



Australian
Human Rights
Commission

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Social Security and Veteran's Entitlements Legislation Amendment (Schooling Requirements) 2008 Bill

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Australian Human Rights Commission Submission
to the Senate Community Affairs Committee

13 October 2008

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1 Introduction

1. The Australian Human Rights and Commission (the Commission) makes this submission to the Senate Community Affairs Committee in its Inquiry into the Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) 2008 Bill ('the Bill').

2 Summary

2. The Commission commends the Government for recognising the importance of addressing the need to improve school enrolments and attendance as a critical step towards realising the right to education for all children. The Commission supports the Government's aims to promote and protect children's right to education.
3. The Commission notes that Indigenous children are particularly disadvantaged in the field of education, as evidenced by their comparatively lower enrolment and attendance rates than for non-Indigenous children, and require targeted assistance to close the education gap.
4. However, the Commission is concerned that the measures for increasing school attendance enrolments and attendance proposed in the Bill constitute an unbalanced approach that favours punitive measures over holistic (and proven) measures.
5. The main limitations of the proposed Bill are:
 - an evidenced based approach demonstrates that punitive measures such as those proposed in the Bill are not as effective in addressing low school enrolment and attendance rates because they do not directly address the underlying causes of low school enrolments and attendance;
 - there are significant unintended negative consequences that would occur for families whose payments are suspended or cancelled, which are disproportionate to the intended aim of realising children's rights to education. Such consequences could include children and families not having the means to access necessary food, clothing, housing, and medical care. This raises concerns about complying with the international human rights principle of acting in the best interests of the child as well as concerns about the possible restriction of the rights of children and their families to food, adequate standard of living and health care;
 - focusing on limited and potentially detrimental strategies such as those outlined in the Bill, unnecessarily draw resources and energy away from more effective holistic strategies, that evidence based research has demonstrated are effective in increasing school enrolments and attendance, and realising the right to education.
6. Having considered the compliance of the Bill with Australia's international human rights obligations under the Convention on the Rights of the Child (CRC), the International Covenant on Economic Social and Cultural Rights (ICESCR) and International Convention on the Elimination of all forms of

Racial Discrimination (CERD), the Commission concludes with concern that the Bill does not adequately protect the rights of children necessary for their development and education.

3 Recommendations

7. The Australian Human Rights Commission recommends that:
 - a. The amendments providing for the suspension or cancellation of welfare payments subject to non-enrolment/ non-attendance of school children not be introduced under the Bill;
 - b. The government adopt a rights based approach to realise the rights of children to education which should include:
 - i. Increasing the provision of education infrastructure and resources, particularly for Indigenous communities in rural and remote areas;
 - ii. Improving the quality of education, placing an emphasis on providing children with incentives to learn and developing methods of teaching that resonate with Indigenous students;
 - iii. Supporting education programs that have proven to increase school attendance.
 - c. The government recognise a child's right to benefit from social security including welfare payments.
 - d. The government address the issue of school enrolment and attendance through a rights based and non-discriminatory approach.
 - e. The government provide comprehensive, accurate, timely and accessible information and education to communities on the introduction of any new measures.

4 Scope and Intent of the Bill

8. The Bill amends the *Social Security (Administration) Act 1999*, the *A New Tax System (Family Assistance) Act 1999*, the *Student Assistance Act 1973* and the *Veterans' Entitlements Act 1986*.
9. The Bill gives effect to the School Attendance and Enrolment Pilot measures announced in the 2008-09 Budget.¹

¹ Families, Housing, Community Services and Indigenous Affairs, Budget 2008-09 (available at: <http://www.budget.gov.au/2008-09/content/bp2/html/expense-11.htm>)

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10. The Commission notes that the Bill provides for the suspension or cancellation of 'schooling requirement income support payments', where a 'schooling requirement person' in receipt of a 'schooling requirement payment' does not comply with a notice relating to school enrolment or attendance of their 'schooling requirement child' (sections 124F-H, 124 K-M of the Bill).²
11. The Bill provides for the measures to be implemented nationally across Australia.
12. However, the government has announced that initially the Bill will be applied as the School Attendance and Enrolment Pilot to only six Northern Territory communities (Hermannsburg, Katherine, Katherine town camps, Wallace Rockhole, Wadeye and Tiwi Islands), and two metropolitan locations (Cannington in Western Australia and one other site yet to be announced), commencing in January 2009.³ The government has indicated that this will initially affect around 3300 children in the identified sites.⁴
13. The Government has said the trials will be evaluated in 2010 and if successful in increasing enrolments and attendance, there will be a national roll out of the policy.⁵
14. As identified in the second reading speech for the Bill by the Deputy Prime Minister Julia Gillard, the purpose of the Bill is to improve school enrolment and attendance:

Australia needs an Education Revolution, and to ensure that every Australian child is able to be a part of that revolution, we need to ensure they are enrolled at and regularly attending school.⁶
15. The primary means by which the Bill seeks to address the issue of low enrolments and attendance is to 'engender behavioural change in those parents who are reluctant to encourage their children to participate in school; by making the receipt of income support payments conditional on parents

² Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) 2008 Bill (available at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r3054_first/toc_word/08156b01.doc;fileType=application/msword)

³ Macklin release on Cannington trial, 17 July 2008 (available at: http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/print/cannington_17jul08.htm)

⁴ Joint Macklin/Gillard media release, 25 August (available at: <http://mediacentre.dewr.gov.au/mediacentre/gillard/releases/schoolenrolmentandattendancelegislationtobeintroduced.htm>)

⁵ Julia Gillard, 2nd Reading Speech (House of Reps), available at: <http://mediacentre.dewr.gov.au/mediacentre/gillard/releases/secondreadingspeechsocialsecurityandvetransentitlementslegislationamendmentschoolingrequirementsbil.htm>

⁶ Julia Gillard, 2nd Reading Speech (House of Reps), available at: <http://mediacentre.dewr.gov.au/mediacentre/gillard/releases/secondreadingspeechsocialsecurityandvetransentitlementslegislationamendmentschoolingrequirementsbil.htm>

taking reasonable action to ensure their children are enrolled in school and attending regularly'.⁷

5. Reasons for under-enrolment and under-attendance in schools

16. The Government notes that according to Australian Bureau of Statistics data nationally up to 20,000 children of compulsory school age are currently not enrolled in school or registered for home-schooling according to state/territory law.⁸
17. The Commission notes that although there is limited reliable public data about Indigenous school participation rates mapped against ABS population data, indications are that Indigenous children are over-represented in these rates. For instance, completion and retention rates such as those provided below are indicative of the comparative under-participation of children in the education system:
 - 49.9 per cent of non-Indigenous Australians had no non-school qualification compared with 71 per cent of Indigenous Australians;
 - 26.9% of Indigenous people reach year 10 or 11 compared to 18.8% of other Australians;
 - In 2003, the retention rate for Indigenous students fell from nearly 90% in year 10 to 67% in year 11. By comparison, the rate for non-Indigenous students falls less dramatically from 99% in year 10 to 87% in year 11. As at 2002, the apparent retention rate for Indigenous year 12 students was 38 per cent compared to 76.3 per cent for their non-Indigenous counter-parts.⁹

⁷ Senator McLucas, 2nd Reading Speech (Senate) (available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=;page=;query=Title%3Aschooling%20Title%3Arequirements%20Database%3Achamber%20Title%3A%22second%20reading%22%3F%20%20Context_Phrase%3Abill%3F%20Speaker%3A%3F;querytype=;rec=0;resCount=Default)

⁸ Senator McLucas, 2nd Reading Speech (Senate) (available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=;page=;query=Title%3Aschooling%20Title%3Arequirements%20Database%3Achamber%20Title%3A%22second%20reading%22%3F%20%20Context_Phrase%3Abill%3F%20Speaker%3A%3F;querytype=;rec=0;resCount=Default)

⁹ Cited in Larissa Behrendt and Ruth McCausland, 'Welfare Payments and School Attendance' Jumbunna Indigenous House of Learning, University of technology, Sydney, 2008, available at: <http://www.aefederal.org.au/Publications/2008/LBehrendtpaper.pdf>

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18. In 2005, the Committee on the Rights of the Child in its concluding Observations on Australia noted its continued concern ‘at the serious difficulties that indigenous children and children living in remote areas face with regard to education, and in particular their lower level of achievement and high dropout rate’ and recommended that the government ‘take all necessary measures to ensure that articles 28 and 29 of the Convention are fully implemented, in particular with regard to ...indigenous children’.¹⁰
19. As evidenced in the government’s parliamentary reading speeches for the Bill, the underlying premise of the Bill is that the reason for the low rates of enrolment and attendance is “parents who are reluctant to encourage their children to participate in school”.¹¹
20. The Commission notes that there is no evidence provided that demonstrates ‘reluctant parents’ are the reason for under-enrolment and under-attendance.
21. To the contrary, the Commission notes that research shows the underlying causes for truancy, under-enrolment and under attendance include:
 - shortages of educational services, particularly for Indigenous communities¹²: 94% of Indigenous communities in the Northern Territory have no preschool; 56% have no secondary school; and 27% have a local primary school that is more that 50kms away.¹³

¹⁰ Committee on the Rights of the Child, *Concluding Observations Australia*, UN Doc CRC/C/15/Add.268, 20 October 2005, paras 59 and 61a (available at: [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6f6879be758d0e8ec12570d9003340ba/\\$FILE/G0544374.DOC](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6f6879be758d0e8ec12570d9003340ba/$FILE/G0544374.DOC)). Similarly the Committee on Economic Social and Cultural Rights in its Concluding Observations on Australia in 2000, noted the comparative disadvantage of indigenous people, including in the area of education, and recommended that the government pursue efforts to address the disadvantage (Committee on Economic Social and Cultural Rights, *Concluding Observations on Australia*, UN Doc E/C.12/1/Add.50, 1 September 2000, (available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/693c56f3d2694130c12569580039a1a2?Opendocument>)).

¹¹ Senator McLucas, 2nd Reading Speech (Senate) (available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Title%3Aschooling%20Title%3Arequirements%20Database%3Achamber%20Title%3A%22second%20reading%22%3F%20%20Context_Phrase%3Abill%3F%20Speaker%3A%3F:querytype=:rec=0;resCount=Default)

¹² The Social Justice report 2007, noted: “It is difficult to assess the exact numbers of students without access to primary and secondary education in the Northern Territory. However, the Northern Territory’s Minister for Education, Mr Paul Henderson, has conceded that the number of school-aged children without access to primary and secondary education is ‘significant’.” Cited in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, HREOC, Sydney, 2007, p279.

¹³ Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government’s proposals*, 10 July 2007, p18, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007. The Australian Education Union, in its 2007 report discusses the problem of the lack of education facilities in the Northern Territory and calls for ‘the Federal and Northern Territory governments to work in partnership to ensure that all children in the Northern Territory have access to and participate fully in high quality education. The estimated cost of this provision is an additional \$1.7 billion over five years. Michaela Kronemann, *Education is the key: An*

- poor quality teachers and teaching resources in schools¹⁴,
 - bullying and teasing experienced by children in school,
 - poverty,
 - ill health,
 - overcrowded housing resulting in a lack of sleep, security and privacy,
 - poor health from broken facilities.¹⁵
22. The Commission notes that the socio-economic disadvantage experienced among Indigenous peoples contributes to Indigenous children having greater exposure to these causes of non-enrolment and non-attendance.
23. Research has shown that *over and above the influence of parents*, factors that can improve school enrolment, attendance and retention include having skilled teachers who create a stimulating learning environment in the classroom and a supportive ‘culture’ in the school that actively addresses bullying and harassment of Indigenous students.¹⁶
24. Further, evidence from evaluations of similar programs in Australia and overseas demonstrate that making welfare payments conditional upon school enrolment and attendance have not generated any significant level of success that would warrant initiating the scheme proposed by this Bill.¹⁷

education future for Indigenous communities in the Northern Territory, Australian Education Union, Southbank, Victoria, 2007,p5.

¹⁴ One aspect of the quality of teaching, is the importance of having culturally relevant education. The Committee on the Rights of the Child has noted that states have a responsibility to accommodate cultural needs when delivering education (Committee on the Rights of the Child, *General Comment No. 1: The Aims of Education*, UN Doc CRC/GC/2001/1, 17 April 2001 (available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2001.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2001.1.En?OpenDocument)).

¹⁵ Department of Employment and Workplace Relations, Halls Creek *Engaging Families Trial*, February–July 2006: Evaluation Report, September 2006, <http://mediacentre.dewr.gov.au/NR/rdonlyres/2B10D46E-592B-4531-B149-A5B91E69A13E/0/KA265HallsCreekEngagingFamiliesReport4October.pdf>, p12 (also citing Australian Council of Educational Research, 1998); David Fein, Wang Lee and Christina Schofield, *The ABC Evaluation: Do Welfare Recipients’ Children Have a School Attendance Problem?* Delaware Health and Social services, Delaware, August 1999.

¹⁶ Department of Employment and Workplace Relations, *Halls Creek Engaging Families Trial*, February–July 2006, Evaluation Report, September 2006.

¹⁷ See Department of Employment and Workplace Relations, *Halls Creek Engaging Families Trial*, February–July 2006, Evaluation Report, September 2006; David Fein, Wang Lee and Christina Schofield, *The ABC Evaluation: Do Welfare Recipients’ Children Have a School Attendance Problem?* Delaware Health and Social services, Delaware, August 1999, and Larissa Behrendt and Ruth McCausland, ‘Welfare Payments and School Attendance’, Jumbunna Indigenous House of Learning, University of Technology Sydney, 2008, available at: <http://www.aeufederal.org.au/Publications/2008/LBehrendtpaper.pdf>.

25. Most recently, the Central Land Council reported on the ineffectiveness of similar income management regimes introduced under the Northern Territory Emergency Response (NTER):
- ‘after the introduction of the NTER attendance numbers were down in five survey communities, from May 2007 compared to May 2008...The figures suggest that the NTER has not had an impact on school enrolment and attendance figures in survey communities.’¹⁸
26. The Northern Territory Council of Government School Organisations Inc., based on its surveys, also reported that the NTER has not resulted in better educational outcomes.¹⁹
27. The lessons learnt show that linking attendance to welfare payments is not as effective in increasing school enrolment or attendance as other measures that directly address the underlying causes such as health inequality and poverty.
28. A number of innovative educational programs in the Northern Territory have achieved success in increasing school enrolments and attendance. For example, the Clontarf program in Alice Springs has increased attendance rates up to 92% by using sport and motivational techniques to motivate students to stay at school. Other success stories include Cherbourg in Queensland, as well as Yirkala, Yipirinya and Barunga in the Northern Territory.²⁰
29. Ongoing, long-term funding to close the gap on education and health inequalities for Indigenous children and their families could generate more positive outcomes for school attendance and for fulfilling children’s rights to education and health, than the proposed measure of making welfare income conditional upon school enrolment/ attendance.²¹

6. Impact on children and families

30. The Commission notes with the concern that the punitive approach adopted in the Bill that allows for the suspension or cancellation of welfare payments

¹⁸ Central Land Council, *Reviewing the Northern Territory Emergency Response: Perspectives from Six Communities*, Central Land Council, Alice Springs, July 2008, p77-78

¹⁹ Northern Territory Council of Government School Organisations Inc., “Submission to the Senate Select Committee – Inquiry into Regional and Remote Indigenous Communities”, 30 May 2008 (available at: http://www.aph.gov.au/SENATE/committee/indig_ctte/submissions/sub10.pdf). They noted that due to alcohol bans some children are being taken out of home communities to areas where parents can drink and often are not returning to school until several months later.

²⁰ Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government’s proposals*, 10 July 2007, p18, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007.

²¹ For suggestions from the community for alternative ideas such as increased focus on education, youth programs, stopping underage drinking and increased recreational and after school activities, see Central Land Council, *Reviewing the Northern Territory Emergency Response: Perspectives from Six Communities*, Central Land Council, Alice Springs, July 2008, p78.

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diminishes the rights of children and their families, and contravenes the principle of acting in the best interests of the child as required under the CRC. It also undermines a child's right to benefit from social security under Article 26 of the CRC.

31. In situations where the welfare payments are suspended or cancelled, there is likely to be no income available for the period of the suspension, or in the case of the cancellation, for the period until a new application is completed.
32. During this period children and families will not have the means to access necessary food, clothing, housing, and medical care. Denying the means to access these goods and services does not promote the best interests of the child nor protect the rights of the child, necessary for their development.

Article 3, Convention on the Rights of the Child:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.²²

Article 26, Convention on the Rights of the Child:

1. States parties shall recognize for every child the rights to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.²³

33. Lack of access to such goods and services can further entrench problems of poverty, ill health and overcrowded housing in the family, which as research shows are factors that contribute to school absence. The effect of the Bill's punitive approach is, in the most difficult cases, to further entrench the causes of low school enrolment and attendance.
34. The Bill may also have the unintended consequence of having a disproportionate negative impact on women. This may arise in the context of women still predominantly fulfilling the role of carer in many Australian families. Consideration should be given to investigating and preventing any potential disproportionate negative impact of the Bill on women welfare recipients with school aged children.

²² UN Convention on the Rights of the Child, 1989

²³ UN Convention on the Rights of the Child, 1989

35. Further, the Bill could also have an unintended consequence of targeting 'responsible' carers in communities, many of whom are women. The suspension or cancellation of Centrelink payments will affect people who have taken responsibility for parenting school-aged children in cases where the biological parents have abrogated parenting responsibilities. The threat of income sanctions may become a disincentive to nominating as a carer.
36. The Bill's negative impacts raise concerns about its compliance with the international human rights principle of the best interests of the child as well as concerns about the possible restriction of the rights of children and their families to food, adequate standard of living and health care.
37. The Commission notes that the government has contended that the suspension or cancellation of welfare payments would be a measure of last resort under the Act.²⁴ However, the extent of the discretion provided to the schools, Departments and the Minister are not clarified in the Act, and in their absence, the Act does not confirm on what basis the notices regarding school enrolment or attendance will be administered as a last resort. Once the notice is given, the Act only allows recipients 14 days to comply with the notice, before the penalty of suspension or cancellation of payments is applied.
38. Given the serious negative consequences the penalty can have on children and their family, the Act does not provide sufficient checks and balances for ensuring the penalties are applied only as a measure of last resort.
39. The Commission notes the importance of considering alternative non-punitive measures, before implementing policies whose penalties have such a detrimental impact.

7. Impact on Indigenous children and families

40. While the Bill makes no mention of specifically applying to Indigenous children, the selected trial sites indicate the Bill's initial application at least will primarily affect Indigenous children and families.
41. Of the six identified trial sites in the Northern Territory, five of them are Indigenous communities. In the sixth site, Katherine, 23% of the population is Indigenous, of which 44% are under the age of 18 years.²⁵

²⁴ Julia Gillard, 2nd Reading Speech (House of Reps), (available at: <http://mediacentre.dewr.gov.au/mediacentre/gillard/releases/secondreadingspeechsocialsecurityandventeransentitlementslegislationamendmentschoolingrequirementsbil.htm>).

²⁵ Australian Bureau of Statistics, 'Basic Community Profile – Katherine (UCL 703600), 15.8 sq. Kms', 2001 Census of Population and Housing, available at: <http://www.censusdata.abs.gov.au/ABSNavigation/prenav/ViewData?&action=404&documentproductno=UCL703600&documenttype=Details&tabname=Details&areacode=UCL703600&issue=2001&producttype=Community%20Profiles&&producttype=Community%20Profiles&textversion=false&navmapdisplayed=true&breadcrumb=LPD&#Basic%20Community%20Profile>.

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42. Cannington, the only metropolitan site identified to date, is the exception, which has an Indigenous population of only 2.3%, but has a higher proportion of people born overseas (35%) and people who speak a language other than English (25%).²⁶
43. Even when the Bill is implemented nationally, beyond the selected trial sites, it is likely to have a greater impact upon Indigenous peoples because school enrolment and attendance is a more significant issue in Indigenous communities.
44. In the context of the high level of impact of the Bill on Indigenous children, in addition to the impacts identified above, the Commission notes some of the negative unintended consequences of the Bill that could undermine the realisation of Indigenous children's rights to education and development.
45. The effect of the Bill undermines one of Australia's key Indigenous policy platforms - the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) *Australian Directions in Indigenous Education 2005 – 2008*.²⁷ This policy contains five policy domains. The second domain is 'School and community educational partnerships'. A recommendation aimed at giving effect to this policy is: 'establish agreement on school goals and policies relating to matters such as attendance and academic achievement'.²⁸
46. The effect of this Bill is to position schools as the monitoring body for student non-attendance and ultimately place them as the responsible party if parents have their welfare payments suspended or cancelled. This has the potential to erode relationships between school staff and community members, especially in small communities.
47. This Bill could prevent schools and communities from developing their own attendance agreements and policies. Ultimately all parents and schools want good school attendance. However, taking a punitive approach to student non-attendance has the effect of diminishing trust between schools and community members and undermines the potential for *School and community educational partnerships*. In effect, this Bill is at cross purposes with existing Indigenous education policy.

²⁶ Australian Bureau of Statistics, 'Basic Community Profile – Cannington (SSC 51231), 4.1 sq. Kms', 2001 Census of Population and Housing, available at: <http://www.censusdata.abs.gov.au/ABSNavigation/prenav/ViewData?&action=404&documentproductno=SSC51231&documenttype=Details&tabname=Details&areacode=SSC51231&issue=2001&producttype=Community%20Profiles&&producttype=Community%20Profiles&textversion=false&navmapdisplayed=true&breadcrumb=LPD&#Basic%20Community%20Profile>

²⁷ Ministerial Council on Education, Employment, Training and Youth Affairs, *Australian Directions in Indigenous Education 2005 – 2008*, Available online at: http://www.curriculum.edu.au/verve/_resources/Australian_Directions_in_Indigenous_Education_2005-2008.pdf accessed 1 October 2008.

²⁸ Ministerial Council on Education, Employment, Training and Youth Affairs, *Australian Directions in Indigenous Education 2005 – 2008*, Available online at: http://www.curriculum.edu.au/verve/_resources/Australian_Directions_in_Indigenous_Education_2005-2008.pdf accessed 1 October 2008.

48. The Commission notes that the Bill may also have the unintended consequence of undermining the achievement of child protection principles such as the Indigenous Child Placement Principle.²⁹
49. Indigenous non-biological carers may be deterred from volunteering to become carers due to the risk associated with potential suspension or cancellation of their welfare payments. This could heighten the existing shortages of available Indigenous carers.³⁰
50. The Commission also notes its concern that the Bill in its national application may be racially discriminatory in its impact upon Indigenous peoples. This is because Indigenous peoples are more likely to be subject to it and have their rights limited as a result.
51. Measures that disproportionately impact upon the ability of a particular racial group to enjoy their rights (such as the right to social security) will be discriminatory unless the impact is necessary and proportionate to a legitimate aim.³¹
52. While the Commission strongly supports measures to increase school attendance and educational outcomes, it is not clear that taking a punitive approach that may disproportionately impact upon Indigenous peoples is an appropriate means of achieving that goal. Careful consideration must therefore be given to the evidentiary basis for these measures in order to properly assess whether they are necessary and proportionate.

8. Information and community education

53. The Commission notes the importance of providing comprehensive, accurate, timely and accessible information and community education to communities on the introduction of any new measures.
54. The lack of sufficient information made available to communities on measures introduced under the Northern Territory Emergency Response highlighted the barriers and uncertainty lack of information can create when new measures are introduced.
55. This is particularly important for people for whom English is not a first language or who may face literacy problems, to make sure they are kept well informed. Information should also be made available in forms that are accessible for people with disabilities.

²⁹ Human Rights and Equal Opportunity Commission, *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, HREOC, Sydney, 1997, p516-517.

³⁰ SNAICC, *Achieving Stable and Culturally Strong Out of Home Care for Aboriginal and Torres Strait Islander Children*, Policy Paper, SNAICC, Victoria, 2005, p1

³¹ This may also be a concern in areas such as Cannington, one of the selected trial sites, where there is a high proportion of cultural and linguistically diverse communities. The Commission notes care must similarly be given to ensuring the Bill does not have a disproportionate impact on culturally and linguistically diverse communities.

56. The Commission recommends [Recommendation1]:
- a. The provisions for the suspension or cancellation of welfare payments subject to non-enrolment/ non-attendance of school children not be introduced under the Bill;
 - b. The government adopt a rights based approach to realise the right of education which should include:
 - i. Increasing the provision of education infrastructure and resources, particularly for Indigenous communities in rural and remote areas.
 - ii. Improving the quality of education, placing an emphasis on providing children with incentives to learn and developing methods of teaching that resonate with Indigenous students;
 - iii. Supporting education programs that have proven to increase school attendance.
 - c. The government recognise a child's right to benefit from social security including welfare payments.
 - d. The government address the issue of school enrolment and attendance through a rights based and non-discriminatory approach.
 - e. The government provide comprehensive, accurate, timely and accessible information and education to communities on the introduction of any new measures.