

2023 Child Rights Progress Reports

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



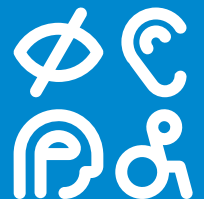
Child Health



Child Justice



Child Protection



Disability



Education



Environment



Physical Punishment



No evidence



Some evidence



Clear evidence

2023 Child Rights Progress Report on Child Health

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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 Child Health



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 children (5–15 years) who reported having a mental health condition. ¹	2022: 18.8% 2021: 17.2% 2020: 19.4% 2019: 19.1% 2018: 16.1%	Slightly increased	Fluctuating, increase from base year	- Unfavourable
Proportion of 16–17 year olds who reported having a mental health condition. ²	2022: 31.7% 2021: 35.3% 2020: 35.8% 2019: 25.1% 2018: 22.7%	Decreased	Fluctuating, increase from base year	- Unfavourable
Proportion of children (5–17 years) who reported accessing a mental health service in the past 12-months. ³	2022: 15.7% 2021: 14.6% 2020: 15.0% 2019: 17.9% 2018: 14.3%	Slightly increased	Fluctuating, slight increase from base year	No change
Mental health presentations to emergency departments among children and young people (12–17 years) (rate per 100,000 children) ⁴	2021/22: 2,940 2020/21: 3,910 2019/20: 2,995 2018/19: 2,863 2017/18: 2,564	Decreased	Fluctuating, increase from base year	- Unfavourable
Chlamydia notification rates among females (15–19 years) (rate per 100,000 population)	2022: 1,464.5 2021: Not available 2020: Not available 2019: 1,585 2018: 1,766 2017: 1,658	Not available	Fluctuating, decrease from base year	+ Favourable
Chlamydia notification rates among males (15–19 years) (rate per 100,000 population) ⁵	2022: 563.3 2021: Not available 2020: Not available 2019: 528 2018: 525 2017: 529	Not available	Increasing	- Unfavourable
Gonorrhoea notification rates among females (15–19 years) (rate per 100,000 population)	2022: 224.2 2021: Not available 2020: Not available 2019: 189.8 2018: 143.5 2017: 140	Not available	Increasing	- Unfavourable
Gonorrhoea notification rates among males (15–19 years) (rate per 100,000 population) ⁶	2022: 165.2 2021: Not available 2020: Not available 2019: 169.0 2018: 96.6 2017: 121	Not available	Fluctuating, increase from base year	- Unfavourable
Proportion of South Australian children and young people who are reported to be overweight or obese. ⁷	2022: 32.5% 2021: 29.7% 2020: 30.8% 2019: 26.3% 2018: 28.6%	Increased	Increasing	- Unfavourable

Areas of concern include:

- Not enough public and private services to meet the mental health needs of children and young people in South Australia.
- High rates of mental health presentations to emergency departments among children and young people aged 12–17 years.
- Children and adolescents not adequately addressed in South Australia's *Mental Health Act 2009* (SA).
- Barriers to safe access of mental health and sexual health services and information, particularly for LGBTQIA+ children and young people, and children and young people living outside of metropolitan areas.
- High rates of sexually transmitted infections amongst young people.
- Increased proportion of children and young people reported to be overweight or obese.
- Lack of a public health approach to planning and transport.
- High levels of food insecurity for households with children.
- Insufficient legal protections to prevent the sterilisation of children with disability without their consent.
- Generally poor access to health services in rural and regional areas.

Background

The UN 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 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 access to health care services, with emphasis on the development of primary and preventative health care.

Australia has a health care system that combines public and private health care services. The Commonwealth and State/Territory governments broadly share responsibility for funding (approx. 70% of total health care expenditure) as well as the operation, management, and regulation of the health care system. The remainder of the funding comes from non-government sources such as individuals, private health insurers, injury compensation insurers, and other private sources.⁸

The Health System in South Australia

The State Department for Health and Wellbeing is responsible for the overall management and strategic direction of South Australia's health care system, while local health networks are responsible for the provision of health services in line with the *Health Care Act 2008* and performance agreements.

South Australia has multiple plans that cover children and young people's health and wellbeing, including the State Public Health Plan 2019–2024, the South Australian Health and Wellbeing Strategy 2020–2025 and regional public health plans.

During 2021, SA Health undertook extensive consultation to inform the development of South Australia's Women's, Child and Youth Health Plan 2021–2031. The Summary Framework for Consultation was released in March 2021, and although the final plan was expected to be launched in 2022, it has not yet been publicly released.

The Mental Health Strategic Plan 2017–2022 and the Mental Health Services Plan 2020–2025 promote and provide access to mental health services in South Australia. The Mental Health Services Plan is listed in the 2023–24 State budget as being targeted for review in 2023–24. There is no publicly available information on what will follow the Mental Health Strategic Plan 2017–2022.

Wellbeing SA was established in 2020 as an independent state government agency that leads cross-government and cross-sector strategies to 'rebalance the health and wellbeing system' in South Australia, and to ensure a greater focus on prevention across the life course.

The Wellbeing SA Strategic Plan 2020–2025 outlines the agency's three key priority areas for the duration of the plan: the early years; chronic disease and injury prevention; and mental health and wellbeing. The Wellbeing SA Strategic Plan 2020–2025 Progress Report, January 2023–June 2023 outlines actions which have been taken, including the release of two *Navigating the Early Years System in South Australia* reports.

In June 2022, Wellbeing SA launched a Wellbeing Index for South Australia to monitor indicators of the physical, mental, social/community, and Aboriginal cultural wellbeing of South Australians over time. In 2023, a new publicly accessible online portal was launched sharing deidentified South Australian population health data. This includes data from the South Australian Perinatal Statistics Collection, South Australian Population Health Survey, and South Australian Cancer Registry. Some of the measures include data on children and young people, although several focus on adults only.

In September 2023, it was announced that a new body called Preventive Health SA will be created, merging Wellbeing SA with Drug and Alcohol Services SA's population health policy and program. The Commissioner will continue to monitor if the new agency has more of a focus on preventive health for children and young people, including in relation to areas such as transport, planning, and education.

Some welcome developments in 2023 include:

- Release of the State-wide Gender Diversity Model of Care, which aims to provide timely access and clear pathways to appropriate, evidence-based, and affirming gender health care and support for trans, gender diverse, and non-binary children, young people, and adults across the state.
- Release of the Aboriginal Health Care Framework 2023–2031, which uses a life course approach that considers health and wellbeing at different life stages. Improving oral health is mentioned in relation to children, and sexual health screening is mentioned in relation to young people.
- Release of the Aboriginal Health Promotion Strategy Action Plan 2022–2026 in February 2023 which follows on from the Australian Aboriginal Health Promotion Strategy 2022–2030: Strengthening and promoting the cultural determinants of health and wellbeing released last year.
- Opening of a dedicated Telethon Kids Institute in the Adelaide CBD in June 2023, focused on child health research.
- Expansion of Act for Kids in South Australia – 'a for-purpose organisation that delivers evidence-led professional therapy and support services to children and families who have experienced or are at risk of harm' with funding provided by the Daniel Morcombe Foundation.⁹ The service also includes therapeutic support for children displaying harmful sexual behaviour.
- Extension to urgent care services for children aged 6 months to 18 years via a State budget commitment of \$30.8 million over four years.

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.



There are still not enough services – public and private – to meet the mental health needs of South Australian children and young people. Children and young people in South Australia aged 12–17 years had the second highest rate of mental health presentations to emergency departments in 2021–22, behind those 85 years and over.¹⁰ The length of stay for children and adolescents accessing mental health services in acute units within public hospitals in South Australia has increased from 4.7 days per 1,000 population in 2018–19 to 4.8 days in 2019–20 to 6.1 days in 2020–21.¹¹ Non-clinical initiatives and services are required to avoid hospitalisation.

Of the South Australian children and young people aged 5 to 15 reported to have a mental health condition in the South Australian Population Health Survey, 59.9% reported receiving treatment in 2022. This shows a decrease from 2021 (64.4%), and change from previously increasing proportions (2018 (50.4%), 2019 (55.6%), 2020 (62.6%)).¹²

The percentage of South Australian children and young people receiving a Medicare Benefits Schedule (MBS) subsidised primary mental care service (in person or via telehealth) in 2021–2022, is similar to the national average across age groups. For South Australia this was 0.9% of preschool children (0–<5 years old), 6.1% of primary school children (5–<12 years old), and 13.1% of secondary school young people (12–<18 years old).¹³ Young people under 25 years of age were much more likely to have had contact with MBS subsidised primary mental health care services either in person or via telehealth in major cities (10.4% of young people) and inner regional South Australia (also 10.4%) compared to those in outer regional (7.2%), remote (5.8%) or very remote (3.4%) regions of South Australia.¹⁴

For 2023, the federal government changed the number of MBS subsidised mental health professional sessions available for people with a mental health treatment plan. During the COVID-19 pandemic those on a plan could receive an additional 10 individual sessions on top of the initial 10 sessions (a total of 20) under the *Better Access Pandemic Support* measure. As of 1 January 2023, the number of subsidised sessions returned to the initial 10 sessions available prior to the pandemic. As 2023 data is not yet available, it is difficult to determine the impact this change has had on children and young people.

The review of rural mental health services in South Australia, released in May 2023, highlights the need for more mental health services outside of metropolitan areas.¹⁵ There is a low number of Child and Adolescent Mental Health Service (CAMHS) clinicians working in regional areas. The Women’s and Children’s Health

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

Network (WCHN) tends to centralise specialist staff in Adelaide leading to regional communities being severely underserved. The review recommends that regional local health networks have more control over CAMHS provision in their areas, and that locally based clinicians are made available. The review also found that South Australia has 'by far the greatest metro to country workforce disparity in Australia', with a deficit of more than 50 rural psychiatrists, along with a similar need for more mental health nurses and allied health workers.¹⁶

In 2022, the Office of the Chief Psychiatrist (OCP) reviewed the assessment, treatment, management and follow up plans of children and young people presenting to the Women's and Children's Hospital Emergency Department for mental health care.¹⁷ This was in response to concerns raised by Parents for Change, a community-based campaign of parents advocating for better mental health care and services for children and adolescents, particularly in relation to the availability of crisis support. No further details on actions are publicly available following the release of the report in 2022.

In 2022, the OCP also developed a draft Youth Mental Health Services Model of Care, which was open for consultation until early February 2023.¹⁸ The final report is yet to be released.

The OCP commissioned a report to explore unmet mental health service need in South Australia that could be met by the NGO sector. This report was released in February 2023.¹⁹ It highlights the significant amount of additional expenditure needed to provide mental health services for different age groups, including children aged 0–17 years. This additional expenditure need includes a significant investment of over \$22 million for individual support and rehabilitation for children.²⁰

The South Australian *Suicide Prevention Act 2021* commenced in September 2022. The South Australian Suicide Prevention Plan 2023–2026 was launched on 12 July, 2023.²¹ The Plan contains very few mentions of children and/or young people, although it does include reference to the higher rates of suicide amongst Aboriginal young people as well as people with adverse childhood experiences. Australian Bureau of Statistics (ABS) figures for South Australia highlight the higher rate of deaths related to intentional self-harm amongst young people aged 15–17 years compared to those aged 5–14 years for 2018–2022 (8.3 per 100,000 population compared to 0.8).²²

The South Australian Law Reform Institute (SALRI) led the statutory review of South Australia's *Mental Health Act 2009* (SA) throughout 2022. The final report of this independent review was released in February 2023.²³ The report suggests that children and adolescents are not adequately addressed in the Act and made multiple recommendations including the need for a separate review to be conducted in relation to use of the Act for children and adolescents.

A federally funded Head to Health Kids Hub for 0–12 year olds has been promised, as part of a national service model. The hub will focus on holistic and multidisciplinary mental health care for children. A mental health drop-in centre for young people aged 16 years plus has been opened in the Adelaide CBD with another centre soon to be established in the Northern suburbs. This leaves a gap for those under 16 years in need of urgent mental health care.

The Department for Education has been rolling out its new School Mental Health Service throughout 2023. This followed the success of the pilot undertaken in nine SA schools throughout 2022/2023. The early intervention service involves school-based mental health practitioners supporting young people with 'mild to moderate and emerging mental health concerns'. Up to 65 high schools, area schools, and reception to year 12 schools will have this service, with a focus on need.²⁴

The Commissioner will monitor the government's response to the above reviews in future progress reports.

The 2023–24 State budget provides funding related to children's mental health that includes:

- Continuation of funding for the new Women's and Children's Hospital (\$119 million in 2023–24 budget).
- Continuation of support for mental health and learning support in schools (\$7.2 million in 2023–24 budget).²⁵

The 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.

Young people experience a range of structural, social and cultural barriers to accessing sexual health services and information. Children and young people who are LGBTIQ+, as well as those living outside of metropolitan areas, face particular barriers to safe, inclusive services and information.

In July 2023, SA Health released the final state-wide Gender Diversity Model of Care.²⁶ The model aims to provide timely access to appropriate, evidence-based, and affirming gender health care and support for trans, gender diverse and gender non-binary children, young people and adults across South Australia and across three health service streams: mainstream health and gender support services; specialised gender health services (separate child/adolescent and adult services); and specialised gender surgical services. The model includes reference to the need for sexual health and fertility preservation information for children and young people.

Under the model of care, the Child and Adolescent Gender Diversity Service will be based at the WCH, but will service the whole state. While there will be outreach and virtual services, more support is needed for children and young people outside of metropolitan Adelaide. The Commissioner welcomes the model of care noting, however, that funding and resourcing for its implementation are yet to be determined. The Commissioner will continue to monitor the resourcing and implementation of the model in future reports.

Adelaide Primary Health Network (PHN) funding for SHINE SA's Gender Wellbeing Service ceased from 1 July 2023. The Gender Wellbeing Service, which commenced in 2016 as a small pilot project, provided individual support to trans and gender diverse people aged 12 and older, as well as support for families of young people aged 10–25 in the Families in Transition program. As a result of an open tender process, funding is now being provided to Thorne Harbour Health SA for a broader LGBTIQ+ mental health service for those aged 16 years and over in the Adelaide region. SHINE SA continues to experience very high demand for gender related care and associated psychosocial, mental health and related supports, and there is now no similar referral point for those aged between 12 and 15 years old.

- **No evidence** that the UN Committee's recommendation is being addressed
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Country SA PHN continues to fund SHINE SA's Gender Connect Country SA Service. This phone and web-based service provides peer support services for people of all ages who live in country SA and have questions about being or supporting those who identify as trans, gender diverse or gender questioning. The service also provides resources, individual support and workplace training for healthcare professionals supporting trans and gender diverse people living in country SA.

The South Australia Mental Health Services Plan commits to addressing discrimination of gender and sexually diverse people by 'providing staff training in the delivery of safe and effective services to the LGBTI community'. However, this commitment is not specific to children and young people, nor has there been any publicly reported update on the State's progress against this commitment.

While the teenage pregnancy rate has been declining steadily year on year, reducing from 15.1 per 1,000 women aged 15–19 in 2013 to 6.9 in 2021, people giving birth under the age of 20 in Australia are less likely than other age groups to have an antenatal visit in their first trimester or to have five or more antenatal visits. Their babies are also more likely to be pre-term, have low birthweight, and have an Apgar score (medical assessment) of less than 7 out of 10 directly after birth. This highlights the pressing need for better sexual and reproductive health support for teenagers.²⁷

Abortion rates for teenagers aged 15–19 years in South Australia increased from 7.8 per 1,000 women in 2021 to 8.3 in 2022.²⁸ The Commissioner's 2021 report explains how this rate varies from year to year. The Commissioner will continue to monitor these figures, particularly following the *Termination of Pregnancy Act 2021* coming into effect in mid 2022, which included the decriminalisation of abortion, and Therapeutic Goods Administration (TGA) changes improving access to early medication abortion in primary care.

Pregnancy and abortion rates are currently measured as the number of women per 1,000, which overlooks the people who are not women who experience pregnancy.

The rate of sexually transmissible infections (STIs) has risen over the last decade in South Australia, with young people disproportionately impacted. SHINE SA communicated to the Commissioner's officer that STIs have increased in 2023, including among those in younger age groups. Data for 2022 provided to the Commissioner by the Communicable Disease Control Branch of SA Health²⁹ allows for a comparison to the 2019 STI data in last year's progress report,³⁰ with the following observations:

- Chlamydia notifications in South Australia continue to be most common in people aged 15–29 years (75% in 2019 and 74% in 2022), with 54% of all notifications in young people aged 24 years and under in both 2019 and 2022.
- Seventy-one per cent of chlamydia notifications among 15–19 year olds in 2022 were among females (738 females compared to 300 males), slightly lower than the 74% in 2019 (793 females compared to 278 males). This is a decrease from 1,585 per 100,000 females aged 15–19 years in 2019 to 1,465 in 2022. However, rates have increased for males aged 15–19 years, from 528 per 100,000 in 2019 to 563 in 2022.

- The rates of gonorrhoea among 15–19 year olds in South Australia has increased among females from 189.8 per 100,000 in 2019 to 224.2 per 100,000 in 2022. Rates among males aged 15–19 increased from 121 to 169 per 100,000 from 2017 to 2019 before slightly decreasing to 165.2 per 100,000 in 2022.

Additional 2022 data provided to this office by the Communicable Disease Control Branch of SA Health breaks down the data further by age:³¹

- Chlamydia notifications increased with age: 0 cases at 0–12 years, 37 at 13–15 years, and 559 at 16–18 years.
- Gonorrhoea notifications also increased with age: 3 at 0–12 years, 16 at 13–15 years, and 123 at 16–18 years.
- There were no notifications of syphilis amongst 0–18 year olds.

Place of residence at notification shows that for 0–18 year olds, there were 432 notifications of chlamydia in the Adelaide region compared to 164 in the rest of SA, and 95 notifications of gonorrhoea in the Adelaide region compared to 45 in the rest of SA.

Young people are a priority population in the Fourth National Sexually Transmissible Infections Strategy 2018–2022. There have been delays in finalising the Fifth National STI Strategy, and there are no further updates released publicly relating to this in 2023.

In January 2022, the Department for Health and Wellbeing commissioned a review of sexual health services in South Australia. The SA Sexual Health Services Review has been endorsed by the Minister for Health and Wellbeing as at November 2023. A government response to the review recommendations is being drafted in partnership with key stakeholders in the sexual health sector in South Australia with a view to implementation in the following year.

The right of South Australian children and young people to access comprehensive relationships and sexual health (CRSH) curriculum in primary and secondary school is currently impacted by the lack of consistently mandated curriculum in South Australia. In Victoria, Respectful Relationships education is mandated as a core component of the Victorian Curriculum from foundation to year 12. SHINE SA trains and supports teachers in South Australian public schools to facilitate evidence-based, best practice Teaching It Like It Is CRSH curriculum. At present, individual schools may elect to implement the SHINE SA program, or deliver alternative models, potentially including those which are not comprehensive, evidence-based or inclusive of diversity. Standardising and supporting the implementation of best practice CRSH curriculum protects the right of South Australian children and young people to access this essential health and wellbeing education. Access for adolescents who leave the school system early and who may be in youth detention or out of school programs also require additional resourcing and support.

There continues to be a lack of specialist therapeutic services for children displaying harmful sexual behaviours. As reported in previous child rights progress reports, eligibility for existing services is largely restricted to those whose behaviour is classified as 'serious'. There needs to be greater investment in protective services that reduce harm and de-escalate behaviours at the earliest possible stage of intervention.

- **No evidence** that the UN Committee's recommendation is being addressed
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There is also currently no specific data being collected on the prevalence of harmful sexual behaviour in children in South Australia. There are some research projects underway including a new project focused on improving responses to harmful sexual behaviour in children and young people being led by the Australian Centre for Child Protection at the University of South Australia, with funding supplied by the Department for Child Protection SA (\$500,000). A state-wide framework for responding to harmful sexual behaviour in children and young people is also being developed.

Address the increasing rate of child obesity

According to the 2022 South Australian Population Health Survey:

- The proportion of children reported to be obese was 11.0% in 2022, a reduction from 13.5% in 2019.
- The proportion of children reported to be overweight was 19.0% in 2022, up from 12.8% in 2019.
- The proportion of children reported to be either overweight or obese was 32.5% in 2022, which has increased since 2018 (28.6%), 2019 (26.3%), 2020 (30.8%), and 2021 (29.7%).
- The proportion of children reported to be overweight or obese was higher among males, and in rural areas. It was similar across SEIFA groupings, but less prominent in the highest group.³²

The State Public Health Plan has set targets to address obesity, and the South Australian Health and Wellbeing Strategy 2020–2025 has committed to developing a ‘comprehensive, fully integrated response designed to address overweight and obesity at both population and individual level’. However, there appear to be no publicly reported updates regarding South Australia’s progress towards these goals during 2023.

The Australian Physical Activity and Exercise Guidelines recommend that children aged 5–17 years should undertake at least 1 hour of moderate to vigorous intense physical activity every day.³³ In 2022 under a quarter (23.0%) of South Australian children aged 5–17 years reported meeting this level of exercise, similar to the 22.2% of children in 2019.³⁴

The Active Healthy Kids Australia 2022 Report Card on physical activity for children and young people shows very low levels (a third or less than a third) of overall physical activity,, physical fitness, and active transport amongst Australian children and young people.³⁵ Levels of participation in organised sport and physical activity are higher, at around two thirds of children and young people.. All of these are at similar levels reported in the 2014, 2016, and 2018 report cards and have either remained the same or shown a slight decrease. The Global Matrix 4.0 shows that these grades are lower than the international average, apart from levels of Australian children and young people’s participation in organised sport and physical activity.³⁶

- **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

According to the 2023 Benchmarking Adelaide report, Adelaide has the lowest proportion of people living in walkable neighbourhoods when compared to similar sized cities around the world, with high levels of car dependence.³⁷ The *Healthy and Sustainable City Indicators Report* found that policies related to transport and land use planning in Adelaide, do not appear to incorporate 'health-focused actions'.³⁸

At the national level, the National Obesity Strategy 2022-2032 was launched in 2022 which recognises food insecurity as 'one of the main drivers of unhealthy weight'.³⁹ As such, it is significant that Australian households with children experienced higher severe levels of food insecurity in 2023 than those without children at home. Severe levels of food insecurity were experienced by 27% of households with children (46% of single-parent households with children and 25% of non-single-parent households with children), compared to 19% of households with no children at home. The national average for severe food insecurity was 22% of all households in 2023.⁴⁰ A South Australian school survey found that nearly two thirds of families with primary school-aged children reported food insecurity.⁴¹

The Commissioner will continue to monitor the development and implementation of initiatives related to obesity prevention that align with state and federal commitments.

Governments should introduce legal protections to prevent sterilisation of children with disability 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.⁴²

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 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 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.⁴³ 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.

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

Endnotes

- 1 Wellbeing SA, *South Australian Population Health Survey: 2019 annual report: Children*, Government of South Australia, 2020, accessed 23 November 2023, <https://das7nagdq54z0.cloudfront.net/downloads/SAPHS/SAPHS2019AnnualReport-Children.pdf>, p 17; Wellbeing SA, *South Australian Population Health Survey: 2020 annual report: Children*, Government of South Australia, 2021, accessed 23 November 2023, <https://www.wellbeingsa.sa.gov.au/https://www.wellbeingsa.sa.gov.au/assets/downloads/SAPHS/SAPHS-2020-Annual-Report-Children.pdf>, p 17; Wellbeing SA, *South Australian Population Health Survey: 2021 annual report: Children*, Government of South Australia, 2022, accessed 23 November 2023, <https://www.wellbeingsa.sa.gov.au/assets/downloads/SAPHS/SAPHS-2021-Annual-Children-Report.pdf>, p 17; Wellbeing SA, *South Australian Population Health Survey: 2022 annual report: Children*, Government of South Australia, 2023, accessed 23 November 2023, <https://www.wellbeingsa.sa.gov.au/assets/downloads/SAPHS/SAPHS-2022-Annual-Children-Report.pdf>, pp 17, 18.
- 2 Wellbeing SA, *South Australian Population Health Survey: 2022 annual report: Children*, p 16.
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2023 Child Rights Progress Report on Child Justice

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 Child Justice



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
Average daily number of children in SA Child Justice System: Detention	2022/23: Data not yet available 2021/22: 29 2020/21: 24 2019/20: 26 2018/19: 37 2017/18: 43	Not available	Fluctuating, decrease from base year	+ Favourable
Average daily number of children in SA Child Justice System: Community-based supervision ¹	2022/23: Data not yet available 2021/22: 151 2020/21: 139 2019/20: 181 2018/19: 144 2017/18: 165	Not available	Fluctuating, decrease from base year	+ Favourable
Number of individual children and young people admitted to Kurlana Tapa Youth Justice Centre (KTYJC) ²	2022/23: 324 2021/22: 292 2020/21: 256 2019/20: 328 2018/19: 299	Increased	Increasing	- Unfavourable
Number of Aboriginal children and young people admitted to KTYJC (% of all detainees) ³	2022/23: 179 (53.3%) 2021/22: 138 (47.3%) 2020/21: 111 (43.3%) 2019/20: 159 (48.4%) 2018/19: 151 (50.5%)	Increased	Fluctuating, increase from base year	+ Unfavourable
Number of children under a guardianship order at time of their admission to KTYJC (% of all detainees) ⁴	2022/23: 88 (27.2%) 2021/22: 83 (28.4%) 2020/21: 78 (30.4%) 2019/20: 93 (28.3%) 2018/19: 93 (31.1%) 2017/18: 77 (23.4%)	Slightly decreased	Fluctuating, increase from base year	- Unfavourable
Number of children aged 10-13 years (inclusive) at the time of their admission to KTYJC (% of all detainees) ⁵	2022/23: 39 (12.0%) 2021/22: 52 (17.8%) 2020/21: 43 (16.7%) Not reported in previous years.	Decreased	Fluctuating, decrease from base year	+ Favourable
Number of children with a known diagnosed disability in KTYJC (% of all detainees)*	2022/23: 85 (25.3%)	Not previously collected	Not previously collected	Not previously collected
Average daily no. of children with a known diagnosed disability in KTYJC (% of daily population of all detainees) ⁶	2022/23: No number provided (59.5%)			

* The Department of Human Services does not provide data on disability in relation to KTYJC. The Training Centre Visitor started collecting data on disability in 2022 which is used here, although it is likely to be an underestimate.⁷

Areas of concern include:

- High use of restraints and the use of the prone position, especially on children with a disability, girls, and children under 13 years of age
- Failure to implement and comply with the basic requirements of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).
- Failure to refresh the Young Offenders Act Regulations to make them consistent with international law and the latest child development and trauma-informed research.
- The overrepresentation of vulnerable children in the criminal justice system, including children with a disability, children in care and Aboriginal children.
- The significant proportion of children on remand being detained in Kurlana Tapa.
- Lack of commitment by the state government to develop a roadmap to raise the minimum age of criminal responsibility.
- Lack of long term, consistent resourcing into diversionary practices.
- Lowest level of police diversion in the last 10 years and reports of children being remanded in police cells alongside adults due to denial of police bail.

Background

The UN 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 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 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 youth justice system. These include:

- an emphasis on prevention, rehabilitation and reintegration of young offenders over punishment;
- using detention as a measure of last resort and for the shortest possible period; and
- setting a minimum age of criminal responsibility to the recommended 14 years.⁸

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) state that non-institutional treatment should always be used in preference to institutional treatment as 'the many adverse influences on an individual that seem unavoidable within any institutional setting cannot be outbalanced by treatment efforts' (Rule 19).⁹ The minimum standards include:

- Proceedings being conducive to the best interests of the juvenile and being conducted in an atmosphere of understanding, to allow the juvenile to participate and to express themselves freely (Rule 14.2);

- The well-being of the juvenile should be the guiding factor in the consideration of their case (Rule 17.1);
- No child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Rule 17.2).
- Restrictions on the personal liberty of the juvenile should be imposed only after careful consideration (17.1(b)).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (United Nation Rules) states:

- That detention should only be used as a last resort;
- Children under arrest or awaiting trial should be presumed innocent and treated as such. This includes making all efforts to prevent detention before trial;
- Children deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity; and
- There should be active efforts to ensure children in detention have adequate communication and connection with their family and community.¹⁰

The Child Justice System in South Australia

Children who are in contact with the law are treated differently to adults in the legal system with diversion being a key goal. The Department of Human Services (DHS) oversees and manages children who are placed in detention or who are undertaking community service. It also manages diversionary services to keep children out of the justice system.

There is a separate criminal court for children (the Youth Court) and a separate facility for children who are detained (Kurlana Tapa Youth Justice Centre). Children who are on remand are often detained in the same facility with children who have been sentenced.

The *Young Offenders Act 1993* (SA) and the *Youth Justice Administration Act 2016* (SA) are the key pieces of legislation in relation to child justice. The *Young Offenders Act* outlines the three tiers of South Australia's child justice system, including two tiers of pre-court diversion: formal and informal police caution, and family conference. These apply where a young person is a first offender or relatively low-level offender and admits to the alleged offending.

The criminal jurisdiction of the Youth Court deals with charges against young people between the ages of 10 and 18 years at the time of the alleged offence. The Youth Court hears and determines matters when charges have been laid, including matters that are disputed or related to more serious offences.

The Youth Court has discretion to refer matters back to be dealt with by family conference or formal police caution.

The *Youth Justice Administration Act 2016* (SA) allows for the establishment of 'training centres' as 'necessary or desirable for the care, rehabilitation, detention, training or treatment of youths'. The objects and principles of the Act include:

- to provide for the safe, humane and secure management of youths held in training centres in the State;
- to provide for appropriate programs for youths who are in detention or under supervision in the community;
- to follow, where practicable, international and national requirements or guidelines relating to the detention of youths; and
- to promote the rehabilitation of youths by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential.

DHS Youth Justice's current strategic agenda is focused on strengthening a therapeutic, trauma-informed and individualised approach to service delivery. This includes developing a Youth Justice Practice Framework, an Enhanced Support Unit service model for the new accommodation unit under construction at Kurlana Tapa, a youth engagement model, and undertaking a review of the case management model. There is also a focus on workforce development at Kurlana Tapa through its Recruitment, Training and Retention Strategy.

The Kurlana Tapa Youth Justice Centre (Kurlana Tapa) is the main place of detention for children in South Australia and is currently being extended to permanently consolidate the provision of youth custodial services in one campus. This will mean children and young people in custody are not segregated by sex.

The Training Centre Visitor (TCV) was legislated under the *Youth Justice Administration Act 2016*. The TCV's main function is to promote the safety and wellbeing of children detained in Kurlana Tapa by talking to them about their rights, promoting their best interests, advocating for children in the centre to resolve issues, inspecting the centre, and investigating systemic reforms or any other matter referred to by the Minister.

Some welcome developments in 2023 include:

- Selection of DHS Youth Justice Services as the inaugural Australian youth justice organisation to provide the Reframe Training program, an evidence-based program specifically designed to support young people in custody with Foetal Alcohol Spectrum Disorder (FASD) and other neuro disabilities.¹¹

- Implementation of the Enhanced Support Team as an ongoing service at Kurlana Tapa to provide behaviour support plans and clinical advice to support the care of young people exhibiting significant behaviours of concern.
- Establishment of the new Aboriginal Practice and Services Team to strengthen engagement and partnerships with Aboriginal people, communities and organisations to support culturally responsive services.
- Continuation of the child diversion program for Aboriginal children and young people aged 10 to 13 years in contact with the criminal justice system.
- Commencement of a two-year trial of the Youth Aboriginal Community Court Adelaide (YACCA), which aims to divert young Aboriginal children and young people.
- Extended mental health and health services for children in Kurlana Tapa.

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



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



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



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

Current Status

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

The behaviour management scheme in Kurlana Tapa is based on a model where incentives are available as a child progresses (or regresses) through 'phase' levels. The rewards are based on staff assessments of a child's personal interactions, hygiene, respect shown to staff, and compliance with rules. Low scores result in fewer privileges and more restrictions. Continual professional education in trauma informed practice and disability is needed to ensure that children are not punished for behaviour that arises from a child's trauma, mental health or disability, and is misunderstood.



Isolation and solitary confinement

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (United Nation Rules) explicitly prohibit isolation and solitary confinement of children as a disciplinary measure.¹² Isolation and solitary confinement are issues repeatedly raised by children in Kurlana Tapa.¹³

The Commissioner remains concerned about:

- Conflicting reports of the length of time children normally spend in their rooms: DHS reports them spending between 10–14 hours out of their rooms, compared to the TCV review of routines data calculating that the average period was less than 10 hours. The TCV confirmed that there was a day where many children were locked in their rooms for 22 hours or more.¹⁴
- 61.2% of 'incidents' in 2022-23 were as a result of isolation or modified routines. Of these incidents, 47.3% involved children engaging in self-harming behaviours.¹⁵

Solitary confinement is inconsistent with international law as well as the principles and objects in South Australian legislation. It is the Commissioner's position that detention should only be used as a last resort and that active efforts should be made to keep children who have been arrested, but not sentenced out of detention and kept safely in their community, connected to family and education. If staff shortages result in children being routinely locked in their rooms in Kurlana Tapa, children on remand should be released, including those under the care and protection of the Chief Executive of the Department for Child Protection.

The use of physical and mechanical restraints

The Commissioner commends the discontinuation of spit hoods but remains concerned about the use of other physical or mechanical restraints. The use of restraints is amongst the most common complaints made by children in Kurlana Tapa. Issues highlighted by the TCV:

- 72.4% of young people involved in incidents were physically restrained and 48% were restrained to prone (forcing a person into a face-down position). The prone position can cause serious injury and even suffocation. Despite legislative requirements that require children to be assessed by a medical practitioner following any use of force, records suggest health assessments took place in only a third (33.4%) of relevant incidents assessed.¹⁶
- Physical restraint was used in all 16 reported incidents involving 13-year-olds. This is despite the evidence that MAYBO Restraint techniques are not always effective on smaller bodies and could in fact cause harm, including increased risk of head injury and damage to growing bones.¹⁷
- The disproportionate use of the prone restraint on children with a disability, and girls and young women.¹⁸

Some welcome developments in 2023 include:

- DHS commencing a new data collection method on individual children's movements, indicating how long they are locked in their rooms. This is a step in the right direction to address issues of isolation. TCV collected and analysed the data between January and June 2023.
 - Reframe Training undertaken with all staff at Kurlana Tapa, which educates frontline professionals to recognise and understand neuro-disability in children and young people, reframe their behaviour, and respond appropriately to their needs.
 - Recruitment of new staff at Kurlana Tapa and implementation of a retention strategy, which has been successful in reducing 'lock down' periods.¹⁹
- The Commissioner will be monitoring any improvements in incidences and children's access to programs and services in subsequent 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

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



In respect to preventing and reporting abuse and torture, Australia missed its deadline to fully implement the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).²⁰ The Training Centre Visitor is the National Preventative Mechanism (NPM) for children in Kurlana Tapa, but this role has not been extended to other places of detention (contrary to OPCAT requirements). Australia has been criticised for not complying with basic OPCAT commitments and the UN Sub Committee on the Prevention of Torture (SPT) cancelled its visit to Australia in February 2023 as a result.²¹

It is critical that governments resource National Preventive Mechanisms (NPMs) so that they are able to fully and effectively carry out their functions and powers under OPCAT and prevent harm to children and young people.²² At the 28 April 2023 Standing Council on Attorneys General (SCAG) meeting, all participants affirmed their commitment to continue to work together towards full implementation of OPCAT obligations.²³ However, it is the South Australian government's position that funding to implement OPCAT is a matter for the Commonwealth Government.²⁴

As outlined in the previous sections, major concerns include children being restrained and locked in their rooms, and the overuse of restraint as a de-escalation technique.

The Charter of Rights for Children and Young People Detained in Youth Justice Facilities states that children have a right to make a complaint about their treatment to an independent person.²⁵ This could be the Training Centre Visitor, their lawyer or other advocate. However, children and young people in Kurlana Tapa are often not in a position to report abuse due to the power imbalance between children and adults.

From the data provided by TCV, there appears to be a lack of timely feedback and support for children who make a complaint, especially when it is made directly to Kurlana Tapa. Further, the TCV audit found inconsistent record keeping, including:

- 384 incidents where incident files should have been created in accordance with the Centre's operational orders, meaning the total number of incidents should be 791 rather than 407.²⁶
- Inconsistent use of body worn cameras during incidents.
- Medical records not being held on site, making it difficult to know whether children were receiving appropriate health services.
- Of the complaints/feedback forms to the Centre submitted by children, Kurlana Tapa responded to only 30% of these complaints and only through verbal feedback. This is despite the relevant procedure requiring all children lodging a complaint to have a response in writing.
- Resident Incident Comment Sheets (RICS) must be provided to children by Centre staff after a formal record of an incident. The TCV audit identified that RICS were only provided in 193 incidents, less than half (47.4%) of all incidents requiring a formal report. The average completion rate for these RICS was 9.5 days, and no children received responses about any concerns raised.²⁷

In 2022–23 the TCV was asked to assist in issues raised by children at the Centre on 163 different occasions, resulting in 110 opened files. This was an increase from the previous year of 63 inquiries. The top three issues raised by children were issues with staff (19.1%), cultural support needs and discrimination (12.2%), and access to/contact with community (8.7%).

- **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

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



South Australia's *Youth Justice Administration Act 2016* requires those administering the Act to give consideration 'at all times to promoting the wellbeing and best interests' of children. The *Young Offenders Act 1993* (SA) does not refer to the best interests of the child and no amendments were made to the refreshed Young Offenders Act Regulations in 2023 – a lost opportunity to bring the regulations in line with international law and the latest research on child justice.

Despite the legislative mandate in the *Youth Justice Administration Act*, it does not appear in the best interests of vulnerable children to be overrepresented in the child justice system. Placing children who require a public health and trauma informed response in detention is not in their best interests.

The following issues and practices appear to be contrary to children's best interests and are of concern:

- Children facing extended periods of remand reportedly due to a lack of alternative accommodation options.
- Inconsistent and limited access to education in Kurlana Tapa. A TCV audit of records found that over the financial year, each unit spent an average of only two hours and 45 minutes in class each day.²⁸
- Lack of records indicating health assessments occur after incidents involving use of restraints or the safe room.
- Extended periods of isolation and time in cells due to staff shortages or modified routines.
- Aboriginal children overrepresented in the child justice system, both in community based supervision (86.9 per 10,000 Aboriginal children compared to 5.1 per 10,000 for non-Aboriginal children)²⁹ and in detention, with over half of the children in Kurlana Tapa identifying as Aboriginal.³⁰

Characteristics of the average daily detention population include:

- 35.6% were under guardianship in the care system;
- 59.5% had a known, diagnosed disability;
- 54.7% were Aboriginal; and
- 19.5% were girls or young women.

In 2022–23, 324 individuals were detained, some on multiple occasions. On an average day, there were 32.3 young people detained, with 90.4% of the Centre population held on remand.³¹ This proportion is concerning as young people on remand have not been found guilty of alleged any criminal charges.³²

Whilst new initiatives have progressed in 2023 to improve responses to young people with disability-related needs, there are significant barriers to diagnosis and supports for young people with disability in detention:

- Some NDIS supports are inaccessible when children are in detention due to issues relating to interactions between state and Commonwealth provision and access to the Centre for service providers.
- The overrepresentation of children with disability being admitted to the Protective Actions Unit (between 53.0% to 97.7% per day), which is significantly higher than the average daily population.³³

- **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 Training Centre Visitor has a statutory function to promote the best interests of young people in detention. Considering a child's best interests requires respect for children's right to be heard. Consistent with the Charter of Rights for Youths Detained in Youth Justice Facilities, this includes ensuring mechanisms through which young people can advocate for themselves and others, make a complaint about their treatment and be told what happens with the complaint.

The Training Centre Visitor 2022–23 Annual Report notes the following concerns about the mechanisms in place for young people's voices to be heard in Kurlana Tapa:

- Formal feedback forms are underutilised and not prioritised or taken seriously.
- Limitations of the Youth Advisory Committee, including that it is dominated by adults. There are currently 5 children representing each unit in Kurlana Tapa on the Committee. This is contrasted with the adults on the committee, including the Accommodation Managers of each unit, Supervisor of Assessment, Case Coordinator, Senior Programs Practitioner, Training Compliance and Welfare Manager and Senior Aboriginal Advisor.
- Inadequate (if any) responses to young people who complete detailed Resident Incident Comment Sheets (RICS) after involvement in an incident.³⁴

There have been some positive developments. DHS is developing a Communities and Justice Youth Engagement Model, and that Kurlana Tapa is working with the TCV to implement a phone line to support those who face barriers to using feedback forms.

Since the Youth Justice State Plan 2020–2023 concluded in June 2022, there has been no public reporting or evaluation of the Plan's implementation. Nevertheless, the Communities and Justice directorate within DHS has indicated that it is prioritising the development and implementation of:

- The Youth Justice Practice Framework 'to support consistent and holistic practice across youth justice services';³⁵
- An Enhanced Support Unit service model for the new 12-bed accommodation unit that aims to improve responses to children and young people at Kurlana Tapa, including those with complex and disability related needs;
- Stronger partnerships to support culturally responsive services for Aboriginal children in the youth justice system, including through the work of the Aboriginal Practice and Services team; and
- A new Case Management Model to strengthen trauma informed approaches, developed in partnership with researchers from the University of Adelaide.³⁶

Other positive developments include a Child and Adolescent Mental Health Service commencing a Saturday service at Kurlana Tapa. This will include a Mental Health Clinician for 8 hours and Aboriginal Consultant for 4 hours. The Women's and Children's Hospital is also installing technology in the centre to allow for consultations with hospital-based staff after hours.

Future progress reports will monitor the extent to which these developments lead to greater consideration of children's best interests.

- **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.



Research shows that the earlier children enter the justice system the higher the risk that they will become entrenched in the criminal justice system and have continued interaction with the system.³⁷ South Australian research using the SA Better Evidence Outcomes Linked data found that children with early contact with the justice system, compared to children with late contact, experienced more serious and extended periods in the justice system, were more disadvantaged, had more serious child protection contact by age 10, and experienced mental health related hospitalisations from ages 12–18.³⁸

In 2022–23, there were 39 children under the age of 14 years admitted to the Training Centre. The average daily population for this group was 0.8 young people (2.5% of the total population). Two of these children were only 10 and in primary school, though both were there for no longer than a day.³⁹




The rate of 10 to 13 year olds undertaking community service is lower than the rate of 10 to 13 year olds in detention. In 2021–22 there were 4.9 children aged 10–13 years per 10,000 undertaking community service compared to 5.8 per 10,000 in detention.⁴⁰ More should be done to ensure this age group is kept out of detention and either given community service or diverted.

There continues to be little movement on raising the minimum age of criminal responsibility in South Australia or nationally. On 30 November 2023 an open letter was sent to all Attorneys-General calling for them to urgently raise the age to 14 years with no exceptions. It was signed by over 100 Aboriginal and Torres Strait Islander, health and medical, legal, social and community services providers, and their respective peak bodies, from every state and territory in Australia. There has been no public response.⁴¹

Australian states and territories do not have a unified position on raising the minimum age of criminal responsibility across states and territories.⁴² The Australian Capital Territory is the only jurisdiction that has committed to raising the age to 14 years in law, with Northern Territory increasing it to 12 years of age.

In 2023, SCAG released the Age of Criminal Responsibility Working Group's Report which sets out principles to help guide jurisdictions when considering reforms. It includes options to build on systems and services, as well as alternative pathways. This report is intended to 'provide public confidence that community safety and victims' rights will continue to be protected under a raised MACR'.⁴³

A public health approach is required to keep children safe, connected to school, extended families and community, and to prevent children moving into the justice system. This should include more intensive and active efforts and supports for children who do breach the law, so they have access to diversionary and restorative programs, re-engaging them with community and learning prosocial behaviours.

-  **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

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



The Commissioner remains concerned about resourcing, and evaluation of alternative approaches to diversionary services in South Australia for children and young people, and recommends that it be guided by the latest report from the Age of Criminal Responsibility Working Group.⁴⁴

Child diversions by police in South Australia are at their lowest rate in 10 years, with 28.7% of alleged child 'offenders' being diverted in 2021/22 compared to 42.8% in 2012/13.⁴⁵ The rates are higher for Aboriginal children and young people who are alleged to have offended, with only 19.6% of alleged Aboriginal offenders being diverted away from court in 2021/22 (compared to 32.6% for non-Aboriginal children), compared to 29.9% (49.1% for non-Aboriginal children) in 2012/13.

There are reports of children being remanded in police cells alongside adults due to denial of police bail. Although there was an opportunity for the Young Offenders Regulations to be amended to ensure children and young people across the state are not remanded alongside adults and feedback from stakeholders supported this, no amendments were made. All children remanded in police cells in Whyalla, Murpurija, Yalata, Mimili and Ceduna were Aboriginal.⁴⁶

The overrepresentation of children in care in Kurlana Tapa and the justice system is also a concern with a lack of progress by DCP, SAPOL and the courts to address the criminalisation of children in care for behaviour that would not result in police intervention within a home environment. This is supported by the Guardian for Children and Young People through Final Report of the South Australian Dual Involved Project.

Some welcome developments during the year include:

- The Youth Court received funding to pilot the Youth Aboriginal Community Court Adelaide (YACCA) for two years. It includes funding for an additional Aboriginal Youth Justice Officer, payments to Elders and Respected persons, audio transcription, ECMS enhancements, program evaluation and the engagement of a service provider. Expenditure of up to \$716,250 for a culturally responsive program that aims to disrupt escalation points in a young person's offending, address trauma and criminogenic needs, implement protective factors and divert young people from further offending. The first sitting of the court was held in November 2023.
- The Child Diversion Program was expanded and funded for a further two years. This program seeks to divert Aboriginal children ages 10–13 years charged with a minor offence through providing short-term accommodation for the child to be placed back with family/kin alongside wrap around case management services. The aim is to keep children on remand out of the custodial environment.⁴⁷

There has been a steady increase in the number of children being diverted to family conferencing, from 1,404 in 2020/21 to 1,889 in 2022/23. The family conferencing team works with the young person, their parents, guardians, family and friends, the victim of the offence and their supporters and a police youth officer to divert the young person out of the justice system. It usually requires the young people to undertake, such as pay compensation, carry out community services, apologise to the victim or anything else that is appropriate. Although the number has increased, the real recurrent expenditure for these services has remained steady from \$1.9 million in 2014/15 to \$1.8 million in 2021/22 meaning more has to be done with less resources.⁴⁸

- **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

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



During the year, there was a lost opportunity to refresh the Young Offenders Act Regulations to ensure it was up to date with international law and latest research. Despite feedback from many stakeholders, the Regulations continue to stipulate that children's rights can only be given to them in writing. This does not recognise that children in the child justice system have many learning challenges and may find it difficult to read these rights, let alone understand what is being said, even if it is simple language.

Children have the same rights as adults within the justice system. This includes the right to a lawyer and not being required to answer questions. When children are arrested before questioning police should do their best to ensure a parent or guardian is present.⁴⁹ However, many children do not understand these rights and often do not have the capacity to ensure these rights are being upheld.

Children in Kurlana Tapa have rights relevant to their particular circumstances. These are set out in the Charter of Rights for Youths Detained in Training Centres (Charter of Rights). Core rights in the Charter of Rights include being treated with dignity, being able to make a complaint, to have access to key services such as health and education, to spend time outside and to have contact with family and community members.⁵⁰

Children in detention can provide feedback to Kurlana Tapa in two ways:

- Through an internal feedback/complaint form: The Training Centre Visitor's audit of these complaints found that 59.4% of these complaints related to staff, 31.7% related to the quality or choice of food and 23.3% related to the conditions of their unit. Kurlana Tapa responded to 30% of these complaints and only through verbal feedback. This is despite the relevant procedure requiring all children lodging a complaint to have a response in writing.
- Resident Incident Comment Sheets (RICS), which the staff at the Centre must provide to children after a formal record of an incident. The TCV audit identified that RICS were only completed in 193 incidents, less than half of all incidents requiring a formal report. The average completion rate for these RICS was 9.5 days and the children involved did not receive a response about any of the concerns raised.

During the year the following has been implemented to assist children within in the system, including:

- The provision of a telephone service for children in custody, enabling children to talk to their lawyers, both before and after any hearing.
- The Youth Court developing a draft practice direction to transfer all overnight arrests of children throughout the state away from adult courts to the Adelaide Youth Court.
- Publishing a range of easy-English, child friendly documents to improve accessibility for children and young people in Kurlana Tapa.⁵¹

- **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

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2023 Child Rights Progress Report on Child Protection

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 Child Protection



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	Assessment
Number of notifications to the Child Abuse Report Line (CARL) for all children. ¹	2022/23: 92,951 2021/22: 80,374 2020/21: 80,175 2019/20: 75,552 2018/19: 78,199	Increased	Increasing	- Unfavourable
Number of notifications to CARL for Aboriginal children. ²	2022/23: 22,759 2021/22: 18,600 2020/21: 18,754 2019/20: 17,364 2018/19: 17,892	Increased	Increasing	- Unfavourable
Proportion of all notifications screened in for further assessment or response. ³	2022/23: 42.5% 2021/22: 43.2% 2020/21: 47.6% 2019/20: 52.3% 2018/19: 36.8%	Stable	Fluctuating, increase from base year	- Unfavourable
Proportion of notifications for Aboriginal children screened in. ⁴	2022/23: 48.4% 2021/22: 49.7% 2020/21: 57.5% 2019/20: 62.9% 2018/19: 42.8%	Slightly decreased	Fluctuating, increase from base year	- Unfavourable
Number of children in out-of-home care (at 30 June 2023). ⁵	2023: 4,860 2022: 4,740 2021: 4,647 2020: 4,370 2019: 3,988	Increased	Increasing	- Unfavourable
Number of children in Residential Care (at 30 June 2023). ⁶	2023: 702 2022: 649 2021: 604 2020: 413 2019: 415	Increased	Increasing	- Unfavourable
Proportion of Aboriginal children in care compared to the proportion in general population (at 30 June 2023). ⁷	2023: 37.4%/4.7% 2022: 37.0%/4.8% 2021: 36.0%/4.9% 2020: 36.1%/4.9% 2019: 34.8%/4.8%	Stable	Increasing	- Unfavourable
Number (%) of children placed in accordance with the Aboriginal Child Placement Principle (at 30 June). ⁸	2022/23 estimated result: 1,065 (60.2%) 2021/22: 1,133 (61.2%) 2020/21: 1,092 (65.2%) 2019/20: 997 (63.7%) 2018/19: 854 (62.7%)	Decreased	Fluctuating, slight decrease from base year (in percentage)	No change
Proportion of children in care requiring a case plan who have one. ⁹	2022/23: 93.8% 2021/22: 96.2% 2020/21: 97.7% 2019/20: 87.3% 2018/19: 88.8%	Decreased	Fluctuating, increase from base year	+ Favourable

Note: 'Children in out-of-home-care' include children aged 0–17 years placed in care under a court order or administrative authority (usually a voluntary custody agreement). Children in care can be placed in different types of out-of-home care (OOHC) arrangements, including:

- Family based care, including foster care, kinship care and family day care placements.
- Non-family based care, including residential care, independent living and commercial property placements (the latter placements ceased as at 9 October 2020).

Areas of concern include:

- The number of children entering into care is continually increasing, year-on-year. South Australia's proportion of expenditure on early intervention services, per child in the population, is still the lowest in the country.
- South Australia is not on track to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (OOHC) by 45% by 2031. The rate is increasing and is the second highest in Australia.
- High numbers of children are not placed in accordance with the ATSI Child Placement Principle and there is a lack of focus on connections, family, community and culture.
- The number of children being placed in residential care is increasing, including those aged under 10 years.
- South Australia has the highest rate in the country when it comes to children aged under 1 year being taken into OOHC.
- The large proportion of children and young people in residential care not receiving full-time education.
- The increasing number of children under guardianship of the Chief Executive interacting with the justice system and the lack of a systemic approach with SAPOL to prevent the criminalisation of children in care.

Background

The UN 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 child protection.

Children's Rights in relation to Child Protection

The United National Convention on the Rights of the Child (UNCRC) protects the right of every child to a standard of living that meets their physical, mental and social development 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. A child's identity, language, and privacy must be respected at all times (Articles 24, 28, 29, 16).

The child protection system in South Australia

The power and responsibilities of the South Australian Department for Child Protection (DCP) are established under the *Children and Young People (Safety) Act 2017* (SA). The paramount consideration in the operation of the Act is to keep children and young people safe, with secondary concerns including children and young people being heard and their views considered, fulfilling the need for love and attachment, protecting self-esteem, and supporting them to reach their full potential.¹⁰

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 taking steps to keep them safe from harm.

The Department of Human Services (DHS) delivers early intervention programs aimed at keeping children safe, working with their families. The Early Intervention Research Directorate (in DHS) provides professionals with the data, evidence, frameworks and tools they need to best support South Australian families and children.

There are also independent bodies that oversee children and young people who enter care. The following roles are currently combined:

- The Guardian for Children and Young People (GCYP) promoting the rights of all children and young people who are under the guardianship, or in the custody, of the Chief Executive of the DCP.
- The Children and Young Person Visitor (CYP Visitor) promoting the rights of children and young people who are under the guardianship, or in the custody, of the Chief Executive of the DCP and who are living in residential care.
- The Training Centre Visitor (TCV) promoting the rights of young people sentenced or remanded to detention in youth training centres in South Australia.

National and state plans and strategies

The National Framework for Protecting Australia's Children (2021–2031) was launched in 2021, setting out a national 10-year plan to improve the lives of children, young people and families experiencing disadvantage or who are vulnerable to abuse and neglect. This framework is being implemented through two 5-year action plans, complemented with dedicated strategies and action plans for Aboriginal and Torres Strait Islander children.

The South Australian government's Safe and Well Strategy supplements the national plan. It recognises the importance of 'earlier, targeted, intensive support for families with multiple and complex needs. This strategy is led by DCP and DHS.

The Safe and Well Strategy details the implementation plan for the Child and Family Safety and Support System (CFSS). The Roadmap for Reforming the Child and Family Support System 2021–2023 outlines the governments' plan to support families with complex needs as well as children in care.¹¹

The DCP's Strategic Plan 2022–26 vision is 'for all children and young people to grow up safe, healthy, connected and feeling loved so they reach their full potential'.¹²

Some welcome developments in 2023 include:

- Expansion of Family Group Conferencing Services, prioritising more vulnerable groups.
- Launch of a new survey tool, co-designed with children and young people in care, to provide them with an opportunity to voice their feelings and opinions and have a voice in their case planning.
- Commencement of the development of a child protection and family support sector workforce strategy.
- Increased resourcing for post-care services to provide more targeted support for young people transitioning from care to help break the cycle (with a focus on Aboriginal young people and young people in regional locations) including the transition to secure housing, education and employment.
- Completion of the first consultation process for the legislative review of the *Children and Young People (Safety) Act 2017* and tabling of the report in Parliament.
- Establishment of the Child Protection Expert Group, Carer Council, Direct Experience Group and Chief Executive Governance Group to advise on reform.
- Provision of resources to support the operations of the Carer Council.
- Increase in the capacity of the care system through the procurement of additional general residential care placements from non-government organisations.
- Commencement of the development and implementation process for a community-led model for South Australia's first peak body for Aboriginal children and young people.
- Provision of funding to Grandcarers SA to amplify the voices of grandparent and kinship carers.
- Increase in funding to support care leavers to access secure housing, study and employment, and to give young people a voice.
- Establishment of structured mechanisms to hear from children and young people in care, in partnership with the CREATE Foundation, on topics including sibling connection. The Minister for Child Protection has committed to work with CREATE and the GCYP to ensure a structured approach to hear the voices of children in care with siblings.
- Launch of a refreshed Statement of Commitment to foster and kinship carers.¹³

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.



There was a total growth in real expenditure on child protection services from \$36.3 million in 2020/21 to \$53.6 million in 2021/22.¹⁴ However, the investment into early intervention services to keep children safe at home remains steady at around 20% of overall expenditure.¹⁵ There was a smaller increase in funding for combined family support services and intensive family support services (\$4.8 million: 7.4%) and a decrease in protective intervention services (-\$7.9 million: 9.9%).¹⁶

South Australia has the lowest expenditure on protective intervention services, per child in the population – 40.2% lower than the national average (2021/22). Expenditure on combined family support services and intensive family support services in South Australia, per child in the population was 19.6% lower than the national average in 2021/22.¹⁷

The number of children aged 0–17 years in care increased by 124 (2.6%) at 30 June 2023 compared to the previous year. For Aboriginal children it increased by 62 (3.5%) in the same period.¹⁸ This slight increase in the number of children and young people entering into care indicates that not enough is being done to help families keep children at home safely.

During the reporting period (2022/2023) a number of early intervention services have either been extended or are continuing, including:

- OOHC prevention and intergenerational impact programs, including working with young women under 25 whose children have been removed and are at risk of repeat removals. During 2022/23, 147 families with an associated 349 children, and 13 young women have been accepted into these programs. Referrals are accepted through maternity hospitals, the DCP, DHS, self-referrals and NGOs.
- Intensive Family Support (IFS) Services provide targeted support for 6–9 months to families with children aged 0–18 years with multiple complex needs who have been identified as high to very high risk. These services are delivered through government partnerships with nongovernment organisations, including Aboriginal Community Controlled Organisations (ACCOs). There were 1,580 families with 3,704 associated children accepted to these services in 2022/23.
- The Family Support and Early Intervention Program – now renamed the Strong Families Strong Communities Program – helps vulnerable families to prevent crises escalating. This program supported 964 families during 2022/23.
- Families Growing Together and Parenting SA deliver parenting programs via face to face and online formats and through Parent Easy Guides. These programs supported 964 families during 2022/23.

- **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 Australian Centre for Social Innovation's Family by Family Program uses peer support from a network of families to help other families to make lasting positive changes. This includes support to families at risk of child abuse and neglect. The Family By Family Program supported 109 families with 242 associated children during 2022/23.
- Pathway Service and Child and Family Safety Networks (CFSNs) are multi-agency networks that provide regional coordinated responses to referrals (pre-birth–18 years). They processed a total of 4,254 referrals in 2022/23.¹⁹

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.

During the year 2022–2023, the DCP:

- Expanded Family Group Conferencing Services, prioritising Aboriginal Families and services to support families where a concern has been made regarding an unborn child.
- Increased procurement of services delivered by Aboriginal Community-Controlled Organisations from 8% in 2021/22 to 9.25% in 2022/23.²⁰
- Trialled the Taikurtirna Warriapinhi Program to assist with identifying placement options for Aboriginal infants, children and young people.
- Partnered with and invested in SNAICC – the National Voice for ATSI children – to develop and implement a community-led model for South Australia's first peak body for Aboriginal children and young people.

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 OOHC by 45% by 2031. However, progress against this target has deteriorated year on year since 2019 (the baseline year). The rate of Aboriginal children aged 0–17 years in OOHC increased from 75.3 per 1000 children in 2019 to 92.7 per 1000 in 2022.²¹ South Australia has the second highest rate in Australia, and the rate has increased more in SA than in other jurisdictions.

The number of Aboriginal children in care increased by 3.5% between 2022 and 2023, from 1,755 children in 2022 to 1,817 in 2023.²² Aboriginal children comprise 37.4% of children in care in 2023, similar to the 37% in care in 2022. The rate of case plan completion for Aboriginal children and young people in care remains steady with 91.9% having a plan. 91.3% have an approved Aboriginal Cultural Identity Support Tool.

The percentage of Aboriginal children in care who were placed in accordance with the Aboriginal and Torres Strait Islander Placement Principle in 2022/23 is estimated to be 60.2%, a reduction from 61.2% in 2021/22 and 65.2% in 2020/21.²³ The Commissioner remains concerned how the principle is being applied, both in placing children and providing the opportunity for children to maintain connection with family, community and culture.

During 2023 the South Australian Commissioner for Aboriginal Children and Young People (CACYP) continued her inquiry examining recent and current policies, practices and procedures of state authorities in applying the Aboriginal and Torres Strait Islander Child Placement Principle when removing and placing Aboriginal children.

- **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

During this time the CACYP heard from more than 400 Aboriginal children, families and community members and 500 people working in child protection and family support services. Public hearings were held across the state and over 44 written submissions received.²⁴ In October 2023 the Preliminary Report was released with 17 recommendations to inform the Amendments to the *Children and Young People (Safety) Act 2017*.

The CACYP's findings and recommendations include:

- Inserting the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle into any new legislation using 'active efforts'.
- Placing more decision making and control with DCP to work alongside Aboriginal controlled organisations and communities when making decisions in relation to Aboriginal children.
- Supporting families earlier to prevent children being taken into care.
- Annually reviewing the consideration of reunification for children on long term orders.

The government announced that it will review the preliminary report before finalising the draft legislation.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability highlighted the overrepresentation of Aboriginal children and young people living with a disability in OOHC and their vulnerability to abuse in these institutional environments. It recommended a First Nations approach to promote the right to self-determination and culture, which includes supporting parents so children remain with families.²⁵

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.

Section 11(1) of the *Children and Young People Safety Act 2017* stipulates that all young people taken into care should be placed in a safe, nurturing, stable and secure environment, and that placements with a person who has an existing relationship with the young person are preferred. Following best practice guidance, residential care should only be considered as a last resort.

Local and world-wide evidence all points to children in care having more adverse health, economic, educational and wellbeing outcomes than children who remain with their families.²⁶ Children in care are also more likely to come into contact with the child justice system and be known to police, especially those in residential care.

The number of children and young people being placed in residential care has been increasing year-on-year in SA, nearly doubling from 388 at 30 June 2017 to 702 as at June 2023. Although this year has seen a decrease in the rate of infants entering OOHC, South Australia still has the highest per capita rate of infants in OOHC, with 7.0 in every 1,000 children under one year old living in OOHC. For Aboriginal children, this figure was more than seven times higher, at 51.6 per 1,000 children.²⁷



- **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 following services and programs for children in residential care are underway:

- A new survey tool has been co-designed with children and young people in care to provide them with an opportunity to voice their feelings and opinions and have a voice in their case planning. Although very new there has already been positive feedback about this tool.²⁸
- The continued roll out of the Sanctuary Model in DCP residential care homes. This model brings a trauma informed lens to working with children in residential care. Monash University has been funded to evaluate this program,²⁹ however at time of writing there appears to be no report publicly available. In future, the Children and Young Person Visitor aims to integrate consideration of the Sanctuary Model in her work.³⁰
- The Power to Kids: Respecting Sexual Safety program is currently being rolled out to all DCP residential care homes. Over 90 staff from 14 residential care homes have completed the training with plans to roll the program out on a wider level next year.³¹
- The My Place program helps children entering residential care feel at home by personalising bedrooms and other spaces.

The Child and Young Person Visitor 2022–23 Annual Report raised a number of concerns for children in residential care, including:

- Children under 10 living in residential care facilities despite a Nyland recommendation³² to ensure that this does not occur, except when it is necessary to keep together a sibling group. As at 30 June 2022 there were 118 children under 10 living in residential care.
- The overrepresentation of children and young people not receiving full-time education.³³ The Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools found an overrepresentation of students in care had been subject to exclusionary practices.³⁴ Data received by this office from the Department for Education on exclusionary practices of primary school children show that although students in care only represented 1.3% of the total population in 2022, they were overrepresented in exclusions (12.8%), suspensions (9.7%) and take homes (7.1%).

In 2022, the Guardian for Children and Young People and Training Centre Visitor released her Final Report of the South Australian Dual Involved Project with a number of recommendations to reduce the overrepresentation of children in care in the justice system.³⁵ This project has continued, with the GCYP reporting an increasing number of young people in care who are admitted to youth detention, and a growing proportion of dual involved young people who are Aboriginal.³⁶

The Training Centre Visitor 2022–23 Annual Report found that 88 young people under the Guardianship of the Chief Executive were detained in Kurlana Tapa Youth Justice Centre on any given day which accounted for an average of 35.6% of the daily population. Young people under Guardianship make up 1% of the South Australian population of under 18s.³⁷ It is understood that there is currently no Memorandum of Understanding between DCP and SAPOL to provide consistent responses for incidents arising in care to ensure children are not criminalised for behaviour that would be deemed non-reportable in a home.

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

As indicated in previous sections there has been a slight increase in the number of services working with children and families to prevent removal of children from families. However, it this is not enough to support families to keep children safe at home. To do this there needs to be a systemic reset moving towards a public health approach, moving away from investing when children and families are already in crisis to providing all children and families with extra supports at an earlier stage to keep children safe in their families where possible.

Some services that are working with children, families and communities include:

- Resilient Families³⁸ – A 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 five years, by keeping together families whose children are at imminent risk of being placed into care. It does this through intensive support and evidence-based therapies and supports. It is focused on creating positive home environments and preventing children entering OOHC.
- Taikurturna Tirra-apinthe – Delivered by Kornar Winmil Yunti, this is a culturally responsive program established to work with Aboriginal families in western Adelaide where children are at imminent risk of being placed into care. This service provides a very high level of intensive family support, to address immediate safety and then works to improve family functioning. The program has been co-designed with the community to keep children safely at home with their families.
- Safe Kids, Families, Together – Delivered by Uniting Communities, this program is aimed at keeping children in Adelaide's north out of the child protection system. Having commenced in August 2019, the program has so far supported a total of 55 families, including 157 children.
- Breathing Space – A program aimed at Aboriginal parents under 25 years who need specific parenting support which is being delivered by Catholic Family Services across metropolitan and southern Adelaide.
- My Place – A pilot program located within Yarrow Place for young people 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.
- Strong Start – A program delivered by DHS with Child and Youth Family Health Services (CAFHS) designed to support first time mothers in Adelaide's southern and northern suburbs to give their children a better start to life.

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

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

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

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



Seventy percent of houses visited by the CYP Visitor in 2022–2023 were home to children who were diagnosed with a disability. This does not include children and young people who are undergoing or believed to require a disability assessment. Of the children diagnosed with a disability, just over one in two young people (55.9%) with diagnosed disabilities were reported as having current NDIS plans.³⁹

The CYP Visitor commended the Department on the number of NDIS plans in place for children and young people in care, but also states that more needs to be done in relation to children who have not been diagnosed and to ensure that carers fully utilise children's plans.

The DCP has reported an increase in the number of children and young people in care with a disability or developmental delay on NDIS plans. However, there is no publicly reported data on the number and proportion of children in care living with a disability or on NDIS plans.⁴⁰ These plans have the potential to improve children and young people's lives, including the purchase of specialist equipment, and access to emotional, mental, and physical wellbeing support services. Access can be complicated in houses with more than one young person with disability, and at the point when a young person on a plan moves to a different house.⁴¹

The Department for Child Protection's Disability Action and Inclusion Plan 2020–2024 has a number of actions, including:

- Developing and implementing a streamlined approach to the collection and reporting of data on children and young people with disability in care.
- Training carers to support children living with a disability or developmental delay and providing information to carers to build awareness of caring for children.
- Introducing a Therapeutic Carer Support Team to focus on providing support and training to carers.⁴²

- **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

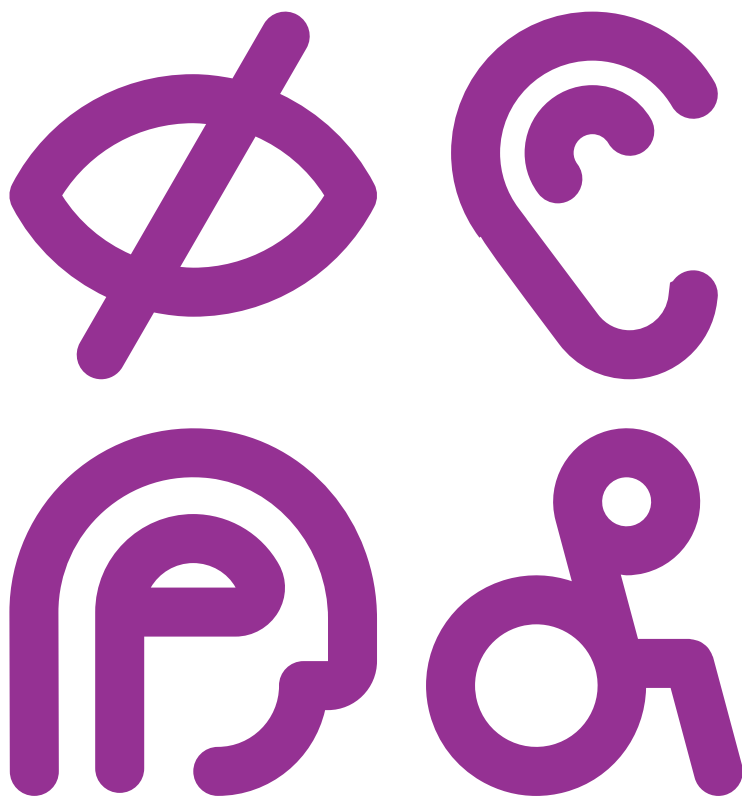
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2023 Child Rights Progress Report on Disability

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

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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.

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

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.

- **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

■ **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

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.

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

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2023 Child Rights Progress Report on Education

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 Education



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
Total incidents of students being suspended in government schools (at Term 2). ²	Total suspensions 2023: Data not yet available 2022: 5,548 2021: 5,128 2020: 5,003 2019: 5,252	Not available	Fluctuating, increase from base year	- Unfavourable
Number of primary school suspension incidents (% of total)	Primary school suspensions: 2023: Data not yet available 2022: 1,869 (33.7%) 2021: 2,559 (49.9%) 2020: 2,633 (52.6%) 2019: 2,943 (56.0%)		Decreasing	+ Favourable
Number of secondary school suspension incidents (% of total)	Secondary school suspensions: 2023: Data not yet available 2022: 3,679 (66.3%) 2021: 2,569 (50.1%) 2020: 2,370 (47.4%) 2019: 2,309 (44.0%)		Increasing	- Unfavourable
Total number of incidents of students being excluded in government schools. ³	Total exclusions 2023: Data not yet available 2022: 281 2021: 207 2020: 254 2019: 229	Not available	Fluctuating, increase from base year	- Unfavourable
Number of primary school exclusion incidents (% of total)	Primary school exclusions: 2023: Data not yet available 2022: 64 (22.8%) 2021: 85 (41.1%) 2020: 97 (38.2%) 2019: 112 (48.9%)		Decreasing	+ Favourable
Number of secondary school exclusion incidents (% of total)	Secondary school exclusions: 2023: Data not yet available 2022: 217 (77.2%) 2021: 122 (58.9%) 2020: 157 (61.8%) 2019: 117 (51.1%)		Fluctuating, increase from base year	- Unfavourable

What the data says

Measure	Year: Data	1 year change	5 year trend	5 year assessment
Proportion of Reception to Year 6 students suspended from government primary schools. ⁴ (% of students suspended/% of enrolments)	Children with Inclusive Education Support program (IESP) funding 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
	Aboriginal children 2022: 20.6%/7.2% 2021: 21.1%/7.0% 2020: 20.1%/6.7% 2019: 21.9%/6.6% 2018: 20.5%/6.5%	Stable	Stable	No change
	Children in out-of-home care 2022: 6.7%/1.4% 2021: 7.3%/1.4% 2020: 6.9%/1.4% 2019: 6.3%/1.2% 2018: 5.3%/1.2%	Stable	Fluctuating, slight increase from base year	- Unfavourable
	Boys 2022: 81.7%/51.9% 2021: 82.3%/51.9% 2020: 82.7%/51.9% 2019: 83.8%/51.8% 2018: 82.6%/51.8%	Stable	Stable	No change
Proportion of Reception to Year 6 students excluded from government primary schools. ⁵ (% of students excluded/% of enrolments)	Children with IESP funding 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
	Aboriginal children 2022: 25.1%/7.2% 2021: 20.8%/7.0% 2020: 18.2%/6.7% 2019: 22.4%/6.6% 2018: 20.3%/6.5%	Increased	Fluctuating, increase from base year	- Unfavourable
	Children in out-of-home care 2022: 12.8%/1.4% 2021: 7.5%/1.4% 2020: 9.1%/1.4% 2019: 9.1%/1.2% 2018: 5.8%/1.2%	Increased	Fluctuating, increase from base year	- Unfavourable
	Boys 2022: 86.3%/51.9% 2021: 88.8%/51.9% 2020: 88.3%/51.9% 2019: 89.0%/51.8% 2018: 85.5%/51.8%	Decreased	Fluctuating, stable from base year	No change
Proportion of Year 4 to Year 12 students reporting being bullied ‘weekly’. ⁶	2023: 18% 2022: 16% 2021: 17% 2020: 19% 2019: 16%	Slightly increased	Fluctuating, slight increase from base year	- Unfavourable
Proportion of Aboriginal and Torres Strait Islander young people (aged 15–24) who are in employment, education or training. ⁷	2021: 55.5% 2016: 57.6%	Annual data not available	Decreasing	- Unfavourable

What the data says

Measure	Year: Data	1 year change	5 year trend	5 year assessment
Proportion of Year 4 to Year 12 students who have an important adult at school. ⁸	2023: 59% 2022: 57% 2021: 58% 2020: 57% 2019: 56%	Slightly increased	Increasing	+ Favourable
Proportion of Year 4 to 12 students who feel connected to school. ⁹	2023: 59% 2022: 60% 2021: 64% 2020: 61% 2019: 61%	Stable	Fluctuating, slight decrease from base year	- Unfavourable

Areas of concern include:

- Increased proportion of students reporting ‘weekly’ or ‘monthly’ verbal bullying, physical bullying and/or cyberbullying.
- Exceptions in anti-discrimination legislation continue to allow religious schools to discriminate against students and staff on the basis of sexuality and gender identity.
- Lack of consistently mandated comprehensive relationships and sexual health curriculum from Reception to Year 12.
- High proportions of children with disability, Aboriginal children and children in out-of-home care being excluded from primary schools. Primary school children should not be suspended, excluded or expelled from school.
- No child-focused safeguarding or independent oversight mechanisms in place to protect children with disability from exclusionary and restrictive practices in education settings.
- Decreased proportion of Aboriginal and Torres Strait Islander young people (aged 15–24) who are in employment, education or training.
- Less than half of children in residential care who were visited by the Child and Young Person’s Visitor in 2022–23 were engaged in fulltime education.
- One third of students enrolled in South Australian government schools are in the lowest quartile of socio-educational advantage.

Background

The UN 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 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*. The Act also 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 school system in South Australia

South Australia's school system is comprised of three compulsory stages: preschool, primary and secondary school. Children aged 6 to 16 years are required to engage in formal education. Children may attend government or non-government (Catholic or independent) schools, as well as authorised home schooling options. The majority of children in South Australia attend government schools.

Some welcome developments in 2023 include:

- State-wide consultation on the Purpose of Public Education, which engaged with students in government schools across the state and culminated in a new purpose statement and strategy for public education.
- Commitments in the 2023–24 State Budget addressing cost of living pressures, including the expansion of the school breakfast program and the subsidy for materials and services charge for the 2024 school year.
- The release of the final report of the Royal Commission into Early Childhood Education and Care in August 2023, which makes 43 recommendations in relation to supporting families in the first 1000 days of a child's life, as well as to improving the quality and accessibility of preschool and out of school hours care.
- Progress on the Department for Education's One in Four reforms and student engagement reforms, including:
 - Release of the Tailored Learning Provision model, which redesigns the Flexible Learning Options (FLO) model for implementation from 2024.
 - Release of a revised draft suspensions, exclusion and expulsion of students procedure.
 - 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.

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.

South Australia's state-wide bullying prevention strategy, Connected – A Community Approach to Bullying Prevention within the School Gates and Beyond, was launched in 2019 and concluded in 2022. A 12-month progress report was released during the strategy's implementation. Although the Commissioner's 2022 report noted that a final report on the strategy's implementation was being drafted, this has not been released publicly. There is no new strategy for 2023 and beyond as the Department for Education has embedded the key actions of the strategy into policy, with 'a suite of new tools and resources available to schools on an ongoing basis'.¹⁰

The Senate Education and Employment References Committee released the report of its inquiry into school refusal and related matters in August 2023. The Committee noted a 'failure to prevent or manage bullying' as a factor contributing to school absence and recommended a stronger focus on wellbeing in schools.¹¹ The Productivity Commission's Review of the National School Reform Agreement (NSRA) made similar findings and recommended that the next NSRA include an explicit focus on supporting student wellbeing, along with a commitment to annual reporting.¹² Building on the Productivity Commission Review, an Expert Panel was established to lead a Review to Inform a Better and Fairer Education System. The Expert Panel delivered its final report to Education Ministers on 31 October 2023 and is under consideration.¹³

2023 results from the Department for Education's Wellbeing and Engagement Collection show:

- An increase in the proportion of all students reporting being bullied 'weekly' from 16% in 2019 to 18% in 2023.
- An increase in 'weekly' or 'monthly' verbal bullying (46% in 2019 to 49% in 2023), physical bullying (30% in 2019 to 32% in 2023) and cyberbullying (21% in 2019 to 23% in 2023). Social bullying was the same in 2019 and 2023 (43%).
- Physical, verbal and social bullying become less frequent as students get older, whereas the frequency of cyberbullying remains relatively steady across year levels. Across all bullying types, 20% of Year 4 students reported being bullied 'weekly', compared to 15% of Year 10 students and 10% of Year 12 students.¹⁴

The following government school-based programs to support student wellbeing are new in 2023:

- The roll-out of the School Mental Health Service follows a successful pilot in nine schools in 2022/23. The early intervention service supports young people with 'mild to moderate and emerging mental health concerns' and will be provided in up to 65 secondary schools, combined schools and area schools.¹⁵

■ **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

- Training on the Positive Behaviour for Learning (PBL) framework began in 25 schools in Term 1 2023 to improve student engagement and 'learning and behaviour outcomes'. A total of 40 schools will implement the PBL framework over 3 years from 2023 with 'annual monitoring and evaluation'.¹⁶
- The External Wellbeing Programs Directory provides schools with information about evidence-informed mental health and wellbeing programs available from external providers.¹⁷
- Funding for 30 schools to engage in training and support for restorative practices has been put in place, in addition to new online learning modules for all government school staff.¹⁸

In December 2022, the Minister for Education, Training and Skills hosted a roundtable on violence prevention in schools. The Department for Education released a Summary Report outlining immediate actions from the roundtable along with a commitment to develop a Plan of Action that builds on existing initiatives related to prevention, restorative practices, teacher education, student voice and agency, and school-family-community partnerships.¹⁹

A ban on the use of mobile phones in government secondary schools became compulsory in 2023. This government election commitment seeks to help 'limit exposure' to cyberbullying.²⁰ The Commissioner has expressed reservations about the ban. Future progress reports will monitor the implementation of this policy. The Department for Education's Guideline on responding to online safety incidents in South Australian schools is due to be reviewed in August 2024.

In terms of support for LGBTQIA+ students, the Department for Education's Supporting Gender Diverse, Intersex and Sexually Diverse Children and Young People Policy and Gender Diverse and Intersex Child and Young People Support Procedure states that discrimination based on sexual orientation, gender identity, and/or intersex status 'must be addressed' in anti-bullying policies across all department preschools, schools and childcare settings. It remains unclear how the implementation of this policy is being monitored. While versions of this policy and procedure have remained in place over changes of government, legislation is needed to ensure the right of LGBTQIA+ students are protected. Policies or procedures of this kind are not consistently in place, made publicly available or monitored across South Australia's Catholic and independent schools.

The *Equal Opportunity Act 1984* (SA) continues to allow some organisations (including religious schools) to discriminate on the basis of a student's sexuality or gender identity. There has been no further progress in terms of clarifying these exceptions since public consultation on the draft South Australia Equal Opportunity (Religious Bodies) Amendment Bill 2020, which has not been tabled in Parliament.²¹ In February 2023, the Attorney-General advised the Legislative Council that he was considering putting in place similar reforms to equal opportunity legislation in place or proposed in other jurisdictions.²²

The federal government asked the Australian Law Reform Commission to inquire into religious educational institutions and anti-discrimination laws. Submissions closed in February 2023. While a final report was initially due to the Commonwealth Attorney-General in April 2023, the date for reporting has been extended to 31 December 2023 due to 'the large volume of submissions received'.²³

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



Comprehensive relationships and sexual health (CRSH) education is crucial to promoting children's rights and gender equality. The right of South Australian children and young people to access comprehensive relationships and sexual health (CRSH) curriculum in primary and secondary school is currently impacted by the lack of consistently mandated curriculum in South Australia.

In South Australia, SHINE SA trains and supports teachers in South Australian public schools to facilitate evidence-based, best practice Teaching It Like It Is CRSH curriculum. At present, individual schools may elect to implement the SHINE SA program, or deliver alternative models, potentially including those which are not comprehensive, evidence-based or inclusive of diversity. In Victoria, Respectful Relationships education is mandated as a core component of the Victorian Curriculum from foundation to year 12.

Standardising and supporting the implementation of best practice CRSH curriculum protects the right of South Australian children and young people to access this essential health and wellbeing education. Access for adolescents who leave the school system early and experience additional vulnerabilities (such as those in youth detention or out of school programs) also require additional resourcing and support.

In 2022, Australian Education ministers endorsed changes to the Australian Curriculum that require all Australian schools to teach age-appropriate consent education from foundation to Year 10 from 2023. However, monitoring the delivery of this commitment is challenging, particularly in the absence of a state or national strategy or framework guiding the development, implementation and delivery of school-based relationships and sexual health education, including consent education.

Several welcome developments have progressed in 2023 as part of the federal government's \$77.6 million investment in the October 2022 Federal Budget to strengthen Consent and Respectful Relationships Education (CRRE). The CRRE measure will provide grant funding to states, territories and the non-government schooling sectors across all jurisdictions to help schools invest in respectful relationships education.

Implementation of the CRRE measure is informed and guided by the National Respectful Relationships Education Expert Working Group (NRREEWG), which met for the first time in June 2023 and is overseeing:

- a rapid review of the current delivery of respectful relationships programs to identify opportunities for improvement, and
- the development of a National Respectful Relationships Education Framework to support the delivery of high-quality RRE, informed by national engagement with stakeholders.²⁴

The federal government has also committed \$5 million over two years from 2022–23 for the Australian Human Rights Commission (AHRC) to undertake a survey of secondary school-age students on their understanding of consent and experiences of school-based consent education. The findings from the survey are expected to inform the delivery of future education programs and the CRRE measure.²⁵ In November 2022, the AHRC informed the Legal and Constitutional Affairs Legislation Committee that it was 'waiting on a grant agreement from the Department of Education' that is expected to commence in 2024.²⁶

- **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

In September 2023, the Senate Legal and Constitutional Affairs References Committee released the report of its inquiry into current and proposed consent laws in Australia. The Committee considered the impact of consent laws on consent education and recommended that the federal government:

- provide ongoing funding to sufficiently resource the elements of the Australian Curriculum 9.0 that provide for RRE, and
- work with states and territories to develop a strategy and deliver funding 'for upskilling the education workforce to achieve the consistent and effective delivery of comprehensive Respectful Relationships Education in Australian schools', including consideration of mandatory education in Initial Teacher Education Curriculum.²⁷

State curriculum and school authorities are ultimately responsible for implementing the Australian Curriculum. Future progress reports will monitor South Australia's progress in line with these commitments and developments at the national level, noting that 'consent' is only one aspect of comprehensive relationships and sexual health education, and that lessons learned at school 'must be supported and validated by adults outside the classroom'.²⁸

South Australia's Keeping Safe: Child Protection Curriculum (KS:CPC) has been under review throughout 2022–23, with the third edition expected to be released in early 2024. As of June 2023, progress based on consultation included a review of the aims, rationale, activities and sequence of topics, as well as the development of a curriculum framework, and design and support materials for Aboriginal children, children with disability and children from culturally and linguistically diverse backgrounds.²⁹

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.

The Commissioner remains concerned about the high number of children being excluded from primary schools, particularly students with disability, boys, Aboriginal children and children in out-of-home care. The Commissioner has expressed to the Department her view that primary school children should not be suspended, excluded or expelled.

As noted in previous progress 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 2022.³⁰

- Students with disability (receiving funding through the Inclusion Education Support Program) 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.

In May 2023, Children and Young People with Disability Australia (CYDA) released findings from a survey of students with disability across Australia, which found 70% of respondents had been excluded from events or activities as part of their schooling.³¹ A preschool survey by CYDA also found that parents reported children being refused enrolment and excluded from excursions, events or activities.³²

In November 2023, the Department for Education sought feedback on its draft revised suspension, exclusion and expulsion of students procedure (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. It states that suspension should not be used where 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.

Non-government school sectors do not appear to have procedures in place of this kind, and there is no publicly available data on suspensions or exclusions from non-government school sectors.

The majority of 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.³³ 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 2020.³⁴

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'.³⁵ The 2022 Amendment Bill did not provide for this recommendation, but future progress reports will monitor the extent to which this is addressed in legislation and policy, including the new 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.³⁶
- Improvements to the Inclusive Education Support Program (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.³⁷

- **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

- Launch of 9 new practice guides for educators to support learners with functional needs, in addition to the sixteen practice guides released in 2022.
- As of February 2023, the indicator framework that describes the outcomes which the Department is seeking for children with functional needs is in its ‘implementation phase’.³⁸
- 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.³⁹
- Over 60 preschool sites have engaged with the Preschool Inclusion Project which supports IESP reforms in preschools as of Term 3 2023. Every government preschool in South Australia will be involved by the end of 2024.⁴⁰

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.

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 final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was handed to the federal government in September 2023. The Commissioners had differing views on whether special/ segregated (non-mainstream) schools should be phased out over time. Nevertheless, they agreed that mainstream schools ‘need major reforms to overcome the barriers that prevent students with disability accessing safe, equal and inclusive education’.⁴¹ 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.⁴²

Restrictive practices

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, there continues to be no child-focused safeguarding or independent oversight mechanism to protect children with disability from exclusionary or restrictive practices in 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

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

The Department for Education's Protective Practices 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'.⁴³

The final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommends that state and territory governments take immediate action to ensure that the use of restrictive practices, and physical, mechanical and chemical restraints, is not permitted in a range of settings including in education settings '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'.⁴⁴

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.

The apparent retention rate for Aboriginal secondary students in South Australian schools in 2022 was 74.4% in 2022, down from 76.3% in 2021 but higher than the 2022 national average of 56.4%.⁴⁵ The attendance rate of all enrolled Aboriginal students in Years 1 to 10 was 72.5% in 2022, which is lower than the national attendance rate (74.5%) and the 2021 attendance rate (77.3%).⁴⁶ The attendance rate for non-Indigenous students in Years 1 to 10 in South Australian schools in 2022 was 86.4%.⁴⁷

In 2022, 260 Aboriginal students completed their SACE in South Australian government schools, compared to 342 students in 2021.⁴⁸

Between 2021 and 2022, there was improvement in NAPLAN mean scores for Aboriginal students in South Australia for Reading in years 3 and 5 and Numeracy in year 5.⁴⁹ From 2023, student achievement in NAPLAN is reported against four new levels of proficiency (Exceeding, Strong, Developing and Needs additional support), therefore results from 2023 are not comparable to previous years.

It is important to note that NAPLAN testing has been criticised for not being culturally relevant or appropriate. A 2021 study by the University of New South Wales in partnership with the NSW Department of Education found that adjusting NAPLAN questions to be culturally relevant for Aboriginal students and students in regional areas could close the gap in reading scores between Indigenous and non-Indigenous students by 50 per cent.⁵⁰

According to data provided to this office by the Department for Education, Aboriginal students made up 7.2% of Reception to Year 6 total enrolments in government primary schools in 2022, and 20.1% of students who received a take-home, suspension and/or exclusion.⁵¹



The Graham Inquiry into Suspensions, Exclusions and Expulsion Processes in South Australian Government Schools (the SEE Inquiry) made recommendations specific to Aboriginal children that would require culturally appropriate trauma informed practice; consultation with Aboriginal Education services and staff; family conferencing and parental sign-off; and support for Aboriginal children with disability.⁵² Future progress reports will monitor the extent to which the finalised SEE procedures address these recommendations.

The preliminary report of the Commissioner for Aboriginal Children and Young People's Inquiry into the Application of the Aboriginal and Torres Strait Islander Child Placement Principle notes that child protection notifications are often made in the education sector when a 'family support response' is needed.⁵³ The Commissioner for Aboriginal Children and Young People highlighted the important opportunity for trusted Aboriginal Community Controlled Organisation (ACCO) services to engage Aboriginal families in education settings, including in early childhood education and care (ECEC), to support families early in a child's life.

In 2021, 55.5% of Aboriginal people aged 15 to 24 years in South Australia were fully engaged in employment, education or training, a decrease from 57.6% in 2016.⁵⁴ This is a deterioration in South Australia's performance on Closing the Gap Target 7: to increase the proportion of Aboriginal and Torres Strait Islander youth (15–24 years) who are in employment, education or training to 67% by 2031.

Some progress has been made in 2023 against the 10-year goals of the Aboriginal Education Strategy 2019–29, as reported in South Australia's 2022–23 Annual Report on the National Agreement on Closing the Gap:

1. Aboriginal children establish foundations for success in the early years:
 - a. The establishment of an Aboriginal Early Years Reference Group with representatives from local Aboriginal community organisations and leaders to support improved preschool enrolment and attendance and advise on early years matters relating to Aboriginal children.⁵⁵
 - b. The final report of South Australia's Royal Commission into Early Childhood Education and Care (ECEC), released in August 2023, makes recommendations to ensure ECEC services are culturally safe and inclusive and to support Aboriginal community-led policy for Aboriginal children, including in relation to:
 - strengthening the Aboriginal Community Controlled Organisation (ACCO) sector as a valued part of early childhood education and care provision.
 - engaging Aboriginal representative organisations in ensuring Aboriginal children 'retain the benefits' from the existing three-year-old preschool model and have the opportunity to improve it.⁵⁶
2. Aboriginal children and young people excel at school:
 - a. A pilot commenced in Term 4 2022 to deliver a new service model (YERTA) to support Aboriginal children and families with school attendance. The YERTA project is a partnership between the Department for Education, Kornar Winmil Yunti (KWY) and the Department of Human Services.

- **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

- b. The provision of grants to strengthen Aboriginal language education and the development of Aboriginal languages curriculum resources for five South Australian Aboriginal languages (Pitjantjatjara, Yankunytjatjara, Kurna, Ngarrindjeri and Nharangga).⁵⁷
 - c. The Targeted Learner Achievement implementation team was established to embed the Aboriginal Learner Achievement Leaders' Resource (ALALR) into all government schools.⁵⁸
 - d. The number of Clontarf academies increased by 4 throughout 2022–23, bringing the total to 11.
 - e. The attendance rate for participants in the Shooting Stars Academy has increased by 2.4% since 2021, and two new programs have been added in 2022-23: Deadly Minds Matter and Yarning with the Stars.
 - f. 2023–24 Budget provides \$5.6 million over four years to support Tauondi Aboriginal College.
3. Aboriginal young people on pathways to success:
- a. As of Term 2 2023, 1,085 students were participating in South Australian Aboriginal Secondary Training Academy (SAASTA) academies. The number of schools participating in SAASTA's Connect program increased from 9 sites in 2022 to 24 sites in 2023, and an additional 9 sites expressed interests for 2024. The Connect program prepares students to join a school-based or specialist academy from Year 10.
 - b. The Workabout Program engaged 687 students from over 71 schools during 2022–23. This resulted in 48 employment outcomes and 1,455 formal and informal training outcomes. As of June 2023, 60% of students accessing training or support from a Workabout Centre were in metropolitan areas and 40% in regional areas.
 - c. More than 180 Year 10 students participated in the Aboriginal Career Exploration (ACE) Program in its second year in 2022.

The Department for Education launched its Culturally Responsive Framework in 2023 to support Department staff to 'embed cultural responsiveness in its practice across all environments'.⁵⁹ The Aboriginal Education Policy Consultation Framework (Aboriginal Voice) was implemented in early 2023 to 'ensure Aboriginal staff perspectives are included in policy development', in line with the Aboriginal Education Strategy and the Stretch Reconciliation Action Plan.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

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.



In July 2023, the Department for Education released a new purpose statement for public education and strategy for public education, following statewide consultation between November 2022 and May 2023. The Strategy's four inter-related areas of impact are: wellbeing, equity and excellence, learner agency and effective learners. The strategy outlines how progress will be measured over time, noting that new measures will be 'developed and trialled collaboratively over time'.⁶¹

Evidence of progress at different levels of education

Early childhood education

In 2022, 62.0% of 3 year olds, 82.0% of 4 year olds and 16.1% of 5 year olds in South Australia were enrolled in preschool.⁶² Some 3 to 5-year-old children are under-represented in preschool enrolments compared to their proportion in the community. For example, children aged 3 to 5 years from non-English speaking backgrounds made up 20.6% of the community and only 10.6% of preschool enrolments in 2022.⁶³ Children from regional, remote and very remote areas also have lower preschool enrolments compared to their proportion in the community. Children with disability and Aboriginal children have higher preschool enrolments compared to their proportion in the community, as might be expected given access to 3-year-old preschool is being actively encouraged for these children.

In August 2023, South Australia's Royal Commission into Early Childhood Education and Care released its Final Report. The State government immediately accepted 13 of the Royal Commission's 43 recommendations and will collaborate with the federal government on a further six recommendations. A new independent Office for Early Childhood Development will coordinate the cross-sectoral response to plan for and implement universal 3-year-old preschool from 2026 and other Royal Commission recommendations related to supporting families in the first 1000 days. The Commissioner will follow the progress of these recommendations, particularly those related to improving equitable outcomes, noting that preschool uptake is not equal nor compulsory.

The Royal Commission recommends that the South Australian government set a 20-year goal to reduce the proportion of South Australian children who are developmentally vulnerable in one or more domains from the current rate of 23.8% to 15%.

Key deliverables in relation to the Early Learning Strategy reported in the Department for Education's 2022 Annual Report, include:

- Launch of the 'Enrol Now' preschool enrolment campaign in April 2022 which includes targeted approaches for Aboriginal children and children in care.
- Launch of the Words Grow Minds messaging campaign in Whyalla in 2023, following a pilot in Mount Gambier in 2022.
- Implementation of pilot programs with non-government organisations to expand child development checks.
- Commencement of mid-year intake into preschools from Term 3 2023.⁶⁴

- **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

Primary and secondary

14,676 students completed their South Australian Certificate of Education (SACE) in 2022, compared to 15,738 students in 2021.⁶⁵ 3,042 students completed a VET Certificate III as part of their SACE in 2022, compared to 3,586 in 2021.⁶⁶ In 2022, 40% of students who completed SACE qualifications included VET studies, compared to 45.3% of students in 2020.⁶⁷

In November 2023, the Department released a document outlining the design elements of a new Tailored Learning Provision (TLP) model to support students 'at risk of disengaging from education'. This new model is a redesign of the Flexible Learning Options (FLO) model, a key project of the Department for Education's student engagement reforms during 2022 and 2023. The new model will be implemented in 12 sample schools in 2024, which will inform further development of the model. FLO programs in other schools will continue as 'business as usual'.

Relevant commitments in the 2023–24 Budget include:

- \$4.6 million in 2022–23 and \$7.6 million per annum from 2023–24 for government and non-government schools to participate in the National Student Wellbeing Program.
- \$100.2 million over four years for upgrades at government schools and preschools.

Future progress reports will monitor the government's response to the Royal Commission into Early Childhood Education and Care's recommendations regarding the quality and accessibility of out of school hours care (OSHC).

Country and rural areas

In 2022, there were 8,834 full-time equivalent students enrolled in schools in remote and very remote areas, making up 24.7% of all South Australian student enrolments.⁶⁸ 2,351 students in country South Australia completed their SACE in 2022, compared to 2,566 in 2021.

Key deliverables against the Country Education Strategy in 2022, as reported in the Department for Education Annual Report, include:

- Provision of scholarships for pre-service teachers to undertake country placements.
- Establishment of a Country Education Reference Group for stakeholders to share ideas.
- Improved access to psychology and speech pathology services through telepractice and external providers.
- A pilot program to improve access to housing for teachers in select regions.
- Upgrades to ICT infrastructure in 97% of country schools.

Catholic Education South Australia released its Regional and Remote Education Strategy in 2023, which aims to 'enhance outcomes and opportunities relating to faith, excellence, access and growth' across the state's 19 regional and remote Catholic schools.⁶⁹

- **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

Relevant 2023–24 Budget commitments include:

- Upgrades and replacement of school bus services on Anangu Pitjantjatjara Yankunytjatjara Lands and regional South Australia.⁷⁰

Children in care

South Australia's Child and Young Person Visitor's (CYP Visitor's) 2022–23 Annual Report noted that only 45% of young people visited in residential care were engaged in full time education. This was based on information provided by the Department for Child Protection and non-government organisations and the CYP Visitor 'believes that this may be a "best case scenario"'.⁷¹

Previous progress reports have noted that the review of South Australia's *Children and Young People (Safety) Act 2017* presented an opportunity to support educational and wellbeing outcomes of children and young people in care. The February 2023 Report on the legislative review of the Act noted strong support for amended legislation to 'require certain levels of service provision for children and young people in care and leaving care', particularly in the areas of education, health, disability support and housing.⁷² At the time of writing, draft legislation had not been introduced into Parliament.

According to data provided by the Department for Education, children in care made up 1.4% of total Reception to Year 6 enrolments and 6% of students who received a take-home, suspension and/or exclusion in 2022.

Future progress reports will monitor the government's response to the ECEC Royal Commission's recommendations in relation to 'connecting the families of children at child protection risk to early childhood education and care'.⁷³

Children in poverty

According to Australian Curriculum, Assessment and Reporting Authority (ACARA) data, more than one quarter (26.4%) of students enrolled in all schools in South Australia were in the lowest quartile of socio-educational advantage (SEA), increasing to 33.0% of students enrolled in government schools in 2021.⁷⁴ As noted in previous reports, Tasmania and Northern Territory are the only two states and territories with a higher proportion of students with low socio-educational advantage than South Australia.

Key commitments in the 2023–24 Budget that seek to support children living in disadvantaged and marginalised situations include:

- \$6.5 million over four years to expand the school breakfast program in government schools.
- \$12 million to deliver a \$100 subsidy for the materials and services charge for the 2024 school year to address cost of living challenges.
- \$1 million per annum from 2023–24 for the Smith Family's Learning for Life program that supports students experiencing disadvantage to succeed at school and beyond.⁷⁵

- **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

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2023 Child Rights Progress Report on the Environment

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 the Environment



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

Areas of concern include:

- Disproportionate impacts of climate change on the rights of present and future generations of children and young people
- Few mechanisms to support children and young people's participation in climate-related policy and decision-making, including legislative reviews and consultation processes.
- A lack of mandated curriculum and policy to support the delivery of consistent and substantive education on climate change or disaster resilience to children and young people.
- Key emissions reduction targets are not yet enshrined in legislation, despite having been already outlined in policy.
- Amendments to the *Summary Offences Act 1953* (SA) include significant increases to the penalties for obstructing a public place, which have the potential to impact on children and young people who take climate action.

Background

The UN 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 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 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 the environment.

The impact of climate change on children's rights

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

South Australian children and young people consistently raise concerns about the environment and climate change, including in the context of conversations about poverty, health, education and transport.¹ This highlights the significant impact climate change is having on children's and young people's daily lives and how they feel about the environment and their future. For many children and young people, key to their concern is their sense of justice. They recognise that climate change heightens social and economic inequalities and disproportionately impacts vulnerable people and communities.

There is limited information made by and for children and young people about climate change-related risks, impacts and solutions, including what positive action is already being taken, and what opportunities are available to them to contribute to these efforts. A lack of information and feelings of powerlessness undermine children's and young people's trust in adults and institutions and exacerbates their climate anxiety. There are also few mechanisms to support their participation in policy and decision-making as it relates to the impact of climate change on the environment and on their lives.

The United Nations Committee on the Rights of the Child (the Committee) has emphasised the undeniable impact climate change is having on children's rights, including their right to life, non-discrimination, health, education, play, and access to an adequate standard of living. In August 2023, the Committee published General Comment No. 26 on Children's Rights and the Environment with a Special Focus on Climate Change. It provides comprehensive guidance on the obligations all States that are signatories to the UNCRC have in relation to protection of the environment. The General Comment highlights that a 'clean, healthy and sustainable environment is both a human right in itself and necessary for the full enjoyment of a broad range of children's rights'.²

Beyond responsibility for protecting children's rights from immediate harm, General Comment No. 26 also outlines the fact that States 'bear responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now'.³ The guidance recognises children as 'agents of change' and highlights the need for States to consider children's views in environmental decision-making as well as highlighting the critical role education plays in preparing children to take action.⁴ The General Comment itself is informed by a comprehensive consultation process that engaged thousands of children globally.

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

- Australia's insufficient progress on the emissions reduction targets set out in international agreements; and
- the 'disrespect from those in authority' for the rights of children to express their views (Article 12 of the UNCRC), evident in government responses to protests led by Australian children and young people.

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.⁵ Nevertheless, in March 2022, the full Australian Federal Court overturned an earlier decision that had ruled that the Federal Environment Minister had a duty of care to take reasonable care when exercising functions under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) to protect children and young people from climate harm.⁶ Despite ultimately overturning the 2021 decision, the full Federal Court upheld the earlier finding of fact that the risk of harm from climate change to children remains. The court also clarified that this decision provides the option for children to pursue similar proceedings in the future.

On 3 August 2023, the Senate referred the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 to the Environment and Communications Legislation Committee for inquiry and reporting upon by 1 February 2024. The Duty of Care Bill seeks to amend the *Climate Change Act 2022* (Cth) to require decision makers to consider the wellbeing of current and future children when making certain decisions likely to contribute to climate change.

According to the 2023 Global Climate Litigation Report, Australia has the highest number of climate litigation cases per capita globally, defined as cases that 'raise material issues of law or fact relating to climate change mitigation, adaptation, or the science of climate change'.⁷ The report notes that children and young people play a leading role in these cases, many of which demonstrate links between human rights and the impact of climate change.

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

Responsibility for the environment is shared between federal, state and local governments. The Federal Government is responsible for ratifying international treaties and can pass laws giving effect to such conventions. While Australia is party to the Paris Agreement, South Australia has passed State legislation that 'limits the status of international treaties to that of non-binding policy documents only'.⁸

The main federal environment legislation is the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). In addition, the *Climate Change Act* (Cth) came into effect in September 2022. It sets out Australia's greenhouse gas emissions reduction targets and provides for annual climate change statements.

South Australia has passed several laws relating to 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). These laws are administered by a range of state departments and agencies. Local councils also have some environmental responsibilities, including rubbish collection, recycling and local development approvals.

The priority actions the South Australian government is taking to tackle climate change are outlined in two key documents: South Australia – Responding to Climate Change, and South Australian Climate Change Actions, released in 2022.⁹ These actions build on those outlined in policies that were released under the former

State government, including Directions for a Climate Smart South Australia, the Climate Change Science and Knowledge Plan, and the Climate Change Action Plan 2021–2025.

Some key commitments include delivering South Australia's Hydrogen Jobs Plan, supporting the uptake of low and zero emissions vehicles, and developing a more circular economy, which includes the implementation of South Australia's Waste Strategy 2020–2025 and South Australia's Food Waste Strategy.

South Australia's *Climate Change and Greenhouse Emissions Reduction Act 2007* sets targets to reduce greenhouse gas emissions, promotes renewable sources of energy, and provides for measures to address climate change and 'achieve a sustainable future of the State'.¹⁰ 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 achieving of targets, and the impacts of climate change on business and community.

South Australia's independent environment protection regulator, the Environment Protection Authority (EPA), releases a State of the Environment Report (SOER) for South Australia at least every five years. These reports provide an assessment of the current state of South Australia's environment, including trends and key pressures. It includes details of the efforts and opportunities available to better protect and improve the environment. The South Australian government is required to respond to the report's recommendations. The Department for Environment and Water also publishes a set of Trend and Condition Report Cards, with the most recent report cards published in 2020.

The *Emergency Management Act 2004* (SA) provides the legal framework and governance for emergency management across the state. This legislation establishes the State Emergency Management Committee whose functions include preparing and reviewing the State Emergency Management Plan (SEMP).

The South Australian Fire and Emergency Services Commission (SAFECOM) works with the South Australian Country (CFS) and Metropolitan Fire Services (MFS) as well as the State Emergency Service (SES) to provide emergency management planning across the state. SAFECOM led the development of 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'.¹¹

While states and territories have primary responsibility for emergency management, the Federal Government supports state responses through the Australian Defence Force and National Emergency Management Authority (NEMA).

The National Disaster Risk Reduction Framework outlines a coordinated approach to reducing disaster risk, and the National Strategy for Disaster Resilience sets out a national resilience-based approach to disaster management. Neither of these national frameworks mention children or young people, despite being guided by the Sendai Framework for Disaster Risk Reduction 2015–2030 (Sendai Framework) to seek 'engagement from all of society'.¹²

Some welcome developments in 2023 include:

- The third round of the South Australian Disaster Risk Reduction Grants, which support children and young people's participation, engagement, and resilience in efforts to prepare for and respond to emergencies and environmental disasters.
- Increasing the proportion of South Australia's electricity generation that comes from renewable energy in line with the target of achieving 100% net renewable energy generation by 2030.
- The launch of the Local Government Net Zero Accelerate Program to help local councils meet South Australia's emissions reduction goals.

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.

As noted in previous reports, Focus Area 3 of Stronger Together: South Australia's Disaster Resilience Strategy 2019–2024, is 'children and young people actively engaged in reducing their risk and increasing their self-reliance'.¹³

In the 2022–2023 financial year, the third round of the South Australian Disaster Risk Reduction Grants were awarded. The following projects received funding and will support children and young people of diverse ages and backgrounds, from across different regions of the State as follows:

- Youth In Emergencies Development Program: A two-year collaboration between Australian Red Cross, Commissioner for Children and Young People, local government, and emergency management agencies, aimed at creating 'a diverse community of informed young change-makers in the emergency preparedness landscape, to provide leadership and influence future policy and practice'.
- Children and Young People in Emergency Service Organisations Project: A collaboration between agencies that include the CFS, Australian Red Cross, and Army Cadets, to 'co-design a program with current cadets and volunteers to modernise the approach and ensure young people are engaged, valued, trained, and wanting to transition to adult volunteers'.
- School Community Disaster Risk Reduction Project: Funding support for the Growing with Gratitude resilience program and Bushfire Kids Connect program in collaboration with digital technology educators Makers Empire, to expand on successful programs and develop a 'ground-breaking disaster risk reduction program that utilises the latest 3D technology for young people'.¹⁴

The Commissioner is represented on the State Emergency Committee's Resilience Recovery and Engagement Sub Committee to raise the voices of children and young people.

In 2023, the federal Department for Home Affairs and NEMA released a Discussion Paper on options for building emergency response capabilities at the national level as an alternative to utilising the Australian Defence Force (ADF).¹⁵ The 2023 Defence Strategic Review found that the ADF is 'not structured or appropriately equipped to act as a domestic disaster recovery agency ... in any sustainable way', particularly as major climate events and crises become more frequent and more severe.¹⁶ The insights gathered will inform policy and advice to government, including the delivery of the National Defence Strategy in 2024. The Commissioner's submission recommended that decision makers meaningfully involve children and young people in preparing and responding to emergencies in line with the Sendai Framework.¹⁷

The Stronger Together strategy recommends a consistent approach to disaster resilience education. The revised Australian Curriculum includes more references to climate change than it did previously. However, this is not mandatory and there are no policy frameworks at a state or national level to guide the consistent delivery of substantive curriculum-aligned climate change education across all education sectors. As such, climate change education is often dependent on the goodwill of individual schools or educators, and there is inconsistency across year levels and subjects.¹⁸ As noted in previous reports, several programs and resources focused on climate change and sustainability have been implemented in schools across South Australia, including Green Adelaide's Climate Ready Schools program, the ClimateClever initiative, and the Wipe Out Waste program.

Provision of child and youth-friendly information about climate change-related risks, impacts, and solutions, is not only key to ensuring accountability and trust, but also to ensuring children's meaningful participation. The UN Committee on the Rights of the Child has recommended that state parties 'develop toolkits for holding public consultations with children on issues that affect them, including on climate change and the environment'.¹⁹

Such toolkits have not been developed by the South Australian government. However, in 2023 the Conservation Council and South Australians for Climate Action have been hosting state-wide community conversations on climate change. The Department for Environment and Water (DEW) is sponsoring this project. A Community Climate Panel met in May 2023, to identify key emissions reduction activities, with their ideas incorporated into a Conversation Guide. The Panel was selected to be broadly representative of the South Australian community in terms of age and gender, with 12% of panellists under 24 years of age. Although the Host Kit encourages hosts to invite people of 'different ages', there are no specific references made to the value and importance of engaging with children and young people.²⁰

Released in 2023, the Consultation Paper to inform the development of South Australia's Youth Action Plan 2023–2026, includes a 'potential action' to 'introduce direct mechanisms for young people to influence environment and climate change policy, and to provide advice to the Minister for Climate, Environment and Water'.²¹ Future progress reports will monitor whether this action is incorporated into the final plan. While the Premier's Climate Change Council has a 'youth' member, they are over the age of 18.

The Environment Protection Authority (EPA) commissioned an independent review of the State of the Environment reporting (SOER) process, following its completion in 2018. The next SOER will be published in December 2023, following consultation and engagement with stakeholders throughout 2022 and 2023. The independent review made recommendations to enhance the stakeholder engagement process and determine if the legislative provisions are 'fit-for-purpose'. However, the review and previous SOERs have not acknowledged children and young people as being key stakeholders whose input should therefore be sought.²²

In May 2023, within days of a protest outside an annual oil and gas conference held in Adelaide, South Australia's Parliament passed the Summary Offences (Obstruction of Public Places) Amendment Bill. These amendments came into effect on 1 June 2023.

- **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

They significantly increase penalties for directly and indirectly obstructing a public place. Civil society groups and lawyers, including the Human Rights Law Centre, have raised concerns that these legislative changes undermine human rights such as freedom of expression, association and peaceful assembly (Articles 12, 13 and 15 of the UNCRC) including for young people who are protesting.²³

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.

As per General Comment No. 26, States not only have immediate obligations under the UNCRC in relation to the environment, but they also bear responsibility for foreseeable environment-related harms that arise as a result of their acts or omissions in the present.

The South Australian government has committed to the following emissions reduction targets:

- Achieving net zero emissions by 2050.
- Reducing net emissions by more than 50% by 2030 (from 2005 levels).
- Achieving 100% net renewable energy generation by 2030.

As reported in 2022, although these targets are set out in policy, they are not enshrined in legislation. The current State government has committed support for reviewing and amending legislation to ‘update greenhouse gas emissions targets and strengthen climate action’.²⁴ However, at the time of writing, the Climate Change and Greenhouse Emissions Reduction (Targets) Amendment Bill 2022 had not progressed beyond the second reading of November 2022.²⁵ The targets set out in South Australia’s *Climate Change and Greenhouse Emissions Reduction Act 2007* have not been updated since commencement of the Act in 2007, despite some of the targets having been met in 2013–2014.²⁶

Relevant legislative updates in 2023 include the following:

- Passing of the Environment Protection (Objects of Act and Board Attributes) Amendment Bill 2023 in both houses of South Australia’s Parliament, which clarifies that the Objects of the Act will include a requirement to ensure all measures to enhance and protect the environment have regard to ‘the need for climate change adaptation and climate change mitigation’.²⁷
- Passing of the Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Bill, arising from the National Energy Transformation Partnership, which integrates emissions reduction objectives into national energy laws.²⁸
- Introduction of the Hydrogen and Renewable Energy Bill in September 2023, which seeks to establish a licencing and regulatory system for large-scale hydrogen and renewable energy projects in South Australia. The State government committed \$1.1 million in the 2023–2024 Budget to facilitate development of this Act and support delivery of the State government’s Hydrogen Jobs Plan.

The proportion of South Australia’s electricity generation that comes from renewable energy continues to increase year on year, accounting for 75% of generation between October 2022 and October 2023.²⁹ There is also promising progress being made toward achieving the State government policy target of 100% net renewable energy generation by 2030.

- **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

Transport remains the largest source of emissions, largely from road transport. The State government's Climate Change Actions document outlines several objectives to address this, including to 'align transport and urban planning with low emissions transport outcomes' and 'increase the use of public transport and active travel'. In February 2023, the Motor Vehicles (Electric Vehicle Levy) Amendment Repeal Bill was passed in the Upper House. The Bill seeks to encourage the uptake of electric vehicles by abolishing the electric vehicle levy that was introduced by the former state government. Construction of the state-wide electric vehicle charging network commenced in 2022, and is expected to be finalised by early 2024.

According to the 2023 Benchmarking Adelaide report, Adelaide has the lowest proportion of people living in walkable neighbourhoods when compared to similar sized cities around the world.³⁰ In 2023, the state government released discussion papers seeking feedback to inform the development of the next Greater Adelaide Regional Plan (GARP) and the 20-Year State Infrastructure Strategy. The Commissioner will monitor the extent to which these policies support public, active and low emissions transport outcomes and report on this in future child right's progress reports.

The Local Government Net Zero Accelerate program was launched in July 2023 by the South Australian Local Government Association and the Department for Environment and Water. The initiative will support participating councils to take action to reduce emissions.

The Independent Review of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) concluded in 2020. The review found that the EPBC Act is 'not fit for current and future environmental challenges, including climate change'.³¹ In December 2022, and in response to the Independent Review, the Federal Government released the Nature Positive Plan, which outlines proposed reforms to Australia's environmental laws. In late 2022, the first Annual Climate Change Statement to Parliament, as required by the *Climate Change Act 2022* (Cth), was also published by the Federal Government. The Annual Statement reports on progress made towards reaching greenhouse gas emissions reduction targets, climate change policy, and risks from the impacts of climate change. While these documents refer to 'future generations' neither document makes any specific mention of children and young people.

Updates on several initiatives mentioned in the 2022 progress report include the following:

- The Government remains committed to building a hydrogen power plant near Whyalla. In September 2023, the South Australian and Federal governments finalised an agreement to develop the Port Bonython Hydrogen Hub.
- The Battery Energy Storage System at Gould Creek, which was previously expected to be completed in 2023, is now scheduled for completion 2026.
- There have been no public updates in relation to the Net Zero Emissions Policy Forum agreement, other than a Ministerial Leadership Group communique that was published in July 2022.

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2023 Child Rights Progress Report on Physical Punishment

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.

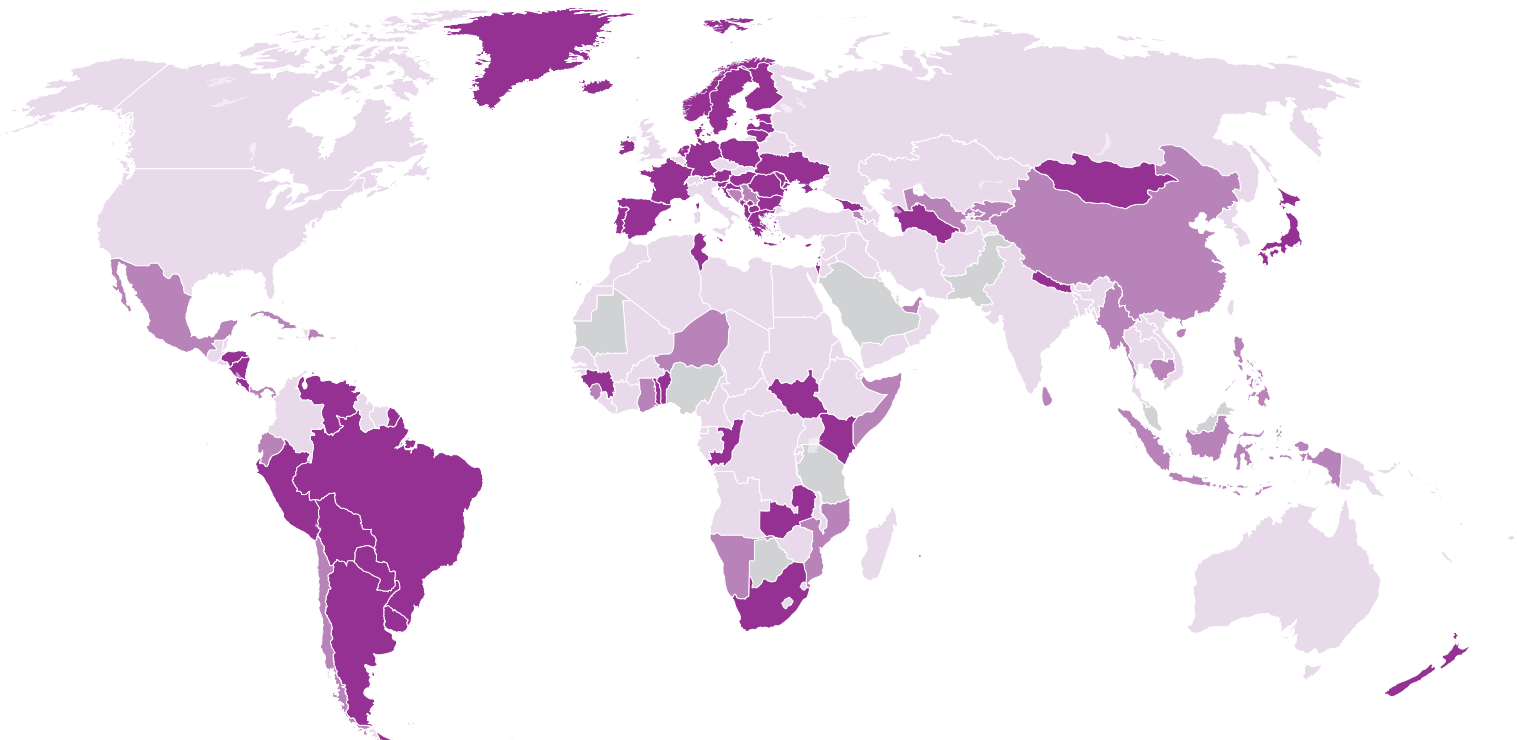


2023 Child Rights Progress Report on Physical Punishment



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

Physical punishment around the world



Map adapted from End Corporal Punishment, Global progress, <https://endcorporalpunishment.org/global-progress/>

As at May 2023, 65 sovereign states have achieved prohibition of physical punishment in all settings, including in the home – governments of at least 27 other sovereign states have expressed a commitment to enacting full prohibition. The countries that outlawed physical punishment in 2022 include Zambia, Mauritius, and Wales.

- Countries where physical punishment is prohibited in all settings
- Countries where governments are committed to full prohibition of physical punishment
- Countries where physical punishment is prohibited in some settings
- Countries where physical punishment is not fully prohibited in any setting

Area of concern:

- Despite considerable evidence identifying the harm caused by physical punishment and repeated calls by the UNCRC for full prohibition, state and federal governments continue to permit violence against children by their parents.

Children do not have the same protections as adults when it comes to assault and the experience of physical punishment by children remains unacceptably high.

Background

The UN 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 physical punishment.

Rights in relation to Physical Punishment*

According to the Convention on the Rights of the Child, children should not be subjected 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'. However, 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:

- has negative effects on children;
- does not reduce defiant or aggressive behaviour, nor does it promote long-term positive behaviour in children;
- has adverse effects on students in school, including on their academic performance and can lead to behavioural issues (for example, violent behaviour and aggressive conduct);
- can harm children's cognitive, behavioural, social and emotional development;
- 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; and
- can also result in lower self-esteem, more aggression, and negative relationships with parents.¹

The landmark Australian Child Maltreatment Study found that children who are smacked repeatedly by their parents are nearly twice as likely to develop anxiety depression later in life.² It surveyed 8,500 Australians aged 16 years and over to determine how they experienced child abuse and neglect, and is a first for Australia. It found child maltreatment is endemic in Australia with two thirds of participants being abused, neglected or exposed to domestic violence as children, resulting in long-term negative health outcomes.³

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*.⁴ This Act provides for contact between persons that would generally be regarded as reasonable. There is also a common law defence of chastisement⁵ and the child's age, and the reason for the punishment (did it occur to 'teach the child a lesson' or 'because the person snapped') can be used in defence.

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). The common law defence is, however, 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."⁶ The Protective Practices Behaviour Guidelines for Staff and Volunteers Working with Children and Young People⁷ is adopted by all schools in the state and prohibits corporal punishment.

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*.⁸ 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.

In residential care facilities, carers and employees are prohibited to physically punish a child under the *Family and Community Services Regulations 2009*.⁹ However the Commissioner has received reports of children being arrested by the police to manage behaviour, which has resulted in some physical handling that could amount to assault.¹⁰

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

The Department for Education has 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 SA¹¹ has free Parent Easy Guides for parents covering a variety of topics, including respectful relationships, positive approaches to guiding behaviour, and being good role models. It also provides seminars that parents can attend.

- **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 new Adults Supporting Kids website, developed by the Department of Human Services (DHS) also provides information for parents, carers and guardians.

The government supported Families Growing Together program 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'.¹² There are a few workshops on offer and these can all be accessed online.

Endnotes

- 1 Child Family and Community Australia, *Physical punishment legislation. CFCA resource sheet*, Australian Institute of Family Studies, 2021, accessed 20 November 2023, https://aifs.gov.au/sites/default/files/publication-documents/2107_physical_punishment_resource_sheet_0.pdf.
- 2 Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E., *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*, 2023, Australian Child Maltreatment Study, Queensland University of Technology, accessed 1 December 2023, <https://www.acms.au/>
- 3 Australian Child Maltreatment Study, 2023, accessed 1 December 2023, <https://www.acms.au/>
- 4 *Criminal Law Consolidation Act (1935)*.
- 5 *Lumb v Police* [2008] SASC 198.
- 6 *Education and Children Services Act (2019)*.
- 7 Department for Education, *Protective practices for staff in their interactions with children and young people: Guidelines for staff working or volunteering in education and care settings 2017*, 2nd edn, Government of South Australia, 2019, accessed 4 December 2023, https://www.education.sa.gov.au/__data/assets/pdf_file/0008/260477/protective-practices-staff-interactions-children-young-people.pdf.
- 8 *Education and Early Childhood Services (Registration and Standards) Act 2011*.
- 9 Family and Community Services Regulations 2009 (SA).
- 10 P Wright, *Final report of the South Australian dual involved project: Children and young people in South Australia's child protection and youth justice systems*, Guardian for Children and Young People, 2022, accessed 20 November 2023, <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2022/07/OGCYP-Final-Report-of-the-South-Australian-Dual-Involved-Project.pdf>.
- 11 Government of South Australia, *Parenting SA*, 2023, accessed 4 December 2023, <https://parenting.sa.gov.au/>.
- 12 Department of Human Services, *Families Growing Together*, 2023, accessed 4 December 2023, <https://dhs.sa.gov.au/services/cfss/cfss-services/cfss-family-support-services/parenting-and-family-support-program>.