

NSW Ombudsman's Statement of Commitment to children's rights

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1. Background to this Statement

The NSW Ombudsman is fully committed to upholding the legal and human rights of all children and promoting their safety, welfare and wellbeing in its processes, decisions and actions. This Statement is in addition to the NSW Ombudsman fully adhering to all relevant statutory obligations, such as relating to privacy, anti-discrimination and reporting of criminal offences and child protection concerns.

The NSW Ombudsman models good administrative conduct and holds itself to the same standards it expects of public authorities and community service providers. This includes ensuring the office's processes, decisions and actions are not improperly discriminatory, wrong or contrary to law,¹ and uphold principles under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA) applicable to service providers, including that:

- the paramount consideration in providing a service for a person must be the best interests of the person
- a person who is eligible to receive, or receives, a community service is also to receive an adequate explanation of the service, is to be heard in relation to the service and may question decisions or actions that affect the person in relation to the service
- a service provider is to promote and respect the legal and human rights of a person who receives a community service and must respect any need for privacy or confidentiality.²

The Australian Government has agreed to uphold key international human rights for children and young people, including those set out in this Statement of Commitment. Through this Statement, the NSW Ombudsman has decided to uphold, as a matter of policy, these human rights in every interaction with children and young people to the fullest extent possible.

This commitment refers to children as persons under the age of 18 years old.³

2. Key human rights for children and young people

2.1 Convention on the Rights of the Child

In 1990, the Australian Government signed and agreed to uphold the *Convention on the Rights of the Child* (1990).⁴ It protects the fundamental human rights and dignity of children.

The core rights and principles are:

- **Right to non-discrimination:** all children, regardless of race, ethnic or social origin, gender, nationality or disability, are entitled to the same rights (Article 2)
- **Best interests of the child:** in all actions concerning children, their best interests must be the primary consideration (Article 3 and 18)

¹ See *Ombudsman Act 1974* (NSW), s 26.

² *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA), s 3(2).

³ This is consistent with CS-CRAMA; Article 1 of the United Nations Conventions on the Rights of a Child - Article 1, [Convention on the Rights of the Child | OHCHR](#); NSW Child Safe Standards, [Children's Guardian Act 2019 No 25 - NSW Legislation](#)

⁴ Australia ratified this Convention in December 1990 to the extent that it is unable to comply with the obligation imposed by article 37(c) (separation of children from adults in prison) – see [UN Status of Ratifications](#); [About Children's Rights | Australian Human Rights Commission](#). [The CRC can be accessed online here.](#)

- **Right to life, survival and development:** every child has the inherent right to life and countries must ensure the survival and development of the child to the maximum extent possible (Article 6)
- **Respect for the views of the child:** children have the right to express their opinions and participate in decisions affecting their lives in a manner appropriate to their age and maturity. (Articles 5 and 12)
- **Right to privacy:** protects children from arbitrary interference with their privacy, family, home or correspondence (Article 16)
- **Right to protection from abuse, exploitation and violence:** protects children from all forms of physical or mental violence, injury, neglect, abuse or exploitation (Articles 19 and 32-36)
- **Right to periodic review of treatment:** when placed away from their family for the purposes of care, protection or treatment, children have the right to periodic review of the treatment provided to them and all other circumstances relevant to their placement (Article 25)
- **Rights of children with disabilities:** children with disabilities are entitled to special care and assistance for achieving independence (Article 23)
- **Right to enjoy culture:** children have the right, in community with other members of their group, to enjoy their culture, profess and practice their religion or use their own language (Article 30).

2.2 Convention on the Rights of Persons with Disabilities

In 2008, the Australian Government signed and agreed to uphold the [Convention on the Rights of Persons with Disabilities](#) (2006).⁵ It protects the fundamental human rights and dignity of people with disability, including children with disability.

Relevantly, the core rights and principles are:

- **Right to non-discrimination:** children with disabilities are entitled to equal protection under the law and measures must be taken to eliminate discrimination based on disability. This ensures that they enjoy the same rights as all other children, regardless of their disabilities (Article 5)
- **Best interests of the child:** in all actions concerning children with disabilities, their best interests must be the primary consideration (Article 7)
- **Respect for the views of the child:** children with disabilities have the right to express their opinions and participate in decisions affecting their lives in a manner appropriate to their age and maturity on an equal basis with other children, including by being provided with disability and age-appropriate assistance to release that right. (Article 7)
- **Measures to ensure accessibility:** appropriate measures must be taken to ensure accessibility to the physical environment, information and communication for children with disabilities to enable them to fully participate in decisions and everyday activities alongside their peers (Article 9).

⁵ Australia has also signed the Optional Protocol in 2009. [Australia signed the Convention with a declaration – see here.](#)

2.3 The Declaration on the Rights of Indigenous Peoples

In 2009, the Australian Government made a formal statement of support for the [*Declaration on the Rights of Indigenous Peoples*](#) (2007).⁶ It is a framework that protects the collective and individual rights of Indigenous peoples worldwide, including Aboriginal⁷ children. It acknowledges the distinct cultural, social, political and economic rights of Indigenous communities, including their right to self-determination.

Relevantly, the core rights and principles are:

- **Right to self-determination and autonomy:** Aboriginal children have the right to self-determination and to maintain their own institutions, laws and systems. For children, this includes the right to grow up in an environment that nurtures their indigenous identity, values and traditions (Articles 3, 4 and 5)
- **Right to participate in decisions affecting them:** Aboriginal children have the right to participate in decision-making processes on matters that affect their lives, their communities and their rights (Article 18)
- **Right to culture and identity:** Aboriginal children have the right to practice, revitalise and preserve their culture, customs, traditions and languages (Articles 11, 13 and 14)
- **Attention to rights and special needs:** particular attention must be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities (Article 22).

3. We commit to upholding the rights of children

The NSW Ombudsman's office commits to upholding the legal and human rights of all children and promoting their safety, welfare and wellbeing in its processes, decisions and actions.

Our services are designed to be inclusive, accessible and safe, recognising the diverse needs of every child and family we serve. We strive to create environments where all children feel safe, respected and supported, regardless of their background, abilities or circumstances.

We believe that every child has the right to protection, participation and provision of services that promote their best interests. To this end, we will continuously work to remove barriers, adapt services to meet unique needs and foster inclusive practices that empower children and their families. By doing so, we ensure that every child receives the care, support and opportunities they deserve to thrive and reach their full potential.

We will handle our statutory functions affecting children in a way that empowers children to realise their legal and human rights.⁸

⁶ Australian Human Rights Commission, [UN Declaration on the Rights of Indigenous Peoples Booklet](#), p.3.

⁷ We use the term Aboriginal to be inclusive of both Aboriginal and Torres Strait Islanders.

⁸ Adapted from [Child Friendly Complaints-handling Principles \(sps.org.uk\)](#)

4. We uphold the rights of children through adherence to guiding principles across functions

In exercising our broad range of statutory functions, we will:

- ensure our services are free from practices that may unlawfully discriminate⁹ against a person on the basis of age, disability or cultural heritage
- take actions, make decisions, and make recommendations only in the public interest, and in doing so give due consideration to the best interests of individual children affected by our processes, decisions and actions
- elevate the voices of children in the care of the State, in recognition of their need for special care, assistance and protection
- listen to the views of children and support them to participate in decisions
- respect their right to privacy
- respect their right to be free from abuse, exploitation and violence
- pay attention to the needs of children with disability
- pay attention to the rights and needs of Aboriginal children, families, communities and organisations
- ensure our staff receive appropriate training and support to meet the needs of the people we serve.

The draft [NSW Ombudsman Practice Guide for Interacting with Children and Young People](#) sets out the application of these principles across the Ombudsman's functions.

5. Ombudsman approval

Paul Miller
NSW Ombudsman
Date:

⁹ For example, s 21 of *Anti-Discrimination Act 1977* (NSW) exempts from racial discrimination anything done in affording persons of a particular race access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.