

Rights of children

NGO Coalition Fact Sheet 11 (LOIPR 20)

There are serious human rights issues with Australia's juvenile justice system.

Juvenile justice system (pages 57-59)

Treatment of children

Australian youth detention services are failing to protect the rights of children and provide for their rehabilitation. 80 per cent of children detained in Australia are in pre-trial detention.

Reports include the use of solitary confinement on children (one child was reportedly isolated for up to 45 days), extensive use of lockdowns in the detention centres (due to staffing issues), inappropriate use of force including inappropriate and unsafe use of restraint, inadequate facilities (including rusty toilets and mouldy showers), and widespread deficiencies in staff training. See page 57 for further details.

An example of such failure is the treatment of Dylan Voller, who as a child was detained in the Don Dale Youth Detention Centre. In one incident he was tear gassed, placed in a spit hood and strapped to a restraint chair by his ankles, wrist and neck for up to 2 hours (see page 58 for the full case study).

Australia should establish independent safeguards to defend the rights of children in detention, reflecting the best interests of the child, rehabilitation as the purpose, and prohibition of corporal punishment, and implement the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory nationwide.

Children with disability

Children with disability are under-diagnosed and over-represented in the juvenile justice system. In NSW, children with mental health disorders and/or cognitive impairment are 6 times more likely to be in prison than children without disability.

Australia should abolish the detention of children with disability, provide community-based therapeutic support services, and ensure that no child with a disability remains undiagnosed and/or untreated.

Children in adult detention

In Australia, children are repeatedly being held in adult facilities. This practice is specifically provided for in legislation.

As at 30 June 2015, there were 3 children in adult facilities in the Northern Territory and 58-60 children in Queensland.

In addition, the Northern Territory, Western Australia and Victoria have classified adult prisons as youth detention centres.

Australia should:

- **immediately remove children currently in adult facilities, and legislatively prohibit the placement of children in adult facilities in the future.**
- **immediately remove its reservation to article 10 in relation to the segregation of adults and juveniles in detention.**

Age of criminal responsibility

(pages 60)

Against human rights law, in Australia, the age of criminal responsibility is 10 years.

For children aged 10 and 14 years, a rebuttable presumption called *doli incapax* applies, where it must be proved that the child knew, or had the capacity to know that they ought not to have done the act or made the omission constituting the offence. In practice this is a very difficult resumption to rebut and 10-14 year olds are detained across Australia.

Aboriginal and Torres Strait Islander children made up more than 60% of all 10-11 year olds in detention in 2012-13, and 74% of all 10-11 year olds in 2014-15. And 79% of all 10-11 year olds in 2015-16.

Australia should increase the age of criminal responsibility from 10 years to 12 years nationwide, and retain the rebuttable presumption of *doli incapax* for 12-13 year old children.

Children's Court proceedings

(page 60)

Children who appear before Children's Courts routinely lack sufficient understanding of proceedings. This is because of overly complicated and formal court procedures, the over-use of legal jargon and insufficient time with counsel.

Australia should:

- ensure Children's Courts make proceedings more child-friendly.
- ensure Children's Courts review the formality of their proceedings and the content, language and structure of their documentation.
- commit to funding Children's Court duty lawyer schemes so that every child who appears is provided with adequate legal advice and representation.

Citizenship for refugee children

(page 57)

Children born in Australia to non-resident parents do not acquire Australian citizenship by birth. Hence, children born to asylum seekers in Australia may be stateless.

The law that provides for citizenship to be conferred to stateless children has a high standard of proof, suggesting it is rarely exercised.

Australia should exercise its obligations to confer citizenship to stateless children under section 21(8) of the Australian Citizenship Act 2007 (Cth).

Curfews and freedom of movement (page 61)

In 2015 it was reported that African-Australian and Pacific Islander communities in Victoria are deeply affected by racial policing. Not only do they feel vulnerable to police harassments and assaults, but they don't lodge complaints for fear of police retribution.

And an analysis of Victoria police's databases in 2013, found that African Australian men were two and half times more likely to be stopped and searched by police.

This analysis was part of a landmark case brought by a group of African-Australian men against several Victorian police officers, the Chief Commissioner and the State of Victoria. They claimed racial discrimination, on the basis that they were regularly stopped, assaulted and searched for no legitimate reason.

Australia should ensure the Western Australian Government repeals the Northbridge Curfew and the Queensland Government repeals the Miriam Vale curfew.

Birth registration (page 61)

Evidence shows that Aboriginal and Torres Strait Islander children face barriers to having their birth registered and obtaining a birth certificate.

Data from 2005 indicated that 13% of children born to Aboriginal and Torres Strait Islander mothers were not registered.

Australia should work cooperatively with state and territory governments through COAG to ensure comprehensive and universal access to birth registration and birth certificates for all children across Australia.