



## 2011 Child Rights NGO Report Australia

### Youth Participation

*Young people will inherit the consequences of today's decisions and I think that gives them the right to be heard - 17 YEAR OLD MALE, TASMANIA*

Our consultations with children reveal a desire to be heard on matters that affect them. There continues to be concern about the insufficient weight that is attributed to children's views in the decision making process.

#### **SUPPORTING GROUPS OF CHILDREN TO BE HEARD**

##### **Students**

The Australian education system presently lacks consideration of children's views in policy formulation. Increased student participation is highly encouraged in order to improve and better inform education and training policy and program development.

##### **Aboriginal Children**

Aboriginal children are suffering some of the most serious rights abuses under the Convention on the Rights of the Child (CRC) and it is therefore paramount that their voices be heard. Unfortunately, the *Northern Territory Emergency Response* and *Closing the Gap* strategies demonstrate the lack of government consultation and involvement with Aboriginal children<sup>1</sup> and their communities in decisions that directly affect them.

##### **Children with a Disability**

Currently there is no national, comprehensive approach to seek the views of children with disabilities. Formulation of a comprehensive, national approach for the meaningful participation of children with disability in policy and program development is crucial.

**Recommendation:** Australia should develop comprehensive strategies to ensure that Aboriginal children and children and young people with a disability can fully and equitably participate in consultations, decision-making processes and policy developments that affect their lives.

**Recommendation:** Australia should better resource child advocacy bodies to listen to the views of children to better increase the input of children in policy development and implementation.

**Recommendation:** Australia should commit to creating institutions and mechanisms to enable the inclusive, transparent and respectful participation of children in the development, implementation and evaluation of laws, policies and programs that affect them.

#### **SUPPORTING INDIVIDUAL CHILDREN TO BE HEARD**

##### **Alternative Care**

State and territory legislation preserves the principle of children's participation in decisions made concerning them, the right to adequate information and assistance in expressing views, as well as the power of the court to order separate legal representation for the child. However, in the absence of independent evaluation there is little evidence to adequately assess the reality of children's participation in alternative care settings and processes.

##### **Youth Justice**

Children have the capacity to make profound contributions to the improvement of the justice system, yet there are only a few avenues available for them to express this. In addition to the need to ensure an increase in the participation of children, particularly those of migrant or Aboriginal background, additional funding and training of participants in the legal system, including children's lawyers is needed to secure greater equity.

##### **Family Law**

Significant efforts have been made to allow for the voices of children to be heard in court, as well as in out of court processes.

Child-inclusive and child-focused mediation are used in out of court proceedings to present parents with the child's views in a safe and effective manner that benefits both the parents and the child.

Independent children's lawyers may represent children in special circumstances, particularly in complex cases. However, this does not occur as a matter of right and is often limited by a lack of government funding.

It is rare for children to actually communicate their views to the judge and even more rare for the child to be present in court or give evidence directly to the court.

**Recommendation:** Australia should ensure that its children and young people and especially its Aboriginal children and children with disability, have access to both the non-legal and legal advocacy support necessary to ensure their full participation in the legal administrative process affecting them, particularly in:

- care proceedings and out-of-home care settings;
- criminal proceedings and juvenile justice settings;
- family law proceedings and settings; and
- civil law areas, such as education, discrimination and bullying.

## IMMIGRATION

At present, children who arrive with their families are not interviewed separately by immigration authorities. In the event that separate interviews do take place, it is important that officials are able to conduct such interviews in an appropriate manner. Inconsistencies in the funding and provision of legal services also need to be addressed, particularly in cases where the initial application was declined.

**Recommendation:** Australia should amend the *Migration Act 1958* (Cth) to incorporate its obligations under Article 12 of the CRC.

For more information see the full *Listen to Children* Report at [www.childrights.org.au](http://www.childrights.org.au)

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<sup>i</sup> Throughout the NGO Report, Aboriginal and Torres Strait Islander children are referred to as 'Aboriginal children.' The authors acknowledge the diversity in culture, language, kinship structures and ways of life within Aboriginal and Torres Strait Islander, and recognise that Aboriginal peoples and Torres Strait Islander peoples retain their distinct culture, irrespective of whether they live in urban, rural, regional or remote areas of the country.