

Child Rights Progress Reports

South Australia's progress on recommendations made by the UN Committee



Child Health



Child Justice



Child Protection



Disability



Education



Physical Punishment



Child Rights Progress Report on Child Health



South Australia's progress on recommendations made by the UN Committee

What the statistics say

- Just over **1 in 5 children and young people** in South Australia have an emotional, mental health or behavioural challenge.
- The proportion of South Australian children fully immunised at 12 months increased **from 90% in 2014 to 95% in 2019**.
- Among young people aged 14-17 years, **suicide and self-inflicted injuries** are causing the largest burden nationally, followed by **anxiety disorders** and **depressive disorders**.
- South Australia **spends lower per capita** on child and adolescent health services than any other Australian state.
- In 2017-18, **1 in 4 children and young people** aged 2-17yrs were assessed as being overweight or obese, **an increase of 2%** since 2014/15.
- Of these children and young people the highest proportion (**35%**) live in remote and very remote areas of SA, followed by those living in metropolitan Adelaide (**26%**) and inner regional areas (**17%**).
- According to NHMRC Guidelines **71% of children and young people** aged 2-17yrs are eating enough fruit daily – **an increase of 4%** since 2014-15. However, more than **1 in 4 SA children and young people** aged 2-17 yrs are not meeting fruit or vegetable consumption guidelines.
- While no trend data on the mental health of children and young people in South Australia is currently available, as at March 2019 the number of mental health beds allocated for children and young people in South Australia was **below the national average**.

Rights in relation to Child Health

Article 24 of the CRC states that all children are entitled to 'the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.' State parties should ensure that every child has the right to access health care services, with emphasis on the development of primary and preventative health care.

Background

Hailed as the Magna Carta for children, the United Nations Convention (UNCRC) on the Rights of the Child was the first international Convention to acknowledge that children have rights and that these rights should be protected.

Australia ratified the UNCRC in 1990. The South Australian government wrote the Convention into South Australia's state legislation in 2017. The Convention sets minimum standards and obligations for the protection of children and young people's rights, including their rights to have access to justice, education, health care and social services. All children have the right to have a say on all matters that affect them and for their views to be taken seriously. In making decisions about children their best interests should be the primary concern, as well as the right to be safe, to be free from discrimination.

Every five years, the Australian Government reports to the United Nations Committee on the Rights of the Child (the Committee) to explain how Australia is faring in relation to child's rights. This means that the State must provide feedback on how they have fulfilled their obligations under the Convention in the areas over which they have responsibility such as crime, child protection, and health, to name a few.

In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure our governments at both the Federal and State levels, fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is child health.

Recommendations for the State Government

In South Australia there are multiple state plans that cover children and young people's health and wellbeing, including the State Health Plan and supporting Regional Health Plans, the State's Health and Wellbeing Strategy, which will soon have an aligned version for women, children and young people, the South Australian Mental Health Services Plan and more recently Inclusive SA for those living with disability. This can make it difficult to determine what actions are being taken.

South Australia's progress on the latest recommendations made by the UN Committee in relation to education



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

The Government should expand and fund the delivery of child targeted mental health and other necessary support services.



Many stakeholders working on the frontline have expressed concern that not enough is being done to address the mental health needs of primary aged children despite the fact that approximately 13% of this age group are presenting with mental health issues. Of SA children and young people aged 5 to 15 years for whom a mental health condition was reported in the 2018 South Australian Population Health Survey, only half (50.4%) had received any treatment.

South Australia's Mental Health Plan endeavours to address the shortfall with a set of actions outlining the improvements to services needed for all children and young people. It has been proposed that these will be supplemented by the following:

- Personalised care and support for perinatal, infants, children (0-12) and families, including providing improved access to and engagement with mental health services and support.
- Young people aged 12-24 given access to and positive engagement with mental health services and support.
- Access to timely and effective integrated mental health care and support which promotes wellbeing and respects diversity.
- Safe and high quality care.

The Plan also states that it will provide another 16 child and adolescent hospital beds by 2026.

South Australia will receive \$14 million over 5 years from the Federal Government for a dedicated mental health centre for adults¹. There is funding in the budget to address mental health concerns for young people affected by COVID-19 and the bushfires, but there does not appear to be any extra State government allocations for mental health resources with Federal funding made available to provide services for children 12 years and over via Headspace.

CAMHS is the only dedicated service for primary school aged children and it only screens-in children presenting with moderate to severe and complex emotional, behavioural or mental health difficulties.

In South Australia there are currently no places in hospital for children who present general mental health conditions, with only 3.2 beds per 100,000 South Australians catering to children and adolescents who present with acute mental health conditions. This is despite an increase in the length of stay for children and adolescents accessing mental health services in acute units within public hospitals from 3.3 days in 2016-7 to 4.1 days in 2017-18.

In 2018-19, the South Australian government funded a statewide Paediatric Eating Disorders Service.

The state government 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.

In relation to trans or gender diverse children and their families the Commissioner has heard that they struggle to access support treatment relating to gender, either through primary health services or other areas in the health system. When asking for referrals many GPs do not understand the issues, particularly in remote and regional areas. Waiting lists are long, and children and young people and their families experience feelings of being 'judged' and discriminated against.

The SA Mental Health Services Plan² states that it will seek to address discrimination against this group by providing staff training in the delivery of safe and effective services to the LGBTQI+ community. This includes the skills needed to counsel and support people considering or undergoing gender transition, and to work collaboratively with general health practitioners in this area.

There has been a business case made for the creation of a gender clinic, however, it appears that it has not demonstrated the required 'rigour' for this clinic to be funded. Many families and children look interstate to get the appropriate treatment and support they need, but COVID-19 has limited the ability to do this.

There is also a lack of services for children displaying problematic sexual behaviour, with eligibility for existing services largely restricted to children whose behaviour is classified as 'serious'. There needs to be greater investment made in protective services that reduce harm and de-escalate behaviours at the earliest possible stage of intervention.

Address the increasing rate of child obesity

The State Public Health Plan 2019–24 meets the requirements under the *South Australian Public Health Act 2011*. The State Plan is complemented and supported by Regional Public Health Plans, which set out actions that local Councils will take to address the public health challenges in their regions, in line with the State Plan's goals. The current plan includes addressing 'chronic disease' with obesity considered to be in this category. The public health plans sets out targets to address obesity, including regional health plans to coordinate evidence based programmes. The plan also promotes development of policies that aim to prevent chronic disease and which address risk factors that include poor nutrition, lack of physical activity, smoking and excessive alcohol consumption.

The South Australian Health and Wellbeing Strategy 2020–2025, led by SA Health, informs the priorities and direction for the public health system. The Women's Child and Youth Health Plan 2020–2030 will align with the SA Health and Wellbeing Strategy.

In relation to the prevention and management of obesity, the Department for Health and Wellbeing will be developing a 'comprehensive, fully integrated response to address overweight and obesity at both the population and individual level'. This will include improving access to preventative programs that will help to maintain a healthy weight, manage obesity and deal with emerging health issues related to poor nutrition. The Commissioner looks forward to monitoring the development and implementation of the Department's response, particularly the improved access to preventative programs.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Governments should introduce legal protections to prevent sterilisation of children with disability without consent.

There is limited data available about the sterilisation of children in Australia. In 2018, there were only 3 sterilisations of women across Australia and none were children.

While this available data suggests sterilisations have become less common over recent years, the practice is still permitted by legislation in South Australia. A child can be sterilised with an order from the Family Court or a guardianship tribunal, having consideration of the best interests of the child. Sterilisation is a 'prescribed treatment' under s61 of the *Guardianship and Administration Act 1993 (SA)*.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Endnotes

- 1 https://statebudget.sa.gov.au/budget-docs/2020-21_bms.pdf
- 2 <https://www.sahealth.sa.gov.au/wps/wcm/connect/8520124e-0250-4393-819e-71bca0db4ad9/19032.2+MHSP-report-web-no+watermark.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPA-CE-8520124e-0250-4393-819e-71bca0db4ad9-njqVlg>



Child Rights Progress Report on Child Justice

South Australia's progress on recommendations made by the UN Committee



What the statistics say

On an average day in 2018–2019 in South Australia's Child Justice System, there were **248 children and young people** aged 10 to 17 years under child justice supervision.

Of these children and young people:

- **81%** were under community supervision



- **19%** were in youth detention



- More than 4 in 5 (**85%**) were males.



- More than half (**53%**) were awaiting the outcome of their court matter or sentence, including **4%** who were already serving a sentence for a separate offence.



Aboriginal and Torres Strait Islander children and young people were **19 times more likely** as non-Aboriginal children and young people to be under supervision, making up **5% of people** aged 10–17 years in the general population but **49% of those** of the same age who are under supervision.

Children and young people spent an average of **23 weeks** (158 days) under child justice supervision throughout the year.

A recent disability screening assessment project found that 'of those SA children in detention that were screened all' scored outside the average range for at least one aspect of impairment, including intellectual function, difficulties with attention, challenges with executive function, language disorders, and impulse control.

76% of SA children released from detention in 2017–18, and aged 10–16 at the time of their release, returned to sentenced supervision within 12 months.

Background

Hailed as the Magna Carta for children, the United Nations Convention (UNCRC) on the Rights of the Child was the first international Convention to acknowledge that children have rights and that these rights should be protected.

Australia ratified the UNCRC in 1990. The South Australian government wrote the Convention into South Australia's state legislation in 2017. The Convention sets minimum standards and obligations for the protection of children and young people's rights, including their rights to have access to justice, education, health care and social services. All children have the right to have a say on all matters that affect them and for their views to be taken seriously. In making decisions about children their best interests should be the primary concern, as well as the right to be safe, to be free from discrimination.

Every five years, the Australian Government reports to the United Nations Committee on the Rights of the Child (the Committee) to explain how Australia is faring in relation to child's rights. This means that the State must provide feedback on how they have fulfilled their obligations under the Convention in the areas over which they have responsibility such as crime, child protection, and health, to name a few.

In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure our governments at both the Federal and State levels, fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is child justice.

Children's rights in relation to Child Justice

According to the UNCRC, children who come into contact with the criminal justice system have the same rights as all other children. This includes the right to be kept safe, to be heard, and to be treated in a way that promotes their dignity and worth.

The UNCRC also provides extra protections for children who enter the child justice system. These include:

- placing an emphasis on prevention, rehabilitation and reintegration of young offenders, over punishment;
- using detention only as a measure of last resort and for the shortest possible period; and
- setting a minimum age of criminal responsibility at the recommended 14 years of age.

South Australia's progress on the latest recommendations made by the UN Committee in relation to child justice



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

Explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion/discipline of children under supervision.

In September 2019, the SA Ombudsman found that the use of spithoods on children and young people who have been detained in the Adelaide Youth Training Centre (AYTC) was not consistent with the objects and guiding principles of the child justice system, and appeared contrary to the SA Charter of Rights for Youths Detained in Training Centres. Due to the above, the use of spithoods was banned from June 2020. Other forms of restraints, including isolation are still being used though.



Promptly investigate all cases of abuse and maltreatment of children in detention, and adequately sanction the perpetrators.

In the Adelaide Youth Training Centre Visitor's most recent report, residents at the Centre told the Visitor that 'they do not consider the AYTC internal complaint process to be reliable or useful.' Staff in the AYTC are open to this feedback and committed to improving the process.



Require decision-makers operating within child justice to consider what is in the best interests of the child.

Currently South Australia's *Young Offenders Act (1993)* does not refer to the requirement for decision makers to consider what is in the 'best interests of the child'. The objects and statutory policies of the Act needs to include a statement around decisions being made 'in the best interests of the child' in addition to securing 'for youth who offend against the criminal law, the care, correction and guidance necessary for their development into responsible and useful members of the community, and proper realisation of their potential.'



Raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the recommended minimum age of 14 years.

South Australia's current age of criminal responsibility is 10 years of age. Although *doli incapax* applies the assumption that children are incapable of forming the intent to commit a crime can be used as a defence between the ages of 10 and 14 years. However, *Doli incapax* is not being used systematically for all children and young people. For the minimum age of criminal responsibility to be raised to 14 years, the State government must properly resource early intervention services for children under 14 years so that they are diverted away from the child justice system.



Actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and where possible, the use of non-custodial sentences, such as probation or community service.

The number of children being detained in South Australia's Child Justice System but who are not yet sentenced is higher than the number of children being detained due to a sentence. To meet UN Recommendations the practice of detaining children until they have been sentenced needs to be avoided and wherever possible replaced by community based options.



Provide children who are in conflict with the law with information about their rights and how to report abuses.

There are already protections and protocols in place within the SA Child Justice System that must be abided by when children are in conflict with the law. However, to meet the UN recommendation, this information must be systematically made available to all children and young people who come into contact with the law, including those being detained while waiting to be sentenced. This information needs to be offered in a range of child-friendly and accessible formats to support children and young people to understand what is being asked of them as well as what support is available to them.



- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed



Child Rights Progress Report on Child Protection



South Australia's progress on recommendations made by the UN Committee

What the statistics say

- **1 in 3 children** in South Australia will have been the subject of a notification to the Department for Child Protection (DPC) by the age of ten.¹
- In 2018/2019 there were **78,000 notifications** made to the Child Abuse Report Line (CARL) in South Australia.
- **30% more** of these notifications met the threshold for further DPC assessment and response.
- **6,996 South Australian children** received child protection services.
- Aboriginal and Torres Strait Islander children are **10 times more likely** to be on a care and protection order and 11 times more likely to be in out-of-home care compared to non-Aboriginal children.
- The number of children in care who required a case plan **increased by 35%** in 2018/2019.
- As at 30 June 2020, of the 256 recommendations made by the Child Protection Systems Royal Commission, **210 had been implemented** and 46 were yet to be completed (noting 4 of the recommendations made were not accepted).

Background

Hailed as the Magna Carta for children, the United Nations Convention (UNCRC) on the Rights of the Child was the first international Convention to acknowledge that children have rights and that these rights should be protected.

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Every five years, the Australian Government reports to the United Nations Committee on the Rights of the Child (the Committee) to explain how Australia is faring in relation to child's rights. This means that the State must provide feedback on how they have fulfilled their obligations under the Convention in the areas over which they have responsibility such as crime, child protection, and health, to name a few.

In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure our governments at both the Federal and State levels, fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is 'children deprived of a family environment'.

Rights in relation to child protection

The UNCRC protects the right of every child to a standard of living that meets their physical and mental needs (Article 27). Parents have a responsibility to raise their children and to consider what is best for them. Governments are required to provide services that support parents (Articles 5 and 18). Governments must also take appropriate measures – legislative, social, administrative and educational – to protect a child from all forms of physical or mental violence, injury, abuse, neglect or maltreatment (Article 19).

Where children are placed in alternative care, their situation must be regularly reviewed (Article 25) and authorities must ensure that a child can exercise all of their rights, including access to education, healthcare, legal and other services. The child's identity, language, and privacy must be respected at all times (Articles 24, 28, 29, 16).

South Australia's progress on the latest recommendations made by the UN Committee in relation to child protection



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

To ensure adequate human, technical and financial resources are allocated to child protection services and to strongly invest in measures for children and their families aimed at avoiding the removal of children from their families.

The South Australian government's *Safe and Well Strategy* recognises the importance of 'earlier, targeted, intensive support for families with multiple and complex needs'. The *Child and Family Safety and Support System* co-design, led by the Department for Child Protection (DCP) and Department for Human Services (DHS) was completed in 2019.

Several trials of intensive family support programs to prevent 'at risk' children from entering care, have now been established, including one in Northern Adelaide. An Aboriginal-specific service is now also being offered in Western Adelaide, and another two-year pilot aimed at supporting young women who have had their children removed or are 'at risk' of this occurring, has also recently been put in place.

While these initiatives are promising, South Australia consistently spends less than other Australian states and territories on services designed to prevent children coming into state care. Only 20% of total services expenditure was allocated to protective, preventative and intensive family support and intervention services throughout 2018–2019.

Although South Australia's total child protection services expenditure was 25.1% higher than the Australian average in the same financial year, this was in large part due to the state's significant expenditure on residential and emergency out-of-home care services.² Meeting the Committee's recommendation requires a greater proportion of the overall budget to be allocated to protective services, particularly those that enable earlier interventions that can assist in preventing children from being removed from their families in the first place.

To provide adequate training to child protection carers on the rights and needs of children with disabilities to prevent their maltreatment and abuse.

Approximately one third of South Australian children and young people in care have a disability or developmental delay. The Disability and Development Services Program within DCP works alongside caseworkers and residential care staff to assist in the identification of disability and developmental delay among children entering care. As part of an expansion of this program, a new In Care Therapeutic Program has been introduced to better support family-based care of children with disability or developmental delay through provision of short-term in-home support for kinship carers.

DCP Complex Case Review Meetings established in 2019 under the guidance of the Lead Psychiatric Director and Interagency Therapeutic Needs Panel, has been extended for an additional twelve months. The aim of the extension is to find ways to improve therapeutic care responses and to identify a child's needs earlier so that therapy and referrals for required supports can be provided sooner.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Despite these positive developments, the Final Report on the *Trial Child and Young Person's Visitor Program* prepared by South Australia's Office of the Guardian for Children and Young People's (GCYP) noted that many children either 'did not have carers who sufficiently understood their disability needs, or did not have the requisite training and were therefore unable to respond appropriately. This resulted in services and supports, including NDIS plans, being difficult to co-ordinate consistently'.³ GCYP recommended that future visiting schemes would 'benefit from staff with, or access to, expertise about the care needs of CYP with a disability'. The trial program ended in September 2019 with no additional funding allocated to the GCYP to continue to undertake the CYP Visitor program.

DCP's Carer and Personnel Requirements Matrix requires specialised therapeutic training for carers who care for children with disability or complex needs in family based and non-family-based care. It is promising that the Carer Recruitment and Retention Taskforce, chaired by DCP, has created and published a shared training calendar to improve carer access to core training.

To strongly invest in measures developed and implemented by Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide them with adequate support while in alternative care, and facilitate their reintegration into their families and communities.

South Australia has committed to the Closing the Gap Target 12, to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031. More than one third of all children in out-of-home care in South Australia are Aboriginal children. At 30 June 2020, only 63.7% of eligible children were placed in accordance with the Aboriginal Child Placement Principles.

The establishment of an external Expert Aboriginal Child Protection Advisory Committee in 2020 is a welcome step. The reference to all five core elements of the Aboriginal Child Placement Principles in the *Children and Young People (Safety) (Miscellaneous) Amendment Bill 2020* and the Bill's confirmation that the Principles are to be the paramount consideration for Aboriginal children is also a positive development.

Approximately 30% of the funding for the reforms to the DHS Child and Family Safety and Support System have been dedicated to recommissioning family support services provided by Aboriginal Community Controlled Organisations (ACCOS). There continues to be a need for greater investment in measures developed and implemented by Aboriginal and Torres Strait Islander children communities. Data gaps must be addressed to enable public reporting on compliance with all elements of the Aboriginal Child Placement Principle encompassing 'Prevention, Participation, Partnership, Placement and Connection'.

To ensure that children in alternative care have access to the mental health and therapeutic services necessary for healing and rehabilitation and to enhance preventive measures to avoid children drifting from care into crime.

In March 2019, SA Health established a third Child Protection Service (CPS) in South Australia to provide specialist assessment and services to children 0 to 18 years old where there are concerns about child abuse, neglect or maltreatment. In January 2020, *Every Effort for Every Child – South Australia's Strategy for Children and Young People in Care 2020-2023* was released. The strategy forms part of the Department for Child Protection's 'Investing in their future' initiative (formerly known as Rapid) and provides children and young people in care with priority access to services and programs. An expanded initiative is planned for release in 2021, with scoping for new services and extended eligibility criteria already in progress.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Evidence shows that providing appropriate, therapeutic and community-based services for children helps to reduce police referral and diversion options. Almost one quarter of the children who enter detention at the Kurlana Tapa Youth Justice Centre are living in residential care.⁴ This high proportion of 'dual status' children and young people, reflects the over-reliance there is on police and the youth justice system to 'manage' the behaviour of children who are living in residential care.

The Young Offenders Act 1993 (SA) already provides police with powers to divert and increase opportunities for diversion, but currently these diversionary measures are not being used as the default. To meet the UN recommendations, diversionary and restorative practices like family conferencing must be used as the default option. The Department has noted the issue and indicated that it is working with SAPOL and the broader justice system to minimise the contact children in care have with the child justice system.

The Commissioner will continue to monitor DCP's implementation of the Sanctuary Model of care used in out of home care. Announced in June 2020, the trauma-informed, therapeutic model of care is designed to help staff better understand how trauma and past adversity can impact a young person's behaviour.

To ensure that children, their families and communities participate in decision-making in order to guarantee an individualised and community-sensitive approach.

Under the *Children and Young People (Safety) Act 2017*, either the Chief Executive or the Family Court may convene a Family Group Conference that allows the child and their family to 'make informed decisions as to the arrangements for the care of the child or young person' concerned. In 2019, the DPC announced a 1.6M pilot aimed at supporting children and young people to remain with their families through family group conferencing. As at 30 June 2020, 46 families had been referred to participate.

These measures require consistent funding to ensure individualised responses that are trauma-informed and tailored to the individual needs of every child can be made. This is particularly so in the case of Aboriginal children and children with disability or developmental needs.

The Commissioner will continue to monitor decision-making processes and the ongoing development and implementation of South Australia's Child and Youth Engagement Strategy.

Endnotes

- 1 Government of South Australia, *Safe and Well: Supporting families, protecting children*. p. 8.
- 2 Office of the Guardian for Children and Young People, *South Australian Child Protection Expenditure from the Report on Government Services 2020*, April 2020, p. 32. Available at <http://www.gcyp.sa.gov.au/wp-content/uploads/2020/04/2020-04-20-GCYP-ROGS-2020-Report-Child-Protection-Expenditure.pdf>
- 3 Office of the Guardian for Children and Young People, *Final Report on the Trial Child and Young Person's Visiting Program*, February 2020, p. 44, p. 63.
- 4 Office of the Guardian for Children and Young People, *A Perfect Storm? Dual status children and young people in South Australia's Child Protection and Youth Justice Systems – Report 1*, November 2019. Available at <http://www.gcyp.sa.gov.au/wp-content/uploads/2019/12/Dual-Status-CYP-in-SA-A-Perfect-Storm.pdf>.



Child Rights Progress Report on Disability

South Australia's progress on recommendations made by the UN Committee



What the statistics say

- **1 in 6 children** in South Australia have a disability.
- Since full roll-out of the National Disability Insurance Scheme commenced in June 2019, children and young people aged 0–18yrs consistently made up **over 50% of all NDIS participants** in South Australia.
- The number of South Australian children from birth to six years of age who needed an approved NDIS plan before entering school increased **from 3,522** in December 2016 **to 3,825** in September 2019.
- **21,876 South Australian children and young people** aged 0–18yrs met the criteria for access to the NDIS as at 30 June 2020.
- A disability screening project undertaken in 2019 found that **nine out of ten young people** currently in detention in South Australia's youth justice system scored below average for intellectual functioning, were at risk of language disorders, and scored below average for at least one aspect of visual-motor integration.
- In the 2018–19 reporting period, **a significant majority of complaints** relating to children received by the Australian Human Rights Commission under the *Disability Discrimination Act 1992 (Cth)* were in the area of education.

Background

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Every five years, the Australian Government reports to the United Nations Committee on the Rights of the Child (the Committee) to explain how Australia is faring in relation to child's rights. This means that the State must provide feedback on how they have fulfilled their obligations under the Convention in the areas over which they have responsibility such as crime, child protection, and health, to name a few.

In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure our governments at both the Federal and State levels, fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is the rights of children with disability.

The rights of children with disability

Article 23 of the UNCRC recognises that all children with disability have a right to a full and independent life in conditions which ensure dignity and facilitate the child's active participation in the community. State authorities must recognise and provide appropriate support and special care to ensure children with disability are able to access and participate in education (Articles 28 and 29), healthcare (Article 24), justice, recreation (Article 31) and preparation for employment on the same basis as others and in a way that supports the child's full social integration

and individual development. This assistance should take into account the financial resources of families (Article 23(3)).

The Disability Inclusion Act (SA) 2018 emphasises that children with disability should be considered a priority group with different needs and vulnerabilities. The Act states that they should 'be given developmentally appropriate opportunities to participate in decisions that affect them' and that any 'decisions made should be child-centred'.

South Australia's progress on the latest recommendations made by the UN Committee in relation to disability



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

To ensure that data collected on children's rights covers all areas of the Convention, that they are disaggregated by age, sex, disability, geographic location, ethnic origin, national origin and socioeconomic background, and that they identify children in situations of vulnerability, including children with disabilities.

Inconsistent definitions and reporting across jurisdictions makes it difficult to gain a clear picture of the prevalence of disability among Australian children. In terms of access to education for children with disability, the Nationally Consistent Collection of Data on Students with Disability (NCCD) records the number of students with disability in schools and the adjustments they receive. The NCCD relies on education providers to determine the level of adjustment each student is receiving and provide evidence to support their reporting. This data does not capture levels of education access and attainment, nor does it capture children who do not qualify for support, or do not have access to mainstream schools.

Although evidence suggests children with disability are particularly vulnerable in institutional contexts, and are at a higher risk of maltreatment and abuse, there is limited data on maltreatment experienced by children with disability.

Where data does exist across sectors including education, health and child protection, it is not consistently disaggregated by age, gender, socioeconomic background or geolocation. For example, National Disability Insurance Scheme (NDIS) data groups together children across a wide range of developmental ages, as well as with adults (15-24 years), and is too broad to be useful, particularly in identifying children in situations of vulnerability.

A 2019, a disability screening project led by the Youth Justice Assessment and Intervention Services (YJAIS) team, identified several significant areas of disability-related need that were previously unknown and unaddressed. The Commissioner is monitoring how further actions based on the findings from the YJAIS project will translate into real action to change the lives of children and young people who are in youth justice and have been identified as having disability or developmental delay.

To prohibit by law the sterilisation of girls with disabilities without their prior, fully informed and free consent.

The UN Committee on the Rights of the Child and the UN Special Rapporteur on Torture have both stated that sterilisation is a form of violence, social control and torture. There is very little data available in relation to sterilisation of children in Australia, other than that it is currently permitted under legislation and continues to take place.

In South Australia, sterilisation is a 'prescribed treatment' under s61 of the *Guardianship and Administration Act 1993 (SA)*. This means a child can be sterilised with an order from the Family Court or a guardianship tribunal if this is considered to be in the best interests of the child.

There is no specific criteria or consistent standard that prescribes the circumstances in which children may or may not be sterilised. In light of concerns about how acting in a child's best interests is determined, and the potential for a child's wishes to be overlooked, governments must put in place policies and procedures that allow families to support their child's menstruation, or any concerns they may have about their fertility. This includes ensuring that children and young people, and their families, have access to the least invasive non-surgical alternatives available to sterilisation.

To 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.

South Australia's first State disability and inclusion plan – 'Inclusive SA', supports the National Disability Strategy 2010-2020 (NDS). It sets out specific actions for State authorities to improve access and inclusion for all people with disability. The Plan notes that targeted consultation with priority groups, including children, will take place during 2020 to inform the revised 2021 plan.

Action 3 of the Inclusive SA plan has been completed, with the Department for Human Services releasing Inclusive Play Guidelines. These Guidelines guide the development of playgrounds and play spaces that ensure all children with disability can exercise their right to play.

The *Disability Inclusion Act SA (2018)* requires each state authority to develop a Disability Access and Inclusion Plan (DAIP) that must give effect to the objects and principles of the Act and acknowledge that there are risks and principles specific to children with disability. It also includes ensuring the views of children with disability are listened to and that their developmental needs are taken into account. Despite this legislative requirement, many of the draft DAIPs developed by key state authorities do not recognise children and young people with disability as a group separate to adults, and therefore requiring a unique set of responses and engagement strategies.

The state government has committed funding for the next three years to an individual disability advocacy service which the Commissioner understands will also be accessible to children with disability. Despite the high prevalence of disability among children in South Australia, there continues to be a lack of community understanding about how communities can promote their participation.

While the Inclusive Education Support Program is a model of funding that supports children with disability in education based on their functional needs rather than on a diagnosis, a lack of disability awareness, low expectations and stigma leads to a failure to provide support and safe education environments for children with disability.

Children with disability talk about a struggle to be understood and the isolation and humiliation that comes from feeling 'othered' – excluded and singled-out in front of their peers. The Commissioner will continue to monitor the implementation of Action 32 of the Inclusive SA Plan that State education and training sectors support inclusive education culture and practice.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

To provide adequate training to child protection carers on the rights and needs of children with disabilities to prevent their maltreatment and abuse.

The Disability and Development Services Program within the South Australian Department of Child Protection (DCP) works alongside caseworkers and residential care staff to assist in the identification of disability and developmental delay among children who are entering care.

The In Care Therapeutic Program aims to better support family-based care for children with disability and developmental delay through short-term in-home support provided to kinship carers.

The DCP's Complex Case Review Meetings and Interagency Therapeutic Needs Panel aim to improve therapeutic care responses to identify a child's needs earlier providing therapy and referral for any required supports. Despite this, the Office of the Guardian for Children and Young People's (GCYP) Final Report on the Trial Child and Young Person's Visitor Program noted that many children 'did not have carers who sufficiently understood their disability needs, did not have the requisite training, and were unable to respond appropriately so that services and supports, including NDIS plans, were difficult to coordinate consistently'. Since the trial program ended in September 2019, no additional State funding has been allocated to the Guardian to undertake the functions of the CYP Visitor.

DCP's Carer and Personnel Requirements Matrix requires specialised therapeutic training for carers who care for children with disability or complex needs in both family based and non-family-based care. It is promising that the Carer Recruitment and Retention Taskforce, chaired by DCP, has created and published a shared training calendar to improve carer access to core training.

To ensure that all children with disabilities have access to inclusive education in mainstream schools and are provided with the support they need.

Under the *Disability Discrimination Act 1992* and the Disability Standards for Education 2005, students with disability must be able to enrol in their local school and access and participate in their education on the same basis as others. In 2019, the Department for Education introduced the Inclusive Education Support Program (IESP), a model of resourcing for students with disability based on the functional needs of children and young people, rather than on a diagnosis.

However, students with disability are disproportionately impacted by informal and formal exclusionary practices that limit or reject the enrolment of students with disability. This includes the suspension or exclusion of children with disability, asking that they attend school on a partial basis, or confining them in a room or enclosed space alone, and/or with adult supervision. Authentic inclusion of students with disability requires cultural change that builds on the IESP to increase understanding, expectations, educator skill levels and support for all children with disability.

Parents of children with disability have reported being unable to secure appropriate school placements for their child for the 2021 school year, despite meeting the eligibility requirements for the SA Department for Education's Specialised Education Options for Children with a Disability Placement Procedure.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

To address the use of restraints and seclusion against children with disability.



The South Australian government endorsed the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector in 2014. Certain restrictive practices, including seclusion and environmental, physical, mechanical and chemical restraint, are subject to regulation under the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

States and territories remain responsible for the authorisation of restrictive practices under the NDIS, and South Australia's current regime does not meet nationally agreed principles. In 2020, the State budget allocated the South Australian Department of Human Services (DHS) \$5.8 million over four years to provide an authorising regime for restrictive practices.

It is proposed that the Restrictive Practices Information System and Authorisation Unit within DHS will educate NDIS service providers on authorisation processes and prohibited practices. This includes use of high-risk restricted practices and the enabling of an independent review of decisions by the South Australian Civil and Administrative Tribunal (SACAT).

The new regime does not appear to extend to South Australian children with disability who are not currently NDIS participants. It is also unclear whether children with disability in environments that include mainstream education settings will be provided with protection, particularly given there is currently no legislation governing the use of restraint and seclusion in schools.

Department for Education's Protective Practices Guide states that where a student is causing harm to themselves or others, staff can 'make legitimate use of physical restraint' as a 'last resort'. This policy document acknowledges that staff must consider 'the age, stature, disability, understanding and gender of the child or young person' before proceeding, and that 'inappropriate use of physical restraint/restrictive practices... may constitute assault'.

Although the Department for Education, South Australian Ombudsman, Equal Opportunity Commission and Australian Human Rights Commission can handle complaints, there are currently no safeguarding mechanisms in place to protect children with disability from the use of exclusionary or restrictive practices.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed



Child Rights Progress Report on Education

South Australia's progress on recommendations made by the UN Committee



What the statistics say

- **24% of South Australian children** are developmentally vulnerable in one or more of the domains of the Australian Early Development Census (AEDC) when they enter school.
- The number of children (birth to six years) with an approved NDIS plan before entering school increased **from 3,522** in December 2016 **to 3,825** in September 2019.¹
- On average, there are **two to three young people** in every classroom who have caring responsibilities that can impact their educational outcomes.
- Although between 2017 and 2019 there was an increase in the proportion of Year 4 to Year 10 students who feel connected to adults at school, **approximately 40%** reported that they do not feel connected to adults at school.
- The number of primary school children who have been suspended from government schools has risen by **nearly 40%** since 2012. Of students formally suspended from South Australian government schools in Term 2, 2019, **24%** were between the ages of 4 and 9 years.
- **One in four** students enrolled in Year 8 in 2014 were not enrolled in Year 12 four years later.
- The proportion of Year 10 students in South Australia achieving at or above a proficient standard in the civics and citizenship component of the Australian Curriculum fell **from 43% in 2007 to 34% in 2016**.

Background

Hailed as the Magna Carta for children, the United Nations Convention (UNCRC) on the Rights of the Child was the first international Convention to acknowledge that children have rights and that these rights should be protected.

Australia ratified the UNCRC in 1990. The South Australian government wrote the Convention into South Australia's state legislation in 2017.

The Convention sets minimum standards and obligations for the protection of children and young people's rights, including their rights to have access to justice, education, health care and social services. All children have the right to have a say on all matters that affect them and for their views to be taken seriously. In making decisions about children their best interests should be the primary concern, as well as the right to be safe, to be free from discrimination.

Every five years, the Australian Government reports to the United Nations Committee on the Rights of the Child (the Committee) to explain how Australia is faring in relation to child's rights. This means that the State must provide feedback on how they have fulfilled their obligations under the Convention in the areas over which they have responsibility such as crime, child protection and health, to name a few.

In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure our governments at both the Federal and State levels, fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is 'access to education'.

Rights in relation to Education

Articles 28 and 29 of the UNCRC recognise the rights of every child to access and participate in education that respects their dignity and develops their individual personality and talents to the full. A quality education is central to lifelong physical and mental health outcomes, social inclusion and employment prospects. Education is not only a human right in itself, but is also a fundamental means of realising other individual and collective rights while fostering greater social inclusion.

The right of every child to an education is embedded in *South Australia's Education and Children's Services Act 2019*, which states that the best interests of the child must be the paramount consideration in all decisions pertaining to the Act. Education is also one of the five key dimensions of the South Australian 'Outcomes Framework for Children and Young People', which recognises the importance of children entering the school system 'ready to take advantage of the learning environment', having positive learning experiences and being engaged in school, further education, training or work.

South Australia's progress on the latest recommendations made by the UN Committee in relation to education



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

To 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 lesbian, gay, bisexual, transgender and intersex children.

The South Australian government released a state-wide bullying prevention strategy in 2019, which aims to ensure that children and young people are thriving in safe environments that promote positive relationships, resilience and wellbeing. The Department for Education has worked with Catholic and Independent schools and government and non-government organisations to develop the 4-year strategy. *Connected: A Community Approach to Bullying Prevention within the School Gates and Beyond* takes a whole-of-community response and public health approach.

The first 12-month progress report highlights progress in the implementation of evidence-based and whole-of-school approaches in government and non-government schools, including resource packs and student-led programs. The Commissioner will continue to monitor the implementation of the bullying prevention strategy in education settings across the state. The State government also gathers student reports about their experiences of bullying through its annual wellbeing and engagement survey.

In 2017, South Australia discontinued the Safe Schools Program, which was developed to prevent bullying and discrimination against LGBTIQ+ students. The statewide strategy replaced this program and while it does mention 'inclusion and diversity' does not refer specifically to gender or sexual diversity. The Department for Education's 'Supporting gender diverse, intersex and sexually diverse children and young people' Policy and Procedures, outlines how staff in corporate, preschool, school education and care settings can support LGBTIQ+ children to participate in education in a safe and inclusive environment.

Currently, some Catholic and Independent schools continue to exclude LGBTIQ+ students from enrolling in their schools. They cite Section 50C of the *SA Equal Opportunity Act 1984* (EO Act) to justify this exclusion. This exemption allows bodies established for religious purposes to discriminate on the basis of sex, gender identity, sexual orientation or intersex status if it conforms to the precepts of their religion. This discrimination is currently being addressed with the introduction of a Bill to amend South Australia's EO Act so that certain services, including pre-school, primary and secondary education service providers, cannot discriminate on the grounds of religion in this way.



To strengthen the school-based Respectful Relationships initiative to promote gender equality and respect.

Equipping children and young people with education to discern between healthy and unhealthy relationships and safe and unsafe sex, is crucial to promoting gender equality and respect, and addressing the intergenerational issue of sexual and domestic violence.

Sexual health education and child safe programs, including the Department for Education's Keeping Safe: Child Protection Curriculum, and parts of the Australian Curriculum, are taught across preschool, primary and secondary schools in South Australia. Professional development is also available to teachers to support them in the delivery of these programs while school wellbeing leaders are available to support students.

Despite this, the delivery of relationships and sexual health education is inconsistent. It is not available across all year levels, and it does not meet the recommended number of lessons per year. In terms of content, it is not equally inclusive of gender or sexual diversity, and does not address issues of consent, problematic sexual behaviour among peers, healthy online relationships, and controlling or possessive behaviours. To meet UN recommendations, there needs to be greater consistency in the quality, content and timing of relationships and sexual health education.

To ensure that all children with disabilities have access to inclusive education in mainstream schools and are provided with the support they need, and to address the use of restraints and seclusion.

Under the *Disability Discrimination Act 1992* and the Disability Standards for Education 2005, students with disability must be able to enrol in their local school and access and participate in their education on the same basis as others. In 2019, the Department for Education introduced the Inclusive Education Support Program (IESP), a model of resourcing for students with disability based on the functional needs of children and young people rather than on a diagnosis.

Authentic inclusion of students with disability requires cultural change that builds on the IESP and increases understanding, expectations and support for all children with disability. Currently South Australian students with disability are disproportionately impacted by informal and formal exclusionary practices. They include limiting or rejecting the enrolment of students with disability, suspending or excluding students with disability, asking students with disability to only attend school on a partial basis, or confine students with disability in a room or enclosed space alone, or with adult supervision.

Parents of children with disability have reported being unable to secure an appropriate school placements for their child in the 2021 school year, despite meeting the eligibility criteria for admission as set out in the placement procedure within the Department's Specialised Education Options for children with disability.

The Department for Education's Protective Practices policy document allows staff to 'make legitimate use of physical restraint' as a 'last resort' where a student is causing harm to themselves or others. The Protective Practices Guidance acknowledges that staff must consider 'the age, stature, disability, understanding and gender of the child or young person' and that the 'inappropriate use of physical restraint/restrictive practices ... may constitute assault'. However, there is currently no legislation governing the use of restraint and seclusion in schools.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

The Department, the Ombudsman SA, the Equal Opportunity Commission and the Australian Human Rights Commission handle complaints, but there is currently no safeguarding mechanism or independent oversight to protect children with disability against exclusionary or restrictive practices.

The state government has recognised that South Australia lacks an organisation that can provide individual advocacy for those with a disability and has committed to funding for the next three years that will enable such a service to be established.

To address the shortcomings of the Closing the Gap measures for Aboriginal and Torres Strait Islander children and to reach the targets on school attendance, retention rates, literacy and numeracy standards by paying particular attention to these children in remote areas and investing in teachers' cultural competency of these communities'.

In 2018, the Department for Education released its ten-year Aboriginal Education Strategy 2019–2029. An Expert Advisory Panel for the Aboriginal Education Strategy was established to support successful implementation of the strategy which includes the goal of seeing Aboriginal and Torres Strait Islander children excel in their early years of learning at school and in their transition from school to employment, training or further education. Unlike many other strategies that focus solely on gaps, this strategy has a focus on positive pathways and takes a strengths-based approach.

Students in regional and remote areas are consistently less likely to be at the national minimum standard for writing, reading and numeracy compared to those Aboriginal and Torres Strait Islander students who live in major cities. While the proportion of Year 3, 5 and 7 Aboriginal and Torres Strait Islander students who are at or above the national minimum standard in reading and writing increased between 2018 and 2019, the proportion of those at or above the national minimum standard in numeracy decreased during the same period. In 2019–20, the Aboriginal and Torres Strait Islander Learner Achievement Resources were implemented across government schools who have Aboriginal and Torres Strait Islander enrolments with the aim of improving these students' literacy and numeracy outcomes.

The apparent retention rate in 2019 for Aboriginal and Torres Strait Islander students in South Australia was 78% – an increase since 2010 (65%) and higher than the national average (60%). In 2019, school attendance rates for Year 1 to Year 10 Aboriginal and Torres Strait Islander students across all South Australian schools was 80%. On any school day, this means that one out of every five Aboriginal and Torres Strait Islander students was not at school.²

Meeting this UN recommendation requires greater understanding of and investment in the positive outcomes of culturally responsive, community-based education. This understanding depends on the quality of the data being collected at both the student and school levels.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

To invest more in improving education at the early childhood, 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.

Results from the 2018 Australian Early Development Census (AEDC) show an increase in the proportion of children who are developmentally vulnerable in one or more domains when they enter school. This steady decline in results was reflected across South Australia's entire socioeconomic distribution. Other than the AEDC, there is no population wide data on child development. Proactive and regular monitoring of the development of all children from birth to school age is central to appropriate investment in education planning and provision.

Children as young as 8 years of age talk about the cost of transport, excursions, resources, uniforms, equipment and sports and the distress not having these essential funds causes their families. To ensure that all children and families can fully participate and access benefits of education, the true cost of education needs to be recognised. Out-of-pocket expenses need to be capped and low income families must receive the financial assistance they require to enable their child/children to fully participate in school life.

Between 2008-09 and 2017-18, real government expenditure per full time student increased in South Australia at an average rate of 2.1% per year.³ Our current understanding of how children and young people in South Australia are doing at school is measured at the population level via key datasets on student retention rates, attendance rates and school completion rates. Data from 2019 paints a positive picture, with an increase in the apparent retention rate being 89% an increase in SACE completion or an equivalent, and a relatively stable attendance rate at 92%.

However, this data was originally designed to be used as a key performance indicator to measure progress toward intergovernmental targets set at the national level. While the Department for Education's Attendance Matters strategy acknowledges some of the issues with population-level data, it still uses this data as an indicator of progress. Using data prepared for a different purpose in this way fails to capture complex issues at an individual, demographic and systemic level. It does not measure the day-to-day reality for children and young people and for schools. Nor does it tell us about children and young people who have partially completed school qualifications, or those who miss significant amounts of school each term for a variety of reasons including caring for others.

Population-level data does not capture how complex factors (including key differences and disadvantage across geolocation, socioeconomic background, Indigenous status and disability status) influence engagement, attendance and exclusion. To improve education for all young South Australian citizens, particularly the most vulnerable, we need data collected at the student and school level that adequately accounts for and addresses the problem of school detachment.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Endnotes

- 1 CDC Report Card, p. 23.
- 2 CDC Report Card, p. 24.
- 3 Figure 4.8 RGOS School Education report. Data Table 4A.14.



Child Rights Progress Report on Physical Punishment



South Australia's progress on recommendations made by the UN Committee

Background

Hailed as the Magna Carta for children, the United Nations Convention (UNCRC) on the Rights of the Child was the first international Convention to acknowledge that children have rights and that these rights should be protected.

Australia ratified the UNCRC in 1990. The South Australian government wrote the Convention into South Australia's state legislation in 2017. The Convention sets minimum standards and obligations for the protection of children and young people's rights, including their rights to have access to justice, education, health care and social services. All children have the right to have a say on all matters that affect them and for their views to be taken seriously. In making decisions about children their best interests should be the primary concern, as well as the right to be safe, to be free from discrimination.

Every five years, the Australian Government reports to the United Nations Committee on the Rights of the Child (the Committee) to explain how Australia is faring in relation to child's rights. This means that the State must provide feedback on how they have fulfilled their obligations under the Convention in the areas over which they have responsibility such as crime, child protection, and health, to name a few.

In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure our governments at both the Federal and State levels, fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is 'physical punishment' (also referred to as corporal punishment).

Rights in relation to child protection

According to the UNCRC children should not be subject to any form of violence. This includes children being made safe from violence by their parents or guardians (Article 19), violence in school (Article 28) and from cruel and degrading treatment (Article 37).

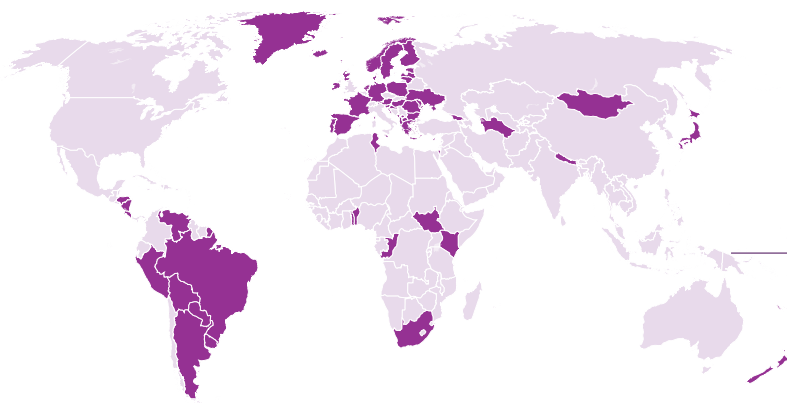
Specifically the UN Committee recommends:

- Explicitly prohibiting physical punishment in law in all settings, including in the home, in public and private schools, in detention centres and in alternative care settings, and to repeal the legal defence of 'reasonable chastisement';
- To develop awareness-raising and education campaigns that promote positive and alternative forms of discipline, and that underscore the adverse consequences of physical punishment.

Why should physical punishment be outlawed?

It is argued by some adults that physical punishment of children is sometimes justified to 'teach children a lesson'. But it is well known that adults cannot be taught a lesson through the use of physical assault, so why should it work for children?

Studies have found very few differences between the physical and emotional impacts of children who were physically punished compared to those who were physically abused.¹ There is overwhelming evidence supporting the view that physical punishment is not an appropriate teaching method or behaviour management strategy. To the contrary, the use of physical punishment on a child can make any negative behaviour worse and can result in increased aggression, antisocial behaviours, mental health problems and low self-esteem. There is also evidence that sometimes physical punishment can escalate to child abuse.



Physical punishment around the world

- Countries where physical punishment is outlawed
- Countries where physical punishment is **not** outlawed

South Australia's progress on the latest recommendations made by the UN Committee in relation to physical punishment



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

Australia should explicitly prohibit corporal punishment in law in all settings, including in the home, in public and private schools, in detention centres and in alternative care settings, and to repeal the legal defence of 'reasonable chastisement.'

The current situation in South Australia is that parents/guardians can still physically punish children under the *Criminal Law Consolidation Act (1935)*. This Act provides for contact between persons that would generally be regarded as accepted within the community. There is also a common law defence of chastisement and the child's age, as well as the reason for the punishment (did it occur to 'teach the child a lesson' or because the person snapped). The child's behaviour and seriousness of the contact should all be considered.

South Australia has prohibited physical punishment in all schools. The *Education and Children Services Act (2019)* outlaws physical punishment. However, it still allows for the common law defence if the conduct lies within 'the limits of what would be generally accepted in the community as normal incidents of social interaction or community life.' The Protective Practices for staff in their interactions with children and young people (aka the Guidance on Protective Practice) used by all South Australian schools makes corporal punishment a violation.

Children's Services in South Australia have adopted the *Education and Care Services National Law Act (2010)* that prohibits the use of physical punishment by providers, nominated supervisors, staff members, volunteers and day care providers of an approved education and care service. The Child Care Centres Regulation 1998 (s39) states that: 'Behaviour management techniques used should not include physical, verbal or emotional punishment, including, for example, punishment that humiliates, frightens or threatens the child.'

To develop awareness-raising and education campaigns that promote positive and alternative forms of discipline and that underscore the adverse consequences of corporal punishment.

The Department for Education has a number of resources that can be accessed by educators on alternative behaviour management responses that attempt to promote positive and inclusive behaviour. This includes teachers promoting and modelling positive behaviour. There are also online courses on positive behavioural management that educators can complete.

Parenting SA has developed a set of guides designed to help parents on a number of issues including how to foster respectful relationships, how to establish positive approaches to guiding behaviour, positive role models and many other topics.

Endnotes

- 1 Gershoff, E. T., & Grogan-Kaylor, A. (2016, April 7). Spanking and Child Outcomes: Old Controversies and New Meta-Analyses. *Journal of Family Psychology*. Advance online publication. <http://dx.doi.org/10.1037/fam0000191>