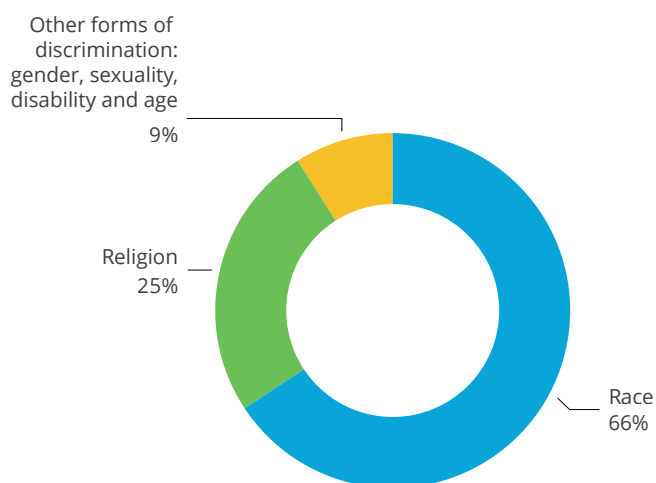


Figure 5.1: Sourced from Johanna Wyn, Rimi Khan and Babak Dadvand, University of Melbourne, *Multicultural Youth Australia Census Report 2017/18* (November 2018).

The *2017 Speak Out Against Racism Survey* canvassed the views of 4,664 students and 202 staff members from schools in New South Wales and Victoria. Approximately one-third of the student participants reported experiences of racial discrimination by their peers (31%), in society more broadly (27%), and just over one tenth reported being racially discriminated against by their teachers.²³

Student experiences of racism

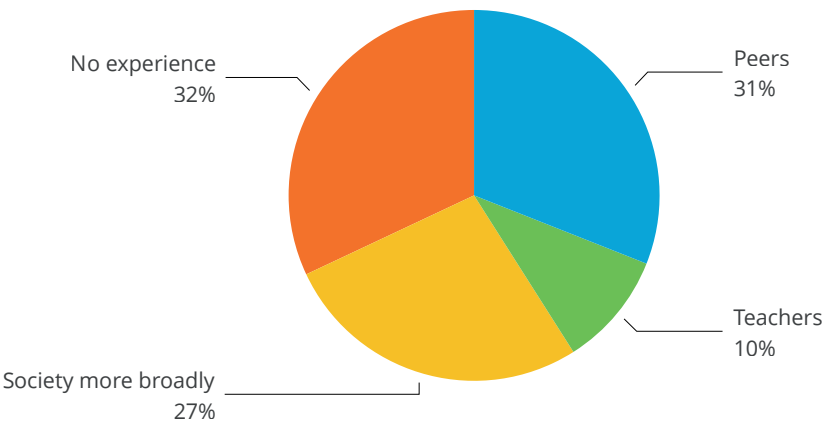


Figure 5.2: Sourced from Australian National University, *Findings from the 2017 Speak Out Against Racism (SOAR) student and staff surveys* (Report, 2019).

African-Australian communities, particularly Sudanese-Australian communities in Melbourne, have experienced heightened public attention in response to concerns about youth crime. Political and media debates about crime have contributed to racial fear and anxiety towards African-Australians.²⁴ This has exacerbated the high levels of discrimination and racial profiling experienced by people from African backgrounds.²⁵

The Multicultural Youth Advocacy Network has pointed out the importance of positive leadership and for governments to refrain from referring to ‘broad characteristics and particular cultural groups ... which reinforces inaccurate stereotypes, harming young people, their families and communities’.²⁶

(c) Aboriginal and Torres Strait Islander children and young people

Experiences of racism during childhood can have a detrimental effect on a child’s mental health. A recent study that focused on Aboriginal and Torres Strait Islander children aged 5–10, showed an increased risk for overall emotional and behavioural difficulties amongst children exposed to interpersonal racism.²⁷ See Chapter 12 for further discussion of Aboriginal and Torres Strait Islander children.

We need equal rights for indigenous
Australians in all of these areas
(child, 17)

(d) Children and young people with disability

Being treated fairly is extremely important
especially if you have a disability

(child, 11)

It is difficult to determine the level of discrimination experienced by children with disability who are younger than 15 because of the lack of available data.

The Australian Institute of Health and Welfare (AIHW) provides information about people with disability aged 15 and over with disability (who are living in households), who reported experiencing discrimination over the previous 12-month period:

- 1 in 4 (23%) had experienced some form of discrimination, compared with 1 in 6 (17%) without disability (2014)
- 1 in 3 (32%) had avoided situations because of their disability (2015)
- 1 in 3 (29%) had experienced difficulty accessing buildings or facilities (2015)
- 1 in 6 (17%) had experienced difficulty using public transport (2015).²⁸

“

For people with a
disability like me but
not a bad one though,
to be treated the same
as able people

(child, 10)

”

Children and young people with disability continue to face challenges in accessing education. A significant majority of the complaints relating to children that were received by the Commission in the 2018–19 reporting year were received under the *Disability Discrimination Act 1992* (Cth) in the area of education.

“
It is a good country but I think we can do better to help everyone. Including the LGBTIQ population. I find that there is still a lot of homophobia, transphobia and biphobia in Australia and especially in schools
”

(e) Homophobia and transphobia

Children who are part of, or assumed to be a part of, lesbian, gay, bisexual, transgender and gender diverse or intersex populations can experience discrimination at school and in other social contexts.

Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse (2014) highlights the effect that homophobia and transphobia can have on a young person’s health and wellbeing.²⁹ This report is based on data collected for a national survey, which was completed by 1,032 young people between the ages of 16 and 27 who identified as gender variant or sexuality diverse.

Young people in the survey who had experienced homophobia or transphobia at school indicated that it ‘impacted their health and wellbeing, the equity and quality of their educational experiences, as well as their learning generally’.³⁰ These results are tabled in the graph below:

In what ways, if at all, has homophobia or transphobia impacted on your schooling?
(n=1,032)

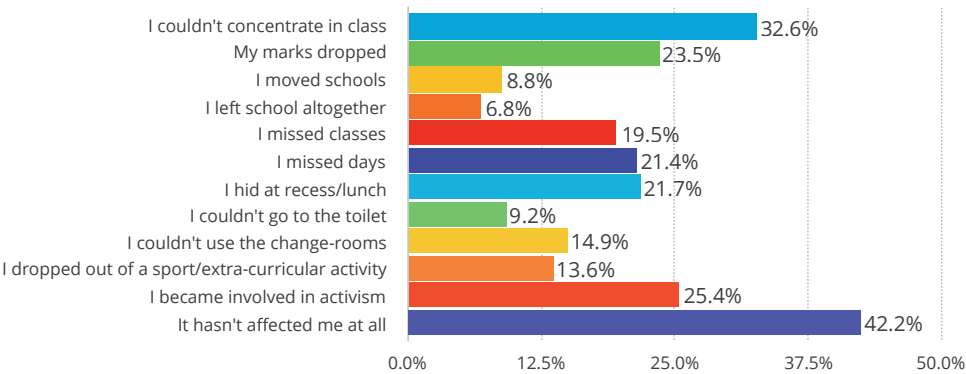


Figure 5.3: Young and Well Cooperative Research Centre, *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse* (Report, 2014) 59.

A further issue in Australia is that s 38(c) of the *Sex Discrimination Act 1984* (Cth) currently allows religious schools to discriminate against both students and teachers on the basis of sex, sexual orientation, gender identity and intersex status. (Discrimination is also permitted on the basis of pregnancy or breastfeeding). Allowing religious schools to discriminate against children in this manner directly contravenes article 2 of the CRC.³¹

Additional information about issues encountered by LGBTI children at school is located in Chapter 10.

(f) Citizenship

Over recent years, the Australian Government has introduced a range of new legislative measures in response to the threat of international terrorism which have the potential to impact negatively on children.

This includes the power to revoke the citizenship of dual nationals aged 14 years and over if they engage in terrorism-related conduct under ss 33AA and 35 of the *Australian Citizenship Act 2007* (Cth) (Australian Citizenship Act).

In its Concluding Observations (2019), the Committee on the Rights of the Child has explicitly requested that Australia revoke the December 2015 amendments to the Citizenship Act which allow for children under 18 years to lose their Australian citizenship if they ‘engage in or are convicted of certain foreign fighting or terrorism related conduct’.³²

The citizenship loss provisions contained in the Australian Citizenship Act can apply to people 14 years and over who are Australian by birth, who have Australian parents, and who have never lived outside Australia.

The operation of the legislation is particularly concerning because it permits the automatic loss of citizenship based on conduct that has not been the subject of a criminal conviction.³³

These conduct-based provisions have the effect of automatically ceasing a person’s citizenship, including the citizenship of a child, by operation of law. Because no formal decision is ever made that citizenship has been lost, let alone following a hearing before a court, there is a lack of certainty about if and when the provisions actually apply.

The legislation also permits the revocation of citizenship on the basis of a criminal conviction. As the age of criminal responsibility is only 10 years in Australia, this means that children as young as 10 may be faced with the possibility of having their Australian citizenship revoked.

The application of these provisions to children does not align with the CRC, which recognises the developmental needs and vulnerabilities of children, and consequently requires that children be treated differently from adults.

The Independent National Security Legislation Monitor released a report to the Attorney-General in September 2019 that recommended the repeal of ss 33AA and 35. In relation to s 33AA, the report states: 'There is a clear breach of the *Convention on the Rights of the Child*, there is a risk of de facto or temporary statelessness, and there is a denial of due process.'³⁴

At the time of preparing this report, and following submissions made by the Commission,³⁵ the Australian Government had introduced the *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (Cth). This Bill would change the operation of these conduct-related provisions to require a positive decision by the Minister with a requirement that, in the case of a child, the Minister take into account the best interests of the child as a primary consideration. In terms of the loss of citizenship for children as young as 10, on the basis of a criminal conviction for a terrorism-related offence and sentence of at least 6 years imprisonment, the Bill also reduces the seriousness of conduct that triggers the operation of this section to a sentence of just three years imprisonment.

5.3 Freedom of expression and the right to seek and receive information

(a) Children's rights in the digital environment

Australian children are active participants in online spaces and consider access to technology to be a basic right. They use it to socialise, to learn, to access information, to play, to get help, and to consume goods and services.

According to the Australian Bureau of Statistics (ABS) *Household Use of Information Technology 2016–17* survey, 97% of Australian households with children under 15 years of age had access to the internet (compared to 82% of households without children under 15). The survey also showed that young people aged 15 to 17 years were the highest proportion of internet users (98%) compared with the older age group (65 years and over) which had the lowest proportion of internet users (55%).³⁶

Proportion of households with internet access, 2004-05 to 2016-17

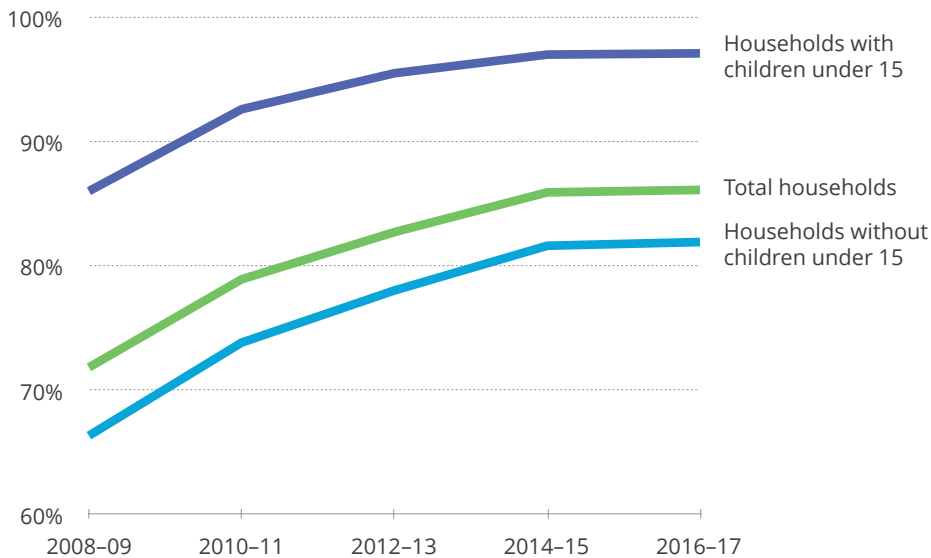


Figure 5.4: Sourced from Australian Bureau of Statistics, *8146.0 — Household Use of Information Technology, Australia, 2016-17* (28 March 2018).

The 2018 *Children's Rights Poll* asked children to identify where they had learned about their rights. 20.6% of respondents indicated that they had learned about their rights online, with 26.4% of those aged 12 to 17 years reporting that they had learned about their rights online. In addition, many of the 'free space' comments focused on digital technology. Comments generally related to the two themes of cybersafety and access (in terms of connectivity or affordability).

“

I think that we should be able to go online and be safer!!

(child, 9)

”

“

It is great but some people online are harsh

(child, 11)

”

“

We want better internet in rural areas

(child, 13)

”

“

Don't always trust the internet

(child, 12)

”

“

Some people don't get it because internet costs so much and it is too much for some people to afford. So I think you need to work on that
(child, 11)

”

These types of comments suggest digital disadvantage is a critical issue. According to the *Australian Digital Inclusion Index 2018*, ‘affordability is the key barrier to greater digital inclusion for single parents. The impact of internet access on single parent family budgets is substantial—it accounts for 2% of their household income compared to the national average of 1.17%.³⁷ Geography also contributes to digital inequality, as data points to substantial differences in connectivity and access between rural and urban areas.³⁸ Aboriginal and Torres Strait Islander children living in rural and remote communities generally have low rates of digital inclusion.³⁹

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government expand access to information, including via the internet, in the relevant language(s), to children in rural or remote areas.⁴⁰

Access to information from a diversity of digital sources is especially important for children who identify as belonging to racial, cultural, gender or sexual minorities, as well as those who experience depression, anxiety or other mental health issues. The communities that are formed in digital spaces through social media can provide essential points of connection and support. *Growing Up Queer* (2014) reports that the internet acts as an important source of information ‘... about the multiple and fluid possibilities for defining one’s own sex, gender and sexuality’.⁴¹ The study also found that LGBTI young people were ‘frequently using new media technologies, such as the internet and social networking sites to digitally “come out”, often before “coming out” offline’.⁴²

Aboriginal and Torres Strait Islander children living in rural and remote communities can have poor or limited access to the internet. However, research indicates that ‘digital technologies can be used as an effective means to overcome Indigenous disadvantage through improving capacity to build local economies, affirming Aboriginal identity, and providing culturally relevant information’.⁴³

(b) Discrimination, harassment and online abuse

Digital environments, particularly those created by social media, have created new arenas for discrimination, harassment and bullying. Education is the most effective response to cyber-harassment and online safety for children. Research conducted by the Commission in 2012⁴⁴ emphasises that the key driver of behavioural change in children is peer support and educative approaches. The need to educate children about how to deal with negative online behaviour needs to be balanced with the recognition that access to digital technology and information supports children to claim their basic rights in a range of areas.

“
That people on the internet that do really bad things should be stopped cause some kids get very upset and do silly things that other people might not want them to do
(child, 11)
”

“
Australia has made some great choices about the age limits for apps in case of cyber bullying or other dangers of the internet
(child, 10)
”

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government ensure that children, their parents and other caregivers are taught appropriate online behaviour, including preventive strategies, against online abuse and/or exploitation.⁴⁵

(c) Exposure to harmful digital content

A common form of harm that can occur within the digital environment is exposure to pornographic and violent images. Intentional or unintentional exposure to pornography can result in children developing distorted ideas about sexuality and relationships. The Australian Institute of Family Studies reported:

- In Australia, just under half (44%) of children aged 9–16 surveyed had encountered sexual images in the last month. Of these, 16% had seen images of someone having sex and 17% had seen images of someone's genitals.
- Younger children (those aged 9–12) are particularly likely to be distressed or upset by pornography.
- Parents tend to overestimate exposure to pornography for younger children and underestimate the extent of exposure for older children.
- The extent and frequency of viewing pornography differs by gender, with males more likely to deliberately seek out pornography and to do so frequently.⁴⁶

A human rights-based approach to protecting children from harm online requires a balancing of rights, with children and young people themselves being included in discussions about the most appropriate protective measures. Current regulatory responses, such as the removal of prohibited content under the eSafety Commissioner's Online Content Scheme, and the requirement that Internet Service Providers (ISPs) offer information and make available (at cost) filters that parents can install, can help to prevent some exposure.

However, the most effective strategy for protecting children and young people from the adverse effects of viewing pornographic content online is education. Such education includes providing children and young people with information and education about safety online, critical discussions about pornography as part of age-appropriate education about sex and respectful relationships, and human rights education. A package of educative measures covering these areas has the potential to empower children and young people and their families, and to provide them with the tools needed to minimise both exposure to and the impact of pornographic online content.

'Sexting' is the practice of sending or sharing intimate images. A 2017 survey of 1,424 young people aged 14–17 conducted by the Office of the eSafety Commissioner found that nearly one in three of the respondents had some experience with sexting in the 12 months prior to the date on which the survey was conducted. This included 'sending, being asked and asking, sharing or showing nude or nearly nude images or videos.'⁴⁷

Under Commonwealth law (section 474.27A(1) of the *Criminal Code Act 1995*), it is an offence for a person to transmit, access or solicit child sexual abuse material. There are also state and territory laws that operate to criminalise accessing, possessing, creating and sharing sexualised images of children. These laws are designed to protect children from predatory adults. However, the laws can sometimes be used to prosecute children who have unknowingly engaged in criminal behaviour—even if the children involved have consented. A child or young person under the age of 18 who takes an intimate image of themselves and then shares it with another young person can be prosecuted for transmitting child sexual abuse material. The recipient of the image can also be prosecuted.

The Youth Advocacy Centre has indicated that it is aware of numerous prosecutions involving children:

Lawyers regularly make submissions for the withdrawal of charges where children are prosecuted for producing and distributing child exploitation material when taking a photo of themselves and sending it to a boy/girlfriend or similar. They are the victim of their own offence.⁴⁸

Children need to be provided with clear guidance about how to navigate healthy sexual relationships, the importance of consent and safe digital practices in the digital environment. Criminalising the behaviour of children who engage in the practice of 'sexting' is not an effective solution to this problem.

(d) Accessibility

Audio description (a descriptive narration of the visual elements of a television program) is a vital service for people who are blind or vision-impaired. It is a particularly important service for children who are blind or vision-impaired, as it enables them to access the same television programs as their peers and therefore assists in their education, cultural participation and social development. Audio description can also be of benefit to children on the autism spectrum. A regular audio description service is not available in Australia.

“

I have a disability (vision impairment) and I can still do things. I would like to see people with disabilities included more and have better access to everything
(child, 9)

”

Television captioning services assist people who are deaf or hearing-impaired to access television programs. Although captioning services have been provided in Australia since 1982, they are not provided on all channels. Free-to-air channels must caption all programs on primary channels broadcast from 6am to midnight, but multi-channels are exempt from these requirements. These exemptions have a significant impact on children, as the majority of free-to-air networks have moved their children's television programs to multi-channels. The Centre for Inclusive Design argues that, 'this means that few, if any, children's programs on free-to-air TV are currently required to be captioned'.⁴⁹

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government promote access to online information for children with disabilities 'through making available audio description and captioning'.⁵⁰

5.4 The way forward

- Ⓜ 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.

Chapter 5: Endnotes

- 1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990) art 7.
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- 14 *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)* 4.
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Australian
Human Rights
Commission

THE **Big
Banter**

Children's rights

You have the right to:

1.
be treated fairly
no matter what

2.
have a say
about decisions
affecting you

3.
live and grow
up healthy

4.
have people
do what is best
for you

5.
know who you
are and where
you come from

6.
believe what
you want

7.
privacy

8.
find out
information and
express yourself

9.
be safe no
matter where
you are

10.
be cared for and
have a home

11.
education,
play and cultural
activities

12.
help and
protection if
you need it

Adapted from the Convention on the Rights of the Child.

For more information on children's rights, go to www.humanrights.gov.au/childrights

To tell a story about your rights, go to somethingincommon.gov.au/thebigbanter

Chapter 6:

Safety

The right of the child is to have PROTECTION



Child's drawing from consultations with the National Children's Commissioner

SAFETY

EXTENT OF FAMILY VIOLENCE ABUSE AND NEGLECT



Child protection reports:
child abuse and neglect
increased **27%**
(2012-13 to 2016-17)

Child protection data:
67,968
substantiations of
child abuse and neglect
Australia-wide (2016-17)

1 in 10 men



and 1 in 8 women



witnessed violence against their
mother before the age of 15 (2016)

CHILDREN AT GREATEST RISK



Girls 15-19 have the **highest rate**
of reported sexual abuse of any
age and sex group (2018)

Children with disability are more
at risk and are more likely to have
experienced **repeated incidents of**
sexual abuse by the time they are
18 years old

Family and domestic violence
disproportionately effects
Aboriginal and Torres Strait
Islander women and children



CORPORAL PUNISHMENT

Corporal punishment is **not**
prohibited for use by parents
nor in all schools

CHILD ABUSE IN INSTITUTIONS

69,600 people reported
having been **sexually abused** by
a doctor, teacher or minister of
religion **before the age of 15** (2012)

FORCED MARRIAGE

Forced marriage was criminalised under federal law in 2013.

The Australia Federal Police received **61** referrals related to forced marriage, the
majority being about children (2017-18).

But prevalence is unknown as a large majority of forced marriages
are not legally registered.

FEMALE GENITAL MUTILATION

Female genital mutilation/cutting for non-therapeutic purposes is criminalised
However, inconsistent penalties, age coverage and extraterritorial provisions impede
information sharing

Children have the right to be safe and protected from violence and abuse in all aspects of their lives—in their homes, at school, in their online activities and in the broader community.

Children say that the right to safety is the number one priority for them, according to the Children's Rights Poll (see Chapter 4—Children's voices).¹

While most children in Australia tell us they feel safe, many children experience unacceptable levels of violence, abuse and neglect.

Most violence against children is committed by someone that the child knows, the family being the most common setting. Tragically, every year a small number of children die at the hands of a family member. Children are also frequently witnesses and bystanders of violence in the family, commonly violence directed at their mother.²

Some children have been maltreated in the care of institutions such as schools, recreational organisations, residential care, youth detention and immigration detention. While the harmful effects of institutional maltreatment have been brought into stark relief in Australia by the Royal Commission into Institutional Responses to Child Sexual Abuse (2012–2017), there is still much to do to make sure that children are safe.

A small number of children in Australia are victims of child trafficking, slavery or slavery-like practices, including forced child marriage. International surrogacy remains unregulated, highlighting risks of child trafficking.

Some people in Australia have also been the victims in childhood of harmful traditional practices, such female genital mutilation or cutting (FGM/C), with serious lifelong health impacts.

6.1 Extent of family violence, abuse and neglect

According to the Personal Safety Survey 2016, 13% of Australian adults (2.5 million people) have experienced physical and/or sexual abuse before the age of 15. This includes 1.6 million adults (8.5%) who experienced childhood physical abuse and 1.4 million adults (7.7%) who experienced childhood sexual abuse.³



Figure 6.1: Sourced from the Australian Bureau of Statistics, *4906.0: Personal Safety Survey, Australia, 2016* (2017).

Of these, 94% reported experiencing the abuse by someone known to them, who, in the case of physical abuse, was most commonly a parent (including step-parents).⁴ For sexual abuse, the most common perpetrator type was a ‘non-familial known person’.⁵

Every year children suffer physical injuries inflicted on them by family members. In 2016–17, there were 611 hospitalisations of children aged 10–14 for injuries due to abuse. Of those cases where the perpetrator was specified, nearly one in two were abused by a parent (45%) and one in eight by another family member (13%).⁶ One in three girls and one in two boys suffered injuries to the head and/or neck, including brain injury.⁷

Tragically, every year a small number of children die at the hands of a parent or parent-equivalent (filicide). Between 2000–01 and 2011–12, 238 incidents of filicide, in which 284 victims were killed, were recorded by police in Australia. Almost all (96%, or 274) of the victims were aged under 18.⁸

“

The government
needs to help
stop children
being abused and
domestic violence

(child, 17)

”

“

It's a safe place
but we need
better laws about
household abuse

(child, 12)

”

In 2018, 34 people aged 19 and under were victims of family and domestic violence related homicide in Australia.⁹ This includes children and young people killed by parents, siblings and other relatives.

In Australia, child protection services are provided to anyone under the age of 18 who has been or is at risk of being abused, neglected or otherwise harmed, or whose parents are unable to provide adequate care and protection.

Child protection statistics indicate that in 2016–17 there were 67,968 substantiations of child abuse and neglect Australia-wide, a 27% increase since 2012–13.¹⁰

As many cases of child abuse and neglect are not reported to child protection authorities, these statistics are likely to underestimate the extent of child abuse and neglect in the family.

Types of substantiations of child abuse and neglect 2016–17

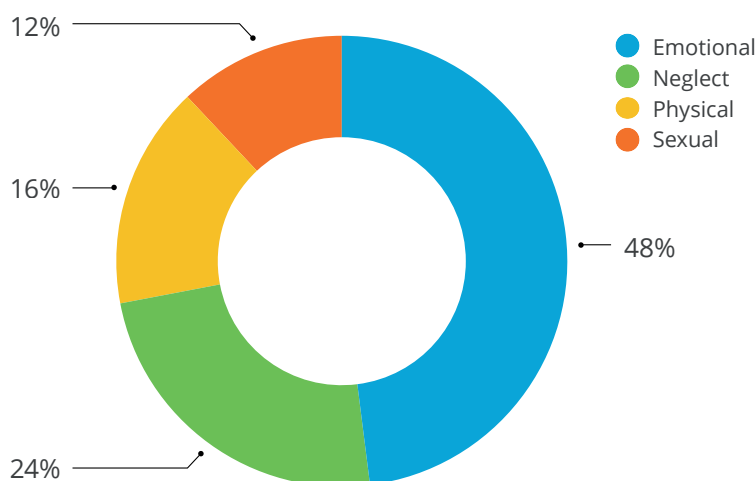


Figure 6.2: Sourced from Australian Institute of Health and Welfare, *Child Protection Australia 2016–17* (2018) 28.

“

Parents should understand that where ever they come from and what they come from still doesn't mean child abuse should be committed

(child, 12)

”

“

Parents shouldn't be allowed to abuse kids

(child, 12)

”

Emotional abuse and neglect are the most common types of substantiated abuse, which commonly includes exposure to domestic violence.¹¹

Aboriginal and Torres Strait Islander children have a lower percentage of substantiations for emotional, physical, and sexual abuse and a higher percentage of substantiations for neglect (34% in 2016–17) than non-Indigenous children (20% in 2016–17).¹²

“

There's a lot of things in homes that authorities need to know about like abuse

(child, 12)

”

“

Kids get physically and mentally abused a lot but they are either too scared to tell someone or don't even know what abuse looks like
(child, 12)

”

“

Australia is a fantastic, safe place where I know that I have an education, clean water and air, healthy food and lots more. I am proud to be an Aussie growing up feeling safe, when others don't have the amount of peace that we do
(child, 10)

”

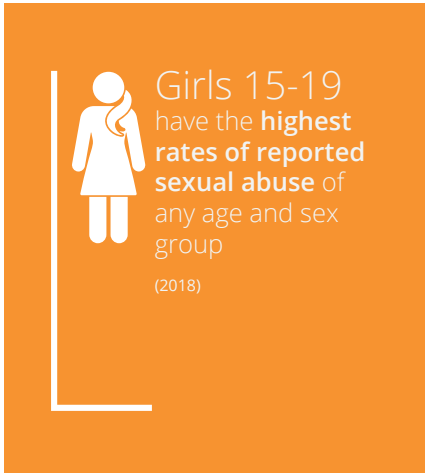
All Australian governments have a role to play in keeping children safe from family and domestic violence, abuse and neglect. To date, their efforts have been coordinated and monitored through two key national frameworks:

- The National Framework for Protecting Australia's Children (2009–2020) (the Framework), which ends in 2020, primarily focuses on child abuse and neglect.
- The National Plan to Reduce Violence against Women and their Children (2010–2022) (the Plan) is targeted at achieving 'a significant and sustained reduction in violence against women and their children'.¹³ While reducing the proportion of children exposed to domestic violence is one of the key indicators under the Plan, its critical focus is on women, not children.

Both the Framework and the Plan going forward will need to include strategies and initiatives that meet the needs of children who are exposed to, or are direct victims of violence, abuse and neglect in the home.

In its Concluding Observations (2019), the Committee on the Rights of the Child welcomed the adoption of the National Framework for Protecting Australia's Children, and the National Plan to Reduce Violence against Women and their Children.¹⁴ However, the Committee remained seriously concerned about violence against children in Australia and urged the Australian Government to review the action plans of the Framework and the Plan to prioritise implementation of key prevention measures and responses to violence against children of all ages, including sexual violence, in particular against girls.¹⁵

6.2 Who is at the greatest risk of family violence, abuse and neglect?



Girls and young women are at heightened risk of sexual abuse. In 2018, girls and young women aged 15–19 years had the highest rates of reported sexual assault of any sex or age group, followed by girls aged 10–14 years.¹⁶ Australian Bureau of Statistics data on recorded crime indicates that in 2018 the majority of victims of sexual assault were female (84%), and around half were aged between ten and 19 years (45% or 11,911 victims).¹⁷ There are also indications that an increasing number of girls aged 15–17 and young women are victims of violence perpetrated by their partners.¹⁸



Family and domestic violence disproportionately affects **Aboriginal and Torres Strait Islander women and children**. In 2016–17, Aboriginal and Torres Strait Islander women aged 15 years and over were 34 times more likely to be hospitalised as a result of injuries caused by family and domestic violence than non-Indigenous women.¹⁹ As women are often the primary carers of children, Aboriginal and Torres Strait Islander children are frequently exposed to family violence.²⁰ Family violence within Indigenous communities is both a cause and effect of social disadvantage and intergenerational trauma. See Chapter 12 for further information and recommendations relating to violence.



Children with disability are more at risk and are more likely to have experienced repeated incidents of sexual abuse by the time they are 18 years old

National data on the level of maltreatment experienced by **children with disability** is sparse. However, some research indicates that children with disability are around three times more at risk of sexual abuse than children in the overall population, and are also more likely than other children to have experienced repeated incidents of sexual abuse by the time they are 18 years old.²¹ They are also disproportionately vulnerable to maltreatment in institutional contexts.²² The Australian Government has commenced a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, due to deliver a final report in April 2022.

Other groups of children, such as those from culturally and linguistically diverse backgrounds, lesbian, gay, bisexual, transgender and intersex children, and children living in remote areas of Australia are also likely to be disproportionately affected by family violence, abuse and neglect, but data for these children is limited or non-existent.²³ There is also limited information on the extent of sibling violence against children.²⁴

The need for better national, disaggregated data on children's experiences of family and domestic violence should be a key priority for action.²⁵

Australian Governments also need to address the methodological restrictions in data collection instruments used to capture data on violence against women and girls with disabilities in particular.²⁶ Data is not uniformly collected, and often fails to be disaggregated by age, for example, data on children with disability in child protection services.²⁷ See Chapter 3 for more information about data.

A nationally representative prevalence study of child maltreatment agreed to by the Government, recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse and the National Children's Commissioner in 2017, will help establish the extent of child maltreatment in both institutional and non-institutional contexts in Australia.²⁸ In June 2018, the Australian Government announced that consultations with relevant stakeholders would be undertaken to ascertain how such a study could be conducted.²⁹

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government collect data on violence against children, disaggregated by age, sex, disability, geographic location, ethnic origin, national origin and socio-economic background and identifies those in situations of vulnerability. It also recommended that Australia:

- substantially increase family violence prevention and responses related to Aboriginal and Torres Strait Islander children, including through the Indigenous Family Safety Programme³⁰
- review the National Framework and the National Plan to adequately address the prevention of violence against children with disabilities, and prohibit by law the sterilisation of girls with disabilities without their prior, fully informed and free consent³¹
- encourage community-based programs to address violence in all its forms against children in remote areas and in communities with a culturally and linguistically diverse background, and for LGBTI children.³²

“

More needs to be done about Domestic Violence and Sexual Assault for child victims because the trauma does really affect us
(child, 16)

”

6.3 Long-term consequences of child maltreatment

Children's experiences of violence in the family are associated with a range of mental health, cognitive and behavioural problems, developmental difficulties and poorer academic outcomes.³³ These effects can last well beyond childhood years.

According to the Personal Safety Survey 2016, persons who experienced childhood abuse were more likely than those who did not experience childhood abuse to:

- experience violence (including partner violence) as an adult
- have a physical or psychological disability
- report poorer health and lower levels of life satisfaction
- enter a cohabiting relationship that later ended
- have lower levels of educational attainment and receive government support
- have a lower income and experience financial stress.³⁴

While there are a number of promising initiatives to support children affected by family and domestic violence, limited information exists about the extent that these are made available to or accessed by children, or the outcomes for children who use such services.³⁵ Children are often supported in the context of the needs of the parent escaping family and domestic violence, rather than in response to their specific therapeutic needs.

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to ensure that a National Centre for the Prevention of Child Sexual Abuse establishes a comprehensive standard with regard to intervention in cases of child sexual abuse, including child-friendly, multi-agency measures and appropriate therapeutic services to avoid secondary or re-traumatisation of child victims.³⁶ It also recommended child-specific therapeutic intervention and counselling to child victims of violence, in addition to the support provided to families.³⁷

6.4 Corporal punishment

In all jurisdictions in Australia, it is lawful for parents to use 'reasonable' corporal punishment to discipline children.³⁸ In some states and territories, a parent's right to use corporal punishment is set out in legislation, while in others it is provided by the common law.³⁹ New South Wales is the only state to have made legislative amendments in 2001 concerning corporal punishment by parents,⁴⁰ specifying that corporal punishment should not harm a child more than briefly and specifying the parts of the child's body that can be subject to force.⁴¹

There is evidence that physical punishment is associated with negative outcomes for children,⁴² including anti-social behaviour, external behaviour problems, negative parent-child relationships and low self-esteem, among others.⁴³

There is no data available on how often parents physically punish their children in Australia. Research suggests that, worldwide, approximately eight in ten children aged between two and 14 years are subjected to some kind of violent discipline in the home.⁴⁴

“

... my mum, dad and grandma do not treat me fairly. eg my mum and dad's punishments for me involves violence like, smacking me, pinching me, things like that

(child, 9)



”

“

It is illegal for adults to hit their children when they are above 18 or any other person and is seen as domestic violence, so why should it be different for below 18s?

(child, 15)

”

Progress of banning corporal punishment in child related institutions	
	
Corporal punishment prohibited in government and independent schools in the Australian Capital Territory, ⁴⁵ NSW, ⁴⁶ Northern Territory, ⁴⁷ South Australia, ⁴⁸ Tasmania ⁴⁹ and Victoria. ⁵⁰	Ambiguity about prohibition on corporal punishment in Queensland and Western Australia, where prohibitions do not extend to non-government schools. ⁵¹
In residential care settings, corporal punishment is prohibited in the ACT, NSW, Queensland and South Australia. ⁵²	Corporal punishment remains lawful in residential care settings in Western Australia, Victoria, Tasmania and the Northern Territory. ⁵³
In youth justice settings, corporal punishment is prohibited as a disciplinary measure in almost every state and territory. ⁵⁴	Corporal punishment in youth justice is not explicitly prohibited in Western Australia and ACT. ⁵⁵

There are particular concerns about the impact of a lack of prohibition of corporal punishment on children with disabilities. The United Nations Committee on Persons with Disabilities has urged Australia to establish a nationally consistent legislative and administrative framework for the protection of all persons with disabilities, including children, from psychotropic medication, physical restraint and seclusion under the guise of 'behaviour modification' and the elimination of restrictive practices, including domestic discipline/corporal punishment, in all settings.⁵⁶

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to explicitly prohibit corporal punishment in law in all settings, including in homes, public and private schools, detention centres and alternative care settings, and repeal the legal defence of 'reasonable chastisement'.⁵⁷ It also recommended the development of awareness-raising and education campaigns to promote positive and alternative forms of discipline, and the adverse consequences of corporal punishment.⁵⁸

6.5 Witnessing violence against a parent

Almost 896,700 men and 1.2 million women have reported witnessing violence, before the age of 15, against their mother, and 380,000 men and 440,900 women have reported witnessing violence, before the age of 15, against their father.⁵⁹

Witnessing family and domestic violence as a child can have long-term impacts on children.⁶⁰ Women who, as children, witnessed violence towards their mother or their father by a partner, were more than twice as likely to be the victim of partner violence themselves, compared with women who had not witnessed this violence.⁶¹ Men who witnessed violence towards their mother by a partner were almost three times as likely to be the victim of partner violence compared with men who had not.⁶²

Further, research indicates that violence against a parent can affect the capacity and ability of a parent to care for a child, which in turn affects a child's wellbeing.⁶³

“

I went through domestic violence but now living with my mum I feel safe
(child, 11)

”

“

Domestic violence sucks when you're in a divorced family, the amount of times I've cried myself to sleep in bed is infinite

(child, 13)

”

“

The government needs to help stop children being abused and domestic violence

(child, 17)

”

While there are a number of promising initiatives to support children affected by family and domestic violence, limited information exists about the extent that these are made available to or accessed by children, or the outcomes for children who use such services.⁶⁴ Children are often supported in the context of the needs of the parent escaping family and domestic violence, rather than in response to their own specific therapeutic needs.

“

There are children in Australia that still live in poverty and some live in domestic violence or have parents who are addicted to different substances. Those children have a right to be safe. I think more needs to be done for them, especially children living in remote areas

(child, 17)

”

“

Just make sure all aussie kids get treated fairly at home and don't have to deal with domestic violence

(child, 12)

”

6.6 Child safety and family law

Ensuring that we listen to children and understand how they experience violence and abuse is a critical element of ensuring child safety.⁶⁵

Many commentators, including the National Children's Commissioner, have recognised the need to improve the capacity of the family law system in prioritising the voices of and needs of children,⁶⁶ and for judges and other family law professionals to have expertise and training in child development and trauma, the impacts of family and domestic violence on children, children's rights, and the skills for effective communication with children and young people.⁶⁷

Children with experiences of the family law system

Children have told the National Children's Commissioner how their experiences in the family law system have affected their safety, relationships and self-esteem. Some of the main issues they raised in 2017:

- They felt that children were not believed, and that an adult's word is taken over theirs.
- They felt that court processes and how they could participate were not properly explained to them.
- They felt they had no rights and their voice wasn't important.
- Their Independent Children's Lawyers did not contact them or ask them for their views.
- They felt that being involved with courts over many years is really bad for children.
- They thought that children shouldn't have to live or have contact with someone they are scared will hurt them.
- Some children feel unsafe and don't want to go to contact visits.
- Supervision at contact centres didn't really happen, the people sat in the office, so bad things happened outside without them seeing or knowing.

Despite the key role that family consultants and Independent Children's Lawyers play in relaying children's views to the Family Court, there are some concerns about whether they are sufficiently child-centred in their approach.⁶⁸

One study in 2014 revealed diverse practices among Independent Children's Lawyers in terms of engagement with children, with some indicating that meeting with children was not a routine part of their practice.⁶⁹ Further, the *Family Law Act 1975* (Cth) does not extend to considering the views of children in non-contested matters.

Children and parents with disabilities also need to be provided with accommodations and additional support to be able to participate in family law proceedings.⁷⁰

The Attorney-General's Department is currently considering the recommendations of the Australian Law Reform Commission Review of the Family Law System on these issues.⁷¹

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government amend the *Family Law Act 1975* (Cth) to provide all children, in accordance with their age and maturity, the opportunity to have their views heard in all matters concerning them, including in 'non-court based family services'.⁷² It also recommended providing training to the Independent Children's Lawyers to ensure they have direct contact with the children they represent in Family Courts.⁷³

6.7 Attitudes to violence

Positive changes in prevalence rates will only be achieved if we address the root causes of family and domestic violence, including gender inequality.⁷⁴

The most recent National Community Attitudes towards Violence against Women Survey (NCAS) showed that Australians are less likely to hold attitudes supportive of violence against women in 2017 than they were in 2013 and 2009.⁷⁵

The persistence of violence-supporting attitudes among young Australians is particularly concerning. For example, although overall the attitudes of young Australians are improving, a notable proportion of young Australians surveyed (1,761 young Australians aged 16–24) continue to minimise violence against women or mistrust women's reports of violence:

- one in three young people support the statement that a female victim who does not leave an abusive partner is partly responsible for the abuse continuing⁷⁶
- almost two in five young people support the statement that it is common for sexual assault accusations to be used as a way of getting back at men⁷⁷
- 14% of young people surveyed believe that many allegations of sexual assault by women are false.⁷⁸

The Plan identifies school-based respectful relationships education as one initiative for instilling generational change in attitudes towards violence.⁷⁹ In 2015, all Australian governments agreed to strengthen respectful relationships education in the Australian curriculum. However, there is inconsistency in how it is implemented by states and territories. Evaluations of respectful relationships projects indicate that, overall, they have a positive impact on students.⁸⁰

6.8 Child abuse in institutional settings

There is also increasing awareness in the Australian community of the negative impacts on children of abuse and violence experienced within institutions.

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) heard from thousands of people who experienced sexual abuse as children in institutions in Australia. The Royal Commission delivered its final report in 2017.⁸¹ In 2012 approximately 69,600 people in Australia aged over 18 (40,200 males and 29,400 females) reported having been sexually abused by a doctor, teacher or minister of religion before the age of 15.⁸² This figure is likely to significantly underestimate the extent of child sexual abuse in institutional settings.⁸³

Many of the personal accounts made to the Royal Commission revealed the devastating effects of institutional child abuse, including on physical and mental health, education, career prospects, ability to form relationships and their faith, as well as negative impacts on survivors' children, partners, parents, other family members and communities.⁸⁴ These effects are often compounded by inadequate and ineffective responses to allegations of abuse within an organisation.⁸⁵



The recommendations of the Royal Commission focused on redress for survivors, protecting children from sexual abuse, identifying abuse and effectively responding to abuse in institutional settings. Many are also relevant for child safety more broadly. Most of the recommendations directed at the Australian Government were accepted or accepted in principle,⁸⁶ including:

- A National Redress Scheme for survivors of child sexual abuse—on 1 July 2018, the Australian Government commenced a National Redress Scheme.⁸⁷ While the introduction of the Scheme is commendable, it excludes some groups of survivors⁸⁸ from accessing redress and access to counselling and psychological services.⁸⁹ Those excluded include non-citizens or non-permanent residents who were sexually abused in institutional settings in Australia;⁹⁰ and children currently under eight years of age, due to the requirement that a child cannot make an application for redress if they will not turn 18 during the 10-year life of the Scheme.⁹¹
- A National Office for Child Safety (NOCS).⁹² In June 2018, the NOCS was established within the Australian Government Department of Social Services. This has since been transferred to the office of Prime Minister and Cabinet.
- A National Centre for the Prevention of Child Sexual Abuse to prevent child sexual abuse, reduce the stigma and raise awareness and understanding of the impacts of child sexual abuse. The Government has committed \$22.5 million over five years for the establishment and ongoing costs of the Centre.⁹³
- A National Framework for Child Safety—to commence after the expiration of the current National Framework for Protecting Australia's Children, and no later than 2020.⁹⁴ It is critical that this National Framework is informed by Australia's obligations under the *Convention on the Rights of the Child* (CRC) and has a broad focus on child wellbeing. The Royal Commission also recommended the Framework be endorsed by a ministerial council.⁹⁵ However, no ministerial council has direct accountability for the wellbeing of Australia's children.
- A national model for 'working with children checks'—while all states and territories have systems for checking the records of people working in child-related areas, there are inconsistencies between jurisdictions. The Royal Commission recommended consistent standards be established with capacity for cross-border information sharing.⁹⁶ The standards were endorsed by most state and territory Attorneys-General and Community Services Ministers in June 2019. Responsibility for implementing and monitoring the standards lies with the state and territory governments.

“

Growing up in Australia is really enjoyable, though i do think that we should put more effort into stopping physical and sexual abuse

(child, 11)

”

In its Concluding Observations (2019), the Committee on the Rights of the Child welcomed the report of the Royal Commission into Institutional Responses to Child Sexual Abuse, and the Prime Minister’s National Apology to Victims of Survivors of Institutional Child Sexual Abuse. However, it recommended a review of the National Redress Scheme to include non-citizens, non-permanent residents, persons sentenced to imprisonment for five years or longer for a crime, and children under 8 in 2018.⁹⁷

The Royal Commission also set out ten standards for making institutions child safe.⁹⁸ Using these standards, with the support of the Australian Government, the National Children’s Commissioner developed the National Principles for Child Safe Organisations. The National Children’s Commissioner also developed a range of tools and resources to support implementation, a dedicated website and resource hub, and online training modules. The National Principles are rights-based and cover all forms of potential harms to children. However, to genuinely embed the cultural change required within the community, much more needs to be done to support the Commissioner and others to promote implementation of the National Principles in organisations working with and for children.

“

I think it is important that we stop child labor and child abuse

(child, 10)

”



Child Safe
Organisations
National Principles

National Principles for Child Safe Organisations

1

Child safety and wellbeing is embedded in organisational leadership, governance and culture.

6

Processes to respond to complaints and concerns are child focused.

2

Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.

7

Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

3

Families and communities are informed, and involved in promoting child safety and wellbeing.

8

Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

4

Equity is upheld and diverse needs respected in policy and practice.

9

Implementation of the national child safe principles is regularly reviewed and improved.

5

People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.

10

Policies and procedures document how the organisation is safe for children and young people.



For information and resources, go to
<https://childsafe.humanrights.gov.au>



Australian
Human Rights
Commission



Australian Government

6.9 Bullying

Bullying at school can have lasting effects on children's psychological wellbeing (of both victims and perpetrators) and can significantly affect their school attendance and performance.

While definitions vary, bullying is commonly defined as intentional and repeated aggressive behaviour towards a peer that causes them harm.⁹⁹ Cyberbullying involves using technology such as mobile phones and the internet to bully or harass another person. Prevalence of bullying can potentially be over-estimated if students use the term 'bullying' to include behaviours that are not actually bullying and can potentially be under-estimated if students are reluctant to report to others.

Bullying is a major adolescent health concern internationally. A 2015 Organisation for Economic Co-operation and Development (OECD) report showed that Australia ranked fifth among OECD countries surveyed for percentage of students who reported being bullied at least a few times a month. The OECD average percentage of students bullied was 8.9%, whereas 14.8% of students were exposed to bullying in Australia.¹⁰⁰

“

Australia could do more about bullying and education

(child, 10)

”

“

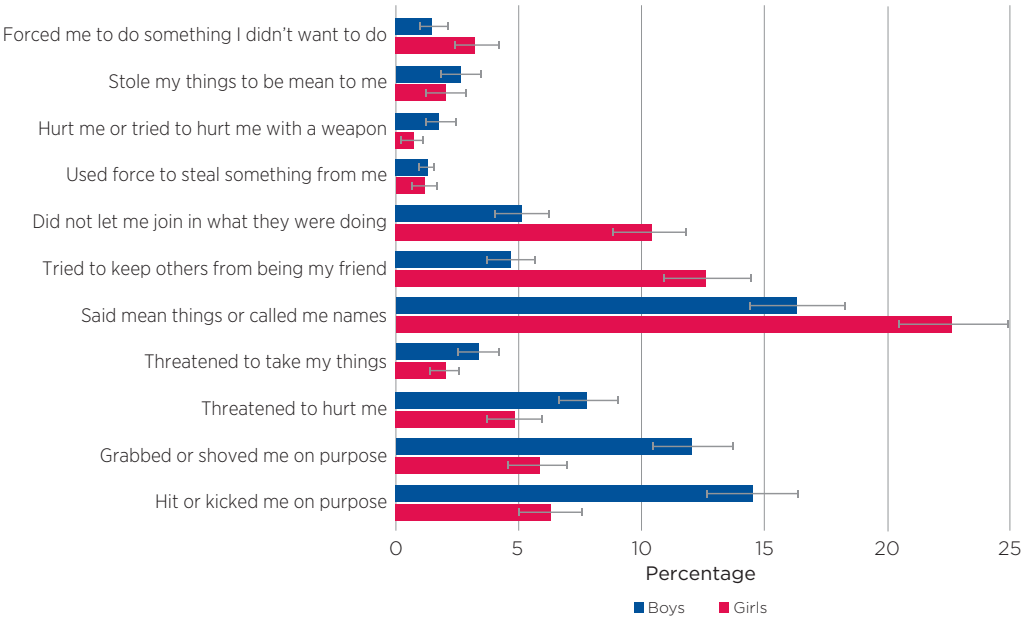
There is a lot of bullying it has to stop

(child, 11)

”

The 2017 Longitudinal Study of Australian Children survey reported that almost one in five children aged 14–15 years in the study said they had been a victim of bullying in the previous month. The most common act reported by victims was someone saying mean things or name calling (23% of girls; 16% of boys). More boys (14%) than girls (6%) reported being kicked or hit on purpose. Acts of social exclusion were more common among girls (13%) than boys (5%).¹⁰¹ About 7% of adolescents admitted to having bullied others.¹⁰²

Proportion of 14–15 year olds who reported being a victim of bullying in last 30 days, by gender



Note: Boys: $n = 1,702$; Girls: $n = 1,641$.
Source: LSAC Wave 6, K cohort, weighted

Figure 6.3: Australian Institute of Family Studies, *Growing Up in Australia: The Longitudinal Study of Australian Children Annual Statistical Report 2017* (2018).

A 2016 report on the prevalence and effectiveness of anti-bullying strategies employed in Australian Schools, which surveyed 1,688 students in Years 5 and 10 found that although the prevalence of bullying overall was reducing, it remains at unacceptably high levels, with an estimated 15% of students surveyed reported being bullied in 2014–15. Higher levels of student victimisation were found among children with disabilities and those who were materially deprived.¹⁰³ Children can also be victimised for other characteristics, such as their sexuality or gender identity, or race. See Chapter 10 for a discussion of inclusive education and LGBTI children.

Cyberbullying is a particular problem for children of school age. The Office of the eSafety Commissioner received 409 complaints about cyberbullying between 1 July 2017 and 30 June 2018, an increase of 34% from 2016–17. Children aged 13–17 were the primary targets, accounting for approximately 79% of complaints received.¹⁰⁴

School-based educational programs are an important way of addressing bullying, including cyberbullying. The Office of the eSafety Commissioner can help organisations to ensure online safety through resources and tools, as well as an eSafety Outreach education program. Encouraging bystander action is one innovative approach. The Australian Human Rights Commission's (the Commission) Back Me Up campaign on cyberbullying in 2013 is a good example of this.¹⁰⁵

“

Bullying is a big thing please do something about it

(child, 12)

”

“

There needs to be more done about bullying and teaching kids about mental illness

(child, 11)

”

“

Bullying isn't good

(child, 10)

”

While many schools are attempting to tackle the problem of bullying through school-based programs, there are mixed reports on their effectiveness. In a 2016 report on the prevalence and effectiveness of anti-bullying strategies employed in Australian Schools, 50% of students and 35% of parents stated that they were unaware of their school's bullying policy.¹⁰⁶

In October 2018, the federal Minister for Education launched the Australian Student Wellbeing Framework, which updates the National Safe Schools Framework (NSSF) and provides Australian schools with a vision and a set of guiding principles to help them tackle school safety. However, as with the NSSF, the new framework is not compulsory for schools.

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government intensify its efforts to prevent and address bullying in schools, including online bullying, through the eSafety Commissioner and provide support to child victims, in particular LGBTI children.¹⁰⁷



“

Australia is a wonderful place to grow up but for cyber bullying, in fact any type of bullying is still prominent where I live

(child, 12)

”

6.10 Online child exploitation

Online child exploitation is a global problem. As of 1 January 2017, more than 10,000 victims of child exploitation have been identified through INTERPOL's Child Sexual Exploitation image database.¹⁰⁸

In Australia, there have been exponential increases in reports of online child exploitation. According to Australian Centre to Counter Child Exploitation (ACCCE), the Australian Federal Police received 17,905 reports of child exploitation in 2018. Each report can contain hundreds and thousands of images and videos.¹⁰⁹

The Office of the eSafety Commissioner has also investigated large numbers of reports of online 'child sex abuse material'—10,229 items of prohibited and potential prohibited content in 2017–18, of which 78% met the definition of child sexual abuse content.¹¹⁰

In 2017–18, a total of 313 charges relating to child exploitation material were made under the *Criminal Code 1995* (Cth) (Criminal Code), and 220 persons were proven guilty of child pornography offences in the federal courts.¹¹¹ This does not include criminal offences contrary to state and territory laws,¹¹² which also prohibit child exploitation material.¹¹³

Under the Criminal Code, it is an offence to possess, control, produce, supply and obtain child abuse or pornographic material of a child under 18 years.¹¹⁴ In 2017, the Criminal Code was amended to criminalise the use of a carriage service to prepare or plan to cause harm to, procure, or engage in sexual activity with, a person under the age of 16.¹¹⁵ In September 2019, the Australian parliament also passed amendments to the *Crimes Act 2014* (Cth) and the Criminal Code aimed at further strengthening provisions that criminalise child sexual exploitation, including referring to such material as child abuse material rather than child pornography.¹¹⁶

While laws to criminalise online child exploitation in Australia are relatively robust,¹¹⁷ concerns have been raised about a lack of uniformity across Commonwealth, state and territory laws, sentencing practices, and legal mechanisms to force internet service providers to block materials.¹¹⁸ There are also concerns that these laws can sometimes be used to prosecute children who have been involved in 'sexting' (See Chapter 5 on Civil rights).

Further, while there are a number of online safety educational programs delivered by government and NGOs, there is a gap in prevention programs that address the causes of online child exploitation.¹¹⁹

The establishment of the ACCCE in March 2018, to drive a collective effort to counter the online exploitation of children in Australia, is a positive development in this context.

In its Concluding Observations (2019), the Committee on the Rights of the Child welcomed the establishment of the Australian Centre to Counter Child Exploitation in March 2018. It also urged the Australian Government to:

- **define and criminalise child prostitution and child pornography, and harmonise legislation across its states and territories**¹²⁰
- **ensure that crimes are investigated, and perpetrators prosecuted and sanctioned**¹²¹
- **amend its legislation to exercise extraterritorial jurisdiction over sexual exploitation of all children under 18 years, including sexual exploitation in travel and tourism where child victims are between 16 and 18 years of age**¹²²
- **further strengthen its measures to combat and prevent sexual exploitation of children online, including through the criminalisation of online grooming of children.**¹²³

6.11 Child trafficking

Police data suggests trafficking has occurred in Australia for a wide range of exploitative purposes, including slavery in the sex industry and child labour. However, its true extent is unknown.

The Australian Federal Police (AFP) received 319 new referrals for investigation of human trafficking offences in 2015–2017,¹²⁴ including 16 for child trafficking. In 2017–18, the AFP received 162 new referrals for trafficking and exploitation related offences. Twenty people have been convicted of trafficking since 2010, two of them for child trafficking.¹²⁵ These figures relate to criminal investigations only and are likely to underestimate the problem.¹²⁶

The Australian Government has taken positive steps to combat human trafficking, slavery and slavery-like practices in Australia, including:

- the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012*
- the National Action Plan to Combat Human Trafficking and Slavery 2015–2019
- the funding of specialist NGOs to deliver education and awareness¹²⁷
- the *Modern Slavery Act 2018* (Cth), to address modern slavery in global supply chains.¹²⁸

Victims of human trafficking and slavery-related offences can receive 45 days intensive support under the Support for Trafficked People Program, irrespective of whether they are willing or able to assist with the investigation or prosecution of a human trafficking or slavery-related offence. They can also access a further 45 days support if they are willing, but not able, to assist with an investigation or prosecution.¹²⁹ They can also receive a 20 working day transition period, which can be extended on a case by case basis. However, beyond these time limits, victims need to contribute to a criminal investigation to access support. Trafficked children and victims should not have to contribute to criminal investigation to receive the support needed.

There are also obstacles that may prevent a victim, including children, from making compensation claims and seeking reparations.¹³⁰

As outlined in the National Action Plan to Combat Human Trafficking and Slavery 2015–2019, the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation means that they may require additional or particular supports different from those of adult trafficked persons in terms of laws, policies, programs and interventions. To guide a child-focused response by criminal justice agencies, the National Action Plan includes the development of an operational protocol for minors as a key area.¹³¹ How this protocol operates in practice needs to be monitored.

In its Concluding Observations (2019), the Committee on the Rights of the Child welcomed developments to fight slavery and trafficking, and urged the Australian Government to:

- **ensure that all children subject to any form of sexual exploitation, sale or trafficking, are treated as victims and not subject to criminal sanctions**¹³²
- **strengthen training programmes on the identification and referral of child victims of sale, sexual exploitation and trafficking.**¹³³

“

Australia is a wonderful place but children are still being kidnapped/assaulted and are being treated like they are a slave which they're not. Australia still has a long way to go but they are doing very well
(child, 11)

”

6.12 Unregulated surrogacy

Unregulated surrogacy raises concerns about the risk of child trafficking and wellbeing, as well as concerns for the position of the surrogate mother. Recent statements from the UN Committee on the Rights of the Child suggest that it does not consider that all commercial surrogacy arrangements amount to the sale of children, as defined under the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (OPSC).¹³⁴ However, there is the potential for arrangements to amount to sale of children if they are unregulated, and involve harm to a child.¹³⁵

While it is not possible to determine exactly the numbers of children in Australia who have been born from commercial surrogacy arrangements overseas, in 2016 the Department of Immigration and Border Protection estimated that it deals with approximately 250 offshore surrogacy cases each year.¹³⁶

Commercial surrogacy is prohibited under state and territory laws in all jurisdictions, except the Northern Territory, where no surrogacy laws are in place.¹³⁷ However, only New South Wales, the Australian Capital Territory and Queensland extend their prohibition on commercial surrogacy to arrangements entered into by their residents outside Australia.¹³⁸ With the exception of those prohibitions, there is currently no regulation by Australia in relation to international surrogacy arrangements (whether altruistic or commercial).¹³⁹

In a 2016 submission to the House of Representative Standing Committee on Social Policy and Legal Affairs, the Commission identified four principles that should guide the development of any regime dealing with surrogacy.¹⁴⁰ It also identified as a key issue whether it is possible to make access to safe, well-regulated domestic surrogacy arrangements easier, so that there is less incentive for people to enter into potentially less well-regulated arrangements elsewhere.¹⁴¹

It recommended that the Australian Government 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 Social Policy and Legal Affairs Committee accepted most of the Commission's recommendations, including a recommendation that the Australian Government conduct a review of surrogacy destinations to assess the extent to which surrogacy practices in these countries meet certain requirements.¹⁴² However, this recommendation by the Committee was not agreed to by the Government.¹⁴³

See Chapter 5 on Civil rights for discussion of the right to identity for children born of surrogacy arrangements.

6.13 Forced marriage of children

The practice of forced marriage was criminalised in Australia under federal law in 2013.¹⁴⁴ It has also been added as conduct that constitutes 'modern slavery' under the *Modern Slavery Act 2018* (Cth).¹⁴⁵

Since criminalisation, the Australian Federal Police has received 174 referrals for forced marriage, 70 of them in 2016–2017.¹⁴⁶ Between March 2013 and July 2015, 32 out of 41 referrals accepted by the Australian Federal Police for further investigation related to children.¹⁴⁷ In the 2017–18 financial year, the Australian Federal Police received 61 referrals related to forced marriage, the majority being underage.

However, the true prevalence of forced marriage of children is unknown, as the large majority of forced marriages are not legally registered and are hidden from view.¹⁴⁸ The lack of data collection for forced marriage inhibits prevention efforts, as it is difficult to determine the effectiveness of criminalisation or other measures such as education and awareness raising.

The Committee on the Rights of the Child considers child marriage to be any marriage where at least one of the parties is under 18 years of age.¹⁴⁹ While the Committee acknowledges that the marriage of a capable child below 18 years of age and at least 16 years of age may be allowed, it is only in exceptional circumstances and such decisions are to be made 'by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition'.¹⁵⁰ The Committee, in its General Comments, has recommended that the marriageable age in all countries be raised to 18 years of age.¹⁵¹ There is growing international consensus that a minimum age of marriage of 18 is critical to end child marriage globally.¹⁵²

In Australia, under the *Marriage Act 1961* (Cth) (Marriage Act), no person under 16 can legally marry under any circumstance. Children aged 16 and 17 can only marry with the permission of the Court, in exceptional circumstances. Such circumstances are not defined in the legislation only to say that ‘the circumstances of the case are so exceptional and unusual as to justify the making of the order’.¹⁵³

In September 2019, the Australian Parliament amended the *Crimes Act 2014* (Cth) and the Criminal Code to expand the definition of forced marriage to explicitly include all marriages involving children under 16 years.¹⁵⁴ This means that in the case of children under 16, marriage is considered a forced marriage, regardless of whether the child has ‘consented’. This is in line with the marriageable age provisions of the Marriage Act.

Although boys may be victims of forced marriage, the overwhelming majority of child victims are girls. Forced marriage can involve many of the elements that constitute family violence, including assault, denying a family member financial autonomy, withholding financial support, preventing a family member from making or keeping connections with his or her family, friends or culture; and unlawfully depriving the family member or any related member of his or her liberty.¹⁵⁵ In this context, forced marriage can be understood as a form of gender-based violence perpetrated by immediate and extended family members.¹⁵⁶

To overcome the shortcomings of a criminal justice response to forced marriage, stakeholders such as Good Shepherd Australia New Zealand recommend that child marriage be defined as a form of family violence.¹⁵⁷ This net-widening would:

- enable greater recognition of the practice within affected communities
- trigger a policy shift from victim-led interventions to ‘a system that intervenes on their behalf’¹⁵⁸ and widen access to resources and support services for at-risk individuals¹⁵⁹
- allow prevention strategies to include forced child marriage in ‘respectful relationship education’, such as in schools.¹⁶⁰

Victims of forced marriage can receive up to 200 days of intensive and holistic support (inclusive of the 90 days of support already provided) under the Forced Marriage Support Stream Trial (which started in 2018). This trial will continue until at least 31 December 2020, with an evaluation beyond this time. As at April 2019, 14 clients under 18 years of age had been referred to the Support Program for being in, or at risk of, a forced marriage for the 2018–19 financial year.¹⁶¹

While the Australian Government's Forced Marriage Support Stream Trial for forced marriage victims is commendable, the program requires at-risk children to be assessed by the Australian Federal Police before accessing support services. Further, to access these services beyond the 200 days of the Support Program, individuals must participate in a criminal investigation or prosecution.¹⁶² This condition is a barrier for children seeking support and protection, as they often fear that testifying will result in the prosecution of their families.¹⁶³ Such support programs should be made available to child victims of trafficking and slavery even where they are unwilling or unable to assist police investigations or prosecutions.¹⁶⁴

The Australian Government has also begun developing a Commonwealth Forced Marriage Protection Order,¹⁶⁵ so that courts can order a protected child not be removed from the country, prevent applications for new passports, ensure the child continues schooling and require respondents to facilitate the return of the protected person.¹⁶⁶ This measure will serve a preventative function in protecting children, who are both at-risk of child marriage and who have already been forced into marriage.¹⁶⁷

In its Concluding Observations (2019), the Committee on the Rights of the Child welcomed the criminalisation of forced marriage and urged the Australian Government to strengthen its measures to raise awareness on the harmful effects of child marriage on the physical, mental health and well-being of girls.¹⁶⁸

It also recommended that Australia review the *Marriage Act 1961* (Cth) to eliminate any exception to the minimum age of marriage of 18 for girls and boys.¹⁶⁹

6.14 Female genital mutilation or cutting

Female genital mutilation or cutting (FGM/C) refers to all procedures involving partial or total removal of the external female genitalia, or other injury to female genital organs.¹⁷⁰ The United Nations estimates that worldwide at least 200 million girls and women alive today have undergone FGM/C.¹⁷¹

FGM/C for non-therapeutic purposes is criminalised in Australia under all state and territory laws.¹⁷²

The reasons why FGM/C occurs are complex and include a mix of social and cultural factors that vary across time, ethnicity and region. It has no basis in religion and is practised by ethnic groups of many faiths.¹⁷³

FGM/C can interfere with normal bodily functions and may result in lifelong physical and sexual health complications. It may also have psychological effects, such as depression and anxiety. Women may also face later surgery, which could be required to give birth or relieve symptoms of the health consequences of FGM/C.¹⁷⁴

Accurate data on the prevalence of FGM/C in Australia is difficult to collect as it is illegal in all states and territories. Further, women and girls are reluctant to reveal if they have undergone the procedure or are at risk of having to undergo the procedure.

In 2019, the Australian Institute of Health and Welfare estimated the prevalence of FGM/C in Australia by applying country and age-specific prevalence rates to the estimated number of girls and women living in Australia born in these countries. Based on this model, it estimates that 53,000 girls and women born elsewhere but living in Australia in 2017 had undergone FGM/C during their lifetime. Of these, it is estimated that 5,739 aged 19 years and under have undergone FGM/C procedures.¹⁷⁵

There are inconsistent penalties, age coverage and extraterritorial provisions relating to FGM/C in Australia that impede information sharing between agencies, jurisdictions and health and legal systems.¹⁷⁶

Awareness and training programs on FGM/C are available in most jurisdictions, although surveys suggest there is a low level of awareness of FGM/C among health practitioners, legal practitioners and communities.¹⁷⁷

6.15 The way forward

- Ⓡ 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.

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- ® 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.

Chapter 6: Endnotes

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- 26 United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Reports of Australia*, Advanced unedited version, UN Doc CRPD/C/AUS/CO/2-3 (23 September 2019) para 32.
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Chapter 7:

Family life



Dear Megan

Thanks from all kids in care
in Australia.



Your work is helping to improve
the system so that it is better for us.



from all of  us in care.

FAMILY LIFE

FAMILY COMPOSITION



7.2 million families



Of the **3.3 million** with dependents, **82%** were families with children under 15

Of the **1.1 million** one parent families **83%** were single mother families

HELP IN THE EARLY YEARS




Paid parental leave scheme provides

18 weeks pay at **minimum wage** for the carer of a newborn or newly adopted child

+ 2 weeks
Dad and Partner Pay

CHILDREN UNABLE TO LIVE WITH THEIR FAMILIES

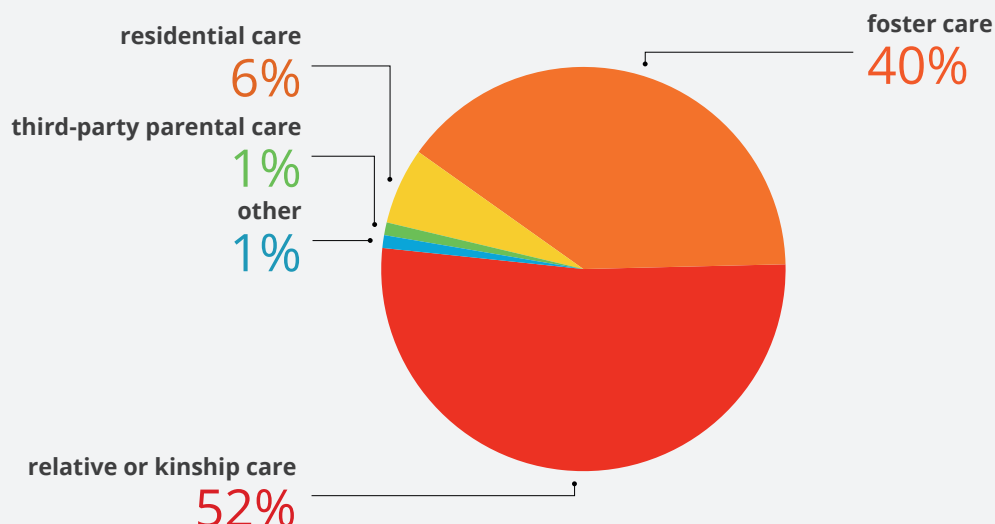
Out-of-home care

Children in out-of-home care **increased**  **6%** (2014-18)

14% of children in out-of-home care in six jurisdictions **have a disability**

- Young people leave out-of-home care aged **18**
- Ongoing support is provided on a discretionary basis

At 30 June 2018, approximately **45,800** children were living in out-of-home care



Families are the cornerstone of Australian life and communities, and their wellbeing is essential for the continued prosperity of Australian society and culture and of the Australian economy. It is the responsibility of all Australian governments and decision makers to ensure that families are provided all opportunities to prosper.

Article 16 of the *Convention on the Rights of the Child* (CRC) emphasises the importance of family, stipulating that there should be no arbitrary or unlawful interference with family, and this should be protected by law.

This chapter looks at the composition of Australia's families, some of the supports needed by these families, and children who are unable to live with their families.

7.1 Family composition

“

All family
members are very
special to me
(child, 4)

”

“

Most important
thing in life is my
mummy, daddy,
brother and sister.
They are important
because I really love
them
(child, 4)

”

In June 2019 there were 7.2 million families in Australia.¹

Family composition

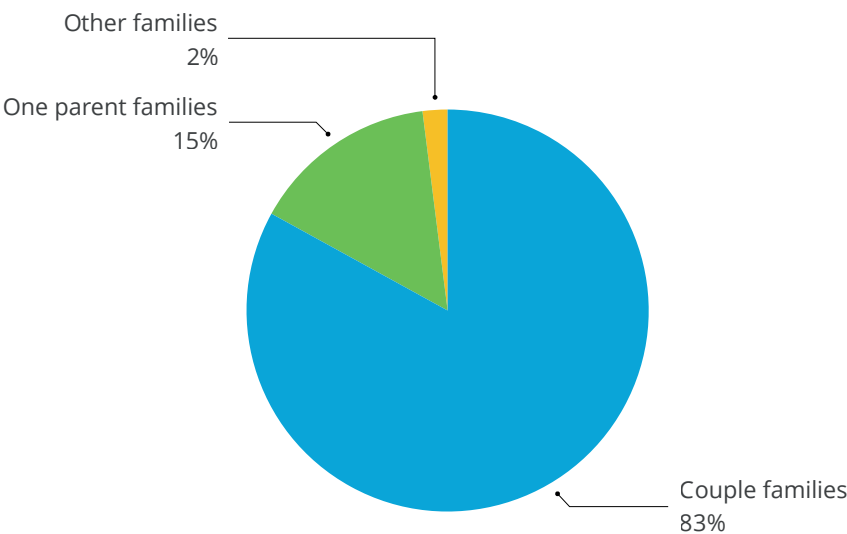


Figure 7.1: Sourced from Australian Bureau of Statistics, 6224.0.55.001—*Labour Force, Australia: Labour Force Status and Other Characteristics of Families*, June 2019 (2019).

‘Other families’ included those where at least two people were related in some way other than as a couple or as a parent and child (such as adult-age siblings).²

3.3 million (46%) were families with dependants, of which 82% were families with children under 15.³

Of the 1.1 million (15%) one parent families, 83% were single mothers.

7.2 Help in the early years

Universal support services in the early years can provide families with assistance that improves the circumstances of both parents and their children.

Improvements in universal support services are recommended by the Committee on the Rights of the Child in its Concluding Observations (2019). For example, the Committee urged Australia to extend paid maternity leave to six months to support appropriate care of newborn children.⁴

More support for families

Currently, Australia's Paid Parental Leave Scheme provides 18 weeks of pay, at minimum wage, for the carer of a newborn or newly adopted child, as well as two weeks paid Dad and Partner Pay.⁵ However, research indicates that a longer period of six months has a more positive outcome for the health and wellbeing of mothers and babies.⁶

The Royal Australasian College of Physicians argues that:

... governmental paid parental leave policies in Australia should provide support for up to 6 months of paid parental leave ... [I]nternational outcomes following institution of paid parental leave suggest that paid parental leave may be an effective intervention for reducing inequities in health and child achievement.⁷

7.3 Children unable to live with their families

(a) Children living in out-of-home care



Kids being taken away from their families and put into unsafe homes

Removing a child from their home and from the care of their parent(s) is considered an intervention of last resort across all Australian statutory child protection jurisdictions, with governments committed to making all efforts to keep children at home with their families.⁸

However, across Australia, the models for funding and support services are not designed to achieve this.

Early intervention policies and practices, aimed at providing families with the help and support needed to keep children safe and at home, comprise a relatively small proportion of overall expenditure compared to tertiary services.

The 2019 Report on Government Services stated that total recurrent expenditure on family support services, intensive family support services, protective intervention services and out-of-home care services was \$5.8 billion nationally in 2017–18 (a real increase of 10.3% from 2016–17) of which out-of-home care services accounted for the majority (58.5% or \$3.4 billion).⁹


In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to strongly invest in prevention measures for children and their families to avoid child removal and, when this is a necessary measure, to limit it to the shortest time possible, and ensure participation of children, their families and communities in decision-making, to guarantee an individualised and community-sensitive approach.¹⁰

One of the four priorities of the National Framework for Protecting Australia's Children 2009–2020 is 'improving outcomes for children in out-of-home care by enhancing placement stability through reunification and other permanent care options'.¹¹ This recognises that children who enter an out-of-home care placement are less likely to achieve positive outcomes, and that children need a stable and secure home environment in order to grow, develop and reach their full potential.

Despite this goal, at 30 June 2018, the number of children living in out-of-home care had risen by 6% since 2014.¹² Nationally, at 30 June 2018, approximately 45,800 children were living in out-of-home care.¹³

Three groups are particularly vulnerable to placement in out-of-home care:

- **Aboriginal and Torres Strait Islander children** were admitted to out-of-home care at a rate of 12.8 per 1,000 children, nine times the rate for non-Indigenous children (1.4 per 1,000).¹⁴ Chapter 12 provides greater detail about the circumstances of Aboriginal and Torres Strait Islander children in the care system.
- **Children under the age of one** were admitted into out-of-home care at a rate of 7.2 per 1000, and children aged between 1–4 years admitted into out-of-home care at a rate of 2.2 per 1000.¹⁵ In 2017–18, the median age of children admitted into out-of-home care was six years.¹⁶



Protection of young children as the priority

- **Children with disability** were also highly represented. In 2017–18, data on the disability status of children in out-of-home care were available for six jurisdictions, representing 75% of children in out-of-home care at 30 June 2018. The available data show that at 30 June 2018, 14% of children living in out-of-home care were reported to have a disability.¹⁷

“

I believe the foster care system could be improved, especially improving the kids right to have a say in where they want to live
(child, 16)

”

Of the children living in out-of-home care, 51% were in relative/kinship care, 39% were in foster care, 1% were in third-party parental care, 1% were in other types of home-based care and 6% were in residential care.¹⁸

At 30 June 2018, 82% of children living in out-of-home care had been continuously living there for one year or more, 30% had been in out-of-home care for two to five years and 40% had been in out-of-home care for five years or more. Approximately 18% of children had been in out-of-home care for less than one year.¹⁹

There is currently insufficient focus on government accountability for outcomes for children in out-of-home care systems. There needs to be more focus on measuring outcomes for children, for example in relation to educational attainment, health status and post-care pathways.

While there have been numerous inquiries in Australia which have included out-of-home care in their terms of reference,²⁰ there has been little systemic change to address the increasing rates of children living in out-of-home care and measures taken to address the reasons why children are being placed in out-of-home care.

A review of the NSW out-of-home care system commissioned by the NSW Government and published in 2018, concluded that:

Expenditure is directed to an ad hoc collection of programs developed and delivered within agency silos that are not focused on achieving shared objectives, including the priority to prevent children and young people entering the child protection or OOH system ... Ineffective responses for families with multiple needs has resulted in more children in OOH and a crisis-oriented system in which expenditure is concentrated on OOH rather than targeted intervention to prevent OOH entries.²¹

While Australia must protect those already in its child protection systems and seek to end intergenerational disadvantage, it also must urgently prioritise measures to prevent further children entering its out-of-home care systems.

(b) Leaving care

Currently young people leave out-of-home care aged 18 years. Ongoing support is provided on a discretionary basis.²²

There are minimal data available on what happens after young people leave care, including how many continue to live in their kinship care or foster care arrangements, return to live with their family of origin, begin living independently or indeed have no permanent home.

There is also little empirical evidence about the outcomes for these young people.²³ This type of information is critical for informing policy and practice. Without this data, it is not possible to know what is being done well for young people leaving out-of-home care and what needs to improve.

The research which does exist suggests that care leavers have higher than average risks of homelessness, substance abuse and contact with the criminal justice system.²⁴ They also commonly have poorer health, education and employment outcomes than the non-care population.²⁵

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to address high rates of homelessness among young people leaving out-of-home care.²⁶

There have been calls for the age of young people leaving out-of-home care to be extended to 21 or 25 years, supported by eight public government and statutory reports.²⁷ Some trials of this are occurring in South Australia, Tasmania, Victoria and Western Australia.

(c) Adoption

In Australia, 330 child adoptions were finalised in 2017–18, an increase of 5% from 2016–17.²⁸ Of these, 65 were adopted from overseas and 265 were adopted from within Australia.²⁹ Of the children adopted in Australia, 32 were local adoptions and 233 were known child adoptions.³⁰

Adoptions

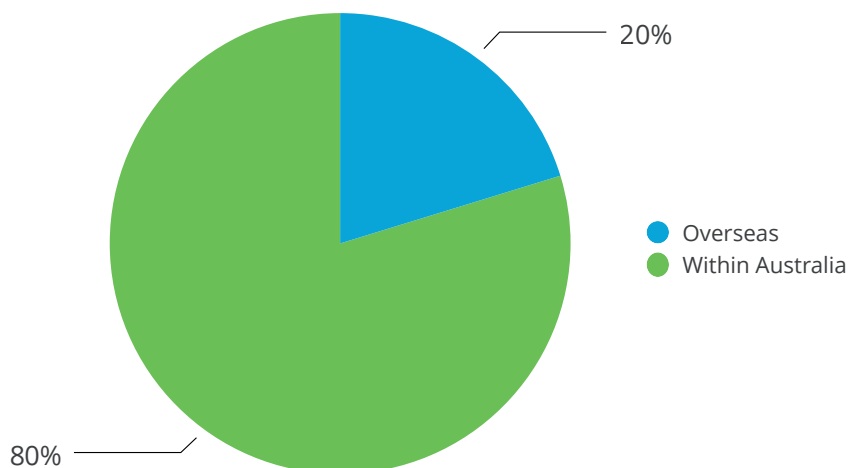


Figure 7.2: Sourced from Australian Institute of Health and Welfare, *Adoptions Australia 2017-18* (2018).

Adoption is one option included in permanency planning frameworks within child protection systems in Australia.

The issue of permanent adoption for Aboriginal and Torres Strait Islander children is complex.

Australia's historical practices of forced removals and forced adoptions have resulted in lasting trauma and damage for Aboriginal and Torres Strait Islander families and communities. This history must be taken into account when considering the transfer of legal guardianship as an option for any Aboriginal or Torres Strait Islander child.

This was reinforced by the Committee on the Rights of the Child in its Concluding Observations (2019), which emphasised the importance of ensuring 'full respect for the rights of Aboriginal and Torres Strait Islander children, including those placed for adoption, to their identity, name, culture, language and family relationships'.³¹

7.4 The way forward

- ④ 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.
- ④ 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.
- ④ 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.
- ④ 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.

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Two siblings in Bagot in the Northern Territory

Chapter 8:

Health



Left: The National Children's Commissioner playing with a young child in a remote community in the Northern Territory
Right: Community mural in the Northern Territory

HEALTH

CHILDREN WITH DISABILITY



Concerns regarding implementation of the **National Disability Insurance Scheme**

- Uncertainty about who is eligible
- Lack of clarity about the types of support covered by the scheme
- Insufficient funds to cover all supports required
- Less funding than previously received
- Delays in entering the scheme and reviewing plans

Legislation still allows non-therapeutic sterilisation of children with disability

MENTAL HEALTH



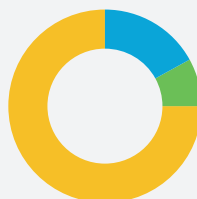
Almost **1 in 7** **4-17 year olds** are assessed as having **mental disorders** (2013-14)

4 in 10 **15-19 year olds** identified mental health as a top issue (2018)
This has doubled since 2016

CHILDHOOD OBESITY



25% of 4-17 year olds are **overweight** or **obese** (2017-18)
= **1.2 million** children and young people



17% are overweight
8% are obese
(2017-18)

SEXUAL HEALTH



Teenage birth rate is at an **historic low**

However, it is **four times higher** in **rural and remote areas** than metropolitan areas

DRUG AND SUBSTANCE ABUSE



Lack of data is a significant issue in terms of assessing drug and substance abuse

81.5% of 4-17 year olds reported alcohol abstinence in 2016, an increase from 54.3% in 2004

The average age of smoking initiation increased from **15.9** years to **16.3** years (2013-16)



Children have a right to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation. Children's right to health care services as set out in the *Convention on the Rights of the Child* (CRC) includes rights to:

- medical assistance
- primary health care
- preventative health care
- pre-natal and post-natal health care for mothers.¹

Generally, most Australian children have good health outcomes and access to health care.

All Australian residents, including children, can access free or subsidised health care through Medicare.² But some children, such as those without permanent residency in Australia, are not covered by Medicare.

That all kids should
get the chance to
see doctors, even if
they do not have a
PR or citizenship

(child, 12)

Australia is ranked in the top third of Organisation for Economic Co-operation and Development (OECD) countries for life expectancy at birth, low youth smoking rates and low rates of young people drinking alcohol at risky levels.³ Infant mortality rates decreased between 2006 and 2016, and injury deaths of children decreased between 2004 and 2016.⁴

Some children are at greater risk of poorer health outcomes due to factors including geography, health literacy, culture, social and economic circumstances, and individual characteristics.⁵

The National Action Plan for the Health of Children and Young People 2020–2030 commits to improving health equity across populations through actions such as expanding telehealth services and scaling up effective programs that address health inequity.⁶

As well as highlighting positive developments in the health of Australia's children, this chapter also focuses on areas of concern for children's health.

See Chapter 12 for a discussion of the health issues facing Aboriginal and Torres Strait Islander children.

8.1 Assistance for children with disability

Children with disability have the right to enjoy a full and decent life, including the right to health care services and other special care.

The Australian Institute of Health and Welfare (AIHW) estimated that in 2015 there were 440,300 children and young people aged 0–19 years with disability. Disability was defined as 'limitation, restriction or impairment, which has lasted, or is likely to last, for at least six months and restricts everyday activities'.⁷

Estimates of children and young people with disability	
Age range	Number of children and young people
0–4 years	53,100
5–9 years	145,800
10–14 years	129,500
15–19 years	111,900

Table 8.1: Sourced from Data tables: Prevalence supplementary data tables at Australian Institute of Health and Welfare, *People with Disability in Australia* (2015).

The AIHW also estimated that there were **217,500** children and young people aged 0–19 years with ‘profound or severe core activity limitation’, meaning that they always or sometimes need assistance or supervision with mobility, self-care and/or communication.⁸

Estimates of children and young people with profound or severe core activity limitation	
Age range	Number of children and young people
0–4 years	31,000
5–9 years	83,800
10–14 years	61,000
15–19 years	41,700

Table 8.2: Sourced from Data tables: Prevalence supplementary data tables at Australian Institute of Health and Welfare, *People with Disability in Australia* (2015).

In Australia, gaining a clear picture of the prevalence of disability among children is difficult because of inconsistent definitions of disability across different contexts and jurisdictions and the current incapacity to report reliably on specific sub-population groups.⁹ The AIHW has committed to continue working with other statistical agencies to improve data collection about people with disability, including to adopt more consistent definitions nationally.¹⁰

(a) Children accessing the National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) was established in 2016 as the first national approach to disability support in Australia. The NDIS aims to provide individualised support to all Australians under the age of 65 with a permanent and significant disability.

“

I feel grateful for
getting help for
my disability
(child, 17)

”

Since 2016, Australian governments, disability and health services have been focused on NDIS implementation. Through the NDIS, the Australian Government aims to support approximately 160,000 children who have a significant and permanent disability.¹¹

On 30 June 2019, there were 129,764 NDIS participants aged 0–18 years, comprising 46% of all participants.¹²

Children who are supported by or applying to be supported by the NDIS face a range of challenges. While the NDIS is designed to make it easier for individuals to access support services, a range of issues have been raised about the implementation of the scheme in respect of children, including:

- uncertainty about who is eligible
- a lack of clarity about the types of support covered by the scheme and the responsibility of other service systems
- insufficient funds to cover all supports required
- less funding than received through previous service offerings
- administrative delays in entering the scheme and reviewing plans
- a lack of accessible and age-appropriate information
- limited supports to help children express their views.¹³

“

Children with disability to have more support services and opportunities
(child, 14)

”

(b) Young children with disability

As part of the NDIS, the Early Childhood Early Intervention (ECEI) approach provides individualised support to children aged 0–6 years with a disability or developmental delay.

Depending on their individual circumstances, families are provided with a combination of assistance, including information, emotional support, referral to mainstream services, short-term intervention, or help to access the NDIS for longer-term intensive supports as part of a funded NDIS Plan.

In March 2019, a progress report by the Joint Standing Committee on the National Disability Insurance Scheme identified key problems with the provision of services under the ECEI approach as:

- access to the scheme
- the planning process and adequacy of the plans
- underfunded plans for children with autism spectrum disorder
- delays in accessing services
- the costs of delivering services for service providers.¹⁴

The Joint Standing Committee recommended that to improve the ECEI approach, the National Disability Insurance Agency (NDIA) should address the delays in accessing services and the delays in receiving approved plans, as well as improving the evaluation of the ECEI, and developing a nationally consistent approach to service delivery.¹⁵

(c) Children with hearing loss

In August 2018, the NDIA established a hearing service stream for children newly diagnosed with hearing loss.¹⁶ This process involves Hearing Australia initiating access to the NDIS for eligible participants. According to the hearing services sector, this pathway has significantly improved the provision of hearing services under the NDIS.¹⁷

This system only applies to children who attend Hearing Australia for the first time. A significant proportion of children who were engaged with Hearing Australia prior to the implementation of this system and children aged 7 or older are not covered by the hearing service stream.¹⁸

The hearing service stream relies on Hearing Australia being the sole provider of hearing services to children. Currently, this exclusive role is only secured until 30 June 2020.¹⁹

The Joint Standing Committee recommended that the program be made available to all children and that Hearing Australia is formally appointed and funded as the independent referral organisation for the program. It will be important to follow up on these recommendations to determine the extent to which they are implemented, given their impact on the health and wellbeing of children being supported through the NDIS.

(d) Eligibility for services

Many people with disability, including children, will not be supported by the NDIS because they do not meet the eligibility criteria.²⁰ An effective framework to deliver health rights to children with disability must also address the needs of children who are not covered by the NDIS.

The National Disability Strategy 2010–2020 (NDS) was the first commitment by all Australian governments to a national approach to improving the lives of people with disability, their families and carers.²¹ The NDS aims to

- improve capabilities of health service providers to meet the needs of people with disability
- improve access to prevention and early intervention health services
- ensure universal health reforms address the needs of people with disability, their families and carers
- support factors fundamental to wellbeing and health status such as choice and control, social participation and relationships, through government policy and program design.

In a recent review of the implementation of the NDS, stakeholders argued that there was no consistent, systematic approach to implementation across Australia.²² The review concluded that the experiences of groups, including children with disability, should be considered when developing a new framework for beyond 2020. It emphasised that children's participation in policy design and implementation would help ensure their experiences and needs are addressed.²³

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government provide greater clarity about eligibility criteria and the types of support covered by the NDIS and that the NDIS has the necessary human, technical and financial resources for its optimal and timely implementation. The Committee also recommended that the Australian Government conduct awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatisation of and prejudice against children with disabilities and promote a positive image of such children.²⁴

8.2 Non-therapeutic sterilisation of people with disability

Non-therapeutic sterilisation of people with disability, particularly women and girls, continues to take place in Australia.

Legislation in Australia still permits the non-therapeutic sterilisation of children with disability. Australian Lawyers for Human Rights (ALHR) told the National Children's Commissioner that:

Sterilisation of a child in Australia can occur with an order from the Family Court or a guardianship tribunal, having consideration to the best interests of the child. ALHR is concerned that, in some cases, the 'best interests' of the child with a disability will be impacted upon by consideration of the interests of parents, carers and the broader health and disability support system, which may be contrary to the child's wishes.²⁵

There is very little data available about forced sterilisations of children in Australia.

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to prohibit by law the sterilisation of girls with disabilities without their prior, fully informed and free consent.²⁶

8.3 Mental health and wellbeing

Surveys of children, young people and their families provide some insights into the prevalence, nature and impact of mental health problems for children.

The second and most recent *Australian Child and Adolescent Survey of Mental Health and Wellbeing* was conducted in 2013–14 with over 6,300 families with children aged 4–17 years.²⁷ Parents and carers completed a survey, while children aged 11 years and older completed their own survey. Key findings included:

- almost one in seven (13.9%) children aged 4–17 were assessed as having mental disorders in the previous 12 months
- males were more likely than females to have experienced mental disorders (16.3% compared with 11.5%)

- Attention Deficit Hyperactivity Disorder (ADHD) was the most common mental disorder in children and adolescents (7.4%), followed by anxiety disorders (6.9%), major depressive disorder (2.8%) and conduct disorder (2.1%)
- 4.2% of children and adolescents with a disorder had two or more mental disorders at some time in the previous 12 months
- about one in thirteen (7.5%) young people aged 12–17 had seriously considered attempting suicide in the previous 12 months
- around one in ten (10.9%) young people aged 12–17 reported that they had self-harmed and about three quarters (73.5%) of these young people had harmed themselves in the previous 12 months.²⁸

Each year, Mission Australia conducts a national survey of young people aged 15–19, asking them about issues that concern them. In 2018, there were more than 28,000 responses. Mental health was identified as the main concern for young people in all states and territories. The rate of young people who identified mental health as a key national issue doubled from 21% in 2016 to 43% in 2018.²⁹

(a) Mental health and wellbeing support services for children and young people

There are more than 100 Headspace centres across Australia, providing early intervention mental health services to young people aged 12–25. Headspace has also established e-Headspace, an online and telephone service to support children and their families.³⁰

Kids Helpline provides free phone and online counselling for young people aged 5–25. In 2018, Kids Helpline responded to 67,264 contacts seeking counselling support. 27% of these contacts were in relation to mental health concerns.³¹

Although Kids Helpline and Headspace provide valuable mental health support, the National Mental Health Commission has indicated that there is a shortage of mental health services in Australia, ‘which can result in children and young people presenting later, or at a more advanced stage of ill-health’. The National Mental Health Commission has also suggested that mental health services tend to be more ‘adult’ focused, which can make them less accessible to children.³²

In April 2019, the Australian Government committed \$461.1 million over seven years for youth mental health. Most of this funding has been allocated to Headspace to reduce waiting lists, build new Headspace centres and extend the Early Psychosis Youth Services program.³³

‘Tackling mental health and risky behaviours’ is a priority area in the National Action Plan for Health of Children and Young People 2020–2030, which commits to:

- support maternal, paternal and child mental health in the early years
- focus on the middle years as a period to build resilience and social and emotional coping skills
- support transitions and risks during all life stages and across the life course
- strengthen the tailoring, appropriateness and impact of suicide prevention strategies
- address the heightened prevalence of mental health conditions among LGBTI children and young people
- work with partners to foster supportive communities for mental health.³⁴

As part of ‘Australia’s Long Term National Health Plan to Build the World’s Best Health System’, the Australian Government is developing a National Children’s Mental Health Strategy to ensure that neuropsychiatric conditions are diagnosed and treated early to prevent lifelong disability. The strategy aims to provide a framework for preventing mental illness and reducing its impact on children, families and the community.³⁵

The Fifth National Mental Health and Suicide Prevention Plan acknowledges that children and adolescents experience mental health problems differently from adults but does not specifically identify child or youth mental health as a priority area for action.³⁶ The implementation document for the plan states that regional mental health and suicide prevention plans should specifically consider the requirements of children with or at risk of severe mental illness.³⁷

See Chapter 12 for a discussion of the health issues facing Aboriginal and Torres Strait Islander children.

Mental health needs to be a priority
(child, age unknown)

(b) Suicide and self-harm

In 2017, suicide was the leading cause of death of Australian children aged 5–17.

In 2017, the Australian Bureau of Statistics (ABS) reported 98 deaths of children aged 5–17 due to suicide. This represents a 10.1% increase in deaths from 2016. Nearly 80% (78.8%) of the child suicides in 2017 were aged between 15 and 17.³⁸

More detailed, disaggregated data from the National Coronial Information System (NCIS) indicated that between 1 January 2007 and 31 December 2015, 645 children aged 4–17 years died by suicide. 94% of these children were aged 14–17.³⁹

It is important to note the significant increase in the number of deaths by suicide between the 12–13 age group and the 14–15 age group. This increase occurs when children are transitioning from primary to secondary school, accompanied by the onset of puberty and rapid brain development. This suggests that the transition between childhood and adolescence is a time where targeted interventions are warranted.



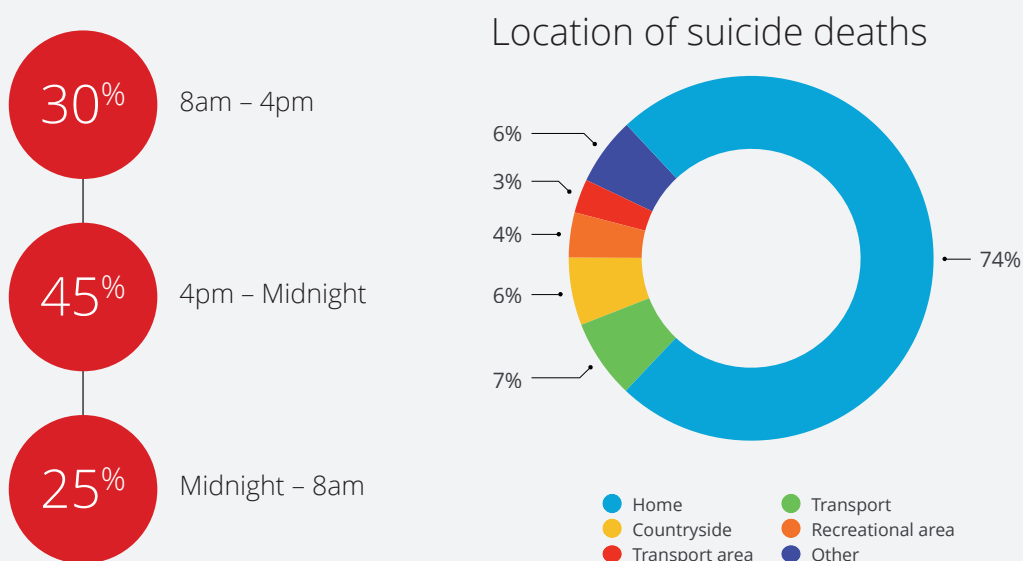
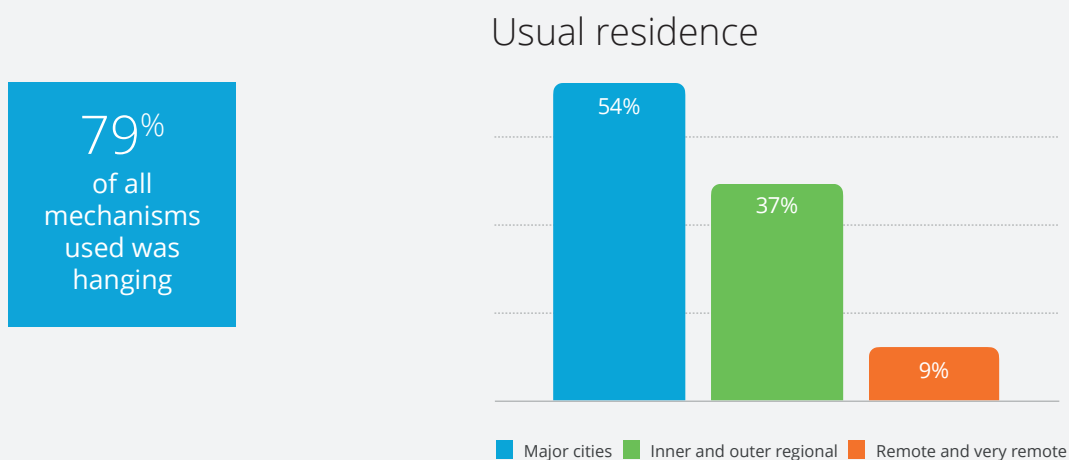
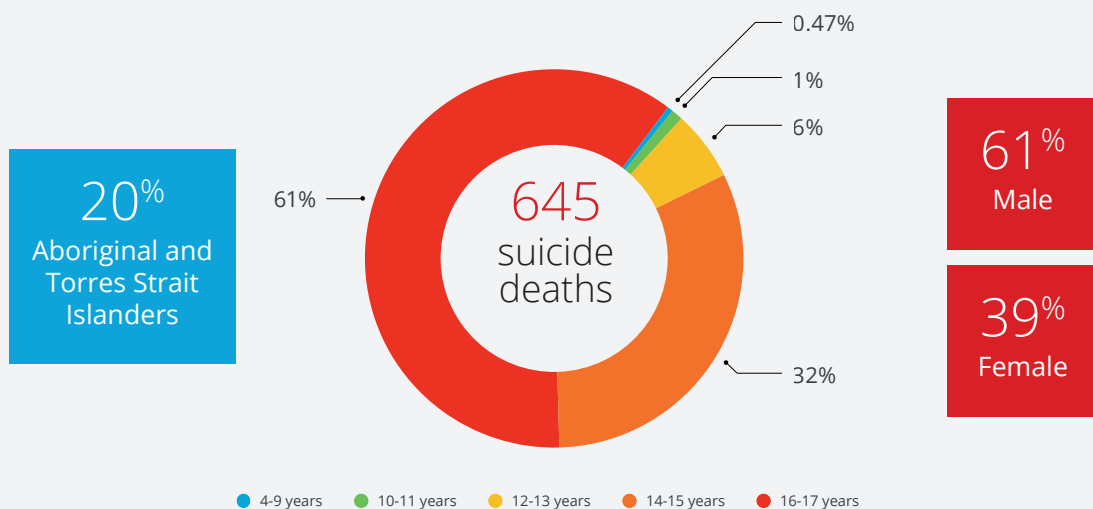


Figure 8.1: Sourced from National Coronial Information System data (between 1 January 2007 and 31 December 2015).

While Aboriginal and Torres Strait Islander children represent approximately 5.9% of Australia's population, the data provided by NCIS show that Aboriginal children accounted for 19.2% of all child deaths due to suicide.⁴⁰ See Chapter 12 for more detail on suicide and self-harm in Aboriginal and Torres Strait Islander children.

54.4% of child suicide deaths occurred in major cities, 22% in inner regional Australia, 14.8% in outer regional Australia and 8.7% in remote or very remote Australia.⁴¹

The 2014 *Growing Up Queer* report identified intentional self-harm and suicide as an issue for children and young people who are sexuality diverse, transgender, gender diverse and intersex.

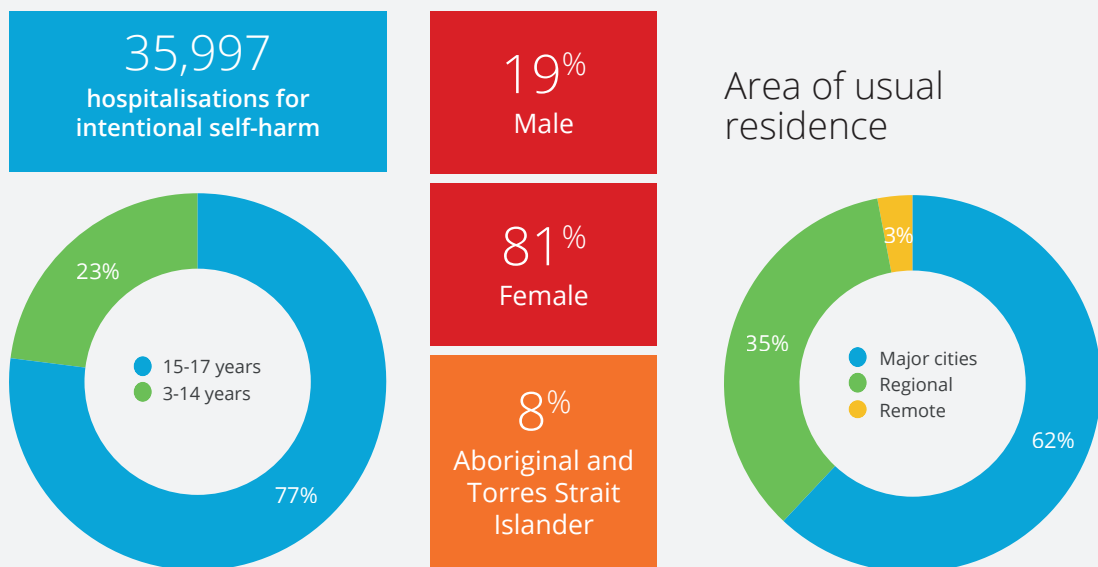
An online national survey completed by 1,032 children and young people aged 16–27 found that 41% of participants had thought about self-harm and/or suicide, 33% had harmed themselves and 16% had attempted suicide.⁴²

Between 2007 and 2017 there were 35,997 hospitalisations of children aged 3–17 years for intentional self-harm.

Data from the AIHW indicated that:

- young people aged 15–17 years comprised 77% of hospitalisations
- 81% of the hospitalisations were girls
- self-poisoning was the most common mechanism of intentional self-harm amongst children who were hospitalised (83% of hospitalisations)
- Aboriginal and Torres Strait Islander children comprised 8% of hospitalisations.

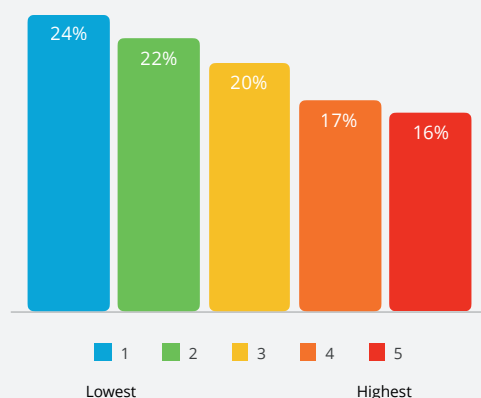
Research has suggested that the earlier physical and mental maturation of girls, as well as gender differences in emotional and behavioural problems, may be contributing factors for the high rate of self-harming behaviour among female adolescents.⁴³ More research is required to better understand this gender discrepancy.



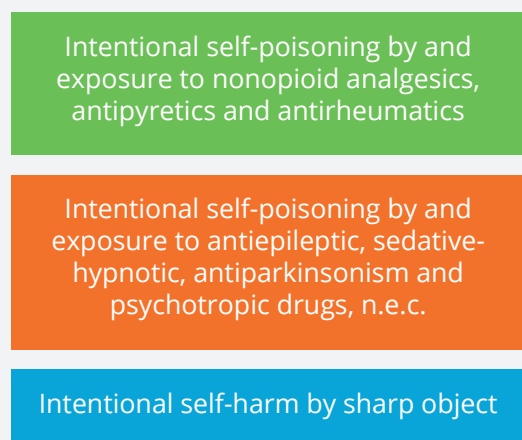
Mechanisms



Socioeconomic status of area of residence



Most used mechanisms



Location of self-harm

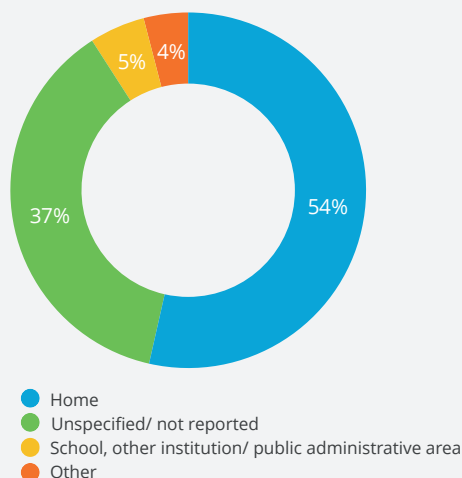


Figure 8.2: Sourced from Australian Institute of Health and Welfare data on hospitalisations due to intentional self-harm 2007-17.

While we have some understanding about suicide and intentional self-harm, there is still much that we do not know. Our capacity to respond in ways that will prevent children and young people from engaging in self-harm and suicidal behaviour is limited. Fundamentally, we 'lack an accurate means of predicting these behaviours and an effective method of preventing them'.⁴⁴ This is compounded by the complexities inherent in data collection and the restricted access to data that is collected. For example, ABS reports child suicide deaths using one age group, 5–17 years. Reporting in this way merges together age groups without differentiating between childhood and adolescence.

Similarly, the AIHW uses 0–14 and 15–17 age groups when reporting on hospitalisations for intentional self-harm. This reporting does not include non-admitted patient care such as care provided in outpatient clinics. Children who engage in intentional self-harm, with or without suicidal intent, often only experience hospitalisation because they need medical intervention to manage their injury.

Children and young people have identified mental health, suicide and self-harm as priority issues to address in order to improve their health and wellbeing.

“

I feel that we are becoming more and more toxic with social media and playground bullying and the only way our teachers handle it is by asking the bully or antagonist to say sorry. This continues the bullying though! It's getting to a point we can only go downhill from here with suicide, crime, mental health issues and nothing is being done about it. HELP US PLEASE

(child, 12)

”

If you don't treat kids fairly
they will commit suicide
(child, 9)

I am 16 (nearly 17), and I have self-harmed for nearly 3 years. From what I have learned in these three years, is there is no real 'cure' for it. I have attempted suicide dozens of times to no avail, and have spent time in the mental ward a few times. Doctors have not really had a chance to sit down and look at the problems, so it seems, because some will make asinine attempts to deter self harmers or suicidal adolescents, by saying how stupid

they are acting and how much hurt they are causing to their families. We are treated as though we have no understanding of the 'real' world, and that our mind just can't see how wrong it is to do what we do, or think how we think, when really, our minds just don't care anymore. Most of us have lost hope in being 'cured', because we know that it will always be there, whenever we come into a bad situation ...

(child, 16)

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to:

- **invest in addressing the underlying causes of children's suicide and poor mental health, improve mental health literacy for children to promote children's awareness and access to support services, and ensure that the Fifth National Mental Health and Suicide Prevention Plan has a clear child focus strategy that involves children's perspectives in the response services provided**
- **prioritise mental health service delivery to children in vulnerable situations, in particular Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care, homeless children, children living in rural and remote areas, asylum-seeker, refugee and migrant children, children from culturally and linguistically diverse backgrounds and LGBTI children**
- **strengthen measures to ensure that the prescription of psycho-stimulant drugs to children with ADHD is used as a measure of last resort and only after an individualised assessment of the best interests of that child, and that children and their parents are properly informed about the possible side effects of this medical treatment and about non-medical alternatives**
- **increase the availability of online mental health services and web-based counselling, while making in-person mental health services child-friendly and accessible to children, including those under 14 years, throughout Australia.**⁴⁵

8.4 Fetal Alcohol Spectrum Disorder

The lack of accurate information about the incidence and prevalence of Fetal Alcohol Spectrum Disorder (FASD) is a serious impediment to developing effective health and policy responses.

FASD is used to describe a range of physical, cognitive, behavioural and neurodevelopmental abnormalities that can result from maternal drinking during pregnancy.⁴⁶ FASD can lead to significant secondary impairments such as difficulties accessing education services, substance use, mental ill-health, difficulties living independently, problems obtaining and maintaining employment, early contact with the justice system and shortened lifespan.⁴⁷

During 2017, the Australian Government Department of Health undertook consultations across Australia to inform the National Fetal Alcohol Spectrum Disorder Strategic Action Plan 2018–2028 (FASD Action Plan).⁴⁸ The FASD Action Plan was released in November 2018 and aims to:

- reduce prevalence of FASD
- reduce the associated impact of FASD
- improve the quality of life for people living with FASD.

The priority areas in the action plan are prevention, screening and diagnosis, support and management, and priority groups and populations at increased risk. The FASD Action Plan also recognises the difficulty of measuring FASD prevalence in Australia and commits to improving national prevalence data.⁴⁹

Effective implementation of the FASD Action Plan could reduce the prevalence of FASD and its impact on individuals, families, carers and communities.

In September 2019, the Australian Government Senate referred an inquiry into Effective Approaches to Prevention, Diagnosis and Support for Fetal Alcohol Spectrum Disorder to the Senate Community Affairs References Committee. The inquiry will consider the effectiveness of the FASD Action Plan, effective approaches to prevention and diagnosis of FASD, and strategies for optimising life outcomes for people with FASD and supporting carers. The inquiry will also consider the prevalence and management of FASD in vulnerable populations, in education and criminal justice systems.⁵⁰

8.5 Childhood obesity

Children with obesity are more likely to be obese as adults and have an ‘increased risk of developing both short and long-term health conditions, such as Type 2 diabetes and cardiovascular disease’.⁵¹

Data on children aged 5–17 shows that the prevalence of overweight or obesity rose from 20% in 1995 to 25% in 2007–08. From 2007–08 to 2017–18, the prevalence of overweight and obesity remained relatively stable, with no significant increase or decrease.⁵²

Proportion of overweight and obese children aged 5–17 from 1995 to 2017–18

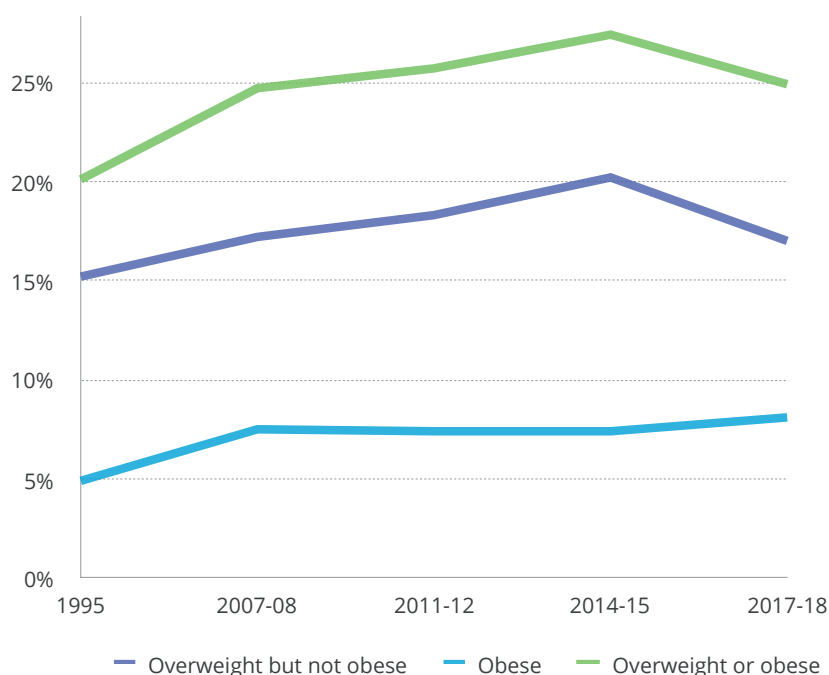


Figure 8.3: Sourced from Australian Institute of Health and Welfare, *Overweight and obesity: an interactive insight, Time trends* (2019).

In 2017–18:

- one in four (25%) children aged 2–17 were overweight or obese—equating to approximately 1.2 million children and adolescents
- about one in six (17%) children were overweight
- one in 12 (8.2%) children were obese
- results were similar for boys and girls across the age groups.⁵³

Children and adolescents aged 2–17 living in outer regional and remote or inner regional areas were more likely to be overweight or obese than those living in major cities. About one in three were overweight or obese (27% and 29% respectively) compared with one in four (23%) of those living in major cities.⁵⁴

“

You need to
cook lots more
veggies so
children can be
healthier
(child, 8)

”

“

I think there
should be
healthier food
around where
we live
(child, 8)

”

Rates of overweight and obesity for children were similar across socioeconomic areas. 28% of children and adolescents aged 2–17 in the lowest socioeconomic areas, and 25% of those in the highest socioeconomic areas, were overweight or obese.⁵⁵ Rates of obesity were 2.4 times as high among those in the lowest socioeconomic areas (10.7%) compared with the highest (4.4%).⁵⁶

Australia is a developed country and gives children opportunities and a good education. We have clean water and are lucky to have a home and shelter. One thing that could be changed is that not a lot of kids in my school are very active. Lots of them don't eat healthy foods.

Students in my class bring chips everyday whereas I bring fruit. If there is a way to get kids more active it would be great. I think you could put a program in every school about healthy eating and being active
(child, 10)

Strategies that have been implemented nationally to reduce overweight and obesity include:

- laws and regulations on providing nutritional information
- restrictions on advertising of unhealthy foods to children
- regulation of health claims on foods and drinks
- guidance and training for canteen managers through the National Healthy School Canteens project
- promotion of physical activity to young women through the Girls Make Your Move Campaign
- a national voluntary Health Star Rating system to compare the nutritional profile of products within the same category.⁵⁷

States and territories have introduced programs such as the NSW Healthy Children Initiative and Healthy Kids Menu Initiative in South Australia to educate and promote healthy eating and physical activity to children, families, teachers, and education and care providers.



The World Health Organisation Commission on Ending Childhood Obesity recommended that governments use fiscal policies such as taxes to reduce the consumption of unhealthy products like sugar sweetened non-alcoholic drinks.⁵⁸

Overweight and obesity are complex conditions affected by interrelated factors including diet, physical activity, biology, socio-economic situation, access to health care, education and infrastructure. While there is wide support for coordinated action, policies and services have struggled to address the range of factors contributing to overweight and obesity.⁵⁹

The Royal Australasian College of Physicians is concerned that childhood obesity continues to be neglected, and that Australia has 'yet to implement comprehensive actions across society to reduce obesogenic environments and their underlying social determinants'.⁶⁰

The National Action Plan for the Health of Children and Young People 2020–2030 identifies ‘addressing chronic conditions and preventive health’ as a priority area for action. This includes commitments to:

- roll out preventive health strategies that address nutrition, physical activity, overweight and obesity, and sleep hygiene
- develop approaches to increase access to and provision of fresh fruit and vegetables to remote communities and among populations experiencing disadvantage
- work with partners to develop a national active travel policy where infrastructure and transport planning incorporate strategies to encourage cycling and walking.⁶¹

In February 2019, the National Obesity Summit brought together experts in obesity to contribute to developing a National Obesity Strategy.⁶²

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to address the increasing rate of child obesity.⁶³

8.6 Immunisation and infectious diseases

Australia’s National Immunisation Program protects against 16 infectious diseases. Most vaccines are funded for all children, with a small number of additional vaccines funded for specific high-risk groups.⁶⁴

In June 2019, 94.2% of children on the Australian Immunisation Register were fully immunised at one year of age.⁶⁵ This percentage is slightly less than most OECD countries where vaccination rates were equal to or above 95% in 2018.⁶⁶ Immunisation rates for Aboriginal and Torres Strait Islander children and non-Indigenous children are similar.⁶⁷

It is difficult to compare data from Australia to the OECD statistics on childhood vaccination due to different definitions of ‘fully immunised’. The OECD focuses on the percentage of one-year-olds who have received three doses of the combined diphtheria, tetanus toxoid and pertussis vaccine, and the percentage of children under one year of age who have received at least one dose of measles-containing vaccine. In Australia, the measles vaccination commences at one year of age.⁶⁸

The National Centre for Immunisation Research and Surveillance suggests that:

There is scope to prevent further severe disease and death, particularly from influenza, meningococcal B and pertussis. In particular, it is important that clinicians are aware of recommendations for influenza and pneumococcal vaccination for high-risk children as well as maternal influenza and pertussis immunisation programs.⁶⁹

8.7 Breastfeeding

Although 90% of Australian mothers initiate breastfeeding, only 15% of infants are exclusively breastfed for the six-month period recommended by the World Health Organisation (WHO).⁷⁰

The World Breastfeeding Trends Initiative assessment tool evaluates a country's progress in implementing the WHO and UNICEF Global Strategy for Infant and Young Child Feeding.⁷¹ This assessment reports on a country's national practices, policy and program indicators. Australia performed poorly with a total score of 25.5/150.⁷²





Australia: Report Card 2018

25.5

The assessment of implementation of policies and programs from the World Health Organization's Global Strategy for Infant and Young Child Feeding (GSIYCF).

Policies and programs: Indicators 1–10		Score out of 10
<small>*IBFAN Asia Guidelines for WBTi for rating individual indicators 1 to 15 are as follows: 0–3 is rated Red, 4–6 is rated Yellow, 7–9 is rated Blue and more than 9 is rated Green.</small>		
1. National policy, program and coordination Concerns national policy, plan of action, funding and coordination issues.		0
2. Baby Friendly Hospital Initiative (in Australia: Baby Friendly Health Initiative, BFHI) Concerns percentage BFHI hospitals, training, standard monitoring, assessment and reassessment systems.		5.5
3. Implementation of the International Code of Marketing of Breastmilk Substitutes (WHO Code) and all subsequent World Health Assembly (WHA) Resolutions Concerns implementation of the Code as law, monitored and enforced.		1.5
4. Maternity protection Concerns paid maternity leave, paid breastfeeding breaks, national legislation encouraging workplace accommodation for breastfeeding and/or childcare and ratification of ILO MPC No 183.		6
5. Health and nutrition care systems Concerns health provider schools and pre-service education programs, standards and guidelines for mother-friendly childbirth procedures and in-service training programs.		2.5
6. Mother support and community outreach: community-based support for the pregnant and breastfeeding mother Concerns the availability of and women's access to skilled counselling services on infant and young child feeding during pregnancy and after childbirth.		5
7. Information support Concerns public education and communication strategy for improving infant and young child feeding that is actively implemented at local levels.		0
8. Infant and young child feeding (IYCF) and HIV Concerns policy and programs to address infant feeding and HIV issue and on-going monitoring of the effects of interventions on infant feeding practices and health outcomes for mothers and infants.		3.5
9. Infant and young child feeding during emergencies (IYCF-E) Concerns policy and program on IYCF-E and material on IYCF-E integrated into pre-service and in-service training for emergency management.		0.5
10. Mechanisms of monitoring and evaluation system Concerns monitoring, management and information systems as part of the planning and management process.		1
Subtotal:		25.5/100

Feeding practices: Indicators 11–15		
<small>Requires national data that is no more than five years old and meets the WHO Indicators for assessing IYCF practices.</small>		
	Data	Score out of 10
Early initiation of breastfeeding within 1 hour of birth	No available data	0/10
Mean percentage of babies 1–<6 months exclusively breastfed	No available data	0/10
Median duration of breastfeeding	No available data	0/10
Bottle-feeding: percentage of babies 0–12 months fed with a bottle	No available data	0/10
Complementary feeding: percentage of babies receiving solids by 8 months	No available data	0/10
Subtotal		0/50

Total score = 25.5/150

The full report is available at www.wbtiaus.com or wbtiaus@gmail.com

Figure 8.4: World Breastfeeding Trends Initiative Australia, *Australia: Report Card 2018* (24 May 2018).

The Australian National Breastfeeding Strategy: 2019 and Beyond commits to providing a supportive and enabling environment for breastfeeding mothers, infants and families.⁷³ The strategy aims to increase the proportion of babies who are exclusively breastfed to six months of age and who continue breastfeeding until 12 months of age. The priority areas for action are:

- structural enablers including community education and awareness
- settings that enable breastfeeding with a focus on support for breastfeeding in workplaces
- individual enablers including access to breastfeeding education, support and information services with a focus on support for priority groups.⁷⁴

The Australian Government Department of Health will lead national policy coordination, monitoring and evaluation, and report annually on implementation of the strategy to the Australian Health Ministers' Advisory Council.⁷⁵

8.8 Medical interventions for intersex children

There is domestic and international concern about involuntary surgery on infants born with variations in sex characteristics.⁷⁶ Decision-making about medical interventions for intersex children should be guided by children's rights to have their best interests taken as a primary consideration, to the highest attainable standard of health and to have due weight given to their views.

The Australian Human Rights Commission is conducting a research project, scheduled for release in 2020, to better understand these concerns and develop recommendations for a nationally consistent human rights-based approach to decision-making about medical interventions.

The Australian Government has emphasised the responsibility of state and territory governments in this area and has not committed to the implementation of particular reform.⁷⁷

In relation to their right to health, the Committee on the Rights of the Child has emphasised that if the outcome of a medical treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must be given due weight based on their age and maturity. Children should also be provided with adequate and appropriate information to understand the situation and be allowed to give their consent in an informed manner.⁷⁸

The Committee on the Rights of the Child has also recognised that a child's evolving capacity affects their independent decision-making on health issues and noted that children who are particularly vulnerable to discrimination are often less able to exercise this autonomy in decision-making. This means it is especially important that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.⁷⁹

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to enact legislation explicitly prohibiting coerced sterilisation or unnecessary medical or surgical treatment, guaranteeing bodily integrity and autonomy to intersex children as well as adequate support and counselling to families of intersex children.⁸⁰

8.9 Medical care for transgender and gender diverse children and young people

Australian transgender and gender diverse children can now access stage two hormonal treatment without seeking court authorisation, due to a landmark court ruling in *Re Kelvin*.⁸¹

The decision in *Re Kelvin* is in line with recommendations made by the UN Human Rights Committee that suggested Australia 'consider ways to expedite access to stage two hormonal treatment for gender dysphoria, including by removing the need for court authorisation'.⁸²

The removal of the requirement of court authorisation does not extend to children in the out-of-home care or youth justice systems. These children are still required to obtain court authorisation to commence treatment.⁸³

In situations where there is a dispute about whether treatment should be given to a child, the Family Court still has jurisdiction to hear and determine the dispute. This may include situations where one parent consents to the procedure, but another parent is opposed.⁸⁴

Children's rights to have their best interests taken as a primary consideration in decisions that concern them, to have their views given due weight, and to be provided with adequate and appropriate information in relation to medical treatment should guide decisions made about access to medical care for transgender and gender diverse children and young people.

8.10 Child mortality

There is no regular national report on all causes of death for Australian children under the age of 18 years.

Existing data merges age groups without differentiating between childhood, adolescence and early adulthood. This makes it difficult to use the data to guide interventions, policy making and planning for children.

Since 2008, the number of infant deaths (children less than one year of age) has decreased. The 2016 infant mortality rate was 3.1 infant deaths per 1000 live births—the lowest on record.⁸⁵ Since 2001, the death rate for Aboriginal and Torres Strait Islander infants also decreased, but it is still almost twice the rate of all infants.⁸⁶ See Chapter 12.

There are mechanisms for reviewing child deaths in all states and territories. Most states and territories report on the number and causes of death of children under 18 years of age and conduct reviews of deaths where children have been involved in child protection systems. But ‘there is no uniform structure or legislation for child death review team responsibilities and reporting requirements vary for each state or territory’.⁸⁷

The Australian and New Zealand Child Death Review and Prevention Group (ANZCDR&PG) was established in 2005 with the aim of sharing information and developing national comparable child death statistics to better understand and prevent child deaths.

The Australian Government has committed to developing a new National Injury Prevention Strategy and is aiming to publish it in 2019–20.⁸⁸

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government continue to support the work of the Australian and New Zealand Child Death Review and Prevention Group.⁸⁹

8.11 Sexual health

Although the teenage birth rate is at a historic low, teenagers in rural and remote areas experience young parenthood at four times the rate of their metropolitan counterparts.⁹⁰

Research indicates that limited access to information and health services may contribute to higher rates of teenage pregnancy in rural and remote areas. Young people themselves report that ‘confidentiality, challenges in being able to discuss sensitive health issues, and cost, all present barriers to using and purchasing contraception’.⁹¹

“

Life would be better for children if we had sexual health and drug and alcohol clinics especially for young people where you didn't get judged

(child, 17)

”

Teenage pregnancy is associated with poorer health outcomes for both mother and child. Teenage mothers are more likely to experience anaemia and hypertension during pregnancy. They are also more likely to smoke during pregnancy.⁹² Data collected by the ANZCDR&PG show that sudden unexpected death of infants is more common for children of teenage mothers.⁹³

Children's and young people's right to the highest attainable standard of health includes the right to certain medical treatments and interventions without parental permission.⁹⁴

The test of 'Gillick competency' has been accepted in Australian common law.⁹⁵ This means that children are considered legally capable of giving informed consent to medical treatment if they have a sufficient level of understanding and intelligence to fully understand what is proposed. But this test is altered by legislation in some states and territories, which impose additional requirements on children seeking medical treatment without parental consent.⁹⁶ These requirements create additional barriers to accessing prescribed forms of contraception and safe abortion. Further, there is no available evidence to suggest that assessments of Gillick competence are routinely applied by medical practitioners.

The right to the highest attainable standard of health also includes the right to education and guidance on sexual health, contraception and safe abortion.

Surveys of young people show that contraceptive knowledge is low. Many young people have little knowledge of basic facts about methods of contraception, including little knowledge about the use and availability of emergency contraception.⁹⁷

Young parents' messages to government:

Everyone know what services are available. A lot of services that were available for me I didn't find out about till after I really needed them

Do your job! Free childcare for single parents, more healthcare benefits for children

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government continues providing children with education on sexual and reproductive health as part of the mandatory school curriculum, with special attention on preventing early pregnancy and sexually transmitted infections.⁹⁸

8.12 Drug and substance abuse

The misuse of drugs and alcohol is a major cause of preventable disease and illness in Australians. Despite substantial evidence that points to the efficacy of prevention programs, government-funding remains primarily focused on law enforcement and treatment.⁹⁹

Lack of data for children under the age of 18 years is a significant issue in terms of assessing drug and substance abuse.¹⁰⁰

However, an increasing proportion of children aged 12–17 are reporting alcohol abstinence. In 2016, 81.5% of children reported alcohol abstinence compared to 54.3% in 2004.¹⁰¹

Further, a decreasing proportion of children aged 12–17 are exceeding the recommended number of standard drinks for adults in a single occasion of drinking.¹⁰² In 2016, 9.1% of males and 6.8% of females exceeded the adult guidelines, a decrease from 2013 when 13.5% of males and 11.3% of females exceeded these guidelines.¹⁰³

Between 2013 and 2016, the average age of smoking initiation increased from 15.9 years to 16.3 years. Females generally smoked their first full cigarette at a slightly younger age than males (16.0 years compared to 16.6 years for males).¹⁰⁴

The 2017 Australian Secondary Students' Alcohol and Drug Survey contains the most recent data on illicit drug use by school students aged 12–17. The survey of 20,019 school students showed cannabis to be the most commonly used illicit substance. 15% of all respondents said they had used cannabis in the last year.¹⁰⁵ Overall males were more likely than females to have used cannabis. The proportion of students who used cannabis increased with age. 34% of 17-year-old respondents said they had used cannabis compared to 3% of 12-year-old respondents.¹⁰⁶

The National Drug Strategy 2017–2026 identifies young people (defined as between age 10–24 years) as a group for policy responses to prioritise when designing strategies to prevent and minimise the effects of alcohol, tobacco and illicit substances.¹⁰⁷ The strategy focuses on harm minimisation through:

- demand reduction by preventing uptake, delaying first use, reducing harmful use and supporting recovery
- supply reduction by preventing availability and accessibility
- harm reduction by reducing risky behaviours and implementing environmental changes to create safer settings.¹⁰⁸

8.13 Male circumcision

The position of the Royal Australasian College of Physicians is that the level of protection offered by circumcision and the complication rates of circumcision do not warrant routine infant circumcision.¹⁰⁹

In Australia, while culturally significant to some groups in the community, the practice of male circumcision is sometimes conducted for non-therapeutic purposes and infants are unable to give consent, giving rise to human rights concerns.¹¹⁰

Data on male circumcision in Australia is collected for circumcisions performed by registered medical practitioners under the Medicare Benefits Schedule (MBS).¹¹¹ In 2018, 6,215 circumcisions of male children aged 0–4 years were claimed under the MBS code for circumcisions performed in conjunction with a Medicare claim for anaesthesia.¹¹² A further 9,964 circumcisions of male children aged 0–4 years were claimed under the MBS code for circumcision only.¹¹³

Before 1 November 2016, there was a separate MBS code for circumcisions of children under 6 months old.¹¹⁴ In 2016, there were 13,052 circumcisions on male children under 6 months old claimed under this code.¹¹⁵

This data does not distinguish between therapeutic and non-therapeutic male circumcisions. Data that distinguishes between therapeutic and non-therapeutic circumcisions, and information on circumcisions performed outside public hospitals would enhance our understanding of male circumcision in Australia.

“

It's not fair that mums and dads can get doctors to cut boys willys tops off and it should be boys choice when we are old enough to choose!!!

(male, 11)

”

Public hospitals in Tasmania, Western Australia, Victoria, New South Wales and South Australia do not perform non-therapeutic circumcisions.¹¹⁶

On the issue of informed consent for infants and children, UNAIDS state that informed consent from parents or caregivers must be based on the best interests of the child. Parents should be provided with clear and understandable information about the benefits and risks in order to make this decision.¹¹⁷

8.14 The way forward

- ④ 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.
- ④ The Australian Government should introduce legal protections to prevent sterilisation of children with disability without consent.
- ④ The Australian Government should expand and fund the delivery of child targeted mental health and other necessary support services.
- ④ 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 that 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.

Chapter 8: Endnotes

- 1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990) art 24.
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- 3 ARACY, *Report Card 2018 The Wellbeing of Young Australians* (Report, 2018) 7.
- 4 Australian Institute of Health and Welfare, *Children's Headline Indicators Overview* (2018) <www.aihw.gov.au/reports/children-youth/childrens-headline-indicators/contents/overview>.
- 5 Department of Health (Cth), *National Action Plan for the Health of Children and Young People 2020–2030* (2019) 8.
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- 7 The Australian Institute of Health and Welfare analysed data collected by the Australian Bureau of Statistics' 2015 survey of disability, ageing and carers to estimate the number of people with disability in Australia. Australian Bureau of Statistics, *Disability, Ageing and Carers: Summary of Findings, Glossary* (18 October 2016) <www.abs.gov.au/ausstats/abs@.nsf/Lookup/4430.0Glossary12015>.
- 8 Australian Bureau of Statistics, *Disability, Ageing and Carers: Summary of Findings, Glossary* (18 October 2016) <www.abs.gov.au/ausstats/abs@.nsf/Lookup/4430.0Glossary12015>.
- 9 Australian Institute of Health and Welfare, *People with Disability in Australia, Key Data Gaps* (3 September 2019) <<https://pp.aihw.gov.au/reports/disability/people-with-disability-in-australia/key-data-gaps>>.
- 10 Australian Institute of Health and Welfare, *People with Disability in Australia, What Can Be Done to Improve the Evidence?* (3 September 2019) <<https://pp.aihw.gov.au/reports/disability/people-with-disability-in-australia/key-data-gaps/what-can-be-done-to-improve-the-evidence>>.
- 11 Commonwealth of Australia, *Combined Second and Third Periodic Reports Submitted by Australia under Article 35 of the Convention, Due in 2018*, UN Doc CRPD/C/AUS/2-3 (5 February 2019) 11.
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- 14 Joint Standing Committee on the National Disability Insurance Scheme, *Progress Report* (March 2019) 62.
- 15 Joint Standing Committee on the National Disability Insurance Scheme, *Progress Report* (March 2019) ix–x.
- 16 Joint Standing Committee on the National Disability Insurance Scheme, *Progress Report* (March 2019) 52.
- 17 Joint Standing Committee on the National Disability Insurance Scheme, *Progress Report* (March 2019) 52.
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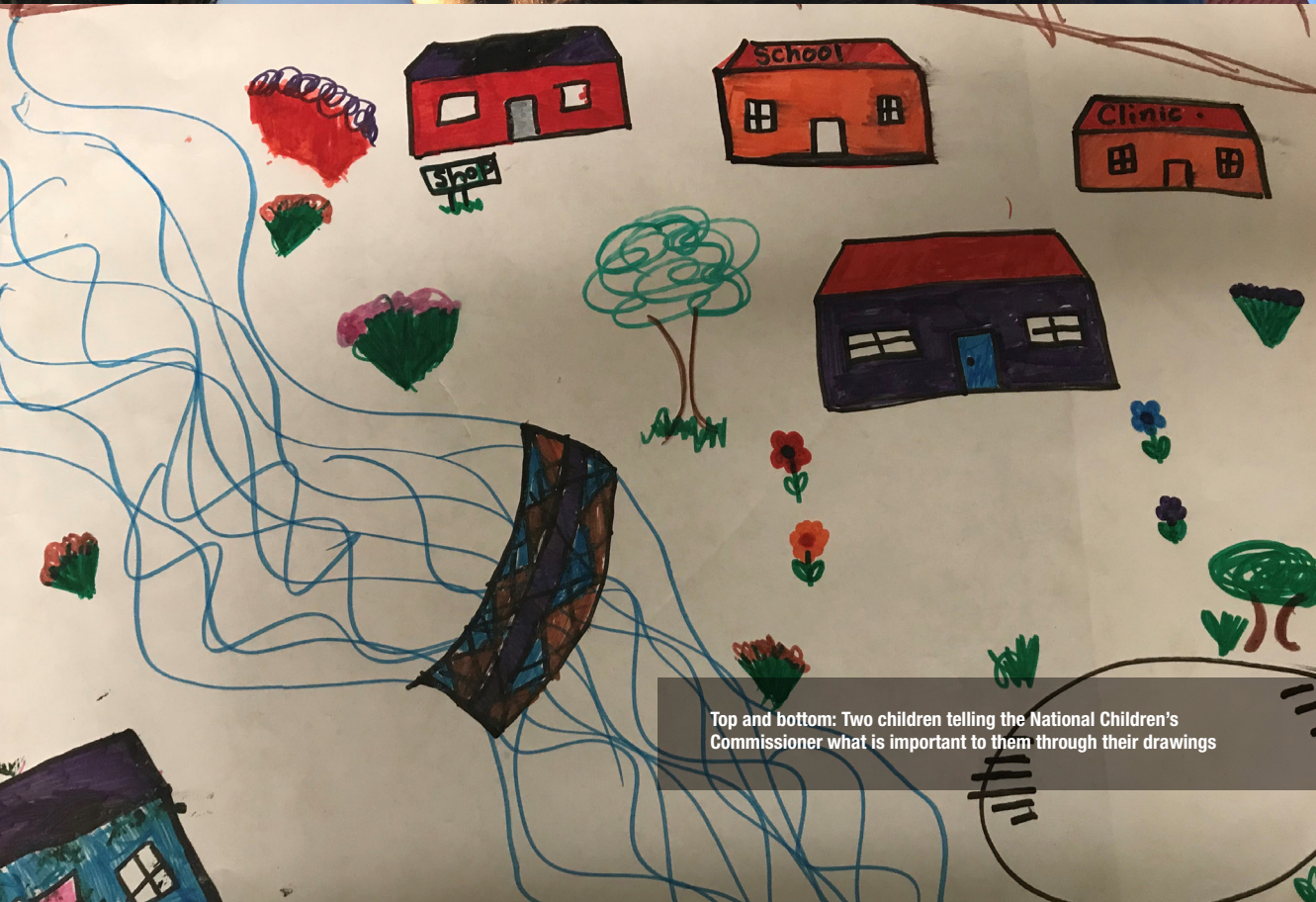
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Chapter 9:

Living standards



Top and bottom: Two children telling the National Children's Commissioner what is important to them through their drawings

LIVING STANDARDS

CHILD POVERTY



17.3% of children under 15 were living in households experiencing poverty
= 739,000 children (2015-16)

The poverty rate for children in **single-parent families** was **4 times** the poverty rate of children in couple parent households (2017)

In a 2017 survey of 1,380 Salvation Army clients:

- 1** in **5** parents could not afford **medical treatment** for their child
- 1** in **3** parents could not afford a **yearly dental check-up** for their child
- 2** in **5** parents could not **fresh fruit and vegetables** on a daily basis for their child
- 1** in **4** parents could not afford **three meals a day** for their child (2017)

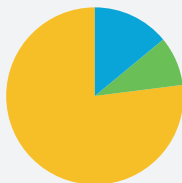


CHILD HOMELESSNESS

People who were homeless in 2016



19.5% of young people who had **couch surfed** reported they have first done so when they were **less than 12 years old** (2017)



14% were aged **under 12**
9% were aged **12-18**
61% of homeless children under 12 were living in **severely crowded** dwellings

42,700 children under 10 were assisted by **specialist homelessness services** (2017-18)



14,500 were Aboriginal and Torres Strait Islander children
28,200 were non-Indigenous children

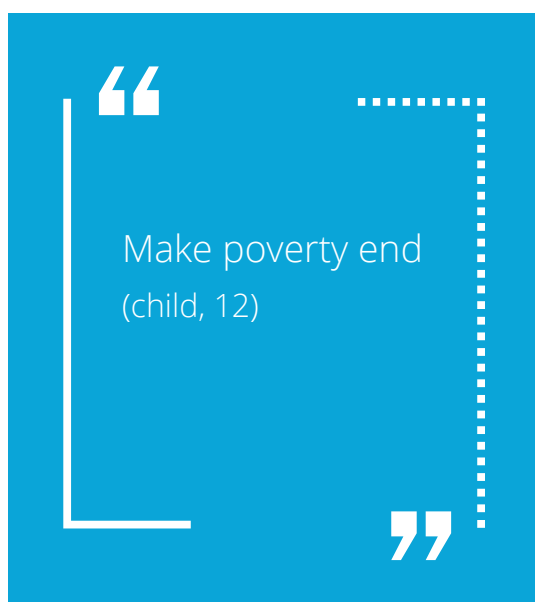
CHILDREN LIVING IN RURAL AND REMOTE AUSTRALIA

Compared to children living in major cities, **fewer** children living in rural and remote areas:

- feel they can **participate in decisions** affecting them at home, online, sport and other activities
- participate in **organised physical activity** outside of school

The *Convention on the Rights of the Child* (CRC) provides every child with the right to a standard of living that is necessary for the child's physical, mental, spiritual, moral and social development. Under article 27, the CRC asks governments to provide material assistance and support programs, such as welfare and housing when necessary.

9.1 Child poverty



In 2015, the Australian Government adopted the Sustainable Development Goals. The first goal is to 'end poverty in all its forms' with a national target 'to reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions' by 2030.¹ Australia currently lacks an agreed national definition of poverty and a poverty reduction plan.²

The development of poverty reduction strategies with a particular focus on children would assist with implementing the right to a standard of living contained in the CRC.

The 2018 Australian Council of Social Services (ACOSS) report, *Poverty in Australia 2018*, defined the poverty line for the purposes of the report as 50% of median household disposable income.³

The 2019 Household, Income and Labour Dynamics in Australia (HILDA) Survey, uses a definition of 'relative income poverty'—a household income below 50% of median income,⁴ consistent with the approach of the Organisation for Economic Co-operation and Development (OECD).⁵

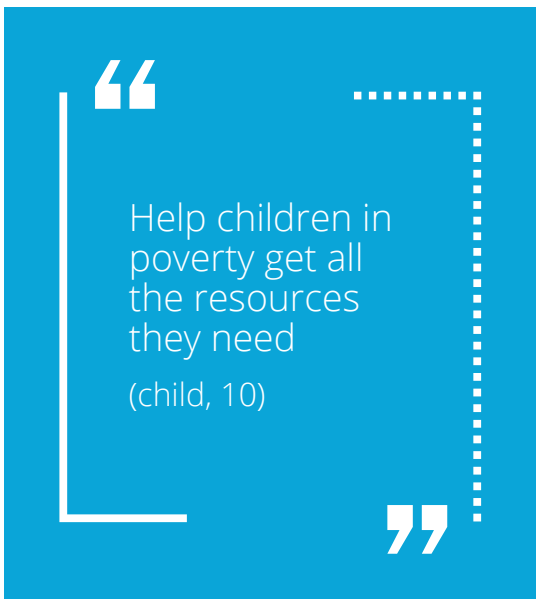
In 2015–16, 17.3% of children under the age of 15 years (739,000—more than one in six) were living in households experiencing poverty.⁶

In 2017, the poverty rate for children in single parent families was almost four times the poverty rate of children in couple parent families at 19.2%, compared with 5.3%.⁷ In 2017, the proportion of individuals in single parent families reliant on welfare was 33.5% compared to 4.2% of individuals in couple parent families.⁸

Applying the ACOSS definition of poverty, in 2015–16 children in sole parent families had a poverty rate of 39% and were more than three times as likely to live in poverty as their counterparts in couple families (13% of whom are in poverty).⁹



Children living below the poverty line are more likely to experience deprivation in terms of their relationship with friends, yelling in the home, enjoyment in exercise, adequate fruit and vegetables, mental health, school attendance, learning at home, and involvement in extracurricular activities like sport.¹⁰



Poor educational outcomes are a consequence of poverty. A 2016 Child Wellbeing study found a strong association between going to bed or going to school hungry and lower school attendance and satisfaction.¹¹

Children who are 'deprived of food, clothes and other materials may reduce their engagement with school due to hunger, shame or being excluded or marginalised'.¹²

“

I think we need
to help kids
living in poverty
more

(child, 12)

”

The Salvation Army's *National Economic and Social Impact Survey 2017*,¹³ surveyed the effects of poverty on 1,380 of its clients. It found that in households with children under 17 years of age:

- approximately one in five could not afford medical treatment and nearly one in three could not afford a yearly dental check-up for their child
- half could not afford school items and 56% did not have the money to participate in school activities
- more than half (55%) could not afford a hobby or outside activities for their child

- almost three in five respondents could not afford an internet connection for their child
- nearly two in five could not afford fresh fruit or vegetables every day and nearly one in four could not afford three meals a day for their child.

9.2 Child homelessness

Homelessness continues to be an issue that affects children in Australia. Its causes are varied and complex and include domestic violence, a shortage of affordable housing, unemployment, mental illness, family breakdown, and drug and alcohol abuse.¹⁴

According to the 2016 Census, 15,872 children under the age of 12 years and 9,955 aged 12–18 years were homeless.¹⁵ It is difficult to determine the number of children 12–17 years who are homeless as data include those who have already turned 18 years of age.

Of homeless children under 12 years, 61% were living in 'severely' crowded dwellings and 26% were living in supported accommodation.¹⁶ Similarly, most of the children in the 12–18 years age bracket were living in 'severely' crowded dwellings (61%) or in supported accommodation for those homeless (26%).¹⁷

In 2017–18, 288,800 clients were assisted by specialist homelessness services (SHS).¹⁸

During that time period:

- Of the 65,200 Aboriginal and Torres Strait Islander clients who received specialist homelessness services in 2017–18, around 1 in 5 (22% or 14,500) were children aged under 10 years.¹⁹
- Of the 42% of clients (121,100) who reported experiencing domestic and family violence at some point during the reporting period, nearly half (47%) were single parents with a child or children. One-fifth of clients who had experienced domestic and family violence were aged 0–9 years (22% or over 26,500) and nearly 41,700 (34%) were aged under 18 years (a 4% increase from 2016–17 for those aged under 18 years).²⁰
- Around 43,200 young people aged 15–24 years presented alone, a quarter of whom (11,200 or 26%) were aged 15–17 years.²¹
- 8,700 clients aged 0–17 years were on a Care and Protection Order in 2017–18.²²

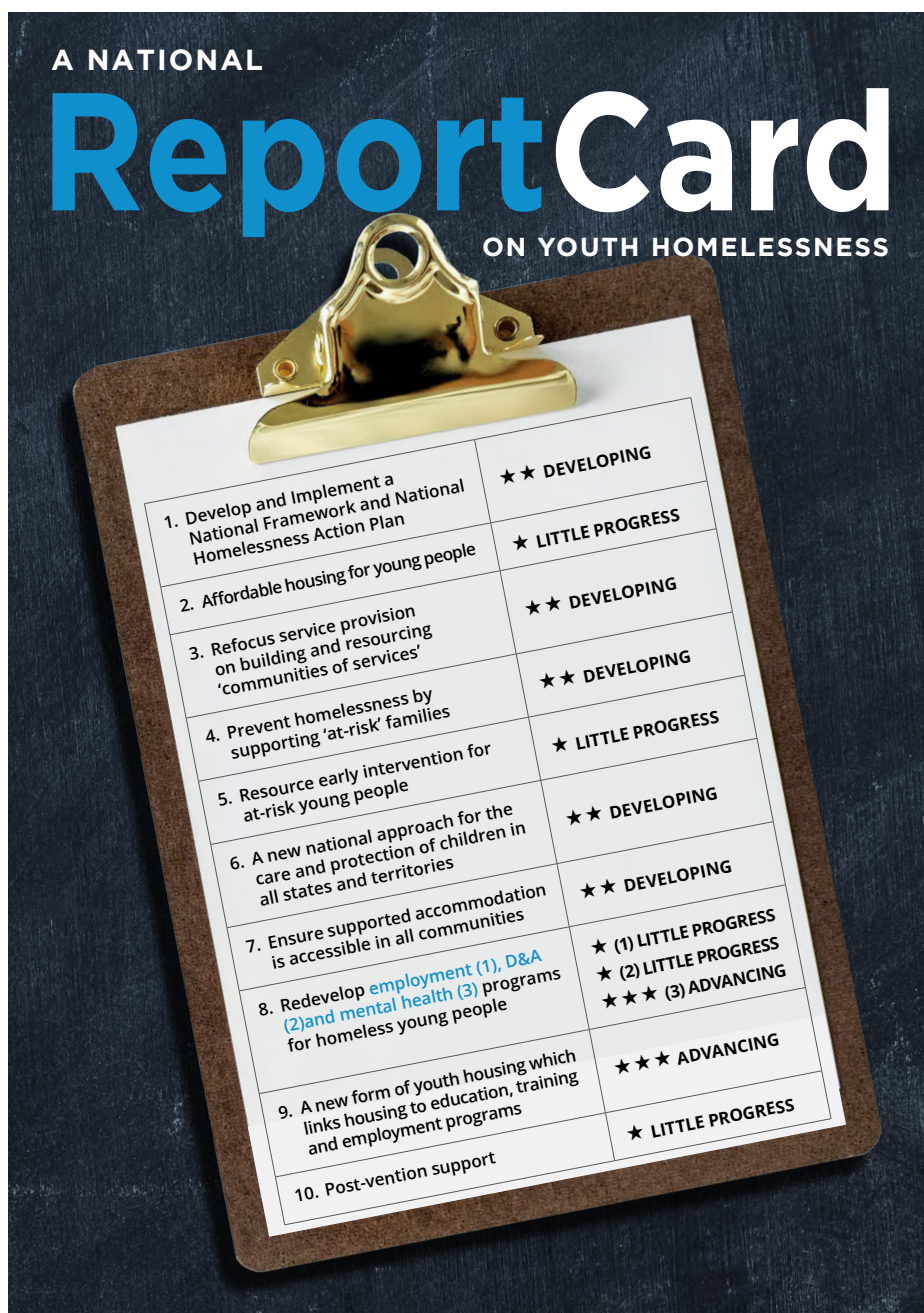
In 2017, Mission Australia conducted a survey of 24,055 young people aged 15–19 years, to understand their experiences of homelessness. Almost one in five of those who 'couch surfed' (19.5%) reported that they had first done so when they were younger than 12 years old.²³

Children in out-of-home care are at high risk of homelessness. It is estimated that nearly 35% of young people who leave out-of-home care become homeless.²⁴ One of the key policy recommendations emerging from Mission Australia's survey was improved exit planning and whole of government approaches to prevent young people exiting care into homelessness.²⁵

In 2008, the National Youth Commission conducted an inquiry into youth homelessness.²⁶ The report, *Australia's Homeless Youth*, provided a framework and a national action plan on homelessness. The Roadmap for Youth Homelessness set out ten strategic areas for action:

1. Develop and Implement a National Framework and National Homelessness Action Plan
2. Affordable housing for young people
3. Refocus service provision on building and resourcing 'communities of services'
4. Prevent homelessness by supporting 'at-risk' families
5. Resource early intervention for 'at-risk' young people
6. A new national approach for the care and protection of children in all states and territories
7. Ensure supported accommodation is accessible in all communities
8. Redevelop employment, drug & alcohol and mental health programs for homeless young people
9. A new form of youth housing which links housing to education, training and employment programs
10. Postvention support.²⁷

The *Homeless Report Card 2019* assesses progress since 2008 against the National Youth Commission Roadmap.²⁸



The overall assessment of the Homeless Report Card is that early promises made in 2008 have only partially delivered housing strategies for increasing the social housing stock and affordable housing.

In its Concluding Observations (2019), the Committee on the Rights of the Child referred to the 'Reconnect Program' and urged the Australian Government to extend the program to children under the age of 12 years.²⁹ The Reconnect Program is a community-based early intervention and prevention program. It is currently open to children and young people aged 12–18 years (12–21 years for new arrivals) who are homeless or at risk of homelessness. The program currently helps around 7,900 young people each year to improve their relationships with their family, stay at school and to participate in their local community.³⁰

9.1 Children living in rural and remote Australia

Consultations by the National Children's Commissioner since 2013 have identified that children living in rural and remote areas experience disadvantage across a range of domains such as access to adequate healthcare, education and housing, as well as access to new technologies and infrastructure. These children also experience negative impacts from natural disasters not experienced by children living in major cities.³¹

The 2018 *Children's Rights Poll*, conducted by the National Children's Commissioner, showed that a lower proportion of children in regional areas felt they could participate in decisions affecting them at home, online and sport/other out of school activities compared to children living in major cities. See Chapter 4 for more information about the *Children's Rights Poll*.

(a) Self-harm, abuse and neglect

Children who live in remote areas are more likely to die due to intentional self-harm than by other external causes, compared to children who lived in metropolitan areas.³² Data on hospitalisations for intentional self-harm in children aged 3–17 years show that children in regional and remote areas accounted for 38% of all hospitalisations between 2007–2008 and 2012–2013.³³

The Australian Institute of Health and Welfare (AIHW) reported in 2016–2017 that children from very remote areas were four times as likely as those from major cities to be the subject of a substantiation of abuse or neglect after an investigation of an at-risk notification.³⁴

(b) Young parenthood

In 2017, the National Children's Commissioner found that teenagers in rural and remote areas experience young parenthood at four times the rate of their metropolitan counterparts.³⁵ Research indicates that limited access to information and health services may contribute to higher rates of teenage pregnancy in rural and remote areas. Young people themselves report that 'confidentiality, challenges in being able to discuss sensitive health issues, and cost, all present barriers to using and purchasing contraception'.³⁶

(c) Education

Four-year-old children living in very remote areas of Australia are more than twice as likely as those from major cities to be developmentally vulnerable (45.5% and 20.8% respectively) against Australian Early Childhood Development Index domains.³⁷

School attendance across years one to ten decreases as remoteness increases.³⁸ Nationally (in 2017), reading and numeracy outcomes declined with remoteness. For example, the proportion of year five students that achieved at or above the national minimum standard in reading was 95% in major city areas compared to 52.7% in very remote areas,³⁹ and in numeracy was 96.2% in major cities compared to 60.7% in very remote areas.⁴⁰

(d) Leisure and play

Children in regional and remote areas of Australia typically have access to a more limited range of organised sports and physical activities when compared with children living in metropolitan areas. 58% of children from remote areas participate in organised physical activity outside of school, compared to 69% of children in regional areas and 76% of children living in major cities of Australia.⁴¹

Participation in organised activity – place of residence

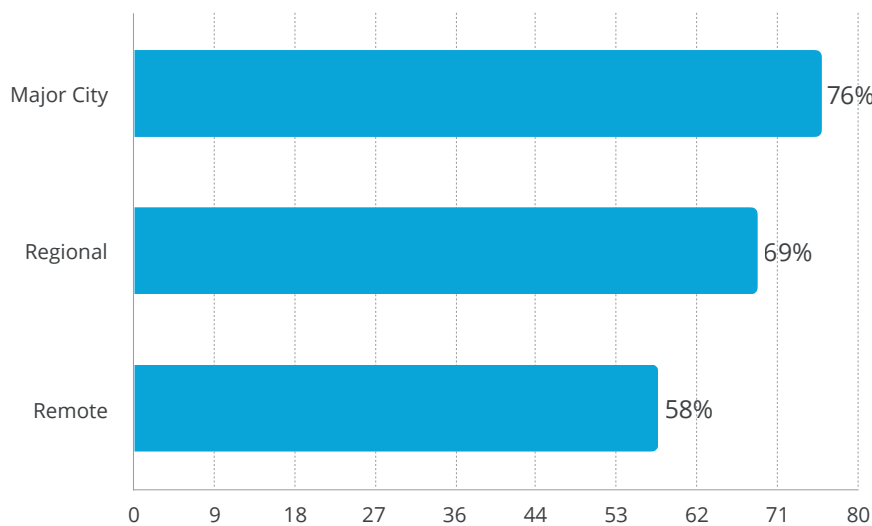


Figure 9.1 Sourced from Australian Government Australian Sports Commission, *AusPlay Focus: Children’s Participation in Organised Physical Activity Outside of School Hours* (April 2018).

(e) Natural disasters

In February 2019, UNICEF published a report on the views of children and young people affected by drought.⁴² The study found that there are few child and youth specific drought relief interventions. Workloads for children on and off farms have increased substantially, leaving little time for schoolwork and play. The children and young people described their days as long and stressful, living and breathing the drought every day. The report makes a number of recommendations related to youth-related service provision, child friendly information, physical and mental health services and support.⁴³

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to ensure that children’s views are taken into account in developing policies and programs addressing disaster risk management.⁴⁴

9.2 The way forward

- ④ The Australian Government should develop a national poverty reduction plan that explicitly focuses on children.
- ④ 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.
- ④ Australian Governments should include children under 12 years of age in the Reconnect Program.
- ④ The Australian Government should address inequality experienced by children living in regional and remote Australia through targeted measures.

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Chapter 10:

Education, leisure and cultural activities



Enjoying school with the National Children's Commissioner

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

31.4%

of children aged 0-12 attended a government approved **child-care service** (2018)

=  1.8%

increase from 2017-2018

EARLY CHILDHOOD EDUCATION AND CARE

40% of children **under 3** were enrolled in early childhood education and care (2017)

67% of children **aged 3** were enrolled in early childhood education and care (2017)

342,464 children **aged 4-5** were enrolled in a pre-school program (2018)



21% of Early Childhood Education and Care service providers are **not meeting the National Quality Standards** (June 2019)



1 in 5 start school developmentally vulnerable (21.7%)

Top difficulties for parents using or thinking about using early childhood education and care

- cost of child-care
- finding care for a sick child
- finding care at short notice

PRIMARY AND SECONDARY EDUCATION

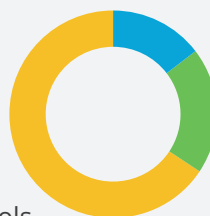
3,893,834

students were enrolled in

9,477 schools (2018)

65.7%

of students were enrolled in government schools



(2018)

14.6%

of students were enrolled in independent schools

19.7%

of students were enrolled in Catholic schools

INCLUSIVE EDUCATION

A survey of **771 students** with disability identified concerning experiences at school (2017)

19%

experienced restraint

21%

experienced seclusion

LEISURE, PLAY AND CULTURAL ACTIVITIES



63% of children participated in organised sport or physical activity outside of school hours at least once per week (2017)

Every child in Australia has the right to an education,¹ to engage in appropriate play and recreational activities and to participate fully in cultural life.²

In its Concluding Observations (2019), the Committee on the Rights of the Child noted Target 4.1 of the Sustainable Development Goals and urged the Australian Government to strengthen its investments in improving early childhood education, and primary and secondary levels, paying particular attention to children living in remote areas, Aboriginal and Torres Strait Islander children, children with disabilities, children in marginalised and disadvantaged situations, children in alternative care and children from refugee and migrant backgrounds.³

10.1 Early childhood education and care

Young children's access to quality early childhood education and care (ECEC) services supports their learning, development and socialisation and promotes school readiness. It also acts as a safeguarding mechanism for many children and connects families into services and supports. The Australian Early Development Census (AEDC) 2019 states that 'investing time, effort and resources in the early years of a child's life has significant impacts on their behaviour, learning, health and wellbeing, as they transition from childhood to adulthood'.⁴

In 2018, there were 342,464 children aged 4 or 5 years old enrolled in a preschool program in Australia. Of these, 80% (274,574) were aged 4, and 20% (67,889) were aged 5. It is estimated that around 86% of children aged 4 and 21% of children aged 5 were enrolled in preschool programs.⁵

Australia falls below the Organisation for Economic Co-operation and Development (OECD) averages for enrolment in ECEC. OECD data from 2017 indicate that 40% of children under 3 were enrolled in ECEC, compared to 36% on average across OECD countries.⁶ Although 67% of 3-year-olds in Australia are enrolled in ECEC, this is well below the OECD average of 79%.⁷ In 2017, 85% of 4-year-olds were enrolled in ECEC, slightly below the OECD average of 87%.⁸

Early Childhood Australia notes that Australia has an above average proportion of children under three years attending ECEC. However, Australia has one of the lowest proportions of three-year-olds enrolled in preschool, at only 15%. Early Childhood Australia goes on to state that this figure reflects the limitations of current data collections, as it does not include the large number of three-year-olds attending programs delivered by an early childhood teacher in long day-care settings.⁹

Every three years, Australia conducts the Early Development Census (AEDC). Nationally, more than 308,000 children in their first year of full-time school participated in the AEDC in 2018.

The majority of children are developmentally on track for each of the five AEDC domains.¹⁰ However, the most recent data in 2018 shows that more than one in five (21.7%) Australian children start school developmentally vulnerable.¹¹ This is largely unchanged from the 2015 data. The most affected groups are:

- children living in the most socio-economically disadvantaged areas, who were twice as likely as those from the least disadvantaged areas to be developmentally vulnerable (32.3% and 14.7% respectively),
- children living in very remote areas of Australia, who are more than twice as likely as those from major cities to be developmentally vulnerable (45.5% and 20.8% respectively),
- Aboriginal and Torres Strait Islander children, who are twice as likely as non-Indigenous children to be developmentally vulnerable (41.3% and 20.4% respectively).¹²

The percentage of children developmentally vulnerable on two or more domains has decreased slightly from 11.8% in 2009 to 11.0% in 2018.

A new subsidy (the Child Care Subsidy) to support the attendance of children at early education and care services was introduced in July 2018.¹³ There are serious concerns that many vulnerable and disadvantaged children are no longer accessing quality early childhood education and care services because of the changes, particularly for single parents and parents whose employment is insecure or unpredictable.¹⁴ This relates to the complexity of the new activity tests that need to be met and a reduction of free access for four-year-olds from disadvantaged families from 24 to 12 hours per fortnight.¹⁵

The impact of the Child Care Subsidy cannot yet be measured because attendance data is currently unavailable.¹⁶

However, the 2017 Household, Income and Labour Dynamics in Australia Survey reports that approximately 53% of couple parents and 41% of single parents were using early childhood education and care for their children not yet at school, with approximately 18% of couple parents and 15% of single parents using early childhood education and care services for their school-aged children.¹⁷

The study also indicates that most parents experienced some difficulty in the previous 12 months when using or thinking about using early childhood education and care services. This accounts for approximately two thirds (66.8%) of parents with a youngest child aged below five years and more than half (55.2%) of parents whose youngest child is aged between 5 and 14 years.¹⁸

The top three difficulties were the same for both groups of parents but not in the same order.¹⁹

Difficulty	Parents with youngest child aged under 5	Parents with youngest child aged between 5 and 14
Cost of child-care	48.8%	31.0%
Finding care for a sick child	35.1%	33.4%
Finding care at short notice	32.85%	31.2%

Table 10.1: Sourced from Roger Wilkins, Inga Laß, Peter Butterworth and Esperanza Vera-Toscano, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 17 (2019)*.

These findings indicate that many parents were already experiencing difficulties prior to the introduction of the new Child Care Subsidy in July 2018.

The Australian Government has been implementing the National Quality Framework (NQF) through the Australian Children's Education and Care Quality Authority (ACECQA), which is a national system for the regulation and quality assessment of early education and care services, applying to most long day-care, family day-care, preschool and kindergarten, and outside school hours care services. ACECQA is funded by the Australian Government until 30 June 2020.²⁰

As of June 2019, there were 15,919 services approved to operate under the NQF, of which 79% (11,828) had a quality rating of meeting the National Quality Standards (NQS) or above.²¹

The NQF is currently under review.²² The ACECQA has indicated that, over the next two years, there will be opportunities to provide feedback and get updates on options being considered by governments.

The Australian Government announced in the 2019–20 Budget that it would invest \$453.1 million to extend the National Partnership Agreement on Universal Access to Early Childhood Education until the end of 2020. The aim is to ensure that every child has access to a quality preschool education for 15 hours a week in the year before school.²³ \$3.2 million is committed to continue the National Early Childhood Education and Care Collection in 2020, and to build the domestic evidence base, to identify the children who are not enrolled or have low attendance, and to better understand the factors that contribute to low participation.²⁴

Many submissions to the National Children's Commissioner supported extending access to preschool to three-year-olds.²⁵ Research suggests that children benefit from access to quality early education in the two years before formal schooling, and that such education has a direct impact on a child's life, safety and future outcomes.²⁶ Only 15% of three-year-olds in Australia participate in a pre-primary education program compared with the OECD average of 68.6%.²⁷

10.2 Primary and secondary education

The structure of school education in Australia varies across the states and territories. Entry to school education is compulsory. Minimum starting age is generally restricted to 4.5 to 5 years of age. Under the National Youth Participation Requirement, all young people must participate in schooling until they complete Year 10.²⁸

In 2018, there were 3,893,834 students enrolled in 9,477 schools across Australia. 65.7% of students were enrolled in government schools, 19.7% in Catholic schools and 14.6% in independent schools.²⁹

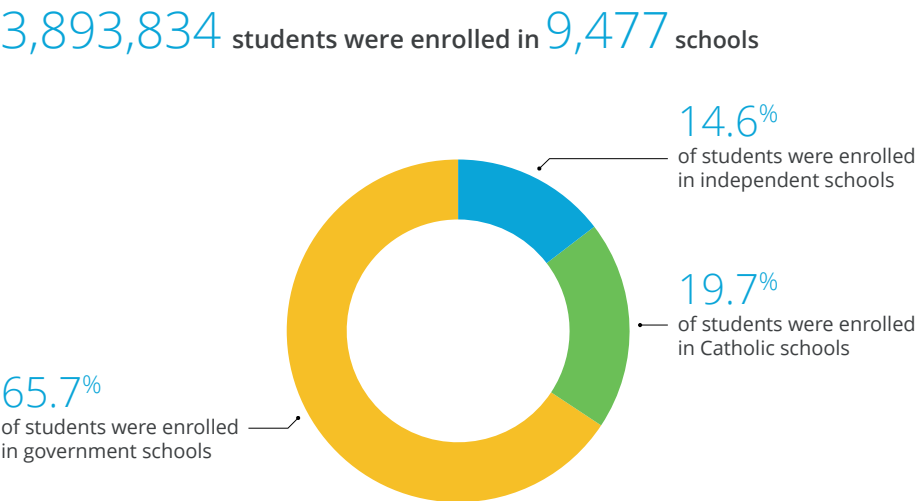


Figure 10.1: Sourced from Australian Bureau of Statistics, 4221.0—Schools, Australia, 2018 (2019).

The Apparent Retention Rate for Australian students in Years 7 to 12 was 84.5%. Aboriginal and Torres Strait Islander students made up 5.7% of all students, with the majority enrolled in government schools (83.9%).³⁰

Student enrolment counts by state/territory and affiliation, 2018³¹

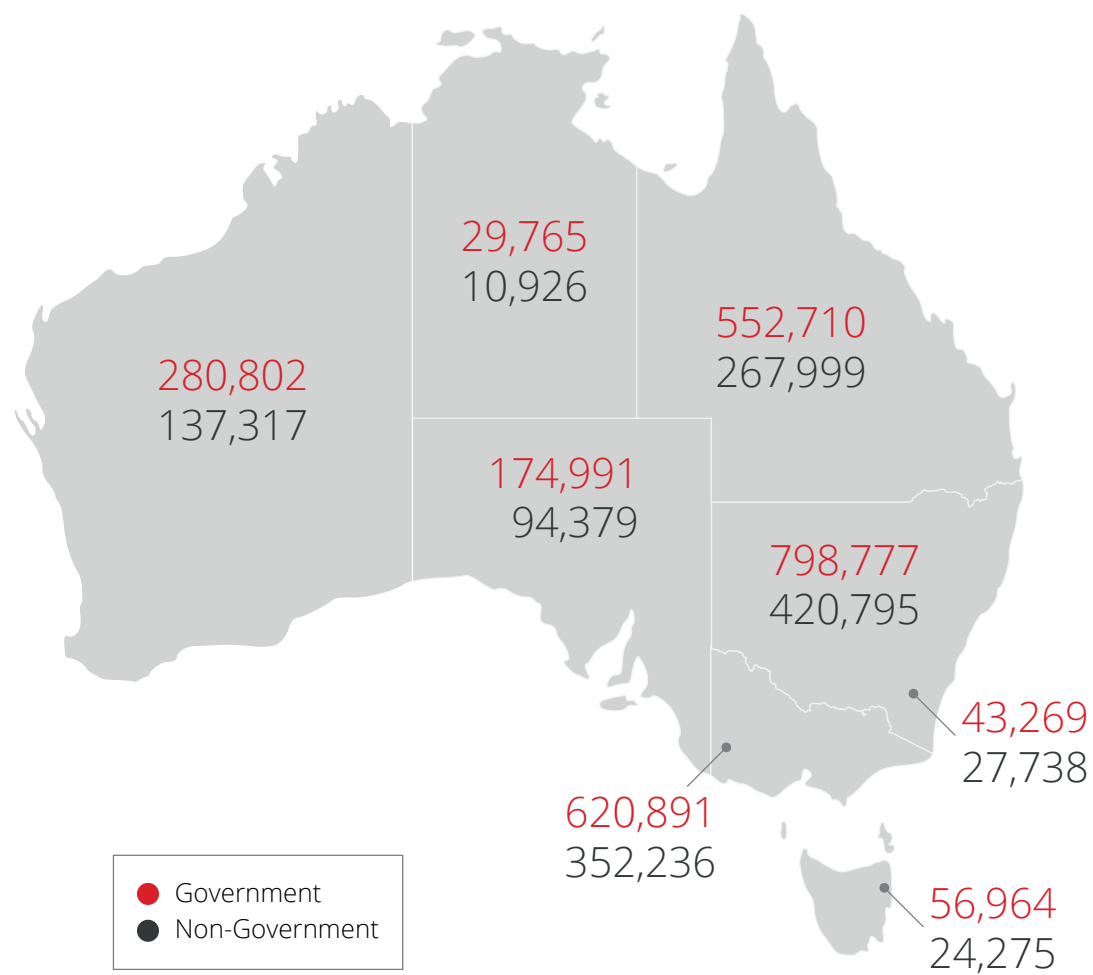


Figure 10.2: Sourced from Australian Bureau of Statistics, 4221.0—Schools, Australia, 2018 (2019).

The aim of Australian schooling is for all students to become successful learners, confident and creative individuals, and active and informed citizens able to live fulfilling, productive and responsible lives.³²

The National Assessment Program—Literacy and Numeracy (NAPLAN) is undertaken by students in Years 3, 5, 7 and 9. Nationally in 2018, 93.4% of Year 9 students achieved at or above the national minimum standard in reading performance.³³ 79.7% of Year 9 students achieved at or above the national minimum standard in writing performance,³⁴ and 95.5% achieved at or above the national minimum standard in numeracy performance.³⁵ Across 10 years from 2008, the performance for Year 9 reading is largely the same and there is an improvement in numeracy. However, there has been a consistent decline in performance for Year 9 in the writing domain from 87.2% (2008) to 82.6% (2013) to 79.7% in 2018.³⁶

Year 9 NAPLAN Results – All Australia

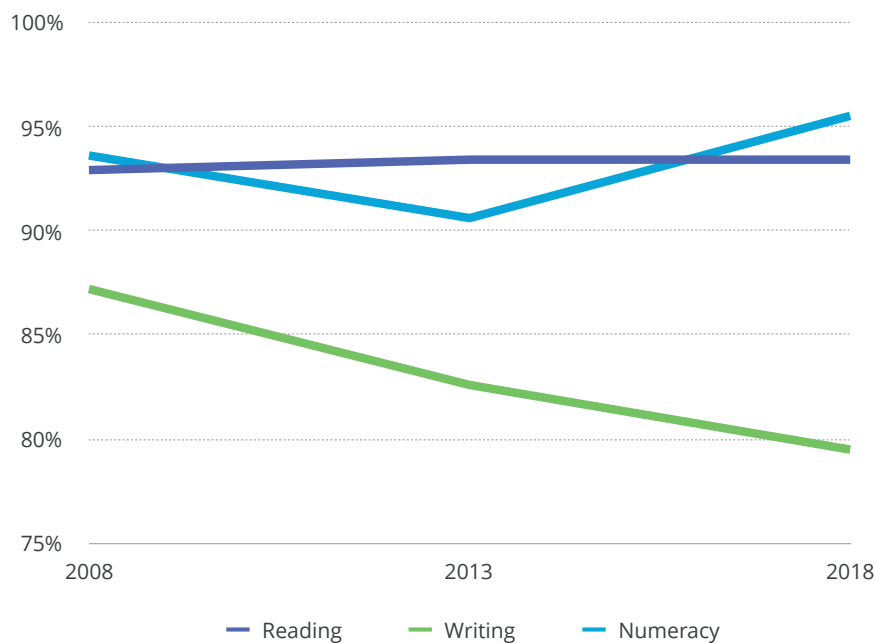


Figure 10.3: Sourced from the Australian Curriculum, Assessment and Reporting Authority, Year 9 NAPLAN Results – All Australia, *National Assessment Program Results* (2018).

The OECD Programme for International Student Assessment (PISA) involves a periodic testing program on student performance.³⁷ The reports generally compare student academic performance of 15-year-olds across countries. The 2015 data reveal that:³⁸

- In mathematics literacy, Australian 15-year-olds score 494 points compared to an OECD average of 493 points. Boys perform better than girls with a non-statistically significant difference of 6 points (OECD average: 8 points higher for boys).
- In science literacy, 15-year-olds in Australia score 510 points compared to an OECD average of 493 points. Boys perform better than girls with a non-statistically significant difference of 2 points (OECD average: 3.5 points higher for boys).
- The average performance in reading of 15-year-olds is 503 points, compared to an OECD average of 493. Girls perform better than boys with a statistically significant difference of 32 points (OECD average: 27 points higher for girls).

Australia does not participate in the *Global school-based student health survey* (GSHS). The GSHS is a collaborative surveillance project designed to help countries measure and assess the behavioural risk factors and protective factors in ten key areas among young people aged 13 to 17 years.³⁹ The ten key areas are:

- alcohol use
- dietary behaviours
- drug use
- hygiene
- mental health
- physical activity
- protective factors
- sexual behaviours
- tobacco use
- violence and unintentional injury.

Similarly, Australia does not participate in the World Health Organisation's international study, *Health Behaviour in School-aged Children*. The Australian Government should consider participating in this study in order to gain a more holistic understanding of the wellbeing of students.

10.3 Inclusive education

If all students are to become successful learners, confident and creative individuals, and active and informed citizens able to live fulfilling, productive and responsible lives, inclusive education is a necessary requirement. However, there is no clear definition of what ‘inclusive education’ means in the Australian context. For present purposes, ‘inclusive education’ refers to an education system which encompasses all children—including Aboriginal and Torres Strait Islander children, LGBTI children, children with disability and children from culturally and linguistically diverse backgrounds.

Enrolment in early childhood education is a precursor to attaining the benefits of a good quality early childhood education, including improving developmental outcomes in preparation for full-time schooling, learning and health and wellbeing.

(a) Aboriginal and Torres Strait Islander children

Educational outcomes for Aboriginal and Torres Strait Islander children are poor when compared with their non-Indigenous peers. Chapter 12 is dedicated to Aboriginal and Torres Strait Islander children and their educational situation is discussed there.

(b) LGBTI children

Children who are part of, or assumed to be part of, lesbian, gay, bisexual, transgender and gender diverse or intersex populations can face particular difficulties at school, and in the community more generally.

The Commission’s report, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights*, identified the following concerns:

- harassment and abuse at school and concerns for safety
- lack of visibility in LGBTI representation in school policy, curriculum and leadership
- lack of comprehensive sexual health education.⁴⁰

In its Concluding Observations (2019), the Committee on the Rights of the Child incorporated consideration of the needs of LGBTI children and urged the Australian Government to provide particular support to LGBTI children in its efforts to prevent and address bullying in schools.⁴¹

(c) Children with disability

Through the Council of Australian Governments (COAG), Australian state and territory governments have agreed to report annually, in a nationally consistent way, on students with disability receiving support, to enable them to participate in education on the same basis as other students. A full set of data is available from 2015.⁴²

In 2017, the Nationally Consistent Collection of Data on School Students with Disability (NCCD) identified 724,624 students receiving this support (18.8%).⁴³

In the 2017 NCCD data set, the most frequently identified category of disability was 'cognitive' (10.4%).⁴⁴

While it is useful to have this information, it is also critical to know how many children did not qualify for support or could not access mainstream schools. Further, some students are discouraged from enrolling or are not allowed to attend full time. It appears that the 2019 NCCD data collection process will not include this information.⁴⁵

The report *Improving Education Outcomes for Children with Disability in Victoria* found that approximately 15% of interviewed parents had experienced some form of difficulty when enrolling their child in a mainstream Victorian Government School.⁴⁶

A 2017 survey of 771 students with disability, conducted by Children and Young People with Disability Australia, identified that 19% of all respondents had experienced restraint at school, and 21% of respondents had experienced seclusion.⁴⁷

The use of such restrictive practices in schools is extremely concerning. These practices include the inconsistent, unregulated and unmonitored use of seclusion and restraint against students with disability in schools.⁴⁸

In its Concluding Observations (2019), the Committee on the Rights of the Child identified restraint and seclusion as areas of concern and urged the Australian Government to address these cases where they occur.⁴⁹

(d) Culturally and linguistically diverse children

Children from culturally and linguistically diverse backgrounds can also experience difficulties at school. While there is limited data on school performance, there is some data emerging on the student experience.

The Multicultural Youth Australia Census (MY Australia Census),⁵⁰ the first national study of young people from migrant and refugee backgrounds, surveyed 1,920 children and young people. Almost half (45.2%) of the sample were 15–17 years of age.⁵¹ The census identified school and study as one of the top three issues of personal concern. Discrimination and the areas of anxiety, depression and body image (which achieved an equal weighting) completed the top three.⁵² The census also revealed that the most common places where discrimination takes place were at educational institutions and on the street, pointing to the need for institutional responses to racism and discrimination in places of study and in public areas.⁵³

The Australian Curriculum, Assessment and Reporting Authority states that it is committed to the development of a high-quality curriculum for all Australian students.⁵⁴ To that end, resources have been developed to address student diversity and provide support for children from culturally and linguistically diverse backgrounds, amongst other students.⁵⁵

10.4 Suspension and expulsion

Data on suspensions and expulsions in government schools are inconsistent and unavailable in some states and territories. NSW has the most complete dataset, including a categorisation of the types of suspensions and expulsions, as well as the corresponding reasons. The NSW data show higher rates of suspension in particular groups, including those with a child protection or out-of-home care history.⁵⁶ Almost 60% of children in out-of-home care were suspended in 2016, and these children lost, on average, 29 school days to suspensions.⁵⁷

Aboriginal and Torres Strait Islander students were also overrepresented in NSW data. They accounted for 25% of total suspensions in 2016.⁵⁸

In its Concluding Observations (2019), the Committee on the Rights of the Child referred to its General Comment No 5 (2003) on general measures of implementation, which requires the collection of comprehensive disaggregated data.⁵⁹ The Committee also recalled its previous recommendation⁶⁰ and reiterated its recommendation that data collected on children's rights should cover all areas of the CRC.⁶¹

10.5 Vocational education and training

Vocational education and training (VET) may be undertaken by school students as part of their senior secondary certificate of education.⁶² The training is nationally recognised and is delivered by a Registered Training Organisation (RTO). RTOs are those training providers registered by the Australian Skills Quality Authority, or in some cases a state regulator, to deliver VET services.⁶³ They can be a TAFE, Adult and Community Education provider, group training company, private provider or school.⁶⁴

In 2018 there were 230,700 'VET in Schools' students nationally, of which 91% (210,200) were younger than 18 years. See chart below. There were 18,200 school-based apprentices and trainees.⁶⁵

Number and percentage of 'VET in Schools' students by age

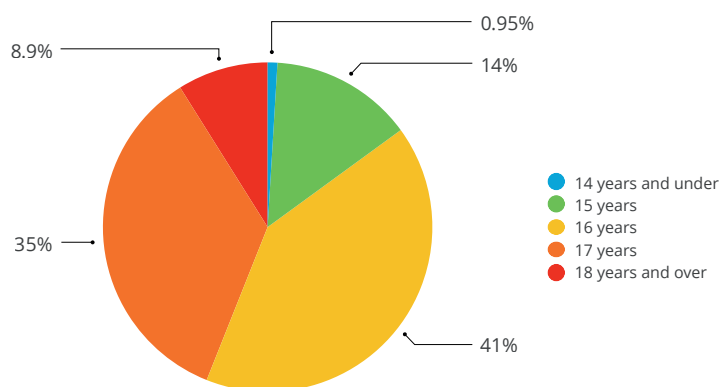


Figure 10.4: Sourced from National Centre for Vocational Education Research, *VET in Schools 2018* (2019).

10.6 Leisure, play and cultural activities

While there are limited data in relation to play and cultural activities among children, some information is available in relation to children playing sport in Australia.

The AusPlay survey is a large-scale national survey to track the sporting and recreational behaviours of the Australian population. The survey commenced in late 2015 and is the largest and most comprehensive survey conducted in Australia. Each year, 20,000 people aged 15 years or over participate in the survey. Apart from providing information about their own participation, parents/guardians of children under the age of 15 years are asked about the physical activities undertaken by one of their children.⁶⁶ The 2018–19 federal budget included \$3.4 million over four years for the continuation of AusPlay.⁶⁷

In 2017, 3,209 parents/guardians provided information about their child’s participation in organised physical activities outside school hours over the preceding 12 months. The overall child participation rate in sport rose in 2017 compared with 2016. In 2017, 63% of children participated in organised physical activity outside of school hours at least once per week (up from 56% in 2016).⁶⁸ While over two-thirds of Australian children participated in organised out-of-school sport, fewer than 20% met daily physical activity recommendations.⁶⁹

When comparing such data internationally, the 2018 Report Card on Physical Activity for Children and Young People indicated that Australia performed poorly for overall physical activity levels.⁷⁰ At the same time, Australia performed better than average for participation in organised sport, being one of only nine countries that received a grade of B or higher.⁷¹

The top four activities were listed as swimming 31.8%, football/soccer 14.1%, Australian football 8.8% and recreational dancing 8.0%.⁷²

TOP 10 ACTIVITIES (2017)	
Swimming	31.8%
Football/Soccer	14.1%
Australian football	8.8%
Dancing (recreational)	8.0%
Gymnastics	7.6%
Basketball	7.3%
Netball	6.6%
Tennis	6.0%
Athletics, track & field	5.5%
Cricket	5.4%

Table 10.2: Sourced from the Australian Government Australian Sports Commission, *AusPlay Focus: Children’s Participation in Organised Physical Activity Outside of School Hours* (April 2018).

Sports account for the majority of organised out-of-school physical activity undertaken by both boys and girls.⁷³

Child participation in sport-related physical activity (2017)

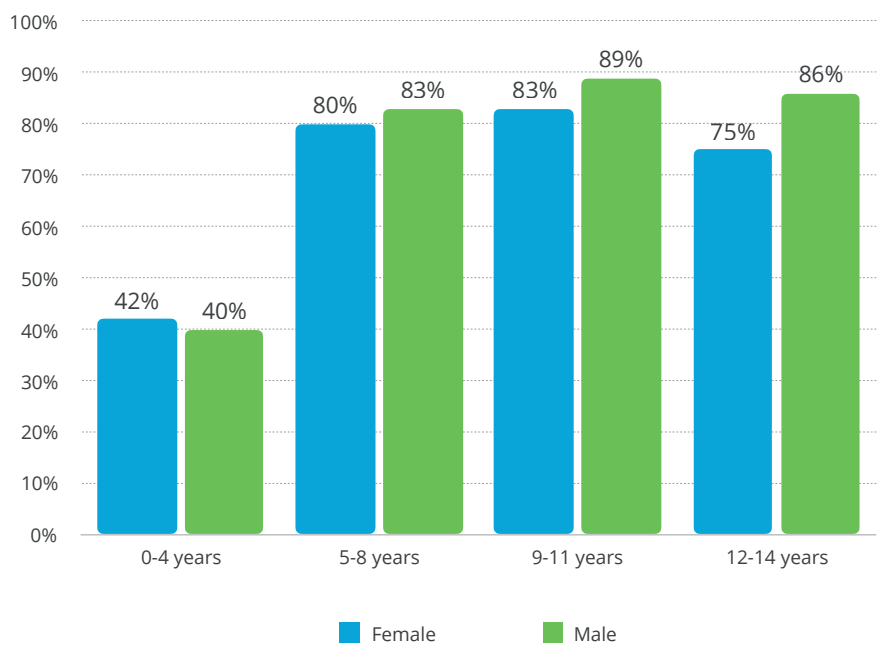


Figure 10.5: Child participation in sport-related physical activity, sourced from Australian Government Australian Sports Commission, *AusPlay Focus: Children’s Participation in Organised Physical Activity Outside of School Hours* (April 2018).

However, girls undertake a much larger proportion of non-sport-related organised out-of-school activity.⁷⁴

Child participation in non-sport-related physical activity (2017)

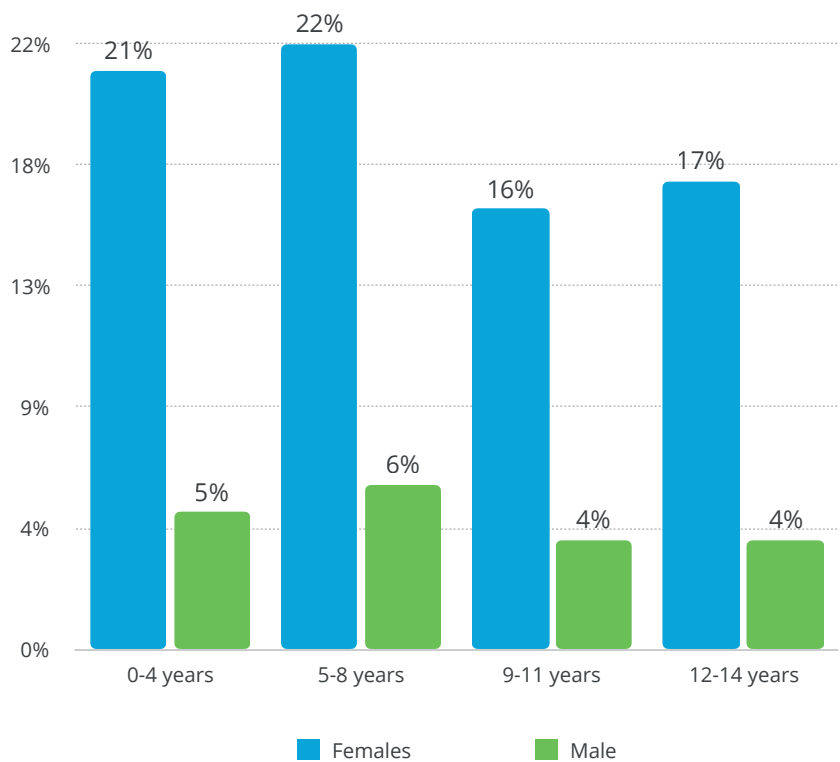


Figure 10.6: Sourced from Australian Government Australian Sports Commission, *AusPlay Focus: Children's Participation in Organised Physical Activity Outside of School Hours* (April 2018).

The AusPlay survey revealed that cost is a barrier to participation in sport for many children from low income families compared to children from high income families.⁷⁵ Geographical location is also a barrier. 58% of children from remote areas participate in organised sporting activity outside of school, compared to 69% of children from regional areas and 76% of children living in major cities of Australia.⁷⁶ Children with a parent who speaks a language other than English at home had below average participation rates compared to English speaking parents (68% and 75% respectively).⁷⁷

A significant number of children stop participating in sport between the ages of 13 and 17 years.⁷⁸ The Australian Sports Commission (ASC), in partnership with the sport and education sectors and La Trobe University, undertook research to identify and address the barriers to sport participation by this age group. A purpose of the research was to support the ASC to expand the Australian Government Sporting Schools program into secondary schools in 2017, with a targeted focus on Year 7 and 8 students and particularly those from low socioeconomic backgrounds, females, and the physically inactive.⁷⁹

The Australian Government announced in the 2019 Budget it would continue to support the Sporting Schools program and provide \$41 million from 2019–20 to 2020–21.⁸⁰

The Cultural Attendance Survey and Cultural Participation Survey were topics of the *Multipurpose Household Survey* conducted by the Australian Bureau of Statistics during 2017–18. For the first time, the scope of the two topics included both children aged 5–14 years and people aged 15 and over who were usual residents of private dwellings.⁸¹

During the 12 months before the interviews in 2017–18, 2.9 million children aged 5 to 14 attended at least one cultural venue or event outside of school hours (94.3%). The most popular cultural venue or event for children was going to the cinema or drive-in, with 87.7% of children going at least once. The second most popular venue or event was libraries and archives (53.1%), followed by museums (45.2%). Musicals and operas had the lowest attendance rate for children, at 14.7%.⁸²

Attendance rates for children aged 5–14, by selected cultural venues and events, 2017–18

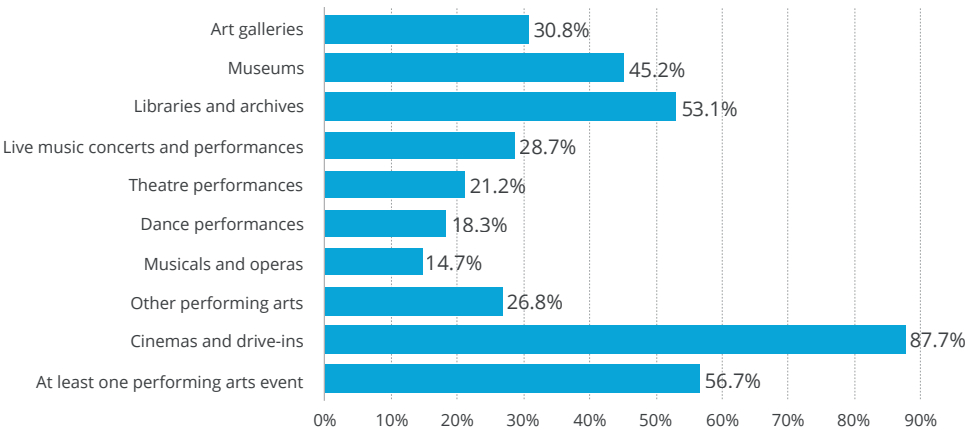


Figure 10.7: Sourced from Australian Bureau of Statistics, *Attendance at Selected Cultural Venues and Events, Australia, 2017–18* (26 March 2019).

In 2017–18, 95.6% of Australian children aged 5 to 14 participated in a cultural activity outside of school hours. 90.3% participated in screen-based activities and 78.5% participated in reading for pleasure.⁸³

Children aged 5–14 participating in cultural activities, by activity

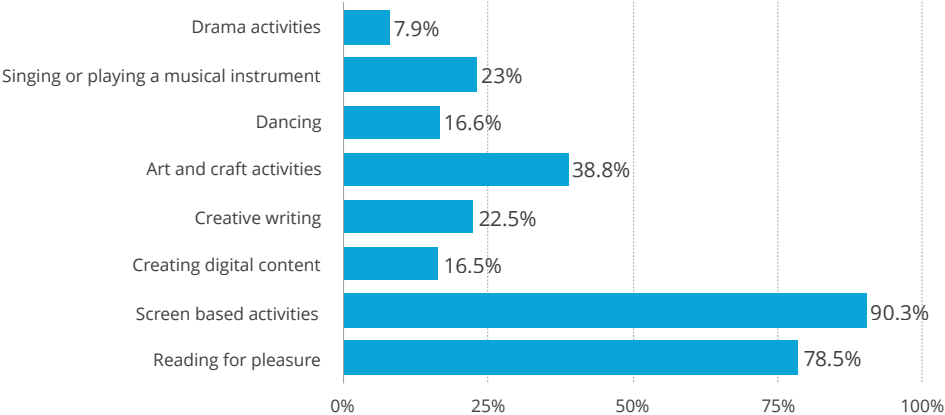


Figure 10.8: Sourced from the Australian Bureau of Statistics, *Participation in Selected Cultural Activities, Australia, 2017–18* (26 March 2019).

It is difficult to determine the attendance at cultural events or venues by children aged 15–17 years as data for this age group is incorporated into the adult population aged 15 and over (upper age limit not specified). Data on this group (15 and over) reveal that 82.4% attended at least one cultural venue or event, 66.8% went to a cinema or drive-in at least once and 53.7% attended at least one performing arts event.⁸⁴

While cultural participation is encouraging, the data also revealed that:

- 56.8% of the children participating in screen-based activities generally did so ten or more hours a week
- 58.6% of the children participating in reading for pleasure did so for less than five hours per week
- more than 50% of the children who participated in a creative activity spent two hours or less participating in their activity.⁸⁵

10.7 The way forward

- ④ Australian Governments should commit to the National Quality Framework and support the Australian Children’s Education and Care Quality Authority beyond 2020.
- ④ Australian Governments should commit to enhancing universal access to quality early childhood education and care services.
- ④ 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.
- ④ 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.
- ④ 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.
- ④ Australian Governments should ensure that data gaps relating to suspensions and expulsions are addressed in the national children’s data framework.

Chapter 10: Endnotes

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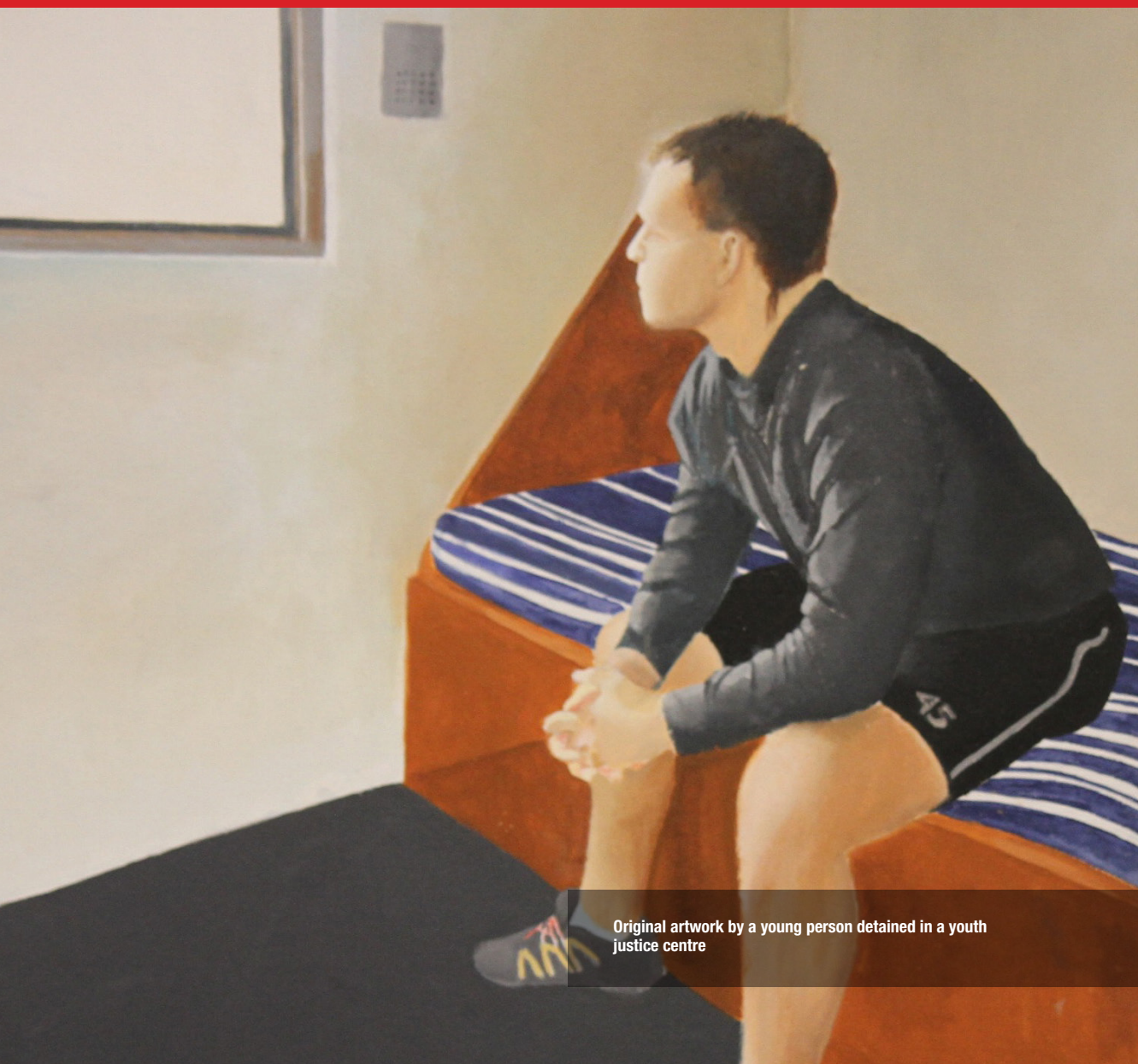
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Chapter 11:

Youth justice



Original artwork by a young person detained in a youth justice centre

YOUTH JUSTICE

CHILDREN IN CONTACT WITH THE YOUTH JUSTICE SYSTEM YOUTH JUSTICE SUPERVISION

Rates of youth justice supervision have  **declined**

Youth justice supervision

On an average day

4,765 children **aged 10-17** were under youth justice supervision

Youth detention

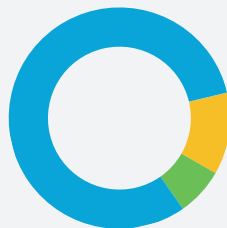
On an average day:

974 children were in youth justice detention

More than half of those children were unsentenced, awaiting an outcome

56% of children in detention were Aboriginal or Torres Strait Islander children

Ages of all children and young people under youth justice supervision



81% aged 14-17

12% aged 18+

7% aged 10-13



CONDITIONS IN DETENTION

Isolation practices and force should be prohibited in youth justice detention



YOUTH DIVERSION

Appropriate diversionary programs are **essential** to reduce the numbers of children in youth justice and youth detention, but they are **underutilised**

35% of children apprehended in the Northern Territory were diverted (2015-16)



MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Age of criminal responsibility is 10 years old

This is **low** compared with other countries

CHILDREN WITH DISABILITY

Children with disability are **overrepresented** in the youth justice system

One study in western Australia found:

89% of children in detention had at least one domain of **severe neurodevelopmental impairment** (May 2015 – December 2016)

CHILDREN AND TERRORISM OFFENCES

National security measures that limit children's rights disproportionately:

- Non-parole periods
- Presumption against bail
- Control orders
- Loss of citizenship

Rehabilitation should be the primary aim of the criminal justice response to children

In Australia, although the numbers of children in the youth justice system are small, and have been declining over the past five years, there are still a significant number of children in Australia who are caught up in an offending and punishment cycle. Australia needs to do more to rehabilitate children, rather than use punitive approaches that have been shown to be less effective in reducing recidivism.

Some laws and policies continue to run counter to the principle of detention as a 'last resort', diversion is underutilised, a large percentage of children are detained on remand, and mandatory sentencing still applies to children in some places.

Further, children as young as ten years of age can be placed in detention.

Children who come into contact with the criminal justice system have the same rights as other children—including the right to be kept safe, be heard, and be treated in a way that promotes their dignity and worth. They also have special rights specific to their experiences. Reintegration and rehabilitation should be a key aim of how children are treated in youth justice. Wherever possible, measures should not resort to judicial proceedings. Detention should only be used as a measure of last resort, and for the shortest appropriate period of time. The law must also set a minimum age below which a child should not be considered to have the capacity to commit an offence.

Reforming the youth justice system to apply children's rights properly is particularly important for Aboriginal and Torres Strait Islander children and those with disability who are overrepresented in our youth justice statistics.

11.1 Children in contact with the youth justice system

(a) Youth justice supervision

The average daily number of young people aged 10–17 years under youth justice supervision in Australia in 2017–18 was 4765.¹

Rates of youth justice supervision for young people have fallen over the past five years. From 2013–14 to 2017–18, the number of young people aged 10–17 years under supervision on an average day fell by 9%, while the rate dropped from 24 to 21 per 10,000. The rate fell for community-based supervision (from 20 to 17 per 10,000) and rose slightly for detention (from 3 to 4 per 10,000).²

Most young people under youth justice supervision on an average day were male (81%). Boys are four times as likely as girls to be under youth justice supervision.³

Children and young people under youth justice supervision on an average day 2017-18 by sex

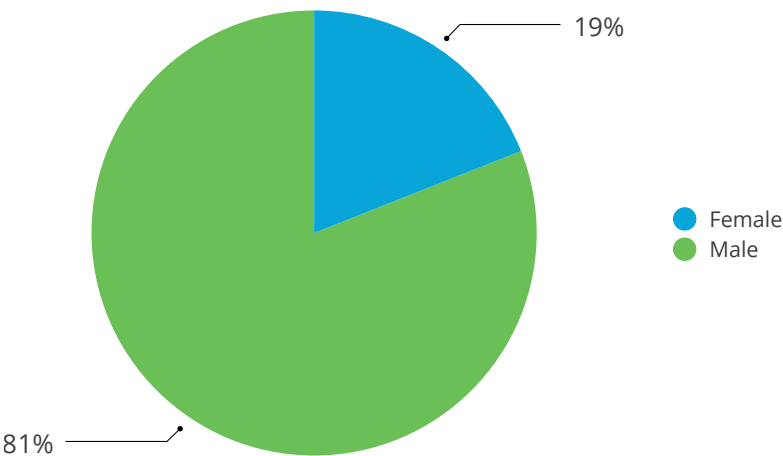


Figure 11.1: Sourced from the Australian Institute of Health and Welfare, *Youth Justice in Australia 2017–2018* (2019).

Most of these children are aged 14–17 years (81%). 7% of young people under youth justice supervision were aged 10–13 years.⁴ About 12% of young people under youth justice supervision were aged 18 and over. These young people may be involved in the youth justice system because they committed an offence when aged 17 years and under, turned 18 years while under youth justice supervision, or were particularly vulnerable or immature.

Children and young people in youth justice supervision on an average day 2017-18 by age

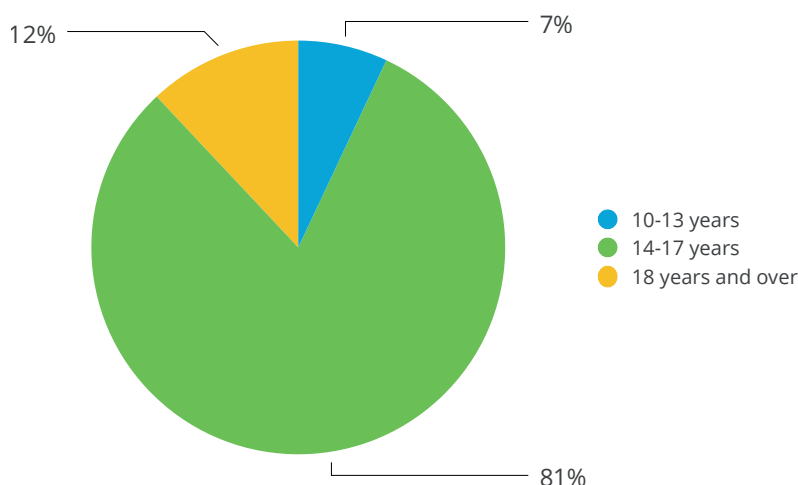


Figure 11.2: Sourced from Australian Institute of Health and Welfare, *Youth Justice in Australia 2017–2018* (2019) 8.

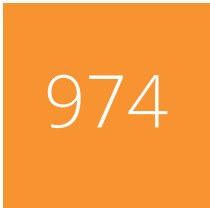
(a) Youth detention

A small proportion of children under youth justice supervision end up in youth detention.

On an average day in 2017–18, 974 (18% of all children in contact with the youth justice system) were in detention.⁵ More than half (60%) of those children were unsentenced, awaiting the outcome of their legal matter or sentencing.⁶ More than half (56%) of all children in detention were Aboriginal or Torres Strait Islander.⁷

Youth detention

ON AN AVERAGE DAY



children were in youth justice detention



of those children were unsentenced, awaiting an outcome



of children in detention were Aboriginal or Torres Strait Islander children

(2017-18)

Younger children, including those as young as ten years, are sometimes detained in youth justice facilities. In 2017–18, a total of 60 children under 14 years were in detention on an average day in 2017-18.⁸ Over the year, 588 children aged 10–13 years had been in detention, the majority Aboriginal and Torres Strait Islander boys.⁹ See Chapter 12—Aboriginal and Torres Strait Islander children for more detail.

“

Children in detention centres do not have an education nor feel safe which is one of the human rights and in my opinion needs to be changed

”

(child, 12)

“

I don't think that the Australian government should keep children in detention centres

”

(child, 10)

While most states and territories do not place children in adult detention facilities, each jurisdiction has legislation that allows children to be detained in adult facilities in certain circumstances.¹⁰ In Queensland, changes to legislation in 2016 mean that 17 year old children in Queensland are no longer automatically transferred to an adult facility. However, in 2019 there have been concerns raised about the practice of holding children in police watch houses built for adults, sometimes for lengthy periods of time.¹¹

Article 37(c) of the *Convention on the Rights of the Child* (CRC) requires authorities to separate children from adults in detention. The Australian Government has a reservation to this article, stating previously that its geography and demography make it difficult to always detain children in juvenile facilities, while also allowing children to maintain contact with their families.¹² However, the CRC makes it clear that incarceration with adults is prohibited unless it is considered to be in the child's best interests.

“

I feel detention centres for youth juveniles need to be reconsidered and re-evaluated with more access to mental health benefits and changing living conditions

(child)

”

“

Indigenous kids are being tortured in juvenile detention, this must stop

(child, 16)

”

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government consider withdrawing its reservation to article 37(c) of the CRC.¹³ It also recommended that, in cases where detention is unavoidable, Australia should ensure that the children are detained in separate facilities and for pre-trial detention, that detention is regularly and judicially reviewed.¹⁴

11.2 Conditions and treatment in youth detention

Despite legislation in most states and territories that prohibit the use of isolation and limit the use of force to certain circumstances, allegations of mistreatment of children in youth detention have arisen in several jurisdictions over recent years.¹⁵

The Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (NT Royal Commission) final report details the failings of the Northern Territory youth justice system, including that child detainees were:

- frequently subjected to verbal abuse and racist remarks
- deliberately denied access to water, food and use of toilets
- restrained in ways that were potentially dangerous, and in situations that were not emergencies
- subjected to isolation excessively, punitively and in breach of the *Youth Justice Act* (NT).¹⁶

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to:

- **explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion/discipline of children under supervision**
- **promptly investigate all cases of abuse and maltreatment of children in detention**
- **adequately sanction the perpetrators.**¹⁷

It also recommended the Australian Government provide children in conflict with the law with information about their rights and how to report abuses.¹⁸

The Australian Government ratified the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT) in 2017. This will provide monitoring bodies (called National Preventive Mechanisms) for places where people, including children, are deprived of their liberty. While there are existing oversight mechanisms for youth detention in all states and territories, a number of issues need to be addressed for OPCAT compliance, including functional independence; expertise of personnel; necessary resources for functioning; access to places of detention and children in detention; power to make recommendations; access to information; and annual and other public reporting.¹⁹

Corrective services oversight mechanisms should pay particular attention to the needs of children in all forms of detention.²⁰ This could be achieved by establishing a children's sub-group to ensure those with expertise and experience of working with children can provide specialist advice, information and recommendations.

Legislative, regulatory and oversight frameworks also need to be complemented by strengthening the culture of the youth detention environment to reflect a rehabilitative and trauma-informed approach.

In 2016, children and young people in youth detention told the National Children's Commissioner about their concerns:²¹

- Respect—because we aren't all bad people just cos we are locked up, so if they show respect we will (child, New South Wales)
- Can't be locked in room all the time, eg not enough staff so locked down (23 hours), anxious, angry (child, South Australia)
- Family, to be able to talk to family, have them visit (child, South Australia)
- Coming here has made me hate the government and police more (child, Queensland)
- We get marked down so easily for stupid reasons (child, Queensland)
- Nothing happens when you make a complaint anyway (child, Tasmania)
- I've been treated unfairly and I want to get it fixed cos its affecting me, and food and lunch should be better fresh not soggy (child, Northern Territory)
- I want to go home (child, New South Wales)

11.3 Youth diversion

The availability of appropriate diversionary programs is essential to reducing the numbers of children in youth detention.

Diversionary programs vary, and can include pre-court diversionary options (such as police warnings), pre-sentencing diversionary options (such as bail support and casework) and diversion from continued contact with the system through the police or courts.²² Early intervention to help children who are at risk of contact with the criminal justice system can also be considered a form of diversion.

While all states and territories offer some form of diversion for young offenders, comparable and complete national data on the use of diversion are not available.²³ While diversion from the criminal justice system is a key principle of all youth justice systems in Australia, it appears to be underutilised for a variety of reasons, including:

- limits to who can access the programs
- insufficient staffing allocated to diversion
- lack of appropriately funded and culturally appropriate programs.²⁴

For example, the NT Royal Commission showed that in 2015–16, only 35% of children apprehended in the Northern Territory were diverted. This is despite evidence that diversion has been successful in reducing recidivism.²⁵

Nationwide, research also shows that Aboriginal and Torres Strait Islander children are less likely to be diverted than non-Indigenous children.²⁶ Given the level of contact of Aboriginal and Torres Strait Islander peoples with criminal justice processes, and the integral role that juvenile offending plays in this, diversionary processes are particularly important for ensuring lasting reductions in the rates of Aboriginal and Torres Strait Islander overrepresentation in detention.²⁷

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences, such as probation or community service.²⁸

11.4 Unsented children in detention

Nationally, on an average day in 2017–18, 60% of young people (588 young people) in detention were unsentenced.²⁹ This included young people referred to detention by police and those referred by a court after being charged (remand). Most young people in unsentenced detention were on remand (98%).³⁰ In all states and territories, a substantial proportion of those in detention on an average day were unsentenced.³¹

Onerous bail laws play a role in the disproportionately high, and increasing, numbers of children on remand in juvenile detention. For example, the Law Council of Victoria has argued that amendments to the bail laws in Victoria, which expanded the categories of offences with no presumption in favour of bail and create a more onerous threshold for bail, have contributed to increasing numbers of children on remand.³² It pointed out that in 2017, the number of children detained on remand accounted for 80% of all detained children in the Parkville Juvenile Justice Centre.³³

The NT Royal Commission reported that 71% of children in detention were on remand in the Northern Territory on an average day in 2015–16.³⁴ Some of the reasons for such high numbers on remand in the Northern Territory included the introduction of the offence of breach of bail, the imposition of bail conditions unlikely to be adhered to (such as curfews and reporting regimes), the lack of programs to support children on bail, and the lack of suitable accommodation for young offenders released on bail.³⁵

The significant numbers of unsentenced children in detention shows that Australia is not effectively implementing article 37 of the CRC, which states that arresting, detaining and the imprisonment of children should only occur as a last resort and for the shortest time possible. There clearly needs to be a greater focus on developing non-custodial alternatives.

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to ensure, in cases where detention is unavoidable, that pre-trial detention is regularly and judicially reviewed.³⁶

11.5 Mandatory minimum sentencing laws

Although most states and territories do not have mandatory minimum sentences for juveniles, in the Northern Territory and Western Australia these still exist,³⁷ despite repeated calls for their repeal.

For children, the imposition of mandatory minimum sentences of detention risks breaching article 37 and article 40 of the CRC. They also have an additional impact on Aboriginal and Torres Strait Islander children who may be more likely to have criminal histories and inadequate access to diversionary programs. They are also contrary to the findings of the 1991 Royal Commission into Aboriginal Deaths in Custody.³⁸

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to review its legislation to repeal mandatory minimum sentences to children in the Northern Territory and Western Australia.³⁹

11.6 The minimum age of criminal responsibility

In each jurisdiction in Australia, the law provides a conclusive presumption that a child under 10 years of age cannot commit an offence on the basis that they are not criminally responsible for that offence.⁴⁰

In addition to the minimum age, the principle of *doli incapax* operates throughout Australia.⁴¹ The principle of *doli incapax* assumes that children aged 10 to 14 years are 'criminally incapable' unless proven otherwise.⁴² However, there is limited evidence that this principle is routinely applied in practice.

The minimum age of criminal responsibility in Australia is low compared with many other countries.⁴³

Reasons for raising the age of criminal responsibility include:

- Many children involved in the criminal justice system come from disadvantaged backgrounds and have complex needs better addressed outside the criminal justice system.⁴⁴
- It would help to decrease the rate of overrepresentation of Aboriginal and Torres Strait Islander children in detention.⁴⁵
- Research into brain development is inconsistent with the current age of criminal responsibility of 10 years. Children have not developed the requisite level of maturity to form the necessary intent for full criminal responsibility.⁴⁶
- Children lack the capacity to properly engage in the criminal justice system, resulting in a propensity to accept a plea bargain, give false confessions or fail to keep track of court proceedings.⁴⁷
- In general, children are more likely than adults to commit less serious offences, and they commit more property than person offences. Research has shown that young people aged 10–14 years are more likely than those aged 15–17 years to have principal offences of theft, unlawful entry with intent and property damage, and less likely to have principal public order and illicit drug offences.⁴⁸
- Studies have shown that the younger children are when they encounter the justice system, the more likely they are to reoffend. Between 2011 and 2012, children who were first subject to supervision under the youth justice system due to offending when aged 10–14 years were more likely to experience all types of supervision in their later teens (33% compared to 8% for those first supervised at older ages).⁴⁹

There is currently significant momentum for raising the age of criminal responsibility in Australia.⁵⁰ The NT Royal Commission recently recommended raising the age of criminal responsibility from 10 to 12 years. The NT Government has given in-principle support to this recommendation.

On 23 November 2018, the Australian Council of Attorneys-General agreed that it would be appropriate to examine whether to raise the age of criminal responsibility from 10 years of age. A working group was established to review this matter, drawing from relevant jurisdictional and international experience, and to report back to the Council in November 2019.

The Committee on the Rights of the Child has recently recommended all countries increase the minimum age of criminal responsibility to at least 14 years of age.⁵¹

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 at which doli incapax applies.⁵²

The expectation to take on such large responsibilities at a young age
e.g. criminal responsibility age (10)

Criminal
responsibility
is too low

only rehabilitation services
between 10 to 14

WORST:
legal system – crim age resp.
juvenile detention, police abuse

Cons
*Age of legal responsibility
*Fix punishment as it is too harsh

11.7 Overrepresentation of Aboriginal and Torres Strait Islander children in youth justice

While the overall numbers of all children under youth justice supervision in Australia on an average day fell by 16% between 2012–2013 and 2016–2017,⁵³ the level of overrepresentation of Aboriginal and Torres Strait Islander children has risen over the same period.

On an average day in 2017–18, Aboriginal and Torres Strait Islander children aged 10–17 were 17 times more likely than non-Indigenous children to be under supervision, decreasing from 18 times as likely in 2016–2017. This level was higher in detention (23 times as likely) than community-based supervision (17 times as likely).⁵⁴ In the Northern Territory, as at 20 June 2018, all of the 38 juveniles in detention were Aboriginal or Torres Strait Islanders.⁵⁵

Reasons for overrepresentation of Aboriginal and Torres Strait Islander children in the justice system include legal and policy factors, such as restrictive bail laws and mandatory sentencing laws,⁵⁶ and socio-economic factors, such as a long history of social disadvantage, cultural displacement, trauma and grief, alcohol and other drug misuse, cognitive disabilities and poor health and living conditions.⁵⁷

See Chapter 12—Aboriginal and Torres Strait Islander Children for further discussion and recommendations specific to Aboriginal and Torres Strait Islander children.

11.8 Children with disability in youth justice

Children with disability are overrepresented in the youth justice system, particularly children with intellectual disabilities or psychosocial disabilities.⁵⁸ In one survey of the NSW youth justice system in 2015, 83.3% of children surveyed met the criteria for at least one psychological disorder—six times the prevalence rate for children in the general population.⁵⁹

Children with Fetal Alcohol Spectrum Disorder (FASD) are particularly prevalent in the youth justice system.⁶⁰ One study in Western Australia found that 89% of children in detention between May 2015 and December 2016 had at least one domain of severe neurodevelopmental impairment and 36% were diagnosed with FASD.⁶¹ The majority of those with FASD had not been previously identified, highlighting a need for improved diagnosis.⁶²

Disability advocacy organisations have argued that the high incarceration rate is due to the failures in mental health, child protection, housing, disability and community service systems to provide appropriate assessment and supports for children with disability.⁶³ The UN Committee on the Rights of Persons with Disabilities, in its Concluding Observations on Australia in September 2019, has expressed concern about the overrepresentation of convicted young persons with disabilities in the youth justice system, especially male youth from Indigenous communities.⁶⁴

In some jurisdictions, declarations of unfitness to stand trial may lead to the indefinite detention of unconvicted people with disability, including children with disability.⁶⁵ Under Western Australia's *Criminal Law (Mentally Impaired Accused) Act 1996*, a person can be indefinitely detained without trial if found unfit to stand trial.⁶⁶ A person can spend a longer time in detention than if they pleaded guilty and were sentenced to imprisonment for the offence. There are no special procedures for children.⁶⁷

Children with FASD are at particular risk of being held in indefinite detention.⁶⁸ A recent Australian study of FASD in Western Australia's juvenile detention population reported increasing concern regarding the forensic implications of FASD in Australia:

...as the neuropsychological sequelae can affect all aspects of the legal proceedings, including the person understanding the expectations and providing credible evidence in forensic interviews, fitness to plead, capacity to stand trial and the process of sentencing.⁶⁹

In 2019, a number of states and territories endorsed the National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment.⁷⁰ These principles recognise the rights of persons with cognitive or mental health impairments and seek to identify safeguards throughout the legal process and periods where a person is subject to orders. However, not all states have endorsed the Statement. Further, the Statement itself is not being prepared as part of a wider framework to reform the laws.

In a submission to a Senate Community Affairs Committee inquiry in 2016 on the indefinite detention of people with cognitive and psychiatric impairment, the Commission recommended that there be effective limits on the period of detention that can be imposed on people who plead unfit to stand trial, and requirements for periodic review of the need for detention.⁷¹ These concerns were reiterated by the UN Committee on the Rights of Persons with Disabilities, in its Concluding Observations on Australia in September 2019, recommending that all state, territory and federal laws and policy ensure a review of the legal situation of persons that have been declared unfit.⁷²

In its Concluding Observations (2019), the Committee on the Rights Child also urged the Australian Government to ensure that children with disabilities are not detained indefinitely without conviction and their detention is regularly and judicially reviewed.⁷³

11.9 Children charged and convicted of terrorism offences

According to the Independent National Security Legislation Monitor (INSLM), since 2014, eight (10%) of the total number of people charged with terrorism offences were under 18 years at the time of offending, and a further 25% were between 18 and 25 years of age. Of the total number of children charged with terrorism offences, six of those cases have resulted in convictions, four of those convicted have received a custodial sentence, and one child remained before the courts at the time of the INSLM report in November 2018. The median age of the subjects of these cases at the time of offending was approximately 16 years.⁷⁴

Significant sentences have been imposed on children, most seriously a term of 13 years and 6 months imprisonment for an offender just 14 years of age at the time of the offence.⁷⁵

Protecting the Australian community from terrorism is an important priority for the Australian Government. However, national security measures should not undermine the rights of children convicted of terrorism offences to special consideration as children under the law.

A number of national security measures limit children's rights disproportionately:

- The minimum age for the subject of a control order was lowered from 16 to 14 years.⁷⁶
- In deciding what conditions should attach to a control order in relation to a child, an issuing court is required to consider the best interests of the child as a 'primary consideration'.⁷⁷ However, under the law, protecting the public from a terrorist act is a 'paramount consideration', which means that conditions could nevertheless be imposed on a child that are not in the best interests of the child.⁷⁸
- There is a lack of clarity and an inconsistent approach when it comes to the procedure in trials of children for terrorism offences.⁷⁹
- Section 19AG(2) of the *Crimes Act 1914* (Cth), which compels the sentencing court to fix a single non-parole period of at least three-quarters of the sentence imposed, applies to both children and adults sentenced in relation to relevant offences. The CRC requires that courts must have full discretion when sentencing children to ensure that they are detained for the shortest appropriate periods of time for the purposes of rehabilitation and restorative justice.⁸⁰ For that reason, the Commission has recommended that s 19AG should be amended so that it does not apply to children.⁸¹ The INSLM agreed with this view in his recent report to the Prime Minister.⁸²

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- Section 15AA of the *Crimes Act 1914* (Cth) includes a presumption against bail for relevant terrorism offences and puts the onus on a defendant to rebut that presumption by establishing that there are ‘exceptional circumstances’.⁸³ However, the Commission considers that the fact an accused person is under 18 years should always be seen as an exceptional circumstance. In his report to the Prime Minister, the INSLM concluded that this provision should be amended so that it expressly provides for additional consideration of the best interests of the child in every case as a primary consideration, and protection of the community as a paramount consideration. The Commission’s preferred position is for this presumption not to apply to children at all.⁸⁴

Children may also arbitrarily lose their citizenship for terrorism-related conduct as a result of 2015 amendments to the *Australian Citizenship Act 2007* (Cth), which provide for the *automatic* cessation of citizenship where a dual citizen engages in such conduct.⁸⁵ The Minister may also determine that a child as young as ten years old ceases to be an Australian citizen if they have been convicted of a terrorism-related offence and sentenced to at least six years imprisonment.⁸⁶ At the time of preparing this report, the Government had introduced the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth) to make further amendments to the Act. (See Chapter 5—Civil rights for more discussion and recommendations relating to loss of citizenship).

As is the case for the treatment of all children who commit criminal offences, rehabilitation should be the primary aim of the criminal justice response to children charged and convicted of terrorism offences.

State, territory and Commonwealth authorities currently undertake countering violent extremism programs, which include rehabilitation of children convicted of terrorism offences, conducted through the National Living Safe Together Program, administered by the Department of Home Affairs. According to the INSLM, that program includes both early intervention activity and work to rehabilitate those convicted of terrorism offences and to prevent the radicalisation of others within the corrections systems. The INSLM identified a capability gap in respect of those young offenders who have been charged, but not yet convicted or sentenced, which represents a potentially long period of time, although he reported that New South Wales and Victoria are taking steps to ensure countering violent extremism programs are available to children at the pre-sentence stage.⁸⁷

See Chapter 13—Asylum seeking and refugee children for recommendations on rehabilitation of children involved in armed conflict.

Professor Manfred Nowak, Independent Expert leading the Global Study on Children Deprived of Liberty, in his report to the United Nations General Assembly on 11 July 2019, recommended that governments facilitate the recovery and reintegration of children recruited by non-State armed groups designated as terrorist, recognising such children as victims, and hold those who recruit and use them to account.⁸⁸ He also called for governments to explicitly exclude children from national counter-terrorism and security legislation and ensure that children suspected of national security offences are treated exclusively within child justice systems. Also, they should end all administrative or preventive detention of children and extended pretrial detention for counter-terrorism purposes.⁸⁹

11.10 The way forward

- Ⓡ 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.

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- ④ Australian Governments should raise the minimum age of criminal responsibility to at least 14 years.
 - ④ 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.
 - ④ 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.

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Chapter 12:

Aboriginal and Torres Strait Islander children



Top: Community mural in Northern Territory
Bottom left: A child playing in a remote community
Bottom right: The National Children's Commissioner working with a young child

ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

ABORIGINAL AND TORRES STRAIT ISLANDER NATIONS:

Over **250** languages spoken and **800** dialectal varieties



HEALTH INEQUALITY



Child mortality rates have declined **10%** since the Closing the Gap target baseline was set in 2008 (2019)

Aboriginal and Torres Strait Islander children **aged 4-17** accounted for **19.2%** of child deaths due to **suicide** (2007-2015)

Sexual health

- levels of sexually transmitted infections in children are concerning
- Aboriginal Medical Services play a crucial role in improving knowledge and increasing safe sex practice

Aboriginal and Torres Strait Islander children are **2.9 times** more likely to have long-term ear or hearing problems compared with non-Indigenous children (2018)



EDUCATION

Closing the Gap targets on track:

- halve the gap in year 12 attainment by 2020
- **95%** of Indigenous four year olds enrolled in early childhood education by 2025 (2019)

Closing the Gap targets not on track:

- school attendance (2014-18)
- grade 7 to 12 Apparent Retention Rate (2017)
- literacy and numeracy targets (2017)

DISCRIMINATION



7% of Aboriginal and Torres Strait Islander children **aged 10-14** reported being treated unfairly at school because they were Aboriginal and/or Torres Strait Islander (2016)

Racism is one of the top emerging issues among girls

CHILD PROTECTION

Aboriginal and Torres Strait Islander children are subject to care and protection orders at **10 times the rate** of non-Indigenous children (2017-18)

Of the **31,800** children in out-of-home care for two years or more, **40%** were Aboriginal and Torres Strait Islander children

CULTURAL RIGHTS

Need for stronger cultural connections, support for cultural identity, preservation and promotion of Aboriginal and Torres Strait Islander languages

YOUTH JUSTICE

Aboriginal and Torres Strait Islander children are overrepresented in detention and community-based supervision at all ages but are particularly overrepresented in the younger age groups (2017-18)

Aboriginal and Torres Strait Islander children in Australia continue to face significant disadvantage across a range of domains relevant to their rights and wellbeing, including in relation to health and education outcomes, discrimination, exposure to family violence, and overrepresentation in child protection and youth justice systems.

Most recommendations made throughout this report apply to all children living in Australia, including Aboriginal and Torres Strait Islander children. However, given the significant disadvantage experienced by Aboriginal and Torres Strait Islander children, this chapter contains recommendations which are specific to their circumstances.

“

I would like to make Aboriginal and Torres Strait islanders treated fairly and not get bullied by other kids at school

(child, 9)

”

“

A lot of Aboriginal history has been lost, which means some people don't really know where they come from

(child, 16)

”

I think Australia should do more to help the young Aboriginal and Torres Strait Islander children and help them get a better education and have the right to feel safe wherever they are

(child, 12)

“

We should do more about poverty and help the aboriginal communities more

(child, 10)

”

“

Please help Australia look after aboriginal children and their cultures

(child, 8)

”

I want to learn more about Aboriginal history and culture, I'm already learning a language but think more people should learn. It should be compulsory for all children to learn about Aboriginal culture

(child, 9)

Aboriginal and Torres Strait Islander peoples are the oldest civilisation on earth, extending back over 65,000 years. Aboriginal and Torres Strait Islander peoples are vastly diverse in culture, language and in spiritual beliefs.¹ At the time of colonisation, there were over 500 separate Aboriginal and Torres Strait Islander nations, over 250 languages spoken, and 800 dialectal varieties.²

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to ensure that Aboriginal and Torres Strait Islander children and their communities are meaningfully involved in the planning, implementation and evaluation of policies concerning them.³

12.1 Health inequality

The disparity in health status between Aboriginal and Torres Strait Islander children and their non-Indigenous counterparts remains a crucial human rights issue within Australia.⁴ This is despite the investment in Closing the Gap—a national strategy to reduce health and related inequalities for Aboriginal and Torres Strait Islander peoples, which has been in place since 2008.

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to promptly address the disparities in the health status of Aboriginal and Torres Strait Islander children.⁵

The Australian Institute of Health and Welfare (AIHW) reported in 2018 that there are major gaps in data on important health issues affecting Aboriginal and Torres Strait Islander children.⁶ This includes culturally-appropriate data that measures wellbeing, treatment of mental health conditions, sexual health (including use of contraception and sexual health services), and use of primary health care services.⁷

It pointed out that data for Aboriginal and Torres Strait Islander children aged 10–14 years is limited, compared to those aged 15–19 and 20–24, as both the *Australian Aboriginal and Torres Strait Islander People Health Survey 2012–13* and the *National Aboriginal and Torres Strait Islander Health Survey 2014–15* were more focused on adults.⁸

In 2018–19, the National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) has, for the first time, included up to two child members of each selected household aged 0 to 17.⁹ The results from NATSIHS 2018–19 will be available in late 2019.¹⁰ The inclusion of those aged 0 to 17 is a welcome addition.

The Australian Human Rights Commission (the Commission) also welcomes Mayi Kuwayu: The National Study of Aboriginal and Torres Strait Islander Wellbeing and hopes that it will collect data on children aged 0–17.¹¹

(a) Child mortality

Since the Closing the Gap target baseline was set in 2008, Aboriginal and Torres Strait Islander child mortality rates have declined by 10%.¹²

However, the gap between Aboriginal and Torres Strait Islander children and non-Indigenous children has not narrowed, because the non-Indigenous rate has declined at a faster rate.¹³ It is for this reason that measuring the gap is not always helpful.

Aboriginal and Torres Strait Islander infants are three times as likely as non-Indigenous infants to die between one and six months of age, and twice as likely to die for all other age categories except for one day to one week old, where the risks are equivalent.¹⁴

Aboriginal and Torres Strait Islander children are 2.1 times more likely to die before their fifth birthday compared to their non-Indigenous peers.¹⁵

(b) Ear disease

Ear disease is a significant health issue facing Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander children aged 0–14 are 2.9 times more likely to have long-term ear or hearing problems compared with non-Indigenous children.¹⁶

Limited access to primary health care for Aboriginal and Torres Strait Islander children can result in delayed diagnosis, treatment and management of health conditions.

Long-term ear or hearing problems are linked to delays in speech and language development.¹⁷ These can have lasting impacts on educational and workforce outcomes.

The AIHW pointed out in its report on *Australia's Health 2018* that there is no national statistical profile of ear disease and associated hearing loss for Aboriginal and Torres Strait children based on diagnostic assessment. It argued that, without good-quality surveillance, it is difficult to understand the size and key determinants associated with the hearing problem.¹⁸

(c) Obesity

The most recent data available from the AIHW shows that in 2012–13, 30% of Aboriginal and Torres Strait Islander children aged 2–14 were overweight or obese, compared with 25% of their non-Indigenous counterparts.¹⁹

One in five (20%) Aboriginal and Torres Strait Islander children aged 2–14 were overweight and one in ten (10%) were obese. At age 15–17, 35% were overweight or obese. About one in five (21%) were overweight, while about one in seven (14%) were obese.²⁰

Of Aboriginal and Torres Strait Islander boys aged 2–14, 18% were overweight and 10% were obese. At age 15–17, 21% were overweight and 17% were obese. Among girls aged 2–14 and those aged 15–17, 21% were overweight and 11% were obese.²¹

Children with obesity are more likely to be obese as adults and have an 'increased risk of developing both short and long-term health conditions, such as Type 2 diabetes and cardiovascular disease'.²²

(d) Mental health

The likelihood of probable serious mental illness has been found to be consistently higher among Aboriginal and Torres Strait Islander children compared to their non-Indigenous peers.²³

National Coronial Information System data show that Aboriginal and Torres Strait Islander children aged 4–17 accounted for 19.2% of all child deaths due to suicide between 2007–15.²⁴ Specifically, there were:

- one to three deaths in the 4–9 year age range
- one to three deaths in the 10–11 year age range
- 12 deaths in the 12–13 year age range
- 45 deaths in the 14–15 year age range
- 62 deaths in the 16–17 year age range.²⁵

The AIHW collects hospital data on intentional self-harm. Children who engage in intentional self-harm, with or without suicidal intent, often only experience hospitalisation because they cannot manage their injury without medical intervention. Approximately 8% of hospitalisations for intentional self-harm between 2007–08 and 2016–17 involved Aboriginal and Torres Strait Islander children.²⁶ Of the 2,928 hospitalisations for Aboriginal and Torres Strait Islander children, 17 (<1%) were for children aged 3–9, 859 (29%) were for children aged 3–14 and 2,052 (70%) were for children aged 15–17.²⁷

In its Concluding Observations (2019), the Committee on the Rights of the Child called on the Australian Government to prioritise mental health service delivery to Aboriginal and Torres Strait Islander children, including addressing the underlying causes of children's suicide and poor mental health.²⁸

(e) Sexual health

The fertility rates of Aboriginal and Torres Strait Islander teenagers are approximately 5.8 times the rate for non-Indigenous teenagers (52 per 1,000 females compared to nine per 1,000 females).²⁹

The Committee on the Rights of the Child in its Concluding Observations (2019) specifically called for the Australian Government to strengthen its measures to prevent teenage pregnancies among Aboriginal and Torres Strait Islander girls, including by providing culturally sensitive and confidential medical advice and services.³⁰

The levels of sexually transmitted infections (STIs) in children, especially those from Aboriginal and Torres Strait Islander communities, are particularly concerning. The rates of infection within these communities are recognised as being the highest of any identifiable population in Australia.³¹

For example, 2016 data from the Northern Territory, shows there were 161 notified cases of chlamydia in Aboriginal children under 16 years compared to three cases in non-Indigenous children; 186 notified cases of gonorrhoea in Aboriginal children under 16 years compared to one case in a non-Indigenous child; 26 notified cases of syphilis in Aboriginal children under 16 years with no notified cases for non-Indigenous children; and 240 notified cases of trichomoniasis in Aboriginal children under 16 years with no notified cases for non-Indigenous children.³²

Aboriginal Medical Services play a crucial role in providing health services for Aboriginal and Torres Strait Islander children. Research has suggested that 'one of the most productive ways forward with regards to improving knowledge and increasing safe sex practice among young Aboriginal people is through community-controlled organisations'.³³

12.2 Discrimination

Numerous studies describe Aboriginal and Torres Strait Islander people's experiences of racial discrimination, including institutional racism.³⁴ Settings identified of special concern include employment, education, shops, public spaces and sport, health and justice.³⁵

In 2016, around one in 14 (7%) Aboriginal and Torres Strait Islander children aged 10–14 reported being treated unfairly at their current school because they were Aboriginal and/or Torres Strait Islanders.³⁶

In consultations with Aboriginal and Torres Strait Islander girls as part of the Commission's Wiyi Yani U Thangani project, experiences of racism are identified as the top emerging issue for girls.

Everyone should be treated equally no matter who and where they are from. Racism shouldn't be a thing in childhood no matter why

(child, 10)

In its Concluding Observations (2019), the Committee on the Rights of the Child encouraged the Australian Government to strengthen its awareness-raising and other preventative activities against discrimination, including through the school curricula. It specifically mentioned affirmative action in relation to Aboriginal and Torres Strait Islander children.³⁷

12.3 Family violence

Trend data on hospitalised injury among Aboriginal and Torres Strait Islander people between 2011–12 and 2015–16 shows the most commonly reported perpetrator of an assault among Aboriginal and Torres Strait Islander people was a family member.³⁸

Family members were listed as the perpetrators in 86% (9,626 cases) of assault injury cases for Aboriginal and Torres Strait Islander women. Of these, 6,990 cases were perpetrated by a spouse or domestic partner.³⁹ As women are often the primary carers of children, Aboriginal and Torres Strait Islander children are frequently exposed to family violence.⁴⁰

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to ‘substantially increase family violence prevention and responses related to Aboriginal and Torres Strait Islander children, including through the Indigenous Family Safety Programme’.⁴¹ It particularly called for the provision of the necessary human, technical and financial resources to family support services to provide Aboriginal and Torres Strait Islander children and their families with the support needed to prevent violence, abuse and neglect’.⁴²

Investment in family violence response and prevention, with a key focus on ensuring the participation of Aboriginal and Torres Strait Islander organisations and communities, is needed in developing long-term solutions.⁴³

“

Aboriginal kids
need more help
(child, 13)

”

“

I would like
Aboriginal people
to have a treaty
because it would
make the kids feel
more safe

(child, 9)

”

12.4 Child protection

Aboriginal and Torres Strait Islander children continue to be significantly overrepresented in Australia's child protection systems.⁴⁴

Aboriginal and Torres Strait Islander children are subject to care and protection orders at ten times the rate of non-Indigenous children.⁴⁵ The number of Aboriginal and Torres Strait Islander children who were subject to care and protection orders has steadily risen from 15,500 in 2014 to 20,500 in 2018.⁴⁶

In 2017–18, Aboriginal and Torres Strait Islander children were admitted into an out-of-home care (OOHC) placement at nine times the rate (12.8 per 1000) of non-Indigenous children (1.4 per 1000).⁴⁷ Further, the rate of Aboriginal and Torres Strait Islander children being placed into OOHC has risen from 52.5 per 1,000 on 30 June 2014 to 59.4 per 1,000 on 30 June 2018.⁴⁸

Of the 31,800 (69%) children in OOHC for two years or more, 40% were Aboriginal and Torres Strait Islander.⁴⁹

The overrepresentation of Aboriginal and Torres Strait Islander children and families across Australian statutory child protection systems has its roots in past government policies and practices pertaining to the forced removals of children from their families, and the continued legacy of intergenerational trauma and disadvantage that these policies created.⁵⁰

Across Australian statutory child protection jurisdictions, the Aboriginal and Torres Strait Islander Child Placement Principle requires that all efforts are to be made to place Aboriginal and Torres Strait Islander children with family and kinship networks, with the child's Indigenous community or with other Aboriginal and Torres Strait Islander people.⁵¹ The fundamental goal of the Principle is to enhance and preserve Aboriginal children's connection to family and community, and sense of identity and culture.⁵²

In 2017–18, 65% of Indigenous children were reported to be placed in a relative and kinship OOHC placement.⁵³

In recognition of the continued overrepresentation of Aboriginal and Torres Strait Islander children and families in child protection systems, the National Framework for Protecting Australia's Children 2009–2020 includes improving outcomes for Aboriginal and Torres Strait Islander children as a priority.

In its Concluding Observations (2019), the Committee on the Rights of the Child strongly urged the Australian Government to invest in measures developed and implemented for Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide the adequate support while in alternative care and facilitate their reintegration into their families and communities.⁵⁴

12.5 Education

The most recent data from the Australian Early Development Census (2015) show that one in five Australian children start school developmentally vulnerable.⁵⁵ One of the most affected groups are Aboriginal and Torres Strait Islander children (42.1%).⁵⁶

Educational outcomes for Aboriginal and Torres Strait Islander children are poor compared with their non-Indigenous peers. School attendance, literacy and numeracy targets did not meet the Closing the Gap goals set by the Australian Government for 2018.⁵⁷ For example:

- Attendance rates for Aboriginal and Torres Strait Islander students have not improved between 2014 and 2018 (around 82% in 2018) and remain below the rate for non-Indigenous students (around 93%).⁵⁸
- In 2018, the Year 7 to 12 Apparent Retention Rate for Australia was 84.5%.⁵⁹ No breakdown was provided for Aboriginal and Torres Strait Islander children. In 2017, the retention rate for Aboriginal and Torres Strait Islander children was 62.4%, compared with 86% for non-Indigenous children.⁶⁰
- National data on literacy and numeracy for 2018 are not yet available.⁶¹ In 2017, an average 78.6% of Aboriginal and Torres Strait Islander students met the national literacy and numeracy standards, compared to an average 95.6% of non-Indigenous students.⁶²

The *Closing the Gap Report 2019* indicated that the targets to halve the gap in Year 12 attainment or equivalent by 2020 and to have 95% of Indigenous four-year-olds enrolled in early childhood education by 2025 are on track.⁶³

The Australian Government, through the Council of Australian Governments (COAG), committed to refresh the Closing the Gap agenda and commenced this process in 2017,⁶⁴ involving Aboriginal and Torres Strait Islander peoples about what needs to be done to promote a thriving and prosperous life for Indigenous Australians, beyond existing targets.⁶⁵

All states and territories have committed to provide universal access to quality early childhood education programs under the National Partnership Agreement on Universal Access to Early Childhood Education. Clause 14 of the 2018–2020 agreement states ‘Children living in remote Indigenous communities remain a focus for universal access’.⁶⁶

The Prime Minister stated in his foreword to the *Closing the Gap Report 2019* that, going forward, Closing the Gap will have a whole of government agenda with all governments sharing accountability for progress and extending this shared accountability to include Aboriginal and Torres Strait Islander people.⁶⁷ Pairing this statement with Clause 14 of the National Partnership Agreement provides a distinct opportunity for Aboriginal and Torres Strait Islander people to monitor the implementation of universal access and hold governments to account. Successful implementation of Clause 14 would be a positive step in the direction of fulfilling the recommendations of the Committee on the Rights of the Child.

In its Concluding Observations (2019), the Committee on the Rights of the Child called for the Australian Government to address the shortcomings of the Closing the Gap measures for Aboriginal and Torres Strait Islander children, to reach the targets on school attendance, retention rates, literacy and numeracy standards, including for those living in remote areas.⁶⁸

12.6 Cultural rights

Aboriginal and Torres Strait Islander children have said that there is a need for stronger cultural connections, support for cultural identity and acknowledgement of Indigenous Australian history.

Aboriginal and Torres Strait Islander girls in the Wiyi Yani U Thangani project consistently identified these issues.

“

I think that Aboriginal Studies should be a foundation element in the Australian curriculum

”

While the National Curriculum for schools includes a framework for Aboriginal and Torres Strait Islander languages, there is no national approach and the programs implemented in schools vary greatly across jurisdictions.

One in ten Aboriginal and Torres Strait Islander people reported speaking an Australian Indigenous language at home in the 2016 Census.⁶⁹

Many submissions to the National Children's Commissioner raised the urgent need to preserve and promote Aboriginal and Torres Strait Islander languages in the national curriculum.⁷⁰ Evidence suggests that learning Indigenous languages increases self-esteem, and a sense of identity and pride in Aboriginal and Torres Strait Islander students.⁷¹

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended the Australia Government ensure full respect of the rights of Aboriginal and Torres Strait Islander children, including through respect for language.⁷² The Committee also called for the Australian Government to invest in increasing cultural competency of teachers in the history of Aboriginal and Torres Strait Islander communities.⁷³

12.7 Youth justice

While around 5% of children aged 10–17 in Australia are from an Aboriginal or Torres Strait Island background, half (49%) of the children under youth justice supervision on an average day in 2017–18 were Aboriginal and Torres Strait Islanders.⁷⁴

Between 2013–14 and 2017–18, the rate of Aboriginal and Torres Strait Islander children aged 10–17 under supervision on an average day fell from 199 to 187 per 10,000. The rate of non-Indigenous young people under supervision also fell over the period, from 13 to 11 per 10,000.⁷⁵

In 2017–18, Aboriginal and Torres Strait Islander children were 23 times more likely than non-Indigenous children to be in detention and 17 times more likely to be in community-based supervision.⁷⁶ Close to half (48%) of all children aged 10–17 under community-based supervision were Aboriginal or Torres Strait Islander, while over half (56%) of those in detention were Aboriginal and Torres Strait Islander children.⁷⁷

Aboriginal and Torres Strait Islander children are overrepresented in both detention and community-based supervision at all ages but are particularly overrepresented in the younger age groups (see Figures 12.1 and 12.2). On an average day in 2017–18, about half (48%) of all Aboriginal and Torres Strait Islander young people under supervision were aged 10–15 years, compared with one-third (33%) of non-Indigenous young people.⁷⁸

As seen in Figures 12.1 and 12.2, during 2017–18, 769 children aged 10–13 years had been under community-based supervision and 588 children aged 10–13 years had been in detention, the majority Indigenous boys.⁷⁹

Numbers of children under community-based supervision during the year by age, sex and Indigenous status, Australia (2017–18)							
	10-11 yrs	12 yrs	13 yrs	14 yrs	15 yrs	16 yrs	17 yrs
Male – Indigenous	43	98	270	474	657	729	740
Male – Non-Indigenous	5	37	155	365	683	927	1,085
Female – Indigenous	9	25	84	159	220	198	186
Female – Non-Indigenous	3	6	34	136	212	232	232

Table 12.1 Sourced from the Australian Institute of Health and Welfare, Youth justice, Data, Young people under community-based supervision during the year by age, sex and Indigenous, Australia, 2017-18, Table S40b.⁸⁰

Numbers of children in detention during the year by age, sex and Indigenous status, Australia (2017–18)								
	10 yrs	11 yrs	12 yrs	13 yrs	14 yrs	15 yrs	16 yrs	17 yrs
Male – Indigenous	6	39	89	196	310	410	463	403
Male – Non-Indigenous	2	6	32	106	222	379	485	504
Female – Indigenous	0	8	24	55	95	104	96	72
Female – Non-Indigenous	1	3	6	21	83	114	90	77

Table 12.2 Sourced from the Australian Institute of Health and Welfare, Youth justice, Data, Young people in detention during the year by age, sex and Indigenous, Australia, 2017–18, Table S78b.⁸¹

Reasons for the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system include legal and policy factors, such as restrictive bail laws⁸² and socio-economic factors, such as intergenerational disadvantage, racism, cultural displacement, trauma, alcohol and other drug misuse, cognitive disabilities and poor health and living conditions.⁸³

There is a strong correlation between juvenile participation in crime and rates of reported neglect and abuse.⁸⁴ Children placed in out-of-home care are 16 times more likely than children in the general population to be under youth justice supervision in the same year.⁸⁵ This risk increases when the child is Aboriginal or Torres Strait Islander.⁸⁶

Effective diversionary processes are particularly important for ensuring lasting reductions in the rates of Aboriginal and Torres Strait Islander overrepresentation in detention.⁸⁷ See Chapter 11 for further information on youth diversion.

Justice targets are also a potential mechanism to reduce rates of incarceration for Aboriginal and Torres Strait Islander peoples.⁸⁸ The refreshed Closing the Gap agenda contains a draft COAG target which calls for reducing the rate of Aboriginal and Torres Strait Islander children in detention by 11–19% by 2028.⁸⁹

The Senate Legal and Constitutional Affairs Committee, Social Justice Commissioners at the Australian Human Rights Commission and the National Children's Commissioner, have recommended justice reinvestment strategies which involve diverting and reinvesting funds used for tertiary services like imprisonment to those designed to address underlying causes of crime and dysfunction, in communities with high rates of offending.⁹⁰ There are a number of trials and initiatives using justice reinvestment in the Australian Capital Territory, New South Wales, Northern Territory, Queensland and South Australia.⁹¹

12.8 The way forward

- Ⓡ 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 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 its Fourth National Sexually Transmissible Infections Strategy 2018–2022.

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- ® 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.

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Chapter 13:

Asylum seeker and
refugee children



ASYLUM SEEKER AND REFUGEE CHILDREN

IMMIGRATION DETENTION



Immigration detention remains mandatory for all unlawful non-citizens, including children

5 children held in **closed immigration detention facilities** (31 Aug 2019)

285 children living in community-based arrangements (31 Aug 2019)

OFFSHORE PROCESSING



0 children on Nauru (by 3rd February 2019)

but Australia retains the policy of **third-country processing**

Serious human rights concerns, in particular the impact on the **mental health** of children

CHILDREN WHO ARRIVE WITHOUT THEIR PARENTS

196 **unaccompanied humanitarian minors** were receiving services nationally (2017-18)

There is a need for an **independent guardian** for unaccompanied children

TEMPORARY PROTECTION VISAS



Asylum seekers who arrive without valid visa and are subsequently granted refugee status:

- are no longer eligible for permanent residency
- do not have access to the same support services and entitlements as refugees on permanent visas
- are not eligible to sponsor relatives overseas to join them

2,400 children with their families were on temporary protection visas

FINANCIAL HARDSHIP

Families and children on bridging visas **may not be eligible** for the **Status Resolution Support Service** allowance in circumstances where they have no other source of income or are unable to work

VISA CANCELLATION



Visa refusals and cancellations on character grounds may result in:

- Indefinite immigration detention
- Removal from Australia
- Indefinite or permanent separation from family members (including parents)

Asylum seeker and refugee children have the right to be provided with appropriate protection and humanitarian assistance so they can enjoy the rights set out in the *Convention on the Rights of the Child* (CRC).¹ This includes their right to be protected from torture or cruel, inhuman or degrading treatment or punishment and be protected from all forms of physical or mental violence, injury or abuse.² They also have the right to non-refoulement under the CRC, the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.³ Unaccompanied children are entitled to special protection and assistance.⁴

Every year, children arrive in Australia as refugees or seeking asylum because they have been displaced from their homes and forced to flee their countries of origin. Some come with their families and some come alone. They come by various means; some arrive as part of Australia's resettlement program, others come on temporary visas, and some arrive without visas, by plane or by boat.

“

Let refugees
come into
Australia instead
of being stuck
on an island that
feels like a jail

(child, 11)

”

“

We are very lucky that
our country is in a safe
place, we should accept
more refugees and
educate our people
about their needs

(child, 11)

”

The numbers of people displaced from their homes and seeking protection in other countries has increased globally. At the end of 2017, 68.5 million people had been forcibly displaced from their homes. Of these, 25.4 million were refugees, 52% of them children.⁵ Compared to other countries, the numbers of people who seek asylum in Australia are small. Between January 2009 and December 2018, Australia recognised or resettled 180,790 refugees, which represents 0.89% of the 20.3 million refugees who were recognised globally over that period.⁶

While Australia’s resettlement program is good by world standards, its policies and laws towards refugees who come to Australia seeking protection are harsh. The mandatory immigration detention law requires that all people who arrive without visas are detained as a matter of course, regardless of whether they are children or adults. If they arrive in Australia by boat, they can be sent to another country like Nauru or Manus Island in Papua New Guinea for their asylum claims to be processed.

Further, those children and their families who have arrived by boat, allowed to remain in Australia and found to be refugees are granted temporary protection visas only. Others, whose claims for protection are yet to be finalised, have waited for long periods of time on Bridging Visas with high levels of uncertainty and limited support. Children are often those who are most negatively impacted by these restrictive laws and policies.

“

It’s a pretty safe place but I feel that the government isn’t doing enough for poverty and refugees. Especially Refugees

(child, 12)

”

“

Look after refugees

(child, 12)

”

That it is an amazing place to grow up in and the government should allow more refugees to settle here

(child, 12)

13.1 Number of children in immigration detention

The number of children in immigration detention has decreased markedly since 2012. Community-based alternatives to detention are most commonly used for children.

According to the Australian Government, on 31 August 2019 there were fewer than five children in immigration detention facilities in Australia (in immigration residential housing, immigration transit accommodation and alternative places of detention).⁷

However, this does not include two infants considered to be 'guests' in immigration detention, who were in immigration detention with the consent of their mothers. The UN Working Group on Arbitrary Detention has considered the circumstances of one of these children.⁸ Given this child has the status of her father, who resides in the community, the Government considers that she is residing in detention due to a decision made by her parents, which may be withdrawn at any time, rather than the Government. However, the opinion of the UN Working Group on Arbitrary Detention is that the situation of this child qualifies as detention.⁹

The number of children living in the community on residence determinations was 285 as at 31 August 2019.¹⁰ Residence determinations allow for the release of people from closed detention facilities into community-based accommodation, often called 'community detention'. While there are some restrictions and reporting requirements, generally these alternatives promote better health and wellbeing outcomes than closed detention. School-aged children can access free primary and secondary education.¹¹

13.2 Mandatory immigration detention of children

The *Migration Act 1958* (Cth) (Migration Act) affirms that, as a general principle, children should only be detained as a measure of last resort.¹² However, under this Act, immigration detention remains mandatory for all unlawful non-citizens, including children.¹³ Children who are unlawful non-citizens are detained automatically, regardless of circumstances. There is no discretion in the initial decision to detain.

Further, Australian courts do not have jurisdiction to remove a person from detention on the basis that their detention is arbitrary under international law. There is also no legislative time limit on detention.

In 2014, the Commission conducted a National Inquiry into Children in Immigration Detention. This inquiry found that Australia's detention law, policy and practice do not address the particular vulnerabilities of asylum seeker children, nor afford them special assistance and protection. The blanket policy of mandatory detention does not consider the individual circumstances of children or address the best interests of the child as a primary consideration.¹⁴

Voices of asylum seeker and refugee children in detention, from the 2014 National Inquiry:¹⁵

“

I'm just a kid,
I haven't done
anything wrong. They
are putting me in a
jail. We can't talk with
Australian people
(child, 13)

”

“

Can we have some toys
please? Here there are only
baby toys. We'd like some
cars to play with, Lego, a
bicycle. We have no visitors,
no toys
(child, 12)

”

The Joint General Comment from the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Committee on the Rights of the Child, states that detaining children as a measure of last resort is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.¹⁶ It states that **any kind** of child immigration detention should be prohibited by law and should be fully implemented in practice.¹⁷

The Independent Expert leading the Global Study on Children Deprived of Liberty, Professor Manfred Nowak, reported to the United Nations General Assembly on 11 July 2019. He argues that the detention of children in immigration facilities is never appropriate and cannot be justified as a measure of last resort, as there are always other options. The Australian system of community detention arrangements supports this view. The Global Study urges countries to prohibit and end all forms of migration-related detention of children and their families.¹⁸

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government amend the Migration Act to prohibit the detention of asylum seekers, refugee and migrant children.¹⁹

The Committee on the Rights of Persons with Disabilities, in its Concluding Observations on Australia in September 2019, has also recommended that Australia urgently remove all refugee and asylum-seeking children, particularly children with disabilities and their families, from closed detention facilities.²⁰

13.3 Length of time in detention

The Australian Government does not publish data on the length of time children have been detained. However, over previous years, children have been held in immigration detention for prolonged periods.

The National Inquiry into Children in Immigration Detention reported that in March 2014, children in Australian immigration detention centres had been held for 231 days (approximately eight months) on average. By September 2014, the average length of detention for children and adults was one year and two months.²¹

According to the Australian Government's 6th periodic report to the United Nations Committee against Torture, the average number of days in closed detention for minors detained in 2017 was 68 days. The maximum number of days a minor had been held in detention in 2017 was 524 days.²²

As at 31 August 2019, the average period for all people (overwhelmingly adults) held in detention was 505 days.²³

13.4 Safety of children in immigration detention

Numerous inquiries have demonstrated that closed immigration detention is an unsafe environment for children.²⁴ The 2014 National Inquiry into Children in Immigration Detention found that prolonged detention had a profoundly negative impact on the mental and emotional health and development of children. The deprivation of liberty and the exposure to high numbers of mentally unwell adults were found to cause emotional and developmental disorders amongst children.²⁵

I think that locking up child refugees
in detention centers is disregarding
the child rights

(child, 11)

Data provided to the inquiry by the then Department of Immigration also described numerous reported incidents of assault, sexual assault and self-harm involving children in detention.²⁶ The Royal Commission into Institutional Responses to Child Sexual Abuse identified immigration detention as an institutional context with an elevated risk of child sexual abuse, and made a number of recommendations for improving child protection in this context.²⁷

More recently, between 1 July 2017 and 27 February 2019, there were five reported incidents of child assault in closed detention (and no reported incidents of neglect or sexual assault of children during this time). This refers to the number of incidents, not the number of children.²⁸

In 2016, the Australian Government developed a Child Safeguarding Framework, designed to ensure that the Australian Government meets its child protection and wellbeing obligations in an immigration context (including in relation to immigration detention).²⁹ Although a child safeguarding framework is a positive step, the risks to child mental and physical health inherent in deprivation of liberty in closed detention remain.

The implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), which Australia has ratified, provides an opportunity to better monitor the conditions for children and their families in immigration detention. Under OPCAT, Australia agreed to establish an independent National Preventive Mechanism to conduct inspections of all places of detention and closed environments. Oversight mechanisms should pay particular attention to the needs of children in all forms of detention.³⁰

Refugee children in detention centres are not treated fairly and don't have all the rights that every child should have... they don't have a right to education, clean food and water, clean sanitation and to have a home. This should change...

(child, 12)

I think we need to work on taking in more refugee children and make the process of letting them out of refugee camps quicker. Having to live in a refugee camp as a kid is scary, especially because they've probably just come from something terrible on a boat out on sea

(child, 11)

There is also a need to improve processes for monitoring the wellbeing of children seeking asylum who are in 'community detention' or are living in the Australian community on visas of various kinds. While community alternatives to detention generally promote better health and wellbeing outcomes than closed detention,³¹ a small number of participants in the Commission's *Lives on hold report* raised concerns that community detention may have negative impacts if used for very long periods of time.³² It recommended an independent review be commissioned on the situation of people in long-term community detention to assess the extent to which the program can continue to promote positive health and wellbeing outcomes over time.³³

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government introduce adequate mechanisms for monitoring the wellbeing of children involved in asylum, refugee and migration processes.³⁴

13.5 Children and families subject to offshore processing

Under Australia's policy of third country processing, asylum seekers arriving by boat (including children) have been transferred to Nauru and Manus Island, Papua New Guinea, for processing of their asylum claims. On 31 May 2018, there were 137 children in Nauru subject to third country processing arrangements, the majority of whom were aged 12 years or under, and had been there for at least four years.³⁵ On 22 October 2018, 52 children remained on Nauru.³⁶ In early 2019, the Government announced that all children had been removed from Nauru, most of these on a temporary basis to receive medical treatment in Australia.³⁷

Although international law does not specifically prohibit offshore processing of asylum seekers, it is difficult to see how Australia's human rights obligations can be reconciled with the effects of this policy. Numerous reports and inquiries, including by international human rights treaty bodies, have documented serious human rights concerns relating to third country processing in Nauru, particularly the impact of these arrangements on the mental health of children.³⁸

A 2019 report on the Commission's inquiry into a complaint by three families transferred to Nauru in 2014 found that the regional processing centre on Nauru was not an appropriate place to send families with young children, and recommended that children, whether accompanied or unaccompanied, no longer be sent there. It also found that the 'best interests assessment' conducted by the Department prior to taking children to Nauru had failed to take the best interests of children into account as a primary consideration.³⁹

Several legal cases decided by the Federal Court of Australia in 2018 found that health care services available on Nauru did not meet the needs of children with complex physical and mental health conditions.⁴⁰

In February 2019, the Australian Parliament passed a law to permit the transfer of asylum seekers held on Nauru and Manus Island for urgent medical reasons (the 'Medevac' Bill).⁴¹ However, in July 2019 the Australian Government introduced a bill to repeal this law,⁴² which was referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report. On 18 October 2019, the Senate Committee recommended the Senate pass this bill. The Commission considers that repealing the Medevac Bill may be inconsistent with a number of Australia's core obligations to fulfil the right to health and would constitute a retrogressive measure that is contrary to Australia's obligation of progressive realisation of economic, social and cultural rights including the right to health.⁴³

There are also ongoing concerns about the impact of the offshore processing regime on family separation. The Australian Government has introduced the Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 (Cth) which would have the effect of asylum seekers in the 'regional processing cohort' facing a 'permanent lifetime ban from obtaining a visa to enter or remain in Australia', even if settled in another country.⁴⁴ Some people taken to a regional processing country have relatives (including, in some cases, immediate family members) living in Australia. The proposed permanent visa ban may prevent these individuals from ever travelling to Australia, which could lead to the prolonged or permanent separation of family members.

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government enact legislation prohibiting the detention of children and their families in regional processing countries.⁴⁵ It also recommended that the Australian Government ensure that:

- **the best interests of the child are a primary consideration in all decisions and agreements in relation to the reallocation of asylum-seeking, refugee or migrant children within Australia or to other countries⁴⁶**
- **children who were detained in regional processing countries have access to adequate child protection, education and health services, including mental health.⁴⁷**

Voices of asylum seeker and refugee children on Nauru from the 2014 National Inquiry:⁴⁸

I've changed a lot, I'm not fun anymore. I'm just thinking about bad stuff now ... I was thinking of become a doctor but not anymore
(child, 15, Nauru Detention Centre)

It affects the people's mind and the children too. They have 10 months on the detention that means they get crazier and upset
(unaccompanied child, Nauru Detention Centre)

My country and my religion is a target for Taliban. There were many bomb blasts and always big wars and terrible attacks. Shia people have arms, legs, noses hacked off, necks slashed, plus there is rocket fire and missiles. This is because I am Shia. All this means no one is safe and now because I escaped. I am in detention
(unaccompanied child, Nauru Regional Processing Centre)

I am a thirteen years old boy that came to Australia with my parents and my eight years old brother for better and brighter future. We took the risk of this dangerous way because we had no other option. I heard Australian politicians say Iranian people come to Australia because of their economic problems. But we weren't poor in our country. We weren't hungry, homeless, jobless and illiterate. We immigrate because we had no freedom, no free speech and we had [a] dictatorship
(child, 13, Nauru Regional Processing Centre)

13.6 Children who arrive without their parents

Over the years, a number of children have arrived in Australia seeking asylum without their families. Since 2001, 14,832 minors (aged 17 years and under) have sought asylum in Australia.⁴⁹

According to the Department of Home Affairs, in 2017–18 as many as 196 unaccompanied humanitarian minors were receiving services nationally.⁵⁰

The Minister for Home Affairs is the legal guardian of unaccompanied children seeking asylum in Australia.⁵¹ The Minister can delegate this role to officers of the Australian Government or state or territory governments, including officers of the Department of Home Affairs.⁵²

The Minister, as Guardian, is also responsible for administering the immigration detention system and making decisions about visas, removals and transfers under third country processing arrangements. Given these multiple roles, the Commission considers it is difficult for the Minister (or their delegate) to ensure that the best interests of the child are a primary consideration when making decisions concerning unaccompanied children.⁵³

In its Concluding Observations (2019), the Committee on the Rights of the Child recommended that the Australian Government amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to create an independent guardian for children.⁵⁴

Voices of unaccompanied children from the 2014 National Inquiry:⁵⁵

Sometimes I have nightmares about the past but there's no parent figure here to assist. I live in fear and I have lost my parents

(unaccompanied child, 16)

Being without my family, I was very alone and sad. At 14, I didn't know what to do. I had to find an Iranian family who I got friends with. They helped me. If they didn't help me I would have been sick and sad

(unaccompanied child)

I don't care about a visa any more. I want to finish everything. My life is very difficult. I don't understand why I am here. I am beginning to feel crazy; my situation is very bad and getting worse. I am alone, no family, nobody here. I've been here 15 months, I need to do something

(unaccompanied child, 17)

13.7 Children on temporary protection visas

As of September 2019, approximately 2,400 children with their families were on temporary protection visas (TPVs and SHEVs).⁵⁶ Between 13–18 unaccompanied humanitarian minors were also holders of temporary protection visas.⁵⁷

Legislative amendments in 2014⁵⁸ mean that asylum seekers who arrive in Australia without valid visas and are subsequently granted refugee status are no longer eligible for permanent residency. Instead, they are granted a temporary visa for three to five years, and after their initial visa expires they must reapply and have their refugee claims reassessed. Refugees on temporary visas do not have access to the same support services and entitlements as refugees on permanent visas and are not eligible to sponsor relatives overseas (including the parents of unaccompanied minors) to join them in Australia.

A significant issue for children and young people on temporary protection visas is that (unlike other humanitarian visa holders) they are considered to be international students, so must pay higher fees for higher education than local students and are ineligible for higher education loans or Commonwealth-supported places. The Commission's *Lives on hold* report found that affordability of tertiary education is likely to present a particularly significant challenge for young people on TPVs and SHEVs who are leaving high school.⁵⁹ It recommended that TPV and SHEV holders have access to the same services and entitlements as permanent protection visa holders, including in relation to tertiary education.⁶⁰

Granting temporary protection to children is more likely to compound mental health problems than facilitate their rehabilitation and integration into Australian society.⁶¹ It results in breaches of those children's rights to mental health, maximum possible development and recovery from past torture and trauma, and of Australia's obligations to address the best interests of the child as a primary consideration.⁶²

Another significant issue for unaccompanied minors on temporary protection visas is the lack of family reunion rights. A set of interagency guiding principles on unaccompanied and separated children, developed by UNICEF, UNHCR and several leading humanitarian organisations advise that unaccompanied and separated children should be reunited with their parents or guardians 'as quickly as possible'.⁶³ However, the restrictions on family reunion opportunities apply equally to adults and children. There are no specific provisions or exceptions for unaccompanied, separated or other vulnerable children.

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to implement durable solutions including financial and other support for all refugee and migrant children to ensure their early rehabilitation, reintegration and sustainable resettlement.⁶⁴

In its *Lives on hold* report, the Commission recommended abolishing temporary protection arrangements or, alternatively, amending current temporary protection arrangements to mitigate their negative impacts.⁶⁵

13.8 Children from the 'legacy caseload'

In 2012, the Australian Government introduced changes to the Migration Act,⁶⁶ which meant that asylum seekers who arrived in Australia before January 2014 were permitted to remain in order to have their refugee claims assessed. While some were able to apply for substantive visas upon arrival, most have faced prolonged delays in the processing of their visa applications,⁶⁷ and many are still waiting for their refugee claims to be assessed. Approximately 30,000 asylum seekers fall into this category and it has become known as the 'legacy caseload'⁶⁸ (see Commission report, *Lives on hold*).⁶⁹

Mental health experts have reported that children in the 'legacy caseload' experience severe mental health symptoms as a result of stress and trauma. One of the most common symptoms includes 'lethal hopelessness', a condition of deep despair that is unique to the asylum seeker population. Experts have highlighted that suicide ideation is prevalent in children as young as ten years old.

Many children in the 'legacy caseload' face prolonged or indefinite family separation. Children separated from their families, especially those who have arrived in Australia as unaccompanied minors, are especially vulnerable and experience a range of mental health issues including sleeplessness, depression, poor concentration, nightmares, headaches, pain and difficulty breathing, and feelings of guilt.⁷⁰

The uncertain conditions of asylum seeker families from this caseload also impact on children's mental health and access to healthcare.⁷¹

13.9 Financial hardship of families on Bridging Visas

As at 31 August 2019, there were a total of 2,210 children living in Australia on a Bridging Visa E.⁷² Bridging Visa E is a temporary visa which allows asylum seekers to live in the community while their claims are being assessed.

Asylum seekers on Bridging Visas facing financial hardship may be eligible to receive a living allowance under the Status Resolution Support Services (SRSS) program. However, from mid-2018, people with work rights attached to their Bridging Visa were no longer eligible to receive the SRSS living allowance, unless they face barriers to employment.⁷³ Being unable to find a job is not considered a 'barrier' to employment for the purposes of SRSS eligibility.⁷⁴

This change is likely to result in a number of asylum seekers (including families with children) becoming ineligible for the living allowance, even if they have no alternative source of income, limited prospects of securing employment or are unable to work.

13.10 Visa cancellation

Under s 501 of the *Migration Act 1958* (Cth), a non-citizen of Australia may have an application for a visa refused or have their visa cancelled if they do not pass a 'character test'.⁷⁵ In recent years, there has been an large increase in the number of visa refusals and cancellations under these provisions due to legislative amendments to the Migration Act in 2014,⁷⁶ which included a mandatory cancellation provision.⁷⁷ For the 2018–19 financial year, there were 943 visa cancellations and 268 visa refusals under s 501.⁷⁸

According to the Department of Home Affairs, since 2014 fewer than five children have had their visas cancelled under s 501. However, the extent to which s 501 has been used to refuse or cancel the visas of parents or guardians of children is unknown.⁷⁹

Visa refusals and cancellations on character grounds may result in children facing indefinite immigration detention, removal from Australia and/or indefinite or permanent separation from family members (including parents). Under article 8(1) of the CRC, Australia is required to 'respect the right of the child to preserve his or her identity, including ... family relations as recognized by law without unlawful interference'.⁸⁰

13.11 Children recruited into armed conflict overseas

The numbers of refugee, asylum-seeking and migrant children in Australia who have been recruited for, or used in, armed conflict are not widely available. However, it is likely that children with the experience of being recruited as child soldiers in other countries have been resettled in Australia.⁸¹ In the 2016–17 financial year, Australia resettled nearly 4,000 young people (aged 12–24 years) from Syria and Iraq, making up 65% of the overall humanitarian youth arrivals to Australia.⁸² Child recruitment continues to be an ongoing practice for children in many countries with increases in verified cases of the recruitment and use of children in armed conflict.⁸³

Children who may have been involved in armed conflict should be identified by the UNHCR or the Department of Home Affairs on application or at interview when they are considered for resettlement or protection in Australia under the Humanitarian Program. Refugees and humanitarian entrants are eligible for trauma counselling through the Program of Assistance for Survivors of Torture and Trauma. However, it is unclear whether there is a specific process for identifying on arrival whether asylum-seeking or refugee children have prior experiences of armed conflict, in order to assist their recovery.

The Australian Government has indicated its concern at the use of child soldiers in conflicts abroad, including Australian children recruited by the Islamic State group.⁸⁴ It states that it is 'working closely with communities to carefully manage the return of children exposed to the terrible effects of violent extremism', and that 'each child will receive tailored support to suit their needs'.⁸⁵ However, there is little publicly available information on the process for identifying and rehabilitating these children.

In its Concluding Observations (2019), the Committee on the Rights of the Child urged the Australian Government to:

- **develop mechanisms for the early identification of asylum-seeking, refugee and migrant children who may have been recruited or used in hostilities abroad**
- **conduct training for personnel responsible for the identification and referral of those children to protection services**
- **provide child victims with appropriate assistance for their full physical and psychological recovery and social reintegration.**⁸⁶

13.12 The way forward

- Ⓡ 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 abolish temporary protection visas and reintroduce permanent protection visas for all applicants determined to be in need of protection.
 - ® 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.

Chapter 13: Endnotes

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- 2 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990) art 24.
- 3 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 6 and 7; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990) arts 6 and 37; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) arts 3, 16.
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Chapter 14:

Moving forward

Australia needs to listen to
children and work harder
to help them.



My first report as National Children's Commissioner in 2013 began with an overview of Australia's progress in meeting its obligations under the *Convention on the Rights of the Child* (CRC), following Australia's appearance before the Committee on the Rights of the Child in June 2012.

With this current report, we have come full circle, as the latest review of progress by the Committee occurred in September 2019.

This report has set out the key human rights concerns facing children in Australia as they currently exist, across all areas of the CRC.

There are a few trends that are apparent from the discussion in this report.

First, our system for protecting the rights of children in Australia is too weak and too passive. We do not have in place a proactive, systematic or coordinated approach to advancing the rights of children in Australia.

We have made progress on some issues, with national frameworks agreed to by all Australian governments, that have a focus on children's needs. But these are on discrete issues and policy areas rather than focusing on the broader inter-connections between issues that reflect the reality of children's lived experience. Similarly, there have been significant developments in the collection, quality, availability and consistency of national data about child wellbeing since I began in the role, that I hope will lead, over time, to the ability to more effectively monitor and report against the domains of the CRC. However, at this time, it is not possible to report on the critical intersectionalities relating to children who face particular vulnerabilities.

Second, one of the implications of our lack of action to address children rights in a holistic way is that critical issues fall through the gaps and have received little policy attention in the seven years since Australia's last appearance before the Committee in 2012.

There is a striking similarity in the human rights concerns that existed under the CRC in 2012 and those that exist in 2019.

It is children in vulnerable situations that suffer the most in terms of a lack of government focus.

This points to a third trend, one that is common across all human rights issues—not just those that affect children.

In short, we have an implementation gap between the human rights standards that Australian governments have committed to uphold, and the actual protections that are afforded in our laws, policies and processes of government.

As the Australian Human Rights Commission has noted in its Issues Paper for the national conversation on human rights that it is currently undertaking:

Without comprehensive legal protection, educational and other measures to promote understanding of human rights and processes for monitoring compliance with human rights, our government is not fully meeting its obligations to make sure that the human rights of all Australians are respected, protected and fulfilled.¹

Where to from here?

All Australian Governments need to recommit to the protection of the human rights of children.

This first and foremost requires upfront and transparent consideration of how to best protect the rights of children in Australia, which includes:

- reference to the rights contained in the CRC
- dialogue and engagement with children
- education for children, the community, key professions and decision makers about children's rights
- appropriate data and measurement for tracking progress
- rigorous, public measurement frameworks that Governments are accountable for and are committed to implementing.

Chapter 3 sets out some of the key elements of a national framework committing to the wellbeing of children. We need:

- an enabling legislative and policy framework that puts children's rights at the centre of law and policy makers' minds when they are designing services for children
- informed decision-making processes, with greater knowledge of children's rights and scrutiny processes that genuinely examine the potential impact of different measures on children
- participatory processes that engage children in the things that they have knowledge about—such as their own lives
- partnership models that build consensus on key goals, provide an evidence base on what works and create common shared purpose across government and non-government settings
- national accountability frameworks for children's rights—with clear targets and accountability for outcomes.

I am strongly supportive of recommendations made by the Committee on the Rights of the Child that aim to strengthen Australia's focus and coordination in relation to children's rights:

Comprehensive policy and strategy

8. The Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para 16) and recommends that the State party 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.²

Coordination

9. The Committee urges the State party to provide the Assistant Minister for Children and Families with a clear mandate and sufficient authority to coordinate all activities related to implementation of the Convention at cross-sectoral, federal, state, territory and local levels, and with the necessary human, technical and financial resources for its effective operation.³

Protecting children's rights requires a commitment to provide all children in Australia with the very best chance to thrive and succeed, and the creation of an environment that also enables the next generation of children to thrive.

A failure to make such a commitment is the converse of this—it is a failure of leadership to aspire to the best possible future for the children of Australia, and for the best possible Australia.

Something that is deeply concerning to me from this latest review by the Committee is that it confirms a drift in government law and policy making processes away from taking core human rights principles, so fundamental to our collective and personal fulfilment, seriously.

Take, for example, the principle of detention of a child as a matter of last resort in article 37(b) of the CRC. This requires governments to take every possible step to keep children out of closed detention environments due to the well-documented harm that these cause to them.

There is no evidence that suggests that detaining a child results in them being better rehabilitated, more aware of their responsibility for their actions, or better protected than non-custodial interventions.

Such environments most often have the opposite effect, setting young people on a pathway to future involvement in criminal justice processes.

As Professor Manfred Nowak states in his groundbreaking UN Global Study on Children Deprived of Liberty, a child deprived of liberty is a child deprived of their childhood.

There is no rationale for the significant number of children being held in youth justice detention on remand or without charge around the country.

There is no rationale for detaining children under the age of 14. Instead, we need to build up community supports to address their behaviours and the underlying causes of these behaviours.

Raising the age of criminal responsibility for children has become an important focus of human rights reform in Australia because it is an issue that highlights the lack of commitment to and focus on children's rights.

We need to stop using imprisonment as the easier (but ultimately more costly) alternative to providing troubled children with the support that they need to make positive life choices.

Of course, there are challenges in developing appropriate non-custodial services for younger children. But we need to remember many countries around the world have risen to this challenge and are reaping the rewards. We need to learn from them, as well as from the diversionary programs we already have in place that are working well.

It is time for Australian governments—state, territory and Commonwealth—to recommit to the fundamental principle of detention as a measure of last resort as set out in article 37(b) of the CRC.

To this end, I also note that in its Concluding Observations (2019), the Committee on the Rights of the Child calls for urgent measures to be taken in order to protect children:

- from violence⁴
- in alternative care⁵
- in relation to mental health⁶
- from environmental damage and climate change⁷
- for asylum, refugee and children in situations of migration⁸
- in the administration of justice.⁹

The way forward: a commitment to action

In each chapter, I have identified actions that provide a clear way forward to improve the lives of children in Australia into the future. Each of these actions requires serious, considered attention by all Australian governments.

To ensure that this occurs, I make the following recommendations:

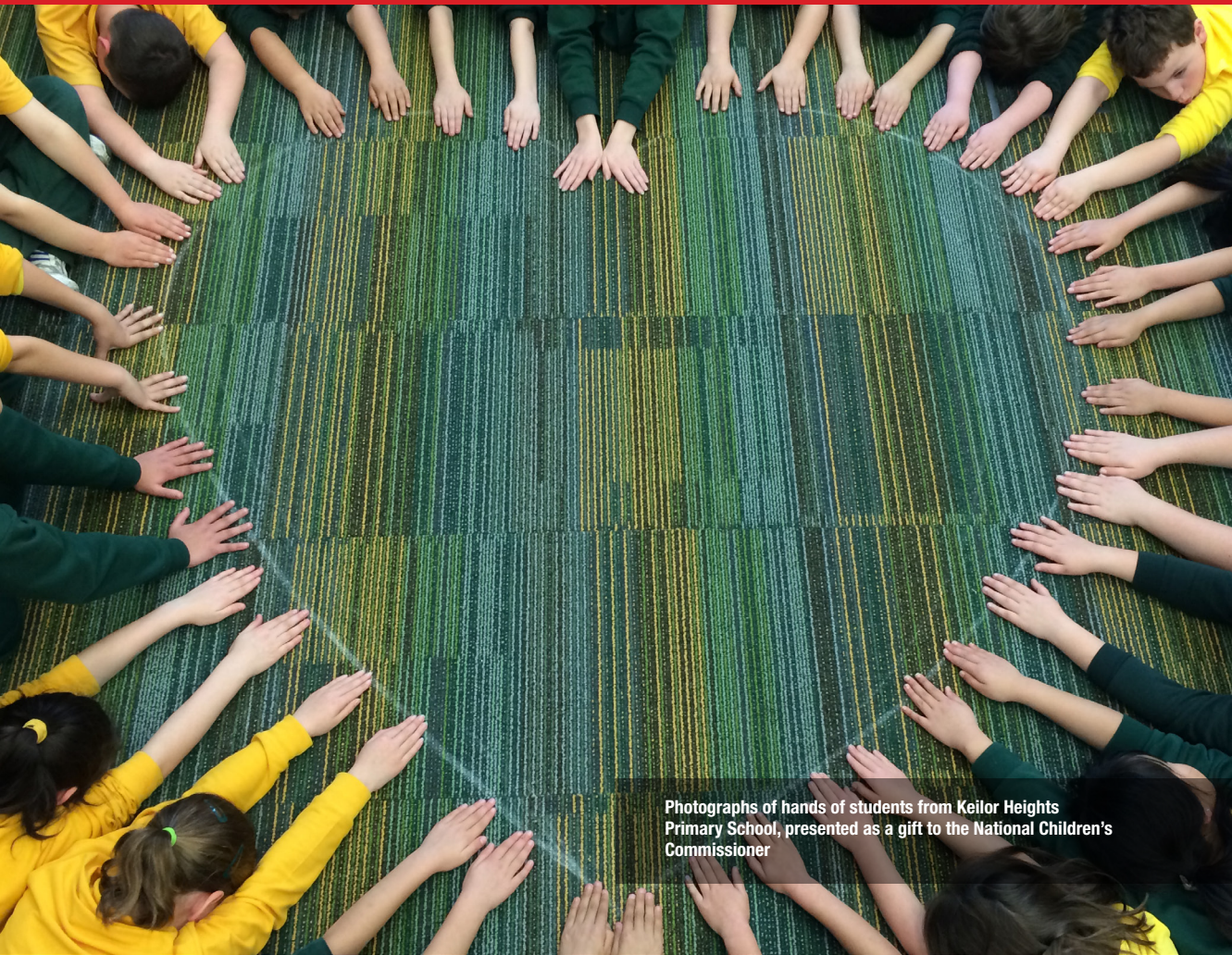
- ④ The Australian Government should provide an interim public response on its implementation of the 2019 Concluding Observations made by the Committee on the Rights of the Child within twelve months, including actions it and state and territory governments will take in response to the Concluding Observations. This response should be developed in consultation with children.
- ④ 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.
- ④ The Australian Government should appoint a Cabinet level Minister with overall responsibility for driving children's issues at the federal level.

Being Australia's first National Children's Commissioner has been an absolute honour. In this role, I have been supported by so many wonderful advocates for children's rights and wellbeing. I have also had the privilege of meeting and hearing from thousands of children and young people who have set the agenda for my term.

There is much goodwill in the community to do better for our children, and I encourage everyone who cares about children and their future—in government, the media, the research community, through state and territory children's commissions, in the law, civil society, in child-related professions, and especially children and young people themselves—to disseminate, and advocate for, the ideas and recommendations in this report.

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- 6 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 38.
- 7 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 41.
- 8 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 45.
- 9 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 48.



Photographs of hands of students from Keilor Heights Primary School, presented as a gift to the National Children's Commissioner

Appendix:

Committee on
the Rights of the
Child—Concluding
Observations on the
combined fifth and
sixth periodic reports
of Australia



The National Children's Commissioner having fun in the classroom

ADVANCE UNEDITED VERSION

Concluding observations on the combined fifth and sixth periodic reports of Australia¹

I. Introduction

1. The Committee considered the combined fifth and sixth periodic reports of Australia (CRC/C/AUS/5-6) at its 2402nd and 2403rd meetings (see CRC/C/SR.2402 and 2403), held on 9 and 10 of September 2019, and adopted the present concluding observations at its 2430th meeting, held on 27 September 2019.
2. The Committee welcomes the submission of the combined fifth and sixth periodic reports of the State party and the written replies to the list of issues (CRC/C/AUS/Q/56/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the progress achieved by the State party in various areas, including the ratification of the Optional Protocol to the Convention Against Torture on 21 December 2017. The Committee notes with appreciation the legislative, institutional and policy measures adopted to implement the Convention on the Rights of the Child, in particular the creation of the Assistant Minister for Children and Families in 2018, and of the National Children's Commission within the Human Rights Commission on 25 June 2012. It further welcomes the establishment of the Royal Commission into the Detention and Protection of Children in the Northern Territory in 2016.

1 Adopted by the Committee at its eighty-second session (9 – 27 September 2019).

III. Main areas of concern and recommendations

4. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: protection from violence (para. 30), alternative care (para. 34), mental health (para. 38), climate change (para. 41), asylum, refugee and children in situations of migration (para. 45), and administration of justice (para. 48).
5. The Committee recommends that the State party ensure the realization of children's rights in accordance with the Convention, the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography throughout the process of implementing the 2030 Agenda for Sustainable Development. It also urges the State party to ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Development Goals as far as they concern children.

A. General measures of implementation (arts. 4, 42 and 44 (6))

Reservations

6. **The Committee, in line with its previous recommendations (CRC/C/AUS/CO/4, para. 10 and CRC/C/15/Add.268 of 2005, para. 8), and in light of its acceptance of the principle of separation and the existence of many facilities separating children from adults, again recommends that the State party consider withdrawing its reservation regarding article 37 (c) of the Convention.**

Legislation

7. **The Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 12) and again recommends, also as a proactive measure, that the State party:**
 - (a) **Enact comprehensive national child rights legislation fully incorporating the Convention and providing clear guidelines for its consistent and direct application throughout the states and territories of the State party;**

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- (b) Ensure that the resources of the Parliamentary Joint Committee on Human Rights are adequate and sufficient to effectively examine, including in consultation with the National Children's Commissioner and other interested parties, all proposed legislation and their impact on children's rights;**
 - (c) Guarantee that such legislation is fully compatible with the Convention.**

Comprehensive policy and strategy

- 8. The Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 16) and recommends that the State party 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.**

Coordination

- 9. The Committee urges the State party to provide the Assistant Minister for Children and Families with a clear mandate and sufficient authority to coordinate all activities related to implementation of the Convention at cross-sectoral, federal, state, territory and local levels, and with the necessary human, technical and financial resources for its effective operation.**

Allocation of resources

- 10. With reference to its general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 20) and recommends that the State party:**
 - (a) Allocate adequate human, technical and financial resources, at all levels of government, for the implementation of all policies, plans, programmes and legislative measures for children and implement a system for tracking and ensuring the efficient use of resources so allocated;**
 - (b) Conduct regular assessments of the distributional impact of government investment in sectors supporting the realisation of children's rights with a view to addressing the disparities in indicators related to children's rights, with particular attention to Aboriginal and Torres Strait Islander children;**

- (c) Establish appropriate mechanisms and inclusive processes through which civil society, the public and children may participate in all stages of the budget process, including formulation, implementation and evaluation.**

Data collection

- 11. The Committee welcomes the creation of the Office of the National Data Commissioner in July 2018 and, with reference to its general comment No. 5 (2003) on general measures of implementation, recalls its previous recommendations (CRC/C/AUS/CO/4, para. 22), and recommends that the State party:**
 - (d) Ensure that data collected on children’s rights covers all areas of the Convention, in particular relating to violence, alternative care, natural disasters and children in conflict with the law, and is disaggregated by age, sex, disability, geographic location, ethnic origin, national origin, and socioeconomic background, and identifies those in situations of vulnerability, such as Aboriginal and Torres Strait Islander children, children with disabilities, and asylum-seeking, refugee and migrant children;**
 - (e) Ensure that the data and indicators are shared among the ministries concerned and used for the formulation, monitoring and evaluation of policies, programmes and projects for implementation of the Convention;**
 - (f) (Ensure that the Office of the National Data Commissioner has the resources necessary for its effective functioning.**

Independent monitoring

- 12. The Committee recommends that the State party:**
 - (a) Ensure that the National Children’s Commissioner (NCC) has adequate and sufficient human, technical and financial resources to implement and monitor the application of the Convention;**
 - (b) Establish by law mandatory consultation between the NCC and children on issues that affect them, and ensure that the results of those consultations and any other recommendations from the NCC are taken into consideration in law and policy making;**
 - (c) Ensure effective coordination between the NCC and the Aboriginal and Torres Strait Islander Social Justice Commissioner on relevant policies and measures.**

Dissemination, awareness-raising and training

13. The Committee recommends that the State party strengthen its awareness- raising programmes on the Convention, including through greater media and social media engagement, in a child-friendly manner, promoting the active involvement of children in public outreach activities including measures targeting parents, social workers, teachers and law enforcement officials.
14. Furthermore, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 24) and recommends that the State party include mandatory modules on human rights and the Convention in the school curriculum and in training programmes for all professionals working with or for children, including all law enforcement officials, teachers, health personnel, social workers and personnel of childcare institutions, as well as State and local government officials.

Cooperation with civil society

15. The Committee recommends that the State party strengthen its support to:
 - (a) Aboriginal and Torres Strait Islander organizations, including through capacity-building initiatives and increased resource allocation, and prioritizes them as service providers;
 - (b) Organizations working with asylum-seeking, refugee and migrant children as well as those working on climate change and environmental issues.

International cooperation

16. The Committee recommends that the State party adopt a child-rights based approach in respect of its trade agreements and development aid policy and programs, with the rights of children and their engagement included in program design, delivery and evaluation.

Children's rights and the business sector

17. With reference to its general comment No. 16 (2013) on the impact of the business sector on children's rights, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para.28) and recommends that the State party:

- (a) Ensure the legal accountability of Australian companies and their subsidiaries for violations of children's rights, including in relation to environment and health, committed within the State party or overseas by businesses domiciled in its territory, and establish mechanisms for the investigation and redress of such abuses;**
- (b) Require companies to undertake assessments, consultations, and to make full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts;**
- (c) Strengthen its support to the Australian Human Rights Commission for the implementation of the UN Guiding Principles on Business and Human Rights, and make information available on the work of the Australian National Contact Point in implementation of the OECD Guidelines for Multinational Enterprises;**
- (d) Undertake awareness-raising campaigns with the tourism industry and the public at large on the harmful effects of sexual exploitation of children in the context of travel and tourism and widely disseminate the World Tourism Organization global code of ethics for tourism.**

B. Definition of the child

- 18. The Committee recommends that the State party review the Marriage Act of 1961 (Cth) to eliminate any exception to the minimum age of marriage of 18 for girls and boys.**

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

- 19. Taking note of target 10.3 of the Sustainable Development Goals, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para.30) and urges the State party to:**
 - (a) Address disparities in access to services by Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care, asylum-seeking, refugee and migrant children, regularly evaluate the enjoyment by those children of their rights and prevent and combat discrimination;**

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- (b) Strengthen its awareness-raising and other preventative activities against discrimination, including through the school curricula, and take affirmative action for the benefit of the groups of children mentioned above.

Best interests of the child

- 20. With reference to its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, and recalling its previous recommendations (CRC/C/AUS/CO/4, para.32), the Committee recommends that the State party:
 - (a) Ensure that procedures and criteria guiding all relevant persons in authority for determining the best interests of the child, and for giving it due weight as a primary consideration, are coherent and consistently applied throughout the State party;
 - (b) Make publicly available all judicial and administrative judgments and decisions regarding children, specifying the criteria used in the individual assessment of the best interests of the child.

Right to life, survival and development

- 21. The Committee recommends that the State party ensure the effective implementation of the National Injury Prevention Strategy 2018-2021, targeting the underlying causes of child deaths, and continue to support the work of the Australia and New Zealand Child Death Review and Prevention Group.

Respect for the views of the child

- 22. With reference to its general comment No. 12 (2009) on the right of the child to be heard, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para.34), and recommends that the State party:
 - (a) Amend the *Family Law Act of 1975* (Cth) to provide all children, in accordance with their age and maturity, the opportunity to have their views heard in all matters concerning them, including in “non-court based family services”;
 - (b) Amend the *Migration Act of 1958* (Cth) to guarantee respect for the views of the child at all stages of the migration process;
 - (c) Provide training and support to the Independent Children’s Lawyers to ensure they have direct contact with the children they represent in Family Courts;

- (d) **Enhance children’s meaningful and empowered participation within the family, community and schools, with particular attention to girls, children with disabilities, Aboriginal and Torres Strait Islander children;**
- (e) **Develop toolkits for public consultation with children on issues that affect them, including on climate change and the environment.**

D. Civil rights and freedoms (arts. 7, 8, and 13-17)

Birth registration / Name and nationality

- 23. Taking note of target 16.9 of the Sustainable Development Goals, the Committee urges the State party to:**
- (a) **Ensure that all children, particularly Aboriginal and Torres Strait Islander children, children living in remote areas, and children in child protection services, are registered at birth and receive free birth certificates;**
 - (b) **Revoke the December 2015 amendments to the Citizenship Act which allow for children under 18 years to lose their Australian citizenship if they “engage in or are convicted of certain foreign fighting or terrorism related conduct”;**
 - (c) **Ensure that children born through international surrogacy arrangements have access to a clear process with uniform rules throughout the country to obtain Australian nationality.**

Right to identity

- 24. The Committee recalling its previous recommendations (CRC/C/AUS/CO/4, para. 38), recommends that the State party:**
- (a) **Ensure full respect for the rights of Aboriginal and Torres Strait Islander children, including those placed for adoption, to their identity, name, culture, language and family relationships;**
 - (b) **Ensure that children born through assisted reproduction technologies, in particular through surrogacy, are able to access information about their origin, and that all involved are provided with appropriate counselling and support.**

Freedom of expression

25. The Committee recommends that the State party promote the right to freedom of expression, paying particular attention to Aboriginal and Torres Strait Islander children, children with disabilities, children with a refugee or migrant background, and children living in rural or remote areas.

Freedom of association and peaceful assembly

26. The Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 40) and recommends that the State party review its legislation to respect children's rights to freedom of association and peaceful assembly, particularly regarding Aboriginal and Torres Strait Islander children.

Access to appropriate information

27. The Committee recommends that the State party:
- (a) Expand access to information, including via the Internet, in the relevant language(s), to children in rural or remote areas;
 - (b) Promote children with disabilities' access to online information through making available audio description and captioning;
 - (c) Ensure that children, their parents and other caregivers are taught appropriate online behaviour, including preventive strategies, against online abuse and/or exploitation.

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Corporal punishment

28. The Committee recall its previous recommendations (CRC/C/AUS/CO/4, paras. 44-45) and urges the State party to:
- (a) Explicitly prohibit corporal punishment in law in all settings, including in homes, public and private schools, detention centres and alternative care settings, and repeal the legal defence of "reasonable chastisement";
 - (b) Develop awareness-raising and education campaigns to promote positive and alternative forms of discipline, and the adverse consequences of corporal punishment.

Violence, including sexual violence, abuse and neglect

29. The Committee welcomes the creation of the National Office for Child Safety in 2018, and the commitment to the National Centre for the Prevention of Child Sexual Abuse in March 2019; the adoption of the National Framework for Protecting Australia's Children (2009-2020), and the National Plan to Reduce Violence against Women and their Children (2010-2022). It also welcomes the report of the Royal Commission into Institutional Responses to Child Sexual Abuse of December 2017 and the Prime Minister's National Apology to Victims and Survivors of Institutional Child Sexual Abuse on 22 October 2018. However, the Committee remains seriously concerned about:
- (a) The high rates of violence against children at home, the third action plan under the National Plan to Reduce Violence against Women and their Children focuses on young people aged 12-20 years, when violence affects children of all ages; and that girls aged 10-19 have the highest rate of sexual abuse, with an increasing number perpetrated by their partners;
 - (b) The National Redress Scheme for people who have experienced institutional child sexual abuse excluding some groups of victims, such as non-citizens or non-permanent residents, persons sentenced for a crime to five years or longer, and children under 8 in 2018;
 - (c) Victims and survivors of abuse by religious personnel of the Catholic church who participated in the two internal church processes – Towards Healing and The Melbourne Response – being required to sign “deeds of release” preventing them from pursuing independent secular justice mechanisms;
 - (d) The limited information about the support provided to child victims of family and domestic violence including sexual violence;
 - (e) Aboriginal and Torres Strait Islander children continuing to be disproportionately affected by family and domestic violence, and sexual violence, both as victims and witnesses, enduring significant gaps in responses to such violence within these communities, and the limited involvement, leadership and participation of these communities in the development of solutions;
 - (f) Children with disabilities being more vulnerable to violence, neglect and abuse, including girls with disabilities being forced to undergo sterilization procedures and as victims of sexual abuse;
 - (g) The limited information available regarding violence against children in remote areas, children with a culturally and linguistically diverse background, and LGBTI children.

30. With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, paras. 47-48), and urges the State party to:

- (a) Review the action plans of the National Framework and the National Plan to prioritize implementation of key prevention measures and responses to violence against children of all ages, including sexual violence, in particular against girls;**
- (b) Ensure that the National Centre for the Prevention of Child Sexual Abuse establishes a comprehensive standard with regard to intervention in cases of child sexual abuse, including child-friendly, multi-agency measures and appropriate therapeutic services to avoid secondary or re-traumatisation of child victims;**
- (c) Review the National Redress Scheme to include non-citizens or non-permanent residents, persons sentenced for a crime to five years or longer, and children under 8 in 2018;**
- (d) Disregard the Catholic church “deeds of release” for the victims and survivors of abuse by religious personnel who wish to pursue an independent and secular redress process;**
- (e) Provide child-specific therapeutic intervention and counselling to child victims of violence, in addition to the support provided to families;**
- (f) Substantially increase family violence prevention and responses related to Aboriginal and Torres Strait Islander children, including through the Indigenous Family Safety Programme;**
- (g) Review the National Framework and the National Plan to adequately address violence prevention against children with disabilities, and prohibit by law the sterilization of girls with disabilities without their prior, fully informed and free consent;**
- (h) Encourage community-based programmes to address violence in all its forms against children in remote areas and in communities with a culturally and linguistically diverse background, and for LGBTI children.**

Harmful practices

31. The Committee welcomes the criminalization of forced marriage and taking note of target 5.3 of the Sustainable Development Goals, urges the State party to:

- (a) Strengthen its measures to raise awareness on the harmful effects of child marriage on the physical, mental health and well-being of girls;**
- (b) Enact legislation explicitly prohibiting coerced sterilisation or unnecessary medical or surgical treatment, guaranteeing bodily integrity and autonomy to intersex children as well as adequate support and counselling to families of intersex children.**

E. Family environment and alternative care (arts. 5, 9-11, 18 (1) and (2), 20-21, 25 and 27 (4))

Family environment

- 32. The Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 50), and urges the State party to:**
- (a) Provide the necessary human, technical and financial resources to family support services to provide children and their families, particularly Aboriginal and Torres Strait Islanders, with the support needed to prevent violence, abuse and neglect;**
 - (b) Extend paid maternity leave to six months to support appropriate care of newborn children.**

Children deprived of a family environment

- 33. The Committee notes the efforts undertaken by the State party to improve the situation regarding children in alternative care, but remains seriously concerned about:**
- (a) The enduring high number of children in alternative care;**
 - (b) The continuing over-representation of Aboriginal and Torres Strait Islander children in alternative care, often outside their communities;**
 - (c) Different criteria across jurisdictions for decisions on child removal and placement in care;**
 - (d) Despite the 25 enquiries conducted since 2012, the child protection systems still not having sufficient human, technical and financial resources and not being able to provide adequate professional support to children, often resulting in:**
 - i. Badly trained and poorly supported staff;**

- ii. Inadequate matching of children of different ages, experiences and background (in particular, child offenders and child victims of abuse are often placed together);
- iii. Excessive reliance on police interference and the criminal justice system when dealing with children's behavioural problems without ensuring appropriate therapeutic services intervention;
- (e) Children with disabilities being more at risk of maltreatment in institutions;
- (f) The limited access of children in alternative care to mental health and therapeutic services.

34. Drawing the State party's attention to the Guidelines for the Alternative Care of Children (see General Assembly resolution 64/142, annex), the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 52), and urges the State party to:

- (a) **Strongly invest in prevention measures for children and their families to avoid child removal and, when this is a necessary measure, to limit it to the shortest time possible, and ensure participation of children, their families and communities in decision-making, to guarantee an individualised and community-sensitive approach;**
- (b) **Harmonize, make transparent and publicize the criteria for removal and placement of a child in alternative care across jurisdictions to provide the highest level of protection;**
- (c) **Ensure the adequate human, technical and financial resources to child protection services and alternative care and proper training of those working with and for children in alternative care, in particular to enhance preventive measures in order to avoid 'care to crime drift';**
- (d) **Strongly invest in measures developed and implemented for Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide the adequate support while in alternative care and facilitate their reintegration into their families and communities;**
- (e) **Provide adequate training to child protection carers on the rights and needs of children with disabilities to prevent their maltreatment and abuse;**
- (f) **Ensure that children in alternative care have access to the mental health and therapeutic services necessary for their healing and rehabilitation.**

F. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1)-(3) and 33)

Children with disabilities

- 35. The Committee welcomes the establishment of the National Disability Insurance Scheme in 2013 and, recalling its previous recommendations (CRC/C/AUS/CO/4, para. 58) and the other recommendations herein, further recommends that the State party:**
- (a) Make clear the eligibility criteria and the types of support covered by the Scheme and ensure it has the necessary human, technical and financial resources for its optimal and timely implementation;**
 - (b) Conduct awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of such children.**

Health and health services

- 36. With reference to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recalling its previous recommendations (CRC/C/AUS/CO/4, para. 60), the Committee urges the State party to:**
- (a) Promptly address the disparities in health status of Aboriginal and Torres Strait Island children, children with disabilities, children living in remote or rural areas, and children in alternative care;**
 - (b) Address the increasing rate of child obesity.**

Mental health

- 37. The Committee is seriously concerned that the number of children with mental health problems is increasing and, while welcoming the adoption of the 2017 Fifth National Mental Health and Suicide Prevention Plan, is concerned that it insufficiently includes child-specific measures. The Committee is also particularly concerned that:**
- (a) Almost one in seven children were assessed with mental health problems, with suicide being the leading cause of death for those aged 15-24;**

- (b) The State party is among the countries with the highest rate of ADHD diagnosis in the world for children 5-14 years, and the number of psychostimulant drugs prescriptions has increased dramatically;
- (c) Children themselves have identified mental health as a main issue of concern, affecting in particular Aboriginal and Torres Strait Islander children, children in alternative care, homeless children, children living in rural and remote areas, asylum-seeker children, children from culturally and linguistically diverse backgrounds and LGBTI children;
- (d) Despite the increase in mental health services for children, such as the centres Headspace and the Youth Early Psychosis Programme, children still have limited access to services, in particular those under 14 years.

38. Taking note of target 3.4 of the Sustainable Development Goals, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 65), and urges the State party to:

- (a) Invest in addressing the underlying causes of children's suicide and poor mental health, improve mental health literacy for children to promote children's awareness and access to support services, and ensure that the Fifth National Mental Health and Suicide Prevention Plan has a clear child focus strategy that involves children's perspectives in the response services provided;**
- (b) Prioritize mental health service delivery to children in vulnerable situations, in particular Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care, homeless children, children living in rural and remote areas, asylum-seeker, refugee and migrant children, children from culturally and linguistically diverse backgrounds and LGBTI children;**
- (c) Strengthen measures to ensure that the prescription of psychostimulant drugs to children with ADHD is used as a measure of last resort and only after an individualised assessment of the best interests of that child, and that children and their parents are properly informed about the possible side effects of this medical treatment and about non-medical alternatives;**
- (d) Increase the availability of online mental health services and web-based counselling, while making in-person mental health services child-friendly and accessible to children, including those under 14 years, throughout the territory of the State party.**

Adolescent health

- 39. With reference to its general comment No. 4 (2003) on adolescent health and general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, the Committee recommends that the State party:**
- (a) Strengthen its measures to prevent teenage pregnancies among Aboriginal and Torres Strait Islanders girls, including by providing culturally sensitive and confidential medical advice and services;**
 - (b) Continue providing children with education on sexual and reproductive health as part of the mandatory school curriculum, with special attention on preventing early pregnancy and sexually transmitted infections.**

Impact of climate change on the rights of the child

- 40.** The Committee is very concerned about the State party's position that "the Convention does not extend to protection from climate change". The Committee emphasises that the effects of climate change have an undeniable impact on children's rights, for example the rights to life, survival and development, non-discrimination, health, and an adequate standard of living. It is also concerned about the State party's insufficient progress on climate goals and targets committed to in the Paris Climate Agreement and its continuing investment in extractive industries, in particular coal. The Committee expresses its concern and disappointment that the protest of children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for their right to express their views on this important issue.
- 41. The Committee draws attention to target 13.5 of the Sustainable Development Goals, and urges the State party to:**
- (a) Ensure that children's views are taken into account in developing policies and programmes addressing climate change, the environment and disaster risk management, and increase children's awareness and preparedness for climate change and natural disasters;**
 - (b) Promptly take measures to reduce its emissions of greenhouse gases, establishing targets and deadlines to phase out the domestic use of coal and its export, and accelerate the transition to renewable energy, including by committing to achieve 100 per cent renewable energy in the electricity sector.**

Standard of living

- 42. The Committee urges the State party to address the high rates of homelessness among children, particularly focusing on children leaving alternative care, and to include children under 12 years in the Reconnect program.**

G. Education, leisure and cultural activities (arts. 28, 29, 30 and 31)

Education, including early childhood education and care

- 43. The Committee is still concerned that efforts to close the gap for Aboriginal and Torres Strait Islander children remain insufficient. The Committee, taking note of target 4.1 of the Sustainable Development Goals, urges the State party to:**
- (a) Address the shortcomings of the Closing the Gap measures for Aboriginal and Torres Strait Islander children, to reach the targets on school attendance, retention rates, literacy and numeracy standards, paying particular attention to remote areas, and investing in teachers' cultural competency of these communities' history;**
 - (b) Strengthen its investments in improving education in early childhood, primary and secondary levels, paying particular attention to children living in remote areas, Indigenous and Torres Strait Islander children, children with disabilities, children in marginalized and disadvantaged situations, children in alternative care and children from refugee and migrant backgrounds;**
 - (c) Ensure that all children with disabilities have access to inclusive education in mainstream schools, are provided with the support needed, and address cases of restraint and seclusion;**
 - (d) Strengthen the school-based Respectful Relationships initiative to promote gender equality and respect;**
 - (e) Intensify its efforts to prevent and address bullying in schools, including online bullying, through the eSafety Commissioner and provide support to child victims, in particular LGBTI children.**

H. Special protection measures (arts. 22, 30, 32-33, 35-36, 37 (b)-(d), 38, 39 and 40)

Asylum-seeking, refugee and migrant children

44. The Committee notes that since 28 February 2019 there are no asylum-seeking, refugee and migrant children in regional processing countries but remains seriously concerned that:
- (a) The State party “is not intending to establish an independent guardianship entity for unaccompanied children” even though the Minister for Home Affairs is also responsible for granting immigration visas and approvals;
 - (b) The *Migration Act 1958* (Cth) still prescribes mandatory detention for irregular migration, including children, and that the State party “is not currently considering prohibiting the detention of children in all circumstances”;
 - (c) The amended *Migration and Maritime Powers Act 2014* (Cth) allows for the return of vessels carrying children who may be in need of international assistance;
 - (d) The policy of utilizing regional processing countries and detention of children has not been revoked;
 - (e) The best interests of the child is not a primary consideration in asylum, refugee and migration processes, leading to children going through lengthy assessment and determination procedures, and that the 286 children transferred from Nauru and the many thousands of children before them (the ‘legacy caseload’) “will not be settled in Australia and are encouraged to engage in third country migration options”, leaving them in limbo for an undetermined period of time;
 - (f) There is limited information on access to child protection, education and health services, including mental health, for all of these children;
 - (g) Migration law and policies still allow disability to be the basis for rejecting an immigration request;
 - (h) Inadequate mechanisms for monitoring the wellbeing of children involved in asylum, refugee and migration processes exist.

45. With reference to its General Comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, and to joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families / No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration, and recalling its previous recommendations (CRC/C/AUS/CO/4, para. 81), the Committee urges the State party to immediately:

- (a) Amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to create an independent guardian for children;**
- (b) Amend the *Migration Act* (Cth) to prohibit the detention of asylum seekers, refugee and migrant children;**
- (c) Amend the *Migration and Maritime Powers Act* to ensure respect for the State party's non-refoulement obligations, particularly in the course of maritime interceptions and returns;**
- (d) Enact legislation prohibiting the detention of children and their families in regional processing countries;**
- (e) Ensure that the best interests of the child are a primary consideration in all decisions and agreements in relation to the reallocation of asylum-seeking, refugee or migrant children within Australia or to other countries;**
- (f) Ensure that children who were detained in regional processing countries have access to adequate child protection, education and health services, including mental health;**
- (g) Review migration law and policies to withdraw disability as a criterion for immigration decisions;**
- (h) Implement durable solutions including financial and other support for all refugee and migrant children to ensure their early rehabilitation, reintegration and sustainable resettlement;**
- (i) Introduce adequate mechanisms for monitoring the wellbeing of children involved in asylum, refugee and migration processes.**

Indigenous children

46. The Committee urges the State party to ensure that:

- (a) Aboriginal and Torres Strait Islander children and their communities are meaningfully involved in the planning, implementation and evaluation of policies concerning them;**

- (b) The Joint Council on Closing the Gap established in March 2019 has a clear mandate and the necessary human, technical and financial resources to function effectively.**

Administration of child justice

47. The Committee again regrets the lack of implementation of its previous recommendations and remains seriously concerned about:
 - (a) The very low age of criminal responsibility;
 - (b) The enduring over representation of Aboriginal and Torres Strait Islander children, and their parents/carers in the justice system;
 - (c) Reports that children in detention are ‘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’;
 - (d) The high number of children in detention, both on remand and after sentencing;
 - (e) Children in detention not being separated from adults;
 - (f) The continuing existence of mandatory minimum sentences applicable to children in the Northern Territory and Western Australia;
 - (g) The continuing over representation of children with disabilities in the justice system;
 - (h) Children’s lack of awareness about their rights and how to report abuses.
- 48. With reference to its general comment No. 24 (2019) on children’s rights in the child justice system, the Committee urges the State party to bring its child justice system fully into line with the Convention and to:**
 - (a) Raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 at which doli incapax applies;**
 - (b) Immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of indigenous incarceration;**
 - (c) Explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion/discipline of children under supervision, promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators;**

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- (d) **Actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences, such as probation or community service;**
 - (e) **In cases where detention is unavoidable, ensure that the children are detained in separate facilities and for pre-trial detention, that detention is regularly and judicially reviewed;**
 - (f) **Review its legislation to repeal mandatory minimum sentences to children in the Northern Territory and Western Australia;**
 - (g) **Ensure that children with disabilities are not detained indefinitely without conviction and their detention is regularly and judicially reviewed;**
 - (h) **Provide children in conflict with the law with information about their rights and how to report abuses.**

Child victims and witnesses of crime

49. The Committee urges the State party to:

- (a) **Apply a child-friendly and multisectoral approach to avoid retraumatization of child victims, and ensure that cases are promptly recorded, investigated and prosecuted, and that perpetrators are duly sanctioned;**
- (b) **Put in place child-sensitive mechanisms to facilitate and promote reporting of cases and ensure that complaint mechanisms are available and child-friendly, both online and off-line, paying particular attention to alternative care places, detention facilities, and locations for asylum-seeking, refugee and migrant children;**
- (c) **Ensure that the national mechanism for the prevention of torture has access to places where children are placed;**
- (d) **Ensure the development of programmes and policies for the full recovery and social reintegration of child victims;**
- (e) **Guarantee child victims' access to adequate procedures to seek compensation for damages;**
- (f) **Ensure that all child victims and witnesses of crime have access to adequate support, independently of assisting police investigations, prosecutions or trials.**

Follow up to the Committee's previous concluding observations on the Optional Protocol on the sale of children, child prostitution and child pornography:

50. The Committee, welcomes developments to fight slavery and trafficking and the establishment of the Australian Centre to Counter Child Exploitation in March 2018. With reference to its 2019 Guidelines on the implementation of the Optional Protocol, the Committee urges the State party to:

- (a) Define and criminalize child prostitution and child pornography (child sexual exploitation) for all children in accordance with articles 1, 2 and 3 of the Protocol, and harmonize legislation across its states and territories;**
- (b) Ensure that crimes under the Protocol are investigated, and perpetrators prosecuted and sanctioned, in addition to trafficking cases;**
- (c) Ensure that all children subject to any form of sexual exploitation, sale or trafficking, are treated as victims and not subject to criminal sanctions;**
- (d) Amend its legislation to exercise extraterritorial jurisdiction over sexual exploitation of all children under 18 years, including sexual exploitation in travel and tourism where child victims are between 16 and 18 years of age;**
- (e) Further strengthen its measures to combat and prevent sexual exploitation of children online, including through the criminalization of online grooming of children;**
- (f) Strengthen training programmes on the identification and referral of child victims of sale, sexual exploitation and trafficking.**

Follow up to the Committee's previous concluding observations on the Optional Protocol on children in armed conflict:

51. The Committee urges the State party to:

- (a) Develop mechanisms for the early identification of asylum-seeking, refugee and migrant children who may have been recruited or used in hostilities abroad; conduct training for personnel responsible for the identification and referral of those children to protection services; and provide child victims with appropriate assistance for their full physical and psychological recovery and social reintegration;**
- (b) Make the National Firearms Agreement binding on all states and territories, allowing firearms licenses to only be issued to people over 18 years;**

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- (c) **Strengthen measures prohibiting the sale of arms to countries known to be, or potentially recruiting or using children in armed conflict and/or hostilities.**

I. Ratification of the Optional Protocol on a communications procedure

- 52. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.**

J. Ratification of international human rights instruments

- 53. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, consider ratifying the following core human rights instruments to which it is not yet a party:**
 - (a) *Convention for the Protection of All Persons from Enforced Disappearance;***
 - (b) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.***

K. Cooperation with regional bodies

- 54. The Committee recommends that the State party cooperate, among others, with regional organizations such as the Pacific Community and the Pacific Islands Forum.**

V. Implementation and reporting

A. Follow-up and dissemination

- 55. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the combined 5th and 6th periodic reports, the written replies to the list of issues and the present concluding observations be made widely available in the languages of the country.**

B. National Mechanism for reporting and follow-up

- 56. The Committee welcomes the creation of the Standing National Human Rights Mechanism by the State party and emphasizes that it should be adequately and continuously supported by dedicated staff to engage with international and regional human rights mechanisms and implement treaty obligations and the recommendations and decisions emanating from the mechanisms.**

C. Next report

- 57. The Committee invites the State party to submit its 7th periodic report by 15 January 2024 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.**
- 58. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.**

Further Information

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