

**Government Response to  
the Joint Standing Committee on Treaties'  
Inquiry into the Convention on  
the Rights of the Child**

March 2003

The Commonwealth Government welcomes the opportunity to respond to the Inquiry of the Joint Standing Committee on Treaties (JSCOT) into the Convention on the Rights of the Child. The responses to JSCOT's recommendations contained in the Government Response reflect the Commonwealth Government's strong commitment to the needs of children, which is implemented through a wide range of initiatives and programs.

The Government recognises that families have the primary responsibility for the growth and development of the nation's children. The Government believes strong families are crucial to maintaining a cohesive and compassionate society. Strong family and community networks that nurture children, and that provide the most effective social support, are the vital building blocks of society. While the Commonwealth Constitution places primary responsibility for children's matters with the State Governments, the Commonwealth has responsibility for:

- the development of integrated policy and programs to strengthen families, enhance the quality of parenting and prevent child abuse and neglect;
- income support and policy for those whose primary role is caring for children; and
- national child care policy.

The creation of the Department of Family and Community Services and the recent creation of the position of Minister for Children and Youth Affairs have ensured an integrated approach across the spectrum of Commonwealth policies and programs for children.

## *Best interests principle*

### **Recommendation 1**

**The Joint Standing Committee on Treaties (JSCOT) recommends that the Government request the Standing Committee of Community Services and Income Security Administrators investigate the need to clarify the interpretation and application of the 'best interests' principle.**

### **Response**

Agreed in part.

### **Comment**

The Government agrees that in some jurisdictions the 'best interests' principle requires clarification. However, this is not a matter that should be referred to the Standing Committee of Community Services and Income Security Administrators (SCCSISA) because it is not the appropriate ministerial forum.

The Government agrees that, at the State and Territory level, there are no provisions specifying the individual criteria that guide the interpretation of 'best interests' of the child. Although State and Territory legislation regarding children, for example, in relation to adoption, states that the best interests of the child is a paramount consideration, it does not define what is to be included in, or what are the elements which make up, the 'best interests' of the child. This situation is one that should be addressed and remedied.

While SCCSISA has considered the 'best interest' principle in the past in the context of child protection matters, Community Services Ministers should consider the recommendation in its totality. The recommendation was drawn to the attention of the Community Services Ministers' Advisory Council at a meeting held in March 2001.

In relation to family law, the Government does not accept the recommendation. The federal *Family Law Act 1975* (FLA) provides that the 'best interests' of the child must be considered in any decision involving the parenting of children. The elements to be considered in the definition of 'best interests' are listed in detail in the FLA. The Government does not accept that the 'best interests' principle requires clarification in relation to cases or matters arising in relation to the FLA.

In addition, the Commonwealth Attorney-General's Department is currently working in conjunction with State and Territory Departments of Community Services to develop criteria for application in consideration of the definition of the 'best interests' of the child, in relation to the inter-country adoption of children under the Hague Convention on Protection and Inter-Country Adoption. That Convention commenced for Australia on 1 December 1998.

## ***Inconsistencies between State, Territory and Federal legislation***

### **Recommendation 2**

**The JSCOT recommends that the Government request the Standing Committee of Attorneys-General investigate and remedy the inconsistencies between legislation in different jurisdictions that may adversely impact on children.**

### **Response**

Noted. Advice on this issue has been sought from the Family Law Council.

### **Comment**

This recommendation concerns issues for which individual States and Territories are primarily responsible. The Report has been referred to the States and Territories for their consideration.

In the area of family law, the Family Law Council is examining the interaction between Commonwealth and State and Territory child and family legislation. The Council has produced a discussion paper entitled *The Best Interests of Children? The Interaction of Public and Private Law in Australia* addressing the care, support and protection of children, and the interaction between the *Family Law Act 1975* (FLA) and State and Territory Child and Family Services legislation. The Family Law Council is a statutory authority which was established by section 115 of the FLA. The functions of the Council are set out in sub-section 115(3) of the Act, which states:

It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning:

- (a) the working of this Act and other legislation relating to family law;
- (b) the working of legal aid in relation to family law; and
- (c) any other matters relating to family law.

The closing date for submissions and comments in relation to the discussion paper was 30 June 2001. The Council's final report has been received and is being considered by the Government.

*Issues relating to the media*

**Recommendation 3**

**The JSCOT recommends that the Government request the Standing Committee of Attorneys-General address jurisdictional inconsistencies in relation to the publication of children's names in circumstances that would be detrimental to the child's best interest.**

**Response**

Noted.

**Comment**

This recommendation concerns issues for which the individual States and Territories are primarily responsible. The Report has been referred to the States and Territories for their consideration.

The Government considers that it is important that the circumstances in which children's names are published should be limited in the child's best interests. This is covered federally in family law matters by section 121 of the *Family Law Act 1975*, which applies restrictions to the publication of proceedings.

**Recommendation 4**

**The JSCOT recommends that the appropriate industry organisations monitor and encourage responsible reporting in the preparation of news stories in relation to the potential impact on children.**

**Response**

Agreed.

**Comment**

The Government considers that this recommendation has been implemented.

The Government agrees that it is important that industry organisations monitor and encourage responsible reporting and preparation of news stories which may potentially impact on children. The Government is of the view that the current system successfully fulfils this obligation.

The *Broadcasting Services Act 1992* (BSA) provides clear objects in relation to the broadcasting of material potentially harmful to children. The objects are:

- to encourage the providers of broadcasting services to respect community standards in the provision of program material;
- to encourage the provision of means for addressing complaints about broadcasting services; and

- to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.

The Government is committed to ensuring that these objects are met and continues to monitor community concerns. The Government works closely with the Australian Broadcasting Authority (the ABA) which was established under the BSA as an independent statutory authority with responsibility for regulating broadcasting services.

Under the BSA, each industry sector must develop codes of practice relevant to the broadcasting operations of that section of the industry. The BSA identifies a number of matters to which codes of practice may relate. Methods of ensuring that children are protected from exposure to program material which may be harmful to them is a high priority.

A revised commercial television industry code of practice was registered by the ABA in April 1999. The ABA must register a code if it is satisfied of the following:

- the code of practice provides appropriate community safeguards for the matters covered by the code;
- the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and
- members of the public have been given an adequate opportunity to comment on the code.

The commercial television industry code of practice is due for review in 2003.

Under the Commercial Television Industry Code of Practice, the broadcasting day is broken up into different classification zones which are based on the majority audience normally viewing at that time and particularly whether children are viewing in significant numbers. All programs must be appropriately classified and only material suitable for a particular classification zone can be broadcast in that zone.

News and current affairs programs do not require classification, but it is a requirement of the code that when broadcasting in a 'G' classification period, extra care must be exercised in the selection and broadcast of all material. News material broadcast outside regular bulletins in 'G' classification periods must be compiled with special care, particularly when many children may be watching.

News and current affairs programs which include images of dead or seriously wounded people which may distress or seriously offend a substantial number of viewers should only be displayed when there is an identifiable public interest to do so. Commercial television stations must display sensitivity in broadcasting images of, or interviews with, bereaved relatives and survivors or witnesses of traumatic incidents.

Further, commercial television stations must provide adequate prior warning to viewers about material which, in the opinion of the licensee, is likely to distress or offend a substantial number of viewers. The warning must be spoken and provide an adequate indication of the nature of the material, while avoiding detail which may itself seriously distress or offend viewers.

The revised code also sets out clearer limits on the reporting and depiction of suicide. The code requires that reports of suicide or attempted suicide should only be broadcast where there is an identifiable public interest to do so and should exclude any description of the method used. The report must be straightforward and must not include graphic details or images, or glamorise suicide in any way.

If a viewer wishes to make a complaint about a program, they must first make their complaint to the station concerned. If they do not receive a response within 60 days, or if they believe the response to be inadequate, they may make a complaint to the ABA about the matter.

Through the investigation of unresolved complaints the ABA is able to monitor stations' compliance with the requirements of the code of practice.

Codes of practice developed by the national broadcasting services (ABC and SBS) have similar requirements to those of the commercial television industry.

The Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) support responsible reporting and preparation of news stories in relation to the potential impact on children. Both broadcasters are independent in editorial and programming matters under their respective legislation.

The current edition of the ABC Editorial Policies was published in April 1998. They state that 'special care should be taken to ensure that programs that children are likely to watch unsupervised should not cause alarm or distress, or incite aggressive behaviour'.

The policies include special provisions for news programs that might be shown during children's viewing time:

**9.7.3 News Flashes** - Because the timing and content of news flashes are completely unpredictable, particular care should be exercised in the selection of sounds and images and consideration given to the likely composition of the audience. This should be done, notwithstanding the need to get a news flash to air as quickly as possible.

**9.7.4 News Updates and News Promotions** - News updates and news promotions should not appear during obviously inappropriate programs, especially programs directed at young children. Due to the repetitive nature of news updates and news promotions, there should be very little violent material included in them, and none at all in the late afternoon and early evening.

These policies are also included in the ABC's Code of Practice, which is notified to the ABA.

Section 2.4.4 of the SBS's Code of Practice also includes similar provisions for the presentation of news flashes and news updates and promotions. The ABC's Editorial Policies are currently being reviewed.

## **Recommendation 5**

**The JSCOT recommends that the Government monitor, assess the adequacy of and enforce existing guidelines to provide greater protection for children viewing television.**

### **Response**

Agreed.

### **Comment**

The Government considers that this recommendation has been implemented.

Australian broadcasting regulation, as it relates to children, has two primary objectives. The first is to provide high quality television programs made specifically for children through program standards; the second (as noted above) is to protect children from exposure to potentially harmful material.

In relation to the first objective, the Government supports the Australian Broadcasting Authority (ABA) continuing its current role of monitoring and reviewing from time to time its existing Children's Television Standards (CTS).

Section 158 of the *Broadcasting Services Act 1992* (BSA) sets out the primary functions of the ABA. Paragraphs 158(j) and (k) require the ABA to 'develop program standards relating to broadcasting in Australia' and 'to monitor compliance with those standards...'. Under Part 9 of the BSA, section 122 requires the ABA to determine standards to be observed by commercial broadcasting licensees in relation to programs for children. Clause 7(1)(b) of Part 3 of Schedule 2 of the BSA makes it a condition of a commercial broadcasting licence that a licensee comply with program standards applicable to the licence under Part 9 of the BSA.

The CTS place mandatory requirements on all free-to-air commercial television stations to broadcast a minimum annual quota of 390 hours of children's programs. This is broken up into 130 hours of preschool (P) programs and 260 hours of programs for primary school children (C). The 260 hours of C programs includes 32 hours of Australian children's drama programs.

These programs are broadcast in special time bands, which are set out in the CTS and are classified by the ABA against criteria set out in the CTS. Only programs meeting the criteria can be broadcast by commercial television stations to meet their quota requirements. The requirements for C and P programs are designed to ensure children have available programs which are not only suitable for them, but are specifically targeted to them. They are designed to provide a positive viewing experience for children by ensuring the broadcast of a certain number of age specific, 'quality' programs on commercial television.

Programs classified by the ABA must satisfy a special set of criteria set out in the CTS which says a program must be made specifically for children in the preschool or primary school age range, be entertaining, be well produced, enhance a child's understanding and experience and be appropriate for Australian children. Programs that do not meet these requirements cannot be classified as C or P programs by the ABA.



In relation to the second objective, the CTS include requirements that unsuitable material, both in programs and commercials, must not be broadcast in programs pre-classified by the ABA as C or P programs. Programs must not: demean individuals or groups of people on the basis of race, nationality, ethnicity, gender, sexual preference, religion or mental or physical disability; present images or events in a way which is unduly frightening or distressing to children; depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them; or advertise products officially declared unsafe by a Commonwealth authority or an authority having jurisdiction within a licensee's service area. Programs which do not meet these requirements cannot be classified by the ABA as C or P programs.

Other programs directed to children, broadcast by free-to-air commercial broadcasters, are classified by the broadcaster concerned and broadcast in the relevant time band in accordance with the Commercial Television Industry Code of Practice. Program classifications – G, PG, M and MA – specify limits for the amount of violence, sex, nudity, language, drugs, and for depictions of suicide, dangerous behaviour and images aimed at creating an atmosphere of tension or fear.

One of the major changes made to the revised code was the inclusion of a new classification category – AV – for those programs at the MA level due to violence. AV classified programs are permitted to be shown between 9.30 pm and 5.00 am.

Complaints about possible breaches of the CTS can be made direct to the ABA for investigation. Complaints about other programs covered by a code of practice must be made to the station in the first instance. If the person does not receive a response, or believes the response to be inadequate, they can refer the matter to the ABA for investigation. The ABA must investigate such complaints.

If the ABA finds a breach of the CTS, it may refer the matter to the Director of Public Prosecutions (DPP) for possible legal proceedings. If the ABA finds a breach of a code of practice it may make compliance with the Code a condition of licence. Breaches of licence conditions may carry substantial penalties.

In April 2000, an additional licence condition was imposed on the licensee of commercial television station QTQ9 Brisbane. The licence condition requires the licensee to comply with clauses 3.6, 3.7 and 3.8 of the Commercial Television Industry Code of Practice concerning the broadcasting of promotions in G viewing periods. Generally the ABA has worked with broadcasters concerned to ensure that they put in place appropriate mechanisms so that future breaches of the same or similar kind do not occur.

Under the *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991*, responsibility for programming and editorial policies is a matter for the respective ABC and SBS Boards and management. The ABC and SBS Boards are required by their respective statutes to develop codes of practice relating to programming matters and to notify those codes to the ABA. ABC and SBS programming must comply with the codes.

The ABC Code of Practice contains a section on Children's Programming. Both the ABC's and the SBS's systems of television program classifications apply the Guidelines for the Classification of Films and Videotapes issued by the Office of Film and Literature Classification.

The Government believes that the current arrangements in place for the ABC and SBS are operating successfully and provide adequate protection for children viewing television.

The BSA now makes provision with respect to Internet content.

While the Australian community recognises the enormous potential of the Internet, many people also believe that there are risks involved in using Internet services. Risks include the distribution of illegal content, for example child pornography and material providing detailed instruction in crime or violence, as well as the exposure of children to content that is unsuitable for them.

The BSA establishes a co-regulatory scheme for Internet content, which is based on the investigation of complaints by the ABA and the development of codes of practice by the industry.

The Government's approach does not rely on regulation alone. Educating and advising the public about means to manage their, and their children's, use of the Internet is an important component of the framework. To this end, the Government established NetAlert in November 1999. NetAlert is an independent community advisory body, responsible for running national awareness campaigns to promote a safer Internet experience and for researching new access management technologies.

In order to assist all Australians and particularly families in their use of the Internet, the ABA has developed and designed the cybersmart kids Internet website at: [www.cybersmart.com.au](http://www.cybersmart.com.au). The website provides people with information they need about safe Internet access for children, plus links to many useful and fun sites for children.

#### **Recommendation 6**

**The JSCOT recommends that the Government monitor and control the content of advertisements designed to appeal to children.**

#### **Response**

Agreed.

#### **Comment**

The Government believes that the existing mechanisms achieve these objectives.

As indicated above in relation to Recommendation 5, under Part 9 of the *Broadcasting Services Act 1992* (BSA), section 122 requires the ABA to determine standards to be observed by commercial broadcasting licensees in relation to programs for children. Clause 7(1)(b) of Part 3 of Schedule 2 of the BSA makes it a condition of a commercial broadcasting licence that a licensee comply with program standards applicable to the licence under Part 9 of the BSA.

Included in the Children's Television Standards (CTS) is a recognition that children, due to their developmental levels, require special consideration in areas such as advertising and the

presentation of material that 'may be harmful to them'. The CTS must be complied with by all commercial television broadcasting licensees.

The CTS do not allow advertising in preschool (P) classified programs broadcast in P periods. Limitations are placed on the broadcast of commercials in C programs. Five minutes of G classified commercials and one minute of G classified program promotions are permitted in every 30 minutes of C program material.

All advertising directed specifically at children must meet the requirements set out in the CTS. This applies to advertising specifically directed at children which is broadcast in C programs and higher classified programs, such as G and PG classified programs.

The CTS include requirements for presentation of advertising and other material to children, such as the presentation of prizes, competitions, a prohibition on host selling of products, a prohibition on advertising alcoholic drinks, restrictions on the number of times a commercial can be broadcast in C programs, misleading advertising and factual and clear presentation.

The underlying premise for these restrictions is to ensure advertising material directed to children is presented clearly and in a way which children can understand. The requirements mentioned above in regard to recommendation 5 concerning unsuitable material also apply to commercials broadcast during C programs.

Complaints about advertising directed at children can be made directly to the ABA for investigation. The ABA has also supported the Australian Association of National Advertisers in developing principles and advisory notes for advertising to children. These principles and advisory notes, which were introduced in August 1999, complement the CTS and provide a point of reference for advertisers and agencies making advertisements directed at children.

Section 6.23 of the Commercial Television Industry Code of Practice prohibits promotion on a program of products or services that have names or packaging featuring the program host and requires any material which promotes a product or service to be presented as a discrete segment. References to prizes for competitions must also be brief.

Section 1.16 of the Commercial Television Industry Code of Practice includes additional provisions relating to premium charge telephone services, particularly those directed at children. Information about the cost of the call must be in a form children can understand and children must be invited orally to seek parental permission before calling.

The ABA also monitors new research being conducted in this area to assess its implications for advertising to children.

The ABC does not broadcast advertisements. Section 4 of the SBS Codes of Practice requires that SBS takes account of the "Classification and Placement of Commercials and Community Service Announcements" contained in Section 6 of the Commercial Television Industry Code of Practice 1999. Section 6.4.3 of the Commercial Television Code requires that a commercial or community service announcement must comply with "any relevant requirements of the Australian Broadcasting Authority's Children's Television Standards". Sections 6.20 - 6.22 include further requirements regarding content and scheduling of commercials or community service announcements directed to children in accordance with the CTS.

## **Recommendation 7**

**The JSCOT recommends that the Government establish an effective and timely complaints mechanism in relation to television programs and advertisements.**

### **Response**

Agreed.

### **Comment**

Under the BSA if a person wishes to make a complaint about program content or compliance with a code of practice, they must make that complaint to the broadcaster concerned in the first instance. If either the person does not receive a response within 60 days, or receives a response but believes it to be inadequate, the person may make a complaint to the ABA about the matter. The ABA must investigate such complaints unless it is satisfied that the complaint is frivolous, vexatious or not made in good faith.

Complaints about possible breaches of licence conditions or breaches of the BSA can be made directly to the ABA. Licence conditions cover program standards including Australian content and programs made specifically for children, tobacco advertising, advertisements relating to medicines and political advertising.

In 1999 the ABA conducted a national survey into community attitudes relating to television programs. The research results are used to monitor the effectiveness of television codes of practices by ensuring they reflect community standards. Among other issues, the study explored the extent of community awareness about the process of making a complaint. The results provide a benchmark for the assessment of changes made to the Commercial Television Industry Code of Practice, including the requirement that broadcasters provide regular on-air information about the codes of practice and complaints procedures.

The ABA completed 137 investigations into program matters in the financial year 1999-2000. This was 25% more than the 109 completed in 1998-99. The average time taken by the ABA to complete an investigation was approximately 13 weeks, 2 weeks less than in 1998-99. Over 85% of investigations were completed within 4 months of receipt of the complaint or the receipt of additional information.

Breaches of codes of practice are not breaches of the BSA. However, the ABA can make compliance with a code of practice a condition of licence. There are substantial penalties (up to \$220,000 for commercial television) for breaches of licence conditions. As discussed above in the response to Recommendation 5, in April 2000, an additional licence condition was imposed on the licensee of commercial television station QTQ9 Brisbane.

The licence condition requires the licensee to comply with clauses 3.6, 3.7 and 3.8 of the Commercial Television Industry Code of Practice concerning the broadcasting of promotions in G viewing periods. Generally, the ABA has worked with broadcasters concerned to ensure that they put in place appropriate mechanisms so that future breaches of the same or similar kind do not occur. The ABA has been generally satisfied with this approach.

Complaints about the classification and placement of commercials are covered under codes of practice. Complaints about advertising in programs classified C are covered in the CTS and can be made direct to the ABA. Under the CTS no advertising is allowed in preschool (P) classified programs broadcast in P periods.

Complaints about other issues to do with advertising such as taste and decency, health and safety, and alarm and distress to children are not covered by codes of practice or the BSA. However, complaints about such matters may be directed to the Advertising Standards Board (ASB). The ASB is funded by the advertising industry and comprises members of the public who are appointed from a broad cross-section of the community so that a range of current community attitudes are fairly represented.

The ABC receives very few complaints concerning children's programs, and already has in place effective and timely mechanisms for all programming complaints. Complaints handling procedures are the subject of regular review within the organisation.

Under the BSA, complaints relating to compliance with the Code of Practice on the part of the ABC should be made in the first instance to the ABC. The ABC has in place detailed procedures for handling complaints. If the ABC does not respond in a specified time period or complainants remain dissatisfied with the ABC's response, complainants have recourse to:

- the Independent Complaints Review Panel, if the complaint alleges a serious case of bias, lack of balance or unfair treatment arising from an ABC broadcast or broadcasts; or
- the ABA, if the complaint is covered by the ABC Code of Practice.

The ABC believes that these procedures provide an effective and timely complaints mechanism in relation to television programs.

Similarly, the SBS has in place effective and timely mechanisms for all programming complaints. Complaints handling procedures are the subject of regular review within the organisation.

Under the BSA, complaints relating to compliance with the Code of Practice on the part of the SBS should be made in the first instance to the SBS. The SBS has in place detailed procedures for handling complaints. If the complaint is covered by the SBS's Code of Practice and the SBS does not respond in a specified time period or complainants remain dissatisfied with the SBS's response, complainants have recourse to the ABA.

The SBS believes that these procedures provide an effective and timely complaints mechanism in relation to television programs.

### ***The right to know the parents***

#### **Recommendation 8**

**The JSCOT recommends that the Government request that information identifying gamete donors be registered in all jurisdictions.**

#### **Response**

Agreed in part.

#### **Comment**

The Government considers that mandatory record keeping, including donor identification, and the setting up of a central register by all clinics involved in gamete transfer is important for medical reasons. In cases where it is possible that disease/abnormality may have been inherited in the offspring, there may be a need to confirm the genetic nature of a disorder and where it is sought, to give adequate genetic information to the recipient/recipient family and/or the donor so that future informed reproductive choices can be made.

The Government is of the view that any collection of gamete donor information should only proceed with appropriate privacy safeguards in place, as the information that would be collected and stored in this context is highly sensitive. Privacy safeguards in relation to any such collection should be consistent across all jurisdictions.

The Government, therefore, agrees with the recommendation that identifying information should be recorded, provided that adequate privacy safeguards are in place in all jurisdictions.

Guidelines for Genetic Registers and Associated Genetic Material were developed by the Australian Health Ethics Committee, after wide consultation. The Guidelines were accepted by the National Health and Medical Research Council in November 1999 and became effective from 1 January 2000. A major issue in those guidelines is that of record keeping and disclosure of information.

The view of the Australian Health Ethics Committee is that information held on a genetic register may only be provided to the registrant's blood relatives or spouse with the registrant's consent. Care should be taken not to inadvertently disclose registrants' confidential information to other family members, even if they are also registrants. With regard to deceased registrants, such information may be provided without consent to a spouse or relative who is the registrant's senior available next-of-kin.

## ***Non-discrimination***

### **Recommendation 9**

The JSCOT recommends that the Government request the Standing Committee of Attorneys-General to review legislation to ensure that there is no exploitation of children on the basis of age.

### **Response**

Noted.

### **Comment**

This recommendation concerns issues for which the individual States and Territories are primarily responsible. The Report has been referred to the States and Territories for their consideration.

The Federal Government is committed to ensuring that children are not exploited. The Federal Parliament enacted child sex tourism provisions in the *Crimes Act 1914*. The legislation was enacted in part, in response to Articles 19 and 34 of the Convention on the Rights of the Child (CROC) which place obligations on States Parties to take action, at both a national and international level, to protect children from exploitation.

Australia was a supporter of the development of an Optional Protocol to CROC on the Sale of Children, Child Prostitution and Child Pornography. That Protocol was adopted by the UN General Assembly in May 2000. Australia signed the Protocol in a signing ceremony in New York on 18 December 2001, and consideration of the ratification process is in progress. The Optional Protocol entered into force on 18 January 2002.

Australia also supported the development of an Optional Protocol to CROC on the Involvement of Children in Armed Conflict. That Protocol was also adopted by the UN General Assembly in May 2000. The possible signature of this Protocol is currently being considered in accordance with normal treaty procedures.

In addition, the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* came into force on 21 September 1999. The Act creates offences in relation to slavery, sexual servitude and deceptive recruiting for sexual services. The penalties imposed in respect of these offences are higher where the victim is aged under the age of 18 years. The range of offences addresses the disturbing increase in the international trade in people for the purposes of sexual exploitation, to which children are increasingly falling victim.

The Act also gives effect to Australia's obligations under a wide range of international instruments to prohibit servitude and the trafficking in persons for the purposes of sexual exploitation, including the *Convention on the Elimination of all Forms of Discrimination Against Women*, CROC and the *Universal Declaration of Human Rights*.

The Government is also committed to ensuring that children do not suffer discrimination. Children are protected against discrimination under all federal anti-discrimination legislation in the same way as adults. Furthermore, the Government has made a commitment to develop new legislation to prohibit discrimination on the basis of age. The legislation will protect

Australians of all ages, including children and young people, from age discrimination in a range of areas of public life.

The legislation will balance the need to eliminate unfair discrimination on the basis of age with the need to ensure sufficient flexibility to allow for situations where age requirements have particular policy significance (for example in relation to youth wages, job training and social security). To achieve this balance, the Government is consulting a wide range of business and community organisations, including those representing children.

In the course of developing the legislation the Government will consult State and Territory governments on a range of issues, including discrimination against children on the basis of their age.

The Human Rights and Equal Opportunity Commission (the Commission) has the power to inquire into complaints in relation to Commonwealth practices which are allegedly inconsistent with CROC and to take action to promote CROC. Violations of such human rights are not made unlawful under the *Human Rights and Equal Opportunity Commission Act 1986* (the HREOC Act), but a complaints process is established and if the act is inconsistent with or contrary to any human right and conciliation is either inappropriate or unsuccessful, a report to the Attorney-General must be made. In addition, paragraph 11(1)(k) of the HREOC Act empowers the Commission to report to the Minister on steps that need to be taken by Australia to comply with the provisions of certain international instruments. Those instruments include the CROC.

### **Recommendation 10**

**The JSCOT recommends that the Government request the Standing Committee of Attorneys-General to review legislation, policies and practices to ensure that children in all jurisdictions are adequately protected.**

#### **Response**

Noted.

#### **Comment**

This recommendation concerns issues for which the individual States and Territories are primarily responsible. The Report has been referred to the States and Territories for their consideration.

In areas of Commonwealth responsibility, the Federal Government is already committed to ensuring that children are adequately protected. For example, a consultative group has been convened by the Attorney-General to assist with a review being conducted on the adequacy of protection for children's personal information under Commonwealth privacy legislation. The group is assisting with the preparation of a discussion paper which will form the basis for wider public consultation on the issue.

At the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSLA) meeting on 28 July 2001, members agreed to target local area priorities in implementing a



national strategy on Indigenous family violence. The strategy seeks to achieve outcomes that reflect measurable improvement in seven areas, the first being child safety and well-being. This means protection of children from all forms of child abuse.

In April 2002, the Council of Australian Governments (COAG) agreed that the Commonwealth and States and Territories would work together in partnership with Indigenous communities in a 'whole of government' approach in up to ten communities or regions. The first of these regions, Cape York in Queensland, was announced on 25 September 2002. Through this initiative, governments will explore more cooperative and integrated responses to the needs identified by Indigenous communities, including issues of child protection.

In addition, the Commonwealth has initiated the consideration of child abuse and protection by COAG on 29 November 2002. The Council's interest in the protection of children across all jurisdictions is likely to involve considering the scope of current protection arrangements.

### **Recommendation 11**

**The JSCOT recommends that the Government investigate educative initiatives apart from the formal complaints mechanisms which can address racial discrimination against children evident in the community.**

#### **Response**

Agreed.

#### **Comment**

The Government is of the view that a range of current initiatives is already effectively working towards this outcome.

The Government is aware of the need to educate the community about racial discrimination against children and has implemented a range of ongoing initiatives which attempts to address this problem.

#### *Living in Harmony Initiative*

The *Living in Harmony* initiative was launched in 1998. It comprises three linked elements – a community grants program, a partnership program and a public information strategy. Children and youth are a major target group of the initiative.

The community grants program is the centrepiece of the initiative, and relies on local groups to identify relevant issues of racism at the "grass roots" level and propose suitable projects that address their own community needs. Over 50% of the 137 community grants awarded since the inception of the *Living in Harmony* initiative have a youth focus.

The projects resulting from these grants have operated in a variety of settings including schools, sporting and youth clubs. They have covered a wide range of issues such as enhancing respect for marginalised Indigenous youth, identifying and addressing elements of discrimination and vilification that are causal links to juvenile offending and programs that

enhance increased participation and acceptance of young people from all backgrounds within sporting clubs and teams.

As well, through the partnerships program of the initiative, the government is working with a number of key Australian businesses and community organisations to develop demonstration projects aimed at improving social cohesion and tackling racism, or generating better understanding, respect and cooperation among people from different cultural backgrounds. In addition, under the partnerships element of the *Living in Harmony* initiative, a number of programs has been implemented with organisations operating at a national level to address issues of racism which affect Australia's young people.

An example of such a partnership was that with the Conference of Education Systems' Chief Executive Officers (a body composed of representatives from the Commonwealth, the States and Territories, the Catholic system and independent schools) which created a comprehensive web-site of a variety of educational resources through which schools and students can be made aware of and address racism in schools ([www.racismnoway.com.au](http://www.racismnoway.com.au)).

The third element of the *Living in Harmony* initiative is the public information strategy. The strategy promotes and reinforces the concepts and practice of acceptance and fairness in our community. The main feature of the public information strategy is Harmony Day, which coincides with the United Nations International Day for the Elimination of Racial Discrimination (21 March). For Harmony Day 2002, a specific resource kit with activities to address racism for primary schools was developed and distributed.

The *Living in Harmony* initiative will continue to have a focus on the prevention of racial discrimination experienced by children and young people through the ongoing promotion of the *Living in Harmony* messages and by practically addressing these issues at both the local and national levels.

#### *The Human Rights and Equal Opportunity Commission (the Commission)*

The functions of the Commission under the *Racial Discrimination Act 1975* include the development of educational programs that aim to combat racial discrimination and prejudices that lead to racial discrimination, and the promotion of understanding, tolerance and friendship among racial and ethnic groups. The Government supports the Commission's work in these areas.

The Commission has sought to respond to the issue of racial discrimination against young people, through the Racial Hatred Act Community Education Program. As part of this program a comic was developed to educate young people about actions they may take to complain about racial harassment. This resource has been evaluated and found to be useful in addressing racist attitudes in school settings.

The Commission has also funded the development of *Tracking Your Rights*, a holistic human rights education program for Indigenous communities. Indigenous young people were involved in the development of this package designed to assist young people to resolve the range of human rights issues they face including instances of racial discrimination.

## Recommendation 12

The JSCOT recommends that the Government formally seek input into policy formulation from Non-English Speaking Background<sup>1</sup> and Indigenous sections of the community in the development of mainstream programs which may be accessed by those groups.

### Response

Agreed.

### Comment

The Government considers that this recommendation has been implemented.

The Government is aware of the need to consult with target communities in the development of programs which affect them and has implemented a number of strategies to ensure this consultation is achieved.

### *The Charter of Public Service in a Culturally Diverse Society*

In June 1998, the Minister for Immigration and Multicultural and Indigenous Affairs released the Commonwealth's *Charter of Public Service in a Culturally Diverse Society*. The Charter fulfils the Government's access and equity strategy and aims to ensure that government services meet the needs of people from diverse linguistic and cultural backgrounds so that they can participate fully in economic, social and cultural life. The Charter summarises a set of service principles central to the design, delivery, monitoring, evaluation and reporting of quality Government services in a culturally diverse society. The Charter covers all groups in Australian society who are eligible to access government services including Indigenous people. The Charter is based on seven principles: access, equity, communication, responsiveness, effectiveness, efficiency and accountability.

As Government policy, the Charter applies across Commonwealth departments and agencies and is aimed at ensuring that the diverse needs of all Australians are addressed in the development of policies and programs.

For instance, the Government, through the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), seeks to ensure that mainstream Government service providers have regard for the needs of their young clients from linguistically and culturally diverse backgrounds (including newly arrived migrants and refugees and Indigenous Australians) through discussions with relevant Departments and agencies.

The Charter principle of 'Communication' requires that Government service providers consult with their clients regularly about the adequacy, design and standard of Government services. The effectiveness of the implementation of the principles of the Charter by each Department

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<sup>1</sup> The Report makes extensive use of the acronym 'NESB' in the phrase NESB children. In May 1996 the Council of Ministers for Immigration and Multicultural Affairs determined that the term and especially the acronym 'NESB' should be dropped where possible from all official communications. The term 'Australians from culturally and linguistically diverse backgrounds', or a variation of it, should be used, although it is suggested that it not be used in acronym form.

and agency is reported to Parliament in the Commonwealth's Access and Equity Annual Report. This report is compiled by DIMIA.

In line with the Charter, the Department of Family and Community Services (FACS) has endorsed the theme of "diversity and difference" which is to be addressed across all FACS' identified research priority areas. The "diversity and difference" theme covers both locational and cultural issues affecting people in rural, regional and remote areas; Indigenous people; and people from other diverse cultural and linguistic backgrounds.

For example, FACS has commissioned research to examine the relationship between social security income support payments and the socio-economic welfare of Indigenous children and their families in rural and remote communities.

#### *Federation of Ethnic Communities' Councils of Australia*

The Government provides funding to the Federation of Ethnic Communities' Councils of Australia (FECCA), a national peak advocacy body for people from diverse cultural and linguistic backgrounds. FECCA provides advocacy to government on a broad range of youth issues and seeks to facilitate policy development in this area through working closely with the community. In this context, FECCA aims to empower young people to participate fully in decision-making processes.

#### *Refugee Resettlement Advisory Council*

The Refugee Resettlement Advisory Council has a key role in advising the Government on the most effective means of designing and delivering settlement services to refugees, Humanitarian Program entrants and migrants to Australia. The Council provides an avenue for continuing consultations with the community on refugee resettlement issues.

#### *Indigenous Australians*

A unique mechanism for obtaining input into the formulation and implementation of government policy exists in the form of the Aboriginal and Torres Strait Islander Commission (ATSIC) which is a government body not controlled by a Minister, but by a popularly elected Indigenous board. ATSIC has an annual expenditure of \$1.1 billion on Indigenous programs and is routinely consulted in relation to mainstream and Indigenous specific programs managed by other agencies. An elected ATSIC Commissioner has specific portfolio responsibility for children's issues.

In addition, numerous Indigenous people have decision-making roles within mainstream agencies, and advise governments through a range of formal, statutory and non-statutory bodies. A large number of Indigenous-controlled organisations are involved in the planning and delivery of government-funded services in areas such as health, housing, legal services and employment. Specifically in relation to children, a network of Aboriginal and Islander Child Care Agencies, and their national umbrella organisation the Secretariat of National Aboriginal and Islander Child Care, receive government funding and make their views known to government and others on a regular basis.

The Department of Health and Ageing has a strong commitment to a partnership between Indigenous communities, mainstream health providers and Aboriginal community-controlled health services as the way to achieve better health outcomes. The partnership approach is

embedded in the Agreements on Aboriginal and Torres Strait Islander Health (Framework Agreements) signed by the Commonwealth government, the State and Territory governments, the Aboriginal and Torres Strait Islander Commission and the Aboriginal community-controlled health sector in each jurisdiction. Under the Framework Agreements, Health Forums (comprising the four partners) are responsible for developing regional plans to identify Indigenous health needs and priorities, and identify gaps in current service provision within the context of a comprehensive primary health care model.

In relation to mainstream public health strategies, it is of note that the National Public Health Partnership Group (NPHPG), a Commonwealth-State forum to strengthen public health infrastructure and response capacity, agreed in September 2000 to create a sub-committee called the Aboriginal and Torres Strait Islander Working Group (ATSIWG). The purpose of ATSIWG is to provide advice on Aboriginal and Torres Strait Islander health issues to the NPHPG. Representatives from the National Aboriginal Community Controlled Health Organisation (NACCHO), Standing Committee on Aboriginal and Torres Strait Islander Health (SCATSIH), ATSIC and the NPHPG comprise the membership of ATSIWG.

In relation to the development of individual public health strategies, there is a range of mechanisms to address input from Aboriginal and Torres Strait Islander people. These include a number of Aboriginal and Torres Strait Islander specific groups (such as the Aboriginal and Torres Strait Islander Women's Forum which advises the National Advisory Committee for the National Cervical Cancer Screening Program); groups which have Aboriginal and Torres Strait Islander representation (such as the national environmental health forum: the enHealth Council); and mechanisms to consult with Indigenous stakeholders on the implementation of programs (such as input from NACCHO and SCATSIH from all jurisdictions on the national Sharing Health Care Program, which supports community based self-management demonstration projects for people with chronic conditions).

From 1996 to 1998, as part of the National Breastfeeding Strategy, the Office for Aboriginal and Torres Strait Islander Health (OATSIH) conducted an audit of training and breastfeeding support and infant nutrition programs available to health professionals who provide health care to Aboriginal and Torres Strait Islander women. OATSIH also conducted a review of current interventions and identification of best practice currently used by community-based Aboriginal health service providers in promoting and supporting breastfeeding and appropriate infant nutrition. This review led to the publication of a resource booklet: *Stories and ideas from around Australia – Giving Aboriginal and Torres Strait Islander babies the best start to life: supporting breastfeeding and good food choices for infants. Indigenous Women's Advisory Group*

In March 2002, a new advisory group was established to further enhance the Commonwealth Government's work with Indigenous women. The 13-member Indigenous Women's Advisory Group will provide advice to the Government to ensure that programmes and policies consider the needs of Indigenous women.

The formation of the Advisory Group resulted from a meeting early in 2001 of Women's Ministers from Australia and New Zealand when it was agreed that they would work directly with Indigenous women to develop an action plan that reflects the priorities under the Council of Australian Governments reconciliation process.

The Advisory Group consists of Indigenous women who have been selected from around Australia for their skills, expertise, knowledge of Indigenous issues and participation in their local community. It will meet face-to-face twice a year, hold regular teleconferences, and will

work closely with the Commonwealth Office of the Status of Women to ensure Indigenous women's issues are considered in policy and programme development.

The Australian Government is committed to consulting migrant and refugee women about government programmes. The Commonwealth Office of the Status of Women (with assistance from the Department of Immigration and Multicultural and Indigenous Affairs) conducted consultations with migrant and refugee women around Australia from May to July 2001. A series of forums were held in every State and Territory to seek the views of migrant and refugee women on a number of areas including economic security, violence, health and leadership. These women contributed ideas and proposed solutions to a range of issues that are important to their lives. A report (entitled *State and Territory Consultations with Migrant and Refugee Women*) has been produced outlining the individual and collective priorities of women during the forums. The report provides a useful resource for developing and shaping future policy.

### **Recommendation 13**

**The JSCOT recommends that the Government formally seek input into the preparation of Australia's reports on compliance with international treaties from Non-English Speaking Backgrounds and Indigenous sections of the community.**

### **Response**

Agreed in part, in principle.

### **Comment**

Consultations with a wide range of community groups, including Indigenous groups and people from culturally and linguistically diverse backgrounds are already part of Australia's procedure for reporting on compliance with international treaties.

For instance, in compiling Australia's first comprehensive report under the *International Covenant on Economic, Social and Cultural Rights*, the Government through the Department of Foreign Affairs and Trade (DFAT) organised formal consultations with representatives of organisations such as the National Aboriginal Community Controlled Health Organisation, the Federation of Ethnic Communities' Councils of Australia, the Human Rights and Equal Opportunity Commission, and the Aboriginal and Torres Strait Islander Commission.

Similarly, in compiling Australia's report under the *Convention on the Elimination of All Forms of Racial Discrimination*, DFAT consulted NGOs and the wider community, including Indigenous people and people from culturally and linguistically diverse backgrounds.

The Government, through the Attorney-General's Department, will consult on future reports under CROC with Indigenous Australians and people of culturally and linguistically diverse backgrounds. Such input will be sought through a Task Force of interested non-government organisations organised by UNICEF Australia. The Attorney-General's NGO Forum on Domestic Human Rights will also be consulted. Participants in the NGO Forum are non-profit, non-governmental organisations that: have a demonstrated commitment to the United Nations' human rights treaties; work primarily to enhance the protection of human rights in Australia; have a 'peak' or national status; and have a constitution or equivalent document, clear membership and publicly available records.

Organisations invited to attend the NGO Forum include: Association of Non-English Speaking Background Women of Australia; Federation of Ethnic Communities' Councils of Australia; National Aboriginal and Islander Legal Services Secretariat; Secretariat of the National Aboriginal and Islander Child Care; National Aboriginal Community Controlled Health Organisations; and the Aboriginal and Torres Strait Islander Commission.

The Commonwealth Office of the Status of Women is consulting with interested parties on Australia's combined fourth and fifth report to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW).

While every effort is made to consult with interested NGOs and community groups, formal input into Australian Government reports by these organisations is more difficult. Reports to international committees, by definition, represent the Government's approach to implementing relevant international treaties. These reports often express policy positions which are the culmination of domestic policy processes entailing consultation. It is neither appropriate nor pertinent to include some comments made during the consultation with NGOs on draft reports.

#### **Recommendation 14**

**The JSCOT recommends that the Government review its policies and practices to ensure that programs and services are accessible to children from Non-English Speaking and Indigenous backgrounds.**

#### **Response**

Agreed in part.

#### **Comment**

The Government agrees that programs and services should be accessible to children from culturally and linguistically diverse and Indigenous backgrounds. The Government has implemented a number of initiatives to address this issue and does not agree that further review is necessary.

For example, where mainstream child care services are either unavailable or inappropriate, the FACS Children's Services Program (CSP) funds special service programs to meet the needs of Indigenous children in ways which are culturally appropriate. Some of these programs include playgroups, outside school hours care, enrichment programs, vacation care, Aboriginal resource and advisory services and children's services workers. Mobile children's services, which assist in meeting child care needs in rural and remote areas, also include provision for Indigenous children.

In those communities where Indigenous child care services are located, access to the service is highly valued, not only for the care and cultural development provided for children, but also as a source of employment and of support in the form of health monitoring and nutrition, welfare and parent counselling.

The Commonwealth also provides support for child care services caring for children with additional needs. The Supplementary Services Program helps child care services care for children with a range of additional needs, including children from diverse cultural and linguistic backgrounds, Aboriginal and Torres Strait Islander children and children with a disability. Help may include training carers, additional or relief staff, assistance with planning programs and specialised resources and equipment.

#### *The Charter of Public Service in a Culturally Diverse Society*

As discussed above in response to Recommendation 12, the Charter aims to ensure that Government services meet the needs of people from diverse linguistic and cultural backgrounds so that they can participate fully in economic, social and cultural life.

The Charter recognises that Government clients can experience double disadvantage if they are from culturally and linguistically diverse backgrounds and are, for example, young people or children. The Charter requires Government departments and agencies to have regard to this in the design and delivery of programs and services.

The Charter principle of 'Communication' encourages Commonwealth Departments and agencies to include people from diverse linguistic and cultural backgrounds, including children's and youth advocates, on decision-making and advisory bodies so that a broad range of views is brought to bear on all key decisions where programs and services are delivered for, or impact on, young people and children.

#### *Refugee and Humanitarian cases*

The Government has also recognised that additional support is often required by families arriving in Australia under the Humanitarian Program and that essential services are made available to those granted protection visas onshore.

Refugee and Humanitarian Program entrants through the offshore program are assisted by an Integrated Humanitarian Settlement Strategy (IHSS) under which humanitarian entrants most in need are assisted. This strategy is currently operating in all States and Territories. The services provided include needs assessment, orientation, torture and trauma counselling if required, household formation support and accommodation support. These services are delivered by a network of non-government sector service providers on contract to the Commonwealth. Humanitarian entrants also have access to volunteers who assist them in forging new social, cultural and sporting links with the wider Australian community.

#### *Unaccompanied Minors*

Unaccompanied minors are accepted for resettlement in Australia only where it is in the best interest of the minor and generally not where the parents or other close relatives are still alive and traceable and where the minor is able to join them in another country.

Unaccompanied minors are cared for by the States under a cost-sharing arrangement with the Commonwealth. Under this arrangement minors are provided with counselling, a maintenance allowance and settlement support. Support is also provided to care-givers to ensure the successful settlement of the minor. Although the *Immigration (Guardianship of Children) Act 1946* provides that unattached humanitarian minors, who do not travel with or



come to join a parent or close adult relative in Australia, become wards of the Minister, this responsibility is delegated to the States by the Minister.

### *Indigenous children*

The Government has established a range of Indigenous specific programs designed to supplement the delivery of mainstream social policy services. This is in recognition of the additional disadvantage many Indigenous children experience in comparison with the wider community. Examples of these programs include:

- The National Indigenous English Literacy and Numeracy Strategy 2000-2004, launched by the Prime Minister in March 2000, is a key strategy in achieving levels of English literacy and numeracy among Indigenous students that are comparable to those achieved by other young Australians;
- The Indigenous Education Strategic Initiatives Programme (IESIP) includes payments per Indigenous student to all education providers, designed to assist education providers improve educational outcomes for Indigenous students; and
- The Commonwealth provides around \$400 million each year in targeted assistance to Indigenous people for public and community housing and related infrastructure, much of which assists children in families.

All such services either support or run alongside mainstream social policy service delivery programs. Furthermore, their operation does not exclude Indigenous people from accessing mainstream programs.

In relation to public health strategies, the mechanisms outlined under Recommendation 12 were established to advise on facilitating access for people from Aboriginal and Torres Strait Islander backgrounds to programs and services. Examples of such programs are the National Child Nutrition Program and the National Aboriginal and Torres Strait Islander Nutrition Strategy and Action Plan (NATSINSAP).

The Commonwealth's funding for Indigenous specific health services and related activities will have increased by 89 per cent in real terms between 1996 and 2003-04, ensuring that Indigenous people, including children, have appropriate and increasing access to health services.

The National Child Nutrition Program is a community-based grants program. It aims to improve the diets of young children in priority communities through projects developed and delivered by community groups or organisations. Funding priorities include communities with high needs such as Aboriginal and Torres Strait Islander communities, rural and remote Australians, and communities with social and economic disadvantage. Priority projects will include those that stimulate community partnerships, build on existing infrastructure and programs that improve access to nutritious food and are sustainable.

The NATSINSAP aims to improve the nutrition of Aboriginal and Torres Strait Islander peoples, with one of its priorities being the improvement of child health. The Strategy was developed under the auspices of the National Public Health Partnership, and is a principal component of the national public health nutrition strategy for all Australians "Eat Well Australia". The NATSINSAP provides a framework for action to improve Aboriginal and

Torres Strait Islander health and well-being through better nutrition and was developed through a consultative and participatory process with Aboriginal and Torres Strait Islander people.

As one of the strategies for monitoring the effectiveness of health programs for Australian children and young people, the Commonwealth funds the Australian Institute of Health and Welfare (AIHW) to produce biennial national surveillance and monitoring reports on health and well-being of Australia's children and young people. The child health report, *Australia's Children: their health and wellbeing*, was released in May 2002 and included separate information on Aboriginal and Torres Strait Islander children and children in rural and remote areas of Australia. The report is based on recently developed core health and well-being indicators, which draw on data from a number of national databases. Indicators of health and well-being of Australia's young people are currently under consideration, with the last youth health report published in 2000.

### *Participation in policy and program development*

#### **Recommendation 15**

**The JSCOT recommends that the Government encourage children and young people to have input into the development of policies and programs that affect them.**

#### **Response**

Agreed.

#### **Comment**

The Government considers that consulting with and listening to the views of young people and organisations working with young people is crucial to making effective policy decisions.

#### *The Voices of Youth package*

The 'Voices of Youth' package announced in June 1998 improves the Government's consultation processes with young people and provides the opportunity for direct communication between Government and young people to take place about issues of concern to Australian youth.

Features of the 'Voices of Youth' package include:

- National Youth Roundtable

The National Youth Roundtable is the centrepiece of the Voices of Youth initiative. The Roundtable brings together 50 young Australians, aged from 15 to 24, in an environment that encourages open discussion. Members are urged to share and exchange with the Government their views on issues that have an impact on young Australians. Members attend a preparatory workshop and two formal Roundtable meetings.

During the year Roundtable members work in topic teams to develop Community Projects around issues of interest. Key Government and community resource groups are encouraged to support these projects. The Department of Family and Community Services (FACS) provides facilitators and nominates specialist support personnel to provide assistance where required.

- The YMCA's National Youth Parliament

The YMCA currently convenes State-based Youth Parliaments and a National Youth Parliament. These forums provide the opportunity for young people to learn about our parliamentary system and to develop skills in debating, teamwork, leadership and research. The Government provides financial support for the National Youth Parliament to assist with travel and other costs to encourage a broad range of young people to participate.

- The Source

*The Source* is an Internet site designed for young people and the wider community to have better access to information about the programs and services that the Commonwealth Government provides for young people. A key feature of the Internet site is the opportunity it provides for young people to comment, or ask questions of the Government, on issues of concern to them. The *Have Your Say* section also seeks feedback on the Internet site and incorporates *Youth View* where comments are sought on particular topics. The Internet site is a crucial mechanism in enabling easy access for young people, organisations working with young people and the Federal Government to exchange ideas.

- The Youth Officer Network

A national network of Youth Officers has been established. These Officers are responsible for a range of youth focused activities including:

- consulting with organisations working with young people; and
- raising the profile of youth affairs.

Specific to the 'Voices of Youth' package, these officers promote the initiatives in the community and provide information to key stakeholders for distribution. Youth Officers also provide local support to Roundtable members.

- Boards and Committees

Young people are making a significant contribution in all walks of life, however often their contribution is often overlooked. FACS has developed a database where young people aged 18 – 27 years can nominate themselves for consideration by organisations for participation on their boards and committees. Application forms can be accessed through *The Source* on the Internet. FACS encourages organisations to include young people on public boards, taskforces and committees. Nominations on the database are matched with requests from organisations.

- Youth.Comm

Youth.Comm is an e-mail discussion list that encourages subscribers to engage in discussion of youth issues, provides feedback to the Government and enables the Government to provide information about youth issues directly and promptly to interested subscribers.

- The Australian Forum of Youth Organisations

This forum provides youth organisations with the opportunity for direct input to the Government to progress key policy objectives and to raise issues based on their experience with young Australians. Established in 1999, the forum meets twice a year and investigates ways that youth organisations and the Government can work more closely in partnership and maintain regular communication.

In addition to the Voices of Youth Package, the Government has also initiated the National Indigenous Youth Leadership Group (NIYLG). NIYLG involves Indigenous Australians aged 15-24 years meeting in an environment of open and honest discussion about areas of interest, their experiences and views, and the experiences and views of other young people in their communities.

The aim of the Leadership Group is to provide additional opportunities for young Indigenous Australians to:

- discuss with the relevant Minister their experiences and perspectives about issues important to them;
- advise the relevant Minister on the most effective ways to empower Indigenous young people in their communities;
- promote positive images of young Indigenous people; and
- develop leadership skills.

#### *Australian Women Speak*

The Commonwealth Office of the Status of Women convened its first National Women's Conference, *Australian Women Speak*, in August 2001. The Conference brought women, community organisations, women in government and commerce, and academics together from all over Australia to share knowledge and experience and celebrate diversity through plenaries and workshops. Young women were one of the target audiences for the Conference. The Conference sessions covered a wide range of issues that were relevant to young women. The second *Australian Women Speak* conference will be held at the end of March 2003. Young women and diversity is the proposed theme for the conference.

Young women are a key priority area of the Australian Government's *National Women's Leadership Initiative*. The Initiative involves consultation with individual women and women's groups and provides funding to projects designed to increase women's leadership opportunities.

***Support for women contemplating abortions***

**Recommendation 16**

**The JSCOT recommends that the Government investigate the adequacy of support services to enable women to contemplate alternatives to abortions.**

**Response**

Noted.

**Comment**

The Australian Government recognises the need to provide safe, affordable and easily accessible family planning services to minimise abortion rates. The legal status of abortion and the provision of related support services in Australia is governed by State and Territory laws.

The Australian aid policy on family planning assistance explicitly excludes projects that involve abortion training and services.

***Teenage pregnancy***

**Recommendation 17**

**The JSCOT recommends that the Government investigate how abortions can be avoided through appropriate sex education in schools.**

**Response**

Noted.

**Comment**

Abortion and the curricula of State and Territory schools are matters which fall within the responsibility of States and Territories. The Report has been referred to the States and Territories for their consideration.

As outlined in the response above, Australian efforts focus on the provision of safe, affordable and easily accessible family planning services so that, where possible, women will not need to rely on abortion to help prevent unwanted teenage pregnancies.

***Decision making responsibilities of government agencies***

**Recommendation 18**

**The JSCOT recommends that the Government request that the relevant departments and agencies identify their decision-making responsibilities in relation to the *Convention on the Rights of the Child* and make this information readily available to the community.**

**Response**

Agreed in part.

**Comment**

The Government supports this recommendation insofar as it calls for relevant departments and agencies to be aware of all provisions of CROC that may be of relevance to their decision-making responsibilities. To this end, the Attorney-General's Department will continue to provide advice to relevant departments and agencies on the interpretation and application of those provisions as required. The Department is also able to provide training and advice on CROC to other departments upon request.

***Jurisdictional inconsistencies***

**Recommendation 19**

**The JSCOT recommends that the Government request that all relevant bodies address the inconsistencies within Australia in relation to matters that impact on children's rights, responsibilities and services.**

**Response**

Agreed in part.

**Comment**

The Attorney-General's Department has requested that the Community Services Ministers' Advisory Council consider the matter of inter- and intra-jurisdictional consistency.

### **Recommendation 20**

**The JSCOT recommends that the Government review its policies and practices to reduce inconsistencies between portfolios in relation to the provision of programs and services for children and young people.**

#### **Response**

Agreed.

#### **Comment**

The Minister for Family and Community Services is working to increase coordination and consistency between Commonwealth programs and services for children. A number of formal and informal bodies provide opportunities for increased cooperation across Government. The Ministerial Councils are examples of bodies which facilitate consultation and cooperation between governments.

A Joint Taskforce for the Development, Health and Wellbeing of Australian Children has been established with cross-portfolio membership. Its aims are to work collaboratively across portfolios to improve child outcomes.

### **Recommendation 21**

**The JSCOT recommends that the Government request the Standing Committee of Attorneys-General to review the existing legislation, policies and practices at Federal, State and Territory levels for compliance with the *Convention on the Rights of the Child*.**

#### **Response**

Disagree.

#### **Comment**

The Government does not consider this an appropriate matter for the Standing Committee of Attorneys-General as it covers matters that go well beyond the responsibilities of the Attorneys-General. The Report, however, has been referred to the States and Territories for their consideration.

***Status of non-legislated international treaties in Australia***

**Recommendation 22**

**The JSCOT recommends that the consideration of the Administrative Decisions (Effect of International Instruments) Bill 1997 recommence as a matter of priority.**

**Response**

Noted.

**Comment**

The Government introduced the Administrative Decisions (Effect of International Instruments) Bill in 1997. The Government introduced this legislation into Parliament to displace the finding in *Minister of State for Immigration and Multicultural Affairs v Teoh* (1995) 183 CLR 273 that an international treaty to which Australia is a party may raise a legitimate expectation and thus may affect procedural domestic law. This was a clear expression by the Executive Government of a statutory indication to the contrary referred to by the majority of the High Court in *Teoh*.

The Bill lapsed upon the prorogation of the Parliament in August 1998. The Government re-introduced the Bill into the Parliament on 13 October 1999 (the 1999 Bill is in identical terms to the 1997 Bill). The Bill was passed by the House of Representatives on 11 May 2000 and introduced into the Senate on 5 June 2000. Debate on the Bill in the Senate commenced on 2 April 2001. However the Bill lapsed upon the prorogation of Parliament on 8 October 2001. No decision has yet been taken on its reintroduction.

**Recommendation 23**

**The JSCOT recommends that the Government take the necessary steps to ensure relevant officials are aware of pertinent international treaties in making decisions.**

**Response**

Noted.

**Comment**

The Government is sympathetic to the thrust of this recommendation as good decision making is dependent upon decision-makers being aware of all relevant material prior to making a decision.

Upon request, the Attorney-General's Department is available to provide advice and training on the treaties pertinent to the making of administrative decisions.



## **Office for Children**

### **Recommendation 24**

**The JSCOT recommends that the Government establish an Office for Children as an independent statutory authority attached to the Prime Minister's portfolio to promote the vitality and importance of the family as the basic unit in society, which is responsible for the growth and the development of our nation's children, while recognising the need for government support for families and those children whose well being may be under pressure due to problems confronting the family.**

#### **Response**

Disagree.

#### **Comment**

The Government is of the view that, with the creation of the Department of Family and Community Services (FACS) and the recent creation of the position of Minister for Children and Youth Affairs, the Government has ensured an integrated approach across the spectrum of Commonwealth policies and programs for children. The Government notes that the Commonwealth Constitution places primary responsibility for children's matters with State Governments.

The Government is committed to supporting families as the basic unit in society. The Government recognises that families have primary responsibility for the growth and development of the nation's children. To ensure that families, especially those confronting pressures and problems, are well assisted in their responsibilities, FACS has been building a continuum of services and simplified delivery for families. The Government is committed to improving the coordination and reducing the gaps between the range of children's services and programs and a philosophy of prevention of child abuse and early intervention as far as possible. Initiatives to combat family violence, such as *Partnerships Against Domestic Violence* coordinated by the Commonwealth Office of the Status of Women, and initiatives undertaken by FACS such as the Youth Homelessness Pilot Program, child abuse prevention and family relationship programs, focus on the early intervention/prevention end of the continuum. There is also a range of programs to foster good health outcomes for children and youth including a Breastfeeding Strategy, immunisation, mental health programs in schools, and programs addressing alcohol and drug misuse.

### **Recommendation 25**

**The JSCOT recommends that the role and functions of the Office for Children should:**

- **ensure that all legislation, policies and practices support the family as the natural environment for the development and well being of children with parents having the primary role and responsibility in raising children;**
- **develop a national strategy and work with the States and Territories on improving coordination of policies affecting children and their families;**

- encourage Federal departments to incorporate the principles of the *Convention on the Rights of the Child* into their policies, programs and practices and act as a voice for children to government;
- consider the potential impact of Government policies, programs and proposed legislation on children and their families;
- develop mechanisms to assist the coordination of Federal Government policies, programs and practices;
- identify and encourage research on children's issues;
- provide leadership and coordination in the development of national standards in consultation with the States and Territories;
- consult with community organisations, children and young people in relation to issues affecting them;
- monitor programs and initiatives for compliance with the Convention;
- coordinate the development of models of best practice for services and/or programs relevant to children;
- liaise with the Federal, State and Territory complaints handling agencies and to facilitate cooperation in respect to matters extending beyond the limits of individual State or Territory jurisdictions;
- report to Parliament on the status of children in Australia;
- encourage and facilitate public debate and community awareness on matters relating to children;
- monitor performance of Australia's international obligations to children;
- establish a mechanism for public reporting on breaches and compliance with the *Convention on the Rights of the Child*;
- prepare Australia's reports to the United Nations Committee on the Rights of the Child; and
- investigate appropriate processes to enhance the opportunities for contribution by non-governmental organisations and young people to Australia's reports to the United Nations Committee on the Rights of the Child.

**Response**

Noted.

**Comment**

See response to Recommendation 24.

## *Complaints mechanisms*

### **Recommendation 26**

**The JSCOT recommends that the Government review the role and functions of the Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman to ensure that there are adequate opportunities and resources available to address potential complaints concerning children under the *Convention on the Rights of the Child*.**

### **Response**

Agreed in part.

### **Comment**

The Government is of the view that the resources provided to both the Human Rights and Equal Opportunity Commission (the Commission) and the Commonwealth Ombudsman are adequate. The internal allocation of the available resources is a matter for the respective management of those organisations to consider.

The *Human Rights Legislation Amendment Act (No 1) 1999*, provides, among other things, that responsibility for the administration of the Commission rests with the President as Chief Executive Officer.

Further, changes were proposed in the Human Rights Legislation Amendment Bill (No 2) 1999. The Bill provided for the replacement of 'portfolio-specific' Commissioners with Deputy Presidents. Under that proposed restructure, the President, all Deputy Presidents and the Commission as a whole would have responsibility to protect and promote the human rights of all Australians. The Bill lapsed when the Federal Election was called in late 2001.

The Government remains committed to pursuing reform to the structure of the Commission. Reforms to the Commission's structure will give it the flexibility to make the most efficient use of its resources in the manner in which it sees fit. Reforms to the Commission's structure also will be directed at addressing the perception which has existed in the past that the Commission is too focused on protecting those sections of the community for whom a specific Commissioner exists, to the detriment of other disadvantaged or vulnerable sections of the community.

As stated above in the response to Recommendation 9, the Commission is empowered to inquire into any act or practice that may constitute a breach of CROC.

The Government does not accept that the Commonwealth Ombudsman is an appropriate body to deal with complaints concerning the human rights of children. The Ombudsman has jurisdiction to handle only those complaints which deal with maladministration by Commonwealth Departments.

***Monitoring the implementation of the Convention in Australia***

**Recommendation 27**

**The JSCOT recommends that the Government develop a coordinated mechanism for ongoing monitoring of the implementation of the Convention.**

**Response**

Already undertaken.

**Comment**

The Government is of the view that the current regime satisfactorily ensures ongoing monitoring of the Convention.

The implementation of CROC is monitored in a variety of ways. The CROC itself establishes an obligation on States Parties to report on the implementation of the Convention. In addition, the United Nations Committee on the Rights of the Child recognises a monitoring role for national human rights institutions, non-government organisations, interested community groups and members of the public. In particular, the United Nations Committee encourages dialogue between national governments and domestic NGOs. It also recognises that interested non-government parties are entitled to submit their own reports to it should they wish.

In Australia, Federal, State and Territory Governments and the Human Rights and Equal Opportunity Commission, monitor issues relevant to CROC. The continuing work of the Australian Bureau of Statistics and the Australian Institute of Family Studies to develop indicators of the well-being of children, and similar work by other agencies, together with the periodic social reports on children produced by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare, provide an important reference both in the reporting process and in the development of national policies and strategies to meet Australia's obligations under the CROC.

***Support for families***

**Recommendation 28**

**The JSCOT recommends that the Government consider the adequacy of resources and the mechanisms in place to provide early intervention programs to support families and thereby to reduce the need to remove children from families.**

**Response**

Agreed.

**Comment**

These matters fall within the responsibilities of the States and Territories. The Report has been referred to the States and Territories for their consideration.

The Department of Family and Community Services (FACS) manages a range of programs to assist families to build their capacity and their resilience, including through supporting and strengthening relationships, and facilitating families in selecting and receiving the help they need at times of transition or crisis. Many of the programs managed by FACS have a strong focus on early intervention and capacity building.

The Stronger Families and Communities Strategy was developed during 1999/2000 and is currently being implemented. The Strategy is establishing new partnerships to strengthen families and communities and to develop and deliver solutions at a local level. The Strategy focuses on three priority areas that are important to families: early childhood and the needs of families with young children; strengthening marriage and relationships; and balancing work and family.

The Family Relationships Branch of FACS administers the Family Relationships Services Program (FRSP). Community based organisations are contracted to provide services that include: family relationships education, family relationships skills training, family relationships counselling, family relationships mediation, adolescent mediation and family therapy, and children's contact services. A series of forums with providers was held in 2000 to further develop child inclusive practices. FACS also manages parenting services including Playgroups, Good Beginnings and Aboriginal and Islander Child Care Agencies.

A range of other programs and pilots with an early intervention and capacity building focus is being managed and developed by FACS.

The Commonwealth has initiated the consideration of child abuse and protection by the Council Of Australian Governments on 29 November 2002.

#### **Recommendation 29**

**The JSCOT recommends that the Government assess the adequacy and accessibility of counselling and mediation services provided for families.**

#### **Response**

Already undertaken.

#### **Comment**

The Government is of the view that these issues are already being adequately addressed.

The Family Relationship Services Program (FRSP), mentioned in the response to recommendation 28, contracts 41 organisations to provide family and child counselling services. Such services support families to resolve their relationship and child-related problems in the most appropriate and helpful way, and are available at various stages of family life: pre-marriage, marriage, separation, divorce and re-marriage. An evaluation, conducted in 1996, found that organisations were effectively meeting the needs of most of their clients. As more resources become available to expand counselling services, access to services will be determined through equitable resource allocation.

The FRSP contracts 17 organisations to provide family and child mediation services. Family and child mediation is provided as a specialist service for separating and divorcing couples

and their children, as an alternative to litigation through the Family Court. Two evaluations of mediation services in Melbourne and Sydney found high levels of satisfaction with the process and outcomes of mediation. Three recently released research reports will assist the FRSP to promote community awareness of the availability of mediation services and tailor counselling and mediation services to the needs of families, especially children.

The Government is providing funding of \$60m over 1999-2003, with ongoing funding of \$20m, for the Reconnect program (formerly the Youth Homelessness Early Intervention Program) in response to a principal recommendation of the final report of the Prime Ministerial Youth Homeless Taskforce, *Putting Families in the Picture*. Reconnect will provide early intervention support for young people aged between 12 and 18 years at risk of homelessness, and their families, through counselling, adolescent mediation and practical support. The program is being established through a staged process, which first identifies and funds projects in communities with the highest need before expanding to other high need communities. When fully operational the program will consist of approximately 100 services which will enable assistance to be provided to approximately 12,000 cases per annum, involving around 7,000 young people and 5,000 families.

### **Recommendation 30**

**The JSCOT recommends that the Government consider the adequacy of and accessibility of parenting courses.**

#### **Response**

Already undertaken.

#### **Comment**

Raising the quality of parenting has been a main thrust of the Government's initiatives in preventing child abuse and neglect.

Over the past three years the Government has funded a number of parenting initiatives that explore new approaches and develop appropriate user-friendly and culturally appropriate parenting resources. Some examples are new approaches to men's parenting, programs for parents with special needs and those of Indigenous and culturally diverse backgrounds, and a program that helps parents in prison sustain relationships with their children. Reports of the outcomes of these projects have been very encouraging and will be collected and published so that they can be replicated in the future.

As part of the 1997 Commonwealth Government's response to the *Bringing Them Home* report, specific funding was provided for Indigenous parenting programs. This funding was made ongoing for a further four years in the 2001 Federal Budget.

The Government has also funded a national pilot parenting program, the Good Beginnings project. The project commenced with four volunteer home visiting programs operating in Sydney, Hobart, Katherine and Moe (Victoria). It has now expanded to some thirteen different projects covering home visiting, new baby groups, fathers' support groups and a parenting program for prison inmates. Good Beginnings draws funding from corporate and

philanthropic organisations as well as Governments, both State and Commonwealth. It has also established its own fund raising strategy, the CLUB 200.

The evaluation of Good Beginnings conducted after two years of operation has shown that the program has been effective for parents in providing emotional support (someone to talk to and offer reassurance and companionship) and practical support with their babies and small children.

Major research projects on men's role in parenting, entitled "Fitting Fathers into Families" and the parenting of adolescents "Growing up in Australia" have been completed. These areas were chosen for research as existing parenting education was not seen as particularly relevant and men were not accessing it. The outcomes from the research will provide valuable information that will help guide the development of initiatives that will make parenting education more relevant and accessible in these areas.

The Government has responded to a Family Law Council report, which examined issues and possible solutions to problems being experienced by parents where Family Court ordered contact with children was being withheld or obstructed, by establishing a Contact Orders Pilot Program in three states. The target group of the Pilot is families where a contact order has been applied for, issued by or registered with a court. The Pilot is trialing a methodology for this group which uses education, counselling, mediation and child contact centres for families undergoing difficulties in the enforcement of child contact orders.

The Pilot aims to gain information about how to more effectively and flexibly respond to the needs and concerns of families, ensure compliance with contact orders, and how to deliver services which enable children to enjoy a relationship with their non-resident parent. Funding for the Pilot commenced on 1 April 1999, and has been augmented so that the Pilot will now run for an additional two years, ending in mid-2003.

The Family Relationship Services Program, referred to in the response to recommendations 28 and 29, is also relevant in this context.

Support services for parents will be considerably enhanced by the Stronger Families and Communities Strategy. Local communities will be able to develop and provide services that support parents and that are appropriate to that community. They will be able to build on existing services and community resources, adopt or adapt existing programs or approaches or develop their own approach. Of this strategy, \$20 million over four years is specifically for Indigenous families.

The Partnerships Against Domestic Violence initiative strengthens community efforts to address domestic violence, and a number of the over 100 projects under its first phase worked directly with children and families, thereby strengthening parenting skills. One of the key priority areas of the second phase focuses on addressing and preventing the negative effects on children who experience domestic violence in their home. Of the \$50 million allocated to this strategy, over \$10 million has been allocated to Indigenous matters. In particular \$6 million has been allocated to a Grants Programme to assist Indigenous communities to find their own solutions to family violence.

Together with the parenting and family support programs that are being funded by State and Territory Governments and the non-government sector, it is considered that much is being

accomplished in raising the quality and improving the accessibility of parenting education. However, this will continue to be monitored.

### **Recommendation 31**

**The JSCOT recommends that the Government research possible indicators of families at risk in Australia and the opportunities to provide early intervention support to reduce the need to remove children from families.**

#### **Response**

Agreed.

#### **Comment**

The Government recognises that the physical and mental health needs of children 'in care' are significant public health issues. There is evidence that outcomes for these children compare poorly with the rest of the Australian population.

There is strong evidence from both overseas and Australia that programs which support families in the early years of parenting result in improved health and well-being for children. The improvements include: a reduction in the amount of hospital admissions for all causes; less occurrence of either accidental or deliberate injuries; improved school performance; and a reduction in the amount of behaviour disorders. There is also evidence that a healthy start in life reduces the likelihood of chronic disease in adulthood.

Parenting and family support programs, such as those referred to in response to the preceding three recommendations, provide early intervention support to families. FACS funded a collaborative research project to identify the factors critical to the measurement of family functioning. The findings of the project are contained in a report, "Indicators of Social and Family Functioning". The report will improve information collection and sharing across government and non-government sectors and enable better collaboration on matters of mutual concern.

A centrepiece of the Government's 2001-02 Budget is *Australians Working Together – Helping people to move forward*, where the Government aims to ensure that the welfare system for people of working age provides as much encouragement as possible for people to get a job, to gain new skills and to be involved in their communities. This package pays particular attention to the needs of Indigenous people by providing \$82.7 million over four years for measures specifically targeted to them.

The Department of Health and Ageing funds the production of comprehensive reports on the health and wellbeing of Australian children and youth. These reports provide on-going and detailed information on trends and are used to identify areas of need.



### **Recommendation 32**

**The JSCOT recommends that the Government investigate the extent to which Aboriginal representatives are consulted during decisions on the placement of Indigenous children in care.**

#### **Response**

Noted. This is a matter primarily for State and Territory Governments.

#### **Comment**

The Government considers consultation with Aboriginal representatives during decisions on the placement of Indigenous children in care to be an issue for States and Territories as they are responsible for decisions on the placement of children in care. The Report has also been referred to the States and Territories for their consideration.

Although the issue is a State and Territory responsibility, consultation with Indigenous representatives when placing an Indigenous child in care has previously arisen in a number of contexts in the Commonwealth arena.

In 1986, the Social Welfare Ministers' Conference adopted the Aboriginal and Islander Child Care Placement Principle, which outlined a preference for the placement of Aboriginal children with Aboriginal people when placed outside their families. All jurisdictions have adopted this approach either in legislation or policy.

This principle was endorsed, and expanded upon, by the Royal Commission into Aboriginal Deaths in Custody. Recommendation 51 of the Human Rights and Equal Opportunity Commission's report *Bringing Them Home* encouraged States and Territories to adopt the above principle and also to recognise the essential role of Aboriginal Child Care Agencies in decisions affecting Indigenous children. All jurisdictions have adopted this principle in either legislation or policy.

### *Involvement of extended families*

#### **Recommendation 33**

**The JSCOT recommends that where appropriate the Government review mechanisms for greater involvement of extended families for children in care.**

and

#### **Recommendation 34**

**The JSCOT recommends that the Government investigate the feasibility of establishing a voluntary register for grandparents.**

#### **Response**

Noted. This is a matter primarily for State and Territory Governments.

#### **Comment**

The treatment of children in care is essentially a State and Territory issue.

As previously mentioned, the Report has been referred to the State and Territories for their consideration.

In relation to the role of extended family members in the care and raising of children, section 60B(2)(b) of the *Family Law Act 1975* (the FLA) states that an object of the FLA is that "children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development."

Sections 69C(2)(c) and (d) of the FLA provide that proceedings under the FLA may, unless the contrary intention appears, be instituted by a grandparent of the child or any other person concerned with the care, welfare or development of the child. The *Family Law Amendment Act 2000* clarified the rights of grandparents to initiate proceedings in respect of their grandchildren to allow applications for a parenting order, a maintenance order, a location order and a recovery order.

In a related matter, the FLA takes into account the needs of Indigenous children. Specifically, it provides that the judge has to take into account the child's 'need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders' when determining what is in the best interests of the child. Due to this provision, the judge will hear evidence supporting the view that placing Indigenous children in non-Indigenous families can fail to address the needs of the child. A judge has also given orders that a child be in the custody of 'his extended maternal and paternal family', thus recognising the extended family lifestyle of Indigenous people.

Whilst in custody, children are wards of the state. The Royal Commission into Aboriginal Deaths in Custody recommended that juveniles (and adults) when incarcerated be placed in an institution where contact with family members is possible, be they immediate or extended. The States and Territories, which manage the prison system, have adopted this recommendation.

The Government also recognises that recommendations 33 and 34 may assist to locate family members to provide support and care in some cases, but will not be an appropriate solution for all. Properly funded government support services will always be necessary, as there will always be cases in which there are no grandparents or other family members who are capable of providing appropriate care.

***Support for disadvantaged and disabled children***

**Recommendation 35**

**The JSCOT recommends that the Government should consider the adequacy of facilities and accessibility of child care and assistance to families with disadvantaged and disabled children.**

**Response**

Agreed.

**Comment**

The Government has already implemented this recommendation.

The Commonwealth provides funding for Child Care Benefit payments made to assist families to gain access to quality child care to enable them to participate in the workforce and the broader community. This assistance is targeted to low and middle income families who might otherwise be disadvantaged in accessing appropriate care for their children.

The Commonwealth also provides support for child care services caring for children with additional needs. The Supplementary Services Program helps child care services care for children with a range of additional needs, including children from diverse cultural and linguistic backgrounds, Aboriginal and Torres Strait Islander children and children with a disability. It is complemented by the Special Needs Subsidy Scheme which helps child care services care for children with ongoing high support needs, particularly children with disabilities. In home-based Family Day Care, extra assistance is available through the Disabled Supplementary Services Program.

Under each of these three programs, assistance is provided in recognition of the additional care and attention that such children require. Help may include training carers, additional or relief staff, assistance with planning programs and specialised resources and equipment.

## ***Children and young people in care***

### **Recommendation 36**

**The JSCOT recommends that the Government investigate the adequacy of, and accessibility to, support services for young people leaving care.**

#### **Response**

Noted. This is a matter primarily for State and Territory Governments.

#### **Comment**

These matters fall within the responsibilities of the States and Territories. The Report has been referred to the States and Territories for their consideration.

Although support services for young people leaving care are primarily the responsibility of State/Territory Governments, in recognition of the difficulties young people leaving care face when establishing independent living, the Commonwealth introduced the Transition to Independent Living Allowance (TILA) in the 2001-2002 Budget. TILA is a targeted measure that provides support and assistance of up to \$1000 to young people moving from care, to help them establish a separate household or with up-front costs of participation in education or employment. TILA is not subject to repayment. TILA will be implemented from March 2003.

### **Recommendation 37**

**The JSCOT recommends that the Government investigate the adequacy of complaints mechanisms for reporting abuse when the child is in care and develop a best practice model.**

#### **Response**

Noted.

#### **Comment**

The *Family Law Act 1975* provides that, where a party to a proceeding makes an allegation that a child has been abused, or is at risk of abuse, the Registrar must notify a prescribed welfare authority. Similarly, where a member of the Court staff suspects that a child has been abused, or is at risk of abuse, the staff member is required to report his or her suspicion to the relevant authorities. The Recommendation also raises matters that fall within the responsibilities of the States and Territories. The Report has been referred to the States and Territories for their consideration.

### **Recommendation 38**

**The JSCOT recommends that the Government investigate the adequacy of and accessibility to support services for young people returning to families after being in care.**

#### **Response**

Noted. This is a matter primarily for State and Territory Governments.

#### **Comment**

These matters fall within the responsibilities of the States and Territories. The Report has been referred to the States and Territories for their consideration.

### ***Sterilisation of disabled children***

#### **Recommendation 39**

**The JSCOT recommends that the Government investigate the adequacy of support programs providing alternatives for parents contemplating the sterilisation of children with disabilities.**

#### **Response**

Already undertaken.

#### **Comment**

Since the release of the JSCOT's recommendations in August 1998 there have been a number of developments relating to the sterilisation of children with disabilities. In November 1998, the Federal Government amended the Medicare Benefits Schedule to draw medical practitioners' attention to the illegality of performing procedures resulting in the sterilisation of a minor without the consent of the Family Court of Australia, or a court or tribunal with the appropriate jurisdiction, unless the sterilisation occurs as an unavoidable consequence of surgery carried out to treat some malfunction or disease.

The Commonwealth Attorney-General has approved revised Commonwealth Priorities and Guidelines for Legal Assistance in Respect of Matters Arising Under Commonwealth Law, which came into effect on 1 July 2000. The Guidelines reflect the Government's policy of encouraging parents to act lawfully by seeking a court order for special medical procedures, such as sterilisation, by making legal aid more accessible and clarifying who is eligible. The Guidelines also provide that legal assistance should be granted for the separate representation of a child in any court case relating to special medical procedures such as sterilisation.

The means test is not applied in such cases, and a Legal Aid Commission must not try to recover any of the costs for the child's representative from the child's parents, whether they are legally assisted or not. In addition, legal aid must be provided to the parents of a child in

any court case relating to special medical procedures (including sterilisation), where the parents meet the means test.

The Attorney-General has also written to Australian medical colleges and associations to inform them of the law and procedure surrounding the non-therapeutic sterilisation of minors with an intellectual disability. An open version of this letter was provided to selected Australian medical journals for publication and has been posted on the Internet.

On 15 March 2000, a motion was passed in the Senate that called on the Government to:

- (i) conduct a review of the legal, ethical and human rights mechanisms in place, or needed, to protect the rights and interests of the reproductive health of women with intellectual and other disabilities; and
- (ii) commission research on the practice, effect and implications of the sterilisation of women with intellectual and other disabilities.

The then Minister for Family and Community Services, Senator the Hon Jocelyn Newman, undertook to report to the Senate on the issues raised in this motion. The final report entitled "Sterilisation of Women and Young Girls with an Intellectual Disability" was tabled in the Senate by Minister Newman on 6 December 2000. The Report covers the background to the issue of sterilisation of women with disabilities, provides recent statistics on sterilisation procedures, and details a cross-Departmental response to the Senate's calls for a review of relevant legal, ethical and human rights mechanisms and the commissioning of research.

Senator Newman's Report was compiled as a result of collaboration between the Departments of Family and Community Services and Health and Aged Care, the Attorney-General's Department and the Office of the Status of Women in the Department of the Prime Minister and Cabinet.

On 24 April 2001 the Human Rights and Equal Opportunity Commission released a report it had commissioned titled '*The Sterilisation of Girls and Young Women: Issues and Progress*'.

The authors of this report analysed Court and tribunal files and provided information concerning the services and support programs provided to children and families who applied for sterilisation procedures. The report found that, since 1997, 'there appears to have been marked progress in the area of disability service providers' education and skills development relating to menstrual management programs and parent education'.<sup>2</sup>

As the report noted, Special Medical Procedure Protocols have been developed for the Family Court in Queensland and Victoria, and are currently being negotiated in both NSW and South Australia. These protocols seek to ensure collaboration between the court and other key agencies in order that sterilisation applications proceed to court only after less invasive alternatives have been considered.

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<sup>2</sup> Susan Brady, John Briton, & Sonia Grover, '*The Sterilisation of Girls and Young Women: Issues and Progress*', pp 30 & 55, report commissioned jointly by Sex Discrimination Commissioner and Disability Discrimination Commissioner at the Human Rights and Equal Opportunity Commission.

The Attorney-General is currently considering the recommendations of the Human Rights and Equal Opportunity Commission arising from this report.

In 2001, as part of its National Women's Non-Government Organisation Funding Programme, The Commonwealth Office of the Status of Women funded a non-government organisation Women With Disabilities Australia (WWDA) to write the *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities* report. This report identified many of the issues that were raised in the Human Rights and Equal Opportunity Commission report *The Sterilisation of Girls and Young Women: Issues and Progress*.

The Attorney-General's Department has consulted the Family Court and Federal Magistrates Service about the issue of whether procedures relating to sterilisation applications could be simplified.

Family Planning Organisations in most States and Territories offer sex education tailored for the special needs of children with disabilities. These include, for example, one-on-one consultations; workshops for people with an intellectual disability, their parents or guardians, doctors, nurses, other health professionals, teachers, or disability workers; and information/fact sheets.

The issues covered are menstrual management advice; alternative contraception options; the necessity for safe sex practices (regardless of sterilisation); legal processes (for example in regard to obtaining consent to or seeking authorisation for sterilisations); and referrals. Health professionals, parents and guardians contemplating sterilisation of young people with disabilities are welcome to use the services provided by the Family Planning Organisations.

As the Commonwealth shares responsibility with the States and Territories for a range of support services to people with disabilities, their parents and carers, the Report has also been referred to the States and Territories for their consideration.

In October 2001, the Attorney-General's Department convened a Forum which focussed on the recommendations made in the latest HREOC commissioned report to identify options for action on the issue of non-therapeutic sterilisation of minors with an intellectual disability. Forum participants included representatives from State and Territory government departments, the Family Court, the Federal Magistrates Service, the Office of the Status of Women, the Office of Disability in the Department of Family and Community Services, the Department of Health and Aged Care, and the co-author of the report.

Topics covered at the Forum were education and information strategies, jurisdictional issues and options, review of the Medicare Benefits Schedule note and methods of data collection.

The Attorney-General's Department and the Department of Health and Ageing have already worked together to recommend further changes to the Medicare Benefits Schedule, in order to make the strict legal requirements applying to the sterilisation of minors with disabilities more explicit.

The Human Rights and Equal Opportunity Commission will be working with WWDA in order to establish whether there are like recommendations made in the Human Rights and Equal Opportunity Commission and Women With Disabilities Australia reports, that may be taken forward.

The Commonwealth Office of the Status of Women will continue to take a close interest in the outcomes of this work.

*Access to support for young Indigenous people*

**Recommendation 40**

**The JSCOT recommends that the Minister for Social Security review the eligibility criteria for the Common Youth Allowance to ensure that Indigenous young people have access to appropriate support.**

**Response**

Noted.

**Comment**

The eligibility criteria for Youth Allowance were developed in consultation with community groups to ensure equitable access for all young Australians. The criteria are broadly based on the previous primary income support payments available to young people, ie AUSTUDY, Youth Training Allowance and Newstart Allowance.

There are some benefits under Youth Allowance for Indigenous young people living in remote areas. They have access to Remote Area Allowance if they live in a remote community and rent assistance is available to young people who live away from home to study, undertake training or look for work. These provisions are of particular benefit to Indigenous Youth Allowance recipients in remote areas.

Some recognition has been afforded to Indigenous peoples' tribal customs under Youth Allowance. Young people under 18 years of age who have been tribally initiated as an independent member of their community are paid their Youth Allowance payments directly, unlike other young people under 18 years whose payments are directed to the parent/s.

Indigenous students may receive either the Youth Allowance or ABSTUDY. Following a review of ABSTUDY in 1998, the Government introduced changes on 1 January 2000 which aligned living allowance rates with comparable benefits in the mainstream income support system (Youth Allowance and Newstart Allowance). This change, which provides a core assistance which is equal for all Australians, increased the upper limits of some ABSTUDY rates and decreased the upper limits of other rates. Following this principle of alignment, ABSTUDY students gained access to mainstream-related benefits such as Rent Assistance, Remote Area Allowance and Pharmaceutical Allowance. Other ABSTUDY allowances were retained to address disadvantages unique to, or disproportionately concentrated in, Indigenous students.



***Training for professionals working with children***

**Recommendation 41**

**The JSCOT recommends that the Government encourage the inclusion of the *Convention on the Rights of the Child* in training programs for teachers and other professionals working with children with an emphasis on the mutuality of rights and responsibilities including the rights of parents.**

**Response**

Noted.

**Comment**

State and Territory Governments and non-government education authorities have primary responsibility for school education, including staffing, teacher training and curriculum development. Therefore, advising teachers of their responsibilities in this area would be consistent with the State, Territory and non-government education authorities' role as teacher employers.

State and Territory Governments also have responsibility for the training of child health nurses and community health workers.

The Commonwealth Government works in partnership with those bodies so it will alert State and Territory Education Ministers to this recommendation at a future meeting of the Ministerial Council of Education, Employment, Training and Youth Affairs.

In addition, the Government notes that the Human Rights and Equal Opportunity Commission has a web site with a specific schools page intended to provide both children and teachers with information about their human rights and responsibilities. The site has a section on CROC and feedback from schools has shown that this is a useful tool for teachers and students.

In addition, the Commission has visited a number of schools and held workshops on issues including rights and responsibilities under CROC.

## *Teaching of the Convention in schools*

### **Recommendation 42**

The JSCOT recommends the Federal Minister for Education encourage State and Territory authorities to develop appropriate and balanced curricula and supporting material which properly explain the rights and commensurate responsibilities of children and their parents as members of our Australian society.

### **Response**

Agreed in part.

### **Comment**

The development of school curricula is the responsibility of the States and Territories as they determine the content of the curriculum taught in schools. However, the importance of civics education was reaffirmed in April 1999 when all Australian Ministers for Education endorsed Goal 1.4 of the *National Goals for Schooling in the Twenty-First Century*. It states that when students leave school they should "be active and informed citizens with an understanding and appreciation of Australia's system of government and civic life".

The Commonwealth has implemented a number of initiatives to assist States and Territories in educating children and their parents about their rights and responsibilities. For example, the Government promotes civics and citizenship education through the *Discovering Democracy* program. Under this program, a range of resources have been distributed to all schools in Australia. To date, they have principally focused on students from early-primary to Year 10. The resources include topics such as law, rights and responsibilities and help students to understand the principles that support Australian democracy and the values and attitudes that enable citizens to participate in the political process and contribute to civic life.

Also, the Curriculum Corporation, an independent education support organisation owned by all Australian State, Territory and Commonwealth Ministers for Education, has developed *Making Choices*. This resource, available in a version for primary school and secondary school, is designed to develop economic literacy. It addresses the role various groups play in the economy as producers and consumers and is designed to assist in making choices and decisions and understanding the significance and impact of those decisions.

Performance indicators on students' civic knowledge and understanding, citizenship participation skills and civic values are being developed through MCEETYA (the Ministerial Council on Education, Employment, Training and Youth Affairs), which consists of all Australian Education Ministers. In the future, a national sample of students will be assessed against these performance indicators and the results reported.

### *Discipline in schools*

#### **Recommendation 43**

**The JSCOT recommends the introduction of an information program for teachers on alternative discipline options available.**

#### **Response**

Noted.

#### **Comment**

This is a matter that falls within the responsibility of the States and Territories. The Report has been referred to the States and Territories for their consideration.

State, Territory and non-government education authorities have responsibility for discipline in schools.

These authorities already have in place their own individual policies in relation to school discipline and any changes would need to be initiated by them.

Corporal punishment is banned in government schools and is no longer used in the majority of non-government schools. The vast majority of schools have already developed alternative discipline measures. However, some Christian schools retain corporal punishment as a last resort on the basis that parents have requested it and there is a Biblical mandate for its use.

This is not a matter in which it is appropriate for the Commonwealth to intervene.

### *Juveniles in detention*

#### **Recommendation 44**

**The JSCOT recommends that the Government request the Standing Committee of Attorneys-General to investigate the alternative options to mandatory sentencing.**

#### **Response**

Noted.

#### **Comment**

The importance of alternative options to mandatory sentencing for juveniles is well recognised by the Commonwealth Government. The Government believes that dealing with juvenile crime requires a variety of programs to support, rehabilitate and educate young offenders, as well as to deter and punish.

Since the release of the JSCOT report in 1998, the Commonwealth Government has demonstrated its ongoing commitment to working with the States and Territories to prevent juveniles from entering the criminal justice system by an Agreement signed by the Commonwealth and the Northern Territory Government on 27 July 2000. The Agreement,

which came into effect on 1 September 2000, is designed to divert juveniles from the criminal justice system and jointly fund an Aboriginal interpreter service in the Northern Territory.

The Agreement gives young people the opportunity to learn from their mistakes rather than immediately entering the criminal justice system. Under the Agreement, minor offenders are able to access appropriate programs which assist in diverting them from the criminal path.

The Commonwealth has committed \$5 million per year under the Agreement for four years. This enables funding for:

- a range of new community-based diversionary programs in urban, rural and remote communities;
- community-based drug and substance abuse diversionary programs;
- the establishment of a Juvenile Diversion Unit in the Northern Territory Police Service to administer the diversion process and to conduct family conferencing and other programs;
- a jointly funded Aboriginal Interpreter Service, including recurrent funding for training of interpreters; and
- \$250,000 extra in the first year for training of interpreters (in addition to the recurrent funding for training).

The Commonwealth Government notes that the Northern Territory Parliament repealed its mandatory sentencing laws, effective 22 October 2001. The *Juvenile Justice Amendment Act (No. 2) 2001* (NT) repealed mandatory sentencing for juvenile offenders and the *Sentencing Amendment Act (No. 3) 2001* (NT) repealed mandatory sentencing for adult offenders in relation to property offences.

Mandatory sentencing legislation was discussed at the March 2000 meeting of the Standing Committee of Attorneys-General. While the Commonwealth Government does not propose to place mandatory sentencing on the agenda, State and Territory Attorneys-General are able to place any matter on the agenda of the Committee with the support of their colleagues.

#### **Recommendation 45**

**The JSCOT recommends that the Government request the Standing Committee of Attorneys-General review existing juvenile justice legislation to ensure that children and young people cannot receive longer sentences than adults for any particular offence.**

#### **Response**

Disagree.

#### **Comment**

The States and Territories have the jurisdiction and the responsibility to enact laws relating to criminal and juvenile justice as they deem appropriate. The Report has been referred to the

States and Territories for their consideration. The Commonwealth Government has no express power to legislate in relation to criminal law, except to the extent that it may be connected to other federal powers.

#### **Recommendation 46**

**The JSCOT recommends that the Government request the cooperation of the State and Territory Governments in establishing the frequency with which juveniles are held in custody with adults and to develop measures to address this problem.**

#### **Response**

Noted.

#### **Comment**

Under section 120 of the Constitution, the States are required to make provision for federal offenders within their prisons. Thus, the Commonwealth Government does not have any prisons of its own, and the States are responsible for the imprisonment of both State and federal offenders. This means in effect that each State Government is responsible for the administration of its own prisons and for determining the conditions for the custody of juveniles.

The Report has been referred to the States and Territories for their consideration.

#### **Recommendation 47**

**The JSCOT recommends that the Government withdraw the reservation to Article 37(c) of the *Convention on the Rights of the Child*.**

#### **Response**

Disagree.

#### **Comment**

Article 37(c) of CROC provides: "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances." Australia has made a declaration to Article 37(c) which states that it accepts the general principles of the Article.

However, Australia has made a reservation that the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is consistent with the obligation that children be able to maintain contact with their families. The reservation on Article 37(c) is considered necessary because of the demographics of Australia. The small

centres of population in remote areas and the distance of some of these centres from larger towns and cities necessitate this reservation.

### *Prosecution of child sex offences committed internationally*

#### **Recommendation 48**

The JSCOT recommends that the Government review existing procedures used in prosecutions under the *Crimes (Child Sex Tourism) Amendment Act 1994* to ensure all requirements of procedural fairness and the interests of justice are met.

#### **Response**

Agreed.

#### **Comment**

The Government considers that this recommendation has already been implemented.

The Attorney-General's Department currently monitors and will continue to monitor the operation of the child sex tourism provisions of the *Crimes Act 1914* (Part IIIA) to ensure that they strike the right balance between ensuring that child sex offenders are prosecuted and providing a fair trial for the defendant.

The Committee has expressed the view that improvements can be made in relation to matters including the gathering of evidence; court procedures; and the protection of child witnesses and their families. The Government is aware of these issues, and is in the process of improving the effectiveness of the provisions in Part IIIA.

For example, legislation was recently enacted to provide protection for child witnesses in proceedings for child sex tourism offences and other Commonwealth sex offences. The protections, which are contained in Schedule 3 to the *Measures to Combat Serious and Organised Crime Act 2001*, apply to persons under the age of 18 and are designed to ensure that child witnesses are able to give evidence as effectively and unreservedly as possible.

The legislation places limitations on the admissibility of evidence of the sexual reputation and sexual experiences of child complainants and child witnesses. Defendants are precluded from personally conducting the cross examination of a child witness and the court has a discretion to disallow unnecessarily aggressive or inappropriate questions. The new measures also enable child witnesses to use facilities such as closed circuit television and screens while giving evidence and to be accompanied by an adult of their choosing. A video recording of an interview with a child witness may be admitted as the child's evidence in chief. The court is able to exclude members of the public from the courtroom during the child witness' testimony and the publication of details which could identify the child witness or child victim is prohibited.

However, the Government is of the view that, since its introduction in 1994, Part IIIA has been relatively successful. There have been a number of prosecutions under the Act, most of which have resulted in convictions.

The Australian Federal Police has taken a leading role in the investigation of child sex tourism. The AFP gives priority to the investigation of persons travelling overseas for the purpose of undertaking paedophile activity. This is done by monitoring travel movements of suspected and convicted paedophiles and placing them on the Customs PACE (Passenger Analysis Clearance Evaluation) system. Identified travel movements are then relayed to AFP Liaison Officers for the purpose of advising host countries so that they may take proactive investigative action.

The AFP has developed strong law enforcement links with a number of countries, and actively cooperates with a number of countries, where, historically, reports of child sex tourism on the part of Australians have been more prevalent.

### *Declarations on the importance of families*

#### **Recommendation 49**

**The JSCOT recommends that the Government lodge declarations in relation to the controversial Articles of the *Convention on the Rights of the Child* to ensure appropriate recognition of the rights and responsibilities of parents in raising their children.**

#### **Response**

Disagree.

#### **Comment**

The Government does not consider that making declarations to CROC with regard to certain Articles specified in the Report (in particular articles 12-16) would be the most appropriate means to further inform and reassure the Australian community about the aim and purpose of the Convention.

The Government is of the view that the proposed declarations, as described by the Committee, could fall within the definition of reservations set out in Article 2 of the Vienna Convention on the Law of Treaties. In this case they would be caught by the general principle referred to in Article 19 (and reflected in Article 51 of CROC) that limits the making of reservations to the time when a State signs, ratifies, accedes, accepts, or approves the treaty in question.