

## Australia's 2015 UPR—NGO Coalition Fact Sheet 12

### Children's Rights

#### National Plan for Children

Despite Australia's ratification of the UN Convention of the Rights of the Child (CRC) in 1990, Australia still does not have a comprehensive national policy framework for children. There has been a lack of integration of children's rights into Australian law, and no appropriate and effective mechanism exists to ensure the "coherence and compliance of all jurisdictions"<sup>1</sup> in Australia for the protection of children's rights.

In 2012, the UN Committee on the Rights of the Child reiterated its concern "at the absence of a comprehensive National Plan of Action for implementing the Convention as a whole."<sup>2</sup>

In 2013, the office of the National Children's Commissioner was established<sup>3</sup> but to date the office has not been provided with adequate resources for effective monitoring as recommended.<sup>4</sup> Without a National Plan for Children and a monitoring framework integrated into the legal system, Australia fails to effectively set benchmarks or measure progress and disadvantage and abuse is not consistently monitored or addressed. In many areas, Australia still lacks the necessary data to guide measures to address disadvantage.<sup>5</sup> With planning and resources, it may be possible in the future to avoid many of the rights abuses currently receiving attention.<sup>6</sup>

#### Proposed Recommendation:

Australia should develop a National Plan for Children to ensure stronger legislative protections and enforcement of the rights of children under the CROC.

#### Aboriginal and Torres Strait Islander Children

Aboriginal and Torres Strait Islander<sup>7</sup> children and young people remain disadvantaged and disproportionately represented in nearly every child rights measure. Infant mortality rates for indigenous children remain almost twice as high as the non-Indigenous rate.<sup>8</sup> Indigenous children account for almost half of all homeless children in Australia, have higher rates of youth suicide, have comparatively limited access to education and are over represented in their experience of poor access to health services and inadequate standards of living.

Over representation is particularly acute in the criminal justice system. Between 2010 and 2014 the rate of Aboriginal and Torres Strait Islander young people in detention increased from 22 to 25 times the rate of non-Indigenous young people.<sup>9</sup> Half the young people in detention in Australia are Aboriginal and Torres Strait Islander,<sup>10</sup> despite Aboriginal and Torres Strait Islander people comprising 3% of the general population.<sup>11</sup>

<sup>1</sup> Committee On Economic, Social And Cultural Rights, Forty-Second Session, Geneva, 22 May 2009, Concluding Observations, Australia E/C.12/Aus/Co/4.

<sup>2</sup> CRC/C/AUS/CO/4, Concluding Observations, Australia, 60th Session, Paragraph 15.

<sup>3</sup> *Australia Human Rights Commission Act 1986* (Cth) as amended under Part IIAA

<sup>4</sup> CRC/C/AUS/CO/4, Concluding Observations, Australia, 60th Session, Paragraph 16.

<sup>5</sup> Australian Research Alliance for Children & Youth, 'The ARACY Report Card on the Wellbeing of Young Australians: Technical Report' (2013), Overview of Indicators.

<sup>6</sup> Such as the Royal Commission into Institutional Responses to Child Sexual Abuse; "The Forgotten Children" report (<https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014>); Closing the Gap Reports (<http://www.dpmmc.gov.au/publications/index.cfm>)

<sup>7</sup> Aboriginal and Torres Strait Islander children will be referred to as 'Indigenous' for the purposes of this submission

<sup>8</sup> The Close the Gap Campaign Steering Committee, 2015. *Progress and Priorities Report 2015*, page 15.

Aboriginal and Torres Strait Islander child mortality rate to the non-Indigenous rate has not changed over the last 10 years and remains almost twice as high (1.9 times).

[https://www.humanrights.gov.au/sites/default/files/document/publication/CTG\\_progress\\_and\\_priorities\\_report\\_2015.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/CTG_progress_and_priorities_report_2015.pdf)

<sup>9</sup> Ibid. Statistics from the June quarter 2014 show rates of 34.8 per 10,000 for Indigenous young people as opposed to rates of 1.4 per 10,000 for non-Indigenous young people.

<sup>10</sup> Ibid. Of particular concern is the Northern Territory where the percentage of Indigenous young people in detention over the four year period fluctuated between 89% and 100% of the total population of young people in detention. The majority (about 65% to 79%) of young people in detention in Western Australia were also Indigenous.

<sup>11</sup> Australian Bureau of Statistics, 2011, '3238.0.55.001 - Estimates of Aboriginal and Torres Strait Islander Australians June 2011', Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/3238.0.55.001?OpenDocument>.

Successive governments (national, state and territory) have failed to adequately implement effective strategies. Community-based early intervention and diversionary programs which take into account issues of disadvantage, discrimination and inequality are vital. There is an urgent need to develop, adequately resource and implement evidence-based strategies across jurisdictions that will reduce high detention rates and recidivism amongst Indigenous children.

The UN Committee on the Rights of the Child has raised concern at the significant over-representation of Indigenous children in the criminal justice system,<sup>12</sup> has called for the “effective and meaningful participation of Indigenous people in policy formulation, decision-making and implementation processes of programmes affecting them”<sup>13</sup> and recommends “strategic budgetary lines for children in disadvantaged ... situations that...require affirmative social measures.”<sup>14</sup>

**Proposed Recommendation:**

Australia should review and implement the recommendations of the UN Committee on the Rights of the Child in partnership with Aboriginal and Torres Strait Islander children and their communities. Consultation must meet the standards contained in the Declaration on the Rights of Indigenous Peoples requiring genuine respect for cultural integrity and self-determination.

## Asylum Seeking Children and Families in Detention

The *Migration Act 1958* (Cth) requires the mandatory and indefinite detention of all unlawful ‘non-citizens’, including children,<sup>15</sup> which continues until the ‘non-citizen’ is removed from Australia, deported or granted a visa.<sup>16</sup> The Act fails to implement the principle that the detention of a child should be a measure of last resort.<sup>17</sup> Despite this, as at 31 January 2015, there were 211 children held in immigration detention facilities within Australia<sup>18</sup> and 119 children held in the offshore processing centre on Nauru.<sup>19</sup> There were a further

1,551 children detained in the community under residence determinations.

In 2014 the Australian Human Rights Commission conducted a National Inquiry into Children in Immigration Detention.<sup>20</sup> The Inquiry found that prolonged detention causes acute distress and a rapid decline in mental health and well-being. From 2013-2014, 128 children engaged in self-harm and 105 children were assessed as being at serious risk of suicide or self-harm. The report identifies a direct correlation between the time spent in detention and rates of mental illness. While a number of children have been removed from closed detention<sup>21</sup> there are still widespread concerns about the remaining children in detention, the ongoing effects of detention and the policy and legislative framework in place.<sup>22</sup>

The Report’s recommendations include:

Children may be detained under the Migration Act for only so long as is necessary for health, identity and security checks; assessment of refugee status should be commenced immediately according to the rule of law; an independent guardian should be appointed for unaccompanied children seeking asylum<sup>23</sup>; alternative community detention should be available for children of families assessed as security risks and children in immigration detention should have regular mental health assessments.

**Proposed Recommendation:**

Australia should implement the recommendations of the Australian Human Rights Commission’s 2014 “The Forgotten Children” Report.

<sup>12</sup> CRC/C/AUS/CO/4, Concluding Observations, Australia, 60th Session, Paragraph 29(a)

<sup>13</sup> CRC/C/AUS/CO/4, Concluding Observations, Australia, 60th Session, Paragraph 30 (d)

<sup>14</sup> CRC/C/AUS/CO/4, Concluding Observations, Australia, 60th Session, Paragraph 20

<sup>15</sup> [Migration Act 1958 \(Cth\) s189](#). It is Australian government policy that children will not be held in high security immigration detention centres, but they may be accommodated in low security facilities

<sup>16</sup> [Migration Act 1958 \(Cth\) s196](#)

<sup>17</sup> Currently there are no time-limits for the detention of children or provisions for periodic judicial review.

<sup>18</sup> These include Immigration Residential Housing, Immigration Transit Accommodation and Alternative Places of Detention.

<sup>19</sup> Department of Immigration and Border Protection, 2015, Immigration Detention and Community Statistics Summary, 31

January 2015, Department of Immigration and Border Protection: <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-jan2015.pdf>

<sup>20</sup> The National Inquiry into Children in Immigration Detention Report was delivered to the Australian Government on 11 November 2014 and tabled in the Australian Parliament on 11 February 2015

<sup>21</sup> <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-jan2015.pdf>

<sup>22</sup> “The Forgotten Children: National Inquiry into Children in Immigration Detention 2014”

<sup>23</sup> The Minister holds the role of Guardian under the *Immigration (Guardianship of Children) Act 1946* whilst also having the power to deport, detain and transfer asylum seekers including unaccompanied children. “Agencies or individuals whose interests could potentially be in conflict with those of the child’s should not be eligible for guardianship.” Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, UN Doc CRC/GC/2005/6