

**ACCESS TO JUSTICE FOR CHILDREN:**  
**COUNTRY REPORT CARD<sup>1</sup>**

**AUSTRALIA**

<b>I. Legal Status of the Convention on the Rights of the Child (CRC)</b>	
<b>A. CRC takes precedence over conflicting legislation (/10)</b> (no = 0; partial = 5; yes = 10)	0
<b>B. CRC has been incorporated into national law (/10)</b> (no = 0; partial = 5; yes = 10)	0
<b>C. CRC is directly enforceable in domestic courts (/10)</b> (no = 0; interpretive guidance = 3; some direct, some interpretive guidance = 6; yes = 10)	3
<b>D. CRC has been applied in legal proceedings (/10)</b> (no = 0; not systematically = 5; systematically = 10)	10
<b>E. OP3 is ratified (/5)</b> (no = 0; yes = 5)	0
<b>SCORE /45:</b>	<b>13</b>

<b>II. Legal Status of the Child</b>	
<b>A. Full range of legal claims is available to challenge rights violations (/20)</b>	
Specific standards: (2.5 each)	
<ul style="list-style-type: none"> <li>● violations can be challenged even if they are not crimes</li> </ul>	2.5
<ul style="list-style-type: none"> <li>● can bring private prosecutions where the State will not carry out a criminal prosecution itself</li> </ul>	2.5
<ul style="list-style-type: none"> <li>● can challenge deprivation of liberty and/or lawfulness of detention</li> </ul>	2.5
<ul style="list-style-type: none"> <li>● mechanisms exist to investigate allegations against officials</li> </ul>	2.5
Independent bodies capable of taking complaints before or on behalf of children: (2 each)	
<ul style="list-style-type: none"> <li>● Independent institution exists with mandate that covers the protection and promotion of children's rights</li> </ul>	2
<ul style="list-style-type: none"> <li>● There is a specific department or person within the relevant institution that specifically deals with children's rights</li> </ul>	2
<ul style="list-style-type: none"> <li>● Institution is empowered to bring complaints in relation to violations of children's rights</li> </ul>	2 <sup>2</sup>
<ul style="list-style-type: none"> <li>● Institution has a transparent appointment procedure</li> </ul>	2
<ul style="list-style-type: none"> <li>● Institution is empowered to review State's progress in realising children's rights</li> </ul>	2
<b>B. Children can bring cases alone or via a representative (/7.5)</b>	
Can bring a case in own name (no = 0; yes = 2.5)	2.5
Is generally not required to bring proceedings through a guardian ad	0

<sup>1</sup> This report card is based on CRIN's Access to Justice for Children: Model Report, available at [www.crin.org/en/node/31972/](http://www.crin.org/en/node/31972/).

<sup>2</sup> The National Children's Commissioner is not empowered to receive complaints. The Northern Territory and Queensland are the only states/territories whose Commissioners have the power to investigate complaints.

litem or litigation friend (no = 0; yes = 2.5)	
No conflict of interests in appointments of representatives (no = 0; yes = 2.5)	2.5
<b>C. Parents/guardians can bring cases on behalf of very young children (/10)</b>	
Parents' ability to act on behalf of child is tempered by the principle of the best interests of the child (no = 0; partial = 5; yes = 10)	5
<b>D. Children/representatives are eligible for free legal assistance (/30)</b>	
Settings: (2 each)	
• civil	2
• criminal	2
• administrative	2
• family	2
• all other judicial settings	0
Right to a lawyer of own choosing (no = 0; yes = 5)	0
Right to lawyer with experience commensurate with nature of claim / offence (no = 0; yes = 5)	0
Right to legal aid throughout the criminal process from arrest to trial and appeal (no = 0; partial = 5; yes = 10)	5
<b>E. No further legal limitations/conditions on children/representatives bringing, running or settling cases (/5) (deduct 1 for each limitation/condition)</b>	5
<b>SCORE /72.5:</b>	<b>48</b>

<b>III. Challenging Children's Rights Violations</b>	
<b>A. Children have complete access to all courts, complaints mechanisms (/10)</b>	
Settings: (2.5 each)	
• criminal	2.5
• civil	2.5
• administrative	2.5
• informal, customary or alternative justice mechanisms available where appropriate	2.5
<b>B. Courts have broad powers to remedy rights violations (/16)</b>	
Remedies: (2 each)	
• restitution	2
• compensation	2
• stop the enforcement of a law	2
• stop the enforcement of subsidiary legislation	2
• order government to take steps to prevent a violation	2
• launch investigation OR bring proceedings at the court's initiative	0
• guarantee non-repetition	2
• repeal of law (partial = 1)	2
<b>C. Widespread violations can be challenged without naming individual victims (/10)</b>	
Named victims are not required (no = 0; partial = 5; yes = 10)	5
<b>D. Children can file group litigation to challenge multiple</b>	

<b>violations (/10)</b>	
Group and collective litigation available (no = 0; partial (selected types of actions only) = 2.5; yes = 7.5)	7.5
Courts have the power to combine cases to offer clear, consistent pronouncements of the law (no = 0; yes = 2.5)	2.5
<b>E. Non-governmental organisations can file, intervene in cases (/10)</b>	
Can file (no = 0; yes = 7.5)	7.5
Can intervene (no = 0; yes = 2.5)	2.5
<b>SCORE /56:</b>	<b>49</b>

<b>IV. Practical Considerations</b>	
<b>A. Venue (/5)</b>	
Formal restrictions relaxed as necessary and appropriate (no = 0; partial = 2.5; yes = 5)	2.5
<b>B. Legal aid / costs (/5)</b>	
Court fees and case related expenses are not payable (no = 0; yes = 5)	5
<b>C. Pro-bono / financing (/10)</b>	
Active legal and bar associations that offer pro-bono representation (no = 0; yes = 5)	5
Systematic procedures to promote pro-bono (no = 0; yes = 5)	0
<b>D. Timing (/10)</b>	
Limitation periods do not begin to run until a child reaches the age of 18 (no = 0; yes = 5)	5
No time limitation period for “serious violations of international humanitarian law” (no = 0; yes = 5)	0
<b>E. Evidence (/7.5)</b>	
Children may testify or give evidence in court proceedings (no = 0; yes = 2.5)	2.5
Opportunity to give evidence not under oath where this is not understood (no = 0; yes = 2.5)	2.5
Child friendly procedures to facilitate the giving of evidence (no = 0; yes = 2.5)	2.5
<b>F. Resolution (/10)</b>	
Cases involving children are resolved without undue delay (no = 0; partial = 5; yes = 10)	0
<b>G. Appeal (/10)</b>	
Children have right to appeal (no = 0; partial = 5; yes = 10)	10
<b>H. Impact and follow-up (/10)</b>	
Judicial decisions are enforced and respected (no = 0; partial = 5; yes = 10)	10
<b>I. Privacy (/10)</b>	
Privacy of children involved in legal proceedings guaranteed by law; public can be excluded; personal details unpublished (no = 0; yes = 10)	10
<b>J. Right to be heard (/10)</b>	
Explicit provisions in place to guarantee children’s right to be heard and for his or her views to be taken into account during legal proceedings	5 <sup>3</sup>

<sup>3</sup> Explicit provision in Queensland; generally in other states it appears to be limited to family and criminal proceedings.

(no = 0; partial = 5; yes = 10)	
<b>SCORE /87.5:</b>	<b>60</b>

**TOTAL WEIGHTED SCORE /256 = 170**