

Children's right to identity in Australia

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While there are many identity rights issues that are relevant to Australia, this brief focuses on a few prominent areas that require urgent attention and accountability on behalf of the country.

1 Creation of identity

- While birth registration rates are high in Australia, there are some groups that can fall through the gaps. UNICEF Australia in 2024 noted that '[o]n average, 12,600 births go unregistered each year in Australia, with delays disproportionately affecting babies born in remote areas, babies born in areas of socioeconomic disadvantage, First Nations babies and babies born to mothers under the age of 25'.¹
- A promising practice is the Pathfinders National Aboriginal Birth Certificate programme, which supports Aboriginal and Torres Strait Islander (ATSI) peoples with applications for free birth registration and birth certificates.²
- The Peter McMullin Centre at the University of Melbourne notes that 'as of 30 September 2025, there were 628 stateless children on visas in Australia; 29% of the overall known stateless population. The majority of these stateless children were on visas within the Refugee and Humanitarian Program (374 on 200 Refugee visas and 100 on 202 Global Special Humanitarian). 48 had been granted an 851 permanent Resolution of Status visa'.³ The Centre further notes that 'stateless children consistently account for a significant number of minors held in immigration detention'.⁴

2 Modification of identity

Alternative care:

- Official statistics show that 'around 1 in 42 (137,000) Australian children aged under 18 came into contact with the child protection system. About 1 in 154 (37,900) Australian children aged under 18 became subjects of substantiated maltreatment. That is, an investigation concluded that they were being, or were at risk of being, maltreated' in 2024-2025.⁵ There is a significant over-representation of ATSI in care, with available figures from 2023, showing that around 19,700 ATSI children were in out-of-home care, where children aged 10–14 years made up the largest proportion of children in out-of-home care (31% or around 6,200 children).⁶ Moreover, 2021 research notes poorer outcomes for ATSI children where Stolen Generation groups are 'more likely to be worse off than other Indigenous Australians of the same age on a range of health and socioeconomic outcomes', including being 1.5 times more likely to be receiving government payments as main income source and a high proportion having multiple long-term health conditions.⁷
- The Bringing Up Aboriginal Babies at Home programme is a promising initiative that can contribute to preventing the high numbers of infant removals among ATSI communities by 'activating extended networks of formal and informal supports, and close collaboration with antenatal and child protection services'.⁸

Adoption:

- For domestic adoptions, States and Territories have their own laws. Work has been carried out to address historic past domestic adoption practices, particularly for single mothers, including a redress scheme for forcible removals.⁹
- There are several current promising domestic adoption practices, particularly in New South Wales, including a culture of openness and encouraging full respect of the child's identity at birth. Positively, legislation facilitates 'successful' openness by clearly outlining the adoption triad's rights, access to information, how registers operate, and reunions.¹⁰ Other factors facilitate openness, such as having a well-functioning regulatory body via the Office of Children's Guardian¹¹ and a code of practice. Adoption orders have to be approved the Supreme Court, where judges systematically check that openness is part of the adoption plan. The University of Sydney has developed tools including research, publications and online training on 'supporting children's connections to family and culture when they are in out-of-home care in collaboration with researchers, experts and practitioners in [New South Wales] and internationally'.¹²
- For both domestic and intercountry adoptions, there is no systematic availability, nor provision, of post-adoption support. Such services are needed to support ongoing relations with the child's birth and extended family, as well as continuity in the child's ethnic, religious, cultural and linguistic background (Art. 20(3) of the UNCRC).

Third-party reproduction and surrogacy:

- The Victorian *Assisted Reproductive Treatment Act 2008* (ART Act) and the *Assisted Reproductive Treatment Regulations 2019* (Regulations) are robust examples of legislation that allows for the full preservation of the child's identity in third-party reproduction. The Victorian Assisted Reproductive Treatment Authority (VARTA) was set up as a statutory authority established to undertake a range of functions set out in these Acts – a world leading example of how to support persons born through donor conception until 31 December 2024,¹³ when the Victorian Ministry of Health took over VARTA's responsibilities.
- While altruistic surrogacy is permitted in Australia, commercial surrogacy is prohibited in its law.¹⁴ However, in practice, Australia indirectly allows international arrangements where residents undertake surrogacy in other countries. There are minimal efforts to prevent or criminalise intermediaries to 'market' their services contrary to the law, nor awareness-raising campaigns explaining the policy stance. Children's rights are at risk in such arrangements as Australian authorities have minimal oversight in the countries that allow commercial surrogacy (e.g. how gametes are used, identified, information is centralized and can be accessed, how surrogate mothers are engaged in terms of compensation, payments and respect for their human dignity, use of intermediaries and prevention of sale of children).

- The Australian Law Reform Commission (ALRC) is currently reviewing the country's legislative framework using a human rights-based approach. The ALRC's discussion Paper addresses some children's rights, including legal parentage, the right to identity including a register, birth registration and nationality. However, several other human rights obligations appear insufficiently addressed in terms of their implementation in Australia. Of particular concern is that the Discussion Paper does not address the child's right to human dignity and right to not be sold. It likewise does not comprehensively address all elements of the child's right to identity. It is clear that there are further opportunities for better alignment with Australia's human rights obligations and coherency as per CHIP's submission notably.¹⁵

- o The law review process initiated by the Attorney General appears flawed from the outset because it is premised on a supposed 'right to a child', with a primary purpose of fulfilling adult demand for children.

- o The Discussion Paper goes beyond the scope of the Terms of Reference by undermining Australia's universal prohibition on commercial/for-profit domestic surrogacy arrangements and relevant international obligations.

- o The Discussion Paper proposes extensive uses of paid, for-profit intermediaries in domestic surrogacy in ways typical of commercial/for-profit surrogacy systems, while also assigning quasi-governmental regulatory roles to these private for-profit entities.

- o The Discussion Paper does not give full and equal attention to all elements of the child's right to identity.



Restoration of identity

- As of May 2026, redress schemes are open for Stolen Generations survivors who were forcibly removed in the Northern Territory, Australian Capital Territory (ACT) and Jervis Bay Territory, Victoria and Western Australia.¹⁶ There are further opportunities to meet the needs of indigenous groups including by way of a national approach, as well as a scheme that covers the State of Queensland.¹⁷

- In terms of concerns about illegal intercountry adoptions, the Department of Social Services launched in mid-2026 an 'Independent Investigation into Historical Intercountry Adoptions from the Republic of Korea to Australia will review adoptions from the Republic of Korea (ROK) to Australia between 1964 and 1999'.¹⁸ While this is a promising initiative, further work is required to ensure that persons with lived experiences are able to fully participate in the process as well as that there is an extension into investigations in other States of origin.

- Further efforts are needed to speedily re-establish the identities of children who are missing fundamental elements including in adoption (domestic and intercountry), international commercial surrogacy arrangements and historic past abuses according to Art. 8(2) CRC which states that 'where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity'.

Potential considerations:

- *What is the Australian Government doing to ensure universal birth registration?*
- *What is the Government undertaking to ensure that no child on its territory is stateless?*
- *What is the Government doing to ensure that ATSI children are not over-represented in out of home care placements?*
- *have access to adequate support to remain with their families and extended kin?*
- *What is the Government doing to ensure that the recommendations from the Bringing Them Home Report relating to Stolen Generations of ATSI children released in 1990 are fully implemented?*
- *What are the Government's plans for investing more in post-adoption support, including access to origins and effective remedies, whenever illegal practices are uncovered?*
- *What measures are in place to prevent commercial surrogacy from occurring, contrary to Australia's policy stance and the eventual rights risks that this can creates?*
- *What measures are in place to speedily re-establish the identities of children who are missing fundamental elements, including in adoption (domestic and intercountry), international commercial surrogacy arrangements and historic past abuses?*

Sources:

¹ UNICEF Australia, Certify hope - Social return on birth registration - Achieving universal birth registration in Australia, 2024, <https://assets-us-01.kc-usercontent.com/99f113b4-e5f7-00d2-23c0-c83ca2e4cfa2/7c6f2cc2-19f3-48b8-a50e-cabc9ecea81/Embargoed%20-%20Certify%20Hope%2C%20The%20Social%20Return%20On%20Birth%20Registration%20Report%20-%202026.pdf>.

² Pathfinders, <https://pathfinders.ngo/category/pnabc/>.

³ Senate Standing Committee on Legal and Constitutional Affairs, Supplementary Estimates October 2025: Home Affairs Portfolio, Department of Home Affairs, Program 2.2: Visas — SE250462 Stateless persons — stateless persons currently in Australia who are under 18 (Parliament of Australia, October 2025). This information was quoted in Foster, M., Robertson, K. & Walter, A., Understanding Statelessness in Australia, Peter McMullin Centre on Statelessness, 2026, https://law.unimelb.edu.au/_data/assets/pdf_file/0012/5575449/PMCS_Understanding-Statelessness-in-Australia.pdf.

⁴ Ibid.

⁵ Australian Institute of Health and Welfare, Government of Australia, Child protection system in Australia, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2024-25/contents/child-protection-system-in-Australia>.

⁶ Australian Institute of Health and Welfare, Government of Australia, Child protection Australia 2022–23, Aboriginal and Torres Strait Islander children in out-of-home care, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2022-23/contents/aboriginal-and-torres-strait-islander-children/out-of-home-care>.

⁷ Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over 2018-2019, 2021.

⁸ Wise, S., King, J., Sleight, J., Omerogullari, S., Samuels, L., Morris, A. and Skeen, T., An Aboriginal-led, systemic solution to Aboriginal baby removals in Australia: Development of the Bringing Up Aboriginal Babies at Home program, in Children and Youth Services Review, 2024, 161, <https://doi.org/10.1016/j.childyouth.2024.107668>.

⁹ For example, see Australian Institute of Family Studies, Key issues from Australian research on the impact of past adoption practices, 2011, <https://aifs.gov.au/research/family-matters/no-87/unfit-mothers-unjust-practices>; Cole, C., Stolen babies - broken hearts: forced adoption in Australia 1881-1987, University of Western Sydney, 2013, <https://researchers.westernsydney.edu.au/en/studentTheses/stolen-babies-broken-hearts-forced-adoption-in-australia-1881-1987>; and Australian Department of Social Services, Forced Adoption, n.d., <https://www.dss.gov.au/forced-adoption>.

¹⁰ Adoption Information Act 1990, New South Wales, Australia, <https://legislation.nsw.gov.au/view/html/inforce/current/act-1990-063>.

¹¹ Office of the Children's Guardian, New South Wales Government, Australia, <https://ocg.nsw.gov.au/>.

¹² University of Sydney Research Centre for Children and Families, Australia, <https://rccf-fostering-connections.sydney.edu.au/>.

¹³ Victorian Assisted Reproductive Treatment Authority (VARTA), <https://www.varta.org.au/>.



¹⁴ Australian Government, Surrogacy in Australia,
<https://www.surrogacy.gov.au/surrogacy-in-Australia>.

¹⁵ See CHIP's full submission at: <https://www.child-identity.org/wp-content/uploads/2025/12/Response-to-ALRC-16-December-2025.pdf>.

¹⁶ Schemes in New South Wales, South Australia and Tasmania are now closed.

¹⁷ Healing Foundation, 'Are you waiting for us to die?' The unfinished business of Bringing Them Home, 2025,
https://healingfoundation.org.au/media/ak5niup3/bth_report_are-you-waiting-for-us-to-die-final-2025-1.pdf.

¹⁸ Department of Social Services, Australian Government, Investigation into historic Republic of Korea–Australia intercountry adoptions,
<https://www.dss.gov.au/ROK-adoption-investigation>.

