



NATSILS
NATIONAL ABORIGINAL & TORRES
STRAIT ISLANDER LEGAL SERVICES

Aboriginal and Torres Strait Islander **CHILD RIGHTS REPORT CARD**

**What Australia must do to protect and support the rights
of Aboriginal and Torres Strait Islander children**



Contact Us

The Secretariat of National Aboriginal and Islander Child Care (SNAICC), established in 1981, is the national peak body in Australia representing the interests of Aboriginal and Torres Strait Islander children and their families. For more information call **03 9489 8099**, see snaicc.org.au or contact Emma Sydenham on emma.sydenham@snaicc.org.au.

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Aboriginal and Torres Strait Islander CHILD RIGHTS REPORT CARD

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What are Human Rights?

Everyone has human rights and is entitled to have them respected. These rights reflect the human dignity of all people. Governments, and other actors like companies, organisations and individuals, have obligations to respect each individual's human rights. The Government, however, has specific obligations to ensure that:

- it respects these rights;
- it protects them from being violated by anyone else; and
- people have the basic conditions and supports to fulfill their rights.

Children's Rights are specific human rights of each child, recognising the special position of children and their needs.

Are Children's Rights in International law?

YES.

The rights of the child are primarily contained in the United Nations Convention on the Rights of the Child. This is an international agreement that Australia signed in 1990. This means Australia is bound by the obligations and rights under the Convention.

Are Children's Rights in Australian law?

NO.

Even though Australia signed the Convention on the Rights of the Child two decades ago it still has not introduced legislation to protect the rights of children. This means that the standards for children's rights are different in each State of Australia and that some rights in the Convention are not protected.

Is Australia doing enough to protect children's rights?

NO.

The Australian Government is not doing enough to protect the rights of our children and this has been recognised by the International community.

In June 2012, the United Nations Committee on the Rights of the Child released a report card on how Australia is performing in its obligations under the Convention. The Report Card notes significant gaps in the fulfilment of Australia's obligations to children's rights under the Convention.

Is Australia doing enough to protect Aboriginal and Torres Strait Islander children's rights?

NO.

The Australian Government is not doing enough to protect the rights of Aboriginal and Torres Strait Islander children. The UN Committee on the Rights of the Child was very concerned about the "serious and widespread discrimination" that our children face, including in the lack of available services, barriers to accessing basic services, and the very high numbers of our children involved in the criminal justice system and in out-of-home care.

What does Australia need to do?

The Committee has recommended that the Australian Government take a series of different actions to better protect and support Aboriginal and Torres Strait Islander children's rights, including those set out in this resource. The Committee stressed the need for Aboriginal and Torres Strait Islander participation in decisions impacting Aboriginal and Torres Strait Islander children and youth. The Committee also called for long term strategies that respond to the causes of current disadvantage that too many Aboriginal and Torres Strait Islander children experience.

Read this resource for more detailed information on what the Committee said and what you can do to help see these recommendations become a reality!



“Our children need our support to make their own way”

Dawn Wallam, SNAICC Chairperson



*“It’s time to take a stand for and with Aboriginal
and Torres Strait Islander children!”*

Shane Duffy, NATSILS chairperson

CHILD RIGHTS REPORT CARD – What Australia must do to protect and support the rights of Aboriginal and Torres Strait Islander children

In June 2012, the United Nations (UN) Committee on the Rights of the Child reviewed Australia in relation to its compliance with the UN Convention on the Rights of the Child. This resource explains the major concerns and recommendations made by the Committee about the rights of Aboriginal and Torres Strait Islander children and youth.

It also contains information on some ideas of how you as services, organisations, parents and communities can take action to ensure the better protection of, and support for, the rights of our children.

What is the UN Convention on the Rights of the Child?

The UN Convention on the Rights of the Child (Convention) is an international legal agreement that sets out the basic human rights of all children. While everyone has the responsibility to respect children's rights and to help children to realise their rights, the Convention mostly focuses on what governments must do. It protects children's rights by setting minimum standards across all areas of life, including health care, education, standard of living, and involvement with the justice system and culture.

Almost every country in the world has signed up to this Convention. Australia signed up in 1990, but has not made the Convention part of Australian law yet. By agreeing to the Convention, governments commit to respect, protect and fulfill the rights of children that the Convention contains.

The Convention can be used together with the UN Declaration on the Rights of Indigenous Peoples. This Declaration specifically sets out the human rights of Indigenous peoples, including children, throughout the world.

The **Committee on the Rights of the Child** (Committee) is a committee set up by the UN and is made up of independent experts who meet in Geneva. The Committee investigates how each country's government fulfills its obligations under the Convention. Countries must report to the Committee every five years on what they are doing to ensure the protection of children's rights.

Australia's Child Report Card 2012 – What did it say?

In June 2012, the Committee looked at how well the Australian Government has been protecting the rights of its children.

The Committee was supportive of positive developments for Aboriginal and Torres Strait Islander children and youth. There are many changes happening every day to empower our children and help them to grow up strong and healthy, to live the life they want to lead. In particular, the Committee welcomed many steps that have been taken by the Government, including: the National Apology to the Stolen Generations in 2008; the Closing the Gap strategy launched in 2008; introduction of various laws; the development of National Frameworks for the protection of Australia's children and to reduce violence against women and children; and the development of The National Early Childhood Development Strategy.

The job of the Committee, however, is to focus on what still needs support, on where there are gaps. The Committee was really concerned that there are still too many failures in protecting and supporting Aboriginal and Torres Strait Islander children. The Committee was very concerned about the *"serious and widespread discrimination"* that our children face, including in the lack of available services, barriers to accessing basic services, and the very high numbers of our children involved in the criminal justice system and in out-of-home care.

The Committee said that the Australian Government must do more to meet the needs and protect the basic rights of Aboriginal and Torres Strait Islander children.



What did the Committee focus on?

Below is a summary of the Committee's main concerns on how Australia is failing to fully protect and support our children and the actions the Australian Government should take to address them.

► **MAKING THE CONVENTION LAW IN AUSTRALIA**

CONCERNS:

The rights outlined in the Convention are currently not comprehensively protected within Australian law.

GOVERNMENT ACTION REQUIRED:

The Australian Government needs to pass a comprehensive Child Rights Act in Australian law that protects all the rights outlined in the Convention.

► **EQUAL ACCESS TO SERVICES**

CONCERNS:

Basic services are not reaching children.

GOVERNMENT ACTION REQUIRED:

- Identify differences between children's enjoyment of their rights;
- Take urgent steps to address barriers in access to services by our children and their families.

► **THE NORTHERN TERRITORY INTERVENTION**

CONCERNS:

The Northern Territory Intervention punishes groups of people that are already struggling.

GOVERNMENT ACTION REQUIRED:

Evaluate the Intervention to ensure that measures are proportionate and do not discriminate against Aboriginal and Torres Strait Islander peoples.

► **PARTICIPATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES**

CONCERNS:

Not enough consultation and poor involvement of our people in policymaking, decision-making and implementation of programs affecting our children.

GOVERNMENT ACTION REQUIRED:

- Ensure participation of Aboriginal and Torres Strait Islander people in policymaking, decision-making and implementation of programs affecting children; and
- Set up an Aboriginal and Torres Strait Islander leadership group to inform how each 'Closing the Gap' target for child development, well-being and protection are developed, implemented and reviewed.

► **LEADERSHIP IN MONITORING RIGHTS**

CONCERNS:

The lack of Aboriginal and Torres Strait Islander representation in tools and bodies for monitoring children's rights.

GOVERNMENT ACTION REQUIRED:

- Set up a Deputy Commissioner for our children's issues at national and/or state or territory level;
- Collect information on all areas of children's rights so we can identify areas of need.

► THE BEST INTERESTS OF THE CHILD

CONCERNS:

People don't know about the principles of the best interests of the child contained in the convention and this principle is not applied in decisions at all levels, from local to national.

GOVERNMENT ACTION REQUIRED:

Make sure everyone knows about this principle and include it in all policies, programs and projects that affect children.

► CHILDREN'S PARTICIPATION

CONCERNS:

There are not enough mechanisms that allow and support Aboriginal or Torres Strait Islander children to participate in decisions that affect them.

GOVERNMENT ACTION REQUIRED:

Promote participation of children at all levels of government and within the family, community, and schools. In particular the Government must support participation of vulnerable children.

► BIRTH REGISTRATION

CONCERNS:

There are still many obstacles to registering the birth of children, and parents are not aware of how to do it and why it is good to do it.

GOVERNMENT ACTION REQUIRED:

- Review of the birth registration processes to ensure registration of all children at birth;
- Awareness amongst Aboriginal and Torres Strait Islander peoples about the importance of birth registration;
- Birth certificates provided free of charge;
- Provide support to people with literacy difficulties.

► PRESERVING CULTURAL IDENTITY

CONCERNS:

A large number of Aboriginal and Torres Strait Islander children are separated from their homes and communities and placed into care with families where there is not enough support to ensure that they fully live their culture and language.

GOVERNMENT ACTION REQUIRED:

- Review implementation of the Bringing Them Home Report;
- Take action to make sure there is full respect for Aboriginal and Torres Strait Islander children's rights to their identity, name, culture, language and family relationships throughout the child protection system;

► PROTECTING OUR CHILDREN FROM FAMILY VIOLENCE AND CHILD ABUSE

CONCERNS:

There are high levels of violence against women and children.

GOVERNMENT ACTION REQUIRED:

- Develop laws to reduce violence;
- Adopt a plan of action to address the factors causing high levels of violence among Aboriginal and Torres Strait Islander women and children;
- Prioritise prevention approaches, (including before birth), to support highly stressed families and prevent abuse and neglect of children and family violence;
- Conduct a national review of strengths based best practice in policy and programs that prioritise positive reunification of children at the various stages of child protection decision-making. This includes intensive family support services.



CONCERNS:

There are inadequate programs to reintegrate child victims of domestic violence.

GOVERNMENT ACTION REQUIRED:

- Establish ways to ensure effective follow-up support for child victims upon family reintegration;
- Make a national data collection system to help understand violence against children.

► CHILDREN IN OUT OF HOME CARE

CONCERNS:

- Large numbers of Aboriginal and Torres Strait Islander children are placed into out-of-home care and outside their communities;
- Inappropriate placements, a shortage of care options and inadequate training, support and assessment of carers;
- Poorer outcomes for young people in care in relation to health, education, wellbeing and development;
- Abuse and neglect in care;
- Inadequate preparation and support for children leaving care.

GOVERNMENT ACTION REQUIRED:

- Examine the root causes of child abuse and neglect;
- Provide data on the reasons for placing children in care;
- Strengthen support to families in vulnerable situations to prevent or ease abuse and neglect of children.
- Give preference to family-based care;
- Develop criteria for the selection, training and support of child-care workers and out-of-home carers, and ensure their regular evaluation, and increase the no. of social workers;

- Ensure equal access to health care and education for children in care;
- Establish accessible child-friendly mechanisms for reporting neglect and abuse;
- Adequately prepare and support young people prior to them leaving care by early planning of transition and assistance afterwards;
- Fully implement the Aboriginal and Torres Strait Islander Child Placement Principle (repeated recommendation);
- Cooperate with communities to find suitable solutions for children in need of alternative care (repeated recommendation).

► HEALTH

CONCERNS:

- The gap in health status between Aboriginal and Torres Strait Islander and non-Indigenous children;
- Marked increases in the rates of Sexually Transmissible Infections (STIs), and particularly high levels for Aboriginal and Torres Strait Islander peoples, and low proportion of youth practicing safe sex.

GOVERNMENT ACTION REQUIRED:

- Take action to ensure that all children enjoy the same access to, and quality of, health services, with special attention to Aboriginal and Torres Strait Islander children and children living remotely;
- Take action to overcome poverty;
- Compulsory training in child rights for all health professionals;
- Provide adolescents with education on sex and reproductive health;
- Improve access to contraception, counseling, and confidential health services, particularly among Aboriginal and Torres Strait Islander communities.

► CHILDREN EXPERIENCING A DISABILITY

CONCERNS:

The current disability support system is under-funded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports.

GOVERNMENT ACTION REQUIRED:

- Strengthen support measures for parents to care for their children with disabilities;
- Address barriers around attitudes that limit participation of children with disabilities;
- Train all professionals working with, or for, children with disabilities;
- Make more effort to provide necessary disability specialists and funds at the local level;
- Promote and expand community-based rehabilitation programs, including parent support groups.

► MENTAL HEALTH

CONCERNS:

- Funding levels are far below other developed countries, creating limited access to services;
- Mental health is a leading health issue for children and young people;
- High rate of youth suicide, particularly for the Aboriginal and Torres Strait Islander community.

GOVERNMENT ACTION REQUIRED:

- Develop measures to address the causes of suicides and other disorders, which are linked to substance abuse, violence and poor care in out of home care;
- Allocate resources for improving the number and quality of early intervention services, training and development of professionals and support to parents;
- Develop specialised health services and targeted strategies for children at particular risk of mental health problems, and their families, and ensure accessibility for all diverse groups.

► HOUSING & HOMELESSNESS

CONCERNS:

High child and youth homelessness, and lack of culturally appropriate housing services for different groups.

GOVERNMENT ACTION REQUIRED:

- Develop specific strategies for housing for Aboriginal and Torres Strait Islander children;
- Improve support offered by social services to children at risk of homelessness, including in relation to education, income support, health, disability and employment.

► EDUCATION

CONCERNS:

Aboriginal and Torres Strait Islander children face barriers in accessing education, and have significantly lower rates of attendance. This means they have lower literacy and numeracy than other students.

GOVERNMENT ACTION REQUIRED:

- Develop individual Aboriginal and Torres Strait Islander education strategies based on previous policy success and with a long-term approach of collaboration with Aboriginal and Torres Strait Islander communities, the education sector, community organisations and professional groups;
- Provide adequate resources (teachers, materials and funding) to ensure bilingual models of education are available, both at national and state level;
- Ensure that children with disabilities receive education, and are included with others in schools to the greatest extent possible.



► EARLY CHILDHOOD EDUCATION AND CARE

CONCERNS:

The quality and coverage of care specifically impacting Aboriginal and Torres Strait Islander children.

GOVERNMENT ACTION REQUIRED:

- Prioritise holistic care for children between 0-3 years old;
- Consider free or affordable care to increase availability of services for all children;
- Ensure all providers come within the National Quality Framework.

► SUPPORT CHILDREN WITH PARENTS IN PRISON

CONCERNS:

Severe overrepresentation of Aboriginal and Torres Strait Islander peoples in prison, often leaving children in insecure alternative care, that is not culturally appropriate and with low rates of family reunification.

GOVERNMENT ACTION REQUIRED:

- Implement programs that address the causes of offending;
- Provide early intervention support services to families at risk to avoid imprisonment and separation from children;
- Where it is in the child's best interest, resource and support the relationship between parent and child while they are in prison.

► JUVENILE JUSTICE

CONCERNS:

The over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system and the failure of Australia's juvenile justice system to meet international standards.

GOVERNMENT ACTION REQUIRED:

- The Australian Government has said it does not have to apply article 37 (c) of the Convention which requires children to be held separately from adults while in detention. The Committee said Australia needs to apply this article to make sure children are separated in detention and in particular, remove 17 year olds from the adult justice system in Queensland;
- Ensure children and youth in detention can write to and be visited by their family;
- Review laws which allow police to remove children and young people gathering in groups peacefully;
- Abolish laws in Western Australia which allows the publication of personal details of children who carry out 'anti-social behaviour';
- Raise the minimum age of criminal responsibility;
- Respond to children and youth who have a mental illness and/or intellectual deficiency who are in conflict with the law without going through legal proceedings;
- Abolish mandatory sentencing laws that exist in Australia;
- Create a mechanism that is easy to use for investigating and addressing cases of abuse at youth detention centres.

What now?

This review is one step in a long term process of holding all Australian Governments accountable for the legal obligations that they have to respect, protect and fulfill the human rights of all children, including all Aboriginal and Torres Strait Islander children.

How effective these recommendations will be depends on how we all take responsibility and work together. There are many things that you can do to increase people's awareness of these issues and increase pressure on Australian Governments to provide appropriate support and address some of the issues outlined in this resource.

Ideas for action:

- Host information sessions in your community, service or network of service providers on what the Committee has said about Australia's child rights performance. Discuss what child rights issues are most important to your community or service and how you could do something together to change them.
- Decide on a priority issue in your service or community, and develop a strategy to bring the recommendations to life.
- Ask your local, state and federal government representatives how they are implementing the Committee's recommendations and addressing any concerns important to you.
- Use the Committee's conclusions and recommendations in your submissions, funding applications or discussions with Government and other actors to back up your position on different issues, and seek better support for your children.
- Document different cases where child rights problems arise in your community to develop an evidence base for future advocacy projects.
- Set up and trial a project that responds to one of the Committee's recommendations. Demonstrate that it works and then seek Government funding to expand it.
- Facilitate sessions with children at local schools on how they see their basic needs and what their priorities are.

- Work with children to develop their own booklets about their rights, about child rights concerns that are impacting them and about change they want to see happen. Check out the self-publishing kits on SNAICC's website on how to make these books!
- Provide a space for youth leadership and support young people to talk about and change issues that are affecting them.
- Develop ideas on how to better support children's participation in issues affecting them in your community or service.

The Secretariat of National Aboriginal and Islander Child Care (SNAICC) and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) are also developing some longer term proposals on how to take these recommendations forward. Get in touch with us and become involved. Some of this work will involve:

- Promoting good practice and positive changes happening out there through community action.
- Advocacy to improve laws and policies for genuine Aboriginal and Torres Strait Islander participation in child protection decision-making.
- Advocacy to improve laws and policies that contribute to the over-representation of Aboriginal and Torres Strait Islander children within the juvenile justice system.
- Advocacy for accessible, community controlled, integrated services for our children and families, whether early childhood education and care, or child and family support.
- Developing a relationship with the incoming National Children's Commissioner to bring awareness and attention to important child rights issues.



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