

WESTERN SYDNEY
UNIVERSITY



Education, Equality, and Digital Inclusion in Australia
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<https://www.westernsydney.edu.au/network-for-law-and-human-rights>

Network for Law and
Human Rights

Where you can fit my
talk into the curriculum

Today's talk

International
perspective

Australian perspective



Relevant sections of the
Legal Studies syllabus:



Preliminary (Year 11)

Part II: The individual and the law

- **Your rights and responsibilities**
 - The nature of individual rights
- **Contemporary issue:**
 - Impacts of technology on the individual
 - legal implications
 - difficulties with enforcing rights

Relevant sections of the Legal Studies
syllabus:

Preliminary (Year 11)

Part III: Law in practice

- Issues that involve an Australian in a domestic jurisdiction, or Australian citizen(s) in another jurisdiction, focusing on the mechanisms for achieving justice and the responsiveness of the legal system
 - groups or individuals suffering disadvantage
 - events which highlight legal issues



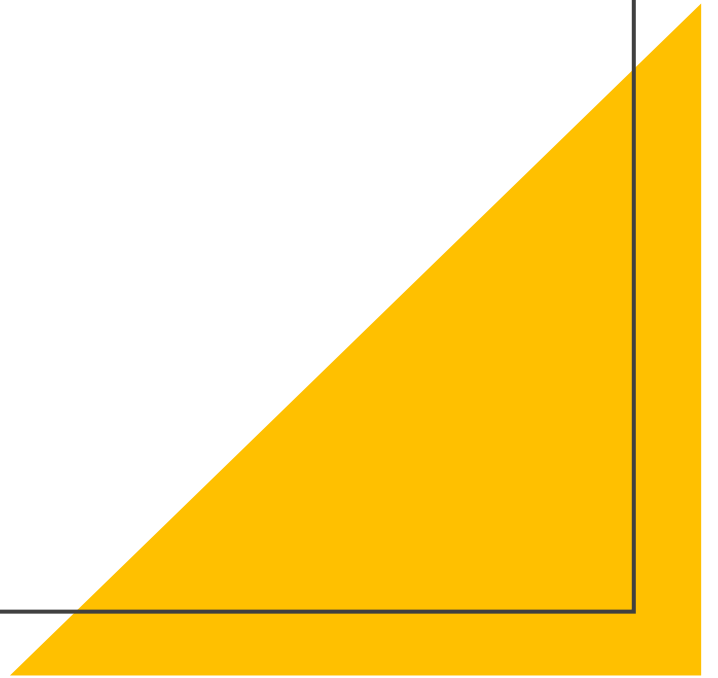


HSC (Year 12)

Part II of the core: Human rights

- **The nature and development of human rights**
 - the definition of human rights
 - universal education
- **formal statements of human rights**
 - Universal Declaration of Human Rights
 - International Covenant on Economic, Social and Cultural Rights

International Perspective



Dr Koumbou Boly Barry
UN Special Rapporteur on
the right to education

The pandemic
has been an
'educational
crisis '



United Nations Children's Fund

- estimates between March 2020 and September 2021, children around the world lost a total of **1.8 trillion hours of in person learning.**
- At least 463 million students around the world were cut off from education during periods of remote learning,



Is this a Human
Rights Issue?



What are international human rights?

- International human rights law has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life.



What are international human rights?

- The International Bill of Human Rights :
 - Universal Declaration of Human Rights (1948),
 - International Covenant on Economic, Social and Cultural Rights (1966),
 - the International Covenant on Civil and Political Rights (1966) and its two optional protocols.



Article 26(1) of the Universal Declaration of Human Rights

- Everyone has the right to education. **Education shall be free**, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.



International Covenant on Economic Social and Cultural Rights

- Australia is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Australia ratified **30 September 1975**. By ratifying a treaty, a country voluntarily accepts legal obligations under international law.
- Australia's obligations under ICESCR include regular reporting requirements.



**International Covenant on
Economic Social and Cultural Rights**



*Article 13 (2)(a) International
Covenant on Economic Social and
Cultural Rights*

- The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all.

- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;





Committee on
Economic, Social
and Cultural Rights

- The Committee on Economic, Social and Cultural Rights (CESCR) is a United Nations body of 18 experts
- monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties.

According to the Committee on Economic, Social and Cultural Rights

- indirect costs are not allowed
- 'education has to be affordable to all' regardless of the socio-economic status, level of ability, race, physical location or financial means of the primary school student



To abide by human rights obligations

Respect

States must refrain from interfering with or curtailing the enjoyment of human rights.

Protect

Must take positive action to safeguard against intrusive and harmful action by third parties

Fulfil

States must take positive action to facilitate the enjoyment of basic human rights

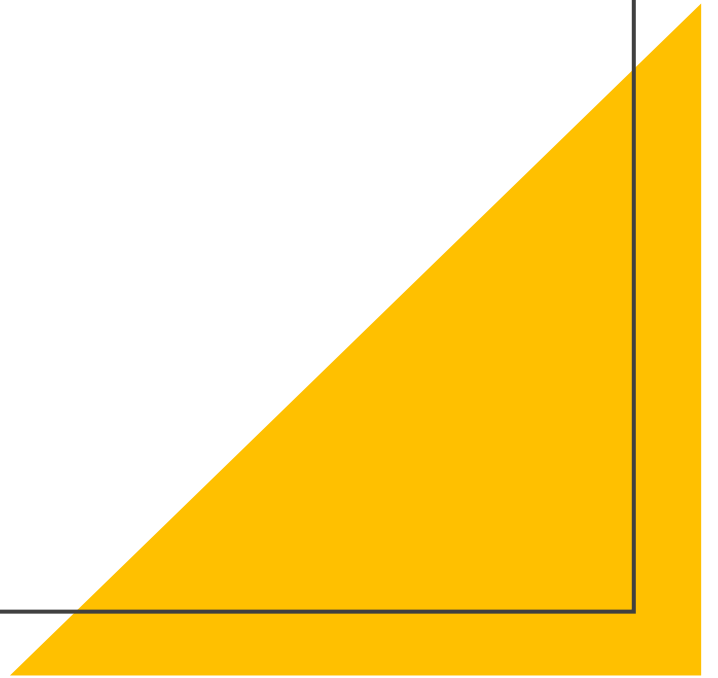
Article 28 Convention on the Rights of the Child

- 1.States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
- (a) Make primary education compulsory and available free to all;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;



CONVENTION
ON THE RIGHTS OF THE CHILD

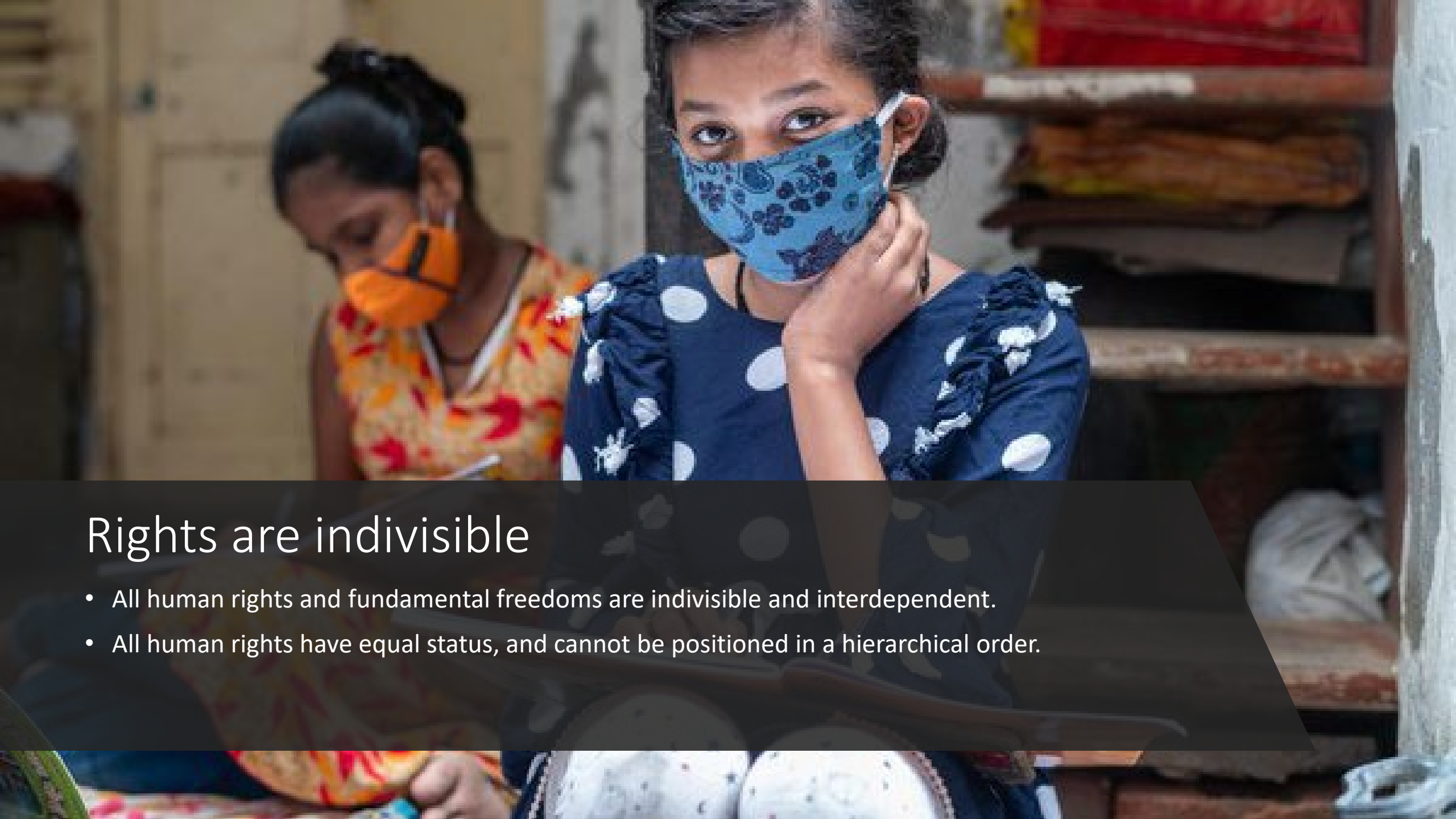
Are there limits to
the right to free
education?





Right to Health

- **Article 12 (C) International Covenant on Economic Social and Cultural Rights** : States must take steps for 'the prevention, treatment and control of epidemic, endemic, occupational and other diseases'
- Article 24(1) of the Convention on the Rights of the Child;
- Article 25 of the Convention on the Rights of Persons with Disabilities ,
- Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women.
- The Constitution of the World Health Organisation, to which 190 States, including Australia are a party further provides that '**the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being**'.

A photograph of two women in a workshop. The woman in the foreground is wearing a blue face mask with a floral pattern and a dark blue dress with white polka dots. She is looking towards the camera. The woman in the background is wearing an orange face mask and a yellow and red patterned dress, looking down. They appear to be working on something, possibly a craft or garment. The background shows shelves with various items, including what looks like fabric or paper.

Rights are indivisible

- All human rights and fundamental freedoms are indivisible and interdependent.
- All human rights have equal status, and cannot be positioned in a hierarchical order.

This right may be limited under Article 29(2) of the United Nations Declaration on Human Rights

- determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society



Article 4 of the International Covenant on Economic Social and Cultural Rights

- The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant,
- **the State may subject such rights only to such limitations**
- as are **determined by law** o
- only in so far as this may be **compatible with the nature of these rights**
- **and solely for the purpose of promoting the general welfare**
- **in a democratic society.**



International Covenant on Economic Social and Cultural Rights Committee

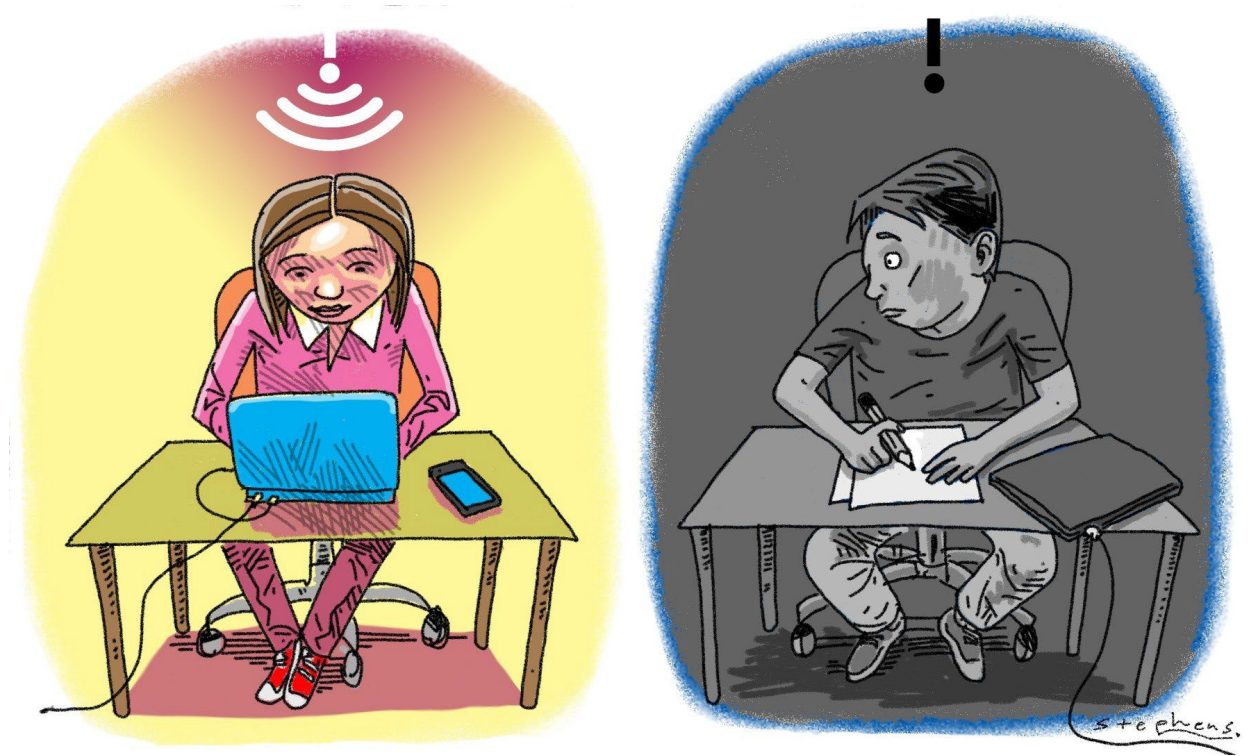
‘be **necessary** to
combat the public
health crisis posed
by Covid-19, and be

reasonable

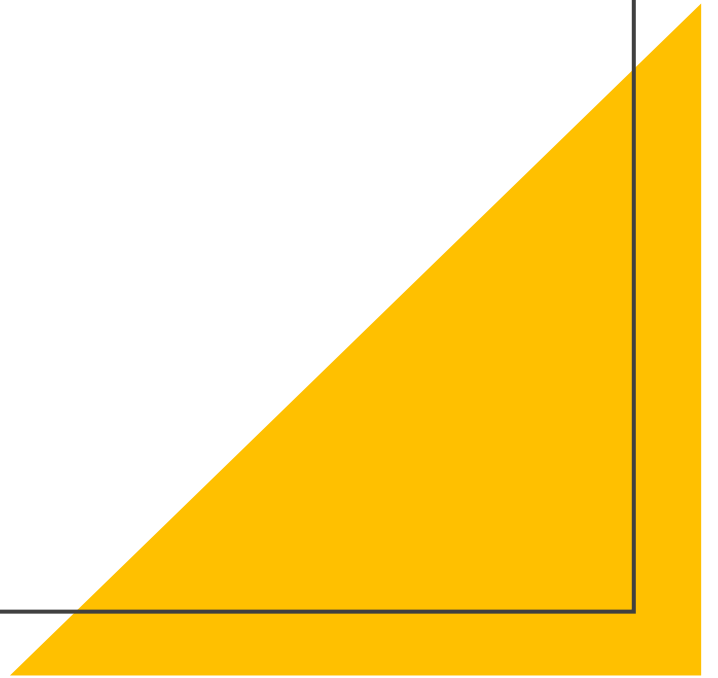
and **proportionate**’

International Covenant on Economic Social and Cultural Rights Committee

- Online education to mitigate the impact of the pandemic:
- “carry the risk of deepening educational inequalities between rich and poor learners due to unequal access to affordable Internet services and equipment such as computers, smart phones and tablets.”



Australia





Incorporation of international law into Australian Domestic Law

- Education = legislation of individual States rather than the federal Commonwealth.
- Free education for primary school children has been implemented in Australian law with statutory guarantees in all Australian States except for South Australia.

Was Education Free in Australia
for Primary School Children
during the first two years of the
pandemic?



Australian students were not spared the disruptive impact of the pandemic

- All states and territories in Australia had a period of at home instruction for all but some exempt children.
- As early as May 2020, 86% of young people in Australia said the pandemic response had disrupted or stopped their education entirely! : UNICEF Australia, 'Living in Limbo' Fact Sheet



Heavy reliance of Australian schools on delivering education through the internet

- disadvantaged students who did not have or could not afford sufficient data to connect with teachers or adequate hardware such as appropriate computers on which to work.



The 'educational crisis' intensified pre-existing education discrepancies in Australia

- Threatened to undo progress that had been made for many marginalised groups including
 - refugees;
 - people living in rural or socio-economically disadvantaged areas;
 - students with physical or mental disabilities;
 - students with special needs;
 - students with caring responsibilities;
 - students who could not rely on parents for effective home schooling (including in situations where the language spoken at home was different to the language of instruction)
 - students in poor quality or unsafe housing.



Who is missing out?

- Access
- Affordability
- Digital Ability

Australian Digital Inclusion Index

<https://digitalinclusionindex.org.au>

Total Index comparison

Subgroup	ADII Score	
	Score	Gap
75+	47.4	-23.6
Did not complete secondary school	52.7	-18.4
Mobile only	54.3	-16.7
Income Q1 (<\$33,800)	55.8	-15.3
65-74	57.3	-13.7
Rent from public housing authority	61.5	-9.6
Single person	61.5	-9.5
Not in labour force	61.6	-9.5
People with disability	62.0	-9.1
Receives income support	62.4	-8.6
Other education	62.5	-8.6
Unemployed	64.4	-6.7
55-64	66.8	-4.3
Income Q2 (\$33,800 - \$51,999)	66.9	-4.1
Regional	67.4	-3.6
Completed secondary school	68.4	-2.7
Own outright / purchaser	70.0	-1.0
Couple without children	70.2	-0.9
Female	70.8	-0.3
Multi-family / group / other household	71.0	-0.0
Male	71.8	+0.7
45-54	72.3	+1.2
Metro	72.9	+1.8
Income Q3 (\$52,000 - \$90,999)	73.1	+2.0
One parent family	73.2	+2.1
Certificate / diploma	73.3	+2.3
LOTE	73.9	+2.9
Rent from private landlord	74.6	+3.5
Other (boarding, living at home etc.)	76.5	+5.4
Employed	77.5	+6.4
35-44	77.5	+6.5
Bachelor and above	77.9	+6.8
Couple with children	78.0	+6.9
Income Q4 (\$91,000 - \$155,999)	78.1	+7.0
18-34	80.6	+9.6
Income Q5 (\$156,000+)	82.3	+11.3

Consequences for Education

- Approximately 125,000 public school students in Australia lived in dwellings that were reported to have no internet access in 2016 (the latest available data).
- Nine percent of students with low family incomes (that is, family incomes in roughly the bottom third of family incomes of all Australian school students) have no internet access at home, compared to only 1% of students with high family incomes without access to the internet at home.
-



Consequences for Education

- **Public school students** were **more than twice as likely** as either Catholic or independent school students to have no internet access at home.
- **Public school students** living in **remote areas** were much more likely to have no internet access at home – **almost a third of the more than 20,000** living in very remote areas had no internet access at home.
- **Aboriginal and Torres Strait Islander students** were much more likely to have no internet access at home—**21% compared with 5%** for all public school students.



Was Australia in Violation of
its International Obligation
to Provide Free Education?



respect, protect and fulfil

Respect

States must refrain from interfering with or curtailing the enjoyment of human rights.

Protect

Must take positive action to safeguard against intrusive and harmful action by third parties

Fulfil

States must take positive action to facilitate the enjoyment of basic human rights

But limitations are OK if:

'necessary to combat the public health crisis posed by Covid-19, and be

reasonable

and proportionate

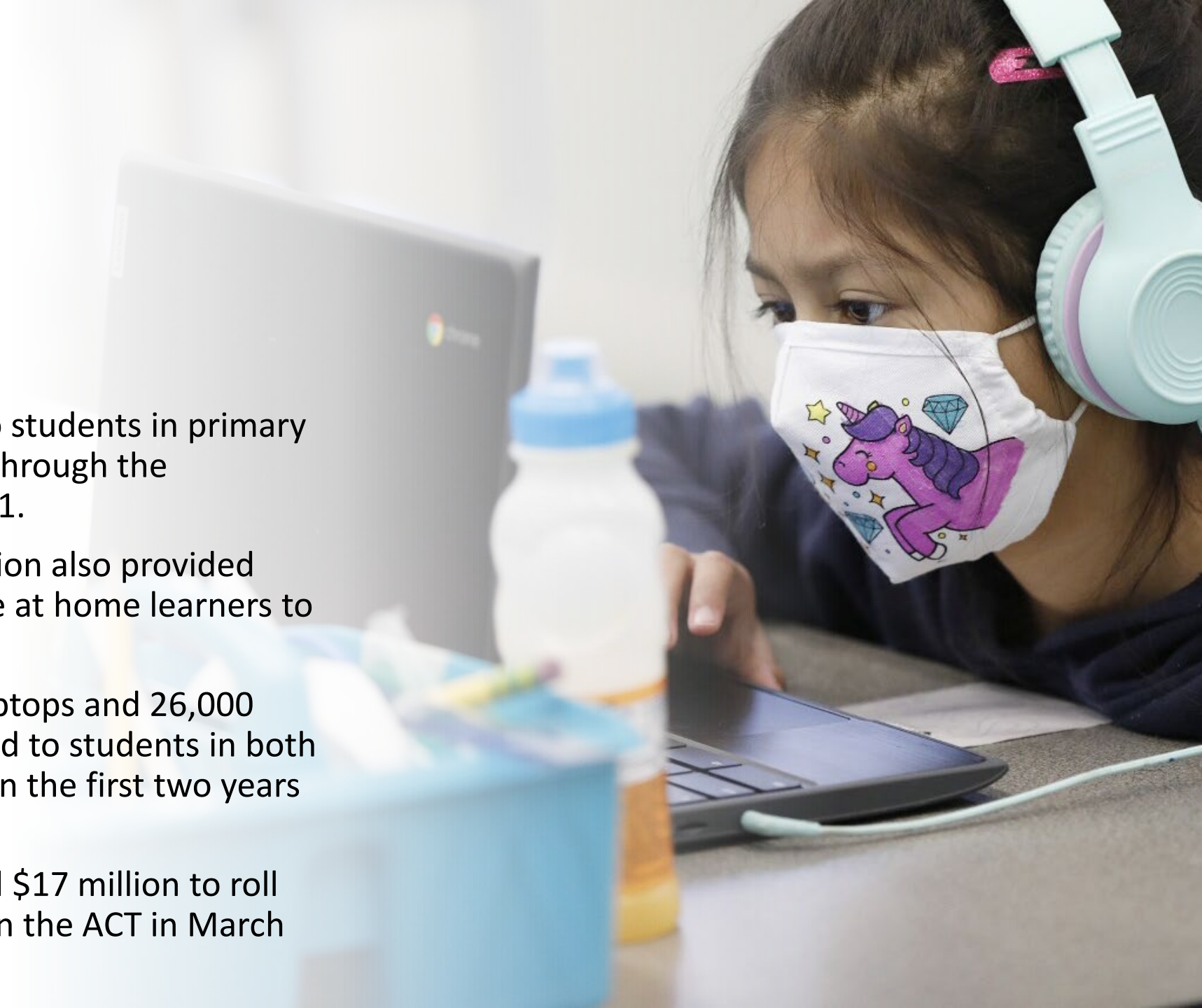
Least restrictive alternative, reasonable and proportionate?

- remote learning without the provision of free and adequate data and sufficient access to computers for primary school students, was not the only option available to Australian States and territories



-
- Could have ensured that every student had access to adequate internet and devices





Did the government do anything?

- NSW provided 22,600 devices to students in primary and secondary school students through the Department of Education in 2021.
- The NSW Department of Education also provided 'thousands' of dongles to enable at home learners to access the internet.
- In Victoria, more than 48,000 laptops and 26,000 internet dongles were distributed to students in both primary and secondary schools in the first two years of the pandemic.
- The ACT government committed \$17 million to roll out chrome books for students in the ACT in March 2020.



CREATING BETTER FUTURES THROUGH EDUCATION.



everyone's family

Charity Sector

- E.g. Smith Family provided data to more than 13000 in both primary and secondary school students through their corporate partner Optus



Private Sector

- scheme to assist people suffering hard ship as a result of Covid
 - Be prepared to waive late fees, interest charges and charges for collection of overdue amounts for consumers and small business customers who are on a payment plan or hardship agreement.
 - Be prepared to modify existing financial hardship plans if a customer's changed circumstances make this necessary.



Was not enough!

- A Pulse Survey by the Smith family among their support workers found that :
- 87% of those served by the charity (including primary school children) were affected by lack of access to devices and reliable internet or lack of digital skills.

A range of measures were provided to support socio-economic rights in the first two years of the pandemic.

- Disaster Payments for individuals unable to earn income because state or territory health orders prevented them working in their usual employment;
- Pandemic Leave Disaster Payments for people who had to self-isolate or care for someone with Covid;
- JobKeeper payments that supported businesses affected by the coronavirus;
- state government voucher subsidy schemes offered by some state governments to encourage the purchase of goods and services from businesses that were impacted by the coronavirus;
- electricity rebates from some States and territories for some individuals and families;
- rent relief for some state and territory owned properties;
- creative economy support packages to support artists and organisations;
- support for childcare including child care transition payments for some early childhood education and care providers and the provision of fee-free child care for families between April and June of 2020 .



Failure to provide adequate data and devices for students was not:

'necessary to combat the public health crisis posed by Covid-19, and be

reasonable

and proportionate

Does it matter now that the pandemic is over?

- YES! Access to adequate ICT will continue to affect education rights.
- United Nations recommends expanding the definition of the right to education to include connectivity and removing barriers to connectivity.



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