



**2011
CHILD RIGHTS
NGO REPORT
AUSTRALIA**

CHILD RIGHTS TASKFORCE MAY 2011

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About this report

i How the report was written

This report to the Committee has been project managed by NCYLC* and prepared by the Child Rights Taskforce, a coalition of organisations committed to the protection and promotion of child rights in Australia. The co-convenors of the Taskforce are NCYLC and UNICEF Australia.**

A steering committee provided strategic guidance and input throughout the reporting process and comprised the following individuals and organisations: Matthew Keeley and Ahram Choi (NCYLC), Sarah Hoff (on secondment to NCYLC from Mallesons Stephen Jaques), Aivee Chew (UNICEF Australia), Ben Schokman (Human Rights Law Centre), Louise Edwards (National Association of Community Legal Centres), Alanna Hector (NAPCAN), Chris Varney (2009 Australian Youth Representative to the United Nations), Emily Cheesman, James McDougall (former Director, NCYLC), Sarah Penman, Melissa Dejong and Meagan Lee (Mallesons Stephen Jaques).

This report was developed following consultations with over 750 children and young people and over 100 organisations and subject matter experts, as well as liaison with the Australian Federal Government and the Australian Human Rights Commission.

A Child Rights Strategic Workshop was held in Melbourne in November 2010, attended by 40 of Australia's notable child rights practitioners. That workshop assisted the authors in establishing the strategic themes and framework of this report, and allowed for cross-disciplinary collaboration in the development of the report's contents.

Information in this report is current as at 6 May 2011.

ii Acknowledgements

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iii Consultation with children

Our report has been informed by the voices of children and young people. Within our resource constraints, we spoke to as many children as we could, and we also used the findings of previous consultations conducted by organisations for other purposes.

The authors thank the following groups of children for agreeing to talk to us about the matters that are important to them: the 628 children and young people from around the country who

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Many of the direct quotes from children in this report were contributed by 2009 United Nations Youth Representative Chris Varney's 'Dear Kevin' book, a collection of children's testimonies that was presented to then-Prime Minister Kevin Rudd in December 2009. Children's names have been omitted to protect their privacy.

iv 'Aboriginal and Torres Strait Islander children' and 'Aboriginal children'

Throughout this report, Aboriginal and Torres Strait Islander children are referred to as 'Aboriginal children'. The authors acknowledge the diversity in culture, language, kinship structures and ways of life within Aboriginal and Torres Strait Islander peoples, and recognise that Aboriginal peoples and Torres Strait Islander peoples retain their distinct cultures irrespective of whether they live in urban, rural, regional or remote parts of the country.¹

v References to 'Australia'

Throughout this report the term 'Australia' is used and as the context permits this refers to either the Australian Federal Government or the Australian Federal Government working in collaboration with the governments of the states and territories.

vi References to 'parents'

Throughout this report the term 'parent' is used and as the context permits this may also refer to others exercising parental responsibilities, family members and carers.

* The National Children's and Youth Law Centre (NCYLC) is dedicated to promoting the human and legal rights of Australia's children and young people. NCYLC's human rights advocacy includes project managing this and the previous shadow report to the Committee. NCYLC is also Australia's only legal centre offering legal information and advice to all Australia's children and young people, wherever they may be.

** UNICEF Australia is a National Committee of the United Nations Children's Fund and plays a vital role in generating public support and funds for UNICEF's life saving work in over 150 developing nations. UNICEF Australia works to educate the Australian public, children and young people about global development issues affecting children and advocates for the rights of all children in Australia with the aim to achieve equity and rights for all.

vii List of contributors

The following organisations and individuals contributed to or advised on this submission:

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viii List of supporting organisations

This report is endorsed, either in part (where an organisation's expertise or interests extend to only part of the report) or in full, by the following organisations and individuals:

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Introduction

***“Children should be taken more seriously.
We have the same value as everyone else”***

15-YEAR-OLD FEMALE, PERTH, WESTERN AUSTRALIA

Australia is a wonderful place for most of its children. This is largely despite, rather than because of the efforts of successive Australian Federal Governments to implement the United Nations Convention on the Rights of the Child (*Convention*).

However, Australia is not a wonderful place for all its children, especially its Aboriginal children.

To do better for all our children, Australia needs to learn to listen to children.

The *Listen to Children Report* finds that despite ratifying the *Convention* in 1991, Australia has not effectively incorporated human rights into policy and legislative frameworks to nurture and support Australian children. Instead, successive governments have perpetuated a traditional welfare approach to children's wellbeing and have not learned to listen to and work with children—to create child-sensitive bodies, systems and initiatives.

Unfortunately, the consequences of this approach are unacceptable gaps in the legal protection of children's rights in Australia.

Significant harm to the lives, survival and healthy development of far too many children and young people has occurred over the two decades since ratification:

- 1,048 children are currently being held in immigration detention;
- almost half of all homeless people in Australia are under the age of 18; and
- Aboriginal children aged 10–17 are 24 times more likely to be jailed than non-Aboriginal children and Aboriginal children are almost 10 times more likely to be in out-of-home care.

These are merely a few of numerous examples that are detailed throughout this report. Such examples give testimony to the fact that successive federal, state and territory governments have evinced a lack of leadership in and commitment to comprehensively implementing the *Convention*.

It is important to acknowledge that Australia has made some progress in the five years since Australia was last before the UN Committee on the Rights of the Child (Committee). Its commitment to the *National Early Childhood Development Strategy*, its implementation of a *National Framework for Protecting Australia's Children* and the *Plan to Reduce Violence against Women and their Children* are all positive developments, as is the important commitment to *Closing the Gap* on Aboriginal health and education.

Through these measures, Australia has demonstrated its commitment to children, but not to their rights. The recent *Northern Territory Intervention* is an example of a government recognising the urgent need to address the unacceptable living conditions and violence experienced by its Aboriginal children, but through the Australian Federal Government's failure to listen to the very children and communities it is attempting to help, the Intervention represents a culture of decision-making that is not informed and underpinned by the rights and principles enshrined in the *Convention*.

This report is a comprehensive overview of Australia's performance in relation to each article of the *Convention*. For Australia to meet its commitments, it needs to begin by implementing a few core initiatives:

- the *Convention* should be comprehensively incorporated into Australian law;
- A comprehensive National Plan of Action for Children and Young People should be created and implemented, in partnership with children and civil society; and
- An independent National Children's Commissioner should be established.

All these measures must be informed by the *Convention*. Children have the same value as everyone else. Australia must learn to listen to children.



General Measures of Implementation

1 Implementation of the rights of the child (Article 4)

1.1 Legislation, coordination and a National Children's Commissioner

"I feel that the rights of children need to be better protected"

17-YEAR-OLD MALE, PERTH, WESTERN AUSTRALIA

1.1.1 The *Convention* has still not been comprehensively implemented into Australian law and there are still no enforceable remedies in the event of violation of many of the rights in the *Convention*. This was highlighted by the Committee in its *Concluding Observations*² and raises concerns in relation to Australia's obligations under Article 4. Furthermore, there is still no comprehensive human rights protection in Australia, despite the 2009 Human Rights Consultation Report, produced following extensive community consultation, recommending the introduction of a human rights act to better protect the rights of children, among other groups.³

1.1.2 The federal nature of the Australian political system means that responsibility for a range of rights covered under the *Convention*, such as child protection, education and juvenile justice, currently fall within the purview of the states and territories. In the absence of legislative implementation of the *Convention* in Australia, the approach to the promotion of children's rights in Australia is therefore fragmented and inconsistent. The incorporation of Australia's obligations under the *Convention* into domestic law would create greater consistency between federal, state and territory governments in legislation that affects children, and ensure that effective remedies are available in the case of a breach of the rights of a child.

Recommendation 1: that Australia implement a comprehensive legislative framework that fully incorporates obligations under the *Convention* into domestic legislation, and ensure that all domestic federal, state and territory legislation is fully compatible with the *Convention* and that effective legal remedies are available in situations of violations of the rights of the child.

1.2 Policy and planning

"I strongly believe that child rights is an important issue to address"

16-YEAR-OLD MALE, PERTH, WESTERN AUSTRALIA

1.2.1 In the *Concluding Observations*, the Australian Federal Government was encouraged to build on its commitment to develop a national action plan for early childhood and to extend this commitment to a National Plan of Action for Children and Young People in order to better meet its obligations under Article 4.

1.2.2 The Australian Federal Government has worked to improve outcomes across early childhood education and care, health, Aboriginal disadvantage, homelessness, child protection, and family support in the *Investing in the Early Years—A National Early Childhood Development Strategy*.⁴ However, we note that the agenda is not informed by a human rights approach and it has not yet led to consistent improvement in early childhood learning, care and wellbeing. In particular, Aboriginal children continue to be left behind, as this report will demonstrate.

1.2.3 The Australian Federal Government has also taken a positive step in developing the *National Framework for Protecting Australia's Children (2009–2020)* and the *National Standards for Out-of-Home Care* in consultation with non-Government organisations (NGOs) and children. The decision to develop the framework, and to do so in a collaborative way, reflects a cultural shift that we welcome and is an acknowledgement of the inadequacy of existing state and territory frameworks. That acknowledgement now needs to extend to the need for a comprehensive National Plan of Action for Children and Young People.⁵ Responsibility for portfolios that impact on children is shared between a disparate group of ministers and government departments and without a ministerial focal point or a National Plan of Action for Children and Young People, effective and coordinated policy development cannot occur.

1.2.4 In order to ensure compliance with Article 4, Australia must adopt a child rights-based approach to policy development. Under such an approach, children would be considered in all government actions and the participation of children would be sought in matters that concern them. In accordance with Article 12 and the Committee's General Comment No. 12 (2009), children must be involved in the planning, implementation and evaluation cycles of policy and program development, and particular focus must be placed on working with Australia's most marginalised children. Children must also be involved as both researchers and participants in research which feeds into that policy development.⁶

Recommendation 2: that Australia resource and participate in the development and implementation of a National Plan of Action for Children and Young People in partnership with children, civil society, parents and interested others.

Recommendation 3: that Australia establish a ministerial portfolio responsible for children with dedicated resources to drive data collection, research and policy development, coordinate across government and ensure the effective implementation of programs and services that meet child rights standards and can be monitored, measured and evaluated to ensure the participation of all children.

Recommendation 4: that Australia implement mechanisms to facilitate greater collaboration between research communities and those responsible for policy development, including supporting the development of the role of children in conducting and participating in research.

Recommendation 5: that Australia, in consultation with children, civil society, parents and interested others, implement mechanisms informed by best practice models to facilitate the inclusive, transparent and respectful participation of children throughout policy development, program implementation and evaluation.

1.3 Independent monitoring

1.3.1 Australia has still not established a National Children's Commissioner as suggested in the Committee's General Comment No. 2 (2002) and General Comment No. 5 (2003). The Senate of the Federal Parliament has referred a Bill seeking to establish a National Commissioner for Children and Young People to the Legal and Constitutional Affairs Legislation Committee for inquiry and report.⁷ We welcome this development, and believe a National Children's Commissioner could go some way to addressing the shortfalls in oversight of policy, accountability, monitoring and participation identified in this report. The state and territory Children's Commissioners and Guardians have played a valuable role in working to make the voices of children and young people heard since 2005.

1.3.2 The Australian Human Rights Commission continues to be inadequately resourced to undertake effective monitoring of the implementation of children's rights, which, in the absence of a National Children's Commissioner, raises concerns about Australia's compliance with Article 4 of the *Convention*.

Recommendation 6: that Australia create and resource an independent National Children's Commissioner tasked with roles including: establishing the strategic direction for evidence-based policy development, monitoring the extent to which Australian children are realising their rights under the *Convention*, promoting those rights and promoting children's participation as full citizens in Australian society. If a National Children's Commissioner is not established, the Australian Human Rights Commission should be adequately resourced to undertake this monitoring and educative role.

1.4 Budgets and resourcing

1.4.1 The Australian Federal Government does not currently undertake any consistent measurement of the allocation of budgetary resources to programs and policy, both domestically and through foreign aid, for the benefit of children. This means there is no effective accountability mechanism to link data to decision-making and resource allocation. This is not consistent with its obligations under Article 4.

1.4.2 The *Concluding Observations* recommended that budgetary allocations to implement the economic, social and cultural rights of children be prioritised, in particular for those children belonging to disadvantaged groups. Without measurement of budgetary allocation, the effectiveness of the Australian Federal Government's expenditure cannot be quantified. This is highlighted by the *Fourth Government Report*

which outlines investment in Aboriginal affairs without being able to provide disaggregated data on expenditure for the benefit of Aboriginal children—a group most in need of adequate and effective resource allocation.

1.4.3 The Productivity Commission has been commissioned by the Council of Australian Governments to report on whether policy, programs and interventions are achieving positive outcomes for Aboriginal people in general, although not specifically on children.⁸

Recommendation 7: that the Australian Federal Government work with state and territory governments to develop mechanisms consistent with the guidance given in General Comment No. 5 (2003) to allow for better identification and analysis of resources for children in government budgets.

Recommendation 8: that Australia provide an ongoing mandate to a qualified, independent body such as the Productivity Commission to monitor and support the effective allocation of resources for children in a way that is informed by international best practice.

1.5 Data and monitoring

1.5.1 The *Concluding Observations* of the Committee and several other treaty bodies recommended that Australia strengthen its existing mechanisms of data collection in order to ensure that data are collected on all areas of the *Convention* in a way that allows for disaggregation. Since 2005, the Australian Federal Government has funded the development of extensively researched headline indicators for children's health, development and wellbeing (including housing disadvantages) which could be reported on in future years, and its efforts should be commended.⁹ However, Australia's national data are still only as good as the data that are received from the states and territories. Although significant work has been done in the development of national data definitions and standards, the states and territories have varying capacity to conform to them, given the differences in policy and practice and data and information systems across the eight jurisdictions.

1.5.2 For example, weaknesses in data collection mean that Aboriginal child and infant mortality rates may in fact be higher than the level stated in this report [see section 19.2]. This is partly because there is an under-recording of Aboriginal status—each jurisdiction uses its own form to record data for newborn babies, with different questions regarding Aboriginal status leading to inconsistent results. Furthermore, a newborn baby will be recorded as Aboriginal only if the mother is Aboriginal, so babies with an Aboriginal father and non-Aboriginal mother are recorded as non-Aboriginal.¹⁰

1.5.3 Data on children's views of aspects of their own lives and their levels of happiness are also limited, and as yet there is no collection of data from which to evaluate children's participation rights. The role of state and territory Children's Commissioners and Guardians in addressing these gaps should be commended and also their encouragement of participation of children in data collection and monitoring, but more needs to be done.¹¹

Recommendation 9: that Australia continue its current efforts to address the deficiencies in data collection relating to the fulfilment of children’s rights under the *Convention* in accordance with the recommendations of the Committee and other human rights treaty review bodies.

1.6 Development assistance

“I feel that we need to further promote the right to childhood, as children should be able to enjoy childhood wherever they are”

16-YEAR-OLD MALE, PERTH, WESTERN AUSTRALIA

1.6.1 The Australian Federal Government has not yet applied the *Convention* as a framework to any of its Overseas Development Assistance programs that affect children. In several key areas there is a strong acknowledgement of children—such as education, disability, water and sanitation—but overall, children are identified as (passive) beneficiaries and seldom as active participants. They are rarely considered sufficiently within less direct areas of the Overseas Development Assistance programs, such as infrastructure or governance. Even in areas where there is a focus on children, it does not tend to influence all practices, but rather is treated as an independent program.

Recommendation 10: that Australia apply a child rights-based approach to Australian aid programs in cooperation with civil society.

1.7 Reservation

1.7.1 The *Concluding Observations* and the 2011 Universal Periodic Review draft report recommended that the Australian Federal Government withdraw its reservation to Article 37(c). However, the reservation remains in place.

Recommendation 11: that Australia withdraw its reservation to Article 37(c) of the *Convention* as previously recommended by the Committee in 2005.

2 Making the principles and provisions of the *Convention* widely known and the report widely available (Articles 42 and 44)

“Everyday people want to contribute to helping with child rights, but do not know how”

15-YEAR-OLD GIRL, PERTH, WESTERN AUSTRALIA

2.1 Despite limited resources, the Australian Human Rights Commission and human rights advocates have developed some awareness of the *Convention*.¹² However, consistent with its obligations under Article 42, there needs to be a greater commitment by the Australian Federal Government to raising awareness of, and educating Australians about, the *Convention* and the protections it provides. The National Human Rights Consultation Report made it clear that there is currently a lack of understanding amongst the Australian community about the content and role of human rights, and that there is strong community support for increased human rights education as a way of better protecting human rights in Australia.¹³

Recommendation 12: that Australia, informed by the views expressed in the National Human Rights Consultation and its obligations under Article 42, include public education on child rights as a core objective of its proposed National Human Rights Action Plan, with an appropriate allocation of resources and policy priority.¹⁴



Definition of the Child

3 Definition of the child (Article 1)

3.1 Queensland remains the only state or territory in which 17-year-olds are treated as adults in the criminal justice system.¹⁵ This was raised in the *Concluding Observations*. Nothing has been done to rectify this situation.

Recommendation 13: that the Queensland Government immediately pass a regulation to include 17-year-olds in the juvenile justice system.



General Principles

4 Principle of non-discrimination (Article 2)

4.1 Some groups of Australian children do not enjoy the same realisation of their rights under the *Convention* as their peers, suffering direct, indirect or systemic discrimination. This raises serious concerns regarding Australia's obligations under Article 2 of the *Convention*.

4.2 The legislative response currently provides a range of legislative protections against discrimination on the grounds of race, sex, age and disability. A stark omission in this protection is the lack of federal legislative protection against discrimination on the basis of sexual orientation or gender identity.

4.1 Discrimination against Aboriginal children across all areas

"Saying 'Sorry' is only a word! Actions speak louder than words"

15-YEAR-OLD ABORIGINAL GIRL, LA PEROUSE, NEW SOUTH WALES

(a) Aboriginal disadvantage and the experience of racism

4.1.1 Aboriginal children in Australia experience:

- lower levels of overall health and wellbeing than non-Aboriginal children (see section 19.2);¹⁶
- high levels of contact with the child protection system, including out-of-home placements at a rate that is almost 10 times greater than that for non-Aboriginal children (see section 16);¹⁷
- overrepresentation in the juvenile justice system, including the likelihood of detention at a rate 24 times higher than their non-Aboriginal counterparts (see section 25.5);¹⁸ and
- a considerable gap between Aboriginal and non-Aboriginal developmental outcomes, education and employment levels.¹⁹

4.1.2 This high level of disadvantage illustrates that Aboriginal children, families and communities are exposed to persistent, systemic and structural discrimination in Australia.²⁰

"Aboriginal Australians are still getting a raw deal"

16-YEAR-OLD ABORIGINAL FEMALE, BRISBANE, QUEENSLAND

4.1.3 Aboriginal children are acutely affected by the issues raised in this report. These experiences are compounded by:

- multiple disadvantage,²¹ including limited access to services, experiences of racism and intergenerational trauma;²²
- a population characterised by high growth and a younger age structure;²³
- many barriers preventing Aboriginal families and children engaging with support services;²⁴ and

- a lack of adequate support for self-governance by Aboriginal peoples and community-driven initiatives.²⁵

4.1.4 Participants in the national consultation consistently noted the failure of government to consistently use effective and appropriate service delivery and engagement models for working with Aboriginal children and their families. Participants identified two crucial components of effective service delivery and engagement, including:

- Aboriginal self-determination, realised in part through consultation and participation in the design, development and delivery of services; and
- respect for the unique collective and individual cultural rights of Aboriginal children, through the provision of culturally appropriate programs and services.

"Reconciliation can work towards closing the gap between Aboriginal people and other Australians"

16-YEAR-OLD ABORIGINAL DHARAWAL BOY, LA PEROUSE, NEW SOUTH WALES

4.1.5 We welcome the Australian Federal Government's shift to a policy directive of reconciliation and a framework that requires collaborative partnerships with Aboriginal communities.²⁶ Its policy and funding commitments under the national *Closing the Gap* strategy are commendable for including reactive, proactive and measurable responses to Aboriginal disadvantage across key areas of early childhood, schooling, health, economic participation, housing, safe communities and governance and leadership.²⁷

4.1.6 Despite these initiatives, the policy and practice shortcomings of the continuing *Northern Territory Emergency Response (Northern Territory Intervention)* (discussed below) indicate an ongoing failure of the Australian Federal Government to:

- adequately consult with Aboriginal peoples;
- consistently transfer decision-making responsibility for the design, development and delivery of services for Aboriginal children and families to Aboriginal communities; and
- consistently promote and recognise the enjoyment of cultural rights as integral to the enjoyment of all rights under the *Convention*.

4.1.7 This policy approach fails to engage with the many examples of resilience, strength and vision of Aboriginal children, families, communities and organisations.

(b) Implementation of the *Northern Territory Intervention* and suspension of the *Racial Discrimination Act*

"The legislation under which we now live does not comply with international law. It is discriminatory. We are no longer equal to other Australians. We are no longer equal to you."

NORTHERN TERRITORY ELDERS STATEMENT, 7 FEBRUARY 2011

4.1.8 In June 2007, the Northern Territory Government released the *Little Children are Sacred Report*,²⁸ which catalogued extensive child abuse, neglect, and personal and community destruction in the Northern Territory and made 97 recommendations to protect children and aid community development. The Australian Federal Government used this report as the purported basis of a package of measures to respond to the ‘emergency’ depicted in the report. Those measures included, but were not limited to, ‘widespread alcohol restrictions, pornography bans, compulsory health checks for children, compulsory quarantining of welfare payments, government acquisition of townships and housing reforms.’²⁹ The legislative measures implemented under the *Northern Territory Intervention* target Aboriginal peoples in designated communities in the Northern Territory.³⁰

4.1.9 In imposing an income management scheme on all social security recipients in all communities falling under the *Northern Territory Intervention*, the implementing legislation simultaneously declared that the relevant provisions of the Act were ‘special measures’ for the purposes of the *Racial Discrimination Act 1975* (Cth) (RDA) and exempted those provisions from the operation of the RDA.³¹ The RDA was reinstated following a review of the *Northern Territory Intervention* in 2008 but the measures targeting Aboriginal peoples remain, justified as ‘special measures’ by the Federal Government.³² This ‘special measures’ justification is weak, given that the policy fails to meet the principles of proportionality, reasonableness and attention to human dignity, fails to build the capacity of care-givers and lacks an evidence base to demonstrate its effectiveness to improve outcomes for children.³³ The Committee on the Elimination of Racial Discrimination has expressed concern over ‘the continuing difficulties in using the Act to challenge and provide remedies for racially discriminatory [Northern Territory Emergency Response] measures’.³⁴ Those measures can impact directly on children, with one media report noting that at some schools Aboriginal children were having to line up separately from non-Aboriginal children to redeem compulsory breakfast vouchers.³⁵ Concern has been expressed over the long-term psychological and mental health impacts of such measures on Aboriginal children.³⁶

4.1.10 The *Northern Territory Intervention* was an acknowledgement by the Australian Federal Government of the necessity of a response to the widespread child neglect and abuse in Aboriginal communities. However, the measures adopted in the *Northern Territory Intervention* bear little resemblance to the recommendations that were made in the *Little Children are Sacred Report* and were introduced without consultation with Aboriginal peoples, let alone consultation with children.³⁷ Notwithstanding reference to the *Convention* in the justification for the *Northern Territory Intervention*, the policy framework and implementation fall short of the principles and standards of a child rights approach.

“If the NT Intervention is something that is going to stay in place, we need feedback and consultation. This is affecting our youth in communities who do not understand the policies”

16-YEAR-OLD ABORIGINAL BOY, DARWIN, NORTHERN TERRITORY

(c) Racism

“I have experienced being judged because I am Aboriginal”

17-YEAR-OLD ABORIGINAL GIRL FROM BUNDJALUNG COUNTRY, MARRICKVILLE, NEW SOUTH WALES

4.1.11 Our consultations revealed that racism remains a serious concern for Aboriginal children and affects them in many areas of their lives—on public transport, in shopping centres and in other public spaces. This issue is dealt with further at section 11.1.

4.2 Discrimination in migrant and ethnic communities

“I have spent 12 years in refugee camps in Tanzania and Uganda. I have spent four months now in Australia and I would like peace”

20-YEAR-OLD MALE, SHEPPARTON, VICTORIA

4.2.1 Racism and discrimination are an ever-present reality for children and young people from newly arrived, refugee or migrant backgrounds. A national study conducted by the Foundation for Young Australians found that over 70 per cent of research participants, from non-Anglo-Australian backgrounds, reported being subjected to some form of racism. That racism may be experienced at school (racist bullying and exclusion, and conflict between groups of young people), in accessing services—for example seeking housing through the private housing sector/real estate agents or employment—or from police.³⁸

4.2.2 Young people from refugee and migrant backgrounds often feel targeted and ‘hassled’ by police due to racial, religious, ethnic and cultural stereotypes.³⁹ In 2008, Australian-Sudanese people in Victoria identified their experience of policing as the biggest issue facing them.⁴⁰ Another study on the experience of young African Australians in three Victorian regions found that African youth were over-policed, and that this over-policing was based on race.⁴¹ Specific issues include ‘overuse of stop and search powers, police engaging in excessive questioning and, in some cases, extra-legal police violence’.⁴² Furthermore, there are currently inadequate police complaints mechanisms in place through which these groups feel that they can report over-policing. This means that such incidents are often not reported or not adequately investigated if reported.⁴³

Recommendation 14: that Australia increase funding and availability of programs in schools and local communities that promote positive images of culturally diverse young people and combat racism and discrimination. This should be developed in consultation with children and young people, parents and leaders within the education sector.

Recommendation 15: that Australia implement the ‘Foundation for Young Australians’⁴⁴ report recommendations, including the provision of targeted classroom resources and teaching tools, including curriculum materials that address racism and discrimination.

Recommendation 16: that all Australian governments invest in compulsory cultural competency training for police in their jurisdiction.

4.3 Discrimination on the basis of sexuality and gender identity

“We think it is unfair that people are discriminated because of their sexual preferences”

16-YEAR-OLD STUDENTS FROM HASTINGS, VICTORIA

4.3.1 Discrimination on the basis of sexuality is still a pertinent issue needing attention by the Australian Federal Government. A national survey on the health and wellbeing of same-sex attracted youths aged between 14 and 21 years found that 38 per cent reported unfair treatment due to their sexual orientation.⁴⁵ The Australian Human Rights Commission has reported significantly higher levels of abuse and resulting experiences of self-harm and suicidal ideation amongst same-sex attracted young people.⁴⁶ This denies opportunities and equality, and the experience of discrimination results in poorer health and wellbeing than their heterosexual counterparts.⁴⁷

4.3.2 In Queensland, the age of consent for penetrative sex other than anal intercourse is 16 years, while the age of consent for anal intercourse is 18 years.⁴⁸ This discrepancy amounts to indirect discrimination against male homosexual young people between the ages of 16 to 18 years, and contributes to an ongoing stigma associated with gay young people.

Recommendation 17: that Australia legislate to protect against discrimination on the grounds of sexuality and gender identity.

5 Principle of best interests of the child (Article 3)

“We need to be treated like intelligent human beings”

16-YEAR-OLD ABORIGINAL GIRL, LA PEROUSE, NEW SOUTH WALES

5.1 The ‘best interests’ principle is enshrined in legislation relating to decision-making about children, including family law, alternative care, adoption, child employment, surrogacy and assisted reproductive technologies. However, the *Concluding Observations* recognised that fulfilment of this right goes far beyond enshrining the principles in legislation.⁴⁹ Accordingly, implementation of the best interests principle must be considered in light of the issues raised in this report.

5.1 Alternative care

5.1.1 All state and territory child protection legislation provides that the child’s best interests are to be a paramount consideration.⁵⁰ Children’s outcomes outlined through this report indicate that legislative protection alone has not been adequate in ensuring the fulfilment of this right. See sections 14–16 for more information on outcomes for children in state care processes.

5.2 Asylum seekers

5.2.1 Although policy provides some protection, there is no legislative requirement for decision-makers to consider the best interests of children who are refugees or in immigration detention.⁵¹ See section 24 for more information on children in immigration detention.

5.3 Family law

5.3.1 The *Family Law Act 1975* (Cth) requires that in making decisions about a child, the child’s best interests are the paramount consideration.⁵² The Australian Federal Government’s Exposure Draft of the Family Law Amendment (Family Violence) Bill 2010 is commendable, particularly for the proposed amendment to require the Court to give more weight to the protection of the child from harm over other considerations.⁵³ Item 13 of the Family Violence Bill would also place a new object in Part VII of the *Family Law Act* confirming that the Act gives effect to the *Convention*. ‘The effect is that decision-makers including family courts must take account of the Convention on the Rights of the Child when dealing with matters in relation to children under Part VII of the Act.’⁵⁴

5.3.2 As over 90 per cent of matters involving children are decided without resort to the courts, the role of alternative dispute resolution practitioners and family support services is increasingly important. The Australian Federal Government’s support of these services is a positive step and we encourage further development of child-centred best practice.⁵⁵

Recommendation 18: that the best interests principle be included in Australia’s immigration laws and implemented in policy and practice.

Recommendation 19: that Australia provide appropriate and adequate training to government officials to ensure that policies and practices relating to children are consistent with current legislative protections of the best interests principle.

6 Right to life, survival and development (Article 6)

“I have never felt like I meant much”

17-YEAR-OLD BOY LIVING IN A HOMELESS SHELTER, PORT PIRIE, SOUTH AUSTRALIA

6.1 The right to life, survival and development is still not fully realised for some children in Australia. This is illustrated by:

- high rates of youth suicide across the population, and even higher rates amongst Aboriginal children and young people;
- an escalating need for youth mental health services, which is not being met;
- the infant mortality rates for Aboriginal children is three times that for non-Aboriginal children;⁵⁶
- the poor access to health services experienced by Aboriginal children, children in out-of-home care and children in rural and remote areas;
- inadequate standards of living for many Aboriginal children, children transitioning from out-of-home care and children in rural and remote areas; and
- the fact that almost half of all homeless people in Australia are under the age of 18.⁵⁷

These issues are covered in detail in other parts of this report.

7 Respect for the views of the child (Article 12)

“Young people will inherit the consequences of today’s decisions and I think that gives them the right to be heard”

17-YEAR-OLD MALE, TASMANIA

7.1 Our consultations revealed that children want to be listened to in matters that affect them. While the Australian Federal Government has made some attempts to promote the participation of children in both individual and group settings, it continues to fail to meet the standard outlined in General Comment No. 12 (2009) and its obligations under Article 12 because it has not committed to developing appropriate systems, informed by a child rights approach.

7.1 Supporting groups of children to be heard

7.1.1 The *Concluding Observations* expressed concern about the limitations of the National Youth Roundtable. In March 2008 the Australian Federal Government replaced the Roundtable with the Australian Youth Forum (AYF), appointed a Minister for Youth and created the Office for Youth.⁵⁸ It has also refunded a national peak body for young people and the youth sector following a 10 year hiatus. While these developments are welcome, both the AYF and the peak body are more targeted to mature adolescents and young adults rather than children. There continues to be no specific forum for the consideration of children’s views as recommended by the Committee.

7.1.2 We acknowledge the Australian Federal Government’s engagement with children and young people in some recent initiatives. These include, the Australian House of Representatives report, *Violence and Young Australians*, the online surveys of children conducted by the Joint Select Committee on Cybersafety and the commitment to consultation under the *National Framework for Protecting Australia’s Children (2009–2020)*. However, this engagement has so far been the exception rather than the rule and the challenge will be to ensure that this engagement is meaningful, effective and systematic.⁵⁹ Unfortunately, in the majority of cases, the design and delivery of policy initiatives have been achieved by adults without first inquiring into and understanding children’s experiences.

(a) Education

“We call on the Government to increase global education curriculum in younger year levels”

MEMBERS OF A STUDENT COUNCIL IN KATHERINE,
NORTHERN TERRITORY

7.1.3 Within education, there are presently few avenues for students to have an active voice and a serious role in shared decision-making. Only two states have a representative organisation of students at a state level (New South Wales and Victoria), and while many schools have some form of student council it is widely recognised that these bodies are curtailed severely by the issues that are considered and the extent to which students are enabled and encouraged to be involved. We acknowledge the formulation of policies by state education departments encouraging greater participation by students—in particular by the Victorian Department of Education and Early Childhood Development—but we urge governments to ensure that these policies are resourced and able to be translated into practice.⁶⁰

(b) Aboriginal children and children from disadvantaged backgrounds

7.1.4 The participation of children from disadvantaged backgrounds and communities must be promoted to a central status within government, both in law reform and the design and delivery of services. The involvement of children in out-of-home care in recent policy development is commendable.⁶¹ Aboriginal children, however, are suffering some of the most serious violations of their rights under the *Convention*, and it is imperative that their voices are heard. The experience of the *Northern Territory Intervention* and the *Closing the Gap* strategy shows us that not only are Aboriginal children not being consulted, but all too often their communities are also not involved in decisions that directly affect them (see sections 4.1 and 28).

(c) Children with disabilities

7.1.5 There is no national, comprehensive approach in seeking the views of children and young people with disabilities or ensuring that they are able to access beneficial information. The prevailing perception that children and young people with disabilities are ‘dealt with’ in the disability or health related sectors, as well as the information, communication, attitudinal and environmental barriers that exist in Australia, prevent children and young people with disabilities from having the opportunities to express their views on an equal basis with others.

Recommendation 20: that Australia develop comprehensive strategies to ensure that children and young people with disabilities can fully and equitably participate in consultations, decision-making processes and policy developments that affect their lives.

Case Study: Legislation in Victoria has been enacted which enshrines the right of a child to participate in decision-making processes of the Department of Human Services.⁶² Despite this, young people in Victoria surveyed as part of the *Emerging Change* report (2008) said that they felt they only sometimes had a chance to have a say or be engaged in things that happen in the local community, and hardly ever at the state government level.⁶³

Best practice 1: The Children’s Voices Playground Enhancement Project in Victoria enabled children to work in partnership with their local council, schools and services to engage children in decisions that affect their lives. The project involved school children (between the ages of 8–12 years) presenting their ideas to adult groups and voting on the possible options for the enhancement of a local park, with the final decision resting with the children.

Best practice 2: NSW Health formulated the NSW Youth Health Policy for health service providers following consultation with a diverse range of children and young people aged 13–24.⁶⁴ The policy encourages the participation and empowerment of young people to make informed decisions about their health and includes training for health service providers in working with young people.

Recommendation 21: that Australia commit to working with children, civil society, organisations that represent children, state and territory governments, parents and research bodies to create appropriate institutions and mechanisms to enable the inclusive, transparent and respectful participation of children in the development of laws and policies that affect them.

Recommendation 22: that Australia better resource child advocacy bodies to listen to the views of children and ensure that those views are heard by policy makers at all levels of government and at all stages of the development and implementation of law and policy.

7.2 Supporting individual children to be heard

(a) Alternative care

7.2.1 Care and protection legislation in each state and territory enshrines the principle that children should have the opportunity to participate in decisions made about them, the right to adequate information and assistance to express their views, and the power for a court to make an order that a child have separate legal representation.⁶⁵ There has not been any evaluation, however, of the extent to which children do actually participate as provided for under these provisions.

(b) Youth justice

7.2.2 Legislation relating to criminal proceedings involving children and young people imposes, at a minimum, a duty of the court to explain the proceedings and the right to legal representation.^{66,67} In some states, legislation also includes the right of the child to participate in the decision-making process.⁶⁸

7.2.3 This legislation must be complemented by adequate funding and training of participants in the justice system, including children's lawyers, to ensure such rights are realised. Children in the youth justice system have intelligent views for improving support mechanisms, but the stigmatisation of these institutions often leaves them voiceless. Particular focus needs to be given to children with disabilities and to children from an Aboriginal or migrant background.

Best Practice: The Queensland Commission for Children and Young People and Child Guardian recently published the *Views of Young People in Detention Centres Survey*, which involved an extensive process of consulting children in detention, particularly Aboriginal children.⁶⁹ The survey used the responses to make practical recommendations on how the youth justice system, and in particular the juvenile detention system, can be more responsive to the needs of Aboriginal young people, such as through providing better quality training and mentoring.

(c) Family law

7.2.4 Family law processes have made considerable efforts to allow children's voices to be heard both in the court process and in cases that are resolved without court intervention. The network of Family Relationship Centres deals with the majority of cases that do not go to court and before they can go to court. Both child-inclusive and child-focused mediation are used to present children's views to their parents in a safe and managed

process, and when used well, this can have positive benefits for both parents and children.⁷⁰

7.2.5 The main way children's voices are heard in court is via the Family Report prepared by a court-appointed family consultant or counsellor who speaks with the child. Children may also be separately represented by an Independent Children's Lawyer, but this does not occur as of right, it is generally limited to more complex cases and appointment is limited by insufficient funding by the government.⁷¹ Independent Children's Lawyers do not act on the instruction of the child and may recommend to the court that a decision or course of action be taken that is contrary to the child's views though their views must be presented to the court. Only in rare cases do children express their views directly to the judge and even more rarely would a child be present in court or give evidence directly to the court. The court has also introduced less adversarial trials to assist in more timely and appropriate resolution of matters involving children.

(d) Immigration

7.2.6 The *Migration Act 1958* (Cth) does not currently provide legislative protection of a child's rights under Article 12. Children who arrive with their families are often not interviewed separately by immigration officials. In the event that they are, emphasis needs to be placed on ensuring that the immigration personnel are able to conduct these interviews in a child-friendly manner to ensure adequate and meaningful participation by the children involved.

7.2.7 Legal assistance for both children and their families is also inconsistent. The government provides funding under the Immigration Advice and Application Assistance Scheme for children and families to access representation at the initial stages of applying for a visa (including review by a tribunal).⁷² However, the funding does not continue after the visa has been declined by the Department of Immigration and Citizenship or review tribunal. As a result, even where asylum seekers (families and children) may be eligible for judicial review or to seek the intervention of the Minister, there are no arrangements in place for government funded legal representation or assistance. In addition, the isolated location of detention centres makes physical access to proper assistance and legal representation more difficult.

Recommendation 23: that Australia amend the *Migration Act 1958* (Cth) to incorporate its obligations under Article 12 of the *Convention* and that Australia commit to ensuring that where legal administrative processes do legislatively provide for a child's participation, appropriate mechanisms are in place and utilised to facilitate that participation in practice, consistent with Article 12 and General Comment No. 12 (2009).



Civil Rights and Freedoms

8 Preservation of identity (Articles 7 and 8)

8.1 Recognition of Aboriginal identity

8.1.1 The *Concluding Observations* encouraged the implementation of the recommendations of the *Bringing Them Home Report* including recognition of the rights of Aboriginal children to their identity, name, culture, language and family relationships.⁷³

8.1.2 On 13 February 2008, the Prime Minister delivered a National Apology to the Stolen Generation—those Aboriginal people who as children had been removed from their families, their communities and their lands as a result of government policy.⁷⁴ However, no compensation scheme has been established and the broader recommendations of the *Bringing Them Home Report* have not been implemented.

Recommendation 24: that Australia review its progress and commit to full implementation of the recommendations of the *Bringing Them Home Report*, including as recommended by the United Nations Human Rights Committee and the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People.

8.2 Birth registration process in Aboriginal communities

8.2.1 Significant barriers exist to the registration of the birth of many Aboriginal children, raising concerns under Article 7. A birth certificate is not automatically issued to a person registering a birth. At the time of registration, a separate application form must be completed and the prescribed fee paid.⁷⁵ Registry forms and requirements are complex, and literacy problems or a lack of confidence can make it difficult for some Aboriginal peoples to navigate the bureaucracy.⁷⁶

8.2.2 The lack of a birth certificate makes it difficult to prove identity and therefore to obtain a tax file number, register to vote, and complete other important tasks.⁷⁷ The number of Aboriginal children not registered at birth is high, especially in rural and regional Australia.⁷⁸

8.2.3 In 2005, 13 per cent of children born in Australia from Aboriginal mothers were not registered. In 2009, 2.5 per cent of births went unregistered in Victoria, and it is believed that most of these unregistered children are Aboriginal.⁷⁹

Recommendation 25: that Australia, consistent with General Comment No. 7 (2005), review the birth registration process to ensure that all children born in Australia are registered at birth and that no child is disadvantaged by procedural barriers to registration.

8.3 Obtaining a passport

8.3.1 Children of parents who have separated, Aboriginal children, and children in care often experience difficulty in obtaining a passport, due to the difficulties in gaining access to a birth certificate, the requirement for written consent of all persons with parental responsibility and additional requirements of proof of the identity of the child's parent(s).⁸⁰

8.3.2 The *Australian Passports Act 2005* (Cth) permits a passport to be issued to a child if an Australian court order allows the child to travel internationally, as well as in specified other circumstances in which full consent has not been obtained.⁸¹

Recommendation 26: that Australia review the process for obtaining a passport by a child to enable simpler proof of identity and to overcome barriers of access caused by parenting arrangements or cultural settings.

8.4 Children born in immigration detention

8.4.1 Children born in Australian immigration detention do not have a right to a visa for permanent residence in Australia or Australian citizenship unless they satisfy prescribed criteria.⁸² The Australian Human Rights Commission has argued⁸³ that the criteria are inconsistent with international law.⁸⁴ This includes circumstances where a child may be entitled to be registered in another jurisdiction, but the parents are unable or unwilling to register their child's birth in that alternate jurisdiction.⁸⁵

8.4.2 The Minister for Immigration and Citizenship also retains discretion to revoke a child's citizenship where a parent renounces or loses citizenship—against the recommendations of the Australian Human Rights Commission and the Senate Legal and Constitutional Affairs References Committee and despite Article 8 of the *Convention*.⁸⁶

Recommendation 27: that Australia again review its implementation of the Committee's 1997 Concluding Observations that 'no child be deprived of citizenship on any ground regardless of the status of his/her parents'.

8.5 Children with same-sex parents

8.5.1 Not all Australian states recognise or allow the registration of both same-sex parents on a child's birth certificate,⁸⁷ usually as a result of legislation surrounding assisted reproduction or adoption. This has been criticised as a failure to recognise the best interests of children living in families with same-sex parents. The consequences extend to financial and work-related benefits for the family.⁸⁸

Recommendation 28: that the Australian Federal Government take steps to ensure that all states and territories provide for the registration of same-sex parents on a child's birth certificate.

8.6 Children born of donor gametes

8.6.1 The right of a child born of donor gametes to know their biological parents is not consistently protected in Australia. The Senate Legal and Constitutional Affairs References Committee has recommended uniform legislation to protect this right and establish a national register.⁸⁹ However, the recommendations have not been implemented. The Committee's Report summarises research that these children often suffer psychological distress and includes the reflections of children conceived of donor gametes.

Recommendation 29: that Australia adopt measures to ensure effective protection of the rights of children born of donor gametes and adopt the recommendation of the Senate Legal and Constitutional Affairs Reference Committee for uniform legislation and the establishment of a national register.

9 Freedom of expression (Article 13)

9.1 Graffiti behaviour is criminalised in all Australian states and territories (including the possession of implements that could be used to create graffiti as well as the creation of graffiti on property).⁹⁰ The overt regulation (by politicians,⁹¹ legislators⁹² and police⁹³) creates an adversarial climate which can discourage expression for young people, including by the association with criminality. Resulting fines can be excessive especially given a child's limited capacity to pay.⁹⁴ Youth advocates call for a more nuanced approach with greater emphasis on restorative justice principles.⁹⁵

Recommendation 30: that Australia develop national standards that ensure the application of graffiti laws to children accord with the principles of the *Convention* and principles of restorative justice and diversion.

10 Access to appropriate information (Article 17)

10.1 Proposed internet filter

10.1.1 The internet is a key medium through which children can realise their right to appropriate information. Almost all children have some access to the internet and use the internet for social networking, research, or interpersonal communication.⁹⁶ The benefits children gain from access to the internet include access to activities such as peer to peer social networking and the opportunity to find out about and discuss sensitive topics.⁹⁷ These experiences can promote positive mental health outcomes for children and young people.⁹⁸

10.1.2 The Australian Federal Government is considering introducing a policy of mandatory ISP-level internet filtering. We acknowledge that there are real dangers for children online. However, the proposed filter will be easily circumvented and will miss the majority of concerning content—that which comes through email or file-sharing networks, not through web traffic.⁹⁹

Empowering children to use the internet safely and developing children's ability to protect themselves online is the only sustainable and long term means to avoid and reduce cyber bullying and promote the safety of children online.¹⁰⁰

10.1.3 Training in internet safety and privacy-preservation should be introduced to children at the earliest opportunity at a kindergarten level, based on studies showing that many children are already using the internet regularly by the time they are first given access in a formal learning environment (usually Years 2 or 3).¹⁰¹ This will not only facilitate children's right to information but will complement the realisation of other child rights.

10.1.4 The Australian Federal Government has established an Office of the Australian Information Commissioner, which is producing internet resources for teaching children how to protect their privacy online, and how to make informed decisions about sharing personal information.¹⁰² Further discussion of protection is at Section 12.

Recommendation 31: that Australia maintain effective systems which balance the regulation of content that can be accessed by children with the need to empower children to use media (including the internet) for communication and access to information.

11 Freedom of association and peaceful assembly (Article 15)

11.1 Public space and police powers

"Every time I go shopping I feel I get stalked and always watched by the authorities"

16-YEAR-OLD ABORIGINAL GIRL, LA PEROUSE, NEW SOUTH WALES

11.1.1 Concerns persist with the unnecessary interference in the right to freedom of association and peaceful assembly in Australia. The *Concluding Observations* recommended that the Australian Federal Government address the gathering of young people in public spaces without necessarily resorting to policing and/or criminalisation and review relevant legislation. Instead the *Fourth Government Report* asserts that policies (such as the Northbridge Strategy—see section 11.2 below) are protective in nature. Further legislation has been enacted which has extended police powers.¹⁰³

11.1.2 Despite recommendations by the Australian Law Reform Commission (ALRC) and the (then) Human Rights and Equal Opportunity Commission in 1997, there are no national standards for juvenile justice, including police powers, training and accountability.¹⁰⁴ Each state and territory has its own legislation—with various deviations from child rights principles. In Victoria, recent laws permit police to search anyone 16 years or over in a designated area.¹⁰⁵ Police continue to use 'move on' powers inappropriately¹⁰⁶ and in some cases in a discriminatory manner (see section 4).¹⁰⁷ These powers may increase the risk of criminalisation for young people who question or resist being 'moved on', and this is a particular concern for young people from refugee backgrounds who are often fearful and mistrustful of police due to their experiences prior to coming to Australia.¹⁰⁸

11.1.3 Public space or public order offences have a particular effect on Aboriginal children not only in the way they may be

selectively enforced, but also because Aboriginal people tend to use public space in a different way from other Australians for cultural reasons. In addition to the issues raised at section 4 in respect of children from migrant backgrounds, a common theme raised by Aboriginal children during our national consultation was that they felt that they were more likely to be stopped and questioned by police when enjoying public space, simply because they were Aboriginal.¹⁰⁹

Recommendation 32: that Australia implement national standards for juvenile justice that are included in police powers, training and accountability measures, as recommended by the ALRC and the (then) Human Rights and Equal Opportunity Commission.

11.2 Curfews and protective powers

11.2.1 The *Concluding Observations* noted concerns over legislation which allows local police to remove children and young people congregating in public places.

11.2.2 Police in Western Australia have additional powers to apprehend a child who is in a public space and is deemed to be intoxicated or under the influence of any illicit substance or where their wellbeing is at risk.¹¹⁰ Under the Northbridge Strategy, from May 2006 to 19 April 2009, 3708 young people were removed from the Northbridge Precinct.¹¹¹ An earlier report indicated that the majority of children who have been 'picked up' by the police or had contact with the specialist Western Australian Police Juvenile Group were of Aboriginal descent (88 per cent), female (67 per cent) and between the ages of 13 and 15 (66 per cent).¹¹²

11.2.3 This particular policing strategy has now been modified and is the subject of a collaborative project involving Aboriginal community partners to provide safety for Aboriginal children.

11.2.4 However, the powers remain in place and there remains a wider concern that police are generally not the most appropriate service providers to exercise child protection powers. Without effective accountability mechanisms, such powers can be exercised in a manner that discriminates on the basis of age and race, inhibits socialisation and contravenes the right to freedom of association and peaceful assembly.¹¹³

Recommendation 33: that Australia implement the recommendation in the *Concluding Observations* and review all legislation that is capable of authorising infringements of a child's freedom of association and peaceful assembly.

Recommendation 34: that Australia support the development of effective and child-friendly complaint mechanisms in all jurisdictions for children whose rights under Article 15 of the *Convention* have been breached.

12 Protection of privacy (Articles 16 and 40(2)(b)(vii))

12.1 Protecting the privacy of children and young people

12.1.1 There is no comprehensive protection of an individual's right to privacy in Australia, which is concerning in light of Australia's obligations under Article 16 of the *Convention*. In

2008, the ALRC recommended the creation of a statutory tort of breach of privacy.¹¹⁴ The Australian Federal Government has not adopted this recommendation.

12.1.2 The Office of the Australian Information Commissioner is empowered to hear complaints about breaches of privacy rights under the *Privacy Act 1998* (Cth). However, there are no child-specific mechanisms and those available are limited to complaints made against government agencies and officers and certain large private organisations.¹¹⁵

Recommendation 35: that Australia review its implementation of the recommendations of the ALRC '*For Your Information*' report with respect to protecting the privacy of children and develop effective remedies for children whose privacy is infringed.

12.2 Privacy of children involved in penal proceedings

12.2.1 Australia lacks uniform protections for children's privacy in connection with penal proceedings so not all children enjoy the protection afforded by Article 40(2)(b)(vii). The Northern Territory permits the publication of child defendants' identities unless the court chooses to exercise its discretion to suppress this information.¹¹⁶ Recent legislation in Western Australia also raises concern. The *Prohibited Behaviour Orders Act 2010* (WA) applies to persons aged 16 and over. The Act permits the publication of the name, photograph, town of origin and details of the Order made against a person who has committed 'anti-social behaviours', and permits community members to re-publish these details, including in pamphlet and poster form, in order to 'name and shame' the person.¹¹⁷

Recommendation 36: that Australia develop and enforce national standards for the protection of the privacy of children in the criminal justice system that accord with international standards and the principles of rehabilitation with particular reference to Western Australian and Northern Territory legislation.

Recommendation 37: that the Australian Federal Government review the National Privacy Principles in conjunction with state and territory governments to extend and enforce their application to children with particular attention to the experience of Aboriginal children and children of different ethnic and cultural communities.

12.3 Counsellors and health professionals

12.3.1 Concerns about confidentiality are one of the key barriers for young people accessing health care.¹¹⁸ There is evidence that young people, particularly in regional areas, avoid consulting their doctor about health concerns for fear of their parents finding out. This is particularly the case in relation to contraceptive and other sexual activity-related matters.¹¹⁹ Consent laws differ from state to state and are commonly not well understood by health professionals.¹²⁰ There have been instances where young people have disclosed information and had this information passed onto their families without their consent, to the young person's embarrassment and distress.¹²¹

Recommendation 38: that Australia review the implementation and enforcement of Health Privacy Principles for children and young people.

13 The right not to be subjected to torture or other cruel, inhuman or degrading treatment (Article 37(a))

13.1 Corporal punishment

13.1.1 Notwithstanding the recommendations of the *Concluding Observations*, it remains lawful for parents in all Australian jurisdictions to use 'reasonable' corporal punishment to discipline their children.¹²² Corporal punishment in schools remains legally permissible in a number of Australian jurisdictions.¹²³ There is evidence to suggest that provisions in some jurisdictions allowing teachers to 'restrain' children as a method of behavioural control are permitting assaults on children.¹²⁴ There is also concern at the lack of consistent legal provisions banning corporal punishment in alternative care settings, such as child care, residential centres and foster care.

Recommendation 39: that Australia implement the Committee's *Concluding Observations*, consistent with General Comment No. 8 (2006), to:

- a) take appropriate measures to prohibit corporal punishment at home, in public and private schools, detention centres and all alternative care settings in all states and territories; and
- b) strengthen awareness-raising and education campaigns, with the involvement of children, in order to promote positive, non-violent forms of discipline and respect for children's rights, while raising awareness about the negative consequences of corporal punishment.

13.2 Sterilisation of children

13.2.1 The *Concluding Observations* encouraged Australia to prohibit sterilisation of children, regardless of disability. There have now been similar recommendations from the United Nations Human Rights Council and the United Nations Committee for the Elimination of Discrimination Against Women.¹²⁵ In February 2011, the Committee on the Rights of the Child issued General Comment 13 (2011), which distinctly identifies forced sterilisation of girls with disabilities as a form of violence and clearly articulates that all forms of violence against children are unacceptable and that there are no exceptions.¹²⁶ The Australian Federal Government ratified the *Convention on the Rights of Persons with Disabilities* (CRPD) in 2008. The CRPD contains specific articles about the rights of children and the right to family, and at Article 23 there is a specific statement that people with disabilities have a right to retain their fertility.¹²⁷

13.2.2 From 2003 to 2007, Australia began to address non-therapeutic sterilisation of children by drafting nationally consistent legislation, although this legislation aimed to regulate *authorisation* of non-therapeutic sterilisation rather than *prohibit* this form of violence. The Australian Federal Government discontinued this work because it believed that evidence indicated that sterilisation of children with disabilities had

declined and that existing guardianship and court mechanisms for authorising sterilisation procedures were working adequately.

13.2.3 However, existing criminal offences that apply under state and territory legislation and federal court mechanisms have been ineffective in eliminating the non-therapeutic sterilisation of children with disabilities. This is supported both by anecdotal reports and health insurance statistics which provide evidence that non-therapeutic sterilisation still occurs in greater numbers than officially reported, that it occurs outside judicial mechanisms, and that these procedures are actively sought both within Australia and in other countries.¹²⁸

Recommendation 40: that Australia, consistent with the Committee's *Concluding Observations*, develop federal legislation prohibiting, except where there is a serious threat to life or health, the non-therapeutic sterilisation of children, regardless of disability. Such legislation should outline the circumstances in which only therapeutic sterilisation can occur.

13.3 Bullying

13.3.1 The *Concluding Observations* welcomed the measures taken by the Australian Federal Government to combat bullying in schools, such as the National Safe School Framework and the 'Bullying. No Way!' website. Notwithstanding these efforts, the evidence still suggests that the current frameworks are inadequate to address all forms of bullying.

"During the first few years of my schooling I learnt to hate it, I was bullied. And not just by my peers, but by my teacher as well. I developed a sense of dread when it came to school..."

17-YEAR-OLD GIRL, EAST COBURG, VICTORIA

13.3.2 According to a comprehensive study of children in government schools, 26.7 per cent of students from Years 4 to 9 have been bullied.¹²⁹ 67 per cent of teachers surveyed thought more training was needed to manage covert bullying.¹³⁰ In the same national study, 6.6 per cent of students from Years 4 to 9 reported cyber bullying.¹³¹ It also noted that strategies that prohibit student use of personal technologies at school decreases the likelihood that students will report bullying.¹³²

Recommendation 41: that Australia, consistent with the Committee's *Concluding Observations* and General Comment No. 13 (2011), maintain its commitment to reduce the incidence of bullying with ongoing evaluation and review of current strategies, to research new strategies and the impact of technology, and to investigate the relationship between bullying and exposure to violence in the home and the wider community.



Family Environment and Alternative Care

14 Parental guidance and responsibilities (Articles 5 and 18)

14.1 Family environment

14.1.1 Despite progress, more can be done by Australia to meet its obligation under Article 18 to support families in their child-rearing responsibilities. The *Concluding Observations* recommended that Australia implement measures to strengthen current programs of family support. Australia has worked to improve family support, including through recent measures such as a baby bonus payment, child care rebates and the introduction of the *National Paid Parental Leave Scheme*.¹³³ However, access to quality child care remains a challenge for many families.

14.1.2 Without a child rights framework, Australia's commitment to provide support for children is based on the conventional political formula that providing economic benefits to the family is generally sufficient to allow children to be raised in a supportive environment.¹³⁴ There is no consistent or coordinated effort being taken to evaluate whether these measures will work for all children.

14.1.3 Government policies have not recognised sufficiently the diversity of the types of families that exist in Australia today.¹³⁵ This has particular implications for Aboriginal children who continue to be placed in care at a significantly higher rate than non-Aboriginal children.¹³⁶ Many of the measures introduced over the last 20 years have shifted responsibility from the welfare and education systems back onto the family unit.¹³⁷

14.1.4 There is a lack of attention to the broad range of circumstances and experiences that constitute childhood. The child protection system understandably prioritises young children—infants and babies—as being in most need of protection due to their more vulnerable circumstances. However this results in a lack of attention being given to older children. There is little consideration given to the needs of children in the middle years (9–14 years) and as a result, some of their developmental needs are remaining unmet.^{138,139}

Recommendation 42: that Australia remain committed to supporting families through ensuring the availability of high quality, affordable and accessible child care facilities, assisting with the cost of raising a family through family assistance payments and supporting parents who work by providing adequate maternity and paternity leave entitlements.

Recommendation 43: that Australia take appropriate measures to strengthen current programs of family support and to evaluate whether such measures are effective for all family types and all children.

15 Abuse and neglect, recovery and reintegration (Articles 19 and 39)

“When I grew up I didn't grow up in a good community. There was lots of violence and fighting”

17-YEAR-OLD ABORIGINAL MALE, WESTERN AUSTRALIA

15.1 Between 2004–2005 and 2009–2010¹⁴⁰ the numbers of children:

- subject to a substantiated notification of abuse or neglect to child protection authorities *decreased* by 8 per cent from 34,046 to 31,295, partly as a result of changed definitions;
- on care and protection orders increased by 57 per cent from 24,075 to 37,730 in 2009–10 (a rate of 5.0 to 7.4 per 1,000 children);
- admitted to orders increased by 27 per cent from 11,492 to 14,564; and
- entering out-of-home-care increased by 51 per cent from 23,695 to 35,895 (4.9 to 7.0 per 1,000 children).¹⁴¹

15.2 These statistics on violence affecting children, and on child abuse and neglect reflect the statutory response to these problems—the numbers of children reported to the statutory authority, placed on orders and those removed from their homes. The *Concluding Observations* shared the Australian Federal Government's concern that child abuse and neglect is a major problem in Australia. Since 2002 there have been 13 separate state and territory government inquiries into child protection services across Australia.¹⁴²

15.3 Australia's federal system of government means that the statutory responsibility for investigating and responding to child abuse and neglect is a state and territory matter. There is, however, increasing recognition at both federal and state levels that child protection requires a comprehensive national approach that focuses on prevention. This has been marked by the development of the *National Framework for Protecting Australia's Children (2009–2020)*, endorsed by the Council of Australian Governments in April 2009. The framework is an important development which is underpinned by child rights principles, with the aim to ensure that Australia's children and young people are safe and well, a right enshrined in Article 19 of the *Convention*.¹⁴³

15.4 Australia's response to child abuse and neglect includes the development of the *National Framework*, the *National Plan to Reduce Violence against Women and their Children* (see section 15.1) and the controversial *Northern Territory Intervention*.

15.1 Preventing abuse and neglect

'We are concerned about violence in our local area and believe there needs to be more police to help us feel safe'

11-YEAR-OLD, NEW SOUTH WALES

15.1.1 The *Concluding Observations* recommended adequate protection for child victims of abuse and neglect and measures to prevent and combat child maltreatment.

15.1.2 The key measure Australia has taken in relation to prevention is the development of the *National Framework for Protecting Australia's Children (2009–2020)*.¹⁴⁴ It focuses on providing timely and universal support to all families (not just those deemed 'at risk') to prevent abuse and neglect and reduce the over-representation of Aboriginal children in the protection system, in line with Articles 2 and 19. One of the key programs under the framework, the *Common Approach to Assessment, Referral and Support* is a secondary prevention measure which aims to better equip those who work with children (including teachers, doctors and school counsellors) to untangle complex issues and sensitively respond to the needs of children. Its effective implementation will rely on close collaboration across government, practitioners and the community sector, as did its development.

15.1.3 The framework has set a target of 'a substantial and sustained reduction in child abuse and neglect in Australia over time'. A range of 29 indicators of change are being used to measure the extent to which the supporting outcomes are being achieved.¹⁴⁵

15.1.4 Family support services provide important services to 'scaffold' families where children are at risk and thereby try to prevent children from entering the child protection system. Shifting the balance in the child protection system is a slow and difficult process and the system still remains heavily geared towards the tertiary (crisis) stages with significant challenges in integrating programs for early intervention and family support. While funding for family support services has increased over the last five years or so, it still makes up only a small fraction (about 10 per cent) of that provided to the statutory child protection system and funding is growing more slowly than for the statutory services.¹⁴⁶ Expenditure on child protection and out-of-home care services was approximately \$2.5 billion across Australia in 2009–10. Out-of-home care services accounted for the majority (64.9 per cent, or \$1.7 billion).¹⁴⁷

15.1.5 Families with multiple problems such as substance abuse, domestic violence, mental health and disabilities continue to drive the increase in the numbers of children entering care, and the demand for resources and funding at the tertiary end of the system.

15.1.6 There are some good practice models such as the Newpin program,¹⁴⁸ the New South Wales Government's *Brighter Futures* program, Integrated Family Services in Victoria, Family Coaching Victoria Pilots and the Victorian Early Parenting Strategy (2010).¹⁴⁹ *Brighter Futures*, for example, is a targeted program for vulnerable families with children between birth to eight (with priority for families with children under three-years-old). A formal evaluation found that the program was effective for children in families who successfully completed it. It was less effective with families with drug and alcohol problems and domestic violence.¹⁵⁰

Recommendation 44: that family support services be offered from early in the antenatal period within a universal service framework (such as the health sector) to avoid stigmatizing families while providing necessary support to high needs families.

"Help break the cycle of abuse by creating a more child-friendly Australia"

17-YEAR-OLD GIRL, DARWIN, NORTHERN TERRITORY

"When I turned 10, my mum married a new guy who constantly belted me, even tried hanging me"

17-YEAR-OLD BOY, SPEAKING FROM A HOMELESS SHELTER IN PORT PIRIE, SOUTH AUSTRALIA

15.1.7 The *Concluding Observations* expressed concern about the exposure of children to high levels of domestic violence. According to the Australian Bureau of Statistics (2006) *Personal Safety Survey*, 49 per cent of men and women who reported violence by a current partner had children in their care at some time during the relationship, 27 per cent reported that these children had witnessed the violence. Recently, Australia introduced a *National Plan to Reduce Violence against Women and their Children* (the Plan) to address the situation.¹⁵¹

15.1.8 While both the Framework and the Plan refer to the need for greater community awareness around the causes of violence and abuse, neither refers to reform of the legal framework which preserves lesser protection for children than adults as victims of assault (for example, see section 13.1 on corporal punishment).

Recommendation 45: that the *National Framework for Protecting Australia's Children (2009–2020)* and the *National Plan to Reduce Violence against Women and their Children* be integrated and refined to apply a human rights approach both in their further development and implementation.

16 Separation from parents (Article 9), family reunification (Article 10) and children deprived of their family environment (Article 20)

16.1 Children in out-of-home care

16.1.1 The *Concluding Observations* expressed concern over the considerable increase in the number of children in out-of-home care. This continues to be a major concern and has been the focus of numerous government inquiries and the *National Framework for Protecting Australia's Children (2009–2020)*. Since 2005, the number of children in out-of-home care across Australia has increased by 51.5 per cent.¹⁵²

(a) Inadequacies of the current system

"My father left me when I was 2 and so I was put in a foster home where the punishment was a beating every night"

18-YEAR-OLD BOY, ADELAIDE, SOUTH AUSTRALIA

16.1.2 The Productivity Commission's *Report on Government Services (2011)* describes national performance indicators for out-of-home care as safety in out-of-home care, stability of placement, children under 12 years in home-based care, placement with extended family, placement in accordance with the Aboriginal Child Placement Principle, local placement, placement with siblings,

documented case plans, client satisfaction, expenditure per placement night and total expenditure.¹⁵³

16.1.3 Many of the inquiries have reported inadequacies in the care system: inappropriate placements of children; a shortage of care options; poorly supported home based carers; mental health issues exacerbated by (or caused in) care; poorer outcomes for young people in care than for the general population in terms of health, education, wellbeing and development; abuse and neglect of children in care;¹⁵⁴ Aboriginal children placed outside their communities; and inadequate preparation for young people leaving care for independent living.¹⁵⁵

16.1.4 Children in care are more likely to experience adversity and hardship in school with respect to social interactions, attention, anxiety, and aggression.¹⁵⁶ National research has found high rates of school absenteeism for children in care, with three quarters reporting having been suspended from school in the previous six months and 13 per cent excluded.

16.1.5 There is still no national data available on the reasons that children are placed in care.¹⁵⁷ The collection of quality data and the coordination of reporting under the *National Framework*, the National Standards and the *Report on Government Services* are currently 'under development'.

16.1.6 There is a lack of government attention to older children and adolescents. This is most evident in the 'buck-passing' between community services and youth justice authorities when children in need of care come into contact with the criminal justice system, the lack of adequate accommodation options for older children, and the abuse of children even after they have been the subject of care orders (see later in this section).

Recommendation 46: that Australia recommit to improving data collection on the reasons that children are placed in out-of-home care and that it continue to support the development of data collection and coordination of reporting under the *National Framework for Protecting Australia's Children (2009-2020)*.

(b) Standards

16.1.7 The *Concluding Observations* raised concern over the lack of stability and security of children in out-of-home-care and the inadequacies of medical care.

16.1.8 The Australian Federal Government has recently introduced *National Standards for Out-of-Home Care*, due to commence from July 2011.¹⁵⁸ They are intended to apply to formal care arrangements to improve children's access to health, education and training, and planning for transition from care. This is a commendable step. The need for such a framework is supported by consistent research that children in out-of-home care are more likely not to have adequate access to quality health services and education, an adequate standard of living and (notwithstanding their placement in care) protection from abuse and the provision of a safe and supportive environment.

Recommendation 47: that Australia apply the *National Standards for Out-of-Home Care* in a manner consistent with a child rights approach, including the use of mechanisms for accountability and the participation of children in care throughout all decision-making stages of the cycle in compliance with Article 12 of the *Convention*.

"What children and young people tell us they want is CERTAINTY—whatever the decision or placement; to know what is going on and be involved to the extent they wish and have capacity to do so. Kids want to be safe, to be stable and to be involved".¹⁵⁹

(c) Transition from care

"It was terrible. I was told a week before I turned 18 that I was leaving care"

19-YEAR-OLD GIRL, QUEENSLAND
IN CREATE FOUNDATION CONSULTATION

16.1.9 Recent research with 335 young people about to or having just left care found that nearly one in three of the young people said no-one had talked to them about leaving care.¹⁶⁰ Just over a third said that they had a leaving care plan or that one was being developed. A third of those who knew about their plan said they had little or no involvement. Their involvement is critical in making sure that these plans are current, relevant and 'owned' by the young person.

16.1.10 The needs and concerns of young people leaving care are one of the key areas of the *National Framework for Protecting Australia's Children (2009-2020)*. The voices of young people are being heard in the current development of the *Transitioning to Independence Action Plan*.

Recommendation 48: that the Australian Federal Government work with state and territory governments to ensure that young people are actively involved in planning for their transition from care.

Recommendation 49: that the Australian Federal Government work with state and territory governments to implement procedures ensuring that planning for a child's transitioning from care commences no later than 15 years of age, and that support should be provided until 25 years of age to ensure the phase in which the young person is gaining their independence is adequately covered.

Recommendation 50: that Australia utilise the findings of evidence-based research to define the most appropriate kinds and levels of support services. This will facilitate a more methodical approach in the monitoring and review processes in each of the different phases of the transitioning from care processes.

(d) Overrepresentation of Aboriginal children

16.1.11 The *Concluding Observations* expressed concern about the very significant overrepresentation of Aboriginal children in out-of-home care.

16.1.12 Aboriginal children remain overrepresented in all areas of the child protection system. As at 30 June 2010, Aboriginal children are:

- almost eight times as likely to be the subject of substantiated notification of abuse, neglect or harm;
- nine times more likely to be on a care and protection order; and
- almost 10 times more likely to be in out-of-home care.¹⁶¹

16.1.13 The initial *Northern Territory Intervention* in 2007 was justified by the then Australian Federal Government as a response to reports of alarmingly high rates of child sexual abuse in remote Aboriginal communities.¹⁶² The measures that were implemented, however, were largely unrelated to these concerns.

16.1.14 The 2010 Northern Territory Government Review Report *Growing Them Strong, Together* reported little progress and significant systemic issues remain unresolved.¹⁶³ This report called for increased funding for prevention services, support for collaboration, greater Aboriginal peoples' involvement and control of service delivery, and culturally appropriate support for Aboriginal families and systems and their communities.¹⁶⁴

(e) Aboriginal child placement principle

16.1.15 The Aboriginal Child Placement Principle states that when Aboriginal children are removed from their birth family, the preferred order of placement is first with their extended family, then their Aboriginal community, with other Aboriginal people, and lastly with a non-Aboriginal family. At 30 June 2010, 71 per cent of Aboriginal children in out-of-home care were placed with relatives, other Aboriginal care givers or in Aboriginal residential care.¹⁶⁵

16.1.16 The principle has been recognised at the federal level and is currently incorporated into the legislation of all states and territories and varies between jurisdictions. In South Australia, for example, the *Children's Protection Act* requires consultation with a 'recognised Aboriginal organisation' on a child's placement but does not set out the hierarchy of the principle as it does, say in New South Wales.¹⁶⁶

16.1.17 A number of successful community or NGO-driven programs have been developed to identify and/or facilitate appropriate placements for Aboriginal children.¹⁶⁷ The operation of these programs, such as Lakidjeka in Victoria, is supported by legislation in many jurisdictions requiring consultation with Aboriginal communities, although those communities have no say on the ultimate placement of children.

16.1.18 Increased flexibility in government procedures regarding child placement may increase the efficacy of these programs, reducing the need, quality and number of placements required. Greater cooperation between government agencies and program providers would allow for the further development of these programs. Crucially, Aboriginal access and use of services increases with the involvement of Aboriginal controlled services.¹⁶⁸

Recommendation 51: that Australia work to improve the accuracy of data collection in relation to placement of Aboriginal children in accordance with the Aboriginal Child Placement Principle.

Recommendation 52: that the Australian Federal Government work with state and territory governments to provide more culturally appropriate training and support for prospective carer families.

Recommendation 53: that Australia provide guidelines that require legislative and policy frameworks around the principle to include the requirement for consultation and cooperation with Aboriginal agencies in accordance with General Comment No. 11 (2009).

16.2 Children of prisoners

16.2.1 The *Concluding Observations* recommended that Australia strengthen measures to provide children of prisoners with support. Increasing numbers of people in Australian prisons, particularly women (up 60 per cent in the last decade and 5 per cent in the last year) means more and more children are dealing with the wide ranging impacts of parental incarceration.¹⁶⁹ Data on the precise numbers of children living with one or both parents in prison is not available but previous estimates suggest there is on average one child per female prisoner and two for every three male prisoners.¹⁷⁰

16.2.2 Children who have parents in prison frequently experience chaotic home environments, including separation from siblings and other support networks, as well as instability in their living arrangements (including homelessness in some cases). Children also face social stigma and often feel isolated, angry and confused. Children of prisoners are also three to six times more likely to exhibit violent behaviour and are disproportionately represented in clinical populations.¹⁷¹ Similarly, they are six times more likely to engage in offending behaviours themselves, unless interventions can be undertaken in a timely manner.¹⁷²

16.2.3 The Australian Federal Government and the Australian Capital Territory Government currently have legislation requiring courts to consider 'the probable effect' of a sentence on a convicted person's family and dependants.¹⁷³ However, these provisions will have no practical effect unless the case is one involving exceptional circumstances or extreme hardship.¹⁷⁴ Other states have no similar provisions.

16.2.4 NGOs in some states have developed innovative programs often using technology to assist the maintenance of parent-child relationships.¹⁷⁵ Such facilities should be extended to all other prisons in all states and territories.

16.2.5 The *Fourth Government Report* refers to a 'parenting program funded under the *National Crime Prevention Program*'.¹⁷⁶ This would appear to be a reference to a pilot program which was in operation up to June 2004, primarily through *Good Beginnings Australia*.¹⁷⁷ Although this program received positive evaluation, Commonwealth funding for it ceased in 2004 and responsibility was referred to state and territory governments. There is currently no consistent approach to funding and no assurance that all children of prisoners have access to support programs.

Recommendation 54: that Australia review all judicial and administrative arrangements where parents are incarcerated and separated from their children to ensure that such arrangements consider and minimise the impact on the person’s children.

Recommendation 55: that the Australian Federal Government work with state and territory governments to resource and support the implementation of programs which facilitate the maintenance of the relationship between children and their incarcerated parents, where it is in the child’s best interests to do so.

16.3 Unaccompanied humanitarian minors

16.3.1 The circumstances of unaccompanied humanitarian minors necessitates special measures by Australia to ensure that this vulnerable group of children realise their rights under the *Convention*, including Articles 9, 10 and 20. The Unaccompanied Humanitarian Minor Program provides support to humanitarian entrants under the age of 18 who arrive in Australia without their parents. This program is funded by the Department of Immigration and Citizenship (DIAC) and delivered through state and territory based child welfare agencies. There is currently no national framework to guide the delivery of this program—including the allocation of resources, consistent models of care and exit or transition plans.¹⁷⁸ There is also a lack of available assistance and information to enable these children to work towards the goal of family reunion; negotiating legislative hurdles makes this goal difficult to achieve.¹⁷⁹

Recommendation 56: that Australia increase resources for the Unaccompanied Humanitarian Minor Program in each state and territory to ensure they are adequately supported in the early stages of settlement.

Recommendation 57: that Australia develop a Memorandum of Understanding between all the state and territory governments to implement a coordinated national policy and legislative frameworks for the delivery of the Unaccompanied Humanitarian Minor Program. This should include a review of state and territory care based models and the legislative framework within which they operate.

Recommendation 58: that Australia review regulations under the Special Humanitarian Program so that a person only has to be under the age of 18 at the time of application, and not at the time of decision, to be eligible to reunite with family members under Split Family provisions and that Australia establish a mechanism for greater cooperation between the DIAC and unaccompanied humanitarian minors to facilitate more timely reunification of these children with their family.

17 Adoption (Article 21)

17.1 Each of the states and territories has separate adoption laws that comply with varying degrees with Article 21 of the *Convention*.¹⁸⁰ For example, only three of the eight jurisdictions require the consent of the adopted child (as of 12 years of age) prior to adoption¹⁸¹ and half the Australian states and territories restricts adoption rights to heterosexual couples, failing to place the best interests of the child as ‘the paramount consideration’ in the adoption process and raising concerns in relation to Articles 3 and 22 of the *Convention*.¹⁸²

17.2 Currently, New South Wales is the only state to have legislated that the child to be adopted is competent to instruct their legal representative.¹⁸³ South Australia and Tasmania’s legislation does not entitle adopted children to legal representation in adoption proceedings.

17.3 No Australian state or territory affords an adopted child the right to access prescribed information, including copies of original birth records, prior to the age of 18 years, without the consent of the child’s adoptive parents.

Recommendation 59: that the Australian Federal Government work with state and territory governments to ensure that all jurisdictions amend legislation as required in order to comply with Australia’s obligations under the *Convention*. Specifically, attention should be paid to provisions dealing with consent, access to legal representation in adoption proceedings and the right of same-sex couples to adopt where it is in the child’s best interests to do so.



Basic Health and Welfare

18 Children with disabilities (Article 23)

'Disability affects all different people around the world—it's about trying hard and working together so everyone can achieve their goals and ambitions. Everyone deserves a fair chance.'

DANNY, BOY WITH DISABILITIES¹⁸⁴

18.1 Australia's ratification of the *Convention on the Rights of Persons with Disabilities* in 2008 was commendable.

18.2 In 2008, the Australian Federal Government and state and territory governments signed a *National Disability Agreement (NDA)* to provide a cooperative approach to support Australians with disability.¹⁸⁵

18.3 In 2011, the Council of Australian Governments endorsed a *National Disability Strategy* that sets out a 10 year agenda for coordinated, across-government action for Australians with disability. This was produced after consultation with people with disabilities, family members and other carers who support people with disabilities, and experts in the field.¹⁸⁶ It aims to establish a high level policy framework to give coherence to, and guide government activity across mainstream and disability-specific areas of public policy. Although it does not contain a specific framework for children with disabilities, it includes priority areas that recognise differing needs through the stages of childhood into adulthood and adopts a rights framework.

18.1 National approach to data collection

18.1.1 The *Concluding Observations* expressed concern at the scarcity of data on children with disabilities and recommended a consistent national approach to the collection of data.¹⁸⁷

18.1.2 Under the *NDA*, \$10 million was committed over five years for disability research, data and evaluation. However there has been no commitment that data is collected in 'a way that allows for disaggregation [so as to identify] groups of children who are in need of special protection'.¹⁸⁸

18.1.3 Given the inadequacy of the existing evidence base, current resource allocation is considered to be deficient.

Recommendation 60: that Australia increase its commitment to the collection of disaggregated data on childhood disability, including specific information on children from Aboriginal and culturally diverse backgrounds, increase the level of formal, publicly accessible information on disability and disability services, and adopt the Disability Investment Group recommendation to: *'allocate \$30 million per annum under the new NDA to fund a National Disability Research Institute as a centre of excellence to lead and promote disability research in Australia.'*¹⁸⁹

18.2 Care and support

'I think families with disabled children need more support and access to free services and respite care for their kids'

14-YEAR-OLD GIRL AND YOUNG CARER TO HER TWO AUTISTIC SIBLINGS, DUBBO, NEW SOUTH WALES

18.2.1 The *Concluding Observations* encouraged Australia to undertake greater efforts to make available the necessary professional and financial resources for children with disabilities, especially at a local level.

18.2.2 In 2010, the Australian Federal Government engaged the Productivity Commission to undertake a feasibility study into a *National Disability Long-term Care and Support Scheme*.¹⁹⁰ In February 2011, the Productivity Commission released an Interim Report which concluded that the 'current disability support system is under-funded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports'.¹⁹¹ In such a system, children with disabilities miss out on crucial and timely early intervention services, supports to assist with life transitions and to prevent family or carer crisis and breakdown. The Productivity Commission recommends a transformational shift in funding, policy and service delivery through the establishment of a National Disability Insurance Scheme (NDIS). However, some suggest that the service delivery model recommended is not based on current evidence based practice,¹⁹² nor does it address important issues such as family support or service coordination. The Australian Human Rights Commission has argued that there should be a human rights framework for any new system and recommends that children with disability are able to express their views, with appropriate assistance if required, and that this should be a 'feature of the operation of institutions administering [the new system]'.¹⁹³

"Managing my school work is extremely hard and most of the time I can't focus in school because of everything going on at home"

13-YEAR-OLD GIRL AND CARER TO HER TWO AUTISTIC SIBLINGS, DUBBO, NEW SOUTH WALES

18.2.3 Ensuring that a new disability support system respects the rights of children will mean that children with disabilities should have the right to live and grow up with their families and with appropriate support. Effective support for the family environment will mean that the rights and needs of siblings of children with disabilities should also be considered. These children often experience higher rates of depression whether or not they have roles as carers in the family.¹⁹⁴ They can experience a range of stresses due to the lack of support provided to the child with disabilities, their family experience and social stigma. They may feel overlooked and isolated within their family as their parents struggle to support the child with disabilities.

Recommendation 61: that Australia develop a national disability insurance scheme which ensures an evidence based effective, equitable and integrated planning and service strategy for all children with disability using human rights principles, and which is developed and implemented in consultation with families, children with disabilities and peak bodies representing those children. The new scheme should be child and family focused taking into account the needs and rights of all children in the family.

Recommendation 62: that Australia commit to addressing long waiting times, inflexible respite service models and the crisis driven approach that currently characterises respite service models.

18.3 Sterilisation and children with disabilities

18.3.1 Sterilisation remains an issue for children with disabilities (see section 13.2).

19 Health and health services (Article 24)

19.1 Overview of health disparity and the role of disadvantage

19.1.1 Generally, Australian children enjoy relatively good physical health, with mental health being the greatest concern in the mainstream population. However, the following groups of children are less likely to be realising their right to health under Article 24 of the *Convention*:

- Aboriginal children;
- disadvantaged children;¹⁹⁵
- children living in rural and remote areas;
- children in out-of-home care; and
- children with a disability.¹⁹⁶

19.1.2 The first three of those groups are closely related, with a larger population of Aboriginal children living in rural and remote areas and people in rural and remote areas experiencing a higher level of disadvantage than their urban counterparts.¹⁹⁷

19.1.3 Economic and social disadvantage plays an important role in determining health status so it is critical that the Australian Federal Government address this disadvantage as well as the health problems themselves. This includes a child's rights under the *Convention* to an adequate standard of living (housing in particular), social security and education.¹⁹⁸

19.1.4 The link between disadvantage and health manifests in teenage pregnancies. Children born to teenage mothers often experience lower educational levels, higher rates of poverty and other poorer 'life outcomes'. In 2006, five per cent of all Australian births were to teenage mothers. There were five times more Aboriginal than non-Aboriginal teenager mothers. Teenagers living in remote areas were also five times more likely to give birth than those living in urban areas.¹⁹⁹

19.2 The gap in health status between Aboriginal and non-Aboriginal children

19.2.1 The *Concluding Observations* expressed concern about the disparity in health status between Aboriginal and non-Aboriginal children.

19.2.2 That disparity continues, highlighted by the following key areas of concern:

- the infant mortality rate for Aboriginal children is three times that for non-Aboriginal children;²⁰⁰
- Aboriginal mothers are twice as likely to bear a low birth weight infant compared with non-Aboriginal mothers, and the gap is widening.²⁰¹ Babies born with a low birth weight are at a greater risk of dying during the first year of life and are prone to ill health during childhood;²⁰²
- the rate of hearing loss conditions for Aboriginal children is more than three times the rate of non-Aboriginal children.²⁰³ An estimated 30 per cent to 80 per cent of Aboriginal children of school age suffer from some hearing loss;²⁰⁴
- rates of skin infection, serious respiratory tract infection, gastroenteritis, genito-urinary infection and rheumatic fever are still much higher among Aboriginal children than in other children of the same age; and²⁰⁵
- almost one in seven Aboriginal Australians report being unable to see a doctor when needed.²⁰⁶

Mother and child health

19.2.3 The health of Aboriginal children, including low birth weight, is inextricably linked with the health of the mother. Socio-economic disadvantage (see section 19.3) also plays a role, with education, employment, income and housing all significant determinants (for example overcrowding affects 14 per cent of Aboriginal households). Maternal smoking, substance abuse and poor nutrition are all risk factors for both low birth weight and infant mortality. In 2006 Aboriginal mothers were more than three times as likely to report smoking during pregnancy as non-Aboriginal mothers.²⁰⁷

Best practice: The Mums and Babies program was established in Townsville in 2000 in an attempt to address the high rates of preterm births, low birth weight and infant mortality amongst the Aboriginal population. It did this by creating a family-friendly environment, staffed predominately by Aboriginal women, which Aboriginal mothers would feel comfortable attending during pregnancy and with their young children. It reflects an acknowledgement that Aboriginal mothers often feel uncomfortable attending mainstream health services.²⁰⁸ From 2000 to 2008, there was a reduction in low birth weight babies from 16 per cent to 11.7 per cent and perinatal deaths dropped from 58 per thousand to 22 per thousand.²⁰⁹

Recommendation 63: that Australia establish mother and baby clinics throughout Australia, in consultation with local Aboriginal peoples, so that every Aboriginal mother has access to a clinic.

Hearing loss

19.2.4 The main cause of deafness in children is infections to the middle ear left untreated or inadequately treated. Hearing loss is a key concern as it can lead to linguistic, social and learning difficulties and behavioural problems in school. This affects educational achievement with lifelong consequences for employment, income and social success.²¹⁰ Hearing loss also increases the likelihood that Aboriginal children come into contact with the criminal justice system.²¹¹ Deaf children are more vulnerable to neglect, emotional, physical, and sexual abuse than children in the general population.²¹²

19.2.5 Addressing the concerns raised below in relation to the implementation of the *Closing the Gap* policy is also expected to address the primary cause of deafness in Aboriginal children.

19.3 Closing the gap in health outcomes for Aboriginal children

19.3.1 Too many Aboriginal children are still not able to realise their right to health like other Australian children, in breach of Articles 2, 6 and 24 of the *Convention*. Australia has recognised the health disparity between Aboriginal and non-Aboriginal children, and has made a substantial financial commitment to addressing the challenge. Specifically, under the *Closing the Gap* strategy, the Australian Federal Government has committed to halving the mortality rates for Aboriginal children within a decade (by 2018) and closing the life expectancy gap (of all Aboriginal people) within a generation (by 2030).²¹³ It has provided \$1.6 billion in funding to achieve these targets.²¹⁴

19.3.2 While we believe that the policy framework of *Closing the Gap* is sound and that the budgetary allocation has the potential to achieve significant improvements in health outcomes for Aboriginal children, the bureaucratic implementation process may result in outcomes falling far short of the policy's potential.²¹⁵ The two key downfalls of the implementation have been the lack of a comprehensive, long-term plan of action and the lack of a genuine partnership through which Aboriginal people are consulted on the best ways for better health services to be delivered. This has resulted in a piecemeal approach to funding allocation and service delivery which often fails to recognise that mainstream service delivery solutions are not always effective in delivering improved health services to Aboriginal children.

19.3.3 The inequality in health status between Aboriginal and non-Aboriginal Australians is exacerbated by inadequate access to preventative health measures such as primary health care, health promotion, early screening and diagnosis. As documented by the UN Special Rapporteur, in addition to the lack of services on offer, Aboriginal Australians face other obstacles to access health services, such as 'language and cultural barriers, distance of services, lack of transportation, high service costs and Western-dominated models of care'.²¹⁶ These obstacles also contribute to the inability for follow up care to be provided for patients with chronic illnesses after being discharged from hospital.²¹⁷ If these impediments to access are to be effectively addressed, Aboriginal peoples, including children, must be an integral part of the policy and program delivery and monitoring cycle.

Recommendation 64: that Australia adopt the recommendations made by the UN Special Rapporteur on the Right to Health and develop a long-term, comprehensive plan of action to achieve equality in health status and health services for Aboriginal children by 2030 under the framework of *Closing the Gap*. This must be done with the full participation and partnership of Aboriginal children and their communities and representative bodies, recognising that mainstream health service delivery is often not the answer to better health outcomes for Aboriginal children.

19.4 Sexual health

19.4.1 The *Concluding Observations* expressed concern for HIV/AIDS rates in Aboriginal persons and encouraged the establishment of campaigns to raise awareness.

19.4.2 Current national data indicates that the rates of HIV/AIDS in the Aboriginal population may be decreasing. The data show that rates of HIV/AIDS diagnoses per capita among Aboriginal peoples have declined from 4.7 in 2000–2004 to around 3.9 in 2005–2009, while the rates in the non-Aboriginal population has increased slightly, from around 2.9 in 2000–2005 to 3.6 in 2005–2009.²¹⁸

19.4.3 A concerning trend is the increase in the rates of Sexually Transmissible Infections (STIs) among young people.²¹⁹ In 2009, the 15–24 year age groups accounted for 80 per cent of the annual number of diagnoses of Chlamydia, and 57 per cent of all notifications in 2008 were for young Australians with Chlamydia, Donovanosis, Syphilis and Gonococcal infections.²²⁰ Only approximately two thirds of young people use condoms, and knowledge about STIs other than HIV/AIDS is relatively poor.²²¹

19.4.4 Aboriginal peoples and people in the most socio-economically disadvantaged areas have much higher rates of infection for STIs, except for HIV/AIDS.²²² Substantially higher rates of Chlamydia and Gonorrhoea were recorded in the Aboriginal population in 2010.²²³

Recommendation 65: that Australia work across all jurisdictions to increase education programs amongst secondary school students about sexually transmitted infections, and increase efforts to promote protected sex.

19.5 Mental health

“Mental health is a massive issue that has been ignored too long in a country that is meant to be at the forefront of medicine”

18-YEAR-OLD GIRL, PERTH, WESTERN AUSTRALIA

19.5.1 The *Concluding Observations* expressed concern that mental health problems were increasing. The latest national study on mental health in children shows that the most prevalent burden of disease among children from birth to 14 years (almost one quarter of the burden of disease) and young people 15–24 years (almost half) was attributed to mental disorders.²²⁴

19.5.2 In November 2009, the Australian Federal Government launched its fourth *National Mental Health Plan (2009–2014)*.²²⁵ Although the Plan lacks specific frameworks for children and young people, it proposes a number of

actions targeted towards them, including the expansion of accessible community based youth mental health services. The implementation of such actions require adequate resourcing, careful consultative planning and effective implementation.

19.5.3 Currently, while one in four young people experience a mental disorder, over 70 per cent do not seek help.²²⁶ In December 2010, the Inspire Foundation together with the Federal Minister for Mental Health hosted the only consultation specifically for young people. The resulting report identified that young people consider mental health as important as physical health, and the recommendations made by the young people have been adopted by this report.

(a) Services for young people

“The violence in my childhood has led to me having schizophrenia”

18-YEAR-OLD MALE, HOMELESS SHELTER IN PORT PIRIE, SOUTH AUSTRALIA

19.5.4 The level of funding for mental health continues to be substantially well below other Western countries despite the growing body of evidence of the link between mental health and social problems, and between mental health and physical health problems. For those children and young people for whom services are sought, many do not receive timely access to services.²²⁷

19.5.5 Better understanding and funding support are required for alternative models of service delivery that provide more effective access and support for children in their different stages of development. The Australian Federal Government’s *MindMatters* school education program and the *National Youth Mental Health Foundation Drugs and Mental Health Initiative (headspace)* are important steps in the right direction for providing services for children and young people across Australia.²²⁸ Services (including screening for disorders) need to be more comprehensive and provided through a range of modalities including face-to-face, telephone and internet based approaches.²²⁹

19.5.6 Significant opportunities (and challenges) are provided by information and communication technologies. 79 per cent of children between the ages of 5 and 14 use the internet.²³⁰ There is a case for greater use of technology to provide support and services to children and young people for mental health including those who are at particular risk or experience barriers to access.²³¹

(b) Mental health in disadvantaged groups of children and young people

19.5.7 Particular groups of children are at higher risk of mental health problems. These include Aboriginal children, children from newly arrived, refugee and migrant backgrounds, same-sex attracted, gender questioning or gender diverse young people, young carers, children with a disability and children in rural, regional and remote areas.²³² All these groups can experience stigma and social isolation. There are some similarities but also differences in needs, risks and protective factors for these groups.²³³ Effective access to health services and better community education on tolerance and support for diversity and mental illness is crucial in addressing this disadvantage.²³⁴

19.5.8 A commendable example is the *Cobaw Community Health Service Rural Victorian Youth and Sexual Diversity Project*, which has a suicide prevention program for same-sex attracted and gender questioning young people in rural Victoria.

Recommendation 66: that Australia undertake further consultations with children and young people for the development and implementation of better outcomes in mental health.

Recommendation 67: that Australia consider the role of peer support in developing appropriate services; and develop national curricula and community education to reduce stigma and promote early access to support.

Recommendation 68: that Australia invest in early intervention services, training and development of teachers, health professionals and others who work with children and young people.

Recommendation 69: that Australia support the development of specialised, age appropriate e-mental health services and targeted strategies and services to different groups, particularly those at high risk of mental health problems.

Recommendation 70: that Australia provide necessary subsidies for costs of services so cost is not a barrier to access.

(c) Youth suicide

19.5.9 The *Concluding Observations* expressed concern over the high rate of youth suicide, especially among Aboriginal children and homeless adolescents.

19.5.10 Suicide deaths still comprise a much higher proportion of total deaths for young people relative to older groups.²³⁵ In 2008 almost a quarter of all male deaths aged 15-24 years were due to suicide. Aboriginal youth suicide rates are estimated to be three to five times higher than those for non-Aboriginal young people.²³⁶

19.5.11 Increased assistance for schools to identify effective anti-bullying programs, better training for teachers and more available counselling services are necessary to develop better preventative and supportive measures for school age children and young adults.²³⁷ This includes increased funding for an active emphasis on people at elevated risk of suicide as well as maintained supportive measures—for instance, in the post-discharge phase for people who have self-harmed or attempted suicide.²³⁸

19.5.12 Inability to access suicide intervention and prevention programs continues to be a problem for remote Aboriginal communities and the system employed to monitor suicidal youths or youths at risk of suicide across Central and Western Australia is inadequate.²³⁹ There are, however, examples of good practice such as the *Yiriman Project* in Western Australia and the *Something Better Project* in Queensland, where community involvement has played a large role in the success of the program.²⁴⁰

Under reporting

19.5.13 The Australian Bureau of Statistics has not reported suicide for people under the age of 15, which is likely to result in the under reporting of suicide deaths.²⁴¹ Other sources indicate an increase in suicides in children under 14-years-old in some Aboriginal communities.²⁴² The Senate Community

Affairs Reference Committee has recommended improving collection of data for attempted and completed suicides for children under 15 years of age.²⁴³

Recommendation 71: that Australia improve collection of data for attempted and completed suicides particularly for children under the age of 15.

Recommendation 72: that Australia address the concern raised in the Committee's *Concluding Observations* by providing for better research, support and evaluation of suicide prevention programs for children and young people.

19.6 Other health issues

(a) Nutrition

19.6.1 The *Concluding Observations* expressed concern about the nutrition of children. In 2009, almost a quarter of all children aged 5–17 years were overweight or obese, while Aboriginal peoples in remote areas continue to suffer from poor nutrition, often due to logistical and price barriers in accessing fresh fruit and vegetables in those areas.²⁴⁴ We note the Australian Federal Government's efforts to address the high incidence of obesity.²⁴⁵

(b) Immunisation

19.6.2 Australia's immunisation rate is below the target of 90 per cent to achieve herd immunity for most vaccine preventable diseases.²⁴⁶ Immunisation rates are relatively constant across different socio-economic groups and areas of remoteness, and there is little difference in immunisation rates between Aboriginal children and other children.²⁴⁷ We acknowledge the Australian Federal Government's efforts to increase rates of immunisation and encourage the continuation of these efforts.²⁴⁸

(c) Oral hygiene

19.6.3 Although Australia compares favourably internationally on rates of child tooth decay, these have been increasing over recent years.²⁴⁹ In 2008 the Australian Federal Government introduced the Medicare Teen Dental Plan to help with the cost of an annual preventative dental check for teens aged 12–17 years who are receiving government benefits individually or as part of a family.²⁵⁰ There are no statistics available to determine the impact of this program.

(d) Passive smoking

19.6.4 The Australian Federal Government has announced its intention to legislate for plain paper packaging of all tobacco products by 1 July 2012.²⁵¹ This measure is welcomed as it seeks to reduce the impact of passive smoking, which has been identified as increasing the risk of stillbirth threefold.²⁵²

Recommendation 73: that Australia continue its efforts in addressing the high incidence of obesity, achieving the target immunisation rate of 90 per cent, increasing the accessibility of dental services for children and decreasing the impact of passive smoking on children.

19.7 A child rights approach to health—best practice

19.7.1 We commend the development by the health sector of the *Standards for the care of children and adolescents in health services* and the *Charter for children and young people's rights in healthcare*.²⁵³ These documents are underpinned by the *Convention* and provide best practice examples of a child rights-based approach to policy development. They recognise the unique needs and vulnerabilities of children requiring health care; for example the standards include requirements to accommodate children separately from adults, facilitate family-centred care and provide avenues for play, leisure and education for children receiving hospital care.

19.7.2 Building on this approach, research has found that concerns about confidentiality are one of the key barriers for young people to access health care.²⁵⁴ This insight from young people can be used to develop better training for health professionals and contribute to better health outcomes for children.

Recommendation 74: that Australia support the implementation of the *Standards for the care of children and adolescents in health services* and the *Charter for children and young people's rights in healthcare* and use these as examples of best practice to be applied in all policy development.

Recommendation 75: that Australia appoint a Chief Paediatrician to advise the Australian Federal Government on strategies needed to comply with the *Standards for the care of children and adolescents in health services*.

Recommendation 76: that Australia support the implementation of mandatory training in child rights for all health professionals as recommended by the UN Special Rapporteur on the Right to Health.²⁵⁵

20 The right to benefit from social security (Article 27)

20.1 Family assistance payments

20.1.1 Social security is principally the responsibility of the Australian Federal Government. Family assistance payments are made to 'help with the costs of raising children' and include a 'Baby Bonus' (paid for 26 weeks from birth or adoption or 'Paid Parental Leave' (18 weeks from birth or adoption), Family Tax Benefit (until a dependent child is 21 years or 24 years if a student) and Child Care Benefit or Rebate.²⁵⁶

20.1.2 Generally, these payments and rebates fall short of the actual costs of rearing children and are not determined on the basis of actual need, which varies over the period of childhood.²⁵⁷ In 2006, changes to parenting payments were introduced that means single parents now lose the payment when their youngest child turns eight and partnered parents no longer qualify for the payment when their youngest child turns six.²⁵⁸

20.1.3 The Australian Federal Government has announced plans to increase the maximum payment rate of Family Tax Benefit Part A by more than \$150 per fortnight for young people aged 16–18 who are in school or an equivalent vocational qualification. The new rates will apply from 1 January 2012.

20.2 Payments to children and young people

20.2.1 There is no entitlement to social security benefits for children under the age of 16 years (15 years if 'living independently').²⁵⁹ The benefit paid to children above these ages is termed 'Youth Allowance' and is conditional on an 'activity' test (looking for full time work or in education or training). This test was further restricted in 2009 when the Australian Federal Government announced its '*Compact with Young Australians*'.²⁶⁰ With the aim of increasing engagement in education and training, a National Youth Participation Requirement was introduced (see section 22), which provides that a young person under 21 is not eligible for Youth Allowance unless in education, training or employment. An independent review of the new compliance framework has proposed that where a young person has been actively looking for work it may be more appropriate for them to continue to do so (at least in the short term) than to be forced back into education or training 'for which they are unsuited or unready'.²⁶¹ As yet the changes have not had any significant impact on reducing youth unemployment.²⁶²

20.2.2 The rate of Youth Allowance is significantly less than the equivalent allowance for a person over 21 years of age, and falls far short of the generally accepted poverty line figure in Australia.²⁶³

20.2.3 In the last decade, the old age pension has increased in real terms by 20 per cent, while Youth Allowance has increased by 0.5 per cent.²⁶⁴ Youth Allowance is paid at different rates for dependent and independent children. The criteria for satisfying the test of independence is not based on actually living away from home but more narrowly as 'unable to live at home due to extreme family breakdown, violence in the home, or serious threats to your health or well-being'. This test is too narrow and its strict application can leave vulnerable young people in difficult situations including lack of access to housing or social security benefits.²⁶⁵

Recommendation 77: that Australia review all benefits to and for children and young people to ensure compliance with child rights principles, to align these benefits with need and to remove unjustified discriminatory features.

20.3 Income management

20.3.1 One of the measures introduced by the *Northern Territory Intervention* was a scheme of quarantining and controlling social security payments to members of Aboriginal communities in the Northern Territory.²⁶⁶ The Australian Federal Government has now extended the scheme across all of the Northern Territory and it has introduced a scheme for certain groups in Western Australia and Queensland.²⁶⁷ These restrictions could be imposed on all social security recipients in those communities, or could be applied to recipients Australia-wide on the basis of child protection notifications or school enrolment and attendance.²⁶⁸ The discriminatory nature of the policy is discussed at section 4.1(b).

20.3.2 The stated aims were to limit the use of benefits for substance abuse and gambling, ensure benefits were spent on 'priority needs' (including food, clothing, housing, healthcare, child care and education) and promote care and education for children. Fifty per cent to 100 per cent of different benefits could be restricted to 'priority need' expenses.²⁶⁹

20.3.3 Despite the magnitude of this policy, the Australian Federal Government has not implemented any mechanism to collect data and monitor the impact of income management. We note that anecdotally some families have welcomed the income support measures. This highlights the need for a nuanced and contextual approach which might allow for a voluntary scheme, rather than the mandatory blanket approach that is in place.

Recommendation 78: that Australia repeal the scheme or review and replace the scheme with provisions for voluntary arrangements, or if the scheme remains in place, that Australia institute a proper evaluation based on data and measurable outcomes.

21 The right to an adequate standard of living (Article 27)

21.1 Housing

"I think there should be more shelters for homeless people"

13-YEAR-OLD BOY WITH EXPERIENCES IN HOMELESS SHELTERS AND IN JUVENILE DETENTION, ADELAIDE, SOUTH AUSTRALIA

21.1.1 Child and youth homelessness remains a prevailing social problem in Australia. Almost half the people seeking specialist services for homelessness in Australia are under the age of 18.²⁷⁰ Reports show that shelters and other supported accommodation services are stretched to capacity and are forced to turn people away.²⁷¹

21.1.2 This is despite efforts by governments to reduce the incidence of homelessness, investing significantly in increasing public and community housing and supporting research into addressing the root causes of homelessness.²⁷² The *Concluding Observations* recommended measures to address the urgent needs and rights of homeless children be intensified.²⁷³

Recommendation 79: that Australia improve the coordination and integration of services that intervene early and stop young people becoming homeless.

21.1.3 Much progress needs to be made in addressing the absence of children's voices from the debate on child homelessness.²⁷⁴ Active participation of children in reform would foster a greater understanding of the causes and effects of childhood homelessness, provided the impetus is childhood participation and not merely a perpetuation of power imbalances between children and adults (embodied in agencies and practitioners).²⁷⁵

21.1.4 There remains a lack of recognition that children can experience homelessness differently from adults, often as children fleeing conflict with single parents or as teenagers escaping family conflict alone. Of the second group, there are further sub-groups.²⁷⁶ Each group has different needs and public policy has not always recognised this clearly enough to build appropriate responses.²⁷⁷ This area requires further investment in research, consultation, evaluation and ultimately implementation in service policy and practice.²⁷⁸

21.1.5 For children accompanying adults, public housing is one option. Despite recent investment, historically there has been a

public housing deficit, with 47,413 applicants on the waiting list for public housing as of June 2009.²⁷⁹ The waiting list for public housing is reportedly up to 10 years in some states.²⁸⁰

21.1.6 For older children on their own, public housing is less commonly a viable option as they often seek temporary options that can accommodate their transition to independent living. Attention is given to various models such as foyers, rooming houses, and support programs.²⁸¹ The investment in these models is slower and fails to keep up with the commitment to public housing stock.

21.1.7 The UN Special Rapporteur on Adequate Housing commented on the lack of commitment to a more comprehensive approach to addressing homelessness and noted that poor housing conditions hinders the enjoyment of other rights which Australia has committed itself to protecting, including the right to health, education, safety, public participation, exercise of civil and political rights, access to justice and the right to be free from discrimination.²⁸²

21.1.8 The Australian Federal Government has also failed to provide culturally appropriate housing services to reflect the specific needs of different groups. For example, in New South Wales, most public housing contains one or two bedrooms and is designed to house up to four people (including children).²⁸³ This does not acknowledge the cultural living practices of Aboriginal Australians who belong to large kinship networks and have obligations towards extended family members.²⁸⁴

Recommendation 80: that Australia review and renew its efforts to address the homelessness of children and young people, with a commitment to the development and implementation of a framework built on the specific experiences and needs of children and young people and with particular strategies for Aboriginal children, children from newly arrived communities, children leaving care, children in regional and remote communities, same-sex attracted or questioning or gender diverse children.

Recommendation 81: that Australia improve mainstream services so that they are more responsive to the needs of young people who are at risk of homelessness. Services provided by the education, income support, health system, disability service system and employment systems need to be able to identify where young people are at risk of homelessness and refer them to other useful services that can provide appropriate support to stop them becoming homeless.

21.1.9 Barriers to income support of children and young people are discussed at section 20.2.

21.2 Adequate standard of living amongst vulnerable groups

“My Mum and I had to move to Perth. We had nowhere to stay so we lived in a car”

17-YEAR-OLD ABORIGINAL BOY, PERTH, WESTERN AUSTRALIA

21.2.1 The *Concluding Observations* expressed concern about the inadequate standard of living of Aboriginal children and children living in rural areas. The Committee recommended that Australia bolster its efforts to develop and implement policies that raise the standard of living of Aboriginal children and ensure their access to culturally appropriate services.²⁸⁵

Aboriginal children

21.2.2 Aboriginal peoples generally are significantly more likely to experience homelessness than non-Aboriginal Australian.²⁸⁶ Aboriginal Australians are also significantly more likely to live in overcrowded housing conditions.²⁸⁷ Overcrowding is identified as a major factor affecting Aboriginal people’s physical and mental health as are the social and schooling disadvantages for Aboriginal children.²⁸⁸

21.2.3 The Australian Federal Government has committed additional funding to housing reforms for Aboriginal Australians.²⁸⁹ In particular, the *Closing the Gap* strategy prioritises provision of habitable housing as well as providing a broad policy framework for improving socio-economic conditions for Aboriginal Australians.²⁹⁰ However, the Australian Federal Government’s initiatives are widely criticised for undermining notions of self-determination and Aboriginal community control of land, and the Strategic Indigenous Housing and Infrastructure Program, aimed at increasing public housing, has been plagued by delays.²⁹¹

Children from newly arrived communities

21.2.4 The risk of homelessness for young people from refugee backgrounds and newly arrived communities is estimated to be up to 10 times higher than for the general population.²⁹² Access to safe, secure and affordable housing is central to social inclusion and the ability to settle successfully in a new country. This group of young people also face particular barriers—such as language and culture—to accessing housing and homelessness services.

Children living in rural areas

21.2.5 Adequate childcare services are unavailable in many rural communities.²⁹³ Moreover, there is a lack of safe housing in rural areas which forces women who are victims of domestic violence to stay in inadequate housing conditions with their children.²⁹⁴

Children leaving state care

21.2.6 Young people who have been in care are overrepresented in Australia’s homeless population.²⁹⁵ One cause is that young people leaving care are not appropriately supported as they adjust to independent living. Broader social trends indicate that young people are leaving their parental home later (82 per cent of 18 and 19-year-olds were still living with their parents in 2009), with financial considerations playing a significant role in their decision-making.²⁹⁶ Children transitioning from care are not afforded this safety net. For many children in care, formal state care ends abruptly between the ages of 16 and 18 and those children are left to manage the move into new accommodation, leaving school and becoming financially independent often around the same time, and at a younger age than their peers.²⁹⁷ Other concerns relating to transitioning from care are raised at section 16.

21.3 Developing measures of adequate standard of living

21.3.1 The *Concluding Observations* noted that Australia did not have an official poverty line and recommended that Australia develop adequate measures to ensure the impact of poor living conditions is appropriately considered.²⁹⁸ Australia still does not have an official poverty line.

Recommendation 82: that Australia commit to the development of more comprehensive measures of standard of living in data collection and research for use in policy development.

Recommendation 83: that Australia, by considering the full range of recommendations raised in this report, further its efforts to address the current inequalities that exist in the standard of living of Australia's most disadvantaged and marginalised children.

THEME VII

Education, Leisure and Cultural Activities

22 Education, including vocational training and guidance (Articles 28 and 29)

22.1 The majority of Australian students are afforded excellent opportunities in education. However, there are specific groups of children who are not always afforded the same educational opportunities as other students, denying the capacity to fulfil their potential. These groups include:

- Aboriginal children;
- disadvantaged children;
- children from refugee and newly arrived backgrounds;
- children in out-of-home care; and
- children with a disability.

22.2 Legislation in most states and territories makes school attendance compulsory at least from ages six to 16 (generally) and around 98.8 per cent of children are enrolled in school.²⁹⁹ However, a national rate for school attendance cannot currently be provided due to lack of consistency of data between states and territories and across school sectors.³⁰⁰ Despite enrolment rates, thirty per cent of Year 9 students possess only basic literacy skills,³⁰¹ which suggests that many children, particularly from those groups identified above, are not having their specific education needs met.³⁰²

22.1 Aboriginal students

22.1.1 The *Concluding Observations* acknowledged Australia's efforts to address concerns relating to the education of Aboriginal children, while highlighting continued concern in relation to the limited access of Aboriginal children to education compared with non-Aboriginal children, a concern with respect to Article 28 of the *Convention*. Attendance,³⁰³ literacy³⁰⁴ and attainment levels³⁰⁵ for Aboriginal students continue to be significantly lower than for non-Aboriginal students. The *National*

Indigenous Education Action Plan 2010–2014 has still not been signed off by the Council of Australian Governments.

22.1.2 Under the *Closing the Gap* strategy, the Australian Federal Government developed key education and health targets. These included:

- ensuring access to early childhood education for all Aboriginal four-year-old children in remote communities by 2013;
- halving the gap in reading, writing and numeracy achievement for Aboriginal children by 2018; and
- halving the gap for Aboriginal students in Year 12 or equivalent attainment rates by 2020.³⁰⁶

22.1.3 In addition, the *National Partnership Agreement on Indigenous Early Childhood Development* between all levels of government commenced in 2009. A key element of this agreement is the establishment of 10 integrated 'Children and Family Centres' in Queensland by mid-2012.³⁰⁷ The centres aim to provide Aboriginal families residing in under-serviced areas with access to integrated education, parenting and family support and child and maternal health services.³⁰⁸

22.1.4 While initiatives like this have had some success, our consultation reveals that many Aboriginal children—for example those living in townships around Alice Springs—still do not have access to regular, culturally appropriate early childhood education.³⁰⁹

Bilingual Education

22.1.5 Children who speak languages other than English are vulnerable to non-enrolment, poor attendance, repetition and are less likely to complete Year 12. Primary education programs that teach students in their native language allow students to effectively develop literacy and numeracy skills. Research shows that the most productive method of teaching Aboriginal children English is through the use of bilingual models of education, where students acquire literacy skills which are transferred and applied to the learning of English.

22.1.6 Bilingual education is also valued by local communities because it ensures the survival of languages and because it provides an honoured place for Aboriginal languages in the curriculum and an honoured place for Aboriginal teachers, an important consideration under Article 30 of the *Convention*.

22.1.7 The Northern Territory Government has a policy of compulsory English language instruction for the first four hours of each school day. This policy 'shows no respect for Indigenous languages and cultures' and moreover, runs counter to the rights expressed in the *United Nations Declaration on the Rights of Indigenous People*.³¹⁰ Different communities may need different models of education.

Recommendation 84: that the Australian Federal Government work with state and territory governments in committing to the protection and promotion of, and adequate funding for, bilingual models of education.

Recommendation 85: that within the *Closing the Gap* policy framework, the Australian Federal Government work with state and territory governments to ensure that individual Aboriginal education strategies are founded on previous policy success, that a long-term approach is taken and that genuine partnerships are fostered between Aboriginal communities, the education sector, community organisations and professional groups such as social workers, researchers, health workers and police.

22.2 Early childhood development

"I wish everyone was my friend"

SIX-YEAR-OLD GIRL, ONSLOW, WESTERN AUSTRALIA

22.2.1 As part of the *National Early Childhood Development Strategy*, the *National Early Years Learning Framework* was endorsed by Council of Australian Governments on 2 July 2009. It is the first nationally endorsed learning framework for early childhood and represents a significant development in early childhood policy. However, access to quality inclusive early childhood education and care is still difficult for many families for a range of reasons. These include inadequate training for staff, limited funding and inclusive practices. Socio-economic disadvantage also plays a role.

22.2.2 The Australian Early Development Index (AEDI) is a population based measure of child development that enables communities to assess how children are progressing by the time they reach school age.³¹¹ The first national rollout of the AEDI took place in 2009, with more than 260,000 children in their first year of formal schooling taking part.³¹² The data revealed social disparity in access to early childhood education—86 per cent of children from the most advantaged communities attended some type of early education program (kindergarten or child care) prior to starting school, compared with only 75.6 per cent of children from the most disadvantaged communities.³¹³

22.2.3 Children living in very remote communities, as well as Aboriginal children and those from language backgrounds other than English, were also less likely to have attended a preschool program.³¹⁴ The Queensland Commission for Children and Young People and Child Guardian observes that 'while the vast majority of children were making good progress in adapting to school, significant proportions were found to be developmentally

vulnerable in a range of domains'.³¹⁵ It is evident that despite considerable government investment, 'universal services' are still not engaging with the most disadvantaged families because of various financial, logistic and/or cultural barriers.

Recommendation 86: that Australia commit to developing specific guidance around inclusive practices and tiered interventions for the use of the *National Early Years Learning Framework* with children with developmental delays and disabilities.

Recommendation 87: that Australia ensures that all Australian children enjoy the right to an early childhood education consistent with the *National Early Years Learning Framework*.

Recommendation 88: that Australia ensure that early childhood services are adequately funded to ensure that the needs of each child are met and that adequate subsidies are provided to support inclusion of children with disabilities.

22.3 Children with disabilities

22.3.1 Many families of children with disabilities believe that their children have limited opportunities to be enriched and extended through education and the present system is 'awash with low expectations and standards for students' with disabilities.³¹⁶ A 2008 report by the Victorian Department of Education and Early Childhood and Development illustrates that around 63 per cent of children with a disability experience difficulties at school.³¹⁷

22.3.2 Key issues include inadequate government policy on engaging with students (to accommodate specific disability or take account of individual learning requirements), inequitable and confusing funding arrangements and insufficient qualification standards for teachers (or use of support staff) working with disabled students.³¹⁸ The Australian Education Union surveyed teachers, students and schools about issues of concern in the provision of education to students with disabilities and concluded that 'there is clear evidence over a long period that the level of resources and funding required to ensure quality education for disabilities/special needs is inadequate with negative consequences for students, families, teachers, other education workers and schools'.³¹⁹

22.3.3 Despite the five year implementation of the *Disability Standards for Education 2005*, these conclusions suggest little progress has been made regarding the Committee's recommendation that Australia ensure public education policies and school curricula reflect the inclusion of children with disabilities in the mainstream school system and that State assistance facilitates such integration. The Australian Federal Government is currently reviewing the *Disability Standards for Education 2005*, and in doing so needs to take account of its obligations within the *Convention on the Rights of Persons with Disabilities* (ratified in 2008), and the need for structural responses, not just individual responses to enable inclusive education. Inclusive high quality education is also a priority in the *National Disability Strategy*, recently endorsed by the Council of Australian Governments.

22.3.4 The failure to implement solutions addressing these issues may be exacerbated by an absence of data. For example,

in compiling a report about improving the lives of young South Australians, the Council for the Care of Children noted that they did not have enough reliable data on inter alia, the needs of children with disabilities and their families.³²⁰

Recommendation 89: that Australia support the review of the *Disability Standards for Education 2005* applying the framework of the *Convention on the Rights of Persons with Disabilities*, so that its obligations related to children with disability and education are incorporated within the revised Standards.

Recommendation 90: that the Australian Federal Government work with state and territory governments, as part of the *National Disability Strategy*, to develop a Disability Education Action Plan which specifically identifies current inadequacies in funding and resources, sets appropriate benchmarks, targets and goals and allocates sufficient funding so that the educational rights of children with disability are adequately met.

22.4 Discipline

22.4.1 School disciplinary measures, such as suspension and expulsion can infringe the child's fundamental right to an education under Article 28. They have been criticised as being ineffective and counter-productive because they do not address, and may exacerbate, underlying problems that lead to disruptive behaviour. High levels of school suspensions also conflict with outcomes under the Council of Australian Governments *National Education Agreement*, for example 'that schooling promotes social inclusion and reduces the educational disadvantage of children, especially Aboriginal children'.

22.4.2 Excluding students from school and denying them their right to education is simply 'shifting the problem' from the school to the community.³²¹ Within 12 months of being suspended from school, students are 50 per cent more likely to engage in anti-social behaviour and 70 per cent more likely to engage in violent behaviour.³²² Suspended students are often male, of low socio-economic status and belong to a cultural minority.³²³

22.4.3 Aboriginal students in New South Wales are significantly overrepresented in suspensions data and in 2009 accounted for 22 per cent of long (between 5 and 20 days) suspensions.³²⁴ In 2009, 2,286 or 5.6 per cent of Aboriginal students received long suspensions.³²⁵ Additionally, using data made available by the New South Wales Department of Education, UnitingCare Children, Young People and Families observes that between 2005 and 2009, total long suspensions for New South Wales students across all grades have increased by 32.7 per cent from 11,216 to 14,887. Moreover, children are being suspended at a young age; in 2009 children in Years kindergarten to Year 6 made up 20 per cent of long suspensions in New South Wales.³²⁶

22.4.4 There are avenues for children to challenge a suspension which include the School Council, Director-General of the Department of Education,³²⁷ the Human Rights and Equal Opportunity Commission or the relevant State Ombudsman.³²⁸ These mechanisms afford children the right to a fair hearing and their right to respond to allegations and to tell their side of the story.

Recommendation 91: that the Australian Federal Government work with state and territory governments to review suspension and exclusion policies with a view to reducing the use of suspension and ensure that students who experience behavioural challenges receive positive therapeutic interventions from appropriately qualified professionals, prior to any disciplinary procedures being applied.

22.5 Children with a refugee background

22.5.1 Children who arrive in Australia under the Refugee Resettlement program continue to face significant barriers to the realisation of their right to education under Article 28 of the *Convention*. There is currently no national strategy for supporting refugee students in school and a lack of uniform accountability across jurisdictions to ensure that the needs of students with refugee backgrounds are met in schools.

Recommendation 92: that the Australian Federal Government work with state and territory governments to develop a national strategy and guidelines which recognise the unique educational needs of children with refugee backgrounds and ensure a uniform approach to those needs.

22.6 Learn or earn

22.6.1 In 2009, 16 per cent of 15-19-year-olds (224,000 young people) were not fully engaged in employment or education. Just over half of this group were not working or studying at all, being either unemployed or not in the labour force, while part-time workers made up most of the balance.³²⁹ The Australian Federal Government has sought to address this with the 'National Partnership Agreement on Youth Attainment and Transitions' in January 2010. This Agreement is commonly referred to as the *Learn or Earn* policy. The outcomes this initiative aims to achieve are:

- increased participation of young people in education and training;
- facilitating successful transition from school to further education, training, or full-time employment;
- a national Year 12 or equivalent attainment rate of 90 per cent by 2015; and
- providing young people aged 15-24 years with an education or training entitlement.

22.6.2 The Australian Federal Government's commitment to improving educational and employment outcomes for Australia's young people is welcomed. However, it is clear that further work is required at both federal and state and territory levels of government to consider the specific needs of vulnerable groups of young people.

Recommendation 93: that Australia, in implementing *Learn or Earn*, work with vulnerable groups of children and young people such as the homeless and those in, or transitioned from, out-of-home care, to ensure that they can access the opportunities afforded by the policy.

22.7 Human rights education

“All children should be educated on what their basic rights are”

16-YEAR-OLD MALE, PERTH, WESTERN AUSTRALIA.

22.7.1 The Australian Federal Government’s response to the 2009 Human Rights Consultation Report contains a welcome commitment to human rights education, although there is currently no reference to the *Convention* or child rights in the Australian Curriculum.³³⁰

Recommendation 94: that Australia introduce child rights education into the national curriculum.

23 Leisure, recreation and cultural activities (Article 31)

‘We wish we had more space for fun, play and activities’

SEVEN YEAR-OLD, WESTERN AUSTRALIA

23.1 Access to playgrounds, play areas and adequate spaces to participate in recreational activities shape a child’s right to play. If a local area is dangerous and makes children and their parents fear for their safety, then the child will face difficulty accessing these facilities.³³¹

23.2 The Australian Human Rights Commission has expressed concern about the lack of recreational spaces and activities in immigration detention facilities.³³² The Commission has stated that detention in secured facilities is not suitable for children. This concern is becoming more significant as the number of detainees increases.³³³ Provision must be made for children’s recreation and play in detention. The Commission, in its visits to several of the facilities where children are detained, found that there are no open grassed play areas for children, barely any open spaces for recreational and cultural activities, no shaded play areas and swimming pools are only available infrequently during the heat.³³⁴ They expressed concerns about the lack of toys, games and materials available to children who are not old enough to attend school.³³⁵ It recommended that the Australian Federal Government monitor the lack of facilities for recreation and improve conditions to avoid inhibiting the right to participate in play and recreational activities.³³⁶

23.3 In the development of houses, apartments and cities, the need to provide more spaces for children,³³⁷ both indoors and outdoors, needs to be considered.³³⁸ This creates a ‘child-friendly’ environment supporting the rights of the child.³³⁹ Residents of buildings have made applications to the Strata Division of the New South Wales Consumer, Trader and Tenancy Tribunal, complaining about the noise level of neighbours with children and the noises children make when playing on common property.³⁴⁰ By-laws created by these schemes should not be allowed to restrict a child’s right to play and make reasonable noise in the context of recreational and cultural activities.³⁴¹

Recommendation 95: that Australia ensure that children in detention have adequate access to play areas, recreational and cultural activities, toys, games and materials that allow them to realise their rights under Article 31.

Recommendation 96: that the Australian Federal Government work with state and territory governments to develop guidelines requiring that new residential development must take into consideration the right of children to play by incorporating adequate playgrounds and recreational spaces.



Special protection measures

24 Refugees and children in immigration detention (Article 22)

24.1 Mandatory immigration detention (Article 37(b))

24.1.1 The *Migration Act 1958* (Cth) still requires mandatory detention of children.³⁴² Their detention is not subject to any independent assessment and there is no time limit and no guaranteed periodic review of their detention.³⁴³ While the *Migration Act 1958* (Cth) does contain the principle of detention as a last resort, it is not enforceable. As at 15 April 2011, there were 1,048 children in immigration detention, more than at any previous time, despite Australia's obligations under Articles 3, 22 and 37 of the *Convention* and the serious concern expressed by the Committee in its *Concluding Observations*.³⁴⁴ Most of the recommendations made by the Committee have not been implemented.

24.1.2 In 2008, the Australian Federal Government introduced the *New Directions* policy, which stated that children were no longer to be kept in places designated as immigration detention centres.³⁴⁵ Children currently in detention remain in facilities where they are under constant guard and supervision, from which they are not free to come and go and in which they have limited access to services.³⁴⁶ The Australian Federal Government calls these locked environments, 'Alternative Places of Detention'.³⁴⁷ Children will continue to be placed in these facilities upon their arrival and there remains no limit on how long they may be in detention before being placed in community based accommodation. This policy is also not enshrined in legislation.

Case Study: When the Australian Human Rights Commission visited immigration detention facilities in Darwin in early September 2010, more than 70 per cent of the children had been in detention for more than three months and 19 of the 248 children had been in detention for more than six months.³⁴⁸ In Leonora, Western Australia, 50 of the 66 children had been in detention for more than six months when the Commission visited in November 2010.³⁴⁹

Recommendation 97: that Australia implement the recommendations made by the Committee in 2005 and the outstanding recommendations of the Australian Human Rights Commission's report, *National Inquiry into Children in Immigration Detention, A Last Resort?* including that Australia's immigration laws be amended to incorporate the following minimum features:

- there should be a presumption against the detention of children for immigration purposes as well as legal protection of the principle that detention of children be only as a measure of last resort and for the shortest practicable time when all other reasonable alternatives have been considered and exhausted;

- a court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks);
- there should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes; and
- all courts and independent tribunals should be guided by the *Convention's* principles of best interests of the child as a primary consideration, detention as a last resort and for the shortest period of time, the preservation of family unity and special protection and assistance for unaccompanied children.³⁵⁰

Recommendation 98: that Australia, in all processing of children (accompanied or not) adopt the UNHRC Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and, or instead, adopt the 1967 Protocol relating to the Status of Refugees.

24.2 Guardianship and support of unaccompanied minors

24.2.1 There is still no 'independent guardianship/support institution for unaccompanied children'.³⁵¹ The Australian Minister for Immigration or his or her delegate (a Department of Immigration Officer) continues to be the guardian of unaccompanied minors. This is an inherent conflict of interest between the joint roles as guardian, as the detaining authority and as the visa decision-maker.

24.2.2 The Australian Human Rights Commission has noted several concerns about the operation of guardianship of unaccompanied minors including uncertainty about the appointment of a legal guardian for some unaccompanied minors in immigration detention not seeking to remain in Australia, staff being unaware which Officer had been delegated guardianship and uncertainty as to when that guardian should be consulted.³⁵²

24.2.3 There are also insufficient resources to support unaccompanied minors. Although a Case Manager and an Independent Observer is provided to act as a support person for an unaccompanied minor during interviews,³⁵³ the Australian Human Rights Commission has expressed concern about the limited capacity of these roles to meet the needs of such a large number of unaccompanied minors.³⁵⁴ For example, in May 2010 there was only one Case Manager and two Independent Observers for 152 unaccompanied minors on Christmas Island.

24.2.4 In addition, the Commission has reported significant concerns with the current system of guardianship of unaccompanied minors. These include concern that Independent Observers were not always present when

unaccompanied minors were interviewed, and that their role does not include acting as an independent advocate or carer of the child or providing information or advice to the child.³⁵⁵

Recommendation 99: that Australia address the concerns of the Australian Human Rights Commission and the Committee by establishing and providing adequate resources for an independent guardianship and support institution for unaccompanied minors.

24.3 Detention of unaccompanied humanitarian minors in isolated areas

24.3.1 The UNHCR guidelines state that unaccompanied minors should not be detained, particularly in isolated areas. Currently, unaccompanied minors are being held in detention in numerous isolated and remote locations including the Construction Camp on Christmas Island and at Leonora in Western Australia. As at May 2010, 152 unaccompanied minors were being detained in a closed detention facility on Christmas Island. This was a significant increase from the same time in 2009, when only 54 unaccompanied minors were in detention on the island. Of those 54, 18 were in community detention, use of which had stopped after May 2010 due to a lack of accommodation.

Recommendation 100: that if Australia intends to continue to detain children in breach of its international legal obligations, that it amend the *Migration Act 1958* (Cth) and implement policies to ensure that unaccompanied humanitarian minors will not be detained in isolated areas.

24.4 Family reunification

24.4.1 The long delays that are experienced in reuniting children with their families under the refugee and humanitarian visa programs are contrary to Articles 9, 10 and 20 of the *Convention* and do not give effect to the 2005 recommendation of the Committee regarding family reunification. The use of a quota to limit the intake of refugee and humanitarian visas and the linking of onshore applications to this quota may have resulted in significant delays in reuniting families, despite government policy stating that such 'split family' applications should be given priority.³⁵⁶ Additionally, 'split family' applications are available only to parents and children, failing to allow for the diverse nature of family relationships, particularly among refugees and asylum seekers.³⁵⁷

Recommendation 101: that Australia commit to revising legislation and policy to allow for more timely reunification of children with their families, and to allow for a more flexible application of the 'split family' policy which recognises the nature of family relationships in the countries of origin of most asylum seeker children, particularly in times of conflict.

24.5 Excision from migration zone

24.5.1 A substantial number of asylum seekers continue to be detained on Christmas Island and in overflow facilities. Under the *Migration Act 1958* (Cth), these applicants are considered 'offshore' and therefore have limited access to legal assistance and appeal. Despite a recent High Court decision holding that the 'offshore' assessment of asylum seekers falls within the provisions of the *Migration Act 1958* (Cth), and is therefore

subject to the same requirements of procedural fairness as apply to onshore assessments, the Australian Federal Government continues to deny these asylum seekers access to the full review process.³⁵⁸ The differing treatment of children seeking asylum based upon whether they are considered 'offshore' or 'onshore' applicants is in contravention of Articles 2 and 22.

Recommendation 102: that Australia amend the *Migration Act 1958* (Cth) to remove 'offshore excise areas' and ensure all asylum seekers are subject to the same application processes which incorporate procedural fairness and allow for independent review by the Refugee Review Tribunal and the Australian courts.

24.6 Broader migration program

24.6.1 Children are often treated as appendages of their parents under migration law in Australia. In most instances the entitlements of children are linked to the entitlements of responsible adults. These approaches create barriers for the effective recognition and participation of children in many crucial areas including the regular failure to interview children by the Australian Department of Immigration, the limited possibilities for children, even Australian citizen children, to sponsor parents or siblings and the failure to provide mechanisms which adequately allow for children, whether unaccompanied or with their parents, to have their views and needs heard (see also section 7.2(d)).³⁵⁹

Recommendation 103: that Australia use a child rights-approach in its implementation of migration law, including by giving consideration to children as migrants and citizens in their own right and adopting the guidance given in the Committee's General Comment No. 12 (2009).

24.7 Physical and mental health

24.7.1 Keeping children in places of detention for prolonged periods is contrary to their right to the highest attainable standard of health. Their developmental pathways are severely disrupted by detention. They suffer from anxiety and are also adversely impacted by the anxiety and depression manifested by those around them.³⁶⁰ The motels, lodges and other facilities currently being used to house children are not designed for young people. Detention in such places compounds the effects of previous trauma and exacerbates the grief and loss that these children have already suffered.³⁶¹ In several instances, prolonged detention has led to self-harm. Teenagers in detention have reported instances of cutting and slashing themselves 'to release the pressure' in their heads.³⁶² International Health and Medical Services, the private contractor responsible for medical care, is not recording children's weight at regular intervals as evidence of their weight loss.³⁶³

Recommendation 104: that if Australia intends to continue to detain children in breach of its international legal obligations, that it provide sufficient resources to ensure that their health and other needs are being met.

24.8 Access to education

24.8.1 Despite the universal access policy for all children in immigration detention under the age of 15 to attend school, in practice many children in immigration detention have been denied their right to education under Article 28 due to overcrowding of facilities and a lack of services. The Australian Human Rights Commission noted that at the time of its visit to Christmas Island, there were 114 children waiting for access to classes. Although these numbers were being reduced, resources would still at times be insufficient to provide classes to all children.³⁶⁴ At one stage in Darwin, Northern Territory, 248 children were not attending school, some of whom had been in detention for more than three months.³⁶⁵ In Melbourne, Victoria, 34 children held in detention were not attending school in December 2010 and there were only 25 language school positions for 144 children.³⁶⁶

24.8.2 Access to education for children from refugee backgrounds is discussed at section 22.5.

Recommendation 105: that the Australian Federal Government work with states and territories to ensure that funded mechanisms are in place which allow all children in immigration detention to realise their right to education under Article 28 of the *Convention*, including the provision of assistance to meet education-related expenses.

24.9 Protection from abuse and neglect

24.9.1 Australia is arguably not meeting its obligations under Article 19 in relation to children in immigration detention because of the lack of formal cooperation between the Australian Department of Immigration and the various state and territory child protection agencies. The lack of cooperation has led to confusion about which agencies have responsibility for these children and the procedures for ensuring staff in immigration detention facilities immediately report their concerns about a child to child welfare agencies do not appear to be sufficient.³⁶⁷

Recommendation 106: that the Australian Federal Government work with state and territory governments to create a Memorandum of Understanding clarifying the legal roles and responsibilities of all jurisdictions' child protection agencies in relation to children seeking asylum.

24.10 Social security and employment

24.10.1 A study commissioned by Hotham Mission Asylum Seeker Project into the rights of asylum seeker children in the community found that most parents lacked the income necessary to feed and house their children to the standards required by international law, and that this was restricting their children's access to healthcare and normal childhood leisure activities.³⁶⁸ This raises concerns in relation to Australia's obligations under the *Convention*, including those contained in Articles 6, 18, 24 and 31. Additionally, the *Concluding Observations* expressed concern that children who are granted a bridging visa have limited access to social security, a right enshrined in Article 27 of the *Convention*. This remains a concern as asylum seeker families in the community continue

to have extremely limited access to social security and support services. New Zealand children, and most children on bridging visas, cannot generally qualify for any Australian social security payments. No children who are here unlawfully can qualify for a social security payment. Nor, for that matter, can they access the range of essential services necessary to ensure their rights enshrined in the *Convention*.

24.10.2 Families with children who are awaiting a decision at the first two stages of the refugee determination process are eligible for the Asylum Seeker Assistance Scheme (ASAS)³⁶⁹ by virtue of having children under the age of 18 years. This is a clear acknowledgment of the inherent vulnerabilities of children and aims to ensure the safety and wellbeing of children, despite this income being less than that of an equivalent Centrelink income. However, this support is withdrawn from those families who are not successful following the Refugee Review Tribunal stage of the refugee determination process, leaving them with no income or support for the later stages of the determination process.³⁷⁰

24.10.3 Families seeking Ministerial intervention or Federal Court appeal are not entitled to any unemployment or illness benefit. If they are unable to secure employment, their family has no income. Neither are the children entitled to any type of social security regardless of the employment status of their parents.³⁷¹ The lack of social security and illness benefits is contrary to Articles 24 and 26.

24.10.4 The Australian Federal Government's abolition of the '45-day rule' was a welcome measure, allowing greater access to work rights and Medicare for asylum seekers living in the community.³⁷² However, asylum seekers face a number of additional barriers to finding employment in Australia beyond those of new migrants. These include no access to government supported vocational study, ineligibility for Centrelink and Job Services Australia assistance, the stigma attached to asylum seekers, and reticence about employing candidates who cannot commit beyond two or three months due to the visa renewal system.

Recommendation 107: that Australia implement measures to provide that all children and their parents receive the same level of financial support as the equivalent Centrelink benefit and receive medical support regardless of what stage in the application process they are at.

25 Youth justice (Articles 37 and 40)

'We need better training programs in youth justice and more support when we leave'

THREE ABORIGINAL CHILDREN IN JUVENILE DETENTION IN QUEENSLAND, AGED BETWEEN 15-17 YEARS

25.1 Age of criminal responsibility

'I have been coming here since I was 10 years old. This place has become a regular part of my life. If I had more positive support I would not do so much crime'

13 YEAR-OLD BOY, SPEAKING FROM A JUVENILE DETENTION CENTRE IN ADELAIDE, SOUTH AUSTRALIA

25.1.1 The *Concluding Observations* urged Australia to raise the minimum age of criminal responsibility to an internationally acceptable level. There has been no change to the minimum age of criminal responsibility anywhere in Australia.

25.1.2 The age of criminal responsibility is a significant 'determining characteristic of progressive or repressive juvenile justice systems'.³⁷³

Recommendation 108: that the Australian Federal Government work with state and territory governments to review the age of criminal responsibility with the aim of increasing it to older than 10 years of age, in accordance with international standards.

25.1.3 Queensland's failure to amend its legislation providing that 17-year-olds can be detained in adult facilities is raised at section 3.

25.2 Diversionary strategies and detention as a last resort

25.2.1 Notwithstanding the efforts of state and territory governments to enact legislation and use diversionary and restorative justice strategies, policy and practice do not always satisfy Australia's obligations under Articles 37 and 40 and the general principles of the *Convention*. Nor do they always comply with the guidance provided in the Committee's General Comment No. 10 (2007) or the Committee's 2005 recommendation that children who are in conflict with the law are deprived of liberty only as a last resort (despite all jurisdictions having legislated to this effect).³⁷⁴

25.2.2 All jurisdictions have legislated for a range of non-custodial sentencing options, including home detention in the Northern Territory and South Australia, police cautioning and referral to Juvenile Justice Teams in Western Australia and juvenile group conferencing in Victoria. However, these programs and processes are often not integrated effectively and consistently and many are run by NGOs without secure or appropriate levels of funding; there are no known examples of juveniles being subject to home detention orders, despite the legislative provision.³⁷⁵

25.2.3 The principles to support diversion by police have been enshrined in legislation in every state except Victoria.³⁷⁶ However, application and monitoring of the principles is haphazard and ineffective particularly for Aboriginal children.³⁷⁷

25.2.4 Victoria is 'the only state in Australia which does not provide for police cautioning within its juvenile justice legislation, although it has had a system of formal cautions as part of its Police Standing Orders since January 1959'. The *Victoria Police Operating Procedures Manual* (updated 11/03/02) outlines the procedures for a police caution.³⁷⁸

25.2.5 All jurisdictions legislate that custodial orders should be used only as a last resort.³⁷⁹ All jurisdictions have legislated for a range of non-custodial sentencing options, ranging from reprimands to formal Community Service Orders.³⁸⁰ However, rates of detention are rising—between 2004 and 2007 the rate of children in detention increased from 25.5 to 37 per 100,000, an increase of 45 per cent.³⁸¹

25.2.6 The Northern Territory's *Youth Justice Act 2005* establishes a separate youth justice system and enshrines principles that support youth rehabilitation and re-integration into the community. However, there is a continued failure to implement them. For example, police remain the gatekeepers for youth involvement in diversionary schemes and pre-sentence

conferencing. Although these can be ordered by Magistrates pursuant to the *Youth Justice Act 2005*, this is rarely, if ever, utilised.³⁸² Specifically, in Central Australia, youth justice court proceedings occur in the same building as all adult criminal proceedings, there is no appointed Youth Justice Magistrate and, most recently, a detention centre has been approved within the precincts of an adult prison.³⁸³ In practical terms, the failure of the *Youth Justice Act 2005* to be fully adopted and implemented in the Northern Territory results in a jurisdiction effectively devoid of a specific youth justice system.

Recommendation 109: that Australia introduce and enforce national standards that ensure the effective application of the principles of diversion and of the use of detention as a measure of last resort.

25.3 Mandatory sentencing and detention as a last resort

"I am in here because I was unable to catch my appointment at the courts. I don't think I deserve to be in here away from my family"

18-YEAR-OLD ABORIGINAL BOY, SPEAKING FROM A JUVENILE DETENTION CENTRE IN WESTERN AUSTRALIA

25.3.1 The *Concluding Observations* recommended that measures be taken to abrogate mandatory sentencing in Western Australia.³⁸⁴

25.3.2 Mandatory sentencing legislation still exists in the juvenile justice system of Western Australia for persons between 10 and 18 years of age.³⁸⁵ In this jurisdiction, the law requires Magistrates and Judges of the Children's Court of Western Australia to seriously consider a custodial order for repeat offenders on their third proven appearance for a serious offence.

25.3.3 It appears that the Western Australian Government has taken no positive steps to abolish the mandatory sentencing law and therefore continues to be in breach of the *Convention*.

Recommendation 110: that Australia take all necessary measures to ensure that mandatory sentencing does not apply to children in Western Australia and that sentencing of children occurs in accordance with the principles enshrined in the *Convention*.

25.4 Bail and remand—effect on juvenile detention as a last resort

25.4.1 The increasing number of children being held in custodial remand and the nature of bail conditions imposed on children is of concern.³⁸⁶ Nationally, at 30 June 2008, 60 per cent of young people in juvenile detention were remanded in custody awaiting trial or sentencing.³⁸⁷ The number of children held on remand is one indication that the principle of detention of children as a last resort is not being observed in practice.

25.4.2 This increase is attributed to several factors, including legislative changes resulting in complex bail eligibility requirements, restrictive bail conditions making compliance problematic and the lack of accommodation options for children.³⁸⁸ In most states, residential conditions can result in homeless children remaining in detention if accommodation

services are not available.³⁸⁹ There is often a lack of cooperation between juvenile justice authorities, community services departments and public housing authorities that is compounded by under funding for accommodation options.

25.4.3 A number of programs have been introduced to ease the pressure on remand numbers in some jurisdictions. These include the Conditional Bail Program and Youth Program Accommodation Support Service in Queensland,³⁹⁰ the Central After Hours Assessment and Bail Placement Service in Victoria³⁹¹ and the Intensive Bail Supervision Program in New South Wales,³⁹² all of which are positive steps. However, more could be done to commit resources to providing accommodation and to monitor police and court practices to ensure diversion rather than court proceedings.³⁹³

Recommendation 111: that Australia take all necessary action to ensure that the number of children on custodial remand is reduced by the application of the principles of diversion and detention as a last resort, and that there is adequate funding for required accommodation options and better coordination between justice, community service and public housing authorities.

25.5 Juvenile justice and Aboriginal children

“They don’t treat us the same as they treat other people and it’s unfair on us”

18-YEAR-OLD ABORIGINAL BOY, SPEAKING ABOUT POLICE ARRESTS OF ABORIGINAL YOUTH FROM A JUVENILE DETENTION CENTRE IN PERTH, WESTERN AUSTRALIA

25.5.1 Aboriginal juveniles remain substantially overrepresented in detention compared with their non-Aboriginal counterparts.³⁹⁴ At 30 June 2008, Aboriginal juveniles were 24 times more likely to be in detention than non-Aboriginal juveniles.³⁹⁵ Both the *Concluding Observations* and the *Fourth Government Report* expressed concern for the disproportionately high percentage of Aboriginal children in conflict with the law.

25.5.2 Some of the causes of the overrepresentation of Aboriginal youth in the juvenile justice system are: the lack of effective distinction between less serious offenders and repeat offenders;³⁹⁶ the fact Aboriginal juveniles are often dealt with by more punitive measures such as arrest and charge rather than other diversionary measures;³⁹⁷ and inadequately resourced legal services.³⁹⁸

25.5.3 Victoria, South Australia and Queensland have introduced Aboriginal sentencing courts for Aboriginal children and young people who admit an offence or against whom an offence is proved in their Children’s Courts. While these courts are necessarily diversionary, they do provide an opportunity for respected members of the child’s community to participate in the sentencing decision.

25.5.4 The Australian Federal Government’s *Prevention, Diversion, Rehabilitation and Restorative Justice Program* and the New South Wales Government’s *Two Ways Together Program* are examples of attempts to address the issue of overrepresentation. Each has been evaluated and both reports indicate strong commitment but significant issues with the measurement of performance and the translation of impacts from a local to a broader level.³⁹⁹ As the 2009 Report on the

New South Wales Program states, ‘There is still considerable work required to properly measure and build an evidence base of what works to close the gaps’.

Recommendation 112: that Australia urgently take all necessary action, in consultation with Aboriginal people and communities, to build an evidence base of measures that are effective in reducing the rate of detention of Aboriginal children including considering inviting the ongoing advisory contribution of international experts such as the UN Special Rapporteur on Indigenous Peoples.

25.6 Juvenile justice and children with cognitive impairments

25.6.1 Children with disabilities, particularly mental illness and intellectual disabilities are still overrepresented in the juvenile justice system.⁴⁰⁰ The *Fourth Government Report* recognised the Committee’s concern regarding this issue. Reports show up to 40 per cent of young people in juvenile detention report symptoms consistent with clinical psychological disorders.⁴⁰¹ A recent New South Wales study found that 92 per cent of female detainees and 86 per cent of male detainees had a psychological disorder, in 2009. Seventy-three per cent of young people had two or more psychological disorders present. The two most common psychological disorders were attention or behavioural disorders and substance use disorders.⁴⁰² Overall, 60 per cent reported experiencing at least one form of childhood abuse or neglect, and was more frequent among young women than young men.⁴⁰³

25.6.2 Problematic and deficient practices within the child protection system have been attributed as one of the causes of children with disability coming into contact with the juvenile justice system.

Recommendation 113: that the Australian Federal Government encourage initiatives such as state-based action plans and work with state and territory governments to establish mechanisms for early assessment of young people entering the juvenile justice system and an increase in services and programs responsive to the needs of young offenders with disabilities.

25.7 Standard of juvenile detention

“The conditions here are really bad. The worst things are the abuse and violence in here”

15-YEAR-OLD BOY, SPEAKING FROM THE MAGILL TRAINING CENTRE, SOUTH AUSTRALIA

25.7.1 The *Concluding Observations* recommended that the Australian Federal Government ‘improve conditions of detention of children and bring them into line with international standards’.

25.7.2 The *Fourth Government Report* stated that conditions of children in detention are in line with international standards. The Australian Federal Government cited the 2005 audit of the Quamby Youth Detention Centre in the Australian Capital Territory and its replacement by the Bimberi Youth Justice Centre,⁴⁰⁴ the first youth custodial facility in Australia to be built and operated under Human Rights legislation as an example of Australia’s compliance.⁴⁰⁵

25.7.3 Reports indicate, however, a lack of practical compliance with human rights principles at other juvenile detention facilities in Australia.⁴⁰⁶ Audits of two facilities reveal a lack of regard for juvenile detainees' rights to facilities that meet the requirements of health, privacy and human dignity.⁴⁰⁷ It is noted one of these facilities, the Magill Youth Training Centre in South Australia, is earmarked for replacement in late 2011.⁴⁰⁸

25.7.4 Accordingly, while the audit and replacement of the Quamby Youth Detention Centre is welcomed, similar measures are required throughout all Australian states and territories.

Recommendation 114: that Australia take all necessary action to ensure that all detention facilities for children are audited to ensure compliance with human right principles and that states and territories upgrade or replace facilities and provide qualified staff and training as necessary.

25.8 Naming of juvenile offenders

25.8.1 This issue is addressed at section 12.2.

26 Detention as the last resort (Article 37)

26.1 The failure to comprehensively implement the *Convention* into Australian law has contributed to regular departures from the principle of detention as the last resort, particularly in juvenile justice and immigration detention, by the Australian Federal Government and state and territory governments. This is illustrated in sections 24 and 25.

27 Substance abuse (Article 33)

27.1 Substance abuse in Aboriginal and remote communities in Central, Western and Southern Australia

"I had been drinking, sniffing and doing needles. Then I started stealing and then I ended up in here. I just want it all to be stopped"

17-YEAR-OLD ABORIGINAL BOY, SPEAKING FROM A JUVENILE DETENTION CENTRE IN PERTH, WESTERN AUSTRALIA

27.1.1 The *Concluding Observations* expressed concern over the high risk practice of petrol sniffing among Aboriginal communities in Central Australia. Despite some positive progress, this remains a concern for young people from Aboriginal and remote communities in Central, Western and South Australia and in parts of Northern Australia, and is preventing the realisation of many children's rights to survival, protection and development under Articles 24 and 33 of the *Convention*.

27.1.2 The *Fourth Government Report* lists a range of strategies that have been implemented to combat the incidence of petrol sniffing and other forms of volatile substance misuse, particularly in regional and remote communities. Available data indicates that the introduction of Opal fuel, a low aromatic vehicle fuel that cannot be sniffed for intoxication, into at-risk communities from 2005 has been effective in reducing petrol sniffing.⁴⁰⁹ However, the introduction of Opal fuel was only one of eight points in the 2005 Petrol Sniffing Prevention Program. As reported by the Australian Senate Standing Committee on Community Affairs in 2009, not only should

governments work to expand the introduction of Opal fuel to other communities, but federal, state and territory governments must also adequately implement and fund other points in that plan, including education, treatment and respite, diversionary activities for young people, strengthening and supporting communities and evaluation of interventions.⁴¹⁰

27.1.3 The UN Special Rapporteur on Indigenous Peoples has highlighted the common theme that runs throughout this report: the lack of proper community consultation in the development and operation of some programs as a key reason for slow progress in addressing the issue.⁴¹¹ The most effective programs have been those with close community involvement.⁴¹²

27.1.4 Our consultations in Central Australia revealed that boredom is one of the most common reasons that children turn to substance abuse. In communities where the introduction of Opal fuel means that petrol sniffing is not an alternative, some children are turning to other substances such as marijuana and glue. This highlights the need to not only address supply of sniffable petrol, but also to address the underlying reasons that Aboriginal children turn to substance abuse. The creation of more recreational activities for youth in regional and remote communities is one part of this.

27.1.5 However, it will be only by addressing the underlying social, educational and economic disadvantage experienced by children in remote Aboriginal communities, including housing, access to services, racism and rates of incarceration that the problem of substance abuse can be addressed.⁴¹³ This one again highlights that for Aboriginal children to realise their rights under Article 33, it is necessary that the Australian Federal Government take measures to address violations of other rights highlighted in this report such as those enshrined in Articles 2, 6, 12, 27 and 30.

Recommendation 115: that the Australian Federal Government, together with the state and territory governments, maintain and act on their commitment to the eight points contained in the Petrol Sniffing Prevention Program and the recommendations contained in the Senate Standing Committee's 2009 report and that it work in consultation with Aboriginal communities to address not only the supply of volatile substances, but also the underlying social, educational and economic disadvantage that leads to the prevalence of substance abuse in regional and remote Aboriginal communities.

28 Children belonging to a minority or indigenous group (Article 30)

"Walk with us"

16-YEAR-OLD ABORIGINAL GIRL, ELIZABETH, SOUTH AUSTRALIA

28.1 This report has shown that despite some efforts to provide for the rights of Aboriginal children, there are far too many human rights abuses continuing to occur in Australia that demonstrate these efforts are simply inadequate. One of the core reasons for this inadequacy is Australia's failure to consider its obligations under Articles 30 and 12 to undertake special measures for the protection of Aboriginal children in consultation with the communities concerned and with the

participation of children in the consultation process.⁴¹⁴ There is an ongoing failure to engage Aboriginal peoples in the design, delivery and evaluation of such measures in complete disregard for Aboriginal peoples' right to self-determination and participation in decision-making about issues affecting their lives. The *Northern Territory Emergency Response* is a primary example of this approach (see section 4.1(b)).

28.2 This report highlights failures of the Australian Federal Government to effectively implement culturally sensitive and effective special measures to address the significant disadvantage that Aboriginal children suffer. Those failures have resulted in the following:

- the ongoing overrepresentation of Aboriginal children in child protection systems because of a failure to provide redress for past wrongs and consequent ongoing systemic inequality and disadvantage;
- the ongoing separation of Aboriginal children from their families, communities and culture because of a failure to adequately implement the Aboriginal child placement principle;
- health outcomes far below those of their non-Aboriginal counterparts; and
- poorer educational and developmental outcomes and a failure of education policy to pay due respect to the value of Aboriginal languages and culture.

28.3 The Australian Federal Government's policy goals specific to Aboriginal children remain closely aligned with a largely non-Aboriginal agenda of workforce participation and education. While these are important predictors of health and wellbeing for non-Aboriginal populations, the predictors for Aboriginal peoples are far broader. The health and wellbeing of Aboriginal children is closely linked to rights of participation and access to culture, as well as issues of racism and discrimination, both at an interpersonal and systemic level.⁴¹⁵ The Australian Federal Government's policy agenda remains largely silent on these issues.

Recommendation 116: that Australia, applying the Committee's guidance in General Comment No. 11 (2009) and consistent with the recommendations of the Special Rapporteur on the Rights of Indigenous Peoples, commit to working with Aboriginal children and communities to develop a policy agenda which recognises the unique predictors of health and wellbeing for Aboriginal peoples and facilitates the implementation of culturally sensitive and effective special measures to address the significant disadvantage and inequality that Aboriginal children suffer.

29 Sexual exploitation, abduction, sale and trafficking and other forms of exploitation (Articles 34, 35, 36 and 39)

29.1 These issues are dealt with in the NGO Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Appendix 1—Proposed recommendations for the Concluding Observations

Theme I—General Measures of Implementation

- 1 THAT Australia implement a comprehensive legislative framework that fully incorporates obligations under the *Convention* into domestic legislation, and ensure that all domestic federal, state and territory legislation is fully compatible with the *Convention* and that effective legal remedies are available in situations of violations of the rights of the child.⁴¹⁶ (See section 1.1)
- 2 THAT Australia resource and participate in the development and implementation of a National Plan of Action for Children and Young People in partnership with children, civil society, parents and interested others.⁴¹⁷ (See section 1.2)
- 3 THAT Australia establish a ministerial portfolio responsible for children with dedicated resources to drive data collection, research and policy development, coordinate across government and ensure the effective implementation of programs and services that meet child rights standards and can be monitored, measured and evaluated to ensure the participation of all children⁴¹⁸ (See section 1.2)
- 4 THAT Australia implement mechanisms to facilitate greater collaboration between research communities and those responsible for policy development, including supporting the development of the role of children in conducting and participating in research.⁴¹⁹ (See section 1.2)
- 5 THAT Australia, in consultation with children, civil society, parents and interested others, implement mechanisms informed by best practice models to facilitate the inclusive, transparent and respectful participation of children throughout policy development, program implementation and evaluation.⁴²⁰ (See section 1.2)
- 6 THAT Australia create and resource an independent National Children's Commissioner tasked with roles including: establishing the strategic direction for evidence-based policy development, monitoring the extent to which Australian children are realising their rights under the *Convention*, promoting those rights and promoting children's participation as full citizens in Australian society. If a National Children's Commissioner is not established, the Australian Human Rights Commission should be adequately resourced to undertake this monitoring and educative role.⁴²¹ (See section 1.3)
- 7 THAT the Australian Federal Government work with state and territory governments to develop mechanisms consistent with the guidance given in General Comment No. 5 (2003) to allow for better identification and analysis of resources for children in government budgets.⁴²² (See section 1.4)
- 8 THAT Australia provide an ongoing mandate to a qualified, independent body such as the Productivity Commission to monitor and support the effective allocation of resources for children in a way that is informed by international best practice.⁴²³ (See section 1.4)
- 9 THAT Australia continue its current efforts to address the deficiencies in data collection relating to the fulfilment of children's rights under the *Convention* in accordance with the recommendations of the Committee and other human rights treaty review bodies. (See section 1.5)
- 10 THAT Australia apply a child rights-based approach to Australian aid programs in cooperation with the civil society. (See section 1.6)
- 11 THAT Australia withdraw its reservation to Article 37(c) of the *Convention* as previously recommended by the Committee in 2005.⁴²⁴ (See section 1.7)
- 12 THAT Australia, informed by the views expressed in the National Human Rights Consultation and its obligations under Article 42, include public education on child rights as a core objective of its proposed National Human Rights Action Plan, with an appropriate allocation of resources and policy priority.⁴²⁵ (See section 2)

Theme II—Definition of the Child

- 13 THAT the Queensland Government immediately pass a regulation to include 17-year-olds in the juvenile justice system. (See section 3)

Theme III—General Principles

- 14 THAT Australia increase funding and availability of programs in schools and local communities that promote positive images of culturally diverse young people and combat racism and discrimination. This should be developed in consultation with children and young people, parents and leaders within the education sector.⁴²⁶ (See section 4.2)

- 15 THAT Australia implement the 'Foundation for Young Australians' report recommendations, including the provision of targeted classroom resources and teaching tools, including curriculum materials that address racism and discrimination.⁴²⁷ (See section 4.2)
- 16 THAT all Australian governments invest in compulsory cultural competency training for police in their jurisdiction.⁴²⁸ (See section 4.2)
- 17 THAT Australia legislate to protect against discrimination on the grounds of sexuality and gender identity.⁴²⁹ (See section 4.3)
- 18 THAT the best interests principle be included in Australia's immigration laws and implemented in policy and practice. (See section 5.3)
- 19 THAT Australia provide appropriate and adequate training to government officials to ensure that policies and practices relating to children are consistent with current legislative protections of the best interests principle.⁴³⁰ (See section 5.3)
- 20 THAT Australia develop comprehensive strategies to ensure that children and young people with disabilities can fully and equitably participate in consultations, decision-making processes and policy developments that affect their lives. (See section 7.1)
- 21 THAT Australia commit to working with children, civil society, organisations that represent children, state and territory governments, parents and research bodies to create appropriate institutions and mechanisms to enable the inclusive, transparent and respectful participation of children in the development of laws and policies that affect them. (See section 7.1)
- 22 THAT Australia better resource child advocacy bodies to listen to the views of children and ensure that those views are heard by policy makers at all levels of government and at all stages of the development and implementation of law and policy.⁴³¹ (See section 7.1)
- 23 THAT Australia amend the *Migration Act 1958* (Cth) to incorporate its obligations under Article 12 of the *Convention* and that Australia commit to ensuring that where legal administrative processes do legislatively provide for a child's participation, appropriate mechanisms are in place and utilised to facilitate that participation in practice, consistent with Article 12 and General Comment No. 12 (2009). (See section 7.2)
- 25 THAT Australia, consistent with General Comment No. 7 (2005), review the birth registration process to ensure that all children born in Australia are registered at birth and that no child is disadvantaged by procedural barriers to registration.⁴³³ (See section 8.3)
- 26 THAT Australia review the process for obtaining a passport by a child to enable simpler proof of identity and to overcome barriers of access caused by parenting arrangements or cultural settings. (See section 8.2)
- 27 THAT Australia again review its implementation of the Committee's 1997 Concluding Observations that 'no child be deprived of citizenship on any ground regardless of the status of his/her parents'.⁴³⁴ (See section 8.4)
- 28 THAT the Australian Federal Government take steps to ensure that all states and territories provide for the registration of same-sex parents on a child's birth certificate. (See section 8.5)
- 29 THAT Australia adopt measures to ensure effective protection of the rights of children born of donor gametes and adopt the recommendation of the Senate Legal and Constitutional Affairs Reference Committee for uniform legislation and the establishment of a national register.⁴³⁵ (See section 8.6)
- 30 THAT Australia develop national standards that ensure the application of graffiti laws to children accord with the principles of the *Convention* and principles of restorative justice and diversion. (See section 9)
- 31 THAT Australia maintain effective systems which balance the regulation of content that can be accessed by children with the need to empower children to use media (including the internet) for communication and access to information.⁴³⁶ (See section 10.1)
- 32 THAT Australia implement national standards for juvenile justice that are included in police powers, training and accountability measures, as recommended by the ALRC and the (then) Human Rights and Equal Opportunity Commission. (See section 11.1)
- 33 THAT Australia implement the recommendation in the *Concluding Observations* and review all legislation that is capable of authorising infringements of a child's freedom of association and peaceful assembly.⁴³⁷ (See section 11.2)
- 34 THAT Australia support the development of effective and child-friendly complaint mechanisms in all jurisdictions for children whose rights under Article 15 of the *Convention* have been breached. (See section 11.2)
- 35 THAT Australia review its implementation of the recommendations of the ALRC '*For Your Information*' report with respect to protecting the privacy of children and develop effective remedies for children whose privacy is infringed.⁴³⁸ (See section 12.1)

Theme IV—Civil Rights and Freedoms

- 24 THAT Australia review its progress and commit to full implementation of the recommendations of the *Bringing Them Home Report*, including as recommended by the United Nations Human Rights Committee and the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People.⁴³² (See section 8.1)

- 36 THAT Australia develop and enforce national standards for the protection of the privacy of children in the criminal justice system that accord with international standards and the principles of rehabilitation with particular reference to Western Australian and Northern Territory legislation. (See section 12.2)
- 37 THAT the Australian Federal Government review the National Privacy Principles in conjunction with state and territory governments to extend and enforce their application to children with particular attention to the experience of Aboriginal children and children of different ethnic and cultural communities. (See section 12.2)
- 38 THAT Australia review the implementation and enforcement of Health Privacy Principles for children and young people. (See section 12.3)
- 39 THAT Australia implement the Committee's *Concluding Observations*, consistent with General Comment No. 8 (2006), to:
- (a) take appropriate measures to prohibit corporal punishment at home, in public and private schools, detention centres and all alternative care settings in all states and territories; and
- (b) strengthen awareness-raising and education campaigns, with the involvement of children, in order to promote positive, non-violent forms of discipline and respect for children's rights, while raising awareness about the negative consequences of corporal punishment.⁴³⁹ (See section 13.1)
- 40 THAT Australia, consistent with the Committee's *Concluding Observations*, develop federal legislation prohibiting, except where there is a serious threat to life or health, the non-therapeutic sterilisation of children, regardless of disability. Such legislation should outline the circumstances in which only therapeutic sterilisation can occur.⁴⁴⁰ (See section 13.2)
- 41 THAT Australia, consistent with the Committee's *Concluding Observations* and General Comment No. 13 (2011), maintain its commitment to reduce the incidence of bullying with ongoing evaluation and review of current strategies, to research new strategies and the impact of technology, and to investigate the relationship between bullying and exposure to violence in the home and the wider community. (See section 13.2)
- children. (See section 14.1)
- 44 THAT family support services be offered from early in the antenatal period within a universal service framework (such as the health sector) to avoid stigmatizing families while providing necessary support to high needs families.⁴⁴² (See section 15.1)
- 45 THAT the *National Framework for Protecting Australia's Children (2009–2020)* and the *National Plan to Reduce Violence against Women and their Children* be integrated and refined to apply a human rights approach both in their further development and implementation.⁴⁴³ (See section 15.1)
- 46 THAT Australia recommit to improving data collection on the reasons that children are placed in out-of-home care and that it continue to support the development of data collection and coordination of reporting under the *National Framework for Protecting Australia's Children (2009–2020)*.⁴⁴⁴ (See section 16.1)
- 47 THAT Australia apply the *National Standards for Out-of-Home Care* in a manner consistent with a child rights approach, including the use of mechanisms for accountability and the participation of children in care throughout all decision-making stages of the cycle in compliance with Article 12 of the Convention.⁴⁴⁵ (See section 16.1)
- 48 THAT the Australian Federal Government work with state and territory governments to ensure that young people are actively involved in planning for their transition from care.⁴⁴⁶ (See section 16.1)
- 49 THAT the Australian Federal Government work with state and territory governments to implement procedures ensuring that planning for a child's transitioning from care commences no later than 15 years of age, and that support should be provided until 25 years of age to ensure the phase in which the young person is gaining their independence is adequately covered. (See section 16.1)
- 50 THAT Australia utilise the findings of evidence-based research to define the most appropriate kinds and levels of support services. This will facilitate a more methodical approach in the monitoring and review processes in each of the different phases of the transitioning from care processes.⁴⁴⁷ (See section 16.1)
- 51 THAT Australia work to improve the accuracy of data collection in relation to placement of Aboriginal children in accordance with the Aboriginal Child Placement Principle.⁴⁴⁸ (See section 16.1)
- 52 THAT the Australian Federal Government work with state and territory governments to provide more culturally appropriate training and support for prospective carer families.⁴⁴⁹ (See section 16.1)
- 53 THAT Australia provide guidelines that require legislative and policy frameworks around the principle to include the requirement for consultation and cooperation with Aboriginal agencies in accordance with General Comment No. 11 (2009).⁴⁵⁰ (See section 16.1)

Theme V—Family Environment and Alternative Care

- 42 THAT Australia remain committed to supporting families through ensuring the availability of high quality, affordable and accessible child care facilities, assisting with the cost of raising a family through family assistance payments and supporting parents who work by providing adequate maternity and paternity leave entitlements.⁴⁴¹ (See section 14.1)
- 43 THAT Australia take appropriate measures to strengthen current programs of family support and to evaluate whether such measures are effective for all family types and all

- 54 THAT Australia review all judicial and administrative arrangements where parents are incarcerated and separated from their children to ensure that such arrangements consider and minimise the impact on the person's children.⁴⁵¹ (See section 16.2)
- 55 THAT the Australian Federal Government work with state and territory governments to resource and support the implementation of programs which facilitate the maintenance of the relationship between children and their incarcerated parents, where it is in the child's best interests to do so.⁴⁵² (See section 16.2)
- 56 THAT Australia increase resources for the Unaccompanied Humanitarian Minor Program in each state and territory to ensure they are adequately supported in the early stages of settlement. (See section 16.3)
- 57 THAT Australia develop a Memorandum of Understanding between all the state and territory governments to implement a coordinated national policy and legislative frameworks for the delivery of the Unaccompanied Humanitarian Minor Program. This should include a review of state and territory care based models and the legislative framework within which they operate. (See section 16.3)
- 58 THAT Australia review regulations under the Special Humanitarian Program so that a person only has to be under the age of 18 at the time of application, and not at the time of decision, to be eligible to reunite with family members under Split Family provisions and that Australia establish a mechanism for greater cooperation between the DIAC and unaccompanied humanitarian minors to facilitate more timely reunification of these children with their family. (See section 16.3)
- 59 THAT the Australian Federal Government work with state and territory governments to ensure that all jurisdictions amend legislation as required in order to comply with Australia's obligations under the *Convention*. Specifically, attention should be paid to provisions dealing with consent, access to legal representation in adoption proceedings and the right of same-sex couples to adopt where it is in the child's best interests to do so. (See section 17)
- 61 THAT that Australia develop a national disability insurance scheme which ensures an evidence based effective, equitable and integrated planning and service strategy for all children with disability using human rights principles, and which is developed and implemented in consultation with families, children with disabilities and peak bodies representing those children. The new scheme should be child and family focused taking into account the needs and rights of all children in the family.⁴⁵⁴ (See section 18.2)
- 62 THAT Australia commit to addressing long waiting times, inflexible respite service models and the crisis driven approach that currently characterises respite service models. (See section 18.2)
- 63 THAT Australia establish mother and baby clinics throughout Australia, in consultation with local Aboriginal peoples, so that every Aboriginal mother has access to a clinic.⁴⁵⁵ (See section 19.2)
- 64 THAT Australia adopt the recommendations made by the UN Special Rapporteur on the Right to Health and develop a long-term, comprehensive plan of action to achieve equality in health status and health services for Aboriginal children by 2030 under the framework of *Closing the Gap*. This must be done with the full participation and partnership of Aboriginal children and their communities and representative bodies, recognising that mainstream health service delivery is often not the answer to better health outcomes for Aboriginal children.⁴⁵⁶ (See section 19.3)
- 65 THAT Australia work across all jurisdictions to increase education programs amongst secondary school students about sexually transmitted infections, and increase efforts to promote protected sex. (See section 19.4)
- 66 THAT Australia undertake further consultations with children and young people for the development and implementation of better outcomes in mental health.⁴⁵⁷ (See section 19.5)
- 67 THAT Australia consider the role of peer support in developing appropriate services; and develop national curricula and community education to reduce stigma and promote early access to support.⁴⁵⁸ (See section 19.5)
- 68 THAT Australia invest in early intervention services, training and development of teachers, health professionals and others who work with children and young people.⁴⁵⁹ (See section 19.5)

Theme VI—Basic Health and Welfare

- 60 THAT Australia increase its commitment to the collection of disaggregated data on childhood disability, including specific information on children from Aboriginal and culturally diverse backgrounds, increase the level of formal, publicly accessible information on disability and disability services, and adopt the Disability Investment Group recommendation to: *'allocate \$30 million per annum under the new NDA to fund a National Disability Research Institute as a centre of excellence to lead and promote disability research in Australia.'*⁴⁵³ (See section 18.1)
- 69 THAT Australia support the development of specialised, age appropriate e-mental health services and targeted strategies and services to different groups, particularly those at high risk of mental health problems.⁴⁶⁰ (See section 19.5)
- 70 THAT Australia provide necessary subsidies for costs of services so cost is not a barrier to access.⁴⁶¹ (See section 19.5)
- 71 THAT Australia improve collection of data for attempted and completed suicides particularly for children under the age of 15.⁴⁶² (See section 19.5)
- 72 THAT Australia address the concern raised in the Committee's *Concluding Observations* by providing for better research, support and evaluation of suicide prevention programs for children and young people.⁴⁶³ (See section 19.5)

- 73 THAT Australia continue its efforts in addressing the high incidence of obesity, achieving the target immunisation rate of 90 per cent, increasing the accessibility of dental services for children and decreasing the impact of passive smoking on children.⁴⁶⁴ (See section 19.6)
- 74 THAT Australia support the implementation of the *Standards for the care of children and adolescents in health services* and the *Charter for children and young people's rights in healthcare* and use these as examples of best practice to be applied in all policy development.⁴⁶⁵ (See section 19.7)
- 75 THAT Australia appoint a Chief Paediatrician to advise the Australian Federal Government on strategies needed to comply with the *Standards for the care of children and adolescents in health services*. (See section 19.7)
- 76 THAT Australia support the implementation of mandatory training in child rights for all health professionals as recommended by the UN Special Rapporteur on the Right to Health.⁴⁶⁶ (See section 19.7)
- 77 THAT Australia review all benefits to and for children and young people to ensure compliance with child rights principles, to align these benefits with need and to remove unjustified discriminatory features. (See section 20.2)
- 78 THAT Australia repeal the scheme or review and replace the scheme with provisions for voluntary arrangements, or if the scheme remains in place, that Australia institute a proper evaluation based on data and measurable outcomes.⁴⁶⁷ (See section 20.3)
- 79 THAT Australia improve the coordination and integration of services that intervene early and stop young people becoming homeless.⁴⁶⁸ (See section 21.1)
- 80 THAT Australia review and renew its efforts to address the homelessness of children and young people, with a commitment to the development and implementation of a framework built on the specific experiences and needs of children and young people and with particular strategies for Aboriginal children, children from newly arrived communities, children leaving care, children in regional and remote communities, same-sex attracted or questioning or gender diverse children.⁴⁶⁹ (See section 21.1)
- 81 THAT Australia improve mainstream services so that they are more responsive to the needs of young people who are at risk of homelessness. Services provided by the education, income support, health system, disability service system and employment systems need to be able to identify where young people are at risk of homelessness and refer them to other useful services that can provide appropriate support to stop them becoming homeless.⁴⁷⁰ (See section 21.1)
- 82 THAT Australia commit to the development of more comprehensive measures of standard of living in data collection and research for use in policy development.⁴⁷¹ (See section 21.3)
- 83 THAT Australia, by considering the full range of recommendations raised in this report, further its efforts to address the current inequalities that exist in the standard of living of Australia's most disadvantaged and marginalised children.⁴⁷² (See section 21.3)

Theme VII—Education, Leisure and Cultural Activities

- 84 THAT the Australian Federal Government work with state and territory governments in committing to the protection and promotion of, and adequate funding for, bilingual models of education.⁴⁷³ (See section 22.1)
- 85 THAT within the *Closing the Gap* policy framework, the Australian Federal Government work with state and territory governments to ensure that individual Aboriginal education strategies are founded on previous policy success, that a long-term approach is taken and that genuine partnerships are fostered between Aboriginal communities, the education sector, community organisations and professional groups such as social workers, researchers, health workers and police.⁴⁷⁴ (See section 22.1)
- 86 THAT Australia commit to developing specific guidance around inclusive practices and tiered interventions for the use of the *National Early Years Learning Framework* with children with developmental delays and disabilities.⁴⁷⁵ (See section 22)
- 87 THAT Australia ensures that all Australian children enjoy the right to an early childhood education consistent with the *National Early Years Learning Framework*.⁴⁷⁶
- 88 THAT Australia ensure that early childhood services are adequately funded to ensure that the needs of each child are met and that adequate subsidies are provided to support inclusion of children with disabilities.⁴⁷⁷ (See section 22.2)
- 89 THAT Australia support the review of the *Disability Standards for Education* 2005 applying the framework of the *Convention on the Rights of Persons with Disabilities*, so that its obligations related to children with disability and education are incorporated within the revised Standards.⁴⁷⁸ (See section 22.3)
- 90 THAT the Australian Federal Government work with state and territory governments, as part of the *National Disability Strategy*, to develop a Disability Education Action Plan which specifically identifies current inadequacies in funding and resources, sets appropriate benchmarks, targets and goals and allocates sufficient funding so that the educational rights of children with disability are adequately met.⁴⁷⁹ (See section 22.3)
- 91 THAT the Australian Federal Government work with state and territory governments to review suspension and exclusion policies with a view to reducing the use of suspension and ensure that students who experience behavioural challenges receive positive therapeutic interventions from appropriately qualified professionals, prior to any disciplinary procedures being applied. (See section 22.4)

- 92 THAT the Australian Federal Government work with state and territory governments to develop a national strategy and guidelines which recognise the unique educational needs of children with refugee backgrounds and ensure a uniform approach to those needs.⁴⁸⁰ (See section 22.5)
- 93 THAT Australia, in implementing *Learn or Earn*, work with vulnerable groups of children and young people such as the homeless and those in, or transitioned from, out-of-home care, to ensure that they can access the opportunities afforded by the policy.⁴⁸¹ (See section 22.6)
- 94 THAT Australia introduce child rights education into the national curriculum.⁴⁸² (See section 22.7)
- 95 THAT Australia ensure that children in detention have adequate access to play areas, recreational and cultural activities, toys, games and materials that allow them to realise their rights under Article 31.⁴⁸³ (See section 23)
- 96 THAT the Australian Federal Government work with state and territory governments to develop guidelines requiring that new residential development must take into consideration the right of children to play by incorporating adequate playgrounds and recreational spaces. (See section 23)
- 99 THAT Australia address the concerns of the Australian Human Rights Commission and the Committee by establishing and providing adequate resources for an independent guardianship and support institution for unaccompanied minors.⁴⁸⁶ (See section 24.2)
- 100 THAT if Australia intends to continue to detain children in breach of its international legal obligations, that it amend the *Migration Act 1958* (Cth) and implement policies to ensure that unaccompanied humanitarian minors will not be detained in isolated areas.⁴⁸⁷ (See section 24.3)
- 101 THAT Australia commit to revising legislation and policy to allow for more timely reunification of children with their families, and to allow for a more flexible application of the 'split family' policy which recognises the nature of family relationships in the countries of origin of most asylum seeker children, particularly in times of conflict.⁴⁸⁸ (See section 24.4)
- 102 THAT Australia amend the *Migration Act 1958* (Cth) to remove 'offshore excise areas' and ensure all asylum seekers are subject to the same application processes which incorporate procedural fairness and allow for independent review by the Refugee Review Tribunal and the Australian courts.⁴⁸⁹ (See section 24.5)

Theme VIII—Special Protection Measures

- 97 THAT Australia implement the recommendations made by the Committee in 2005 and the outstanding recommendations of the Australian Human Rights Commission's report, *National Inquiry into Children in Immigration Detention, A Last Resort?* including that Australia's immigration laws be amended to incorporate the following minimum features:
- there should be a presumption against the detention of children for immigration purposes as well as legal protection of the principle that detention of children be only as a measure of last resort and for the shortest practicable time when all other reasonable alternatives have been considered and exhausted;
 - a court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks);
 - there should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes; and
 - all courts and independent tribunals should be guided by the Convention's principles of best interests of the child as a primary consideration, detention as a last resort and for the shortest period of time, the preservation of family unity and special protection and assistance for unaccompanied children.⁴⁸⁴ (See section 24.1)
- 98 THAT Australia, in all processing of children (accompanied or not) adopt the UNHRC Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and, or instead, adopt the 1967 Protocol relating to the Status of Refugees.⁴⁸⁵ (See section 24.1)
- 103 THAT Australia use a child rights-approach in its implementation of migration law, including by giving consideration to children as migrants and citizens in their own right and adopting the guidance given in the Committee's General Comment No. 12 (2009).⁴⁹⁰ (See section 24.6)
- 104 THAT if Australia intends to continue to detain children in breach of its international legal obligations, that it provide sufficient resources to ensure that their health and other needs are being met.⁴⁹¹ (See section 24.7)
- 105 THAT the Australian Federal Government work with state and territory governments to ensure that funded mechanisms are in place which allow all children in immigration detention to realise their right to education under Article 28 of the *Convention*, including the provision of assistance to meet education-related expenses.⁴⁹² (See section 24.8)
- 106 THAT the Australian Federal Government work with state and territory governments to create a Memorandum of Understanding clarifying the legal roles and responsibilities of all jurisdictions' child protection agencies in relation to children seeking asylum.⁴⁹³ (See section 24.9)
- 107 THAT Australia implement measures to provide that all children and their parents receive the same level of financial support as the equivalent Centrelink benefit and receive medical support regardless of what stage in the application process they are at.⁴⁹⁴ (See section 24.10)
- 108 THAT the Australian Federal Government work with state and territory governments to review the age of criminal responsibility with the aim of increasing it to older than 10 years of age, in accordance with international standards.⁴⁹⁵ (See section 25.1)

- 109 THAT Australia introduce and enforce national standards that ensure the effective application of the principles of diversion and of the use of detention as a measure of last resort.⁴⁹⁶ (See section 25.2)
- 110 THAT Australia take all necessary measures to ensure that mandatory sentencing does not apply to children in Western Australia and that sentencing of children occurs in accordance with the principles enshrined in the *Convention*.⁴⁹⁷ (See section 25.3)
- 111 THAT Australia take all necessary action to ensure that the number of children on custodial remand is reduced by the application of the principles of diversion and detention as a last resort, and that there is adequate funding for required accommodation options and better coordination between justice, community service and public housing authorities.⁴⁹⁸ (See section 25.4)
- 112 THAT Australia urgently take all necessary action, in consultation with Aboriginal people and communities, to build an evidence base of measures that are effective in reducing the rate of detention of Aboriginal children including considering inviting the ongoing advisory contribution of international experts such as the UN Special Rapporteur on Indigenous Peoples.⁴⁹⁹ (See section 25.5)
- 113 THAT the Australian Federal Government encourage initiatives such as state-based action plans and work with state and territory governments to establish mechanisms for early assessment of young people entering the juvenile justice system and an increase in services and programs responsive to the needs of young offenders with disabilities.⁵⁰⁰ (See section 25.6)
- 114 THAT Australia take all necessary action to ensure that all detention facilities for children are audited to ensure compliance with human right principles and that states and territories upgrade or replace facilities and provide qualified staff and training as necessary.⁵⁰¹ (See section 25.7)
- 115 THAT the Australian Federal Government, together with the state and territory governments, maintain and act on their commitment to the eight points contained in the Petrol Sniffing Prevention Program and the recommendations contained in the Senate Standing Committee's 2009 report and that it work in consultation with Aboriginal communities to address not only the supply of volatile substances, but also the underlying social, educational and economic disadvantage that leads to the prevalence of substance abuse in regional and remote Aboriginal communities.⁵⁰² (See section 27.1)
- 116 THAT Australia, applying the Committee's guidance in General Comment No. 11 (2009) and consistent with the recommendations of the Special Rapporteur on the Rights of Indigenous Peoples, commit to working with Aboriginal children and communities to develop a policy agenda which recognises the unique predictors of health and wellbeing for Aboriginal peoples and facilitates the implementation of culturally sensitive and effective special measures to address the significant disadvantage and inequality that Aboriginal children suffer.⁵⁰³ (See section 28)

Appendix 2

Case Study

The following case study from Queensland illustrates systemic problems within the legal and child protection system. The child, M, was involved in various criminal and child protection proceedings, and suffered numerous infringements of his rights under the *Convention*.

Facts

After M's mother and father separated, M went to live with his father until the age of nine or 10 when his father became unwilling to care for him, and the Department of Child Safety (the Department) intervened. M was placed in the home of his mother and stepfather (and two half-siblings), despite their apparent drug use. During this time, M experienced severe violence at the hands of his stepfather, who was charged on at least one occasion with inflicting grievous bodily harm. There were also allegations of sexual abuse.

M's stepfather eventually moved out. M's mother, concerned about M's troubled behaviour, expressed unwillingness to continue to care for M, and the Department assumed guardianship. The guardianship order was made on the basis that M was a threat to his siblings and a hindrance to the reunification of his mother and stepfather. As a result, M was prohibited from staying with his mother while his siblings were present. When M's Department placements routinely failed over the years, he could be found squatting under his mother's house. It was clear that he was at high risk of harm and of homelessness at a very early stage.

Comment

This situation demonstrates a failure to provide special protection for a child deprived of his family environment, in contravention of Article 20. It also evinces a failure to recognise the right of every child to a standard of living adequate for his physical, mental, spiritual, moral, and social development (Articles 6 and 27).

There is no indication that M received medical or psychiatric assessment at any time and his views were only consulted on three occasions preceding the Department taking out a guardianship order in breach of Articles 3, 12 and 25. There was a failure to promote M's highest attainable standard of health in contravention of Article 24, to provide a periodic review of treatment per Article 25, and to take all appropriate measures to promote recovery per Article 39. The Department also failed to protect him from illicit use of drugs (Article 33) despite his early exposure to drugs and repeated requests for 'rehab'.

Consequences

Over time, M was charged with various offences, including breaking and entering and driving without a license. He was sentenced to six months detention. His solicitor appealed the sentence and pending the appeal the Judge released M, commenting, 'if a conditional release order was within range then it should have been given'. M's solicitor requested that the Department provide a placement for M so that he would have

the necessary supported accommodation to comply with the intensive release requirements, which required daily community service. The youth shelter placement provided by the Department was located one and a half hours by bus from the location of his daily required community service and provided no support. M stayed at the shelter for a night or two, and attended community service at least once, but his efforts were hindered when he lost his wallet (containing his transport card). At that point, M left the shelter, took up residence with friends, and ceased participating in community service. A couple of weeks later he died of a drug overdose, one month after turning 17.

Appendix 3

Results

of Child Rights Survey 2010–2011

1 Background and Summary

During the period of November 2010 to April 2011 the National Children's and Youth Law Centre, on behalf of the Child Rights Taskforce, conducted a Child Rights Survey to hear what children and young people had to say about children's rights in Australia.

628 survey responses were received from children and young people under the age of 20 years from across Australia. The survey was conducted online and produced the following data:

- The majority of the survey participants were born between 1993 and 1997. The average age was 16 years. [21% of those surveyed were 16 years old].
- 6.3% of the children identified as Aboriginal or Torres Strait Islander.
- 56.6% of the young people surveyed identified their ancestry as 'Australian'. The remaining 43.4% of the children came from a diverse range of ethnic backgrounds.
- 45.4% identified themselves as being Non-Religious, whilst 41.6% of children stated they were Christian.
- 5.6% of the children who completed the survey indicated that they have a disability.
- 86.9% of the children lived at home with either their parents or carers.
- 90.2% of participants stated they were currently studying and 76.6% of participants stated that they attend school.
- 9.4% of the participants worked at a full time job and 29.4% stated they were engaged in casual work/employment.

When asked about how much they knew of the *Convention on the Rights of the Child*, most of the participants responded with 'not much' (36.3%). However 28.9% indicated that they had a fair idea of the *Convention*.

Most children identified freedom of speech and respect as the rights that they have as a young person; "*I think that as a young person we have the right to voice our opinion and speak our mind. We have the right of freedom*"

2 Results

2.1 Home, Family and Guardian

- Over 90% of the children surveyed were in regular contact with their family or would like to be in regular contact with their family.

2.2 Organisations, Services and Government

- Most of the children did not ever ask for help from an organisation when they encounter a problem (68.8%). However, out of these children, approximately 88% of them knew what to do or, if they did not know what to do, knew how to find out what they needed to do.
- The participants who have asked for help from an organisation stated that the most common problems they sought help for were: family issues and health issues (mostly psychological health).
- The most popular services that the participants went to were Health (46.2%) and Legal (39.4%) services.
- 70.2% of service users stated that they received adequate help with their problems.
- The most common form of benefit received from Centrelink was Youth Allowance (71%).

2.3 Safety and Protection

- The participants were asked who they thought should be responsible for their safety. Most indicated their parents (85.5%) and family (73.4%) while 70.6% believe that they themselves are responsible for their own safety.
- Most children felt rather safe where they live (63%) and at school or TAFE (60%). Most of the time, children felt safe on or near public transports (55.2%) or in other public areas (60.3%).
- Most children had only sometimes seen drug/alcohol use on public transports (50.4%) or public spaces (53.6%).

2.4 Education and Work

- 83.2% of the children enjoyed school. One child wrote: "*I enjoy school because I feel safe and it is friendly. It is also where I am educated and am pushed towards making a successful future.*"

- Most children agreed that school provides them with essential skills and values (percentages ranging from 38% to 46%) and they strongly agreed that school helps them to build social networks (44.1%), prepares them for life outside of school (43.8%) and creates a pathway for their future (53%).
- Of the children who had been unfairly stopped from attending a school (12.1%), the most popular reason was because of the people they mix with (18.2%).
- About half of the children had never worked in a paid job and most of those who had worked in paid jobs were paid under \$10 (50.9%).
- When asked what they would do when a problem arose at work, most children stated they knew how to deal with problems at work. 48.5% chose to speak up for themselves and an equal amount chose to talk to their boss. 21.6% indicated that they would seek help from someone else and a few (2.3%) knew to talk to Union Representatives. 25.7% would choose to do nothing.
- One child commented: *“Never had any problems, but if I did I would talk to my manager or boss about it but for the moment it’s good.”*
- 10.2% deemed their work as dangerous or potentially harmful. These mostly related to lifting heavy objects and other laborious works.
- Most children indicated that the number of hours they worked did not have an effect on their study (46.5%), relationships (46.5%) or health (65.3%). However, there were some children who felt that the number of hours they worked had affected them sometimes.
- The problems that the children experienced at work included: petty pay, exhaustion, unpleasant customers, physical injuries, bad working hours, stress, unsympathetic bosses and less time with friends and families.
- From these media sources, 46.5% stated that they either always understood the information and 50.6% revealed that they sometimes understood the information.
- Just over half of the children and young people surveyed stated that they participate in recreational activities (55.1%).

2.7 Criminal Law

- A large majority of the children had never been in trouble with the law (80%).
- 8.7% had been cautioned by police but not charged with an offence.
- When asked if they feel they had been treated fairly by police, most of the children and young people indicated yes (76.3%).
- Only 40% knew of their rights and less (27.6%) were informed of their rights.
- A small percentage had the matter go to Court (5.6%), but for those who proceeded to Court, only 9.5% had legal support in Court.
- A small number had been locked up in a police cell (0.8%) or a juvenile centre (0.4%). None of the children had been locked up in an adult prison.

2.8 Comments

We received many positive comments in relation to the survey.

- One child commented: *“I thoroughly enjoyed this, I like speaking out. I hope that you get what you needed and if you need any help you have my email.”*
- Another commented: *“Just a little thank you note—it means a lot to me that you are doing this—it’s time our voices were heard.”*

2.5 Thoughts, Beliefs and Culture

- The majority of the children surveyed indicated that they had not been treated unfairly due to a characteristic such as age, race, gender, disability, beliefs, sexuality, and background (ranging from 51.4% to 85.9%). However, many participants indicated that age is the biggest reason of discrimination (40.3%).

2.6 Participation

- More than 85% of the survey participants believed that they have enough time to spend for themselves or with friends.
- Most of the participants stated that they had their views taken into account by parents/guardians (41.4%), other family members (43%), teachers (36%) and friends (42.7%). However, some felt that their views had only sometimes been taken into account by schools/TAFE/University (34.2%).
- The most popular source of media that children and young people get their information from was websites (53.3%), followed by news on TV (18.1%) and schools (16.6%). 84% of the survey participants indicated that they only sometimes trust these media sources.

Appendix 4 - Some Key recommendations of the 2005 Concluding Recommendations

General Measures of Implementation and General Principles

[6] The Committee urges the State party to take all necessary measures to give more effective follow-up to the recommendations contained in the concluding observations of the initial report that have not yet been implemented and to provide concrete and effective follow-up to the recommendations contained in the present concluding observations on the second and third periodic reports.

[8] The Committee, in light of the 1993 Vienna Declaration and Programme of Action, recommends that the State party continue and strengthen its efforts towards a full withdrawal of its reservation.

[10] The Committee recommends that the State party strengthen its efforts to bring its domestic laws and practice into conformity with the principles and provisions of the *Convention*, and to ensure that effective remedies will be always available in case of violation of the rights of the child.

[12] The Committee encourages the State party to complete the development of the National Agenda for Early Childhood, taking into account the Committee's general comment No. 7 (2005) on implementing child rights in early childhood, and to provide the necessary budget for its full implementation. At the same time, the Committee recommends that the State party develop and implement effectively a National Plan of Action for children, taking into account the Declaration and the Plan of Action contained in the document "A world fit for children" adopted by the General Assembly at its special session on children in May 2002. This plan should have specific goals, strategies and guaranteed resources, which would allow for an appropriate implementation of the *Convention* in all states and territories.

[14] The Committee recommends that the State party assign adequate powers as well as human and financial support to the Parliamentary Secretary for Children and Youth Affairs so that it would be able to develop, coordinate and monitor law and policy for children throughout the country.

[16] The Committee recommends that the State party ensure that HREOC can undertake independent and effective monitoring of the implementation of children's rights, in accordance with the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions, by providing it with adequate human and financial resources to do so. In addition, the State party could create specialized sections within the offices of the various state and territory ombudsmen to deal with issues relating to children.

[18] The Committee recommends that the State party pay particular attention to the full implementation of Article 4 of the

Convention, by prioritizing budgetary allocations so as to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to disadvantaged groups, such as indigenous children, "to the maximum extent of ... available resources".

[20] The Committee recommends that the State party strengthen its existing mechanism of data collection in order to ensure that data are collected on all areas of the *Convention* in a way that allows for disaggregation, inter alia by those groups of children who are in need of special protection.

[22] The Committee recommends that the State party continue its efforts to disseminate the principles and provisions of the *Convention* and to raise public awareness, in particular among children themselves and parents, about the *Convention*.

[23] The Committee also recommends that the State party strengthen its efforts to provide adequate and systematic training and/or sensitization on children's rights among professional groups working with and for children, in particular law enforcement officials, as well as parliamentarians, judges, lawyers, health personnel, teachers, school administrators and others, as required.

[25] In accordance with Article 2 of the *Convention*, the Committee recommends that the State party regularly evaluate existing disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures within a set time period in order to prevent and eliminate de facto discrimination and discriminatory attitudes towards especially vulnerable groups of children and ensure that, in enforcing its anti-terrorism legislation, the rights enshrined in the *Convention* are fully respected.

[28] The Committee recommends that the State party strengthen its efforts to ensure effective implementation of the general principle of the best interests of the child as enshrined in Article 3 of the *Convention* in all legal provisions as well as in judicial and administrative decisions and in projects, programmes and services that have an impact on children.

[30] The Committee recommends that the right of the child to express his/her views in all matters affecting him/her be expressly provided in the Family Law reform. Furthermore, the Committee recommends that a Roundtable specifically for children, be established and that the participants be selected in accordance with the principle of equitable geographic distribution.

Source: Committee on the Rights of the Child, *Concluding Observations: Australia*, 40th sess UN Doc CRC/C/15/Add.268 (20 October 2005)

Endnotes

- 1 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (Report, Australian Human Rights Commission, 23 December 2009) 6.
- 2 Except whether otherwise indicated references to *Concluding Observations* refers to UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 40th sess, CRC/C/15/Add.268 (20 October 2005).
- 3 National Human Rights Consultation Secretariat, Commonwealth of Australia, *National Human Rights Consultation Report* (30 September 2009) Recommendation 18.
- 4 Commission for Children and Young People and Child Guardian, *Snapshot 2010: Children and Young People in Queensland* (2010) 97.
- 5 We acknowledge the work of the Australian Research Alliance for Children and Youth in seeking to redress this gap by undertaking to develop a National Action Plan for Young Australians, the result areas of which align with the *Convention* rights of survival, health and family, protection from violence, education and participation.
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- 8 Productivity Commission, Australian Government, *Overcoming Indigenous Disadvantage* (12 May 2010) <<http://www.pc.gov.au/gsp/reports/Indigenous>>.
- 9 Australian Institute of Health and Welfare, Australian Government, *Shelter: Development of a Children's Headline Indicator* (Information Paper, December 2010) vi.
- 10 National Indigenous Health Equality Council, *Child Mortality Target: Analysis and Recommendations* (2010) 26.
- 11 Children's Rights Taskforce, *Report on the Child Rights Strategic Directions Workshop*, (Report presented at the Workshop on Children's Rights, University of Melbourne, 16 December 2010) 5.
- 12 Human Rights and Equal Opportunity Commission, *Bringing Them Home—Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997); Human Rights and Equal Opportunity Commission, *A Last Resort—The National Inquiry into Children in Immigration* (13 May 2004).
- 13 National Human Rights Consultation Secretariat, above n 3, 352.
- 14 See Attorney-General's Department, Australian Government, *A New National Human Rights Action Plan for Australia* (Background paper, December 2010).
- 15 *Juvenile Justice Act 1992*, now *Youth Justice Act 1992*: A "[c]hild" is a person who has not turned 17 years of age, or 18 years of age after a date fixed by proclamation under s 6 (Child's Age Regulation), a process not undertaken.
- 16 Productivity Commission, Australian Government, *Overcoming Indigenous Disadvantage Key Indicators 2009* (12 May 2010) ch 7.
- 17 Australian Institute of Health and Welfare, Australian Government, *Child Protection Australia 2010* (Report, Child Welfare Series No 51, 2011).
- 18 Australian Institute of Criminology, Australian Government, *Juveniles in detention in Australia, 1981–2008* (AIC Monitoring Report No 12, 2010) 21.
- 19 Productivity Commission, above n 16.
- 20 See James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, 15th sess, UN Doc A/HRC/15/ (4 March 2010); Productivity Commission, above n 16; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (Report, Australian Human Rights Commission, 2007); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (Report, Australian Human Rights Commission, 2008); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (Report, Australian Human Rights Commission, 2009); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (Report, Australian Human Rights Commission, 2010).
- 21 *Ibid.*
- 22 See Human Rights and Equal Opportunity Commission, *Bringing them home—National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997).
- 23 Nicholas Biddle and John Taylor, 'Indigenous Population Projections, 2006-31: Planning for Growth' (2009) (Working Paper No 56, Centre for Aboriginal Economic Policy Research, 2009); Productivity Commission, above n 16.
- 24 Saul Flaxman, Kristy Muir and Ioana Oprea, 'Indigenous families and children: coordination and provision of services' (2009) (Occasional Paper 23, National Evaluation Consortium, Sydney).
- 25 James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, 15th sess, UN Doc A/HRC/15/ (4 March 2010).
- 26 Australian Government, *National Apology to the Stolen Generations—Video* (13 February 2008) [Australia.gov.au](http://australia.gov.au/about-australia/our-country/our-people/national-apology-to-the-stolen-generation-video) <<http://australia.gov.au/about-australia/our-country/our-people/national-apology-to-the-stolen-generation-video>>.
- 27 Council of Australian Governments, *National Indigenous Reform Agreement (Closing the Gap)* (2007) and Council of Australian Governments, *National Indigenous Reform Agreement (Closing the Gap)* (2011).
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- 29 Louise Pounder, 'Never Mind Human Rights, Let's Save the Children: The Australian Government's Emergency Intervention in the Northern Territory' (2008) 12(2) *Australian Indigenous Law Reporter* 2; Mal Brough, Minister for Families, Community Services and Indigenous Affairs, 'National Emergency Response to Protect Children in the NT' (Press Release, 21 June 2007).
- 30 *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Service and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).
- 31 *Social Security and other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); Louise Pounder, 'Never Mind Human Rights, Let's Save the Children: The Australian Government's Emergency Intervention in the Northern Territory' (2008) 12(2) *Australian Indigenous Law Reporter* 3.
- 32 Louise Pounder, 'Never Mind Human Rights, Let's Save the Children: The Australian Government's Emergency Intervention in the Northern Territory' (2008) 12(2) *Australian Indigenous Law Reporter* 3.
- 33 *Ibid.*
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- 36 See Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner cited in Gibson, above n 35.
- 37 National Association of Community Legal Centres and the Human Rights Law Resource Centre, *Freedom Respect Equality Dignity: Action—NGO Submission to the UN Committee on the Elimination of Racial Discrimination Australia* (June 2010) 15.
- 38 Professor Fethi Mansouri et al, *The Impact of Racism upon the Health and Wellbeing of Young Australians* (Report, Foundation for Young Australians and the Institute for Citizenship and Globalization, 2009) 11.
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- 40 Problems include being questioned by police without cause, being 'moved on', and being the subject of racist comments or public searches. See Victorian Equal Opportunity and Human Rights Commission, *Rights of Passage: The experiences of Australian-Sudanese young people* (2008) 30.
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- 42 *Ibid.* 11.
- 43 *Ibid.*
- 44 Mansouri et al, above n 38, 7-9.
- 45 Lynne Hillier, Alina Turner and Anne Mitchell, *Writing Themselves In Again: 6 Years On—the 2nd National Report on the Sexuality, Health & Well-being of Same Sex Attracted Young People in Australia* (Report, Australian Research Centre in Sex, Health and Society, 2005) 35.
- 46 Australian Human Rights Commission, *Addressing sexual orientation and sex and/or gender identity discrimination Consultation Report* (2011) 13.
- 47 William Leonard et al, *Beyond Homophobia: Meeting the Needs of Same Sex Attracted and Gender Questioning (SSAGQ) Young People in Victoria—a Policy Blueprint* (Report, Australian Research Centre in Sex, Health and Society, 2010) 22 and 4.
- 48 *Criminal Code 1899* (QLD) ss 208, 215.
- 49 UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 40th sess, CRC/C/15/Add.268 (20 October 2005) paras [27], [28].
- 50 National Child Protection Clearinghouse, *Australian child protection legislation: Resource Sheet No. 14* (10 May 2011) Australian Institute of Family Studies <<http://www.aifs.gov.au/nch/pubs/sheets/rs14/rs14.html>>.

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- 52 *Family Law Act 1975* (Cth) s 60CA.
- 53 Attorney-General's Department, Australian Government, *Exposure Draft, Family Law Amendment (Family Violence) Bill 2010 (Cth) Consultation Paper* (2010).
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- 55 The *Family Law (Family Violence) Amendment Bill 2010* is commendable in its aim to expand the obligations of family law service providers to encourage their clients to consider the best interests of the child; however appropriate training and resourcing of these services is required to ensure this amendment would have practical impacts for children.
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- 59 House Standing Committee on Family, Community, Housing and Youth, Parliament of Australia, *Avoid the Harm—Stay Calm: Report on the Inquiry into the impact of violence on young Australians* (Report, July 2010) 3, 70, and 123.
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