



This information sheet talks about some of the human rights issues faced by children and young people in Australia. It also highlights how a federal Human Rights Act could help deal with these issues.

Which human rights are we talking about?

Human rights are about everyone, and they are very important for children and young people. But children and young people are also entitled to special additional protections, as described in the UN *Convention on the Rights of the Child*. One of the main human rights protections for children is that the best interests of the child must be a primary consideration in all decisions and actions concerning children.

The human rights and freedoms particularly relevant to children and young people in Australia include the right to:

- an adequate standard of living, including adequate food, clothing and housing
- the highest attainable standard of physical and mental health
- be safe and free from violence
- life
- education
- express their own views and have them taken into account
- be detained *only* as a last resort and for the shortest appropriate period of time and, if detained, to be treated humanely, with dignity and in a way that takes into account their age
- fair working conditions
- privacy.

Children with a physical, intellectual or mental disability have a special right to enjoy a full and decent life, and have access to appropriate health care and education facilities.

What are some of the human rights problems facing children and young people in Australia?

Poor services for children with disabilities in rural areas

‘Children with disabilities are particularly disadvantaged in isolated rural areas. Generally there is a lack of any services for these children, and when they are available there is a lack of continuity due to piecemeal funding. This makes it difficult to attract professional staff. To access services, parents have to travel very long distances over appalling roads with no public transport available. The cost in time and money is considerable. Parents also suffer the distress of knowing their child needs help and being unable to provide it.’

Human Rights and Equal Opportunity Commission, *Education Access: National Inquiry into Remote and Rural Education* (2000), p 9.

Some of the major human rights problems faced by children and young people in Australia include:

- inadequate access to education – particularly for children in rural and remote areas, Indigenous children, children with a disability, and children from diverse cultural, religious and linguistic backgrounds
- youth homelessness – 46% of people who are homeless in Australia are younger than 25
- over-representation of Indigenous children in the child protection system – an Indigenous child is six times more likely to be in the child protection system than a non-Indigenous child
- immigration detention – the long-term detention of child asylum seekers in immigration detention centres, often in remote desert locations, has severely affected the mental health of many child detainees. Despite recent reforms, some children are still detained in closed immigration detention facilities
- limited opportunities for participation – the views of children and young people are often inadequately represented in political and legal decisions which affect them
- child abuse and neglect – in the last ten years there has been an increase in reporting to child protection systems. In 2006, 1,530 children died as a result of abuse or neglect
- poor conditions in juvenile detention facilities – including overcrowding and some children being housed in adult facilities
- low youth wages – employers are allowed to discriminate against young people in terms of pay. This means that a young person with the same skill level, and doing exactly the same task as another employee who is an adult, can legally be paid a different amount for that work
- restrictions on using public space – in most states and territories, police have broad powers to ‘move-on’ or detain people in public spaces. These powers disproportionately impact on young people, particularly Indigenous and homeless youth.

Children unfairly evicted from shopping centres

‘We have heard numerous reports of young people being ejected or banned from shopping centres, often for spurious reasons which would not be applied to older people. Driving young people away from shopping centres interferes with rights such as freedom of association and of peaceful assembly and participation in leisure, recreation and cultural activities. It may also deny them access to services such as shops, banks, libraries and Centrelink offices. In our view, such practices are clearly discriminatory and should not be tolerated.’

Youth Justice Coalition, in a submission to the Human Rights and Equal Opportunity Commission, *Age Matters?: a report on age discrimination* (2000), p 9.

What are the limitations of existing human rights protections for children and young people?

There are limited human rights protections for children and young people at the moment.

Federal politicians and public servants don’t have to consider the rights of children and young people when developing and implementing new laws and policies on issues such as education, health and employment.

There is no specific Commissioner for children and young people at the national level to promote and protect the full range of children’s rights. Also, child protection laws are primarily state and territory laws and may not protect children from breaches of human rights by federal bodies.

There are some existing protections for children and young people. For example, all states and territories have Commissioners or Guardians for children and young people that promote the best interests of children and young people in those places. Also, there are a variety of laws that protect children from abuse, neglect and violence.

If you are a young person experiencing discrimination on the basis of age, race, sex or disability, you can make a complaint to the Australian Human Rights Commission, as well as state and territory anti-discrimination agencies.

You can also make a complaint to the Commission if you think there has been a breach of your rights under the *Convention on the Rights of the Child*. This includes important rights such as the right to be detained only as a last resort. If the Commission finds a breach of the *Convention*, it can recommend a remedy. However, these recommendations are not enforceable, and you cannot apply to have your complaint heard in court.

How could we improve human rights protections for children and young people?

The Australian Human Rights Commission supports a Human Rights Act for Australia.

A Human Rights Act that includes the rights to adequate housing, health, education and social security could make a difference to the lives of children and young people in Australia. It would improve the policies, procedures and services that many children and young people encounter daily. It could help prevent human rights breaches from happening, and could provide ways of resolving those breaches that were not prevented.

A Human Rights Act could make a difference in protecting and promoting the rights of children by requiring our government to carefully consider how decisions impact on human rights.

If Australia had a Human Rights Act, it could:

- make the **federal Parliament consider how laws impact on human rights** – for example, whether Australia’s immigration detention laws breach the rights of children
- make the **federal government respect human rights when developing policy** – for example, whether education policies ensure an equal right to education for *all* children in Australia no matter who they are or where they live
- make **public servants respect human rights when making decisions and delivering services** – for example, a Centrelink official may have to take into account the best interests of the child before penalising a single parent for failure to meet the conditions of his or her benefits
- provide a range of **enforceable remedies** if a government authority breaches human rights – for example, a juvenile detention facility may have to improve detention facilities to accommodate the special needs of children and young people.

Over the long term, a Human Rights Act would be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all people in Australia.

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UK Human Rights Act allows children to visit their mother

The United Kingdom has had a Human Rights Act since 1998. The British Institute of Human Rights tells the story of a woman with mental health problems who increasingly struggled following the death of her husband. She was placed in 24 hour supported care and her children were fostered. It was agreed that the children could visit their mother three times each week, but these visits were gradually reduced to one per week on the basis that the authority did not have enough staff to supervise the visits. Both the children and their mother were greatly distressed by this. The mother's advocate noticed that the local children's services department was not present during a care programme approach meeting and that the children's interests were not being properly represented. The mother's advocate invoked the children's right to respect for family life and convinced the mental health team to invite children's services to the next meeting. The three visits each week were restored as a result. From this point onwards, the manager of the children's care team personally saw to it that each visit occurred. The mother and her children have remained very close and recently secured funding to enjoy an overseas holiday together.

British Institute of Human Rights, *The Human Rights Act – Changing Lives* (2nd ed, 2008), p 13.

In addition to a Human Rights Act, there is a range of other ways in which the human rights of children and young people could be better promoted and protected in Australia. For example:

- enhanced protection of human rights in the Australian Constitution
- stronger legal protections of the rights contained in the *Convention on the Rights of the Child*
- a National Commissioner for children and young people
- a National Human Rights Action plan, including a focus on the rights of children and young people
- a national public education program about human rights, including the rights of children and young people.

These and other measures could make a positive difference to human rights protection for children and young people.

Where can I find more information about the human rights of children and young people?

Australian Human Rights Commission:
www.humanrights.gov.au/human_rights/children/index.html

National Children's and Youth Law Centre:
www.ncylc.org.au