

# 2021 Child Rights Progress Reports

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



Child Health



Child Justice



Child Protection



Disability



Education



Environment



Physical Punishment



No evidence



Some evidence



Clear evidence

# 2021 Child Rights Progress Report on Child Health

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## About the CCYP

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The Commission promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports include:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment



# 2021 Child Rights Progress Report on Child Health



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

## What the statistics say

Measure	Year (%)	Trend	Assessment
Proportion of children (5-15 years) who were reported as having a mental health condition	2020 (19.4%) 2019 (19.1%) 2018 (16.2%)	Increasing	- Unfavourable
Proportion male/female	2020 (64%/36%) 2019 (55.8%/44.2%) 2018 (70.3%/29.7%)		
Proportion of children (5-17 years) who reported accessing a mental health service in the past 12 months <sup>1</sup>	2020 (15%) 2019 (17.9%) 2018 (14.4%)	Increasing	- Unfavourable
Proportion Male/Female	2020 (57%/43%) 2019 (59.8%/40.2%) 2018 (59.6%/40.4%)		
Number of mental health beds per 100,000 SA children <sup>2</sup>	2018-2019 / 3.3 2017-2018 / 3.2	No change	- Unfavourable
The proportion of South Australian children fully immunised at 12 months	2019 (95%)	Remaining steady	+ Favourable
Percentage of South Australian children and young people who are considered overweight or obese <sup>3</sup>	2020 (32.7%) 2019 (28.5%) 2018 (30.9%)	Increasing	- Unfavourable

## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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 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.

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.

## A Child's Right to Health

Article 24 of the UNCRC 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.

Australia has a public/private health care system. The Commonwealth, State, and Territory governments broadly share responsibility for funding (around 68% of total funding) as well as the operation, management, and regulation of the health care system. The remainder of the funding comes from the private not-for-profit and for-profit sectors.<sup>4 5</sup>

## The Health Care System in South Australia

South Australia has multiple plans that cover children and young people's health and wellbeing, including the State Public Health Plan and Regional Health Plans. There is also the State's Health and Wellbeing Strategy, which will soon have an aligned version for women, children and young people, and the South Australian Mental Health Services Plan.

During the year, SA Health consulted on development of a new 10-year Women's Child and Youth Health Plan. The final plan is currently being drafted and will be launched in 2022.

In October 2021, the Commonwealth Government released the National Children's Mental Health and Wellbeing Strategy in response to the data that suggests “half of all adult mental health challenges emerge before the age of 14 and that more than 50% of children experiencing mental health challenges are not receiving professional help.”<sup>6</sup> This strategy aims to “provide a framework and the foundations for lifelong mental health and wellbeing, built during childhood (0–12 years) with a whole-of-community approach.”<sup>7</sup>

To ensure delivery of the strategy, an implementation plan will be developed by an Inter-Departmental Committee established at the Commonwealth level with state and territory-based branches within each jurisdiction.

Although some progress was made over the past twelve months in relation to implementation of UN recommendations on child health, ongoing areas of concern include the following:

1. The Australian Medical Association 2021 Public Hospital Report Card states that South Australia's public health hospital system is continuing to decline with the reduction in hospital beds impacting on the capacity of the system to care for patients quickly and safely.<sup>8 9</sup>
2. The long-term health, wellbeing, economic and social impacts of the COVID-19 epidemic on children and young people.
3. Limited access to appropriate health care services for children and young people living in rural and remote areas.

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



**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.

South Australia spends lower per capita on child and adolescent health care services than any other Australian state.<sup>10</sup> Alongside the new National Children's Mental Health Plan and Wellbeing Strategy, South Australia's Mental Health Plan 2020–2025 endeavours to address the shortfall in mental health services aimed at children and young people. A set of actions outlining the improvements needed includes the following:

- personalised care and support for perinatal, infants, children (0–12 years) and their families, including provision for improved access to, and engagement with mental health care services and support;
- access to, and positive engagement with mental health care services and support for young people aged 12–24 years.
- access to timely and effective integrated mental health care services and supports that promote wellbeing and respect diversity; and
- delivery of safe, high-quality health care services.

#### Gaps and concerns

Many stakeholders working on the frontline have expressed concern that not enough is being done to address the mental health care needs of primary school aged children.

#### Evidence of progress or commitment to progress

Of SA children and young people aged 5 to 15 years diagnosed with a mental health condition in the 2019 South Australian Population Health Survey, just over half (55.6%) reported receiving treatment.<sup>11</sup> This is up from the previous year where 50.4% reported receiving treatment. Part of this 5% increase may be due to extra COVID-19 funding, which will cease in 2022.

In respect to the rollout of the State's Mental Health Plan the following has been achieved since last year:<sup>12</sup>

- Continued funding for Child and Mental Health Services (CAMHS) as part of the COVID-19 Mental Health Response. This has led to an extension in the hours of operation of the CAMHS Connect Telephone service, as well as an increase in staffing across emergency mental health care services.
- In 2021, the state government allocated \$1.3 million to child and adolescent mental health, (mostly to CAMHS) of which \$367,500 was allocated to bolstering NGO counselling services for children under 12 years.

- The 2020–21 state budget included additional funding for Community Mental Health Care Services, including CAMHS, providing ongoing funding for the next 4 years;
- workshops were held to identify gaps and develop new services to meet the specific needs of children and young people;
- discussions were held with Adelaide Primary Health Network to undertake a feasibility study for establishment of a single point of access for youth mental health;
- work continues to support development of a State-wide Youth Model of Care; and
- approval to commence planning towards the development of a sub-acute Youth Mental Health Care Facility is being sought.

There are currently no places available in South Australian public hospitals for children who present with sub-acute mental health conditions. This is despite an increase in the length of stay for children and adolescents accessing mental health care services in acute units within public hospitals from 3.3 days in 2016–17 to 4.7 days in 2018–19.<sup>13</sup> In respect to acute presentations the number of beds rose from just 3.2 beds per 100,000 in 2018–19 to 3.3 beds per \$100,000 in 2019–20.<sup>14</sup>

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.

The Commissioner has heard that trans and gender diverse children and their families struggle to access appropriate support treatments either through primary health care services, or via other areas in the health care system. Waiting lists are long, and children and young people and their families report experiencing feelings of being “judged” and discriminated against.

#### **Evidence of progress or commitment to progress**

##### ***LGBTQIA+ children and young people***

The SA Mental Health Services Plan<sup>15</sup> states that it will seek to address discrimination by providing staff training in the delivery of safe and effective services for children and young people and their families who are part of the LGBTQIA+ community. This includes counselling skills and support for LGBTQIA children and young people who are considering or undergoing gender transition, so health staff can work collaboratively with general health practitioners in this area. However, the latest update on the implementation of the plan does not address this area, leaving it unclear as to what progress has been made.

A business case was made for creation of a state-wide model of care for delivery of gender diversity services. This model would articulate how SA Health and its partners could deliver appropriate, timely, and evidence-based health services to SA children, adolescents, and young adults who are gender diverse and/or who experience gender dysphoria. The Commissioner understands that during the year the Women’s and Children’s Hospital Network was provided with some additional funding to resource development of an improved clinical service delivery and framework of practice in this area.

- **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

## Problematic Sexual Behaviour

In South Australia, there is a lack of services specific to the needs of children displaying problematic sexual behaviours (PSB) with eligibility for existing services largely restricted to children whose behaviour is classified as “serious”. During 2021, the Commissioner formed advisory and working groups that brought representatives from across government and the private sector together to develop a coordinated approach to service delivery in this area.

Progress made to date includes:

- Finalising a new policy developed by the Department for Health that includes introduction of practices designed to better support educators to respond to incidents involving PSB, including provision for online and in-person training.
- Funding for research granted to enhance South Australia’s response to PSB. Projects receiving funding include:
  - SA Department for Child Protection (DCP) Grant with three main strands of activity (\$500,000 from SA DCP/\$2m Western Australia Communities) including analysis of current data, mapping and outcomes; developing and adapting policy and practice solutions to address gaps; and workforce development to enhance their capacity to respond to harmful sexual behaviours (HSBs).
  - DCP funded Professional PhD Scholarship (SA): HSBs in residential care (\$162,500).

## Address the increasing rate of child obesity

The proportion of children and young people who are considered to be either overweight or obese in South Australia stands at 32.7%. There are more males than females (62.7%/37.3%) considered overweight and obese, with a greater prevalence in metropolitan areas (73.9%). Children and young people from lower Socio-Economic Index Areas are also more likely to be considered overweight or obese: Lowest (39.8% considered overweight or obese); Low (39.6%); Middle (33.5%); High (21.6%); and Highest (25.3%).

The Australian Physical Activity and Sedentary Behaviour Guidelines<sup>16</sup> recommends that children aged 5–17 years should accumulate at least 60 minutes of moderate to vigorous exercise every day. However, only 22.2%<sup>17</sup> of South Australian children and young people reported being engaged in that level of exercise, with little change from last year’s figures of 22.6%.

A number of strategies designed to address this area of concern include:

1. SA’s State Public Health Plan 2019–24 aims to address “chronic disease” (with obesity listed as a chronic disease). The public health plan has set targets aimed at addressing obesity. These include regional health plans to “coordinate evidence-based programmes” and develop policies that prevent chronic disease by addressing risk factors that include nutrition, physical activity, smoking and alcohol consumption”.

- **No evidence** that the UN Committee’s recommendation is being addressed
- **Some evidence** that the UN Committee’s recommendation is being addressed
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2. The South Australian Health and Wellbeing Strategy 2020–2025 led by SA Health informs the priorities and direction for the public health system. In relation to the prevention and management of obesity, the Department for Health and Wellbeing will develop a “comprehensive, fully integrated response designed to address obesity at both the population and individual level”. This will include improving access to preventative programs designed to help maintain a healthy weight, manage obesity, and deal with emerging health issues related to poor nutrition.
3. The Women’s Child and Youth Health Plan meant to commence in 2020 was delayed, and will now be finalised in 2022.

The Commissioner looks forward to monitoring the development and implementation of the Department’s response, particularly the improved access to preventative programs.

### Evidence of progress or commitment to progress

There appears to be no publicly reported progress on developing a state-wide response to addressing obesity at a population level.

During 2021, the Commonwealth Government opened up consultations for development of Australia’s first National Obesity Strategy<sup>18</sup> which is expected to be launched nationally in 2022.

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

### Gaps and concerns

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

While this available data suggests sterilisations have become less common over recent years, the practice is still permitted in South Australian legislation. A child can be sterilised with an order from the Family Court or through a guardianship tribunal having “consideration of this being in the best interests of the child.” Sterilisation is also listed as a “prescribed treatment” under s61 of South Australia’s *Guardianship and Administration Act 1993* with changes to this legislation not yet addressed.

### Endnotes

- 1 SA Health. South Australian Population Health Survey – 2019 Annual Report, Children. Available at [SAPHS+2019+Annual+Report+--+Children+.pdf \(sahealth.sa.gov.au\)](#).
- 2 Australian Institute of Health and Welfare. Mental Health Services in Australia. Data source and key concepts Table FAC.14. Available at [Mental health services in Australia, Interactive data – Australian Institute of Health and Welfare \(aihw.gov.au\)](#)
- 3 SA Health. South Australian Population Health Survey – 2019 Annual Report, Children. Available at [SAPHS+2019+Annual+Report+--+Children+.pdf \(sahealth.sa.gov.au\)](#).
- 4 Australian Institute of Health and Welfare. 23 July 2020. Health System Overview. Available at [Health system overview – Australian Institute of Health and Welfare \(aihw.gov.au\)](#)
- 5 Australian Institute of Health and Welfare. 23 July 2020. Snapshot. Health Expenditure. Available at [Health expenditure – Australian Institute of Health and Welfare \(aihw.gov.au\)](#).

- **No evidence** that the UN Committee’s recommendation is being addressed
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- 6 Australian Government Mental Health Commission. October 2021. The National Children's Mental Health and Wellbeing Strategy. Available at <https://www.mentalhealthcommission.gov.au/get-media/e369a330-f8c3-4b9e-ab76-7a428f9ff0e3/national-childrens-mental-health-and-wellbeing-strategy-report-25oct2021>.
- 7 National Children's Mental Health and Wellbeing Strategy at page 3.
- 8 Australian Medical Association. 5 November 2011. The Public Hospital Report Card. Available at [AMA's latest Report Card shows public hospitals backsliding | Australian Medical Association](#)
- 9 Australian Medical Association SA. 5 November 2021. SA Medical receives dismal marks in AMA's 2021 Public Hospital Report Card. Available at [https://sa.ama.com.au/sites/default/files/2021-11/AMA%28SA%29%20MR%20PUBLIC%20HOSPITAL%20REPORT%20CARD\\_051121.pdf](https://sa.ama.com.au/sites/default/files/2021-11/AMA%28SA%29%20MR%20PUBLIC%20HOSPITAL%20REPORT%20CARD_051121.pdf).
- 10 Office of the Chief Psychiatrist. Mental Health Services Plan Progress Report and Implementation Plan for 2021–22. Available at [Document Control Information](#): page 35
- 11 SA Health. South Australian Population Health Survey – 2019 Annual Report, Children at page 18. Available at [SAPHS+2019+Annual+Report+--+Children+.pdf \(sahealth.sa.gov.au\)](#).
- 12 Ibid. Mental Health Services Plan Progress Report and Implementation Plan for 2021–22.
- 13 Australian Institute of Health and Welfare. Mental Health Services in Australia. Data source and key concepts Table FAC.28. Available at [Mental health services in Australia, Interactive data – Australian Institute of Health and Welfare \(aihw.gov.au\)](#)
- 14 Australian Institute of Health and Welfare. Mental Health Services in Australia. Data source and key concepts Table FAC.14. Available at [Mental health services in Australia, Interactive data – Australian Institute of Health and Welfare \(aihw.gov.au\)](#)
- 15 <https://www.sahealth.sa.gov.au/wps/wcm/connect/8520124e-0250-4393-819e-71bca0d-b4ad9/19032.2+MHSP-report-web-no+watermark.pdf?MOD=AJPERES&CACHEID=ROOT-WORKSPACE-8520124e-0250-4393-819e-71bca0db4ad9-njvqVlg>
- 16 Department of Health. 2019. Australia's Physical Activity and Sedentary Behaviour Guidelines and the Australian 24-Hour Movement Guidelines. Available at [Physical activity and exercise guidelines for all Australians | Australian Government Department of Health](#).
- 17 SA Health. South Australian Population Health Survey – 2019 Annual Report, Children. Available at [SAPHS+2019+Annual+Report+--+Children+.pdf \(sahealth.sa.gov.au\)](#).
- 18 Department for Health. Australian Government. National Obesity Strategy. Available at <https://consultations.health.gov.au/population-health-and-sport-division/national-obesity-strategy/>.

# 2021 Child Rights Progress Report on Child Justice

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South Australia's progress on recommendations made  
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# 2021 Child Rights Progress Report on Child Justice



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

## What the statistics say

Measure	No. (%) 2020–21	No. (%) 2019–20	5 Year Trend	Assessment
Average daily number of children in SA's Child Justice System in detention / under community based supervision <sup>1</sup>	Figures not yet released	26/181	Decreasing	+ Favourable
Number (%) of children detained at SA's Kurlana Tapa Youth Justice Centre (KTYJC) <sup>2</sup>	256 (100%)	328 (100%)	Decreasing	+ Favourable
Number (%) of Aboriginal and Torres Strait Islander children and young people admitted to KTYJC	111 (43.3%)	159 (48.4%)	Decreasing (% decreasing)	+ Favourable
Number (%) of children under a guardianship order at the time of their admission to KTYJC	78 (30.4%)	93 (28.3%)	Decreasing/ % increasing	+ Favourable
Number (%) of females admitted to KTYJC	56 (21.8%)	75 (22.8%)	Decreasing/ % increasing	+ Favourable
Number of individuals aged 10–13 years (inclusive) at the time of their admission to KTYJC	43 (16.7%)	35 (10.6%)*	Decreasing/ % steady	+ Favourable

\*Impacted by COVID-19

## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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.

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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.



# 2021 Child Rights Progress Report on Child Justice



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

## Brief Overview of SA Child Justice

The State Department for Human Services oversees and manages child justice issues, including the Youth Justice State Plan in South Australia. Children who come into contact with South Australia's legal system are required to be treated differently from adults, with diversion from the system a key goal. There is a separate criminal court for children, as well as a separate facility for children who are detained.

The Kurlana Tapa Youth Justice Centre (KTYJC) is the main place of detention for South Australian children. Since 2017, an independent Training Centre Visitor (TCV) whose role is legislated under the *Youth Justice Administration Act 2016*, has also been in place. The TCV's main function is to promote the safety and wellbeing of all children detained in the KTYJC by talking to children who have been detained about their rights, inspecting the centre, promoting the child's best interests, advocating for children to be involved in resolving issues at the centre, investigating systemic reform, and investigating any other matter referred to the TCV by the Minister.

Some welcome initiatives include:

1. A new DHS pilot program to keep children between 10–13 years of age who are being held on remand, out of the KTYJC. Initially the program will be for those children (and their families) who have had no previous contact with the South Australian justice system.
2. The South Australian government has made an \$18.7 million commitment over the next three years to consolidate provision of youth custodial services into a single site at the KTYJC. The build will include sensory rooms, a general learning area, and a counselling space for education programs. It will also include a new education building, an extended visiting space to improve outcomes for children and young people, and will increase opportunities for children and young people and their families to access rehabilitation services and therapeutic supports.
3. A reduction in the use of restrictive-type practices.<sup>3</sup>

In South Australia, the number of children entering the child justice system – both in the community and via detention – continues to decrease. However, there are still areas of concern that include the following:

1. There is an overrepresentation of South Australian children who identify as Aboriginal and Torres Strait Islander under the protection of the Chief Executive of Child Protection.
2. There is an overrepresentation of children with a disability (or children with disability related needs) under the protection of the Chief Executive of Child Protection.<sup>4</sup>
3. There are reports of children being detained in the Adelaide Watch House, a practice which is in direct conflict with UN guidance.<sup>5</sup>
4. South Australia's current bill to implement an independent oversight mechanism for all places of child detention is not fully compliant with the Optional Protocol against Torture (OPCAT). The bill has been drafted in response to Australia's duties under the OPCAT, where all Australian jurisdictions have committed to independent oversight of places of detention. In respect to children and young people, the independent National Preventative Mechanism (NPM) will only apply to children in the KTYJC. This leaves children who are detained in other areas with no independent oversight.
5. There is a distinct lack of investment into diversionary programs for South Australian children and young people.

## 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



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### Current Status

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

Following the banning of the use of spithoods in June 2020, there have been further gains made over the past year:

1. Reduction in the use of the Kurlana Tapa Youth Justice Centre 'Safe Room'
  - 1 January–30 June 2020 used 35 times;
  - 1 July–31 December 2020 used 6 times;
  - Jan–30 June 2021 used 7 times.
2. Reduction in the use of Restricted Routine-Dynamic Management Plans.

#### Concerns that still need to be addressed:

The use of handcuffs for night movement of on-site detainees.

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

There have been some gains made over the past year.

These include:

1. An end to unclothed searches (since 8 August 2020) due to the introduction of Wave Scanner Technology.
2. A review of the complaints process following feedback received last year.
3. Progress on improving the identification, assessment, and support of detainees with complex and challenging behaviours, particularly those related to disabilities. (The TCV noted a "a respectful and sensitive approach taken by KTYJC management and staff to complex issues affecting individual detainees".)

There have been no specific reports of cases of abuse and maltreatment of children in detention during the year, however, there have been some concerns raised by the Training Centre Visitor as follows:

1. There are reports of children being detained in the Adelaide City Watch House and other Watch Houses throughout South Australia.<sup>6</sup> Alleged offenders are being held in custody pending court or bail. Article 37c of the UNCRC states that children and young people should only be detained for the shortest possible time, separately from adults, and only as a last resort.
2. A perception of differential treatment or racism by peers/staff, a lack of cultural support, minimal Aboriginal staff within KTYJC, and limited or no cultural programs in place.

3. Young people from African, Central Asian, and Middle Eastern backgrounds have mentioned experiences of racism involving some peers and KTYJC staff, as well as concern about food (including issues associated with Ramadan participation), limited cultural or religious support, concerns about co-residents, and worries they have about returning to their community.
4. Lack of access to responsive medical care (24 hours, every day of the week).
5. Inadequate treatment and options for children with major mental health issues, including the necessity for separation, and the use of canvas coverings when children and young people are considered to be 'at risk'.
6. The care, treatment, and control of children and young people with disabilities.
7. Incidents of bullying between detainees that were not addressed.<sup>7</sup>

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

Although the Training Centre Visitor 2020–21 report notes that there have been some improvement to services in KTYJC (ending of strip searches, reduction in the use of the 'safe room', and recruitment of a nutritionist) there are still areas of concern, especially for certain groups.

These concerns include a lack of:

- appropriate child mental health facilities at KTYJC or elsewhere in the child justice system;
- diagnostic and treatment services of children with a disability;
- culturally appropriate support; and
- support for trans and gender diverse children.

In addition to these concerns there is the lack of the following:

1. The objects of South Australia's *Young Offenders Act (1993)* do not refer to the 'best interests of the child'. The objects and statutory policies of the Act states that government needs 'to secure 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'.
2. The *Youth Administration Act (2016)*, which sets up and administers training centres requires that those administering the Act should "at all times be given to promoting the wellbeing and best interests" of the children. Further, the Training Centre Visitor who oversees the centre is tasked with promoting the child's best interests.
3. The Youth Justice State Plan 2020–2023 mentions child's 'best interests' in the introduction but no-where else in the plan. One pillar of the plan includes: "Young people's safety and wellbeing is at the heart of our services" which is a step in the right direction. However, the best interest principle would take into consideration safety and wellbeing, and ensure this is used as the primary consideration.

■ **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

**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 set at 10 years. *Doli incapax* – the assumption that children are incapable of forming the intent to commit a crime – can be used as a defence for children between the ages of 10 and 14 years, however, it is not being used systematically for all children and young people in the court system. On a positive note, no 10-year-olds were detained in KTYJC in the 2020–21 year.

The Attorney-General has stated that the age will only be raised if there is national consensus to do so.<sup>8</sup> To date the Meeting of Attorneys General (MAG) has publicly stated that raising the age will be considered out of session<sup>9</sup> and have asked for evidence on what can be put in place to support children under 14 years if the age is raised.

This year's Training Centre Visitor's Annual Report<sup>10</sup> states that for the first time since commencement of reporting, no 10-year old South Australian children were detained. There is, however, a small group of children under 14 years of age who are being detained, with a large proportion of these children under a guardianship order and therefore in residential care.

The Training Centre Visitor is not aware of any South Australian child or young person under 14 years of age who was subjected to detention orders that contravened Article 37(b) of the UNCRC, however, there have been anecdotal reports that children are being held in policy custody in Watch Houses throughout the State. This practice is in direct contravention to international human rights Article 37(c) which states that "every child deprived of liberty shall be separated from adults" and only detained as a last resort.

**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.**

According to SAPOL data there is a long-term trend pointing to a decrease in the number of children being taken into custody by police (from 7,278 in 2012–13 to 2,955 in 2020–21). This is consistent with the percentage of children that end up in court or going through family conferencing (a more formal version of diversion) (from 71.65% in 2012–13 to 48% in 2020–21). Although the number of children entering the justice system has been steadily declining over the long term, the figures suggest that more could be done to divert children away from the justice system.

Concerns include:

1. The rate of SA children between the ages of 10 and 17 years who are on community-based supervision is the second lowest in the country at 11.0 per 10,000 children. This is below the national average of 14.3 per 10,000 children. Focus should be on community-based supervision rather than on detention.
2. South Australian police have wide powers to divert children away from the child justice system. Although SAPOL figures show that application of these powers have been contributing to a steady decline in the number of children who end up in court or going through family conferencing, the numbers are still far too high.

■ **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

Of concern is that in 2019–20 the number of Aboriginal children and young people who were successfully diverted away from the child justice system was at its lowest rate since reporting began. More needs to be done to divert all children away from the child justice system with a particular emphasis needed on diversion of Aboriginal children and young people.<sup>11</sup>

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

The KTYJC has a Charter of Rights for Children, and the Training Centre Visitor and her representatives actively talk to residents about these rights.

Children also have rights when they are arrested and when they interact with the justice system and other authorities. However, it is unclear whether children know about these rights or are being informed of them at the time of their arrest. This was a key recommendation made in *Making Change in Youth Justice* (2020).<sup>12</sup>

In 2021, a Custody Notification Service was legislated. This means that SAPOL must notify the Custody Notification Service if an Aboriginal person is brought into custody, including any Aboriginal children. This service is led by an Aboriginal Legal Rights Movement and ensures that Aboriginal children and young people are made aware of their rights at the time they are arrested.

#### Endnotes

- 1 Report on Government Expenditure.
- 2 All figures from the KTYJC sourced from Training Centre Visitor Annual Report 2020–2021. Accessed at <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/10/TCV-Annual-Report-2020-21.pdf>
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- 4 Department for Human Services. 2020. Disability Screening Assessment Project Report: Identification of Population Needs at the Adelaide Youth Training Centre (Kurlana Tapa). Accessed at <https://dhs.sa.gov.au/services/youth-justice/disability-screening-assessment-project>
- 5 UN Rules for the Protection of Juveniles Deprived of their Liberty (r.29) and UN Standard Minimum Rules for the Administration of Juvenile Justice (r.13.4) requires separation of juveniles pending trial and detention in a separate, or separate part of an institution holding adults.
- 6 TBD position <https://indaily.com.au/news/2021/10/19/child-offenders-detained-in-adult-holding-cells/>
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- 8 Parliament of South Australia. 11 February 2021. Hansard. Age of Criminal Responsibility. Available at <http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-8-582>
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- 10 Training Centre Visitor. Training Centre Visitor Annual Report 2020–2021 at pages 6 and 63–64.
- 11 Guardian for Children and Young People. Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021, pages 18–19, Chart 10.
- 12 Connolly, H. *Making Change in Youth Justice* 2020. Accessed from <https://www.ccyp.com.au/wp-content/uploads/2020/03/Screen-Youth-Justice-Report-web-version.pdf> (pp 11).

# 2021 Child Rights Progress Report on Child Protection

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



## About the CCYP

The [South Australian Commissioner for Children and Young People](#) is an independent position, established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#) (OAB Act). This legislation was introduced to the South Australian Parliament in response to the [Child Protection Systems Royal Commission 2014](#).

The Commission promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee) particularly in areas of relevance to Child Rights.

This year's progress reports include:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment



# 2021 Child Rights Progress Report on Child Protection



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

## What the statistics say

	No. (%)	5 year trend	Assessment
Number of notifications to the Child Abuse Report Line (CARL) for all children (number of notifications for Aboriginal children)	80,175 (18,754) <sup>1</sup>	Increasing	- Unfavourable
Proportion of notifications screened-in (Proportion of Aboriginal notifications)	47.6% (57.5%) <sup>2</sup>	Increasing	- Unfavourable
Number of children in Care*	4,647	Increasing	- Unfavourable
Number of children in Residential Care	604	Increasing	- Unfavourable
Proportion of Aboriginal children in care/proportion in general population	37.7%/5% <sup>3</sup>	Increasing	- Unfavourable
Number (%) of children placed in accordance with the Aboriginal Child Placement Principle	1,092 (65.2%) <sup>4</sup>	Increasing	+ Favourable
Proportion (%) of children in care requiring a case plan who have one	97.7% <sup>5</sup>	Increasing	+ Favourable

\*This number includes children in Kinship Care, Family Day Care, and those who are under the Guardianship of the CE (ie children aged 0–17 years placed in care under a court order or administrative authority).

## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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 their right to be safe and to be free from discrimination.

Every five years, the Australian Government reports to 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.

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 protection.



# 2021 Child Rights Progress Report on Child Protection



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

## Children's 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). Although parents have the primary responsibility to raise their children and to consider what is best for them, governments are required to provide services that support parents' efforts (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 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 16, 24, 28, 29).

## The child protection system in South Australia

The power and responsibilities of the South Australian Department for Child Protection (DCP) are established under the *SA Children and Young People (Safety) Act 2017*. The paramount consideration in the operation of the Act is to keep children and young people safe<sup>6</sup> with secondary issues including children and young people being heard and their views considered, fulfilling the need for love and attachment, protection of self-esteem, and providing support to enable them to reach their full potential.

The DCP works with vulnerable families, government and non-government organisations, foster carers, and the community to care for and protect at risk children and young people, by addressing incidents of abuse and neglect, and by keeping them safe from further harm.

Although early intervention programs have been initiated during the last year, more still needs to be done to ensure South Australia's child protection system maintains its focus on keeping children safe with their families.

In August 2021, SA Minister for Child Protection, Rachel Sanderson, confirmed that the government would not continue to fund the Child and Young Person's Visitor Program. This means there is no dedicated independent oversight for children and young people placed in Residential Care<sup>7</sup>. This is despite the support shown for the establishment and maintenance of this independent role by Commissioner Margaret Nyland in her Royal Commission Report on Child Protection Systems "The Life They Deserve" (2016). In this report, the Commissioner supported the recommendations made in The Layton Review for a 'community visitors' scheme to be legislated for and "established for all children in residential care."<sup>8</sup> Nyland stated that the "aim [of the scheme] is to ensure the consistent delivery of best practice services and to improve overall health and wellbeing outcomes for those children placed in residential care."<sup>9</sup>

## 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.

In 2020–21 the Department for Child Protection provided its services to 1,970 families and their associated 3,500 children. (More details on these figures can be found in the Department's 2020–21 Annual Report and its annual Safe and Well Report (2020).)

The proportion of expenditure for early intervention services remains steady at around 20% of total services expenditure in 2019–20,\* including investment into statewide strategies to support more families to care and protect their children at home. Systemic change will, however, require scalable and sustained responses.

#### Evidence

The South Australian government's Safe and Well Strategy recognises the importance of "earlier, targeted, intensive support for families with multiple and complex needs". This strategy is jointly led by the Department for Child Protection (DCP) and Department for Human Services (DHS).

The State government's 2021 progress report<sup>10</sup> provides an update on the Safe and Well Strategy, including the Child and Family Safety and Support System (CFSS). This system delivers services to vulnerable families to support children and their families at risk of harm, neglect, and family violence, through use of intensive and tailored services. A total of \$52 million is being invested over the next 4 years into a range of services designed to meet the needs of these vulnerable families including:

1. **Intensive Family Services** – established specifically to work with families facing complex issues where children are at high risk of entering care. There are seven non-government organisations being funded with 30% of overall funding going toward Aboriginal Community Controlled Organisations (ACCO).
2. **Resilient Families** – an \$11.3 million social impact initiative being delivered by the Benevolent Society with a funding model that rewards the program for achieving results. The initiative plans to support up to 300 children over the next five years by keeping together families whose children are at imminent risk of being placed into care.

\*2020–21 figures not yet released.

- **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

3. **Taikurturna Tirra-apinghi** – a pilot program established to work with Aboriginal families in western Adelaide whose children are at imminent risk of being placed into care. As one of the three out of home care prevention pilots, this service provides a very high level of intensive family support, initially to address immediate safety and then to improve family functioning. The program has been co-designed with the community to keep children safely at home with their families. It is being delivered by Kornar Winmil Yunti.
4. **Safe Kids, Families, Together** – a pilot program aimed at keeping children in Adelaide's north out of the child protection system. Having commenced in August 2019 with \$3 million worth of funding, the program has so far supported a total of 55 families, including 157 children.
5. **Breathing Space** – a two-year pilot program aimed at Aboriginal parents under 25 years who need specific parenting support. The program is being delivered by Catholic Family Services across metropolitan and southern Adelaide.
6. **My Place** – a new pilot program located within Yarrow Place, for young women aged 12–25 years who are, or have been under the Guardianship of the Chief Executive. It supports young people through their pregnancy and parenting journeys. It has a strong focus on engaging Aboriginal young people who are currently pregnant, or who have had their child taken into care.
7. **Strong Start** – a program designed to support first time mothers in Adelaide's southern and northern suburbs, so that their child gets a better start to life. The program aims to address complex issues that may otherwise place newly born children at risk of abuse or neglect.

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 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. In South Australia, the rate per 1,000 Aboriginal children aged 0–17 years in the population who were in care at 30 June 2020 was 84.5. This compares to a rate of 7.4 per 1,000 non-Aboriginal children in the population.<sup>11</sup>

The Department for Child Protection (DCP) has reported that, as at 30 June 2021, the number of Aboriginal children and young people in care with a current and approved Aboriginal Cultural Identity Support Tool or Cultural Plan is 92.7% – up from 56.6% at 30 June 2020.

#### Evidence

The DCP has:

1. Implemented the delivery of an Aboriginal Kinship Carer Pilot Program with three Aboriginal Community Care Organisations (ACCOs) engaged to support kinship carers of Aboriginal children and young people.
2. Implemented the Winangay Initial Carer Assessment tool; a tool that uses a strengths-based approach to engage, assess, and support kinship carers.<sup>12</sup>

- **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

3. Committed to establishment of an expert Aboriginal Child Protection Advisory Committee.
4. Increased procurement from ACCOs from 6.3% in 2019–20 to 7.9% in 2020–21.
5. Funded SNAICC, the national peak body for Aboriginal and Torres Strait Islander children, to work with South Australian Aboriginal communities, Commissioner for Aboriginal Children and Young People, and other Aboriginal South Australians to develop options for a peak SA body to represent the interests of Aboriginal children and young people.
6. Maintained Aboriginal employment at approximately 5% and continued to develop the cultural capability of the State's workforce in line with the Aboriginal Child Placement Principle.
7. Established an Aboriginal Cadetship Program with the first Legal Cadet commencing in July 2021, and a number of Social Work Cadets to commence during 2021–22.

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.

The Guardian for Children and Young People's *Six Month Snapshot of the South Australian Dual Involved Project* reports on the criminalisation of children in care, and the systemic issues that occur. The report also provides feedback from children who are dual involved.

Key points made in the snapshot include:

- Fourteen dual involved children and young people under the age of 14 years were detained between February and July 2021; four were 11, four were 12 and six were 13 years of age.
- Five individuals in this cohort are Aboriginal, while six of the 11–13-year-olds have a diagnosed disability.

Main conclusions include:

- children and young people in residential care are at far greater risk of criminalisation;
- residential care often exposes children and young people to peers with difficult behaviours; and
- systemic problems can result in unacceptable and unnecessary extended periods of detention for children who are being held on remand, as well as for those children who are transitioning into 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

## Evidence

1. The Mackillop Institute's **Sanctuary Model** of care is being used in Department for Child Protection (DCP) residential homes. 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. The Sanctuary Model is being rolled out over a 3-year period. Currently, the department is implementing 2-day Sanctuary Model training for all DCP Residential Care staff, including targeted non-government agency staff.<sup>13</sup> The introduction of the Sanctuary Model is a welcome initiative, but its successful implementation will be dependent upon a robust Residential Care system characterised by: trained and supported staff; access to sufficient and adequate metropolitan and regional properties; alignment with the Aboriginal and Torres Strait Islander Placement Principle; and appropriate care and opportunities for children and young people living with disabilities.
2. The Mackillop Institute has been engaged by DCP to implement the **Power 2 Kids: Respecting Sexual Safety** program across Residential Care. This trauma informed program builds carer capabilities to prevent, identify, and intervene early when they see indicators of sexual abuse. The program also increases children and young people's understanding of what healthy relationships are and what sexual safety involves, thereby empowering them to keep themselves safe and well.
3. DCP's **MyPlace** program is strengthening the quality of care provided within non-family-based care settings, by refreshing and enhancing the physical home environments for children and young people residing in Residential Care.

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

There are several initiatives led by DCP that involve families, communities, and children. These include:

1. Release of a new **Child and Youth Engagement Strategy 2021–2023**, which has been co-designed by children and young people with a lived care experience. The strategy is designed to support DCP to ensure the thoughts, feelings and perspectives of children and young people are at the core of protection work and inform policy and decision-making. The strategy's vision is to 'build a better child protection system, one that listens and empowers children and young people to have a voice in decision making'. Members of the 'No Capes for Change' Co-design Group, were young people aged 15 to 25 years with experience of living in residential care.
2. Increase in the use of **Family Group Conferences**. As at 30 June 2021, a total of 146 families had been referred to DCP in the 2020–21 financial year, compared to 46 in the previous year.<sup>14</sup> It is understood that DCP has funded an Aboriginal-specific service delivered by Aboriginal Family Support Services. The Government has committed \$3.7m over 4 years to establish Family Group Conferencing as an ongoing program. DCP has also committed to trialing a new conferencing program for Unborn Child Concerns and an Aboriginal-specific Family Group Conferencing program.



- **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

3. Recommissioning of **Family Reunification Services** that meet the needs of children and families. To date, nine service providers have contracts with DCP to enable them to provide reunification services.
4. Launch of a new Uniting Communities reunification program, called **Newpin** following a joint \$18.2 million commitment between the state and Commonwealth governments. The Newpin program involves parents and their children regularly attending a centre-based program for up to 18 months to engage in activities that promote wellbeing, improve parenting capacity, and support the development of positive family relationships. The program is also designed to support the return of children and young people to live safely with their families.

**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.

#### **Evidence**

There are several programs and services provided by the Department for Child Protection (DCP) relating to the delivery of services to South Australian children and young people living with disability. These include:

1. Expansion of the **Disability and Development Services Program** to offer more support to carers of children with disability and developmental delay. There are currently three teams that support caseworkers, family-based carers, and residential care services.
2. Continuation of **DCP Complex Case Review Meetings**, established in 2019 under the guidance of the Lead Psychiatric Director and Interagency Therapeutic Needs Panel. The Panel provides specialist input to Complex Case Review Meetings, and therapeutic support more broadly.
3. Continuation of efforts to increase the number of children and young people in care with a current **National Disability Insurance Scheme (NDIS) plan**. This figure currently totals 1,113 (23.5%) of all children in care, up from 19% at 30 June 2020. The DCP has recruited an additional 10 allied health staff in the Disability and Development Program to achieve this target.
4. Provision of specialised therapeutic training for carers who care for children with disability or complex needs in family based and non-family-based care via the **DCP's Carer and Personnel Requirements Matrix**.
5. Establishment of **new placement models** to better meet the needs of children and young people, including Placement and Support Packages (PaSP), Supported Independent Living Services, and Specialist Disability Residential Care Packages. AS at 30 June 2021 there were 35 funded NGO residential care disability placements across four NGOs. Two houses are based in regional areas.<sup>15</sup>

6. Establishment of **Disability Residential Care** – a new service model to better meet the needs of children and young people living with disability who are living in residential care. Key changes include service providers being required to have a more specific focus on disability, developmental delay, and trauma informed service delivery. This includes making it a requirement for them to be registered providers with the National Disability Insurance Scheme (NDIS) and therefore providing support in accordance with the NDIS Quality and Safeguards Practice Standards.<sup>16</sup>

#### Endnotes

- 1 Department for Child Protection, Reporting and Statistics. Available at <https://www.childprotection.sa.gov.au/department/reporting-and-statistics> accessed on 12 October 2021
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- 13 Ibid.
- 14 Department for Child Protection. 2020–21 Annual Report. 30 September 2021. Available at <https://www.childprotection.sa.gov.au/department/about-us/annual-reports/2020-21-annual-report>. Accessed on 12 October 2021.
- 15 Information from SA Guardian for Children and Young People.
- 16 Ibid. DCP Annual Report.

# 2021 Child Rights Progress Report on Disability

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



## About the CCYP

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The Commission promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports include:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment



# 2021 Child Rights Progress Report on Disability



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

## What the statistics say

Measure	Year (% or number)	Trend (Time period)	Assessment
Proportion of students in South Australian schools receiving adjustments due to disability.	2019 (26.3%) 2018 (23.6%) 2017 (21%) <sup>1</sup>	Increasing (Year on Year)	+ Favourable <sup>2</sup>
Proportion of suspensions from SA government schools for students receiving disability adjustments.	2019 (56.6%) 2016 (42.5%) <sup>3</sup>	Increasing (Three-year trend)	- Unfavourable
Proportion of children and young people in care who have a current National Disability Insurance Scheme (NDIS) plan.	2021 (23.5%) 2020 (19%) <sup>4</sup>	Increasing (Year on Year)	+ Favourable
Number of children and young people aged 0 to 18 years meeting criteria for access to the NDIS.	2021 (21,711) 2020 (21,876) <sup>5</sup>	Increasing (Year on Year)	+ Favourable  Compared to all other states and territories, South Australia has the highest NDIS participation rates of children across all three NDIS age groups 18 years and under.
Proportion of South Australia's general population who are NDIS participants.	At 30 June 2021: 4.18% of 0–6 year olds; 7.28% of 7–14 year olds; 4.63% of 15–18 year olds.  At 30 June 2020: 3.62% of 0–6 year olds; 6.44% of 7–14 year olds; 3.92% of 15–18 year olds. <sup>6</sup>	Increasing (Year on Year)	+ Favourable

Note: Data related to children with disability varies across data sources. This is due to differences in the definition of disability and age groups used for reporting purposes. There are also challenges in tracking data over time due to inconsistency and irregularity in terms of what data is made publicly available, particularly regarding children with disability who are not NDIS participants.

## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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 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.

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 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 (Article 23) 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 rights of children and young people with disability are also embedded in South Australia's *Disability Inclusion Act 2018*, which emphasises that children with disability should be considered a priority group with different needs and vulnerabilities.

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. The Act states that children with disability should 'be given developmentally appropriate opportunities to participate in decisions that affect them' and that any 'decisions made should be child-centred'.

### Positive developments include:

- A 42% increase between 2017 and 2020 in the amount of funding going directly to schools to support students who have a disability as part of the Inclusive Education Support Program (IESP).<sup>7</sup>
- Passing of the Disability Inclusion (Restrictive Practices-NDIS) Amendment Bill 2021 through all parliamentary stages in May 2021. The bill includes separate provisions for children with disability giving weight to their particular vulnerability.
- Commitment to ongoing state funding of around \$1.1 million per year from 2021–22 to complement NDIS funding for the Voluntary Out-of-Home Care (VOHC) program. This program forms part of the nationwide agreement aimed at preventing children with a disability who have exceptional needs from unnecessarily entering statutory care services.<sup>8</sup>
- Development and publication of Disability Access and Inclusion Plans by State authorities under the *Disability Inclusion Act 2018* (Cth).
- Publication of the Inclusive SA Engagement and Consultation with People Living with Disability Toolkit, which directly incorporates feedback from the Commissioner specific to children and young people living with disability.

### Ongoing areas of concern in South Australia include:

- No safeguard mechanisms are in place in SA schools to protect against the use of exclusionary or restrictive practices on students with disability despite parents and other stakeholders continuing to raise concerns about their use.
- Lack of opportunities and mechanisms to support the rights of children and young people living with disability to participate and engage in decision-making processes. This is despite significant evidence that engagement not only improves the design and delivery of systems and services but also increases individual confidence and capabilities, as well as physical and emotional safety.
- Overrepresentation of children and young people living with disability in child protection and youth justice systems.
- Criminalisation of children in residential care disproportionately impacting children living with disability.
- Lack of integration and information sharing between federally funded services under the NDIS and state-funded health, education and family support services, which is a barrier to appropriate and timely support for children living with disability.

## 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.

#### Gaps and concerns

Where data related to children living with disability exists across systems, it is not consistently collected, reported, or shared between agencies or stakeholders. Nor is it consistently disaggregated by age, gender, geographic location, or socioeconomic background. For example:

- lack of data collection in hospitals, which means clinicians lack information about disability-related needs to inform the provision of healthcare;
- lack of access to National Disability Insurance Agency data that would enable Department for Education staff to know if a child is an NDIS participant while allowing for the broader definition of disability used by the Department that captures children with 'complex social, emotional and behaviour needs';<sup>9</sup> and
- Department for Child Protection data focused on children with an NDIS plan, which does not therefore capture children living with disability or who have trauma related needs without a diagnoses, or who meet NDIS eligibility criteria.

Data about children living with disability is also largely limited to the prevalence of disability or service provision, with no consistent or regular data collected in relation to their:

- citizenship, including electoral enrolment and participation;
- safety, including sexual health and safety;
- participation, engagement and attainment in education, beyond enrolment figures; and
- participation in decision-making at all levels of government.

Inconsistent definitions and reporting across jurisdictions and systems makes it difficult to:

- ensure that children living with disability are accessing the support they need;
- design and implement effective policy, programs and services;
- track progress to ensure policies and programs achieve intended outcomes; and
- determine whether governments are meeting human rights obligations.

The Interim Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability highlighted that there is no reliable publicly available data on the violence, abuse, neglect or exploitation experienced by children and young people living with disability, despite their particular vulnerability.<sup>10</sup>

While Aboriginal people make up 6.5% of NDIS participants in South Australia, this data is not reported by age. Neither does the NDIS quarterly data include any detail about the number of Aboriginal and Torres Strait Islander children who have an NDIS plan.<sup>11</sup>

### **Evidence of progress or commitment to progress**

The Department for Human Services (DHS) has committed to developing new data indicators as part of an outcomes framework that aligns with the National Disability Strategy and builds on the Inclusive SA 'interim measures'. This new data would include indicators relating to participation in decision-making, involvement in the community, improvements in community understanding and attitudes, and promotion of the rights of people living with disability.<sup>12</sup>

DHS has committed to responding to the significant areas of disability-related need among children detained in Kurlana Tapa Youth Justice Centre as identified in the 2019 Disability Screening Assessment Project.<sup>13</sup> These area of disability-related need include:

- working with Child Justice Liaison Officers in the NDIA to facilitate access to NDIS services for children living with disability who are in custody (Action 9.6 of the DHS DAIP);
- providing disability screening assessments for all children and young people engaged in Youth Justice Services in ways that 'actively promote children's rights and the engagement of parents, carers, families and communities' (Action 9.7 of the DHS DAIP);
- improving staff awareness training to understand the rights of children and young people living with disability, and how disability affects a child or young person's behaviour or attention span (Action 9.7 of the DHS DAIP); and
- embedding disability informed policies and procedures across Youth Justice Services (Action 9.7 of the DHS DAIP).

The Department for Human Services (DHS) continues to negotiate a Memorandum of Understanding (MOU) for information sharing between the NDIA and State government agencies to 'allow for more timely access to data'.<sup>14</sup> The Department for Child Protection (DCP) has also committed to implementing 'a streamlined approach to collection and reporting on children and young people with disability in care' and developing data sharing arrangements with relevant agencies and stakeholders.<sup>15</sup>

The Commissioner will monitor progress towards these commitments in future progress reports.

■ **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 for Education uses a broader definition of disability that includes 'complex social, emotional and behaviour needs'. This aligns with national disability guidelines and informs the Inclusive Education Support Program (IESP) funding model, which is premised on the provision of support according to functional needs rather than diagnosis. The significant increase in the number of students reported to have a disability since the introduction of this category in 2019 'demonstrates the importance of properly recognising and reporting on disability'.<sup>16</sup>

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

There is limited data available about the sterilisation of children in Australia. While available data suggests sterilisations have become less common over recent years, the practice is still permitted by legislation in South Australia.

While sterilisation is a 'prescribed treatment' under Section 61 of the *Guardianship and Administration Act (SA) 1993*, 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 a child's best interests are determined and the potential for a child's wishes to be overlooked, governments must put in place policies and procedures that allow support for children and their families, including 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.**

There are limited opportunities and mechanisms to support the participation of children with disability in decision-making at a community and systemic level. It is promising that the final Inclusive SA Engagement and Consultation with People Living with Disability Toolkit developed by the Department of Human Services (DHS) has incorporated practical feedback from the Commissioner specific to engaging with children and young people living with disability.

South Australia's first Inclusive SA: State Disability Inclusion Plan 2019–2023 sets out specific actions for State authorities to improve access and inclusion for all people living with disability, including children and young people. However, there is no publicly reported evidence of further targeted consultation with children and young people to ensure the 'revised plan in 2021 responds to their specific needs', as promised in the Inclusive SA Plan.<sup>17</sup>

The lack of a safeguard or oversight mechanism (similar to the Adult Safeguarding Unit) for children living with disability continues to be a concern. Due to a range of systemic, social and individual factors, that can include poverty, complex health or mental health needs, and the complexity of the system, parents and guardians may not have the resources, skills and knowledge to act in their child's best interests and external safeguarding may be required.

- **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

- **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 for Education's '1 in 4' reforms are based on the proportion of students requiring adjustments due to disability, mental health issues, dyslexia, or other behavioural or functional needs (as identified in the Nationally Consistent Collection of Data). The focus on the 1 in 4 seeks to raise awareness of the support needs of students in every classroom and every school.

Provisions that exempt a person of 'unsound mind' from voting in elections remains in Commonwealth electoral legislation despite recommendations from the Australian Law Reform Commission to remove this provision.<sup>18</sup>

The Office for Recreation Sport and Racing (ORSR) has committed to exploring opportunities to foster greater participation in sports by children living with disability, including a review of the Sports Voucher Program.<sup>19</sup> The timeline for this to be actioned is 31 October 2022, aligning with Priority 1: Action 5 of the Inclusive SA State Disability Inclusion Plan.

In 2021, the South Australian Law Reform Institute (SALRI) completed a review of the use of communication assistance in South Australia's justice process. The final report makes several recommendations specific to child suspects and witnesses, including that existing legislation be amended to 'create a positive obligation on SAPOL or any other prescribed interviewer' to provide communication assistance to children. The Commissioner will monitor the government's response to these recommendations.

Noting the prevalence of complex communication needs among children in the youth justice system, the study emphasises that the 'absence of complex communication needs should be assumed to be the exception rather than the rule'.<sup>20</sup>

The new National Disability Strategy 2021–2031 has been endorsed by all Australian governments and launched in December 2021. The Commissioner will continue to monitor South Australia's progress in meeting its obligations under the national Strategy and Inclusive SA Plan in 2022 and beyond.

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

During the 2020–21 financial year, the number of children and young people in care with a current NDIS plan increased to 1,113, making up 23.5% of all children in care (up from 19% at 30 June 2020).<sup>21</sup>

The focus of the Department for Education's data and work in supporting children living with disability is primarily focused on NDIS access. To fully address this recommendation, there is a need for greater systemic identification and support for children who do not meet NDIS eligibility, but who nevertheless have complex social, emotional and behavioural needs. This includes greater support for children who have needs relating to trauma and foetal alcohol syndrome and their carers.

The resources for carers made available through the Department for Child Protection's (DCP) website have been updated in 2021 to include disability-specific titles, including a number which are specific to Aboriginal children and young people (in line with Action 1.2 of the DCP DAIP).<sup>22</sup>



- **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

According to the 2020–21 DCP Annual Report the Department:

- expanded the Therapeutic Carer Support Team and recruited an additional 10 allied health staff in the Disability and Development Program;<sup>23</sup> and
- reported an increase in the number of kinship carers supported by Aboriginal Community Controlled Organisations to provide 'culturally responsive support to kinship carers of Aboriginal children and young people'.<sup>24</sup>

The Disability Advocate Report on Children and Young People (August 2021) and the NDIS, highlighted significant barriers to the provision of support and information to those who care for young Aboriginal children living with disability, including that:

- the NDIS Act does not acknowledge private arrangements for foster care placements and kinship care arrangements, making it difficult for these carers to provide and receive information from the NDIS;
- there is a limited number of providers providing culturally appropriate services; and
- there are limited services available in regional and remote areas.<sup>25</sup>

The criminalisation of children in care, particularly those in the residential care system, continues to be a systemic concern; one that disproportionately impacts children living with disability. The Guardian for Children and Young People recently reported that a failure to identify disability effectively contributes to criminalisation 'by not ensuring access to full early assessments, diagnoses, and interventions, that could minimise or mitigate youth justice involvement'.<sup>26</sup>

The Children and Young Person's Visitor role – which was legislated to conduct inspections, provide oversight, and advocate for the welfare of children living in residential care, ceased operating at the end of 2019 after a two-year pilot.

Under the *Disability Discrimination Act (Cth) 1992* and the Disability Standards for Education 2005 (the Standards), students with disability must be able to access and participate in their education on the same basis as others.

The federal government released the final report on the 2020 Review of the Disability Standards for Education in March 2021. The report makes 13 recommendations, including that the Australian government work with state and territory governments to:

- provide information and teacher training on the Standards; and
- develop practices to collect and report on the participation of students with disability in school education, including the extent to which the Standards are being followed.

Although the Review aligns with the UN recommendation and reflects the Commissioner's feedback, the National Disability Strategy State of the Disability Sector Report, highlighted concern that the Standards are a framework, and that the Government 'does not have mechanisms to drive accountability and progress'.<sup>27</sup>

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



- **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

Between 2017 and 2020, as part of the Inclusive Education Support Program (IESP), there was a 42% increase in the amount of funding going directly to schools to support students with a disability.<sup>28</sup> The focus of the IESP model on student needs, rather than on diagnosis, captures a greater number of students in need of support.

The independent 'Inquiry into suspensions, exclusions and expulsions in South Australian government schools' found that students with disability are disproportionately impacted by school exclusions, particularly those who are not provided with reasonable adjustments necessary to prevent incidents that lead to the use of exclusion. This reflects the findings of the Commissioner's own Blame Game Report, which highlighted children and young people's perspectives on the causes and impacts of education exclusions.

The Department for Education is engaged in a 'significant body of work' in response to the Graham Inquiry to increase inclusion and 'reduce the high levels of exclusion and suspension that have been noted for students with a disability'. This work will continue through to 2023.

The Commissioner remains concerned that the Department for Education Transport Policy appears to require children with disability to meet eligibility requirements that go further than their peers without disability, thus making it harder for these students to get to and from school.<sup>29</sup> The Commissioner will continue to monitor the Department's implementation of a commitment in its DAIP to 'support access to preschool and school for children and young people with disability via the students with disability transport assistance program' and review the program procedure at least every three years.

Approximately 84% of children and young people with disability in government schools attend mainstream schools and 16% attend specialised education options, including special schools, disability units, or special classes.<sup>30</sup> In preparation for the state-wide transition of year 7 students to high school, the Department for Education has provided an additional 180 special option places, recruited additional School Services Officers (SSOs), and established individual student plans well in advance of the transition. The Commissioner will monitor how the learnings from the pilot transition and the actual 2022 transition inform the preparation and support provided for students with disability both during the transition and in future years.

According to the Department for Education's DAIP, the Department's *Children and Students with Disability Policy* is to be reviewed by December 2021.

The Disability Royal Commission recently released a Public Hearing Report on Barriers to Inclusive Education, giving families a voice to the failings of the education system to ensure access to inclusive education. The Commissioner hopes this will drive cultural and systemic reforms that build on the IESP to increase understanding, expectations, and the skills of educators, to better support the inclusion and participation of all children and young people living with disability.

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

South Australia's Parliament passed the *Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021* in May this year.<sup>31</sup> Informed by public consultation, the legislation provides a legislative framework for the use of restrictive practices by NDIS providers, for NDIS participants. This will ensure that restrictive practices such as restraint and seclusion are used only as a last resort and that South Australia complies with national principles for restrictive practice authorisation.

The Restrictive Practices Authorisation Team within DHS is working with NDIS providers, statutory authorities, and people living with disability to transition to the new Restrictive Practices Authorisation scheme in 2022.<sup>32</sup> The Commissioner will monitor this in subsequent reports.

In March 2021, the NDIS Quality and Safeguards Commission released the Practice Guide for Regulated Restrictive Practices with Children and Young People Living with Disability. The guide applies to NDIS service providers, and it provides guidance and examples of the use of regulated restrictive practices and the balance with standard parental practices. However under-reporting of the use of restrictive practices for children living with disability is an ongoing concern. The NDIS Commission reported that only 12.2% of the behaviour support plans lodged with the NDIS Commission in the 2019-20 financial year, related to a participant under 18 years.<sup>33</sup>

The state government is currently undertaking a piece of work to legislate for a whole of government approach to the regulation of restrictive practices, including their use in education and children protection, as well as in aged care settings. This should be finalised in 2022. The Commissioner will report on this in future progress reports.

Although the Department for Education, South Australian Ombudsman, Equal Opportunity Commission and Australian Human Rights Commission handle complaints, there are currently no independent safeguard mechanisms in place to protect children living with disability from the use of exclusionary or restrictive practices while they're attending school.

### Endnotes

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- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
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# 2021 Child Rights Progress Report on Education

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



## About the CCYP

The [South Australian Commissioner for Children and Young People](#) is an independent position, established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#) (OAB Act). This legislation was introduced to the South Australian Parliament in response to the [Child Protection Systems Royal Commission 2014](#).

The Commission promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports include:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment



# 2021 Child Rights Progress Report on Education



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

## What the statistics say

	Data	5 year trend	Assessment
The proportion of Year 3 students achieving at or above the national minimum standard (NPM) in learning. (2021) <sup>1</sup>	Reading – 94.7% Writing – 95.5% Numeracy – 94.7%  SA students are below the national average in all domains	Increasing	+ Favourable
The proportion of Year 5 students achieving at or above the national minimum standard (NPM) in learning. (2021)	Reading – 94.2% Writing – 90.6% Numeracy – 94.3%  SA students are below the national average in all domains	Increasing	+ Favourable
The proportion of Year 7 students achieving at or above the national minimum standard (NPM) in learning. (2021)	Reading – 93.3% Writing – 88.5% Numeracy – 92.5%  SA students are below the national average in all domains	Steady	+ Favourable
The number of children (birth to 6 years) with an approved NDIS Plan before entering school <sup>2</sup> (as at June 2020)	4,895 (up from 3,825 at September 2019)	Increasing	+ Favourable
The total number of SA children who were suspended across Primary and Secondary School levels <sup>3*</sup>	5,003	A rise in the proportion of students being suspended whilst in primary school	- Unfavourable for primary school students
Primary Secondary (Government schools only) (Term 2, 2020)	2,633 (52.6%) 2,370 (47.4%)		
Incidents of bullying reported by all SA students <sup>4</sup> (2021)	Total – 388,408 Physical – 97,409 Verbal – 97,162 Social – 97,044 Cyber – 96,793	Increasing	- Unfavourable
Proportion of students who have an important adult at school <sup>5</sup> (2021)	58% (57% in 2020)	Improving	+ Favourable
Proportion of students who feel connected to school (2021)	64% (61% in 2021)	Improving	+ Favourable

\*In 2019, SA students in Years 11 and 12 became participants in the State's Annual Wellbeing and Engagement Collection Survey of students. This resulted in 20,000 more students undertaking the survey than in previous years. This means that the long term trend can only really be measured from 2019.

## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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, and free from discrimination.

Every five years, the Australian Government reports to the Committee to explain how Australia is faring in relation to child 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.

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'.

## Child's right 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 good 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 also a fundamental means of realising other rights and 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.

## The education system in South Australia

South Australia's education systems is comprised of early, primary, secondary and tertiary education levels. Children must be engaged in formal education from 6 to 16 years of age.

Formal education includes government schools or private – Catholic or Independent schools, and authorised home schooling options. The majority of children attend government schools.

During the year there have been issues affecting schools and students in both public and private schools, as well as development of some new initiatives.

Some welcome initiatives include:

1. A commitment of \$15 million in funding over the next four years to support the development and implementation of a systemic strategy to drive a significant reduction in exclusionary discipline in South Australia's public schools. This includes providing increased accountability in response to the *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools*, the *Blame Game* report by the SA Commissioner for Children and Young People examining the impact of exclusion on children and their families, and the *Earning and Learning Pathways* report by the Australian Council for Educational Research (ACER).
2. Making period hygiene products freely available to students who menstruate in South Australian primary and secondary public schools from 2021 thereby ensuring that a lack of access to these essential products is not a barrier to their school attendance and engagement with their education.

Ongoing areas of concern include:

- the disproportionate number of vulnerable children affected by school exclusions and disengagement, who include children living with a disability, Aboriginal children, and children in care, particularly those who have come into contact with the youth justice system;
- the inconsistent delivery of respectful relationship and sex education in schools; and
- the readiness of schools to support the state-wide transition for year 7 students moving to high school in 2022.

## 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. *Connected: A Community Approach to Bullying Prevention within the School Gates and Beyond* takes a whole-of-community response and public health approach, with the strategy's initiatives being implemented from 2019 to 2022.

The Department for Education's Student Wellbeing and Engagement Survey found that there has been a marked increase in "bullying" behaviour, however, the frequency of this bullying is decreasing with 42% of respondents saying that it rarely occurs.



#### Evidence

- An online portal which supports schools to create local best practice bullying prevention, behaviour and attendance policies and plans, has been implemented during the year, with over 275 schools having starting a policy or plan via the portal.<sup>6</sup>
- The Department for Education undertook an evaluation of "Friendly Schools" – a whole of school social and emotional wellbeing and bullying intervention program piloted across 10 schools in the Greater Gawler Partnership at a cost of approximately \$90,000<sup>7</sup>. Following the success of this trial the Minister announced a further \$200,000 in funding toward implementation of the program at 40 other SA government schools.<sup>8</sup>
- A bill to amend the Equal Opportunity Act to ensure children are not discriminated against on the basis of their sex or sexual preferences was consulted upon, but has not yet been tabled. It is not clear how this bill would have addressed bullying in schools for LGBTBIQA+ children.
- The current policy of the Department for Education stipulates that all public schools must address bullying on the grounds of "sexual orientation, intersex status, gender expression or gender identity." The policy also states that "all areas of the curriculum must use language that is inclusive of gender diversity, intersex and sexual diversity. Staff practices need to challenge gender stereotypes, expectations, values and attitudes." It is not clear how this policy is being monitored.

**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 is crucial to promoting gender equality and respect, as well as addressing the intergenerational issue of sexual and domestic violence.

Respectful relationships and consent are covered in the Health and Physical Education curriculum and the Keeping Safe: Child Protection Curriculum (KS:CPC). It is not, however, being taught consistently in all schools. In terms of content, it is not consistently 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.

**Evidence**

In 2021, hundreds of secondary school students across Adelaide attended public protests and signed a petition, calling for more timely, relevant and consistent respectful relationships and sexual health education, and the end of gendered violence and sexual harassment in schools. They were partly responding to issues identified in global movements, as well as to their own experiences as students in a high school setting.

As part of a response to this, the Department for Education:

- refreshed information available to educators, both on the Department for Education's intranet and within the resources used by Catholic Education;
- committed to updating the teaching of respectful relationships and child safety to better highlight consent, and to review of the 'Keeping Safe' content to ensure it is relevant. It is not clear, however, what has been done to ensure that the curriculum is being properly delivered; and
- is refreshing its guidance to educators on how to respond to incidences of problem sexual behaviour. It will also provide educators with more training on this subject.

The Commissioner will continue to monitor the development and implementation of measures in this area in 2022

**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.**

Students with disability can be disproportionately impacted by informal and formal exclusionary practices that limit or reject the enrolment, participation and engagement of students with disability, including:

- using suspension and exclusion of students due to behaviour that arises out of their disability;
- schools limiting the hours this group of students can go to school; and
- confining students in a room or in an enclosed space either alone or with adult supervision.

In relation to children on an NDIS plan key issues identified by the Department for Education include:

- challenges in balancing educational needs with visiting services for children and managing onsite visits or time away from the education environment;
- disbandment of the state group coordinated by SA Department for Human Services for information sharing about the NDIS;
- an inability to obtain data about which students have an NDIS Plan in place; and
- the late identification of disability or disability related needs of students. This may be due to parental hesitancy to recognise there is a developmental delay.<sup>9</sup>

Authentic inclusion of students with disability requires cultural change that builds on the Inclusive Education Support Plan (IESP) and increases understanding, expectations, and support for all children living with disability.

### **Evidence**

During the past twelve months changes in relation to provision of and access to inclusive education for children living with disability have been made including:

- changes to the funding model for the IESP such as looking at the functional needs of children and not at their disability diagnoses, as well as pausing reviews for ongoing funding over the next two years.<sup>10</sup> The audit of the enrolment census for Term 3, 2020 identified that 21,115.8 FTE students are being supported by the IESP. There appears to be an increase in the number of students diagnosed with a disability since 2013 with the number of placements in mainstream public schools increasing from 14,760 in 2013 to 21,115 in 2020.<sup>11</sup>
- the decommissioning of the Flexible Learning Options program by the Department for Education. At this time, it is not known what will replace this program. Work with stakeholders to introduce a new model will commence in 2022.

### **Restrictive Practices**

- Although there is no legislation covering restrictive practices it is expected that a bill will be tabled in Parliament early in 2022 to address the use of restrictive practices across government public schools.
- The Department for Education's Protective Practices<sup>12</sup> 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."
- The Department for Education, the Ombudsman SA, the Equal Opportunity Commission and the Australian Human Rights Commission can handle complaints, especially in relation to discriminatory or exclusory practices. There is currently no child-focused safeguard mechanism in place. Neither is there an independent oversight to protect children living with disability from exclusionary or restrictive practices being used against them by the education system.

- the state government has committed to funding an individual disability advocacy service for three years. While not specifically designed for children, this Office understands that children living with disability will be able to access the service. It is unclear how many complaints have been received from children and young people living with disability to date.

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' history.

Students in regional and remote areas are consistently less likely to be at the national minimum standard for writing, reading and numeracy compared to their counterparts in major Australian cities. Although there has been an increase in the proportion of Aboriginal students in Years 3, 5 and 7 whose reading and writing levels are either at, or above national minimum standards, the levels are still between 5–10% lower than the State average.<sup>13</sup>

In 2019–20, the Aboriginal Learner Achievement Leaders' Resource was implemented across government schools that have students enrolled who are Aboriginal, with the aim of improving the literacy and numeracy outcomes for Aboriginal students.

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 data collection at both the student-level and school-level.

#### Evidence

In 2018, the Department for Education released its ten-year Aboriginal Education Strategy 2019–29. An Expert Advisory Panel has been established to support the successful implementation of the strategy's goals for Aboriginal children to excel in the early years, at school and in the transition from school to employment, training, or further education.

The key goals of the strategy are:

1. Aboriginal children establish foundations for success in the early years.
2. Aboriginal children and young people excel at school.
3. Aboriginal young people on pathways to success.

In implementing the strategy to reach these goals, the Department for Education has reported that the following steps have been undertaken:

1. Aboriginal children establish foundations for success in the early years:
  - a. The strategy states that all Aboriginal children will have a One Plan. At the end of Term 4, 2020, 72% of Aboriginal students have their own 'One Plan'. (One plan is a single, comprehensive online learning tool developed for targeted groups of students to ensure they have a single coordinated learning plan.)
  - b. The Department is currently consulting on ways to develop a culturally responsive method of teaching Aboriginal students. Consultation was undertaken throughout 2021 and is expected to be finalised this year.<sup>14</sup>

■ **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

- **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

2. Aboriginal children and young people excel at school:
  - a. Schools in Whyalla launched the **Shooting Stars** program; an engagement and mentoring program for girls.<sup>15</sup> The program targets Aboriginal girls in Years, 3, 4, 5, 6 and 7 attending the Whyalla Stuart R–7 School, Nicolson Avenue Primary School and Hincks Avenue Primary School. In 2022, the Shooting Stars program will expand to Whyalla Secondary College and then to all remaining schools in the area in 2023.
  - b. Seven **Clontarf Foundation** academies are being piloted in nine SA government schools since 2019. The program is offered to young Aboriginal and Torres Strait Islander boys from Year 5 through to Year 12 enrolled at participating schools.<sup>16</sup>
  - c. The Department for Education launched the **Aboriginal and Torres Strait Islander English as an additional language or dialect** (EALD) to support Aboriginal students who learn English as an additional language or dialect.
  - d. A number of initiatives aimed at increasing opportunities to engage with Aboriginal languages and culture have been introduced. They include embedding South Australian Aboriginal understanding, knowledge and ways of thinking into teaching resources aligned with the Australian Curriculum: Science Years 7–10.<sup>17</sup>
  - e. Throughout 2020, two Principal Implementation Managers have worked across metropolitan and regional schools, partnerships and portfolios, to provide leaders with a range of tailored support with implementation of the Aboriginal Learner Achievement Leaders' Resource. This includes online and in person presentations, school visits, and advice, connecting the work across the department to deliver improved education outcomes for Aboriginal students.
3. Aboriginal young people on pathways to success.
  - a. Expanding the **Workabout Program** to support Aboriginal young people living in Port Lincoln, Murraylands, and southern and western metropolitan regions, to make a successful transition from study to employment.

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.

## Evidence

According to Australian Curriculum, Assessment and Reporting Authority (ACARA) over a quarter of students enrolled in South Australian schools come from disadvantage backgrounds.<sup>18</sup> The only two states with students who are more disadvantaged than those in South Australia are those living in Tasmania and Northern Territory.<sup>19</sup> This makes it imperative that these children get the educational support they need to fulfil their learning potential. The following section covers groups of students whose learning needs have not been previously addressed:

### 1. Early childhood education

The 2020 Department for Education's Annual Report stated that in 2019, 95% of South Australian children, including vulnerable and disadvantaged children, have access to, and participate in, an affordable quality early childhood education program.



In August 2021, the SA Government consulted with stakeholders and the community to develop the Department's 10 year Early Learning Strategy. Two key streams included "Growing Learners Together" and "World Class Preschools" with the use of AECD data as a key enabler. The Early Learning Strategy aims to increase the ability for preschool children in remote and rural areas to access programs.

A total of \$50 million in government funding has been invested over four years to support implementation of the strategy, which aims to:

- expand the reach, frequency and number of child development checks undertaken;
- give parents easy access to tips and resources to support their child's development;
- provide teachers with new resources to build on the high-quality learning and development of every public preschool; and
- establish a new Office for the Early Years within the Department for Education to provide strategic vision and direction across the early years education system.

## 2. Country and rural areas

Approximately 28% of SA children and young people are enrolled in government run country schools and 30% are enrolled in government run country preschools. Almost half of government schools and 40% of preschools are located in country areas.<sup>20</sup>

In 2021, the Department focused on development of its first ever Country Education Strategy, to address the barriers to teachers working in regional and remote locations, to ensure equity of opportunity for SA school students living in the regions and help achieve the goal of delivering a world class public education system in South Australia.

The actions contained in the strategy will be rolled out over the next three years and will involve stakeholders who will include children and young people.

The Commissioner will monitor the implementation of this strategy and report on its progress in subsequent annual child rights reports.

## 3. Children in care

In 2021, the Department for Education and the Department for Child Protection (DCP) developed and released a plan of action to support the education and wellbeing outcomes of children and young people who are living in residential care.

According to the DCP's website children in care get priority enrolment into public schools, a personalised learning plan (One Plan), extra learning support (including, if applicable tutoring, mentoring, and disability support), as well as financial support and scholarships.

## Endnotes

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# 2021 Child Rights Progress Report on the Environment

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



## About the CCYP

The [South Australian Commissioner for Children and Young People](#) is an independent position, established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#) (OAB Act). This legislation was introduced to the South Australian Parliament in response to the [Child Protection Systems Royal Commission 2014](#).

The Commission promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports include:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment



# 2021 Child Rights Progress Report on the Environment



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

## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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 their right to be safe and to be free from discrimination.

Every five years, the Australian Government reports to 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.

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 environment.

## The impact of climate change on children's rights

This is the Commissioner's inaugural progress report on children's rights in relation to the environment and climate change.

Children and young people in South Australia have been vocalising their increasing concern about growing inequality and the impact of climate change, particularly on vulnerable populations around the world. These concerns are emerging as key issues affecting intergenerational trust, particularly when there are few mechanisms to support children and young people's participation in decision-making.

The Commissioner has elsewhere highlighted that the impacts of climate change and natural disasters on the future of the environment, animals, places, and the people children and young people care about are consistently raised in the top 5 issues they are worried about.<sup>1</sup>

In conversations about the 2019-20 bushfires and the 2020 COVID-19 pandemic, some South Australian children told the Commissioner they felt invisible, ignored, and 'cut off' from information and decision-making, and were not being heard or understood by the adults in their lives, including government and community leaders.

In early 2021, the Commissioner published "A Guide to Being Child and Youth Focused in an Emergency". This publication provides guidance to adults on how to interact with children and young people in a child-friendly way – from parents and teachers to 'official' emergency management personnel and media. It asks adults to consider children and young people during the immediate response as well as in the preparation and recovery phases of managing an emergency disaster. This includes:

- understanding the impact of disasters on children and young people's lives;
- supporting children and young people to feel welcome and included;
- supporting children and young people to be hopeful and useful; and
- supporting children and young people to have a say.<sup>2</sup>

Although evidence indicates that some of the significant effects of climate change can be mitigated or reversed with policy redirection and reinvestment, this message – and information about what positive action is already being taken to progress climate action – rarely reaches children and young people. This contributes to feelings of uncertainty and hopelessness, particularly about their future.

The UNCRC has emphasised the 'undeniable impact' that the effects of climate change has on children's rights, including their rights to life, survival and development, non-discrimination, health, and an adequate standard of living.<sup>3</sup>

In the Committee's Concluding Observations on Australia's most recent periodic reports, the Committee raised particular concerns in relation to:

- Australia's 'insufficient progress' on the emissions reductions targets set out in international agreements; and
- the government's response to protests led by Australian children and young people calling on the government to protect the environment, demonstrated disrespect 'from those in authority' for the rights of children to express their views (as per Article 12 of the UNCRC).

The UN Committee drew attention to target 13.5 of the Sustainable Development Goals and made specific recommendations related to children's rights and a healthy environment.

In October 2021, the UN Committee ruled that a State party can be held responsible for the negative impact of its carbon emissions on the rights of children, both within and outside its territory.<sup>4</sup>

## **South Australia's climate change, environment, and emergency management policy frameworks**

Responsibility for the environment is shared between the Commonwealth, state, and local governments in Australia. The Commonwealth is responsible for ratifying international treaties and can pass laws giving effect to such conventions, whereas South Australia has passed legislation that 'limits the status of international treaties to that of non-binding policy documents only'.<sup>5</sup>

The State has passed several laws that affect the environment, including the *Environment Protection Act 1993 (SA)*, the *Native Vegetation Act 1991 (SA)*, the *Planning, Development, and Infrastructure Act 2016 (SA)* and the *Landscape South Australia Act 2019 (SA)*.

The main Commonwealth environment legislation is the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. However, where Commonwealth and State legislation overlaps and conflicts, the Commonwealth laws prevail.

Released in December 2019, Directions for a Climate Smart South Australia set the South Australian government's agenda for 'low emissions jobs and growth' and 'net zero emissions by 2050'.

Released in December 2020, the Climate Change Action Plan 2021–2025 sets out 68 government-led actions to deliver the Directions for a Climate Smart South Australia and drive progress towards emissions reduction goals.<sup>6</sup> Some key initiatives include South Australia's Hydrogen Action Plan and Electric Vehicle Action Plan, which aim to drive the uptake of electric vehicles by 2025.

The Climate Change Science and Knowledge Plan<sup>7</sup> identifies the critical knowledge needed to inform risk assessment, mitigation, planning, and adaptation responses, including those identified in the Climate Change Adaptation Framework for South Australia.

South Australia's *Climate Change and Greenhouse Emissions Reduction Act 2007* (the Act) sets targets to achieve a reduction in greenhouse gas emissions, promote renewable sources of energy, and 'facilitate the early development of policies and programs to address climate change'.

The Premier's Climate Change Council was established under this Act to provide independent advice to the Minister for Environment and Water on climate change adaptation, energy efficiency, establishment and achievement of targets, and the impacts of climate change on business and community. The Council also consults with businesses, the environment sector, and the wider community about issues relating to climate change.<sup>8</sup>

Each year the Department for Environment and Water publishes a set of 38 Trend and Condition Report Cards on the health of South Australia's natural environment over time. South Australia's independent environment protection regulator, the Environment Protection Authority (EPA), also releases a State of the Environment Report for South Australia at least every five years. These reports provide an assessment of our efforts to deal with significant environmental issues, and the South Australian government is required to respond to recommendations contained in each of these reports.

As for emergency and disaster management, the South Australian Fire and Emergency Services Commission (SAFECOM) works with the South Australian Country and Metropolitan Fire Services (CFS and MFS) as well as the State Emergency Service (SES) to lead emergency management planning across the state. This includes coordinating the implementation of recommendations from reviews and reports that have been made, such as the Ministerial Review of Bushfire Management in South Australia.

SAFECOM also led the development of the Stronger Together, South Australia's Disaster Resilience Strategy 2019–2024, which provides a foundation for State and local government, businesses, and the non-government and community sectors, to collectively strengthen the resilience of South Australians to survive, adapt and grow, no matter what happens.<sup>9</sup>

There is also a National Strategy for Disaster Resilience that was endorsed by the Commonwealth and State governments in 2011 following the 'Black Saturday' fires in 2009, and the more recent National Disaster Risk Reduction Framework. Neither of these national frameworks mention children or young people.<sup>10</sup>

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



**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 children's views are taken into account in developing policies and programs addressing climate change, the environment and disaster risk management, and to increase children's awareness and preparedness for climate change and natural disasters.

Focus Area 3 of *Stronger Together: South Australia's disaster resilience strategy 2019–2024* is 'children and young people actively engaged in reducing their risks and increasing their self-reliance'.<sup>11</sup> The two actions and recommendations related to this Focus Area include a scoping exercise with children and young people to better inform future projects, and a consistent approach to disaster resilience education.

A number of projects have been funded and delivered in line with the *Stronger Together* strategy including:

- the Disaster Resilience Innovation Challenges for Schools (pilot) with high school students;
- Leave it to Z – Involving children and young people in emergency management; and
- Empowering SA Guides and Scouts to 'help build the resilience of their communities', including through a co-designed app.<sup>12</sup>

In 2021, Bushfire Kids Connect – a community based organisation co-founded by a nine-year-old and led by the voices of children – collaborated with Makers Empire to lead a pilot educational program in schools. The program seeks to empower children and young people to be mentally and physically prepared for bushfires. There have been calls for the State government to partner with schools, Bushfire Kids Connect, and Makers Empire to scale up this pilot.

At a showcase in November 2021, participating students from metropolitan and regional schools presented over 60 concept ideas, including ideas to keep families, firefighters, and animals safe during bushfires, and as part of bushfire recovery.<sup>13</sup> South Australia's Emergency Services Minister noted the 'incredible potential' of the pilot to better educate children about bushfires and ways to keep the community safe.<sup>14</sup>

South Australia's Climate Science and Knowledge Plan recognises the importance of providing 'high-quality and accessible climate change science and information' and support for communities to 'build resilience and adapt'.<sup>15</sup>



However despite some progress towards more consistent disaster resilience education, there is limited information made directly by and for children about both:

- climate change-related risks, impacts and issues, including disaster awareness and preparedness; and
- what action is being taken and what more can be done to mitigate risks and support present and future generations (by government and non-government organisations at a local, state, national and global level).

Provision of child-friendly, age-appropriate information is not only key to ensuring accountability and trust, but also to ensuring children's meaningful participation. It would also address the UN Committee's following recommendation in relation to the 'General principle' of 'Respect for the views of the child' (as per Article 12 of the UNCRC):

That State parties 'Develop toolkits for holding public consultations with children on issues that affect them, including on climate change and the environment'.<sup>16</sup>

In response to the Independent Review into South Australia's 2019-20 Bushfire Season, the State Government announced up to \$100 million of funding ahead of the 2021-22 bushfire danger season. Neither the Independent Review nor the government's response make specific reference to children or young people.<sup>17</sup>

**To promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy, including by committing to meeting 100 per cent of its electricity needs with renewable energy.**

South Australia has a policy target of achieving 100% net renewable energy by 2030.<sup>18</sup> More than 60% of South Australia's power supply comes from renewable energy.<sup>19</sup> It is promising that South Australia's electricity emissions are reducing, and this is testament to the state's progress made against electricity generation and consumption targets set to date.

However emissions in sectors other than electricity are projected to increase or plateau at best. As noted in South Australia's latest State of the Environment Report, although the state's 'total emissions' are decreasing, transport emissions are increasing.<sup>20</sup> As such, meeting the UN's recommendation requires action across sectors, as highlighted in a recent series of reports by the Grattan Institute.

South Australia's Electric Vehicle Action Plan and the passing of the Motor Vehicles (Electric Vehicle Levy) Amendment Bill 2021 to drive the take-up of zero and low-emission vehicles, is a welcome step in transport emissions reduction.<sup>21</sup>

Further, the targets set out in South Australia's *Climate Change and Emissions Reduction Act (SA) 2007* have never been updated, despite the fact that some targets were met in 2013-14.

It is promising that South Australia's Minister for Environment and Water recently introduced a bill to amend the *Climate Change and Greenhouse Emissions Reduction Act (SA) 2007* to update the State's emissions reduction and renewable electricity targets as follows:

- net zero emissions by 2050;

- **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



- reduce net emissions by more than 50 per cent by 2030 (from 2005 levels); and
- achieve 100 per cent net renewable energy generation by 2030.<sup>22</sup>

Although this bill will lapse given that Parliament has been prorogued, this commitment is in the Government's Climate Change Action Plan 2021–2025.

Other commitments made during and following the COP26 global climate summit in November 2021 include:

- approval for South Australia's largest battery storage project to date – the 225MW Battery Energy Storage System (BESS) at Gould Creek – which once completed in 2023, is expected to power 40,000 homes during peak hour.
- Formation of a Net Zero Emissions Policy Forum by the South Australian Government, alongside New South Wales and Australian Capital Territory governments, which 'will share information and resources to address the practical challenges of achieving net-zero emissions, as well as help each other to meet their emission reduction targets'.<sup>23</sup>

The Commissioner will monitor South Australia's progress against these commitments and proposed legislation in future reports.

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# 2021 Child Rights Progress Report on Physical Punishment

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



## About the CCYP

The [South Australian Commissioner for Children and Young People](#) is an independent position, established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#) (OAB Act). This legislation was introduced to the South Australian Parliament in response to the [Child Protection Systems Royal Commission 2014](#).

The Commission promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports include:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment

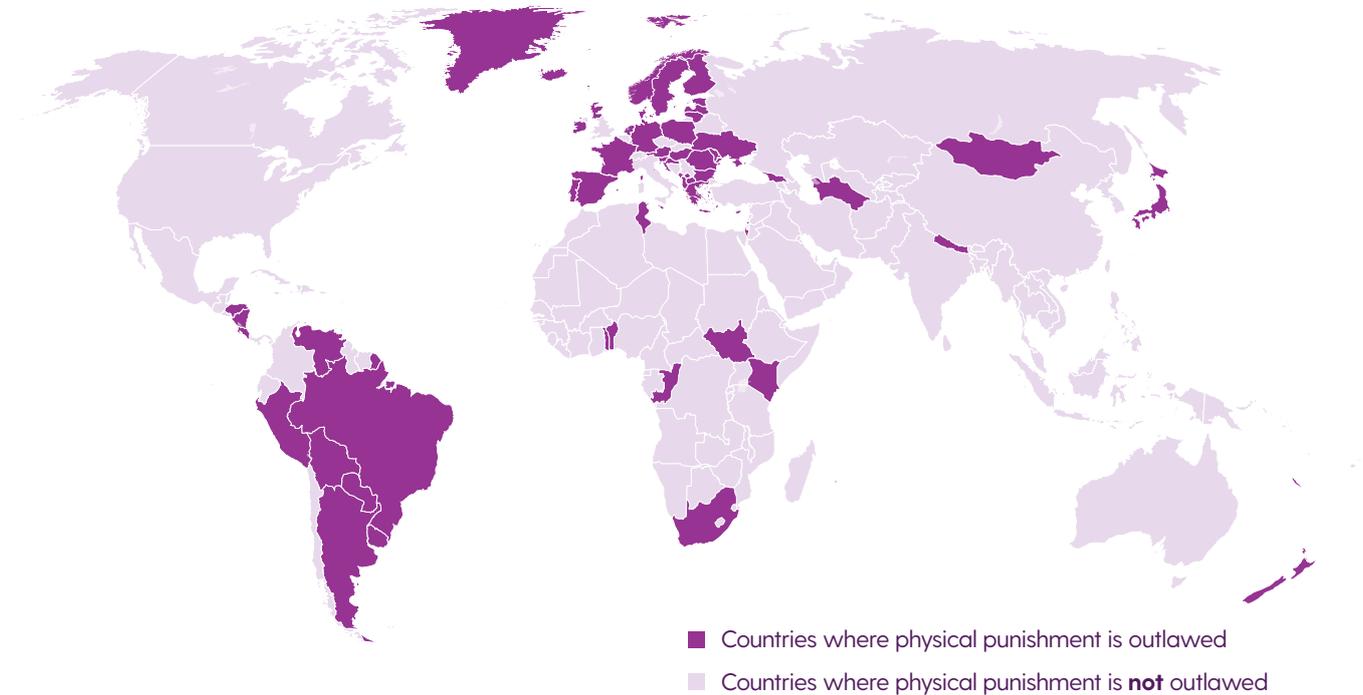


# 2021 Child Rights Progress Report on Physical Punishment



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

## Physical punishment around the world



## Background

The UNCRC was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's OAB Act states that all governmental authorities must seek to give effect to the UNCRC. 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 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.

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.

## Rights in relation to Physical Punishment\*

According to the Committee, children should not be subject to any form of violence. This includes children being safe from violence from parents/guardians (Art. 19) at school (Art. 28), and against cruel and degrading treatment (Art. 37). Specifically, the Committee on the Rights of the Child 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"; and
- development of awareness-raising and education campaigns that promote positive and alternative forms of discipline and that underscore the adverse consequences of physical punishment.

\* Also called corporal punishment

## Why should Physical Punishment be outlawed?

Adults often argue that physical punishment is justified to “teach children a lesson”. But it is well known that adults cannot be taught a lesson by using physical assault, so why would it work for children?

There is now overwhelming evidence to suggest that physical punishment is not an appropriate teaching method or behaviour management strategy for children.

Research has found that physical punishment:

- does not reduce defiant or aggressive behaviour, nor does it promote long-term positive behaviour in children;

- has negative effects on students in school, including on the academic performance of children, leading to behavioural issues (for example, violent behaviour and aggressive conduct);
- can harm children’s cognitive, behavioural, social and emotional development; and
- can carry the risk of escalating into physical abuse (causing a physical injury) and have negative outcomes for children. This includes impacts on their mental health and emotional wellbeing. It can also result in lower cognitive ability, lower self-esteem, more aggression, more antisocial behaviour and negative relationships with parents.

## 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.’

In South Australia, parents and guardians can still physically punish children under section 20(2) of the *Criminal Law Consolidation Act 1935*.<sup>1</sup> 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.<sup>2</sup> The defence looks at the child’s age, their behaviour, severity of the response, and the reason for the punishment (did it occur to teach the child a lesson or ‘because the adult snapped’), the child’s behaviour and seriousness of the contact should all be considered.

South Australia has prohibited physical punishment in all schools via the *Education and Children Services Act (2019)* which outlaws physical punishment in pre-school services (s32) and in all South Australian schools (s83). However, the common law defence is still available to educators 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.”<sup>3</sup> The Protective Practices Behaviour Guidelines for staff and volunteers working with children<sup>4</sup> and young people is adopted by all schools in the state makes corporal punishment a violation.



- **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

South Australia has adopted national provisions for early childhood services, enshrined in the South Australian *Education and Early Childhood Services (Registration and Standards) Act 2011*.<sup>5</sup> Section 166 of this Act prohibits the use of physical punishment by providers, nominated supervisors, staff members, volunteers, and day care providers of an approved education and care service. Regulation 39 of the Child Care Centres Regulation 1998, states that: 'Behaviour management techniques used should not include physical, verbal or emotional punishment and including, for example, punishment that humiliates, frightens or threatens the child'.<sup>6</sup>

Carers and employees are prohibited to physically punish a child under the Family and Community Services Regulations 2009.<sup>7</sup> However this has not stopped reports of children being arrested by the police to manage behaviour, which could result in some physical handling that could amount to assault.<sup>8</sup>

The Department for Education has some 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 for educators on positive behavioural management.

Parenting SA<sup>9</sup> also has guides helping parents on some issues, including respectful relationships, positive approaches to guiding behaviour, role models and many other topics. The new Adults Supporting Kids website, developed by the Department for Human Services (DHS) also provides information for parents, carers and guardians.

There is also a government supported Families Growing Together<sup>10</sup> program that supports "families by empowering them with the knowledge and skills they need to connect and grow together. This helps them lay strong foundations for their children and young people". There are a few workshops, that can all be accessed online.

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



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