

2022–2026 Legislation Priorities to Improve Outcomes for South Australia's Children and Young People



As Commissioner for South Australia's children and young people, I have heard firsthand how many of our children and young people lead happy, active lives. They feel respected by the majority of adults with whom they regularly interact, and value school, education and learning, family relationships, their culture and communities, opportunities to participate, and their friendships and pets.

I have also heard, however, that our children and young people are genuinely concerned for those who they see as less fortunate, less included, less mentally well, less financially secure, and less prepared for the future. They have told me they would like to make life better for all children and young people, particularly those they see doing it tough. As experts in their own lives they want to have their opinions heard, treated with respect, and taken seriously by adults.

As future participants in Australia's democracy, our children and young people rely upon our political parties to be focused on future-proofing their lives by development and implementation of policies and practices that will enable them to not merely survive, but to thrive across our communities.

I call upon leaders and decision-makers to make it a priority to listen and address the critical areas of law and policy that will directly impact on children and young people's lives now and in the future.

1. Introduce a Future Generations Act.

Article 5 of the United Nations Convention on the Rights of the Child (UNCRC) states that “in all actions concerning children ... the best interests of the child shall be a primary consideration.”

The best interests of children should be a primary consideration when making decisions that will affect their future. All children have the right to a good standard of living, health, and development. In the reactive short termist political world we inhabit, introducing a Future Generations Act is a way to ensure that decision makers build collective capacity for long term planning.

The Act would obligate today’s decision makers to fully consider the interests of future generations. Without this requirement, we risk focusing purely on today, rather than planning on how we will manage the crises of tomorrow.

Long term strategic intentions in Australia/South Australia need to focus on building intergenerational capacity. A Future Generations Act can provide us with an independent safeguard for future generations through a sound legislative basis. It can be overseen by an independent body such as a Future Generations Commission to ensure accountability.

Introduction of a Future Generations Act will create a systemic obligation to look beyond short termism and populism, and unite competing sustainability ideologies around an agreed vision for the future. In this way we will all be collaborators in creating a State that we want future children and young people to experience.

“How will we handle future issues, not just limited to a pandemic. Whether it’s bushfires or any other natural disasters, possibly an introduced superbug, anything that could cause panic, how would we be handling that? What precautions have already been set to prevent people from losing business and their lives? What will be done to protect people that are effected, if there is a superbug how can we deal with such a thing?”

16 year old – Metropolitan SA

“Having been only a few years old during the global financial crisis, I’ll now live through a second world economic crisis after COVID-19. As a young person, I will have less financial safety nets than other generations, so I am more likely to struggle to gain secure employment and a liveable income in a world recovering from COVID-19.”

16 year old – Metropolitan SA

“Looking into the future, I am concerned about increasing income and social inequality creating an unnecessary divide in living standard in Australia. I am also concerned about a return to selfishness in politics where experts and evidence are disregarded to suck up to special interest groups.”

18 year old – Metropolitan SA

“Dear parlement (Parliament), I think that you should have more places for children to go when they are afraid or scared in the country.”

11 year old – Metropolitan SA

“Helping and supporting others to ensure they don’t have to go through what I’ve been through.”

16 year old – Metropolitan SA

“[Provide] more funds to help out less fortunate children with [a] license, housing, food and financial support.”

15 year old – Metropolitan SA

2. Introduce a Child Poverty Act to establish a long term approach to reducing the impact of poverty on children.

Under Article 26 of the UNCRC, children have the right to receive assistance from governments if they are poor or in need.

A State that prides itself on the national values of ‘a fair go and justice for all’, must act to ensure all children and young people in South Australia have adequate nutritious food, a home, their own bed, suitable shoes and clothing, education, opportunities to go on school trips, and enjoy an occasional family outing. We must create opportunities for those ‘less fortunate’ to play regular sport or participate in an activity that is of interest to them, such as learning to play a musical instrument or developing an artistic talent.

Child poverty is real, and in a country of relative abundance and enduring economic growth, it should not, and must not be tolerated. We must work together to eliminate poverty in our own backyards once and for all. We can do this while also contributing to the national effort to end extreme poverty around the world, a key target among 17 ambitious global sustainable development goals that the world’s nations agreed to work together to achieve by 2030 at the United Nations assembly held in 2015.

To achieve a significant and sustained reduction in child poverty, South Australia should introduce a Child Poverty Act to establish a shared vision for children’s wellbeing. The Act would identify the measures, indicators and targets that are needed to focus the SA community on developing strategies to actively reduce child poverty.

3. Introduce an independent appeals mechanism/body for children who have been excluded from school.

Articles 28 and 29 of the UNCRC recognises 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.

Access to education is enshrined in the Universal Declaration of Human Rights and within the UNCRC where it is included as a fundamental child right. Yet despite this, children and young people and their families report formal and informal processes that actively exclude them from the mainstream schooling system.

Suspensions and exclusions are punitive processes that can have long-term negative effects on children's educational attainment and treatment within the school system. Anything with the potential for such substantive impact on a child's wellbeing and future attainment must be subject to the most rigorous standards and oversight.

Currently, the Department for Education's policy does not meet contemporary understandings of procedural fairness and transparency. Nor is there a pathway to an independent appeal body.

The South Australian Government should draw on international best practice by establishing a new Independent Statutory Body – the Education Ombudsman – to act as an independent, effective, accessible, transparent, safe and enforceable adjudicator of decisions, (dispute resolution and appeals) as per the recommendation made in the 2020 Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools.

Independent review is a crucial element in improving governance and reducing opportunities for abuse of power.

"If a student is suspended they should have to attend school still but they should not be put in a room with large windows where others can see them. It's horrifying and really impacts on your mental health. This has happened to me and it was a bad experience I'll never forget. There is no respect for privacy."

15 year old –
Metropolitan SA

"Instead of depriving a student you should be helping them so they don't make the same mistake, or see why what they did was wrong."

16 year old –
Metropolitan SA

"They need to change to give a little bit more respect to kids and pay a little more attention. I mean the kids are here... we are not invisible (invisible) and we need some head up in life."

11 year old –
Metropolitan SA

"We should be placing a greater emphasis on nurturing an environment where individuals feel comfortable to work on their personal skills & assets, as well as feel comfortable in their own skin – culture, gender, socio-economic standing; promoting self-love & positive mental health."

17 year old –
Metropolitan SA

4. Amend the *Children and Young People (Safety) Act 2017 (Safety Act)* to embed the UN Convention on the Rights of the Child and to make "best interests" the primary consideration when any decisions about any child are being made.

Article 3 of the UNCRC requires that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Whilst the principles in the Safety Act recognise children's need for love and attachment, self-esteem, and the ability to achieve their full potential, and have their views considered, the paramount consideration in the Act is "safety". At an operational level this narrows the focus of decision making towards the primary consideration of each individual child's immediate safety rather than the more expansive view of children's longer-term best interests, which includes safety. Embedding the UNCRC in the Act would ensure children's rights are fully integrated into all relevant policies and procedures in the Department, and thereby ensure that there is training around human rights and what it means to create child-safe environments. This would also mean that any decisions made by the Department, would have to consider not just children's safety, but all other children's rights.

Academic practice and research repeatedly show that children who are placed in out of home care, particularly those in residential or commercial care, have worse outcomes than their peers across all key outcome areas of health, safety, wellbeing, education and citizenship. Further, they are more likely to have contact with the youth justice system, be disengaged from school, and have fractured relationships with family and community. This means that their capacity to achieve their full potential is significantly compromised as a result.

Including "best interests" in the Safety Act would create consistency with all other South Australian legislation that concerns the rights and interests of children. It would also provide operational consistency given that acting in the best interests of the child is both a well-established and understood concept in law.

5. Introduce a state-wide menstrual wellbeing policy.

Under Article 24 of the UNCRC, children have the right to the highest attainable standard of health.

In most countries and contexts around the world, menstruation has long been surrounded by stigma, misconceptions, myths, and taboo. Policymaking processes, traditionally designed by and for adult men, have ignored what is typically considered a private 'women's' issue.

While further research is needed, there is growing evidence linking poor menstruation education and management with gender disparities and poor health and wellbeing outcomes. These include barriers to participating in education and contributing to the workplace.

Given the wide-ranging impacts of menstruation on key aspects of a young person's life, the onus should be on all sectors across the state – education, business, health, and community – to recognise menstrual wellbeing and dignity as a systemic issue that is fundamental to children's rights, central to economic productivity and achieving gender equity across the State.

It is time to address menstrual wellbeing and the current failings in our responses to menstrual awareness, menstrual education and menstrual management for all South Australian children and young people. It is patently clear that to improve menstrual wellbeing across our community we must acknowledge that it is a systemic gender equity and equal opportunity issue, requiring a comprehensive systemic policy response.

South Australia's current health and wellbeing policies do not adequately acknowledge menstrual wellbeing as a desired health outcome or make a link between it and systemic gender disparities in the social, cultural, and economic participation of children and young people across our communities. In light of this, a state-wide menstrual wellbeing policy should be developed and implemented to address these issues.

6. Give children a voice in the Family Court.

Under Article 12 of the UNCRC, children who are capable of forming views should be able to express those views. These views should be given due weight. Further, children should be provided the opportunity to be heard in any judicial proceedings affecting them.

Much more needs to be done to ensure that children who want to be heard in family law proceedings are included in family court matters. The premise that children should not go to court to 'protect' them, ignores the fact that most children are fully aware of the dynamics at home.

Children and young people have told us they often feel powerless and voiceless in the Family Court process, and that they feel their views are not given any importance and are therefore not considered. Governments should recognise that those who are most affected by a relationship breakdown between two adults can be their children. Children often live across two homes and can become a buffer between their parents.

Australian children are asked to testify in court every day, often to relate their most traumatic experiences. Criminal courts have had child victims as witnesses in courts for years and have experience in adducing the best evidence from them without doing further harm. These practices can be transferred to the family court so that children who want to voice their views directly to the Judge, can do so.

Further, the Commonwealth government should invest in providing children with the support and resources they need to work through what is usually a very difficult and unsettling time. This will ensure children's rights, as set out in the UNCRC, are upheld, respected and more fully taken into consideration in Family Court proceedings.

"The pain can be unbearable, tampons and pads can be on shortage. You feel very unclean. You may not have a spare pair of underwear. You worry people can see the blood. You stop concentrating at school and sometimes friends will tell others you're on your period to embarrass you."

14 year old – Metropolitan SA

"Not tell us to 'just get over it' because 7 girls in my year have been diagnosed with endometriosis and pcos, and they get annoyed at us for missing a couple of lessons!"

15 year old – Metropolitan SA

"Children are still seen as possessions [...]they are seen as if [because] they are a child, they can't have an opinion. [...] they [do] have opinions and emotions which are very real."

17 year old – Metropolitan SA

"When an agreement cannot be reached and the best interests of children are no longer at heart, it's just a competition. Someone who has no emotional attachment needs to step in and take charge."

17 year old – Metropolitan SA

7. Amend the *Environment Protection and Biodiversity Conservation Act* to ensure environmental approvals consider the right of future generations to inherit a healthy and clean environment, with protections put in place for environments that are of national significance.

Article 24 of the UNCRC states that for children to stay healthy they have the right to good quality healthcare, clean water, nutritious food, and a clean environment.

Whilst the inclusion of children's rights in the preamble of the Paris Agreement is welcome, it is not enough to ensure that progress towards adopting a child rights-based approach to climate action is more broadly achieved.

Australia's current climate policy does not apply a "child-focused lens" or consider child rights issues or the impacts of climate change on children's rights now and in the future. Yet children and young people are the ones who will face the consequences of the climate crisis and water insecurity, despite being those who are least responsible for causing it.

Children's rights must be integrated into climate action law and policy. This means ensuring that climate projects respect, protect, promote, and fulfil children's rights, rather than undermine or ignore them.

The recent review of the Commonwealth *Environment Protection and Biodiversity Conservation Act* included recommendations to address the unprecedented net environmental decline in Australia and protect future generations.

However, the Commonwealth government has not embedded stronger and enforceable environmental protections that would protect future generations.

South Australia's children and young people are worried that pollution, particularly plastics, are having a negative impact on their environment and health. They believe the government's current policies and practices are putting our environment at risk, resulting in an increased likelihood of contaminated food, air and water.

They know that the cleaner and healthier the environment is, the healthier and more productive all people are.

"SA looks very nice now I would like it to stay like that for the future. This is very important because when I was little I used to always go to the hills with my family on walks and bike rides. I want others to have the same opportunities as me."

15 year old – Metropolitan SA

"The government needs to consider our future. They need to start having a positive impact on the environment, because at this rate, our job in the future will be to live with the impact that past generations have left on our Earth. The government needs to address things such as climate/change and realise it isn't science fiction – it's real life and if we don't do anything about it soon, it will be too late."

17 year old – Metropolitan SA

8. Stop criminalising childhood – increase the minimum age of criminal responsibility from ten (10) years to fourteen (14) years.

Many people across our community are not aware that in South Australia children as young as ten years (10) can be gaoled. Being 'tough on crime' does not work and in fact makes it more likely that they will re-offend.

Governments recognise that children do not have the capacity to undertake certain actions – such as signing contracts, smoking, drinking, and driving – and therefore need to be protected by law. But when it comes to "criminal actions" the law says that locking children up in gaol is appropriate, as they have the capacity to understand the difference between criminal actions and being "naughty".

Governments must recognise the documented evidence in the fields of child development and neuroscience indicating that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years.

The UN Committee encourages State parties "to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age."

It is well established that criminalising children leads to adverse health, social and economic outcomes for individuals, their families, and their extended networks. Evidence shows that the majority of children who are gaoled become a burden to their community for the remainder of their lives. Our laws should protect children through the support, diversion, and rehabilitation of young offenders. We must change the minimum criminal age of responsibility to 14 years.

"[To] reduce [the] youth crime rate – [take a] different approach – a different way to talk to youth."

18 year old – Metropolitan SA

"They forget you are human – we are all still people."

17 year old – Metropolitan SA

9. Outlaw physical punishment on children.

The UNCRC states that children should not be subject to any forms of violence. This includes violence from parents/guardians (Art. 19), at school (Art. 28), and cruel and degrading treatment (Art. 37).

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.
- results in lower cognitive ability, lower self-esteem, more aggression, more antisocial behaviour, and negative relationships with parents.

Despite this overwhelming evidence, parents and guardians in South Australia can still physically punish children. This is due to the defence under section 20(2) of the *Criminal Law Consolidation Act 1935*. This Act allows 'conduct that lies within limits of what would be generally accepted in the community as normal incidents. There is also a common law defence of chastisement.

The Act should be amended to outlaw physical punishment and override the current common law defence.

"Some adults think that you can do more than you're capable of doing. Can you please let adults know that sometimes they put too much pressure on us to act older than we are."

10 year old –
Metropolitan SA

"A safe environment is a place that makes you feel respected, able to grow and develop, relaxed and free – when you live in poverty often that is missing."


17 year old –
Metropolitan SA

WHO ARE WE: South Australia's Commissioner for Children and Young People has a mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* to advocate for the rights, interests and wellbeing of all children and young people in South Australia. It is also the Commissioner's role to ensure that the State, at all levels of government, fulfils its international obligations under the United Nations Convention on the Rights of the Child (UNCRC).

Please note: All quotes appearing in this document have been selected from notes written by South Australian children and young people in documented conversations held with SA Commissioner Helen Connolly.

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