

Information concerning Australia and the Convention on the Rights of the Child

.....
Australian Human Rights Commission
Submission to the Committee on the Rights of
the Child
August 2011

Table of Contents

1	Introduction	4
2	National developments	4
3	General measures of implementation	5
3.1	Legal protection of children’s rights	5
3.2	UN Declaration on the Rights of Indigenous Peoples	6
(a)	<i>Incorporating the Declaration into Australia’s Human Rights Framework</i> .	6
(b)	<i>Implementing the Declaration</i>	7
3.3	National Children’s Commissioner	7
3.4	Third Optional Protocol to the Convention	8
3.5	Reservations to the Convention	9
4	General principles	9
4.1	Non-discrimination	9
(a)	<i>Age discrimination</i>	9
(b)	<i>Discrimination on the basis of sexual orientation and sex and/or gender identity</i>	10
(c)	<i>Discrimination experienced by girls and young women</i>	11
(d)	<i>Discrimination experienced by Aboriginal and Torres Strait Islander children</i>	11
4.2	Respect for the views of the child	13
5	Civil rights and freedoms	14
5.1	Violence, bullying and harassment	14
(a)	<i>Violence, bullying and harassment in schools</i>	14
(b)	<i>Violence and sexual harassment experienced by girls and young women</i>	15
(c)	<i>Race-based violence, bullying and harassment</i>	16
(d)	<i>Corporal punishment</i>	17
5.2	Sterilisation of children	17
5.3	Legal recognition of sex and/or gender	18
6	Family environment and alternative care	18
6.1	Family and domestic violence	18
6.2	Children in out-of-home care	20
(a)	<i>Measuring outcomes for children in out-of-home care</i>	20
(b)	<i>Transitioning from care</i>	21
6.3	Unaccompanied children in immigration detention	22
7	Disability, basic health and welfare	22
7.1	Health equality for Aboriginal and Torres Strait Islander Children	22
7.2	Fetal Alcohol Spectrum Disorder	23
7.3	Children with disabilities	23
7.4	Mental health of children	24
8	Education, leisure and cultural activities	25
8.1	Aboriginal and Torres Strait Islander children and education	25
8.2	Education for children with disabilities	26
8.3	Education for children from culturally and linguistically diverse backgrounds	27

8.4	<i>Human rights education</i>	28
9	Special protection measures	29
9.1	<i>Children in immigration detention</i>	29
	(a) <i>Mandatory and indefinite immigration detention in Australia</i>	29
	(b) <i>Conditions in immigration detention facilities</i>	30
	(c) <i>Community detention</i>	30
	(d) <i>Removal to a third country</i>	31
	(e) <i>Detention of foreign juvenile fishers and crew</i>	31
9.2	<i>Child homelessness</i>	32
9.3	<i>Juvenile justice</i>	34
	(a) <i>Children in the adult justice system</i>	34
	(b) <i>Monitoring conditions in juvenile detention</i>	34
	(c) <i>Aboriginal and Torres Strait Islander children and juvenile justice</i>	35
	(d) <i>Children with disabilities and juvenile justice</i>	36
	(e) <i>Children from culturally and linguistically diverse backgrounds and juvenile justice</i>	37
	Relations between police and African Australian young people.....	37
	Interpreters in court proceedings	37
9.4	<i>Child victims of trafficking</i>	38
10	Appendix: List of recommendations	40

1 Introduction

- 1 This submission was prepared by the Australian Human Rights Commission. It provides information to the Committee on the Rights of the Child on Australia's implementation of the International Convention on the Rights of the Child (the Convention) with reference to the Australian Government's 4th periodic report.
- 2 This submission focuses on key child rights issues on which the Commission has recent data or evidence. It does not aim to provide a comprehensive overview of all child rights issues in Australia. The Commission acknowledges the Child Rights NGO Report, prepared by the Child Rights Taskforce, which provides information on a broad range of child rights issues.¹
- 3 In preparing this document, the Commission has consulted with state and territory human rights agencies, and children's commissioners and guardians.²

2 National developments

- 4 The Commission welcomes the following key national developments in the protection of child rights in Australia:
 - the introduction of the Australian Human Rights Framework in April 2010, which includes references to rights contained in the Convention. Of particular note is the proposed introduction of a Parliamentary Joint Committee on Human Rights, and the requirement for all new legislation to be accompanied by a statement of compatibility. Both of these measures require consideration of compliance with the Convention.
 - the agreement by the Council of Australian Governments to the National Framework for Protecting Australia's Children
 - the National Apology by the Prime Minister in the Australian Parliament to the Stolen Generations, for the past policies and practices of forcibly removing Aboriginal and Torres Strait Islander children from their families on 13 February 2008,³ and the formation of the Aboriginal and Torres Strait Islander Healing Foundation in October 2009
 - the National Apology by the Prime Minister to the Forgotten Australians and former child migrants, many of whom suffered abuse and neglect in out-of-home care during the last century⁴
 - the affirmation by the Council of Australian Government (COAG) of the National Integrated Strategy for Closing the Gap in Indigenous Disadvantage, which identified six Closing the Gap targets in the areas of health, education and employment in July 2009⁵
 - the agreement by the Council of Australian Governments to the National Plan to Reduce Violence Against Women and their Children.

- 5 Further developments which will impact positively on child rights are welcomed throughout this submission, in particular developments addressing the rights of children in need of special protection.

3 General measures of implementation

3.1 *Legal protection of children's rights*

- 6 In its Concluding Observations in 2005, the Committee stated its concern that the Convention could not be used by the judiciary to override inconsistent provisions of domestic law. It recommended that Australia strengthen its efforts to bring its domestic laws and practice into conformity with the principles and provisions of the Convention, and to ensure effective remedies will always be available in case of violation of the rights of the child.
- 7 While some rights under the Convention have been incorporated into domestic laws, there is an 'implementation gap' in Australia with respect to children's rights. The legal protection of child rights in Australia are not comprehensive and nor do they provide an effective remedy for violations.
- 8 Only Victoria and the Australian Capital Territory have specific human rights legislation and these laws contain limited protection of child rights.⁶ The Australian Constitution and common law provide only limited human rights protection.⁷
- 9 While the Commission can investigate and conciliate complaints of breaches of rights set out in the Convention, any recommendations made by the Commission are not legally enforceable.⁸ This differs from how the Commission can handle complaints that fall under discrimination law provisions.
- 10 In 2009-10, the Australian Government undertook a National Human Rights Consultation, seeking the public's views on the protection and promotion of human rights. The Commission, and thousands of individuals and organisations, including children and young people, contributed to the consultation.⁹ The consultation committee report, released in October 2009, recommended, among other things, that the Australian Government adopt a Human Rights Act.
- 11 In April 2010, the Australian Government responded to the report by announcing Australia's Human Rights Framework, which commits to a variety of measures to strengthen human rights protection in Australia, including
- human rights education for the community
 - a National Action Plan on Human Rights
 - establishing a federal Parliamentary Joint Committee on Human Rights to scrutinise existing and new legislation for compliance with Australia's human rights obligations
 - requiring that all new federal legislation be accompanied by a statement of compatibility with Australia's human rights obligations

- developing a consolidated federal anti-discrimination law.¹⁰
- 12 Australia's Human Rights Framework is informed by seven core Human Rights Treaties, including the Convention.¹¹
- 13 While the Commission strongly welcomes the Framework measures announced, these measures alone are not sufficient to address all of the weaknesses in Australia's system of human rights protection.
- 14 The Commission recommends that the Australian Government fully incorporate into Australian law its human rights obligations to children, including through the adoption of a federal Human Rights Act.

Recommendation 1: The Commission recommends that the Australian Government fully incorporate into Australian law its human rights obligations to children, including through the adoption of a federal Human Rights Act.

3.2 UN Declaration on the Rights of Indigenous Peoples

- (a) *Incorporating the Declaration into Australia's Human Rights Framework*
- 15 The Commission is concerned that Australia's Human Rights Framework is not informed by the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration).¹²
- 16 The Declaration contains specific articles relating to the rights of children, including:
- the right to live free from violence and discrimination (article 22)
 - the right to continuing improvement in social and economic conditions (article 21)
 - the right to education free from discrimination (article 14)
 - the right to education in their own culture and language (article 14).
- 17 The Commission notes that the Declaration does not contain any new rights. Rather it contains existing human rights standards and interprets them as they apply to Indigenous peoples. This has been acknowledged by the Minister for Families, Housing, Community Services and Indigenous Affairs.¹³
- 18 As such, it should be explicitly included in measures under Australia's Human Rights Framework.

Recommendation 2: The Australian Government should incorporate the Declaration on the Rights of Indigenous Peoples into Australia's Human Rights Framework as one of the core instruments to inform its operation.

(b) *Implementing the Declaration*

- 19 The Commission welcomed the Australian Government's formal endorsement of the Declaration in April 2009. The Declaration has become increasingly prominent in Australia's legal and policy landscape, with references to the Declaration being made in Parliament,¹⁴ parliamentary committee reports,¹⁵ court decisions¹⁶ and in policies developed by Aboriginal and Torres Strait Islander non-government organisations.¹⁷
- 20 However, the Australian Government has yet to develop an action plan for the 'full realization of the provisions of [the] Declaration' (article 41). Such an action plan should be developed with the active participation of, and in full partnership with, Aboriginal and Torres Strait Islander peoples.
- 21 Further, the Commission considers that the Declaration should be used to frame the Australian Government's engagement with Indigenous peoples. In particular, the Commission considers that the Australian Government should consult and cooperate with Aboriginal and Torres Strait Islander peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Recommendation 3: The Australian Government should work with the Australian Human Rights Commission and Indigenous peoples organisations to develop an action plan on the Declaration on the Rights of Indigenous Peoples.

Recommendation 4: All legislation, policies and programs should be reviewed for consistency with the rights affirmed by the Declaration on the Rights of Indigenous Peoples.¹⁸

3.3 *National Children's Commissioner*

- 22 The Commission is concerned that there is no dedicated body at the national level which is tasked with monitoring and advocating for children's rights.
- 23 Under the *Australian Human Rights Commission Act 1986* (Cth), the Commission has a number of statutory functions to promote and protect human rights,¹⁹ including those rights set out in the Convention. Pursuant to these statutory functions, the Commission has conducted a number of significant inquiries and projects on children's rights.²⁰ However, there is no specific commissioner dedicated to child rights. Moreover, the Commission is not specifically resourced to conduct policy work in children's rights. The Commission notes that the Committee has raised concerns about monitoring the implementation of child rights in its 2005 Concluding Observations.²¹
- 24 The Commission believes that the creation of a national Children's Commissioner would address these concerns.
- 25 The Commission commends the state and territory governments for establishing children's commissioners and guardians. All states and territories in Australia have a commissioner or guardian for children and young people living

in that state or territory. The state and territory commissioners and guardians do important work advocating for children. However, there is still a need for a national Children's Commissioner. Not only do the responsibilities of state and territory commissioners and guardians vary considerably,²² but there are some policy issues for which responsibility rests with the Commonwealth and which have a direct impact on the lives of children, including immigration, social security and family law.

- 26 In addition, many of the issues facing Australia's children, such as homelessness, abuse, violence and bullying, mental illness and access to justice affect children across all of Australia. These are national issues and need to be understood, analysed and responded to from a national perspective.
- 27 In particular, a national Children's Commissioner could:
- operate as a national advocate for children's rights, ensuring that government decision-making processes and outcomes are consistent with the best interests of children
 - develop mechanisms to secure the participation of children in decisions that affect them (see Section 4.2)
 - provide a coordinated national approach to children's rights.
- 28 In 2009, the Council of Australian Governments (COAG) endorsed the National Framework for Protecting Australia's Children, together with its first three-year Implementation Plan 2009-2012.²³ The Framework outlines a national approach to protecting children from abuse and neglect, and promoting their safety and well-being. The potential role of a national Children's Commissioner is one of the areas being explored under the Framework.²⁴
- 29 The Commission welcomes the development of the Framework, which aims to address one of the most critical child rights issues facing Australia currently – child abuse and neglect. The Commission also commends the Australian Government for examining the possibility of a national Children's Commissioner through the Framework's consultative process.
- 30 The Commission believes, however, that a national Children's Commissioner should not be limited to monitoring and advocating for children in need of protection from abuse and neglect. There is no independent body in Australia dedicated to monitoring whether all children's rights are being protected, and ensuring that children's voices are heard and taken into account.

Recommendation 5: The Australian Government should establish a national Children's Commissioner with the primary functions of monitoring, investigating and reporting on the protection of children's rights as set out in the Convention on the Rights of the Child. The Children's Commissioner should be independent, adequately resourced and accessible to children.

3.4 *Third Optional Protocol to the Convention*

- 31 The Commission supports the development of the Third Optional Protocol to the Convention on the Rights of the Child, which, if adopted by the General

Assembly, will establish an individual communications mechanism for children, and their representatives, for violations under the Convention.

- 32 Communications under the Optional Protocol will be a valuable mechanism for identifying both systemic and individual violations of the Convention in Australia, and will assist in persuading the Australian Government to address any violations of children's rights.

Recommendation 6: The Australian Government should sign and ratify the Third Optional Protocol to the Convention on the Rights of the Child, once it is adopted by the General Assembly. The Australian Government should ensure that the availability of the Optional Protocol is promoted widely throughout Australia, in particular to children and organisations working with children.

3.5 Reservations to the Convention

- 33 Australia continues to have a reservation to article 37(c) of the Convention, which requires that children not be detained with adults.
- 34 While in most cases across Australia child offenders are held in specific juvenile detention facilities, there are instances when young people under 18 years of age are detained in adult facilities.²⁵
- 35 Australia has previously defended the reservation to article 37(c), claiming that Australia's geography and demography make it difficult to always detain children in juvenile facilities and simultaneously allow children to maintain contact with their families.²⁶ However, the Committee in its 2005 Concluding Observations has pointed out that the Australian Government's concerns are taken into account by article 37(c), which states that incarceration with adults is prohibited *unless it is considered in the child's best interest not to do so* and also that *a child shall have the right to maintain contact with his or her family*.
- 36 In its report to the Committee, the Australian Government states that it is 'considering the feasibility of withdrawing its reservation to article 37(c) of the Convention', indicating, however, that considerable consultation with states and territories is necessary before a decision to withdraw the reservation can be made.

Recommendation 7: Australia should withdraw its reservation to article 37(c) of the Convention on the Rights of the Child.

4 General principles

4.1 Non-discrimination

(a) Age discrimination

- 37 At the federal level, the *Age Discrimination Act 2004* (Cth) (ADA) is the primary source of anti-discrimination protection for people of all ages, including young

people and children. However, of the four federal anti-discrimination acts, the ADA is widely considered to offer the weakest level of protection.

- 38 Recent amendments have addressed some of the Commission's concerns about the ADA, but a number of issues remain outstanding. In 2009 the 'dominant reason' test was removed from the ADA. This amendment meant that in order to substantiate a complaint, a person need only show that their age was 'a' reason rather than 'a dominant reason' for the less favourable treatment they allegedly received.²⁷
- 39 Amendments to the ADA which took effect in June 2011 created the office of a stand-alone Age Discrimination Commissioner. This brought the ADA into line with the federal race, sex and disability Acts and is a role that will assist in advancing the profile of age discrimination, including discrimination against children due to their age.²⁸
- 40 The Commission remains concerned, however, that coverage of the ADA does not extend to 'relatives and associates', that there is no specified ground of harassment and/or vilification on the basis of age²⁹ and that the ADA contains the broadest range of exemptions of all federal anti-discrimination legislation.³⁰
- 41 In April 2010, the Australian Government announced the Australian Human Rights Framework, which included a commitment to develop an exposure draft legislation harmonising and consolidating Commonwealth anti-discrimination laws. It is hoped that this will address outstanding concerns.³¹

Recommendation 8: The Australian Government should ensure that federal anti-discrimination legislation provides equal protections from discrimination on the basis of age as for other grounds.

(b) Discrimination on the basis of sexual orientation and sex and/or gender identity

- 42 For many years the Commission has heard of significant instances of young people experiencing discrimination, bullying and harassment on the basis of sexual orientation, often in school environments.³²
- 43 Children and young people who are trans or intersex are especially vulnerable to discrimination and harassment due to their sex and/or gender identity.
- 44 Although state and territory laws provide protection from discrimination on the basis of sexual orientation,³³ and in some cases gender identity,³⁴ there is no federal law prohibiting discrimination on the ground of sexual orientation or sex and/or gender identity. Including these grounds in federal anti-discrimination laws would send a powerful message to the community about respect for people of all sexual orientation and for sex and/or gender diversity.
- 45 The current process of consolidating federal anti-discrimination laws provides an opportunity to ensure that concrete steps are taken to promote and protect the human rights of people of all sexual orientations and all sex and/or gender identities. Importantly, in 2010 both of the major political parties affirmed their support for the inclusion of protection from discrimination on the basis of sexual

orientation and gender identity in federal law.³⁵ The Australian Government reaffirmed its commitment to implementing this policy in its recent appearance before the United Nations Human Rights Council's Universal Periodic Review.³⁶

Recommendation 9: Sexual orientation should be included as a ground of discrimination in federal anti-discrimination laws.

Recommendation 10: Sex and/or gender diversity should be included as grounds of discrimination in federal anti-discrimination laws.

(c) Discrimination experienced by girls and young women

46 National and international literature has highlighted the discrimination that young women face on account of sex, particularly in the areas of education, and work.³⁷ Young women in Australia often perform so called 'semi-skilled' work in industries like retail, hospitality and child-care, with poor remuneration and conditions, and few opportunities for ongoing training or education.³⁸

47 Issues faced by young women are often compounded for pregnant young women. Research indicates that a high proportion of young pregnant women can also experience low socio-economic status, low levels of education, and low levels of social support.³⁹ Young women face challenges in gaining education, and transferring into the workforce. New federal government initiatives are seeking to help teenage parents re-engage with education and the workforce.⁴⁰ These include support to access child care while studying or training, support to enrol and attend school or training, and mentoring and support groups.⁴¹

Recommendation 11: The Australian Government should ensure adequate funding and provision of services to assist girls and young women to seek support and redress for sex-based discrimination.

(d) Discrimination experienced by Aboriginal and Torres Strait Islander children

48 Aboriginal and Torres Strait Islander children experience discrimination across many areas of life.⁴² The high levels of disadvantage experienced by Aboriginal and Torres Strait Islander children are a product of systemic and structural discrimination in Australia.

49 Aboriginal and Torres Strait Islander children experience a range of disadvantage that results from this discrimination. Some indicators of disadvantage include:

- Infant mortality rates for Aboriginal children are three times higher than the rate for non-Indigenous children.⁴³
- Aboriginal mothers are twice as likely to bear a low birth weight infant compared with non-Aboriginal mothers.⁴⁴
- The rate of hearing loss conditions for Aboriginal children is more than three times the rate of non-Aboriginal children.⁴⁵

- The school retention rate from year 7 to year 12 for Aboriginal and Torres Strait Islander students is only 43 per cent.⁴⁶
 - Aboriginal and Torres Strait Islander children are nine times more likely to be placed in out-of-home care compared to non-Indigenous children.⁴⁷
- 50 These sorts of indicators can be detrimental to the life chances of Aboriginal and Torres Strait Islander children.
- 51 The Commission also remains concerned about the discrimination facing Aboriginal and Torres Strait Islander children as a consequence of the implementation of the Northern Territory Intervention.
- 52 The Northern Territory Intervention was implemented in 2007 and included a range of measures. Of special concern to the Commission was the suspension of the *Racial Discrimination Act 1975* (RDA).⁴⁸ The RDA was subsequently reinstated in 2010. However, there are still concerns that welfare quarantining continues to have a discriminatory impact on Aboriginal and Torres Strait Islander children.
- 53 A new model of income management (NIM) was introduced in July 2010. The new model attempts to be compliant with the RDA by targeting particular groups of income support recipients rather than all income support recipients living in prescribed communities. Under the NIM model, disengaged youth and long term welfare recipients are subject to automatic income management.⁴⁹ In some cases, it is possible to request an exemption from income management.⁵⁰ However, if Child Protection Authorities refer customers to Centrelink for compulsory Income Management, they will not be eligible for an exemption.⁵¹
- 54 The Commission is concerned that Aboriginal and Torres Strait Islander people will be more vulnerable to income management measures under these categories than non-Indigenous peoples. This risk stems from the limited access to education, training and employment for Aboriginal people, particularly in remote communities in the Northern Territory, and the consequent high proportion of Aboriginal people accessing welfare payments for extended periods. There is also a large Aboriginal youth population in the Northern Territory, many of whom also have difficulties accessing education, training and employment.

Recommendation 12: The Australian Government should make the following changes to the new model of income management:

- **Welfare recipients must be offered the option to be voluntarily income-managed in the first instance.**
- **Welfare recipients that do not choose to be voluntarily income-managed, and who fit one of the two defined categories, must be assessed on a case by case basis for inclusion in the scheme, on the basis of their individual circumstances.**
- **A decision to income manage a welfare recipient should be reviewable.**
- **Welfare recipients should have the option to apply for an exemption from income management at any stage of the process (for example, after a**

period of time where their circumstances may have changed or the concerns that led to them being income managed having changed).

- **Income management should be for a defined period and then continuation of income management should be subject to regular review.**

4.2 *Respect for the views of the child*

- 55 The Commission welcomes the Australian Government's efforts to create mechanisms at the federal level for young people to express their views, including establishing the Australian Youth Forum (AYF) in 2008, and funding the Australian Youth Affairs Coalition (AYAC).⁵² The Australian Government has also supported such initiatives as National Youth Week and the development of a National Strategy for Young Australians, in consultation with young people.
- 56 While the Commission welcomes these efforts, it notes that they are primarily aimed at young adults aged 15 to 24 years of age, rather than all children.
- 57 The Commission considers that there are many opportunities to better facilitate the participation rights of children in Australia. In particular, there is a need to ensure that children from particular vulnerable groups, such as children with disability, Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds and children of diverse sex and/or gender identity are able to express their views on an equal basis with other children and young people and participate effectively in various decisions which directly affect them.
- 58 In relation to children with disability, Australia also has obligations regarding participation under the Convention on the Rights of Persons with Disabilities.⁵³ As stated in Australia's Child Rights NGO Report, there is currently no national comprehensive approach in seeking views of children and young people with disability in Australia. A comprehensive strategy is critical to ensure policy and program development at local, state, territory and national levels responds to the experiences, needs and rights of children with disability.
- 59 Further, children and young people have voiced concerns that even if they are able to express themselves, their views are not given any weight in decision-making.⁵⁴ There is a need for a systematic approach to ensuring that children's views are heard and taken into account.
- 60 The Commission is aware of a number of positive examples of initiatives across Australia whereby children's participation rights have been facilitated. The state and territory children's commissioners and guardians have been especially active in promoting and facilitating children's participation rights.⁵⁵ State and territory human rights agencies have also undertaken activities which encourage participation of children and youth.⁵⁶
- 61 The Commission submits that a national Children's Commissioner could help facilitate a comprehensive and systematic approach across Australia, whereby children's views are heard, and taken into account, in decisions which affect them across a broad range of areas.

Recommendation 13: A key function of a national Children’s Commissioner should be to ensure that children’s views are heard on issues that affect their lives and that those views are respected by those involved in official decision-making processes.

Recommendation 14: The Australian Government should develop a comprehensive strategy to ensure that children with disability are provided with opportunities to express their views and that these are considered systematically in policy design and program development at local, state, territory and national levels. Children with disability should be provided with all necessary supports and accommodations to ensure effective and meaningful participation.

5 Civil rights and freedoms

5.1 Violence, bullying and harassment

(a) Violence, bullying and harassment in schools

- 62 The Commission holds significant concerns about the negative impact that violence, harassment and bullying have on the realisation of children’s rights in Australia, including the right to education (article 28) and the right to the enjoyment of the highest attainable standard of health (article 24).
- 63 The Commission notes that General Comment 13 emphasises the importance of integrated, cohesive, interdisciplinary and coordinated systems to address violence, harassment and bullying, as isolated programs and activities which are not integrated into sustainable and coordinated government policy and infrastructures will have limited effects.⁵⁷
- 64 Australian research indicates that between 19 and 27 per cent of students are bullied at school and 10 per cent report being cyberbullied.⁵⁸ Another recent study, which canvassed the views of 24,500 girls aged up to 17,⁵⁹ identified that 68 per cent admit to being bullied, and one fifth of those aged 10-14 have experienced online bullying.
- 65 The Commission is especially concerned about the growing prevalence of cyberbullying and its detrimental mental and physical health impacts.⁶⁰ Cyberbullying can lead to emotional and physical harm, social isolation, loss of self-esteem, feelings of shame and anxiety, concentration and learning difficulties. Bullying that previously occurred at school can now, through technology, occur at any time or place, reach a wide audience and have permanency of expression when content is put online.⁶¹
- 66 Violence, bullying and harassment also have a disproportionate impact on vulnerable groups of children and young people.⁶² For example, Aboriginal and Torres Strait Islander children experience a higher number of the risk factors associated with violence, harassment and bullying.⁶³
- 67 The Commission notes that the Committee’s 2005 Concluding Observations indicate a concern with the impact of bullying on affected children. The

Committee recommended that the Australian Government continue to take appropriate measures to combat bullying in schools, including by carrying out periodic surveys among students, staff and parents to learn more about the peer relations being fostered by the school.⁶⁴

- 68 The Commission welcomes Australian Government initiatives to tackle violence, harassment and bullying in schools, including state and federal child protection and educational policies such as the Ministerial Council for Education Early Childhood Development and Youth Affairs revised National Safe Schools Framework. Its guiding principles affirm the rights of all members of school communities to feel safe and be safe at school.⁶⁵ The revised framework⁶⁶ and consultations with children and young people recognise the importance of student participation in school anti-bullying and violence strategies.
- 69 The Queensland Commission for Children and Young People and Child Guardian has also consulted with students about violence and bullying. Students indicated that they should be included in the development, implementation and monitoring of school anti-bullying policies and responses. Students emphasised that, without their involvement, their school's anti-bullying policies would not be as effective.⁶⁷
- 70 A June 2011 Joint Select Committee Interim report⁶⁸ on cybersafety and young people noted that safer online environments requires government, industry and the broader community to work together to realise the benefits of the online environment while also protecting Australians from online risks such as cyberbullying.

Recommendation 15: The Australian Government should undertake integrated, cohesive, interdisciplinary and coordinated measures to address violence, harassment and bullying of children, consistent with a child rights approach.⁶⁹ These should include specific measures to address violence, bullying and harassment of vulnerable groups.

Recommendation 16: The Australian Government should adequately support school communities to effectively implement the revised National Safe Schools Framework by developing outcomes and indicators to monitor and evaluate its impact.

(b) Violence and sexual harassment experienced by girls and young women

- 71 Young women experience higher rates of sexual abuse, often perpetrated by those that they know, and this abuse can have ongoing negative consequences for many aspects of their lives.⁷⁰ In 2005, more than 950,000 Australian women reported that they were sexually abused before the age of 15, and fewer than 10 per cent reported that they were abused by a stranger.⁷¹
- 72 The Commission welcomes the Australian Government announcement of the *National Plan to Reduce Violence Against Women and Their Children 2010-2022* in March 2011.⁷² The plan identifies both preventative and redress measures for addressing sexual assault and family and domestic violence.

- 73 While the Commission welcomes the National Plan, in relation to young people the plan is limited to making provision for preventative measures, such as respectful relationships programs in schools and other youth settings and the development of a social marketing campaign targeted at young people and parents. Further, it does not provide for independent monitoring or evaluation of the plan, which is a necessary component of an effective national plan.

Recommendation 17: The Australian Government should establish and fund an independent body to monitor and evaluate the National Plan to Reduce Violence Against Women and their Children.

- 74 Amendments to the Sex Discrimination Act which took effect in June 2011 strengthen the protections against sexual harassment in workplaces⁷³ and schools⁷⁴ and provide protection from harassment by persons attached to different educational institutions.⁷⁵
- 75 The Commission's 2008 Sexual Harassment National Telephone Survey found around one third of women in Australia aged 18 – 64 years have experienced sexual harassment. The majority of sexual harassment is experienced in the workplace (65 per cent).⁷⁶ The large majority of sexual harassment goes unreported to employers and other bodies. Only 16 per cent of those who have been sexually harassed in the last five years in the workplace formally reported it or made a complaint.⁷⁷
- 76 Research demonstrates that young women are more likely than other groups to experience sexual harassment, discrimination, bullying and victimisation. They are also less likely to make a formal complaint about that treatment.⁷⁸

Recommendation 18: The Australian Government should ensure adequate funding and provision of services to assist girls and young women to seek support and redress for violence and sexual harassment.

(c) *Race-based violence, bullying and harassment*

- 77 The Commission welcomes the Australian Government's 2011 national multicultural policy, *The People of Australia*.⁷⁹ In particular, the Commission welcomes one of the key initiatives under the policy, a commitment to fund and develop a national anti-racism strategy.
- 78 The Commission continues to be concerned about the impact of race-based bullying, harassment and violence on the wellbeing of children and young people. Research indicates that students who experience racism over time consistently have decreased health/wellbeing and education outcomes.⁸⁰
- 79 A 2009 study⁸¹ surveyed 823 school aged children and found that over 70 per cent of participants from non- Anglo Saxon backgrounds reported experiencing racism on an occasional basis and identified their school as the main setting.
- 80 A 2010 Commission report *In Our Own Words* documents three years of consultation with African Australian communities across Australia.⁸² The report focuses on the current, key human rights issues for over 2500 people from African Australian backgrounds. Many of the young people who participated in

consultation sessions, particularly those from Somali and Sudanese backgrounds, said that they had been subjected to regular assaults in public spaces because of their appearance.

Recommendation 19: The Australian Government's National Anti-Racism Partnership and Strategy should include a dedicated youth component and initiatives targeting education settings. These initiatives should be consistent with the National Safe Schools Framework and Australia's Human Rights Framework.

(d) *Corporal punishment*

- 81 Corporal punishment by a parent or carer is lawful in most states and territories across Australia, provided that it is carried out for the purpose of correction, control or discipline, and that it is 'reasonable'.⁸³
- 82 For example, in Tasmania children are an exception to the general law because of the 'domestic discipline defence' legislated in the criminal code.⁸⁴ Under this defence, assault is a criminal offence unless it is committed against a child by a parent or a care giver, by way of correction, and if it is 'reasonable in the circumstances'. In October 2003, the Tasmanian Law Reform Institute recommended that the Tasmanian Government repeal this defence.⁸⁵ The Tasmanian Commissioner for Children and the Anti-Discrimination Commissioner have advocated for removal of the defence, on the basis that it is inconsistent with the Convention on the Rights of the Child and does not ensure equality before the law for children in respect of protection from assault.⁸⁶
- 83 While corporal punishment has been prohibited in government schools across all states and territories, it is still lawful in non-government schools in some states and territories.⁸⁷

5.2 *Sterilisation of children*

- 84 Despite the current requirement for authorisation from the Family Court of Australia or guardianship tribunal for the sterilisation of children, and the existence of guidelines to assist guardianship tribunals in exercising their powers,⁸⁸ the Commission is concerned that non-therapeutic sterilisation of girls with disability is still occurring in Australia.⁸⁹
- 85 These concerns are not new. In the 2005 Concluding Observations, the Committee encouraged the Australian Government to pursue efforts to prohibit sterilisation of children (with and without disabilities). Similar recommendations were made by the CEDAW Committee in 2010 and by the Working Group on the Universal Periodic Review in January 2011 in relation to the prohibition of non-therapeutic sterilisation of women and girls with disabilities.
- 86 On 8 June 2011, the Australian Government issued its formal response to recommendations made by the Human Rights Council through the Universal Periodic Review and accepted, in-part, the recommendation in relation to sterilisation.⁹⁰

- 87 The World Health Organisation (WHO) has stated that legal frameworks and reporting and enforcement mechanisms need to be put in place to ensure that, whenever sterilisation is requested, the rights of persons with disabilities are always respected above other competing interests.⁹¹

Recommendation 20: The Australian Government should initiate discussions with states and territories to develop national legislation prohibiting the non-therapeutic sterilisation of children, except where there is a serious threat to life or health. Women and children with disability, through their representative organisations, should be consulted in the development of this legislation.

5.3 *Legal recognition of sex and/or gender*

- 88 In 2008-2009, the Commission conducted a consultation project - *Sex Files: the legal recognition of sex in documents and government records* - which examined the difficulties faced by people who are sex and gender diverse to obtain official documents that accurately reflect their status.⁹² Greater frequency of diagnosis and awareness of sex and gender diversity means that more children and young people are expressing a sexual identity that is different to that noted on their birth certificate, passport, driver's license or proof of age cards.
- 89 Under the current laws, people wishing to amend the sex on their birth certificate or other documents must generally establish that they have undergone sex affirmation or genital surgery.⁹³ However, children and young people rarely undergo sex affirmation surgery before they are 18.⁹⁴ This means that children and young people are typically precluded from amending the sex on their identification documents and records. The Commission has recommended that the definition of sex affirmation treatment be broadened (so that surgery is not the only criteria for a change in legal sex), and that the evidentiary requirements for the legal recognition of sex should be relaxed.

Recommendation 21: The Australian Government should implement the recommendations of the Sex Files report that the special needs of children and young people should be considered in procedures for amending official documents and records.

6 **Family environment and alternative care**

6.1 *Family and domestic violence*

- 90 The Commission is concerned about the significant impact that family and domestic violence has on the rights of children and young people. Children are frequently affected by intimate partner violence. Children and young people from homes where family and domestic violence occurs are more vulnerable to being subject to physical abuse, emotional abuse and neglect.⁹⁵
- 91 The 2005 ABS Personal Safety Survey found that of all women who had experienced partner violence since the age of 15 years and had children in their care during the relationship, 59 per cent reported that the violence had been

witnessed by children.⁹⁶ In 45 per cent of hospitalised cases for assault against young people, the perpetrator was a parent, carer or other family member.⁹⁷

- 92 However, it is noted that such statistics are likely to under-report the level of exposure of children to family and domestic violence, as such data is inconsistently collected by police, and family and domestic violence incidents generally are commonly under-reported.
- 93 Statistics also indicate that Aboriginal and Torres Strait Islander people experience much higher levels of family violence than non-Indigenous people.⁹⁸ 42 per cent of Aboriginal and Torres Strait Islander young people reported witnessing violence against their mother or stepmother, compared with 23 per cent of all children.⁹⁹ Aboriginal and Torres Strait Islander children are also eight times more likely to be on a care and protection order than non-Indigenous children, reflecting higher rates of detected family violence, abuse and neglect.¹⁰⁰
- 94 The *National Plan to Reduce Violence Against Women and Their Children 2010-2022* in March 2011 focuses on strengthening Aboriginal and Torres Strait Islander communities to better tackle family violence and sexual assault.¹⁰¹ The Commission has argued that programs to address family violence in Aboriginal and Torres Strait Islander communities need to be community-driven, and also that a holistic approach is needed to address the causes and the consequences of family violence.¹⁰²

Recommendation 22: The Australian Government should implement a range of holistic, multidisciplinary approaches, including early intervention strategies and community education strategies, specifically aimed at assisting children and young people who have been exposed to family and domestic violence.

- 95 In 2010 the Australian Law Reform Commission (ALRC) reviewed the interaction in practice of state and territory family and domestic violence and child protection laws with the *Family Law Act 1975* (Cth) and relevant Commonwealth, state and territory criminal laws.¹⁰³ In its report, *Family Violence - A National Legal Response*, the ALRC made over 180 recommendations for amending the Family Law Act.¹⁰⁴
- 96 On 9 July 2010 the Attorney-General of Australia asked the ALRC to conduct a further inquiry into the treatment of family violence in Commonwealth laws, including child support and family assistance law, immigration law, employment law, social security law and superannuation law and privacy provisions in relation to those experiencing family violence. This inquiry is scheduled to be completed in late 2011.
- 97 Through the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 the government is currently seeking to amend the Family Law Act to respond more effectively to family violence and child abuse, in compliance with human rights standards, and to prioritise the safety of children in family law proceedings.¹⁰⁵ The Bill requires the Convention to be taken into account when dealing with matters in relation to children. The Bill is currently the subject of an inquiry by the Legal and Constitutional Affairs Committee, who are scheduled to report in August 2011.

- 98 However, many of the ALRCs recommendations made in its report *Family Violence - A National Legal Response* remain substantially unaddressed through the current proposed amendments to the Family Law Act.

Recommendation 23: The Australian Government should produce a more comprehensive and detailed response to the Australian Law Reform Commission's 2010 Report *Family Violence - A National Legal Response* outlining how the recommendations will be addressed.

6.2 *Children in out-of-home care*

(a) *Measuring outcomes for children in out-of-home care*

- 99 The Commission is concerned about the high number of children and young people entering the child protection system and the significant increase in the number of children in out of home care.¹⁰⁶ At 30 June 2010, there were 35,895 (7.0 per 1,000) children in out-of-home care, an increase of 51 per cent since June 2005, when Australia last reported to the Committee.¹⁰⁷
- 100 Aboriginal and Torres Strait Islander children are more likely to be involved in the child protection system and are nine times more likely to be placed in out – of-home care compared to non-Indigenous children.¹⁰⁸ Reasons for this overrepresentation include the continuing legacy of the intergenerational effects of the forcible removal of Aboriginal and Torres Strait Islander children from their families, high levels of family and community disadvantage and perceived cultural differences in child rearing practices.¹⁰⁹
- 101 Children and young people in out- of-home care have some of the worst health, educational and employment outcomes of all children in Australia.¹¹⁰ Research shows almost half of those leaving care experience homelessness, attempt or think of attempting suicide, more than half have committed criminal offences and almost one third of young women fell pregnant or had a child soon after leaving care.¹¹¹
- 102 The Commission welcomes the development of the National Framework for Protecting Australia's Children and the national standards for children in out-of-home care, which refer to Australia's obligations as a signatory to the Convention.¹¹²
- 103 In the Commission's view the national standards for out-of-home care should drive improved outcomes in education, health, housing and leaving care. The national standard indicators need to be linked to measurable targets in these areas.
- 104 The Commission supports the Australian Children's Commissioners and Guardians (ACCG) views that the national standards for children in out-of-home care should measure access to early childhood education and care.¹¹³ This data will be crucial in determining where and how improvements need to be made so that all young children living in out-of-home-care have the best possible start to education.

105 The ACCG also recommended the development of an indicator to measure the number of children who have received comprehensive health assessments when entering care and at intervals during their time in care, as well as an indicator that measures action taken on any recommended treatments from these assessments.

Recommendation 24: The Australian Government should evaluate the National Framework for Protecting Australia’s Children and the National Standards for Out-of-Home Care using population-based indicators to monitor the life outcomes of children and young people in out-of-home care. This should include indicators to measure the number of children who receive quality early childhood education, comprehensive regular health assessments and follow-up treatment.

Recommendation 25: The Australian Government should implement the National Standards for Out-of-Home Care consistent with a child rights approach, including the use of mechanisms for accountability and the participation of children in care.

(b) Transitioning from care

106 The Commission is concerned about significant disadvantage experienced by young people transitioning from out-of-home care to independence. The Australian Government provides young people leaving care with the Transition to Independent Living Allowance (TILA), a one-off payment to help meet some of the costs involved in moving to independent living. However, in submissions to a recent Australian Government review, state and territory children’s commissioners and guardians made the following recommendations to improve TILA:

- consult with young people to see how many are accessing the payment and if it is meeting their needs
- remove the requirement for applications to be made within 24 months of leaving care
- make access to the payment more equitable for young people integrate TILA into the planning process for exiting care and any State-based payments to maximise young people’s entitlement to support
- remove the cap of 2500 young people per year so all eligible young people may benefit
- increase the payment cap of \$1500 to be more reflective of costs associated with moving to independent living.¹¹⁴

Recommendation 26: The Australian Government should implement the recommendations made by state and territory children’s commissioners and guardians to the Review of the Transition to Independent Living Allowance.

6.3 *Unaccompanied children in immigration detention*

- 107 The Commission has repeatedly raised concerns regarding the care and protection of unaccompanied minors who arrive in Australia without a valid visa and are detained in immigration facilities. Children who arrive in Australia unaccompanied are especially vulnerable. Significant numbers of unaccompanied minors have been held in immigration detention in recent years.¹¹⁵
- 108 On 29 June 2011, the Minister for Immigration announced that 58 per cent of children – including unaccompanied minors and children with their families – had been moved to community detention.¹¹⁶ While the Commission welcomes the increased use of community detention (see section 9.1(c)), it remains concerned that there is insufficient support provided to unaccompanied minors in detention. All the Commission's concerns about children in immigration detention, outlined in Section 9.1, apply with particular significance to unaccompanied minors.
- 109 One of the Commission's key concerns regarding unaccompanied minors is the lack of appropriate arrangements for their guardianship.¹¹⁷ In Australia, the Minister for Immigration and Citizenship is the legal guardian of all unaccompanied minors seeking asylum.¹¹⁸ The Minister can delegate that role to officers of the Department of Immigration and Citizenship (DIAC).¹¹⁹ In the Commission's view, these arrangements create a fundamental conflict of interest. It is not possible for the Minister or a DIAC officer to ensure that the best interests of an unaccompanied minor are their primary consideration when they are simultaneously the child's guardian, the detaining authority and the visa decision-maker. The Commission has repeatedly recommended that an independent guardian should be appointed for unaccompanied minors in immigration detention.¹²⁰ This would be in line with UNHCR Guidelines.¹²¹

Recommendation 27: The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in its report, *A last resort?*, that Australia's laws should be amended so that the Minister for Immigration is no longer the legal guardian of unaccompanied children in immigration detention. An independent guardian should be appointed for unaccompanied children in immigration detention and they should receive appropriate support.

7 Disability, basic health and welfare

7.1 *Health equality for Aboriginal and Torres Strait Islander Children*

- 110 Aboriginal and Torres Strait Islander children face much poorer health outcomes than their non-Indigenous counterparts. Of particular concern to the Commission is the disparity in infant mortality rates, with the Aboriginal and Torres Strait Islander infant mortality rate being three times higher than the non-Indigenous rate.¹²²

- 111 The Commission has been active in advocating for improved Aboriginal and Torres Strait Islander health outcomes. Since 2006 the Commission has led the Close the Gap Campaign, bringing together Australia's peak Indigenous and non-Indigenous health bodies, non-government organisations and human rights organisations.
- 112 The Commission welcomes the Australian Government's commitment to Closing the Gap, in particular, achieving Indigenous life expectancy equality within a generation and halving the gap in mortality rates for Indigenous children under five within a decade (by 2018).¹²³ The latter supports the realisation of the right of Indigenous children to an equally healthy life as non-Indigenous children (and its subsequent positive impacts on educational and vocational attainment). It also recognises that a healthy childhood lays a foundation for a long and healthy adult life and this could be expected to demonstrate benefits across the life-span of the future Indigenous adult population over time.

7.2 Fetal Alcohol Spectrum Disorder

- 113 Fetal Alcohol Spectrum Disorders (FASD) are a set of disorders that may occur when a mother consumes harmful quantities of alcohol at crucial points during pregnancy. They are potentially 100 per cent preventable. The disorders create barriers to normal child development, including learning and behaviour.¹²⁴ Although the data are still inconclusive, it is understood that FASD is a very damaging problem facing Aboriginal and Torres Strait Islander communities.
- 114 The Commission has undertaken some work in conjunction with the Aboriginal communities of the Fitzroy Valley, in the Kimberley region, on FASD. The Fitzroy Valley Aboriginal communities have identified FASD as an issue of concern and have developed a community-led strategy to address it.
- 115 A critical component of this strategy is the undertaking of a prevalence study. The Australian Government should be commended for providing funding to support this research project.¹²⁵

Recommendation 28: The Australian Government should continue to support the Aboriginal and Torres Strait Islander communities to address Fetal Alcohol Spectrum Disorders.

7.3 Children with disabilities

- 116 In February 2010, the Australian Government requested the Productivity Commission to undertake a public inquiry into the feasibility of a long-term care and support scheme for people with disability. The Productivity Commission, in its draft report, found that the current arrangements in Australia to provide disability services, including for children, were systematically flawed:

The current disability support system is underfunded, unfair, fragmented, and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports. It is not a 'system'.¹²⁶

- 117 The Australian Human Rights Commission made a submission to the Productivity Commission Inquiry, commending the recognition by the Productivity Commission of the central relevance of the Convention on the Rights of Persons with Disabilities to the design of a National Disability Insurance Scheme or similar scheme.¹²⁷
- 118 The Commission recommended, among other things, that children with disability should be able to express their views and to be provided with assistance where necessary, and that this should be a feature of the operation of institutions administering a National Disability Insurance Scheme.

Recommendation 29: The Australian Government should adopt a National Disability Insurance Scheme which encompasses the full range of human rights and obligations recognised by the Convention on the Rights of Persons with Disabilities, and which responds to the needs and rights of children.

7.4 *Mental health of children*

- 119 In 2005 the Commission, in Association with the Mental Health Council of Australia and the Brain and Mind Research Institute, conducted a broad national consultation to capture the current critical themes in mental health care from the perspective of those who use and deliver mental health care services. *Not for service: Experiences of injustice and despair in mental health care in Australia* revealed disturbing stories of young people and families attempting to seek services and the tragic consequences that resulted from the lack of coordinated and genuine youth friendly, or early intervention, services.¹²⁸
- 120 The Commission has also reported the high prevalence of mental health problems for particular groups of vulnerable young children, including Aboriginal and Torres Strait Islander children,¹²⁹ ATSI children and young people who are deaf or have hearing loss,¹³⁰ children who are refugees and asylum seekers¹³¹ and lesbian, gay, bisexual, trans and intersex young people.¹³²
- 121 A recent inquiry undertaken by the Western Australian Commissioner for Children and Young People on the mental health and wellbeing of children and young people in Western Australia also highlights the high level of mental health problems in children and young people in general, and an even higher rate in Aboriginal children and young people.¹³³ It identifies the need for significant reform and investment in the provision of prenatal to early adulthood mental health programs and services to adequately address the mental health needs of children and young people in Western Australia.
- 122 The Queensland Commission for Children and Young People and Child Guardian has consistently identified child and adolescent suicide as another key concern.¹³⁴
- 123 The most recent health study by the Australian Institute of Health and Welfare released in 2010 indicates that mental ill-health is the leading health issue for children and young people and largest contributor to the burden of disease in children aged 0-14 years (23 per cent) and young people aged 15-24 years (50 per cent).¹³⁵ The importance of access to age appropriate (child and youth friendly) supports and services is underscored by the reports that 75 per cent of

mental health problems that will affect people across the lifespan will have emerged for the first time by the age of 25 years¹³⁶ and that young people are less likely to seek help or access a service than other age groups.¹³⁷

- 124 The Commission welcomes the recent announcements by the Australian Government to improve the delivery and range of services to better meet the needs of children and young people with mental health problems.¹³⁸

Recommendation 30: The Australian Government should continue its commitment to expand and fund the delivery of child and youth-targeted mental health and other necessary support services to ensure the health and wellbeing of all children and young people in Australia. Particularly, children and young people with mental health problems should be supported to express their views and have these views taken into account in the development, implementation and monitoring of these programs and services.

8 Education, leisure and cultural activities

8.1 *Aboriginal and Torres Strait Islander children and education*

- 125 Aboriginal and Torres Strait Islander children continue to have poorer educational outcomes than non-Aboriginal children. Attendance, literacy and attainment levels for Aboriginal and Torres Strait Islander students are much lower than for non-Indigenous children.¹³⁹
- 126 The Commission welcomes the Australian Government's commitments and reforms under the Closing the Gap strategy as well as the recent COAG endorsement of the National Indigenous Education Action Plan.¹⁴⁰ It will be important to ensure that the National Indigenous Education Action Plan is monitored to review the impact on attendance, literacy and attainment for Aboriginal and Torres Strait Islander students.
- 127 The Commission is concerned about the erosion of bilingual education in schools. In particular, the Northern Territory government has a policy of compulsory English language instruction for the first four hours of the school day. This has been met with great resistance by a number of the affected school communities.
- 128 The integration of Aboriginal languages into the formal education system through bilingual programs is consistent with international human rights standards. It makes schooling more accessible to Aboriginal and Torres Strait Islander students and it recognises cultural difference in a manner that is non-discriminatory in international law. Bilingual education programs value Aboriginal and Torres Strait Islander educators and knowledge. Aboriginal and Torres Strait Islander communities state that the success of the education of their children should be measured both by standards of English literacy, and also by respect for their rights to education, language, culture and land.
- 129 For many Aboriginal people, the decision of the Northern Territory government to phase out bilingual education programs in government schools in Aboriginal

communities amounted to a denial of their right to choose the mode of education for their children and threatens the viability of remaining languages.

Recommendation 31: The Australian Government should monitor and review the National Indigenous Education Action Plan to ensure improvements in attendance, literacy and attainment for Aboriginal and Torres Strait Islander children.

Recommendation 32: The Australian Government should work with state and territory governments to support and resource bilingual education options for Aboriginal and Torres Strait Islander children.

8.2 Education for children with disabilities

- 130 The Commission is concerned about the significant disparity that continues to exist between educational attainment for children with disability compared to children without disability.
- 131 Statistics released by the Australian Bureau of Statistics (ABS) on 2 May 2011 suggest that very little progress has been made over the past six years in relation to increasing the number of children with disability who complete Year 12 (that is, the end of schooling opportunities).¹⁴¹
- 132 In 2003, 49 per cent of people without disability aged 15-64 years who were living in households had completed Year 12. In 2009, there was an improvement, with 55 per cent of this same cohort completing Year 12. However, the same degree of improvement in school retention rates was not evident for people with profound or severe core-activity limitations. In 2003, 24 per cent of this cohort had completed Year 12. In 2009, 25 per cent had completed Year 12 (roughly one quarter the rate of improvement experienced by those with no disability).
- 133 Importantly, the ABS also found that the level of education and type of qualification gained had a direct bearing on employment outcomes for people with disability. That is, the lower the level of qualification attained, the markedly lower rate of employment.¹⁴²
- 134 The Australian Government has also noted in the National Disability Strategy 2010-2020 the significant gap in education for students with disability compared to students without disability.¹⁴³
- 135 To address this gap, the Commonwealth, state and territory governments have identified, in the National Disability Strategy 2010 – 2020, areas for future action with regard to children and young people and the education system.¹⁴⁴ However, there is a need to develop a plan to implement these actions.

Recommendation 33: Commonwealth, state and territory governments, in consultation with persons with disabilities, including children, should develop a plan to implement the areas identified for future action relevant to education (Area 5 – Learning and skills) in the *National Disability Strategy 2010-2020*.

- 136 Aboriginal and Torres Strait Islander people suffer ear disease and hearing loss at up to ten times the rate of non-Indigenous Australians.¹⁴⁵ Chronic ear disease can have a significant impact on Aboriginal and Torres Strait Islander children's access to education. A Senate Inquiry into hearing health in Australia found that Aboriginal and Torres Strait Islander children who are deaf or have hearing loss have poor educational outcomes.¹⁴⁶
- 137 In its report, *Hear Us: Inquiry into Hearing Health in Australia*, the Senate Inquiry made eight recommendations related to education and learning. Many of these recommendations specifically addressed the needs of Aboriginal and Torres Strait Islander children with hearing loss. The Commission supports these recommendations.

Recommendation 34: The Australian Government should immediately implement the eight recommendations related to education and learning made by the Senate Community Affairs References Committee in *Hear Us: Inquiry in to Hearing Health in Australia*.

8.3 *Education for children from culturally and linguistically diverse backgrounds*

- 138 During consultations for the Commission's report, *In Our Own Words*, African Australian young people in every state and territory told the Commission they had experienced both discrimination and negative attitudes about their ability to succeed during their education.¹⁴⁷
- 139 They also felt unfairly targeted for not understanding how to behave in different social settings, including classroom behaviour.
- 140 Students from African Australian backgrounds are not necessarily familiar with teaching styles in Australian schools. Those from refugee backgrounds are likely to have no or limited exposure to modern technologies which are used as learning tools, including the use of standard computers.
- 141 The report, *In Our Own Words*, found that African Australian parents wanted to maintain and share their cultural values with their children. These values were seen as a key factor in bringing families together and keeping them strong, healthy and resilient, especially during the settlement period. Participants reported that African Australian young people face significant pressures to conform to western cultural norms, which created conflict both within young people and within their families.
- 142 Participants in the *In our Own Words* project also reported that language was intrinsic to the expression of their culture. African Australians said that maintaining their first languages should be encouraged and supported, especially through community-based initiatives.¹⁴⁸
- 143 There are currently around 1000 community language schools operating in Australia. Community language schools are funded and regulated by each state's department of education. Due to a lack of funding, these schools often

rely on volunteer teachers and administrators and require additional income through school fees and/or fundraising.

- 144 In May 2011, the Victorian Government provided an additional \$16.3 million over four years for the state's community language schools, representing a funding increase of \$70 to \$190 per child each year.¹⁴⁹ The Commission welcomes this policy decision, and encourages other states and territories to consider increasing community language school program budgets.

Recommendation 35: Community language school programs in each state and territory should be adequately resourced to cater for the needs of Australia's new and emerging ethnic groups.

8.4 *Human rights education*

- 145 The Commission welcomes the Australian Government's commitment to human rights education outlined in Australia's Human Rights Framework.¹⁵⁰ The Framework identifies developing an understanding of rights and responsibilities, including human rights, as an integral part of the development of a national school curriculum.¹⁵¹ The draft national school curriculum is currently being drafted and parts of it are under consultation.

- 146 The Commission considers the development of a national school curriculum as a unique opportunity to ensure all young people in Australia learn about their human rights and responsibilities. However the current draft national school curriculum contains very limited reference to human rights,¹⁵² no mention of child rights or of the Convention, or any other human rights treaties as envisioned by article 29(b).¹⁵³

- 147 The draft national school curriculum identifies key learning areas¹⁵⁴, as well as general capabilities and cross-curriculum priorities.¹⁵⁵ Human rights education should be embedded as a core and cross-cutting element across all relevant learning areas of the curriculum and at all stages of schooling.¹⁵⁶ This can most effectively be achieved by inclusion of a specific 'cross-curriculum priority' or 'general capability' focused on human rights.

- 148 This approach will foster an understanding and appreciation for human rights and encourage students to adopt human rights values in their everyday lives.

Recommendation 36: The Australian Government should integrate human rights education into the national school curriculum through a specific cross-curriculum priority or general capability on human rights, and integrate human rights in all learning areas.

9 Special protection measures

9.1 *Children in immigration detention*

(a) *Mandatory and indefinite immigration detention in Australia*

- 149 For many years the Commission has repeatedly raised concerns about the mandatory immigration detention of children, the high number of children in closed immigration detention facilities, and the long periods of time many children are spending in immigration detention.¹⁵⁷
- 150 The Commission opposes Australia's system of mandatory immigration detention because it is inconsistent with Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR)¹⁵⁸ and the Convention.¹⁵⁹ While detention may be acceptable for a short period in order to conduct security, identity and health checks, Australian law currently requires detention for unspecified purposes, for an unlimited period of time, and in the absence of judicial review of the need to detain an individual.¹⁶⁰
- 151 The Commission has welcomed reforms brought about by the current Australian Government, such as the end of the so-called 'Pacific Solution'¹⁶¹ and the New Directions in Detention policy of 2008.¹⁶² The Commission also acknowledges that the Australian Government has recently taken some measures to improve the situation of children in immigration detention, such as transferring the majority of children in detention into community-based arrangements (see Section 9.1(c)).¹⁶³ However, such reforms and measures do not address the Commission's fundamental concerns about the system of mandatory and indefinite detention of children for immigration purposes. The Commission continues to call for legislative change to ensure that children will be detained only as a last resort and for the shortest appropriate period of time.

Recommendation 37: The Australian Government should amend Australia's immigration detention laws, as a matter of urgency, to comply with the Convention on the Rights of the Child. The new laws should incorporate the following minimum features:

- **There should be a presumption against the detention of children for immigration purposes.**
- **A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention.**
- **There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.**
- **All courts and independent tribunals should be guided by the following principles:**
 - **detention of children must be a measure of last resort and for the shortest appropriate period of time**
 - **the best interests of children must be a primary consideration**

- **the preservation of family unity must be a matter of priority**
- **special protection and assistance must be provided for unaccompanied children.**

(b) *Conditions in immigration detention facilities*

152 The Commission welcomed the Australian Government's commitment in New Directions that children and, where possible, their families, will not be detained in immigration detention centres.¹⁶⁴ However, since 2008, significant numbers of children have continued to be held in closed immigration detention facilities, such as immigration residential housing, immigration transit accommodation and various 'alternative detention' facilities. The Commission has serious concerns about this practice. While the physical environment in these facilities is preferable to that of high security immigration detention centres, they are still closed detention facilities, from which children and their families are not free to come and go. The Commission has been particularly concerned about the detention of child asylum seekers in facilities on Christmas Island, a remote territory of Australia located in the Indian Ocean.¹⁶⁵

153 For over a decade the Commission has conducted inspections of immigration detention facilities and raised concerns about the difficulties in protecting children's rights within these environments.¹⁶⁶ In recent reports, the Commission has expressed concern about the negative mental health impacts of prolonged detention on children and young people, lack of opportunity for recreational activities including excursions, lack of educational opportunities, lack of safe and appropriate play areas for small children, and unclear child welfare and protection arrangements, especially for unaccompanied minors.¹⁶⁷

Recommendation 38: The Australian Government should make greater use of community-based alternatives to holding children in immigration detention facilities for prolonged and indefinite periods. These should include alternatives to detention, such as bridging visas, and alternative forms of detention, such as community detention.

(c) *Community detention*

154 The Commission believes that if children must be held in immigration detention, they should be detained in the community rather than in closed immigration detention facilities. People in community detention are permitted to live at a specified residence in the community instead of in an immigration detention facility.¹⁶⁸ They are still immigration detainees in a legal sense, but they are not under direct supervision and are generally free to come and go, subject to conditions. In the Commission's view, community detention significantly improves the well-being of asylum seeker children.

155 The Commission has repeatedly urged the Australian Government to place children and their families as well as unaccompanied minors into community-based detention, rather than in secure facilities.¹⁶⁹ The Commission notes that as of 29 June 2011, 531 children, or 58 per cent of all children in immigration detention in Australia, had been moved into community detention.¹⁷⁰ The Commission welcomes the Australian Government's efforts to transfer children

into community detention. It urges the Department of Immigration and Citizenship and the Minister for Immigration and Citizenship to continue to expand the use of community detention for children who must be detained.

Recommendation 39: The Australian Government should make full use of community detention for children and, where relevant, accompanying family members.

(d) Removal to a third country

- 156 On 25 July 2011, the Australian Government entered into an arrangement between Australia and Malaysia, whereby up to 800 asylum seekers arriving in Australia by boat will be transferred to Malaysia to have their asylum claims assessed, in exchange for Australia accepting 1000 refugees from Malaysia every year for four years.¹⁷¹ Children and young people will not be specifically excluded from the arrangement.¹⁷²
- 157 The Commission has serious concerns about sending people who claim asylum in Australia to a third country for processing.¹⁷³ For instance, the Commission is concerned that the arrangement may increase the risk of Australia breaching its non-refoulement obligations under the Refugees Convention¹⁷⁴ and, in the case of children, the Convention on the Rights of the Child.¹⁷⁵ This is particularly the case as Malaysia is not a signatory to the Refugee Convention.
- 158 The Commission also notes that the Minister for Immigration and Citizenship is the legal guardian of unaccompanied minors who seek asylum in Australia, and as such is required to act in their best interests. The Commission has serious concerns about whether the transfer of an unaccompanied minor asylum seeker to Malaysia could be in their best interests.
- 159 Despite the safeguards in the arrangement, the Commission is concerned that there remains a risk that people transferred to Malaysia will be mistreated. The Commission has particular concerns about whether children who are transferred to Malaysia will have adequate access to education and an adequate standard of healthcare.
- 160 Further, the Commission is concerned that the agreement has the potential to prevent children from being reunified with their parents who may have travelled to Australia on a separate occasion and that it may consequently lead to a breach of the right to family unity.
- 161 In the Commission's view, instead of re-establishing third country processing, the Australian Government should expand the use of community-based alternatives to mandatory detention in immigration detention facilities, as outlined in above recommendations.

(e) Detention of foreign juvenile fishers and crew

- 162 At various times juvenile foreign fishers and crew members have been detained in immigration detention facilities pending charge or removal. The Commission has expressed serious concerns about the detention of juvenile Indonesian crew members in recent years, including:

- the length of time these children have spent in detention awaiting charge or removal¹⁷⁶
- the children's lack of a legal guardian (because fishers and crew members are not covered by the provisions of guardianship legislation).¹⁷⁷

163 The Commission is also concerned about the use of wrist x-rays by Australian Federal Police to determine the ages of people suspected of people-smuggling offences whose ages are in doubt.¹⁷⁸ The Commission is not convinced of the reliability of the wrist x-ray determination process and is concerned that, on the basis of wrist x-ray evidence, people claiming to be juveniles have been held in adult correctional centres facing charges relating to people-smuggling.¹⁷⁹

164 The Commission acknowledges that an interdepartmental age determination working group¹⁸⁰ recently made recommendations which will improve the age determination process for crew members suspected of people smuggling. These include offering dental x-rays to supplement wrist x-rays, changes to the wrist x-ray consent form, focused age interviews and efforts to more expeditiously obtain documentary evidence from people's countries of origin.¹⁸¹ The Attorney-General has also proposed a more proactive application of the principle that people claiming to be minors be given the benefit of the doubt.¹⁸² The Commission welcomes these measures although it continues to have concerns about the use of radiography for age determination purposes.

165 The Commission is also concerned that there may continue to be Indonesian nationals who are minors detained in adult correctional facilities. The Commission urges immediate reassessment, by an independent person or body, of whether a proper and reliable assessment of age has been conducted for any Indonesian national claiming to be a minor who has been convicted as an adult.

Recommendation 40: The Australian Government should adopt the recommendations of the age determination working group and continue to review the age determination process to improve legal safeguards for foreign juvenile fishers and crew.

9.2 *Child homelessness*

166 In 1989, the Commission conducted a National Inquiry into Homeless Children. The inquiry revealed disturbingly high rates of homelessness amongst children and young people and highlighted the lack of accommodation available. Many years on, despite some government attention to the issue, the rate of child and youth homelessness in Australia remains shamefully high.¹⁸³

167 The Commission commends the Australian Government on its commitment to reducing homelessness. In its White Paper, *The Road Home: A National Approach to Reducing Homelessness* in December 2008, the Australian Government, with the agreement of state and territory governments, set two headline goals to halve overall homelessness by 2020, and offer supported accommodation to all 'rough sleepers' who need it by 2020.¹⁸⁴ The Australian Government has also increased funding and coordination on homelessness and

housing under the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.

- 168 However, it is still the case that some people who are homeless, including families with children and young people, are unable to access homelessness services. An Australian Institute of Health and Welfare report in 2009-10 found that, despite an increase in overall funding for specialist homelessness services of just over 9 per cent and the fact that more services were funded in 2009/10 than in the previous financial year, specialist homelessness services still did not have sufficient resources or beds to meet demand for accommodation.¹⁸⁵ Despite the funding of youth homelessness early intervention programs¹⁸⁶, young people can still fall through the gaps of the service system.¹⁸⁷
- 169 The Australian Government's White Paper included a commitment to 'enact new legislation to ensure that people who are homeless receive quality services and adequate support'.¹⁸⁸ In 2009 the House of Representatives Standing Committee on Family, Community, Housing and Youth held an inquiry into Homelessness Legislation. On 17 June 2011, at the Housing Minister's Conference, the Ministers agreed to public consultation on draft national legislative arrangements and a regulation impact statement in the latter half of 2011, with final proposals to be put to Housing Ministers for agreement by the end of 2011.¹⁸⁹
- 170 In its submissions to the above inquiry, the Commission argued that the legislation should incorporate a human rights approach.¹⁹⁰ It also emphasised that homelessness legislation should actively promote a substantive equality approach to reducing homelessness, so that vulnerable groups - including children and young people - receive specific appropriate services and support. For example, homelessness legislation or intergovernmental arrangements should recognise children and young people as a specific group within homelessness legislation, distinct from their parents and carers. In addition, Australian governments should fund child and youth-specific services.

Whilst the causes of homelessness are complex and multi-faceted, one key driver is lack of affordable housing. In its submission to the above inquiry, the Commission also recommended that the Australian Government develop a National Housing Strategy which sets benchmarks and targets for progressively expanding affordable housing, developed through an evidence-based assessment of current and future housing needs for demographic groups.¹⁹¹ The need for a national housing policy in Australia has also been recognised by the UN Special Rapporteur on Adequate Housing.¹⁹²

Recommendation 41: The Australian Government should continue its commitment to reducing homelessness, including funding targeted programs for children and young people.

Recommendation 42: The Australian Government should adopt a human rights approach to homelessness legislation, which takes into account the full range of child rights impacted by homelessness.

Recommendation 43: The Australian Government should consider developing a National Housing Strategy, which sets clear benchmarks and time-bound

targets for all measures of the progressive realisation of the right to adequate housing.

9.3 *Juvenile justice*

(a) *Children in the adult justice system*

- 171 Queensland is the only Australian state or territory where 17 year olds are treated as adults in the criminal justice and corrections systems, and consequently they can be placed on remand or sentenced to a term of imprisonment in adult correctional facilities.¹⁹³ At 30 June 2009, there were 39 17 year olds in Queensland's adult prisons (36 males and 3 females).¹⁹⁴
- 172 A number of organisations, including the Commission, have raised concerns about the Queensland law since its introduction, and have recommended that it be amended.¹⁹⁵
- 173 As required under the Queensland law, the majority of 17 year olds are generally held separately from the wider prison population. However, they are still held within adult correctional centres.¹⁹⁶ In its report on Women in Prison, the Anti-Discrimination Commission of Queensland (ADCQ) was told that the 17 year olds in prison often had no one to look after them, were often frightened and were very vulnerable to self-harm.¹⁹⁷ Further, the ADCQ was aware of 17 year old females placed in a protection unit, which often led to stigmatisation, and resulted in the prisoner remaining in the protection unit for the entire period of her incarceration.¹⁹⁸ The ADCQ concluded that it is not in the best interests of 17 year olds to be placed in an adult prison or for correctional authorities to place a female 17 year old offender in the protection unit of an adult prison.¹⁹⁹
- 174 The Queensland Commission for Children and Young People and Child Guardian has also urged the Queensland Government to remove 17 year olds from adult prisons, include them in the youth justice system and to nominate a clear date by when this will occur.²⁰⁰

Recommendation 44: The Queensland Government should immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years, consistent with other states and territories.

(b) *Monitoring conditions in juvenile detention*

- 175 The Commission notes that the Australian Government provided the Committee with information on the human rights audit of Quamby Youth Detention Centre, undertaken by the ACT Human Rights Commissioner in 2005.²⁰¹ The audit highlighted several human rights violations in the juvenile detention centre, including routine strip searching and mixing the behaviour management regime with remission, but that its recommendations were being implemented by the ACT Government.²⁰² A report of the human rights audit of the new Bimberi Youth Detention Centre, opened in late 2008, was released publicly in July 2011. The report details some ongoing problems at the centre, and makes a number of recommendations for improvement, especially on the use of force

and restraints, searches, segregation, communication, discrimination, oversight and health.²⁰³

- 176 The Commission believes that all juvenile detention facilities across Australia should be monitored systematically and regularly for their compliance with human rights standards of detention.²⁰⁴ The ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the establishment of an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention, including juvenile detention centres, would establish consistent, regular and systematic monitoring of detention conditions, and be an important safeguard against the potential mistreatment of children in juvenile detention.

Recommendation 45: The Australian Government should ratify the Optional Protocol to the Convention Against Torture and establish as soon as possible a National Preventive Mechanism for places of detention.

(c) Aboriginal and Torres Strait Islander children and juvenile justice

- 177 Aboriginal and Torres Strait Islander children continue to be significantly overrepresented in the juvenile justice system. Aboriginal and Torres Strait Islander people are 28 times more likely to be in juvenile detention than non-Indigenous children and make up 59 per cent of the total juvenile detention population.²⁰⁵
- 178 There are a variety of reasons for the overrepresentation of Aboriginal and Torres Strait Islander young people, including a lack of diversion and crime prevention programs, inadequately funded legal services and systemic discrimination.²⁰⁶
- 179 The Commission also remains concerned about the impact of mandatory sentencing regimes on Aboriginal and Torres Strait Islander young people. Mandatory sentencing applies to young people between 10-18 years in Western Australia.²⁰⁷ The Court must seriously consider a custodial sentence for repeat offenders on their third proven serious conviction. Victoria is also currently considering mandatory sentencing for acts of gross violence committed by juveniles and adults.²⁰⁸
- 180 The Convention provides that detention should be used as a last resort for children.²⁰⁹ Mandatory sentencing is in breach of these provisions. It also has an additional impact on Aboriginal and Torres Strait Islander children as they are more likely to have criminal histories and inadequate access to diversion programs.
- 181 The Commission has been calling for a new approach to address Aboriginal and Torres Strait Islander overrepresentation in the justice system by way of 'justice reinvestment'.²¹⁰ Justice reinvestment diverts a portion of the money that would have been spent on prison to communities where there is a high concentration of offenders. The funds are then spent on crime prevention, diversion and support programs.

182 The Commission has also been advocating for national justice targets to be included in the Closing the Gap strategy. This could include specific targets to reduce the overrepresentation of Aboriginal and Torres Strait Islander young people in the juvenile justice system. Setting justice targets at the Council of Australian Government level will provide accountability as well as greater cooperation between Commonwealth and state and territory governments.

Recommendation 46: The Australian Government should take all necessary measures to ensure that mandatory detention does not apply to children in any Australian jurisdiction.

Recommendation 47: The Australian Government should commit to juvenile justice targets as part of the Closing the Gap Strategy.

Recommendation 48: The Australian Government should examine ways to trial and implement justice reinvestment in partnership with Aboriginal and Torres Strait Islander communities.

(d) *Children with disabilities and juvenile justice*

183 The Commission is concerned by the ongoing overrepresentation of children and young people with intellectual disability and mental illness in the criminal justice system.²¹¹

184 The National Disability Strategy has identified areas for future action with regard to people with disability and the justice system.²¹² However, there is a need to develop a plan on how to implement the identified actions.

185 The Commission has also been concerned with the numbers of Aboriginal and Torres Strait Islander young people with cognitive disabilities, mental health issues and hearing loss in the criminal justice system.²¹³

186 The recent House of Representatives inquiry into the high level of involvement of Aboriginal and Torres Strait Islander juveniles and young adults in the criminal justice system noted mental health issues, health and hearing loss as significant issues affecting Aboriginal and Torres Strait Islander young people and their contact with the criminal justice system. The final report, *Doing Time - Time for Doing: Indigenous youth in the criminal justice system*, contains specific recommendations to address these issues.²¹⁴

Recommendation 49: Commonwealth, state and territory governments should develop a plan to implement the areas identified for future action on 'Rights protection, justice and legislation' (Area 2) under the National Disability Strategy 2010-2020. The plan should be developed in consultation with persons with disabilities, including children, and their representative organisations.

Recommendation 50: The Australian Government should implement the recommendations made by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, in its report *Doing time – time for doing: Indigenous youth in the criminal justice system*, in particular as they relate to young people with an intellectual disability, mental health issues and hearing loss.

(e) *Children from culturally and linguistically diverse backgrounds and juvenile justice*

Relations between police and African Australian young people

- 187 Both young African Australians and Muslim Australians have reported to the Commission that they have felt targeted by police.²¹⁵ The Commission's report, *In Our Own Words*, indicated a widespread view that further efforts were needed to counter 'entrenched stereotypes' among police that all young men from African Australian backgrounds belong to gangs.²¹⁶ They believed this had been a significant factor in undermining relations between police and African Australian communities. Racial profiling, in various forms, is currently used by state and territory policing agencies across Australia.²¹⁷
- 188 A number of small-scale projects have been implemented within local communities aimed at improving the relationship between police and young people from culturally diverse backgrounds. Evaluations have indicated that they are successful in building trust and respect between police and young people.²¹⁸

Recommendation 51: Biennial cross-cultural awareness training should be compulsory across state and territory police forces.

Recommendation 52: State and territory police forces should design, implement and enforce measures to eliminate racial profiling.

Recommendation 53: Commonwealth, state and territory governments should continue to fund, monitor and evaluate projects that aim to improve relationships between police and young people from new and emerging communities.

Interpreters in court proceedings

- 189 For some newly arrived and emerging communities (such as those speaking selected African dialects), there is a lack of qualified interpreters to assist the police or the courts. In some cases, this has meant that justice proceedings have continued without the aid of a qualified interpreter.
- 190 There is no requirement in Australian common law for an interpreter to be provided during court proceedings. The presiding judicial officer has the discretion to engage an interpreter in cases where they believe it is required.
- 191 However, some Australian courts, such as the Family Court of Australia and the Federal Magistrates Court have developed guidelines for when an interpreter should be utilised.
- 192 Given Australia's large multicultural population, there is a need for a more rigorous and coordinated process for determining when an interpreter is required in legal proceedings, particularly in cases where it affects the wellbeing of children and young people.

Recommendation 54: All state and territory police forces should include specific guidance in their Standard Operating Procedures on the appropriate use of interpreters.

Recommendation 55: All courts, tribunals and alternative dispute processes should develop guidelines setting out when an interpreter should be used and how the courts should work with an interpreter.

9.4 Child victims of trafficking

193 The Commission draws the Committee's attention to reports on the Optional Protocol submitted by both the Australian Government and non-government organisations.

194 The Commission is not submitting a separate report to the Committee on the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. However, comments on the Optional Protocol and child victims of trafficking are included below.

195 The Commission welcomes recent positive developments initiated by the Australian Government to address people trafficking, including:

- ratification in 2007 of the Optional Protocol
- criminal offences for slavery, sexual servitude and deceptive recruitment for sexual services, sale of a child, debt bondage and people trafficking under the Criminal Code, including specific child trafficking offences
- establishment in 2009 of the victim support program for victims returning to Australia to provide evidence
- communication awareness strategy for victims of trafficking – including the issuing of 'Guidelines for NGOs working with trafficked people' and an accompanying 'Know Your Rights' fact sheet, which were developed in conjunction with the Commission and non-government organisations
- consultation with non-government organisations and the Commission through the annual National Roundtable on People Trafficking, and other roundtables, including the 2011 roundtable on housing needs of victims of human trafficking
- changes to the people trafficking visa framework to provide permanent witness protection visas to trafficked people who would face danger if returned to their country of origin, and who have contributed to a criminal investigation, as well as their immediate family members.²¹⁹

196 The Commission remains concerned that:

- There continues to be a lack of data and research on the prevalence of child trafficking and sexual exploitation in Australia.
- There is a need for specific policy guidelines to be developed on protecting the rights of child victims of trafficking in Australia, especially during police investigations and prosecutions.
- Ongoing support services should be available to child victims of trafficking even where they are unwilling or unable to assist police investigations or prosecutions.
- The victim support program could benefit from further funding to be able to provide specific services and support that respond to (a) the specific needs of child victims of trafficking and (b) the needs of adult victims of trafficking with dependent children either in Australia or offshore.
- The process of reunifying adult victims of trafficking with dependent children offshore often takes years. This is distressing for families and can leave the children of trafficking victims exposed to dangers in the country of origin. When trafficked people are reunited with their children (under the people trafficking visa framework) it is essential that appropriate settlement services are made available to help trafficked people and their families build a new life in the Australian community.
- There are also concerns that state and territory child protection and other agencies need to be better resourced and skilled in meeting the needs of child trafficking victims who remain in Australia.

197 Other recommendations the Commission has made to the government for improving its people trafficking framework include establishing a federal compensation scheme for victims of crime and improving access of trafficked people to information and legal advice for making compensation claims.

Recommendation 56: The Australian Government should

- **undertake comprehensive data collection and research on the prevalence of child trafficking and sexual exploitation**
- **implement measures for providing specialist child specific services for child victims of trafficking, non-citizen minors and unaccompanied minors, in accordance with the best interests of the child principle and the UNICEF ‘Guidelines on the Protection for Child Victims of Trafficking’ (2006)**
- **ensure that where trafficked people and their dependent children obtain permanent residence in Australia, these families receive access to adequate settlement services**

- **amend the visa framework for victims of trafficking to ensure every person who is identified as a victim of child trafficking and who would face danger if returned to their country of origin is eligible for a permanent visa, regardless of whether they participate in law enforcement processes**
- **develop clear guidelines for agencies on how to deal with child victims of trafficking on issues including guardianship, housing, access to education, confidentiality and privacy, access to independent lawyers and protecting the best interests of child.**

10 Appendix: List of recommendations

Recommendation 1: The Commission recommends that the Australian Government fully incorporate into Australian law its human rights obligations to children, including through the adoption of a federal Human Rights Act.

Recommendation 2: The Australian Government should incorporate the Declaration on the Rights of Indigenous Peoples into Australia's Human Rights Framework as one of the core instruments to inform its operation.

Recommendation 3: The Australian Government should work with the Australian Human Rights Commission and Indigenous peoples organisations to develop an action plan on the Declaration on the Rights of Indigenous Peoples.

Recommendation 4: All legislation, policies and programs should be reviewed for consistency with the rights affirmed by the Declaration on the Rights of Indigenous Peoples.²²⁰

Recommendation 5: The Australian Government should establish a national Children's Commissioner with the primary functions of monitoring, investigating and reporting on the protection of children's rights as set out in the Convention on the Rights of the Child. The Children's Commissioner should be independent, adequately resourced and accessible to children.

Recommendation 6: The Australian Government should sign and ratify the Third Optional Protocol to the Convention on the Rights of the Child, once it is adopted by the General Assembly. The Australian Government should ensure that the availability of the Optional Protocol is promoted widely throughout Australia, in particular to children and organisations working with children.

Recommendation 7: Australia should withdraw its reservation to article 37(c) of the Convention on the Rights of the Child.

Recommendation 8: The Australian Government should ensure that federal anti-discrimination legislation provides equal protections from discrimination on the basis of age as for other grounds.

Recommendation 9: Sexual orientation should be included as a ground of discrimination in federal anti-discrimination laws.

Recommendation 10: Sex and/or gender diversity should be included as grounds of discrimination in federal anti-discrimination laws.

Recommendation 11: The Australian Government should ensure adequate funding and provision of services to assist girls and young women to seek support and redress for sex-based discrimination.

Recommendation 12: The Australian Government should make the following changes to the new model of income management:

- Welfare recipients must be offered the option to be voluntarily income-managed in the first instance.
- Welfare recipients that do not choose to be voluntarily income-managed, and who fit one of the two defined categories, must be assessed on a case by case basis for inclusion in the scheme, on the basis of their individual circumstances.
- A decision to income manage a welfare recipient should be reviewable.
- Welfare recipients should have the option to apply for an exemption from income management at any stage of the process (for example, after a period of time where their circumstances may have changed or the concerns that led to them being income managed having changed).
- Income management should be for a defined period and then continuation of income management should be subject to regular review.

Recommendation 13: A key function of a national Children's Commissioner should be to ensure that children's views are heard on issues that affect their lives and that those views are respected by those involved in official decision-making processes.

Recommendation 14: The Australian Government should develop a comprehensive strategy to ensure that children with disability are provided with opportunities to express their views and that these are considered systematically in policy design and program development at local, state, territory and national levels. Children with disability should be provided with all necessary supports and accommodations to ensure effective and meaningful participation.

Recommendation 15: The Australian Government should undertake integrated, cohesive, interdisciplinary and coordinated measures to address violence, harassment and bullying of children, consistent with a child rights approach. These should include specific measures to address violence, bullying and harassment of vulnerable groups.

Recommendation 16: The Australian Government should adequately support school communities to effectively implement the revised National Safe Schools Framework by developing outcomes and indicators to monitor and evaluate its impact.

Recommendation 17: The Australian Government should establish and fund an independent body to monitor and evaluate the National Plan to Reduce Violence Against Women and their Children.

Recommendation 18: The Australian Government should ensure adequate funding and provision of services to assist girls and young women to seek support and redress for violence and sexual harassment.

Recommendation 19: The Australian Government's National Anti-Racism Partnership and Strategy should include a dedicated youth component and initiatives targeting education settings. These initiatives should be consistent with the National Safe Schools Framework and Australia's Human Rights Framework.

Recommendation 20: The Australian Government should initiate discussions with states and territories to develop national legislation prohibiting the non-therapeutic sterilisation of children, except where there is a serious threat to life or health. Women and children with disability, through their representative organisations, should be consulted in the development of this legislation.

Recommendation 21: The Australian Government should implement the recommendations of the Sex Files report that the special needs of children and young people should be considered in procedures for amending official documents and records.

Recommendation 22: The Australian Government should implement a range of holistic, multidisciplinary approaches, including early intervention strategies and community education strategies, specifically aimed at assisting children and young people who have been exposed to family and domestic violence.

Recommendation 23: The Australian Government should produce a more comprehensive and detailed response to the Australian Law Reform Commission's 2010 Report *Family Violence - A National Legal Response* outlining how the recommendations will be addressed.

Recommendation 24: The Australian Government should evaluate the National Framework for Protecting Australia's Children and the National Standards for Out-of-Home Care using population-based indicators to monitor the life outcomes of children and young people in out of home care. This should include indicators to measure the number of children who receive quality early childhood education, comprehensive regular health assessments and follow-up treatment.

Recommendation 25: The Australian Government should implement the National Standards for Out-of-Home Care consistent with a child rights approach, including the use of mechanisms for accountability and the participation of children in care.

Recommendation 26: The Australian Government should implement the recommendations made by state and territory children's commissioners and guardians to the Review of the Transition to Independent Living Allowance.

Recommendation 27: The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in its report, *A last resort?*, that Australia's laws should be amended so that the Minister for Immigration is no longer the legal guardian of unaccompanied children in immigration detention. An independent guardian should be appointed for unaccompanied children in immigration detention and they should receive appropriate support.

Recommendation 28: The Australian Government should continue to support the Aboriginal and Torres Strait Islander communities to address Fetal Alcohol Spectrum Disorders.

Recommendation 29: The Australian Government should adopt a National Disability Insurance Scheme which encompasses the full range of human rights and obligations recognised by the Convention on the Rights of Persons with Disabilities, and which responds to the needs and rights of children.

Recommendation 30: The Australian Government should continue its commitment to expand and fund the delivery of child and youth-targeted mental health and other necessary support services to ensure the health and wellbeing of all children and young people in Australia. Particularly, children and young people with mental health problems should be supported to express their views and have these views taken into account in the development, implementation and monitoring of these programs and services.

Recommendation 31: The Australian Government should monitor and review the National Indigenous Education Action Plan to ensure improvements in attendance, literacy and attainment for Aboriginal and Torres Strait Islander children.

Recommendation 32: The Australian Government should work with state and territory governments to support and resource bilingual education options for Aboriginal and Torres Strait Islander children.

Recommendation 33: Commonwealth, state and territory governments, in consultation with persons with disabilities, including children, should develop a plan to implement the areas identified for future action relevant to education (Area 5 – Learning and skills) in the *National Disability Strategy 2010-2020*.

Recommendation 34: The Australian Government should immediately implement the eight recommendations related to education and learning made by the Senate Community Affairs References Committee in *Hear Us: Inquiry in to Hearing Health in Australia*.

Recommendation 35: Community language school programs in each state and territory should be adequately resourced to cater for the needs of Australia's new and emerging ethnic groups.

Recommendation 36: The Australian Government should integrate human rights education into the national school curriculum through a specific cross-curriculum priority or general capability on human rights, and integrate human rights in all learning areas.

Recommendation 37: The Australian Government should amend Australia's immigration detention laws, as a matter of urgency, to comply with the Convention on the Rights of the Child. The new laws should incorporate the following minimum features:

- There should be a presumption against the detention of children for immigration purposes.

- A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention.
- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
 - detention of children must be a measure of last resort and for the shortest appropriate period of time
 - the best interests of children must be a primary consideration
 - the preservation of family unity must be a matter of priority
 - special protection and assistance must be provided for unaccompanied children.

Recommendation 38: The Australian Government should make greater use of community-based alternatives to holding children in immigration detention facilities for prolonged and indefinite periods. These should include alternatives to detention, such as bridging visas, and alternative forms of detention, such as community detention.

Recommendation 39: The Australian Government should make full use of community detention for children and, where relevant, accompanying family members.

Recommendation 40: The Australian Government should adopt the recommendations of the age determination working group and continue to review the age determination process to improve legal safeguards for foreign juvenile fishers and crew.

Recommendation 41: The Australian Government should continue its commitment to reducing homelessness, including funding targeted programs for children and young people.

Recommendation 42: The Australian Government should adopt a human rights approach to homelessness legislation, which takes into account the full range of child rights impacted on by homelessness.

Recommendation 43: The Australian Government should consider developing a National Housing Strategy, which sets clear benchmarks and time-bound targets for all measures of the progressive realisation of the right to adequate housing.

Recommendation 44: The Queensland Government should immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years, consistent with other states and territories.

Recommendation 45: The Australian Government should ratify the Optional Protocol to the Convention Against Torture and establish as soon as possible a National Preventive Mechanism for places of detention.

Recommendation 46: The Australian Government should take all necessary measures to ensure that mandatory detention does not apply to children in any Australian jurisdiction.

Recommendation 47: The Australian Government should commit to juvenile justice targets as part of the Closing the Gap Strategy.

Recommendation 48: The Australian Government should examine ways to trial and implement justice reinvestment in partnership with Aboriginal and Torres Strait Islander communities.

Recommendation 49: Commonwealth, state and territory governments should develop a plan to implement the areas identified for future action on 'Rights protection, justice and legislation' (Area 2) under the National Disability Strategy 2010-2020. The plan should be developed in consultation with persons with disabilities, including children, and their representative organisations.

Recommendation 50: The Australian Government should implement the recommendations made by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, in its report *Doing time – time for doing: Indigenous youth in the criminal justice system*, in particular as they relate to young people with an intellectual disability, mental health issues and hearing loss.

Recommendation 51: Biennial cross-cultural awareness training should be compulsory across state and territory police forces.

Recommendation 52: State and territory police forces should design, implement and enforce measures to eliminate racial profiling.

Recommendation 53: Commonwealth, state and territory governments should continue to fund, monitor and evaluate projects that aim to improve relationships between police and young people from new and emerging communities.

Recommendation 54: All state and territory police forces should include specific guidance in their Standard Operating Procedures on the appropriate use of interpreters.

Recommendation 55: All courts, tribunals and alternative dispute processes should develop guidelines setting out when an interpreter should be used and how the courts should work with an interpreter.

Recommendation 56: The Australian Government should

- undertake comprehensive data collection and research on the prevalence of child trafficking and sexual exploitation
- implement measures for providing specialist child specific services for child victims of trafficking, non-citizen minors and unaccompanied minors, in accordance with the best interests of the child principle and the UNICEF 'Guidelines on the Protection for Child Victims of Trafficking' (2006)

- ensure that where trafficked people and their dependent children obtain permanent residence in Australia, these families receive access to adequate settlement services
- amend the visa framework for victims of trafficking to ensure every person who is identified as a victim of child trafficking *and* who would face danger if returned to their country of origin is eligible for a permanent visa, regardless of whether they participate in law enforcement processes
- develop clear guidelines for agencies on how to deal with child victims of trafficking on issues including guardianship, housing, access to education, confidentiality and privacy, access to independent lawyers and protecting the best interests of child.

¹ *Listen to Children: Child Rights NGO Report Australia* (2011). At <http://www.cyp.wa.gov.au/files/Listen%20to%20Children.pdf> (viewed 6 July 2011).

² The submission has also been endorsed by the following state and territory human rights agencies: Anti-Discrimination Commission (Queensland), Office of the Anti-Discrimination Commissioner (Tasmania), Anti-Discrimination Commission (Northern Territory), Victorian Equal Opportunity and Human Rights Commission, Equal Opportunity Commission (South Australia), Anti-Discrimination Board of NSW and the Equal Opportunity Commission (Western Australia). The Commission acknowledges the substantial information provided by state and territory children's commissioners, for the preparation of this submission.

³ House of Representatives, Official Hansard No.1, Forty second Parliament, First Session, First Period (13 February 2008), p167. At <http://www.aph.gov.au/hansard/rep/dailys/dr130208.pdf> (viewed 10 June 2008).

⁴ In a special ceremony at Parliament House, the Prime Minister and the Leader of the Opposition apologised, on behalf of the nation, to more than 500,000 Australians, many of whom suffered abuse and neglect while in out-of-home care. See http://www.fahcsia.gov.au/sa/families/proserv/apology_forgotten_au/Pages/default.aspx. See also Australian Human Rights Commission, 'Apology and important step forward in the healing process' (Media Release, 16 November 2009). At http://www.humanrights.gov.au/about/media/media_releases/2009/112_09.html (viewed 1 August 2011).

⁵ The six Closing the Gap targets include:

- Close the gap in life expectancy within a generation
- Halve the gap in mortality rates for Indigenous children under five within a decade
- Halve the gap for Indigenous students in reading, writing and numeracy within a decade
- At least halve the gap for Indigenous students in year 12 attainment or equivalent attainment rates by 2020
- Halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade
- Ensure all four-year-olds, including those in remote communities, have access to early childhood education, within five years.

These targets have been supplemented by substantial budget commitments under the National Indigenous Reform Agreement and associated National Partnership Agreements. For further information on COAG's National Agreements and National Partnership Agreements for meeting COAG's objectives see the COAG website. At <http://www.coag.gov.au/>.

⁶ Sections 17 and 23 of the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) provides for the right to protection of families and children and children in the criminal process. The Office of Child Safety Commissioner in Victoria provided a submission to the Victorian Inquiry into the

Charter, recommending articles 23, 24 and 39 of the Convention be included in the Charter. Similarly, ss 11 and 20 of the *Australian Capital Territory Human Rights Act 2004* (ACT) provides only for the right to protection of the family and children; and for children in the criminal process.

⁷ The Australian Constitution provides safeguards for the following individual rights and freedoms: The right to compensation on just terms in the event of a compulsory acquisition of property by the Commonwealth (section 51(xxxi)); the right to trial by jury for a federal indictable offence (section 80); the right to challenge the lawfulness of decisions of the Australian Government in the High Court (section 75(v)); a prohibition on making federal laws that establish a religion, impose a religious observance or prohibit the free exercise of any religion (section 116); and a prohibition on making federal laws that discriminate against a person because of the state in which they live (section 117). The High Court has found that a right of freedom of expression in relation to public and political affairs is implied in the text of the Constitution: *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; *Levy v Victoria* (1997) 189 CLR 579. This right is directed at ensuring that people are free to discover and debate matters which enable them to exercise a free and informed choice as voters. The High Court has rejected suggestions that other basic rights, like the right to equality, are implied by the text of the Constitution. The High Court has not supported the proposition that, in cases of ambiguity, the Constitution should be interpreted consistently with human rights: See, for example, *Roach v Electoral Commissioner* (2007) 233 CLR 162, 224–225 (Heydon J) and the authorities cited therein.

⁸ If the Commission finds that there has been a breach of human rights, then the Commission can prepare a report of the complaint for the Attorney-General. This report can include recommendations for action and must be tabled in Parliament.

⁹ Australian Human Rights Commission, *Australian Human Rights Commission Submission on National Human Rights Consultation* (June 2009). At http://www.humanrights.gov.au/legal/submissions/2009/200906_NHRC_complete.pdf (viewed 5 July 2011).

¹⁰ For information on Australia's Human Rights Framework, see <http://www.ag.gov.au/humanrightsframework>.

¹¹ Australia's human rights obligations are considered to be those rights set out in the following core international instruments: the *International Convention on the Elimination of all Forms of Racial Discrimination*; the *International Covenant on Economic, Social and Cultural Rights*; the *International Covenant on Civil and Political Rights*; the *Convention on the Elimination of All Forms of Discrimination Against Women*; the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *Convention on the Rights of the Child*; and the *Convention on the Rights of Persons with Disabilities*.

¹² Reference to the Declaration in the Framework is limited to noting Australia's announced support for the Declaration.

¹³ J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx (viewed 30 May 2011).

¹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 8 February 2010, p 97 (The Hon Tony Abbot, Leader of the Opposition).

¹⁵ Legal and Constitutional Affairs Committee, Parliament of Australia, *Native Title Amendment Bill (No.2) 2009 [Provisions]* (2010), para 357.

¹⁶ *Aurukun Shire Council & Anor v. CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2010] QCA 37 (1 March 2010), [33].

¹⁷ Northern Australian Indigenous Land and Sea Management Alliance, *A Policy Statement on Northern Australian Indigenous Water Rights* (2009). At http://www.nailsma.org.au/projects/water_policy.html (viewed 26 March 2010); Goldfields Land and Sea Council, *Mining Policy: Our Land is Our Future* (2008). At <http://www.glc.com.au/> (viewed 26 March 2010).

¹⁸ This was also a recommendation made by Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in his 2010 report on Australia: Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: The Situation*

of Indigenous Peoples in Australia, UN Doc A/HRC/15/ (2010). At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010).

¹⁹ See *Australian Human Rights Commission Act 1986*, s 11 (1), (e), (f), (g), (h), (j), (k), (m), (n), (o) and (p).

²⁰ See, for example, Australian Human Rights Commission and the Australian Law Reform Commission (ALRC), *Seen and Heard: Priority for Children in the Legal Process* (1997). At http://www.humanrights.gov.au/human_rights/children/seen_and_heard.html (viewed 5 July 2011); Australian Human Rights Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (2004). At http://www.humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf (viewed 5 July 2011); Human Rights and Equal Opportunity Commission (HREOC), *Rights of Passage: A Dialogue with Young Australians about Human Rights* (2005). At http://www.humanrights.gov.au/human_rights/rights_passage/index.html (viewed 5 July 2011); Human Rights and Equal Opportunity Commission, *Recommendations: National Inquiry into Rural and Remote Education* (2002). At http://www.humanrights.gov.au/pdf/human_rights/rural_remote/Rec_book.pdf (viewed 5 July 2011); See also Australian Human Rights Commission webpages on children's rights. At http://www.humanrights.gov.au/human_rights/children/index.html (viewed 5 July 2011); The Commission also provides submissions to court cases relevant to children's rights: See <http://www.humanrights.gov.au/legal/submissions/index.html> (viewed 5 July 2011).

²¹ United Nations, *Committee on the Rights of the Child Concluding Observations: Australia* (20 October 2005). At [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6f6879be758d0e8ec12570d9003340ba/\\$FILE/G0544374.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6f6879be758d0e8ec12570d9003340ba/$FILE/G0544374.pdf) (viewed 5 July, 2011).

²² For example, some offices, such as the Queensland Commission for Children and Young People and Child Guardian and the South Australian Office of the Guardian for Children and Young People, focus on certain groups of disadvantaged children, including children in government care or children with no one to act on their behalf. The ACT Commission, in contrast, has a much broader mandate to promote and protect the rights of all children and young people in the ACT. For links to the websites of state and territory children's commissioner and guardians see the Queensland Commission for Children and Young People and Child Guardian (2011). At <http://www.ccypcg.qld.gov.au> (viewed 5 July 2011); New South Wales Commission for Children and Young People (2011). At <http://kids.nsw.gov.au> (viewed 5 July 2011); The Victorian Office of the Child Safety Commissioner (2011). At <http://www.ocsc.vic.gov.au> (viewed 5 July 2011); ACT Children and Young People Commissioner (2011). At <http://www.hrc.act.gov.au> (viewed 5 July 2011); Commission for Children and Young People (2011). At <http://www.cryp.wa.gov.au> (viewed 5 July 2011); Office of the Children's Commissioner Northern Territory (2011). At <http://www.childrenscommissioner.nt.gov.au> (viewed 5 July 2011); South Australian Office for Youth (2011). At <http://www.officeforyouth.sa.gov.au> (viewed 5 July 2011).

²³ Australian Government, *National Framework for Protecting Australian Children* (2009). At http://www.fahcsia.gov.au/sa/families/proserv/Child_Abuse_Prevention/Pages/default.aspx (viewed 5 July 2011).

²⁴ Australian Government, *National Framework for Protecting Australian Children*, above.

²⁵ For example, in Queensland 17 year olds are incarcerated in adult facilities, although they are generally kept apart from other prisoners 18 years or older (see section 9.3(a)). In another example, a 13 year old child was reported to be detained for three days in a police lock-up in Western Australia after police arrested him for giving a false name and breaching other bail conditions and he was refused bail by a justice of the peace (JP): 'Teen spends time in Kalgoorlie lockup', *ABC Goldfields*, 10 May 2011. At <http://www.abc.net.au/news/stories/2011/05/10/3212415.htm> (viewed 7 July 2011). The Western Australian (WA) Commissioner for Children and Young People has recommended that JPs should not have any responsibility for judicial duties in relation to young people. The WA Children's Court has since issued a Practice Direction that requires decisions of bail refusal made by a JP for young people to be reheard by a magistrate: Information provided to the Australian Human Rights Commission by the Australian Children's Commissioners and Guardians (ACCG) during consultations for this submission to the Committee on the Rights of the Child, 17 June 2011.

²⁶ Australian Government, *Australia's Combined Second and Third Reports under the Convention on the Rights of the Child*, (2003), para 467. At

http://www.dfat.gov.au/hr/downloads/australia_2nd_3rd_reports_convention_rights_child.pdf (viewed 30 June 2011).

²⁷ Australian Human Rights Commission, *Federal Discrimination Law*, (2010) ch 2, 2.2.4, pp 6-7, http://www.hreoc.gov.au/legal/FDL/pdf/2_Age.pdf (viewed 26 May 2011).

²⁸ Attorney General, 'Gillard Government Strengthens Human Rights Commission', (Media Release, 27 January 2011). At

http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2011_FirstQuarter_27January2011-GillardGovernmentStrengthensHumanRightsCommission (viewed 25 May 2011).

²⁹ Human Rights and Equal Opportunities Commission, *Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs regarding Inquiry into Older People and the Law* (2006) p 7. At

http://www.humanrights.gov.au/legal/submissions/2006/ADA_200612/older_people_and_the_law_dec06.html (viewed 26 May 2011).

³⁰ These include exemptions relating to direct compliance with laws; in relation to religious bodies, and in relation to voluntary bodies. See E Broderick, *Mature Age Worker – you'll be one sooner than you think!* (Speech delivered at Australian Institute of Family Studies, Melbourne, 6 August 2009). At http://www.humanrights.gov.au/about/media/speeches/age/2009/20090806_mature_age.html (viewed 26 May 2011); Human Rights and Equal Opportunity Commission, *Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs regarding Inquiry into Older People and the Law* (2006) p 7. At

http://www.humanrights.gov.au/legal/submissions/2006/ADA_200612/older_people_and_the_law_dec06.html (viewed 26 May 2011).

³¹ Attorney General, 'Reform of Anti-Discrimination Legislation,' (Media Release, 21 April 2010). At http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_21April2010-ReformofAnti-DiscriminationLegislation (viewed 25 May 2011).

³² See Australian Human Rights Commission, *Inquiry into the Same-sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008* (15 September 2008). At http://www.hreoc.gov.au/legal/submissions/2008/20080915_samesex_bill.pdf (viewed 7 July 2011); Australian Human Rights Commission, *Sex Files: The legal recognition of sex in documents and government records* (2009). At http://www.humanrights.gov.au/genderdiversity/SFR_2009_Web.pdf (viewed 7 July 2011); Australian Human Rights Commission, *Addressing sexual orientation and sex and/or gender identity discrimination* (2011). At

http://www.humanrights.gov.au/human_rights/lgbti/lgbticonsult/report/SGI_2011.pdf (viewed 7 July 2011).

³³ See: *Discrimination Act 1991* (ACT), s 7(b), *Anti-Discrimination Act 1977* (NSW), s 49ZG, *Anti-Discrimination Act 1991* (NT), ss 4,19(c), *Anti-Discrimination Act 1991* (Qld), s 7(n), *Equal Opportunity Act 1984* (SA), s 29(3), *Anti-Discrimination Act 1998* (Tas), s 16(c), *Equal Opportunity Act 2010* (Vic), s 6(p), *Equal Opportunity Act 1984* (WA), s 35(O).

³⁴ See: *Discrimination Act 1991* (ACT), s 7(c), *Anti-Discrimination Act 1977* (NSW), s 38(b), *Anti-Discrimination Act 1991* (NT), ss 4,19(c), *Anti-Discrimination Act 1991* (NT), ss 4,19(c), *Anti-Discrimination Act 1991* (Qld), s 7(m), *Equal Opportunity Act 1984* (SA), s 29(2A), *Anti-Discrimination Act 1998* (Tas), s 16(c), *Equal Opportunity Act 2010* (Vic), s 6(d), *Equal Opportunity Act 1984* (WA), ss 35(AA), 35(AB).

³⁵ See Australian Labor Party, *National Platform and Constitution 2009*, p 207; 'Abbott supports anti-discrimination legislation', *Star Observer*, 25 March 2010; and Coalition response in Law Council of Australia, *Federal Election 2010 Key Issues: Responses* (2010); as cited in Law Council of Australia, Comment 132, pp 13-14.

³⁶ Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Australia*, 10th session (2011), Geneva, A/HRC/WG.6/10/L.8, pp 6-7. At:

<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AUSession10.aspx>.

³⁷ Beijing Platform for Action, *Chapter IV. L. The girl child* (1995). At <http://www.un-documents.net/bpa-4-l.htm> (viewed 25 May 2011); Angela Taft, Lyn Watson and Christina Lee, *The Australian Longitudinal Study on Women's Health: Health and Experiences of Violence among Young Australian Women* (2003). At http://www.fahcsia.gov.au/sa/women/pubs/violence/longitudinal_study/Documents/ViolenceGlossy.pdf (viewed 25 May 2011).

³⁸ A Barns and L Ferraciolo, *Young Women in Low Paid Employment: Issues and experiences within the context of the 'Fair Work' agenda* (2010), p 7.

³⁹ D Loxton, J Stewart Williams and L Adamson, *Barriers to Service Delivery for Young Pregnant Women and Mothers*, 2007. At http://www.deewr.gov.au/Youth/Programs/NYARS/Documents/ServiceDeliveryBarriers_Report.pdf, (viewed 25 May 2011).

⁴⁰ K Ellis, *Women's Budget Statement 2011-12* (2011), pp 11-12. At http://resources.fahcsia.gov.au/budget/2011-12/Womens_Budget_2011.pdf (viewed 30 May 2011).

⁴¹ Prime Minister Julia Gillard, *Helping teenage parents to finish school and support their children* (2011). At <http://www.pm.gov.au/press-office/helping-teenage-parents-finish-school-and-support-their-children> (viewed 30 May 2011).

⁴² Australian Human Rights Commission, *2010 Social Justice Report* (2010), p 2. At http://www.hreoc.gov.au/social_justice/sj_report/sjreport10/pdf/sjr2010_full.pdf (viewed 13 July 2011); Northern Territory Government, *Little Children are sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2006). At http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf (viewed 14 July 2011); United Nations Committee on the Rights of the Child, *Concluding Observations: Australia* (2005). At http://www.unhcr.org/refworld/publisher/CRC_CONC/OBSERVATIONS_AUS_45377eac0_0.html (viewed 14 July 2011); Australian Human Rights Commission, *Submission to the special rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission* (2009). At http://www.humanrights.gov.au/social_justice/publications/srip_2009/index.html#7; Human Rights and Equal Opportunity Commission, *Submission on the Discussion Paper, 'Australia's Children: Safe and well – a national framework for protecting Australia's children'* (2008). At http://www.hreoc.gov.au/legal/submissions/2008/20080714_safe.html

⁴³ COAG Reform Council, Council of Australian Governments, *National Healthcare Agreement: Baseline performance report for 2008-09* (2010) p 209; National Indigenous Health Equality Council, *Child Mortality Target Analysis and Recommendations* (Report, 8 April 2010) p 6.

⁴⁴ National Indigenous Health Equality Council, *Child Mortality Target Analysis and Recommendations* (Report, 8 April 2010) p 6.

⁴⁵ COAG Reform Council, Council of Australian Governments, *National Healthcare Agreement: Baseline performance report for 2008-09* (2010) p 209.

⁴⁶ T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), p 298.

⁴⁷ Australian Institute of Health and Welfare, *Child Protection 2008-2009*, Child welfare series no. 47 (2010), p viii.

⁴⁸ See Australian Human Rights Commission, *The Northern Territory, 'Emergency Response' intervention – a human rights analysis* (2007). At http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/chap3.html (viewed 14 July 2011); Australian Human Rights Commission, *Social Justice Report* (2007). At http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/index.html (viewed 14 July 2011); Australian Human Rights Commission, 'Passage of NTER Amendments a step in the right direction' (Media Release, 22 June 2010). At http://www.hreoc.gov.au/about/media/media_releases/2010/61_10.html (viewed 14 July 2011).

⁴⁹ Department of Families, Housing, Community Services and Indigenous Affairs, *Evaluation Framework for New Income Management* (2010), Section 2: The new model of income management. At <http://www.fahcsia.gov.au/SA/FAMILIES/PUBS/NIM/Pages/p2.aspx> (viewed 15 June 2011); see also Human Rights and Equal Opportunity Commission, *Ending Family Violence in Aboriginal and Torres Strait Islander communities* (2006). At http://www.hreoc.gov.au/social_justice/familyviolence/index.html (viewed 14 July 2011).

⁵⁰ See: Centrelink, *Income Management Exemptions*, at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co497.htm> (viewed 19 July 2011).

⁵¹ Centrelink, *Income management in the Northern Territory: Child Protection Measure* (2011). At http://www.centrelink.gov.au/internet/internet.nsf/individuals/income_mgt_nt.htm (viewed 15 June 2011).

⁵² The Australian Youth Forum (AYF) is funded to engage youth and advocate on youth issues via its website and national steering committee. In 2008, the Australian Youth Affairs Coalition (AYAC) was re-established and funded as the national peak body to advocate on youth issues.

⁵³ Article 7(3) states that ‘States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right’: *Convention on the Rights of Persons with Disabilities* (2006). At <http://www.un.org/disabilities/convention/conventionfull.shtml> (viewed 7 July 2011).

⁵⁴ See Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009), app 6. At http://humanrights.gov.au/legal/submissions/2009/200906_NHRC.html (viewed 7 July 2011); See also Victorian Equal Opportunity Human Rights Commission, *Emerging Change: Summary Report on the operation of the Charter of Human Rights and Responsibilities*, which reports on a survey of young people. Young people expressed their dissatisfaction when their contribution and participation was sought in relation to an agenda that had already been determined. At http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1254:operation-of-the-charter-of-human-rights-and-responsibilities-2008&Itemid=690 (viewed 7 July 2011).

⁵⁵ See, for example, the Queensland Commission for Children and Young People and Child Guardian biennial survey of children in out-of-home care and detention to better shape policy outcomes: Queensland Commission for Children and Young People and Commissioner and Child Guardian, *Views of Children and Young People in Foster Care* (2010), At <http://www.ccypcg.qld.gov.au/resources/publications/ViewsChildrenYoungPeopleinFosterCare10>, (viewed 4 July 2011); In June 2010 the Queensland Commission also undertook a series of workshops to inform anti-bullying and anti-violence strategies in state and private schools: Queensland Commission for Children and Young People and Commissioner and Child Guardian, *Student Consultation Report: Students’ views about bullying* (16 September 2010). At http://education.qld.gov.au/student-services/behaviour/qsav/docs/consultation_report.pdf (viewed 4 July 2011); The Queensland Commission also identified the need for greater community engagement in order to achieve better educational outcomes for indigenous communities: Queensland Commission for Children and Young People and Commissioner and Child Guardian, *Snapshot 2010: Children and Young People in Queensland*. At <http://www.ccypcg.qld.gov.au/pdf/publications/reports/snapshot2010/Snapshot-2010.pdf> (viewed 4 July 2011)). The Western Australian Commissioner for Children and Young People, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia* (April 2011). At

<http://www.ccyp.wa.gov.au/files/MentalWellbeingInquiry/CCYP%20Mental%20Health%20Inquiry%20-%20Report%20to%20Parliament.pdf> (viewed 4 July 2011); The Western Australian Commissioner for Children and Young People established guidelines to make complaints processes child-friendly: Western Australian Commissioner for Children and Young People, *Are you listening? - Guidelines for making complaints processes accessible and responsive for children and young people; Involving children and young people - Participation guidelines; Improving legislation for children and young people* (2010) at <http://www.ccyp.wa.gov.au/files/resource/Complaints%20-%20Are%20you%20listening.pdf> (viewed 4 July 2011); The Victorian Child Safety Commissioner has undertaken consultation with African-Australian youth on issues affecting them: Victorian Child Safety Commissioner, *Follow-up Submission: In our own words – African Australians Report* (2010) at <http://www.ocsc.vic.gov.au/downloads/submission-african-australians.pdf> (viewed 4 July 2011).

⁵⁶ See, for example, projects undertaken by the Victorian Equal Opportunity and Human Rights Commission such as the appointment of 11 Youth Ambassadors (*Charter of Human Rights and Responsibilities: comforting rhetoric or a tool to combat marginalisation* (13 February 2007) at http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=346:charter-of-human-rights-and-responsibilities-comforting-rhetoric-or-a-tool-to-combat-marginalisation?&Itemid=514 (viewed 4 July 2011)); the canvassing of young people’s views for *Rights of Passage* (2008). At http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=571:rights-of-passage-the-experiences-of-australian-sudanese-young-people&Itemid=690 (viewed 4 July 2011); the canvassing of young people’s views for review of the Victorian Charter, *2008 Summary Report on the Operation of the Charter of Human Rights and Responsibilities* (April 2009). At http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1254:operation-of-the-charter-of-human-rights-and-responsibilities-2008&Itemid=690 (viewed 4 July 2011); and its

young women workplace rights project, *Young Women's Workplace Rights Project: Survey* (April 2011) at <http://www.dvrcv.org.au/pip/?p=602> (viewed 4 July 2011).

⁵⁷ Committee on the Rights of the Child, *General Comment no. 13- Article 19: The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13 (2011), para 12.

⁵⁸ D Cross, T Shaw, I Hearn, M Epstein, H Monks, L Lester, L Thomas, *Australian Covert Bullying Prevalence Study*, Child Health Promotion Research Centre, Edith Cowan University (2009).

⁵⁹ Guides Australia, *Girl Guides Survey Reveals Alarming Concerns* (2010). At <http://www.girlguides.org.au/news-events/news-coverage/smh-article-guides-speak-out-on-bullying.html> (viewed 29 April 2011).

⁶⁰ D Cross, T Shaw, et al above, p 42; Sameer Hinduja and Justin W. Patchin, 'Bullying, Cyberbullying and Suicide' (2007) 14 *Archives of Suicide Research* 3, 206 – 221. At <http://www.informaworld.com/smpp/section?content=a924722304&fulltext=713240928> (viewed 16 November 2010).

⁶¹ Australian Human Rights Commission, *Cyberbullying, Human Rights and Bystanders* (2011). At <http://www.humanrights.gov.au/bullying/cyberbullying/index.html> (viewed 5 July 2011).

⁶² See Australian Human Rights Commission, *Violence, Harassment and Bullying: Children and Young People* (2011) p 5. At <http://www.humanrights.gov.au/bullying/cyberbullying/impacts.html> (viewed 20 June 2011). See also Youth Disability Advocacy Service, *The National Disability Strategy Youth Roundtable Report* (2008). At <http://www.ydas.org.au/content/publications> (viewed 12 July 2011); S Bourke and I Burgman, *Coping with bullying in Australian schools: how children with disabilities experience support from friends, parents and teachers*, May 2010, *Disability & Society*, 25 (3): 359–371; and *Addressing sexual orientation and sex and/or gender identity discrimination* (2011). At http://www.humanrights.gov.au/human_rights/lgbti/lgbticonsult/report/SGI_2011.pdf (viewed 7 July 2011).

⁶³ Risk factors include low educational outcomes, history of abuse, poor family relationships, a normalisation of violence within the community and society-level structural inequalities including systemic discrimination. See J Coffin, A Larson and D Cross, 'Bullying in an Aboriginal Context' (2010) 39 *Australian Journal of Indigenous Education*, p78.

⁶⁴ Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (20 October 2005) paras 60-61. At <http://www.unhcr.org/refworld/publisher,CRC,CONC/OBSERVATIONS,AUS,45377eac0,0.html> (viewed 7 July 2011).

⁶⁵ Ministerial Council for Education Early Childhood Development and Youth Affairs, *Revised National Safe Schools Framework* (2011). At <http://www.deewr.gov.au/Schooling/NationalSafeSchools/Pages/nationalsafeschoolsframework.aspx> (viewed 7 July 2011).

⁶⁶ Ministerial Council for Education Early Childhood Development and Youth Affairs, above, p 7.

⁶⁷ Queensland Commission for Children and Young People and Commissioner and Child Guardian, *Student Consultation Report: Students' views about bullying* (16 September 2010). At http://education.qld.gov.au/student-services/behaviour/gsaav/docs/consultation_report.pdf (viewed 4 July 2011).

⁶⁸ Joint Select Committee on Cyber-Safety, *High Wire Act: Cyber Safety and the Young, Interim Report* (June 2011), p xviii. At <http://www.aph.gov.au/house/committee/jscc/report.htm> (viewed 5 July 2011).

⁶⁹ Committee on the Rights of the Child, above, para 12, 72 (a).

⁷⁰ For example women who experience violence and assault have poorer health and use health services, including mental health services, more often, even after they have escaped the violence, see *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021* (2009), pp 3-4. At

http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Pages/default.aspx (viewed 11 May 2011); C Boyd, 'The impacts of sexual assault on women,' (April 2011) *Australian Centre for the Study of Sexual Assault* pp 3-4. At <http://www.aifs.gov.au/acssa/pubs/sheets/rs2/rs2.pdf> (viewed 11 May 2011).

⁷¹ The National Council to Reduce Violence Against Women and their Children, *Background Paper to Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, p 19. At

http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/background/Documents/Background_Paper_to_Time_for_Action.PDF (viewed 25 May 2011).

⁷² Department of Families, Housing, Community Services and Indigenous Affairs, *National Plan to Reduce Violence against Women and their Children 2010–2022*, (2010). At

<http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx#natplan> (viewed 13 July 2011).

⁷³ By providing that sexual harassment between workplace participants need only occur at the workplace of one of the workplace participants.

⁷⁴ By expanding protection to students of any age against harassment from a teacher or an adult student (aged over 16 years).

⁷⁵ The amendments also extend the protection from sexual harassment to persons from whom others are seeking goods, services or facilities, and provide further support for the prohibition of sexual harassment conducted by way of new technologies.

⁷⁶ Human Rights and Equal Opportunity Commission, *Sexual harassment: Serious business - Results of the 2008 Sexual Harassment National Telephone Survey* (2008), p 1. At

http://humanrights.gov.au/sexualharassment/serious_business/index.html (viewed 7 July 2011).

⁷⁷ Human Rights and Equal Opportunity Commission, above, p 2.

⁷⁸ Victorian Equal Opportunity and Human Rights Commission, *Women, rights and equality report* (March 2008), p 11. At

http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=574:women-rights-and-equality-report&Itemid=690 (viewed 7 July 2011).

⁷⁹ Australian Government, *The People of Australia: Multicultural Policy* (2011). At

http://www.immi.gov.au/media/publications/multicultural/pdf_doc/people-of-australia-multicultural-policy-booklet.pdf (viewed 13 July 2011).

⁸⁰ F Mansouri, L Jenkins, L Morgan, and M Taouk, *The Impact of Racism upon the Health and Wellbeing of Young Australians: Foundation for Young Australians Report* (October 2009), pp. 49-50.

At http://www.fya.org.au/wpcontent/uploads/2009/11/Impact_of_Racism_FYA_report.pdf (viewed 7 July 2011).

⁸¹ F Mansouri, L Jenkins, et al, above, p 40.

⁸² See Australian Human Rights Commission, *In our own words: African Australians – A review of human rights and social inclusion issues* (2010). At

http://www.hreoc.gov.au/africanaus/review/in_our_own_words.pdf (viewed 13 July 2011).

⁸³ In some jurisdictions this is provided for in legislation, and in others by the common law. New South Wales is the only state to have made legislative amendments concerning corporal punishment by parents. In 2001, New South Wales introduced the *Crimes Amendment (Child Protection Physical Mistreatment) Act*, which states that physical punishment should not harm a child 'more than briefly' and specifies the parts of a child's body that can be subject to force. See Australian Institute of Family Studies, 'Corporal Punishment: Key Issues', National Child Protection Clearing House Resource Sheet, April 2010. At <http://www.aifs.gov.au/nch/pubs/sheets/rs19/rs19.html>.

⁸⁴ *Criminal Code Act 1924* (Tas), section 50.

⁸⁵ Tasmanian Law Reform Institute, *Physical Punishment of Children: Final Report No 4* (2003)

University of Tasmania. At <http://www.law.utas.edu.au/reform/documents/PhysPunFinalReport.pdf>, Recommendation 1, pp 4-5.

⁸⁶ Information provided to the Australian Human Rights Commission by the Anti-Discrimination Commissioner and the Tasmanian Commissioner for Children, during consultations for this submission to the Committee on the Rights of the Child, 5 August 2011. See also submissions made by the former Tasmanian Commissioner for Children, Paul Mason, for example in a submission to the Australian Government's National Human Rights Consultation (June, 2009). At [http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/list?OpenView&RestrictToCategory=Children and young people's rights&Start=26](http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/list?OpenView&RestrictToCategory=Children+and+young+people's+rights&Start=26).

⁸⁷ It is still lawful in non-government schools in Queensland and South Australia. Also, while the Northern Territory does not have a provision in its Education Act banning or permitting the use of corporal punishment in schools, the *Criminal Code Act* (NT) makes it lawful for teachers to use corporal punishment unless parents expressly withhold their consent to such forms of correction.

⁸⁸ Australian Guardianship and Administration Council, *Protocol for Special Medical Procedures (Sterilisation)* (2009). At <http://www.agac.org.au/agac-publications> (viewed 7 July 2011).

⁸⁹ See for example: Women With Disabilities Australia: Submission to the United Nations Special Rapporteurs regarding forced sterilisation in Australia (June 2011). At <http://www.wwda.org.au/subs2011.htm> (viewed 12 July 2011); *Women With Disabilities Australia: Sterilisation of Women and Girls with Disabilities - An update on the issue in Australia* (December 2010). At <http://www.wwda.org.au/sterilise2006.htm>; P French, J Dardel & S Price-Kelly, *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment* (2009). At <http://www.pwd.org.au/submissions.html#mainstart> (viewed 7 July 2011).

⁹⁰ Recommendation 39 Accepted-in-part: The Australian Government considers that the 'best interests' test as articulated and applied in Australia is consistent with Australia's international obligations. In response to concerns expressed internationally and domestically, the Attorney-General intends to initiate further discussions with state and territory counterparts. A copy of the Australian Government's formal response to the UPR is available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AUSession10.aspx> (viewed 13 July 2011).

⁹¹ World Health Organisation, *World Report on Disability* (2011). At http://whqlibdoc.who.int/hq/2011/WHO_NMH_VIP_11.01_eng.pdf (viewed 7 July 2011). WHO also noted that attitudes and misconceptions among health-care providers remain barriers to health care for people with disabilities and so recommended the integration of disability education into undergraduate and continuing education for all health care professionals. It also recommended that people with disabilities should be empowered to maximize their health by providing information, training, and peer support and, where appropriate, the inclusion of family members.

⁹² Australian Human Rights Commission, *Sex Files: The Legal recognition of sex in documents and government records* (2009). At http://www.humanrights.gov.au/genderdiversity/SFR_2009_Web.pdf (viewed 7 July 2011).

⁹³ Except in Western Australia and South Australia. For more information, see Australian Human Rights Commission, *Sex Files: The Legal recognition of sex in documents and government records*, p 17.

⁹⁴ Australian Human Rights Commission, *Sex Files: The Legal recognition of sex in documents and government records*, above, p 26.

⁹⁵ Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009 -2020* (2009).

⁹⁶ Australian Bureau of Statistics, *Personal Safety Survey* cat.no. 4906.0. (2005). Domestic violence is also more prevalent among young mothers; See J Quinlivan, 'Teenage Pregnancy' (2008) 8 O&G 2, p 25.

⁹⁷ Australian Institute for Health and Welfare, *A Picture of Australia's Young People* (2009), p 105.

⁹⁸ Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander Peoples*, 2006. Aboriginal and Torres Strait Islander females and males were 35 and 22 times as likely to be hospitalised due to family violence-related assaults as other Australian females and males, respectively.

⁹⁹ Secretariat of National Aboriginal and Islander Child Care Study cited in K Richards, 'Children's Exposure to Domestic Violence in Australia', *Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice* No 419, May 2011.

¹⁰⁰ Australian Institute of Health and Welfare, *Child Protection 2008-2009*, Child welfare series no. 47 (2010), p viii.

¹⁰¹ Outcome 3 of the *National Plan to Reduce Violence against Women and their Children 2010-2022*.

¹⁰² Australian Human Rights Commission, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key Issues*, June 2006. At http://www.hreoc.gov.au/social_justice/familyviolence/family_violence2006.html.

¹⁰³ Australian Law Reform Commission, *Family Violence – A National Legal Response* (October 2010). At http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf (viewed 13 July 2011).

¹⁰⁴ Australian Law Reform Commission, above.

¹⁰⁵ *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* (Cth). At http://www.austlii.edu.au/au/legis/cth/bill_em/fllavaomb2011623/memo_0.html (viewed 26 May 2011); See also Attorney General, 'Family violence reforms one step closer' (2011). At http://www.attorneygeneral.gov.au/www/ministers/mccllelland.nsf/Page/MediaReleases_2011_Second_Quarter_30thMay2011-Familyviolencereformsonestepcloser (viewed 1 June 2011).

¹⁰⁶ COAG, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009 -2020* (2009), p 7.

¹⁰⁷ Australian Institute for Health and Welfare, *Child Protection in Australia: 2009-10* (January 2011), p 53. At <http://www.aihw.gov.au/publication-detail/?id=6442475448&tab=2> (viewed 20 June 2011).

¹⁰⁸ Australian Institute of Health and Welfare, *Child Protection 2008-2009*, Child welfare series no. 47 (2010), p viii.

¹⁰⁹ Australian Institute of Health and Welfare, *Child Protection 2008-2009*, Child welfare series no. 47 (2010), p 21.

¹¹⁰ JJ McDowall, *CREATE Report Card 2009 – Transitioning from Care: Tracking Progress* (2009).

¹¹¹ James Wood, *Report of the Commission of Inquiry into Child Protection Services in NSW: Volume 1* (2008), pp. 98 – 103. At www.dpc.nsw.gov.au/publications/news/stories/special_commission_of_inquiry_inquiry_into_child_protection_services_in_new_south_wales (viewed 26 August, 2010).

¹¹² COAG, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009 -2020* (2009), p 7.

¹¹³ Information provided to the Australian Human Rights Commission by the Australian Children's Commissioners and Guardians (ACCG) during consultations for this submission to the Committee on the Rights of the Child, 17 June 2011.

¹¹⁴ Participating commissioners and guardians were from Queensland, Western Australia, Tasmania, New South Wales, South Australia and Northern Territory.

¹¹⁵ For example, in September 2010, there were 167 unaccompanied minors detained in Darwin immigration detention facilities, ranging from 11-17 years of age: Australian Human Rights Commission, *Immigration detention in Darwin – summary of observations from visits to immigration detention facilities in Darwin* (2010). At

http://humanrights.gov.au/human_rights/immigration/idc2010_darwin.html (viewed 7 July 2011).

¹¹⁶ Chris Bowen MP, Minister for Immigration and Citizenship, 'Government meets commitment on Community Detention' (Media Release: 29 June 2011); Minister for Immigration and Citizenship, Doorstop Interview (Darwin, 29 June 2011). At

<http://www.minister.immi.gov.au/media/cb/2011/cb167721.htm> (viewed 1 July 2011).

¹¹⁷ See, for example, Australian Human Rights Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (2004), chapter 14. At

http://www.humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf (viewed 8 July 2011); Australian Human Rights Commission, *Immigration detention report* (2008). At

http://www.humanrights.gov.au/human_rights/immigration/idc2008.pdf (viewed 8 July 2011), section 14.5; Australian Human Rights Commission, *Immigration detention and offshore processing on Christmas Island* (2009), section 11.8. At

http://www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.pdf (viewed 8 July 2011).

¹¹⁸ *Immigration (Guardianship of Children) Act 1946* (Cth), s 6.

¹¹⁹ *Immigration (Guardianship of Children) Act 1946* (Cth), s 5.

¹²⁰ See for example, *A last resort?*, chapters 14, 17; *Immigration and offshore processing on Christmas Island*, section 11.8.

¹²¹ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (February 1997), guideline 5.7. At <http://www.unhcr.org/3d4f91cf4.html> (viewed 8 July 2011).

¹²² Australian Institute of Health and Welfare, *Australia's Health 2010*, Report No 12 (2010).

¹²³ Other targets relevant to the well-being of Indigenous children are:

- to ensure access to early childhood education for all Indigenous four years olds in remote communities within five years
- to halve the gap in reading, writing and numeracy achievements for children within a decade
- to halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020 (amended to 2015 in April 2009).

¹²⁴ M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social justice Report 2010*, Australian Human Rights Commission (2011), p 92; J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 5.

¹²⁵ See M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social justice Report 2010*, Australian Human Rights Commission (2011), p 105.

¹²⁶ Australian Productivity Commission, *Draft Report into Disability Care and Support* (February 2011), p 1. At http://www.pc.gov.au/data/assets/pdf_file/0015/106512/key-features.pdf (viewed 8 July 2011).

¹²⁷ Australian Human Rights Commission, *Submission to the Productivity Commission Inquiry into Long Term Disability Care and Support* (29 June 2010). At http://www.humanrights.gov.au/disability_rights/inquiries/NDIS.html#_Toc262639168 (viewed 8 July 2011). Children's commissioners and guardians from Queensland, Western Australia, Tasmania, Victoria, South Australia and Northern Territory also made a joint submission to the Productivity Commission Inquiry, endorsing a no-fault social insurance model for provision of disability care, and sought confirmation that children and young people with a disability would continue to receive funding under national disability schemes.

¹²⁸ Mental Health Council of Australia, Brain and Mind Research Institute and Human Rights and Equal Opportunity Commission, *Not for service: Experiences of injustice and despair in mental health care in Australia* (2005). At http://www.hreoc.gov.au/disability_rights/notforservice/index.html (viewed 8 July 2011).

¹²⁹ Australian Human Rights Commission, *2008 Social Justice Report*, Chapter 4, 'Beyond the Apology – an agenda for healing' (2008). At http://www.hreoc.gov.au/social_justice/sj_report/sjreport08/downloads/chap4.pdf (viewed 8 July 2011); Australian Human Rights Commission, *Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues* (2008). At http://www.hreoc.gov.au/social_justice/publications/preventing_crime/cog_disr.pdf (viewed 8 July 2011).

¹³⁰ Australian Human Rights Commission, *Submission to the Senate Community Affairs Committee Inquiry into Hearing Health in Australia* (October 2009). At http://www.humanrights.gov.au/legal/submissions/2009/20091016_hearing.html (viewed 8 July 2011).

¹³¹ Australian Human Rights Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (2004). At http://www.humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf (viewed 8 July 2011); Australian Human Rights Commission, *Immigration detention on Christmas Island* (2010). At http://www.hreoc.gov.au/human_rights/immigration/idc2010_christmas_island.pdf (viewed 8 July 2011); Australian Human Rights Commission, *Immigration detention in Darwin: summary of observations from visits to immigration detention facilities in Darwin* (2010). At http://www.hreoc.gov.au/human_rights/immigration/idc2010_darwin.pdf (viewed 8 July 2011).

¹³² Australian Human Rights Commission, *Addressing Sexual Orientation and sex and/or gender identity discrimination: consultation report* (2011), p 13. At http://www.humanrights.gov.au/human_rights/lgbti/lgbticonsult/report/SGI_2011.pdf (viewed 13 July 2011).

¹³³ WA Commissioner for Children and Young People, Report of an Inquiry into the mental health and wellbeing of children and young people in Western Australia, April 2011, at <http://www.cyp.wa.gov.au/mentalhealth.aspx?CID=40>.

¹³⁴ In the Reducing Youth Suicide in Queensland project (2009), the Queensland Commission for Children and Young People and Child Guardian identified common risk factors for suicide, a prevalence for contagion and cluster suicides in particular regions, and a significant overrepresentation of Aboriginal and Torres Strait Islander children, who were six times more likely to suicide than other Queensland children aged 10-17 years. At <http://www.cypcg.qld.gov.au/resources/rysq/index.html>.

¹³⁵ Australian Government, *Australian Institute of Health and Welfare: Australia's Health* (2010). At <http://www.aihw.gov.au/publication-detail/?id=6442468376&tab=2> (viewed 8 July 2011).

¹³⁶ RC Kessler, P Berglund, O Demler, R Jin, KR Merikangas, EE Walters, 'Lifetime prevalence and age-of-onset distributions of DSM-IV disorders in the National Comorbidity Survey Replication' (2005) 62 *Arch Gen Psychiatry* pp 593–602.

¹³⁷ Australian Bureau of Statistics, *National Survey of mental health and Wellbeing: Summary of Results* (2007). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4326.02007> (viewed July 2011).

¹³⁸ Minister for Health and Ageing, Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Mental Health and Ageing, 'Delivering national mental health reform' (Media

release, 10 May 2011). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr11-nr-nr093.htm?OpenDocument&yr=2011&moth=05> (viewed 8 July 2011).

¹³⁹ See Australian Human Rights Commission, *Social Justice Report* (2010). At http://www.humanrights.gov.au/human_rights/lgbti/lgbticonsult/report/SGL_2011.pdf (viewed 13 July 2011).

¹⁴⁰ The Queensland Commission for Children and Young People made a submission to the draft Indigenous Education Plan early in 2010. It argued, among other things, that better educational outcomes for children and young people require the local Aboriginal and Torres Strait Islander community, including children and young people, to be engaged in and enabled to share responsibility for the planning, implementation and continuing evaluation of educational services.

¹⁴¹ Australian Bureau of Statistics, *Disability: Australia* (2009). At [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/C2CB52449D58E51ACA25788100166FBC/\\$File/44460_2009.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/C2CB52449D58E51ACA25788100166FBC/$File/44460_2009.pdf) (viewed 8 July 2011).

¹⁴² The disparity between people with and without disability aged 25-44 years became more apparent, the lower the level of qualification. Of people aged 25-44 years with specific restrictions whose highest educational attainment was Year 12, 55 per cent were employed compared to 81 per cent of people with no disability. Similarly, of people with disability whose highest attainment was lower than Year 12, only 37 per cent were employed compared to 75 per cent of those with no disability: Australian Bureau of Statistics, above.

¹⁴³ Council of Australian Governments, *National Disability Strategy 2010 - 2020*, p 53. At http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Pages/default.aspx (viewed 13 July 2011).

¹⁴⁴ Council of Australian Governments, *National Disability Strategy 2010 - 2020*, Outcome Area 5 Learning and Skills, p 58. Available at http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Pages/default.aspx (viewed 13 July 2011).

¹⁴⁵ Australian Senate, *Hear Us: Inquiry into hearing health in Australia* (2010), p121. At http://www.aph.gov.au/senate/committee/clac_ctte/hearing_health/report/report.pdf (viewed 8 July 2011).

¹⁴⁶ Australian Senate, *Hear Us*, above.

¹⁴⁷ Australian Human Rights Commission, *In Our Own Words: African Australians: A review of human rights and social inclusion issues*, (2010), p 14. At <http://www.humanrights.gov.au/africanaus/review/index.html>

¹⁴⁸ *In Our Own Words*, above, p 34.

¹⁴⁹ Victorian Minister for Education, 'Coalition Government funds major increase in language education for Victorian families' (Media release, 3 May 2011). At <http://www.premier.vic.gov.au/media-centre/media-releases/767-coalition-government-funds-major-increase-in-language-education-for-victorian-families.html> (viewed 15 July 2011).

¹⁵⁰ Australian Government Attorney-General's Department, *Australia's Human Rights Framework*, 21 April 2010, p 4. At [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(689F2CCBD6DC263C912FB74B15BE8285\)-HumanRightsFramework\[1\]PDF.pdf/\\$file/HumanRightsFramework\[1\]PDF.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(689F2CCBD6DC263C912FB74B15BE8285)-HumanRightsFramework[1]PDF.pdf/$file/HumanRightsFramework[1]PDF.pdf) (viewed 8 July 2011).

¹⁵¹ Australian Government, above, p 5.

¹⁵² As of June 2011, the draft version of the general capability focused on "ethical understanding" mentions 'human rights' as one possible ethical framework: see Australian Curriculum, Assessment and Reporting Authority, *Ethical Behaviour* (2011). At <http://www.australiancurriculum.edu.au/GeneralCapabilities/Ethical-behaviour> (viewed 8 July 2011).

Significant historical human rights events are also included in the History Curriculum: see Australian Curriculum, Assessment and Reporting Authority, *History* (2011). At <http://www.australiancurriculum.edu.au/History/Curriculum/F-10> (viewed 8 July 2011). It is also anticipated that human rights will be included in the 'civics and citizenship' learning area currently under development.

¹⁵³ There is, however, a range of web-based material available for school aged students and teachers aimed at educating on human rights and discrimination. For example, the SA Equal Opportunity Commission has maintained an interactive website called EO 4 Schools, specifically aimed at school aged students and teachers: see Government of South Australia, *Equal Opportunity for Schools* (2010). At <http://www.eo4schools.net.au/>. The Australian Human Rights Commission also has

developed web-based human rights education resources for teachers, rightsED and information for students on human rights: Australian Human Rights Commission, *Education: Resources* (2011). At <http://humanrights.gov.au/education/rightsED.html>.

¹⁵⁴ The learning areas identified in the curriculum are: English, mathematics, science, history, languages, geography, the arts, health and physical education, information and communication technology, design and technology, economics, business, and civics and citizenship.

¹⁵⁵ The general capabilities and cross-curriculum priorities are integrated into the content descriptions and achievement standards for each subject to ensure they are taught within each learning area. The general capabilities currently included in the curriculum cover seven areas: literacy; numeracy; information and communication technology competence; critical and creative thinking; ethical behaviour; personal and social competence; intercultural understanding. The three cross-curriculum priorities are: Aboriginal and Torres Strait Islander histories and cultures; Asia and Australia's engagement with Asia; sustainability.

¹⁵⁶ Relevant learning areas would include English, history, geography, civics and citizenship and health and physical education.

¹⁵⁷ See, for example, the Commission's national inquiry reports: Australian Human Rights Commission, *A last resort? National Inquiry into Children in Immigration Detention* (2004). At http://humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf (viewed 8 July 2011); Human Rights and Equal Opportunity Commission, *Those who've come across the seas: Detention of unauthorised arrivals* (1998). At http://humanrights.gov.au/human_rights/immigration/seas.html (viewed 8 July 2011); Commission reports of inspections of immigration detention facilities at Australian Human Rights Commission, *Immigration Detention and Human Rights* (2011). At http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9_3 (viewed 8 July 2011); Commission reports of complaints about alleged human rights breaches in immigration detention at Australian Human Rights Commission, *Reports to the Minister under the Australian Human Rights Commission Act* (2010). At <http://humanrights.gov.au/legal/humanrightsreports/index.html> (viewed 8 July 2011). Further information about the Commission's activities relating to immigration detention is available at http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9.

¹⁵⁸ *International Covenant on Civil and Political Rights* (1966), art 9(1).

¹⁵⁹ *Convention on the Rights of the Child* (1989), art 37.

¹⁶⁰ The Commission's *National Inquiry into Children in Immigration Detention* of 2004 found that this system was fundamentally inconsistent with the Convention. See *A last resort?*, executive summary.

¹⁶¹ See Australian Human Rights Commission, 'HREOC Welcomes end of 'pacific solution'' (Media Release, 5 February 2008). At http://www.hreoc.gov.au/about/media/media_releases/2008/12_08.html (viewed 8 July 2011).

¹⁶² See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008). At <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (viewed 4 July 2011).

¹⁶³ See Minister for Immigration and Citizenship, 'Government meets commitment on community detention' (Media Release, 29 June 2011). At <http://www.minister.immi.gov.au/media/cb/2011/cb167699.htm>; Minister for Immigration and Citizenship, Doorstop Interview (Darwin, 29 June 2011). At <http://www.minister.immi.gov.au/media/cb/2011/cb167721.htm> (viewed 1 July 2011).

¹⁶⁴ See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008). At <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (viewed 8 July 2011).

¹⁶⁵ See, for example Minister for Immigration and Citizenship, 'Rudd Government committed to Christmas Island detention' (Media Release, 18 August 2009). At <http://www.minister.immi.gov.au/media/media-releases/2009/ce09074.htm> (viewed 4 July 2011); Department of Immigration and Citizenship, *Processing Irregular Maritime Arrivals, Fact Sheet 75* (2010). At <http://www.immi.gov.au/media/fact-sheets/75processing-irregular-maritime-arrivals.htm> (viewed 4 July 2011). See also Australian Human Rights Commission, *Immigration detention and offshore processing on Christmas Island* (2009). At http://www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.pdf (viewed 8 July 2011).

2011); Australian Human Rights Commission, *Immigration Detention on Christmas Island* (2010). At http://www.humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.pdf (viewed 8 July 2011).

¹⁶⁶ See Australian Human Rights Commission, *Immigration Detention and Human Rights* (2010). At http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9_3 (viewed 8 July 2011).

¹⁶⁷ Australian Human Rights Commission, *Immigration Detention at Villawood: Summary of Observations from visit to immigration detention centre at Villawood* (2011). At http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html (viewed 4 July 2011); Australian Human Rights Commission, *Immigration Detention on Christmas Island*, (2010). At http://www.hreoc.gov.au/human_rights/immigration/idc2010_christmas_island.html (viewed 4 July 2011). The Western Australian Commissioner for Children and Young People has also raised her concerns with the Minister for Immigration and Citizenship about mandatory immigration detention policy and the health and well-being of children detained in the Alternative Place of Detention (APOD) in Leonora, Western Australia. Concerns raised by the Commissioner include access to mental health services, availability of social and recreational activities and the management of child protection matters: Information provided to the Australian Human Rights Commission by the Australian Children's Commissioners and Guardians (ACCG) during consultations for this submission to the Committee on the Rights of the Child, 17 June 2011.

¹⁶⁸ *Migration Act 1958* (Cth), s 197AB. Under the Residence Determination Guidelines, children and their accompanying family members, persons who may have experienced torture or trauma, persons with significant physical or mental health concerns, persons whose cases will take a considerable period to substantively resolve, and other cases with unique or exceptional characteristics are to be given priority consideration for Community Detention: Minister for Immigration and Citizenship, *Minister's Residence Determination Power Under S. 197AB and S. 197AD of the Migration Act 1958: Guidelines* (2009), para 4.1.4.

¹⁶⁹ Australian Human Rights Commission, *Immigration Detention on Christmas Island* (2010). At http://www.hreoc.gov.au/human_rights/immigration/idc2010_christmas_island.html (viewed 4 July 2011) p. 7, 18; Australian Human Rights Commission, *Immigration Detention at Villawood: Summary of Observations from visit to immigration detention centre at Villawood* (2011). At http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html (viewed 4 July 2011) p 8, 12, 14, 20, 26, 29; Australian Human Rights Commission, *Commission welcomes expansion of community detention* (Media release, 29 June 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/56_11.html (viewed 4 July 2011).

¹⁷⁰ See Chris Bowen MP, Minister for Immigration and Citizenship, 'Government meets commitment on Community Detention' (Media Release: 29 June 2011); Minister for Immigration and Citizenship, Doorstop Interview (Darwin, 29 June 2011). At <http://www.minister.immi.gov.au/media/cb/2011/cb167721.htm> (viewed 1 July 2011).

¹⁷¹ Prime Minister, Minister for Immigration and Citizenship, 'Australia and Malaysia sign transfer deal' (Media Release: 25 July 2011). Also see the Operational Guidelines for the arrangement. At <http://www.pm.gov.au/press-office/australia-and-malaysia-sign-transfer-deal> (viewed at 25 July 2011).

¹⁷² Tony Jones, 'Children part of refugee swap: Bowen', *Lateline* (2 June 2011). At <http://www.abc.net.au/lateline/content/2011/s3234302.htm> (viewed 13 June 2011).

¹⁷³ See, for example, Australian Human Rights Commission, 'Commission raises concerns about sending asylum seekers to Malaysia' (Media Release, 9 May 2011). At http://humanrights.gov.au/about/media/media_releases/2011/38_11.html (viewed 1 July 2011).

¹⁷⁴ See the *Convention Relating to the Status of Refugees* (1951), art 33.

¹⁷⁵ See UN, *Convention on the Rights of the Child* (1989), art 22.

¹⁷⁶ Australian Human Rights Commission, *Immigration detention in Darwin: summary of observations from visits to immigration detention facilities in Darwin 2010* (2010). At http://humanrights.gov.au/human_rights/immigration/idc2010_darwin.html (viewed 8 July 2011). In 2010, the Commission expressed concerns at the number of Indonesian crew in detention in Darwin who claimed to be minors and the length of time for which they had been detained. There were 17 of these boys in detention at the time of the Commission's visit. They were aged between 11 and 17 years, and had been detained for periods ranging between three and eight months.

¹⁷⁷ By virtue of s 6 of the *Immigration (Guardianship of Children) Act 1946* (Cth), the Minister is only the guardian of every 'non-citizen child' that enters Australia. Section 4AAA of the *Immigration (Guardianship of Children) Act 1946* (Cth), defines 'non-citizen child' to be a child who is under 18;

enters Australia as a non-citizen; and intends, or is intended, to become a permanent resident of Australia.

¹⁷⁸ The Commission notes that a parliamentary inquiry into age determination legislation in 2001 recommended a number of safeguards which were not incorporated into the law. See for instance Senate Legal and Constitutional Affairs Committee, 'Inquiry into the Provisions of the *Crimes Amendment (Age Determination) Bill 2001* (Cth)' (March 2001). The Committee recommended, amongst other things, that:

- all other appropriate age determination procedures will be undertaken before a prescribed procedure is undertaken
- persons whose age cannot be accurately determined be given the benefit of the doubt and be treated as juveniles.

¹⁷⁹ Mark Dodd, 'Jakarta to Press Kevin Rudd over detained children', *The Australian*, 27 June 2011, at <http://www.theaustralian.com.au/national-affairs/jakarta-to-press-kevin-rudd-over-detained-children/story-fn59niix-1226082393940> (viewed 4 July 2011); Alana Buckley-Carr, 'Send young smugglers home, says rights group', *The West Australian*, 30 June 2011, at <http://au.news.yahoo.com/thewest/a/-/breaking/9757658/send-young-smugglers-home-says-rights-group/> (viewed 4 July 2011).

¹⁸⁰ The working group consists of the Attorney-General's Department, the Australian Federal Police, the Commonwealth Director of Public Prosecutions and Department of Immigration and Citizenship.

¹⁸¹ Letter from Attorney-General Robert McClelland to Catherine Branson, President, Australian Human Rights Commission (30 June 2011).

¹⁸² Letter from Attorney-General, above.

¹⁸³ Children in homeless families are the largest single group who seek support from the homeless service system. According to Homelessness Australia, in 2011 approximately 105,000 people will be homeless across the country. Among them are 7,483 families with children. Twelve per cent (or 12,133 people) are children under 12. Another 21 per cent (or 21,940 people) are children and young people aged 12 to 18, most of them homeless as well as estranged from their families: Homelessness Australia, *Homelessness and Children: 2011 Factsheet* (2011). At <http://www.homelessnessaustralia.org.au/site/issues.php> (viewed 14 June 2011).

¹⁸⁴ Australian Government, *The road home: a national approach to reducing homelessness* (2008). At http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Documents/the_road_home.pdf (viewed 8 July 2011).

¹⁸⁵ Australian Institute of Health and Welfare, *People turned away from government-funded specialist homelessness accommodation 2009-10* (2010). At <http://www.aihw.gov.au/publication-detail/?id=10737419235> (viewed 14 June 2011).

¹⁸⁶ The government-funded program Reconnect uses community-based early intervention services to assist young people aged 12 to 18 years who are homeless, or at risk of homelessness, and their families. See Australian Government, *Homelessness: Reconnect* (2010) <http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/reconnect/Pages/default.aspx> (viewed 8 July 2011).

¹⁸⁷ The Office of Child Safety Commissioner in Victoria has identified that young people under 16 are 'falling through the gaps' of the service system, particularly between the child protection system and the homelessness sector because of a lack of clear arrangements around shared responsibility. Through its project titled *Linking Service for Young People Under 16 and Alone*, a draft overarching policy framework has been developed that will enable a more integrated and responsive approach towards the best possible outcomes for these young people. See *The Office of the Child Safety Commissioner of Victoria* (2011). At <http://www.ocsc.vic.gov.au/> (viewed 4 July 2011).

¹⁸⁸ Australian Human Rights Commission, *Inquiry into National Homelessness Legislation: Australian Human Rights Commission Submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth* (1 September 2009). At http://www.humanrights.gov.au/legal/submissions/2009/20090901_homelessness.pdf (viewed 4 July 2011) p 1.

¹⁸⁹ Housing Minister's Conference, *Communiqué 17 June 2011* (2011). At: <http://www.communityhousing.org.au/index%20attachments/Housing%20ministers%20communiqué.pdf> (viewed 8 July 2011).

¹⁹⁰ Australian Human Rights Commission, above.

¹⁹¹ Australian Human Rights Commission, Submission to the House of Representatives Standing Committee on Family, Community Housing and Youth Inquiry into National Homelessness Legislation, 1 September 2011, para 8. At http://www.hreoc.gov.au/legal/submissions/2009/20090901_homelessness.html#fn102 (viewed 1 August 2011).

¹⁹² Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living: Mission to Australia (31 July to 15 August 2006)*, UN Doc A/HRC/4/18/Add.2 (Annex) (2007), summary, para 127. At <http://daccessdds.un.org/doc/UNDOC/GEN/G07/125/72/PDF/G0712572.pdf?OpenElement>.

¹⁹³ *Youth Justice Act 1992* (Qld) (Youth Justice Act), Schedule 4, defines a child to be in most cases a person who has not turned 17 years. The Governor in Council may also proclaim a person, who has not turned 18 years, to be a 'child' for the purposes of the Act. .

¹⁹⁴ Queensland Commission for Children and Young People Guardian, *Policy Position Paper: Removing 17 year olds from adult prisons and including them in youth justice system* (Nov 2010) p 6. At <http://www.ccyccg.qld.gov.au/pdf/publications/papers/17-year-olds-Policy-Position-Paper.pdf> (viewed 30 June 2011).

¹⁹⁵ Australian Law Reform Commission and the Australian Human Rights Commission, *Seen and heard: priority for children in the legal process*, Report No 84 (1997), paras 18.21 and 18.22; Kennedy JJ, *Commission of Review into Corrective Services in Queensland Final Report* (1998), p 126; Anti-Discrimination Commission Queensland, *Women in prison: A report by the Anti-Discrimination Commission Queensland* (2006), p 117; at http://www.adcq.qld.gov.au/pubs/WIP_report.pdf (viewed 30 June 2011).

¹⁹⁶ Section 18(2), *Queensland Corrective Services Act 2006* (Qld) provides that a prisoner who is under 18 years of age must be kept apart from other prisoners who are 18 years or older unless it is in the prisoners best interests not to be kept apart.

¹⁹⁷ Anti-Discrimination Commission Queensland, *Women in prison*, p 29.

¹⁹⁸ Anti-Discrimination Commission Queensland, *Women in prison*, p 116.

¹⁹⁹ Anti-Discrimination Commission Queensland, *Women in prison*, p 117.

²⁰⁰ Section 6(1) of the Youth Justice Act, which provides that the Governor may by regulation fix a day after which persons up to the age of 18 will be dealt with under the juvenile justice system, may be understood to reflect a parliamentary intention that such a regulation should be made within a reasonable time. However, more than 18 years later, no regulation has been made under the Act.

²⁰¹ Australian Government, Fourth Report under the Convention on the Rights of the Child, October 2008, para 295.

²⁰² ACT Human Rights Office, *Human Rights Audit of Quamby Youth Detention Centre* (2005) At http://www.google.com.au/#hl=en&q=quamby+youth+detention+centre+audit&oq=quamby+youth+detention+centre+audit&aq=f&aql=&aql=f&gs_sm=e&gs_upl=105601150821135133101251251013191206410.14.318&bav=on.2,or.r_gc.r_pw.&fp=70ae6720f3e6a41b&biw=1920&bih=1053 (viewed 8 July 2011).

²⁰³ ACT Human Rights Commission, *The ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the Act Human Rights Commission*, July 2011. At http://www.hrc.act.gov.au/news.php/article/art_id/33 (viewed 1 August 2011).

²⁰⁴ There are some mechanisms for monitoring conditions in juveniles detention centres in other states and territories, aside from the ACT. For example, the Queensland Commission for Children and Young People and Child Guardian has a legislated mandate to visit children and young people in state care and detention to listen to their concerns and ensure that they are safe. It fulfils this through a Community Visitor Program.

²⁰⁵ Australian Institute of Criminology, *Juvenile Detention Statistics*, at http://www.aic.gov.au/statistics/criminaljustice/juveniles_detention.aspx (viewed 20 June 2011).

²⁰⁶ K Richard, L Rosevear, R Gilbert, *Promising Interventions for Reducing Indigenous Juvenile Offending*, Indigenous Justice Clearinghouse, Brief 10 (2011).

²⁰⁷ *Young Offender Act 1994* (WA), ss 124-130.

²⁰⁸ The Sentencing Advisory Council has been requested by the Victorian Attorney-General to provide advice by September 2011 on a scheme of Statutory Minimum Sentences for offences of gross violence. See <http://www.sentencingcouncil.vic.gov.au/page/our-work/projects/gross-violence>.

²⁰⁹ Convention on the Rights of the Child, art 37.

²¹⁰ This was also one of the recommendations of the Australian Children's Commissioners and Guardians (ACCG) to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into High Levels of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System, in February 2010. The ACCG submitted that the overrepresentation of Indigenous young people in the youth justice system will require strategic approaches to prevention and early intervention across the continuum of child and youth development, as well as engaging Indigenous communities.

²¹¹ Mental Health Council of Australia, Brain and Mind Research Institute and Human Rights and Equal Opportunity Commission, *Not for service: Experiences of injustice and despair in mental health care in Australia* (2005). At http://www.hreoc.gov.au/disability_rights/notforservice/index.html (viewed 8 July 2011); Phillip French, *Disabled Justice: The barriers to justice for persons with disability in Queensland* (2007).

²¹² Council of Australian Governments, *National Disability Strategy 2010 - 2020*, Outcome Area 2 Rights protection, justice and legislation, page 41. Available at http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Pages/default.aspx (viewed 13 July 2011).

²¹³ Australian Human Rights Commission, *Submission to the Senate Community Affairs Committee Inquiry into Hearing Health in Australia* (October 2009). At http://www.humanrights.gov.au/legal/submissions/2009/20091016_hearing.html (viewed 8 July 2011); Australian Human Rights Commission, *Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues* (2008). At http://www.hreoc.gov.au/social_justice/publications/preventing_crime/index.html (viewed 8 July 2011).

²¹⁴ House of Representatives, *Doing Time - Time for Doing: Indigenous youth in the criminal justice system* (2011), Recommendations 10-15. At <http://www.aph.gov.au/house/committee/atsia/sentencing/report.htm> (viewed 8 July 2011).

²¹⁵ Australian Human Rights Commission, *In Our Own Words: African Australians: A review of human rights and social inclusion issues* (2010), p 29. At http://www.humanrights.gov.au/africanaus/review/in_our_own_words.pdf (viewed 8 July 2011); Australian Human Rights Commission, *Unlocking Doors: Muslim communities and police tackling racial and religious discrimination together* (2007). At http://www.hreoc.gov.au/racial_discrimination/unlocking_doors/report.html (viewed 8 July 2011). The Victorian Equal Opportunity & Human Rights Commission has received similar reports from African Australian communities. See VEOHRC, *Rights of passage: The experiences of Australian-Sudanese young people* (2008), p30; and *Rites of Passage – Two Years On* (2010). At http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&layout=item&id=1165&Itemid=654%22%20target=%22_self (viewed 8 July 2011).

²¹⁶ *In Our Own Words* (2008), p 30.

²¹⁷ Racial profiling is the practice of police and other law enforcement officials relying on race, colour, descent or national or ethnic origin as a basis for subjecting persons to investigations.

²¹⁸ R Harvey, R Hogg and M Bull, *Building Trust: Working with Muslim communities in Australia: a review of the Community Policing Partnership Project*, Australian Research Council Centre of Excellence in Policing and Security (2010). At http://www.hreoc.gov.au/racial_discrimination/publications/police/index.html (viewed 8 July 2011).

²¹⁹ Australian Human Rights Commission, *Protection of the rights of the child in the context of migration* (2010). At http://www.humanrights.gov.au/legal/submissions/2010/201004_OHCHR_child_migration.pdf (viewed 15 July 2011).

²²⁰ This was also a recommendation made by Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in his 2010 report on Australia: Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/ (2010). At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010).