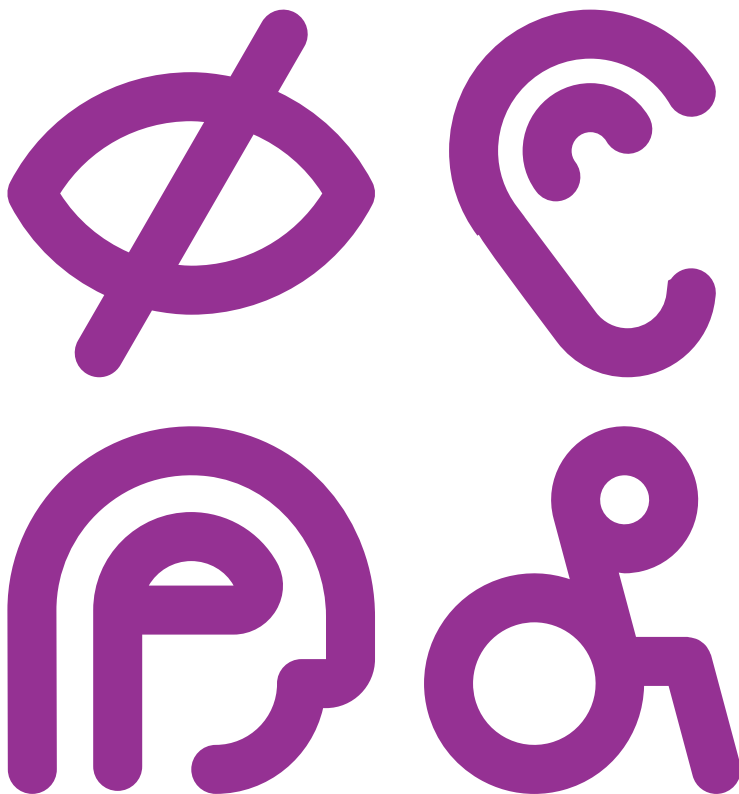


2023 Child Rights Progress Report on Disability

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 Commissioner 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 comprise:

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

Data reported in the data tables are the most accurate available at the time of writing.



2023 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 data says

Measure	Year: Data	1 year change	5 year trend	5 year assessment
Proportion of students in South Australian government and non-government schools receiving adjustments due to disability. ¹	2022: 28.4% 2021: 28.3% 2020: 27.7% 2019: 26.3% 2018: 23.6%	Stable	Increasing	+ Favourable
Proportion of Reception to Year 6 students suspended from SA government schools who have Inclusive Education Support Program (IESP) funding. ² (% of students suspended/% of enrolments)	2022: 32.3%/7.5% 2021: 34.7%/8.2% 2020: 39.9%/9.8% 2019: 30.3%/9.9% 2018: 25.5%/9.1%	Decreased	Fluctuating, increase from base year	- Unfavourable
Proportion of Reception to Year 6 students excluded from SA government schools who have IESP funding. ³ (% of students excluded/% of enrolments)	2022: 60.7%/7.5% 2021: 63.3%/8.2% 2020: 63.1%/9.8% 2019: 41.9%/9.9% 2018: 29.3%/9.1%	Decreased	Increasing	- Unfavourable
Proportion of suspensions from SA government schools for students receiving disability adjustments (Reception to Year 12). ⁴	2019: 56.6% 2016: 42.5%	Not available	Increasing	- Unfavourable
Proportion of children and young people in out-of-home care who have a current National Disability Insurance Scheme (NDIS) plan. ⁵	2023: Not reported 2022: 26.1% 2021: 23.5% 2020: 19% 2019: Not reported	Not available	Increasing	+ Favourable
Number of children with a known diagnosed disability detained in Kurlana Tapa Youth Justice Centre (KTYJC) (% of all detainees).*	2022/23: 85 (25.3%)	Not previously collected	Not previously collected	Not previously collected
Average daily number of children with a known diagnosed disability in KTYJC (% of average daily population). ⁶	2022/23: No number provided (59.5%)			
Proportion of South Australia's general population who are NDIS participants (at 30 June). ⁷	0–6 year olds 2023: 5.3% 2022: 4.6% 2021: 4.2% 2020: 3.6% 7–14 year olds 2023: 8.6% 2022: 7.8% 2021: 7.3% 2020: 6.4% 15–18 year olds 2023: 6.4% 2022: 5.5% 2021: 4.6% 2020: 3.9%	Stable	Increasing	+ Favourable

Notes:

- 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.
- Suspensions and exclusions data from non-government school sectors is unavailable.

* There are significant challenges sourcing data about the number of young people in youth detention with disability and disability-related needs. This data is from the Training Centre Visitor annual reports and is likely to be an underestimate due to under-assessment and diagnosis of disability-related needs. The Department of Human Services (DHS) does not consistently collect or report on disability data in relation to KTYJC. A 2019 DHS disability screening assessment project in KTYJC concluded that nine out of ten participants had a disability-related need.

Areas of concern include:

- Lack of complete, consistent and disaggregated data in relation to the rights, wellbeing and participation of children and young people with disability across key systems in SA.
- Insufficient legal protections to prevent the sterilisation of children with disability without their consent.
- Few mechanisms to support the engagement and participation of children with disability in decision-making at the school, community and systemic level.
- Overrepresentation of children and young people with disability, particularly Aboriginal children and young people, in child protection and youth justice systems.
- Criminalisation of children in residential care, which disproportionately impacts children with disability.
- Concerningly high proportion of children with disability being suspended or excluded from primary and secondary schools.
- No child-focused safeguarding mechanisms or independent oversight to protect children with disability from exclusionary and restrictive practices across health, education, residential care and youth justice settings.

Background

The United Nations Convention on the Rights of the Child (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 *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (OAB Act) states that all government authorities must seek to give effect to the UNCRC. The Convention sets minimum standards and obligations for the protection of children's 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 to be free from discrimination.

Every five years, the Australian Government reports to the UNCRC Committee to explain how Australia is fulfilling its obligations in relation to child rights. In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure 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 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. The rights of children with disability are also set out in Article 7 of the United Nations Convention on the Rights of Persons with Disabilities, which overlaps with the UNCRC in articulating that:

- The best interests of a child shall be a primary consideration in all actions concerning children with disability; and that
- Children with disability have the right to express their views freely in all matters affecting them, with their views being given due weight in accordance with their age and maturity.

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 (Article 40), 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)).

Compared to all other states and territories, South Australia has the highest NDIS participation rates of children across all three NDIS age groups of 18 years and under. The number of children

and young people aged 0 to 18 years meeting criteria for access to the NDIS increased from 14,901 children and young people at 30 June 2019 to 34,177 at 30 June 2023.⁸

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

The Act was independently reviewed in 2022. Based on the review's findings, the Department of Human Services (DHS) drafted the Disability Inclusion (Review Recommendations) Amendment Bill 2022 which was open for consultation until April 2023 and introduced to Parliament in June 2023. Debate on the Amendment Bill was adjourned on its second reading on 14 September 2023.⁹

In late 2023, DHS started consultations on a new State Disability Inclusion Plan to follow on from South Australia's first State Disability Inclusion Plan 2019–2023 (also known as Inclusive SA). The new plan will consider recommendations made in the review of the *Disability Inclusion Act 2018*.

The final report of the federal Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was released in September 2023 and made 222 recommendations. Key findings and recommendations relevant to children and young people relate to data collection, inclusive education and employment, and eliminating restrictive practices. The Australian government and all state and territory governments are due to publish a written response to the final report by 31 March 2024.

In October 2022, the federal Minister for the NDIS announced an independent review of the NDIS. A 'What we have heard' report was released in June 2023, detailing emerging issues and priority areas for improvement and noting that 'many more young children are entering the scheme than was expected'.¹⁰ The Disability Reform Ministerial Council (DRMC) discussed the review's recommendations at its November 2023 meeting.¹¹ At the time of writing, the final report has not been released publicly.

The first annual report of Australia's Disability Strategy 2021–2031 Outcomes Framework was released in February 2023. The first implementation report is expected to be available in late 2023, covering the 2021–23 financial years.

Some welcome developments in 2023 include:

- Proposed amendments to the *Disability Inclusion Act 2018* (SA) that would require Disability Access and Inclusion Plans to 'properly address' the needs of children with disability.
- Progress on the Department for Education's One in Four reforms, including:
 - The appointment of Autism Inclusion Teachers in all government primary schools.
 - Improvements to the Inclusive Education Support Program (IESP) so that schools will no longer need to apply to the IESP Panel for categories 1 to 3 funding from Term 1, 2024.
 - Launch of 9 new practice guides for educators.
 - Milestones reached on the disability data reforms, which seek to establish a single source for complete and consistent disability data across the Department.
- Release of the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which makes recommendations in relation to inclusive education, prohibiting restrictive practices and improving data collection.
- Recommendations from the Social Development Committee to improve safeguarding and support for children and young people with complex disability needs who are unable, or at risk of being unable, to live in the family home.

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.

The Commissioner remains concerned about incomplete and inconsistent data being collected and made publicly available in relation to children and young people with disability across key systems and areas of the UNCRC. Systemic barriers and challenges associated with data collection and reporting include:

- Inconsistent definitions and disability criteria across datasets and jurisdictions;
- Underdiagnosis and underreporting of disability in relation to children and young people;
- Failures to record disability data, and inconsistency in how it is collected, reported and shared across agencies;
- Lack of data disaggregated by age, gender, geographic location, socioeconomic and/or cultural background.

As noted in previous reports, inconsistent definitions and reporting across jurisdictions and systems have significant implications for policy and service delivery, making it difficult to:

- Ensure that children living with disability are accessing the support they need;
- Design, implement, monitor and evaluate effective policy, programs and services; and
- Determine whether governments are meeting human rights obligations.

Data in relation to children with disability tends to focus on the prevalence of diagnosed disability and the provision of services. There are few mechanisms to capture children and young people's views and experiences in relation to their rights and interests. Data gaps in the following areas continue to raise concerns:

- Lack of data collection in hospitals, which means clinicians lack information about disability-related needs to inform the provision of healthcare;
- Focus of Department for Child Protection reporting on the proportion of children and young people with NDIS plans, which does not consider plan utilisation or capture children with disability or trauma-related needs who may not have a diagnosis or may not meet NDIS eligibility criteria; and
- Lack of data about children living with disability in relation to their:
 - Safety, including sexual health and safety;
 - Citizenship, including electoral enrolment and participation;



- Participation, engagement and attainment in education (beyond enrolment figures) and after they leave school; and
- Inclusion and participation in ‘everyday’ decision-making and at all levels of government.

The Department for Education’s disability data reform project is part of its One in Four reforms and seeks to ‘establish a single source of truth for disability data across the Department’. Milestones achieved as of February 2023 include:

- Integration of Inclusive Education Support Program (IESP) data into the school enrolment census.
- Automating changes to student enrolment details with IESP eligibility and funding details.
- Streamlining of site funding calculations and site reports.¹²

As of June 2023, all state and territory governments have committed to the delivery of a National Disability Data Asset (NDDA). The first results from the NDDA will be available in 2024 and the Asset is expected to be fully operational in 2026.¹³ The report of the South Australian NDDA Pilot identified data gaps and limitations, including a lack of information on ‘barriers to participation or achievement as experienced by students with disability’ and a lack of information on students enrolled in non-government schools.¹⁴

Australia’s Disability Strategy Data Improvement Plan outlines data improvements needed to achieve the Strategy’s vision. The focus of ‘Future Measures’ relevant to children and young people appear to be limited to the following areas: pre-school enrolments, school readiness, attendance, completion and NAPLAN achievement, employment, and child protection system involvement.¹⁵

The Disability Royal Commission final report has recommended that all governments commit long-term support to establishing the NDDA ‘as a national resource for longitudinal analysis of linked data across service systems’, including education, housing, health, NDIS, child protection and justice systems.¹⁶ The Royal Commission also highlights many areas where data is lacking across settings or jurisdictions, including gaps in relation to:

- people from culturally and linguistically diverse backgrounds with disability
- people who are LGBTIQ+ with disability
- restrictive practices, violence, abuse, neglect, exploitation and sterilisation of people with disability
- school experiences and post-school trajectories of young people with disability
- children with disability in youth detention
- disaggregated NDIS data relating to complaints, reportable incidents, and behaviour support.

■ **No evidence** that the UN Committee’s recommendation is being addressed

■ **Some evidence** that the UN Committee’s recommendation is being addressed

■ **Clear evidence** that the UN Committee’s recommendation is being addressed

To prohibit by law the sterilisation of girls with disabilities without consent.

As noted in previous reports, 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. From 1 July 2021 to 1 June 2022, there were no cases of sterilisation of an adult with cognitive impairment being approved by the South Australian Civil and Administrative Tribunal, compared to one in the previous year.¹⁷

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.

The final report of the Disability Royal Commission was handed to the federal government in September 2023. The report recommends that by the end of 2024 'all jurisdictions should amend or enact legislation prohibiting non-therapeutic procedures resulting in permanent sterilisation of people with disability' except where there is a threat to life, or the person with disability is an adult and has given voluntary and informed consent.¹⁸ It is also recommended that collation and publication of data relating to the sterilisation of people with disability should be disaggregated by several demographic factors, including age.

Given 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 providing access to the least invasive non-surgical alternatives to sterilisation available.

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.

According to the Inclusive SA 2021–2022 Annual Report, tabled in Parliament in February 2023:

- 81% of state authorities were supporting young people with disability to actively participate in decision-making in their Disability and Access Inclusion Plans (DAIPs) in 2021–22, up from 74% in 2020–21; and
- 55% of authorities engaged in priority group decision making and/or co-design of activities with children/young people with disability in 2021–22.¹⁹

In 2020–21, 58 State authorities had specific actions in their DAIPs that were targeted to children and young people living with disability. An update on this figure was not provided in the 2021–22 annual report.

While the involvement of young people with disability is promising, there continue to be limited opportunities and mechanisms that support the engagement and participation of children living with disability in decision-making at the school, community and systemic levels.

Following the 2022 review of the *Disability Inclusion Act 2018* (SA), the Disability Inclusion (Review Recommendations) Amendment Bill 2023 was introduced in Parliament in June 2023 and adjourned after the second reading.²⁰ The Bill includes an amendment to section 16 that would require Disability Access and Inclusion Plans to 'include strategies to ensure that the needs of persons referred to in section 9(2), (3), (4), (5) and (5a) are properly addressed' (persons referred to in section 9(3) of the Act are children with disability).²¹

■ **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

Data indicators that measure changes in community attitudes about the rights and needs of people living with disability were released as part of the Australia's Disability Strategy Outcomes Framework. The Department of Human Services is supporting the collection of relevant data in South Australia.²² It is unclear how this data will be disaggregated by age and other characteristics.

There have been a number of actions at the state and federal levels in relation to supporting children and young people with autism. South Australia's First Autism Strategy Discussion Paper was released in November 2022, with a consultation report released in June 2023.²³ The 2023–24 State Budget provides \$4 million over four years for a range of initiatives to 'help make South Australia the autism inclusive state'.²⁴ At the federal level, the National Guideline for supporting the learning, participation, and wellbeing of autistic children and their families in Australia was released in 2023.²⁵

The Inclusive SA Plan 2019–2023 includes an action to increase the involvement of children with disability in sports and cultural activities such as the Sports Voucher program and arts programs. In 2023, 4% of children accessing the Sports Vouchers scheme were living with disability, up from 3% in 2022.²⁶ The 2022 progress report noted that the Office of Recreation, Sport and Racing had initiated a study to understand and improve the reach of programs for disadvantaged communities, including children with disability. The Inclusive SA 2021–2022 Annual Report does not provide an update on this.

Consultation on South Australia's next Disability Inclusion Plan began in October 2023 and is open until December 2023. While the Discussion Paper notes that children are one of the priority groups defined in the Act, mentions of children and young people are primarily confined to the education section of the discussion paper. Future progress reports will monitor the extent to which the finalised plan upholds the rights of children and young people with disability.

The 2023–24 State Budget allocates \$836,000 in 2023–24 and \$849,000 in 2024–25 towards 'strategic leadership, management and expert advice to inform the national disability agenda', including Australia's Disability Strategy and outcomes of the federal NDIS Review and federal Disability Royal Commission.

Provisions that exempt a person of 'unsound mind' from voting in elections remain in South Australian and federal electoral legislation, despite recommendations from the Australian Law Reform Commission to remove such provisions, as reported in the previous progress report. There are continued actions to try to change this, including the Political Inclusion National Summit in August 2023 hosted by the University of Melbourne and Inclusion Melbourne's Designlab.²⁷

The *Evidence Act 1929* (SA) provides for special measures for vulnerable witnesses, including children living with disability. However, as noted in previous progress reports, it is not well known that these measures are available. The State Budget 2023–24 includes \$1.9 million funding over 4 years for the maintenance and upgrade of 'soft interview rooms' to support vulnerable witnesses.²⁸

- **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 Disability Royal Commission has made recommendations in relation to strengthening awareness and understanding of the rights of people with disability, including through guidance materials, and educational and training programs. The Commissioners also emphasised the importance of supported decision-making frameworks for people with disability, noting that the NDIS Supported Decision Making Policy and the NDIS Supported Decision Making Implementation Plan, released in May 2023, 'do not provide enough detail about how service providers can improve daily supported decision-making practices'.²⁹

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

The Australian Institute of Health and Welfare's (AIHW's) latest published figures show that South Australia has the highest proportion of children in out-of-home care with disability in Australia – 29.5% of children in care at 30 June 2022, up from 24.2% at 30 June 2021.³⁰ Prior to 2021, data related to children in out-of-home care by disability status was not available for South Australia.

The Department for Child Protection (DCP) 2022–23 Annual Report notes that DCP has supported 'an increased number of children and young people in care with a disability or developmental delay to access a National Disability Insurance Scheme (NDIS) plan', but does not provide a percentage.³¹ Earlier annual reports included the proportion of children in care receiving supports through an NDIS plan (26.1% of all children in care at 30 June 2022, up from 23.5% in 2021 and 19% in 2020).

The DCP has published disability-specific resources for carers on its website and as part of the Caring Together newsletter, as noted in previous progress reports. Updates in 2023 in terms of support for carers who are caring for children with disability include:

- DCP hosted a series of carer forums to inform and progress recommendations made in Fiona Arney's Independent Inquiry into Foster and Kinship Care in South Australia, including in relation to flexibility in respite care and supporting young people with disability and their foster carers during the transition out of care.³²
- The Department for Education has developed a free online course for carers and parents to support children's self-regulation. Another free online course on caring for children and young people with trauma was commissioned by the Department for Child Protection and is available to all foster and kinship carers in South Australia.³³
- While not specific to carers who are caring for children with disability, changes to the carer payment scheme in the 2023–24 Budget includes a 4.8% increase in payments to all carers, including an additional \$50 per fortnight for family-based carers for each child in their care under the age of 16.³⁴

The Office of the Public Advocate's Annual Report 2022–23 notes that 'improving the pathways from child to adult guardianship' remains among the 'most pressing issues for people with disabilities'.³⁵ Released in February 2023, the report on the 2022 review of the *Children and Young People (Safety) Act 2017 (SA)* noted strong support for amended legislation to 'require certain levels of service provision' for children in care and leaving care, including disability support.³⁶ At the time of writing, no new draft legislation had been introduced into Parliament.



The Commissioner's 2022 progress report highlighted concerns in relation to the isolation, invisibility and lack of safeguarding and oversight of children and young people with complex disability needs who are unable, or at risk of being unable, to live in the family home. In the absence of appropriate accommodation and support, children with disability may be admitted to hospital, have extended stays in Kurlana Tapa Youth Justice centre, or be placed in emergency accommodation in caravan parks or Airbnbs.³⁷

The Parliament of South Australia's Social Development Committee shed light on the experiences of children in voluntary out-of-home care (VOOHC) in its Inquiry into the impact of the National Disability Insurance Scheme (NDIS) on South Australians living with disability who have complex needs and are, or are at risk of, residing for long periods in inappropriate accommodation.

The Committee's Inquiry Report was tabled in Parliament in September 2023.³⁸ The Committee made several recommendations focused on improving support for children with disability so they can remain in family-based settings, including that the South Australian government work with the Commonwealth government to:

- Investigate, develop and implement a safeguarding mechanism for children and young people with complex support needs, who access both the NDIS and mainstream services, to ensure the safety and wellbeing of children and young people, with a particular focus on those at risk of losing their disability supports or accommodation.
- Develop a best-practice model of NDIS plan management for children and young people as they grow through developmental stages, in order to make their NDIS plans adequate, flexible and responsive to their changing needs and requirements, with a particular focus on funding for their accommodation and supported independent living.
- Urgently expand the Exceptional Needs Unit to provide appropriate support for the increased number of children and young people accessing the service.
- Seek expert, professional advice regarding the level of 'parental responsibility' and the application of 'reasonable and necessary' in the provision of Specialist Disability Accommodation and Supported Independent Living, in a child or young person's NDIS plan, where parents or guardians are expected by the NDIA to provide care and support beyond 'ordinary' familial duties. The 'What we have heard' report of the 2022–23 NDIS Review identified that 'reasonable and necessary support' is poorly defined, as did the 2019 review of the NDIS Act 2013.

Future progress reports will consider the extent to which government responses to these recommendations clarify the application of reasonable and necessary.

The Child and Young Person's Visitor 2022–23 Annual Report is the first annual report since funding for the scheme was reinstated in the 2022–23 Budget. 70% of the houses visited by the CYP visitor in 2022–23 were home to young people with diagnosed disability, and just over half (55.9%) of those with diagnosed disabilities were reported as having current NDIS plans.³⁹ The Child and Young Person's Visitor Annual Report 2022–23 notes that 1 in 5 young people with diagnosed disability who were visited in residential care had a recent admission to the Youth Justice Centre.

- **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 criminalisation of children in out-of-home care, particularly in residential care, is an ongoing systemic concern that disproportionately impacts children with disability. There has been no clear progress in 2023 in terms of improving the consistency and adequacy of responses from DCP and SAPOL to prevent the criminalisation of children in care. This is despite recommendations from the Guardian for Children and Young People's 2022 'dual-involved' project in relation to improving diversion and reducing police involvement in residential care settings through early intervention supports and a joint protocol between DCP and SAPOL.⁴⁰

In relation to carer support in residential care, the Child and Young Person's Visitor Annual Report 2022–23 highlights several systemic barriers that impact the support available to children and young people with disability in residential care, including:

- Variation in the quality of training provided to residential care staff;
- Transient and casual nature of care staff rostering;
- Under-utilisation of approved NDIS funding, including due to changes in placement location, limited or no local services available, waiting lists for services and resources, and fluctuating levels of engagement.⁴¹

The final report of the Disability Royal Commission makes recommendations aimed at addressing the overrepresentation of First Nations children in out-of-home care (OOHC). The Royal Commission identified a need for a First Nations approach that prioritises early intervention, ensures culturally appropriate assessment tools and embeds the involvement of Aboriginal Community Controlled Organisations (ACCOs) at every stage of child protection systems.

The Commissioner remains concerned about the high number of children with disability being excluded from primary schools.

The Commissioner has expressed to the Department her view that primary school children should not be suspended, excluded or expelled.

As noted in previous reports, students with disability are disproportionately impacted by informal and formal exclusionary practices that limit or reject their enrolment, participation and engagement in education. This includes practices that limit the hours students can attend school, isolate students from peers, and restrict children's rights.

Data provided to this office by the Department for Education shows the number of students in government primary schools (Reception to Year 6) who received a take-home, suspension or exclusion in 2022.⁴²

- Students with disability (receiving funding through the IESP) make up 7.5% of total enrolments and 34.5% of the total number of primary school students who received a take-home, suspension and/or exclusion in 2022.
- Students with disability (according to the Nationally Consistent Collection of Data on students with disability, which includes IESP students) make up 33.0% of total enrolments and 73.6% of the total number of primary school students who received a take-home, suspension and/or exclusion in 2022.

To ensure that all children living 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



Data is not consistently reported publicly in relation to the proportion of suspensions for students in Reception to Year 12 who are receiving disability adjustments. According to the most recent data reported in the Graham Inquiry, 56.6% of suspensions in 2019 were for students receiving disability adjustments, up from 42.5% of suspensions in 2016.⁴³

Data is not recorded or reported publicly in relation to the participation and the engagement of students with disability in non-government schools.

In May 2023, Children and Young People with Disability Australia (CYDA) released findings from a survey of students with disability across Australia which found that 70% of respondents had been excluded from events or activities as part of their schooling.⁴⁴ A different survey by CYDA also found that parents reported preschool children with disability being refused enrolment and excluded from preschool excursions, events or activities.⁴⁵

In November 2023, the Department for Education sought feedback on its draft revised procedure for the suspension, exclusion and expulsion of students (SEE procedure). The draft SEE procedure refers to the obligations under the Disability Standards for Education 2005 and includes 'making adjustments for students with disability' as a key consideration in determining whether an exclusionary response is appropriate. Certain grounds for suspension should not be used where certain behaviour 'may be connected to a student's disability'. Further, when an appeal is made against a decision to exclude a student with disability, the appeal panel must have expertise in an area related to the student's circumstances, including disability support. The non-government (independent and Catholic) school sectors do not have relevant publicly available procedures.

The majority of public education students with disability (95.1%) are enrolled in mainstream education settings (either in mainstream classes or in special classes or units within mainstream schools), compared to 4.9% of students with disability who are enrolled in special schools.⁴⁶ The number of full-time equivalent students with disability in mainstream schools remained steady between 2022 and 2023: 18,630.1 in 2023, compared to 18,610.3 in 2022. In 2022, 307 students with intellectual disability completed their SACE with one or more modified subjects, compared to 353 students in 2021 and 323 students in 2020.⁴⁷ In 2023, the Parliament of South Australia's Social Development Committee is undertaking an inquiry into funding for children and students with additional learning needs in public schools and preschools.

The Report of the Review of the *Disability Inclusion Act 2018* recommended that the Department for Education be required to report on 'the extent to which children living with disability are able to participate in mainstream learning and social experiences at school'.⁴⁸ The 2022 Amendment Bill did not provide for this recommendation, but future progress reports will monitor whether this is addressed in legislation and policy, including in the next State Disability Inclusion Plan.

The Department for Education's One in Four reform program has progressed in 2023 with the following developments:

- The appointment of Autism Inclusion Teachers in all government primary schools from the start of the 2023 school year.⁴⁹

- **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

- Improvements to the IESP, following a pilot of new processes in 22 schools in Terms 3 and 4 of 2022. A new Supplementary Level Funding grant will be introduced from Term 1, 2024 so that schools will no longer need to apply to the IESP Panel for categories 1 to 3 funding.⁵⁰
- Launch of 9 new practice guides for educators to support learners with functional needs, in addition to the sixteen practice guides released in 2022.
- The indicator framework that describes the outcomes the Department is seeking for children with functional needs has reached the ‘implementation phase’.⁵¹
- Improvements to the accessibility of Student Support Services, with the Department’s 2022 Annual Report noting an average reduction in wait times by 25% across all disciplines.⁵²
- Over 60 preschool sites have engaged with the Preschool Inclusion Project which supports the IESP reform in preschools as of Term 3 2023. Every preschool in South Australia will be involved by the end of 2024.⁵³

A new Tailored Learning Provision model will be implemented in 12 sample schools from 2024 as part of the Department’s student engagement reforms and redesign of the Flexible Learning Options (FLO) model.

The Disability Standards for Education 2005 (the Standards) clarify the obligations of education providers under the *Disability Discrimination Act 1993* (Cth) to ensure that students with disability access and participate in education on the same basis as other students. There has been no formal public response to the 13 recommendations made in the 2020 Review of the Disability Standards for Education 2005, despite the federal Department of Education’s website noting that ‘the Government will keep the community up to date about progress of this work’.⁵⁴

In the final report of the Disability Royal Commission, the Commissioners had differing views on whether special/segregated (non-mainstream) schools should be phased out over time. However, they agreed that mainstream schools ‘need major reforms to overcome the barriers that prevent students with disability accessing safe, equal and inclusive education’.⁵⁵ The Royal Commission recommends that state and territory governments take action to:

- Provide equal access to mainstream education and enrolment.
- Prevent the use of exclusionary discipline against students with disability.
- Improve the provision of reasonable adjustments.
- Develop a ‘National Roadmap to Inclusive Education’.
- Implement a careers guidance and transition support service for students with disability.
- Strengthen oversight and enforcement of inclusive practices and improve data collection, workforce capacity, student and parental communication, First Nations expertise, funding and complaints management.⁵⁶

There are no child-focused safeguarding mechanisms or independent oversight bodies in place to protect children with disability from exclusionary or restrictive practices in the education system. The next recommendation provides further detail on the need to address the use of restraints and seclusion against children with disability in a range of settings, including education settings.

■ **No evidence** that the UN Committee’s recommendation is being addressed

■ **Some evidence** that the UN Committee’s recommendation is being addressed

■ **Clear evidence** that the UN Committee’s recommendation is being addressed

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



The Commissioner remains concerned that there is still no independent safeguard and oversight mechanism in place to protect children with disability from the use of restrictive practices across health, education, residential care and youth justice settings.

The Department for Education, the South Australian Ombudsman, the Equal Opportunity Commission and the Australian Human Rights Commission handle complaints in relation to restraints, seclusion and discrimination against children with disability. However, South Australia's legislation regulating restrictive practices remains limited to practices used by registered NDIS service providers with NDIS participants. There has been no further progress in 2023 in terms of cross-government legislation for regulating restrictive practices outside of the NDIS.

A cross-government approach is essential to reducing the use of restraint and seclusion against all children with disability. In September 2022, South Australia's Attorney-General indicated that 'further detailed advice is being provided by my department' on the development of further legislation to regulate the use of restrictive practices.⁵⁷ The Attorney-General indicated in July 2023 that restrictive practices are under review 'right across settings, whether they be care settings for children, health provision settings or aged-care settings'.⁵⁸ There have been no further updates.

Previous progress reports have noted that a Human Rights Act in South Australia would strengthen the protection of rights for all children and provide a range of enforceable remedies where the rights of children with disability have been breached, including in cases of restraints or seclusion. In 2023, the federal Parliamentary Joint Committee on Human Rights undertook an inquiry into Australia's human rights framework, including whether the Australian Parliament should enact a federal Human Rights Act. The Committee is due to report by 31 March 2024.

The Disability Royal Commission is clear about the need to reduce and eliminate restrictive practices across disability, health, education and justice settings. Recommendations relate to:

- Taking immediate action to prohibit certain practices, including the seclusion of children in all settings;
- Ensuring legal frameworks for the authorisation, review and oversight of restrictive practices in disability, health, education and justice settings;
- Improving collection and reporting of restrictive practices data, including by age, gender, cultural diversity, disability status and restraint type.⁵⁹

In relation to education settings, the Disability Royal Commission recommends that state and territory governments take immediate action to eliminate the use of restrictive practices and restraints 'as a form of discipline, punishment or threat; as a means of coercion or retaliation; in response to property destruction; or for reasons of convenience'.⁶⁰

■ **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 Protective Practices guidelines apply to staff interacting with children across government and non-government education and care settings. The guidelines allow staff to 'make legitimate use of physical restraint' as a 'last resort' where a student is causing harm to themselves or others. The guidelines acknowledge that staff must consider 'the age, stature, disability, understanding and gender of the child or young person' and that 'inappropriate use of physical restraint/restrictive practices may constitute assault'.⁶¹

The Senate referred the 'issue of increasing disruption in Australian school classrooms' to the Education and Employment Reference Committee for inquiry in late 2022. The Commissioner and other advocates for children with disability raised concerns in relation to the negative framing and mischaracterisation of disability-related behaviours as 'wilfully disruptive or naughty' in the Inquiry's terms of reference.⁶² The Committee is due to report in December 2023.

In the health and mental health sectors the Women's and Children's Hospital (WCH) 'will be developing a specific policy in conjunction with the Office of the Chief Psychiatrist (OCP) for practices relating to the restraint and seclusion of children and young people and their reduction'.⁶³ This follows an investigation into the care of a young man in Mallee Ward, which was released in June 2023 by the Health and Community Services Complaints Commissioner and made recommendations in relation to authorising and documenting restrictive practices, including that OCP 'develop a paediatric version of the SA Health restraint and seclusion policy'.⁶⁴

The Office of the Chief Psychiatrist is considering recommendations from the independent review of the *Mental Health Act 2009* (SA) undertaken by the SA Law Reform Institute (SALRI), including extra safeguards for children and young people under treatment orders.⁶⁵ While 'no changes to the Act are proposed for restrictive practices', changes are proposed to authorise the use of restrictive practices for electroconvulsive therapy (ECT) under certain circumstances.⁶⁶

The Training Centre Visitor and other oversight bodies continue to raise concerns about 'a lack of transparency about the extent of isolation practices' in youth justice settings, as well as other restrictive practices including the use of force, mechanical restraints and searches.⁶⁷ According to the 2023-24 Budget papers, the state government intends to launch a new 12-bed accommodation unit in 2023/24 'to improve responses to children and young people at the Kurlana Tapa Youth Justice Centre, including those with complex and disability related needs'.⁶⁸

The Department for Child Protection's Understanding Restrictive Practices Practice Paper was revised in November 2023 and seeks to provide DCP case workers and residential care workers with a comprehensive understanding of when and why restrictive practices may be used, how to minimise their use and 'ensure children and young people in care are safe and their human rights upheld and protected'.⁶⁹ The Child and Young Person Visitor's 2022-23 Annual Report noted that in some cases restrictive practices appear to be used in residential care settings 'as a default, influenced by house dynamics, carers' opinions, or as a control mechanism, rather than based on a clear rationale'.⁷⁰

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

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