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The United Nations Convention on the Rights of the Child: Reflections on Australia's progress and challenges

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2024 marks the 35th anniversary of the United Nations Convention on the Rights of the Child (UNCRC; United Nations, 1989). When adopted by the United Nations General Assembly, the UNCRC was considered revolutionary as the first legally binding international treaty to comprehensively recognise children's human rights, including their rights to survival, development, protection and participation. It shifted global perspectives, positioning children as rights-holders rather than passive dependents, and provided a universal framework for advancing their wellbeing, dignity and agency. Australia ratified the UNCRC in 1990. It rapidly became the most ratified international human rights treaty.

In 2011, children and young people provided guidance in a collection of contributions collated by the Australian Children's Commissioners and Guardians to commemorate the UNCRC's 21st anniversary (Australian Children's Commissioners and Guardians &

Noble-Carr, 2011; hereafter ACCG Report, 2011). They argued that achieving their rights required measures to address both systemic barriers and societal attitudes:

Make children feel more important because even little kids need to be listened to (ACCG Report, 2011)

We have drawn from both the ACCG's report and the current insight of children and young people throughout this editorial.

A transformative framework

The adoption of the UNCRC was transformative, bringing a holistic vision of children's human rights to the forefront. It broke new ground by positioning children as full participants in society, not merely subjects of adult care and protection.

Australia has made some notable strides in progressing the vision outlined in the UNCRC. The establishment of Children's Commissioners across states and territories reflects a commitment

to prioritising the interests of children and amplifying youth voices. The first National Framework for Protecting Australia's Children (2009–2020) and its successor, Safe and Supported (2021–2031) (Department of Social Services, 2021), align with the UNCRC's vision, striving to ensure that every child grows up 'safe, connected, and supported in their family, community, and culture'. Both Frameworks explicitly draw on the UNCRC. Additionally, the launch of the National Early Years Strategy (Department of Social Services, 2024) signals the nation's recognition of the critical importance of children's first 2000 days and our obligations to children under international human rights treaties.

The Convention also spurred states and territories across Australia to adopt Charters of Rights for children in out-of-home care and to create platforms for youth participation (Bessell, 2010). At the Commonwealth level, the National Standards for out-of-home care were adopted in 2011, explicitly recognising Australia's responsibilities under the UNCRC (Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, 2011: p. 2). These measures reflect the lived experiences of children, who emphasise the importance of being heard (Bessell, 2011). As one child stated,

Listen ... and see our point of view, not just as children, but as a person (Qld, from ACCG Report, 2011)

Charters of Rights for specific groups of children are necessary and signal the influence of the UNCRC in Australia, but they fail to advance the rights of all children or progress the intent of the Convention to bring a rights-based approach to all policies and actions concerning children. Notably, as Tobin (2021) highlighted, only the Australian Capital Territory, Victoria and Queensland have adopted legislation to protect human rights across the population. These charters draw on international human rights treaties but not the UNCRC. This is worrying both because the transformative potential of the Convention has been ignored and because children's rights are siloed as separate from the human rights of the adult population. If the power of the UNCRC is to be realised, it is necessary to recognise that children's rights are not novel or an optional addition to human rights. Rather, all children are entitled to human rights and the Convention provides a means of understanding the specific nature of children's human rights that is often unacknowledged in other international treaties. While Charters of Rights for groups of children who are often subject to violations are essential, so too is the inclusion of children in all legislative efforts to promote human rights in Australia.

Progress in child participation

One of the most significant impacts of the UNCRC globally has been the gradual elevation of children's participation in decision-making. Article 12 recognises the right of children to express their views on matters affecting them and requires decision makers to give weight to these views when making decisions. Across Australia, youth advisory councils, participatory research projects and legislative changes have taken steps towards the implementation of this principle in practice.

Despite some progress, however, there remain deep challenges. Australia has not translated the UNCRC into domestic law and, as a result, the approach to children's human rights has been ad hoc. Moreover, a series of inquiries in Australia have demonstrated that the aspirations of the UNCRC and the recommendations from those inquiries have not been fully adopted (Stevens et al., 2024).

The challenge is twofold. The first lies in ensuring that children's input leads to meaningful change rather than tokenistic gestures. As a group of young people in care recently told the ACT Commissioner for Children and Young People, this requires seeing young people as those who policy decisions most affect:

We do not make a choice to be in care, but you make a choice to work with us. Be the person who makes a difference. Change doesn't have to be big; it can start with the way you listen (Scarcella, 2024: p. 5)

Second, there is a need for attitudinal change on the part of adults to ensure that children are recognised as full members of society, with the full suite of human rights provided for in the UNCRC.

Recent debates around banning children under the age of 16 from some social media platforms have highlighted the extent to which children are excluded from decision-making processes. Children and young people have commented on their lack of engagement in policy-making related to social media and its banning (Project Rocklt, 2024; ReachOut Australia, 2024).

On the surface, the debates around social media bans may appear to bring into conflict protection rights and participation rights, with legislation to restrict the access of people under 16 leaning heavily towards protection. Yet, deeper analysis points to the complementarity of these rights. Keeping children and young people safe online can only occur if we understand children's experiences of both the harms and the benefits of social media – and all that lies in between. This opens the way to strategies that are developed in collaboration with children and young people, rather than for them. While the perils of the online world are real, so too are the benefits, particularly for children and young people from marginalised groups for whom online communities provide connection and avenues through which they can have their say and access important information and education (Project RockIt, 2024; ReachOut Australia, 2024). Faith Gordon (2024) highlighted the work that children and young people already do in promoting peer education and online safety - something she describes as digital siblingship. This work is a powerful example of young people expressing their views on matters affecting them (views that have been largely ignored in the development of restrictions on social media access), and going beyond to demonstrate active, engaged citizenship. Amanda Third (2024) highlighted the possibilities of moving beyond a protectionist approach to work with children and young people to 'build the very best digital environments we can imagine'. Such an approach brings together protection and participation rights, rather than positioning them in tension with one another.

Persistent challenges

Despite progress, systemic challenges continue to undermine children's human rights in Australia. In our first editorial (Bessell et al., 2024a), we focused on the over-representation of Aboriginal and Torres Strait Islander children in care and issues of child poverty. In this editorial, we focus on other children's human rights concerns. These include the lack of services for children in 'the

middle years', child abuse and neglect, the treatment of children in detention, barriers to education and the need for child-focused responses to environmental challenges.

The missing middle years

The UNCRC stresses the need to provide support to children and families across childhood. However, advocates argue that middle childhood, spanning ages 6–12 years, is a critical developmental stage that is often overlooked in policy (Bessell et al., 2024b). While substantial investment in early childhood has laid strong foundations for younger children, the transition into middle childhood lacks the same focus, creating a 'missing middle' in Australia's child wellbeing framework (Redmond et al., 2016). The middle years are marked by increasing independence and exploration beyond the home, yet the participation of 6–12-year-old children in community and civic life often remains limited, leaving them feeling excluded and undervalued.

Children frequently highlight the importance of feeling respected and having trusted adults in their lives. As one child explained:

It's important for adults to listen, not just hear us but actually understand what we mean (ACCG Report, 2011)

Policies must extend beyond schools to create child-inclusive communities where children feel valued, safe and connected. Investing in these relationships is essential to bridging the gap between early childhood and adolescence, fostering wellbeing and a sense of belonging.

Youth justice: A system in crisis

The UNCRC outlines clear rights and protections for young people in youth detention to ensure their dignity, safety and wellbeing. Article 37 prohibits the use of torture, cruel or degrading treatment, and mandates that detention be used only as a last resort and for the shortest appropriate period. It requires humane treatment, including avoiding separation from adults unless it is in the child's best interest, and access to family contact. Notably, Australia has a reservation on Article 37, placing limits on the extent to which the Article will be implemented. Specifically, Australia's reservation uses geography and the reality of small populations spread across vast areas to justify incarcerating children in adult prisons, arguing that separating children may result in them being unable to maintain contact with their families. This disproportionately impacts Aboriginal and Torres Strait Islander children.

As recent inquiries have shown, the incarceration of children with adults and in adult facilities is a violation of their human rights and a cause of deep trauma. The recent report on the child justice system by Australia's National Commissioner for Children recommended that Australia withdraw its reservation to Article 37(c) (Australian Human Rights Commission, 2024).

Article 40 of the UNCRC upholds the right of children accused of breaking the law to be treated with respect and guarantees a fair hearing, legal assistance and support for reintegration into society. These provisions emphasise rehabilitation over punishment, aiming to safeguard the rights and future of young people in conflict with the law.

Australia's youth justice system remains a significant area of concern, as highlighted by the recent report of the National Children's Commissioner, 'Help way earlier!' How Australia can transform child justice to improve safety and wellbeing' (Australian Human Rights Commission, 2024). In the words of Anne Hollonds:

... tragically, by not addressing their human rights early on, and instead taking a punitive approach to their offending, we are essentially criminalising some of the most vulnerable children in Australia (Australian Human Rights Commission, 2024: p. 5)

In many jurisdictions, the minimum age of criminal responsibility remains set at 10 years, which is among the lowest in the world and contravenes international standards. Disturbingly, there has been recent backsliding in political commitment to reducing the minimum age of criminal responsibility in both Queensland and the Northern Territory. Reports of mistreatment in youth detention facilities reveal systemic failures to protect children's human rights under Article 37, while ongoing challenges have limited the capacity of often well-intentioned programs to embed rehabilitation into their work.

Children and young people in the youth justice system often take responsibility for their actions and seek trusted workers and programs to help them find new paths. As one young person reflected in their poem, 'Last Time':

Being kicked when I'm down,

no one knows what goes down,

back in [juvie] for doing crime that I defined.

Sitting writing what's on my mind,

it ain't no mystery

I'm going to get out and make it all history,

move on from living this life style

and make a better life.

Be a somebody instead of a no-body

make myself proud

not hang around the same croud.

I'm going to make this my last time I hope ...

this time around!!! (Tas., from ACCG Report, 2011)

Reforming the youth justice system to focus on rehabilitation and dignity is vital to supporting children's and young people's futures.

Child abuse and neglect: A national priority

The UNCRC provides comprehensive protections for children against harm through several key articles. Article 19 requires measures to safeguard children from all forms of abuse, neglect and violence. Articles 32, 33 and 34 address protection from economic exploitation, drug involvement and sexual abuse, respectively, while Article 35 mandates prevention of trafficking and abduction. Article 36 ensures protection from any harmful exploitation, and Article 37 prohibits torture, cruel treatment and

unlawful detention. Additionally, Article 39 guarantees recovery and reintegration for children affected by abuse, exploitation or conflict. Together, these provisions establish a robust framework to ensure children's safety, dignity and wellbeing.

Child abuse and neglect remain pervasive issues, impacting the safety, wellbeing and development of countless children in Australia. Despite significant progress in policy and practice, the rates of abuse and neglect are deeply concerning. In this Issue, India Bryce provides an update on the literature related to cumulative harm, building on her previous contribution to *Children Australia* (Bryce, 2018) . She argues that, despite some progress, proactive measures are required to better understand, prevent and respond to cumulative harm to ensure that vulnerable children do not slip through the cracks (Bryce, 2024).

Additionally, children who have experienced abuse or neglect but who do not enter care require environments that prioritise their safety and development. In their paper, Paton et al., (2024) present the Minimum Practice Standards for Specialist and Community Support Services Responding to Child Sexual Abuse, which addresses significant gaps in the consistency and quality of services across Australia. They observe that the standards, informed by extensive consultation with survivors, practitioners and researchers, focus on trauma-informed, culturally safe and survivor-centred care.

Domestic and family violence (DFV), of which children are not merely bystanders but victim—survivors in their own right, commonly occurs together with other forms of child maltreatment, including physical abuse, emotional abuse and/or neglect. In this issue, Ulrike Marwitz and co-workers present results of a case-file analysis that aimed to better understand the characteristics of DFV in families involved with statutory child protection services. They found that distinguishing between coercive control and situational couple violence, different types of violence characterised by different dynamics and requiring different interventions, may help child protection workers to identify appropriate interventions and supports for families impacted by DFV where children are at risk or have been harmed (Marwitz et al., 2024).

Education: Unlocking potential

Education is a cornerstone of the UNCRC, ensuring children's right to develop to their fullest potential. However, barriers such as inadequate support for marginalised children, inconsistent access to quality education and issues with inclusivity hinder progress. A child's view, included in the ACCG report (2011) captures the significance of education:

You just need to embrace education. Knowledge is power in this world, seriously (WA, from ACCG Report, 2011)

Ensuring schools are inclusive, nurturing environments is essential. As another young person shared:

My teacher never gave up on me. If they don't give up on you ... you don't give up on you (SA, from ACCG Report, 2011)

However, the rising number of young people who are disengaged or otherwise absent from school represents a growing concern for families, educators and policymakers. Chronic absenteeism can stem from various factors, including mental health challenges, bullying, family instability or disengagement with the education system (Mills et al., 2021). Post-COVID, we are seeing an increase in the numbers of children and young people experiencing anxiety and depression and growing wait times to access services and supports (Li et al., 2022). As one young person noted,

I get embarrassed when I have to ask questions. It's easier to be thought of as trouble rather than stupid (SA, from ACCG Report, 2011)

Such experiences highlight how feelings of exclusion or inadequacy can push students away from learning environments.

The consequences of school absence extend beyond academics, impacting young people's social development, future opportunities and sense of belonging. Addressing this issue requires systemic action to foster inclusive, supportive school cultures and provide targeted interventions for at-risk students. Schools must strive to be safe spaces where every child feels valued and motivated to participate.

Climate change: A growing threat

When asked about their key worries and concerns, children and young people often talk about their fears related to climate change and note how this affects their mental health, wellbeing and civic engagement (or a lack of it) (Godden et al., 2021; Sciberras & Fernando, 2022; Teo et al., 2024).

Climate change is intrinsically linked to the UNCRC, which outlines children's human rights to survival, development, protection and participation (United Nations Committee on the Rights of the Child, 2023). Climate change threatens these rights by exacerbating environmental risks that compromise children's health, safety and access to essential resources like clean water, food and education. Article 24, which guarantees children the highest attainable standard of health, is jeopardised by rising temperatures, extreme weather events and pollution.

Additionally, Articles 27 and 28, which focus on adequate living standards and education, are undermined as climate impacts disrupt communities and access to schooling. Recognising the disproportionate vulnerability of children to climate-related harms, the UNCRC underscores the need for governments to take urgent and inclusive climate action to safeguard children's human rights and empower them to participate in decisions that shape their future. As one young person told the Commissioners:

Climate change is an issue ... it is actually going to affect our generation whereas it is older people who are making the decisions (WA, from ACCG Report, 2011)

Responding to children's concerns and engaging them in shaping climate policy, while prioritising sustainability in national strategies, are essential for securing their future.

Progressing children's human rights

The UNCRC provides a framework for transforming how children's human rights are perceived, prioritised and acted upon. As children remind us, achieving these rights is not just about legislation, but about fostering environments where every child feels valued, heard and supported:

A loving, caring family is what everyone needs (ACCG Report, 2011)

In Australia, there has been significant progress since the ratification of the UNCRC but that progress has often been slow and ad hoc. The language of rights has infiltrated policy and shapes practices in ways that would have been unimaginable prior to 1989, yet rights violations, particularly among marginalised children and young people, remain far too common - and the language of rights rings hollow. Children and young people, including those with disability and from culturally and linguistically diverse backgrounds, are often at particular risk of rights violations. As discussed in our previous editorial, very deep challenges continue to be faced by Aboriginal and Torres Strait Islander children and young people, those living in poverty and those who have experienced child maltreatment (Bessell et al., 2024). Shifting from what Tobin (2021) has described as a superficial or rhetorical approach to substantive embrace of rightsbased approaches is urgently needed.

Work in Australia and abroad has also demonstrated that young LGBTQIA+ people continue to encounter prejudice and have their children's human rights undermined. In this Issue, Theo Boltman draws on their lived experience to highlight systemic challenges that undermine transgender young people's rights under the UNCRC (Boltman, 2024). Delays in gender-affirming health care and harmful political debates, such as those around the Religious Discrimination Bill, compromise young people's rights to education (Article 28) and protection (Article 32). These barriers exacerbate mental health struggles and highlight the need for timely, affirming care. Theo argues that governments must prioritise inclusive policies, equitable funding and culturally sensitive practices to uphold the rights and wellbeing of gender-diverse young people.

Systemic barriers continue to hinder the full realisation of children's human rights. Addressing these challenges requires a collective commitment from governments, organisations and communities.

In this Issue, we are delighted to present the first of a series of papers from a Special Edition drawing from the 'Children, Trauma and the Law' conference held at Southern Cross University, Lismore, NSW, on 12 and 13 October 2023.

In their paper, Actioning Children's human rights in Out of Home Care in NSW: A focus on the right of family connection, Forrester and Byers highlight the value of implementing rights-based casework. Emphasising the value of family connection and traumainformed approaches, they critique risk-focused practices and call for relational strategies to prioritise healing. The Family is Culture report underpins recommendations for collaboration and empathetic engagement to support children's wellbeing effectively (Forrester & Byers, 2024).

In her commentary, long-term children's human rights advocate, Judy Cashmore, considers procedural justice in child protection processes and emphasises the significant impact of decision

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making on children and families, highlighting the critical need for fairness, transparency and participation. Grounded in Article 12 of the UNCRC, which advocates for children's human rights to voice their views, the paper underscores the importance of engaging children meaningfully in these processes to enhance trust, reduce trauma and improve outcomes. The principles of procedural justice – neutrality, trustworthiness, participation and respectful treatment – are vital for fostering legitimacy and collaboration within the system. However, systemic barriers, such as opaque decision making and limited feedback mechanisms, hinder the realisation of these rights. To address these gaps, Cashmore advocates for relational approaches that prioritise respect, understanding and culturally appropriate practices, aligning with international standards to support children's safety and wellbeing effectively (Cashmore, 2024).

In their paper, 'We have a part to play', Moore and McArthur (2024) share the insights that they learned from Tasmanian children and young people. Participants in their study shared ideas on how they would like to work with adult allies and organisations and to play a role in the prevention of maltreatment. By both providing mechanisms through which children can be protected from harm while working with them to prevent abuse, children's 'protective participation' is an enactment of Articles 3 and 12. Moore and McArthur make the point that the responsibility for preventing abuse should never sit on the shoulders of children and young people – but that to be protective, adults and organisations must be guided by want children and young people tell us they need.

Final thoughts

Children Australia is delighted to present this second edition and to further promote discussions about children's human rights in Australia. We thank the contributors for their thought-provoking work and the significant part that they have played in progressing children's human rights, their safety and wellbeing.

Once again, we thank our stellar Editorial Board, our wonderful authors and reviewers and the Centre for Excellence in Child and Family Welfare for their support of the journal. We look forward to another fruitful year in 2025.

We conclude our editorial by supporting the view of a child who shared their thoughts for the 21st Anniversary of the UNCRC:

I believe that a happy childhood is filled with hopes and dreams. A happy childhood is something that a person should remember for the rest of their lives. A childhood should be the best part of someone's life (ACT, from ACCG Report, 2011)

Let this be the vision that guides our ongoing journey as advocates for children and young people.

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