

GLOBAL **NEXTGEN** INDEX

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End Child Detention Scorecard

AUSTRALIA

Published August 2018 using information compiled between November 2017 – May 2018, based on the most up-to-date reports and analysis available.



FINAL SCORE

47

There is a well-established practice of using alternatives to detention on Australia's mainland. This practice has reduced the number of children in mainland detention facilities to a minimal level. These well-established programs achieve government objectives while saving money and protecting children's health and wellbeing. As a result, currently there are very few children detained on Australia's mainland.

However, Australia has an offshore processing agreement with the country of Nauru, which holds more than 20 children in detention centres on behalf of the Australian government and 137 children live in the community in Nauru.

Australia could improve its score by utilising alternatives to detention across all immigration facilities, and through clear articulation of these practices within policy and law.

	Australia	Possible
Treaties	18	20
National laws	0	10
Processing	13	26
Placement	7	12
Rights	9	20
Oversight	7	12
Sub Total	54	100
Points off	-11	-15
Bonus points	+4	+15

Treaties 18/20

Australia has ratified four of the six Conventions and Protocols that assist in the protection of children in the context of migration. Australia recently ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides an important avenue of oversight for places where people are detained.

Recommendation: The Government of Australia is commended for its efforts to ratify OPCAT. Additionally, the government is encouraged to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

National laws 0/10

Currently, Australia does not have any laws that prevent the immigration detention of children.

Recommendation: The Government of Australia is strongly encouraged to immediately reflect current mainland practice of alternatives to detention into law. Additionally, the government is encouraged to

undertake legal and policy reforms to ensure no children are detained in immigration facilities on behalf of the Australian government in the future.

Processing 13/26

Australia has a number of policies and practices that enable the processing of children in a manner that is sensitive to their needs, such as the Procedures Advice Manual (PAM) for age determination of asylum seekers and boat crews. A Best Interest Determination process is undertaken for most, if not all, children in Australia, however there are significant concerns regarding the implementation of the Best Interest Determination.

Some practices however are clearly not in the child's best interest. As of 22 March 2014, minors who arrive in Australia by boat are barred from proposing their family for resettlement to Australia. While the Australian government recognises that family reunion would be in the best interest of minors, it considers that this is outweighed by the need to maintain the integrity of Australia's migration system by deterring minors from taking boat journeys. The guardian of unaccompanied children in Australia is the Immigration Minister, who is the same authority responsible for the child's migration determination and detention.

Recommendation: The Government of Australia is strongly encouraged to accurately apply the best interests of the child in a manner that supersedes migration status, consistent with international human rights obligations. Additionally, the government is encouraged to strongly consider the right for children to live with their families as being integral to their health and wellbeing. Further, the government is encouraged to develop guardianship arrangements independent of the migration process, in order for integrity to be maintained within guardianship decisions and the best interests of the child.

Placement 7/12

Australia has worked to reduce the number of children held in detention facilities by establishing alternative options. These well-established programs achieve government objectives while saving money and protecting children's health and wellbeing. Alternatives are already being widely used. Less than 5 children are currently held in detention facilities out of the 3,450 children currently in Australia with unresolved migration status – that's only 0.1% of all cases currently in Australia. Further, community options are at least 60% cheaper than immigration detention. Significantly, previous Labor and Liberal Ministers for Immigration have stated that holding children for prolonged periods in detention centres does not deter people smugglers or asylum seekers.

The government endeavours to place families with children in community options, either through a Residence Determination (colloquially referred to as "community detention") or through the grant of a Bridging Visa. However, all these placements are subject to reporting requirements and, at times, restrictions on work rights. In addition, bridging visas must be renewed on a regular basis and the renewal process is experienced as a looming threat.

Recommendation: The Government of Australia is commended for its commitment to placing children in community options, and with their family when possible. However, the government is strongly encouraged to consider the impact of current reporting requirements and restrictions, and adapt programs in order to improve the quality of life under these placement options.

Rights 9/20

Australia provides for basic rights of some populations to be met, although the experiences of those children who are unaccompanied and in families who are living under 'Community Detention' arrangements and families on a Bridging Visa E (BVE) are vastly different. Unaccompanied children and children and families who are placed in 'Community Detention' have access to shelter, food and healthcare, but their parents do not have access to work rights, which has a significant psychological impact on the family unit.

Families on BVEs have to rent their own housing through the private housing market, with very limited access to income support that is insufficient for the price of housing in Australia. Those in this category are at a high risk of homelessness, and if work rights have been allocated, access to the job market, skills and qualification needs create significant barriers. In 2018, the Australian government severely restricted the eligibility criteria for accessing income support (Status Resolution Support Services, SRSS) putting many children and their families at risk of homelessness and destitution.

Children in both situations can attend school, although access to higher education is limited. No firewall legislation exists within Australia - which has led to situations such as the Department of Immigration utilising information from service providers and police to detain people on the basis of breaching the Code of Conduct.

Recommendation: The Government of Australia is encouraged to improve its commitment to upholding the rights of migrant children. The government is strongly encouraged to develop policies and programs that ensure families are supported to be self-sufficient, and have access to social assistance and welfare support.

Oversight 7/12

In Australia, immigration detention is a mandatory action implemented by an immigration official to fulfil a process established by law. There is no judicial review or control of decisions to detain, and no time limit on the length of detention. Currently several independent bodies can monitor immigration detention although only the Human Rights Commission reports publicly and none of the recommendations of any monitoring body are legally binding. Immigration detention statistics are regularly published with information about age, sex, ethnicity, placement, length of detention and reason for detention. Statistics published do not report on the length of time children are detained.

Recommendation: The Government of Australia is commended for ratifying OPCAT, and is strongly encouraged to introduce judicial control of detention decisions to ensure appropriate checks and balances on the decision to detain. The government is also commended for its commitment to publishing immigration detention statistics, however the government is encouraged to develop transparency regarding the length of time children are detained as well.

Points off -11/-15

The average number of children detained by Australia from December 2016-17 was around 47, less than 5 in onshore detention centers and 42 in offshore detention in another country which Australia has an agreement with, Nauru. Under Australian law there is no legal limit to the time a child can be held in immigration detention, and reports have shown that children have been held in detention for a concerning amount of time - an average of 231 days, according to the Australian Human Rights Commission report published in March 2014. Australia is known to maintain a policy to intercept boats at sea and return the people on board to the country of departure, which is usually Indonesia. Indonesia detains children who do not have legal status in that country. This interception policy has also resulted in reported incidences of detention at sea. Children who are born in Australia to parents who have arrived by boat are considered an Irregular Maritime Arrival, which impacts their ability to access services and places those children at risk of being Stateless.

Recommendation: The Government of Australia is strongly encouraged to abolish the detention of children, in law and in practice, in both onshore and offshore locations. Notwithstanding this recommendation, the government is encouraged to end transfer and return practices, and to end the discriminatory policy of determining legal status based on method of entry into the Australian territory.

Bonus points +4/+15

Australia was one of the UN Member States that committed to "working towards" ending detention of children as part of New York Declaration. The Australian Government made efforts to considerably reduce the number of

children in detention onshore. The Australian Prime Minister Turnbull has stated that "one child in detention is one too many" and the Minister for Immigration and Border Protection has directed the Department that "we are to have zero children in immigration detention". However, this political will is yet to be translated into legislation to ensure that future governments are mandated to replicate this practice.

Recommendation: The Government of Australia is encouraged to develop legislation that ensures all children are protected from immigration detention both onshore and offshore, reflecting the well-established practice in Australia of supporting children in alternatives to immigration detention on the mainland.

This scorecard has been assessed by the Australia NextGen Index Committee:

- Refugee Council of Australia
- Centre for Asylum Seekers Refugees and Detainees
- The End Child Detention Coalition

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:

media@endchilddetention.org

Additional Resources & Information

Treaties & National Laws

- [Migration Amendment](#) (2014 Measures No. 1) Regulation 2014
- [Commonwealth Ombudsman to be National Preventative Mechanism Coordinator for OPCAT](#)
- [List of Treaties Ratified by Australia](#)
- Edwards, A. (201). Geneva, UNHCR.
 - [Back to basics: The right to liberty and security of person and 'alternatives to detention' of asylum-seekers, stateless persons, and other migrants.](#)

Statistics

- [Australian Border Force from December 2016-December 2017](#)
- Department of Home Affairs (2018). Canberra: DHA
 - [Immigration detention and community statistics: 31 January 2018.](#)

Conditions & Case Studies

- [AHRC's Forgotten Children report](#) Case Study 9 (p.169)
- Federation of Ethnic Communities Council of Australia
 - [Australia's Growing Linguistic Diversity: An opportunity for a strategic approach to language services policy and practice](#)
- Sampson, R., et al. (2015). Melbourne, International Detention Coalition.
 - [There are alternatives: A handbook for preventing unnecessary immigration detention \(Revised\).](#)
- Mares, S. (2015). "Fifteen years of detaining children who seek asylum in Australia – evidence and consequences." *Australasian Psychiatry* **24** (1):11-14. doi: 10.1177/1039856215620029.
- Rowcliffe, C., et al. (2016). "The impact of detention on children and adolescents." *Journal of Paediatrics and Child Health* **52**(9): 912-913.
- Mares, S. and J. Jureidini (2004). "Psychiatric assessment of children and families in immigration detention - Clinical, administrative and ethical issues." *Australian and New Zealand Journal of Public Health* **28**(6): 520-526.