DEPARTMENT OF POLITICAL AND SOCIAL SCIENCES - SPS

SECOND CYCLE DEGREE

INTERNATIONAL RELATIONS

FROM LAW TO PRACTICE: A COMPARATIVE ANALYSIS OF ACCESS TO EDUCATION FOR UNACCOMPANIED MINORS IN ITALY AND AUSTRALIA

Dissertation in EU Migration and Asylum Policies

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To all the children,

In the hope that they may live their lives to the fullest

and freely enjoy the rights that belong to them.

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CHAPTER 1
Introduction and Research Design

1.1 Rationale and Significance of The Study

This research seeks to address the underexplored issue of effective access to education for unaccompanied minors (UMs) in Italy and Australia. The study will go beyond a purely legal analysis to focus on the implementation gap between formal rights and realisation in practice. The research makes a significant contribution through its collection of empirical data, as discussed in Section 1.6.

The significance of the thesis lies in the centrality of education as both a fundamental human right and a key instrument of social inclusion. Yet, in many contexts, access to education remains obstructed by persistent structural and administrative barriers, even when legal entitlements exist.

The study therefore pursues the following objectives:

- To analyse and compare the legislative and policy frameworks regulating UMs' access to education in Italy and Australia;
- To identify the main barriers to the fulfilment of the right to education;
- To contribute to the broader scholarly debate on the tensions between migration control and child protection

Scholarly research on UMs has developed along various interconnected strands, including child-rights-based approaches, migration governance and securitisation studies, and socio-legal analyses of policy implementation. While these strands of literature have generated valuable insights into protection standards and migration control practices, they often remain fragmented. This study argues that access to education constitutes a critical

site where the translation of child-protection norms into practice can be empirically observed and assessed. Therefore, this thesis positions itself at the intersection of these debates, using the effective enjoyment of educational entitlements as a lens through which examine how child protection and migration control interact in practice.

For the purposes of this study, the term "education" refers primarily to compulsory and post-compulsory schooling, including primary education, lower and upper secondary education, and vocational or technical training pathways that are particularly relevant for unaccompanied minors approaching the legal age (18 years old in both Italy and Australia). The analysis focuses on formal access, continuity of attendance, and the availability of educational support measures within compulsory and post-compulsory education systems.

1.1.1 Case Studies Selection: Italy and Australia

Italy and Australia were selected as case studies because they are two liberal democracies, both members of the Organisation for Economic Co-operation and Development (OECD), and signatories to the 1989 Convention on the Rights of the Child (CRC) and the 1951 Refugee Convention. Nevertheless, they embody divergent approaches to migration management that will be first explored and then compared in the following related chapters of the thesis. This contrast allows for a meaningful comparison of how similar international obligations are interpreted and implemented under distinct policy logics and socio-political contexts. Rather than constituting an incremental comparison between broadly similar systems, this study adopts an ideal-type contrast between two divergent governance regimes. On the one hand, it examines a formally protection-centred, multi-level framework embedded in European Union law, whose normative orientation continues to prioritise child protection despite recent restrictive reforms at the national level, including the so-called *"Decreto Cutro"* (Decree-Law No. 20 of 10 March 2023, converted into Law No. 50 of 5 May 2023), which have introduced tighter controls on reception and

protection mechanisms and intensified implementation tensions. On the other hand, it analyses a deterrence-oriented, status-based migration regime in which access to rights is structurally mediated by migration control. This ideal-type contrast does not deny recent convergences or restrictive shifts but serves as an analytical framework to highlight how different legal architectures condition the translation of child-rights norms into educational access.

By juxtaposing these two countries, this analysis aims to shed light on the underlying tension between child protection and migration control in high-income countries, offering multidisciplinary insights relevant to migration studies, human rights scholarship, and policymaking.

The choice of topic is also rooted in the author's personal and academic background. A longstanding interest in children's rights and the transformative power of education was strengthened during an academic exchange at the University of Sydney and an internship at the Refugee Advice and Casework Service (RACS), a legal aid organisation based in Sydney. These experiences provided direct exposure to migration and asylum issues, strengthening the researcher's commitment to understanding how international and national frameworks translate into practice, particularly in relation to unaccompanied minors.

1.2 Introductory Overview of the Phenomenon

1.2.1 Definitions of Unaccompanied Minors and Conceptual Boundaries in International and National Contexts

UMs are a central concern within global migration governance, as they represent one of the most vulnerable groups amongst people on the move. Therefore, a fundamental preliminary step in analysing access to education for UMs in Italy and Australia is to clarify how this population is defined according to international and national frameworks. The importance of definitions comes from their power to determine who becomes visible to the state, being entitled to legal safeguards, and receiving educational and welfare interventions. The divergence between the international standards,

the Italian legal categorisation, and the Australian policy landscape not only reflects different administrative traditions; it provides a first insight into the broader tension between child protection and migration control that lies at the centre of this thesis.

For the purposes of this thesis, the term "unaccompanied minors" refers specifically to third-country national children who are present in the territory if Italy or Australia without parental care and without a legally relevant family link to an EU citizen (in the Italian case) or to an Australian citizen or permanent resident (in the Australian case). Minors whose residence status derives from family reunification or from citizenship-based entitlements are therefore excluded from the scope of the analysis, as they are subject to substantially different legal regimes and levels of protection.

1.2.1.1 The United Nations Convention on the Rights of the Child and the UNHCR Guidelines

At the international level, the definition of an "unaccompanied minor" derives from the UNHCR guidelines and the United Nations Convention on the Rights of the Child (1989). An unaccompanied minor is:

"a person below the age of eighteen who is separated from both parents and is not being cared for by an adult who, by law or custom, has responsibility to do so".

These children are entitled to special protection and assistance, as reaffirmed by the 1951 Refugee Convention and the167 Protocol. Such wording is deliberately broad and status-blind: it encompasses refugee children, asylum-seekers, victims of trafficking, children arriving irregularly, and those with an undetermined migration status. There is a child-centred vision, and it is grounded in protection obligations, with no distinction made between lawful and unlawful children or between different migration channels. However, despite the above-mentioned international standards, the protection of UMs is still one of the most contested areas of migration governance, due to the intersection and conflict between child welfare principles and border control logics that this thesis aims to

investigate. The international definition provides a normative baseline for the research and an analytical lens through which both national cases can be assessed.

1.2.1.2 The Italian Definition of Unaccompanied Minors

Italy's definition of "*Minore Straniero Non Accompagnato" (MSNA)*, which can be translated into Unaccompanied Minor, is based on Article 2 of the European Union's Council Directive 2001/55/EC of 20 July 2001 (the Temporary Protection Directive). According to this provision, unaccompanied minors are defined as:

"Third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States".

While this definition originates at the EU level, it was progressively incorporated into the Italian legal system through ordinary migration legislation and administrative practice prior to the adoption of a dedicated framework. The category of MSNA was subsequently consolidated and systematically codified with Law No. 47/2017 (the so-called *Legge Zampa*), which formalised a protection-centred approach to unaccompanied minors and embedded this definition within a comprehensive reception and guardianship system.

Building on this EU-derived definitional framework, analysing the so-called "*Legge Zampa"* (Italy, 2017), these minors are entitled to equal protection compared to Italian citizen minors. The Italian definition aligns closely with the UN/CRC definition, and it includes minors who enter the country irregularly, asylum-seekers, child victims of trafficking or exploitation, and minors discovered in the Italian territory without documentation. Italy, hence, conceptualises unaccompanied minors mainly through the lens of vulnerabilities and protection needs. The definitional category is broad and legally stable, ensuring that all minors falling within

this profile are channelled into the child-protection and reception system, which, in principle, would grant them access to education. The Italian definition, at the formal level, structurally separates child protection from migration control objectives. Nonetheless, tensions between the two logics emerge during implementation and resource allocation, as this thesis will show in the following chapters.

1.2.1.3 Unaccompanied Minors in the Australian Legislative Landscape

Australia, by contrast, does not provide a single, unified category that mirrors either the UN or the EU definition. Instead, the country's legal and policy framework contains several partially overlapping concepts. The most formalised category is Unaccompanied Humanitarian Minors (UHM). These are

"Children entering Australia on a Refugee or Humanitarian visa without a parent or legal guardian"

(Australian Government Department of Home Affairs; 2024). These children fall under the responsibility of state and territory guardianship arrangements and are supported through the Department of Home Affairs' Unaccompanied Humanitarian Minors Program. However, it is crucial to note that this category applies only to children granted certain visa types; it excludes unaccompanied minors arriving in Australia through other pathways, including those in irregular situations and minors who may be victims of trafficking or exploitation. State-level child-protection legislation may intervene when a foreign child is without caregivers, but this does not produce a nationally recognised unaccompanied minor migration category that equates to the Italian MSNA, demonstrating that the Australian definitional approach is narrower and more conditional. In Australia, in fact, the recognition of a child as "unaccompanied" is closely tied to their migration status and visa class rather than inherent protection needs. As a result, Australia has a system in which the conceptual category of unaccompanied minor is visa-dependent and exclusionary. Children who fall outside of the humanitarian intake category may receive fragmented or

inconsistent support, and their access to education depends on their visa conditions, state legislation, and local administrative practices. The country's definitional architecture structurally embeds migration control within the very identification of who counts as an unaccompanied minor, creating a category that is both narrower and more conditional than the Italian one.

The definitional divergences illustrated in this section are not just technical. They represent the earliest and clearest manifestation of the tension between child protection and migration control that this study aims to explore, and it emerges in more complex forms within education policy, reception systems, documentation requirements, and guardianship arrangements that will be explored in the next chapters. On one side, Italy, there is a broad definition that places the burden of reconciling these competing logics on implementation processes and on local authorities, while on the other, Australia, the tension is built into the legal architecture itself, subordinating the recognition of an unaccompanied minor to migration category rather than universal protection principles. In order to undertake a comparative analysis, it is vital to understand these foundational differences. They shape not only the structure of national systems, but also the concrete possibilities for unaccompanied minors to exercise their right to education, to be integrated into host societies, and to be treated first and foremost as children rather than as migrants.

1.2.2 Scale of the Phenomenon: Recent Data on Unaccompanied Minors

Italy and Australia represent two contrasting migration contexts: Italy is a frontline state receiving mixed flows by sea and land, whereas Australia has a highly controlled migration system in which the majority of unaccompanied minors enter through managed humanitarian channels (UNHCR, 2023; Australian Department of Home Affairs, 2024). To contextualise the situation of UMs in these two countries, the following section presents recent empirical data from official sources. Descriptive

statistics are reported separately from scholarly interpretations, which are explicitly attributed where relevant.

1.2.2.1 Italy's Large and Fluctuating Numbers

The Italian reception system has seen major fluctuation in the number of the so-called MSNA over the last decade, as shown by official institutional data. The highest figure of UMs in reception facilities recorded in the last decade was in September 2023, when there were 23,531 UMs, while the lowest was in December 2019 with 6,054 UMs (Italian Ministry of Labour and Social Policies, 2019; 2023). Official statistics document a sharp increase in the number of MSNA between 2021 and 2023 (Italian Ministry of Labour and Social Policies, 2024). Scholarly and institutional analyses interpret this trend as partly linked to the arrival of Ukrainian minors following the Russian invasion and to continued migration flows originating in North Africa, especially Egypt and Tunisia (ISMU, 2023). While the population is predominantly male (88%), according to ISMU (2023), the recent increase in the share of girls can be explained by Ukrainian arrivals in 2022-2023.

Italy's central Mediterranean geographic position strongly influences the country's immigration flows. Over the last decade, Sicily, the closest Italian region to the African continent, has consistently hosted the largest proportion of MSNA in the country, with peaks of over 40% of the total in some years. Other regions, such as Lombardy, Emilia-Romagna, Calabria, Puglia, and Friuli - Venezia Giulia, also play significant but more variable roles. According to recent institutional data, the large majority of MSNA in Italy is aged 16-17, and concentrated in Sicily (25.6%), Lombardy (12.8%), and Emilia-Romagna (8.3%). Entries in the first half of 2024 amounted to 6,694 minors, predominantly male and mainly from Egypt, Tunisia, Gambia, Guinea, and Kosovo (Italian Ministry of Labour and Social Policies, 2024). The latest report published in June 2025 shows a partial downturn, with 16.497 minors present, indicating an apparent stabilisation

after the rapid growth of 2021-2023 (Italian Ministry of Labour and Social Policies, 2025).

1.2.2.2 The Australian Controlled System: Small Numbers and Visa-dependent Entry

Unlike Italy, Australia, notably extremely isolated on the geographical level, receives numerically smaller and higher regulated cohorts of unaccompanied minors. The majority enter the country through the Unaccompanied Humanitarian Minors Program, which covers children arriving on Refugee or Humanitarian visas without a parent or legal guardian. According to the Department of Home Affairs' report on the matter (2025), 200 minors were receiving UHM Program services as of December 2024, 82 of whom were under the Minister's guardianship. Humanitarian grants to UMs fluctuate yearly: 6 (2018–19), 40 (2019–20), 7 (2020–21, due to COVID-related suspensions), then rising to 106 (2021–22), 89 (2022–23), 53 (2023–24) and 45 in the first half of 2024–25. These figures illustrate, at an empirical level, the limited numerical scope of Australia's humanitarian intake of unaccompanied minors and a managed resettlement process aligned with UNHCR and geopolitical priorities, but they are limited to those holding a specific type of visa. It is more complex to have a general picture of all the UMs present in the country, as the Government issues only a limited amount of data and only regarding specific categories of immigrants.

Scholarly literature has interpreted this configuration as characteristic of a deterrence-based migration regime, in which access to protection is tightly managed through visa categories and executive discretion rather than framed as a rights-based entitlement (Gerard and Weber, 2019; Abbondanza, 2023).

Historically, a limited number of UMs were affected by Australia's offshore processing regime: between 2012 and 2019, 222 children, including at least 27 unaccompanied children, were transferred to Nauru, a small country that lies in the Micronesia subregion of Oceania (Zwi et al.,

2020). Current detention data confirm a substantial decline: as of September 2025, fewer than five children were held in closed detention, and 27 were living in the community under residence determinations. These are the lowest figures since the 2013 peak of 2,000 detained minors (Australian Department of Home Affairs, 2025). Settlement patterns show concentration in the states of Victoria (39%), New South Wales (NSW) (29%) and Queensland (16%) (MYAN, 2025).

Although official statistics are essential to capture the scale and distribution of UMs, they remain limited in their ability to account for lived experiences and the effective enjoyment of social rights. In particular, quantitative data provide little insight into how access to education is practically enabled or constrained within different legal and institutional settings. The divergences between the two countries are not merely quantitative, but they frame the conditions of vulnerability, the forms of reception, and the opportunities and obstacles that UMs encounter in accessing education. For this reason, these topics will be analysed in depth in the following chapters to uncover the schooling experiences of UMs in Italy and Australia.

1.2.3 Contemporary Drivers of Unaccompanied Child Migration

To better understand the conditions of unaccompanied minors in Italy and Australia, it is necessary to examine the structural factors that shape contemporary patterns of child migration. The migration of unaccompanied children is often perceived as an exceptional development, but studies indicate that it must be situated within broader social, economic, and political dynamics shaping global mobility (Deligios, 2024; Salmerón-Manzano & Manzano-Agugliaro, 2019). The phenomenon notably reflects a combination of push factors in countries of origin and pull factors in destination countries, interlaced with elements of vulnerability that disproportionately affect children.

1.2.3.1 Structural Push Factors

There are three major categories of push factors behind unaccompanied minors' migration. First, economic insecurity and poverty play a decisive role, particularly for those in their teen years who face limited educational and employment prospects in their home countries (Deligios, 2024). In many contexts, as the "new economy of migrations" suggests, migration becomes a strategy of household survival, with older family members encouraging younger ones to migrate in the expectation that remittances will support the collective welfare of those who remain at home. Second, armed conflicts, political instability, and human rights violations constitute a major driver of forced child migration. Exposure to internal ethnic conflicts, civil wars, community-level insecurity, persecution, and rights abuses pushes minors to flee, often without formal protection structures (European Union, 2010). In such contexts, the absence of state protection and the breakdown of family structures make independent migration a perceived path toward safety. Third, environmental degradation and climate change intensify existing vulnerabilities. Environmental factors rarely act alone, but they can exacerbate livelihood insecurity and contribute to displacement in regions experiencing desertification, extreme weather, or loss of habitable land (Deligios, 2024).

1.2.3.2 Pull Factors and Aspirational Mobility

Alongside the mentioned pressures, many unaccompanied minors are motivated by aspirations for stability and security, economic and educational opportunities, and connecting to a network of acquaintances in the desired country of destination. It is vital to note that Italy and Australia, given their geopolitical positions and migration policies, attract different profiles of UMs. Italy functions as a first entry point to the European Union, and often minors do not initially aim at settling down in the Italian territory but reach it through irregular Mediterranean or Balkan routes shaped by border dynamics and smugglers' networks. By contrast, Australia primarily receives children through humanitarian programmes, as its geographical

position, restrictive border policies and deterrence mechanisms prevent spontaneous irregular arrivals (Abbondanza, 2023).

While push–pull models remain useful to systematise the drivers of unaccompanied child migration, this study adopts a more critical perspective by situating these factors within broader structural determinants and the political economy of migration, emphasising how global inequalities, conflict dynamics, and policy regimes condition children's mobility choices.

1.2.4 Vulnerabilities of Unaccompanied Minors

Unaccompanied minors are recognised as one of the groups most exposed to an elevated risk of exploitation, trafficking, violence, precarious living conditions, and social exclusion within contemporary migration flows. As underlined by the international literature, research on UMs demonstrates that their marginalisation is not accidental but structurally embedded in migration and welfare systems (Salmerón-Manzano and Manzano-Agugliaro, 2019). Building on this, Bhabha conceptualises child migrants as experiencing a "protection deficit", located at the intersection of restrictive migration regimes and under-resourced child protection systems. At the analytical level, while there is wide consensus that unaccompanied minors experience heightened vulnerability, scholars increasingly contest essentialist interpretations, emphasising instead how vulnerability is structurally produced through legal uncertainty, administrative practices, and restrictive migration regimes rather than inherent personal characteristics. In this context, rights exist formally but are often not implemented in practice (Bhabha, 2014). Such structural vulnerability is particularly relevant for those UMs lacking parental care, secure legal status, and independence from institutional actors, who are more likely to be exposed to trafficking, labour exploitation, homelessness, and long-term social marginalisation.

These dynamics emerge clearly in the Italian reception and integration trajectories of unaccompanied minors. The country's system is

characterised by legislative ambivalences that lead to strong legal guarantees coexisting with fragmented implementation and uneven local practices, resulting in precarious or discontinuous care arrangements (Pasquale, 2020). UMs' pathways to school and to work integration are marked by instability and delays, which incentivise older minors towards informal economy solutions, thereby heightening their risk of exploitation and social exclusion (Deligios, 2024). Unaccompanied minors often encounter fragmented learning pathways and are treated as transient subjects by institutions, producing forms of symbolic marginalisation even if formal access to education is granted (Santagati et al., 2019). Administrative and technological practices and infrastructures, such as the *codice fiscale,* consisting of just numbers instead of combining numbers and letters, become powerful mechanisms of exclusion, leading to a form of digital discrimination that reveals substantive right violations behind bureaucratic procedures (Salerno, 2025).

In contrast, the risk of exploitation and social exclusion in Australia derives less from the precarious journey toward the territory and more from the institutional architecture that governs asylum and migration in the country, which has been repeatedly criticised for its severe mental health impacts and for creating environments that are incompatible with children's rights and social inclusion. The government-affiliated structures deliver support to UMs while simultaneously reproducing a security logic of containment and control, in what Gerard and Weber (2019) define as "humanitarian borderwork". This ambivalent positioning can entrench dependency and isolation, specifically for those minors in community detention or with restrictive visa conditions. Post-migration stressors, including prolonged legal uncertainty, limited agency, and constrained access to education and social participation, cause high rates of post-traumatic stress, undermining the well-being of UMs (King, 2019). Being in a legal limbo produces long-term exclusion by restricting access to welfare services and by keeping children in a state of chronic uncertainty about their future (Lelliott, 2022).

1.2.5 Different National Contexts

The risks described in the above section are crucially shaped by the distinct migration patterns of Italy and Australia.

1.2.5.1 Italy as a Frontline State

Italy's geographical position makes it a primary entry point for mixed migration flows toward the European Union. UMs arrive through both the central Mediterranean and Balkan routes, constituting a stable component of irregular arrivals (Italian Ministry of Labour and Social Policies and Italian Ministry of the Interior, 2025). These flows involve minors from various countries of origin, and local reception systems must respond to unstable numbers and complex migration aspirations of UMs (Deligios, 2024). Italy's approach has generally been entry-based, despite moments of securitisation. Irregular arrivals are received on the territory and processed within the national and EU protection frameworks, rather than being systematically intercepted and diverted elsewhere (Abbondanza, 2023). In this context, the main challenge becomes the management of relatively high and volatile numbers of UMs within a multi-level welfare system, where the risk of social exclusion is linked to reception capacity, local resources, and the quality of social inclusion pathways.

1.2.5.2 Australia as a Deterrence Regime

Australia's migration regime, by contrast, frames irregular maritime arrivals as a security problem to be prevented. Since the introduction of Operation Sovereign Borders, asylum seekers, including UMs, attempting to reach the country by boat have been systematically intercepted and transferred to processing centres, often offshore, instead of being allowed to claim protection and disembark on the mainland (Abbondanza, 2023). The result is that most unaccompanied minors inside Australia are Unaccompanied Humanitarian Minors that arrive through a specific resettlement program. Those who arrive irregularly face mandatory detention as unlawful non-citizens until a visa is granted or their removal occurs (Australia Ministry of Home Affairs, 2025). In this highly securitised

environment, child protection interventions, such as community detention or specialised support programs, operate as partial correctives within a system designed around deterrence. Numerical visibility of UMs in the country is low, but the risk of exclusion is embedded in the legal and policy architecture itself.

1.2.6 The Tension Between Child Protection and Migration Control

A substantial body of scholarship has examined the structural tension between child protection obligations and migration control objectives, particularly in the fields of asylum, detention, and border enforcement. However, comparatively less attention has been paid to how this tension materialises within education systems, despite schooling representing a central site for the practical realisation of children's rights. The Italian and Australian cases exemplify, in distinct yet comparable ways, the existing tension between migration control and child protection. The Italian legal framework on the matter formally prioritises the best interest of the child, as established in international and European law (Convention on the Rights of the Child, 1989; Directive 2013/33/EU and Article 24(2) EU Charter of Fundamental Rights). However, this protective framework coexists with restrictive migration governance mechanisms that aim at containing and managing irregular arrivals: recent Italian reforms, including the *Decreto Cutro*, illustrate how restrictive migration measures may coexist with formally unchanged child-protection obligations, thereby widening the gap between normative commitments and their practical realisation. The practical implementation of children's rights is therefore conditioned by administrative fragmentation and resource scarcity, particularly at the local level. Reception and educational inclusion are often dependent on municipal capacity rather than on a uniform national standard (Santagati et al., 2024). In contrast, Australia's migration system explicitly shows this structural tension. Polices such as *Operation Sovereign Borders* embody a deterrence-based model that seeks to prevent irregular arrivals altogether (Abbondanza, 2023). Within this securitised environment, child protection measures exist

largely as compensatory mechanisms rather than as central policy priorities. Here, care is delivered through systems fundamentally designed to exclude, creating a form of humanitarian borderwork (Gerard and Weber, 2019).

Scholars working at the intersection of migration studies and child rights consistently note that states often struggle to reconcile border enforcement with the obligations deriving from the CRC. According to Roger Zetter (2007), asylum and migration systems tend to categorise individuals in ways that legitimise control and surveillance. Being labelled as "unaccompanied minor" or "irregular migrant" shapes the degree of institutional protection offered, showing that, in practice, child protection may be subordinated to migration governance priorities. Children on the move, in fact, are often mainly perceived and treated as migrants rather than as children (Crawley, 2016). According to Crawley, the "best interests of the child" standard is frequently overshadowed by border regimes processes, including age assessment procedures, immigration enforcement, and deterrence logics that delay guardianship and create bureaucratic barriers to schooling and access to services. Consequently, this produces insecurity and legal precarity, causing unaccompanied minors an experience of "structural vulnerability" (Bhabha, 2014).

Both national contexts hence reveal that the protection of unaccompanied minors is continuously negotiated within, rather than outside, the logic of migration control, fuelling a central tension that this study seeks to unpack in the following chapters, investigating how these legal, policy, and implementation dynamics shape unaccompanied minors' concrete access to education in Italy and Australia.

1.3 Legal Framework and Normative Architecture

1.3.1 Common International Obligations

Both Italy and Australia are parties to the Convention on the Rights of the Child and to the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. The CRC has a central role at the normative level, framing the child as a rights-holder regardless of migration

status, imposing the best interests of the child as a primary consideration in decisions affecting minors, and linking protection to concrete social rights, including education. UN treaty bodies have repeatedly emphasised that states must ensure that immigration enforcement does not hollow out child-protection obligations, particularly where detention, guardianship delays, or barriers to services arise. In 2019, Italy was at the centre of the CRC Committee's Concluding Observations concerning the country's compliance in areas that included education, asylum-seeking and refugee children, and children in situations of migration (Committee on the Rights of the Child, 2019a). Likewise, Australia was criticised by the Committee for its policies affecting asylum-seeking children, including practices associated with immigration detention and offshore arrangements (Committee on the Rights of the Child, 2019b).

1.3.2 Domestic Incorporation and Normative Hierarchy

A key structural difference between the two analysed countries lies in the way the international legal obligations illustrated in the previous paragraph are incorporated and operationalised within their respective domestic legal systems. In fact, the domestic legal effects of the international instruments relevant to UMs diverge significantly due to contrasting constitutional and legal frameworks.

Italy is characterised by a predominantly monist model, albeit with important qualifications. Articles 10 and 117 of the Italian Constitution establish a constitutional framework in which international law, while requiring parliamentary ratification and, where necessary, implementing legislation, assumes a normative relevance within the domestic legal system and constrains legislative and administrative action, particularly in areas concerning fundamental rights

Australia, by contrast, is widely characterised as a dualist legal system, meaning that international treaties ratified by the executive do not automatically become part of domestic law. For an international agreement to produce legal effects internally (e.g. conferring enforceable rights or

obligations), it must be incorporated through specific legislative action by Parliament. In the absence of such implementing legislation, treaties bind Australia exclusively at the international level and are not directly justiciable before domestic courts. Such position has been consistently affirmed by Australian jurisprudence: an example is the landmark case *Minister for Immigration and Ethnic Affairs v Teoh* (High Court of Australia, 1995) that will be examined later. As a result, international child-rights norms exert only an indirect and contingent influence on migration and asylum governance, mediated through administrative discretion rather than constitutional or statutory entitlement.

1.3.3 The European Legal Layer

A crucial distinction between Italy and Australia lies in Italy's membership in the European Union (EU), which introduces a supranational legal layer with direct relevance for the protection of unaccompanied minors. EU law constitutes an exceptional normative framework: it is directly applicable, enjoys primacy over conflicting national legislation, and is directly enforceable before domestic courts.

In the field of asylum and reception, EU secondary legislation establishes binding minimum standards that Member States are required to implement. The Reception Conditions Directive 2013/33/EU explicitly requires Member States to guarantee access to education for minor applicants under conditions comparable to those of nationals, at least until a potential removal is enforced (Directive 2013/33/EU, art. 14). This obligation will be maintained and further specified under the recast EU reception framework, notably Regulation (EU) 2024/1346 on reception conditions for applicants for international protection, which will apply from June 2026 as part of the New Pact on Migration and Asylum, and continues to include provisions on access to education within reception standards for

minors (Regulation (EU) 2024/1346, arts.16-17)[1]. Moreover, the right of unaccompanied minors to access education is not confined to reception instruments alone but is also reflected in other components of the EU migration acquis. In particular, the Return Directive 2008/115/EC requires Member States to take due account of the best interests of the child during return procedures and to ensure access to basic education for minors pending removal.

At the European level, a distinct but complementary normative position is occupied by the European Convention on Human Rights (ECHR). Although the Convention does not enjoy the same direct applicability and primacy as European Union law, it holds a constitutionally reinforced status by virtue of Article 117 of the Italian Constitution. Through its landmark judgments nos. 348 and 349 of 2007, the Constitutional Court clarified that domestic legislation must, wherever possible, be interpreted in conformity with the ECHR, and that laws may be declared unconstitutional when such conforming interpretation proves impossible, boosting the role of the Convention as an interpretative and normative benchmark (Corte costituzionale, sentt. nn. 348–349/2007). Taken together, the EU legal framework and the ECHR contribute to a dense supranational normative environment that significantly constrains domestic discretion in Italy, particularly with regard to the protection of minors' social rights. This multi-layered legal architecture has no direct equivalent in the Australian system, where international human rights obligations lack comparable mechanisms of direct or constitutionally reinforced domestic enforceability.

1.3.4 The Italian Constitutional Architecture

Italy's Constitution is particularly relevant in the context of the study because it contains express constitutional anchors for asylum and education. Specifically, the art. 10(3) recognises the constitutional right to asylum for

[1] At the time of writing, the recast Reception Conditions Directive has been adopted but is not yet applicable.

those prevented from exercising democratic freedoms in their country of origin, while the art. 34 set compulsory and free basic school education for everyone (Costituzione Italiana, 1947). Alongside the constitutional framework, Italian ordinary legislation and secondary norms operationalise these principles in the migration domain. A crucial provision for the Italian context and for this research is the non-rejection safeguard in the art. 19 of the Italian Consolidated Act (*T.U. Immigrazione*), which includes an explicit clause stating that unaccompanied foreign minors cannot be refused at the border in no case (Legislative Decree No. 286/1998), signalling that at the legal level a protective logic should – in principle – preserve minors' experience on the territory, facilitating their access to welfare and education. Lastly, Italy has a dedicated framework for UMs, which is the so-called *"Legge Zampa"* (Law 47/2017), that consolidates a child-protection approach to unaccompanied minors in reception and guardianship pathways, which later chapters will assess against implementation realities.

1.3.5 The Australian Legal Architecture

Australia's legal framework is structurally different from the Italian one. As previously illustrated, Australia is defined as dualist, which means that international treaties do not become directly enforceable domestically unless implemented through legislation. In this context, a key doctrinal marker is the High Court's decision in *Minister for Immigration and Ethnic Affairs v Teoh* (High Court of Australia, 1995), where the Court acknowledged that ratified but unincorporated treaties may give rise to legitimate expectations in administrative decision-making; however, it made clear that they do not create directly enforceable rights.

The backbone of Australian migration control is the Migration Act 1958. The High Court's decision in *Al Kateb v Godwin* (2004) upheld the statutory scheme authorising detention of an "unlawful non-citizen" pending removal, even where removal was not reasonably foreseeable (High Court of Australia, 2004). This doctrinal position has evolved since then: in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*

(2023), the High Court found that continuing detention is unlawful when there is no real prospect of practicable removal in the foreseeable future (High Court of Australia, 2023). Within the scope of this thesis, the relevance is not only given by the detention matter, but by the way in which migration-control logics can restructure the "conditions of possibility" for children's educational access, either through confinement or through prolonged legal uncertainty.

1.3.6 The Legal Pathways of Unaccompanied Minors

To have an exhaustive overview of the phenomenon analysed in this thesis, it is crucial to clarify the concrete legal pathway UMs typically travel through, shedding light on the legal gates where entitlements can be enabled or stalled.

1.3.6.1 The Italian Protection-centred Legal Pathway

In Italy, the formal pathway for UMs generally follows this sequence:

1. Identification and, where necessary, age assessment;
2. Placement in reception facilities;
3. Appointment of a legal guardian;
4. Status determination (asylum or other status);
5. School enrolment and access to educational support measures.

This pathway reflects a formally protection-centred legal architecture, in which access to education is, in principle, guaranteed irrespective of migration status. At the same time, it identifies the procedural stages at which implementation gaps are most likely to emerge, particularly where coordination between different institutional actors becomes necessary.

The constitutional baseline (Arts. 10(3) and 34 of the Italian Constitution), together with the EU reception standards, reinforces this protection-centred approach, while the principle of territorial protection for minors is further strengthened by the prohibition of refoulement and by the absolute ban on the refusal of entry and expulsion of unaccompanied minors under Article 19 of the Consolidated Immigration Act (Legislative Decree No. 286/1998). This provision establishes a form of territorial protection for

unaccompanied minors that operates independently from an individual assessment of risk in the country of origin. Furthermore, the legal rule that minors present on the Italian territory have a right to education irrespective of their residence status is repeatedly affirmed in legal guidance and doctrinal materials, including the systematic reconstructions of the applicable framework by the Association for Law Studies on Migration (ASGI, 2016).

In practice, however, the translation of these formal entitlements into effective school access depends on multi-level governance arrangements involving municipal services, guardianship systems, and school administrations. It is at this level that recurrent friction points such as delays in guardianship appointment, inconsistencies in age assessment, documentation requirements, and uneven territorial capacity arise, constituting the implementation gap that will be examined in the following chapters.

1.3.6.2 The Australian Status- and Visa-dependent Legal Pathway

Compared to the Italian context, the Australian pathway governing unaccompanied minors is structurally more status- and visa-conditional. Any identification, including that of a minor as an "unaccompanied" beneficiary category, is strongly tied to migration status and visa categories, particularly within the humanitarian intake system. This legal salience of migration status is further reinforced by the Migration Act's control-oriented architecture and by judicial interpretations that have historically granted broad discretion to the executive in matters of detention and removal powers.

In formal terms, the legal pathway for UMs in Australia can be synthetically described as follows:

1. Determination of migration status and visa category under the Migration Act 1958;
2. Classification as a beneficiary of specific protection schemes (e.g. the UHM, where applicable);

3. Allocation to detention, community detention, or welfare-based arrangements, depending on legal status and ministerial discretion;
4. Guardianship arrangements, either under the Immigration Act 1946 (Guardianship of Children) or through state and territory child protection systems;
5. Access to education, mainly regulated at the state and territory level and mediated by visa conditions, placement settings, and administrative discretion;
6. Prolonged legal uncertainty, often linked to a temporary visa or unresolved status determination.

This pathway reveals a legal configuration in which both the recognition of unaccompanied minors and their access to education are structurally mediated by migration governance rather than anchored in a constitutional or directly incorporated child-rights framework. Enforceable rights are therefore filtered through administrative decision-making, producing implementation gaps at the intersections between federal migration control and state-level child protection and education systems.

In practical terms, access to education may become indirectly contingent upon several interrelated factors, including the place and form of processing (for example, community-based arrangements versus detention-type settings), the stability and duration of a child's legal status, and the degree of coordination between migration authorities and subnational education providers. Even where schooling is formally available, the legal precarity generated by migration control settings can disrupt continuity of attendance and restrict access to educational support measures. As a result, educational inclusion is shaped less by child-protection principles than by the priorities and constraints of migration governance, creating a form of structural vulnerability in which the implementation gap examined in the following chapters is expected to emerge.

1.3.7 Points of Conflict and Interpretive Controversies

In Italy, international, EU norms and constitutional principles largely converge toward a protection-centred vision. Therefore, tensions mainly emerge as implementation conflicts, where factors such as local administrative practices, resource constraints, and documentation requirements produce de facto restrictions. A useful example is litigation challenging local exclusions from early childhood education, such as the Tribunal of Milan with its order of 11 February 2008 that addressed discriminatory barriers affecting access to nursery school for children linked to irregular status, reaffirming tights of minors irrespective of their or their parents' regularity, demonstrating how education becomes a site where equality and migration control collide in administrative practice.

In Australia, the gap is often more structural: CRC principles exist at the treaty level, but domestic enforceability is mediated by legislative incorporation and administrative law doctrines. Treaty ratification can influence procedural fairness expectations, and, at the same time, detention jurisprudence illustrates how migration-control rationales can dominate the legal landscape with the possibility of prolonged detention. The controversies mentioned in the previous sections matter for UMs, shaping the institutional settings in which children can be placed and the (in)stability of their everyday lives. In addition to this, the CRC Committee's observations on Australia provide further legal critique of compliance gaps, specifically where immigration control settings affect children's rights.

By juxtaposing a protection-centred, EU-embedded system with a status- and visa-dependent deterrence regime, this study contributes to existing literature by offering a cross-national socio-legal analysis of how divergent migration governance models shape access to education for unaccompanied minors. Focusing on education allows the research to move beyond formal legal guarantees and to examine implementation gaps where child protection and migration control most visibly intersect.

1.4 Theoretical Framework and Analytical Lens

This study is situated within an interdisciplinary theoretical framework that draws on international human rights law, migration governance studies, implementation theory, and critical approaches to vulnerability and education. Adopting multiple analytical lenses is thereby necessary to capture the complexity of unaccompanied minors' experiences and to explain the reasons why access to education often remains precarious in practice, despite the existence of legal guarantees. This research treats legal norms, migration policies, and educational outcomes not as separate factors but as interconnected layers that together shape the experiences of unaccompanied minors in Italy and Australia.

1.4.1 The Convention on the Rights of the Child

The normative foundation of the research lies in international children's rights law, particularly the Convention on the Rights of the Child (CRC, 1989) and its principle of the "best interest of the child", which shall be a primary consideration in all actions concerning minors. Such principle, as clarified by the UN Committee on the Rights of the Child in its General Comment No. 14 on the best interest of the child, constitutes a binding interpretative standard that should be entrenched in legislative design, administrative decision-making, and service provision affecting children. The CRC adopts a deliberately status-blind approach: rights are attributed to all children within a state's jurisdiction, irrespective of their nationality or migration status. In this study, national legal and policy arrangements are assessed against this child-centred framework in order to examine whether unaccompanied minors are effectively treated as rights-holders entitled to equal access to education and protection, or whether their access to such rights is differentiated, delayed, or restricted as a consequence of their classification within migration and asylum governance systems.

1.4.2 Migration Governance and Securitisation Theory

International legal commitments alone are insufficient to explain the divergence between Italy and Australia in the governance of UMs. To

address this, the research draws on migration governance and securitisation theory, which shows how migration has increasingly been framed as a matter of security, control, and risk management. As explored by Gerard and Weber (2019), states often reconcile humanitarian obligations with restrictive border regimes by selectively prioritising control over protection. This lens facilitates the understanding of how children on the move are frequently constructed foremost as migrants and recognised as children only at a later stage. In this context, Italy and Australia represent two distinct but related models of migration governance. The latter exemplifies a deterrence-based governance model, characterised by border externalisation, offshore processing, and tightly controlled humanitarian intake. Italy, by contrast, acts within a framework of frontline humanitarian governance, shaped by its geopolitical position in the central Mediterranean and by the need to manage large and fluctuating arrivals (Abbondanza, 2023). Despite sharing the same obligations under international law, the two countries' governance regimes produce divergent institutional architectures and policy priorities, making visible the structural tension between child protection and migration control that conditions access to rights, including education.

1.4.3 Street-Level Bureaucracy

To bridge the unavoidable gap between formal legal frameworks and empirical outcomes, the study further relies on theories of policy implementation, particularly on the concept of street-level bureaucracy developed by Lipsky in 1980 (Lipsky, 2010). Such notion, subsequently applied in socio-legal studies, emphasises the discretion that characterises frontline actors (social workers, police forces, school administrators, guardians, local officials, etc.) in translating legal norms into concrete practices. Rights are not implemented automatically; rather, they are filtered through institutional constraints, resource availability, administrative cultures and individual interpretations (Lipsky, 2010). This lens is crucial to understand the implementation gap that lies at the core of this study and provides an analytical tool to explain why similar rights produce different

outcomes in practice, and why gaps persist even in the presence of formal guarantees.

1.4.4 Structural Vulnerability

Finally, the study is informed by critical approaches to vulnerability and social exclusion. Building on Bhabha's concept of structural vulnerability (Bhabha, 2014), UMs are understood as occupying a position of compounded risk at the intersection of age, migration status, and institutional dependency. Vulnerability is not just an inherent personal trait, but a condition produced by legal uncertainty and restrictive policy environments (Bhabha, 2014). For UMs, barriers to education may stem not only from language or (the lack of) prior schooling, but from administrative delays and documentation requirements. These dynamics become particularly relevant to interpret how the education system responds to UMs in different contexts, exploring how schools can be both spaces of inclusion and sites of symbolic exclusion (Santagati et al., 2024).

Taken together, the theoretical frameworks presented in this section guide the comparative analysis developed in the following chapters. By integrating these perspectives, the study examines how and why the right to education of UMs is unevenly implemented, and how national migration regimes shape both opportunities and constraints in the two analysed countries.

1.5 Research Question

The analysis focuses on unaccompanied minors who are third-country nationals and whose legal position is governed primarily by migration and asylum frameworks rather than by citizenship or family-derived residence rights. Given the age profile of most unaccompanied minors in both Italy and Australia, the study focuses on those segments of the education system where legal entitlement and administrative discretion most frequently intersect, namely compulsory and post-compulsory schooling. In light of the

existing scholarly debates, the identified implementation gaps, and the limited attention devoted to education as a site of legal translation, this study formulates the following research questions. The main research question guiding the research is:

To what extent does the legislation on unaccompanied foreign minors (UMs) in Italy and Australia translate into real access to education, and what does this reveal about the balance between child protection and migration control?

Then, the analysis will be further informed by the following sub-questions:

- Which barriers prevent minors from accessing education despite their legal entitlements?
- What roles are played by third-sector organisations, and street-level bureaucrats in facilitating or constraining such access?

1.6 Methodology of the study

The study utilises a combination of qualitative and quantitative tools. This dual methodology allows for a comprehensive understanding of how formal legal provisions on the rights of unaccompanied minors (UMs) translate into effective access to education in Italy and Australia. By integrating documentary analysis, empirical material and statistical indicators, the research captures both the structural architecture of national systems and their operational functioning in practice.

1.6.1 Comparative Research Design

This research compares two high-income liberal democracies - Italy and Australia - that share similar international obligations (CRC, 1951 Refugee Convention) but have significantly divergent migration governance models. Italy represents a reception-oriented framework embedded in European Union law, while Australia is characterised by a securitised, deterrence-based migration regime. The comparative analysis enables an exploration of

how distinct policy logics influence the implementation of the right to education for UMs.

A common analytical grid is employed to examine both cases. This includes:

- Formal legal entitlements such as national laws, administrative procedures and - in the case of Italy - the EU acquis;
- Entry pathways and identification procedures;
- Enrolment rules and bureaucratic requirements;
- Institutional responsibilities at both the central and local levels;
- Availability of multidisciplinary support measures (linguistic, psychological, socio-educational);
- Outcomes such as enrolment and participation.

This structured comparative framework allows the research to isolate how differing governance logics shape the implementation of the right to education for UMs.

1.6.2 Qualitative Analysis

The qualitative component constitutes the core of the research strategy and combines documentary analysis with empirical data collection.

1.6.2.1 Document and Legal Analysis:

The study analyses:

- International instruments (CRC, 1951 Refugee Convention, EU directives) ;
- National legislation (e.g., Italian Legislative Decree 142/2015; Australian Migration Act and associated policy guidelines);
- Policy documents, ministerial circulars, and government reports;
- Academic and grey literature on child protection, migration governance, and UMs.

This normative mapping provides the foundation for identifying potential discrepancies between legal guarantees and implementation practices.

1.6.2.2 Italy: Mixed Qualitative-Descriptive Approach

The Italian case adopts a mixed qualitative–descriptive approach. Responses to closed-ended questions in the stakeholder questionnaire[2] were aggregated into analytical categories rather than interpretative themes. The aim was to identify recurring implementation patterns across regions rather than to produce statistical generalisations.

Open-ended responses were analysed through thematic coding. Each response was assigned a limited number of codes reflecting key issues raised, such as administrative delays, documentary uncertainty, discretionary practices, and coordination gaps.

The unit of analysis was the thematic pattern rather than the individual respondent, in line with the exploratory nature of the study. This methodological choice reflects the decentralised structure of the Italian reception and education system, where implementation varies across regions. The full codebook, including operational definitions and coding examples, is provided in the Appendices[3].

1.6.2.3 Australia: Qualitative and Expert-Oriented Approach

The Australian chapter adopts a qualitative research design combining documentary analysis with empirical material collected through two semi-structured interviews with senior academics and professionals holding leading roles in refugee policy, education governance and child advocacy, and six responses to an online questionnaire[4] completed by academics, legal practitioners and NGO operators working in migration and refugee protection.

The expert interviews were conducted to provide qualitative insight into the operational dynamics of educational access in the Australian context.

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[2] Detailed description and translation of the Italian questionnaire in Appendix A (Questionnaire Italy)

[3] See Appendix C (Codebook), Appendix D (Italian Coding Matrix), and Appendix E (Italian Closed Questions – Recoding and Frequencies

[4] Detailed description of the Australian questionnaire in Appendix

They were conducted online and recorded with consent. Given the limited number of interviews, findings are used illustratively rather than as a representative empirical dataset. The interviewees possess long-standing experience in policy design, advocacy and service provision at both national and international levels. The questionnaire responses were used to triangulate interview findings by identifying recurring themes across professional perspectives. Convergence emerged particularly around:

- fragmented governance arrangements,
- the conditional nature of educational access linked to visa status,
- institutional opacity and discretionary practices.

Given the limited size of the empirical sample, findings do not claim statistical representativeness. Rather, they illuminate structural dynamics and implementation challenges within the Australian system from a policy-oriented and institutional standpoint.

Due to the documented difficulties in accessing comprehensive and disaggregated official data in Australia, empirical findings are discussed in a dedicated section following the legal and policy analysis. This sequencing reflects the characteristics of the Australian context, where data on unaccompanied and separated minors are often embedded within broader youth or settlement categories and are inconsistently collected (MYAN, 2018).

Consistent with the analytical framework of the thesis, empirical material is used to illustrate governance patterns, discretion and systemic constraints rather than to document individual life stories of UMs.

Questionnaire responses and Interviews can be found in the Appendices[5].

[5] See Appendix F (Australian Questionnaire Responses) and Appendix G (Interviews)

1.6.3 Quantitative Analysis

Quantitative data serve to contextualise and triangulate qualitative findings rather than to construct predictive models.

Primary sources include the Italian Ministry of Labour and Social Policies, the Italian Ministry of Education and Merit (MIM), the Italian Ministry of the Interior, the Australian Department of Home Affairs, the Australian Border Force, the Australian Department of Education. Indicators are used to corroborate qualitative insights and identify systemic patterns in the implementation of educational rights.

1.6.4 Sampling Strategy

The study adopts purposive (judgmental) sampling to select participants directly involved in UMs' educational and protection pathways. Selection criteria included:

- Expertise (direct involvement with UMs)
- Institutional role
- Geographical relevance (e.g. in Italy, mainly regions with significant arrival flows and with differing social contexts were selected)
- Diversity of viewpoints (NGOs, schools, public authorities)

Snowball sampling was subsequently employed to identify additional key stakeholders through professional networks.

1.6.5 Researcher Positionality

The researcher acknowledges her own positionality as an integral part of the methodological framework. Personal experience gained during an internship at the Refugee Advice and Casework Service (RACS) in Sydney, combined with a broader academic and personal engagement with migration and human rights issues while living in Australia, provided direct exposure to the challenges faced by asylum seekers, including minors, and valuable contextual insight into the Australian's institutional framework and everyday practises surrounding migration management and child protection. The comparative analysis between Australia and Italy is thus enriched by

the author's informed understanding of both national settings and by her access to key informants and stakeholders, thanks to existing professional networks.

Concurrently, the author's prior involvement in advocacy-oriented environments may incline the researcher to privilege accounts aligned with protection-focused approaches and to centralise the study on instances of vulnerability, exclusion, or right violations, potentially limiting the consideration of different narratives. Recognising this background, the author ensures that analytical distance was respected during the study and over-identification with specific narratives was prevented, triangulating the material collected from interviews and questionnaires with documentary and quantitative data to not compromise the objectivity and rigour of the research.

1.6.6 Limitations

The author accepts that the study's results may be limited due to constrained access to certain institutional actors, due to bureaucracy and confidentiality rules, different categorisation and data collection methods employed by the Italian and Australian systems, and reliance on adult intermediaries instead of direct contact with UMs due to ethical restrictions. Moreover, structural and legal asymmetries between the two countries pose a challenge to the development of efficient cross-country comparability. Italy and Australia are inherently different in terms of legal frameworks, migration regimes, and welfare arrangements.

To address this issue and avoid analytical distortions, the study adopts a common analytical grid that focuses on legal entitlements, enrolment procedures, institutional responsibilities, and support measures. This tool allows the two cases to be compared on shared dimensions rather than on their institutional structures. Hence, the differences and similarities between the two contexts emerge from comparable categories of analysis and become analytically visible. The limitations of the investigation will be further mitigated thanks to extensive contextual sections for both countries

that clarify the national peculiarities, and a final comparative chapter that draws systematic parallels.

1.6.7 *Ethical Considerations*

All interviews, questionnaires and general interactions strictly adhered to ethical principles. Participants received an informed consent form, outlining the scope of the research, voluntary participation, and the right to withdraw at any time. Anonymity and confidentiality were guaranteed, and all data collected will be used exclusively for academic purposes linked to the research. The study complies with the ethical guidelines of the Alma Mater Studiorum - University of Bologna.

CHAPTER 2

Legal and Policy Frameworks

2.1 Global Legal Framework: From Normative Principles to Educational Entitlements

The global legal framework governing the right of children to education is primarily anchored in international human rights law and, more specifically, in international children's rights law. As established in Chapter 1, the United Nations CRC represents the cornerstone of this framework, articulating a comprehensive set of rights applicable to all individuals below the age of eighteen, irrespective of nationality, migration status, or legal position within a state's territory. This section builds on that normative foundation by examining how the CRC and related international instruments concretely shape states' obligations concerning access to education for children affected by forced migration, with particular attention to UMs.

2.1.1 The Convention on the Rights of the Child and the Right to Education

Adopted in 1989 by UN General Assembly Resolution 44/25, the CRC is among the most widely ratified human rights treaties in history and constitutes the central normative reference for the protection of children's rights at the global level. Its near-universal ratification has consolidated a shared legal understanding of childhood as a distinct phase of life, warranting specific protection, including in the context of migration and forced displacement. Within this framework, the right to education emerges not as an isolated entitlement but as a core component of the broader system of guarantees designed to ensure children's development, dignity, and social inclusion.

The relevance of the CRC to the educational rights of unaccompanied and refugee children cannot be reduced to Article 28, which explicitly

recognises the right of the child to education. Rather, it results from the combined operation of the explicit right to education and the general principles governing the interpretation and application of the Convention, which together support a status-blind and child-centred approach of particular relevance in migration governance.

At the outset, Article 1 of the CRC establishes a uniform definition of the child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." This definition performs an essential gatekeeping function: it anchors the applicability of the Convention in age, rather than in nationality or legal status. In migration contexts, where administrative classifications and age assessment procedures often determine access to protection, Article 1 thus operates as a safeguard against the exclusion of minors from child-specific rights, including education.

This inclusive logic is reinforced by Article 2, which enshrines the principle of non-discrimination and obliges States Parties to respect and ensure the rights outlined in the Convention to each child within their jurisdiction, without distinction of any kind. As consistently clarified by the UN Committee on the Rights of the Child, the scope of this obligation extends to all migrant children, irrespective of their migration or residence status. In the educational field, Article 2 therefore precludes the conditioning of access to schooling on factors such as legal entry, documentation, or the regularity of stay, and requires states to remove both formal and practical barriers that disproportionately affect migrant and asylum-seeking children.

Within this normative architecture, Article 3(1) occupies a pivotal role. By requiring that the best interests of the child shall be a "primary consideration" in all actions concerning children, the provision establishes an overarching interpretative lens applicable across all policy domains. As discussed in Chapter 1, General Comment No.14 (2013) confirms that the best interests principle constitutes a binding legal standard guiding legislative, administrative, and judicial decision-making. When applied to

education, this standard demands that decisions relating to reception arrangements, transfers between facilities, age determination, or placement in educational pathways be assessed in light of their impact on the child's educational continuity, development, and well-being, rather than being subordinated to migration control objectives.

The CRC further addresses the specific situation of children affected by forced migration in Article 22, which obliges State Parties to ensure that children seeking refugee status, or recognised as refugees, receive appropriate protection and humanitarian assistance in the enjoyment of their rights under the Convention and other international instruments. Notably, the provision does not distinguish between accompanied and unaccompanied children, nor does it condition protection on the basis of formal recognition of refugee status. This formulation reinforces the obligation to guarantee access to education from the earliest stages of displacement, including during asylum procedures and reception phases.

Lastly, Article 28(1)(a) obliges State Parties to make primary education compulsory and available free to all, and to encourage the development of accessible secondary education. While certain aspects of the right to education are subject to progressive realisation, the CRC Committee has clarified that access to primary education for all children within a state's jurisdiction, including UMs, must be ensured without discrimination and as soon as possible, as set out in General Comment No.6 (2005).

Taken together, these provisions establish a coherent normative framework in which access to education is inseparable from the broader protection of children's rights. The CRC thus sets a clear benchmark against which national and regional legal frameworks must be assessed. Such benchmark will inform the analysis of the European, Italian, and Australian approaches during this thesis.

2.1.2 Interpretative Guidance and the Status-Blind Approach to Education

The normative reach of the CRC is significantly shaped by the interpretative activity of the UN Committee on the Rights of the Child, whose General Comments provide authoritative guidance on the scope and content of States Parties' obligations. In the context of migration and forced displacement, this interpretative function has been particularly relevant in clarifying the application of the CRC to children whose legal status is uncertain, temporary, or irregular.

General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin constitutes the Committee's most explicit articulation of a child-centred and status-blind approach to migration. The Committee affirms that UMs are entitled to the full range of rights enshrined in the CRC and that States Parties must ensure their effective enjoyment "without discrimination" and irrespective of their immigration status. In relation to education, the General Comment specifies that access to schooling must be granted on an equal footing with nationals and ensured as soon as possible after the child's arrival. This formulation is particularly significant, as it links the temporal dimension of access to education to the child's vulnerability, rather than to the progression of asylum or migration procedures.

The emphasis on immediacy reflects the Committee's understanding of education not merely as a social service, but as a protective measure essential to the child's well-being, development, and resilience. Prolonged exclusion from education, delays in enrolment, or placement in segregated or inferior educational pathways may therefore undermine the protective purpose of the CRC and expose unaccompanied children to heightened risks of marginalisation and exploitation.

This interpretation is reinforced by General Comment No. 14 (2013), which clarifies the legal nature and operational content of the best interests of the child principle. As discussed in Chapter 1, the Committee explicitly recognises the best interests of the child as a binding interpretative standard

applicable to all actions concerning children, including administrative decisions taken in the context of migration governance. When applied to education, this standard requires authorities to assess how reception arrangements, transfers between facilities, or age assessment procedures affect the child's access to schooling and educational continuity. The principle thus operates as a constraint on policy choices that prioritise migration control or administrative convenience over children's rights.

Read together, these General Comments consolidate a coherent interpretative framework in which access to education for UMs is understood as an immediate and non-discriminatory obligation, closely tied to the child's best interests. Such framework provides a crucial benchmark for assessing regional and national legal regimes, particularly in contexts where formal guarantees coexist with restrictive migration practices that may hinder their effective implementation.

This interpretative approach has been reiterated in the Committee's Concluding Observations on States Parties. In its Concluding Observations on Italy, the Committee expressed concern about persistent barriers affecting UMs' effective access to education, including delays in school enrolment, fragmentation between reception and education systems, and obstacles to educational continuity. The Committee reaffirmed that States must ensure non-discriminatory and timely access to education for all children within their jurisdiction, irrespective of migration status, and emphasised the need to align reception arrangements with children's educational needs (CRC Committee, Concluding Observations on Italy, 2019).

This interpretative lens has also been concretely applied in the Committee's individual communications. In cases such as *J.A.B. v Spain*, the Committee affirmed that uncertainty regarding a child's age or migration status cannot justify delays in the application of the Convention and that the best interests of the child must guide administrative practices from the outset. While these decisions do not address access to education as a

standalone issue, they are nonetheless relevant in clarifying the conditions under which CRC rights must be applied in migration contexts, confirming the immediate and status-blind applicability of CRC obligations. This jurisprudence thus provides an essential interpretative backdrop for understanding States' duties in relation to children's access to education.

This interpretative approach has also been reflected in legal scholarship. In particular, Pobjoy argues that the best interests principle codified in Article 3 CRC may constrain removal and reception decisions even where a child does not meet the criteria for refugee status under the 1951 Convention, thereby reinforcing the status-blind logic underpinning the Committee's jurisprudence (Pobjoy, 2017).

Similar concerns have been raised by the Committee in relation to Australia. In its Concluding Observations on Australia, the Committee highlighted the adverse impact of migration detention and temporary migration statuses on asylum-seeking children's access to education, noting that restrictive migration policies continue to generate delays, exclusion, and unequal educational opportunities. The Committee called on Australia to ensure that all children, including asylum-seeking and UMs, enjoy effective and non-discriminatory access to education, regardless of their migration status or mode of arrival (CRC Committee, Concluding Observations on Australia, 2019).

2.1.3 The 1951 Refugee Convention and the Structural Limits of Refugee Law in Protecting Children's Educational Rights

Alongside international children's rights law, the global legal framework governing forced displacement is centred on the Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol. The Refugee Convention establishes a status-based regime of protection, conferring a defined set of rights upon individuals who satisfy the legal definition of a refugee under Article 1A(2). While international refugee law has progressively expanded the catalogue of rights attached to refugee

status, it remains fundamentally structured around status determination as the gateway to protection (Hathaway, 2021).

Within this Convention, access to education is addressed in Article 22, which obliges States Parties to grant recognised refugees the same treatment as nationals with respect to elementary education, and treatment no less favourable than that accorded to other non-nationals generally with respect to post-primary education. Read in conjunction with Article 3, which prohibits discrimination on grounds such as race, religion, or country of origin, this provision establishes an important guarantee for children who have been formally recognised as refugees.

However, as noted by Pobjoy, the Refugee Convention is fundamentally age-neutral in its design and contains no child-specific provisions addressing the particular vulnerabilities or developmental needs of refugee children (Pobjoy, 2017). This omission is not accidental but reflects the historical and political context in which the Convention was drafted, at a time when international refugee protection was primarily conceived in relation to adult political dissidents rather than children as autonomous rights-holders. Even Article 22, which governs access to public education, makes no explicit reference to childhood or to the best interests of the child.

This structural feature has significant implications for the protection of UMs. First, the Convention's guarantees are conditional upon formal recognition of refugee status, thereby excluding asylum seekers and other displaced children whose status has not yet been determined. Second, the Convention does not articulate education as a right grounded in the child's development or well-being, but rather as one entitlement among others attached to refugee status. As a result, access to education under refugee law remains vulnerable to delays inherent in status determination procedures and to restrictive interpretations tied to migration control objectives.

Pobjoy's analysis further highlights that, while the denial of access to education may in certain circumstances amount to "persecutory harm" for the purposes of refugee status determination, this protection operates

indirectly and contingently (Pobjoy, 2017). In such cases, education is not protected as an autonomous right per se, but as an element contributing to the severity of harm suffered by the child. This approach contrasts sharply with the CRC, which frames education as an autonomous and universal right owed to all children within a state's jurisdiction, irrespective of status.

The Refugee Convention's provisions on non-penalisation for irregular entry (Article 31), non-refoulement (Article 33), and protection against expulsion (Article 32) may also bear relevance for children, insofar as detention, removal, or punitive measures may indirectly obstruct access to schooling. Yet these safeguards function primarily as negative obligations limiting state action, rather than as positive duties to ensure educational access and continuity. They therefore lack the proactive, child-centred orientation that characterises international children's rights law.

The comparison between the two regimes reveals a clear normative asymmetry. While refugee law offers essential protection against return and discrimination once status is recognised, it does not provide a comprehensive framework for safeguarding children's educational rights. As legal scholarship has noted, this gap reinforces the need to read refugee law in light of the CRC when assessing the protection owed to children (Pobjoy, 2017). This structural limitation of refugee law highlights the added value of the CRC in addressing the educational needs of UMs. The limits of refugee law as a comprehensive protection framework have long been acknowledged, particularly in relation to vulnerable groups such as children, whose rights often require supplementation through international human rights law (Goodwin-Gill, McAdam, 2021). By extending its protective reach to all children within a state's jurisdiction, irrespective of legal status, the CRC offers a normative framework capable of mitigating the exclusionary effects inherent in status-based regimes of protection. At the same time, the coexistence of these two legal frameworks reveals the tensions that emerge when access to education is primarily regulated through asylum and migration law rather than through a child-centred rights-based approach. These tensions provide a critical lens through which

the European, Italian, and Australian legal regimes will be examined in the following sections.

2.1.4 The Global Education Agenda: Sustainable Development Goal 4 as a Policy Framework

Alongside binding international legal obligations, the global commitment to education is further articulated within the framework of the 2030 Agenda for Sustainable Development, adopted by the United Nations in 2015. Sustainable Development Goal 4 (SDG 4) aims to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all", explicitly embracing a language of universality and inclusion. While the Sustainable Development Goals do not create legally enforceable obligations, they nonetheless provide an important policy backdrop against which states' commitments to education are articulated and assessed.

In relation to unaccompanied and displaced children, SDG 4 reinforces - at the level of political commitment - principles already embedded in international children's rights law, particularly inclusivity, equity, and access. At the same time, the non-binding nature of the SDGs and their reliance on state-led implementation highlight the limits of global education agendas in addressing the structural barriers faced by migrant children, particularly in restrictive migration contexts. As such, SDG 4 functions less as an independent normative source than as a complementary reference point, underscoring the gap that may arise between formal commitments to inclusive education and the effective enjoyment of the right to education in practice.

2.1.5 Normative Benchmarks and Emerging Tensions

A comprehensive analysis of international children's rights law, refugee law, and global development frameworks establish a robust normative foundation for the right of UMs to education. The CRC, interpreted through the authoritative guidance of the CRC Committee, articulates a clear, status-blind obligation to ensure access to education as a core component of child protection and development.

However, as the following sections will demonstrate, the translation of these global norms into regional and national legal frameworks remains uneven. While international children's rights law adopts a formally universal and status-blind approach, scholarship has long highlighted the gap between the legal recognition of children's rights and their differentiated implementation in migration contexts, particularly concerning access to education for migrant and refugee children (Bhabha, 2014). The gap between formal commitments and practical implementation, particularly in migration governance contexts, constitutes a central tension of this research and provides the basis for the comparative analysis of the Italian and Australian frameworks.

Despite the centrality of education within the CRC framework, legal scholarship on children's rights in the context of migration has traditionally privileged civil and procedural guarantees, such as detention, asylum procedures, and the best interests principle, while devoting comparatively limited attention to economic, social and cultural rights, including education. As highlighted by Brittle and Desmet, this imbalance has contributed to the relative invisibility of education as a legally enforceable right within migration governance debates, despite its recognised role in children's development and protection (Brittle and Desmet, 2020).

The existent legal scholarship on this topic has long emphasised that the formal recognition of education as a right does not, in itself, guarantee its effective enjoyment. In the context of migration, education rights are often undermined by structural barriers linked to migration control policies, administrative practices, and legal uncertainty. In her work, Brittle notes that the realisation of education rights for migrant and refugee children is frequently constrained by the tension between child-centred human rights obligations and securitised migration governance, rendering the right to education "more illusory than real" in practice (Brittle, 2023).

2.2 The European Union and Italian Legal Frameworks: Formal Protection and Implementation Tensions

2.2.1 The European Union Legal Framework

At the regional level, the European Union has developed a comprehensive legal framework governing asylum, reception, and the protection of children, which formally reflects many of the principles enshrined in international children's rights law. In line with the CRC, EU law recognises children as rights-holders and integrates the best interests of the child as a relevant consideration within areas traditionally shaped by migration control objectives. At the same time, as already anticipated in the previous chapter, the translation of these guarantees into effective protection has been increasingly affected by broader trends towards the securitisation of migration governance.

The constitutional cornerstone of children's protection within the EU legal order is the European Union Charter of Fundamental Rights (2000), which has been legally binding since the entry into force of the Lisbon Treaty in December 2009. The Charter embeds children's educational rights in Article 14, while Article 24 affirms that children are entitled to protection and care as it is necessary for their well-being and requires that their best interests must be a primary consideration in all actions relating to them. Article 18 further guarantees the right to asylum, with due respect for the rules of the 1951 Refugee Convention and the 1967 Protocol. Read together, these provisions situate access to education for minors, including those seeking international protection, within the EU's constitutional architecture and formally align EU law with the CRC's child-centred approach.

Alongside the EU Charter of Fundamental Rights, the European Convention on Human Rights (ECHR) constitutes a further cornerstone of children's rights protection within the European legal space. While the Convention does not contain an explicit provision on the right to education comparable to Article 28 CRC, Article 2 of Protocol No. 1 guarantees the right to education, and Article 14 prohibits discrimination in the enjoyment of Convention rights. The European Court of Human Rights has consistently

interpreted these provisions in light of the best interests of the child, recognising that access to education must be ensured on a non-discriminatory basis, including for children in vulnerable situations, as affirmed in its case law concerning non-discriminatory access to education, including in the context of migration or residence status[6]. Although the ECHR operates outside the EU legal order, its jurisprudence has significantly influenced the interpretation of fundamental rights within EU law and provides an additional normative reference for assessing States' obligations towards migrant and unaccompanied children. Through the combined jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights, fundamental rights standards have been progressively constitutionalised within the European asylum space, most notably principles of non-discrimination, effective judicial protection, and the integration of international human rights norms. As scholarship has highlighted, this process has generated persistent tensions between rights-based standards and securitised migration governance (Moreno-Lax, 2017).

From a doctrinal perspective, this judicial constitutionalisation operates through the elevation of fundamental rights to the level of primary EU law. The Court of Justice has consistently treated the Charter of Fundamental Rights as binding in the interpretation of secondary asylum legislation, thereby integrating best interests and non-discrimination as interpretative constraints on CEAS instruments. At the same time, pursuant to Article 52(3) of the Charter, the content and scope of corresponding Charter rights must be aligned with the European Convention on Human Rights, rendering ECtHR jurisprudence an authoritative interpretative benchmark within the EU legal order.

However, this constitutionalisation does not eliminate the structural discretion retained by Member States in the implementation of asylum and reception standards. CEAS instruments, even in their reformed regulatory form, continue to leave significant margins in matters of reception

[6] *Ponomaryovi v Bulgaria* (2011), European Court of Human Rights.

conditions, procedural design, and administrative organisation. Judicial intervention therefore tends to operate ex post, correcting manifest violations in individual cases rather than restructuring the systemic conditions that shape access to rights, including access to education for UMs.

Building upon this constitutional framework, secondary legislation adopted within the Common European Asylum System (CEAS) gives more concrete expression to these principles. Directive 2011/95/EU (Qualification Directive) defines the criteria for granting refugee status and subsidiary protection and explicitly recognises that acts of persecution may take child-specific forms. While the Directive does not regulate access to education as such, its acknowledgement of age and vulnerability as relevant interpretative factors reinforces the need for child-specific approaches to protection, including in the assessment of risks and needs that may affect educational trajectories during and after the asylum process.

It should be noted that the Qualification Directive is in the process of being replaced by Regulation (EU) 2024/1347 (Qualification Regulation), adopted as part of the EU Pact on Migration and Asylum. While the Regulation largely retains the substantive structure of the previous Directive, including the recognition of child-specific forms of persecution and vulnerability, its transformation into a directly applicable instrument reflects the EU's broader objective of strengthening harmonisation in asylum decision-making. The implications of this shift for the protection of UMs, including the assessment of their specific needs, remain to be fully assessed in practice.

More directly, access to education is addressed in Directive 2013/33/EU (Reception Conditions Directive), which establishes minimum standards for the reception of applicants for international protection. At the normative level, Article 14 of the Directive requires Member States to grant minor applicants access to the education system under conditions comparable to those enjoyed by nationals, and to ensure such access no later than three months from the lodging of the application for international

protection. For UMs, the Directive further requires that education takes into account their specific needs and, where possible, facilitates access to vocational training, translating, at least at the formal level, the CRC's principles of non-discrimination and timely access to education into binding EU obligations. This child-sensitive orientation has also been emphasised in EU asylum law scholarship, which highlights how fundamental rights standards—most notably the best interests of the child and the recognition of child-specific vulnerabilities—have been progressively integrated into the Common European Asylum System as interpretative constraints on asylum decision-making (Hailbronner and Thym, 2016).

It should also be noted that the Reception Conditions Directive 2013/33/EU is in the process of being replaced by Regulation (EU) 2024/1346, adopted as part of the EU Pact on Migration and Asylum. While the Regulation largely preserves the core structure of the previous Directive, including provisions on access to education for minor applicants, its transformation into a directly applicable instrument reflects the EU's objective of strengthening uniform reception standards across Member States. The practical implications of this shift for UMs, particularly in relation to educational continuity and material reception conditions, remain contingent on national implementation practices and will require close monitoring.

Alongside binding legislation, such a child-centred orientation has also been reinforced at the European level through soft-law instruments[7] addressing the protection of refugee and migrant children. In this context, the EU Action Plan on UMs (2010-2014) represents a key policy document. Although not legally binding, the Action Plan articulates a comprehensive strategy structured around three main pillars: prevention, protection, and the pursuit of durable solutions.

[7] Council of Europe, Action Plan on Protecting Refugee and Migrant Children in Europe (2017–2019) (Division on Migration and Refugees, 2017)

Within this framework, access to education is explicitly identified as a key component of protection and social inclusion for UMs. Education is framed not merely as a welfare measure, but as a key tool for integration, development, and long-term autonomy. At the same time, the non-binding nature of the Action Plan limits its normative force. Rather than creating enforceable individual rights, it reflects a programmatic commitment to incorporating children's rights considerations into EU migration governance, without ensuring their uniform or effective implementation across Member States.

Despite this formally robust framework, significant challenges persist in practice. As documented by the European Union Agency for Fundamental Rights (FRA), the implementation of the above-mentioned standards relating to access to education for UMs across Member States remains uneven, with considerable variations, particularly with regard to timely enrolment, educational continuity, and access to age-appropriate schooling for UMs (FRA, 2018). Such shortcomings do not reflect a lack of normative guidance, but rather the difficulties inherent in translating child-centred legal standards into practice within increasingly restrictive asylum and reception systems.

Recent scholarship has emphasised that the formal recognition of education rights within migration and asylum frameworks does not necessarily translate into their effective realisation. Drawing on a rights-based policy perspective, Brittle argues that education for migrant and refugee children is particularly vulnerable to being subordinated to migration governance priorities, resulting in a pattern where access is formally guaranteed but substantively constrained by administrative practices, reception arrangements, and legal uncertainty. This dynamic reflects what has been described in the literature as a form of selective operationalisation of children's rights, whereby socio-economic rights such as education receive less sustained legal attention than procedural safeguards related to asylum and migration control, producing a structural

implementation deficit rather than an isolated policy failure (Brittle, 2023; Brittle and Desmet, 2020).

The illustrated tension between formal protection and uneven implementation constitutes a defining feature of the EU legal framework on UMs. It also provides a crucial starting point for analysing how EU norms are received and operationalised at the national level, as illustrated by the Italian case examined in the following section.

2.2.2 The Italian Legal Framework: Child Protection, Education, and Emerging Tensions

Within the European legal framework outlined above, Italy has developed a national regime governing UMs that is formally grounded in a strong child-protection rationale. Italian law has long recognised access to education as a fundamental right, applicable to all children within its territory, irrespective of nationality or migration status, as reflected in Articles 3 and 34 of the Constitution and confirmed by judicial practice[8], and has progressively incorporated international and European standards concerning the protection of minors.

At the constitutional level, this orientation is reflected in Article 34 of the Italian Constitution, which affirms that schools are open to everyone, and in Article 10, which requires the Italian legal order to conform to generally recognised principles of international law, including those relating to asylum and human rights. Italian constitutional principles, as interpreted by the Constitutional Court, have consistently affirmed that fundamental rights attach to the person as such and may not be restricted on the basis of nationality or migration status. In the field of education, this principle has been concretely applied in judicial practice, which has held that access to education and school enrolment cannot be conditioned on the migration status of the child or of their parents concerning the enrolment of migrant children (Corte Costituzionale, judgment no. 454/1998; Tribunale di Milano, order of 11 February 2008).

[8] Tribunale di Milano, order of 11 February 2008

This constitutional backdrop has been complemented by legislative measures transposing EU asylum law into the domestic legal order. Legislative Decree No. 142/2015, which implements the Reception Conditions Directive, constitutes the primary instrument governing reception standards for applicants for international protection. Article 22 of the Decree explicitly guarantees UMs access to education under the same conditions as Italian nationals and affirms the obligation of public authorities to ensure enrolment and attendance. In doing so, the Decree reflects both EU minimum standards and the CRC's principles of non-discrimination and best interests, at least at the level of formal entitlements.

This child-centred approach has also been reinforced at the judicial level by the Court of Justice of the European Union (CJEU). In *TQ v Staatssecretaris van Justitie en Veiligheid* (C-441/19), the Court held that decisions concerning UMs must be guided by the best interests of the child and must not expose them to situations of legal or material uncertainty. Although the case did not concern access to education as such, the Court's reasoning underscores the obligation to ensure stable living conditions, which are a precondition for the effective enjoyment of rights, including education.

A significant step forward in the consolidation of a child-specific protection framework was the adoption of Law No. 47/2017, commonly referred to as the *Legge Zampa*. The Law represents a turning point in the Italian approach to UMs, as it systematises a range of protections previously scattered across different legal instruments and explicitly anchors them in the primacy of the child's best interests. Among its key features are the strengthening of guardianship mechanisms, the prohibition of refoulement of UMs, and the recognition of access to education, health care, and social services as integral components of protection rather than ancillary measures. In this sense, the Zampa Law can be read as the most explicit domestic translation of international children's rights standards within the Italian legal system.

Despite this formally robust framework, the effective enjoyment of the right to education by UMs in Italy has remained uneven. Legal analyses and independent monitoring bodies have highlighted persistent obstacles to the effective enjoyment of the right to education by UMs, including administrative delays and fragmented coordination between reception and educational authorities (ASGI, 2016; ISMU, 2023). These difficulties point to a structural gap between legal guarantees and their implementation, a gap that mirrors, at the national level, the broader tensions observed within the EU framework.

Judicial practice has also contributed, in a limited but relevant manner, to shaping the effective protection of UMs' rights within the Italian legal system, particularly in situations where administrative practices have not fully aligned with statutory guarantees. Beyond the case law of the Constitutional Court, ordinary courts, often acting within anti-discrimination proceedings, have been called upon to assess the compatibility of specific administrative measures with constitutional principles and with Italy's obligations under international and European law.

As documented by legal advocacy organisations such as ASGI, litigation before civil courts has been used to challenge practices affecting access to education for UMs, including delays in school enrolment, obstacles linked to documentation requirements, or exclusion from ordinary educational pathways at the local level. In these cases, courts have generally reaffirmed that access to education constitutes a fundamental right that cannot be conditioned on migration status, reception arrangements, or administrative discretion. At the same time, available analyses underline the structural limits of judicial intervention as a mechanism for ensuring uniform protection. While court decisions may provide effective remedies in individual cases, they do not resolve the underlying implementation gaps resulting from fragmented governance, uneven administrative capacity, and the decentralised organisation of reception and education services. As noted by ASGI, reliance on judicial remedies tends to produce reactive and case-

specific outcomes, leaving broader patterns of delayed or uneven access to education largely dependent on local practices and advocacy capacity rather than on systematic enforcement mechanisms (ASGI, 2021). This confirms that, within the Italian framework, judicial practice plays a complementary role in the protection of UMs' rights, contributing to the clarification of legal standards without substituting for comprehensive and coherent administrative implementation.

The contribution of European courts has further strengthened this rights-based framework. While education has rarely been addressed as an autonomous right in the case law of the European Court of Human Rights, the Court has consistently emphasised the heightened vulnerability of UMs and the centrality of their best interests in migration contexts. In cases such as *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2006) and *Rahimi v Greece* (2011), the ECtHR held that States have positive obligations to ensure adequate care and protection for UMs, highlighting that failures in reception and protection may undermine the effective enjoyment of their fundamental rights. These principles, although articulated outside the educational field, are directly relevant to the conditions enabling access to education, including stability, accommodation, and guardianship.

In recent years, this tension has been further accentuated by legislative reforms aimed at strengthening migration control. Decree-Law No. 20/2023, converted into Law No. 50/2023 (*Decreto Cutro*), does not formally amend the Zampa Law nor does it revoke the right of UMs to education. Nevertheless, by restructuring reception systems and narrowing access to certain forms of protection, the Decree has indirect but significant implications for the conditions under which educational rights are exercised. In particular, increased instability in reception arrangements and accelerated procedures risk undermining educational continuity, even where formal entitlements remain intact.

This development illustrates a broader dynamic within the Italian legal framework: while the normative architecture governing UMs continues to reflect a strong formal alignment with international and EU children's rights

standards, its implementation has become increasingly conditioned by policy choices aimed at migration control and the reconfiguration of reception systems.

Legal scholarship has framed this dynamic not merely as an implementation problem, but as a structural feature of rights protection in migration governance. Courts may act as important sites for the clarification of legal standards and, in some cases, as avenues of resistance to exclusionary practices; however, they remain ill-equipped to address deficiencies rooted in fragmented administration and policy design. In the Italian context, judicial intervention has therefore been described less as a mechanism of systemic correction than as a contingent safeguard, whose effectiveness depends on individual litigation rather than on uniform institutional enforcement (Pasquale, 2020; ASGI, 2016).

These implementation gaps are not unique to the Italian context. As highlighted in comparative research on migrant children's education rights, the absence of explicit exclusionary rules often coexists with structural barriers that render access to education fragmented, delayed, or dependent on local capacity and discretionary practices. In this sense, the Italian experience reflects a broader pattern in which education rights are formally recognised but unevenly realised in practice, particularly for children subject to migration governance (Brittle, 2023). The tension between formally preserved guarantees and increasingly restrictive implementation practices thus constitutes a defining feature of the Italian case and provides a particularly instructive point of comparison for the analysis of the Australian framework in the following section, where similar implementation dynamics emerge within a markedly different legal architecture.

From a structural perspective, Italian courts operate primarily as corrective mechanisms within a decentralised and administratively fragmented implementation framework. Judicial intervention has contributed to reaffirming the universal character of fundamental rights and to clarifying the non-discriminatory scope of access to education for UMs.

However, as legal scholarship has observed, litigation tends to address individual violations ex post rather than restructuring the systemic conditions that generate implementation gaps. Courts may function as sites for the clarification of standards and, at times, as avenues of resistance to exclusionary practices; yet they remain institutionally ill-equipped to remedy deficiencies rooted in fragmented governance and policy design. As a result, while constitutional and supranational jurisprudence reinforces the formal robustness of the Italian legal framework, the effective enjoyment of educational rights remains significantly conditioned by local administrative capacity, reception arrangements, and migration governance choices. This structural dynamic situates Italy within a broader European pattern in which judicial constitutionalisation coexists with uneven practical realisation.

2.3 The Australian Legal and Policy Framework: Migration Control and Child Protection

The Australian legal framework governing unaccompanied and refugee children differs markedly from the European and Italian models examined in the previous section. While Australia formally recognises the importance of child protection, most notably through dedicated arrangements for unaccompanied humanitarian minors, child welfare standards governing out-of-home care, and institutional monitoring of children's rights, it has developed these protections within a migration system that remains strongly shaped by border control imperatives and extensive executive discretion. As already discussed in Chapter 1, this structural orientation has significant implications for the way in which children's rights, including access to education, are recognised and implemented in practice.

Unlike the European Union and its Member States, Australia has not incorporated the CRC directly into domestic law. Although Australia ratified the CRC in 1990, the Convention does not have direct effect in the absence of legislative incorporation. As a result, children's rights are not enforceable as such before domestic courts but may instead operate as interpretative considerations within administrative decision-making.

Therefore, the Australian approach to children's rights is defined by a duality between formal international commitment and limited domestic justiciability.

The central legal instrument governing migration and asylum in Australia is the Migration Act 1958, which establishes a comprehensive statutory framework for entry, detention, visa determination, and removal. The Act does not contain a child-specific protection regime comparable to that found in European asylum law, nor does it explicitly recognise a general right to education for asylum-seeking or unaccompanied children. Instead, access to rights and services is largely mediated through visa status and administrative policy.

Within this framework, the position of UMs is shaped by a combination of migration law and child welfare arrangements. The Australian Human Rights Commission (AHRC) Act 1986 assigns the role of guardian for unaccompanied humanitarian minors to the Minister for Immigration, creating a system in which guardianship functions are embedded within the same executive authority responsible for immigration control. This institutional overlap has been the subject of sustained legal and scholarly scrutiny, particularly in relation to the capacity of the guardian to act independently in the best interests of the child (AHRC, 2014).

At the policy level, Australia has developed specific programmes addressing UMs, most notably the Unaccompanied Humanitarian Minors Program, which applies primarily to children admitted under Australia's humanitarian resettlement pathways. These children are generally placed in out-of-home care arrangements and granted access to education and welfare services comparable to those available to Australian nationals. However, this protection is contingent upon entry through authorised channels and the granting of an appropriate visa.

By contrast, children who arrive irregularly or who seek asylum after arrival are subject to a notably different legal regime. Asylum-seeking minors may experience prolonged periods of immigration detention or residence in alternative forms of restricted accommodation, with access to

education dependent on policy choices rather than enforceable legal entitlements. This creates a distinction between resettled humanitarian minors and asylum-seeking or irregularly arrived children that reflects a broader stratification of rights within the Australian system, in which legal status functions as the primary gateway to protection.

This section will therefore examine how Australian migration law and policy construct differentiated pathways of protection for UMs, and how these pathways shape access to education in practice. In doing so, it will analyse the Migration Act 1958, relevant child protection standards, and key policy frameworks, including the Operation Sovereign Borders, in order to assess the extent to which Australia's approach aligns with, or departs from, international children's rights standards.

2.3.1 The Migration Act 1958 and the Centrality of Migration Status

In Australia, at the statutory level, the central role of migration status in shaping access to rights is embedded in the structure of the Migration Act 1958, which regulates entry, visa determination, detention, and removal through a highly centralised system of executive powers. Rather than articulating substantive rights applicable to all persons within the territory, the Act organises entitlements through a complex architecture of visa categories and administrative classifications.

The Migration Act does not establish a child-specific protection regime for asylum-seeking or irregularly arrived minors, nor does it recognise education as an autonomous or directly enforceable right for children without lawful status. Consequently, access to education for unaccompanied and asylum-seeking minors is not governed by age or vulnerability as such but is indirectly determined by the child's position within the migration system, including visa status, place of residence, and exposure to detention measures.

Mandatory detention for "unlawful non-citizens" has long constituted a defining feature of Australian migration law. Although children are not excluded from this regime as a matter of principle, their treatment within

detention settings has been shaped primarily by administrative practice rather than by statutory guarantees. Detention and temporary migration statuses may significantly disrupt educational pathways, either by delaying school enrolment or by limiting access to age-appropriate and continuous schooling, particularly where legal uncertainty persists over extended periods.

This indirect regulation of access to education reflects a broader structural characteristic of Australian migration law: the prioritisation of border control and migration management objectives over the articulation of universal or status-blind rights. Legal scholarship has characterised the position of unaccompanied and asylum-seeking children in Australia as one of structural legal uncertainty, in which temporary or precarious migration statuses translate into delayed or disrupted access to rights and services (Lelliott, 2022). In the absence of legislative incorporation of international children's rights instruments, including the CRC, the Migration Act operates as the primary gatekeeper of entitlements, with children's access to education remaining contingent upon discretionary and policy-driven arrangements.

2.3.2 Guardianship, Child Protection, and the AHRC Act 1986

Within this migration-centred framework, the legal position of UMs is shaped by the Australian Human Rights Commission Act 1986, which assigns guardianship responsibilities for unaccompanied humanitarian minors to the Minister for Immigration.

Beyond its role in guardianship arrangements, the AHRC exercises an important oversight and reporting function in relation to children's rights in migration contexts. Acting under the Australian Human Rights Commission Act 1986, the Commission is empowered to inquire into conditions of immigration detention, monitor compliance with international human rights standards, and issue public reports and recommendations. Although its findings are not legally binding, the Commission has played a significant role in documenting systemic shortcomings affecting asylum-seeking and

unaccompanied children, including the impact of detention and restrictive migration policies on their access to education and development. This monitoring function constitutes one of the few institutional mechanisms through which children's rights concerns are articulated within the Australian migration system.

The critical role of the Minister for Immigration within the Australian migration system warrants closer scrutiny[9], the Minister is vested with extensive statutory powers relating to visa determination, detention, transfer, and removal, many of which are exercised on a discretionary basis. In the context of unaccompanied humanitarian minors, the Minister also acts as legal guardian pursuant to federal legislation, thereby combining migration control functions with child protection responsibilities. This institutional concentration of powers is distinctive within comparative asylum law and creates a structural overlap between the authority responsible for immigration control and the entity tasked with safeguarding the best interests of the child, thereby raising concerns regarding the capacity of guardianship arrangements to operate independently from migration enforcement objectives.regarding the capacity of guardianship arrangements to operate independently from migration enforcement objectives.

This institutional configuration has been widely criticised, including by the AHRC, for creating an inherent conflict of interest between migration control functions and the effective protection of the child's best interests, as the Minister's obligations as the guardian may come into tension with migration enforcement objectives (AHRC, 2014). In the field of education, this overlap may affect decisions concerning placement, transfers, and the prioritisation of educational continuity, particularly where children are moved between detention facilities, community placements, or reception arrangements.

[9] Migration Act 1958 (Cth), ss 4AA, 189, 196 (detention powers); Australian Human Rights Commission Act 1986 (Cth), s 6 (guardianship of UHM).

Although Australian states and territories retain primary responsibility for child welfare and education systems, the federal guardianship model limits the extent to which child protection principles operate independently of migration governance. This stands in sharp contrast with the Italian model under the *Legge Zampa*, where guardianship is structurally separated from migration control and explicitly grounded in the child's best interests.

2.3.3 The Unaccompanied Humanitarian Minors (UHM) Program

Australia's most comprehensive child-protection mechanism for UMs is the Unaccompanied Humanitarian Minors Program, administered by the Department of Home Affairs. The UHM Program applies to children admitted to Australia through authorised humanitarian resettlement pathways and provides for placement in out-of-home care arrangements under state and territory child protection systems.

The placement of unaccompanied humanitarian minors within state and territory child protection systems is governed by the National Standards for Out-of-Home Care (2011), which set minimum benchmarks for the care, safety, stability, and development of children placed outside their family environment. The Standards explicitly recognise the importance of access to education, continuity of schooling, and support for learning as core components of child well-being. In the context of the UHM Program, these Standards provide the normative framework through which educational inclusion is operationalised for resettled humanitarian minors. However, their applicability remains limited to children formally placed in out-of-home care, thereby excluding asylum-seeking and irregularly arrived minors who fall outside this protection pathway.

Children admitted under the UHM Program are generally granted permanent visas and enjoy access to education, health care, and welfare services on a basis comparable to Australian nationals. In this context, access to education is relatively stable and institutionalised, reflecting the integration of humanitarian minors into domestic child welfare frameworks. Educational inclusion is thus facilitated not by an enforceable right

applicable to all children, but by the legal security conferred by permanent migration status.

However, the scope of the UHM Program is inherently limited. It excludes children who arrive irregularly by sea or who seek asylum after arrival in Australia, whose legal position is instead governed by general migration law and discretionary policy arrangements. As a result, the Program exemplifies a dual-track system in which child protection and access to education are relatively robust and institutionalised for resettled humanitarian minors, while remaining contingent, depending on visa status, place of accommodation, and exposure to detention or restrictive reception settings.

Access to education in Australia is primarily regulated at the state and territory level through education legislation enacted in the early 2010s, which generally affirms the universality of compulsory schooling. In formal terms, these frameworks do not exclude non-citizen children from enrolment in primary and secondary education. In practice, however, access to schooling for asylum-seeking and UMs is significantly shaped by migration status, place of residence, and administrative arrangements, particularly in cases involving detention or temporary visas. As a result, the formal universality of education law operates alongside migration-driven constraints that may hinder timely enrolment, continuity, and access to age-appropriate educational pathways.

2.3.4 Operation Sovereign Borders and the Securitisation of Child Protection

A defining feature of Australia's contemporary migration regime is Operation Sovereign Borders (OSB), a military-led policy framework introduced in 2013 to deter and prevent irregular maritime arrivals. OSB prioritises border security, offshore processing, and deterrence, and has profoundly shaped the legal and policy environment in which asylum-seeking children are received (OSB, 2025).

Since its introduction in 2013, OSB has evolved from an emergency response to irregular maritime arrivals into a consolidated and enduring framework of migration governance. While initially framed as a temporary measure aimed at disrupting people-smuggling networks, OSB has progressively been normalised within Australia's migration policy architecture, retaining its core emphasis on deterrence, interdiction, and offshore processing across successive governments (Abbondanza, 2023). Although certain operational aspects have been adjusted over time, particularly in response to judicial scrutiny, international pressure, and changes in regional arrangements, the fundamental logic underpinning OSB has remained largely unchanged. This continuity has ensured that securitisation imperatives continue to shape the reception and treatment of asylum seekers, including children, well beyond the policy's initial phase.

Within this framework, children arriving irregularly have been subjected to offshore processing, prolonged detention, or restrictive community arrangements, often with limited and inconsistent access to education. While a series of policy adjustments have been introduced over time with the stated aim of mitigating the most severe impacts on children, access to schooling has largely remained contingent upon location, legal status, and administrative discretion rather than being grounded in enforceable legal entitlements[10]. The nature and scope of these adjustments, and their implications for children's educational access, will be examined in detail in the Australia-focused chapter.

Comparative analyses have underscored how Australia's deterrence-based approach to irregular migration, exemplified by OSB, marks a structural shift from the European and Italian models, particularly in its

[10] Australian Human Rights Commission, *The Forgotten Children* (2014), documenting the absence of enforceable educational entitlements for asylum-seeking children and the dependence of access to schooling on location and administrative arrangements; see also Lelliott (2022).

prioritisation of border control over child-centred protection and integration mechanisms (Abbondanza, 2023)

The logic underpinning OSB stands in marked tension with international children's rights standards. Rather than adopting a child-centred or status-blind approach, the policy differentiates sharply between categories of children based on mode of arrival, thereby reinforcing a hierarchy of protection that directly affects educational opportunities.

2.3.5 Judicial Engagement with Children's Rights in Migration Contexts

Australian courts have occasionally engaged with the relationship between migration law and children's rights, though their capacity to impose substantive constraints on executive discretion has remained limited. In Minister for Immigration and Ethnic Affairs v Teoh (1995), the High Court held that ratification of the CRC gives rise to a legitimate expectation that decision-makers will take the best interests of the child into account, even in the absence of legislative incorporation.

However, subsequent legislative and judicial developments have significantly curtailed the practical impact of Teoh. More recent jurisprudence, including Al-Kateb v Godwin (2004) and NZYQ v Minister for Immigration (2023), has reaffirmed the breadth of executive power under the Migration Act, particularly in relation to detention. Although these cases do not directly address access to education, they nonetheless underscore the limited role of judicial oversight in safeguarding children's rights within the migration system.

As a result, judicial engagement has not produced a child-centred jurisprudence comparable to that developed under the European Convention on Human Rights or within EU law. Instead, children's rights considerations continue to operate at the margins of migration decision-making.

2.3.6 Interim Assessment

The Australian legal framework governing UMs reveals a highly differentiated system of protection, in which access to education is closely tied to migration status and mode of arrival. While resettled humanitarian

minors admitted under the UHM Program benefit from relatively stable educational access, asylum-seeking and irregularly arrived children remain subject to a regime characterised by detention, executive discretion, and policy-driven differentiation.

Unlike the European and Italian frameworks, Australian law does not embed education as a universal or immediately enforceable right for all children within its jurisdiction. Instead, educational inclusion is mediated through migration law and policy, resulting in a conditional and stratified model of protection. This structural orientation stands in tension with the CRC's status-blind approach and highlights the limits of international human rights commitments in the absence of domestic incorporation.

This chapter has illustrated the sharp contrast and subsequent consequences arising from the differing legal frameworks in the EU, Italian, and Australian models. The following chapters, therefore, move from normative design to implementation, examining how these legal frameworks translate into institutional practice and shape UMs' effective access to education in Italy and Australia.

CHAPTER 3

The Implementation of the Italian Framework for Unaccompanied Minors: Empirical Findings and Street-level Practices

As illustrated in the previous chapters, the Italian legal system has progressively developed an articulated framework aimed at ensuring the protection of UMs, grounded in the principles of the best interests of the child and non-discrimination. Access to education is formally recognised as a fundamental right at constitutional and supranational levels, including Article 34 of the Italian Constitution, Article 14 of the EU Charter of Fundamental Rights, and Article 28 of the UN Convention on the Rights of the Child. However, the effective enjoyment of this right ultimately depends on its concrete implementation at the local level, where administrative practices, institutional coordination and discretionary decision-making play a decisive role.

This chapter shifts the analytical focus from the normative architecture examined in the preceding sections to the practical functioning of the Italian educational system. Rather than reiterating the legal provisions governing access to education for UMs, it examines how these rules operate in practice and to what extent they translate into timely and effective educational pathways. Adopting an implementation-oriented and street-level bureaucracy perspective, the chapter analyses how the formally recognised right to education is translated into practice through everyday administrative decisions, organisational constraints and discretionary practices**.** Particular attention is paid to the role of street-level actors, such as schools, reception facilities, legal guardians, and local authorities, whose everyday decisions significantly shape the actual enjoyment of educational rights. This chapter therefore adopts a street-level bureaucracy and rights implementation perspective to analyse how the formally recognised right to education is

translated into practice within a fragmented system of education and migration governance.

In line with the methodological approach of the research, this chapter relies on empirical evidence gathered through a questionnaire addressed to individuals involved in the protection and education of UMs. The analysis focuses on how access to education is implemented in practice, with particular attention to administrative barriers, the role of street-level actors and the exercise of discretionary power in determining educational access.

3.1 Methodology and Scope of the Empirical Analysis

3.1.1 Research Design and Data Collection

In line with the methodological framework outlined in Chapter 1, the empirical analysis developed in this chapter draws on data collected through a questionnaire addressed to professionals working with unaccompanied minors in Italy. The questionnaire explored how access to education is implemented in practice, with particular attention to enrolment procedures, administrative barriers and the role of the actors involved in decision-making processes.

The questionnaire included both closed-ended and open-ended questions. Closed-ended items were used to identify general trends and recurring patterns, while open-ended questions captured respondents' experiences and evaluations in their own terms.

3.1.2 Profile of Respondents and Geographical Scope

The questionnaire was completed online by 60participants operating in different capacities within the system of protection and reception of UMs, including voluntary legal guardians, educators, school personnel, third-sector operators, legal professionals, and public officials. This plurality of profiles makes it possible to compare perspectives across roles and to capture how implementation dynamics vary depending on the actor's

institutional position. The participants were contacted via email, and they received a link with the instructions to complete the questionnaire.

From a geographical perspective, responses were unevenly distributed across the national territory, with a prevalence of participants operating in Northern Italy. While this distribution does not allow for region-specific conclusions, it still provides insights into implementation mechanisms and recurring issues that are not confined to a single local context. Findings should therefore be read as indicative of broader patterns rather than statistically representative.

3.1.3 Analytical Approach

The analysis followed a mixed qualitative–descriptive approach, as discussed in Chapter 1, section "Methodology of the Study", where this methodology is justified in relation to the exploratory aims of the research and the focus on implementation dynamics rather than statistical generalisation. Responses to closed-ended questions were aggregated into analytical categories, rather than interpretative themes, in order to identify recurring implementation patterns rather than to produce statistical generalisations.

A detailed codebook containing definitions and inclusion and exclusion criteria for each thematic category is provided in Appendix C.

Limitations of the Empirical Analysis

As with qualitative research based on self-reported data, the findings presented in this chapter must be interpreted in light of the study's scope and design. The questionnaire does not aim to provide a statistically representative account of the Italian system, but rather to identify recurring patterns and implementation dynamics as experienced by actors directly involved in the field.

The analysis relies on professional experiences and assessments rather than on administrative datasets. This is consistent with the chapter's implementation-oriented aim: to examine how legal standards operate in practice and how they are mediated by procedural constraints, organisational capacity, and discretionary decision-making at the local level.

3.1.4 Conceptual Framework: Effectiveness of Rights and Implementation

The empirical analysis developed in this chapter is grounded in the broader legal debate on the effectiveness of human rights. In the field of children's rights, and particularly regarding UMs, the formal recognition of entitlements does not automatically guarantee their effective enjoyment. Access to education represents a paradigmatic example of this tension between rights on paper and rights in practice: while international and domestic legal instruments clearly recognise education as a fundamental right of the child, its realisation depends on a sequence of operational decisions taken at the local level. From this perspective, timely access constitutes an integral component of the right itself, and delays, interruptions or conditional forms of access may affect its substance even where enrolment is eventually granted.

From a legal perspective, effectiveness entails more than the mere absence of formal exclusion. In the context of compulsory education, timely access constitutes an integral component of the right itself. Delays, interruptions, or conditional forms of access may therefore affect the substance of the right, even where enrolment is eventually granted. This understanding is particularly relevant for UMs, whose educational trajectories are often marked by discontinuity and vulnerability, and for whom early and stable access to schooling plays a central protective and integrative function.

The decentralised organisation of public services further complicates the implementation of educational rights. For UMs, this complexity is

further intensified by their migrant status, which brings an additional range of actors into the implementation process, including education facilities, migration authorities, guardianship systems, reception facilities, and social services. As a result, access to education is mediated by a dense institutional environment in which coordination gaps and overlapping responsibilities significantly affect implementation outcomes.

Against this background, the analysis developed in this chapter adopts an implementation-oriented perspective drawing on scholarship on policy implementation and street-level bureaucracy, which emphasises how legal norms are translated into practice through everyday administrative decisions, organisational constraints, and discretionary practices (Lipsky, 2010; Buffat et al., 2016). Rather than assessing compliance in abstract terms, it examines how the right to education is operationalised in everyday contexts and how legal standards interact with administrative processes, organisational constraints and discretionary decision-making. This approach makes it possible to identify not only instances of non-compliance, but also structural factors that systematically affect the effective enjoyment of educational rights by UMs.

3.2 Access to Education in Practice: Main Empirical Trends and Recurring Barriers

3.2.1 Timeliness of School Enrolment

Timely access to education constitutes a crucial dimension of the effectiveness of the right to education for UMs. While the Italian legal framework formally recognises the need to ensure prompt access to schooling for all minors, the empirical data collected for this study suggest that, in practice, timely enrolment remains far from systematic.

Data from the questionnaire reveal a persistent gap between the formal recognition of the right to education and its effective realisation. Over two-thirds of respondents describe delays in school enrolment as a recurrent feature of access to education of UMs, often normalised through

administrative routines or organisational constraints. This qualitative assessment is reflected in the quantitative findings, according towhich approximately three-quarters of respondents report that school enrolment occurs with moderate or significant delays, whereas timely enrolment represents the exception rather than the rule. Other respondents emphasises that enrolment timelines depend heavily on individual cases, pointing to a lack of predictability and standardised procedures. In this context, some respondents explicitly describe enrolment decisions as shaped by assessments of opportunity rather than entitlement, for instance, where it is questioned *"Whether it is worth enrolling them in school"* (Respondent 3, voluntary guardian).

From an implementation perspective, these delays are not incidental inefficiencies but the product of administrative fragmentation, organisational constraints and discretionary practices operating at the local level. Qualitative responses help clarify the nature of these dynamics, highlighting how access to education is formally envisaged but unevenly realised in practice. Similar patterns have been documented in national studies, which show that when UMs arrive after the beginning of the school year, access to formal schooling is often postponed until the following academic year, with interim solutions limited to informal language support within reception facilities (Santagati et al., 2024). These delays are not portrayed as episodic but rather as structural, reflecting persistent implementation gaps within the system.

Among the factors contributing to delayed, documentary uncertainty, particularly with regard to identity, age assessment and residence permits, emerges as a recurrent obstacle. In practice, school registration is often deferred until documentation is clarified, notwithstanding the formal irrelevance of residence status for access to compulsory education under the Italian law. Such delays are rarely presented as exceptional; rather, they appear as foreseeable outcomes of procedural bottlenecks embedded in the system.

At the same time, enrolment timelines are significantly influenced by the organisational practices of reception facilities and educational institutions. Several respondents describe situations in which schools act as informal gatekeepers by introducing de facto conditions for enrolment that go beyond formal legal requirements, such as minimum language thresholds, organisational readiness or the availability of specialised support staff. These practices do not usually result in explicit refusals, but in postponements or temporary exclusion from mainstream schooling. As one respondent noted, *"Students were rejected after the entrance test because the school did not have teachers available who could do strengthening, literacy or other skills"* (Respondent 2, third-sector operator).

3.2.2 Administrative and Documentary Barriers

While delays observed in school enrolment represent the visible outcome, administrative and documentary barriers constitute one of their primary structural drivers. The empirical findings indicate that difficulties affecting access to education for UMs are frequently rooted in documentary uncertainty and administrative procedures, which emerge as structural rather than incidental obstacles.

Across the responses, uncertainty surrounding identity documentation, age assessment and residence permits is consistently identified as a concrete source of obstruction. Despite the formal irrelevance of immigration status for access to compulsory education under Italian law, documentary instability continues to exert a significant influence on enrolment procedures. In practice, school registration is often postponed pending clarification of the minor's legal or administrative position, particularly in cases involving unresolved age determination or delays in the issuance of residence permits.

Intricately connected to documentary uncertainty are administrative delays linked to fragmented procedures and unclear institutional responsibilities. Respondents describe prolonged waiting periods and

diffuse chains of responsibilities, resulting in situations where enrolment is formally possible but practically deferred. Rather than being attributable to a single authority, these delays appear to stem from the cumulative effect of multiple administrative steps, contributing to institutional inertia.

Within this context, schools play a mediating role in the implementation of enrolment procedures. Qualitative responses point to practices whereby enrolment is conditioned upon documentary completeness, perceived readiness, language proficiency or availability of places. While not amounting to formal refusals, such practices effectively introduce additional thresholds that are not explicitly provided for by the legal framework and may disproportionately affect UMs.

Administrative and documentary barriers are further exacerbated by the absence of clear operational guidance and limited coordination among the actors involved. Respondents repeatedly highlight, for example, that access to education is often contingent upon the completion of guardianship-related steps, with delays in the appointment of a legal guardian emerging as a recurrent obstacle. Although formally external to schooling, these procedures prove practically determinative for enrolment as indicated by an NGO operator respondent "*...delays in the appointment of a legal guardian*" (Respondent 1, NGO operator).

Territorial and Organisational Variability

Beyond administrative and documentary barriers, the empirical findings reveal a pronounced degree of territorial and organisational variability in the implementation of access to education for UMs. Although the applicable legal framework is uniform at the national level, access to education emerges as a context-dependent outcome, shaped by local governance arrangements, organisational capacity and the configuration of actors involved in reception and schooling.

Qualitative responses from the questionnaire provide concrete illustrations of this variability. In some local contexts, respondents report

the existence of relatively structured coordination mechanisms between reception facilities, schools and training providers. In these settings, enrolment practices appear more flexible and inclusive: respondents refer, for instance, to contexts in which *Centri Provinciali per l'Istruzione degli Adulti*(*C*PIA) centres and mainstream schools systemically allow the enrolment of UMs at any point during the school year, thereby reducing delays linked to arrival timing. By contrast, in other areas, respondents report that enrolment is effectively suspended once the school year has started, forcing minors to wait several months before accessing formal education. These differences suggests that enrolment timelines are not determined by legal entitlements alone, but by the presence or absence of locally established coordination practices.

A second axis of variability concerns the role of third-sector actors. Where public coordination is weak or absent, access to education often relies on informal arrangements supported by voluntary organisations. Several respondents describe contexts in which third-sector actors act as intermediaries to facilitate school enrolment and provide language support, compensating for the lack of structured public intervention. As one respondent noted, *"There are third-sector organisations acting on a voluntary basis to provide support but are unable to act organically as the public sector could"* (Respondent 13, legal guardian). In these contexts, educational access depends heavily on the availability, continuity and sustainability of project-based initiatives, rather than on institutionalised public procedures.

Conversely, other respondents emphasised the absence or fragility of coordination mechanisms altogether. In these cases, governance arrangements are described as unstable and fragmented, characterised by high turnover of operators and limited involvement of public social services. One participant observed that coordination *"It remains complex and exhibits fluctuations over time"* (Respondent 51, NGO operator), resulting in discontinuous educational pathways and delayed access to schooling.

Territorial thus appears to stem not only from discretionary choices, but also from the lack of durable and institutionalised coordination models capable of ensuring continuity over time.

Differences across territories are further shaped by the organisation of reception. Reception facilities play a key mediating role, as their internal priorities, staffing levels and expertise condition both the timing and continuity of enrolment procedures. While in some contexts, proactive engagement by reception providers facilitates early contact with schools, in others, competing administrative demands and limited resources contribute to delays and fragmented educational trajectories.

These findings are consistent with national qualitative research on the schooling of UMs in Italy, which documents marked territorial differences in educational access. Studies show that areas with longer-standing experience in the reception of UMs, such as regions of arrival or transit, tend to develop more stable networks between schools and reception services, whereas in other contexts, access to education relies on ad hoc solutions rather than on consolidated practices (Santagati et al., 2024). Further disparities also emerge between urban and peripheral or rural settings. While urban areas may offer a wider range of educational opportunities and specialised services, they are often characterised by high pressure on schools and reception systems, whereas peripheral or rural areas frequently face infrastructural constraints, limited availability of specialised staff, transport barriers and reduced access to language support, all of which can hinder timely enrolment and continuity in education (Santagati et al., 2024).

The latest national mapping study confirms that such territorial variability is not incidental but reflects structural features of the Italian reception and welfare system. The absence of a uniform operational model and of binding minimum service standards leaves significant space for local interpretation and uneven implementation. Access to education and related support services are therefore largely shaped by local governance

arrangements and by the presence or absence of stable coordination between public authorities and third-sector actors, rather than by systematically enforced public standards (UNICEF, 2026).

From a broader analytical perspective, this uneven implementation reflects enduring ambivalences within the Italian framework for the protection of UMs. While educational rights are formally recognised, their practical realisation is delegated to decentralised and weakly coordinated systems, producing territorial differences in access pathways and levels of protection (Pasquale, 2020).

3.2.3 Disrupted Continuity and Transfers Within the Reception System

Beyond access and enrolment, the effectiveness of the right to education also depends on continuity, which emerges as a critical yet fragile dimension for UMs. The empirical findings indicate that even where school enrolment is eventually achieved, educational trajectories are frequently disrupted by transfers within the reception system, often decided independently of educational planning or pedagogical considerations. As a result, access to education appears not only delayed or uneven, but also structurally unstable.

Respondents consistently highlight that transfers between reception facilities, municipalities or regions constitute a major obstacle to the effective enjoyment of the right to education. These movements often occur during the school year and lead to interruptions in attendance, loss of educational progress and difficulties in re-enrolment within the new territory. In several accounts, minors are transferred shortly before completing a course or sitting an examination, effectively nullifying the educational investment made up to that point.

As one respondent observed: *"Frequent transfers between different reception facilities hinder the right to education of UMs, as they interrupt their educational pathways. Each transfer can result in the loss of days or even months of schooling and significantly complicates integration into new*

educational environments" (Respondent 51, third-sector professional). Another one explained *"...paths are interrupted because of transfers. For example, a minor was transferred to another Italian region upon social services' decision on the same day of his exam for an Italian course, even if both the reception centres agreed on postponing the transfer"* (Respondent 4, legal guardian).

From a legal perspective, these practices raise serious concerns. While transfers are formally justified by reception management needs, capacity constraints or administrative reallocation, their impact on education is rarely assessed in advance. The absence of systematic coordination between reception authorities and educational institutions means that continuity of schooling is not treated as a binding consideration in placement decisions. Consequently, the right to education is reduced to a formal entitlement, vulnerable to displacement whenever reception priorities prevail.

The qualitative data further suggest that the effects of transfers are cumulative. Repeated interruptions undermine learning continuity, weaken motivation, and increase the risk of early disengagement from education, particularly for adolescents nearing the age of majority. This dynamic is especially problematic for minors enrolled in longer or more demanding educational pathways, where continuity is a prerequisite for meaningful participation and progression. In this sense, transfers operate as an indirect mechanism of exclusion, not through explicit denial of access, but through the erosion of the conditions necessary for sustained educational engagement.

Importantly, respondents emphasise that transfers are not evenly distributed across contexts. They appear more frequently in settings characterised by emergency-oriented reception arrangements, limited availability of specialised facilities or reliance on temporary accommodation. This confirms that educational disruption is closely linked

to territorial and organisational variability within the reception system, rather than to individual characteristics of the minors concerned.

Normatively, the recurrent disruption of educational pathways sits uneasily with the principle of the best interests of the child and with the understanding of education as a continuous process rather than a series of isolated enrolment acts. International standards on the right to education emphasise not only access but also retention and continuity as essential components of effective educational protection. When transfers systematically undermine these elements, the substance of the right is compromised, even in the absence of formal exclusion.

The lack of safeguards ensuring educational continuity during transfers constitutes a structural weakness of the Italian reception system. The right to education, while formally recognised, remains exposed to organisational decisions taken outside the educational sphere, reinforcing the broader implementation gap identified in this chapter. Addressing this gap would require stronger coordination mechanisms and the explicit integration of educational continuity into reception and placement decisions, rather than treating schooling as an ancillary consideration subordinate to administrative management.

3.3 Street-level Actors and Discretionary Practices

3.3.1 Administrative Discretion and the Implementation of Rights

A central dimension of the implementation of educational rights concerns the role of administrative discretion. Discretion is an inherent feature of public administration, particularly in fields characterised by complexity, limited resources, and individualised decision-making. In legal terms, it refers to the margin of appreciation left to administrative actors in the application of legal norms, allowing them to adapt general rules to concrete situations. This dynamic is particularly relevant in the Italian context, where access to education for UMs is implemented through a multi-level and highly decentralised governance structure, characterised by

fragmented responsibilities and limited operational coordination (Pasquale, 2020).

Empirical research on the Italian school system highlights how discretionary practices are routinely exercised by educational institutions, and shaped by administrative, pedagogical, and socio-educational considerations (Santagati et al., 2024; Lipsky, 2010). In the context of access to education for UMs, discretion is exercised across multiple levels and by a plurality of actors, including schools, reception facilities, guardians, migration authority, and local institutions. Although the legal framework establishes general principles and obligations, it leaves significant room for interpretation about procedures, timing, and modalities of access. In practice, this interpretative space expands in the absence of detailed operational guidance and coherent coordination mechanism.

Rather than constituting an isolated issue, discretion operates as the mechanism through which administrative barriers, organisational constraints and territorial variability translate into concrete implementation outcomes. Decisions that formally appear technical or organisational, such as the timing of enrolment, the assessment of readiness, or the sequencing of administrative steps, may therefore have significant legal implications for the effective enjoyment of the right to education.

3.3.2 Actors Involved in Educational Access

The implementation of access to education for UMs is shaped by the interaction of multiple actors operating within loosely coordinated institutional settings. While legal entitlements are defined at the national levels, the concrete pathways through which minors access schooling are largely determined by decisions taken at the operational level, where responsibilities overlap, and lines of accountability are not always clearly defined.

Schools emerge as a central actor in this process. In practice, they initiate enrolment procedures, assess educational pathways, and manage organisational constraints related to class composition, language support and available resources, and establishing enrolment deadlines. Through informal assessments and procedural choices, schools exercise significant degree of influence over both the timing and the modalities of access to education, determining whether enrolment is facilitated, postponed or redirected.

Another key role in mediating access to education is played by reception facilities, particularly in the initial phases following arrival. Their degree of engagement varies considerably depending on organisational priorities, staffing levels and internal expertise. Where proactive involvement is present, reception providers may facilitate early contact with schools and support administrative procedures; where capacity is limited, educational access may be delayed or fragmented access.

Legal guardians constitute another critical actor. Although their mandate formally centres on the protection of the minor's best interests, their capacity to stand out and influence educational access in practice depends on their knowledge of the system, their ability to actively intervene, and the responsiveness of other actors. As a result, similarly, situated minors may experience different outcomes depending on the availability and effectiveness of guardianship.

Social services and public authorities intervene a primarily in relation to age assessment, placement decisions and administrative documentation. Their role in relation to educational access is frequently indirect, contributing to a governance structure in which responsibility is dispersed, and coordination gaps persist, creating space for discretionary practices.

3.3.3 Discretionary Power and Informal Practices

The empirical findings indicate that access to education for UMs is frequently shaped by discretionary decisions taken at the operational level. Such discretion rarely takes the form of explicit refusals or formally documented decisions; rather, it emerges through informal practices, procedural choices and interpretative margins exercised by front-line actors. As one respondent noted, *"It depends on the person you encounter at the various schools' offices"* (Respondent 35, NGO operator), highlighting the extent to which outcomes may hinge on individual interpretations rather than uniform standards.

Discretion is particularly visible in relation to enrolment timing. Respondents describe situations in which registration is postponed pending documentary clarification, organisational readiness or internal assessments by schools or reception facilities. While these postponements are often framed as temporary or pragmatic measures, their cumulative effect is to delay effective access to education, frequently without clear timelines or accountability mechanisms.

At the school level, discretionary decisions concerning educational pathways, language preparation and organisational capacity play a decisive role. One respondent reported that: *"Generally, (for younger foreign minors - around 14-16 years old) schools do not have the tools to accommodate a student that does not know the language, except by essentially sidelining them. Some available resources are pointed out but they are absolutely insufficient. Individual schools then hide behind this difficulty and, in order to avoid sidelining students, end up not accepting those without adequate language proficiency."* (Respondent 19, school staff). Although such decisions may be motivated by pedagogical or organisational considerations, they introduce de facto conditions that are not explicitly foreseen by the legal framework, effectively transforming organisational capacity into an implicit eligibility requirement.

A further salient pattern concerns the role of individual advocacy. In several cases, access to education was secured only following persistent intervention by legal guardians. As one legal guardian observed, *"Public schools often tend to block enrolment, especially once the school year has started; however, when the guardian insists, enrolment is usually eventually accepted"* (Respondent 14, legal guardian). This reliance on advocacy shifts implementation from institutionalised guarantees to conditional practices, raising concerns regarding equality, predictability and accountability.

Importantly, this reliance on individual advocacy does not reflect the existence of a legally recognised discretionary power to refuse or postpone enrolment. Italian law explicitly guarantees the right of UMs to enrol in compulsory education at any time of the school year, regardless of immigration status or the availability of complete documentation (Law No. 47/2017). Scholars who conducted empirical research point out that, despite this clear normative framework, some educational institutions continue to condition enrolment on requirements such as possession of a residence permit, completion of documentation, or compliance with internal deadlines, thereby adopting practices that are not legally grounded (Caragiuli, in Santagati et al., 2024). In this sense, what appears empirically as discretion exercised by schools often corresponds to illegitimate or extra-legal practices, rather than to a lawful margin of appreciation. As documented by Caragiuli, schools may differentiate enrolment decisions based on the period of arrival during the school year, postponing access when minors arrive after the autumn months and redirecting them to informal language activities within reception facilities until the following academic year, despite the absence of any legal basis for such postponement (Caragiuli, in Santagati et al., 2024). The fact that enrolment is frequently secured only after persistent intervention by legal guardians therefore reveals a paradox of implementation: advocacy succeeds not because schools are legally entitled to refuse access, but because rights that are formally guaranteed are not automatically enforced in practice. This

dynamic underscores how individual insistence operates as a corrective mechanism to unlawful or informal practices, rather than as a complement to legitimate administrative discretion.

Reception facilities similarly exercise discretionary influence through the prioritisation of educational access within broader reception management. Respondents note that competing administrative demands, such as administrative procedures, transfers or the management of daily needs, may result in education being treated as a secondary concern, particularly in the initial phases of reception, with direct consequences for enrolment timelines and continuity.

Importantly, these discretionary practices do not stem solely from individual attitudes. They are often embedded in structural conditions characterised by limited resources, unclear operational guidance, and fragmented governance. In this context, discretion functions as a compensatory mechanism within an under-specified implementation framework. At the same time, reliance on informal discretion risks reshaping the substance of legal rights, blurring the boundary between lawful flexibility and de facto restriction.

3.3.4 Standardised and Accelerated Educational Pathways

Beyond the issues of delayed enrolment and gatekeeping practices from educational institutions, the empirical findings reveal that access to education for UMs is frequently channelled into standardised and accelerated educational pathways, shaped less by the individual educational profile of the minor than by administrative timelines, organisational constraints, and migration-related considerations. In this sense, the implementation gap does not concern access alone, but also the quality, continuity and orientation of the educational trajectories offered in practice.

Several respondents describe a system in which educational pathways are implicitly adapted to the temporal constraints imposed by reception

arrangements, the proximity of the age of majority and the uncertainty surrounding residence status. This pattern emerges consistently across responses from different professional profiles, suggesting that such adaptations are not episodic but structurally embedded in practice. According to several questionnaire respondents, proximity to the age of eighteen, which in the Italian legal system marks the transition to adulthood, appears to function as an implicit threshold in enrolment decisions, with education at times deprioritised in favour of shorter-term or labour-oriented pathways. As a result, respondents report a recurring preference for brief, non-qualifying or highly vocational courses, perceived as more compatible with the anticipated duration of reception or with the prospect of transition into adult accommodation or employment.

This dynamic is clearly illustrated by the following account: *"Often less complete and faster educational pathways are chosen, especially when the prospect of an administrative extension is uncertain"* (Respondent 9, legal guardian).

Such practices raise significant concerns from a legal perspective. While these pathways may formally satisfy the requirement of providing some form of educational access, they risk undermining the substantive dimension of the right to education, which encompasses not only enrolment but also meaningful learning opportunities, progression, and personal development. The tendency to prioritise speed and administrative compatibility over educational depth suggests a shift from education as a protective right to education as an instrument of migration management, where educational provision is adapted to administrative timelines rather than to the child's developmental needs.

The empirical material further indicates that these accelerated pathways are often presented as pragmatic solutions, justified by the limited time available before the minor reaches adulthood or by the perceived lack of feasibility of longer educational trajectories. However, this framing

obscures the extent to which such constraints are themselves the product of delayed interventions, fragmented coordination, and insufficient investment in inclusive educational structures. In other words, the compression of educational pathways appears less as an unavoidable consequence of age or arrival timing and more as the cumulative outcome of earlier implementation failures. National studies confirm that proximity to the age of majority operates as a decisive factor in educational orientation, with access to upper secondary education remaining rare and enrolment frequently redirected towards the CPIA or short-term vocational pathways, particularly where only a limited time remains before turning eighteen (Santagati et al., 2024).

Moreover, the standardisation of educational responses frequently results in limited individualisation. Several respondents note that minors are directed towards pre-defined tracks, often vocational or basic language courses, regardless of prior educational experiences, aspirations or learning capacities. According to one participant: *"... specific vocational courses are proposed based on the nationality of the minor, for example, those coming from the Balkans are enrolled in building courses, Pakistanis in cooking classes..."* (Respondent 48, legal guardian). This approach risks reproducing unequal outcomes, particularly for minors who, with adequate support, could realistically pursue longer or more academically oriented pathways. From this perspective, accelerated education functions as a form of indirect selection, filtering minors into pathways deemed administratively manageable rather than educationally appropriate.

From a normative standpoint, these practices sit uneasily with the principle of the best interests of the child, as enshrined in Article 3 of the CRC, which requires that decisions affecting minors be guided by an assessment of their individual needs and long-term development. They also challenge the qualitative dimension of the right to education as recognised under international human rights law, notably in the interpretation of Article

13 of the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966) and European human rights law, which emphasises adaptability, acceptability and accessibility as core components of educational provision. When educational pathways are compressed primarily to accommodate administrative timelines, the risk is that access to education becomes formally inclusive but substantively diminished.

These accelerated and standardised educational pathways constitute a structural feature of the Italian reception system for UMs. While rarely framed as exclusionary, these practices contribute to a form of graduated inclusion, in which the scope and ambition of educational rights are progressively reduced in response to institutional constraints, highlighting a further layer of the implementation gap identified in this chapter: one that concerns not only whether education is provided, but what kind of education is ultimately made available to UMs in practice.

3.3.5 Diverging Perspectives Among Professionals

The empirical findings reveal significant differences in how access to education and discretionary practices are perceived by the various actors involved in the protection of UMs. These diverging perspectives do not merely reflect subjective attitudes, they rather stem from the distinct institutional roles, responsibilities and constraints that shape how each actor engages with the education system.

Voluntary legal guardians tend to frame access to education primarily through a rights-based and child-centred lens, closely linked to the minor's best interests and long-term integration. From this perspective, delays and interruptions in educational pathways are perceived as particularly problematic, as they undermine both the protective function of education and the stability of the minor's situation. Guardians frequently emphasise the gap between formal entitlements and actual practices, highlighting the lack of predictability and the difficulty of contesting postponements that are justified on administrative or organisational grounds.

By contrast, actors operating within reception facilities and the third sector frequently adopt a more pragmatic perspective, shaped by their responsibility for managing daily reception processes and administrative demands. While recognising the importance of education, they tend to situate access to schooling alongside other pressing priorities in the initial phases of reception, such as documentation, placement, and transfers. From this standpoint, delays are sometimes framed as the foreseeable outcome of systemic constraints, including documentary uncertainty, limited resources and fragmented coordination, rather than as discretionary choices.

School personnel, in turn, often approach access to primarily education through pedagogical and organisational rationales. Decisions concerning enrolment timing, placement and preparatory measures are commonly justified by reference to language proficiency, class composition, and institutional capacity. Within this framework, discretion is understood as a necessary tool to manage heterogeneous classrooms and preserve educational effectiveness. However, this perspective may downplay the legal implications of delayed access and the cumulative impact of postponements on the minor's right to education, particularly when such decisions are taken in the absence of alternative educational arrangements.

The coexistence of these divergent rationales contributes to a fragmented allocation of responsibility. Each actor tends to interpret delays and discretionary practices in light of their own institutional logic, while no single actor assumes overall accountability for ensuring timely and effective access to education. As a result, practices that appear reasonable or unavoidable from one perspective may be experienced as exclusionary or unjustified from another.

From a legal standpoint, these divergences constitute a structural feature of the implementation process. When access to education depends on the interaction of actors operating according to different rationales, the substantive content of the right is reshaped through practice. Discretion thus

emerges not as an anomaly, but as an inherent outcome of fragmented governance, with direct implications for the consistency, predictability and effectiveness of legal guarantees.

3.4 Gaps Between Law and Practice: Structural Limits of Formal Protection

The empirical findings analysed in this chapter reveal a persistent gap between the formal legal recognition of the right to education for UMs in Italy and its practical implementation. This gap does not derive from the absence of legal standards. On the contrary, Italian law provides a relatively robust normative framework grounded in compulsory education, non-discrimination and the best interests of the child. Rather, the gap emerges at the level of implementation, where legal norms are translated into everyday practices through decentralised, fragmented and discretionary processes.

Although the empirical findings on timeliness, administrative and documentary barriers, territorial variability and discretionary practices may appear closely interconnected, they stem from distinct sources of implementation failure. Delays in enrolment primarily reflect weaknesses in school governance, including organisational capacity, resource constraints and the use of pedagogical criteria as de facto access conditions. Administrative and documentary barriers are instead rooted in reception and migration governance, where procedures related to age assessment, legal status and guardianship interfere with educational access despite their formal irrelevance under education law. Territorial variability reflects a third source of failure, namely the uneven capacity of local networks to coordinate actors and operationalise legal entitlements in the absence of binding national standards. The findings show that implementation failures do not originate from a single governance domain, but from the interaction between education governance and migration governance, with different mechanisms producing similar exclusionary effects.

Together, these dynamics illustrate how the substantive content of the right to education is reshaped through implementation. While access to schooling is rarely denied outright, it is frequently delayed, mediated or redirected in ways that erode the immediacy, continuity and quality of educational provision. Timeliness, which constitutes an essential component of the right itself, emerges as a critical weakness. Moderate to significant delays are widely normalised through administrative routines and discretionary justifications, resulting in a form of formal compliance that progressively empties the right of its substance.

A further structural dimension of the implementation gap concerns the fragmentation of responsibility among multiple actors. Although the legal framework assigns specific roles to schools, reception facilities, guardians and public authorities, the empirical evidence shows that accountability for ensuring timely enrolment often remains diffuse. In this context, discretionary practices function as a compensatory mechanism for under-specified norms and weak coordination. While discretion may allow the system to function in complex settings, its informal and pervasive exercise raises concerns regarding equality, predictability and legal certainty.

The findings also highlight a critical shift from institutional guarantees to individual advocacy. In several cases, effective access to education appears to depend on the persistence and capacity of legal guardians to mobilise the system. From a legal perspective, this reliance on individual insistence undermines the principle of effectiveness of rights, as access becomes contingent upon personal resources rather than secured through institutional safeguards.

Importantly, respondents did not report substantial changes in access to education following the adoption of Decree-Law No. 20/2023. This suggests that the implementation challenges identified in this chapter are not the product of recent political shifts but reflect structural features of the Italian system. As Pasquale observes, the regulatory framework governing

UMs is characterised by fragmentation and wide margins of discretion that do not consistently operate in favour of children's rights (Pasquale, 2020). The empirical findings analysed here confirm that these ambivalences persist at the level of implementation.

This chapter demonstrates that the effectiveness of the right to education for UMs in Italy cannot be assessed solely through the lens of formal legal provisions. It must be evaluated considering how those provisions are operationalised at the street level, where organisational capacity, coordination and discretionary practices play a decisive role. By identifying the structural sources of implementation failure, the analysis provides a critical foundation for the comparative chapter of the thesis, which will examine whether alternative governance models address similar tensions between formal protection and effective access to education.

CHAPTER 4
Access to Education for UMs in Australia: Policy Design and Implementation Gaps

4.1 Introduction and Analytical Framework

This chapter examines the Australian approach to access to education for UMs. After discussing the Italian context in Chapter 3, the analytical focus will shift toward a migration system characterised by markedly different legal, institutional, and policy features. As outlined in Chapter 2, access to education for UMs is formally recognised under international and domestic legal frameworks as a fundamental right and a key component of social inclusion and long-term integration. However, this research has already shown in the previous chapters that the effective enjoyment of this right is highly dependent on implementation dynamics, institutional coordination, and discretionary decision-making at the local level.

Building on these premises, this chapter engages with scholarship on migration governance, street-level bureaucracy, and refugee education to analyse how policy choices translate into differentiated outcomes for UMs. It applies the same analytical lens adopted for the Italian case, namely the distinction between the formal recognition of educational rights and their practical realisation, while focusing on selected legal and policy design choices that are particularly relevant for understanding how access to education for UMs is shaped, enabled or constrained in practice within the Australian migration and education system.

The chapter is guided by the hypothesis that, within migration-centred governance systems, the implementation gap between formal legal recognition and substantive access to rights is not accidental but structurally embedded. Drawing on theories of street-level bureaucracy (Lipsky, 2010), migration securitisation and the notion of the "structurally embedded

border" (Weber, 2019), the analysis assumes that educational access for UMs is mediated through institutional logics that prioritise migration control and administrative risk management over child-centred protection.

Under this theoretical framework, discretion is not treated merely as a local anomaly but as a predictable feature of decentralised governance arrangements, particularly where legal status operates as the primary organising principle of entitlement. The Australian case therefore offers an opportunity to examine whether and how the right to education becomes conditional, stratified or diluted when embedded within a deterrence-oriented migration regime.

The Australian context is marked by a highly securitised migration regime, within which children and UMs are primarily regulated through general migration law rather than through a dedicated, child-centred normative framework. As highlighted in the literature, Australia's approach to irregular migration has been shaped by a long-standing prioritisation of border control and deterrence objectives, framed as matters of national interest and security rather than social protection or welfare policy (Abbondanza, 2023). Within this framework, the legal and policy positioning of UMs does not emerge as an autonomous field of protection, but rather as a residual component of a broader migration governance architecture. This structural feature has direct implications for how educational entitlements are conceptualised and implemented, contributing to the conditional and uneven nature of access to education analysed in the following sections.

In this respect, this chapter pays particular attention to the governance structure underpinning educational access for refugee and asylum-seeking children, including the division of responsibilities between the Commonwealth and the States, as well as the role played by schools, non-governmental organisations and individual practitioners. As already underlined in the Italian case, these actors often function as street-level bureaucrats whose discretionary decisions can substantially affect the timing, quality and continuity of educational pathways. In the Australian

system, however, such discretion operates within a context of more limited formal guidance and weaker institutionalisation of targeted support measures.

Methodologically, the chapter combines documentary analysis with two expert interviews[11] and six questionnaire responses[12]. Given the limited availability of disaggregated official data and the difficulty of accessing practitioners in this field, the empirical material is exploratory and is used to illuminate governance and implementation dynamics rather than to support representativeness claims.

Within this structure, the following sections examine how Australia's legal and policy arrangements shape access to education for UMs in practice, focusing on the institutional and structural factors that mediate the implementation of formally recognised rights. The analysis developed in this chapter provides the basis for the comparative discussion advanced in Chapter 5.

Against this analytical backdrop, the following section examines how the Australian legal framework structures the position of UMs within a migration-centred regime.

4.2 The Australian Legal Framework on UMs as a Design Choice

4.2.1 UMs within a Migration-centred Regime

Unlike systems in which UMs are regulated through a distinct child-protection framework, the Australian legal order primarily addresses their legal position through general migration law. The *Migration Act 1958* explored in Chapter 2 constitutes the central normative reference point governing entry, status determination, detention, and removal, and it applies to children and adults alike, with limited differentiation based on age. As a result, UMs are legally constructed first and foremost as non-citizens subject

[11] See Appendix G: Interviews

[12] See Appendix B: Questionnaire Australia and Appendix F: Australian Questionnaire Responses

to migration control, rather than as children entitled to a comprehensive and autonomous regime of protection.

This migration-centred legal construction has been critically analysed in the literature through the concept of "legal limbo", used to describe situations in which unaccompanied children are granted discretionary, temporary or otherwise insecure forms of legal status, or are subjected to prolonged uncertainty pending migration decisions. As Lelliott (2022) argues, such uncertainty is not merely the by-product of administrative delay, but a structural feature of migration governance in systems prioritising deterrence and control over child-centred protection. UMs may formally remain within the territory of the State, yet without the legal certainty necessary to fully access and exercise social rights. Education, in particular, becomes contingent upon an unstable legal position, placement arrangements and the duration of migration procedures, reflecting the subordinate role assigned to educational entitlements within the broader migration regime.

From a legal-policy perspective, this structural positioning has significant consequences. By embedding UMs within a migration-centred legal regime, the Australian system narrows the normative space in which educational rights can be articulated independently from migration enforcement objectives, resulting in an approach where education is accommodated only insofar as it remains compatible with migration control priorities.

4.2.2 Guardianship Arrangements and Institutional Ambiguity

The governance of UMs in Australia is further characterised by a highly institutionalised and centralised guardianship model. Under existing arrangements, the Commonwealth, acting through the Minister for Immigration and Citizenship or delegated authorities, assumes guardianship responsibilities for UHMs, formally assigning responsibility for the welfare of the child to the state, but also generating a structural tension between protection and control. This institutional configuration is grounded in the

Immigration (Guardianship of Children) Act 1946, which formally vests guardianship of unaccompanied humanitarian minors in the Minister. The coexistence of this guardianship role with the Minister's powers under the *Migration Act 1958* thus provides the legal basis for the structural tension between guardianship responsibilities and migration control objectives examined below.

Unlike systems based on individual guardianship or judicially supervised care arrangements, the Australian approach concentrates both migration decision-making and guardianship functions within the same institutional sphere. This overlap raises well-documented concerns, notably regarding conflicts of interest between enforcement-driven migration decision-making and guardianship obligations, and the resulting risk that the child's best interests are subordinated to administrative and control priorities. From an international law perspective, such institutional overlap raises particular concerns in relation to the principle of the best interests of the child enshrined in Article 3 of the CRC, insofar as the concentration of migration control and guardianship functions within the same authority risks structurally subordinating child-centred considerations to administrative and enforcement priorities.

In practice, guardianship functions are operationalised through administrative programmes, most notably the UHM Programme, which relies heavily on cooperation with States, territories, and contracted service providers. However, the absence of a statutory articulation of guardianship duties specific to education means that access to schooling is not embedded within the core obligations of the guardian but instead depends on downstream implementation mechanisms.

This institutional ambiguity contributes to uneven outcomes. While some minors benefit from timely school enrolment and tailored educational support, others experience delays or interruptions linked to placement instability, transfers between facilities or prolonged uncertainty regarding their migration status. As documented in both institutional reports and academic literature, such conditions are not exceptional but structurally

embedded within Australia's migration governance framework, particularly where children are subject to discretionary and time-limited legal arrangements (AHRC, 2014 and Lelliott, 2022). Therefore, guardianship, as currently structured, operates primarily as a coordinating function within a migration framework than as robust child-centred protective mechanism oriented towards the long-term educational and developmental needs of the child.

Broader scholarship on children's rights in migration contexts has consistently argued that when migration control objectives are institutionally intertwined with child protection responsibilities, the best interests principle risks becoming procedural rather than substantive (Brittle and Desmet, 2020). This critique resonates strongly with the Australian guardianship model, where the concentration of authority within the migration portfolio structurally conditions the implementation of child-centred protections.

4.2.3 Education as a Conditional Right: Detention and Legal Uncertainty

The centrality of detention within the Australian migration system further illustrates the conditional nature of educational access for UMs. Judicial interpretations of the *Migration Act*, most notably in *Al-Kateb v Godwin* (2004), have affirmed the lawfulness of immigration detention even in circumstances of prolonged or potentially indefinite confinement. Although subsequent jurisprudence, including *NZYQ v Minister for Immigration* (2023), has prompted renewed scrutiny on this framework, detention remains a defining feature of the legal landscape.

For UMs, the legal normalisation of detention has direct and indirect implications for education. Where children are held in closed or semi-closed facilities, educational provision is frequently ad hoc, informal or disconnected from mainstream schooling systems. Even in community-based arrangements, the legacy of detention and ongoing legal uncertainty can disrupt educational continuity, particularly when transfers, visa insecurity or the prospect of removal persist.

From a governance perspective, these outcomes are not merely incidental. They are the foreseeable result of a legal framework in which migration status operates as the primary organising principle, leaving education structurally exposed to enforcement priorities. As highlighted in the literature on Australian migration governance, this reflects a deliberate policy orientation that accepts social and developmental costs as a trade-off for broader deterrence and control objectives (Abbondanza, 2023). Within this legal configuration, the operationalisation of educational access is shaped by specific policy instruments and administrative arrangements.

4.3 Policy Design and Educational Programmes for Refugee and UMs

4.3.1 Overview of Existing Educational Programmes: The Settlement-Protection Nexus

Within the Australian administrative tradition, educational provision for UMs is not conceptualised as a standalone welfare entitlement but rather as an integral component of the broader settlement framework. As a result, access to educational support is closely aligned with migration status, reinforcing an understanding of education as an integration measure rather than as an autonomous entitlement.

The principal policy instrument addressing the needs of resettled minors is the UHM Programme, administered by the Department of Home Affairs in collaboration with non-governmental service providers such as Life Without Barriers and SSI. Within this framework, educational support is predominantly oriented towards linguistic acquisition, with minors channelled into English as an Additional Language or Dialect (EAL/D) pathways. In States such as New South Wales and Victoria, this model is operationalised through Intensive English Centres (IECs) or English Language Schools, which function as transitional settings prior to enrolment in mainstream secondary education.

However, the underlying policy design is characterised by a distinctly transitional logic. The primary objective is rapid functional language acquisition, rather than long-term academic inclusion or educational

continuity. This transitional logic has been critically examined in the literature on English language programmes for newly arrived students, which shows that intensive on-arrival provision is often treated as a compensatory measure expected to "fix" linguistic disadvantage within a short timeframe, while responsibility for sustained academic development is subsequently shifted to mainstream schools that frequently lack the necessary resources and expertise (Creagh, 2019). Creagh (2019) further argues that this expectation reflects a systemic underestimation of the time required to develop academic language proficiency, often several years, thereby transferring responsibility to mainstream schools without corresponding specialist resourcing. While initiatives such as the Refugee Action Support (RAS) programme and other State-level schemes seek to mitigate the gap between specialist provision and mainstream schooling, responsibility for sustained educational outcomes is largely devolved to individual schools. As highlighted in the literature on refugee education and settlement governance, many schools lack the dedicated funding, specialist staff and trauma-informed pedagogical frameworks necessary to adequately address the complex educational and psychosocial needs of UMs (Naidoo, 2015). Targeted initiatives such as the Refugee Action Support (RAS) programme illustrate that more intensive and coordinated educational support can be effective in individual cases; however, their reliance on project-based funding, volunteer engagement and local partnerships means that such interventions remain exceptional rather than systemic, and cannot substitute for uniform, rights-based provision.

Creagh (2019) links this expectation to a systemic underestimation of the time required to develop academic language proficiency, noting that parity with first-language peers typically takes several years (often four to eight). The effect is to shift responsibility for sustained academic development onto mainstream schools, frequently without commensurate specialist resourcing or accountability mechanisms.

This settlement-oriented and transitional design is further reflected in the limited and uneven institutionalisation of targeted educational

programmes at the national level. Recent sector-wide assessments highlight the absence of a coherent national framework for refugee and unaccompanied students, with educational support largely delivered through a patchwork of State-based initiatives and short-term programmes whose scope and availability vary considerably across jurisdictions. While trauma-informed and culturally responsive approaches are increasingly recognised as essential for supporting students from refugee backgrounds, their implementation remains inconsistent and largely dependent on local capacity and discretionary resourcing rather than embedded policy commitments (Refugee Education Australia and MYAN, 2025).

Recent national data further contextualise the long-term implications of this fragmented framework. According to the Building a New Life in Australia (BNLA) longitudinal study, after ten years of permanent residence only 10% of humanitarian migrants had completed a university qualification, while 40% had completed trade or technical qualifications and 35% had not completed any form of post-school education (Refugee Education Australia and MYAN, 2025) . These figures suggest that formal access to schooling does not necessarily translate into sustained educational progression, particularly in the absence of coordinated national support structures.

4.3.2 Structural Limitations of the Australian Policy Approach: The Visa-Dependent Entitlement Model

A central limitation of the Australian policy design lies in its stratified entitlement model, under which the effective scope of the right to education is closely tied to the type of visa held by the minor. This structure produces a marked divergence from the more universalist approach identified in the Italian system, and results in differentiated educational trajectories that are legally sanctioned yet substantively unequal.

4.3.2.1 Permanent vs. Temporary Status

UMs granted permanent humanitarian visas generally enjoy access to domestic student fee arrangements and government-funded educational

support across primary, secondary and tertiary levels. By contrast, minors holding Bridging Visas or otherwise subject to temporary or unresolved protection arrangements have historically encounter significant structural barriers, particularly at the post-secondary level. As documented by Baker et al., (2023), such students have frequently been classified as "international students" by Technical and Further Education (TAFE) institutions and universities, resulting in substantially higher tuition fees. Although recent policy reforms have sought to reduce reliance on temporary protection visas, the legacy of visa insecurity continues to shape access to higher education, often rendering it a formal legal possibility but a practical financial impossibility[13].

4.3.2.2 The Federal-State Governance Gap

Further limitations arise from the constitutional allocation of competences between the Commonwealth and the States. While the Federal Government retains exclusive authority over migration status and visa determination, responsibility for education policy and service delivery rests primarily with State governments. This division generates significant territorial disparities in implementation, resulting in what has been described as a "postcode lottery" of educational access, a pattern repeatedly described by practitioners and experts interviewed for this research. Fee waivers, the availability of specialised counsellors, and the flexibility of enrolment procedures vary considerably across jurisdictions, reinforcing uneven outcomes for UMs depending on their place of residence. Empirical evidence from Western Australia (WA) further illustrates the extent of territorial variation within the Australian system. One expert respondent noted that, until relatively recently, UMs in WA did not automatically access public schooling without paying full international fees, with access often

[13] Following reforms introduced from 2023 onwards, the Australian government has progressively moved away from temporary protection arrangements, including TPVs and SHEVs, towards permanent resolution pathways (Refugee Council of Australia, 2023).

secured on a case-by-case basis and, in practice, facilitated by non-governmental actors such as Catholic schools rather than through uniform State provision.

Recent national sectoral analyses have similarly highlighted the absence of a unified refugee education framework across jurisdictions. Refugee Education Australia and MYAN (2025) argue that the lack of formal recognition of students from refugee backgrounds as a distinct equity cohort results in fragmented policy responses and inconsistent resource allocation across States and sectors.

4.3.2.3 Administrative Discretion as a Gatekeeping Mechanism

In the absence of a binding federal obligation to ensure educational continuity for all UMs irrespective of migration status, substantial discretion is exercised at the local administrative level. School principals and State education departments operate as street-level bureaucrats in the sense articulated by Lipsky (2010), translating abstract policy objectives into concrete decisions that directly affect access to education.

In the Australian context, such discretion is frequently exercised through a logic of administrative risk management rather than rights realisation. Uncertainty surrounding a minor's legal status, anticipated duration of stay, or eligibility for future funding may lead to delayed enrolment, informal gatekeeping practices or reluctance to invest in long-term educational planning. These dynamics underscore how, in practice, access to education for UMs is shaped less by formal legal guarantees than by discretionary administrative judgments embedded within a fragmented governance framework. Some respondents also pointed to uncertainties surrounding guardianship authority and responsibility for consent as a practical source of delay in school enrolment, particularly for older adolescents, further reinforcing the role of administrative discretion in shaping access to education. As Weber (2019) argues in her analysis of Australian migration governance, these discretionary practices are not

peripheral but form part of a “structurally embedded border”, whereby migration control objectives are enacted across welfare, education and service-delivery settings, including schools and government-contracted organisations.

These structural features cannot be understood solely as the result of administrative fragmentation or federal complexity. Interview material and policy analysis suggest that the conditional and stratified nature of educational access reflects a broader migration rationality in which deterrence and status resolution operate as primary organising principles. Within this framework, social rights, including education, are mediated through visa categorisation and compliance logics rather than framed as autonomous entitlements. This is consistent with scholarship describing Australian migration governance as securitised and deterrence-oriented (Abbondanza, 2023; Weber, 2019). While the best interests of the child are formally acknowledged, they do not operate as a decisive organising principle capable of overriding migration control priorities.

This configuration is consistent with scholarship describing Australian migration governance as characterised by securitisation and deterrence-oriented policy design (Abbondanza, 2023; Weber, 2019). Educational access thus becomes embedded within a hierarchy of priorities in which migration control objectives are structurally privileged over child-centred protection imperatives. While the best interests of the child are formally acknowledged, they do not operate as a decisive normative principle capable of overriding migration enforcement considerations.

These policy and governance features become particularly visible once educational access is examined through the lens of reception and placement arrangements, where migration control logics most directly intersect with everyday schooling continuity.

4.4 Detention, Community Arrangements and Their Impact on Educational Access

4.4.1 Immigration Detention and the Suspension of Educational Continuity

Immigration detention has long constituted a central pillar of Australia's migration governance framework, including in relation to children and UMs. Although the number of children held in closed detention facilities has fluctuated over time, immigration detention continues to shape the legal and institutional context within which access to education is negotiated, both directly and indirectly, as documented by institutional oversight bodies (AHRC, 2014). For UMs, detention represents not merely a spatial restriction, but a structural interruption of educational continuity.

Institutional reports and academic literature consistently document that educational provision in detention settings is ad hoc, fragmented and largely disconnected from State education systems. The AHRC, in its *National Inquiry into Children in Immigration Detention* (2014), found that schooling in detention environments frequently lacked accredited curricula, qualified teaching staff and mechanisms for recognising prior learning or facilitating reintegration into mainstream education upon release. As a result, detention operates as a de facto suspension of the right to education, even where limited instructional activities are formally provided.

Beyond institutional deficiencies, detention produces indirect yet profound effects on educational access through its impact on children's well-being and capacity to engage in learning. Empirical studies on children held in both onshore and offshore detention settings, including longitudinal research conducted on Nauru, have documented severe and enduring impacts on children's mental health, development and capacity to engage in learning activities (Zwi et al., 2020). In this sense, detention not only interrupts schooling temporally but also erodes the conditions necessary for meaningful learning to occur. Within the Australian academic and policy literature, these dynamics are increasingly framed through the lens of trauma-informed education. While schools may formally provide access to

schooling, the absence of systematic, trauma-informed pedagogical frameworks and adequate institutional support means that educational access risks remaining largely formal rather than substantive, particularly for children with prior experiences of detention or prolonged legal uncertainty.

From a policy perspective, these outcomes are not accidental. As Lelliott (2022) argues, immigration detention forms part of a broader governance strategy in which uncertainty and restriction are deployed as tools of migration control, with limited regard for the long-term developmental consequences for children. Educational disruption thus emerges as a foreseeable by-product of a system in which enforcement priorities override child-centred considerations.

4.4.2 Community Placement as a Partial and Uneven Corrective

Community-based arrangements are frequently presented in policy discourse as a corrective to the harms associated with detention. In formal terms, placement in the community improves the prospects for school enrolment and participation by removing the physical barriers inherent in detention settings. However, empirical evidence indicates that community placement alone is insufficient to guarantee effective or equal access to education for UMs, with significant variations persisting across local contexts and service delivery arrangements (Gerard and Weber, 2019; AHRC, 2014).

These territorial disparities are also reflected in differences between States in the scope and accessibility of educational support for refugee and UMs. The State of Victoria, which is also known as "The Education State"[14],

[14] Victoria has officially branded itself as "The Education State" since 2014, framing education as a central policy priority. While this narrative has supported the development of targeted initiatives in the field of refugee education, including additional funding and coordination mechanisms, it does not in itself guarantee uniform or rights-based access, which remains shaped by broader governance and implementation dynamics (Government of Victoria State, 2025).

is often cited as an example of a more structured and comparatively generous approach, notably through the Refugee Education Support Program (RESP), which provides targeted funding and coordinated support for schools enrolling students from refugee backgrounds (State of Victoria Government, 2025; Foundation House, 2026). By contrast, in other States educational access and support mechanisms tend to remain more fragmented and administratively burdensome, relying to a greater extent on school-level discretion and local capacity. This variability reinforces a postcode-based logic of access, whereby the realisation of educational rights depends significantly on the State and locality of placement.

Access to schooling under community arrangements remains highly contingent upon migration status, administrative discretion and local capacity. Children released into the community on Bridging Visas or other temporary arrangements often face delays in enrolment linked to documentation requirements, uncertainty regarding duration of stay and difficulties in coordinating between migration authorities, child protection services and education departments, as documented by institutional inquiries and academic literature (AHRC, 2014; Lelliott, 2022). These challenges are exacerbated where placements are unstable or subject to frequent transfers, undermining continuity in schooling. (AHRC, 2014; Lelliott, 2022)

Research on Australia's community detention and bridging visa regimes further indicates that educational access is shaped by informal practices rather than by enforceable guarantees. Gerard and Weber's analysis of "humanitarian borderwork" (2019) shows how NGOs and individual practitioners play a crucial mediating role in facilitating school access, often compensating for gaps in formal policy frameworks. While such practices may mitigate exclusion in individual cases, they also reinforce a system in which access to education depends on advocacy capacity and local goodwill rather than on uniform standards.

This gap between formal access and substantive support is also evident in the provision of specialised psychosocial services. Evaluations of the

Refugee Student Counselling Support Team highlight how trauma-informed counselling and school-based support, while effective, are delivered through time-limited funding and targeted programmes, resulting in uneven coverage and the absence of a guaranteed entitlement to such services across community placements (Centre for Education Statistics and Evaluation, NSW Department of Education, 2019)

4.4.3 Legal Uncertainty, Placement Instability, Educational Precarity

Across both detention and community settings, legal uncertainty emerges as a unifying factor shaping educational precarity. UMs subjected to temporary or discretionary migration statuses frequently experience prolonged periods of waiting, repeated reassessments and the prospect of abrupt status changes. As conceptualised by Lelliott (2022), these conditions constitute a form of legal limbo that has direct implications for access to social rights, including education.

Educational planning under such conditions is inherently constrained. Schools may be reluctant to invest in long-term support strategies for students whose legal future is uncertain, while minors approaching adulthood face heightened risks of disengagement as access to education becomes increasingly contingent upon visa status. As documented in the literature, this dynamic is particularly pronounced at transitional stages, including the move from secondary to post-secondary education, where legal uncertainty intersects with financial and administrative barriers (Lelliott, 2022; Baker et al., 2023). When UMs turn eighteen, support under the UHM Program typically ceases abruptly. For those holding temporary or bridging visas, this transition often coincides with the loss of settlement and access to educational support at precisely the stage at which entry into post-secondary pathways would normally occur, leading to a sudden and poorly supported break in educational pathways (King, 2019; AHRC, 2014).

International evidence further supports the link between placement type and educational outcomes. A systematic review of unaccompanied refugee minors across several host countries found that stable foster or community-

based placements were associated with improved educational and health outcomes compared to detention or unstable accommodation contexts (O'Higgins et al., 2018). Although not Australia-specific, this evidence underscores the structural importance of placement stability in shaping educational continuity.

Institutional oversight mechanisms offer limited protection against these outcomes. While national standards for out-of-home care and child protection frameworks formally apply to UMs in the community, they do not impose a clear, enforceable obligation to secure educational continuity irrespective of migration status. Consequently, educational access remains vulnerable to disruption at precisely the stages where stability is most critical for long-term integration.

4.4.4 Educational Access Along a Continuum of Constraint

Taken together, detention and community-based arrangements do not constitute two clearly distinct regimes of educational access but rather points along a continuum of constraint. Detention represents the most severe manifestation of exclusion, producing systemic disruptions to schooling and compounding educational disadvantage through both institutional shortcomings and the harmful effects of prolonged confinement. Community placement, while removing the most immediate barriers associated with detention, does not in itself secure stable or equitable access to education, as it remains shaped by legal status, placement instability and discretionary administrative practices.

In both settings, access to education for UMs is not organised around a coherent child-centred entitlement and remains structurally subordinated to migration control objectives. Legal uncertainty, fragmented governance arrangements and the absence of enforceable obligations regarding educational continuity continue to condition how, when and to what extent educational access is realised in practice.

This analysis suggests that improvements in placement conditions, taken in isolation, are insufficient to address the underlying sources of

educational precarity. In the absence of a policy framework capable of decoupling educational access from migration status and embedding continuity as a binding institutional requirement, both detention-based and community-based arrangements risk reproducing forms of exclusion at different degrees of intensity. This conclusion informs the empirical analysis that follows, which examines how these structural constraints are interpreted and managed in professional practice.

The structural dynamics outlined above are further illuminated by the perspectives of practitioners and experts operating within the system.

4.5 Empirical Insights into the Implementation of Educational Access for UMs in Australia

4.5.1 Methodology and Data Overview

The empirical component of this chapter is based on a qualitative research design aimed at exploring how Australia's legal and policy framework on UMs translates into educational access in practice. Data were collected through two semi-structured interviews with senior experts holding leading roles in the fields of refugee policy, education and child advocacy, complemented by six responses to an online questionnaire completed by academics, legal practitioners and NGO operators.

The empirical material is not intended to be statistically representative. Rather, it is used to identify recurring themes and patterns across expert perspectives, and to illuminate implementation dynamics that are not readily captured through formal legal and policy analysis alone.

4.5.2 Definitional Ambiguity and the Invisibility of UMs

A first and recurrent theme emerging from both interviews and questionnaire responses is the absence of a shared and operational definition of UMs within the Australian policy framework. Interviewees consistently underlined that the term "unaccompanied minors" is not commonly used in Australia outside the specific category of Unaccompanied Humanitarian Minors, which applies only to a narrow group of resettled children. As one interviewee noted, *"We don't really use the term unaccompanied minors in*

Australia" (Interviewee 1, policy expert and academic in refugee education).

This definitional ambiguity has tangible policy implications. As several respondents noted, the lack of a general category encompassing all unaccompanied and separated children contributes to their institutional invisibility, limiting the development of targeted educational policies and undermining systematic data collection. In practice, UMs tend to be subsumed within broader categories of "youth", "new arrivals" or "refugee-background students", obscuring their specific vulnerabilities and needs.

Importantly, invisibility was not described as an unintended oversight, but rather as a function of Australia's migration context. Interviewees repeatedly emphasised that the relatively small number of UMs arriving in Australia has reduced political and administrative incentives to develop dedicated frameworks or reporting mechanisms. As one interviewee observed, in the absence of a perceived policy imperative, the category remains marginal to both public debate and institutional priorities.

4.5.3 Fragmented Governance and Territorial Disparities

A second major theme concerns the fragmented nature of governance arrangements affecting access to education for UMs. Consistent with the federal structure discussed above, respondents pointed out substantial variation across States and territories in terms of educational provision, specialist support and coordination between migration, settlement and education actors. As one interviewee noted, *"This will look different everywhere"* (Interviewee 1, policy expert and academic in refugee education).

Interview material underscored that educational pathways for refugee and UMs "look different everywhere", depending on local infrastructure, funding arrangements and the presence of experienced service providers. In some metropolitan areas, such as Sydney, with established settlement ecosystems, schools and NGOs are able to draw on existing language programmes, counselling services and community networks. In contrast, in

regional or newly designated resettlement areas, the absence of such infrastructure can result in delayed enrolment, limited English support and disrupted educational trajectories.

Localised studies further illustrate how such fragmentation operates in practice. Research focusing on areas such as Greater Western Sydney shows that access to educational support for refugee-background students is strongly shaped by the availability of local services, inter-agency coordination and school-level discretion, reinforcing territorially uneven outcomes even within the same State (Ferfolja and Vickers, 2010).

Questionnaire respondents similarly pointed to the lack of nationally coordinated standards governing fee waivers, enrolment flexibility and access to specialist counselling. These disparities reinforce a territorial logic in which educational access depends not only on legal status, but also on place of residence, institutional capacity and informal networks.

4.5.4 Education Between Settlement Objectives and Discretionary Practices

Across the empirical material, education was consistently framed as an instrument of settlement and functional integration rather than as an autonomous right. Both interviewees and questionnaire respondents described a strong policy emphasis on English language acquisition and employability-oriented pathways, particularly for adolescents arriving in mid or late secondary school years.

While such approaches were not criticised per se, respondents emphasised their limitations for UMs, whose educational needs often extend beyond linguistic proficiency. Interviewees stressed that late arrivals, in particular, risk being channelled into truncated or alternative pathways that prioritise short-term functionality over long-term educational development.

At the implementation level, this settlement-oriented logic interacts with high levels of administrative discretion. Teachers, school leaders and education department officials and, in some cases, child protection authorities were repeatedly described as key decision-makers shaping

access to education in practice. Drawing on a street-level bureaucracy framework, respondents noted that discretionary judgments of the above-mentioned actors regarding enrolment timing, allocation of resources and investment in long-term support are often influenced by funding pressures and perceptions of legal uncertainty.

In this context, discretion may operate as an informal gatekeeping mechanism. As highlighted by interviewees, where minors are perceived as having a temporary or uncertain legal status, or as unlikely to complete standard educational qualifications, schools may be reluctant to invest in long-term educational planning, resulting in delayed enrolment or truncated support pathways. These practices do not necessarily reflect explicit exclusion, but rather risk-management strategies adopted by school leaders and administrators operating within under-resourced and highly decentralised systems, consistent with broader accounts of street-level discretion in public service delivery (Lipsky, 2010). Empirical studies of Australian school settings similarly highlight how teachers and school leaders negotiate competing understandings of equity and equality under conditions of limited resources and legal uncertainty, reinforcing the central role of discretion in shaping educational access for refugee-background students. (Tippett et al., 2024)

4.5.5 Data Opacity and Accountability Gaps

A central empirical finding concerns the pervasive opacity surrounding data on UMs and their educational trajectories. Interviewees consistently reported, as reflected in the research process, that while some data are collected within government departments, these are rarely published in disaggregated or accessible forms. Information on age, visa status, unaccompanied or separated status, and educational outcomes is often unavailable to the public and difficult to access even for researchers and service providers. As one interviewee explained, *"There is data available, but anything beyond that you can't access"* (Interviewee 2, senior NGO policy expert).

Access to meaningful data was described as largely dependent on informal relationships with government departments or contracted organisations, rather than on transparent reporting mechanisms. This lack of publicly available data significantly constrains evidence-based policymaking and limits opportunities for independent scrutiny of implementation practices. In this respect, opacity can also be understood as an effect of the transversalisation of border control, whereby data production and access are mediated through a dispersed network of State agencies and contracted non-governmental actors, further blurring lines of responsibility and accountability (Weber, 2019).

These findings are consistent with broader sectoral analyses documenting significant gaps in the collection, coordination and public dissemination of education-related data on refugee and unaccompanied children. Recent national youth and refugee education reports note that available data are often aggregated within broader settlement or youth categories, with limited disaggregation by migration status, care arrangements or educational pathways. This fragmentation restricts the capacity to systematically monitor access, progression and outcomes for UMs, reinforcing their statistical invisibility and weakening accountability mechanisms within the education–migration nexus (Refugee Education Australia and MYAN, 2025). National youth settlement datasets further illustrate this limitation. Available statistics are typically aggregated across broader humanitarian cohorts, with limited disaggregation for UMs as a distinct category, thereby constraining systematic monitoring of their educational pathways over time (MYAN, 2018). The relatively small size of the UHM cohort and inconsistencies in reporting practices across States compound these difficulties, reinforcing the statistical invisibility of UMs within national education and settlement data frameworks.

Expert contextual feedback further suggests that this opacity is reinforced by strict confidentiality obligations and administrative constraints affecting public servants and government-contracted organisations. Even where engagement with external research may be

technically permissible, complex approval processes and risk-averse institutional cultures can operate as de facto barriers to participation. As a result, the difficulty encountered in accessing both data and practitioners' perspectives reflects not merely methodological limitations, but a structural feature of the governance environment within which migration and education policies are implemented.

4.6 Intersectional Dimensions of Education Access

Educational access for UMs cannot be fully understood through legal status alone. Quantitative and longitudinal research suggests that educational trajectories are shaped by the intersection of migration status with age, race, gender, placement type and socio-economic precarity. Treating UMs as a homogeneous administrative category risks obscuring differentiated patterns of vulnerability that affect educational continuity and attainment. An intersectional perspective therefore enables a more precise assessment of how formally equal entitlements translate into uneven substantive outcomes.

Longitudinal evidence from a Melbourne-based cohort demonstrates that age at arrival constitutes a significant predictor of secondary school completion, with each additional year at arrival reducing the likelihood of completion (OR 0.494, $p = 0.009$) (Correa-Velez et al., 2017, p. 799). Experiences of racial discrimination were also statistically associated with lower completion rates (OR 0.205, $p = 0.049$), highlighting how migration status interacts with processes of racialisation in shaping educational outcomes (Correa-Velez et al., 2017). These findings indicate that legal precarity alone does not explain educational disadvantage; rather, it operates in conjunction with socially embedded forms of marginalisation.

National reporting further indicates that participation patterns vary along gendered and socio-economic lines. Women represent approximately 65% of enrolments in the Adult Migrant English Program (AMEP), yet face structural barriers linked to caregiving responsibilities, transport limitations and digital exclusion (Refugee Education Australia & MYAN, 2025). While

gender was not statistically significant in the Melbourne cohort (Correa-Velez et al., 2017), female participants displayed higher completion rates (74% compared to 50% for males), suggesting differentiated trajectories that merit further investigation. At the same time, qualitative research has highlighted that young men exposed to detention or prolonged legal uncertainty may experience heightened disengagement risks and institutional surveillance, particularly where migration status intersects with racialisation and control-oriented governance dynamics (Zwi et al., 2020; King, 2019).

Placement type further differentiates educational outcomes. International comparative research on unaccompanied minors has found that stable foster or community-based placements are associated with improved educational and health outcomes compared to detention or unstable accommodation contexts (O'Higgins et al., 2018). In the Australian context, prolonged detention, repeated transfers and uncertainty regarding guardianship arrangements have been shown to compound psychological distress and disrupt educational continuity (AHRC, 2014; Zwi et al., 2020). Placement instability therefore operates as an additional structural layer through which migration governance affects educational trajectories.

The intersection between visa precarity and socio-economic marginalisation is also evident in post-secondary participation. Building a New Life in Australia (BNLA) data show that ten years after arrival only 10% of humanitarian entrants had completed a university qualification, while 35% had not completed any post-school education (BNLA Wave 6, in Refugee Education Australia & MYAN, 2025). These figures suggest that formal access to schooling does not necessarily translate into upward mobility, particularly where migration-related uncertainty overlaps with economic vulnerability and limited institutional recognition.

An intersectional lens thus shows that implementation gaps are not uniformly distributed. Migration status conditions formal access, yet age at arrival influences recovery capacity, experiences of discrimination affect school retention, placement instability disrupts continuity, and socio-

economic constraints shape post-secondary progression. Educational precarity among UMs is therefore layered rather than homogeneous.

4.7 Structural Constraints on Access to Education

The empirical findings analysed in this chapter largely confirm the structural dynamics identified in the preceding sections, while clarifying how they operate in practice. Limitations in access to education for UMs in Australia stem less from the absence of formal legal entitlements than from a combination of definitional ambiguity, fragmented governance arrangements and policy choices that frame education primarily as a component of settlement rather than as an autonomous right.

These features are reinforced by extensive administrative discretion at the local level and by the limited availability of publicly accessible and disaggregated data, which weakens accountability mechanisms and constrains systematic evaluation of policy outcomes. The enjoyment of educational rights is therefore shaped less by uniform standards than by local capacity, institutional priorities and individual decision-making within schools and service providers.

Comparative research further contextualises these findings. North American studies have documented comparatively higher educational completion rates among foster-supported unaccompanied minors, particularly where placement stability and targeted educational mentoring were systematically embedded within child protection frameworks (Wilkinson, 2002; Rana et al., 2011, in Correa-Velez et al., 2017). By contrast, the Australian evidence suggests that educational outcomes are more closely associated with age at arrival, experiences of discrimination and structural placement dynamics than with a consistently institutionalised child-protection-centred support model (Correa-Velez et al., 2017).

These findings reinforce the central analytical claim advanced in this chapter: within a migration-centred governance system, the gap between formal legal recognition and substantive access to education is structurally embedded rather than the product of isolated administrative failures. Visa

stratification, institutionalised discretion and the embedding of guardianship within the migration portfolio interact with broader social inequalities, producing differentiated and hierarchically organised forms of educational access.

Educational access in Australia is therefore not denied outright; it is rendered conditional. It operates along a continuum shaped by legal status, placement arrangements, territorial disparities and discretionary decision-making. While similar implementation challenges were identified in the Italian case, the Australian findings demonstrate that such gaps emerge from a distinct legal and institutional architecture, characterised by the structural privileging of migration control over child-centred protection. This distinction provides the analytical basis for the comparative discussion developed in the following chapter.

4.8 Concluding Remarks

The Australian case reveals that access to education for UMs is shaped less by the absence of formal legal guarantees than by the institutional conditions through which those guarantees are operationalised. Across the sections examined, educational continuity emerges as structurally fragile: dependent on visa category, placement stability, State-level governance arrangements and the discretionary judgments of school-level actors.

The analysis further demonstrates that these constraints do not operate uniformly. Age at arrival, experiences of racial discrimination, socio-economic vulnerability and exposure to detention or placement instability significantly mediate educational trajectories. The implementation gap is therefore not only structural but internally differentiated within the category of UMs itself.

Two broader implications follow. First, policy design is decisive: when guardianship, migration control and educational access are institutionally intertwined, the right to education becomes formally recognised yet substantively conditional. Second, accountability and data transparency remain systemic weaknesses. The absence of consistent, disaggregated

national data on UMs constrains policy evaluation and limits independent scrutiny.

From a theoretical perspective, the findings support the hypothesis advanced at the outset of this chapter: within a migration-centred governance regime, the gap between legal recognition and substantive access is not accidental but structurally embedded in the interaction between visa stratification and street-level discretion.

These conclusions provide the basis for the comparative analysis developed in the following chapter. While both Australia and Italy display tensions between law and practice, the Australian case illustrates how educational precarity may be embedded within a deterrence-oriented migration architecture rather than arising primarily from administrative inefficiencies.

Future research would benefit from longitudinal and State-disaggregated quantitative analysis capable of tracing the educational trajectories of UMs over time, as well as from deeper examination of how placement models and guardianship structures shape educational continuity.

CHAPTER 5

Comparative Analysis: Law, Governance, and Educational Precarity

5.1 Introduction: Framing the Comparative Question

The preceding chapters have examined the Italian and Australian approaches to access to education for UMs, highlighting persistent tensions between formal legal recognition and practical implementation. Both countries are liberal democracies, parties to the CRC and the 1951 Refugee Convention, and both formally recognise education as a fundamental right. Yet, as the country chapters have demonstrated, the institutional pathways through which that right is operationalised differ markedly.

This comparative chapter asks a more precise question: is the fragility of educational access for UMs primarily the result of implementation failures within otherwise protective legal frameworks, or does it reflect deeper systemic characteristics embedded in migration governance design? Framed differently, the analysis seeks to determine whether the observed gap between law and practice is contingent or systemic.

At the international level, the normative benchmark appears clear. The CRC, as interpreted in General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, requires States to ensure that such children enjoy access to education based on equality with nationals and without discrimination, irrespective of migration status. The Committee explicitly links access to education to the broader protective function of the child rights regime, emphasising that reception arrangements must not undermine the child's development or long-term integration. Education is thus not framed as a discretionary welfare benefit, but as an immediate and substantive obligation grounded in the best interests of the child.

Scholarly analysis in international refugee law reinforces this interpretation. Pobjoy (2017) argues that children's rights norms, including the best interests principle, operate as interpretative constraints on States' migration powers, requiring that asylum and immigration frameworks be applied in a manner consistent with children's developmental and protection needs. From this perspective, educational access is not ancillary to status determination or migration control; rather, it constitutes part of the substantive content of protection owed to children as rights-bearers.

Despite this shared normative framework, national approaches to migration governance vary significantly. Abbondanza's comparative study of Australian and Italian responses to irregular migration highlights a structural divergence in policy rationalities: whereas Italy has historically operated within a frontline humanitarian governance model shaped by European legal constraints, Australia has developed a deterrence-oriented regime centred on border control and securitisation (Abbondanza 2023). These differing migration architectures operate beyond formal commitments, shaping the construction of legal categories, the exercise of discretion, and the distribution of social rights.

The relevance of this divergence becomes particularly salient when examining access to education for UMs. If educational rights are embedded within a broader child-protection framework, implementation failures may stem from administrative fragmentation, resource constraints, or coordination gaps. By contrast, where educational entitlements are mediated through migration status and control-oriented logics, precarity may be structurally produced by design rather than by malfunction.

The comparative analysis that follows, thus, moves beyond a descriptive juxtaposition of two national systems. Instead, it situates Italy and Australia within broader debates on migration governance, child rights, and the stratification of social entitlements. The comparison is conducted not merely at the level of policy outcomes, but at the level of legal architecture and institutional allocation of authority. The comparative research draws on the original empirical material presented in Chapters 3

and 4, including a structured survey of 58 professionals working with UMs in Italy and 6 in Australia and semi-structured interviews with policy and education experts in Australia[15]. By placing the empirical findings of the previous chapters in dialogue with international legal standards and comparative migration scholarship, the chapter advances a central claim: while both systems exhibit tensions between law and practice, the Italian case reveals weaknesses in the operationalisation of a formally universal framework, whereas the Australian case reveals how migration governance structures condition the scope of educational entitlement.

Through this lens, educational precarity emerges not simply as an administrative shortcoming but as a governance outcome shaped by the relationship between child protection and migration regulation in contemporary liberal democracies.

5.2 Legal Architecture and Models of Entitlement

5.2.1 Universalism vs Stratified Rights

5.2.1.1 Italy: Territorial Universalism with Implementation Fragility

In contrast to the status-differentiated structure of entitlement examined in the Australian case, the Italian legal framework governing access to education for UMs is formally grounded in a universalist logic. Education is recognised as a fundamental right attached to the person as such, irrespective of nationality or migration status. Within this statutory architecture, the minor's presence on the territory constitutes the decisive criterion for entitlement. The distribution of competences between central and local authorities does not formally alter the status-neutral character of access to compulsory education. Immigration status is, at least normatively, irrelevant to access to compulsory schooling, and enrolment is not legally conditioned upon the regularity or stability of residence.

[15] See Appendix A for the Italian questionnaire, Appendix B for the Australian Questionnaire, Appendix C for the Codebook, Appendix D, E, and F for anonymised respondent matrices, and Appendix G for interview guide

This configuration approximates what can be described as a model of territorial universalism, whereby rights derive from territorial presence rather than from membership in the national political community. In contrast to systems in which entitlements are explicitly stratified according to visa categories, the Italian framework does not construct educational access as a graduated benefit tied to migration status. On paper, UMs are integrated into the general child-protection and compulsory education system, rather than channelled into a separate or conditional regime.

However, as the empirical and doctrinal analysis developed in Chapter 3 has shown, this universalist orientation coexists with significant implementation fragilities. Pasquale (2020) has described the Italian regime for UMs as characterised by normative ambivalence: while formally anchored in the best interests of the child and non-discrimination, it operates within a fragmented governance structure marked by decentralisation and broad administrative discretion. The protective orientation of the law does not automatically translate into uniform operational practices. Instead, the realisation of rights depends heavily on local coordination, institutional capacity, and the initiative of individual actors.

Recent empirical research confirms that this gap between formal entitlement and practical access is not episodic but structural. Santagati et al. (2024), analysing schooling pathways of UMs across different Italian territories, document recurrent delays in enrolment, uneven coordination between reception facilities and schools, and the tendency to channel minors into accelerated or standardised educational tracks, particularly when arrival occurs mid-year or close to the age of majority. These dynamics do not amount to explicit exclusion. Rather, they represent forms of mediated or deferred access that gradually erode the immediacy and substantive quality of the right to education.

The fragility of implementation is further compounded by territorial variabilities, namely the maturity of local networks, the availability of language support, and the stability of reception arrangements. In this sense, universalism operates at the level of normative design but not always at the

level of lived experience. Access is rarely denied outright; instead, it is delayed, redirected, or reshaped through discretionary and organisational mechanisms.

In comparative terms, the Italian case exposes the limits of universalist legal design when embedded within a decentralised and resource-sensitive administrative system. The legal architecture does not stratify access by migration status; however, its consistency depends on decentralised competences and weak coordination mechanisms.

5.2.1.2 Australia: Visa-Stratified Entitlements

While Italy has a territorial-universalist orientation, the Australian framework governing access to education for UMs is structured around a markedly different organising principle: migration status operates as the primary axis of entitlement. Access to primary and secondary schooling is generally available; however, the scope and stability of educational participation are shaped by visa category and residence status. Questionnaire responses collected in Australia (N=6) reinforce this assessment. Five out of six respondents reported that UMs often or consistently face problems linked to effective access to education. Moreover, all six respondents indicated that migration and asylum procedures affect educational continuity, either significantly (3/6) or to some extent (3/6).

Baker et al. (2023), in their analysis of educational entitlements for forced migrants in Australia, demonstrate that the system differentiates sharply between permanent humanitarian visa holders and those subject to temporary or unresolved protection arrangements. Permanent status enables access to domestic student fee arrangements and broader educational support structures, including pathways to tertiary education. By contrast, students holding temporary visas or bridging visas have historically encountered barriers, particularly in post-secondary education, where they may be classified as international students and thus required to pay significantly higher tuition fees. Even where formal access to schooling is

not explicitly denied, long-term educational planning becomes contingent upon visa security.

This differentiation illustrates the broader organisation of the migration framework. As Abbondanza (2023) argues, Australia's migration regime places strong emphasis on border control and migration management. Within such a framework, social rights, including education, are mediated through the lens of legal status. Entitlements are not attached to territorial presence as such, but to the nature and durability of one's migration category. The child is positioned primarily as a non-citizen subject to migration law, and only secondarily as a rights-bearing minor within a child-protection framework.

The implications of this design become particularly visible in situations of temporary protection or prolonged status determination, defined as a form of legal limbo (Lelliott, 2022) in which UMs may remain physically present in the territory while lacking the stability necessary to meaningfully exercise social rights. Legal uncertainty affects the continuity of educational planning. Schools and institutions may hesitate to invest in long-term support for students whose right to remain is unresolved, and students themselves may experience uncertainty regarding progression into upper secondary or tertiary education.

The opacity of data further reinforces this structural precarity. The difficulty of accessing disaggregated information on unaccompanied minors was repeatedly raised in interviews conducted for this study. As one senior policy expert observed, *"We don't know what the numbers are… it's not publicly available information"* (Interviewee 2, senior NGO policy expert) . Another education specialist similarly noted that *"There's no kind of mapping of what happens"* (Interviewee 1, policy expert and academic in refugee education) once young people enter the education system. This lack of transparency limits policy evaluation, weakens public accountability, and constrains evidence-based reform.

In this context, differentiated visa status has direct implications for the continuity and progression of educational access. The differentiation

between permanent and temporary status introduces a legally sanctioned hierarchy of educational opportunity. Even when access to compulsory schooling is formally maintained, the conditions of continuity, progression and long-term inclusion are unevenly distributed.

From a comparative perspective, the distinction with the Italian model is clear. Whereas Italy's framework formally decouples educational access from migration status but struggles with operational consistency, Australia embeds differentiation directly into the architecture of entitlement. Educational access is not universally detached from legal status; rather, it is calibrated in accordance with it. The divergence reveals differences in how entitlement is structured within domestic migration law.

5.2.2 Comparative Insight: Membership vs Presence and the Stratification of Rights

The contrast between the Italian and Australian approaches to educational access for UMs can be more fully understood when situated within broader theoretical debates on territorial presence, political membership, and the stratification of rights.

Bosniak's analysis of the tension between "the citizen" and "the alien" provides a particularly useful conceptual lens. The author distinguishes between rights grounded in territorial presence, which attach to persons by virtue of being within the jurisdiction of the State, and rights grounded in political membership, which depend upon formal inclusion within the national community (Bosniak 2006). Liberal democracies often oscillate between these two logics, formally endorsing universal human rights while simultaneously structuring full social entitlements around citizenship or secure status.

The Italian framework for access to education approximates a presence-based model. Educational entitlement, at least normatively, is triggered by the minor's presence within the territory and by their status as a child, not by the possession of a particular residence permit or visa category. In this

sense, Italy reflects a territorial-humanitarian orientation consistent with a child-protection rationale: the minor is primarily conceptualised as a child in need of protection, and only secondarily as a migrant subject to regulation.

By contrast, the Australian system more clearly exemplifies a membership-stratified logic. Although certain educational services are accessible irrespective of status, the depth, stability, and progression of educational opportunities are calibrated in accordance with visa category. Legal status functions as a proxy for belonging, shaping not only access to tertiary education and fee arrangements, but also institutional willingness to invest in long-term educational planning. In Bosniak's terms, the alien's presence within the territory does not automatically generate equivalent entitlement; rather, membership, defined through migration status, mediates the scope of rights.

Anderson's work on "deservingness" further illuminates this dynamic. The author argues that migration control regimes construct moral hierarchies, distinguishing between those deemed deserving of inclusion and those positioned as conditional or provisional members (Anderson, 2013). Applied to the Australian case, visa stratification can be understood not merely as administrative differentiation but as the institutionalisation of graded belonging. Permanent humanitarian entrants are more readily integrated into domestic entitlement structures, whereas temporary or unresolved protection holders occupy a more precarious, conditional space. Educational access thus becomes one of the sites through which membership is signalled and regulated.

The comparative insight that materialises is not simply that one system is more inclusive than the other. Rather, the two frameworks organise the relationship between migration control and child protection according to distinct normative hierarchies. In Italy, educational entitlement is formally anchored in territorial presence and the child's developmental needs, with

migration status playing no constitutive role in defining access; the difficulty lies in ensuring consistent and uniform implementation. In Australia, by contrast, educational entitlement is embedded within a migration-status architecture that differentiates between categories of non-citizens from the outset, thereby conditioning both the scope and stability of access. The divergence between the two systems is therefore not rooted in differing treaty commitments, but in the institutional hierarchy between migration authority and child protection, and in the degree to which migration status shapes access to social rights. This divergence has broader implications for how liberal democracies conceptualise child protection: whether it operates as an autonomous normative framework capable of constraining migration authority, or as a subordinate regime mediated by membership status and border governance rationalities.

This distinction clarifies how entitlement is structured differently across the two systems. In a membership-stratified system, precarity is closely linked to the legal organisation of entitlement. Educational access becomes not only a question of implementation, but a reflection of how liberal democracies define the boundary between those who are merely present and those who are recognised as entitled members of the political community.

5.3 Discretion and Governance

5.3.1 Street-Level Bureaucracy in Two Governance Models

5.3.1.1 Italy: Discretion as a Compensatory Mechanism

The Italian case illustrates how discretion operates within a formally universalist framework as a compensatory mechanism responding to fragmentation rather than as a tool of exclusion embedded in legal design. Although the right to education for UMs is clearly recognised at the normative level, its operationalisation depends on a multi-layered governance structure involving schools, reception facilities, local authorities, guardians, and social services. Within this decentralised allocation of administrative competences, front-line actors inevitably

exercise discretion in translating legal standards into concrete educational pathways.

Lipsky's theory of street-level bureaucracy (2010) argues that public service professionals, such as teachers, administrators, and social workers, effectively become policymakers through the discretionary judgments they make under conditions of resource constraints, organisational pressure, and ambiguous guidance. In the Italian context, schools frequently determine the timing of enrolment, placement within educational tracks and access to language support. These decisions are rarely framed as deviations from the law; rather, they are justified in pedagogical or organisational terms. Yet they significantly shape how and when educational rights are realised in practice.

While discretion in Italy takes shape as a pragmatic response to fragmented governance, it operates within a statutory framework that formally affirms universal and status-neutral entitlement; this contrasts with the Australian context, where discretionary decision-making unfolds within a status-differentiated entitlement structure.

Importantly, the Italian case does not reveal a formally sanctioned margin of discretion to restrict access based on migration status. On the contrary, the normative framework is explicitly child-centred and grounded in non-discrimination (Pasquale, 2020). The problem lies not in the absence of protective standards but in their translation within a fragmented institutional setting. Decentralisation and uneven coordination generate practical uncertainties regarding documentation, guardianship procedures, and placement stability, which in turn create spaces for discretionary adaptation at the local level.

This dynamic is reflected in the original survey data collected for this study. Out of 58 respondents working in different roles across Italian regions, 30 explicitly reported having observed practices that, while not formally denying access, effectively delayed or obstructed enrolment. Only 13 respondents indicated that they had not observed such practices. Moreover, when asked whether ministerial or regional guidelines are

applied uniformly, only 4 respondents perceived homogeneity, whereas 38 reported either significant or substantial territorial variation. This reliance on individual initiative is also visible in the qualitative responses. One respondent working in a reception facility noted that "without the guardian's intervention, enrolment would have been postponed indefinitely," highlighting how effective access may depend on proactive advocacy rather than automatic procedural safeguards. Similar observations were made by multiple respondents across different regions, suggesting that discretionary mediation often compensates for coordination gaps in the system. These findings suggest that discretion operates not as an exceptional deviation from legal standards, but as a structurally embedded feature of decentralised implementation.

Empirical data thus confirm that such discretion is often exercised in response to systemic constraints rather than as an intentional mechanism of exclusion. Santagati et al. (2024) document how schools and reception actors frequently navigate delays in documentation, mid-year arrivals and language barriers by adopting flexible or improvised solutions. In some contexts, minors are temporarily redirected to language-focused pathways or accelerated vocational tracks, not because the law requires such differentiation, but because institutional capacity or timing pressures limit available alternatives. Discretion, in this sense, becomes a pragmatic strategy to manage heterogeneity within under-resourced environments.

At the same time, the reliance on individual advocacy, particularly by voluntary legal guardians, reveals the limits of institutional automaticity. Access to timely enrolment often depends on persistent intervention by guardians capable of invoking the legal framework and negotiating with school administrations. This dynamic reinforces Lipsky's insight that policy implementation is shaped not only by formal rules but by interactions between street-level actors and the resources available to claimants. Where advocacy is strong, formal rights are more likely to be enforced; where it is absent, delays and redirections may remain uncontested.

From a comparative standpoint, the critical point is that discretion in the Italian system emerges as a response to fragmentation and operational uncertainty within an otherwise universalist rights framework. It functions as a mediating mechanism, filling coordination gaps and compensating for limited resources. While it may produce unequal outcomes and erode the immediacy of rights, it does not originate from a legal architecture designed to differentiate entitlements on the basis of status.

5.3.1.2 Australia: Discretion as an Instrument of Migration Control

If, in the Italian case, discretion operates primarily as a compensatory response to fragmentation, the Australian framework reveals a different configuration. Here, discretionary practices operate within a status-differentiated governance structure. In this institutional setting, discretion does not correct the system; it operationalises it.

As discussed above, migration status operates as the primary organising principle of entitlement within the Australian system (Abbondanza, 2023). Within this framework, discretion does not merely mediate administrative constraints; it functions within a pre-existing architecture of status differentiation. Decisions taken by schools and administrative actors are therefore exercised considering visa category, funding eligibility, and anticipated duration of stay, rather than within a universally structured child-protection framework.

Weber's concept of the "structurally embedded border" (2019) explored in Chapter 4 is particularly instructive in this regard. In the Australian case, schools and education authorities can become sites where this embedded border is enacted. Decisions regarding enrolment timing, allocation of support resources or investment in long-term educational planning are influenced, directly or indirectly, by a student's visa status and the perceived stability of their legal position.

Unlike the Italian case, where discretion seeks to reconcile universal norms with administrative constraints, the Australian model situates discretion within a status-differentiated institutional framework.

Educational decision-making is shaped by the legal structuring of entitlement and eligibility criteria attached to visa status. Discretion is therefore exercised in light of the anticipated duration of stay and funding eligibility, rather than within a universally structured child-protection logic.

As noted above, entitlements remain differentiated, particularly in post-compulsory education (Baker et al., 2023).

The analytical distinction lies in the function of discretion. In Italy, it mediates fragmentation within a universal framework; in Australia, it operates within an institutional structure that conditions entitlement from the outset. At the street level, discretionary practices therefore reinforce, rather than offset, structural differentiation.

5.4 *Educational Continuity and Structural Precarity*

5.4.1 Two forms of Educational Precarity

5.4.1.1 Italy: Administrative and Territorial Disruption

If the Italian model is normatively grounded in territorial universalism, its principal vulnerability lies in the instability of educational continuity. The fragility does not manifest primarily through formal legal exclusion, but through the decentralised implementation of statutory guarantees across territorially differentiated administrative authorities.

Survey responses indicate that enrolment delays are not episodic. Of the 58 respondents who answered the question on timing of school registration, 41 reported either moderate or significant delays, while only 9 indicated that enrolment typically occurs without delay. This pattern suggests that delayed access to schooling is perceived as structurally recurrent rather than exceptional.

A first structural factor concerns transfers within the reception system. Placement decisions, often driven by capacity constraints, administrative reallocation, or reception management priorities, frequently occur without systematic coordination with educational planning. Both the empirical material and broader national research document mid-year transfers interrupt schooling, delay examinations, and complicate re-enrolment in

new local contexts. As one NGO operator from Southern Italy explained, frequent transfers between reception facilities hinder the right to education, as they interrupt schooling trajectories and can result in the loss of weeks or months of instruction, generating difficulties in integration and delayed academic progression (respondent 28, NGO operator). Santagati et al. (2024) observe that educational trajectories of UMs are often marked by discontinuity linked to movements between facilities and regions, with cumulative effects on motivation and academic progression. Continuity, which is a core component of substantive educational protection, becomes contingent upon administrative stability rather than guaranteed as a structural safeguard.

This instability is reinforced by territorial disparities in governance capacity. Although the legal framework is nationally uniform, implementation depends heavily on local coordination between schools, reception facilities, and social services.

A second dimension of disruption concerns the structuring of educational pathways, particularly for adolescents approaching the age of majority. Both empirical findings and national studies indicate a tendency to channel minors into accelerated or vocational tracks deemed compatible with limited time horizons. Santagati et al. (2024) note that proximity to eighteen often functions as an implicit threshold shaping educational orientation, with preference given to short-term or labour-oriented programmes over longer academic trajectories. 12 respondents across different professional roles highlighted that proximity to the age of majority represents a turning point for UMs', accelerating their educational decision-making and favouring shorter or vocational pathways, reflecting how closeness to adulthood may implicitly reshape institutional expectations and planning horizons. While such pathways formally satisfy the requirement of access, they may reduce the qualitative depth and long-term developmental potential of education.

Crucially, these practices do not stem from a statutory limitation on entitlement. Italian law does not mandate differentiated or abbreviated

schooling for older UMs. Rather, accelerated pathways emerge at the intersection of administrative timing, resource constraints, and expectations regarding transition out of reception. The compression of educational trajectories thus reflects institutional pragmatism under structural pressure; not formal exclusion grounded in migration status.

Taken together, transfers, territorial variability, and accelerated pathways illustrate how educational continuity in Italy is shaped by the decentralised allocation of legal competences and the variability of institutional coordination mechanisms at the local level. While access is formally secured, its substantive consistency depends on the institutional context in which schooling unfolds.

5.4.1.2 Australia: Temporal Uncertainty and the Structuring of Educational Futures

While the previous section on Australia examined how visa status structures entitlement, the Australian case also reveals how temporality itself becomes a mechanism of educational precarity. Educational continuity is shaped not only by differentiated rights but by the temporal logic embedded in migration governance.

Educational planning unfolds within shortened institutional horizons. Questionnaire responses collected in Australia confirm that temporariness is not perceived as incidental but structurally consequential: all six respondents indicated that migration and asylum procedures affect educational continuity, either significantly (3/6) or to some extent (3/6). This uniform assessment suggests that legal uncertainty is embedded in the educational experience of UMs, shaping both institutional expectations and students' projected trajectories. Interview evidence further indicates that expectations of temporariness shape institutional behaviour. As one education specialist noted, long-term planning is often constrained by uncertainty regarding students' visa status, reinforcing the perception that educational investment may be provisional rather than sustained (Interviewee 1, policy expert and academic in refugee education). Pathways

requiring sustained multi-year commitment may therefore appear structurally misaligned with limited expectations of permanence.

This temporal dimension distinguishes the Australian form of educational precarity from the Italian case. Whereas in Italy discontinuity often results from weak implementation within a rights-based framework, in Australia, fragility is closely tied to how expectations of permanence shape educational trajectories.

5.5 *Child Rights and the Limits of International Commitments: The Best Interests Principle in Two Liberal Democracies*

5.5.1 International Standard: Education, Protection, and the Best Interests Principle

Any comparative assessment of national approaches to educational access for UMs must be anchored in the international legal framework governing children's rights. CRC recognises education as a fundamental right of every child within a State's jurisdiction (Article 28), to be implemented without discrimination, including on the basis of national origin or migration status (Article 2).

For unaccompanied and separated children outside their country of origin, General Comment No. 6 clarifies that access to education must be immediate and guaranteed on a basis of equality with nationals. Migration status cannot justify reduced standards of protection, and reception arrangements must prioritise continuity, integration, and the child's developmental needs. Education is therefore framed not as a discretionary welfare benefit, but as a core component of child protection.

As Pobjoy (2017) argues, the CRC operates as a substantive constraint on the exercise of migration powers. The best interests principle must meaningfully shape outcomes rather than function as a purely procedural consideration. Educational access, therefore, forms part of the core protective obligations owed to UMs under international law.

The generated benchmark is twofold: educational access must be immediate, non-discriminatory, and continuous, and migration governance structures must not undermine the child-centred orientation of protection.

This standard provides the normative reference point for assessing the Italian and Australian systems. The comparative question is not whether education is formally recognised in both jurisdictions - it is - but whether the institutional relationship between migration control and child protection enables the substantive realisation of that right. The relevance of this benchmark lies not in measuring formal compliance but in assessing whether domestic governance structures permit the best interests principle to operate as a substantive constraint on migration authority.

5.5.2 Italy: Substantive Recognition, Weak Enforcement

Measured against the international benchmark outlined above, the Italian framework formally aligns closely with the child-centred orientation required by the CRC. The principle of the best interests of the child is explicitly embedded within the legislative regime governing UMs, and access to education is recognised as an immediate and non-discriminatory entitlement. Migration status does not legally qualify or limit the right to schooling, demonstrating a child-centred statutory orientation.

In this respect, Italy approximates what can be described as a substantive incorporation of the best interests principle at the legislative level. The legal framework governing UMs is structured around child protection rather than migration control, and educational access is framed as an integral component of integration and developmental safeguarding. This orientation is broadly consistent with the interpretative approach advanced in General Comment No. 6 and reinforced by Pobjoy's analysis of the child-centred reading of refugee and migration law.

However, the Italian case also illustrates the limits of formal alignment with international standards when enforcement and coordination mechanisms remain weak. The legal recognition of rights does not always translate into uniform operational guarantees. The decentralised organisation of reception and education services produces variability in timing, continuity, and pathway allocation, with the result that the

immediacy and stability required by the CRC are not consistently secured in practice.

The survey data collected for this study further indicates that this gap between normative guarantees and operational reality is not perceived as marginal. When asked whether ministerial or regional guidelines are applied uniformly across territories, only 4 out of 42 respondents reported homogeneity, whereas 38 indicated either significant or substantial variation. These findings suggest that uneven enforcement is experienced as a structural feature of decentralised governance rather than as an occasional deviation from legal standards.

Empirical research further confirms that the best interests principle, while formally central, is not always systematically operationalised as a binding constraint in placement and educational decisions. Santagati et al. (2024) document how transfers within the reception system frequently occur without a structured assessment of educational continuity, and how proximity to the age of majority may influence the compression of educational trajectories. Such practices do not indicate an explicit rejection of child-centred standards; rather, they reveal a governance structure in which educational planning is sometimes subordinated to administrative or organisational considerations.

5.5.3 Australia: Procedural Acknowledgement, Structural Subordination

Formally, Australia recognises the relevance of the best interests principle in migration decision-making and child welfare contexts. As a State party to the CRC, it is bound by the obligation to treat the best interests of the child as a primary consideration in all actions concerning children. In practice, however, its operation is shaped by the statutory concentration of migration and guardianship competences.

Unlike systems in which child protection operates within a legally distinct institutional framework, separate from migration decision-making competences, the Australian model situates guardianship and migration authority within the same institutional sphere. The Minister responsible for

immigration exercises guardianship functions for UHMs, thereby concentrating protection and control responsibilities within a single portfolio. This overlap does not automatically negate the application of the best interests principle, but it structurally conditions how it is interpreted and prioritised. Survey responses suggest a degree of ambivalence in the operationalisation of the best interests principle. While four respondents considered it often taken into account, two assessed its consideration as rare, indicating variability in practice.

Interview evidence reinforces the structural implications of this concentration of authority. The issue is not merely doctrinal but operational: as one senior policy expert characterised the guardianship arrangement, it constitutes *"... a real problem, it's a conflict of interest"* (Interviewee 2, senior NGO policy expert). This assessment highlights the inherent tension in locating protective and migration control functions within the same statutory actor, raising questions about the capacity of the best interests principle to operate as an independent constraint.

From the perspective advanced by Pobjoy (2017), the CRC requires that children's rights norms operate as substantive interpretative constraints on the exercise of migration powers. The best interests principle is not satisfied by procedural acknowledgement alone; it must meaningfully shape outcomes. Where migration objectives systematically outweigh child-centred considerations, the principle risks becoming formal rather than effective.

Weber's concept of the "structurally embedded border" (2019) illuminates how migration control rationalities permeate administrative decision-making, limiting the capacity of child protection norms to operate as autonomous constraints.

Survey responses further reveal this structural hierarchy. Half of the respondents (3/6) considered that the Australian system tends to privilege migration control over protection, while others described an ongoing tension between the two logics.

In Italy, weaknesses arise from fragmented implementation within a child-protection-oriented framework. In Australia, by contrast, the best interests principle operates within an institutional configuration in which migration authority and child protection functions are not normatively separated.

5.6 Typology and Theoretical Contribution

5.6.1 Two Models of Rights Dilution

The comparative analysis developed in this chapter suggests that educational precarity for UMs does not emerge uniformly across liberal democracies. Rather, it is produced through distinct governance configurations that shape how formally recognised rights are operationalised.

While both Italy and Australia formally acknowledge education as a fundamental right and are bound by the same international legal commitments, the mechanisms through which that right is diluted differ in nature and origin. Educational precarity emerges through two distinct governance configurations.

5.6.1.1 Implementation-Driven Dilution: The Italian Model

In the Italian case, the normative architecture is explicitly universalist. Educational entitlement is formally detached from migration status and grounded in territorial presence and child protection principles. The best interests of the child occupy a central position in the legislative framework, and migration law does not structurally stratify access to compulsory education.

As the survey data demonstrate that rights are frequently weakened at the level of implementation. Delays in enrolment, transfers within the reception system, territorial variability and reliance on discretionary mediation collectively erode the immediacy and continuity required by international standards. The source of dilution lies not in the legal

architecture itself, but in the fragmented governance structures through which it is executed.

Discretion in this context operates as a compensatory mechanism: street-level actors navigate coordination gaps, resource constraints, and administrative uncertainty to operationalise broadly protective norms. However, such compensatory discretion produces variability and unpredictability, generating unequal outcomes across territories and cases. Educational precarity under these conditions remains primarily administrative in character.

This model can be described as normative universalism with operational fragility. Rights are robust on paper but vulnerable in practice.

5.6.1.2 Design-Driven Conditionality: The Australian Model

By contrast, the Australian case reflects a structurally differentiated architecture of entitlement. Migration status functions as a central organising principle in determining the scope and stability of educational access. Visa categories shape funding eligibility, institutional planning horizons, and long-term educational progression, particularly at transitional stages.

This status-stratified logic was consistently emphasised by interviewees. As one senior policy expert noted, *"Everything in Australia ultimately comes back to Operation Sovereign Borders"* (Interviewee 1, policy expert and academic in refugee education), highlighting how deterrence policy frames the broader governance environment within which education policy operates.

Here, rights are not diluted primarily through weak implementation of universal norms, but through a migration-centred entitlement design in which migration authority and child protection competences are legally concentrated within the same statutory authority. Discretion operates within this differentiated structure rather than independently from it. This institutional concentration has implications for the normative hierarchy between migration control and child protection, as the same statutory actor exercises powers of entry, residence determination and guardianship.

The best interests principle, while formally acknowledged, operates within a statutory configuration in which migration authority and child protection competences are legally concentrated, allowing migration law to shape the scope of protective guarantees. The allocation of guardianship responsibilities to the Minister responsible for immigration illustrates the concentration of legal authority within a single portfolio, shaping the relative normative weight accorded to protective and control considerations.

5.6.1.3 Comparative Typology

Dimension	**Italy**	**Australia**
Normative Model	Universalist	Stratified
Source of Gap	Implementation	Institutional design
Function of Discretion	Compensatory and mediating	Control-oriented and status-sensitive
Nature of Precarity	Administrative and territorial	Structural and Status-based
Best Interest Principle	Substantively recognised but weakly enforced	Procedurally acknowledged but structurally subordinated

Table 1 Comparative Typology of Educational Precarity in Italy and Australia
Source: Author's elaboration

This typology clarifies that the gap between law and practice cannot be treated as a homogeneous phenomenon across jurisdictions. The two configurations differ not in formal rights recognition, but in the governance structures through which those rights are operationalised.

An additional dimension of divergence concerns data transparency and institutional accountability. In Italy, while national legal standards are formally uniform, the absence of systematically harmonised reporting across regions limits the capacity to monitor educational continuity in practice. This limitation is also reflected in the survey responses collected for this study. When asked whether ministerial or regional guidelines are applied uniformly, only 4 out of 42 respondents perceived homogeneity,

while 38 indicated significant or substantial territorial variation, suggesting that the monitoring of implementation is experienced as structurally uneven. In Australia, the lack of disaggregated national data on UMs further constrains external scrutiny of how visa status affects educational trajectories. In both systems, limited transparency reduces the visibility of implementation gaps and weakens mechanisms of rights-based oversight.

The comparative contribution of this chapter, therefore, lies in reframing educational vulnerability not merely as a failure of compliance but as a governance outcome shaped by the relationship between child protection and migration regulation. Where universalist legal design lacks strong institutional enforcement, rights become administratively diluted. Where migration status is built into the architecture of entitlement, rights become conditionally distributed.

This distinction contributes to comparative migration and child rights scholarship by clarifying the difference between governance-induced precarity and implementation-induced precarity: a distinction that is frequently conflated in broader discussions of compliance gaps and rights effectiveness.

5.7 Concluding Comparative Reflections

In Italy, educational precarity arises primarily from weaknesses in implementation. A formally universal and child-centred statutory framework is mediated through a decentralised allocation of competences, producing variability and discontinuity. The right to education is recognised without status differentiation, but its application depends on the coordination and capacity of territorially distributed authorities.

In Australia, precarity is linked to the legal structuring of entitlement around migration status. Educational access operates within an institutional design in which migration law determines the scope and stability of social rights.

The divergence between the two cases lies not in their international commitments, but in the domestic statutory positioning of child protection within migration law and the allocation of legal authority between protection and control functions. The following chapter considers the broader implications of these findings for the protection of unaccompanied minors.

CHAPTER 6
Conclusion

6.1 Reframing the Research Question

This thesis examined whether educational precarity for UMs is primarily the result of weaknesses in implementation within otherwise protective legal frameworks, or whether it reflects structural features embedded in migration governance design. Although both Italy and Australia formally recognise education as a fundamental right and are bound by the same international obligations under the CRC and the 1951 Refugee Convention, the analysis has shown that the gap between legal recognition and effective access cannot be treated as a uniform phenomenon.

This two countries' comparison demonstrates that educational precarity originates in different institutional configurations. In Italy, fragility emerges within a formally universal and child-centred framework whose implementation is uneven and territorially fragmented. In Australia, by contrast, precarity is intricately linked to the organisation of entitlement itself, where migration status structures the scope and stability of access. The distinction between these configurations clarifies that the law–practice gap may stem either from operational weakness or from the architecture of governance through which rights are mediated.

6.2 Comparative Structural Analysis

The Italian framework is normatively grounded in territorial universalism. Access to compulsory education is not formally conditioned on migration status, and the best interests of the child are explicitly embedded in the legislative regime governing UMs. In legal terms, educational entitlement derives from presence and childhood rather than from membership categories.

Yet the empirical analysis shows that this universalist orientation is operationally fragile. Delays in enrolment, transfers within the reception system, and uneven coordination between reception authorities and schools weaken the continuity and predictability of educational pathways. Discretion exercised by street-level actors frequently compensates for institutional gaps, but it also produces variability. Educational access is rarely denied outright; instead, it is mediated, postponed, or redirected. The source of precarity lies not in the design of entitlement but in the decentralised and uneven structures through which it is implemented.

The Australian case presents a different configuration. Educational access operates within a migration-centred framework in which visa status functions as a structuring principle. While access to schooling may be formally available, the depth, stability, and progression of educational participation are conditioned by legal status and temporal uncertainty. The differentiation between permanent and temporary protection arrangements introduces a hierarchy of entitlement that becomes particularly visible at transitional stages, including upper secondary completion and post-compulsory education.

This stratified design is reinforced by the institutional embedding of guardianship within migration authority. In such a configuration, child protection does not operate in clear normative separation from migration control. Educational planning unfolds within horizons shaped by visa security and the anticipated duration of stay. Precarity, therefore, reflects not merely administrative inconsistency but the structural organisation of entitlement.

The comparison confirms that educational vulnerability is not uniform. In Italy, rights are weakened through fragmented execution. In Australia, they are conditioned through the structuring of status-based membership. The difference is not one of formal commitment to children's rights but of institutional design.

6.3 Theoretical Implications

These findings invite a reconsideration of the "implementation gap" narrative that often dominates discussions of migrant children's rights. The distance between law and practice is not always the product of insufficient enforcement. It may also reflect how entitlements are legally constructed and institutionally located within migration governance regimes.

Where child protection is normatively autonomous and status-neutral, fragility tends to arise from coordination failures, resource disparities, and decentralisation. Where child protection functions are institutionally intertwined with migration authority, the scope of rights becomes structurally mediated by status categories. In such contexts, the best interests principle risks operating as a procedural reference point rather than as a substantive constraint.

The relationship between migration control and child protection competences thus proves decisive. The effectiveness of educational rights depends not only on their formal recognition, but on the degree of institutional autonomy afforded to child-centred norms within the broader governance architecture.

6.4 Normative and Policy Implications

The comparative analysis suggests different lines of reflection for the two systems. In Italy, the challenge concerns the consolidation of enforcement mechanisms within an already universalist framework. Greater coordination between reception and education authorities, clearer procedural safeguards for continuity, and more consistent monitoring of territorial disparities would strengthen the practical realisation of rights without altering the foundational model.

In Australia, the issue is more structural. The conditioning of educational continuity on visa stability raises questions about the positioning of child protection within migration governance. Ensuring that educational pathways are not truncated by status temporality and clarifying the institutional separation between protective and control functions would

enhance the capacity of the best interests principle to operate substantively rather than symbolically.

Across both cases, the broader lesson is that the formal affirmation of education as a fundamental right does not in itself secure its effective enjoyment. The decisive factor lies in how governance structures allocate authority and define the relationship between presence, membership, and protection.

6.5 Limits of the Research

This research adopts a qualitative and comparative design aimed at examining how governance structures shape the effective enjoyment of educational rights for UMs. The empirical component, particularly in the Australian case, is based on a limited number of expert interviews and questionnaire responses. It does not claim statistical representativeness, nor does it offer a comprehensive mapping of all regional variations within the two jurisdictions. Its purpose is instead analytical: to illuminate recurring institutional dynamics that mediate access to education in practice.

Both country chapters were constrained by the limited availability of disaggregated and publicly accessible data on the educational trajectories of UMs. In Australia, definitional ambiguity and restricted transparency significantly limit systematic monitoring of outcomes. In Italy, regional disparities in reporting practices complicate national-level assessment and longitudinal comparison. The absence of consistent and disaggregated datasets restricts the capacity to evaluate progression, continuity, and post-compulsory participation in a systematic manner. These constraints inevitably limit the empirical scope of the study.

At the same time, the limited availability of reliable data is not merely a methodological obstacle; it reflects a structural feature of the governance environments examined. Where UMs are not systematically tracked as a distinct educational cohort, accountability mechanisms remain weak, and policy evaluation becomes fragmented. The empirical limitations

encountered in this research, therefore, also confirm one of its broader findings: that educational access for UMs often operates at the margins of institutional visibility.

Finally, the comparative focus on Italy and Australia necessarily limits generalisation. The typology developed in this thesis, distinguishing between implementation-driven dilution and design-driven conditionality, should be understood as a conceptual framework open to further testing in additional national contexts.

6.6 Future Research

The analysis developed in this thesis opens several avenues for further research. The structural distinction identified between implementation-driven dilution and design-driven conditionality would benefit from testing across additional national contexts, particularly in European and North American jurisdictions where migration governance and child protection are differently configured. Expanding the comparative framework could help assess whether the typology proposed here captures broader patterns or remains context-specific.

Further empirical work is also needed to address the limitations in available data identified throughout this research. Longitudinal and disaggregated quantitative studies tracing the educational trajectories of UMs over time would provide a more precise understanding of progression, completion rates, and post-compulsory participation. Such research would be particularly valuable in contexts where policy discourse emphasises formal access while systematic outcome data remain limited.

Finally, greater attention could be devoted to the transitional phase between minority and adulthood. In both jurisdictions examined, proximity to the age of majority emerges as a critical moment in which educational continuity is exposed to structural pressures. Analysing how migration status, welfare arrangements, and educational policy interact at this juncture

would deepen understanding of how precarity evolves beyond formal school enrolment.

Future research along these lines would not only refine the comparative typology advanced here but also contribute to a more evidence-based assessment of how child-rights commitments operate within contemporary migration regimes.

6.7 Final Reflection

The comparative analysis undertaken in this thesis shows that educational precarity for UMs cannot be reduced to a generic failure of compliance with international child-rights standards. Both Italy and Australia formally recognise education as a fundamental right and affirm the relevance of the best interests principle. Yet how these commitments are institutionalised differ significantly, and those differences shape the conditions under which educational rights are realised.

In Italy, educational entitlement is formally detached from migration status and embedded within a child-centred statutory framework. Precarity arises primarily through decentralised implementation, territorial variability, and uneven coordination between reception and education systems. Rights are recognised, but their continuity and immediacy depend on institutional capacity and administrative coherence.

In Australia, educational access is situated within a migration-centred architecture in which visa status structures stability and progression. Here, precarity reflects the conditioning of entitlement by membership categories and legal temporality. The institutional intertwining of migration authority and protective functions further shapes how the best interests principle operates in practice. The result is not necessarily overt exclusion, but a calibrated and status-sensitive distribution of opportunity.

The contrast between these two configurations underscores a broader point. The practical force of children's rights depends on whether governance structures allow them to operate as binding constraints rather than aspirational commitments. The best interests principle, in particular, is

not merely an interpretative value but a legally binding standard capable of constraining legislative and administrative choices. Its practical force depends on the institutional conditions that allow it to operate as a substantive limit on migration authority rather than as a secondary consideration mediated through status. Where child protection operates with institutional autonomy from migration control, fragility tends to emerge through administrative weakness. Where protection is embedded within migration authority, fragility may become structurally embedded in the organisation of entitlement itself.

Educational precarity is therefore neither accidental nor inevitable. It reflects identifiable institutional choices about how States organise the relationship between territorial presence, political membership, and protective responsibility. International law recognise education as an immediate and non-discriminatory right. Whether that right acquires substantive force depends on the governance architecture through which it is operationalised. Under international law, access to education for UMs is not programmatic but constitutes an immediate and binding obligation. The persistence of structural fragilities therefore raises not only governance concerns but also questions of compliance with legally binding standards. States' positive obligations under the CRC extend beyond formal enrolment and require the removal of structural barriers that undermine continuity, stability and equal participation. Where such barriers persist, the issue is not merely one of administrative efficiency, but of compliance with binding legal standards.

Understanding these structural dimensions does not resolve the tensions between border governance and child protection. It does, however, clarify that those tensions are not merely practical challenges but institutional design questions. The protection of UMs' right to education ultimately requires attention not only to enforcement but to the allocation of authority and the normative hierarchy between protection and control within contemporary migration regimes.

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Appendices

Appendix A: Questionnaire Italy

The Italian questionnaire is reproduced in its original language together with an English translation[16] for transparency and comparability purposes.

Original Italian Version

Sezione 1 – Consenso Informato

1. Accetto di partecipare al questionario (risposta singola – obbligatoria)
    a. Sì, accetto
    b. No, non accetto (questa scelta comporta il termine della compilazione)

Sezione 2 – Profilo Personale

2. Nome e cognome (risposta aperta - facoltativa)
3. In quale regione opera principalmente? (risposta singola – obbligatoria)
    a. Friuli – Venezia Giulia
    b. Sicilia
    c. Lombardia
    d. Emilia – Romagna
    e. Altro
4. Da quanti anni lavora o interagisce con MSNA? (risposta singola – obbligatoria)
    a. Meno di 1 anno
    b. 1 – 3 anni
    c. 3 – 5 anni
    d. Più di 5 anni
5. Qual è il suo ruolo principale nell'ambito dei minori stranieri non accompagnati (MSNA)? (risposta singola – obbligatoria)
    a. Tutore volontario
    b. Operatore ONG e cooperativa
    c. Avvocato
    d. Funzionario Pubblico
    e. Insegnante
    f. Altro
6. In quale ente lavora? (risposta aperta – facoltativa)
7. In quale tipo di struttura o contesto interviene (centro d'accoglienza, servizi sociali, scuola, tutela volontaria, tribunale per i minori, ecc.)? (risposta aperta – obbligatoria)

Sezione 3 – Accesso effettivo all'istruzione

[16] Translations made by the author

8. In base alla sua esperienza, ci sono problemi legati all'accesso a percorsi scolastici/formativi dei MSNA in Italia? (risposta singola – obbligatoria)
    a. Assolutamente sì
    b. Abbastanza
    c. Non molti
    d. Assolutamente no
    e. Non so
9. In base alla sua esperienza, quanto tempestivamente i MSNA vengono iscritti a percorsi scolastici o formativi dopo il loro arrivo? (risposta singola – obbligatoria)
    a. Tempestivamente
    b. Con ritardi moderati
    c. Con ritardi significativi
    d. Dipende dal caso (spiegare)
    e. Non so
10. Spiegazione facoltativa della risposta precedente (risposta aperta – facoltativa)
11. Quali sono gli ostacoli principali che rallentano o impediscono l'iscrizione a scuola? (Se possibile, distingua tra ostacoli amministrativi, burocratici, organizzativi, personali.) (risposta aperta – obbligatoria)
12. La mancanza o incertezza dei documenti (identità, età, permesso) incide sull'iscrizione scolastica? In che modo? (risposta aperta – facoltativa)
13. Secondo lei, le scuole del suo territorio sono adeguatamente attrezzate per accogliere MSNA? (Consideri risorse, orientamento iniziale, supporto linguistico, formazione del personale.) (risposta aperta – obbligatoria)

Sezione 4 – Divario tra norma e pratica

14. A suo avviso, in quali passaggi specifici si manifesta maggiormente lo scarto tra quanto previsto dalla normativa (nazionale o regionale) e la realtà operativa? (risposta aperta – obbligatoria)
15. Secondo la sua esperienza, quali attori (scuola, servizi sociali, tribunale, prefettura, tutori, enti gestori) hanno più margine di discrezionalità nel determinare se e quando un MSNA accede a scuola? (risposta aperta – obbligatoria)
16. Ha osservato pratiche che, pur non vietando formalmente l'accesso all'istruzione, di fatto lo ostacolano (es. Attese per inserimento in classe, mancanza test di livello, trasferimenti frequenti, ecc)? (risposta singola – obbligatoria)
    a. Sì
    b. No
    c. Non so
17. Se sì, descriva esempi concreti che si ricorda: (risposta aperta – facoltativa)
18. In base alla sua esperienza, le indicazioni ministeriali o regionali vengono applicate in modo omogeneo o variano molto tra territori/istituzioni? (risposta singola – obbligatoria)
    a. C'è omogeneità
    b. Ci sono variazioni
    c. Ci sono molte variazioni
    d. Non so

19. Dopo l'entrata in vigore del cosiddetto “Decreto Cutro” (D.L. n. 20/2023, ha osservato cambiamenti nelle modalità di accesso all’istruzione per i Minori Stranieri Non Accompagnati? (risposta singola – obbligatoria)
    a. Sì, cambiamenti significativi
    b. Sì, cambiamenti lievi
    c. No, non ho osservato cambiamenti
    d. Non so / non operavo con MSNA prima
20. Se sì, può descrivere in che modo questi cambiamenti si sono manifestati nella pratica? (risposta aperta – facoltativa)

Sezione 5 – Il rapporto tra tutela e controllo

21. Ci sono state situazioni nelle quali ha notato che esigenze legate al controllo migratorio (identificazione, trasferimenti, procedure amministrative) hanno interferito con il diritto all’istruzione dei MSNA? Se sì, riporti degli esempi (risposta aperta – obbligatoria)
22. Secondo lei, il sistema di accoglienza e tutela italiano tende a privilegiare: (risposta singola - obbligatoria)
    a. La protezione del minore
    b. Il controllo migratorio
    c. Entrambi, ma con tensioni
    d. Non so
    e. Altro
23. Se vuole, spieghi il perché della risposta precedente (risposta aperta – facoltativa)
24. Ha osservato discrepanze tra le esigenze educative del minore e le priorità percepite dagli enti che gestiscono l’accoglienza? Se sì, motivi la sua risposta (risposta aperta - obbligatoria)

Sezione 6 – Ruolo delle istituzioni e pratiche efficaci

25. Secondo la sua esperienza, quali attori risultano più efficaci nel facilitare l’accesso all’istruzione dei MSNA? Perché? (risposta aperta – facoltativa)
26. Esistono nel suo territorio procedure di coordinamento tra vari enti/individui (formali o informali) che agevolano l’inserimento scolastico (risposta singola – obbligatoria)
    a. Sì
    b. No
    c. Non so
27. Se sì, descriva (risposta aperta, facoltativa)

Sezione 7 – Valutazioni e raccomandazioni

28. Qual è, secondo lei, la misura più urgente per favorire l’accesso all’istruzione per MSNA? (risposta aperta – facoltativa)
29. Come descriverebbe in una breve frase lo stato attuale dell’accesso all’istruzione per MSNA nel suo contesto di lavoro/vita personale? (risposta aperta – obbligatoria)
30. Disponibilità facoltativa per essere eventualmente ricontattati (risposta singola obbligatoria)
    a. Sì, sono disponibile
    b. No, non voglio essere ricontattato/a
31. In caso di disponibilità ad essere ricontattata/o, lasciare un proprio contatto email/telefonico (risposta aperta – facoltativa)

32. Eventuali osservazioni o commenti aggiuntivi (risposta aperta – facoltativa)

English Translation

Section 1 – Informed Consent

1. I agree to participate in the questionnaire (single choice – mandatory)
    a. Yes, I agree
    b. No, I do not agree (this choice results in the termination of the questionnaire)

Section 2 – Personal Profile

2. Full name (open-ended response – optional)
3. In which region do you primarily operate? (single choice – mandatory)
    a. Friuli – Venezia Giulia
    b. Sicily
    c. Lombardy
    d. Emilia – Romagna
    e. Other
4. For how many years have you worked with or interacted with Unaccompanied Foreign Minors (MSNA)? (single choice – mandatory)
    a. Less than 1 year
    b. 1 – 3 years
    c. 3 – 5 years
    d. More than 5 years
5. What is your main role in the field of Unaccompanied Foreign Minors (MSNA)? (single choice – mandatory)
    a. Volunteer guardian
    b. NGO or cooperative worker
    c. Lawyer
    d. Public official
    e. Teacher
    f. Other
6. Which institution do you work for? (open-ended response – optional)
7. In which type of facility or context do you operate (reception centre, social services, school, volunteer guardianship, juvenile court, etc.)? (open-ended response – mandatory)

Section 3 – Effective Access to Education

8. Based on your experience, are there problems related to access to school or training pathways for MSNA in Italy? (single choice – mandatory)
    a. Absolutely yes
    b. Quite a few
    c. Not many
    d. Absolutely no

e. I don’t know

9. Based on your experience, how promptly are MSNA enrolled in school or training pathways after their arrival? (single choice – mandatory)
    a. Promptly
    b. With moderate delays
    c. With significant delays
    d. It depends on the case (please explain)
    e. I don’t know
10. Optional explanation of the previous answer (open-ended response – optional)
11. What are the main obstacles that delay or prevent school enrolment? (If possible, distinguish between administrative, bureaucratic, organisational, and personal obstacles.) (open-ended response – mandatory)
12. Does the lack or uncertainty of documents (identity, age, residence permit) affect school enrolment? In what way? (open-ended response – optional)
13. In your opinion, are schools in your area adequately equipped to receive MSNA? (Consider resources, initial orientation, language support, staff training.) (open-ended response – mandatory)

Section 4 – Gap Between Law and Practice

14. In your view, at which specific stages does the gap between what is provided by legislation (national or regional) and operational reality most clearly emerge? (open-ended response – mandatory)
15. In your experience, which actors (school, social services, court, prefecture, guardians, managing entities) have the greatest margin of discretion in determining whether and when an MSNA accesses school? (open-ended response – mandatory)
16. Have you observed practices which, while not formally prohibiting access to education, effectively hinder it (e.g. waiting times for class placement, lack of placement tests, frequent transfers, etc.)? (single choice – mandatory)
    a. Yes
    b. No
    c. I don’t know
17. If yes, please describe concrete examples you recall: (open-ended response – optional)
18. Based on your experience, are ministerial or regional guidelines applied uniformly, or do they vary significantly across territories/institutions? (single choice – mandatory)
    a. There is uniformity
    b. There are variations
    c. There are many variations
    d. I don’t know
19. Following the entry into force of the so-called “Decreto Cutro” (D.L. No. 20/2023), have you observed changes in the modalities of access to education for Unaccompanied Foreign Minors? (single choice – mandatory)
    a. Yes, significant changes
    b. Yes, minor changes
    c. No, I have not observed changes

d. I don’t know / I was not working with MSNA before

20. If yes, can you describe how these changes have manifested in practice? (open-ended response – optional)

Section 5 – The Relationship Between Protection and Control

21. Have there been situations in which you noticed that migration control requirements (identification, transfers, administrative procedures) interfered with the right to education of MSNA? If yes, please provide examples (open-ended response – mandatory)
22. In your opinion, does the Italian reception and protection system tend to prioritise: (single choice – mandatory)
    a. The protection of the minor
    b. Migration control
    c. Both, but with tensions
    d. I don’t know
    e. Other
23. If you wish, please explain the reason for your previous answer (open-ended response – optional)
24. Have you observed discrepancies between the minor’s educational needs and the priorities perceived by the entities managing reception? If yes, please explain your answer (open-ended response – mandatory)

Section 6 – Role of Institutions and Effective Practices

25. In your experience, which actors are most effective in facilitating access to education for MSNA? Why? (open-ended response – optional)
26. Are there coordination procedures in your area between various entities/individuals (formal or informal) that facilitate school inclusion? (single choice – mandatory)
    a. Yes
    b. No
    c. I don’t know
27. If yes, please describe (open-ended response – optional)

Section 7 – Assessments and Recommendations

28. In your opinion, what is the most urgent measure needed to facilitate access to education for MSNA? (open-ended response – optional)
29. How would you describe, in a brief sentence, the current state of access to education for MSNA in your professional/personal context? (open-ended response – mandatory)
30. Optional availability to be contacted again (single choice – mandatory)
    a. Yes, I am available
    b. No, I do not wish to be contacted
31. If you are available to be contacted, please leave an email address/phone contact (open-ended response – optional)
32. Any additional observations or comments (open-ended response – optional)

Appendix B – Questionnaire Australia

Section 1 - Privacy

1. I agree to participate in the questionnaire (single choice – mandatory)
    a. Yes
    b. No, I don't accept (this choice means that you will NOT answer any further question)

Section 2 – Personal Information and Professional Background

2. Name and Surname (open-ended response – optional)
3. In which Australian state/territory do you mainly work/live? (single choice – mandatory)
    a. NSW – New South Wales
    b. ACT – Australian Capital Territory
    c. VIC – Victoria
    d. TAS – Tasmania
    e. NT – Northern Territory
    f. QLD – Queensland
    g. WA – Western Australia
    h. Other
4. How long have you been working/interacting with unaccompanied minors or young asylum seekers? (single choice – mandatory)
    a. Less than 1 year
    b. 1–3 years
    c. 3–5 years
    d. More than 5 years
5. Which area most accurately represents your occupation? (single choice – mandatory)
    a. NGO / Civil society organisation
    b. Social worker / Case manager
    c. Educational professional (teacher, school staff, administrator)
    d. Government / Public authority
    e. Legal professional
    f. Academic
    g. Other
6. In which context do you primarily operate? (single choice – mandatory)
    a. Onshore reception / community-based arrangement
    b. Detention-related context
    c. Offshore / former offshore-related cases
    d. Education sector
    e. Multiple contexts
    f. Other

Section 3 - Access to Education

7. In your experience, under which status are most of the unaccompanied minors you work with placed? (single choice – mandatory)
    a. Unaccompanied Humanitarian Minors (UHM)

b. Other unaccompanied minors outside the UHM framework
c. Both
d. Not sure
e. Other

8. In your experience, do unaccompanied minors generally face problems linked to effective access to education in Australia? (single choice – mandatory)
    a. Yes, consistently
    b. Yes, often
    c. Rarely
    d. No
    e. I don't know
9. In your experience, how quickly are unaccompanied minors enrolled in school or training programs after their arrival? (single choice – mandatory)
    a. Very quickly
    b. With moderate delays
    c. With significant delays
    d. Depends on the context (please explain)
    e. I don't know
10. Optional explanation of the previous answer (open-ended response – optional)
11. Based on your experience, what type of educational pathways are most commonly available to unaccompanied minors in Australia? (single choice – mandatory)
    a. Mainstream public schools
    b. Specialised programs for newly arrived students
    c. Vocational Education and Training (VET)
    d. Informal or NGO-led education
    e. None in practice
    f. I don't know
    g. Other
12. Does the specific legal or administrative status of unaccompanied minors (e.g. UHM or other arrangements) affect their access to education in practice? (single choice – mandatory)
    a. Yes, positively
    b. Yes, negatively
    c. It makes no significant difference
    d. Not sure
13. If yes, could you briefly explain how? (open-ended response – optional)
14. Based on your experience, what are the main barriers to accessing education? (Select all the options that you consider relevant) (multiple choice – mandatory)
    a. Age assessment / status determination
    b. Visa or migration status
    c. Placement in detention or remote facilities
    d. Language barriers
    e. Lack of educational support services
    f. Psychological trauma / wellbeing issues

g. Other

15. Do you think that schools/education providers in your area are adequately equipped to accommodate unaccompanied minors? (Consider resources, initial orientation, language support, and staff training.) (single choice – mandatory)
    a. Strongly agree
    b. Agree
    c. Neutral
    d. Disagree
    e. Strongly disagree

Section 4 - Practical Implementation and Challenges

16. In your view, what are the main obstacles to the realisation of the right to education for unaccompanied minors in Australia?
    If you think there are no obstacles, write "NO". (open-ended response – mandatory)
17. Based on your experience, do migration and asylum procedures affect educational continuity? (single choice – mandatory)
    a. Yes, significantly
    b. Yes, to some extent
    c. No
    d. I don't know
18. Based on your experience, which actors (schools, social services, courts, police, management bodies, etc.) have more discretion in determining whether and when an unaccompanied minor can attend school/education facilities? (open-ended response – mandatory)
19. Have you observed differences in access to education depending on:
    – place of reception (community vs detention)?
    – migration status or visa type?
    If yes, please explain or provide examples. (open-ended response – optional)
20. Have you observed practices that, while not formally prohibiting access to education, actually hinder it (e.g. waiting times for class placement, frequent transfers, lack of resources, etc.)? (single choice – mandatory)
    a. Yes
    b. No
    c. I don't know
21. If yes, describe some examples that you remember (open-ended response – optional)

Section 5 - Recent Developments and Policy Changes

22. In recent years, have you noticed changes in access to education for unaccompanied minors due to policy or legislative reforms? (single choice – mandatory)
    a. Yes, improvements
    b. Yes, restrictions
    c. No significant change
    d. Not sure

23. If yes, could you briefly describe these changes and their impact? (open-ended response – optional)
24. Based on your experience, are federal/state-level guidelines applied equally, or do they vary across local areas/institutions? (single choice – mandatory)
    a. They are applied equally everywhere
    b. There are some variations
    c. There are many variations
    d. I don't know

Section 6 - Best Interests of the Child

25. In your experience, are the best interests of the child effectively considered in educational decisions concerning unaccompanied minors in Australia? (single choice – mandatory)
    a. Always
    b. Often
    c. Rarely
    d. Never
    e. I don't know
26. Do you think educational access is promoted or hindered in the name of migration control or administrative priorities? (single choice – mandatory)
    a. Promoted
    b. Hindered
    c. Depends
    d. I don't know
27. Could you provide an example where educational access was either promoted or hindered in the name of migration control or administrative priorities? (open-ended response – optional)
28. Do you think the Australian migration, reception and protection system tends to privilege: (single choice – mandatory)
    a. The protection of the minor
    b. Migration control
    c. Both protection and migration control, but often in conflict with each other
    d. I don't know
    e. Other
29. If you wish, please explain your previous answer (open-ended response – optional)
30. Have you observed discrepancies between the educational needs of minors and the perceived priorities of bodies managing their reception? Please explain. (open-ended response – mandatory)
31. Based on your experience, which actors (if any) are most effective in facilitating access to education for unaccompanied minors? Why? (open-ended response – optional)
32. Is there any coordination between various bodies/individuals (formal or informal) to facilitate access to education for unaccompanied minors in your local area? (single choice – mandatory)
    a. Yes
    b. No

c. I don’t know

33. If yes, please describe (open-ended response – optional)

Section 7 - Final Assessments and Recommendations

34. What do you think is the most urgent action needed to facilitate access to education for unaccompanied minors? (open-ended response – optional)
35. How would you describe, in a short sentence, the current state of access to education for unaccompanied minors in your life/work context? (open-ended response – mandatory)
36. Optional availability to be contacted again for this research (single choice – mandatory)
    a. Yes, I am available
    b. No, I do not want to be contacted again
37. If available, please leave your contact details (email or phone number) (open-ended response – optional)
38. If you would like to add any further comments or observations, please do so here. (open-ended response – optional)

Appendix C: Codebook

The codebook reflects the analytical framework developed in Chapters 3 and 4 and operationalises the central research question concerning the structural and procedural determents of educational precarity. Categories were constructed to capture both implementation failures and embedded governance logics, including the interaction between child protection principles and migration control mechanisms. Coding allowed for overlapping classifications to account for the multi-layered nature of institutional decision-making.

Table C.1 - Codebook of the Italian Questionnaire

Code	**Definition**	**Inclusion criteria**	**Exclusion criteria**
ADMIN_DELAY	Administrative or procedural delays affecting enrolment or continuity.	References to waiting lists, slow procedures, delayed registration.	Primary cause is transfers or lack of school places.
DOCS_STATUS	Documentation status (identity,	Missing, pending, or uncertain documentation	Explicit statement that documentation does not affect access.

	age, permit/visa) affecting access.	impacting enrolment.	
AGE_ASSESS	Issues linked to age assessment procedures and their consequences.	Waiting for, disputing, or consequences of age determination.	Transition at age 18 (use TURNING_18).
LANGUAGE_LEVEL	Language proficiency barriers affecting placement or learning.	Low host-country language affecting school access or progress.	Focus on provision of language services (use L2_SUPPORT).
L2_SUPPORT	Availability or adequacy of second-language educational support.	Presence/absence/quality of structured L2 or EAL support.	General funding shortages (use RESOURCE_CONSTRAINTS).
RESOURCE_CONSTRAINTS	Insufficient funding, staffing or services limiting access.	Understaffing, limited funding, lack of support services.	School overcrowding specifically (use SCHOOL_CAPACITY).
SCHOOL_CAPACITY	Lack of available school	No places available, full	Broader resource shortages not tied to places.

	places or overcrowding constraints.	classes, capacity limits.	
GATEKEEPING_SCHOOL	School-level practices restricting or delaying access.	Refusal, informal conditions, delayed placement decisions.	Purely administrative delays outside school control.
TRANSFERS	Relocations disrupting educational continuity.	Frequent moves between centres/regions interrupt schooling.	Proposed solutions to increase stability (use STABILITY_MEASURES).
RECEPTION_PROVIDER	Thematic reference to reception provider.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
SCHOOL_ACTOR	Thematic reference to school actor.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
SOCIAL_SERVICES	Thematic reference to social services.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
TUTOR_ACTOR	Thematic reference to tutor actor.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
TUTOR_ROLE	Thematic reference to tutor role.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.

TIMELY_TUTOR_APPOINTMENT	Thematic reference to timely tutor appointment.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
MIGRATION_AUTHORITY	Thematic reference to migration authority.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
JUDICIAL_AUTHORITY	Thematic reference to judicial authority.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
DISCRETION_HIGH	Thematic reference to discretion high.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
COORDINATION_GAP	Thematic reference to coordination gap.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
STRONG_COORDINATION	Thematic reference to strong coordination.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
IMPROVE_COORDINATION	Thematic reference to improve coordination.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
SHARING_KNOWLEDGE	Thematic reference	Excerpt explicitly refers to	Theme only implied without

	to sharing knowledge.	this theme in substantive terms.	substantive reference.
INFORMAL_NETWORKS	Thematic reference to informal networks.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NGO_ROLE	Thematic reference to ngo role.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
THIRD_SECTOR	Thematic reference to third sector.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
IMPLEMENTATION_GAP	Thematic reference to implementation gap.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
DISCREPANCY_PRESENT	Thematic reference to discrepancy present.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NO_DISCREPANCY	Thematic reference to no discrepancy.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
LEARNING_NEEDS_UNMET	Thematic reference to learning needs unmet.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
UNCLEAR_ORIENTATION	Thematic reference	Excerpt explicitly refers to	Theme only implied without

	to unclear orientation.	this theme in substantive terms.	substantive reference.
WORK_ORIENTATION	Thematic reference to work orientation.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
CHILD_PROTECTION_ORIENTED	Thematic reference to child protection oriented.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
MIGRATION_CONTROL_ORIENTED	Thematic reference to migration control oriented.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
DUAL_LOGIC_TENSION	Thematic reference to dual logic tension.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
MIGRATION_CONTROL_INTERFERENCE	Thematic reference to migration control interference.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
POLITICAL_REASONS	Thematic reference to political reasons.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NEGATIVE_CHANGE	Thematic reference to negative change.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
POSITIVE_CHANGE	Thematic reference	Excerpt explicitly refers to	Theme only implied without

	to positive change.	this theme in substantive terms.	substantive reference.
MINOR_MOTIVATION	Thematic reference to minor motivation.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
INDIVIDUAL_FACTORS	Thematic reference to individual factors.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
TURNING_18	Thematic reference to turning 18.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
TERRITORIAL_DISPARITIES	Thematic reference to territorial disparities.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
STRENGTHEN_L2_SUPPORT	Thematic reference to strengthen l2 support.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
INCREASE_RESOURCES	Thematic reference to increase resources.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
SIMPLIFY_PROCEDURES	Thematic reference to simplify procedures.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
STABILITY_MEASURES	Thematic reference to stability measures.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.

BEST_PRACTICE_LOCAL	Thematic reference to best practice local.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
SCHOOL_PROACTIVITY	Thematic reference to school proactivity.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
FLEXIBLE_SCHOOL	Thematic reference to flexible school.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
TRAINING_ACTORS	Thematic reference to training actors.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
INDIVIDUALISED_EDUCATIONAL_PATHS	Thematic reference to individualised educational paths.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
POLICY_CHANGE_NEEDED	Thematic reference to policy change needed.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
OVERALL_CRITICAL	Thematic reference to overall critical.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
OVERALL_MIXED	Thematic reference	Excerpt explicitly refers to	Theme only implied without

	to overall mixed.	this theme in substantive terms.	substantive reference.
OVERALL_POSITIVE	Thematic reference to overall positive.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NO_INTERFERENCE	Thematic reference to no interference.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NO_IMPACT_DOCS	Thematic reference to no impact docs.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NO_OBSTACLE	Thematic reference to no obstacle.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.
NO_KNOWLEDGE	Thematic reference to no knowledge.	Excerpt explicitly refers to this theme in substantive terms.	Theme only implied without substantive reference.

Appendix D: Italian Coding Matrix

Coding Procedure

Questionnaire responses were coded using a structured thematic framework developed on the basis of the research questions and refined inductively through close reading of the empirical material. The coding process followed the operational definitions outlined in Appendix C.

Coding was conducted manually and recorded in a structured Excel workbook. The coding matrix adopts a "long format" structure: each row corresponds to a coded segment associated with a given respondent, rather than a binary presence/absence grid.

This structure allows:

- multi-coding of the same response;
- identification of overlapping institutional and structural dynamics;
- flexible aggregation for thematic and comparative analysis.

Structure of the Coding Matrix

The coding dataset includes the following variables:

- **Id** – anonymised respondent identifier
- **Question** – questionnaire question reference
- **Code** – thematic code assigned (see Appendix C)

Each response could receive more than one code where overlapping themes were identified. In such cases, each coded segment is recorded as a separate row. Accordingly, when several themes emerged within a single response, multiple entries were created under the same respondent identifier and question reference.

Table D.2 Example of the Italian Questionnaire Coding Matrix

Id	Question	Code
1	Q11	ADMIN_DELAY
1	Q12	DOCS_STATUS
1	Q14	GATEKEEPING_SCHOOL
1	Q15	MIGRATION_AUTHORITY
1	Q17	RESOURCE_CONSTRAINTS
2	Q11	DOCS_STATUS
2	Q14	DISCRETION_HIGH
2	Q15	IMPLEMENTATION_GAP

This structure enables both respondent-level and theme-level analysis. The full coding matrix is available upon request.

Given the qualitative orientation of the research and the limited sample size, the coding matrix serves as an analytical tool for pattern recognition rather than a quantitative measurement instrument.

The full coding matrix is available upon request.

Appendix E: Italian Closed Questions - Recoding and Frequencies

Recoded Variables

d	Regione	Macro-area	Ruolo (raw)	Ruolo (gruppo)	Anni esperienza (categoria)	Anni esperienza (valore)	Problemi accesso (1-4)	Tempestività iscrizione (1-4)	Scuole attrezzate (1-5)	Pratiche ostacolanti (0/1)	Applicazione uniforme (1-3)	Cambiamenti post-Cutro (0-2)	Privilegia (1-3/9)	Coordinamento (0/1)

	Abruzzo	Sud	Coordinatrice di progetto	Terzo settore Accoglienza	3-5 anni	4.0	3	3	2	1.0	1.0	0.0	3.0	0.0
	Friuli-Venezia Giulia	Nord	Tutore e volontario	Tutore volontario	3-5 anni	4.0	3	4	1	1.0	2.0	1.0	2.0	-
	Lombardia	Nord	Insegnante	Scuola Educazione	Più di 5 anni	6.0	2	2	3	0.0	-	-	1.0	1.0
	Friuli-Ven	Nord	Tutore vol	Tutore volontario	Più di 5	6.0	4	4	1	1.0	3.0	-	9.0	-

	ezia Giulia		ontario		anni									
	Friuli - Venezia Giulia	Nord	Tutore volontario	Tutore volontario	Più di 5 anni	6.0	2	2	3	0.0	-	0.0	3.0	-
	Friuli - Venezia Giulia	Nord	Tutore volontario	Tutore volontario	1-3 anni	2.0	3	3	2	1.0	3.0	-	3.0	-
	Friuli - Venezia Giulia	Nord	Tutore volontario	Tutore volontario	Più di 5 anni	6.0	4	4	2	-	3.0	0.0	1.0	0.0

	Friuli-Venezia Giulia	Nord	Tutore volontario	Tutore volontario	1-3 anni	2.0	2	1	2	1.0	-	0.0	3.0	0.0
	Friuli-Venezia Giulia	Nord	Tutore volontario	Tutore volontario	1-3 anni	2.0	3	1	3	-	-	-	2.0	-
0	Friuli-Venezia Giulia	Nord	Tutore volontario	Tutore volontario	1-3 anni	2.0	4	3	2	-	-	-	1.0	-

The following variables were recoded numerically in order to allow structured comparison across responses. The table below lists the main recoded variables used in the analysis.

Table E.1 Recoded Variables of the Italian Questionnaire

Note: The full recoded dataset contains 58 observations. Only an illustrative extract is shown here. The complete dataset is available upon request.

Frequency Distribution of Closed Questions

The following table presents the distribution of responses for closed-ended questions. Frequencies are reported as absolute counts (N).

Table E.2: Frequency Distribution of Closed Questions of the Italian Questionnaire

Variable	**Category**	**n**
Region	Friuli-Venezia Giulia	29
	Veneto	9
	Sicilia	7
	Lombardia	5
	Liguria	5
	Abruzzo	1
	Emilia - Romagna	1
	Piemonte	1
Macro-area	Nord	50
	Isole	7
	Sud	1
Role (grouped)	Volunteer Legal Guardian	37
	Third sector / Reception providers	11
	School/Education	6
	Lawyer	2
	Public administration	1
Years of experience (category)	1-3 years	22
	+ 5 years	19
	3-5 years	15
	- 1 year	2
Access problems (raw)	Quite a few	25
	Not many	16
	Absolutely yes	16
	Absolutely no	1

Timeliness of enrolment (raw)	With moderate delays	28
	With significant delays	13
	Promptly	9
	Depends on the case (please explain)	8
Schools adequately equipped (raw)	Disagree	24
	Neutral	14
	Strongly disagree	11
	Agree	9
Hindering practices (raw)	Yes	30
	Don't know	15
	No	13
Implementation of guidelines (raw)	There are many variations	21
	There are some variations	17
	Don't know	16
	There is homogeneity	4
Changes post–Cutro Decree (raw)	No, I have not observed any changes	25
	Don't know / I was not working with UMs before	23
	Yes, minor changes	6
	Yes, significant changes	4
System Priorities (raw)	Both, but with tensions	26
	Migration control	14
	Child protection	14
	Don't know	2
	Territory control	1

	Other	1
Coordination mechanisms (raw)	Don't know	26
	No	17
	Yes	15

These distributions provide contextual support for qualitative analysis and do not constitute inferential statistical evidence.

Appendix F: Australian Questionnaire Responses

The Australian questionnaire yielded a limited number of responses (n = 6). The survey targeted professionals working in refugee education, migration governance, legal practice, and settlement services. Figures are reported as absolute counts only. Given the limited sample size (n = 6), responses are presented for transparency and illustrative purposes only. They complement the qualitative analysis developed in Chapter 4 and do not support generalisable empirical claims.

Table F.1: Respondent Profile of the Australian Questionnaire

Variable	Category	n
State/Territory	NSW – New South Wales	3
	QLD – Queensland	2
	Other	1
Professional background	Legal professional	2
	Academic	1
	Social worker / Case manager	1
	Human services manager	1
	Other	1
Years of experience	Less than 1 year	1
	1–3 years	2
	More than 5 years	3
Primary operational context	Onshore/community-based	2
	Legal context	1
	Multiple contexts (incl. legal/onshore)	2
	Other/unspecified	1

Table F.2: Closed Question – Absolute Counts of the Australian Questionnaire

Question	Category	n

Educational pathways	Mainstream public schools	3
	Specialised programs for newly arrived students	2
	Both public schools and IECs	1
Legal/administrative status affects access	Yes, negatively	3
	Yes, positively	1
	No significant difference	1
	Not sure	1
Schools adequately equipped	Disagree	2
	Neutral	2
	Agree	1
	Strongly disagree	1
Migration/asylum procedures affect continuity	Yes, significantly	3
	Yes, to some extent	3
Practices hinder access	Yes	2
	No	2
	Don’t know	2
Recent policy changes	No significant change	4
	Not sure	2
Guidelines applied equally	Some variations	3
	Many variations	1
	Applied equally everywhere	1
	Don’t know	1
Best interests effectively considered	Often	4
	Rarely	2

Access promoted or hindered (migration control)	Depends	3
	Hindered	2
	Promoted	1
System tends to privilege	Migration control	3
	Both (in tension)	1
	Protection of the minor	1
	Don't know	1
Coordination mechanisms exist	Yes	4
	No	1
	Don't know	1

Note: Open-ended responses are discussed qualitatively in Chapter 4. Closed-question counts are included here to ensure transparency and coherence with the numerical references made in the analytical chapters.

Due to the limited sample size (n = 6), results are presented for transparency only and are used illustratively in Chapter 4 rather than as a basis for generalisable empirical claims. Anonymised responses are available upon request.

Appendix G: Interviews

Two semi-structured expert interviews were conducted to complement the doctrinal and policy analysis. Interviews were conducted online, recorded with consent, and transcribed. Full transcripts are available upon request.

Interview	Date	Length	Profile
Interview 1	27/11/2025	32 minutes	Academic and Policy expert in refugee education and settlement governance
Interview 2	08/12/2025	22 minutes	Senior NGO and Policy expert in refugee and migrant children's rights and global advocacy

Interviews were conducted online. Full transcripts are available upon request.