

NHRI submission on the List of Issues Prior to Reporting under the Convention on the Rights of the Child

Submission to the UN Committee on the Rights
of the Child

28 July 2026

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**Australian
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About the Australian Human Rights Commission

Our vision is an Australian society where human rights are respected, promoted and protected and where every person is equal in dignity and rights.

The Commission's key functions include:

- Access to justice: We help people to resolve complaints of discrimination and human rights breaches through our investigation and conciliation services.
- Fairer laws, policies and practices: We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
- Education and understanding: We promote understanding, acceptance and public discussion of human rights. We deliver workplace and community human rights education and training.
- Compliance: We are the regulator for positive duty laws requiring employers and others to address sexual harassment, sex discrimination and other unlawful conduct.

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Overview

1. The Australian Human Rights Commission (the Commission) provides this submission to the UN Committee on the Rights of the Child (UN Committee) for consideration when developing its List of Issues regarding Australia's compliance with the *Convention on the Rights of the Child* (CRC). It includes issues relevant to the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.

Recommendations

2. The Australian Government should provide information on:
 1. how the CRC will be fully incorporated into Australian law
 2. how it has utilised Child Rights Impact Assessments (CRIAs) when developing and assessing policies and laws that impact children
 3. how it is addressing gaps in data collection on children
 4. how it has reviewed the necessity of the reservation to article 37(c)
 5. how it has considered ratification of the *Optional Protocol on a Communications Procedure*
 6. how it is implementing the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* obligations in relation to children
 7. how CRC Concluding Observations are considered and made public
 8. how the views of children inform law and policy decision-making
 9. how it is revising religious exemptions in the *Sex Discrimination Act 1984* (Cth) to ensure LGBTIQ+ people are protected from discrimination, including timeframes
 10. how it is seeking to achieve a nationally consistent approach to:
 - banning conversion and suppression practices
 - ending non-medically necessary surgeries on infants with innate variations of sex characteristics
 - ensuring children have equitable access to safe and evidence-based healthcare
 11. how it is implementing the National Anti-Racism Framework recommendations relating to children
 12. how it is using the Australian Child Maltreatment Study data to inform and prioritise prevention and early intervention initiatives through programs, policies and law reform
 13. the implementation of the Anti-Bullying Rapid Review's recommendations across all jurisdictions, addressing the distinct needs of children most at

risk such as those with disability, LGBTIQ+ children and First Peoples children

14. how it is evaluating the implementation of Respectful Relationships Education in schools, including how it is incorporating children's views into that process
15. progress on achieving a nationally consistent system of working with children checks, reportable conduct schemes and child safe standards, including the timetable for implementation
16. how it is reviewing the effectiveness of the social media ban in protecting children's rights, including their right to participation
17. how it is prioritising prevention and early intervention initiatives to prevent children entering out-of-home care, including specific measures to reduce over-representation of Aboriginal and Torres Strait Islander children, children with disability and children living in regional and remote areas
18. how it provides all children an opportunity to express their views and have these views taken into account in family law proceedings
19. the government response to the recommendations made by the Australian Law Reform Commission Review into Surrogacy
20. when a protocol specific to children in the context of modern slavery will be completed and implemented
21. how NDIS reforms, including 'Thriving Kids', uphold children's rights and improve children's access to quality supports
22. how it is implementing a consistent approach to reducing and eliminating the use of restrictive practices on children with disability across all service systems
23. how it is implementing the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that relate to segregation in education
24. national data on prevalence, severity and trends in mental health, suicide and self-harm among children and adolescents, and ask how this data is used to inform policy and funding decisions
25. how it is implementing the National Children's Mental Health and Wellbeing Strategy
26. what efforts it is taking to limit global warming to 1.5 degrees Celsius and mitigate the impacts on children
27. how it is ensuring that all laws that regulate protests are consistent with rights to peaceful assembly and freedom of expression
28. how it is taking action to reduce child poverty, including implementing the recommendations of the 2024 Senate Committee Inquiry into poverty

29. how its National Housing and Homelessness Plan is addressing the needs of children requiring safe and affordable housing
30. how it is building a universal childcare system that is affordable and accessible for every family
31. progress in implementing reforms to early childhood education and care, including monitoring and enforcing child safety standards
32. how it is addressing low school attendance rates and disengagement from schooling by specific groups of children, including Aboriginal and Torres Strait Islander children, children with disability, children in out-of-home care, children in remote areas and children in contact with the child justice system
33. the numbers and rates of children suspended or expelled from schooling, including by school grade, jurisdiction, and specific groups of children as mentioned in Recommendation 32, and any trends in this data over time
34. measures it is taking to:
 - prioritise early intervention and prevention programs to prevent children entering the child justice system
 - respond to the parliamentary inquiry into Australia's youth justice and incarceration system which reports in 2026
 - use detention only as a last resort across all jurisdictions
 - ensure that children are not held in adult facilities such as watch houses
 - legislate national standards for child justice
 - implement the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, in particular its recommendations to prohibit solitary confinement of children in detention across all jurisdictions
 - raise the minimum age of criminal responsibility across all jurisdictions.
35. how all governments are accountable for demonstrating progress on Targets 11 and 12 in the National Agreement on Closing the Gap
36. the steps taken to prohibit the immigration detention of children in all circumstances
37. how it determines refugee status and assesses *refoulement* risks for children and their families during interceptions and boat turnbacks
38. how the guardianship arrangements for unaccompanied minors are operating to ensure that the best interests of the child are considered when making decisions about visas, removals and transfers to third countries
39. the number of:

- parents and primary caregivers in immigration detention
 - children with parents and primary caregivers in immigration detention
 - children who visit Australian immigration detention facilities each year
40. its support and monitoring arrangements for children applying for, or holding, orphan relative visas.

1 General measures of implementation

Legal protection for children's rights

3. Legal protections for children's rights in Australia are inadequate and inconsistent between jurisdictions. There is currently no federal legislation that directly and adequately incorporates the full spectrum of child rights, and that can effectively hold the Australian Government to account for protecting child rights across the nation.
4. Australia lacks a federal Human Rights Act or Children's Rights Act, and international law is not binding in domestic courts. Only three states or territories (Australian Capital Territory, Victoria and Queensland) have passed human rights legislation.¹
5. Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), all bills introduced to Parliament must be accompanied by a Statement of Compatibility with human rights, including the CRC. While this has provided some consideration of human rights, there are ongoing concerns about the effectiveness of this process.²
6. The Commission and the Australian Parliament's Human Rights Committee have both recommended introducing a Human Rights Act which requires government to comply with human rights standards.³
7. The Commission's proposed model for a Human Rights Act includes all civil, political, economic, social and cultural rights; a 'participation duty' requiring children, First Peoples and persons with disability be heard on matters affecting them; and an interpretative clause requiring all human rights be interpreted consistently with the CRC. It would provide a complaints pathway to the Commission when rights are breached and, where this does not resolve complaints, access to the courts, with capacity for representative action.
8. The Commission has also recommended a National Children's Rights Act, that could complement a Human Rights Act and provide more detailed and specific protections for children, such as minimum standards for treatment of children in the child justice system.⁴
9. The Commission has developed a Child's Rights Impact Assessment (CRIA) tool for use by policy-makers and has encouraged their use within government departments.⁵ Some states and territories have developed CRIAs.⁶ An Australian parliamentary inquiry on climate change recommended the Australian Government consider using CRIAs to assist in policy development and decision making.⁷ However, the Australian

Government has yet to commit to the use of CRIAs and their uptake nationwide is unclear.

10. **Recommendation 1: Request information on how the CRC will be fully incorporated into Australian law.**
11. **Recommendation 2: Request information on how it has utilised CRIAs when developing and assessing policies and laws that impact children.**

National coordination on children's rights and wellbeing

12. There is no national level coordination of the many policy initiatives that exist across all governments relating to children. Policy affecting children is uncoordinated, widely spread across portfolios, and there is a lack of monitoring and accountability for reform.⁸
13. While the position of Minister for Early Childhood Education and Youth was created in 2022, there is no Senior Minister in Cabinet with the mandate to advance the broad spectrum of children's issues in a meaningful, coordinated way.
14. The Commission has recommended a Ministerial Council for Child Wellbeing, chaired by a Minister for Children, that could monitor and respond to emerging policy issues affecting the safety and wellbeing of children and their families. This would include developing an overarching, cross-portfolio National Plan for Child Wellbeing, including child wellbeing budget reporting.⁹
15. Significant data gaps continue to impede Australia's capacity to address children's rights and wellbeing.¹⁰ For example, the Report on Government Services data on child justice indicators shows that the Productivity Commission is unable to report against some key indicators due to the unavailability of data from relevant jurisdictions.¹¹
16. In 2023, a scoping study for establishing a Child Wellbeing Data Asset Development Framework and Roadmap was completed.¹² When completed, the Data Asset will link some key data sets, including on child justice.¹³
17. **Recommendation 3: Request information on how it is addressing gaps in data collection on children.**

Reservation to the CRC

18. The Commission's report on child justice reform highlighted instances of children being detained in adult facilities where they have not been kept safe from harm.¹⁴ This has included prisons and police watchhouses designed for adults. Despite ratifying the CRC in 1990, Australia has

maintained a reservation to article 37(c) with respect to separating children from adults in detention. The Australian Government has stated 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.¹⁵

19. The UN Committee has observed that the Australian Government's concerns are accounted for by the article itself, which states that incarceration with adults is prohibited unless it is considered in the child's best interests not to do so, and also that a child shall have the right to maintain contact with their family.¹⁶
20. The Commission has noted that Australia does not routinely review reservations to treaties, nor consult with the community on the ongoing need for such reservations.¹⁷
21. **Recommendation 4: Request information on how it has reviewed the necessity of the reservation to article 37(c).**

Optional Protocol on a Communication Procedure

22. Australia has not ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which allows children to bring a complaint of breaches of the CRC directly to the UN Committee.¹⁸
23. Ratification of the Protocol would provide new protections for children, ensuring their rights are given a similar level of accountability as for adults.¹⁹
24. **Recommendation 5: Request information on how it has considered ratification of the *Optional Protocol on a Communications Procedure*.**

National Preventive Mechanism under OPCAT

25. Consistent standards for monitoring the treatment of children deprived of their liberty are central to ensuring children's rights are being protected. This is especially important for child justice facilities, given the serious concerns raised in numerous reports and inquiries over many years.²⁰ States and territories have developed their own standards to guide the inspection and monitoring of child justice centres. These are not consistent between jurisdictions and there are no legally binding national standards.²¹
26. The development of an integrated network of National Preventive Mechanisms (NPM), as required by the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), presents an opportunity to coordinate these efforts, and develop nationally consistent standards for child justice facilities.

27. In 2022, the Commission published a *Road Map to OPCAT Compliance*, outlining the immediate steps Australian governments need to take to fully implement OPCAT.²² On 20 January 2023, Australia missed its extended deadline to fully implement its obligations under OPCAT.²³
28. The Australian Government has adopted a 'progressive realisation' approach to implementing OPCAT, whereby NPMs will prioritise monitoring activities in 'primary' places of detention, rather than all places where people may be deprived of their liberty. While many of the places that the government defines as 'primary places of detention' hold children (such as juvenile detention facilities, police lock-ups and watchhouses, and immigration detention), there has been less focus on monitoring 'secondary' places of detention also relevant to children (such as residential institutions and disability-specific settings).²⁴
29. Oversight mechanisms should pay particular attention to the needs of children in all forms of detention. 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.²⁵
30. **Recommendation 6: Request information on how it is implementing the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* obligations in relation to children.**

Responding to recommendations made by the UN Committee

31. The Australian Government did not formally respond to the Concluding Observations issued by the UN Committee on the Rights of the Child in 2019.
32. **Recommendation 7: Request information on how CRC Concluding Observations are considered and made public.**

2 Civil rights and freedoms

Child participation

33. Australia has made some progress towards including children's voices in decision-making processes.
34. Targeted bodies like youth advisory groups and youth councils provide key pathways for children's voices. However, it is often unclear how the views of children are used in the development of policies and laws that affect them. These mechanisms may also exclude certain children including young children, First Peoples children, LGBTIQA+ children, children with disability, and those in regional or remote areas.
35. The Australian Human Rights Commission, on behalf of the Australian Government, consulted with children across 5 key national strategies (2022 – 2025).²⁶ This work aimed to amplify the voices of children who may usually be excluded from such conversations.²⁷
36. Further action is required to demonstrate how information provided by children is used to inform the development of effective policy that takes into consideration their rights and needs.
37. **Recommendation 8: Request information on how the views of children inform law and policy decision-making.**

Discrimination and vilification of LGBTIQA+ children

38. In Australia, LGBTIQA+ children experience higher rates of physical and sexual assault, harassment, bullying, and hate crime.²⁸ LGBTIQA+ children experience discrimination and exclusion in many areas of life including education, employment and leisure activities²⁹ and face barriers to accessing affirming and safe healthcare.³⁰ This discrimination, and laws which enable it, result in LGBTIQA+ children experiencing high rates of mental distress and suicidality.³¹
39. Legislation prohibiting discrimination and vilification based on sexual orientation, gender identity, gender expression and sex characteristics remains inconsistent nationally and needs to be strengthened as a matter of urgency. Not all states and territories have legislation banning conversion practices – a harmful practice often targeting LGBTIQA+ children.³² Among those that do, the effectiveness varies depending on scope, enforcement and protections for survivors.³³ The federal *Sex Discrimination Act* continues to allow religious bodies, including schools, to discriminate against LGBTIQA+ people despite Australian Government

reform commitments.³⁴ Children with innate variations in sex characteristics lack protection from unnecessary medical intervention in most jurisdictions.³⁵

40. In 2025, Queensland paused access to medical treatments for trans and gender diverse children with gender dysphoria until at least 2031.³⁶ This has the potential to harm the physical and mental wellbeing of trans and gender diverse children in Queensland and undermines their right to healthcare.³⁷
41. In February 2025, the National Health and Medical Research Council commenced a review to develop new national, evidence-based guidelines about the care of trans and gender diverse children with gender dysphoria. Interim advice about puberty blockers is expected mid-2026 and final Guidelines in 2028.³⁸
42. **Recommendation 9: Request information on how it is revising religious exemptions in the *Sex Discrimination Act 1984* (Cth) to ensure LGBTIQ+ people are protected from discrimination, including timeframes.**
43. **Recommendation 10: The Australian Government report on how it is seeking to achieve a nationally consistent approach to:**
 - **banning conversion and suppression practices**
 - **ending non-medically necessary surgeries on infants with innate variations of sex characteristics**
 - **ensuring children have equitable access to safe and evidence-based healthcare.**

Racial discrimination

44. Racial discrimination is a common and harmful experience for many children in Australia. It occurs both interpersonally and systemically. Racial discrimination negatively impacts children's health, wellbeing, education and development, with long term consequences across the life course.³⁹ Aboriginal and Torres Strait Islander children and children from culturally and racially marginalised backgrounds consistently report high levels of racial discrimination⁴⁰, reflecting entrenched inequalities in Australian society.
45. A 2021 research snapshot from the Longitudinal Study of Australian Children shows that racial discrimination is a common experience among teens aged 12–17. Aboriginal and Torres Strait Islander teens (34%), those who spoke a language other than English at home (31%), and those with parents born overseas (25%) reported the highest rates.⁴¹

46. Since 7 October 2023, there has been an increase of racism and attacks toward Arab, Jewish, Muslim and Palestinian communities in Australia.⁴² This creates hostile and unsafe environments for children from these communities.
47. In April 2025, an urgent complaint was made to the United Nations Committee on the Elimination of Racial Discrimination about Australia's discriminatory child justice systems and how they violate the rights of Aboriginal and Torres Strait Islander children.⁴³ In May 2026, the Committee reiterated these concerns.⁴⁴
48. Addressing racial discrimination requires confronting racism in all parts of Australian society. In 2024, the Commission released the National Anti-Racism Framework, providing a roadmap for governments and civil society to take action to eliminate all forms of racism in Australia.⁴⁵
49. It makes some recommendations specifically relating to children.⁴⁶ In particular, it identifies places of learning (early childhood to tertiary) as key areas for preventative education about racism.⁴⁷
50. **Recommendation 11: Request information on how it is implementing the National Anti-Racism Framework recommendations relating to children.**

3 Violence against children

Child maltreatment

51. In 2023, the Australian Child Maltreatment Study (ACMS), the first Australian prevalence study, revealed high rates of maltreatment in childhood including physical, sexual and emotional abuse, neglect and exposure to domestic violence. The ACMS reported that 40.2% of young people aged 16-24 years experienced one or more types of child maltreatment. Children experienced multi-type maltreatment more often than a single type.⁴⁸
52. Child maltreatment has broad and long-lasting impacts on children's development, health and wellbeing. The ACMS found almost half (48%) of those who experienced maltreatment in childhood meet the criteria for a mental health disorder, compared with 21.6% of those who did not experience child maltreatment. Girls and LGBTIQ+ children experience child maltreatment at higher rates.⁴⁹
53. Nationally, in 2023-2024, 42,100 children in the child protection system were subjects of substantiated maltreatment⁵⁰, with higher rates of maltreatment substantiations reported among Aboriginal and Torres Strait Islander children,⁵¹ children living in very remote areas, and children living in the lowest socioeconomic areas.⁵²
54. The ACMS also shows that corporal punishment is common in Australia, with over half (53.7%) of parents reporting using physical punishment.⁵³ Corporal punishment remains lawful for parents in all Australian states and territories to use 'reasonable' chastisement to discipline their children.⁵⁴
55. The ACMS also identified high prevalence of exposure to domestic violence (39.6%). Young people aged 16-24 years reported even higher rates (43.8%).⁵⁵ In families where children are exposed to domestic violence there is a much higher chance of the child experiencing other forms of maltreatment.⁵⁶
56. The Commission welcomes the National Plan to End Violence against Women and Children 2022–2032 which acknowledges children as victim-survivors.⁵⁷ Its success will depend on adequate funding and implementation by Australian governments.
57. **Recommendation 12: Request information on how it is using the Australian Child Maltreatment Study data to inform and prioritise prevention and early intervention initiatives through programs, policies and law reform.**

Bullying

58. While the exact prevalence of bullying in Australia is unknown, research suggests it is a widespread and growing problem.⁵⁸ Rates of cyberbullying are increasing, with 53% of young Australians reporting experiencing it, and reports to the eSafety Commissioner increasing by 455% between 2019 and 2024.⁵⁹
59. In consultations with the former National Children's Commissioner, children have raised bullying as a significant issue.⁶⁰
60. The Australian Government's 2025 Anti-Bullying Rapid Review report made 8 recommendations that aim to ensure that every school is a safe, inclusive and respectful learning environment where bullying and other harmful behaviours are not accepted.⁶¹ It includes a National Standard on addressing bullying in Australian Schools. The Implementation Plan for the Anti-Bullying Rapid Review was announced in February 2026, including the *National Framework for Addressing Bullying in Australian Schools*.⁶²
61. **Recommendation 13: Request information on the implementation of the Anti-Bullying Rapid Review's recommendations across all jurisdictions, addressing the distinct needs of children most at risk such as those with disability, LGBTIQ+ children and First Peoples children.**

Sexual harassment

62. Children in Australia experience sexual harassment by peers and adults including in schools, online and in workplaces.⁶³
63. A 2024 report from the Australian Institute of Family Studies found that over half (54%) of young people aged around 16 to 19 experienced sexual harassment in the last 12 months.⁶⁴ Girls (65%) were more likely to have experienced sexual harassment than boys (43%). Children often start paid work at 15 years old without any education on workplace sexual harassment.
64. The Australian Government has a National Respectful Relationships Education Framework which aims to support schools to plan and deliver respectful relationships education.⁶⁵ The implementation of Respectful Relationships Education varies across jurisdictions and schools.⁶⁶
65. The Commission is conducting a survey of 14–18-year-olds to improve education on consent and sex education in schools.⁶⁷
66. **Recommendation 14: Request information on how it is evaluating the implementation of Respectful Relationships Education in schools, including how it is incorporating children's views into that process.**

Sexual abuse in institutional contexts

67. Since the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) in 2017, Australian governments have made some progress toward implementing its recommendations on child safety, including development of the *National Strategy to Prevent and Respond to Child Sexual Abuse*, and endorsement in 2019 of the National Principles for Child Safe Organisations developed by the Australian Human Rights Commission.⁶⁸
68. However, the pace for implementing some of the Royal Commission's key recommendations has been slow, and some remain inconsistently applied across the jurisdictions.
69. While National Standards for Working With Children Checks (WWCCs) were endorsed by all governments in 2019,⁶⁹ Australia still lacks a nationally consistent WWCC system, a key recommendation of the Royal Commission. This has created loopholes that offenders can exploit and move between the states and territories.
70. Reportable conduct schemes do not yet exist in South Australia and the Northern Territory.⁷⁰ Similarly, not all states or territories have introduced child safe standards, the regulatory frameworks needed for implementing the National Principles.
71. Following reports of harms to infants and young children in childcare in recent months, Australian governments have made commitments to ensure national coordination and consistency in WWCCs, including the development of a national early childhood worker register.⁷¹ However, it is unclear when complete national consistency will be achieved.
72. **Recommendation 15: Request information on progress in achieving a nationally consistent system of working with children checks, reportable conduct schemes and child safe standards, including the timetable for implementation.**

Online safety

73. Digital harms prevalent for children in Australia include exposure to harmful content and online abuse.⁷² The Australian Government amended the *Online Safety Act 2021* (Cth) to ban under-16s from holding accounts on social media platforms from 10 December 2025.⁷³
74. The Commission recognises the need to protect children from digital harms. However, the Commission has expressed concerns about measures that may disproportionately impact access to information and privacy.

75. Social media can be important for children who face barriers to inclusion, safety and wellbeing - including those from culturally and racially marginalised backgrounds, children with disability and LGBTIQ+ young people.⁷⁴
76. The Commission is also concerned about age assurance measures that require people to share data, including government-issued ID, facial recognition and age inference, posing risks to privacy, inclusion and human rights.⁷⁵
77. The *Online Safety Act 2021* requires an independent review of the social media ban within 2 years of the Act taking effect, which will assess the effectiveness of the measures and consider whether changes to scope, minimum age (or if additional powers) are necessary.⁷⁶
78. Any review should be informed by robust, comparative data from different points in time. This must include broad consultation with children and young people given the impact of this policy on all children in Australia.
79. The Australian Government is developing a Children's Online Privacy Code which aims to improve privacy protections for children in the digital world.⁷⁷
80. **Recommendation 16: Request information on how it is reviewing the effectiveness of the social media ban in protecting children's rights, including their right to participation.**

4 Family environment and alternative care

Children deprived of their family environment

81. As at 30 June 2024 there were 44,900 children in out-of-home care (7.7 per 1,000).⁷⁸ Of these, about 88% (39,700) were in home-based care (foster care, relative/kinship care and other home-based care). About 3 in 5 (61% or 27,300) children were aged 5–14 years.⁷⁹
82. Children disproportionately represented in out-of-home care include Aboriginal and Torres Strait Islander children, children with disability and children from regional and remote areas.⁸⁰ The rate of Aboriginal and Torres Strait Islander children in out-of-home care has increased from 47.3 per 1,000 children in 2019 to 50.3 in 2024.⁸¹
83. Most of the expenditure in child protection is spent in out-of-home care, rather than in primary prevention and early intervention. Total recurrent expenditure on family support, intensive family support, protective intervention, and out-of-home care was approximately \$11.3 billion nationally in 2024-2025, with out-of-home care services accounting for \$7.2 billion (63.6%) of that total.⁸²
84. Prevention and early intervention must be prioritised in the same way as secondary and tertiary level responses to child protection concerns. While Australia must protect those already in its child protection systems, it also must urgently prioritise measures to prevent children from entering the child protection system.
85. **Recommendation 17: Request information on how it is prioritising prevention and early intervention initiatives to prevent children entering out-of-home care, including specific measures to reduce over-representation of Aboriginal and Torres Strait Islander children, children with disability and children living in regional and remote areas.**

Children and family law

86. The Commission has raised concerns for many years about the need for the family law system to respect children's rights, in particular children's right to participate.⁸³
87. In November 2023, the Australian Government amended the *Family Law Act 1975* (Cth) to ensure that the best interests of children are placed at the centre of the family law system.⁸⁴ This included requirements for Independent Children's Lawyers to meet with children to seek their views.

88. However, there is more to be done to ensure that children can be heard in family law decisions. Previous recommendations made by the Commission have not been fully implemented. These include:
- amending the Family Law Act to require a judge to provide children with an opportunity to express their views in matters that affect their rights or interests
 - alternative dispute resolution processes for parenting matters provide children with the opportunity to express their views
 - ensuring children are informed of their rights in family law proceedings that affect them
 - ensuring children are informed of decisions made in relation to parenting arrangements that affect them
 - ensuring judicial officers and family law professionals, including Independent Children's Lawyers, family consultants and mediators are provided with training and resources to assist them to engage and communicate effectively with children
 - creating a children's board or committee to provide ongoing advice by children to the Family Court on how to better realise children's rights.⁸⁵
89. **Recommendation 18: Request information on how it provides all children an opportunity to express their views and have these views taken into account in family law proceedings.**

Surrogacy

90. The Commission has previously raised concerns about international surrogacy arrangements, that are not well-regulated and can raise serious concerns about the trafficking and wellbeing of children, as well as concerns for the women who act as surrogate mothers.⁸⁶ We have recommended a set of guiding principles be followed in any regulatory regime.⁸⁷
91. The Australian Law Reform Commission is reviewing Australian surrogacy laws, policies, and practices and will recommend improvements in how surrogacy should be regulated in Australia.⁸⁸ A report is due on 11 September 2026.
92. **Recommendation 19: Request information on the government response to the recommendations made by the Australian Law Reform Commission Review into Surrogacy.**

Modern slavery

93. A small but growing number of children under 18 have been identified as victim-survivors of modern slavery in Australia.⁸⁹ Approximately 1 in 7 (14%) people supported by the Support for Trafficked People Program (STPP) are children under 18.⁹⁰ The most common reason for referral of children under 18 is forced marriage. However, this issue is likely to be underreported, and the true prevalence is unknown.⁹¹
94. Child victim-survivors have different needs to adults, requiring tailored support that upholds their rights. This is acknowledged in the National Action Plan to Combat Modern Slavery 2020-2025, where reference is made to implementing a child-focused protocol.⁹² The Australian Government has introduced practice guidelines which recognise the specific needs of children. However, there is still currently no child-specific government framework for addressing modern slavery.⁹³
95. **Recommendation 20: Request information on when a protocol specific to children in the context of modern slavery will be completed and implemented.**

5 Disability, health and basic welfare

Children with disability

Access to support

96. The National Disability Insurance Scheme (NDIS), introduced in 2013, is Australia's national system for providing funding and support to people with permanent and significant disabilities, empowering them to live independently and participate fully in society.
97. Children and their families have told the Commission about the difficulties they face navigating services and supports, including the NDIS, and in getting a formal diagnosis in a timely manner.⁹⁴
98. The Australian Government has announced substantial reforms to the NDIS to ensure its 'long-term sustainability'.⁹⁵ Proposed legislative amendments in May 2026 include stricter eligibility criteria and changes to funded supports.⁹⁶ The Parliamentary Joint Committee on Human Rights found that the measures are likely to restrict access to the NDIS and reduce the availability of supports.⁹⁷
99. In parallel, governments will implement a new program called 'Thriving Kids' to support children aged 8 and under with mild and moderate developmental delay and autism outside of the NDIS, commencing October 2026.⁹⁸
100. These reforms represent a structural shift in how children with disability access support. Without adequate safeguards and equivalent alternative services, there is a risk that children may experience reduced access to supports and fragmented service provision.⁹⁹
101. **Recommendation 21: Request information on how NDIS reforms, including 'Thriving Kids', uphold children's rights and improve children's access to quality supports.**

Restrictive practices

102. In 2019-2023, a Royal Commission examined experiences of violence, abuse, neglect and exploitation of people with disability (Disability Royal Commission). The Disability Royal Commission's final report set out an expansive reform agenda to protect the rights of people with disability.¹⁰⁰
103. The Disability Royal Commission found that people with disability in Australia are disproportionately subjected to 'restrictive practices' which deny their autonomy.¹⁰¹ The NDIS Quality and Safeguards Commission

reported a fivefold increase in reports of unauthorised uses of restrictive practices between the years of 2019/2020 to 2021/2022.¹⁰² 17% of families of students with disability report that their school used restrictive practices.¹⁰³

104. There is no nationally consistent and targeted approach to reducing and ultimately eliminating the use of restrictive practices across all settings.¹⁰⁴
105. **Recommendation 22: Request information on how it is implementing a consistent approach to reducing and eliminating the use of restrictive practices on children with disability across all service systems.**

Segregation in education

106. According to the Disability Royal Commission, early segregation in education makes it more likely for children with disability to transition into other segregated environments throughout their life, such as housing and employment.¹⁰⁵
107. The number of segregated schools across Australia is on the rise. For example, in Queensland segregated schools increased by 26% (106 schools) between 2010 and 2022, with the 'largest' segregated schooling investment in Queensland's history to build of 6 segregated schools.¹⁰⁶
108. One in 10 students with disability in Australia attend a separate school.¹⁰⁷ The Disability Royal Commission recommended several milestones to phase out segregated schools, with no new segregated facilities to be constructed from 2025.¹⁰⁸
109. **Recommendation 23: Request information on how it is implementing the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that relate to segregation in education.**

Mental health

110. The last comprehensive national study on the mental health of children and adolescents in Australia was conducted in 2013–2014. Although fieldwork for a new national survey commenced in November 2025, results are not expected until 2027,¹⁰⁹ resulting in a prolonged gap in nationally representative data to inform policy and service delivery.
111. Children and young people consistently report mental health as a critical issue in their lives. Many report challenges relating to anxiety, depression, stress and worry.¹¹⁰

112. Suicide remains the leading cause of death among young people aged 15–24 years¹¹¹ and thoughts and acts of self-injury are common amongst adolescents aged 14–17.¹¹²
113. Some children are at increased risk of mental ill-health including Aboriginal and Torres Strait Islander children, children who have been involved in child protection and out-of-home care, LGBTIQ+ children, children with disability, refugees and children who have recently migrated, and children who have been or are in detention.¹¹³
114. While professional services are available to support children and adolescents with mental health concerns, there are gaps in access, particularly for children under 12.¹¹⁴ Half of all adult mental health challenges emerge before the age of 14, yet more than 50% of children experiencing mental health challenges are not receiving professional help.¹¹⁵
115. Barriers to accessing services include costs, wait times, not enough services to meet demands, and lack of culturally safe services.¹¹⁶
116. The National Children’s Mental Health and Wellbeing Strategy was released in 2021 with a focus on children from birth through to 12 years of age, as well as the families and communities that nurture them.¹¹⁷
117. **Recommendation 24: Request national data on prevalence, severity and trends in mental health, suicide and self-harm among children and adolescents, and ask how this data is used to inform policy and funding decisions.**
118. **Recommendation 25: Request information on how it is implementing the National Children’s Mental Health and Wellbeing Strategy.**

Impacts of climate change

119. Australia has committed to reducing its greenhouse gas emissions in accordance with the Paris Agreement. Based on recent projections, Australia is unlikely to meet these obligations.¹¹⁸
120. Children will experience the most extreme impacts of climate change for a greater portion of their lives. Their state of physiological and psychological development also increases their risk of death, disease and trauma compared to adults.¹¹⁹
121. Two-thirds of young people in Australia identify climate change as harmful to their mental health, with 77% believing that stronger action from the Australian Government would improve mental wellbeing.¹²⁰ These impacts are compounded for children who live in rural and remote areas, and for Aboriginal and Torres Strait Islander children.¹²¹

122. Children are increasingly advocating for their right to be heard on climate and environmental issues, often through mass protest movements.¹²² At the same time, Australian governments have enacted laws that limit the right to peaceful assembly and freedom of expression with overly broad offences and disproportionately harsh penalties.¹²³ Environmental activists are particularly impacted by these measures.
123. Children in Australia are also using legal mechanisms to defend their right to a clean, healthy and sustainable environment.¹²⁴ However, Australia does not have a Human Rights Act that could protect this right.¹²⁵
124. In June 2024, a parliamentary committee recommended the Australian Government consider using the Commission's CRIA tool to ensure that children's rights and wellbeing are taken into consideration in decision-making relating to climate change and the environment.¹²⁶
125. **Recommendation 26: Request information on what efforts it is taking to limit global warming to 1.5 degrees Celsius and mitigate the impacts on children.**
126. **Recommendation 27: Request information on how it is ensuring that all laws that regulate protests are consistent with rights to peaceful assembly and freedom of expression.**

Poverty

127. Based on a 50% of median household income measure, it is estimated that 1 in 6 children (15.9%, or 757,000 children) in Australia live below the poverty line.¹²⁷
128. Many vulnerable households with children are experiencing rising costs of living in recent years.¹²⁸ In a national survey of young people in 2025 conducted by Mission Australia, more than half (64%) of young people identified cost of living as the top national issue.¹²⁹
129. A survey by Foodbank in 2025 found that 33% of Australian households (an estimated 3.5 million) experienced food insecurity in the past 12 months.¹³⁰ Among two-parent households with children, food insecurity rose from 35% in 2024 to 39% in 2025. Single-parent households remain under acute pressure, with 68% experiencing food insecurity in the past 12 months.¹³¹ The cost-of-living remains the primary contributor to food insecurity, cited by 79% of food insecure households. The impact of the housing market is also a growing consideration for families managing their budgets.
130. The Commission has repeatedly recommended that the Australian Government review and increase the level of income support payments for

unemployed people, young people and families with children so that they can maintain an adequate standard of living.¹³²

131. While the Australian Government increased several social security payments in 2023, the gaps between payments and the poverty line remain substantial.¹³³ The most recent national data indicates that the maximum Youth Allowance payments for a young person living away from the parental home is \$279 per week below the poverty line, and the payment for a sole parent family with two children (8-12 years) is \$163 below the poverty line.¹³⁴
132. A 2024 Senate Committee inquiry into the extent and nature of poverty in Australia heard that poverty has wide-ranging impacts across every aspect of a child's life.¹³⁵ It recommended that the Australian Government take action to reduce child poverty, including by having explicit definitions, targets and measures relating to child poverty in any broader national poverty reduction frameworks.¹³⁶
133. **Recommendation 28: Request information on how it is taking action to reduce child poverty, including implementing the recommendations of the 2024 Senate Committee Inquiry into poverty.**

Homelessness

134. Australia is facing a national housing crisis,¹³⁷ with increased homelessness,¹³⁸ inadequate public and affordable housing and rising cost of living. Those disproportionately affected by homelessness include people who have experienced domestic violence, First Nations people, young people, and children on care and protection orders.¹³⁹
135. In May 2026, the Australian Government released a National Housing and Homelessness Plan as part of a broader Housing Strategy.¹⁴⁰
136. Of the 122,494 people experiencing homelessness in 2021, 17,646 (14.4%) were aged under 12 years.¹⁴¹ While for most age groups there was a decrease in the rates of homelessness between 2016 and 2021, the rates of homelessness for children of all ages increased over this period.¹⁴²
137. Some children experience homelessness without an accompanying parent or guardian. In 2023–24, around 13,300 children seeking support from specialist homelessness services (SHS) were not accompanied by an adult parent or guardian when SHS support began.¹⁴³ About 1 in 5 (19%) unaccompanied children who were experiencing homelessness when they began an SHS support period were housed when their support ended; around 3 in 4 (77%) remained without secure stable housing.¹⁴⁴

138. The lack of safe and stable housing was a key issue raised with the former National Children's Commissioner by children in contact with the criminal justice system, including waiting lists of up to 10 years.¹⁴⁵
139. **Recommendation 29: Request information on how its National Housing and Homelessness Plan is addressing the needs of children requiring safe and affordable housing.**

6 Education, leisure and cultural activities

Early childhood education and care

Access to early childhood education

140. In Australia, quality early childhood education is not universally available or guaranteed as an entitlement under law.
141. While the Australian Government subsidises access to early childhood education and care, including childcare, preschool and outside of school care, affordability remains a significant barrier. A report by Australia's Productivity Commission found that certain children are more likely to miss out.¹⁴⁶ These include children with disability, those from a non-English speaking background, those from remote and very remote areas, and those from low socio-economic areas.¹⁴⁷ The percentage of Aboriginal and Torres Strait Islander children enrolled in preschool in the year before schooling has increased since 2016, on track to reach a target of 95% by 2025.¹⁴⁸ However, these increases have been much less in remote areas.¹⁴⁹ Attendance figures are also lower than enrolment figures.¹⁵⁰
142. The Australian Government is investing \$1 billion into universal, affordable early education through a Building Early Education Fund.¹⁵¹ It has also introduced 'guaranteed eligibility' covering 3 days a week of subsidised early education for children who need it.¹⁵²
143. **Recommendation 30: Request information on how it is building a universal childcare system that is affordable and accessible for every family.**

Safety in early childhood education and care services

144. In 2025 the quality of early childhood education was called into question, with allegations of physical and sexual abuse and inappropriate discipline used against children, as well as inconsistent regulation and a shortage of suitably qualified staff.¹⁵³ This exposed gaps in systems designed to protect children from maltreatment and a failure to put the safety and best interests of children first. It also highlighted an expansion of 'for-profit' services, whose ratings have been lower than 'not-for-profit' providers when assessed against Australia's national quality standards.¹⁵⁴
145. In response to this, the Australian Government announced a series of measures to address child safety in the sector, including a National Educator Register; a ban on personal devices; mandatory national child safety training; more unannounced spot checks of services; improved

transparency for parents; a national CCTV assessment in up to 300 services; funding for joint regulatory action; tougher penalties under the *Education and Care Services National Law Act 2010* (Cth); improved supervision rules; and regular assessment and rating visits.¹⁵⁵

146. Governments also agreed to a range of legislative reforms including making the safety, rights and best interests of children a paramount consideration under the *Education and Care Services National Law*, and national coordination and consistency in background screening checks.¹⁵⁶
147. **Recommendation 31: Request information on progress in implementing reforms to early childhood education and care, including monitoring and enforcing child safety standards.**

School attendance and engagement

148. Over the last 9 years, school student attendance rates across all year levels have fallen. In 2025, student attendance rates for Years 1 to 10 were 88.8% in all schools, down from 92.5% in 2016.¹⁵⁷
149. Attendance rates are lower for Aboriginal and Torres Strait Islander children and children in remote areas.¹⁵⁸
150. Children in contact with child justice systems, many of them facing multiple disadvantage, have told the Commission that they would like to go to school but feel disengaged and as if they do not belong.¹⁵⁹ Children at risk of child justice involvement said their reasons for disengaging include not understanding the schoolwork, not being able to relate to the content of the schoolwork, being 'picked on by teachers', 'bullied' by peers, not being able to 'sit in class for a long time' and not able to concentrate for extended periods of time. They suggested that mainstream schools provide more mental health support, especially culturally appropriate mental health support, and that teachers could take the time to understand the individual circumstances of children.¹⁶⁰
151. The Commission has recommended that Australian governments resource schools to be community hubs integrated with health services and providing flexible learning options.¹⁶¹
152. Another reason why children are not attending school is because they have been suspended or expelled. There is no single, nationally consistent dataset on student suspensions and expulsions in Australian government schools. Data is collected and published independently by state and territory education departments, and the terminology, data collection methods, and reporting standards vary considerably across jurisdictions.¹⁶²

153. Data from New South Wales (NSW) indicates that 41,125 (less than 6%) of students were suspended at least once in 2024. Aboriginal and Torres Strait Islander students, and students who receive supplementary, substantial or extensive adjustments due to disability are significantly overrepresented in suspensions.¹⁶³
154. **Recommendation 32: Request information on how it is addressing low school attendance rates and disengagement from schooling by specific groups of children, including Aboriginal and Torres Strait Islander children, children with disability, children in out-of-home care, children in remote areas and children in contact with the child justice system.**
155. **Recommendation 33: Request information on the numbers and rates of children suspended or expelled from schooling, including by school grade, jurisdiction, and specific groups of children as mentioned in Recommendation 32, and any trends in this data over time.**

7 Special protection measures

Children in contact with criminal justice system

Prevention and early intervention

156. Children who become involved in the child justice system in Australia often have experienced poverty, family, domestic and sexual violence, child abuse and neglect, out-of-home care, homelessness, drug and alcohol use, mental health issues and disability.¹⁶⁴ Aboriginal and Torres Strait Islander children are disproportionately overrepresented in every aspect of the child justice system. Nationally in 2024-25, the rate of Aboriginal and Torres Strait Islander young people aged 10–17 years in detention on an average day was 25.7 times the rate of non-Indigenous young people.¹⁶⁵ About 3 in 4 Aboriginal and Torres Strait Islander young people under youth justice supervision had an interaction with child protection services in the last 10 years.¹⁶⁶
157. Children with disability are significantly overrepresented in the criminal justice system,¹⁶⁷ particularly Aboriginal and Torres Strait Islander children.¹⁶⁸ The Disability Royal Commission found that detention settings lack access to therapeutic support, trauma-informed care, and timely screening and assessment.¹⁶⁹
158. Currently, 66% of expenditure in the child justice system is on detention-based supervision rather than on alternative or diversionary measures.¹⁷⁰ A holistic and coordinated focus on prevention and early intervention is required to address the underlying causes of offending by children.¹⁷¹
159. A parliamentary committee is conducting a renewed inquiry into Australia's youth justice and incarceration system in Australia, to report by 31 August 2026.¹⁷²

Detention as a last resort

160. Since 2024, Queensland and the Northern Territory passed legislation removing the principle that detention should only be used as a 'last resort' when sentencing children.¹⁷³ In March 2025, Victoria removed the principle that detention on remand is a last resort.¹⁷⁴
161. Mandatory minimum sentencing laws also undermine the principle of detention as a last resort. In Western Australia, minimum mandatory sentences for certain offences still apply to children.¹⁷⁵ Despite many calls for mandatory sentencing to be abolished in the Northern Territory, children are still subject to mandatory sentencing if their matter is dealt with under the *Sentencing Act 1995* (NT) rather than the *Youth Justice Act*

2005 (NT).¹⁷⁶ In 2025, Queensland passed legislation to sentence children as adults for certain offences.¹⁷⁷

162. In 2025, Victoria passed legislation allowing children aged 14 and above to be tried in adult courts and face adult sentences for serious violent crimes.¹⁷⁸
163. Many Australian states and territories have passed legislation which makes it more difficult for children to get bail.¹⁷⁹ This is likely to increase child incarceration and disproportionately impact Aboriginal and Torres Strait Islander children.
164. Children are being detained inappropriately in adult watch houses and police stations in Queensland, some for extended periods of time.¹⁸⁰
165. Only South Australia and NSW have laws which ban the use of spit hoods in child detention. In 2025, the Northern Territory passed legislation reinstating their use.¹⁸¹
166. Official inquiries continue to find that children have been impacted by mistreatment in detention, including being subjected to prolonged isolation amounting to solitary confinement.¹⁸² The power to isolate a child in a detention facility is subject to statutory limitations. However, these provisions vary by jurisdiction.¹⁸³ Only Victoria has passed legislation to prohibit solitary confinement, to come into effect by 30 September 2026.¹⁸⁴

National standards for youth justice

167. In Australia, there are no legally binding national standards for child justice systems.
168. The Australasian Youth Justice Administrators principles and standards are 'aspirational standards of practice'.¹⁸⁵ There is no mechanism for public accountability on how these non-binding Standards are being implemented.
169. Some states and territories have statutory inspectors and ombudsmen with oversight and monitoring functions specific to children in detention facilities. They have developed their own standards to guide the inspection and monitoring. However, these standards are not consistent between jurisdictions.¹⁸⁶

Minimum age of criminal responsibility

170. Most Australian states and territories have a minimum age of criminal responsibility of 10 years. The Northern Territory Government, after raising the age from 10 to 12 years in October 2023, lowered the age back to 10

years in 2024.¹⁸⁷ The ACT increased the age to 14 years, with exceptions for serious offences, in 2025.¹⁸⁸ Victoria raised the age to 12 years in 2024.¹⁸⁹

171. The Standing Council of Attorneys-General Minimum Age of Criminal Responsibility Working Group released a report in November 2023 on raising the minimum age of criminal responsibility across Australia. It demonstrated broad agreement across jurisdictions on the need for reform.¹⁹⁰

172. **Recommendation 34: Request information on measures that it is taking to:**

- **prioritise early intervention and prevention programs to prevent children entering the child justice system**
- **respond to the parliamentary inquiry into Australia's youth justice and incarceration system which reports in 2026**
- **use detention only as a last resort across all jurisdictions**
- **ensure that children are not held in adult facilities such as watch houses**
- **legislate national standards for child justice**
- **implement the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, in particular its recommendations to prohibit solitary confinement of children in detention across all jurisdictions**
- **raise the minimum age of criminal responsibility across all jurisdictions.**

Aboriginal and Torres Strait Islander children

173. The National Agreement on Closing the Gap (2020) is a landmark partnership between all Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. It sets out 17 socio-economic targets and 4 priority reforms to improve life outcomes for First Nations people. For children, its outcomes focus on early development, education, safety, and reducing overrepresentation in child protection and child justice systems.¹⁹¹

174. Target 11 to reduce the rate of Aboriginal and Torres Strait Islander young people in detention shows no trend from the baseline in 2018-19.¹⁹² Target 12 to reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care has worsened.¹⁹³

175. A new National Commission for Aboriginal and Torres Strait Islander Children and Young People has been established and legislated as an

independent Statutory Agency with a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People.¹⁹⁴

176. **Recommendation 35: Request information on how all governments are accountable for demonstrating progress on Targets 11 and 12 in the National Agreement on Closing the Gap.**

Asylum seeker, refugee and migrant children

Mandatory immigration detention of children

177. Australia enforces one of the harshest immigration detention regimes in the world, with a long-standing policy of mandatory detention for all non-citizens arriving or remaining in Australia without a valid visa, regardless of risk.¹⁹⁵ This includes children, refugees and asylum seekers. While the number of children in immigration detention has reduced significantly since 2013, there is no legislative prohibition on the detention of children.¹⁹⁶ The impacts of immigration detention on children are well-established.¹⁹⁷ As of 30 April 2026, there were 1,122 people in immigration detention facilities, including 13 children.¹⁹⁸ Twenty-three children were living in the community after being approved for a residence determination.¹⁹⁹

Boat turnbacks and takebacks

178. Since December 2013, under a policy of turnbacks and takebacks implemented as part of Operation Sovereign Borders, Australia has intercepted boats carrying people seeking asylum in Australia and returned them to their point of departure. In some cases, people have been returned directly to their countries of origin after undergoing an inadequate screening process at sea. These measures have been widely condemned²⁰⁰ and create a significant risk of *refoulement* as onboard screening processes do not provide a fair or thorough assessment of protection claims in the absence of normal safeguards and a lack of access to lawyers.²⁰¹
179. Between December 2013 and 31 December 2024, 59 boats carrying more than 1,281 people, including at least 141 children, have been intercepted and returned.²⁰² Asylum seekers intercepted at sea who are assessed as potentially engaging Australia's protection obligations are transferred to a third country for offshore processing of their claims. However, only a small number of people intercepted and assessed at sea are found to have potential protection claims. Historically, more than 80% of asylum seekers who arrived in Australia by boat over a 40-year period were found to be refugees.²⁰³

Guardianship of unaccompanied children

180. The Minister for Home Affairs is the legal guardian of unaccompanied children seeking asylum in Australia.²⁰⁴ 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.²⁰⁵
181. The Commission has repeatedly raised concerns that 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, 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.

Impact of parental detention and deportation on children

182. Children can be significantly impacted by the immigration detention and subsequent deportation from Australia of their parents or primary caregivers.²⁰⁶
183. Detention of a parent can result in prolonged separation from a primary caregiver, particularly if they are detained at a location that is difficult for children and families to visit on a regular basis. Deportation from Australia could result in even longer periods of separation as a parent may be permanently excluded from Australia, such as when their visa is cancelled on character grounds.²⁰⁷ The majority of people in immigration detention have had their visa refused or cancelled for failing the character test under section 501 of the *Migration Act 1958* (Cth).²⁰⁸
184. Information is not available on how many parents or primary carers of children are detained, how many children are impacted by the detention of a parent or caregiver, or how many children visit Australian immigration detention facilities each year.

Orphan visas

185. Australia has an Orphan Relative visa (subclass 117), which allows for orphaned children overseas to be brought to Australia under the sponsorship of a relative.²⁰⁹
186. The Commission is concerned about the lack of child safeguarding and oversight under this visa.²¹⁰
187. **Recommendation 36: Request information on the steps taken to prohibit the immigration detention of children in all circumstances.**
188. **Recommendation 37: Request information on how it determines refugee status and assesses *refoulement* risks for children and their families during interceptions and boat turnbacks.**

189. **Recommendation 38:** Request information on how the guardianship arrangements for unaccompanied minors are operating to ensure that the best interests of the child are considered when making decisions about visas, removals and transfers to third countries.
190. **Recommendation 39:** Request information on the number of:
- parents and primary caregivers in immigration detention
 - children with parents and primary caregivers in immigration detention
 - children who visit Australian immigration detention facilities each year.
191. **Recommendation 40:** Request information about its support and monitoring arrangements for children applying for, or holding, orphan relative visas.

Endnotes

- ¹ *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act 2006* (VIC); *Queensland Human Rights Act 2019* (QLD).
- ² Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia* (Position Paper, 2022) 300–303 <<https://humanrights.gov.au/sandbox/qa/resource-hub/by-resource-type/projects/rights-and-freedoms/policy-reports-rights-and-freedoms/human-rights-act-for-australia>>.
- ³ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Final Report, May 2024) Recommendation 2, para 9.42, xxi; Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia* (Position Paper, 2022) 11–35 <<https://humanrights.gov.au/sandbox/qa/resource-hub/by-resource-type/projects/rights-and-freedoms/policy-reports-rights-and-freedoms/human-rights-act-for-australia>>.
- ⁴ Australian Human Rights Commission, *'Help Way Earlier!': How Australia can Transform Child Justice to Improve Safety and Wellbeing* (Report, 2024) 31 <<https://humanrights.gov.au/resource-hub/by-resource-type/projects/children-and-youth-rights/help-way-earlier!-transforming-child-justice-for-safety-and-wellbeing>>.
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- ⁹ Australian Human Rights Commission, *'Help Way Earlier!': How Australia can Transform Child Justice to Improve Safety and Wellbeing* (Report, 2024) 29 <<https://humanrights.gov.au/resource-hub/by-resource-type/projects/children-and-youth-rights/help-way-earlier!-transforming-child-justice-for-safety-and-wellbeing>>.
- ¹⁰ Australian Human Rights Commission, *'Help Way Earlier!': How Australia can Transform Child Justice to Improve Safety and Wellbeing* (Report, 2024) 84 <<https://humanrights.gov.au/resource-hub/by-resource-type/projects/children-and-youth-rights/help-way-earlier!-transforming-child-justice-for-safety-and-wellbeing>>; Australian Human Rights Commission, *National Anti-Racism Framework Scoping Report* (Report, 2022) 92–96 <<https://humanrights.gov.au/resource-hub/by-resource-type/publications/national-anti-racism-framework-scoping-report>>.
- ¹¹ Productivity Commission, *Report on Government Services 2014: Community Services* (Report, January 2014) 16.1–16.55; Productivity Commission, *Report on Government Services 2024: Community Services* (Report, January 2024) 176–216. Productivity Commission, *Report on Government Services 2026: Community Services* (Report, 2026) 202.
- ¹² Australian Institute of Health and Welfare, *Child Wellbeing Data Asset* (Meeting Paper, National Strategy Advisory Group, 15 March 2024) 2; Australian Institute of Health and Welfare, *Child Wellbeing Data Asset: Development Framework and Roadmap* (Report, 2023) <https://www.aihw.gov.au/getmedia/717e86da-e9f1-434b-bc1b-811cb1288b44/aihw-scoping-report-for-child-wellbeing-data-asset_v2.pdf>.
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- ¹⁵ Australian Government, *Australia's Combined Second and Third Reports under the Convention on the Rights of the Child* (2003) 467.
- ¹⁶ 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 6.
- ¹⁷ Australian Human Rights Commission, *Free & Equal: Revitalising Australia's Commitment to Human Rights* (Final Report, 2023) 43 <<https://humanrights.gov.au/resource-hub/by-resource-type/publications/Revitalising-AustraliaE28099s-commitment-to-human-rights>>.

- ¹⁸ 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 52.
- ¹⁹ *International Covenant on Civil and Political Rights* (ICCPR); *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); *Convention on the Elimination of Racial Discrimination* (CERD); *Convention on the Rights of People with Disabilities* (CRPD).
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