



**Addendum**  
**to**  
**“Listen to Children”**  
**the Child Rights NGO Report for Australia**

Providing update material for the period  
May 2011 to May 2012

Child Rights Taskforce

This report to the United Nations Committee on the Rights of the Child (Committee) has been project managed by the National Children's and Youth Law Centre (NCYLC) and prepared by the Child Rights Taskforce, a coalition of organisations committed to the protection and promotion of child rights in Australia. The co-convenors of the Taskforce are NCYLC\* and UNICEF Australia\*\*.

The Child Rights Taskforce thanks the following organisations for their contributions in the preparation of this addendum.

- National Children's and Youth Law Centre
- UNICEF Australia
- Save the Children Australia
- Human Rights Law Centre
- National Aboriginal and Torres Strait Islander Legal Services
- Secretariat of National Aboriginal and Islander Child Care
- King & Wood Mallesons
- Centre for Excellence in Child and Family Welfare Inc
- Australian Youth Affairs Coalition
- NSW Young Lawyers Human Rights Committee
- People with Disability Australia Incorporated

**This publication does not contain legal advice and you should seek professional advice before taking any action based on its contents. Children and young people and those advocating in their interests can seek legal information and advice via the website, 'Lawstuff', at [www.lawstuff.org.au](http://www.lawstuff.org.au).**

Published by the Child Rights Taskforce Steering Committee (May 2012).

Copies of this report and more information are available to download at: [www.childrights.org.au](http://www.childrights.org.au)

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

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

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# I Introduction

The original “*Listen to Children*” Report (*Listen to Children*) was provided to the United Nations Committee on the Rights of the Child in June 2011 with information current at 6 May 2011. The report was project managed by the National Children’s and Youth Law Centre (NCYLC) and prepared by the Child Rights Taskforce, a coalition of organisations committed to the protection and promotion of child rights in Australia.

**This publication is intended to be used to update the Committee on developments in the issues addressed in the original report since its publication in the period from May 2011 to May 2012.**

The format of the Addendum follows that of the original report and should be read in conjunction with the original document.

Copies of the original report and more information are available to download at: [www.childrights.org.au](http://www.childrights.org.au)

During the period since the publication of *Listen to Children*, the Australian Government responded to its first Universal Periodic Review<sup>1</sup> and the United Nations High Commissioner for Human Rights visited Australia<sup>2</sup>.

Both these issues serve to highlight both the strengths and weaknesses of Australia’s record of protecting the human rights of its children.

Despite accepting most of the recommendations of the UN Human Rights Council, the Australian Federal Government maintained a commitment to its current approach to the treatment of asylum seekers using mandatory and indefinite detention. This attracted further criticism from the UN High Commissioner who also reiterated many of the concerns expressed by the Special Rapporteur on Indigenous Peoples on the lack of effective consultation with Aboriginal communities particularly in the implementation of its Northern Territory Intervention. These concerns have not been addressed in the Government’s consultation process for its 10-year proposal for the next phase of the Intervention: Stronger Futures (and related) Bills for the Northern Territory, legislation which is in the process of being passed through Parliament.

While the Australian Federal Government has embarked upon consultations for the development of a National Action Plan on Human Rights<sup>3</sup>, there has been no progress on most of the issues raised in the original “Listen to Children” report. Australia is yet to effectively incorporate human rights into policy and legislative frameworks to nurture and support Australian children.

This Addendum notes developments and further evidence in support of the recommendations of *Listen to Children*.

## **References to ‘Aboriginal and Torres Strait Islander children’ and ‘Aboriginal children’**

Throughout this report, Aboriginal and Torres Strait Islander children are referred to as ‘Aboriginal children’. The authors acknowledge the diversity in culture, language, kinship structures and ways of life within Aboriginal and Torres Strait Islander peoples, and recognise that Aboriginal peoples and Torres Strait Islander peoples retain their distinct cultures irrespective of whether they live in urban, rural, regional or remote parts of the country.<sup>4</sup>

# Theme I – General Measures of Implementation

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

### 1.1 National Children’s Commissioner / Independent Monitoring

In June 2011, the Australian Federal Government provided their response to the UN Human Rights Council’s Periodic Review of Australia. The response included a commitment to the role for a National Children’s Commissioner. This commitment took a step closer to realisation with the announcement in late April 2012 of the establishment of the role within the Australian Human Rights Commission. Over the months leading up to this announcement, there have been strong representations made by the NGO sector to the Government on the need and nature of the required role.<sup>5</sup>

These representations included the presentation of an NGO Options Paper *A National Commissioner for Australia’s Children: Role, Powers and Functions of the Office of the National Children’s Commissioner Australia*<sup>6</sup> (NGO Options Paper) that reflected broad areas of consensus from the key child welfare, child rights and child protection organisations involved.<sup>7</sup>

The NGO Options Paper set out a list of key principles required for an effective and independent National Children’s Commissioner who meets the leadership, advocacy and monitoring capacities required to safeguard the rights of Australia’s children.<sup>8</sup> These principles include effective independence from government, the meaningful involvement of children and young people in all aspects of the Commissioner’s work, a mandate based on child rights principles and the prioritisation of vulnerable groups of children and young people.<sup>9</sup>

At the time of writing, the detail of the proposed legislative mandate for the role had not been provided so the extent that it meets the key principles is yet to be determined. The Federal Government Budget papers on 8 May 2012 indicated a comparatively low level of resources for the role (\$3.5 million over 4 years). Most of the State and Territory Commissioners are significantly better resourced. Leading advocates in the NGO sector are encouraging government to provide the role with increased resources as it is established, so that the role may be effective. If such increases are not afforded there is concern that the role will be in name only, without the powers to be effective.

During the NGO sector consultations in late 2011 and early 2012, an additional issue for attention has been identified. That is a call for the establishment of a Deputy Children’s Commissioner role that is dedicated in its focus to the issues for Aboriginal and Torres Strait Islander children.<sup>10</sup>

### 1.2 Policy and planning

The 2011 Australian Youth Delegate to the UN Commission on the Status of Women, Catrina Stanfield, and the 2009 Australian Youth Representative to the UN, Chris Varney, have issued a call for the development of a National Participation Principles to encourage and support the involvement of children in policy development. This call is supported by research undertaken by the Western Australian Commissioner for Children and Young People.<sup>11</sup>

In addition an independent non-government initiative has been launched by the Australian Research Alliance for Children and Youth called The Nest – as a collaborative project to improve the health, wellbeing and life opportunities of all young Australians.<sup>12</sup>

This is intended to include consultation with children, young people and the community, collating existing agendas, identifying policy gaps, establishing indicators and targets for children and youth wellbeing, and reviewing the evidence on what works in reaching targets.<sup>13</sup>

### 1.3 Data and monitoring

The Australian Bureau of Statistics has announced its intention to publish a new series of statistics which focuses on Aboriginal children.<sup>14</sup> The announcement acknowledges that only in 2008 did the National Aboriginal and Torres Strait Islander Social Survey begin to collect information about children

aged 0–14 years, despite the fact that children aged 0–14 years, and youth aged 15–24 years, make up over half of the total Aboriginal population.<sup>15</sup>

#### **1.4 Development assistance**

In mid 2011, the Australian Federal Government announced its response to the Independent Review of Aid Effectiveness.<sup>16</sup> Whilst the response committed to an increase in funding and in governance, it still lacks a commitment to a consistent child rights approach in the funding allocated to provide benefits to children.

In the Federal Budget announced in May 2012, the Australian Government revised its previous commitment to increase aid to 0.5% of Gross National Income by 2015 and pushed that commitment out to 2016/2017. The Federal Opposition which had previously supported the commitment indicated that its own commitment to reaching the goal of 0.5% would not have a fixed timeframe.

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## **2 Making the Convention known (Article 42 and 44)**

The Australian Federal Government has published a *Baseline Study*<sup>17</sup> as part of its commitment to developing a National Human Rights Action Plan. The Study was developed in consultation with State and Territory Governments to outline future action for the promotion and protection of human rights.<sup>18</sup>

At the date of writing, there is no national resourced plan for making the Convention known and understood by the Australian community.

## **Theme II – Definition of the Child**

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### **3 Definition of the child (Article 1)**

In June 2011, it was reported that three Indonesian boys were being held in an Australian adult jail on charges of people smuggling. The authorities were relying on wrist x-rays as evidence that the boys were adults despite the production of birth certificates and affidavits asserting that the boys were under 18 years of age.<sup>19</sup> This process is currently the subject of an inquiry by the Australian Human Rights Commission.

Despite a change in Government in Queensland, there has been no change in the Government's refusal to implement the regulations in Queensland to ensure 17 year olds are no longer treated as adults when in contact with the criminal justice system.

## **Theme III – General Principles**

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### **4 Principle of non-discrimination (Article 2)**

The Australian Federal Government has appointed the Hon Susan Ryan AO as Australia's first full-time Age Discrimination Commissioner, who will fulfil the role of "a dedicated advocate not only for older Australians, but also young people who might be affected by age discrimination."<sup>20</sup> Despite this designation, the Age Discrimination Commissioner's role has so far focused almost entirely (and explicitly) on age discrimination with regards to the older population.<sup>21</sup> According to the Age Discrimination Commissioner, "the most prevalent damage is done by discrimination against older people."<sup>22</sup>

## 4.1 Discrimination against Aboriginal children across all areas

### a) Aboriginal disadvantage and the experience of racism

The Aboriginal and Torres Strait Islander Social Justice Commissioner has called on the Australian Federal Government to maintain its funding commitments under the national *Closing the Gap* strategy and to increase the involvement of Aboriginal peoples in policy development and program delivery.<sup>23</sup>

The Australian Federal Government's annual report on the *Closing the Gap* strategy released in February 2012 (Closing the Gap Report) states that infant mortality rates are continuing to decline but that there is a need to maintain this positive trend through continued expansion of preventive care and child and maternal health services.<sup>24</sup> There has been no change in the gap in the proportion of low birth weight babies to Aboriginal and non-Aboriginal mothers, an increase in the gap in hospitalisation rates for Aboriginal children aged 0-4 years and consistently high rate of vulnerability of five year old Aboriginal children in the domain of language and cognitive skills, 2.4 times greater than the proportion for non-Aboriginal children, with the rate increasing in remote areas.<sup>25</sup>

The Closing the Gap Report indicates that inconsistent progress is being made regarding literacy and numeracy, with only 3 years of progress reported since 2008. There is no comprehensive source of data on Indigenous preschool participation and thus it is difficult to draw conclusions about early childhood education target.<sup>26</sup> With regard to education attainment levels, retention rates of Aboriginal students have shown improvement, but further progress is needed to ensure national targets are met.<sup>27</sup> The gap in the substantiation rate of child abuse and neglect for Aboriginal children continues to escalate, increasing from 7 times the rate for non-Aboriginal children (rates of 37.1 and 5 per 1000 children respectively) in 2009-2010<sup>28</sup> to almost 8 (rates of 34.6 and 4.5 per 1000 children respectively) the subsequent year.<sup>29</sup> The rate of Aboriginal children in out-of-home care has also slightly risen and remains at crisis level at 10 times the rate of non-Indigenous children (2010 rate of 48.4 and 5.0 per 1000 children respectively to a 2011 rate of 51.7 and 5.1 per 10000 children respectively).<sup>30</sup>

Comparative with non-Aboriginal children, the findings in all areas remain poor. While the Aboriginal and Torres Strait Islander Social Justice Commissioner has emphasised the intergenerational nature of the programs in action,<sup>31</sup> significant improvements could be supported by increased engagement of Aboriginal participation in the development, implementation and review of strategies and programs designed to achieve the Closing the Gap outcomes. Recent state, federal and international reports have highlighted the need for greater decision-making power by Aboriginal people over the design and delivery of government services in their communities.<sup>32</sup>

The Government continues to direct insufficient focus towards the Safe Communities aspect of the Closing the Gap Strategy. The Safe Communities Building Block is the key area under which the chronic over-representation of Aboriginal peoples, including children, within the criminal justice system is meant to be addressed. Action in this area is critical to ensuring that Aboriginal peoples, including children, have equal access to justice, equal treatment before the law and enjoy the benefits of living in safer communities.

However, despite a high level Government inquiry in June 2011 finding that the over-representation of Aboriginal children within the criminal justice system was a national crisis<sup>33</sup> and that the only way to effectively make progress under the Safe Communities Building Block was to develop a National Partnership Agreement dedicated to improving Aboriginal justice outcomes,<sup>34</sup> the Government has failed to develop such. Instead, the Government has announced that they will develop a Safe Communities Strategy, which unlike the National Partnership Agreements that exist under all the other Closing the Gap Building Blocks, will not require any concrete commitment of funding or mandate any compulsory action by governments in Australia. Justifications offered by the Government that there is simply no funding available for a National Partnership Agreement are inadequate, especially given the fact that the Australian Children's Commissioner and Guardians, in given evidence to the inquiry, advised that it will be impossible to meet the other Closing the Gap targets around health, education and employment without also addressing the high level of Aboriginal imprisonment which compounds individual and community disadvantage.<sup>35</sup>

Also recommended by the inquiry was the development of justice targets for incorporation into the Closing the Gap Strategy. The Government is still considering this recommendation but the Taskforce would encourage the Government to implement this recommendation.

**A key recommendation for the Australian Government is to establish and resource an Aboriginal and Torres Strait Islander Steering Group to inform the development, planning, implementation and review of each 'Closing the Gap' target. This needs to include a specific group focused on child protection, development and well-being.**

The December 2012, the Prime Minister, Julia Gillard, established an Expert Panel on Indigenous Constitutional Recognition.<sup>36</sup> The Australian Federal Government, the Coalition, the Australian Greens and the Independent members of parliament all support recognising Aboriginal and Torres Strait Islander Australians in the Constitution.<sup>37</sup> The Expert Panel released their Final Report on 19 January 2012. The Australian Federal Government is currently considering the Report.<sup>38</sup>

In August 2011, Amnesty International released a report recommending the Australian Federal Government and the Northern Territory Government give greater recognition and protection for Aboriginal people's rights to land, culture, informed consent and adequate housing.<sup>39</sup>

#### **b) Implementation of the Northern Territory Intervention**

The UN High Commissioner for Human Rights has added her voice to criticisms of the lack of appropriate justification of the *Northern Territory Intervention's* special measures.

The Australian Federal Government has introduced legislation into parliament that will repeal and replace the current legislation governing the *Northern Territory Intervention*, with most of the current measures expiring in August 2012.

The *Stronger Futures in the Northern Territory Bill*, and the supporting legislation, were drafted after consultation with Aboriginal people but there remain concerns that the consultation process was insufficient in relation to the scope and depth of the issues under consideration, particularly given the proposed length of time of the new measures<sup>40</sup> and that aspects of the new framework will indirectly have a disproportionate effect on Aboriginal people. In particular, it proposes the mandatory suspension of welfare payments if a child fails to comply with a school attendance compliance notice.<sup>41</sup> [The Taskforce] supports the Australian Human Rights Commission's contention that school attendance would be better addressed through a rights-based approach – improving education infrastructure (especially in rural and remote areas); increasing engagement with parents instead of punishment; ensuring cultural competence of schools, in particular concerning local languages and Indigenous staff; and, providing methods of teaching that Aboriginal and Torres Strait Islander students can relate to.<sup>42</sup>

#### **c) Discrimination in migrant and ethnic communities**

The Australian Federal Government released a new multicultural policy, *The People of Australia*, on 16 February 2011.<sup>43</sup> Under this policy the Australian Government establish a new independent body, the Australian Multicultural Council (AMC), to replace the current Australian Multicultural Advisory Council. The AMC was officially launched on 22 August 2011. The AMC is a permanent and independent bipartisan body that can advise and consult on policies and emerging issues to inform a national multicultural Australian strategy.

The National Action Plan to Build on Social Cohesion, Harmony and Security commenced in 2005 as a whole-of-government initiative. As of 1 July 2010 it appears the Australian Government concluded the program.<sup>44</sup>

Under *The People of Australia* policy, a new national partnership was to be established to develop and implement a comprehensive National Anti-Racism Strategy for Australia. The partnership consists of the Department of Immigration and Citizenship, the Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs, the AMC, the Australian Human Rights Commission, the National Congress of Australia's First Peoples and the Federation of Ethnic Community Councils of Australia. The Strategy is expected to be launched in July 2012 with implementation of the strategy rolled out over three years, 2012-2015.<sup>45</sup>



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## **5 Principles of best interests of the child (Article 3)**

### **5.1 Family law**

The Family Law Amendment (Family Violence) Bill 2010 has not yet been passed by the Australian Federal Parliament. The Bill is supported by research that suggest that the current formula of 'best interests' contained in the *Family Law Act 1975* (Cth) has been ineffective in protecting children from family violence.

Under the *Family Law Act 1975* (Cth), there is still no requirement for matters involving children which are decided without resort to the courts, to be dealt with by dispute resolution practitioners and family support services that are child-centred or child inclusive.

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

The Queensland Commissioner for Children and Young People has called for an increased focus on the role parents and communities can play in the education of young people about risk taking and the risks they face on entering adulthood. On behalf of the Australian and New Zealand Child Death Review and Prevention Group, the Commissioner stressed the importance of universal resilience-building activities in schools for children aged 9-14 years.<sup>46</sup>

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

We commend the work of the Western Australian Commissioner for Children and Young People who is regularly releasing Policy Briefs that set out the views of children and young people on issues raised by children and young people. These Policy Briefs have addressed topics such as family, friends, education, safety, decision making, culture, bullying and drugs<sup>47</sup>.

The work of the Commission for Children and Young People and Child Guardian (Queensland) is welcomed, having produced the "Views of Young People in Detention Centres 2011" survey (the third of its kind), with the "Views of Young People in Residential Care 2012" survey forthcoming.<sup>48</sup>

A recent example which highlights, at all levels of government, the absence of children and young people views on matters directly affecting them is the Parliament of Tasmania Select Committee on Child Protection's Final Report (2011). The inquiry, which received 47 submissions, failed to include the views of those at the heart of the child protection system – children and young people.<sup>49</sup> Research indicates that the structures, agendas and processes of Inquiries such as this one are intrinsically adult-centred, thereby limiting the inclusion of children and young people. Change in the orientation, perspective and practice of such Inquiries is recommended to allow the voices of children and young people to be heard.<sup>50</sup>

## **Theme IV – Civil Rights and Freedoms**

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## **8 Preservation of identity (Article 7 and Article 8)**

### **8.1 Recognition of Aboriginal identity**

The Aboriginal and Torres Strait Islander Social Justice Commissioner has called on greater recognition of Aboriginal culture and its value as knowledge and as the oldest living culture in human history. He noted Article 11 of the UN's Declaration on the Rights of Indigenous Peoples which acknowledges the right of Aboriginal peoples to practice and revitalise their cultural traditions and customs<sup>51</sup>.

The alarming levels of removal of Aboriginal children from their homes and their culture remain a critical issue of concern requiring greater Government attention. This is dealt with in greater detail under section 16 below.

It has been reported that Aboriginal youth in remote areas who speak an Indigenous language are less likely to engage in high risk alcohol consumption and illicit substance use, than those who did not speak an Indigenous language.<sup>52</sup> They were also less likely to report being a victim of physical violence. In 2008, 47 per cent of all Aboriginal youth (aged 15–24 years) in remote areas spoke an Indigenous language.<sup>53</sup>

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## **9 Freedom of expression (Article 13)**

### **10 Access to appropriate information (Article 17)**

In June 2011, the Australian Parliament Joint Select Committee on Cyber-Safety tabled its report on the inquiry into cyber-safety.<sup>54</sup> Although the Report does not use a child rights approach, it does consider the views and interests of children and young people.<sup>55</sup> The Report noted that “younger generations not only hold the key to their own safety, but also that their knowledge and risk management strategies are frequently undervalued.”<sup>56</sup>

The Youth Advisory Group on Cyber Safety is now accessible to any school in Australia and membership has doubled from last year.<sup>57</sup> The Youth Advisory Group on Cyber Safety provides primary and secondary students the opportunity to provide cyber safety advice directly to the Australian Federal Government. The project should be commended for allowing young people to have their voices heard in matters that directly affect them.<sup>58</sup>

Mandatory ISP filtering remains part of Australian Federal Government’s policy, with a review on Refused Classification material expected to be handed down soon.<sup>59</sup>

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## **11 Freedom of association and peaceful assembly (Article 15)**

A Victorian University project undertaken in collaboration with the Victoria State Police from the Brimbank region has produced a valuable report with suggestions for improving relations between police and young people from ethnic communities.<sup>60</sup>

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## **12 Protection of privacy (Articles 16 and 40)**

The Australian Federal Government’s draft legislative changes, in response to the Australian Law Reform Commission’s privacy inquiry, are still being considered in stages by the Senate Finance and Administration Committee.<sup>61</sup> Currently only two of the four stages have been released for public consultation and Committee scrutiny.<sup>62</sup>

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## 13 Freedom from torture (Article 37)

We commend the Australian Government on taking steps towards ratification of the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT). In early 2012 the Government commissioned and released a National Interest Analysis regarding ratification of the OPCAT which found that there would be no significant negative impacts in ratifying the OPCAT and that in fact there would be numerous social and economic benefits in doing so. The issue of ratification has now been referred to the Joint Standing Committee on Treaties and it is the Taskforce's hope that they will recommend immediate ratification to the Government.

### 13.1 Bullying

The Taskforce welcomes the Western Australian Commissioner for Children and Young People Policy Brief which sets out the views of children about bullying.<sup>63</sup> The Policy Brief reports back on the views of children and young people in Western Australia and notes strategies to overcome bullying.

In 2011, the South Australian Government commissioned the Cossey Report *Review of Procedures and Processes in Department for Education & Child Development Related to Bullying and Violence in Schools*.<sup>64</sup> The Report makes 14 recommendations which focus on strengthening procedures where incidents of violence occur, in particular the need for proper police involvement and raising the profile of bullying policies in schools.<sup>65</sup> The South Australian Department of Education and Child Service's Response to the Report<sup>66</sup> supported most of the recommendations although significant progress towards implementation has yet to be achieved.

The Victorian Government has enacted legislation to extend the offence of stalking (which carries a maximum penalty of 10 years imprisonment) to provide more protection for serious bullying by including conduct such as making threats to the victim; using abusive or offensive words to or in the presence of the victim; performing abusive or offensive acts in the presence of the victim; or directing abusive or offensive acts towards the victim.<sup>67</sup>

The Taskforce recommends that uniform model legislation is developed to extend and create national consistency in the area is recommended, but care must be taken to ensure the offence does not become overly inclusive and criminalise behaviour unnecessarily.

## Theme V – Family Environment and Alternative Care

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### 14 Parental guidance and responsibilities (Articles 5 and 18)

A decision in May 2011 by the Victorian State Government to withdraw funding for occasional or respite child care has exposed the lack of effective coordination and collaboration between [all levels of government] to provide appropriate family support programs.<sup>68</sup> This is notwithstanding a commitment made by the Council of Australian Governments in 2009 to a strategy to ensure quality child care.<sup>69</sup>

The Department of Communities within the Queensland Government is trialling the 'Helping Out Families Initiative' and the role of its Aboriginal Support Services has been extended to support families in preventing ongoing contact with the child protection system.<sup>70</sup> Prevention and Intensive Family Support services by Aboriginal services are being trialled in a number of states, such as Victoria and NSW, which require support and expansion across other states and territories.

In partnership with non-government sector and Aboriginal communities, the Queensland government has created a blueprint for reducing the over-representation of Aboriginal children in Queensland's child protection system.<sup>71</sup> This is a significant and important initiative but must not stay in the theoretical: attention to across-Government implementation is required urgently. An important agreement has also been agreed in NSW for the transfer of out of home care services to community controlled organisations over a decade through facilitated partnerships between mainstream service providers and Aboriginal communities and organisations.

In October 2011, the Australian Federal Government and State and Territory Governments agreed to support the implementation of a national collaboration framework for family support services<sup>72</sup> which aims to deliver increased, accessible and co-ordinated family support services providing early intervention services to vulnerable children, families and individuals.<sup>73</sup>

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## 15 Addressing abuse and neglect (Article 19 and 39)

### 15.1 Preventing abuse and neglect

The Australian Federal Government released its first annual report on the *National Framework for Protecting Australia's Children (2009–2020)* in March 2012.<sup>74</sup> The Report highlights the progress the Australian Government has made in relation to the priority areas that Framework addresses.

The Framework is set for the period of 2009 to 2020, and broadly seeks to ensure that Australia's children and young people are safe and well. It is supported by three-year action plans that identify specific actions, responsibilities and timeframes for implementation. The Framework is closely linked with the *National Plan to Reduce Violence Against Women and their Children 2010-2022*.

The first action plan '*Implementing the first three-year action plan, 2009-2012*' outlines the national priorities for the first three years which are:<sup>75</sup>

- Joining up service delivery among the different jurisdictions;
- Closing the gap for Aboriginal children;
- Seeing early warning signs of abuse and neglect and taking action;
- Improving support for carers;
- Developing National Standards for Out of Home Care;
- Building capacity and expertise;
- Enhancing the evidence base;
- Filling the research gaps;
- Transitioning to independence;
- Responding to sexual abuse;
- Advocating nationally for children and young people; and
- Sharing information.

The Australian Federal Government measures its progress by examining four broad indicators:<sup>76</sup>

- National trends in the key aspects of children's health and development indicating their wellbeing;
- Trends in hospital admissions and emergency department visits for neglect and injuries to children under three years of age;
- Trends in substantiated child protection cases; and
- Trends in the number of children in out of home care.

The Framework is reviewed and monitored by the Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children (NGO Coalition). The NGO Coalition consists of 100 non-government organisations. The NGO Coalition has reported on the first three years of the plans and comments:

"As evidenced by the latest national figures (Australian Institute of Health and Welfare, 2012), Australia is yet to see clear signs of a turn-around in rates of child abuse and neglect...Some distance has been travelled in the first three-year action plan under the National Framework, building on the momentum generated in the preceding decade. The next action plan needs to start showing—and be seen to show—clear and substantial signs of improvement in the situation for children and young people at risk of, or experiencing, abuse and neglect."<sup>77</sup>

In June 2011, the NGO Coalition met with the responsible Federal Ministers and called for all the current national priority projects which were set out under the first three-year action plan for the

Framework to be fully implemented, and for greater emphasis on early intervention should be given under the next three action plan.

The meeting also raised the need to better address issues for children with disability and children from culturally and linguistically diverse groups, siblings of children with a disability or chronic illness, inter-generational trauma, including amongst Aboriginal peoples, teenage parents, child sexual abuse and exploitation, and housing and homelessness.

The recommendations to this section have been revised to state:

**That Australia takes all necessary steps to ensure that its laws are uniform and provide protection for children from violence (including by ensuring that corporal punishment cannot be used as a defence to assault).**

**That Australia ensure that the National Framework for Protecting Australia's Children and the National Plan to Reduce Violence Against Women and Children generate complementary and coordinated approaches that respect the rights of children and women.'**

**That Australia support prevention through a national review of best practice policy and programmes that prioritise and support positive reunification of children with families at the various stages of child protection decision-making, including through intensive family support services.**

**That Australian develop a National Partnership Agreement in relation to progressing the Closing the Gap plan for Aboriginal and Torres Strait Islander children and their families in the context of the National Framework for the Protection of Australia's Children 2009 – 2020.**

Additionally, the recently released Cummins Report into child protection in Victoria has found that nearly one in four children born in 2011 will be the subject of at least one welfare protection report by the time they reach 18 years of age unless current measures to deal with abuse and neglect are not immediately reviewed.<sup>78</sup> The substantial differences in state and territories spending on child protection measures illustrates that a national framework is required to ensure that the right of children to be free from abuse is made a national priority.

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## **16 Separation from family (Article 9, 10 and 20)**

While the Aboriginal Child Placement Principle is embedded in legislation and policy, definitions vary in strength and it remains poorly implemented across jurisdictions. The Queensland Commission for Children and Young People reported recently that child protection workers could only demonstrate consideration of the hierarchy of placement options in 26 per cent of cases; complete compliance with all steps in 15 per cent of cases consultation with Aboriginal agencies in only 62 per cent of cases, despite the legislative requirement to do so.<sup>79</sup> In many other jurisdictions there is a lack of clear data on compliance with the Principle, and a lack of effective compliance mechanisms. As a result, a large number of Aboriginal children continue to be dislocated from family and culture, exacerbating the inter-generational effects of the Stolen Generations.

Additional recommendations for this section are:

**That Australia develops a national strategy for the full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, consistent with prior recommendations from the UN Committee on the Rights of the Child.**

**That Australia include more detailed data on compliance with the Aboriginal and Torres Strait Islander Child Placement Principle in child protection data collected and reported through the Australian Institute of Health and Welfare, including the completion and implementation of cultural care plans**

**That Australia ensure that law and policy in each jurisdiction requires that every Aboriginal and Torres Strait Islander child in out-of-home care has a cultural care plan that it is enforceable. This could operate as a strategy to implement standard 10 of the national out-of-home care standards.**

## **16.1 Transition from Care**

In *Listen to Children* the inadequacies of the system for transitioning young people from care was noted. A recent study conducted in 2011 found that 68 per cent of young people reported that they did not have a transition or leaving care plan. It is important to note that a study conducted in 2009, found that over 30 per cent of young people were homeless in their first year of leaving care, over 28 per cent were unemployed, and a higher than average amount of the girls were parents at a younger age than the general population. These statistics show the importance of supporting young people as they leave care to be independent and to be able to successfully support themselves post care.

In October 2011, the *Transitioning from out-of-home care to independence: A Nationally Consistent Approach to Planning* was agreed by Ministers at the Standing Council on Community, Housing and Disability Services. This is to be commended for its holistic approach which has as a core element that the participants in the system be included in the process. Furthermore, it recognises that planning for the transition from care should commence at no later than 15 years, with support necessary up to 25 years.<sup>80</sup> It should also be commended for developing a national approach, bringing consistency to the process of transition.

In March 2012, the Australian Federal Government released a Good Practice Guide for supporting young people transitioning from out-of-home care to independent living situations.<sup>81</sup> The guide promotes addressing the needs of young people across a wide range of life domains including health, education, financial security and social relationships.<sup>82</sup>

Aboriginal children continue to be significantly over-represented in all child protection systems in Australia, in particular in regards to rates of those being placed in out-of-home care. Given the high rates of Aboriginal and Torres Strait Islander children in out of home care it is important to ensure that such placements are as culturally appropriate as possible. In response to this issue, in its recently handed down Final Report from the Protecting Victoria's Vulnerable Children Inquiry recommended the transfer of guardianship responsibilities to Aboriginal communities and the transfer of existing out-of-home care placements for Aboriginal children and young people from mainstream agencies to Aboriginal community controlled organisations. This is a strategy which should be explored throughout all Australian Jurisdictions.

In addition, despite wide spread recognition that Aboriginal children are over-represented in the child protection system at an unacceptable rate, no mention was made of this issue and no commitment for action to reduce such over-representation was made by the Government in its Draft National Human Rights Action Plan.

# **Theme VI - Basic Health and Welfare**

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## **17 Children with disabilities (Article 23)**

### **17.1 National Disability Insurance Scheme**

In August 2011, the Australian Federal Government released the Productivity Commission's final report into the feasibility of a *National Disability Scheme*.<sup>83</sup> The Report recommends a [National Disability Insurance Scheme](#) (NDIS) to provide all Australians with insurance for the costs of support if they or a family member acquire a disability. The Council of Australian Governments (COAG) has endorsed the report's key recommendations<sup>84</sup> and agreed to the development of a Select Council of Treasurers and Disability Ministers to consider the Report's recommendations.<sup>85</sup> There remains significant uncertainty as to the detail of the model to be used and development of the NDIS is in its early stages.

At the first meeting of the Select Council on 20 October 2011, all Ministers agreed to lay the foundations for a National Disability Insurance Scheme by mid-2013.<sup>86</sup> The development of a national assessment framework is a key foundation reform for an NDIS. Part One of a National Assessment Tools Project, the overarching objective for which is the selection and development of a suite of tested and validated tools that may be used by an NDIS to assess the support needs of people with a disability and allocate resources to meet those needs, is currently underway.<sup>87</sup>

Funding in the Australian Federal Government 2012-13 Budget will enable the creation of a new National Disability Insurance Agency to administer the NDIS.<sup>88</sup> Legislation to establish the agency and its funding source, a National Disability Insurance Premium Fund, is to be introduced into the Federal Parliament in 2012.<sup>89</sup> The government's decision to begin funding the progressive roll-out of the NDIS in the 2012-2013 financial year in accord with a proposed timeline by the Productivity Commission.<sup>90</sup>

## 17.2 Data Collection and Research

The *National Disability Research and Development Agenda*<sup>91</sup> (the Agenda) was endorsed by all the State and Commonwealth Disability Ministers in November 2011.<sup>92</sup> Under the National Disability Agenda, \$10 million was committed over five years for disability research, data and evaluation by the Australian, State and Territory Governments.<sup>93</sup> The Agenda has been designed to assist in managing and allocating these funds to support the delivery of the objectives and reform priorities of the National Disability Agreement and the National Disability Strategy.<sup>94</sup> The Agenda also aims to influence the inclusion and direction of research relating to disability across a range of national research initiatives and sectors more generally.<sup>95</sup>

The Agenda sets out five Directions for National Disability Research and Development (the Directions) which have been established to focus and guide investment in disability related research to those areas identified as of greatest priority.<sup>96</sup> The Directions include social and economics inclusion research including research which focuses on human rights as well research on disadvantaged groups with disability.<sup>97</sup> The Directions include a non-exhaustive list of examples of such disadvantaged groups including women and people from Aboriginal and Torres Strait Islander communities.<sup>98</sup> It does not include children.

The Agenda also sets out Principles (the Principles) which provide a guide to the core values for disability related research and development, consistent with the National Disability Agreement objectives and outcomes, although the Agenda states that the Principles do not constrain the range of research projects to be pursued under the Agenda.<sup>99</sup> The Principles provide that research should be:

- inclusive and rights based (i.e. that research, consistent with Australia's commitment to the United Nations Convention on the Rights of Persons with Disabilities, should affirm the human rights of people with disability and be inclusive of people with disability, their families and carers);<sup>100</sup>
- responsive and diverse (i.e. reflect that people with disability have specific needs and perspectives including age, gender, ethnic or cultural background);<sup>101</sup> and
- accessible and communicated (i.e. that research should be accessible and available for dissemination to people with disability and their families, carers and representative organisations).<sup>102</sup>

The Agenda includes an acknowledgement that references to people with disability includes 'people in all age groups including children with disability'<sup>103</sup> although it does not deal with research and data for children individually.

In May 2011, the Australian Federal Government announced the More Support for Students with Disabilities Initiative. Forming part of the Australian Federal Government 2012-13 Budget, it provides '\$200 million additional funding to support government and non-government education authorities in their work with students with disabilities and/or learning disabilities.'<sup>104</sup> The Taskforce welcomes this support for students with disabilities.

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## 18 Health and health services (Article 24)

### 18.1 The gap in health status between Aboriginal and non-Aboriginal children

See comments under **General Principles: Non- Discrimination**.

### 18.2 Mental health

Since *Listen to Children* was published, there have been some developments across the Federal and State and Territory Governments which are to be commended:

- As part of the Australian Federal Government 2012-13 Budget, the Australian Federal Government announced a National Mental Health Reform Package in May 2011 which includes a focus on improving the mental wellbeing of children and young people.<sup>105</sup> The Package includes provisions for early intervention through the introduction of a universal health and wellbeing check for 3 year olds<sup>106</sup> and the development of 30 further headspace sites.<sup>107</sup> The Package also included provisions for the development of a national Social Engagement and Emotional Development survey for children aged 8 to 14 years.<sup>108</sup> The Australian Federal Government also released a draft ten Year Roadmap for Mental Health Reform for consultation in January 2012.<sup>109</sup> Whilst the draft roadmap lacks specific frameworks for children and young people, it includes a number of actions targeted towards them, relating largely to early intervention. The draft at this stage lacks details of and timelines for implementation.
- In August 2011, the Minister for Mental Health, Hon Mark Butler, took part in the second online youth forum hosted by the Inspire Foundation through ReachOut.com.<sup>110</sup> The focus of the forum was youth mental health service reform.<sup>111</sup> Over 100 young people engaged in the session and 583 posts on the issue were made on the website.
- In May 2011, the Western Australia Commissioner for Children and Young People tabled a report in the Western Australian Parliament following an independent inquiry into the mental health and wellbeing of young people.<sup>112</sup> The Report's recommendations included Australian Federal Government and State Governments collaboration to address young peoples' mental health needs and the involvement of children and young people in the development of policy, program design and facilities.<sup>113</sup> It also advocates for early childhood services on school sites and a state wide 24-hour emergency service for children and young people experiencing a mental health crisis.<sup>114</sup>
- In July 2011, the Young and Well Cooperative Research Centre was formed to unite young people, technology and research to ensure young people are supported to grow up safe, happy and resilient. This is the first funded Cooperative Research Centre with a social purpose (<http://www.yawcrc.org.au/>).

### 18.3 Youth suicide

In July 2011, the Australian Parliament House of Representatives Standing Committee on Health and Ageing released a report on early intervention programs aimed at preventing youth suicide.<sup>115</sup> Recommendations included increasing mental health literacy among young people and professional staff who have regular contact with young people.<sup>116</sup>

The Australian Federal Government's Expanding Suicide Prevention Programs initiative provides \$62.4 million (over five years) to expand and enhance national and community-based projects under the National Suicide Prevention Strategy. This initiative complements other suicide prevention activities and brings the total amount of funding under the National Suicide Prevention Strategy to \$127 million to 2012.<sup>117</sup>

The Queensland Commission for Children and Young People and Child Guardian has highlighted the need for continued research to increase the understanding of risk factors and barriers to suicide prevention as well as the importance of strengthening cross-agency collaboration and improving intervention frameworks so as to engage with the different environments of a child's life.<sup>118</sup>



The Northern Territory Select Parliamentary Committee on Youth Suicides tabled the report *Gone too Soon* in March 2012.<sup>119</sup> The Report outlined the comparatively high rates of youth suicide in the Northern Territory and amongst Northern Territory Aboriginal youth.<sup>120</sup> The Report provided that the Northern Territory youth suicide rate is 3.5 times the national average, and that Aboriginal children accounted for 75 per cent of all child suicides in the Northern Territory from 2007 to 2011.<sup>121</sup> The Report outlined 23 recommendations including increases in Youth Engagement Police Officers<sup>122</sup> and the development of youth and community development officer positions in all Shires.<sup>123</sup> The Report also noted that the Australian Bureau of Statistics does not collect detailed information on suicide rates for children under 15.<sup>124</sup>

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## **19 The right to benefit from social security (Article 27)**

### **19.1 Payments to children and young people**

In response to the Review of Student Income Support Reforms (September 2011), the Australian Federal Government has extended the availability of ABSTUDY and Youth Allowance to students from Inner Regional areas, provided they meet the workforce participation criteria. The personal income threshold at which payments to students entitled to support is reduced will also be increased from 1 July 2012.<sup>125</sup>

### **19.2 Income management**

These measures have now been extended to five new locations around Australia.<sup>126</sup>

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## **20 The right to an adequate standard of living (Article 27)**

In March 2012, the Australian Institute of Health and Welfare released a report on specialist homelessness services. It found that 50 per cent of Australians seeking assistance for homelessness in 2011 were under the age of 25 and that 18 per cent were under the age of 10.<sup>127</sup>

## **Theme VII – Education, Leisure and Cultural Activities**

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## **21 Education and vocational training (Articles 28 and 29)**

### **21.1 School Funding Review**

In April 2010, the then Minister for Education, Hon Julia Gillard, announced a review of school funding arrangements. This is the first time since 1973 that funding arrangements for all schools have been reviewed. The “Gonski Report” was released in December 2011 and made widespread recommendations including introducing a ‘*Schooling Resource Standard*’ made up of a set level of investment per student and top-up funding to address disadvantage.<sup>128</sup> The Australian Federal Government has yet to make any firm undertakings in relation to appropriately funding and implementing the important and urgent recommendations made in this report.

### **21.2 Aboriginal students**

As discussed under *Preservation of Identity* (see section 8), the Australian Parliament has announced an Inquiry into Indigenous languages in Australia.<sup>129</sup>

The *National Indigenous Education Action Plan 2010- 2014* has still not been signed off by the Council of Australian Governments. The critical link within the Plan between cultural and linguistic identity and Aboriginal student success and well-being is also in direct opposition to current policies, which require reform. These include: the deliberate ‘scaling back’ of Aboriginal Homelands through the concentration of services in and funding to promote the growth of ‘hub’ towns; the Northern Territory Government’s

'Compulsory teaching in English for the first four hours of each school day' policy (2009); and the linking of funding to the abidance to this policy leading to the eradication of many successful 'Both-ways' and bilingual schools and curriculums.

Aboriginal families continue to face 'multiple barriers in accessing support services which include historical, cultural, social and practical.'<sup>130</sup>

On the 2 April 2012, the Indigenous Affairs Minister, Hon Jenny Macklin, announced that funding would be made available to pay for the building of up to 100 teacher houses in remote communities in the Northern Territory.<sup>131</sup>

It has been reported that Aboriginal children aged 0–12 years had a lower representation in child care services (2 per cent) than their representation in the community (4.7 per cent). This was also the case for both the 0–5 year's age group and the 6–12 years age group. A reason for this is the government's failure in 'engaging hard to reach families through holistic service provision and mutually beneficial partnerships.'<sup>132</sup>

### 21.3 Early childhood development

As discussed under **Family Environment**, a decision in May 2011 by the Victorian State Government to withdraw funding for occasional or respite child care has exposed the lack of effective coordination and collaboration between governments to provide appropriate family support programs.<sup>133</sup> This is notwithstanding a commitment by the Council of Australian Governments made in 2009 to a strategy to ensure quality child care.<sup>134</sup>

Research provides evidence that 'children experiencing disadvantage stand to gain the most from quality [early childhood] services'.<sup>135</sup> The National Quality Standard (NQS) and regulatory framework becomes effective in January 2012.<sup>136</sup> It will initially apply nationally to long day care, family day care, outside school hours care, and preschool or kindergarten services. Currently, Indigenous-focused services, also known as non-mainstream services,<sup>137</sup> have been excluded from the NQS.<sup>138</sup> Essentially, this approach directs resources away from the most vulnerable children and the services in abject need of support, many of which are the service models that are best placed to engage with Aboriginal children and families.<sup>139</sup> The exclusion of Indigenous-focused services from the NQS sits directly against the Australian Federal Government's policies to close the gap in Indigenous disadvantage and requires urgent redress.

While the NQS provide an ambitious reform agenda introducing new staffing ratios, staff qualifications and service ratings, there are concerns that the proposed implementation of the NQS may compound the many existing barriers to families accessing and engaging with support services.<sup>140</sup> Many of these are detailed throughout *Listen to Children*, and include an interaction of socio-economic disadvantage, geography, limited funding and prohibitive fees, and limited access to appropriate service models. These concerns are particularly acute for Aboriginal children and families.<sup>141</sup> Without an adequate government funding commitment, there is a real risk that costs of meeting the NQS will be passed onto families. This may have the unwanted results of government-funded services, such as the NMS, becoming increasingly limited in the education and care programs that can be provided, and the most vulnerable families may no longer be able to access services.<sup>142</sup>

Aboriginal early childhood education and care services provide a critical role of supporting children to develop a strong cultural identity before they become immersed in mainstream schools. In its General Comment 7, the Committee on the Rights of the Child, directs states to design and implement "culturally relevant programmes and to achieve this by working with local communities rather by imposing a standardized approach to early childhood care and education."<sup>143</sup> A range of authors indicate that governance strategies that foster Aboriginal and Torres Strait Islander leadership and ownership of early childhood services lead to better outcomes for service delivery,<sup>144</sup> and therefore directly benefit children and families. Community control of services tends to overcome many barriers to Aboriginal and Torres Strait Islander families accessing services. It also strongly correlates with an organisations ability to recruit and retain Aboriginal workers,<sup>145</sup> a feature which is known to be key in engaging with and supporting Aboriginal and Torres Strait Islander families and children.<sup>146</sup> There is therefore real concern that Government is shifting to mainstream early childhood services to the exclusion of Indigenous services. This is illustrated by Government failure to include the Indigenous services within the National Quality Framework, significantly higher support provided to new mainstream early childhood integrated

child and family centres across Australia and underfunding of services as reported recently by Federal state bodies.<sup>147</sup>

To expand on the recommendations 42, 43, 86-88 in *Listen to Children*, other key recommendations include:

**That Australia increase its commitment to the collection of adequate, disaggregated data on access and engagement with early child care and education services, including Aboriginal and Torres Strait Islander pre-school participation.<sup>148</sup>**

**That Australia ensure that early childhood services, including non-mainstream services and services in rural, regional or remote settings, are adequately funded to meet the new quality standards and the needs of each child.<sup>149</sup>**

**That Australia develop a plan with time specific targets for the inclusion of Aboriginal and Torres Strait Islander early childhood education and care services within the National Quality Framework prior to the 2014 review, including additional funding for capacity building to ensure they can meet the quality standards under the National Quality Framework.**

**That Australia ensure early childhood education and care service choice for Aboriginal and Torres Strait Islander children to participate in Indigenous or mainstream services, including equity in funding for service operation.**

### 21.3 Children with disabilities

Children aged 0–12 years with disability have a lower representation in child care - 2.6 per cent as compared with their representation in the community which is 6.6 per cent. This was also the case for both the 0–5 year's age group and the 6-12 years age group.<sup>150</sup>

At a national level, patterns for children from special needs groups attending government approved child care varied:

- Children from non-English speaking backgrounds aged 0–12 years had a lower representation in child care (13.7 per cent) than this group's representation in the community (18.8 per cent).
- This was also the case for both the 0–5 year's age group and the 6–12 years age group.<sup>151</sup>

### 21.4 Discipline

There is no provision for advocacy support for children to challenge school disciplinary measures that result in suspension or expulsion.

It is difficult to generalise as to the avenues for children to challenge a suspension due to the different frameworks that are in place between States and Territories. Generally the theoretical avenues available to all children are: the School Council, Director-General of the Department of Education,<sup>152</sup> the Human Rights and Equal Opportunity Commission and the relevant State Ombudsman.<sup>153</sup> While States and Territories all have some avenue for appeal as to school disciplinary actions, there is a different level of emphasis placed between each other. There is no available evidence as to the awareness of children of the available avenues nor as to the age or status-appropriate nature of the avenues available.

Since the publication of *Listen to Children* statistics for New South Wales suspensions have been updated. It is important to note that in 2010 the total number of long suspensions for students in New South Wales was 17,397, this is an increase 16.8 per cent from 2009.<sup>154</sup>

### 21.5 Children with a refugee background

On 23 February 2012, the Minister for Immigration and Citizenship, Hon Chris Bowen MP and Parliamentary Secretary for Immigration and Multicultural Affairs, Senator Kate Lundy introduced a new approach to help young refugees settle in Australia. The new Refugee Youth Support Pilot is intended

to focus on assisting older refugee youths to successfully transition to adulthood and contributing to their communities through tailored, youth specific settlement services, without round-the-clock care.<sup>155</sup> The Multicultural Youth in Victoria, Multicultural Development Association in Queensland and Multicultural Youth South Australia will conduct the pilot program, with up to 120 young people to be settled through the pilot.<sup>156</sup> The pilot program has not been implemented to date.<sup>157</sup>

## 21.6 Human Rights Education

There is still no reference to the *Convention* or child rights in the Australian Curriculum.<sup>158</sup> There is very limited coverage of general human rights education in the Australian school system and human rights education is not compulsory for students.<sup>159</sup> The Australian Human Rights Commission is calling on the Australian Curriculum Assessment & Reporting Authority to embed human rights principles and education as a core and cross-cutting element across all learning areas.<sup>160</sup> It is unknown as to when this will be implemented.

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## 22 Leisure, recreation and cultural activities (Article 31)

We commend the Western Australian Commissioner for Children and Young People for producing guide to involving children in the built environment.<sup>161</sup> The guide focuses on involving children in the designing of the built environment to give them independence, acknowledgement and respect. The guide considers what makes a child and youth friendly built environment are environments that encourage active healthy lifestyles, offer green and friendly public spaces, provide child friendly transport options and include safe places. All states and territories are encouraged to develop such guides and policies.

## Theme VIII - Special protection measures

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## 23 Refugees and children in immigration detention (Article 22)

### 23.1 Malaysian Transfer and Resettlement Agreement

In July 2011, the Australian Government reached an agreement with the Malaysian Government to transfer 800 'irregular maritime arrivals' to Malaysia for processing for refugee status.<sup>162</sup> These arrivals may include children including unaccompanied children. This development has attracted criticism including from the UN High Commissioner for Human Rights<sup>163</sup> and Human Rights Watch.<sup>164</sup> In August 2011, the High Court of Australia held that Minister for Immigration and Citizenship's declaration of Malaysia as a country to which asylum seekers who entered Australia at Christmas Island can be taken for processing of their asylum claims was invalid. The Court also decided that an unaccompanied minor may not lawfully be taken from Australia without the Minister's written consent under the *Immigration (Guardianship of Children) Act 1946* (Cth).<sup>165</sup>

It is concerning to see that the Australian Government intends to continue with the arrangement with Malaysia as government policy.<sup>166</sup>

### 23.2 Mandatory immigration detention

As at 29 February 2012, there were 1,098 children in immigration detention (including community detention).<sup>167</sup> The Department of Immigration and Citizenship (**DIAC**) reports that 487 of these children and young people are in Alternate Places of Detention and 611 children and young people are in 'Community under Residence Determination'.<sup>168</sup> It is noted that there has been an increase in the number of children in the 'Community under Residence Determination', since the Listen to Children Report was published.<sup>169</sup>

DIAC reports that 'the majority of children in facilities-based detention have been in detention for less than three months'.<sup>170</sup> It is submitted that three months in detention is not in compliance with the Article 37(b) which requires detention or imprisonment of a child be only for the "shortest appropriate period of time".

The Joint Select Committee has recently completed a detailed review on Australia's Immigration Detention Network and published its final report in March 2012. Among other recommendations, the Committee recommended that all reasonable steps be taken to limit detention to 90 days, and that where people are held any longer, the reasons for their prolonged detention be made public without compromising the individual's privacy.<sup>171</sup>

The Australian Federal Government reports that when those under the age of 18 years are detained, "they are placed in a form of accommodation most appropriate to their circumstances. This may be community detention an alternative place of detention or an immigration detention facility."<sup>172</sup> However, the Australia Human Rights Commission has commented that places which are alternate places of detention "are still detention facilities from which children and their families are not free to come and go. Children might be escorted to an external school during the day, or they might take part in supervised excursions, but during the remainder of their time they are restricted to the detention facility."<sup>173</sup>

Australia has been targeted in a global campaign to end the detention of children in immigration facilities.<sup>174</sup>

### **23.3 Guardianship and Support of unaccompanied minors**

As at 14 March 2012, there were 254 unaccompanied minors in immigration detention facilities, and 130 in community detention.<sup>175</sup>

The concern regarding the lack of an independent guardian remains. The Australia Human Rights Commission commented, even though there is no independent guardian, "there is no localised written policy within detention facilities setting out who is the delegated legal guardian and when that guardian should be consulted."<sup>176</sup> This should be implemented to ensure the best interests of the child are protected.

In September 2011, the Australian Federal Government released the advice given by the solicitor-general, where it was made clear that if an unaccompanied minor was to be transferred offshore, the Immigration Minister would need to give personal consent and this is subject to judicial review.<sup>177</sup>

The Australian Government reports that "independent observers are available to support unaccompanied minors in interviewed."<sup>178</sup> The Australia Human Rights Commission has reported that it welcomes this, however it is concerned that the scheme is not "uniformly applied throughout the detention network, with staff in some facilities being unaware of the requirement for independent observers."<sup>179</sup>

The Taskforce welcomes and supports the Australian Parliament Joint Select Committee recommendation that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.<sup>180</sup>

### **23.4 Detention of minors in isolated areas**

The Australian Government continues to detain children and young people in remote isolate areas, for example there is currently 236 minors detained on Christmas Island.<sup>181</sup>

The Joint Select Committee recommended that, as a matter of policy, the DIAC accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.<sup>182</sup>

### **23.5 Access to education**

Senator Sarah Hanson-Young for the Australian Greens has noted that there are issues with adequate provision of education within immigration detention program. It was noted that schooling within immigration detention or detention-like facilities is not subject to the national quality agenda in the Early Childhood Development Strategy, there are difficulties retaining and accommodating teachers on Christmas Island and in some instances, such as in Port Augusta, children have been receiving education that is substandard, ad hoc and incommensurate to their needs.<sup>183</sup>

## **23.6 Protection from abuse and neglect**

The Taskforce supports the Joint Select Committee's recommendations that DIAC develop and implement a uniform code for child protection for all children seeking asylum across the immigration system and that DIAC adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.<sup>184</sup>

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## **24 Youth justice (Articles 37 and 40)**

### **24.1 Aboriginal children**

In June 2011 the Australian Parliament House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs released its report on the over-representation of Aboriginal youth in the criminal justice system<sup>185</sup>. The Report makes comprehensive recommendations including for the inclusion of measures to reduce over-representation to be included in the *Closing the Gap* strategy. The Report made a key recommendation relating to the development of a National Partnership Agreement under the Safe Communities Building Block of Closing the Gap which would mandate that all jurisdictions contribute funding and undertake specific actions. The Government tabled its response to the recommendations and disappointingly rejected the development of a National Partnership Agreement (see above) despite the existence of National Partnership Agreements for all other Closing the Gap Building Blocks.

The Government is also yet to develop a coordinated implementation strategy for the Report's recommendations despite the situation of Aboriginal over-representation in the juvenile justice system being deemed a national crisis and a national tragedy. In addition, the Taskforce is concerned that there was no recognition of this issue in the Government's Draft National Human Rights Action Plan. If the Action Plan is meant to address the major human rights concerns in Australia it is alarming that no mention is made of a situation that has been deemed by the Government itself to be a national crisis and tragedy.

In July 2008, a total of \$564 million over 6 years was committed to address the needs of aboriginal children in their early years. From this, \$1,059,281 was allocated to Child and Adolescent Community Health in Western Australia.<sup>186</sup>

### **24.2 Standard of detention**

The Australian Capital Territory Human Rights Commission has released its audit of the Bimberi Youth Justice Centre<sup>187</sup> the first youth custodial facility in Australia to be built and operated under Human Rights legislation.

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## **25 Detention as last resort (Article 37)**

The Western Australia Commissioner for Children and Young People has issued a policy brief on youth justice which recognises that diversionary strategies are the most effective in reducing crime, recommending suggested programs of action.<sup>188</sup>

The Australian Government's Draft National Human Rights Action Plan failed to provide any commitment to secure the repeal of mandatory and minimum sentencing laws, the amendment of bail legislation and the provision of youth bail hostels to ensure that children are only detained as a last resort.

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## **26 Substance abuse (Article 33)**

The *Low Aromatic Fuel Bill 2012* has been introduced to the Australian Federal Parliament which further promotes the supply of low aromatic fuel and controls the supply of other fuels by prohibiting the supply of regular petrol in low aromatic fuel areas, which may be designated by the Minister.<sup>189</sup> While this is a

positive step in reducing one method of substance abuse, the Bill is not directed at addressing the underlying reasons of substance abuse.

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## **27 Children of a minority or indigenous group (Article 30)**

As noted, the Australian Government is pushing ahead with the Stronger Futures and related Bills as the next stage of the Northern Territory Emergency Response. The underlying premise and approach of this proposal replicates its predecessor.

Issues pertaining to the right to enjoy culture arise under most sections of the *Listen to Children* Report. There is grave concern that the Government's 'mainstreaming' approach, illustrated in sections 16 and 22 in relation to removal from homes, education, language and early childhood development, increasingly denies Aboriginal and Torres Strait Islander children the enjoyment of this right and is seriously weakening the continuation of Aboriginal and Torres Strait Islander culture. This does not reflect, inter alia, proper consideration of the cultural rights of Indigenous children and their need to exercise such rights collectively with members of their group " in application of the best interests principle.<sup>190</sup> It is imperative that the Government support and enable Aboriginal and Torres Strait Islander local community leadership, respect the right for Aboriginal communities (and children) to participate in the development of policies that affect their children, and resource and enable community controlled services.

That Australia review its policies that affect Aboriginal children and young people, assessing the impact on knowledge and experience of culture and identity, and the cultural appropriateness of the policy response. That the Australian Government also report on Aboriginal participation in the development, implementation and review of policy that impacts Aboriginal children and young people, including the participation of children.

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## **28 Exploitation (Articles 34, 35, 36 and 39)**

### ***Questions on notice in relation to Art 38 CROC (children in armed conflict)***

The Australian Federal Government's report on the Optional Protocol on the Involvement of Children in Armed Conflict at [45] to [67] provides its answer to these questions. Given that it refers to training provided in the military, detailed information on the training is not readily available. We recommend that the Committee further question the Government on the precise training provided and methods used to identify child soldiers in order to comply with Article 38 and the Protocol.

As noted in our fact sheet, unless a child asylum seeker fulfils the requirements of the Refugee Convention, it is up to the discretion of the Minister for Immigration whether a Protection Visa will be granted. The policy documents referred to in our fact sheet are not specific as to the procedures in place to properly identify child soldiers. As Article 38(2) of the CRC requires States Parties to 'take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities' there is an argument that Australia should have done more than amending the Criminal Code in the way outlined in the Government's report. The terms of Article 38(2) arguably require a State Party not to send a child under 15 back to a country where he or she will be required to take direct part in hostilities. We again urge the Committee to consider recommending that the Government enact complementary protection legislation including specific protections for child soldiers.

## **Third Optional Protocol to the Convention**

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### **29 Third Optional Protocol**

The Australian Government has not yet signed the Third Optional Protocol which was opened for signature on 28 February 2012.

The Taskforce strongly encourages and recommends that the Australian Government sign and ratify the Third Optional Protocol without any unnecessary delay.

## Index of references to the *List of Issues*

List of Issues	Addendum
<p>2. Please provide information on measures undertaken by the State Party, if any, to implement a comprehensive child rights law framework, with the aim of fully incorporating the obligations of the Convention into its domestic legislation, both at Federal and State level.</p>	<p>14 Parental guidance and responsibilities (Articles 5 and 18)            15 Addressing abuse and neglect (Articles 19 and 39)            18.2 Mental health            18.3 Youth suicide            21.3 Early childhood development            21.5 Children with a refugee background</p> <p>See <i>Listen to Children</i> report, section 1.1</p>
<p>3. Please provide information on the agreement by the Council of Australian Governments to establish a National Framework for Protecting Australian Children. How far has the agreement gone into adoption and implementation of such Framework and what is the scope, timeframe and resources allocated to it? Please also indicate what is its relationship with other programmes for children such as the National Programme on early childhood?</p>	<p>1.2 Policy and planning            2 Making the Convention known (Article 42 and 44)            4.1(c) Discrimination in migrant and ethnic communities            15 Addressing abuse and neglect (Article 19 and 39)</p>
<p>4. Please provide information on progress made on the National Agenda on Early Childhood in terms of coverage, impact and differentials in implementation among states and territories, paying special attention to Indigenous children. Please provide information on the yearly resources allocated to this Agenda since its creation and as a percentage of the budget for social sectors.</p>	<p>4.1(a) Aboriginal disadvantage and the experience of racism            21.2 Aboriginal students            21.3 Early childhood development            27 Children of a minority or indigenous group (Article 30)</p>
<p>5. Please provide information on progress, if any, concerning the establishment of a National Commissioner for Children and Young People.</p>	<p>1.1 National Children's Commissioner / Independent Monitoring</p>
<p>6. Please update the information provided in the State Party's report on the level of financial resources invested in children and type of programme, in absolute terms as well as a percentage of the total budget. If possible provide information on the budget process by the Australian Government with regard to investing on (sic) children, in particular on whether there is a tracking system to enable monitoring and evaluation of such investment and whether there is any participation by the communities concerned, specifically children.</p>	<p>1.1 National Children's Commissioner / Independent Monitoring            17.1 National Disability Insurance Scheme            17.2 Data collection and research            18.2 Mental health            18.3 Youth suicide            21.1 School funding review</p>



	21.2 Aboriginal students 21.3 Early childhood development
7. Please provide details on the implementation of the National Action Plan to Build on Social Cohesion Harmony and Security. In doing so, please provide information on its effectiveness in addressing discrimination and intolerance, including for girls, children in minority situations and in the context of anti-terrorism legislation.	4.1(c) Discrimination in migrant and ethnic communities
8. Please provide updated details on programmes and measures addressing child abuse and neglect, including further detailed information on the follow-up to the Intergovernmental Summit on violence and abuse of children in Indigenous communities and on the Government's Emergency Response to child sexual abuse in remote Indigenous communities in its Northern Territories.	4.1(a) Aboriginal disadvantage and the experience of racism 5.1 Family Law 13.1 Bullying 15.1 Preventing abuse and neglect 23.6 Protection from abuse and neglect 27 Children of a minority or indigenous group (Article 30)
9. Please provide updated information on the implementation of the recently constituted National Council responsible for reducing the incidence and impact of domestic and family violence and sexual assault on women and their children and on the establishment of Family Relationship Centres and their effectiveness in investigating and redressing violence and abuse.	5.1 Family Law 15.1 Preventing abuse and neglect
11. Please provide updated and detailed information on the State party's policies and legislation on children with disabilities, including with regard to:  a) Provision of inclusive education, taking into account specific physical, psychological and intellectual needs for people with disabilities  b) Sterilisation of girl children with disabilities for non-therapeutic reasons  c) Immigration restrictions, including with regard to its impact on the right to family reunification, for children with disabilities	17.1 National disability insurance scheme 17.2 Data collection and research  See <i>Listen to Children</i> report, sections 13.2, 22.3, 24.4

<p>12. Please provide updated information on:</p> <p>a) The Australian Remote Indigenous Accommodation (ARIA) Program, including the impact of the 2007-2008 reforms of it</p> <p>b) Measures, if any, taken to address the discrimination faced by Aboriginal and/or other children of ethnic, cultural or linguistic minorities, including its over representation among children in conflict with the law</p> <p>c) Application and impact of the Closing the Gap plan</p>	<p>See <i>Listen to Children</i> report, section 21.2</p> <p>4.1(b) Implementation of the Northern Territory Intervention</p> <p>4.1(c) Discrimination in migrant and ethnic communities</p> <p>4.1(a) Aboriginal disadvantage and experience of racism</p>
<p>13. Please provide detailed information on the State party's immigration policies, including with regard to:</p> <p>a) Implementation of its August 2011 High Court ruling prohibiting the deportation of persons in an irregular migration situation to third countries</p> <p>b) Its new risk-based detention policy, including any implications it may have for children in a migration and/or asylum or refugee situation</p> <p>c) Details on the situation of Children in Community Detention arrangements</p> <p>d) guardian/counsellor to guarantee that the best interests of the child and right of the child to be heard is respected in all aspects relating to that child's situation</p> <p>e) Results of the internal review undertaken by the Department for Immigration and Citizenship</p>	<p>4.1(c) Discrimination in migrant and ethnic communities</p> <p>21.5 Children with a refugee background</p> <p>23.1 Malaysian transfer and resettlement agreement</p> <p>22.5 Children with a refugee background</p> <p>23.2 Mandatory immigration detention</p> <p>23.4 Detention of minors in isolated areas</p> <p>23.5 Access to education</p> <p>28 Exploitation</p>
<p>14. Please provide updated information on the State party's juvenile justice system and policies, including with regard to:</p> <p>a) Minimum age of criminal responsibility in all of the State party's states and territories;</p> <p>b) Criteria, including safeguards and the right to appeal in juvenile justice proceedings, used by the State party's courts in cases where criminal responsibility is found for children under the age of 14 years;</p> <p>c) Measures to ensure that children in a detention situation are accommodated in child-appropriate facilities that are separated from adult detainees;</p> <p>d) Measures to facilitate the re-integration of juvenile offenders</p>	<p>See <i>Listen to Children</i> report, section 25.1 and 25.4</p> <p>24.2 Diversionary strategies and detention as a last resort</p> <p>24.3 mandatory sentencing and detention as a last resort</p> <p>24.4 Bail and remand – effect on juvenile detention as a last resort</p> <p>23.2 Mandatory immigration detention</p> <p>25 Detention as last resort (Article 37)</p>

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## Endnotes

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- <sup>137</sup> The NMS were established to deliver flexible early learning opportunities to meet the particular child care needs of regional, remote or Indigenous communities.
- <sup>138</sup> These services are funded under the Budget Based Funding (BBF) program. The BBF is a part of the Australian Government's Community Support Program, which sits under the umbrella of the Child Care Services Support Program (CCSSP).
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- <sup>141</sup> For example, Aboriginal and Torres Strait Islander children are underrepresented in ECEC services and more likely to be absent than other children. The estimated number Aboriginal and Torres Strait Islander children aged birth to 4 years in the general community is 55,000 (representing 4.9%), while the proportion of Indigenous children attending mainstream services is 1.9%. Those children attending one of the approximate 269 Aboriginal and Torres Strait Islander-focused early childhood services reduce this discrepancy, but information on those numbers is limited. See Productivity Commission 2011, *Early Childhood Development Workforce Draft Research Report*, Commonwealth of Australia, Melbourne. Accessed 19 July 2011 <[http://www.pc.gov.au/projects/study/education-workforce/early-childhood/draft\\_pp\\_263-265](http://www.pc.gov.au/projects/study/education-workforce/early-childhood/draft_pp_263-265)>
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