



DISCUSSION PAPER #21 DECEMBER 2019

The United Nations tells Australia how to better protect children's rights as outlined in the Convention on the Rights of the Child



The United Nations Convention on the Rights of the Child (UNCRC) was ratified in 1989. It outlines the rights which the United Nations believe should be universally available to all children.

Periodically, (approximately every five years) States Parties¹ are assessed to ensure that they are taking steps towards enshrining children's rights in legislation, policy and practice. The States Party is invited to submit a report to the UN detailing what progress has been made since the last assessment. Australia also appeared before the Committee on the Rights of the Child in September 2019.

In return UN Committee made 122 recommendations to the Australian government for improvements that should be made to the implementation of the CRC.²

The following summary of the UN report to the Australian government is organised around the areas of interest most discussed by grandparents and kinship carers. The first matter reported in this summary relates to the rights of children and young people to be heard, something GPV/KCV has been keen to safeguard, especially since the Victorian government removed the right of children under ten years of age to have their own representation in court proceedings affecting their future.

Australia's next report to the UN Committee on the Rights of the Child is due by January 15th 2024.

The Voice of Children and Young People

One of the key rights enshrined in the UNCRC is that of children/young people to have the opportunity to express their opinion on issues that affect them. A number of recommendations on this subject were made by the committee, including:

- mandatory consultations between the Children's Commissioner and children,
- amending several pieces of legislation to ensure that children's views are heard in areas such as legal matters affecting them and immigration matters affecting them,
- enshrining respect for children's rights to freedom of expression and peaceful assembly,
- creating mechanisms to ensure children's input into public consultations on issues such as climate change, and at all stages of the budget process,
- ensuring that child-friendly mechanisms exist for the reporting of criminal offences, and that the government ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which would allow Australian children and young people to take their concerns about human rights violations directly to the UN.

¹ Nations who have ratified the UNCRC

² The list of recommendations analysed by GPV/KCV has been taken from a summary appended to *Children's Rights in Australia: a scorecard* released by the Australian Children's Commissioner on 20 November 2019.

Procedural change

All the recommendations require changes to either legislation, policy or practice to be implemented. In some cases, recommendations require a combination of changes to legislation, policy and practice:

- **34 recommendations require legislative changes.** The committee asks for greater oversight in the Australian parliament when making legislation, to accommodate children's rights.
- **93 recommendations ask for changes to practice** through more effectively implementing current policies. Also mentioned is the need for action to increase community awareness on specific issues such as sexual exploitation tourism, the harmful effects of child marriage, positive discipline rather than corporal punishment, and discrimination against children with a disability.
- **73 recommendations call for policy changes** to better reflect the CRC. Some examples of this include prioritising access to mental health services for vulnerable children, eliminating policies and practices that contribute to discrimination, consistently applying guidelines to determine the best interests of a child, and developing mechanisms to ensure that children and young people have a voice in decision making processes on a variety of issues that affect them.
- **19 recommendations ask that adequate resources be made available** to implement the new policies and programs suggested by the committee, as well as adequate resourcing for services such as the NDIS and Child Protection, and oversight bodies such as the National Children's Commissioner, the National Data Commissioner, and the Joint Committee on Closing the Gap
- **2 recommendations call for better collection and sharing of data** on children's rights, ensuring that data is disaggregated on a number of factors including age, gender, location, ethnic and national origin, and identifies specific situations of vulnerability. The committee also asked that the data collected is shared among ministries to be used in the formulation of policies, programs and projects for implementing the CRC.

OOHC/Refugees

GPV/KCV has placed these groups together because both groups of children/young people have been separated from their homes. Key issues which are common to these groups include:

- access to identity documents,
- access to services and supports such as medical and mental health treatment, and
- adequate education supports.

Further, the committee has made specific recommendations relating to refugees, including:

- prohibiting the detention of asylum seekers,
- monitoring the wellbeing of children in immigration detention,
- prohibiting the return of asylum seekers to dangerous situations,
- strengthening support to asylum seeker support agencies, and
- ensuring the best interests of the child are considered when deciding to return a child to another country.

Recommendations specific to children in OOHC include:

- taking measures to preserve the family and ensure that removing a child is a last resort, standardising the criteria by which the decision to remove a child is made,
- providing training for child protection practitioners on working with children in alternative care and specifically the needs of children with disabilities.

Aboriginal & Torres Strait Islander children

Many of the recommendations of the committee relating to Aboriginal and Torres Strait Islander children also come under the banner of “discrimination”, “health and welfare”, or “OOHC”. In these cases, Aboriginal children are singled out specifically as a group who are particularly affected by these issues, and who may be negatively impacted by having less access to supports and services such as medical intervention and education. Specific recommendations regarding these children include:

- education programs addressing all forms of violence,
- priority access to mental health services,
- culturally sensitive programs addressing teen pregnancy in Aboriginal communities,
- ensure that Aboriginal children are registered at birth and receive birth certificates,
- address disparities in investment in children’s rights for Aboriginal children,
- ensure effective coordination between the National Children’s Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner on relevant policies and measures,
- strengthen Aboriginal service providers, provide programs to prevent the removal of Aboriginal children into OOHC,
- support “Closing the Gap” measures and improve education standards,
- reduce the rate of indigenous incarceration.

Violence Family/Sexual Violence

Key recommendations regarding all forms of violence include:

- taking greater steps to prevent forced marriages and marriages of children under 18 years of age, extending jurisdiction to cover sexual exploitation of children and young people in the context of travel or tourism,
- greater efforts to end the practice of female genital mutilation (FGM),
- prioritise measures to prevent or respond to violence against women and children,
- ensure prosecution of those involved in trafficking for child prostitution while protecting the victims,
- ban corporal punishment,
- prohibit the use of force against children in youth justice or immigration detention, and
- take measures to identify and support children who have been involved in armed conflict overseas.

Health & Welfare/Sexuality

For the purposes of this paper, “sexuality” has been defined to include issues of gender identity and consensual sexual behaviour, as distinct from sexual violence (discussed above). It has been included with health and wellbeing because many of the recommendations made by the committee on the subject refer to mental health, medical intervention, or teenage pregnancy. Recommendations included:

- prohibiting unwanted or unnecessary medical intervention such as coerced sterilisation of children with disabilities or surgery on intersex children without their consent,
- providing adequate support and counselling services for families of intersex children,
- providing adequate therapeutic supports for children suffering the physical or mental effects of violence or abuse,
- strengthening measures to prevent teenage pregnancy and provide education on sexual health, address bullying – particularly of LGBTQI+ children, address access to services for children in remote & regional communities or vulnerable groups, implement the *National Injury Prevention Strategy 2018-21*,
- extend paid maternity leave to 6 months to support appropriate care of newborns, provide clarity about who is eligible for NDIS and what services it covers,
- combat prejudice against children with disabilities,
- address the rate of childhood obesity, address the underlying causes of poor child mental health and youth suicide, use psycho-stimulant drugs as a last resort only in the treatment of ADHD.

Education

There are two types of recommendation related to education. The first are recommendations regarding the rights of children to have a high standard of education and to feel safe in schools, including:

- making sexual and reproductive health a mandatory part of the school curriculum
- strengthening the school-based “Respectful Relationships” program
- addressing bullying in schools, including online bullying
- prohibiting corporal punishment in all settings, including schools
- including modules on human rights and the CRC in the school curriculum
- ensuring that all children/young people complete free, equitable and quality primary and secondary education by 2030
- adding training on avoiding discrimination in the school curriculum
- investing in education at early childhood, primary, and secondary levels, paying particular attention to Aboriginal communities, remote and regional communities, children/young people with disabilities, children in OOHC and asylum seekers

The other is recommendations related to educating the wider community about children’s rights:

- raising awareness about the impact of violence on children/young people
- including modules on human rights and the CRC in training courses for all professionals working with and for children

Youth Justice

The recommendations regarding youth justice relate to both preventing the instances of detention of children, and ensuring that children in detention are well treated, including:

- withdrawing Australia’s reservation to article 37(c) regarding the separation of children and adults in detention settings
- raising the legal age for criminal responsibility to 14 in line with international standards
- repealing mandatory minimum sentencing laws in the Northern Territory and Western Australia
- implementing recommendations made in 2018 by the Australian Law Reform Commission to reduce rates of indigenous incarceration
- prohibit the use of restraints, isolation, and force in disciplining children/young people in detention
- immediately investigating all allegations of abuse or maltreatment of children/young people in detention
- promoting alternatives to detention, such as probation, counselling, or community service
- providing children/young people in conflict with the law with information about their rights.

Discrimination

Key recommendations aimed at reducing discrimination include:

- ensuring equal opportunity and equality of outcomes by eliminating discriminatory laws, policies and practices
- addressing disparities in access to services and preventing and combating discrimination
- strengthening activities to raise awareness of and prevent discrimination
- making audio-description of websites available to children/young people with vision impairment
- combatting stigmatisation of and prejudice against children/young people with disabilities

Environment

Key recommendations aimed at protecting the environment include:

- requiring companies to undertake assessments and consultations, and make full public disclosure of the environmental impacts of their business
- taking prompt measures to reduce carbon emissions, including establishing targets and deadlines to phase out both the domestic use and export of coal, and to accelerate transition to renewable energy
- strengthening support to organisations working on climate change and environmental issues
- supporting the development of toolkits for including children/young people in public consultation on climate change
- ensuring that children/young people's opinions are taken into account in developing policies and programs addressing climate change and the environment

Surrogacy

Two recommendations relate specifically to the rights of children born with assisted reproductive technologies, particularly those born through surrogacy. These are:

- ensuring that children born through international surrogacy have access to a clear process to obtain Australian citizenship
- ensuring that children born through assisted reproduction/surrogacy are able to access information about their origins, and that counselling is available for all parties.

Grandparents Victoria/Kinship Carers Victoria
14 Youlden St
Kensington, VIC, 3031

(03) 9372 2422

director@grandparents.com.au