

The Children's Report

Australia's NGO coalition report
to the United Nations Committee
on the Rights of the Child

Australian Child Rights Taskforce



AUSTRALIAN
CHILD RIGHTS
TASKFORCE

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AUSTRALIA

for every child



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This report has been written and compiled by Freyana Irani (Senior Policy Advisor, UNICEF Australia), with the support of Amy Lamoin (Director of Policy and Advocacy, UNICEF Australia) and Krista Lee-Jones (Consultant). It includes the contributions of over 500 children and young people across Australia, and is based on content generously provided by over 90 non-government organisations and child rights experts.

DLA Piper Australia provided valuable pro bono assistance with the two Optional Protocols.

All artwork in this report has been created by children and credited accordingly.

All handwritten messages were gathered during the national consultation with children and young people.

Hand-drawn self-portraits are from the ACT Children and Young People Commissioner's *Right Here Right Now* art installation, 2014.

Design: tmpdesign.com.au

COVER ARTWORK: Casula Public School (Years 3–4), Sydney Opera House, Casula Powerhouse Arts Centre, Howard Matthew. *Our Australian family routes*. 2016. Celebrates the richness and diversity of the community. Torn maps represent how many of the students' families have had difficult journeys to Australia, and that the students have mixed heritage in much the same way that they have used mixed and different maps from parts of the world.

THIS PAGE: Victoria Avenue Public School (Years 5–6), Sydney Opera House, Howard Matthew. *A window on our world*. 2018. Brings together the present-day landscape surrounding the school with layers of its history, from an industrial landscape and tracing back to its Indigenous origins and the Wangal people who lived in the mangroves of the Concord area.



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Young people need to be accepted more by adults and given the opportunity to show they are capable of big things. A flower will only grow if it gets water.

Australia is failing children in many ways. We aren't safe, we don't know our rights and we aren't taken seriously. There needs to be rules in place to protect children. But the important bit is to actually follow through and act on the rules.

Yes, we are young. But we too, are people. Don't forget the purpose of United Nations - it's for us, the people. No matter the age, sex, religion or race. And please, focus on the now, not later. Fix the problems we suffer now, the present - not just the future, because in order to even have a future is to do something in the present.

Everything that you are doing now is going to impact our future, and if we don't get a say then how are we going to fix anything? How are we going to be happy with the world that you left us? We have to start making a contribution now or we will never feel valid enough to try later in life.

Introduction

1.1 PREPARATION OF THE NGO COALITION REPORT

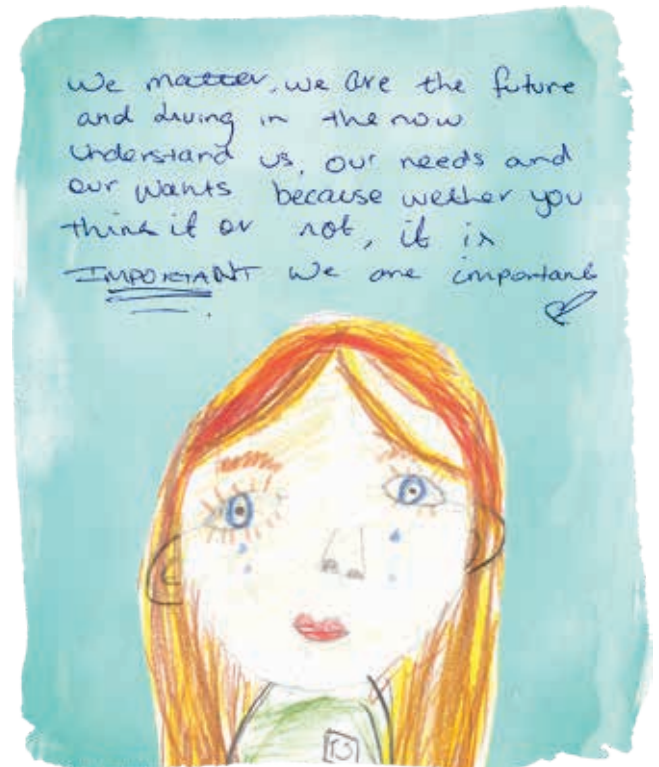
This report has been submitted to the United Nations Committee on the Rights of the Child (Children's Committee) by the Australian Child Rights Taskforce. In this integrated report, the views of children and young people across Australia sit in close association with the contributions of 93 non-government organisations (NGOs) and subject matter experts committed to improving the protection, promotion and fulfilment of the rights of all children and young people in Australia.¹

This report has been prepared in accordance with United Nations (UN) reporting guidelines,² and covers the period since Australia's last review by the Children's Committee, in June 2012.³

1.1.1 National consultation with children and young people

In its role as convenor of the Australian Child Rights Taskforce, UNICEF Australia conducted a national consultation with children and young people (the national consultation) to inform the content of this report. UNICEF Australia met face to face with and heard from 527 children and young people ranging from four to 24 years of age, holding 58 consultations in 30 different geographical locations around Australia (see map on page 7).⁴

In addition to meeting with general groups of children in classroom settings, the consultation methodology prioritised reaching specific groups of children and young people whose personal characteristics or lived experiences increase their vulnerability to rights abuses. These included Aboriginal and Torres Strait Islander children, children with disability, children who identify as LGBTIQ+, asylum seeker and refugee children, and children from culturally and linguistically diverse backgrounds. Consultations were conducted with children and young people who have witnessed, experienced and lived with abuse and neglect, substance abuse and addiction, and poverty and homelessness; children with incarcerated parents; children and young people living in regional and remote areas; children who have withdrawn from mainstream school environments; young mothers; children with mental



health diagnoses and children who have made suicide attempts; children and young people with experiences in out-of-home care, and children in youth detention facilities.

Every effort was made to conduct consultations in situ, in the familiar environments where children and young people felt safe, comfortable and supported.⁵ Consultations were typically conducted under gum trees, on children's play equipment, alongside basketball courts, on living room floors, at Saturday morning market stalls, and over breakfast, lunch and dinner.

At the end of every consultation, each participant was invited to write a message to the UN on how to make Australia a better place for all children and young people. These messages appear in each child's and young person's own handwriting throughout the pages of this report, and stand as powerful testimony to the personal experiences and insight of Australia's children and young people.

1.2 CHILD RIGHTS IN AUSTRALIA

Australia ratified the 1989 *Convention on the Rights of the Child* (Children's Convention) in December 1990,⁶ committing to improving outcomes for the current generation of children and the generations to come. There are currently over five million children that call Australia home.⁷ However, almost 30 years later, the Children's Convention continues to have no overarching legal force in Australia, and there remains a distinct and critical absence of well resourced, strategic and coordinated measures to implement and protect children's rights.

During this reporting cycle, there have been multiple leadership changes across the Australian Government. Australia has had seven different prime ministers within the last 11 years, making it one of the least stable democracies in the Asia-Pacific region. This has distracted from quality, coherent policy development in relation to children and young people, and across other areas of policy.

Many children and young people in Australia enjoy a good quality of life. However, despite its relative economic prosperity and growth, Australia is not making sufficient progress for all children and young people and has regressed in areas of critical importance since the last review by the Children's Committee, in 2012. At best, Australia ranks average or 'middle of the pack' when compared to the other 35 member countries of the Organisation for Economic Co-operation and Development (OECD), including most of Europe, North America, and advanced Asian, Latin American and Oceanic economies.⁸

During the national consultation, a high school student in Ipswich, Queensland, stated: 'If you're doing something wrong, fix it.'⁹ However, an overwhelming number of the issues identified in this report are disturbingly familiar; and have attracted repeated criticism from the Children's Committee, as well as multiple other UN treaty bodies and UN special procedures, over years, and in some cases, decades. These include high rates of violence and abuse of children in familial and institutional settings; and insufficient investment in population-wide, early intervention to prevent future interaction with Australia's failing child protection and youth justice systems. They also include the Australian Government's punitive approach towards asylum seeker and refugee children, and the persistent, systemic, intersecting and entrenched disadvantage experienced by Aboriginal and Torres Strait Islander children across all areas of the Children's Convention. There is presently a key opportunity to leverage developments in the public policy space to ensure that governments at all levels are held accountable to the children and young people affected by these failings; including by implementing the recommendations of the recent Royal Commission

into Institutional Responses to Child Sexual Abuse (Child Abuse Royal Commission) and the Royal Commission into the Protection and Detention of Children in the Northern Territory (Northern Territory Royal Commission).

At a general population level, there remain serious questions about how Australians value children and young people. In a 2016 survey conducted by the Valuing Children Initiative, 'looking after the interests of children' was ranked ninth out of ten issues of importance to adults in Australia; where the highest ranked issues included management of the economy, a fair taxation system, and housing affordability.¹⁰ In an environment where there remains limited consideration and commitment to addressing the issues facing children and young people, it is therefore not surprising that during the national consultation, children and young people repeatedly spoke of feeling 'invisible' to adults within government, community and family.¹¹ As a primary school student in Liverpool, New South Wales, said: 'It feels like sometimes they don't even know you're there. Like, they can't see or hear you.'¹²

Children and young people in Australia face growing intergenerational inequality, while the implications of social and economic disadvantage are more acute for vulnerable groups of children in Australia. During the national consultation, a high school student in Canberra, Australian Capital Territory, described the current status quo as follows:

“ I think most young people with a middle class background in Australia are living a pretty good life. But for young people of a lower class, Aboriginal kids, kids in the outback...they don't have near the same rights as me. This needs to be changed.¹³ ”

During the national consultation, children living in socio-economically disadvantaged areas spoke of feeling 'worthless', 'irrelevant' and 'unappreciated'.¹⁴ Similarly, a young person in Mount Gambier, regional South Australia, said: 'Government-wise, no one exists beyond the city limits.'¹⁵ Young Aboriginal advocates for children in out-of-home care expressed the view that Aboriginal and Torres Strait Islander children and young people are 'just another statistic for funding, to be honest', and that the government's consideration of the critical issues they face is limited to 'ticking a box'.¹⁶

As expressed by a transgender young person in Perth, Western Australia, during the national consultation:

“ We still live in a fairly progressive country. If this is the best we can get in Australia, then I'm happy to live here. But it could be so much better, so much better improved.¹⁷ ”

WHERE WE VISITED



New South Wales

- Dubbo
- Goulburn
- Kempsey
- Liverpool
- Parramatta
- Sydney

Australian Capital Territory

- Canberra

Northern Territory

- Borroloola
- Darwin
- Katherine
- Robinson River

Victoria

- Geelong
- Maribyrnong
- Yarra

South Australia

- Adelaide
- Marion
- Mount Gambier
- Port Augusta
- Unley

Tasmania

- Deloraine
- Smithton
- Wynyard

Queensland

- Brisbane
- Ipswich

Western Australia

- Canning
- Karratha
- Perth
- Roebourne
- Wickham
- Yokine

Less talk, more action

Policies that don't listen to young people fail young people. Young people need to be treated with agency and their individual circumstances need to be considered. Our generation is having its future taken away.

children and young people need to be a priority to have their rights upheld - But first of all they need to be informed what their rights are in the first instance.

We need to be taught what we can do to ensure we are receiving all of these rights and taught what to do when they are not. We need to have a say in changes that affect us, in parliament.

More representation in national institutions to better enable organisations and governments to enact policies and decisions that reduce the negative impact on youth in Australia.

the government disregards views of young people for "lack of experience" when the case is that we are the most experienced voices when it comes to our future and rights that apply to us.

General measures of implementation

2.1 COORDINATION, LEGISLATION AND IMPLEMENTATION (art. 4; COs 12, 14, 16, 18 and 20)

The Australian Government is not demonstrating a commitment to achieving the highest level of implementation of the Children's Convention, which could reasonably be expected of a high income, advanced country. Over multiple cycles of reporting, there has been inadequate progress in responding to the recommendations of the Children's Committee, and in addressing some of the most pervasive aspects of inequality and discrimination facing children and young people in Australia. As recommended by the Children's Committee on repeated occasions, there is a need for a more systematic approach to the domestic legal application of the Children's Convention.

In the Australian context, state and territory governments are predominantly responsible for many of the activities that give effect to the Children's Convention. This can present

challenges to developing a national picture and consistent responses that have national significance, such as reforms to youth justice and the child protection system. However, the federal system should not present a justifiable barrier to a coordinated and cohesive approach to implement the objectives of the Children's Convention, nor to critical public policy reforms that are necessary to improve the lives of children and young people.

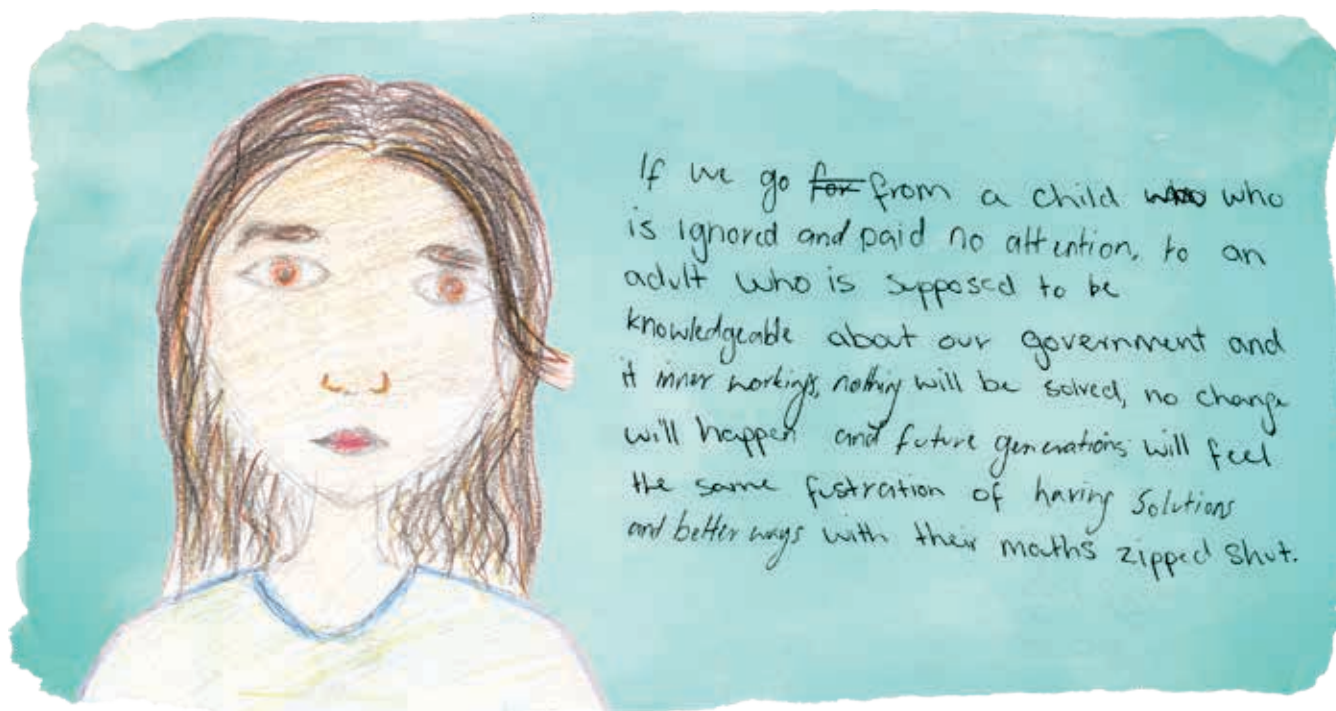
A sufficient commitment to strengthening implementation efforts during this reporting cycle is required, or it remains likely that Australia will continue to adopt a fragmented, ad hoc and reactive approach to the protection and promotion of children's rights across the country.

Recommendations:

The Australian Child Rights Taskforce recommends that the Australian Government, in cooperation with state and territory governments, adopt a proactive approach to child rights protection underpinned by a number of measures:

1. establish a dedicated federal minister to advocate for and coordinate whole-of-government agendas for children and young people;
2. enact a federal Charter of Human Rights, or a comprehensive national Children's Act which provides full and direct effect to the provisions of the Children's Convention;
3. establish a dedicated Children and Families Council within the Council of Australian Governments, to ensure adequate coordination, across states and territories, of the implementation of the Children's Convention;
4. introduce federal and state and territory child specific budgeting measures to plan and monitor levels of financial investment in children, in accordance with the Children's Committee's General Comment No. 19¹⁸;





5. include the views of children in parliamentary scrutiny processes during the development of significant pieces of legislation;
6. develop a national plan of action to implement the Children's Convention, linked to individual sector, state and territory based plans,¹⁹ including a National Action Plan on Business and Human Rights;
7. provide the Office of the National Children's Commissioner with enhanced resources to support the commissioning of research and facilitate effective consultation with children, in accordance with the Children's Committee's General Comment No. 2²⁰;
8. establish Children's Commissioner roles with a dedicated focus on Aboriginal and Torres Strait Islander children and disadvantage, in all jurisdictions;
9. commit to comprehensive child rights training for elected officials, senior decision makers across governments, members of the judiciary and other officials, with a focus on the guiding principles of the Children's Convention;
10. ensure that members of the National Preventative Mechanism under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* have applied child rights expertise or are informed by specialist child rights subcommittees;

11. ratify outstanding treaties to protect the rights of children, including *ILO 138 Convention concerning Minimum Age for Admission to Employment* and the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.²¹

2.2 RESERVATION TO THE CHILDREN'S CONVENTION (CO 10)

The Australian Government has not withdrawn its reservation under article 37(c) of the Children's Convention, which requires that children deprived of liberty should be separated from adults in detention facilities. The Children's Committee has previously clarified that the Australian Government's concerns are addressed by the Children's Convention, given that the best interests provision necessitates consideration of the importance of ensuring that children deprived of their liberty maintain contact with family members.²²

Recommendation:

That the Australian Government:

12. withdraw its reservation to article 37(c) of the Children's Convention.

2.3 NATIONAL DATA COLLECTION (art. 4; CO 22)

The Australian Government currently has neither a national, comprehensive research agenda nor research priorities for children and young people in Australia. It does not consistently and comprehensively collect targeted, relevant and disaggregated data on children to enable the identification of progress, discrimination or disparities in the enjoyment of their rights; or to inform policy development for children.

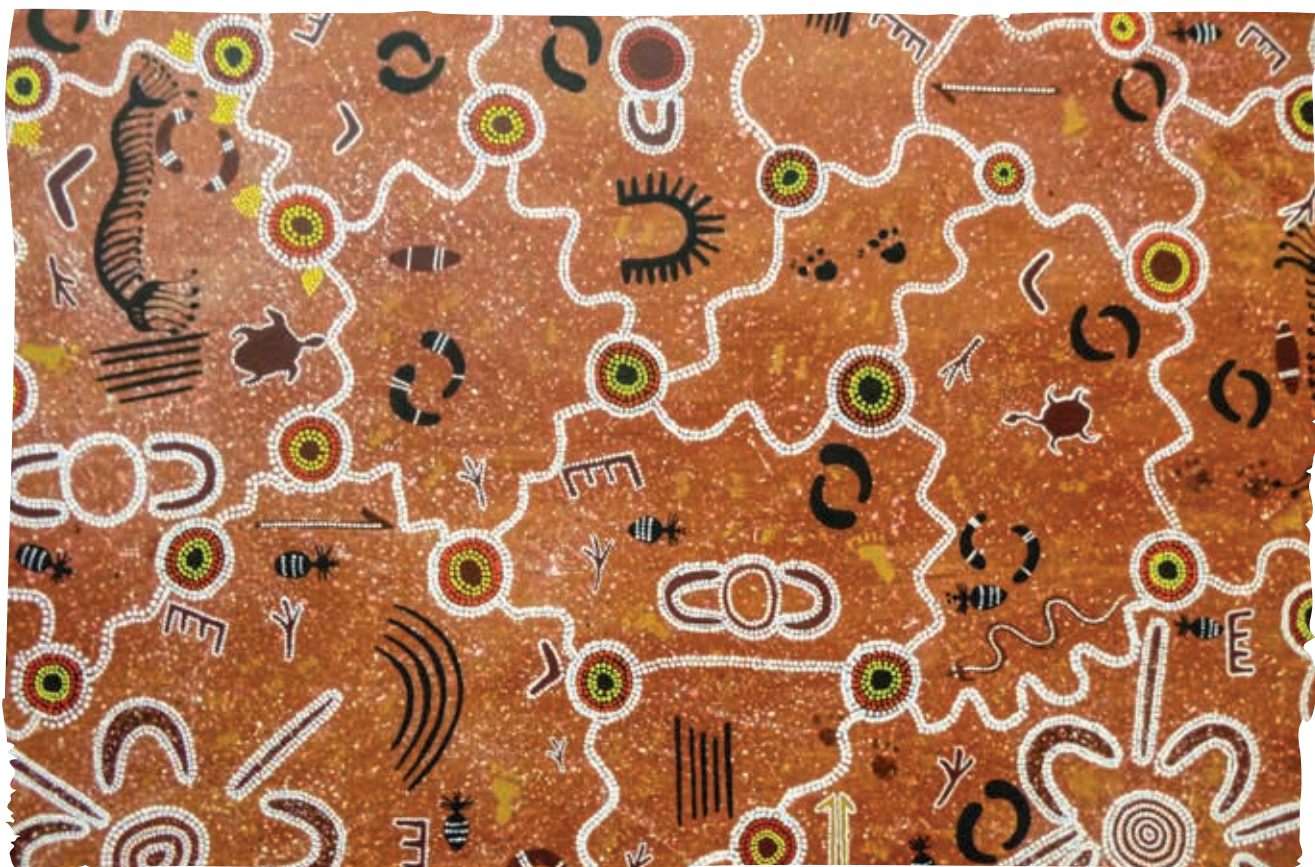
As discussed throughout this report, improved national data collection is required in multiple areas of public policy of relevance to children's lives. In particular, data gaps create an inability to assess the nature and extent of child abuse and neglect in familial, institutional, community and other settings (discussed in *Chapter 5: Violence against children*). In addition, there remains a need for clear national

disaggregated data on child protection; including the reasons why children are placed in out-of-home care, rates of reunification with family, and the experiences and long term outcomes for children in out-of-home care (discussed in *Chapter 6: Family environment and alternative care*).

Recommendations:

That the Australian Government:

13. establish and fund a national research agenda for children and young people in Australia;
14. ensure the disaggregation of national data by age (e.g., nine and under, ten to 14 years, 15–19 years, 20–24 years), to enable children and young people to become more visible in policy making and planning.



ABOVE: Child residents of Banksia Hill Detention Centre (Western Australia). *Australian native languages*. 2017.

Explores how Australia is a dream land with thousands of ancient Aboriginal cultures and languages. Some languages are still known, spoken and have been recorded. However, many other native languages are sacred and unknown to most of us. When we open our hearts, our eyes and our ears through curiosity and listen carefully, we can hear some of the languages in the vast Australian land and its people through images drawn in the desert sands, cave paintings and tribal rituals used in body decorations. Some of these languages used in the past and present have been designed and painted on this canvas.

I am so privileged to live in a progressive nation such as Australia. But due to a culture of bigotry and hating anything that is different from oneself makes it almost impossible to grow up 'normally' here.

Help with: Aboriginal Rights + less Racism
Because we need to have a say Because this is our land.

THE YOUNG QUEERS ONLY GOAL IN LIFE IS TO MAKE IT TO 18.

I think racial discrimination should be stopped because it really makes young people ~~depressed~~ depressed. It makes us think that something is wrong ourselves.

Listen to vulnerable youth Mental Illness, disability, religion, Orientation (sexual/romantic) gender, culture, addictions, ect, all go hand in hand and the stress of all that stigma together could kill young people, we need to make life better for all young people, especially marginalized ones

Stop, and Listen to us, the young people who have feelings, thoughts, ideas, opinions and theories on these major issues

General principles

3.1 NON-DISCRIMINATION (art. 2; CO 30)

The *Commonwealth of Australia Constitution Act 1900* (Cth) does not include legal protection of the right to equality and non-discrimination. Anti-discrimination laws at federal, state and territory levels provide a patchwork of protections that are undermined by formal exemptions.²³ Legislation only goes so far in protecting children and young people from discrimination, as evidenced by the continuing disparity in outcomes experienced by children and young people under the Children's Convention.

According to a 2017 survey of over 24,000 children and young people, equity and discrimination is one of the top three issues facing Australia today.²⁴ In the same year, 11.1% of Australians between 15 and 19 years of age reported that discrimination is a personal concern, an increase from 10.8% in 2013.²⁵

During the national consultation, children and young people consistently recounted personal experiences of discrimination in all areas of public life, and at times, in their private lives. This included being treated differently simply 'because you're young',²⁶ and extended to changing their behaviour or concealing aspects of themselves in order to avoid negative repercussions or to ensure their personal safety. A high school student in Ipswich, Queensland, stated: 'You can't be yourself if you want to be included'²⁷; while a young person in Perth, Western Australia, said: 'You can be yourself, but you have to accept the risk.'²⁸

These experiences are particularly acute for marginalised and disadvantaged groups of children and young people in Australia. As a high school student in Ipswich, Queensland, stated during the national consultation: 'You know how they say that Australia's a free country? Yeah, except for the prejudice and discrimination.'²⁹

3.1.1 Aboriginal and Torres Strait Islander children and young people

Some Aboriginal and Torres Strait Islander communities, particularly those connected to their homelands and who speak their own languages, are thriving. However, Aboriginal

and Torres Strait Islander children and young people experience more chronic disadvantage and consistently poorer outcomes across every thematic area of the Children's Convention, as indicated throughout this report. This includes in all stages of education, developmental health and wellbeing; while the situation for Aboriginal and Torres Strait Islander children in relation to their contact with youth justice and child protection systems should be considered a national crisis.

Efforts by the Australian Government to address disparities and improve outcomes for Aboriginal and Torres Strait Islander children and young people have failed to achieve necessary outcomes, including the 'Closing the Gap' strategy. As a young Aboriginal advocate in New South Wales stated during the national consultation: 'They're trying to close the gap, but they're just opening it up more.'³⁰

In 2017, one in five Aboriginal and Torres Strait Islanders between 15 and 19 years of age reported that discrimination is a personal concern.³¹ Persistent racism coupled with Australia's history of colonisation, violent dispossession and the removal of Aboriginal and Torres Strait Islander children from their families, cultures and lands has had profound generational impacts on Aboriginal and Torres Strait Islander children and their ability to grow up strong in their culture. As another young Aboriginal advocate in New South Wales explained during the national consultation:

“ When Australia was invaded, they cut off the land, which was food resources, then they cut off family, then they cut off culture, connection and spirituality. And then, what do you have left? Like, you've got nothing. So how do you bring that back? You bring that back by listening to what we say. We know what works for us.”³²

There remains a critical and urgent need for the Australian Government to invest in dedicated measures to address the impacts of intergenerational disadvantage for Aboriginal and Torres Strait Islander peoples. This must be grounded in consultation with Aboriginal and Torres Strait Islander children and communities, relying on the competencies and cultural knowledge of Aboriginal and Torres Strait Islander led civil society groups and services.

Recommendation:

That the Australian Government:

15. **establish a Makarata (truth telling) Commission as recommended in the Uluru Statement of the Heart as a measure to address historic injustice and intergenerational grief among Aboriginal and Torres Strait Islander peoples.**



3.1.2 LGBTIQ+ children and young people

During the national consultation, a young transgender advocate in Perth, Western Australia, described discrimination against LGBTIQ+ people as ‘a national pass-time’.³³ Federal, state and territory anti-discrimination laws contain permanent religious exemptions that permit otherwise unlawful discrimination, provided it is in accordance with religious doctrines or beliefs.³⁴ These exemptions enable religious schools to refuse admission and to discipline, suspend or expel students on the basis of their sex, sexual orientation or gender identity. They also operate as a barrier for LGBTIQ+ children and young people to access services from faith-based service providers,³⁵ and have an impact across a range of areas of public life.³⁶

While social research is limited, 34% of LGBT people surveyed reported hiding their sexuality or gender identity when accessing services in order to avoid discrimination, with young people being more likely to hide who they are.³⁷ During the national consultation, young LGBTIQ+ advocates spoke of going ‘back in the closet’ or being ‘forced to lead a secret life’; including having two separate resumes for job applications, ‘an LGBTIQ+ friendly resume, and a “safe” resume’.³⁸

Discrimination entrenched in laws and policies or experienced at work, school or home, contributes to alarmingly high rates of suicide, self harm and depression among LGBTIQ+ children and young people in Australia (discussed in *Chapter 7: Disability, health and welfare*). As stated by a young LGBTIQ+ advocate in Perth, Western Australia, during the national consultation:

“ I’m terrified – mostly of non-acceptance. I’m bisexual, I’m binary and I’m terrified that maybe one day my family is going to find out about my gender identity. I’m terrified that employers won’t accept my presentation. This is the most comfortable I can be in my own body and even though it’s not perfect, this is the closest I can do, but this is not socially accepted. I can’t live as my true self without all these fears for financial and social repercussions. I just live in a constant state of uncertainty, which is probably why I’m so stressed all the time.”³⁹

Recommendation:

That the Australian Government:

16. **introduce a general limitations clause to replace permanent exemptions in anti-discrimination legislation, only allowing for limitation of rights where there is a legitimate aim and where it is reasonable, necessary and proportionate.**

3.1.3 Children with disability

The definition of disability in anti-discrimination legislation may prevent access to justice for children where there is a social experience of exclusion. For example, these definitions may be hard to meet for a child excluded from education due to challenging behaviour but who has no formal medical diagnosis of disability.⁴⁰ The experiences of children with disability are discussed further in *Chapter 6: Family environment and alternative care*, *Chapter 7: Disability, health and welfare*, and *Chapter 8: Education*.

3.1.4 Asylum seeker and refugee children

Australia’s legal framework denies asylum seeker and refugee children the enjoyment of rights under the Children’s Convention on the basis of their immigration status.⁴¹ Children and families experience differential treatment depending on the timing and mode of their arrival. Australia’s policy of ‘offshore processing’ is targeted only at adults and children seeking asylum from some countries who arrive by boat without a visa.⁴² The distinction by mode of arrival does not have a legitimate aim, and cannot be considered necessary or proportionate.

Legal and policy changes have resulted in particular cohorts of asylum seekers being subject to differential treatment with regards to their asylum applications, duration of protection visas, rights of appeal against negative refugee status determinations, work rights, income support and access to opportunities for family reunification.⁴³ These issues are discussed in detail in *Chapter 9: Special protection measures*.

3.1.5 Children and young people from culturally and linguistically diverse backgrounds

In 2016, a fifth (21.1%) of young Australians were born overseas, increasing from 12.2% in 2006.⁴⁴ However, racism and discrimination are commonly identified as significant issues for children and young people from culturally and linguistically diverse backgrounds in Australia. Nine out of ten children between 13 to 17 years of age have reported experiencing some form of racism or have seen it happen to someone else, 43% have experienced or witnessed racism at school, and 33% have experienced or witnessed racism on the Internet.⁴⁵

Research on racism and discrimination has identified significant negative outcomes in health and wellbeing for children and young people in Australia⁴⁶; and it has been found to impact on the ability to make effective transitions into adulthood, as well as personal and cultural identity.⁴⁷ During the national consultation, a high school student from a culturally and linguistically diverse background in Yarra, Victoria, said:

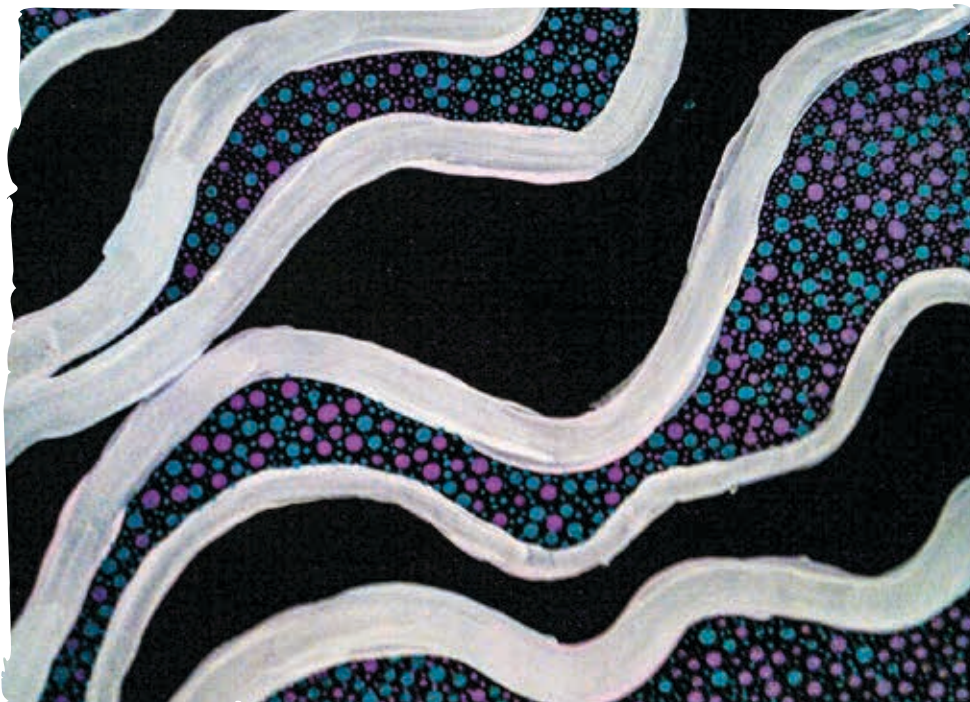
“ I’m black, I’m African, I’m a woman, and I’m Muslim. I’ve been in public before and been told that I have a bomb in my headscarf, been called a ‘terrorist’. So, you’re left with this societal perception of all the negative connotations that come out of your identities and sometimes it can lead to not being able to find the best job, or sometimes walking down the street you get a few stares... It’s the society that we live in, but these things can really halt an individual’s potential.⁴⁸ ”

The experiences of children from culturally and linguistically diverse backgrounds are discussed further in *Chapter 4: Civil rights and freedoms*, and *Chapter 8: Education*.

3.2 BEST INTERESTS OF THE CHILD (art. 3; CO 32)

The principle of the best interests of the child appears in state and territory legislation as well as in policy and administrative guidelines regarding decision making about children in several contexts.⁴⁹ However, it continues to be inadequately understood and inconsistently applied, and its application is disproportionately denied to particular groups of children. Practical failures to appropriately consider the best interests of children include:

- the increased discretion to refuse or cancel a child or young person’s visa on character grounds (see *Chapter 4: Civil rights and freedoms*);



LEFT: Terrence Sansbury. *Moving on*. 2018.

- increasing rates of separation of Aboriginal and Torres Strait Islander children from their families, and an insufficient focus on prevention and intensive support services to ensure children are brought up in safe and functioning family environments and retain their cultural identity (see *Chapter 5: Violence against children* and *Chapter 6: Family environment and alternative care*);
- the return to a 'market approach' to adoption and surrogacy, and a preference for permanency planning, which risks compromising the views and needs of children in favour of the family formation interests of prospective parents (see *Chapter 6: Family environment and alternative care*);
- a deterrence based migration policy involving mandatory and indefinite detention, 'offshore processing', boat turnbacks, conflicts in guardianship arrangements for unaccompanied minors, and limitations on family reunification (see *Chapter 9: Special protection measures*);
- a punitive approach to youth justice that fails to consider detention as a last resort, limits support for rehabilitation or the use of diversionary strategies, and permits incidences of cruel and inhuman treatment in youth detention facilities (see *Chapter 9: Special protection measures*).
- limited access to primary health care services for children in out-of-home care, children with disabilities, and children living in rural and remote areas;
- an escalating need for youth mental health services that are appropriate and child focused in their delivery;
- high rates of youth suicide across the general Australian population, and even higher rates for Aboriginal and Torres Strait Islander and LGBTIQ+ children and young people;
- rates of poverty affecting one in six children in Australia, with particular concerns for children in single parent households and Aboriginal and Torres Strait Islander children.

Low rates of access to early childhood education and care and the detrimental impacts on early development of Aboriginal and Torres Strait Islander children are discussed in *Chapter 8: Education*. Concerns about limited access to primary health care services, increased mental health needs, and high rates of poverty affecting asylum seeker and refugee children and families are discussed in *Chapter 9: Special protection measures*.

3.3 RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (art. 6; SDG 6.2)

As discussed in *Chapter 7: Disability, health and welfare*, the right to life, survival and development is not realised for children and young people in Australia. Problems include:

- high infant mortality rates, low immunisation rates, high prevalence of fetal alcohol spectrum disorders, and limited access to primary health supports for Aboriginal and Torres Strait Islander children and expectant mothers;

3.4 RESPECT FOR CHILDREN'S PARTICIPATION (art. 12; CO 34)

There are continued institutional and generational barriers to children's and young people's meaningful, empowered participation and respect for their views. In 2014, only 19.8% of 15–24 year olds in Australia reported that they felt able to have a say within the community on important issues all or most of the time.⁵⁰

The Australian Government has continued to withdraw support for national youth initiatives, peak bodies and advocacy groups, including the Australian Youth Forum and National Youth Week, and there has been no reinstatement of funding to the Australian Youth Affairs Coalition. Agencies with the ability to receive children's views and concerns – such as the National Children's Commissioner, and children's commissioners, guardians, advocates and ombudsmen at state and territory level – have limited influence on the legislative process.



if your family (parents) are going for full custody you should have a say. It ~~ruined~~ ruined my childhood and I would like to be heard in a issue which is affecting my life forever.

There remain limited opportunities for children to be heard and for their views to be considered in legal and administrative decision making processes. For example, the views of the child are rarely taken into account in migration matters; and there is still no requirement for child asylum seekers to be interviewed independently, even where facts indicate they may have the strongest asylum claim. In family law matters, while section 60C of the *Family Law Act 1975* (Cth) requires courts to give regard to the views of the child when deciding their best interests, this requirement is qualified by a stipulation that children are not required to express their views.⁵¹ In many cases, a final decision is made in parenting matters without the court having received any independent information about the views of the child. There are also variations between states and territories in relation to the availability of and legal requirements for independent legal representation for children in court proceedings.⁵²

Legislative provisions across all states and territories enable and encourage the consideration of children's views in child protection decision making, where appropriate. However, a 2018 review by the Australian Centre for Child Protection found that a lack of tools and approaches to engage children in decisions was a 'large gap in almost all child protection frameworks' across Australia.⁵³

Both the Child Abuse Royal Commission and the Northern Territory Royal Commission raised concerns about the systemic lack of opportunities for children to articulate their concerns within institutional environments in Australia, carrying significant implications for children's safety. It is concerning that a survey by the Valuing Children Initiative found that in 2016, 63% of survey respondents agreed that a child's word is less likely to be believed than that of an adult.⁵⁴ The Child Abuse Royal Commission found that children are more likely to raise concerns in institutional environments that empower, listen to and believe them⁵⁵; and listed 'that children participate in decisions affecting them and are taken seriously' as one of the ten Child Safe Standards for institutions.⁵⁶ During the national consultation, a young advocate with lived experience of out-of-home care in South Australia said:

“ You guys are sitting here, and you guys are trying to hear our story, [but] ...How many people work for the government? In the youth and child protection sector? A lot of people. But I only see two people in front of me asking for our opinions.”⁵⁷

During the national consultation, children across the country consistently took issue with their lack of influence and consideration in decision making at all levels, including

government, community, school, and within the family. They spoke of feeling disrespected,⁵⁸ 'excluded',⁵⁹ 'frustrated',⁶⁰ 'helpless'⁶¹ and 'powerless to make change'.⁶² They repeatedly challenged the assumption that adult decision makers are fully able to understand their lived experiences and concerns, questioning the implications and relevance that these decisions then have on their lives. As high school students in Queensland and Tasmania expressed: 'Some adults say, "I've been through what you're going through". But that's at a completely different time'⁶³; and 'They were kids, but we are the kids now, and its changed'.⁶⁴ Other children stated: 'They probably haven't experienced things that we have in their lifetime'⁶⁵; 'If the issue is about us, we should be able to have a say'⁶⁶; and 'It's going from having no say... and then turning 18 and being able to vote and now you're deciding about what happens to the country. Then it's a Big Say and a Big Opinion'.⁶⁷

A meaningful quality approach to the participation of children will require change on the part of adults in positions of power across government and in many Australian institutions and communities. As stated by a high school student in Mount Gambier, regional South Australia, during the national consultation: 'You have to think about how you actually get young people to participate'.⁶⁸ This includes maximising children's agency within existing social, political and governance structures, and the development of additional strategies and processes that foster the conditions necessary for children and young people to take action and to be heard.⁶⁹

Recommendations:

That the Australian Government:

17. recurrently fund a national, independent youth peak body to engage with children and young people directly and to represent their views to government and other decision makers;
18. resource a forum for Aboriginal and Torres Strait Islander children and young people to have their voices heard, involving a National Aboriginal and Torres Strait Islander Children and Young People's Council;
19. legislate and embed strong, culturally responsive mechanisms and child inclusive decision making/ dispute resolution processes, particularly in family law, child protection and youth justice.

you are you. Own your identity

We need to be safe, alive and ourselves so we can be the future leaders.

heighten the voice of Australia's young people, and ensure an independent ~~the~~ media entity to give honest portrayals of young people and their views.

Strike the balance of left-wing and right-wing movements to ultimately create a better society. Too much of anything causes chaos

Please make Australia a better place for us by stopping the limits of freedom for children.

The Police men aren't treating children fairly because they think they have all the Power.

-Train Law Enforcement more thoroughly
~~to include~~ especially with racism

Civil rights and freedoms

4.1 BIRTH REGISTRATION, NAME AND NATIONALITY (art. 7; CO 36; SDG 16.9)

A significant number of Aboriginal and Torres Strait Islander children are denied the entitlements of citizenship and struggle to fully participate in Australian society, as their birth has never been registered; or, if it has been, they are unable to produce a birth certificate to prove it.⁷⁰ Without a birth certificate, individuals can face difficulties enrolling in school, accessing health services and social security, gaining employment, obtaining a tax file number, applying for private and public housing, obtaining a driver's licence, joining sporting clubs, and opening a bank account.

The concerns identified by the Children's Committee in 2012 remain unaddressed. Aboriginal and Torres Strait Islanders face continued obstacles to birth registration, including poor literacy levels; a lack of awareness of birth registration as a fundamental human right; lack of understanding of the requirements and advantages of birth registration; inadequacies in the support provided by authorities, including primarily capital-city-centric birth registration systems and services; and reliance on a paper based system.

Further, although it is free to register a birth, a fee is usually imposed to issue or reissue birth certificates, and there is a fine for late registration of births.⁷¹ Although parents on low incomes can apply for fee waivers, these operate as a barrier and administrative costs pose an additional hindrance for those experiencing economic disadvantage.

Ongoing obstacles are faced by children in out-of-home care regarding obtaining identity documents; and by foster and kinship carers in obtaining timely access to identity documents for children in their care.⁷² In addition to the impacts outlined above, this can result in children not receiving timely treatment for health conditions, or missing out on school excursions, sporting and cultural opportunities; and in families being prevented from taking overseas holidays together.⁷³

Recommendation:

That the Australian Government:

20. ensure comprehensive and universal access to birth registration by:

- (1) automatically issuing the first birth certificate for free upon the registration of an Aboriginal or Torres Strait Islander birth;
- (2) investing in decentralisation, including community based and digital birth registration systems.



4.2 PRESERVATION OF IDENTITY (arts 8 and 30; CO 38; SDG 16.9)

4.2.1 Cancellation of visas based on character grounds

In December 2014, the Australian Government introduced amendments to the *Migration Act 1958* (Cth) that have significantly broadened the Minister for Immigration's discretionary power to cancel an individual's temporary or permanent visa based on character grounds. Under section 501, a person who is reasonably suspected

of posing any risk to the Australian community can be subject to visa cancellation, removal or deportation from Australia.⁷⁴ Of concern are the introduction of mandatory visa cancellations, the removal of aspects of judicial oversight, and increased ministerial powers. There is also little scope in the existing legislation and guidance to call on the Minister for Immigration to consider the individual circumstances of a child or young person.⁷⁵

Following these amendments, the number of visas cancelled under section 501 has increased from 76 in 2013–14⁷⁶ to 1,284 in 2016–17.⁷⁷ The extent to which children have been affected by visa cancellation under section 501 is unclear. However, there have been cases of young refugees or former refugees from South Sudan who have had their visas cancelled and who the Australian Government has sought to deport to South Sudan.⁷⁸ In 2017, the UN Special Rapporteur on the human rights of migrants expressed grave concerns regarding the potential for visa cancellations and deportations to breach Australia's *non-refoulement* obligations.⁷⁹ A more constructive approach to addressing perceived or actual 'anti-social behaviour' by young people from migrant or refugee backgrounds would be to pursue measures aimed at promoting the education, inclusion and participation of all children and young people in Australian society, including targeted, youth specific settlement services.⁸⁰

Recommendations:

That the Australian Government:

- 21. ensure that powers under section 501 of the *Migration Act 1958* (Cth) are not applied to refuse or cancel the visa of a child;**
- 22. strengthen merits review processes for visa cancellation decisions under section 501 of the *Migration Act 1958* (Cth).**

4.2.2 Aboriginal and Torres Strait Islander children

Protecting the cultural and identity rights of Aboriginal and Torres Strait Islander children requires that all governments work collaboratively alongside Aboriginal and Torres Strait Islander peoples. There remain considerable concerns that the child protection system does not adequately facilitate the preservation of Aboriginal and Torres Strait Islander children's cultural and linguistic identity or connection to community; with problems including varying implementation of cultural care and support plans, and an increased emphasis on pathways to permanency and adoption. These concerns are discussed further in *Chapter 6: Family environment and alternative care*.

4.2.3 Donor conceived children

The right of a child born of donor gametes to access information about their biological heritage is not consistently protected in Australia.⁸¹ In 2011, the Senate Legal and Constitutional Affairs References Committee recommended the establishment of a national register of donors as a matter of priority.⁸² However, the recommendations have not been implemented, and the regulation of donor conception in Australia continues to limit access to records that may assist donor conceived children in developing and improving their sense of identity, and supporting their psychological health and wellbeing.⁸³

Recommendation:

That the Australian Government:

- 23. develop uniform legislation and establish a national register to allow donor conceived children to access identifying information about their donor, and donor siblings.**

4.3 FREEDOM OF ASSOCIATION AND OF PEACEFUL ASSEMBLY (art. 15; CO 40)

There are continuing concerns around the overuse of public order offences, consorting laws and other forms of policing that disproportionately affect young people and particularly vulnerable groups of children. During the national consultation, many children and young people raised concerns about police behaviour; including a young person in Mount Gambier, regional South Australia, who reflected on 'the double standard with police or getting in trouble. Like, if you're wearing a baggy hoodie at night, you're getting pulled up, even if you're just walking'.⁸⁴ Similarly, high schools students in Brisbane, Queensland, stated: 'The police abuse their powers. Because they've been given it, so they feel like they need to use it'⁸⁵; and 'There is a lot of racism. They do all these courses and things to try and make the officers aware, but the stories I've heard, they target people.'⁸⁶

In 2016, nearly 60% of the children and young people who were subject to the use of a consorting law under the *Crimes Act 1900* (NSW) were of Aboriginal and Torres Strait Islander background, with the highest proportion being in the youngest category of children, between 13 and 15 years of age.⁸⁷ Young people accessing homelessness services also reported that they had been issued consorting warnings while spending time with friends in public areas, including parks and outdoor seating areas.⁸⁸ Similar concerns exist in relation to 'pre-emptive policing' strategies employed in New

South Wales that aim to ‘prevent future offending by targeting repeat offenders and people police believe are likely to commit future crime’;⁸⁹ discussed further in *Chapter 9: Special protection measures*.

Further, a 2015 report found that both African Australian and Pacific Islander communities were affected by racial policing in Victoria; and that young people from those communities avoided the city centre, where they felt vulnerable to police harassment and assaults, and did not lodge complaints for fear of police retribution.⁹⁰ During the national consultation, a high school student from a culturally and linguistically diverse background in Yarra, Victoria, explained: ‘If a group of people feel threatened by the police, they’re so much less likely to go to them for help when they need to.’⁹¹

Recommendation:

That the Australian Government:

24. **commit to improving police–youth interactions by educating police in contemporary youth engagement strategies, through the Australia New Zealand Policing Advisory Agency.**

4.4 CHILDREN AND YOUNG PEOPLE IN THE DIGITAL AGE

Children and young people’s capacity to access, use and benefit from technology is an emerging area, and the digital age presents new challenges and opportunities that impact on the enjoyment of rights across the Children’s Convention.

Research shows that young Australians are among the nation’s most digitally included.⁹² As of 2016, the vast majority of Australian families (96%) had wifi access at home,⁹³ and in 2018, 86% of Australian teenagers aged 14–17 years are recorded as owning or using a mobile phone, with 57% having a smartphone.⁹⁴ However, despite Australia’s aspirations to be ‘the first fully connected continent’,⁹⁵ there remain barriers to digital inclusion, including cost and quality of service connectivity.⁹⁶

Online safety remains a key focus for Australian policy and practice relating to children’s engagement with digital media. The establishment of the Office of the eSafety Commissioner in 2015 – a unique entity internationally – has played a significant role in coordinating and leading online safety efforts across sectors. Australian children are potentially subject to a range of negative experiences online, the most common being unwanted contact and content; social exclusion; and threats and abuse.⁹⁷ However, evidence



LEFT: Child residents of Banksia Hill Detention Centre (Western Australia). *Our languages matter*. 2017. Explores the different languages of Western Australia and how language links people to their land and water, spirituality and sacred rites.

continues to show that those children and young people who are more vulnerable to risk of harm offline are more likely to experience harm in online environments. They are more likely to take risks such as sharing passwords and sharing personal information online, and are also less likely to use privacy settings effectively.⁹⁸ Further, these young people are less likely to involve family and friends in order to resolve negative online experiences.⁹⁹ The majority of children and young people are not necessarily being skilled to deal with the everyday risks of harm they face online. At the same time, children who are most vulnerable to serious risk of harm are not necessarily getting the support they need.¹⁰⁰

If Australian children are to be adequately prepared for the digital future, it is critical that more attention is targeted towards their participation and provision rights. Currently, a lack of rigorous data limits the capacity of policy and practice to promote the benefits of connectivity for children and to realise their participation rights. Similarly, efforts to consult with children on the issues that impact them tend to be one-off and aligned to adult centred agendas, rather than ongoing conversations driven by children’s insights and experiences.

Recommendations:

That the Australian Government:

25. **prioritise the digital access and online safety needs of vulnerable groups of children through targeted programs;**
26. **develop research and online safety initiatives in collaboration with children, to ensure they more effectively enhance children’s capacity to manage a range of risks online.**

I do not feel very safe in the place i live
(Australia) it can be really scary just walking through town

Some kids are unsafe in their own home with
their own parents. most kids don't want
to tell anyone.

- I ~~believe~~ ^{know} some children in my school are
harmed at home.

Police ~~are to~~ help teenagers in some way when teenagers call
about people trying to hurt them.

NOT TO LET SEXUAL ASSULT BE
GOTTEN away with with humor

- harsher punishments for pedophiles and rapist.

We young students have been through sexual abuse as well
as bullying which increases the chances of suicidal.

Make sexual harassment policies more well known and
enforced as well as general harassment, especially in workplaces

Violence against children

5.1 ABUSE AND NEGLECT (arts 19 and 39; COs 47 and 48; SDG 16)

Since the last reporting cycle, the Australian Government has undertaken several positive initiatives including national and state and territory inquiries into institutional abuse of children.¹⁰¹ These have been supported by the Australian Government's national apology to survivors of institutional child sexual abuse; its support for the development of the National Principles for Child Safe Organisations; and its acceptance in principle of the majority of the recommendations of the Child Abuse Royal Commission.

However, it is well established that the greatest risks faced by children are at home, in the form of abuse or neglect by parents.¹⁰² In the 2017 Happiness Survey, 10% of the 46,972 Australian children surveyed between six and 18 years of age reported that they did not feel safe at home.¹⁰³ During the national consultation, children in every state and territory spoke of personal experiences of being and feeling unsafe due to violence, abuse and intimidation. When asked what 'safety' looks like at home, a high school student in Ipswich, Queensland, answered: 'Locks on the door. That no one is scared of other people in the house.'¹⁰⁴ High school students in Karratha, Western Australia, spoke of feeling 'trapped' in home environments where 'parents don't make you feel protected'¹⁰⁵; and a high school student in Wynyard, Tasmania, said:

“ Violence has just been a part of my life since I was born. I'm used to it. My first instinct is just to get my younger brothers out of the house, the main thing is to keep them safe.”¹⁰⁶

The most common reasons children are placed on care and protection orders and subsequently placed in out-of-home care are familial abuse or neglect.¹⁰⁷ Australia's fragmented child protection system is discussed further in *Chapter 6: Family environment and alternative care*.

The *National Framework for Protecting Australia's Children 2009–2020* (National Framework) includes a focus on preventative approaches to promote child safety. However, implementation of the National Framework has been mixed

due to changes in government at both federal and state and territory levels. There are also widespread concerns that the *National Plan to Reduce Violence against Women and their Children 2010–2022* is under-resourced and not sufficiently focused on prevention.¹⁰⁸ Key actions under both national strategies remain unimplemented; there is no independent mechanism to monitor implementation and effectiveness; and there is no ministerial accountability or responsibility for progress against agreed outcomes. As a high school student in Mount Gambier, regional South Australia, stated during the national consultation:

“ When it's about protecting children, no one follows through as seriously as they would when it's about protecting adults. For it to be as serious as it is for adults. That's what would provide more safety for us.”¹⁰⁹





LEFT: Frank Tau (Woodridge, Queensland). *Children have the right to be cared for.* 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0005).

5.1.1 Data

In Australia, there are no accurate national data on the nature and extent of child abuse and neglect in familial, institutional, community and other settings, nor how it differs for different groups within the general population.¹¹⁰ This is further complicated by a lack of coordination and consistency in state and territory legislation, including variations in the definition of 'at risk' children, or what behaviour may constitute 'abuse' or 'neglect'.¹¹¹ Australia remains one of the few developed countries that has not conducted a national prevalence study of child abuse and neglect.¹¹²

According to surveys, approximately 5–10% of children experience physical abuse, 12–23% witness family violence, and 4–5% experience serious sexual abuse.¹¹³ It is likely that such retrospective, self-reported surveys may underestimate the full extent of familial maltreatment, and worth noting that children often experience more than one form of abuse and neglect during childhood.¹¹⁴ In 2017, 20% of those aged 15–19 were extremely or very worried about family conflict, and this was higher for Aboriginal and Torres Strait Islander children, at 26.4%.¹¹⁵

Data collected at state and territory levels are inconsistent, and children's experiences of domestic and family violence are not recorded independently of the accompanying adults' experience.¹¹⁶ Violence against women is endemic in Australia, with one in three women experiencing physical violence and almost one in five women experiencing sexual violence.¹¹⁷ In 2016, one in eight women (1.2 million) and one in ten men (896,700) in Australia reported having witnessed

violence towards their mother by a partner before the age of 15.¹¹⁸ Similarly, in 2016 it was reported that 40.1% of adults had children in their care while experiencing violence from a current partner.¹¹⁹ Demographic data including ethnicity, gender identity, disability and sexual orientation of family members are collected differently across states and territories, or are not collected at all, and there is inconsistent collection of information from secondary intervention and support services.

Data collection on child protection has typically been undermined by numerous challenges, making it difficult to draw comparisons between jurisdictions or to see the national context.¹²⁰ As a national measure, reliance on counting of activities of state and territory statutory child protection services remains a poor substitute for capturing the extent of harm experienced by children, and fails to capture the risks of violence faced by children across Australia.¹²¹ Also, statutory child protection systems only come in contact with a small proportion of children who experience abuse and neglect.¹²²

The lack of aggregated data has resulted in an inability to properly assess the effectiveness of previous or existing policies employed to reduce rates of violence against children, at both a general population level and for different groups of children. Improved data collection is necessary for the development of prevention, early intervention and recovery services that are culturally appropriate and specifically targeted to the needs of families with high vulnerability and existing barriers to appropriate services.¹²³

Recommendations:

That the Australian Government:

- 27. implement recommendation 2.1 of the Royal Commission into Institutional Responses to Child Sexual Abuse and conduct and publish a nationally representative prevalence study on a regular basis, to establish the extent of child maltreatment in institutional and non-institutional contexts in Australia;**
- 28. implement recommendations 3 to 6 of the National Children's Commissioner's *Children's Rights Report 2015*, to strengthen the Australian Bureau of Statistics Data Collection and Reporting Framework.**

5.1.2 Children experiencing higher levels of risk

Particular groups of children in Australia experience greater risks of violence, and this is coupled with barriers to reporting or seeking support from services. In 2014, 72.3% of those aged 16–27 who identify as LGBTIQ said they had experienced abuse because of their sexuality and/or gender identity.¹²⁴ There are also concerns around the use of 'conversion therapy' by families, as a harmful and unethical practice aimed at the sexual reorientation of LGBT children and young people.¹²⁵ During the national consultation, a young transgender advocate in Perth, Western Australia, explained:

“ If an LGBTIQ+ person is trying to escape somewhere abusive, there's often nowhere to go. No short term housing, no long term housing. Bigoted families aren't just going to turn around and change their ideas. ...People don't see this as harm to a child, they'd still think your parents would be willing and able to care for you. But conversion therapy... It's child abuse.¹²⁶ ”

In addition, children and their families from culturally and linguistically diverse backgrounds, children in rural and remote areas, and children who identify as LGBTI are all less likely to seek support from law enforcement and other support services.¹²⁷ As another young transgender advocate in Perth, Western Australia, expressed during the national consultation:

“ Everyone is afraid of cops. Even if you did get bashed and stuff, nobody goes to the cops. I have a black belt in karate. I took it into my own hands. No one's going to protect me, I've got to protect myself.¹²⁸ ”

It is well established that women and girls with disability are at far greater risk of violence, particularly sexual violence, than the general population.¹²⁹ Children with disability are three to four times more likely to experience sexual abuse and less likely to be believed,¹³⁰ and are 3.4 times as likely to experience violence compared to other children.¹³¹

Children with disabilities also often experience multiple and ongoing episodes of violence.¹³² Policy, legislation and service frameworks largely focus on addressing domestic and family violence, and sexual assault. However, this fails to recognise that children with disability are more likely to experience violence across a broad range of settings, including in institutional, residential and other care settings; and to experience all forms of violence and abuse, including restrictive practices such as seclusion and solitary isolation, and physical and chemical constraint.

Research into the prevalence of violence suggests that Aboriginal and Torres Strait Islander women are 45 times more likely to experience family violence,¹³³ 32 times more likely to be hospitalised as a result of family violence, ten times more likely to die from violent assault, and 3.7 times more likely than other women to experience sexual violence.¹³⁴ Family violence is a key driver of child protection involvement. One of the factors that contributes to the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care is the overrepresentation of Aboriginal and Torres Strait Islander women as victims of family violence.¹³⁵ For example, a 2016 review in Victoria found that 88% of 980 Aboriginal and Torres Strait Islander children in out-of-home care had been exposed to family violence.¹³⁶

Significant gaps continue to exist in ensuring meaningful responses to family violence within Aboriginal and Torres Strait Islander communities.¹³⁷ Evidence demonstrates that reducing rates of family violence in Aboriginal and Torres Strait Islander communities will only occur if Aboriginal and Torres Strait Islander led organisations are fully resourced to provide a holistic response to family violence.¹³⁸ However, Aboriginal and Torres Strait Islander led organisations that are responding to family violence continually face threats to funding sustainability, which directly undermines their capacity to support vulnerable children, families and communities.¹³⁹

Further, concerns have been raised regarding the limited level of Aboriginal and Torres Strait Islander participation, leadership and involvement in the development of long term solutions for ensuring the safety and wellbeing of Aboriginal and Torres Strait Islander children and families.¹⁴⁰ As a young Aboriginal advocate for children living in out-of-home care in New South Wales expressed during the national consultation:

“ What needs to be taken into account is the mistrust relationship between government and Aboriginal people. So they need to get Aboriginal leaders within their communities to work in partnership to build trust within these organisations. ...It's not about pointing the fingers and saying you guys are doing this and doing that. We need to work in partnership, together, on the same level. ...And children is everybody's responsibility. So, to have kids unsafe just isn't okay. One child unsafe is too many.¹⁴¹ ”

Recommendations:

That the Australian Government:

29. ensure meaningful participation and collaboration with women and children at higher risk, in the development, implementation and monitoring of national strategies to reduce violence against children;
30. develop and resource a dedicated plan to reduce violence against Aboriginal and Torres Strait Islander women and girls, designed and led by Aboriginal and Torres Strait Islander women and community controlled organisations.

5.1.3 Institutional abuse and violence

Recent Australian Government inquiries have resulted in considerable focus on children's exposure to abuse in institutional environments. These include the Child Abuse Royal Commission¹⁴²; the Senate Community Affairs References Committee inquiry into violence, abuse and neglect against people with disability in institutional and residential settings¹⁴³; and similarly positive initiatives at state and territory level, including the Royal Commission into Family Violence in Victoria¹⁴⁴; the Child Protection Systems Royal Commission in South Australia¹⁴⁵; and the Northern Territory Royal Commission (discussed further in *Chapter 9: Special protection measures*).¹⁴⁶

These initiatives have resulted in commitments at institutional level to implement and expand existing 'screening' measures, such as pre-employment checks to identify volunteers or employees who may have a history of offending behaviour. However, these measures have limitations; as they focus on identifying past behaviours that are typically not reported to external authorities, fail to identify first time offenders who do not have a prior history of abuse, and fail to protect children from harmful sexual behaviour by other children.

To adequately reduce the risk of abuse in institutions, it is important to move beyond a narrow focus and ensure that steps are taken simultaneously to address the situational contexts that make institutions inherently unsafe environments for children. These include having child friendly reporting procedures; and implementing processes that reduce opportunities for sexual offending to occur, increase the chances of offenders being caught, and address institutional cultures that promote conditions where abuse is more likely to be tolerated, excused or ignored.¹⁴⁷

Recommendations:

That the Australian Government:

31. establish a Royal Commission into all forms of violence, abuse and neglect against children with disability;
32. implement and resource the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse;
33. require organisations that have contact with children to report on compliance with the National Principles for Child Safe Organisations as part of their ongoing funding arrangements;
34. integrate the National Principles for Child Safe Organisations into existing national regulatory frameworks, such as the National Standards for Out-of-Home Care and the Human Services Quality Framework.

5.2 TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (arts 37(a) and 28(2))

Concerns about the torture and other cruel, inhuman or degrading treatment or punishment of asylum seeker and refugee children, and children in youth detention facilities, are discussed in *Chapter 9: Special protection measures*.

5.2.1 Corporal punishment (COs 44, 45 and 47(e))

Australia has made some progress in addressing the practice of corporal punishment. The physical punishment of children in schools is currently prohibited in most states and territories, with the exception of the Northern Territory, Queensland and Western Australia.¹⁴⁸ However, Australian law still does not prohibit corporal punishment in all settings, despite consistent recommendations from the Children's Committee over the last two decades.¹⁴⁹ The physical punishment of children is effectively permitted in the home, alternative care settings, day care, schools and penal institutions in some states and territories. As stated by a high school student in Ipswich, Queensland, during the national consultation: 'If you do something wrong at home, you get a hiding.'¹⁵⁰

The Global Initiative to End All Corporal Punishment of Children reported in 2017 that the 'near universal acceptance of corporal punishment in childrearing' in Australia means that legal provisions are not interpreted as prohibiting corporal

punishment.¹⁵¹ Rather, a legal defence operates in practice to permit the ‘reasonable’ punishment of children in different settings in all Australian jurisdictions,¹⁵² with New South Wales being the only state that has stipulated what is deemed to be ‘unreasonable’ punishment.¹⁵³ This remains contrary to Children’s Committee guidance that the physical punishment of children constitutes violence and is inconsistent with a child’s right to human dignity and physical integrity.¹⁵⁴

Recommendations:

That the Australian Government:

- 35. repeal the legal defences for the use of corporal punishment and ensure that all forms of corporal punishment are unlawful across all Australian jurisdictions;**
- 36. strengthen awareness raising and education campaigns, with the involvement of children, in order to promote positive, non-violent forms of discipline.**

5.2.2 Forced sterilisation of children (CO 47(b))

Forced sterilisation is an ongoing practice in Australia, and disproportionately affects girls with intellectual disabilities. These decisions are typically justified as being in the child’s best interests. However, when analysed, it is clear that these procedures are undertaken as a means of preventing pregnancies, often on account of sexual abuse; in order to prevent menstruation and sexual behaviour, often to



ABOVE: Nina Panayotov (Rainworth, Queensland). *Hit the streets*. 2013. Dr Barbara Piscitelli AM Children’s Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0067).

reduce the burden on parents, carers and public resources; to address the perceived incapacity of adolescents with learning disabilities to take on parental responsibilities; and to prevent passing on genetic irregularity.¹⁵⁵ This is despite the fact that it has been identified by the Children’s Committee as a form of violence,¹⁵⁶ and by the UN Special Rapporteur on torture as a form of social control and a form of torture.¹⁵⁷

Since 2005, UN treaty bodies including the Children’s Committee,¹⁵⁸ the Committee on the Rights of Persons with Disabilities,¹⁵⁹ the Committee against Torture,¹⁶⁰ the Committee on the Elimination of Discrimination against Women¹⁶¹ and the Human Rights Committee,¹⁶² in addition to the Human Rights Council,¹⁶³ UN special procedures,¹⁶⁴ and international medical bodies,¹⁶⁵ have made recommendations that the Australian Government enact national legislation to prohibit forced sterilisation.

Recommendation:

That the Australian Government:

- 37. enact nationally uniform legislation prohibiting non-therapeutic and forced sterilisation of children in the absence of their prior, fully informed and free consent, except where there is a serious threat to life or health.**

5.2.3 Forced medical interventions on children born with intersex variations

Invasive and irreversible surgeries and other medical interventions are performed on children born with variations of sex characteristics without their informed consent or evidence of medical necessity, in an attempt to ensure ‘normalisation’ of sex and permanent sex assignment.¹⁶⁶ The consequences of these procedures can be profound, including impaired sexual function and sensation, and incorrect gender assignment.¹⁶⁷ In 2018, the Committee on the Elimination of Discrimination against Women recommended that the Australian Government explicitly legislate to prohibit these procedures.¹⁶⁸

Recommendation:

That the Australian Government:

- 38. enact legislative provisions explicitly prohibiting forced medical interventions on children born with intersex variations before they reach an age when they are able to provide their prior, fully informed and free consent.**

What I am honestly asking for is some where,
where where children can feel safe Respected & loved

* More support for the families and not just
the students. Happy home = Happy kids.

Please allow me to see my family. They're my family
and I shouldn't have to fight to love them.

Try to keep siblings together when going into care

Take time to see if the child is a good fit for the carer.
Children just get placed into a home with people
who are available at the time, it will be easier for a
child if they have the same sort of interests as a carer.

-Take your time to go ~~see~~ what its like in the life
of a child in care so that you can see the
problems that occur - make sure of the staff
you are hiring are right for the job

Young people in or leaving out of home care need on
going support

Family environment and alternative care



6.1 CHILDREN DEPRIVED OF THEIR FAMILY ENVIRONMENT (arts 9 and 20; COs 50, 52 and 56)

Under current legal frameworks, the primary responsibility for child protection rests with state and territory governments. The Australian Government has taken on a key leadership role in promoting a nationally consistent approach to improving child protection and out-of-home care policies and practices through the *National Framework for Protecting Australia's Children 2009–2020* (National Framework).¹⁶⁹

However, the continued increase in the numbers of children who have contact with the child protection system, the consistently poor outcomes experienced by children in out-of-home care, as well as rising associated costs across every Australian jurisdiction, demonstrate that the current frameworks and funding efforts are floundering and insufficient. During the national consultation, young advocates with lived experience of out-of-home care in South Australia expressed the view that the government ‘turns a blind eye. They don’t want to know what goes on.

They do know, but they don’t want to know,’¹⁷⁰ and that it was a matter of

“ people sitting at their desks making decisions about our lives and they have never once, I’m assuming, set foot inside a residential care home or a foster care house, spent a week there every day for eight hours. Live it. I dare you.”¹⁷¹

Children in out-of-home care are among Australia’s most vulnerable children. They are often still recovering from traumatic histories of abuse and neglect, most often at the hands of adults entrusted with their care and protection.¹⁷² They also typically experience compounding disadvantage. Aboriginal and Torres Strait Islander children are disproportionately overrepresented in the out-of-home care population. Similarly, an estimated 24–30% of children in out-of-home care have some form of disability;¹⁷³ and children from culturally and linguistically diverse backgrounds are estimated to constitute 13–15% of children in out-of-home care, a significant proportion of whom have refugee experiences.¹⁷⁴

Despite the obvious need for additional support and protection, children in out-of-home care experience chronic inadequacies in the quality of their care, and there remain significant systemic failures to support ‘at risk’ families and prevent children entering the child protection system.¹⁷⁵

6.1.1 Inadequacies of the child protection system

Since 2000, the number of children entering and remaining in out-of-home care has more than doubled,¹⁷⁶ and an increasing proportion of children are entering care at a younger age and remaining in care longer.¹⁷⁷ In June 2017, there were 47,915 Australian children living in out-of-home care, rising by 18% since 2013.¹⁷⁸ Similarly, expenditure on out-of-home care services has more than doubled, from \$1 billion in 2004–05 to \$2.2 billion in 2013–14.¹⁷⁹

Over the past two decades, numerous inquiries have consistently highlighted issues of overwhelming need, inadequate workforce capacity and poor quality of practice and decision making within Australia’s child protection system.¹⁸⁰ A 2018 evaluation of the quality

and comprehensiveness of child protection practice frameworks found that the frameworks themselves may be limiting rather than enhancing child protection practice in all Australian jurisdictions.¹⁸¹ The Australian Centre for Child Protection found that not a single state or territory child protection practice framework contained adequate information on all core domains of child protection practice.¹⁸² Significant problems included a lack of consistency and lack of emphasis on frameworks being child centred, where outcomes tended to emphasise satisfaction levels of parents and practitioners, or decreasing expenditure.¹⁸³ Only four frameworks contained principles that placed the child's best interests at the centre of practice,¹⁸⁴ and none of the frameworks reported having consulted with and/or worked with children during their development.¹⁸⁵ In those jurisdictions where the best interests principle is embedded, it is not interpreted evenly, or with any consistency.

The 2018 evaluation also found a lack of specification regarding the qualifications, experience, knowledge or skills required in effective child protection practice.¹⁸⁶ This is particularly concerning given that practitioners are working with highly vulnerable children and families on issues of child safety.¹⁸⁷ Frameworks also lacked specific tools, skills and techniques to inform and improve intake, investigations, case management, out-of-home care, and reunification.¹⁸⁸ The evaluation found that practitioners were provided with limited guidance around the types of interventions that could be used with families to assist them in achieving care plan goals¹⁸⁹; and limited or no information was provided for practitioners working with families from culturally and linguistically diverse backgrounds, or families in which parents or children had intellectual and physical disabilities.¹⁹⁰

The current need for out-of-home care services far outweighs the capacity of the child protection system and service providers, resulting in decisions about appropriate placements for children often being based on availability rather than a need to ensure children's safety, care and development.¹⁹¹ As a young advocate with lived experience of out-of-home care in South Australia stated during the national consultation: 'They don't even bother looking at whether

it's a good fit, is this actually going to work? They just turn around and say – this place can take this child, here you go.'¹⁹² This practice may involve failures to take into account a child's development, gender, mental health and behavioural tendencies when making placement decisions.¹⁹³ During the national consultation, many of the young advocates with lived experience of out-of-home care spoke of the element of 'luck' involved in placement decisions, or being denied the ability to stay with siblings, with one young advocate stating: 'I'm one of nine. Nine. And I couldn't be with even one of my siblings.'¹⁹⁴ There are also limited supports provided to kinship carers and their families, meaning that children placed in kinship care arrangements do not have access to the same supports and services as other forms of care.¹⁹⁵

During the national consultation, several young advocates spoke of having been denied a childhood as a consequence of being placed in out-of-home care, with statements including, 'I've been an adult since I was nine. I didn't have the option of being a kid',¹⁹⁶ and:

“ I look at my little sister in residential care, and it breaks my heart. I would still parent her, even though we had carers. And they were like: 'No, you can't keep doing this, you're not having your own childhood.' But you're not giving her a childhood by chucking her in with carers that rotate, eight hour shifts, on and off, 24/7.¹⁹⁷ ”

There remain significant concerns that children continue to experience physical, emotional and sexual abuse while in care, and that many children are placed in unsafe out-of-home care placements where their basic needs are not

Make sure everyone feels safe in their homes, because someone's home is their main place, trust -worthy people, sleeping, eating, it's where someone's guard would be most down. Everyone deserves safety.



met.¹⁹⁸ In 2015, the Senate Community Affairs References Committee reported that children in out-of-home care experience poorer educational outcomes than the general population¹⁹⁹; are more likely to experience chronic health issues, often due to a lack of access to health care services²⁰⁰; and are more likely to experience mental health issues and associated emotional and behavioural problems, given the strong coincidence of early trauma and abuse and subsequent placement instability.²⁰¹ As another young advocate with lived experience of out-of-home care in South Australia expressed during the national consultation:

“ Personally, I was put in four different homes before I even found one, so that’s going to mess with a kid’s head, you know? And I’m traumatised from residential care. I would have been better living with my heroin addict mum, you know what I mean? Residential care was nothing to me. There are other traumatised kids with you, with workers that abuse you in care. No, I want none of that. You know the paedophile bloke here, Shannon McCool? He looked me in the eye and told me I was too old to rape. So, that’s residential care for you.²⁰² ”

Recommendations:

That the Australian Government:

39. develop a uniform, integrated national child protection system that is aligned with ‘public health’ models and is based on children’s rights and their recovery;
40. establish a National Office of Child Wellbeing and Safety in the Department of the Prime Minister and Cabinet, to assist in the coordination and oversight of child protection nationally.

6.1.2 Data

Positive efforts have been undertaken under the National Framework to develop and implement the Child Protection National Minimum Dataset. However, in addition to data gaps regarding the prevalence of child abuse and neglect (as discussed in *Chapter 5: Violence against children*), there are significant data gaps with respect to the experiences of children in out-of-home care.

There are currently no national data on the reasons why children are placed in out-of-home care²⁰³; this data is vital in order to address the root causes of the increasing numbers of children entering the child protection system. Similarly, there are no clear national data on the circumstances and types of family supports needed by vulnerable families to care for their children and prevent their entry into the system, and how these interventions may correlate against outcomes

for children. Although there are some national data on stability and permanency of placements, there are currently insufficient data on how many children in care maintain contact with birth families, and there are no national data on rates of reunification with family.²⁰⁴ There is also a significant dearth of data on the numbers of children and young people transitioning from care, and limited Australian research that examines the long term outcomes for children and young people once they leave the child protection system.²⁰⁵

Recommendations:

That the Australian Government:

41. ensure that the full range of data required by the Child Protection National Minimum Dataset is collected and reported;
42. coordinate a national system for collecting disaggregated data on the reasons children are placed in out-of-home care; and longitudinal data that allow for calculation of the length of stay in care, time to exit by exit type, and re-entry to care, by Aboriginal and Torres Strait Islander status.

6.1.3 Transition from out-of-home care

Significant concerns remain regarding the vulnerability of children and young people forced to leave state care upon turning 18 years of age, and the inadequacy of preparation and supports to enable children and young people leaving



care to transition successfully to independent living. Many children and young people do not have a transition from out-of-home care plan, and for others, transition planning does not occur until just prior to leaving care.²⁰⁶ As a young Aboriginal advocate with lived experience of out-of-home care in New South Wales said during the national consultation: 'People aren't even aware of their after care plans, if they've got them, they aren't aware of the services and support networks.'²⁰⁷

The Australian Institute of Family Studies has reported that children and young people leaving care are 'one of the most vulnerable and disadvantaged social groups', with the vast majority of care leavers suffering from, or at a greater risk of suffering from, negative outcomes in their social and psychological functioning, financial status, and educational and vocational pursuits.²⁰⁸ In the first year of leaving care, 35% of children and young people are homeless, only 35% complete Year 12, 29% are unemployed, 46% of males are involved in the youth justice system, and 70% are dependent on Centrelink for some form of income support.²⁰⁹ During the national consultation, a young advocate in South Australia spoke of her experiences after having left out-of-home care:

“ I didn't know cooking, cleaning, nothing. I was an anorexic. I didn't know how to chop a tomato. How am I supposed to be independent? You're kicked out when you don't know anything. All I knew how to do is make crack, man. Sorry, but, they didn't give me any of those life skills. And you never feel worthy enough for a normal human being, which is somebody with two parents. Even to this day, I'm 21, and I don't feel normal. And I've been out of care for four years. I'm still a gone kid. I've broken the cycle, I'm a youth worker now, I'm not on drugs and I'm not a crackhead anymore. But at the end of the day, it still haunts you. Government life never, ever, ever will get out of your system.²¹⁰ ”

The Tasmanian, South Australian and Victorian Governments have recently committed to extend the age that children leave out-of-home care from 18 to 21 years of age. However, other states and territories are yet to follow. This has been described as a 'double standard' for children in out-of-home care, compared with children who live with their families and who are not expected to 'exit' the family home upon reaching 18 years of age without proper supports.²¹¹ It is notable that there is a substantial cost benefit to state and territory governments in extending the age of leaving care. Research commissioned by Anglicare Victoria found that the community would save between \$1.40 and \$2.69 for every dollar spent on extending support to 21 years of age, depending on the state or territory.²¹²

Recommendations:

That the Australian Government:

43. **extend the age of children leaving out-of-home care to 21 years, and invest in additional services to support this approach across all Australian jurisdictions;**
44. **implement policies to prepare children to transition to independence and invest in quality monitoring of agencies' compliance with these policies.**

6.1.4 Voluntary relinquishment of children with disability into out-of-home care

'Voluntary relinquishment' describes situations where families feel they are no longer able to safely care for their child and surrender the day-to-day care of their child to the state. The difficult decision to relinquish care of a child is commonly driven by a family's unmet need for services, such as family respite or in-home support for a child with high support needs.²¹³

Consistent, cross-jurisdictional data regarding the relinquishment of children with disability are not collected in Australia, though evidence suggests that children of people with disability, particularly those with intellectual and psychosocial disability, are subject to removal from their parents at a higher rate than the general population.²¹⁴ In many circumstances, children with disability are pre-emptively removed from families, despite there being no evidence of neglect, abuse and/or parental incompetence.²¹⁵

Children with disability under the guardianship of the state may not be provided with adequate supports to develop independent living skills, to access relevant services, or to participate in mainstream educational, cultural or social activities with peers. Limited options within the child protection system to enable children with disability to be placed with foster carers or in other home environments mean that children with disability are more likely to experience 'institutionalisation', which can be ongoing throughout their lives.

As discussed in *Chapter 7: Disability, health and welfare*, the implementation of the National Disability Insurance Scheme (NDIS) has created a lack of clarity as to who holds primary responsibility for the care of a child with disability who has been relinquished into state care. As a result, current placement arrangements for children with disability who have been relinquished into care are extremely variable and unstable. These arrangements can vary from a child with disability who has been relinquished receiving ongoing accommodation, to a child with disability being 'exited' from respite care and left at risk of homelessness.

Recommendations:

That the Australian Government:

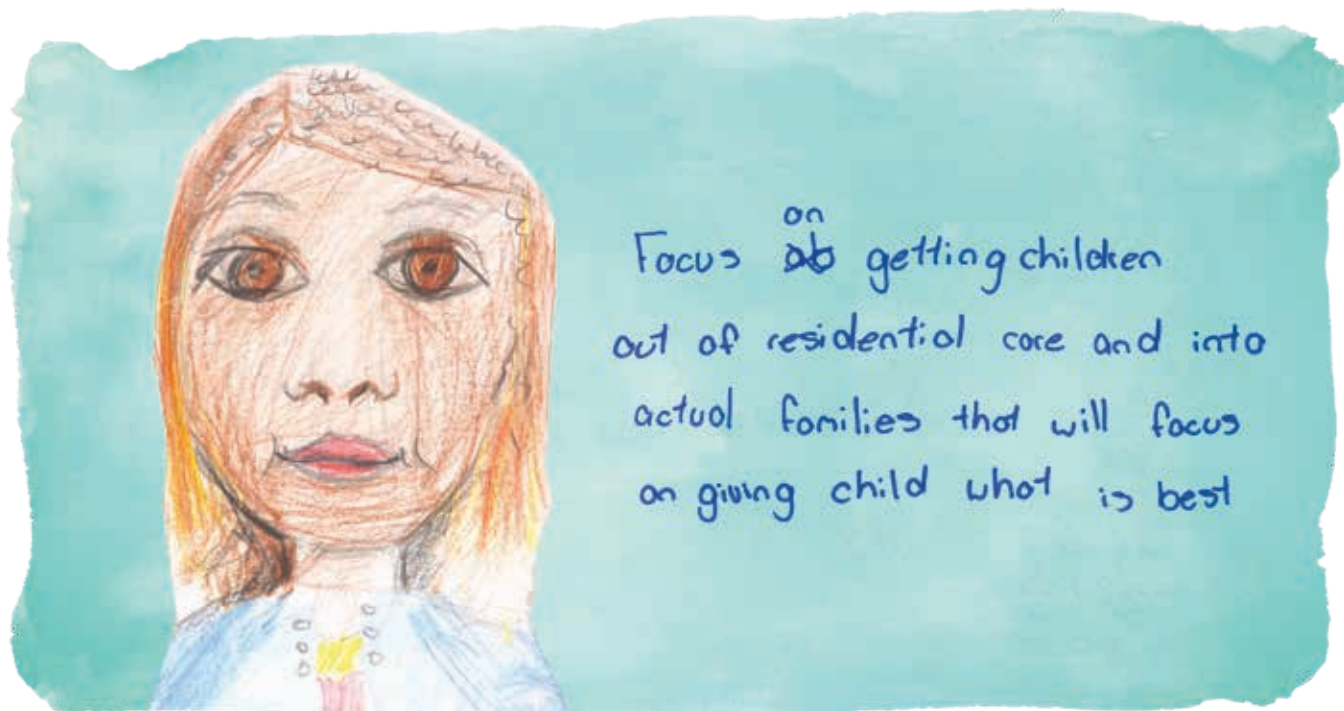
45. review the adequacy and availability of funding for children with disability through the National Disability Insurance Scheme, including:
 - (1) early intervention funding to support children with disability remaining at home in the care of their parents;
 - (2) case management support for children with disability and families with disability, to access family support services to assist children remaining at home in the care of their parents;
46. improve linkages between the child protection system and the National Disability Insurance Scheme to ensure that children with disability have stable and secure accommodation, consistent support services and meaningful relationships with their families.

6.1.5 Overrepresentation of Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children continue to be removed from their families at alarmingly high rates. As of June 2017, Aboriginal and Torres Strait Islander children are placed in out-of-home care at almost ten times the rate of non-Indigenous children.²¹⁶ The number of Aboriginal

and Torres Strait Islander children living in out-of-home care has more than doubled since 2008, when the Australian Parliament apologised to the Stolen Generations.²¹⁷ It is predicted from current trends that the number of Aboriginal and Torres Strait Islander children in out-of-home care will more than triple by 2036.²¹⁸ However, the Australian Government's 'Closing the Gap' strategy continues to omit any targets to address the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care or to provide support to families.

A large proportion of Aboriginal and Torres Strait Islander children are placed in out-of-home care due to substantiations of 'neglect', which is closely linked to the prevalence of social disadvantage in Aboriginal and Torres Strait Islander communities. Poverty, poor housing and a lack of equitable access to appropriate services often result in the inability of a parent or guardian to provide for a child's basic needs, including shelter, nutritious food, health care, water, sanitation and supervision.²¹⁹ The overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care is due in part to the lack of support services tailored to the specific needs of Aboriginal and Torres Strait Islander communities²²⁰; as such, addressing 'neglect' involves addressing a broad range of complex social factors that are beyond the purview of child protection services.²²¹ In 2017, the UN Special Rapporteur on the rights of Indigenous peoples concluded that the prolonged impacts of intergenerational trauma from the Stolen Generations, disempowerment and entrenched





poverty continue to inform Aboriginal and Torres Strait Islanders' experiences of child protection interventions.²²² During the national consultation, a young Aboriginal advocate with lived experience of out-of-home care in New South Wales said:

“ It just comes down to invasion, it really does. Like, Australia hasn't acknowledged its history. And until that happens, people are still going to be living in intergenerational trauma. Like, it's in our DNA. ...Our children are still getting taken at a higher rate, just like back in the day. That in itself is actually ridiculous. It's actually at a higher rate now. The stuff we're talking about has been going on for far too long, you know what I mean?²²³ ”

The continued overrepresentation of Aboriginal and Torres Strait Islander people in custody also poses particular concern, as Aboriginal women are the fastest growing sector of the prison population in Australia, increasing by 60% over the past ten years.²²⁴ This figure has a direct impact on the number of Aboriginal and Torres Strait Islander children being placed in out-of-home care, as children are often removed after a parent is taken into custody.

The intergenerational cycle of marginalisation, trauma and disadvantage represents a significant personal and collective burden on the wellbeing of Aboriginal and Torres Strait Islander families and communities. This speaks to the need for Aboriginal and Torres Strait Islander child and family services that are community controlled and led and that seek to keep Aboriginal and Torres Strait Islander children and young people safely connected with their families, communities and culture.

6.1.5.1 Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is embedded in legislation and child protection policy across all state and territory jurisdictions. It is a key mechanism intended to ensure that Aboriginal and Torres Strait Islander children in out-of-home care retain familial, community and cultural connections through the five elements of prevention, partnership, placement, participation and connection.²²⁵ However, it is inconsistently and ineffectively implemented, and there remains a concerning lack of understanding and compliance with all five elements of the ATSICPP across jurisdictions.²²⁶

While the number of Aboriginal and Torres Strait Islander children in out-of-home care has increased, the proportion placed with relatives/kin, other Aboriginal and Torres Strait Islander carers, or in Aboriginal and Torres Strait Islander residential care has decreased over the past ten years, from 75% in 2007 to 67% in 2017.²²⁷ In the same period, the rate of placement with Aboriginal and Torres Strait Islander carers fell from 65% to only 50%.²²⁸ A 2016 inquiry by the Victorian Commission for Children and Young People found that there were no relevant cases between January 2013 and December 2014 that achieved full practical compliance with the ATSICPP.²²⁹

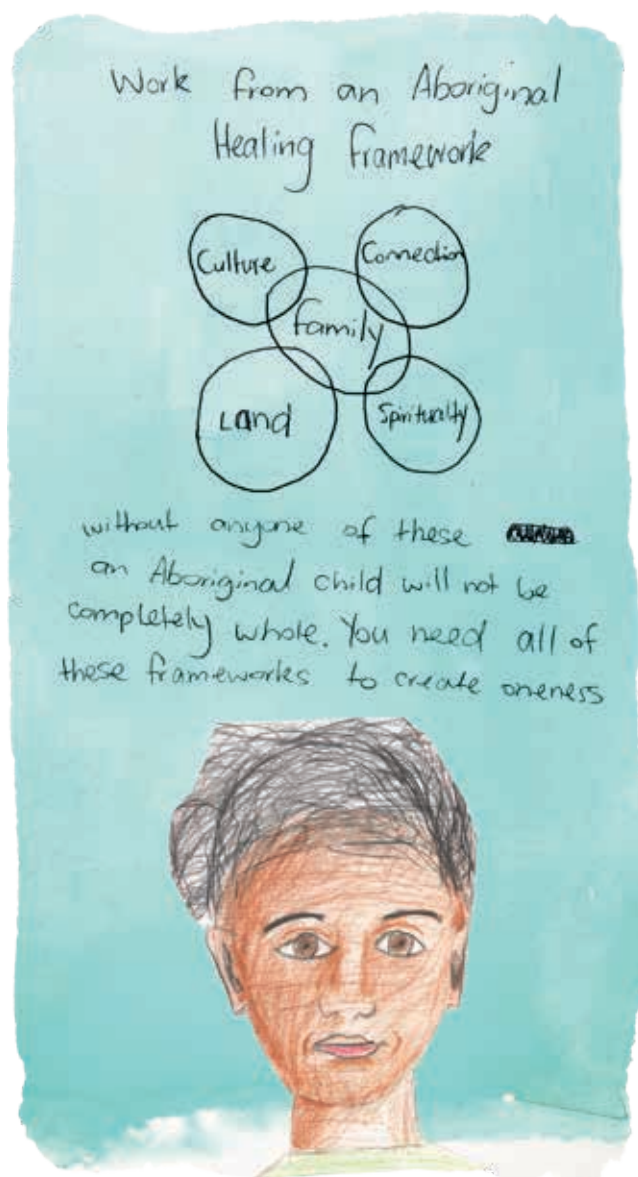
Practical concerns include failures to identify Aboriginal and Torres Strait Islander children and inadequate efforts to consistently look for placement options in consultation with family and community, at each stage of the management of an individual child's care arrangements. In 2015, the Senate Community Affairs References Committee Inquiry reported on a lack of cultural competence regarding Aboriginal and Torres Strait Islander family, culture and tradition,²³⁰ and a lack of understanding of how Aboriginal families function (particularly regarding the extended family network).²³¹ During the national consultation, young Aboriginal advocates with lived experience of out-of-home care in New South Wales said: 'It doesn't just come out of a textbook. They need to be aware of what culture is to us'²³²; and explained:

“ They're not taking into account our cultural care, they're looking at it from a Western society lens that is just completely not for our people. We aren't just one person mothering a child. It takes a community to raise a child. Our everyone is involved.²³³ ”

There also remain significant concerns about the quality and implementation of cultural care and support plans for Aboriginal and Torres Strait Islander children in out-of-home care, including the extent to which they retain and build on the child's connection to family, community and culture. Evidence suggests that the implementation of cultural support plans can be as low as 10%,²³⁴ or that plans are of such poor

quality that they fail to provide meaningful cultural connection for Aboriginal and Torres Strait Islander children.²³⁵

There have been positive announcements by state and territory governments regarding investment in Aboriginal and Torres Strait Islander led organisations to support culturally safe out-of-home care services, including recent initiatives by Queensland, the Australian Capital Territory and Victoria. There remains a continued and pressing need for all jurisdictions to fully implement the ATSICPP; to build partnerships with Aboriginal and Torres Strait Islander community leaders and communities in order to find suitable solutions for Aboriginal and Torres Strait Islander children in need of alternative care; and to develop and support an Aboriginal and Torres Strait Islander community controlled workforce in the child protection space, to share responsibility and accountability for child protection with Aboriginal and Torres Strait Islander communities.²³⁶



Recommendations:

That the Australian Government:

47. **implement nationally consistent standards with respect to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle and linked jurisdictional reporting requirements through the National Forum for Protecting Australia's Children;**
48. **commit to 'Closing the Gap' targets to:**
 - (1) **reduce the rate of Aboriginal and Torres Strait Islander children in out-of-home care;**
 - (2) **eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040;**
 - (3) **address the drivers of child protection intervention through sub-targets;**
49. **prioritise investment in service delivery by Aboriginal and Torres Strait Islander community controlled organisations, including through investment targets aligned to need and 'Aboriginal and Torres Strait Islander first' procurement policies;**
50. **increase commitment to connect Aboriginal and Torres Strait Islander children in out-of-home care to family and culture, through cultural support planning, family finding, return to country, and kinship care support programs;**
51. **ensure commitments to fund Aboriginal and Torres Strait Islander community driven cultural/healing centres, to address the prolonged impacts of intergenerational trauma and to support improved mental health and wellbeing.**

6.1.6 Early intervention and family supports (CO 56)

Significant evidence indicates that early intervention, intensive family support, and timely decision making at critical junctures in a child's interaction with the child protection system can have a significant positive impact on removal and reunification outcomes, as well as reducing the need for permanent long term care.²³⁷ Both the National Framework and the *National Plan to Reduce Violence Against Women and their Children 2010–2022* require a primary focus on redistributing child protection intervention, from statutory crisis care at the tertiary end to investment in universal support for all families and targeted early intervention for high risk families at the primary and secondary levels. The National Framework also clearly articulates that addressing the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care requires a focus on preventing abuse, neglect and

removal through early intervention, intensive family support and healing services.²³⁸ However, Australia's current response to children and families experiencing complex challenges continues to occur too late.

In addition to concerns regarding the lack of ministerial accountability or independent monitoring of the implementation and effectiveness of both national strategies,²³⁹ progress has been limited by the dramatic reform required to reconsider the role of primary and secondary interventions. It is of concern that the majority (59.5% or \$3.1 billion) of the \$5.2 billion allocated to the child protection budget continues to be directed towards out-of-home care at the tertiary end of the spectrum, rather than at the earlier stages of the family support continuum²⁴⁰: only 17.4% of national child protection expenditure is dedicated to family support and intensive family support services.²⁴¹ Further, even though the vast bulk of child protection funding continues to be targeted at the tertiary end of the spectrum,²⁴² there is still significant underfunding of ongoing services for children in out-of-home care and their carers and birth families, and little targeted funding to enable the reunification of children with their families.

There remains a critical need for investment in approaches promoting safe and supportive environments for all children, rather than concentrating almost exclusively on those

environments where children might be at high risk of abuse or neglect.²⁴³ Continued investment in population-wide family support services is a key way to intervene early in the child and family support spectrum to improve positive parenting, and access to other related support services that address issues external to the child protection system that significantly contribute to the incidence of child abuse and neglect.

In 2015, the Senate Community Affairs References Committee reported that the most significant drivers for children entering and remaining longer in out-of-home care are socio-economic factors linked to disadvantage, including family violence and its links to homelessness, drug and alcohol abuse, and mental health issues.²⁴⁴ Over a million children (22% of all Australian children) are estimated to be affected in some way by a parent or carer's problematic alcohol consumption.²⁴⁵ Parental alcohol abuse plays a large role in child protection cases,²⁴⁶ and alcohol abuse is associated with between 15 and 47% of child abuse cases each year across Australia.²⁴⁷ During the national consultation, a high school student of Aboriginal descent in Borroloola, remote Northern Territory, said: 'At home, people are drunk all the time. Too much argument, too much fighting, I get hit sometimes.'²⁴⁸ Children across the country identified substance abuse as contributing to violence in their homes. Similarly, a high school student in Smithton, regional Tasmania, reflected:



LEFT: Mimi Hoffman (Rainworth, Queensland). *All children have the right to be looked after by their parents.* 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0058).

“Parents are probably in a different state of mind where they don’t care as much as they would if they were sobered up, they would probably behave in a better way. And kids are probably scared to go home because maybe after a bit of alcohol or a hit of whatever drugs the parents can find, it gets them a little angry or abusive, and the kids don’t want to go home.”²⁴⁹

Many families struggling with parental alcohol misuse are ‘hidden’ to authorities, demonstrating the need for population-wide strategies that reduce alcohol problems across the community and prevent further harms from occurring in families.²⁵⁰ Services that address mental health and alcohol and other drug abuse often remain oriented towards delivering services to adults with little consideration of their role as parents. This often results in no accountability or incentive to address the needs of children or families holistically.²⁵¹

Data on the number of children living with one or both parents in custody are not available; however, estimates suggest, on average, one child per female prisoner and two children for every three male prisoners.²⁵⁶ Establishing and maintaining a child’s bond with an incarcerated parent is crucial to ensuring their positive wellbeing. However, many correctional services facilities are not child friendly and offer limited visits and programs for children; alongside reports that some child protection workers display prejudicial attitudes towards children visiting parents in custody. During the national consultation, an 11 year old living in New South Wales said:

“I miss my dad and we need your help to make all dads in gaol be able to spend more time with their kids. Because dad misses out on our birthdays, Christmas and more special events. Our dads are not just getting punished, it’s the whole family too.”²⁵⁷

Recommendations:

That the Australian Government:

- 52. significantly increase investment, beyond the current 17.4% of total child protection expenditure nationally, in early intervention and prevention strategies that support families before neglect or abuse occurs;**
- 53. design targeted prevention and early intervention approaches as part of a ‘public health model’, in consultation with Aboriginal and Torres Strait Islander peak organisations and other vulnerable cohorts;**
- 54. invest resources in developing culturally appropriate alcohol and drug detoxification programs, and culture based interventions for Aboriginal and Torres Strait Islander communities.**

6.1.7 Children of incarcerated parents (CO 73)

Children of incarcerated parents frequently experience chaotic home environments; such as separation from siblings and support networks, as well as instability in their living arrangements, including homelessness. During the national consultation, children of incarcerated parents living in Victoria and New South Wales spoke of the need for extra support to ‘feel protected’ at school,²⁵² and for help to ‘be accepted as a normal person’.²⁵³

Children of incarcerated parents are three to six times more likely to exhibit violent behaviour and are disproportionately represented in clinical populations,²⁵⁴ and they are six times more likely to engage in offending behaviours themselves.²⁵⁵

Recommendation:

That the Australian Government:

- 55. resource and support the development of facilities, services and programs that facilitate the maintenance of parent–child relationships for children of incarcerated parents, where it is in the child’s best interests to do so.**

6.2 ADOPTION (art. 21; CO 54)

Despite an increase in adoptions in 2016–17,²⁵⁸ annual adoptions have fallen by 60% over the past 25 years. Of all finalised adoptions over this period, 22% were intercountry and 78% were of Australian children. Of the 125 Indigenous child adoptions over the past 25 years, 50% were by Indigenous Australians.²⁵⁹

Under current provisions relating to intercountry adoption, prospective parents in Australia must nominate whether to retain the birth nationality of a child adopted from overseas. This may result in children losing an important aspect of their identity, and one of the few things they are born with, before being transferred to a new nation state and family.²⁶⁰ There are also currently no services geared towards post-adoption support for adoptees, including reparation for children whose placements have broken down; despite the potential lifelong challenges for both intercountry and domestic adoptees. It is also concerning that the only intercountry adoption tracing and reunification service for adoptees was not re-funded in June 2018, despite having over 230 cases, many of which were partway through their search and require ongoing support.²⁶¹



LEFT: Joy Niyonzima (Woodridge, Queensland). *Children have the right to healthy food*. 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0022).

Changes in policy and legislation across Australian jurisdictions have reflected the importance of achieving permanency and stability for children in out-of-home care.²⁶² In the five years leading up to 2015–16, there was an 84% increase in third party parental responsibility orders issued in Australia.²⁶³ It is concerning that across Australian jurisdictions, there is an increasing focus on and interest in expediting time frames for legal permanency and adoption.²⁶⁴ This includes recently announced reforms in New South Wales through the 'Forever Family' program, which indicate a move towards adoption as a preferred option for children in out-of-home care.²⁶⁵

Prioritising legal permanency risks failing to consider the unique needs and best interests of individual children and may block pathways to ongoing family relationships and reunification. Permanency options such as adoption should not be pursued where the system has failed to provide appropriate early intervention for families. For children in out-of-home care, adoption should only be considered when

care within the family unit or guardianship is not a feasible option. These children require early pathways and processes that prioritise and reflect each child's individual needs and best interests. Legislation and policy must direct parties to consider all possible forms of care that might be appropriate for the child and consider the child's unique and individual circumstances and experiences.

6.2.1 Aboriginal and Torres Strait Islander children

There remain deep concerns regarding the enduring impact of adoption orders for Aboriginal and Torres Strait Islander children in out-of-home care, particularly when administered by non-Indigenous processes. In a context where compliance with the ATSICPP is so poor, inflexible legal measures to achieve permanent care will likely sever connections that are fundamental for Aboriginal and Torres Strait Islander children's identity. Permanency orders are being pursued when the focus should be on reunification of Aboriginal and Torres Strait Islander children with their families.²⁶⁶

Ongoing challenges regarding timely and accurate identification open up the possibility that Aboriginal and Torres Strait Islander children may unknowingly be placed for adoption prior to being identified as of Aboriginal and Torres Strait Islander descent. For example, in the majority of New South Wales cases where Aboriginal and Torres Strait Islander children in out-of-home care have been adopted since 2011, their heritage became known after placement or during the adoption process.²⁶⁷ Permanent placement decisions may therefore be made without due diligence and proper consideration of the child's cultural needs, in circumstances where cultural identity is integral to a child's best interests.

A feature of permanent care orders, such as adoption orders, is that there is no legal mechanism to ensure compliance with the ATSICPP, including ongoing connection to family, community and culture. They therefore present significant risks to the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children, families and communities. Permanency for Aboriginal and Torres Strait Islander children is identified by a broader communal sense of belonging, a stable sense of identity, and an understanding of where they are from and their place in relation to family, community, land and culture.²⁶⁸ During the national consultation, a young Aboriginal advocate with lived experience of out-of-home care in New South Wales explained:

“ Permanency changes are going to rip away the essence of a child's identity and a sense of who they are, a sense of community and family, if they're getting placed with carers outside of community or non-Indigenous carers or people that don't hold a respect for their culture and who they are as a person. There's going to be no accountability to meet those cultural needs. That whole essence of understanding who you are as a person is just going to disappear.²⁶⁹ ”

Recommendations:

That the Australian Government:

56. ensure that children adopted from overseas retain their birth nationality unless it is not in the child's best interests to do so;
57. provide funding for intercountry adoption tracing and reunification services;
58. place an immediate moratorium on permanency orders for Aboriginal and Torres Strait Islander children until current high risk and harmful approaches are remedied;

59. develop nationally consistent statutory guidelines that outline key considerations for determining the best interests of the child in permanency arrangements;

60. reform permanency planning measures across all Australian jurisdictions; towards a focus on holistic stability of care, ensuring adequate mechanisms to strengthen families and protect children's rights to family and culture.

6.2.2 Surrogacy

As the number of intercountry adoptions has fallen, the number of international surrogacy arrangements has rapidly increased in the absence of international standards governing appropriate surrogacy practices.²⁷⁰ Surrogacy has emerged as an area of concern, as a demand driven system where children face becoming commodities.²⁷¹

The 1993 *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* provides that nation states must create safeguards to prevent the abduction, sale or trafficking of children from being used as a means of family formation. Surrogacy can constitute the sale of children.²⁷² Australian laws governing surrogacy prohibit 'commercial', 'for-profit' or 'compensated' surrogacy, while explicitly or implicitly permitting 'altruistic' surrogacy.²⁷³ Intending parents often travel from jurisdictions prohibiting commercial surrogacy, such as Australia, to jurisdictions permitting commercial surrogacy, and then seek to return with surrogate born children to their home jurisdiction. Such travel intentionally evades prohibitionist laws and creates dilemmas for the jurisdictions involved.²⁷⁴

Studies have shown that surrogacy carries real psychological repercussions for children.²⁷⁵ The best interests of the child need to be at the heart of any decision taken in respect to parentage and parental responsibility.²⁷⁶

Recommendation:

That the Australian Government:

61. strengthen legislation in line with the 1993 *Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption*, to prevent international commercial surrogacy.

I want to have the same rights as everyone else and not find things more difficult because of my disability

There should be more accessible ways for kids to find help & guidance for Mental disorders such as depression Anxiety Because even though we're kids we still feel those ways.

We need more mental health services closer, better and cheaper.

- Better support for people giving verbal cues or other indications
- Better healthcare for children of younger parents

There are kids on the street without a home.
~~Does~~ Does the rule book include looking after the kids on the street? If so help them.

The Government, should help people with no houses and help them get better in there lives so they can succeed

Disability, health and welfare

7.1 MEASURES TAKEN FOR CHILDREN WITH DISABILITY (art. 23; CO 58)

As discussed throughout this report, children with disability and their families face entrenched rights abuses, including structural barriers to inclusion, high risks of violence and abuse, high rates of removal from families, poorer educational outcomes, and high risk of contact with the youth justice system. This situation is both amplified and facilitated by barriers to receiving adequate disability services and mainstream support. During the national consultation, a child living with chronic illness and disability said:

“Every child is supposed to be able to have the same opportunities as every other child. And if for some reason they can’t, maybe because they have a special condition, then it is the job of the government to support that child so that they can still have the same opportunities.”²⁷⁷

However, access to early intervention for children with disability and developmental delay is being compromised in the transition to the National Disability Insurance Scheme (NDIS); with particular concerns regarding the limited capacity and funding for outreach and early intervention supports for already vulnerable cohorts of children. This includes Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds, and children living in rural, regional and remote areas.²⁷⁸

The rollout of the NDIS has also exposed gaps in the provision of disability support services and health care systems. Support services report that people with disability are experiencing stress, delays and disadvantage due to lack of access to disability supports and specialist care, particularly in remote areas.²⁷⁹ The disability workforce is not currently growing quickly enough to meet demand within the NDIS, nor is the workforce adequately responding to cultural needs.²⁸⁰

Aboriginal and Torres Strait Islander people have higher rates of disability than non-Indigenous people across all age groups, and those aged 0–14 years are more than twice as likely as non-Indigenous children to have a

disability (15.2% compared with 6.6%).²⁸¹ Aboriginal and Torres Strait Islander children under 15 years of age are 3.4 times more likely to be deaf, while all Aboriginal and Torres Strait Islanders are nearly four times as likely to have an intellectual disability than the general population.²⁸² Research shows that Aboriginal and Torres Strait Islander people with disability experience social inequality of at least twice that of the general population, across all recorded indicators of systems and services that support their social, health and wellbeing.²⁸³

Competitive market approaches, including that of the NDIS, will not provide the desired outcomes for children with disability in Aboriginal and Torres Strait Islander communities, as they fail to incentivise providers to build community capacity or demonstrate cultural competencies.

Recommendations:

That the Australian Government:

- 62. allocate funding for information and support for families of children with disability and developmental delay to connect with early intervention services;**
- 63. ensure public funding for the development of an Aboriginal and Torres Strait Islander community controlled disability sector.**

7.2 HEALTH AND HEALTH SERVICES (art. 24; COs 60 and 61; SDG 3)

The significant overrepresentation of Aboriginal and Torres Strait Islander children in the child protection and youth justice systems, as well as the overrepresentation of children with disabilities in the youth justice system, likely reflects the lack of appropriate services that were available in Australian jurisdictions to support these children from early in life. These supports include education, medical and allied health and mental health care, disability, social supports and programs to engage family and community elders.

A model of care is required that ensures vulnerable children with chronic health issues are identified early and receive appropriate, potentially life altering medical care, monitoring and prevention strategies. This must be accompanied by active follow-up for high risk children and families in their homes and communities, conducted by outreach child and adolescent health and support officers, and supported by paediatricians based within community health centres; as well as by closer links between community health organisations and the public health sector.²⁸⁴

The Australian Association for Adolescent Health reports that behaviours that increase current or future health risk, as well as new health conditions, often emerge during adolescence.²⁸⁵ Children and young people in Australia experience high rates of mental health problems, discussed further below. More than half (57%) of all notified sexually transmissible infections in Australia are among 15–24 year olds, of which chlamydia accounts for 90%.²⁸⁶ In addition, obesity rates continue to rise, with Australia ranking 28th out of 39 OECD countries on this measure. In 2017, the Australian Institute of Health and Welfare reported that obesity is a 'major public health issue in Australia',²⁸⁷ and recent figures indicate that 31.6% of children and young people between five and 24 years of age and 40.1% of Aboriginal and Torres Strait Islander children and young people are overweight or obese.²⁸⁸

Children and young people face unique, age specific barriers that can limit their access to health care services. These include concerns about confidentiality, often linked to needing parent or carer support to access a service; inexperience with accessing health care independently; or a lack of knowledge about the different components of the health system, including referral mechanisms and

how to coordinate their care. Access may be further compromised by practical barriers, including limited availability of transport and geographical distance from health supports.²⁸⁹ These complexities are compounded for marginalised children and young people, who are likely to require a more overt sense of safety when accessing services, or may face additional barriers including stigma or lack of culturally appropriate services.²⁹⁰

Currently, in Australia, adult prisoners and children in youth detention facilities are excluded from Medicare and the Pharmaceutical Benefits Scheme under section 19(2) of the *Health Insurance Act 1973* (Cth). Children in youth detention facilities typically have complex histories of disadvantage and significant health needs that are often long term or chronic in nature.²⁹¹ These exclusions also disproportionately affect Aboriginal and Torres Strait Islander children, who are overrepresented in the youth justice population. Peak medical and public health bodies including the Public Health Association of Australia,²⁹² the Australian Medical Association²⁹³ and the Royal Australian and New Zealand College of Psychiatrists have repeatedly called for the Minister for Health to grant an exemption under section 19(2) to ensure that adult prisoners and children in youth detention facilities receive a level of care at least equivalent to that offered by community health services.²⁹⁴

Children in out-of-home care also experience barriers to accessing primary health care, including poor health awareness on the part of carers, who may not know when children should receive health care; inadequate health care infrastructure in remote areas or a lack of culturally appropriate services²⁹⁵; and inefficient bureaucratic systems that result in some children waiting months for access to basic health care.

.....

Recommendations:

That the Australian Government:

64. implement policies that ensure equity of access to health services, with special attention to marginalised and excluded groups of young people;
65. grant an exemption under section 19(2) of the *Health Insurance Act 1973* (Cth), to permit health care providers in custodial settings to claim Medicare and Pharmaceutical Benefits Scheme subsidies for the provision of health care services not currently funded by prison health services;
66. ensure that all children have complete health and wellbeing assessments upon entry into the youth justice or child protection systems.

.....



7.2.1 Aboriginal and Torres Strait Islander children and expectant mothers (art. 6(2); SDG 3)

Although immunisation rates for Aboriginal and Torres Strait Islander children have improved over recent years,²⁹⁶ these children continue to experience poorer health outcomes across a range of health indicators. These include unacceptably high infant and child mortality rates and low birthweights²⁹⁷; and higher rates of skin and ear infections, behavioural and emotional disorders, and cognitive impairments.

In 2016, 11.9% of Aboriginal and Torres Strait Islander children were underweight at birth, compared to 6.5% of the general population.²⁹⁸ The overrepresentation of Aboriginal and Torres Strait Islanders in child deaths has grown from a rate ratio of 1.84 in 2008 to 2.23 in 2015.²⁹⁹ This appears to be due to decreasing mortality rates for non-Indigenous children and stagnant mortality rates for Indigenous children.³⁰⁰ In 2016, Aboriginal and Torres Strait Islander children were 2.1 times as likely to die during early childhood as non-Indigenous children.³⁰¹

Many deaths of Indigenous children are potentially avoidable.³⁰² Key drivers of child mortality relate to birth outcomes (including low birthweight), maternal health, maternal risk factors during pregnancy (including antenatal care), maternal socio-economic status, and other social determinants.³⁰³ Child and infant mortality rates provide an important indication of whether parents and young children are able to access vital and quality health and wellbeing supports during pregnancy and early in a child's life. Aboriginal and Torres Strait Islander women remain significantly less likely to access an antenatal care session during the first trimester. While the greatest disparity in access occurs in remote locations, the lowest percentage of Aboriginal and Torres Strait Islander women accessing a service in the first trimester has been in major Australian cities (47.6%).³⁰⁴

Ear disease and associated hearing loss are highly prevalent among Aboriginal and Torres Strait Islander children.³⁰⁵ In 2017, the Australian Medical Association called for a national response to the disproportionate rates of chronic otitis media in Indigenous children and the impacts this has across the life span.³⁰⁶ Limited access to health care can result in delayed diagnosis, treatment and management of middle ear disease among Indigenous children, resulting in prolonged periods of hearing loss and hearing impairment.³⁰⁷ Indigenous children

typically wait longer than the recommended time to see an audiologist and/or ear, nose and throat specialist.³⁰⁸

Aboriginal and Torres Strait Islander community controlled health services are 23% better at attracting and retaining Aboriginal and Torres Strait Islander clients than mainstream providers, by using local engagement and a proven service delivery model.³⁰⁹ They ensure a level of cultural safety that is a key factor of success and patient retention, while supporting sustainable Aboriginal and Torres Strait Islander employment and leadership capacity in the health sector.



RIGHT: Molly Read (Rainworth, Queensland). *Waiting for life: Children's right of having a home*. 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0069).

Recommendations:

That the Australian Government:

- 67. develop and fund a national strategic response to chronic otitis media by a National Indigenous Hearing Health Taskforce under Aboriginal and Torres Strait Islander leadership, as part of the 'Closing the Gap' strategy;**
- 68. regionalise and resource Aboriginal and Torres Strait Islander community controlled health services to enable more effective, culturally appropriate and cost effective service delivery;**
- 69. fully implement universal, indicated and targeted measures across quality antenatal and postnatal care, nurse home visitation, parenting programs, intensive child development programs and preschool.**



7.2.2 Fetal alcohol spectrum disorders

Fetal alcohol spectrum disorders (FASD) are a group of disorders that include Fetal Alcohol Syndrome (FAS), caused by alcohol consumption during pregnancy. FASD are associated with a range of birth defects, including abnormalities in brain structure and function. In Australia, FASD remain under-recognised and under-diagnosed. Estimates for FAS (at the more severe end of the spectrum of disorders) range from 0.01–1.7 per 1,000 live births,³¹⁰ and the incidence of FAS may be as high as 1.87–4.7 per 1,000 births.³¹¹ It has been suggested that as many as 2% of all Australian babies may be born with some form of FASD.³¹²

Numerous studies indicate elevated rates of FAS among Indigenous populations generally, although these figures may be inflated by systematic sampling bias (studying populations already known to have high levels of alcohol consumption).³¹³ This is particularly concerning given the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care and the youth justice system.

Children with FASD are often placed in out-of-home care due to ongoing issues related to alcohol consumption within their families of origin.³¹⁴ These children can suffer multiple placement breakdowns as a result of their complex support needs and challenging behaviour.³¹⁵ Carers may not receive adequate information and support from professionals,³¹⁶ and may not know that a child is living with FASD because they do not have access to information regarding a child's social and medical background.³¹⁷ Similarly, the special needs and vulnerabilities of children with FASD can exacerbate the impacts of detention and cause additional problems for children's developmental, physical and psychosocial health.³¹⁸ This is discussed further in *Chapter 9: Special protection measures*.

Researchers have documented an urgent need to address the failure of health professionals to ask about alcohol use in pregnancy and therefore recognise children at risk, accompanied by a lack of professional knowledge about how to diagnose FASD and where to refer patients for diagnosis.³¹⁹

Recommendation:

That the Australian Government:

- 70. ensure the availability of diagnosis and support services for children with suspected or actual cognitive and/or mental health impairments, including fetal alcohol spectrum disorders; through early referrals via government-provided services (i.e., schools, health care, child protection services, youth justice).**

7.2.3 Harmful traditional practices (SDG 5)

There are no systematically collected national data on the prevalence of female genital mutilation (FGM) in Australia. A 2017 survey of Australian paediatricians found 10% had treated at least one child with FGM.³²⁰ There is inconsistency between the number of women reported as having sought care for FGM and the number of reports made to law enforcement agencies. Further, there has been a significantly increased demand for female genital cosmetic procedures since the criminalisation of FGM, likely due to the lack of delineation and arguably artificial distinction between the procedures.³²¹

Recommendation:

That the Australian Government:

71. improve awareness of the illegality and risks of female genital mutilation among health practitioners and the general public.

7.3 MENTAL HEALTH (CO 65; SDG 3)

Over 2013–14, the Australian Institute of Health and Welfare reported that one in seven children (14%) between four and 17 years of age experienced a mental disorder over the previous 12 months.³²² In 2014–15, 15.4% of young Australians aged 18–24 years suffered high or very high psychological distress, up from 11.8% in 2011.³²³ In 2016, almost 23% of 15–19 year olds were recorded as having a 'probable serious mental illness', increasing from 18.7% in 2012.³²⁴ Kids Helpline recently reported that the largest increase in contact from children and young people seeking mental health support has been within the 10–14 year age group.³²⁵

In the national consultation, children and young people around the country consistently raised concerns about their mental health and the limited access and appropriateness of the mental health supports available. This was especially the case for particularly vulnerable children and young people, including those who identify as LGBTIQ+,³²⁶ asylum seeker children,³²⁷ children from culturally and linguistically diverse backgrounds,³²⁸ children who have withdrawn from mainstream school environments,³²⁹ and children and young people living in regional areas.³³⁰ Rates of mental illness are typically higher for these cohorts of children and young people, while access to appropriate services is often poorer, necessitating more nuanced funding and service delivery to meet these needs. Other vulnerable cohorts include Aboriginal and Torres Strait Islander children and young people,³³¹ children in out-of-home care,³³² children and young people experiencing homelessness, and those living in rural and remote areas.³³³ There are also concerns regarding the disjointed mental health service provision for children under 14 years of age.

There remains a need for improved mental health literacy for all children and young people in Australia. As a high school student in Canberra, Australian Capital Territory, said during the national consultation:

Mental health facilities should be reviewed a lot, taking in feed back from young patients. At public health facilities I have had bad experiences





“ I just felt I wasn’t worth it. It’s an empty feeling—a feeling like you’re not worth being alive. I found out it was Anxiety around Year 10. Before that, I thought I was broken, I thought there was something wrong with me. I didn’t know what it was and I didn’t know who to bring it up with.³³⁴ ”

Children and young people in need of health care often experience a lack of awareness of the support mechanisms available to them, demonstrate a reluctance to engage with mainstream mental health services, and often prefer to use the Internet for health seeking and web based counselling. During the national consultation, children spoke of being ‘very patronised by the mental health system’,³³⁵ and described existing services as ‘intimidating’.³³⁶ A high school student in an alternative education program in Brisbane, Queensland, said:

“ I feel like, if we had better mental health care for youth, it would be that the people working in the area would be a lot more welcoming. Because most of the time when you do go to places like a mental ward or if you go to a psychologist and it doesn’t work out, the thing that you’re most likely going to be is afraid. So then I don’t want to go back there because I’ve had such a bad experience. We need something that we’re not afraid of.³³⁷ ”

There remains a need for a greater investment in prevention of poor mental health, and addressing the underlying causes of increasing rates of mental distress in children and young people. The 2017 Happiness Survey found that 44% of the 46,972 Australian children surveyed between six and 18 years of age worried ‘lots of the time’ about their family, 36% worried about their future, 31% worried about their health, and 20% worried about being different.³³⁸

7.3.1 Youth suicide (CO 65(a))

Suicide is the leading cause of death of children and young people in Australia, with rates of youth suicide increasing over the past ten years.³³⁹ Between 2012 and 2016, 89 children aged 0–14 years, 699 children aged 15–19 years, and 1,150 young people aged 20–24 years took their own lives.³⁴⁰ There are similarly concerning statistics around rates of suicidal ideation, suicidal thoughts and children making suicide plans.³⁴¹ As described during the national consultation by a 17 year old in Canberra, Australian Capital Territory:

“ In the past three years, my count of how many people I’ve lost to suicide is up to seven. ...They were aged around 15 and 16. I’ve got scars all over myself from self harm. I’ve tried to commit suicide a couple times, nearly succeeded last year, but I didn’t. With most of the adults I know, who’ve dealt with me, none of them saw it coming or thought that I’d do it, but my head was just in that space where I was just that low that I didn’t think I could get out of it.³⁴² ”

The suicide rate for Aboriginal and Torres Strait Islander children and young people (15–24 years of age) is five times that of their non-Indigenous peers, necessitating a suicide prevention approach that is culturally responsive, community led, and addresses the unique factors that contribute to high suicide rates in Aboriginal and Torres Strait Islander communities, including intergenerational trauma.³⁴³ Same sex attracted young people, young people living in rural and remote areas, children and young people who are currently in or have been in out-of-home care, and young people involved with the youth justice system are also all at higher risk of suicide.³⁴⁴ The risk of suicide also increases with remoteness, with suicide rates almost three times higher for children and young people living in remote and very remote areas, compared to those living in major cities.³⁴⁵

Many children and young people who take their lives have previously experienced some kind of psychiatric disorder, particularly depression; as well as anxiety disorders, substance abuse, psychotic disorders and borderline personality disorder. However, as discussed above, a significant number of children and young people experiencing mental illness do not access prevention services or receive any treatment. Effective youth suicide prevention requires tailored approaches directly informed by the needs and preferences of children and young people.

7.3.2 LGBTIQ+ children and young people

LGBTIQ+ young people are five times more likely to attempt suicide and twice as likely to engage in self harm than their peers of a similar age.³⁴⁶ In 2014, 16% of LGBTIQ+ people aged 16–27 reported that they had attempted suicide, 42% reported having thoughts about suicide, and 33% reported having self harmed.³⁴⁷ There is even greater concern for

transgender children and young people, with findings from a 2017 survey indicating that around 70–75% of transgender children and young people have a clinical diagnosis of depression and/or anxiety, almost 80% have self harmed, and close to 50% have attempted suicide at one point in their life.³⁴⁸ During the national consultation, a young transgender advocate in Perth, Western Australia, explained:

“ When I first came out, my parents said: ‘Well, you can still be you. Why do you have to change your body? Change yourself?’ My response was: ‘I have to. It’s not an option. Do you want a dead kid, or do you want a trans kid? Those are your options.’³⁴⁹ ”

As discussed in *Chapter 8: Education*, the Australian Government’s defunding of the Safe Schools Program has left a considerable gap in appropriate supports for LGBTIQ+ students in schools. Further, inadequate consideration was given to ensuring protection against offensive, misleading or intimidating material or behaviour during the Australian Government’s same sex marriage plebiscite (postal survey) in 2017, which had a significant negative mental health impact for many LGBTIQ+ children and young people and their families.³⁵⁰ ReachOut saw a 40% increase in young people seeking help from its LGBTIQ+ support services over the course of the postal survey.³⁵¹



Recommendations:

That the Australian Government:

- 72. establish and fund a youth focused national strategy on mental health that engages young people’s perspectives as part of the response and service delivery;**
- 73. provide targeted funding and service delivery to meet the mental health needs of key vulnerable cohorts of children and young people; including Aboriginal and Torres Strait Islander, LGBTIQ+, asylum seeker and refugee children and young people, and those experiencing homelessness, and/or living in rural and remote areas.**

7.4 STANDARD OF LIVING, SOCIAL SECURITY AND MATERIAL SUPPORT (arts 18(3), 26 and 27(1)–(3); COs 69 and 71; SDGs 1 and 5.4)

Rates of poverty in Australia have increased by 15% since 2004.³⁵² Of the three million people living in poverty in Australia, 731,000 are children, representing one in six children under the age of 15.³⁵³ A reduction in social security spending combined with low and stagnant wages, insecure work and the high cost of living has pushed more parents and their children into poverty.³⁵⁴ Single parent families locked out of paid work are at particularly high risk, with 40% of all children in poverty in Australia living in single parent households³⁵⁵; and more than 90% of single parents are women.³⁵⁶

The Australian Government has not developed a national strategy to address child poverty.³⁵⁷ There are no set targets and no measurements of where poverty is entrenched, nor the deprivation that is experienced by children as a direct

I have a single mum who struggles to keep my brother and I alive and the government seems to just brush us away like we don't matter. I'm personally struggling, but no one knows, and no one knows how bad it is and how bad I want to be gone. And I don't know who is there to help me.

consequence of living in poverty. Reducing poverty leads to better health, education and employment outcomes for children.³⁵⁸ Children who are deprived of food, clothing and other material goods may reduce their engagement with school due to hunger, shame or fear of being excluded or marginalised; impacting on children's development and eventual employment opportunities.³⁵⁹

There are also concerns around the growth in compulsory quarantining of social security payments through income management, with limited investigation into the impacts on children and families, young people who are dependent on income support, and the inability of these measures to address the complexities and reinforcing dynamics of inequality. Income management measures include the 'Cashless Debit Card', which quarantines 80% of an individual's social security payments. This model has been rolled out in many locations across Australia, without sufficient evidence demonstrating that it is effective in achieving its aims of reducing violence and harm related to alcohol consumption, illegal drug use and gambling.³⁶⁰

Significant concerns regarding the withdrawal of social security support for asylum seeker children and families are discussed in *Chapter 9: Special protection measures*.

Recommendations:

That the Australian Government:

- 74. commit to an official, national measure of poverty and collect biannual data on the number of adults and children living below the poverty line;**
- 75. develop a national strategy to end child poverty and commit to reducing child poverty by at least 50% by 2030, in line with the Sustainable Development Goals.**

7.4.1 Homelessness and housing instability (CO 71; SDG 11)

In 2016–17, around 42,131 children and young people between 15 and 24 years of age presented alone to a specialist homelessness services agency.³⁶¹ In 2017, nearly 11,000 Victorian students sought assistance from homelessness services.³⁶²

The Australian Institute of Health and Welfare has observed that high housing costs, housing mobility, overcrowding and homelessness all affect children's development, health and wellbeing,³⁶³ with adverse impacts that can persist into adulthood and impact on future socio-economic status.³⁶⁴ Adults who became homeless at or before the age of 15 have an employment rate of just 10%.³⁶⁵ Children who experience

homelessness are also more likely to experience persistent homelessness as adults,³⁶⁶ resulting in the intergenerational transmission of social inequality.

For families living in poverty, the cumulative stress on parents to provide a secure and healthy home environment for their children can undermine the care they provide, resulting in poorer outcomes for their children. Children often bear the brunt of housing instability, with the relative safety and stability of school compromised by constant accommodation moves that also necessitate changing schools. Homelessness, overcrowding and poor housing conditions also have an impact on the rates at which children enter the child protection system and their prospects for successful family reunification.

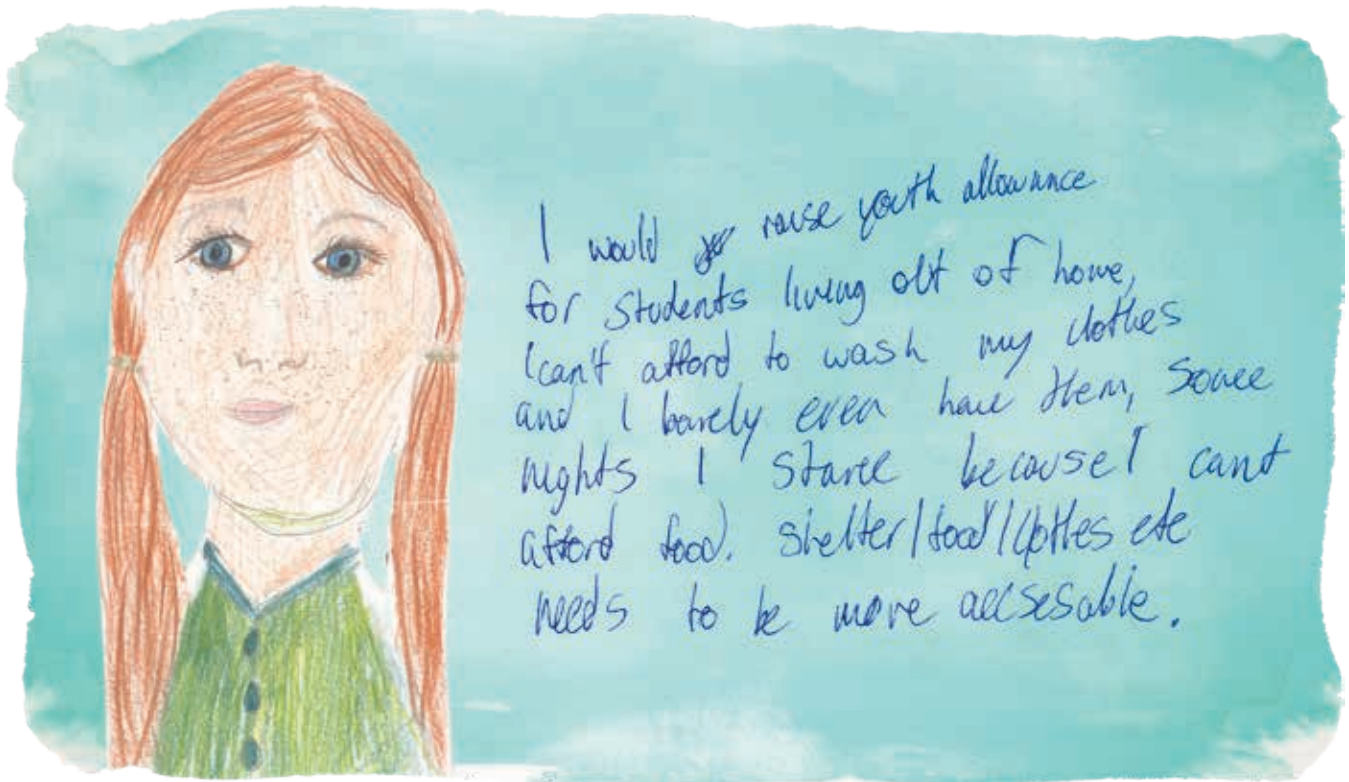
Adolescents at risk of homelessness continue to fall into a significant service delivery gap. Many specialist homelessness providers refuse to accommodate children under 16, while children between 12 and 15 years of age are often considered 'too old' for appropriate foster care placements. 'Couch surfing' is increasingly being recognised as a form of homelessness in Australia, particularly for children and young people living in outer urban areas, who face additional challenges due to lack of infrastructure, support and services. As a 17 year old with experiences of homelessness in South Australia described during the national consultation:

“ I got kicked out and stuff and my dad left me with nothing, no money, no nothing. I didn't know where I was going to live. And the train station was like, an hour walk from my house, and there was no bus port or nothing. I just had the pair of clothes I had on that day. So I was living with my friends for a few months. What's the point of having an accommodation service if some of it is overfilled? They say: 'Oh, call back and see if there's room.' But what if there's no room? ...Maybe you should have a system that everyone can turn to. If you don't have a place to live at, what's the point of living?³⁶⁷ ”

Recommendations:

That the Australian Government:

- 76. increase social security payments including Newstart and Youth Allowance to a level that is above the poverty line, with payments indexed in accordance with movements in median income;**
- 77. fund research into effective housing crisis models for children experiencing or at risk of homelessness; and trial the most effective model as an alternative to crisis accommodation for homeless youth.**



7.4.2 Aboriginal and Torres Strait Islander children

In 2014–15, 31.6% of Aboriginal and Torres Strait Islander children aged up to 14 lived in households that had run out of money for basic living expenses in the previous 12 months.³⁶⁸ Aboriginal and Torres Strait Islander peoples experience significantly higher rates of homelessness, overcrowded housing and insecure housing tenure³⁶⁹; they are 14 times more likely to be homeless than the general population, and are up to 20 times more likely to be accessing homelessness services in remote areas.³⁷⁰ In 2016–17, one in four Aboriginal and Torres Strait Islander clients using homelessness services was a child under ten years of age.³⁷¹

Many Aboriginal and Torres Strait Islander families in remote communities lack adequate access to the social determinants that promote health and wellbeing, including adequate housing, nutrition, education and safety.³⁷² The disadvantaged socio-economic conditions prevalent in many Aboriginal and Torres Strait Islander communities, including overcrowding, unemployment and a lack of services, greatly influence the disproportionately high rates at which Aboriginal and Torres Strait Islander children are removed from their families.³⁷³ Chronic housing shortages also reduce the number of Aboriginal and Torres Strait Islander carers who are able to take children in.³⁷⁴ Improving living conditions and ensuring that children and families can access the social determinants that promote health are essential to reducing the rates of children going into out-of-home care.³⁷⁵

Poverty, poor housing and situations of overcrowding are also key determinants for acute rheumatic fever, which can lead to rheumatic heart disease among Indigenous populations in the Northern Territory. Rheumatic heart disease is an infectious disease virtually unknown in the broader Australian community. Between 2011 and 2015, 98% of all cases of acute rheumatic fever recorded in the Northern Territory were among Indigenous populations; 51% of cases occurred in children aged 5–14 years of age, and 27% of cases occurred in the 15–24 year age group. In 2015, Indigenous Australians were 37 times more likely to be diagnosed with rheumatic heart disease than the general Australian population.³⁷⁶

Recommendations:

That the Australian Government:

78. increase investment in housing for Aboriginal and Torres Strait Islander communities, including in urban areas, to reduce overcrowding; and ensure adequate resources for ongoing repairs and maintenance;
79. establish and resource Aboriginal and Torres Strait Islander community controlled housing organisations, to manage new and existing housing stock and provide opportunities for local skills and employment.

We look from different perspectives, have unique background
but we want classes to be more alive.

I would ask The government to make
schools a more accepting place for people
with a disability and make sure that teachers
are supporting people with a disability equally.

we could
I think that a way to improve Australia is to allow people
who are struggling in school to access free tutoring.
Struggling

Schools educators need to be taught on how they
can deal with a student who has no support.

teachers need to just take a second to dig under
the tip of the iceberg.
- we need to be seen more than 'trouble makers'.

Make schools a safer environment and actually
take action against bullying and don't leave
it till people feel helpless like suicidal.

Please ~~make~~ ^{make} the University tuition more cheaper

Education

8.1 ACCESS TO QUALITY AND INCLUSIVE EDUCATION (arts 28 and 29; COs 75, 77 and 79; SDG 4)

For most children in Australia, there is no legal entitlement to education. The right to education is not explicitly protected in state and territory legislation, with the exception of the *Human Rights Act 2004* (ACT) in the Australian Capital Territory.

The Australian Government has made significant investments in two reviews of the education system by Mr David Gonski AC. The recent Gonski review (also known as Gonski 2.0) confirmed that since 2000, Australia's academic performance has declined and continues on a consistent downward trend.³⁷⁷ This has occurred in every socio-economic quartile and in all school sectors, including government, Catholic and independent schools.³⁷⁸ The extent of the decline is 'widespread and equivalent to a generation of Australian school children falling short of their full learning potential'.³⁷⁹ There is a general trend of decreasing academic attainment for increased geographical remoteness from major cities.³⁸⁰ There is also a wide disparity in learning outcomes in the same classroom or school, with the most advanced students typically five to six years ahead of the least advantaged students within the same year group.³⁸¹ In recent UNICEF global comparisons, Australia is ranked in the bottom third of all three indicators of equality in education across early childhood, primary and secondary school levels.³⁸²

A child's background is having a greater impact on their ability to succeed at school,³⁸³ with direct and indirect barriers that impede access to education including absence of birth registration, poverty, experiences of violence and bullying, remoteness, lack of cultural safety for Aboriginal and Torres Strait Islander children and children from refugee and migrant backgrounds, and limited individualised support for children with disabilities. During the national consultation, children in Queensland, the Australian Capital Territory and Victoria spoke about experiencing difficulties fitting into the mainstream model of schooling, which is assumed to be the individual child's problem, rather than a problem with the mainstream model itself.³⁸⁴ As a high school student in an alternative education program in Canberra, Australian Capital



Territory, explained: 'Nobody doesn't want to learn—some people just can't or it's a lot harder for them. Sometimes the system just shuts them out and says, "You can't"'.³⁸⁵ Another student in the same program said:

“ Something could go wrong in your life and that's all it takes. If you miss a turn of school, you're so behind you can't catch up. There's no support and you're going through so much stuff at the same time, you don't quite know how to catch back up. It's like building a wall with bricks—you've got your layers of bricks. If you miss, say a couple of months, you got missing bricks in your brick wall and it's going to come tumbling down.³⁸⁶ ”



LEFT: Phoebe Oats (Rainworth, Queensland). *Education is definitely important because it can make children around the world happy.* 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0065).

Student engagement and retention in education are growing problems, demonstrating a need for a broader approach to curriculum and teaching practice to better support diverse cohorts of students, particularly those experiencing vulnerability.³⁸⁷ As another student in the same alternative education program explained during the national consultation:

“ I think it's important to recognise as well that we weren't all just feeling like: 'I don't want to go to school.' I was abused by my stepfather, and I'm the oldest of seven kids, and I got to a point where I felt I had to move out or he was going to kill me. So I needed to either pay rent, get food and eat, or stay in school. So, it's not like we wanted to drop out because we didn't care. We did care.”³⁸⁸

A 2017 report found that 40% of Australian students are regularly unproductive in a given year, with schools of lower socio-economic status having considerably higher rates of school disengagement.³⁸⁹ Gonski 2.0 concluded that Australia needs to review and change its model for school education, which is not designed to differentiate or accommodate individual student learning. Nor does the model incentivise schools to innovate and continuously improve.³⁹⁰

The Centre for Policy Development has identified that the current framework of Australian schooling, including the way schools are provided, resourced and regulated, is showing serious signs of dysfunction.³⁹¹ School funding has lacked transparency and coherence, and expenditure on educational institutions as a percentage of GDP, of all levels combined, is below the OECD average.³⁹² Australia is drifting from an ambition to provide high quality and accessible education for all children.³⁹³

Recommendations:

That the Australian Government:

- 80. ensure the right to quality and inclusive education for all children is legally protected across all Australian jurisdictions;**
- 81. resource a national study to better understand the drivers of student disengagement and how it can be effectively and systematically measured in schools.**

8.2 ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN (arts 28, 29 and 30; CO 75)

Aboriginal and Torres Strait Islander children continue to be the most educationally disadvantaged group in Australia,³⁹⁴ facing persistent structural barriers to accessing quality, culturally appropriate education. Aboriginal and Torres Strait Islander children continue to experience poorer educational outcomes from Year 4 onwards.³⁹⁵ They experience significantly higher rates of school absence and attrition, and significantly lower rates of progression to higher education.³⁹⁶ Aboriginal and Torres Strait Islander students have also reported experiencing a much lower sense of belonging than their peers, with fewer than 8% of Indigenous students agreeing with the statement ‘I feel like I belong in school’.³⁹⁷

While the Australian Government is on track to halve the gap in Year 12 attainment by 2020, this is not necessarily translating into employment pathways for Aboriginal and Torres Strait Islander children and young people. In a 2018 survey of 15–24 year olds experiencing long term unemployment, Indigenous children and young people ranked a lack of qualifications as the main barrier to obtaining employment.³⁹⁸ With the exception of Year 12 attainment rates, none of the Australian Government’s ‘Closing the Gap’ educational targets are on track to being met, and are due to expire at the end of 2018.³⁹⁹

Educational experiences are worse for Aboriginal and Torres Strait Islander children experiencing intersecting vulnerabilities. For example, New South Wales studies found that Aboriginal and Torres Strait Islander children in out-of-home care had significantly lower test results,⁴⁰⁰ were more likely to withdraw from school,⁴⁰¹ experienced higher incidences of school exclusion,⁴⁰² and were overrepresented in the numbers of students subject to both short and long term school suspensions.⁴⁰³ Aboriginal and Torres Strait Islander children with disability experience inequality in educational outcomes at twice the rate of non-Aboriginal and Torres Strait Islander children with disability. Undiagnosed and unsupported disability during a child’s formative years places them on a ‘matriculation pathway into prison’, rather than into education.⁴⁰⁴

School attendance rates for Aboriginal and Torres Strait Islander children also decrease significantly with remoteness. In 2016, Indigenous attendance rates ranged from approximately 87% in inner regional areas to 66.5% in very remote areas.⁴⁰⁵

It is of concern that there is limited or no funding for well resourced, culturally responsive secondary education in remote Aboriginal and Torres Strait Islander communities. For example, educational opportunities for students in the remote

Northern Territory are limited to ‘post-primary literacy and numeracy’.⁴⁰⁶ There is a significant level of government and private sector investment in scholarship programs to enable Aboriginal and Torres Strait Islander students from remote communities to attend fee paying, high performing boarding schools.⁴⁰⁷ However, there are currently no independently evaluated, baseline or longitudinal data regarding the education trajectory or other life outcomes for these children, including the length of time these students remain at boarding school. Anecdotal evidence indicates that many such students experience both academic and emotional disengagement and a loss of language, culture and identity; and that most Aboriginal and Torres Strait Islander students who drop out of boarding school environments do not re-engage with school when they return to remote communities, often expressing that they could no longer find any place or purpose back in their home communities.⁴⁰⁸ The cost of funding a boarding placement is two to three times higher than the recurrent funding a remote school receives from the Australian Government.⁴⁰⁹ This approach deflects appropriate investment in community based education programs and culturally responsive secondary education in remote communities.

There remains a critical need to develop teachers’ cultural competency and understanding of Aboriginal and Torres Strait Islander peoples, histories and issues, with over 25% of Australian teachers surveyed feeling that they needed more training in Indigenous education.⁴¹⁰ This should also include prioritising Aboriginal and Torres Strait Islander employment in schools as an essential element in increasing overall Aboriginal and Torres Strait Islander involvement, cultural competency and responsiveness within schools.⁴¹¹



Recommendations:

That the Australian Government:

82. improve investments in quality facilities and adequate resourcing of teachers and schools at a local level in remote communities, with a commitment to maintenance of existing and new facilities;
83. establish a common Diversity Fund to encourage increased diversity in the teacher workforce, particularly for underrepresented population groups, including for Aboriginal and Torres Strait Islanders;
84. commission research to examine the rates, trends and characteristics of students subject to exclusion from education (suspensions and expulsions), and update policies and school practices to minimise resort to school exclusion.

8.2.1 Bilingual education

In 2014–15, 31.9% of Aboriginal and Torres Strait Islanders between 15 and 24 years of age spoke at least some words of an Australian Aboriginal or Torres Strait Islander language,⁴¹² and in 2016, 10.5% of Aboriginal and Torres Strait Islanders between five and 24 years of age spoke a language other than English at home.⁴¹³ Indigenous languages are the foundation upon which the capacity to learn, interact and to shape identity is built.⁴¹⁴ During the national consultation, a child of Aboriginal descent in Robinson River, remote Northern Territory, explained: 'Language is our history.'⁴¹⁵

Over half of the Aboriginal and Torres Strait Islander languages spoken throughout Australia have been lost since the time of European settlement.⁴¹⁶ Evidence demonstrates that the use of Indigenous languages can assist in improving education, vocational and economic outcomes for Aboriginal and Torres Strait Islander people.⁴¹⁷ The incorporation of Indigenous languages into the school environment has demonstrated positive links with improvements in school attendance rates, academic performance, and a sense of self worth, pride and motivation.⁴¹⁸



LEFT: Xai Vue (Woodridge, Queensland). *The right to education*. 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0035).

Recommendations:

That the Australian Government:

85. increase investment to support the learning and teaching of Aboriginal and Torres Strait Islander languages and to strengthen existing language and cultural maintenance programs at school and university levels;
86. implement the recommendations of the report by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Our Land: Our Languages: Language Learning in Indigenous Communities*.⁴¹⁹



8.3 INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITY (CO 58(e))

According to the Australian Bureau of Statistics, 7.7% of all children and young people aged 0–24 years in Australia have an identified disability.⁴²⁰ There is evidence of a rise in segregated delivery of education, including specialist schools and specialist classes where children with disability are isolated from their peers. From 1999 to 2013, the number of schools in Australia increased by 3%, while the number of special schools increased by 17% over the same period.⁴²¹ This is contrary to international practice, where there is a clear shift in favour of mainstreaming education, and against the recommendations of the Children's Committee⁴²²; the Committee on Economic, Social and Cultural Rights⁴²³; and the Committee on the Rights of People with Disabilities.⁴²⁴ During the national consultation, a high school student in Mount Gambier, regional South Australia, reflected:

“ When it comes to people who do have disabilities, they're put in whole different entire classes. They're not with any of us other students. And they get bullied for it, because of the fact that they're now away from us, and that they can't be in the same rooms as us, and they're now being shifted to another part of the school. A whole area to themselves where they can't be with us.⁴²⁵ ”

While states and territories have developed policies that support inclusive practices,⁴²⁶ there is no single nationally accepted definition of inclusive education.⁴²⁷ Inconsistent practices between systems, sectors and individual schools impede the ability to track the academic progress of students with disabilities; in particular, those with

intellectual or cognitive disabilities. The education system has been described as 'awash with low expectations and standards' that limit opportunities for students with disabilities.⁴²⁸ As a child living with chronic illness and disability explained during the national consultation: 'It is often the attitudes of people and the assumptions they make that hold you back, more than it is the actual illness or disability.'⁴²⁹ Under-education of students with disability 'leads to unemployment, lower levels of health, social isolation and a lifetime of disadvantage'.⁴³⁰ In Australia, 30% of people with disability do not go beyond Year 10, compared to 20% of people without disability⁴³¹; and in 2013, only 15% of people aged 15–64 with disability had completed tertiary study, compared to 26% of people without disability.⁴³²

There is limited ability to assess the extent of adjustments to typical teaching practices to accommodate variability in the needs of all students, and the unique and specific barriers confronting children with disability.⁴³³ Recent reviews by the New South Wales and Victorian Ombudsmen found that students with cognitive and learning impairments and students with disability are overrepresented in the numbers of students subject to school suspensions, despite the evidence that suspension may exacerbate challenging behaviour for students with disability or trauma.⁴³⁴ There are similar concerns about reports of the use of restrictive practices in both specialist and mainstream schools, including children with disability being tied to chairs, locked in isolation rooms, and physically restrained under the guise of 'behaviour management'.⁴³⁵

Recommendations:

That the Australian Government:

- 87. ensure the adoption of a standard definition of inclusive education, and develop a system for consistently measuring and reporting academic progress and outcomes for students with special educational needs across all Australian jurisdictions;**
- 88. develop a National Inclusive Education Action Plan that specifically identifies current inadequacies in funding, allocates sufficient funding, sets appropriate benchmarks, targets and goals, and increases school accountability for the academic progress of children with disabilities.**

8.4 CHILDREN AND YOUNG PEOPLE FROM MIGRANT, ASYLUM SEEKER AND REFUGEE BACKGROUNDS

In 2016, 45% of young people in Australia were either first or second generation migrants.⁴³⁶ Early disengagement from school is a key factor limiting participation and increasing marginalisation of children from culturally and linguistically diverse backgrounds.⁴³⁷ Many children from migrant backgrounds struggle to navigate the Australian education system, often reporting that they have not yet acquired a sufficient level of English to enable them to engage successfully when they transition into mainstream schooling.⁴³⁸ During the national consultation, a child from a refugee background in Darwin, Northern Territory, said: 'Because I couldn't speak English, I couldn't tell people how I was feeling.'⁴³⁹ Similarly, a high school student from a culturally and linguistically diverse background in Yarra, Victoria, said:

“ Just the way that school is set up. It's difficult enough for someone who speaks English to learn all the content. If you spoke a completely different language, and then come here and you've been learning English for say, two or three years, going into a system that's designed in English is very difficult. But I feel like lots of people have just accepted it as the way it is. And I know it's hard and it's meant to be difficult, nothing is going to be easy. But it's little things like that that sometimes might mean it's not exactly fair.⁴⁴⁰ ”

Such difficulties are often accompanied by experiences of racism and discrimination that decrease enjoyment in attending school. During the national consultation, another high school student from a culturally and linguistically diverse background in Yarra, Victoria, reflected:

“ Skin colour is such a, honestly, it's stupid the way we hold it to such a high level. Because it doesn't mean anything. It's just the way the sun has affected us because we come from different countries, from different areas of the world. But all of a sudden, our skin colour determines everything about us? ...I don't try and think too much about it, it's very, it's sad but you just sort of accept it because you're so used to it.⁴⁴¹ ”

Asylum seekers on bridging visas and refugees on Temporary Protection Visas and Safe Haven Enterprise Visas do not have access to higher education and training on an equal basis with the general population, or even as compared with refugees on permanent protection visas.⁴⁴² It is Australian Government policy that these children and young people are not eligible for financial assistance programs for tertiary study,⁴⁴³ and many are also unable to access vocational education programs at concessional rates. They face barriers to accessing education including the cost of course fees and a lack of income support, as well as restrictions based on their migration status or visa requirements. Limiting access to education and training for this particularly vulnerable cohort of children and young people is likely to have debilitating long term consequences for their future employment prospects and economic engagement.

Recommendations:

That the Australian Government:

- 89. increase investment in programs that support young people's transition from intensive English language programs into mainstream secondary schools, or from the Adult Migrant English Program into further training/higher education;**
- 90. ensure that all school and university aged asylum seekers and refugees on temporary visas have access to education and loan schemes, on a similar basis to other Australian students.**

8.5 SCHOOL BULLYING (COs 47(e) and 79)

In recent UNICEF global comparisons, a survey of Year 4 children across 30 countries found that one in every two children in Australia said they experience bullying at least once a month.⁴⁴⁴ In the 2017 Happiness Survey, 67% of the 46,972 children surveyed between six and 18 years of age reported that they had been bullied, with 41% of children having experienced bullying for a year or longer.⁴⁴⁵ The

Progress in International Reading Literacy Study found that Australia is ranked 40th out of 49 countries for high levels of bullying of Year 4 students, with 15.3% of 15–19 year olds in Australia being very or extremely concerned about bullying or emotional abuse; this increased to almost one quarter (24.5%) among Aboriginal and Torres Strait Islanders.⁴⁴⁶ In the national consultation, children in Victoria, the Australian Capital Territory and Queensland spoke of withdrawing from school due to bullying.⁴⁴⁷ Bullying is one of the most common forms of violence experienced by children, and can have severe consequences for children's mental and physical health.

8.5.1 LGBTIQ+ children

Since 2014, the Australian Government has progressively defunded the Safe Schools Program, aimed at creating safe and inclusive school environments for same sex attracted, intersex and gender diverse students, staff and families. Funding has since been directed to the National School Chaplaincy Program, which may not be sufficiently inclusive to provide appropriate supports for LGBTIQ+ students. The Safe Schools Program was informed by an extensive empirical evidence base,⁴⁴⁸ and was named by UNESCO as an international best practice anti-bullying program. As stated by a transgender high school student in Geelong, Victoria, during the national consultation:

“ Unless you've experienced having a trans person or someone at your school first hand, many don't actually understand that you need to really cater to what they need in terms of bathrooms and uniforms and stuff. ...Because my school has been putting education throughout the school on LGBT topics, through Safe Schools and stuff, they've put a lot of work into making sure that everyone, well the majority of people, can be open minded and informed.⁴⁴⁹ ”

A 2015 survey of secondary school students in Australia found that over 50% of same sex attracted or gender diverse children have experienced verbal abuse and over 15% have experienced physical abuse; and that over 70% of homophobic and transphobic incidents take place in Australian schools.⁴⁵⁰ During the national consultation, the implications of defunding the Safe Schools Program were raised by a transgender young person in Perth, Western Australia, who said:

“ The Safe Schools Program is now voluntary for schools in Western Australia, it's only implemented where there has been a suicide. It's that feeling that the government does not care until there's a death toll.⁴⁵¹ ”

Recommendations:

That the Australian Government:

91. reinstate funding to the Safe Schools Program, or an equivalent program that provides safe, inclusive and non-discriminatory support for LGBTIQ+ students;
92. collect standardised statistical data on cases of bullying by cause (e.g., race, gender, physical appearance, sexual orientation, gender identity and sex characteristics) on an annual basis.

I don't feel safe walking through school, already used to have a cop at home now, get it here too and I don't want to be here anymore. I'm done. Find a way to fix it please.





ABOVE: Taliyah Tewake-Matthers (Woodridge, Queensland). *Education is a right that helps us realise our dreams.* 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0004).

8.6 EARLY CHILDHOOD EDUCATION AND CARE (art. 28; CO 77; SDG 4.2)

Australia is rapidly falling behind the rest of the developed world in provision of early childhood education and care (ECEC), and ranks below the OECD average in terms of access and participation, affordability and investment in ECEC.⁴⁵² Australian children are not being adequately supported to have the best possible start in their first five years, when 85–90% of brain development occurs.⁴⁵³ More than one in five (22%) Australian children is starting school developmentally vulnerable; experiencing difficulties in social competence, emotional maturity, language and cognitive skills, or communication skills and general knowledge.⁴⁵⁴ These figures are worse for children living in areas of socio-economic disadvantage.⁴⁵⁵

While Australia has high levels of enrolments of four year olds in ECEC in the year before school (92.4%),⁴⁵⁶ it is concerning that only 15% of three year olds in Australia participate in pre-primary education, which falls well below the OECD average of 68.6%.⁴⁵⁷ Australia is one of only three OECD

countries to see a decline in pre-primary enrolment at age three since 2005.⁴⁵⁸ Australia's current ECEC system works to disadvantage already vulnerable groups of children, who stand to benefit the most from high quality early learning that can break the cycle of disadvantage.⁴⁵⁹ Children from culturally and linguistically diverse backgrounds, from remote areas, or residing in the most disadvantaged areas, are all less likely to be enrolled in ECEC than the general population.⁴⁶⁰ Similarly, three to five year olds with disability have a lower representation in preschool than their representation in the community.⁴⁶¹

The cost of ECEC remains prohibitive for many families. Australia ranks 20th out of 30 OECD countries in terms of affordability of ECEC, with child care prices having increased significantly over the past decade.⁴⁶² In 2014, the median weekly cost of child care for families with children 0–12 years was \$90, an increase from \$50 in 2011.⁴⁶³ The Australian Government has been clear that around 25% of children and families will receive less access to subsidised ECEC as a result of new child care reforms, in operation since July 2018.⁴⁶⁴ These reforms were not designed to

support greater access to ECEC, but rather to ensure greater workforce participation. An activity test makes higher subsidies available to parents in regular work or other approved activity. Children in families struggling with employment, employed casually or with irregular employment hours can access only 12 hours of subsidised care per week, half of what families were entitled to receive prior to the recent reforms. This also falls below the generally accepted minimum standard of 15 hours of ECEC per week, necessary for substantial impacts on cognitive outcomes.⁴⁶⁵

It is also concerning that 25% of ECEC services are not meeting the National Quality Standard, with 19% of services not meeting the standard relating to educational programs and practice; arguably the most important element from an ECEC perspective.⁴⁶⁶ Additionally, families in remote areas or areas of socio-economic disadvantage generally have access to fewer and lower quality ECEC services, which can compound the effects of disadvantage, rather than ameliorate them.⁴⁶⁷ It is particularly concerning that the Australian Government has ceased funding for the National Quality Agenda for ECEC,⁴⁶⁸ thereby withdrawing its commitment to ongoing and improved quality ECEC.

Recommendations:

That the Australian Government:

- 93. ensure universal access to early childhood education and care for all three and four year old children in Australia;**
- 94. ensure at least two full days (22.5 hours) of subsidised quality early childhood education and care per week for all children.**

8.6.1 Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children are half as likely to access ECEC as non-Indigenous children,⁴⁶⁹ and are more than twice as likely to be developmentally vulnerable than non-Indigenous children.⁴⁷⁰ The Australian Government failed to meet the previous 'Closing the Gap' target for access to ECEC, with only 65% of all Indigenous children enrolled in an ECEC program that they attended for 600 hours or more; in comparison to 77% of non-Indigenous children.⁴⁷¹

The Australian Government's recent child care reforms will result in less access to ECEC for Aboriginal and Torres Strait Islander children and families⁴⁷²; and there is no apparent strategy to close the gap identified by the Productivity Commission of 15,000 places for Aboriginal and Torres Strait Islander children in ECEC.⁴⁷³ The reforms

also abolished the Budget Based Funding program, in which 80% of the services funded were for Aboriginal and Torres Strait Islander children.⁴⁷⁴ Services that were funded under this program have mostly been transferred to the mainstream funding system. In addition to restricting access to ECEC, there are serious concerns that this threatens the viability and identity of Aboriginal and Torres Strait Islander early years services, which face pressure to shift their service model to cater to non-Indigenous families in order to remain operational.

An essential component to closing the gap in outcomes between Aboriginal and Torres Strait Islander and non-Indigenous children is a fully funded ECEC system that recognises the importance of integrated responses to the needs of vulnerable families, who are not accessing or are unlikely to access mainstream services. It is critical that Aboriginal and Torres Strait Islander ECEC programs have access to necessary funding and supports. ECEC services designed and run by Aboriginal and Torres Strait Islander community controlled organisations can provide unique and tailored holistic support, grounded in culture and trauma informed practice, and cognisant of the complex needs of Aboriginal and Torres Strait Islander children and families.⁴⁷⁵ ECEC that is culturally safe is a key protective factor for Aboriginal and Torres Strait Islander children's engagement with education and for ensuring their healthy development.

Recommendations:

That the Australian Government:

- 95. provide sustainable funding for a dedicated Aboriginal and Torres Strait Islander community controlled early years sector;**
- 96. address the 15,000 place participation gap for Aboriginal and Torres Strait Islander children, delivered through Aboriginal and Torres Strait Islander community controlled services;**
- 97. strengthen the early education target in the 'Closing the Gap' Refresh to ensure that 95% of all Aboriginal and Torres Strait Islander three and four year olds access 30 hours per week of early childhood education by 2040;**
- 98. strengthen the current 'Closing the Gap' target for early childhood education by including early childhood developmental outcomes, rather than the narrow focus on participation in early childhood education, and include outcomes for children from birth to three years.**

I think Asylum seekers and refugees should be given freedom and Protection and say what they want to you should treat them better.

Young Asylum seekers and refugees should get more care from the government, especially with education and Health.

get better treatment in youth Detention centres & more Support to develop Skills to get jobs for younger Aboriginals.

need money need support ~~at~~ Education house & get a job
Doing crime for money

give ^{young/old} families houses, money, jobs support so young boys stop stealing and breaking the law and end up being here/Banksia

• Giving young a second chance: rehabilitation and education centres

I feel that all us teens aren't trusted just because of our bad mistakes. Should have more family support so we can break the cycle.

Special protection measures

9.1 ASYLUM SEEKER AND REFUGEE CHILDREN (art. 22; CO 81)

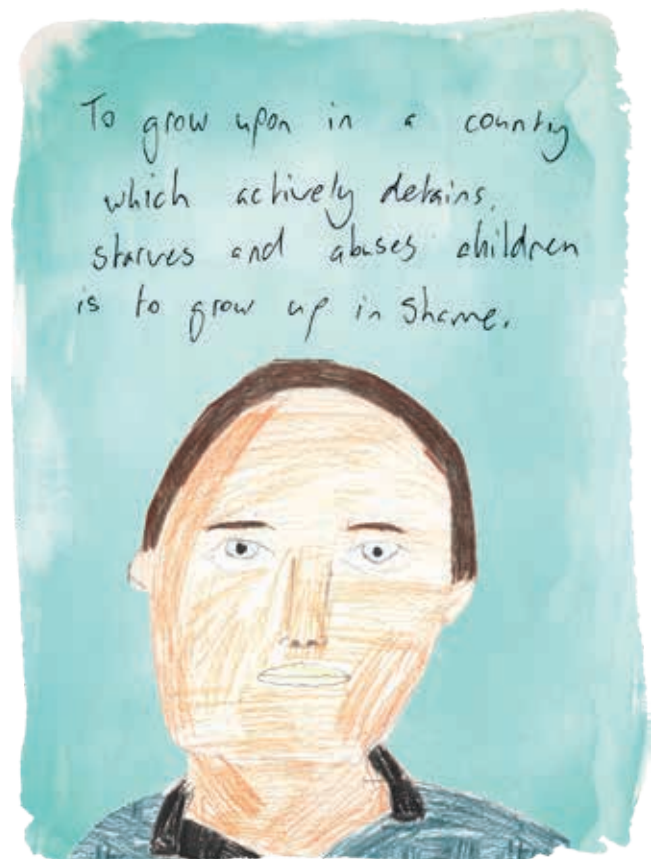
Australia's immigration and asylum framework violates fundamental human rights, and, since the last reporting cycle, has continued to cause profound harm and distress to thousands of asylum seeker and refugee children and their families. This is particularly the case for those children who have been subject to Australia's 'offshore processing' policy, which was introduced at the time of the Children's Committee's last review of Australia, in 2012. Since that time, the Australian Government has been consistently criticised by UN bodies including the Human Rights Committee,⁴⁷⁶ the Committee on the Elimination of Racial Discrimination,⁴⁷⁷ the Committee against Torture,⁴⁷⁸ the UN Special Rapporteur on the human rights of migrants⁴⁷⁹ and the Working Group on Arbitrary Detention.⁴⁸⁰

There has been periodic bipartisan support for some of the most restrictive aspects of Australia's immigration and asylum framework, such as boat turnbacks and offshore detention, with no commitment to educating or sensitising the Australian public regarding Australia's international protection obligations. Further, there has been an intentional conflation of national security/border protection with international protection obligations in Australia's public discourse.⁴⁸¹

Policy decisions and legislative amendments by successive Australian Governments have led to a discretionary approach to protection, diminished government transparency and accountability, the removal of almost all references to the 1951 *Convention relating to the Status of Refugees* (Refugee Convention)⁴⁸² from Australia's legal system,⁴⁸³ and the repudiation of *non-refoulement* obligations as a domestic legal constraint on government actions.⁴⁸⁴ Recent Australian Government policy and practice have further shrunk the protection available to asylum seeker children, demonstrating an attitude that the application of human rights is contingent on nationality and migration status, while causing demonstrated harm to children under Australia's effective control. As stated by a 16 year old asylum seeker living in Sydney, New South Wales, during the national consultation:

“ The government should look after every young person. It doesn't matter what country they come from, all people are the same. If they are young, the government should take care of them, to make sure they don't have too many troubles.”⁴⁸⁵

Over recent years, the Australian Government has defended its policy approach to asylum seekers, suggesting that it has protected Australia's borders, prevented drownings at sea, and enabled Australia to be more generous with the annual intake under the Humanitarian Program. It is clear, however, that Australia cannot offset children's rights, and that a more proactive approach to regional protection would assist in minimising dangerous journeys by land and sea across South-East Asia.





ABOVE: Ella Chapple (Rainworth, Queensland). *A child's prison: Children's right to freedom*. 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0050).

Despite grave concerns regarding the current framework, the Australian Government can be commended for:

- exercising its power to remove the majority of children from closed immigration detention facilities into community based settings⁴⁸⁶;
- increasing Australia's annual humanitarian intake by 12,000 people in 2016 to respond to conflict related displacement from Syria and Iraq, and by 2,500 places from 2017–18 to 2018–19.⁴⁸⁷

9.1.1 Mandatory, indefinite and non-reviewable detention of children (art. 37(b); CO 81(a))

Australia is the only country that mandates the indefinite detention of asylum seeker children. Under the *Migration Act 1958* (Cth), mandatory immigration detention remains the default legal position for 'unlawful non-citizens', including children. Detention is not subject to any time limit, and decisions to detain are not subject to an assessment of compliance with human rights law (e.g., in relation to necessity,

reasonableness and proportionality).⁴⁸⁸ This framework establishes detention as a general deterrent against unlawful entry, rather than as a response to assessed risk. The *Migration Act 1958* (Cth) 'affirms as a principle that a minor shall only be detained as a measure of last resort'.⁴⁸⁹ However, this provision is not legally enforceable and does not prohibit the detention of children. It remains contrary to the recent Joint General Comment from the Committee on Migrant Workers and the Children's Committee that the 'last resort' standard is not applicable in immigration proceedings, that the detention of children owing to their parents' migration status is a child rights violation, and that the immigration detention of children should cease in practice and be prohibited by law.⁴⁹⁰

Immigration detention has profoundly detrimental impacts on children, regardless of the length of time spent in detention.⁴⁹¹ It presents unacceptable levels of harm to children's safety, wellbeing and development; puts adolescents at risk of mental illness, emotional distress and self harming behaviour; and impedes social and emotional maturation.⁴⁹²

As the detention of ‘non-citizen’ children is mandatory under Australian law, compliance with Australia’s obligations in relation to the detention of children relies on the exercise of non-compellable discretions as an exception to the ordinary operation of the law. At its highest point during this reporting cycle, in July 2013, the Australian Government detained 1,992 children in closed immigration detention facilities.⁴⁹³ Despite the dramatic increase in the numbers of children in immigration detention and contrary to the Children’s Committee’s recommendations during Australia’s last review in 2012,⁴⁹⁴ the legal framework for mandatory detention of children has not changed. Rather, the low numbers of children currently held in immigration detention in Australia can be explained by Australia’s policies of ‘offshore processing’ of asylum seeker claims, and naval interception through ‘Operation Sovereign Borders’, discussed further below.

Recommendations:

That the Australian Government:

99. amend Australia’s immigration laws to incorporate the following minimum features, including:
 - (1) a presumption against the detention of children for immigration purposes; as well as legal protection of the principle that detention of children be only a measure of last resort and for the shortest practicable time, when all other reasonable alternatives have been considered and exhausted;
 - (2) that a court or independent tribunal assess whether there is a need to detain children for immigration purposes within 48 hours of any initial detention;
 - (3) that all courts and independent tribunals be guided by the principles of the best interests of the child as a primary consideration, detention as a last resort and for the shortest period of time, the preservation of family unity, and special protection and assistance for unaccompanied children;
 - (4) that appropriate services, living conditions, health care and activities be provided to all people who remain in closed detention;
100. amend section 197AB of the *Migration Act 1975* (Cth) and other relevant regulations, to require the Minister for Immigration to immediately make a ‘residence determination’ for all minors;
101. abide by its legislative requirement to ensure all children within its jurisdiction are enrolled in school.

9.1.2 Offshore processing

The Australian Government reintroduced ‘offshore processing’ arrangements in late 2012, resulting in children and families being sent into dangerous conditions, initially in Papua New Guinea, and from July 2013, in Nauru. Children and families were initially held in locked facilities until the Nauru Regional Processing Centre (RPC) was declared an ‘open’ centre in October 2015. At that time, many of the children affected had been in detention for two years or longer. Concerns remain regarding the lack of durable, long term solutions for the children and families on Nauru and the quality of refugee status determination under third country arrangements; with feasible long term resettlement options limited to the United States of America. To date, only a small number of refugees on Nauru have been resettled in the USA.⁴⁹⁵ As the agreement with the USA is understood to involve 1,250 places, hundreds of others have no foreseeable solution.

Delays in processing claims for protection and resettlement have exposed children to severe rights abuses. In 2013, UNHCR determined that the situation for those transferred to Nauru amounts to arbitrary detention⁴⁹⁶; and the UN Special Rapporteur on the human rights of migrants concluded in 2017 that the confinement of children and families amounts to cruel, inhuman and degrading treatment or punishment.⁴⁹⁷

The Australian Government’s ongoing and systemic failures to protect children detained on Nauru have been repeatedly criticised, including in the Australian Human Rights Commission’s 2014 *The Forgotten Children* report,⁴⁹⁸ the 2015 Moss Review,⁴⁹⁹ the 2015 report of the Senate Select Committee,⁵⁰⁰ the 2016 report of the Child Protection Panel,⁵⁰¹ the 2017 report of the Senate Standing Committee on Legal and Constitutional Affairs⁵⁰² and the Child Abuse Royal Commission.⁵⁰³ These include reported and unreported allegations of sexual, physical and verbal abuse of children, and staff engaging in sexual harassment and sexually exploitative behaviour involving children.⁵⁰⁴ Human rights violations have been treated with impunity in circumstances where child abuse investigations have been prematurely closed, and there has been a demonstrated lack of capacity to respond to complex incidents.⁵⁰⁵ In some cases, the Australian Government has refused to bring children to Australia in the face of urgent protection needs, and has only done so when ordered by a court.⁵⁰⁶

Successive Senate Committee reviews have concluded that the Nauru RPC is ‘neither a safe nor appropriate environment for children and that they should no longer be held there’,⁵⁰⁷ and that the welfare of asylum seeker and refugee children on Nauru falls well below an acceptable standard.⁵⁰⁸ There are consistent reports of self harm by asylum seeker and refugee children on Nauru,⁵⁰⁹ and mental health concerns including Post-Traumatic Stress Disorder, depression, anxiety, learning difficulties, bed wetting, nightmares, behavioural



regression, memory loss, separation issues, and some suicidal ideation.⁵¹⁰

The vulnerability of the children on Nauru is compounded by the lack of independent and systematic monitoring, with no comprehensive inter-agency framework for monitoring detention-like settings, and where visits are ad hoc, with limited or no available public reporting. This is further impeded by the ‘pervasive culture of secrecy’⁵¹¹ and lack of transparency surrounding the operation of Nauru RPC, the ‘persistent unwillingness’ of the Department of Home Affairs to speak openly about matters associated with Nauru RPC,⁵¹² and a legislative framework that attempted to prevent employees disclosing suspected wrongdoing at Nauru RPC, with the threat of a penalty of up to two years imprisonment.⁵¹³

Australia cannot evade its international obligations by transferring people seeking asylum to its facilities in other countries, delegating the processing of their protection claims to those countries, and outsourcing detention and care to private contractors.⁵¹⁴ Since 2013, the Australian Government has spent large sums of money on the maintenance of the offshore processing system; an average of more than \$400,000 per person per year.⁵¹⁵ In 2017, the Senate Standing Committee on Legal and Constitutional Affairs concluded that it was a ‘fiction’ for the Australian Government to deny responsibility and a duty of care towards asylum seekers and refugees in the RPCs, in circumstances where the Australian Government pays for all associated costs, engages all major contractors, owns all the major assets and has been responsible for negotiating all third country resettlement options.⁵¹⁶ This is consistent with the views of the Human Rights Committee⁵¹⁷; the Committee on Economic, Social and Cultural Rights⁵¹⁸; the Committee

on the Elimination of Racial Discrimination⁵¹⁹; the Committee against Torture⁵²⁰; and the UN Special Rapporteur on the human rights of migrants⁵²¹ that Australia exercises effective control over its RPCs. That Nauru also has obligations to those affected does not alter the position that the Australian Government exercises a degree of influence and control. This influence and control renders a wide range of actions attributable to Australia and necessitates better treatment and outcomes for the children and families transferred to Nauru. During the national consultation, a high school student in Yarra, Victoria, reflected on Australia’s offshore detention policies, stating:

“ Australia pays so much money to have these island prisons. I understand that we can’t just let anyone in, but we can’t just leave them. There is so much money being spent on these prisons that instead they could be trying to spend on learning about these people, and supporting them, and helping them.”⁵²² ”

Recommendations:

That the Australian Government:

- 102. take all necessary measures to urgently remove all asylum seeker and refugee children and families on Nauru to Australia, or an appropriate third country where they can enjoy the rights to which they are entitled under the Children’s Convention.**

That until all asylum seekers and refugees transferred to Nauru and Papua New Guinea are able to realise a durable solution, the Australian Government:

- 103. amend its contracts with service providers to ensure all critical information is recorded and reported to Australian Parliament on a regular basis;**
- 104. establish an independent monitor with a routine presence in immigration detention and detention-like settings, onshore and offshore, who should:**
- (1) have a clear and comprehensive monitoring methodology;**
 - (2) be multidisciplinary, with relevant expertise in child rights and human rights;**
 - (3) monitor children’s access to core services, basic living conditions, and children’s mental and physical health; and assist in mitigating abuse, violence and exploitation;**
 - (4) have adequate human and financial resources, the power to access immigration detention and detention-like settings, and the power to make policy and legal recommendations.**

9.1.3 Maritime interception and return of people seeking asylum

Since 2014, all asylum seekers attempting to reach Australia by boat have been subject to naval interception through a military led, inter-agency border security initiative known as 'Operation Sovereign Borders'.⁵²³ It is currently Australian Government policy that boats carrying asylum seekers are either forcibly turned back to the territorial waters of their departure state, or are otherwise returned to their countries of origin, including Indonesia, Vietnam and Sri Lanka.

In April 2017, the Minister for Immigration stated that 30 boats (carrying about 765 people) had been intercepted since the beginning of Operation Sovereign Borders,⁵²⁴ and the Australian Government has confirmed that it does not monitor what happens to the people it has returned.⁵²⁵ This raises serious concerns for the short term safety of children and families travelling on often overcrowded and unseaworthy vessels, reportedly repaired and/or refuelled by Australian personnel at point of interception, in circumstances that have previously resulted in deaths at sea.⁵²⁶ Operation Sovereign Borders also puts Australia at considerable risk of breaching its *non-refoulement* obligations,⁵²⁷ relying on a procedurally inadequate process of on-water screening of protection claims. This process is not insufficiently able to guarantee the range of procedural safeguards required for fair and efficient assessment of an individual asylum seeker's international protection needs and the Australian Government's international protection obligations. It also risks returning children with legitimate protection claims to environments where their safety and security is in question.⁵²⁸



In December 2014, the Australian Government passed legislation that removed references to the Refugee Convention from domestic law, and introduced section 197C of the *Migration Act 1958* (Cth), which provides that Australia's *non-refoulement* obligations are irrelevant to the general power to remove a 'non-citizen' from Australia. This inversion of the principle of *non-refoulement* is at odds with a good faith interpretation of Australia's obligations under relevant international instruments, and puts Australia at risk of exposing affected children to serious forms of harm.

Recommendations:

That the Australian Government:

- 105. repeal section 197C of the *Migration Act 1958* (Cth) and establish a prohibition of *refoulement* in domestic law;**
- 106. ensure that all people who seek asylum in Australia have access to refugee status determination procedures that are consistent with international standards.**

That in its capacity as the co-chair of the Bali Process, the Australian Government:

- 107. work in cooperation with neighbouring countries in South-East Asia to resource and establish a regional protection framework for asylum seekers;**
- 108. develop a cooperative framework with Bali Process member states for the maritime rescue of asylum seekers in distress, with dedicated protocols to safeguard unaccompanied children.**

9.1.4 Guardianship and support of unaccompanied minors (CO 81(c))

Australia's refugee determination processes offer insufficient protections to ensure that the best interests of unaccompanied asylum seeker children are upheld. According to guidance from the Children's Committee, 'agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship'.⁵²⁹ However, under the *Immigration (Guardianship of Children) Act 1946* (Cth), the legal guardianship of unaccompanied minors is conferred on the Minister for Immigration or his or her delegate.⁵³⁰

There remains an inherent conflict of interest in the Minister for Immigration holding both the responsibility for the system of immigration, including decisions about visas, removals and transfers to RPCs,⁵³¹ and guardianship of and a duty to protect

unaccompanied children who may be subject to these same processes. Equally, the daily responsibilities of the Minister for Immigration's delegate are likely to limit their capacity to advocate for, or consider the best interests of, the children nominally in their care. This presents a particular conflict of interest when children are being harmed by prolonged and unnecessary detention or confinement, and where independent guardianship is of the highest imperative.

Recommendations:

That the Australian Government:

- 109. amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to remove the Minister for Immigration's status as legal guardian of unaccompanied asylum seeker children, and legislate an alternative guardian at a federal ministerial level;**
- 110. establish and provide adequate resources for an independent guardianship and support institution for unaccompanied minors. The guardian should be:**
 - (1) required to act to ensure that the best interests of the child are upheld;**
 - (2) vested with sufficient powers to ensure that the best interests of the child can be upheld, including legal powers to make enquiries on behalf of children held in immigration detention and detention-like settings when there are concerns about their safety or interests;**
 - (3) provided with access to meet with the children in their care in confidential and child friendly locations, at times of their choosing;**
 - (4) suitably qualified, with specific training in child protection and children's rights, asylum and migration law, and the challenges faced by unaccompanied minors;**
 - (5) monitored and overseen in the execution of their responsibilities by an independent third party;**
- 111. develop a National Policy Framework for Unaccompanied Children, to provide an explicit and integrated national policy for the guardianship, care and support of all unaccompanied children, to apply uniformly across all Australian jurisdictions.**

9.1.5 Family separation

The Australian Government provides narrow opportunities for family reunification for refugees accepted under the Humanitarian Program, with prolonged waiting periods, a restrictive definition of 'family', unrealistic requirements for formal documentation and evidence, significant financial

costs, and lack of affordable legal advice.⁵³² As stated by a 12 year old from a refugee background living in Darwin, Northern Territory, during the national consultation: 'More people need to move here, but there are not enough visas.'⁵³³

The Australian Government's policies and practices actively prevent family reunification for refugees who arrived by boat without a visa, depending on their date of arrival. Ministerial Directive 72 specifies that family visa applications lodged by refugees who arrived by boat before 13 August 2012 should be the lowest processing priority, meaning that they have virtually no chance of success.⁵³⁴ The position is even more restrictive for those who arrived by boat without a visa after 13 August 2012 and before 1 January 2014, who are only eligible to be granted a Temporary Protection Visa or a Safe Haven Enterprise Visa, and are barred from family reunification and prohibited from sponsoring family members.⁵³⁵ Australia's policy of offshore detention has created family separation for those families who had some members arrive after 19 July 2013, for whom there are no options for family reunification, including for unaccompanied minors.

Many of the children subject to Australia's offshore processing system on Nauru have suffered significant and unjustifiable interference with their rights to family life. The offshore processing system has:

- permanently separated children from other family members based on the date on which they arrived in Australian territory (with some individuals sent to Nauru, some to Papua New Guinea, and some permitted to reside in Australia);
- held children and families in detention or detention-like conditions for years at a time in a way that has eroded the central role of the family and family life;



- significantly reduced the capacity of parents to care for their children by eroding the independence, mental health and resilience of parents;
- been a strong contributing factor in family breakdowns.⁵³⁶

The role of family is central in the successful resettlement, psychosocial wellbeing, and economic participation of refugees. Family unity is a fundamental principle of international law,⁵³⁷ and refugees should not be viewed in isolation from their broader family context. As stated by the UN Special Rapporteur on the human rights of migrants: 'It is in the best interests of the child to live with both parents; separation for long periods has a huge impact on the development of children left behind.'⁵³⁸

Recommendations:

That the Australian Government:

- 112. amend the current practice of separating pregnant women from spouses and other children when transferring from Nauru to the mainland for perinatal care;**
- 113. immediately reunite families in Australia that are split between offshore processing countries and Australia;**
- 114. allocate at least 5,000 visas under the family stream of the Migration Program for refugee and humanitarian entrants, and introduce needs based concessions under this stream to make family visas more accessible;**
- 115. commit to revising legislation and policy to allow for more timely reunification of children with their families, and to allow for a more flexible application of the 'split family' policy, which recognises the nature of family relationships in the countries of origin of most asylum seeker children, particularly in times of conflict;**
- 116. permit Temporary Protection Visa and Safe Haven Enterprise Visa holders to sponsor family members.**

9.1.6 Cuts to income support for asylum seeker children and families

The Australian Government has recently announced the reduction in income support and other life saving supports for families and children who are currently seeking asylum

in Australia.⁵³⁹ The Status Resolution Support Services (SRSS) program has provided asylum seekers awaiting determination of their refugee applications with financial support for basic living costs, as well as access to casework support and torture and trauma counselling.⁵⁴⁰ Under the SRSS program, a single person is entitled to less than \$35 per day, which already falls far below the poverty line of \$63 per day.⁵⁴¹ During the national consultation, a nine year old asylum seeker living in Sydney, New South Wales, said:

“ On our second day in Australia, when we woke up we had nothing to eat or drink. We just walked and walked through the street. We found a man on the street who was really kind. My father told him we needed some food and so he took us to a place to get food and he bought us food.⁵⁴² ”

As of February 2018, more than 13,000 people, including more than 4,000 children, were dependent on the SRSS program as a safety net.⁵⁴³ However, the Australian Government has announced plans to reduce the number of people receiving assistance through the SRSS program to fewer than 5,000 people. Changes in the eligibility requirements will result in some children and families having no other means of support while they wait for their protection claims to be resolved. Overstretched charities and community organisations will likely see an increase in people seeking emergency relief for food, clothing, blankets, and support to pay rent. There is likely to be increased reliance on hospitals for people unable to afford their medications. Support services are already reporting that the cuts in social support are leading to homelessness, depression, anxiety and self harm among the asylum seeker population.⁵⁴⁴ As a 16 year old asylum seeker living in Sydney, New South Wales, said during the national consultation:

“ We had to call for help. We needed clothes, and food. We needed everything, like money. It would be much easier for the NGOs if the government took a part in helping. Housing is the main thing. People can live without food for a few days, but you cannot stay outside without a home.⁵⁴⁵ ”

Recommendation:

That the Australian Government:

- 117. restore access to the Status Resolution Support Services program for all people seeking asylum.**

9.2 YOUTH JUSTICE (arts 37 and 40; CO 84)

Since the last reporting cycle, most of the Children's Committee's previous recommendations concerning the administration of youth justice in Australia have not been actioned, with the positive exception of law reform in Queensland to include 17 year olds in the youth justice system⁵⁴⁶ and the ratification of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.⁵⁴⁷ Some isolated examples of good practice have also been introduced or expanded, including culturally adapted courts for Aboriginal and Torres Strait Islander children,⁵⁴⁸ some early intervention programs,⁵⁴⁹ and examples of integrated services.⁵⁵⁰ However, evidence indicates that Australia's youth justice systems are frequently unsafe for children and fail to deliver on rehabilitative aims.

The politicisation and distorted media reporting of youth offending, including misrepresentation about the nature and extent of youth crime, have heightened the public's concern for personal and community safety,⁵⁵¹ and have contributed to 'tough on crime' and harmful law and order policies. These punitive policies prioritise punishment over rehabilitation, and deterrence over the best interests of the child. Such reporting includes, for example, high profile media coverage of youth crime in Victoria, though police data indicate that overall crime by ten to 17 year olds has dropped by 25% over the past five years, and the number of ten to 17 year olds committing crime has decreased by 40%.⁵⁵² The Northern Territory Royal Commission also raised concerns that Youth Justice Court proceedings remain open to the public in the Northern Territory,⁵⁵³ which has resulted in identifying material about children involved in criminal proceedings being published in the media.

Overwhelming evidence demonstrates the frequent and compounding disadvantage experienced by most children in contact with youth justice systems in Australia. During the national consultation, an Aboriginal child detained in Western Australia's Banksia Hill Detention Centre expressed:

“ People make bad choices, and they learn from their mistakes. Some people do bad things because they've been through a hard time. Everyone has issues, no one doesn't.”⁵⁵⁴

There remains a need for substantial reforms and investments in evidence based early intervention strategies to address the underlying causes and particular vulnerabilities that lead children to criminal behaviour and keep some children cycling back into the criminal justice system. As an Aboriginal child detained in the Northern Territory's Don Dale Youth Detention Centre said during the national consultation: 'People think that

I am bad. I am not bad. I did wrong, but I am not bad.'⁵⁵⁵ The Productivity Commission reports that in 2016–17, detention based supervision of young offenders cost on average \$1,482 per day, amounting to over \$540,000 annually per child.⁵⁵⁶ There may be significant cost savings associated with more effective youth justice responses, in addition to the social justice benefits for children, their families, and the community more broadly.⁵⁵⁷

9.2.1 Age of criminal responsibility (arts 1 and 40(3)(a); CO 84(a))

In every jurisdiction across Australia, the minimum age at which children can be held criminally responsible is ten years of age.⁵⁵⁸ This remains the case despite repeated recommendations by the Children's Committee over the last two decades,⁵⁵⁹ as well as recent recommendations by the Committee on the Elimination of Racial Discrimination,⁵⁶⁰ the Human Rights Committee,⁵⁶¹ and the UN Special Rapporteur on the rights of Indigenous peoples⁵⁶² for Australia to raise the minimum age of criminal responsibility to an internationally acceptable level. This call has been echoed by civil society groups in Australia,⁵⁶³ the findings of the Northern Territory Royal Commission,⁵⁶⁴ and the National Children's Commissioner.⁵⁶⁵

Evidence indicates that the chances of future offending increase the younger a child has their first contact with the criminal justice system. In 2014–15, 100% of those aged ten to 12 years at the start of their first supervised sentence returned to some form of sentenced supervision before they turned 18. This decreased slightly with successive age groups, to around 80% of those aged 14 and 15, 56% of those aged 16, and 17% of those aged 17.⁵⁶⁶ Over 2016–17, 1,006 children between ten and 13 years of age were under youth justice supervision,⁵⁶⁷ including 566 children in youth detention facilities.⁵⁶⁸ Of these children, 68% were Aboriginal and Torres Strait Islander children.⁵⁶⁹

Recommendation:

That the Australian Government:

- 118. prevent the criminalisation of children between ten and 13 years of age by:**
 - (1) raising the minimum age of criminal responsibility in all Australian jurisdictions to at least 14 years;**
 - (2) ensuring the availability of age appropriate, therapeutic, family strengthening and evidence based programs to prevent and address identifiable risk factors and anti-social behaviour for children between ten and 13 years of age; with priority for funding given to community controlled programs and services for Aboriginal and Torres Strait Islander children.**



LEFT: Child residents of Ashley Youth Detention Centre (Tasmania). *Street brothers*. 2017. Represents the relationship the residents share with each other.

9.2.2 Overrepresentation of Aboriginal and Torres Strait Islander and other vulnerable children in detention

Although the number of children in contact with the youth justice system has declined in recent years,⁵⁷⁰ the overrepresentation of Aboriginal and Torres Strait Islander children has significantly increased. Despite comprising only 5% of the population of ten to 17 year olds in Australia, in 2016–17, half of the children aged ten to 17 under supervision and 58% of those in detention were Aboriginal and Torres Strait Islanders.⁵⁷¹ In Australia, Aboriginal and Torres Strait Islander children are 17 times more likely than non-Indigenous children to be under supervision, and 24 times more likely to be in detention.⁵⁷²

The lack of targets to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system remains a significant omission from the Australian Government's 'Closing the Gap' strategy.⁵⁷³ There remains a need for state and territory governments to commit

to long term supports for culturally appropriate diversionary programs, and community owned strategies that address the underlying causes of offending by Aboriginal and Torres Strait Islander children. As an Aboriginal child detained in the Northern Territory's Don Dale Youth Detention Centre expressed during the national consultation: 'I hate it in here. I am not going to come back. I am not, but I need people to help me.'⁵⁷⁴

There is a need to address the trajectories that lead to children's contact with the law, particularly for children experiencing intersectional disadvantage through exposure to multiple risk factors. Children living in geographically remote areas, very remote areas⁵⁷⁵ or areas of socio-economic disadvantage,⁵⁷⁶ as well as children experiencing homelessness,⁵⁷⁷ remain overrepresented in the youth justice system. This is also the case for children in contact with the child protection system,⁵⁷⁸ including children who have experienced family violence or maltreatment,⁵⁷⁹ particularly when placed in out-of-home care settings.⁵⁸⁰

The intersection between youth justice and out-of-home care is particularly concerning. In 2015–16, the overlap between youth justice supervision and child protection was highest in Victoria, where 53% of all children under youth justice supervision were also in the child protection system; and lowest in South Australia, where there was a 29% overlap.⁵⁸¹ In 2015–16, Aboriginal and Torres Strait Islander children between ten and 16 years of age were 16 times as likely as non-Indigenous children to have contact with both the child protection and youth justice systems.⁵⁸²

Similarly, children reporting substance misuse,⁵⁸³ children experiencing mental health issues⁵⁸⁴ and children with mental and cognitive disabilities are also overrepresented in the youth justice system.⁵⁸⁵ A 2015–16 study found that 89% of the ten to 17 year olds detained in Western Australia's Banksia Hill Detention Centre had at least one domain of severe neurodevelopmental impairment.⁵⁸⁶ The researchers diagnosed 36% of the children detained at the facility with fetal alcohol spectrum disorders (FASD)—the highest rate of FASD in a youth justice setting in the world.⁵⁸⁷ The prevalence of FASD in Aboriginal and Torres Strait Islander children at the facility was 47%.⁵⁸⁸ Only two of these 36 children had been diagnosed with FASD prior to the study, with the researchers noting the significant 'missed opportunities for earlier diagnosis and intervention' through school and prior engagement with child protection services, which 'might have prevented or mitigated their involvement with youth justice services'.⁵⁸⁹ This is discussed further in *Chapter 7: Disability, health and welfare*.



Recommendations:

That the Australian Government:

119. include justice targets in the 'Closing the Gap'

Refresh to:

- (1) end the overrepresentation of Aboriginal and Torres Strait Islander children (10–17 years) and adults under justice supervision (community based and in prison) by 2040;
- (2) cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to at least close the gap by 2040, with priority strategies for women and children;

120. adequately fund and ensure access to Aboriginal and Torres Strait Islander community controlled legal and other support services that relate to children, including Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services;

121. establish a national, holistic and whole-of-government strategy to address imprisonment and violence rates impacting Aboriginal and Torres Strait Islander children, based on *Change the Record's Free to be Kids: National Plan of Action*⁵⁹⁰;

122. establish or expand, and appropriately resource, specialist children's courts, including culturally adapted youth courts to work with Aboriginal and Torres Strait Islander children;

123. establish or expand, and appropriately resource, specialist, accredited children's legal services, including culturally appropriate and community controlled legal services for Aboriginal and Torres Strait Islander children;

124. ensure all judicial officers hearing child related proceedings receive specialist training on children's cognitive development, adolescent behaviour, and communicating effectively with children appearing in court.

Help more young people of Support and Plans for young people when they get out of custody. Giving them jobs, schools giving young people chance in the community

9.2.3 Detention as a last resort (arts 37 and 40(3)–(4); CO 84(c))

9.2.3.1 Mandatory sentencing

Despite the recommendations of the Children's Committee in 2005 and 2012,⁵⁹¹ mandatory sentencing legislation continues to operate in the youth justice system in Western Australia.⁵⁹² Similarly, if passed, a bill introduced into the Victorian Parliament in June 2018 will require courts to impose a custodial sentence for certain offences. In these cases, the judiciary will have no ability to consider whether a non-custodial outcome would be more appropriate for a young offender, even after determining that special reasons apply or that the statutory minimum sentence should not be imposed.⁵⁹³

Recommendation:

That the Australian Government:

- 125. ensure mandatory sentencing laws that apply to children are repealed across all Australian jurisdictions.**

9.2.3.2 Bail and remand

The proportion of unsentenced children held in detention has continued to rise steadily as a proportion of the overall youth detention population, having comprised 52% of the youth detention population in 2013–14,⁵⁹⁴ 54% in 2014–15,⁵⁹⁵ 57% in 2015–16⁵⁹⁶ and 61% in 2016–17.⁵⁹⁷ By contrast, in 2017, only 31.3% of the adult prison population was unsentenced.⁵⁹⁸ This indicates that children in Australia are not being detained in youth detention facilities as a measure of last resort.

Factors contributing to high numbers of unsentenced children in youth detention include state and territory legislation providing that bail is dependent on a child having suitable and safe accommodation,⁵⁹⁹ and a lack of suitable accommodation options. This has meant that children experiencing homelessness and housing instability are often denied bail and remanded in custody, simply on account of there being no other place for them to go. This is disproportionately the case for children living in regional, rural and remote areas, Aboriginal and Torres Strait Islander children, and children in out-of-home care.⁶⁰⁰ As a young Aboriginal advocate with lived experience of out-of-home care in New South Wales explained during the national consultation:

“ When an out-of-home care kid goes into juvenile justice, and they're looking at release, they won't release them unless they've got a placement to go to. But because they're teenagers and they're troubled, there's no one that wants them. So what happens? They're just stuck there.⁶⁰¹ ”

In addition, there are concerns around the inappropriate and arbitrary use of bail conditions that can be difficult for children to meet, and that can result in children being placed in detention due to a breach of bail conditions, rather than on account of the original, substantive offence.⁶⁰²

Recommendations:

That the Australian Government:

- 126. develop youth specific bail laws to reduce the number of children held on remand;**
- 127. establish and prioritise safe, community based accommodation options for children as alternatives to detention;**
- 128. address laws and policies that unfairly contribute to the growing number of children in unsentenced detention, particularly Aboriginal and Torres Strait Islander children;**
- 129. ensure adequate access to health, education and rehabilitation services and programs for children in community and detention facilities.**

9.2.3.3 Diversion

Despite legislation at state and territory level that emphasises the use of diversionary options and detention as a last resort,⁶⁰³ available data suggest that diversion is not being utilised to the extent required under the Children's Convention. For example, the Productivity Commission reports that the majority of Australian jurisdictions reported a decreased proportion of juvenile diversions from 2015–16 to 2016–17.⁶⁰⁴ Analysis conducted by the Auditor General of Western Australia found that between 2012 and 2016, police 'could have diverted between 88 and 96% of offences by children, but chose to divert less than half (between 40 and 49% over the period).'⁶⁰⁵

Similarly, the Northern Territory Royal Commission noted research suggesting that 'nation-wide, Aboriginal children and young people are less likely to be diverted than non-Aboriginal children and young people. This is also the case in the Northern Territory specifically, where in 2015, 32.6% of Aboriginal children and young people accused of offences were diverted, compared with 47.9% of non-Aboriginal children and young people.'⁶⁰⁶

There is also evidence that discretionary police powers are being used disproportionately against Aboriginal and Torres Strait Islander children and young people, who are

RIGHT: Joy Niyonzima (Woodridge, Queensland). *Some people live peacefully with their families while others are being taken away from their parents.* 2013. Dr Barbara Piscitelli AM Children's Art Archive, John Oxley Library, State Library of Queensland (Item: 7116/15/0020).



far more likely to be stopped and searched, and arrested or summonsed for public order offences.⁶⁰⁷

Similar concerns exist with 'pre-emptive policing' strategies being used in place of alternative and early intervention measures to address the underlying causes of criminal behaviour. These include the Suspect Targeted Management Program (STMP) in New South Wales, which aims to 'prevent future offending by targeting repeat offenders and people police believe are likely to commit future crime'.⁶⁰⁸ A recent evaluation found that the STMP is disproportionately used against children (as young as ten years of age), particularly Aboriginal and Torres Strait Islander children.⁶⁰⁹ Children and young people on the STMP have reportedly experienced 'oppressive policing' involving 'repeated contact with police in confrontational circumstances such as through stop and search, move on directions and regular home visits'.⁶¹⁰ The evaluators also found 'no appreciable distinction in the nature of STMP targeting and the use of police powers in relation to a young person who has committed minor offences or no offences as compared to more serious offences'.⁶¹¹ The evaluators argued that it should not be applied to children, and a better use of resources would be to fund and support early intervention programs with demonstrated success.⁶¹²

Recommendations:

That the Australian Government:

130. review the adequacy of youth justice legislation and youth diversion programs (as has occurred in New South Wales), and ensure end-to-end diversion options are available and used, including through specialist education, health and community services;
131. ensure transparent and proportionate policing methods, including safeguards that are consistent with the Children's Convention;
132. establish a nationally consistent approach to tracking children through the criminal justice system, including collecting disaggregated data on diversion and recidivism;
133. implement the Australian Law Reform Commission's *Pathways to Justice Report* recommendation for an independent national justice reinvestment body.⁶¹³

9.2.4 Administration of youth justice

9.2.4.1 Conditions in youth detention and protection from torture and cruel, inhuman or degrading treatment or punishment (art. 37(c))

Since 2015, more than 14 state and territory reviews and inquiries have drawn attention to widespread and systematic failings in youth detention facilities across Australia.⁶¹⁴ Inadequate facilities have put children's health, safety and wellbeing at serious risk. Instances include reports of rusty toilets, mouldy showers, insufficient air conditioning, electrical hazards, a high prevalence of communicable diseases, and facilities with no running water, natural ventilation or natural light for 22 hours per day.⁶¹⁵

Inquiries have reported widespread deficiencies in staff training, over-reliance on inexperienced casual staff, and incompetent centre management.⁶¹⁶ The Northern Territory Royal Commission found that youth justice officers at times deliberately withheld children's access to basic human needs such as water, food and the use of toilets, and that some female detainees were inappropriately physically handled, restrained and stripped of their clothing by male youth justice officers.⁶¹⁷ This conduct is inconsistent with the inherent dignity and humanity of all children; may amount to torture, cruel and inhuman treatment; and is inconsistent with article 37 of the Children's Convention as well as other human rights standards.⁶¹⁸ Children in youth detention facilities have also been subject to the improper use of isolation and segregation (including one report of isolation of up to 45 days)⁶¹⁹ and the inappropriate and potentially dangerous use of restraint.⁶²⁰

There are also continued and repeated reports of children being held in adult detention facilities (including watch houses), despite the existence of youth detention facilities in every state and territory.⁶²¹ Children aged 15 years and above in the Northern Territory and 16 years and above in New South Wales may legally be held on remand in adult facilities.⁶²² Children aged 16 and above in New South Wales,⁶²³ Victoria⁶²⁴ and Western Australia,⁶²⁵ and children aged ten and above in South Australia,⁶²⁶ Tasmania,⁶²⁷ the Australian Capital Territory⁶²⁸ and the Northern Territory⁶²⁹ may also be detained in adult facilities under specified circumstances that vary across jurisdictions.

Recently, governments in the Northern Territory, Western Australia and Victoria have re-gazetted adult prisons as youth detention centres, to house children in response to conflict and damage to youth detention facilities. In Victoria, this occurred after the Supreme Court determined that

the transfer of the children to Barwon Prison, a maximum security adult prison, was in violation of children's rights.⁶³⁰ It was reported that the children held in Barwon Prison had minimal time outdoors, were handcuffed when they went to the exercise yard, and were subject to extreme solitary confinement, the use of guard dogs, and threats of tear gas.⁶³¹

Recommendations:

That the Australian Government:

- 134. implement the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, and consider the application of these recommendations in all Australian jurisdictions;**
- 135. review and amend youth justice legislation, policy and practice to ensure that children are treated consistently with the Children's Convention and the *Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules)⁶³²;**
- 136. prioritise detention centres where children are placed as requiring immediate action as part of the implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁶³³;**
- 137. ensure the existence of child specific, independent inspectorates and complaint mechanisms;**
- 138. ensure enforceable minimum standards in places of youth detention in line with international human rights standards, including to prohibit:**
 - (1) the use of solitary confinement other than as a last resort;**
 - (2) the use of restraints against children, except where all other control measures have been exhausted and have failed;**
 - (3) routine strip searches, unless other less invasive search options have been exhausted;**
- 139. update relevant policies, procedures and staff training to ensure alignment with the Australian Children's Commissioners and Guardians *Statement on Conditions and Treatment in Youth Justice Detention*.⁶³⁴**

APPENDIX 1

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)

1. DATA (CO 7)

The Australian Government's development and work to implement the current *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* (NAP) has been a positive development.⁶³⁵ This has been supported by the Australian Institute of Criminology's development of a human trafficking and slavery monitoring framework, as part of the Human Trafficking, Slavery and Slavery-Like Practices Monitoring Program under the NAP.⁶³⁶

However, it is concerning that Australia has no comprehensive and systematic mechanism of data collection on human trafficking, the sale of children, child prostitution and child pornography.⁶³⁷ Although various bodies at national and state and territory level are involved in data collection on the sale of children, child prostitution and pornography,⁶³⁸ there is no single framework or administrator of data collection.

It is crucial that precise and integrated metrics are available in order to find solutions and raise awareness of the sale of children, forced marriage, child prostitution and child pornography.⁶³⁹ A national database containing crime statistics on the exploitation of children would also facilitate the easy collation, assessment and comparison of data relating to crimes of online child exploitation.⁶⁴⁰

Recommendations:

That the Australian Government:

- 140. improve data collection and research into child trafficking, sexual exploitation, forced labour and other offences against children, including on the prevalence of child survivors of trafficking and slavery, and with focus on groups with high risk – Aboriginal and Torres Strait Islander girls, migrants, and children living in poverty in Australia;**

- 141. collect and analyse data on the prevalence of child abuse material offences, particularly those involving live streaming;**

- 142. support the Australian Centre to Counter Child Exploitation, or another independent national body, to develop and maintain a comprehensive database on the incidence of sale of children, child prostitution and child pornography.**

2. GENERAL MEASURES OF IMPLEMENTATION

2.1 National Plans of Action, policy and overall strategy (COs 11, 15 and 19)

While the NAP provides a good basis to ensure compliance with OPSC, ensuring that key measures under the NAP are detailed and implemented in a full, timely and measurable fashion does not appear to have been consistently achieved. For example, it is unclear whether the operational protocol in respect of minors has been progressed, and it remains unclear how the NAP is implemented 'on the ground', or how it works within Australia's current child protection system.

2.2 Coordination (CO 13)

The Australian Government has taken a proactive role in coordination of responsibilities for the protection of child victims, including through the NAP. This includes the establishment in 2013 of the office of the country's first National Children's Commissioner, whose focus is solely on the rights and interests of children, and the laws, policies and programs that impact on them. However, there remain concerns around the absence of a coordinating body or mechanism specifically in charge of coordinating the implementation of OPSC.

Recommendations:

That the Australian Government:

- 143. establish a mechanism to implement the operational protocol for minors under the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*, and a forum to discuss related issues;**
- 144. establish a coordinating body or mechanism specifically in charge of coordinating the implementation of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* and ensure effective coordination and collaboration across agencies, both domestically and internationally.**

3. PREVENTION (arts 9(1)–(2); COs 21 and 23)

3.1 Measures to prevent offences including the commercial exploitation of children (Trafficking of children into Australia)

Funding or running ‘orphanages’ remains a common activity for Australian charities, despite the significant body of evidence demonstrating the harms of institutional and residential care.⁶⁴¹ Significant funding goes towards overseas institutions operating in contravention of the Children’s Convention and supporting UN Guidelines for the Alternative Care for Children.⁶⁴² There are currently no standards or requirements to ensure that supported orphanages are registered and compliant with international child rights laws and domestic laws in terms of their operation.⁶⁴³

Historically, Australia was primarily a destination country for women and girls subjected to sex trafficking, although more recently, men, women and children have been trafficked into Australia for a range of exploitative purposes including forced labour.⁶⁴⁴ A small number of children, primarily teenage Australian and foreign girls, are subjected to sex trafficking within the country.⁶⁴⁵ Recent reports have also noted the trafficking of Aboriginal and Torres Strait Islander girls within Australia, particularly in regional and remote areas.⁶⁴⁶

While Australia appears to have made progress towards the broader issue of preventing trafficking of persons into Australia, it is unclear the extent to which these measures specifically address the issue of child trafficking. As discussed above, although the NAP commits to the finalisation of an operational protocol for minors to combat trafficking in slavery,⁶⁴⁷ there is uncertainty as to how this protocol would be rolled out or practically implemented.

3.2 Measures to prevent offences including the commercial exploitation of children (Online child exploitation)

In 2015, the Australian Federal Police (AFP) received 11,000 reports involving online child exploitation.⁶⁴⁸ In June 2016, the International Centre for Missing and Exploited Children reported that there have been 194 identified Australia-based child victims and 102 identified Australian offenders.⁶⁴⁹ The AFP has also reported a significant rise in reports of online child exploitation, and there has also been an increase in the number of prosecutions and convictions for online procurement and grooming offences in New South Wales and Victoria.

The establishment of the Australian Centre to Counter Child Exploitation is a positive development to help improve international and domestic collaboration to address the online sexual exploitation of children. However, Australia maintains no regime of Internet regulation. Further, there is no legal mechanism to force Internet service providers (ISPs) to block materials that would be refused classification if those materials are hosted on overseas servers.⁶⁵⁰ Currently, ISPs are only required to ‘do [their] best’ to prevent telecommunication networks and facilities from being used in, or in relation to, the commission of offences against federal, state and territory laws.⁶⁵¹ These provisions are vague and limited in ensuring that ISPs comply with their obligations to cooperate with authorities. However, the AFP have issued notices under section 313 of the *Telecommunications Act 1997* (Cth) to require ISPs to disrupt access to the child exploitation sites on the Interpol ‘worst of the worst’ list.

The Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 currently before Australian Parliament seeks to criminalise the provision of an electronic service to facilitate dealings with child abuse material online. The Bill also envisages an increase in penalty units from 100 to 800 units, which is likely to encourage ISPs to comply. Despite these amendments, the introduction of an industry code for telecommunications providers that clarifies an ISP’s obligations would provide greater certainty and encourage compliance.⁶⁵²

Further, there is a growing trend of networks that facilitate the sharing/production of child abuse material in cybersex trafficking cases. There is a need for legislation to criminalise the intentional facilitation, distribution and hosting of child sexual abuse material. Three states (Victoria, New South Wales and Queensland) have criminalised the administration of computer networks for sharing child exploitation material.⁶⁵³ The Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 seeks to create new offences to criminalise the grooming of third parties for the purpose

of procuring a child for sexual activity; and to criminalise the provision of an electronic service to facilitate dealings with child abuse material online. It also seeks to remove references to 'child pornography material' within federal legislation and replace it with 'child abuse material'. However, the Bill also seeks to introduce mandatory sentencing provisions which may have unintended consequences, such as mandatory minimum sentences applying to teenagers who engage in conduct such as 'sexting'.

In comparison to international standards, the strength of legislation pertaining to online child exploitation offences at federal and state and territory level is relatively robust in Australia.⁶⁵⁴ Federal legislation provides that offences of this nature committed on three or more separate occasions are aggravated offences, and includes provisions relating to the possession of child exploitation material outside Australia. However, there are no specific provisions reflecting the prominent role of people who administer online child exploitation networks in the distribution of materials, and in some cases, incitement of child exploitations, or the extent of distribution as aggravating factors.⁶⁵⁵

There is a lack of clarity between existing legislative and common law sentencing principles relating to online child exploitation offences. Further, consideration of the harm suffered by the victims of online child exploitation crimes varies between courts and jurisdictions, and there is often a distinction made between online child exploitation images and the crimes they depict.

Education, training and technological development is required to ensure the protection of children in Australia and overseas. Current efforts in Australia have resulted in duplication between government bodies and NGOs, as well as reliance on prevention models with a limited evidence base. There are also currently no Australian programmes to promote the primary prevention of online child exploitation.

Recommendations:

That the Australian Government:

145. conduct further research into:

- (1) the extent and nature of domestic trafficking of children;
- (2) sentencing outcomes for child online exploitation offences;
- (3) the relationship between human trafficking and online child exploitation to facilitate the development of a coordinated Australian response to these emerging crimes;
- (4) victim and offender behaviours, to prevent the future exploitation of children online;

146. require the Australian Communications and Media Authority to develop an industry code, guideline or standard to assist telecommunications providers to 'do [their] best' to prevent telecommunication networks and facilities from being used in, or in relation to, the commission of offences against federal, state or territory law under the provisions of the *Telecommunications Act 1997* (Cth);

147. pass the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017, particularly the provisions addressing the sentences for offences covering online sexual exploitation of children and targeting criminal networks facilitating the online sexual exploitation of children, and the provisions that increase penalties for Internet service providers that do not provide information to law enforcement regarding online sexual exploitation of children;

148. introduce federal offences concerning the administration of online networks in their distribution of child abuse material, analogous to those in New South Wales and Victoria;

149. update the *Broadcasting Services Act 1992* (Cth) to reflect the emergence of new technologies and ensure that instances of online child exploitation material hosted in Australia and overseas are effectively identified and investigated;

150. provide further funding support for the Australian Centre to Counter Child Exploitation.

3.3 Measures to protect vulnerable groups, including through awareness raising (Forced marriage)

Forced marriage is criminalised under the *Criminal Code Act 1995* (Cth) and applies to conduct within or outside of Australia.⁶⁵⁶ Further, the *Marriage Act 1961* (Cth) includes provisions whereby a marriage may be void if the consent of a party was not real, or if a party was not of a marriageable age.⁶⁵⁷ This is in line with article 24(3) of the Children's Convention relating to abolishing traditional practices that are prejudicial to the health of children.⁶⁵⁸

There is little available comprehensive data about the extent of early and forced marriage in Australia.⁶⁵⁹ Since 2013, the number of suspected forced marriage cases reported to Australian authorities has continued to rise. In 2014, there were as many as 250 cases of children being forced into marriage in the previous two years.⁶⁶⁰ As at June 2017, the AFP had received a total of 183 referrals involving a person in, or at risk of, forced marriage. In 2016–17, forced marriage referrals accounted for almost half of all referrals received by AFP Human Trafficking Teams.⁶⁶¹ There have also been

several cases in Australia that raise concerns about children being removed from Australia for forced marriage.⁶⁶²

It is difficult to develop effective solutions to address and prevent forced marriage without adequate data. There have been no convictions for forced marriage offences to date, however there is one matter currently before the courts involving one defendant. Several matters have resulted in offenders being convicted of related offences, including under the *Marriage Act 1961* (Cth) and state and territory-based child sex offences.⁶⁶³

The inclusion of Australia's response to forced marriage as a key focus area under the NAP has assisted to raise awareness of the issue, leading to increased reporting, and the Australian Government is currently considering the need for enhanced civil protection measures to complement existing criminal offences and provide an alternate source of remedy for people at risk of forced marriage. However, there are significant gaps in interagency coordination in Australia to address the issue of forced marriage, including case coordination, information sharing and options for joint referral, and the perceived hesitancy of child protection authorities to engage with suspected cases of forced marriage.⁶⁶⁴

Recommendations:

That the Australian Government:

- 151. identify federal, state and territory responses to forced child marriage, define roles, coordinate responsibilities and develop national best practice responses;**
- 152. ensure the response to forced child marriage is integrated into the family violence and child protection framework, with a greater focus on early intervention rather than the future prosecution of offenders who are usually the parents of the children affected;**
- 153. revise the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* to include specific, measurable and funded steps to facilitate a more coordinated response to forced child marriage:**
 - (1) update relevant legislation and ensure it is effectively synchronised with federal legislation across all Australian jurisdictions;**
 - (2) develop a nationwide operational framework delineating clear response protocols across key stakeholders;**
 - (3) build capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage of children across all Australian jurisdictions.**

4. PROHIBITION AND RELATED MATTERS (arts 3, 4(2)–(3), 5, 6 and 7; COs 9, 25 and 26)

There remain concerns that federal, state and territory laws are not fully harmonised in respect of the prohibition and criminalisation of the crimes under OPSC, including an inconsistent approach to terminology and definition of offences, as well as lack of clarity and consistency in sentencing principles.

There is currently no national formal mechanism in Australia that directly targets modern slavery in business operations and supply chains or supports the business community to act to address modern slavery. The Australian Government has undertaken commendable work to harmonise domestic legislation with OPSC and has introduced new legislation since the last reporting period.⁶⁶⁵ At state and territory level, the adoption of the *Modern Slavery Act 2018* (NSW) is a positive development. The Australian Government is urged to continue with its efforts to pass and implement the Modern Slavery Bill 2018, which has passed the House of Representatives and is now with the Senate.

Some children between the ages of 16 and 18 are not fully protected against the offences under OPSC. In many states and territories, child prostitution and child pornography are only criminalised for children between the ages of 16 and 18 if the defendant is in a position of trust or authority. The criminalisation of some relevant offences under OPSC is linked to the age of sexual consent.⁶⁶⁶ The age of consent in South Australia and Tasmania is 17 years of age, and is 16 years of age in all other states and territories.

There is also a lack of uniform legislation at federal and state and territory levels to prevent online child exploitation offences and promote online safety, which contributes to difficulties in prosecution and inconsistent sentences. The lack of uniformity includes different terminology to describe the prohibited material.⁶⁶⁷

In Australia, forced child marriage often involves children being taken out of Australia for a marriage, perhaps for a traditional/religious marriage, with the expectation that they will subsequently sponsor their spouse for migration to Australia. The current definition of 'forced marriage' in the *Criminal Code Act 1995* (Cth) applies to all marriages, whether formal or informal, religious or civil, and regardless of the age of the people involved. However, there is no provision that specifically addresses later sponsorships.

Orphanage trafficking is not sufficiently addressed by the existing laws that criminalise human trafficking as they relate exclusively to entry to and/or exit from Australia. Only the forms of exploitation,⁶⁶⁸ but not the actual act of trafficking,

can be prosecuted under Australian law. Orphanage trafficking often involves the practice of falsifying a child's identity as an orphan through 'paper orphaning'.⁶⁶⁹ Only some of the constituent forms of exploitation associated with orphanage trafficking can be prosecuted under the current provisions of the *Criminal Code Act 1995* (Cth),⁶⁷⁰ and it remains ambiguous as to what actions would fall within its provisions as it relates to orphanage trafficking. The facilitation of orphanage tourism needs to be included in the *Criminal Code Act 1995* (Cth) as a form of exploitation associated with orphanage trafficking to enable prosecution of offenders.⁶⁷¹ The Modern Slavery Bill 2018 has included orphanage trafficking and child exploitation in institutions in the scope of reportable forms of modern slavery captured by the Bill.

Recommendations:

That the Australian Government:

154. ensure the harmonisation of laws in respect of the definition, prohibition and criminalisation of the crimes under the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*;

155. amend the *Criminal Code Act 1995* (Cth) to ensure all aspects of orphanage trafficking and the facilitation of orphanage tourism are identified as forms of child exploitation;

156. pass and implement the Modern Slavery Bill 2018.

5. PROTECTION OF THE RIGHTS OF VICTIMS (arts 8 and 9(3)–(4); CO 33)

The Australian Government's Support for Trafficked Persons Program provides valuable assistance and support to victims of trafficking. However, it does not have the necessary resources to provide specialist, child specific services for child victims.

Child victims and children of victims of trafficking are not guaranteed access to information in a child friendly format, with interpreter/translator and independent legal assistance where required. A child specific victim support program is needed to give specialist advice to the child victim regarding their options, which is independent of government. The current victim support program continues to emphasise support for victims of trafficking who are participating in law enforcement processes. This may not be the most appropriate course of action for child victims. Children are often left vulnerable when their parents have become victims of trafficking. Current visa rules allow for extensions to adult visas in situations of trafficking, however,

the rules between adults and children do not always align.⁶⁷² Further, the visa extension is limited to 45 days, a timeframe which is often insufficient to ensure that the best interests of the child and their family are protected.⁶⁷³

The Referred Stay (Permanent) (Class DH) Visa is the new permanent visa for victims of human trafficking, slavery and slavery-like practices, previously named the 'Witness Protection (Trafficking) (Permanent) Visa'. In a welcome change to the visa criteria, the Migration Regulations were amended to provide a better and more efficient pathway to permanent residency. This important amendment potentially allows those victims of trafficking who have contributed to and cooperated with an investigation the opportunity to apply for a permanent visa, regardless of whether the investigation has led to a prosecution.⁶⁷⁴ However, there are concerns that an applicant is still required to participate and cooperate in an investigation relating to a possible human trafficking and slavery offence in order to obtain an extended Bridging F Visa and a Referred Stay Visa. Since these investigations are often complex and lengthy, the applicant is left with much uncertainty.⁶⁷⁵ Further, the additional hurdle of meeting the 'danger' criteria has resulted in considerable uncertainty in the assessment of cases.⁶⁷⁶ There is a significant gap in the trafficking visa framework that could be remedied by the implementation of a mechanism to grant a permanent visa in compassionate circumstances.⁶⁷⁷ The trafficking visa framework needs to be implemented in a way that minimises prolonged uncertainty and family separation. Expediting visa processes for people on the Support Program alleviates distress, and supports recovery and family reunification.

There remains a lack of clarity on the question of guardianship of trafficked children, which continues to pose a challenge to providing child victims with adequate child protection services. This remains an issue where children are trafficked into Australia on substantive visas such as student or tourist visas, where their guardian or sponsor is involved in the trafficking. The Minister for Immigration retains the authority to delegate guardianship responsibilities to state and territory child protection authorities,⁶⁷⁸ however there is no mandate for the child protection authority to take responsibility for the child. It is not clear who then becomes the child's de facto guardian, and the scope of their responsibilities.

While there exists a broad right within Australia's legislative framework for a child victim to seek compensation for damages from those legally responsible for perpetrating offences against them, there remains a need to consider incorporating the special factors to be considered in realising the right to an effective remedy by trafficked children. This includes consideration of the best interests of the child in determining the most appropriate form of reparation for a child victim, which is not necessarily, or only exclusively, criminal proceedings against the perpetrators.

Recommendations:

That the Australian Government:

- 157.** develop processes and protocols to ensure the rights and best interests of child victims are met, including that child victims and children of victims of trafficking be guaranteed access to support and information in a child friendly format, with interpreter/translator and independent legal assistance where required;
- 158.** prioritise processing of visa applications for victims of trafficking who are separated from their children, and children of victims of trafficking, and consider permanent settlement in Australia for such cases;
- 159.** grant permanent visas in compassionate circumstances, where trafficked children are unable to participate in a criminal investigation;
- 160.** review current legislation on guardianship as it applies to children who have been trafficked into Australia and develop clear reporting and accountability guidelines, especially where children with substantive visas are concerned;
- 161.** provide an effective remedy for trafficked children that is guided by the general principles of the Children's Convention and the best interests of the child, and that reparative measures for child victims are built into a comprehensive child protection system which will guarantee children's rights;
- 162.** resource the Support for Trafficked Persons Program to provide specialist, child specific services for child victims of trafficking;
- 163.** conduct an independent evaluation of the impact and effectiveness of the Support for Trafficked Persons Program and related Human Trafficking Visa Framework to better understand the impact of the services on children and the post-support pathways offered to those who access the program; assess its applicability to children facing forced marriage; and better interrogate the link between the program and the criminal justice response.

6. INTERNATIONAL COOPERATION (CO 34)

The Australian Government has devoted significant efforts to strengthening international cooperation around the offences covered by OPSC, as well as providing funding and assistance to other countries to respond to issues including child trafficking and sex tourism. The Australian Government's role in the Asia-Pacific region in relation to prevention and the development of legislative responses to address and protect children from trafficking and sexual exploitation can be commended. However, these efforts could be expanded to other regions in the world.

The Australian Government has also not focused on the issue of harmful child marriage that occurs on a mass scale around the world, and there is scope for the Australian Government to provide more support on this issue, especially in the Indo-Pacific region.⁶⁷⁹

Recommendations:

That the Australian Government:

- 164.** expand international cooperation through multilateral, regional and bilateral arrangements to respond to issues of child trafficking and sexual exploitation in other regions outside the Asia-Pacific region;
- 165.** incorporate an integrated response to child marriage in its key overseas development and assistance policies and priorities, and work with development partner governments to develop effective monitoring and reporting mechanisms on child forced marriage;
- 166.** undertake further review, research and data collection in relation to child sex tourism;
- 167.** improve international collaboration to address online sexual exploitation of children and continue investment in projects designed to strengthen the response of public justice in countries in which online sexual exploitation is being facilitated.

APPENDIX 2

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

1. GENERAL MEASURES OF IMPLEMENTATION

1.1 Legal status, coordination and training (COs 6, 8 and 10)

Australia has not fully incorporated the provisions of OPAC into its domestic legislation, and there remains no central government entity with responsibility for coordinating and monitoring the implementation of OPAC at a federal and state and territory level.

There is limited publically available information regarding the training offered to members of the Australian Defence Force (ADF), and Defence Instructions only address OPAC in relation to the recruitment and involvement of ADF personnel over 17 years of age in armed hostilities (discussed further below).⁶⁸⁰

Recommendations:

That the Australian Government:

- 168. conduct a comprehensive review of legislation affecting children in order to ensure national policy is consistent with the principles of the *Optional Protocol on the Involvement of Children in Armed Conflict*;**
- 169. ensure that the Children's Committee's recommendations are transmitted to all relevant agencies in Australia for appropriate consideration and action;**
- 170. ensure that all relevant personnel within the Australian Defence Force as well other personnel who work with children in other capacities such as medical professionals, social workers, lawyers and police, are appropriately trained on the *Optional Protocol on the Involvement of Children in Armed Conflict* and that any training manuals or information be made publically available for review.**

2. PREVENTION (arts 1, 2, 4(2) and 6(2))

2.1 Recruitment and participation of minors in the national armed forces (COs 14, 16 and 18)

Australia's compliance with OPAC continues to be largely regulated by policy.⁶⁸¹ Australian legislation still does not provide for a minimum age for voluntary recruitment into the ADF.⁶⁸² The Australian Government permits 17 year olds to voluntarily serve in the ADF,⁶⁸³ and allows minors:

- as young as ten years of age to register and receive information about available careers in the ADF;
- over 12 years and six months of age to join the ADF Cadets (discussed further below);
- over 15 years and six months of age to apply to study at the ADF Academy, which provides military and tertiary academic education for junior officers of the ADF.⁶⁸⁴

There remains no absolute safeguard against the direct participation of children under 18 years of age in hostilities. Defence Instructions require ADF personnel to take 'all feasible measures' to ensure that minors serving in the ADF do not participate in hostilities. However, this limitation applies to the extent that it does not adversely impact on the conduct of operations.⁶⁸⁵ The Defence Instructions contain no definition of 'direct participation', 'hostilities' or 'feasible measures'. As a result, the application of this provision could lead to the direct participation of children under the age of 18 years in hostilities.

Recommendations:

That the Australian Government:

- 171. legislate and amend Australian Defence Force policy to raise the minimum age of voluntary recruitment to join the Australian Defence Force to 18 years of age;**
- 172. ensure that the Australian Defence Force prohibit the use of minors in direct hostilities or at a minimum define what would constitute 'direct participation', 'hostilities' and 'feasible measures' in relation to the use of minors in hostilities.**

2.2 ADF Cadets (CO 20)

Despite the Children's Committee recommendation in 2012, ADF Cadets under 18 years of age are able to participate in 'military like activities', including training on how to handle, maintain, operate and fire weapons.⁶⁸⁶ According to the Youth Policy Manual: 'Use of ADF weapons is a distinguishing feature of the Cadet program, and among the features of the scheme that attract young people who are interested in military matters.'⁶⁸⁷ There has been no formal review to ensure that these operations are age appropriate and take into consideration the individual circumstances of each child, including the mental and physical effects of such activities on the child.

In 2017, the ADF conducted an internal review of the Youth Policy Manual regarding the use of defence weapons, cadet firearms, military-like activities and protection orders for ADF Cadets.⁶⁸⁸ However, neither the results nor the criteria of the review have been made publicly available. There is also no independent monitoring of the ADF Cadets scheme, and responsibility for monitoring youth safety through the ADF Cadets scheme lies with the Vice Chief of the Defence Force.⁶⁸⁹

While there is no requirement for ADF Cadets to join the ADF,⁶⁹⁰ the program is viewed as a recruitment tool for the ADF. Almost 20% of ADF permanent members were members of a defence sponsored cadet organisation and 23% of ADF reserves were members of a Defence sponsored cadet organisation.⁶⁹¹ Recruitment of minors into the ADF Cadets scheme, the relevant departments (navy, air force and army) disseminate information about the ADF Cadets scheme to potential candidates,⁶⁹² and their parents.⁶⁹³ While the Army and Navy Cadets websites state that they encourage diversity, there is a lack of information to ensure those from different linguistic or marginalised backgrounds are not overly targeted in recruiting, nor do those sites suggest that there are measures in place to ensure informed consent from these cohorts.

Recommendations:

That the Australian Government:

- 173. ensure the Australian Defence Force Cadets scheme prohibits all activities involving the handling and use of firearms and other explosives;**
- 174. ensure the Australian Defence Force Cadets scheme develops guidelines outlining the appropriateness of military-like activities for specific age brackets;**
- 175. ensure that an appropriate organisation with expertise in child rights reviews the relevant sections of the Youth Policy Manual and monitors the operations of the Australian Defence Force Cadets scheme to ensure all activities are age appropriate;**
- 176. ensure that the Australian Defence Force implement measures to protect minors from different linguistic or marginalised backgrounds from being targeted in recruiting for the Australian Defence Force Cadets scheme;**
- 177. ensure that the Australian Defence Force make publicly available disaggregated data according to sex and ethnicity regarding voluntary recruits under the age of 18 years;**
- 178. ensure that an independent organisation is responsible for oversight of the Australian Defence Force Cadets scheme.**

3. PROHIBITION AND RELATED MATTERS (arts 1, 2 and 4(1)–(2))

3.1 Criminal legislation and regulations in force (CO 23)

Australian legislation criminalises the recruitment of all children under the age of 18 by armed groups or paramilitary groups.⁶⁹⁴ However, under the *Criminal Code 1995* (Cth), the national armed forces can use, conscript or enlist a child under 15 years of age to participate actively in hostilities in an international armed conflict during times of war.⁶⁹⁵

Reform is also necessary to ensure appropriate oversight and accountability of private military and security companies. In the majority of Australian jurisdictions, there is an explicit legislative requirement that candidates applying for a security licence must be 18 years of age or older.⁶⁹⁶ This operates as a means of ensuring that people in the security industry are appropriately trained and qualified across a broad range of roles, including crowd controllers, guards, security consultants, trainers and technicians. However, there is no such explicit requirement in the Northern Territory and South Australia, and the discretion to refuse a security licence is left to the relevant decision maker.⁶⁹⁷

Recommendations:

That the Australian Government:

- 179. amend the *Criminal Code 1995* (Cth) to raise the age for legal recruitment, conscription and active participation in hostilities for its national armed forces to 18 years of age;**
- 180. ensure that there is an explicit statutory requirement that an individual must be 18 years of age or older to obtain a security licence in all Australian jurisdictions.**

4. PROTECTION, RECOVERY AND REINTEGRATION (art. 6(3))

4.1 Measures adopted to protect the rights of child victims (CO 25)

Australia's immigration framework does not include legislation that specifically addresses the issue of returning children to countries where they may be (re)recruited as child soldiers.⁶⁹⁸ The *Migration Act 1958* (Cth) allows for Australia's complementary protection obligations under international treaties to be considered by decision makers in the granting of a protection visa.⁶⁹⁹ However, the *Migration Act 1958* (Cth) makes no specific reference to obligations under the Children's Convention or OPAC. This means that while the circumstances of asylum seeker children who have been involved in armed conflict may be considered, it does not qualify as a separate, specific ground for the granting of a protection visa.

The Department of Home Affairs' Procedures Advice Manual (PAM), the most recent version being PAM3, still instructs that Australia's international obligations, including the Children's Convention, should be taken into account in its procedures.⁷⁰⁰ It also now includes some guidance for decision makers identifying whether a visa applicant is a former child soldier, has been involved in armed conflict or committed a war crime while a child soldier. It states that, 'there is a concern that, although to date only a few cases have come to the department's attention, there may be many more cases that remain undetected'.⁷⁰¹

There continues to be an absence of official statistics and data on asylum seeker and refugee children, specifically those who were child soldiers or who have experienced armed conflict. The Department of Home Affairs publishes limited information on the numbers of people granted refugee status on complementary protection grounds,⁷⁰² and limited statistics on the numbers of children in detention.⁷⁰³

The Department of Health maintains a counselling program for resettled humanitarian refugees.⁷⁰⁴ However, Australia does not maintain any counselling or support programs specifically targeted to former child soldiers or children that have been involved in armed conflict. The status of Australian law related to asylum seeker children is discussed in *Chapter 9: Special protection measures*.

Recommendations:

That the Australian Government:

- 181. amend the *Migration Act 1958* (Cth) to include specific protections for minors who fear returning to a country in which they may be (re)recruited as child soldiers, including legislating for the provision of protection visas specifically for this category of applicants;**
- 182. ensure that the Department of Home Affairs obtains information on the numbers of children granted complementary protection;**
- 183. collect data on refugee, asylum seeker and migrant children within Australia's jurisdiction who may have been recruited in armed conflict and or hostilities in their home country;**
- 184. establish a national system of registration for all asylum seeker and refugee children, including identification of, and statistics for, children who have been or may have been involved in armed conflict;**
- 185. ensure that the Department of Home Affairs develop and implement a targeted and specialised recovery program for those minors who have been involved in armed conflict.**

5. INTERNATIONAL ASSISTANCE AND COOPERATION (art. 7(1))

The need to resolve the issue of children in armed conflict was largely absent from the Australian Government's Humanitarian Strategy 2016 and from the Protection in Humanitarian Action Framework 2013.⁷⁰⁵ While acknowledging the Australian Government's support for international efforts to assist children affected by armed conflict, there is scope to prioritise support for children in regions directly affected by armed conflict in Australia's humanitarian funding.

Recommendations:

That the Australian Government:

- 186.** increase funding priorities to Africa and the Middle East, given the proportionately higher number of countries in these regions utilising child soldiers⁷⁰⁶;
- 187.** earmark a portion of overseas humanitarian funding for funding sectors directly involved in preventing the recruitment of child soldiers and supporting disarmament, demobilisation, and reintegration of child soldiers;
- 188.** align the Humanitarian Strategy and Protection in Action Framework with regard to the issue of children in armed conflict.

5.1 Arms export (CO 28)

Despite concerns raised by the Children's Committee, Australia has not introduced or amended existing legislation specifically prohibiting the export of arms to nations who are known to or may potentially recruit and use children in armed conflict. This is of particular concern given the Australian Government's stated intention to increase arms manufacture and exports to become one of the top ten arms exporters within the next decade.⁷⁰⁷

The Australian Government did not introduce new legislation after ratifying the Arms Trade Treaty in 2014, stating that Australia's legislative framework is sufficient to meet the obligations under the Arms Trade Treaty.⁷⁰⁸ While the *Defence Trade Controls Act 2012* (Cth) allows a Minister to impose conditions on a permit to export 'Defence and Strategic Goods' and technology,⁷⁰⁹ it is unclear whether this has been used in practice to prohibit the sale of arms to countries known to be recruiting children in armed conflict. It also falls short of a legislative prohibition in that it is reliant on ministerial discretion.

It is of continuing concern that the *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012* (Cth) still permits Australian forces to assist in activities prohibited by the 2008 *Convention on Cluster Munitions*, and explicitly allows the stockpiling and transfer of cluster munitions by foreign military allies through Australian territory.⁷¹⁰

Recommendations:

That the Australian Government:

- 189.** enact or amend legislation to specifically prohibit the export of arms to countries that are known to, or potentially are, recruiting and using children in hostilities;
- 190.** clarify whether it takes the recruitment of child soldiers into account in its sanctions regime and Defence and Strategic Goods List export permits;
- 191.** amend the *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012* (Cth) in line with the requirements of the 2008 *Convention on Cluster Munitions* in order to prevent the proliferation or use of these weapons in hostilities where children may be involved.

APPENDIX 3

List of recommendations

Recommendations under the *Convention on the Rights of the Child*

The Australian Child Rights Taskforce recommends that the Australian Government, in cooperation with state and territory governments where relevant:

1. establish a dedicated federal minister to advocate for and coordinate whole-of-government agendas for children and young people;
2. enact a federal Charter of Human Rights, or a comprehensive national Children's Act which provides full and direct effect to the provisions of the Children's Convention;
3. establish a dedicated Children and Families Council within the Council of Australian Governments, to ensure adequate coordination, across states and territories, of the implementation of the Children's Convention;
4. introduce federal and state and territory child specific budgeting measures to plan and monitor levels of financial investment in children, in accordance with the Children's Committee's General Comment No. 19;
5. include the views of children in parliamentary scrutiny processes during the development of significant pieces of legislation;
6. develop a national plan of action to implement the Children's Convention, linked to individual sector, state and territory based plans, including a National Action Plan on Business and Human Rights;
7. provide the Office of the National Children's Commissioner with enhanced resources to support the commissioning of research and facilitate effective consultation with children, in accordance with the Children's Committee's General Comment No. 2;
8. establish Children's Commissioner roles with a dedicated focus on Aboriginal and Torres Strait Islander children and disadvantage, in all jurisdictions;
9. commit to comprehensive child rights training for elected officials, senior decision makers across governments, members of the judiciary and other officials, with a focus on the guiding principles of the Children's Convention;
10. ensure that members of the National Preventative Mechanism under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* have applied child rights expertise or are informed by specialist child rights subcommittees;
11. ratify outstanding treaties to protect the rights of children, including the *ILO 138 Convention concerning minimum Age for Admission to Employment* and the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*;
12. withdraw its reservation to article 37(c) of the Children's Convention;
13. establish and fund a national research agenda for children and young people in Australia;
14. ensure the disaggregation of national data by age (e.g., nine and under, ten to 14 years, 15–19 years, 20–24 years), to enable children and young people to become more visible in policy making and planning;
15. establish a Makarata (truth telling) Commission as recommended in the Uluru Statement of the Heart as a measure to address historic injustice and intergenerational grief among Aboriginal and Torres Strait Islander peoples;
16. introduce a general limitations clause to replace permanent exemptions in anti-discrimination legislation, only allowing for limitation of rights where there is a legitimate aim and where it is reasonable, necessary and proportionate;
17. recurrently fund a national, independent youth peak body to engage with children and young people directly and to represent their views to government and other decision makers;
18. resource a forum for Aboriginal and Torres Strait Islander children and young people to have their voices heard, involving a National Aboriginal and Torres Strait Islander Children and Young People's Council;
19. legislate and embed strong, culturally responsive mechanisms and child inclusive decision making/dispute resolution processes, particularly in family law, child protection and youth justice;

Recommendations

20. ensure comprehensive and universal access to birth registration by:
 - (1) automatically issuing the first birth certificate for free upon the registration of an Aboriginal or Torres Strait Islander birth;
 - (2) investing in decentralisation, including community based and digital birth registration systems;
21. ensure that powers under section 501 of the *Migration Act 1958* (Cth) are not applied to refuse or cancel the visa of a child;
22. strengthen merits review processes for visa cancellation decisions under section 501 of the *Migration Act 1958* (Cth);
23. develop uniform legislation and establish a national register to allow donor conceived children to access identifying information about their donor, and donor siblings;
24. commit to improving police–youth interactions by educating police in contemporary youth engagement strategies, through the Australia New Zealand Policing Advisory Agency;
25. prioritise the digital access and online safety needs of vulnerable groups of children through targeted programs;
26. develop research and online safety initiatives in collaboration with children, to ensure they more effectively enhance children’s capacity to manage a range of risks online;
27. implement recommendation 2.1 of the Royal Commission into Institutional Responses to Child Sexual Abuse and conduct and publish a nationally representative prevalence study on a regular basis, to establish the extent of child maltreatment in institutional and non-institutional contexts in Australia;
28. implement recommendations 3 to 6 of the National Children’s Commissioner’s *Children’s Rights Report 2015*, to strengthen the Australian Bureau of Statistics Data Collection and Reporting Framework;
29. ensure meaningful participation and collaboration with women and children at higher risk, in the development, implementation and monitoring of national strategies to reduce violence against children;
30. develop and resource a dedicated plan to reduce violence against Aboriginal and Torres Strait Islander women and girls, designed and led by Aboriginal and Torres Strait Islander women and community controlled organisations;
31. establish a Royal Commission into all forms of violence, abuse and neglect against children with disability;
32. implement and resource the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse;
33. require organisations that have contact with children to report on compliance with the National Principles for Child Safe Organisations as part of their ongoing funding arrangements;
34. integrate the National Principles for Child Safe Organisations into existing national regulatory frameworks, such as the National Standards for Out-of-Home Care and the Human Services Quality Framework;
35. repeal the legal defences for the use of corporal punishment and ensure that all forms of corporal punishment are unlawful across all Australian jurisdictions;
36. strengthen awareness raising and education campaigns, with the involvement of children, in order to promote positive, non-violent forms of discipline;
37. enact nationally uniform legislation prohibiting non-therapeutic and forced sterilisation of children in the absence of their prior, fully informed and free consent, except where there is a serious threat to life or health;
38. enact legislative provisions explicitly prohibiting forced medical interventions on children born with intersex variations before they reach an age when they are able to provide their prior, fully informed and free consent;
39. develop a uniform, integrated national child protection system that is aligned with ‘public health’ models and is based on children’s rights and their recovery;
40. establish a National Office of Child Wellbeing and Safety in the Department of the Prime Minister and Cabinet, to assist in the coordination and oversight of child protection nationally;
41. ensure that the full range of data required by the Child Protection National Minimum Dataset is collected and reported;
42. coordinate a national system for collecting disaggregated data on the reasons children are placed in out-of-home care; and longitudinal data that allow for calculation of the length of stay in care, time to exit by exit type, and re-entry to care, by Aboriginal and Torres Strait Islander status;
43. extend the age of children leaving out-of-home care to 21 years, and invest in additional services to support this approach across all Australian jurisdictions;
44. implement policies to prepare children to transition to independence and invest in quality monitoring of agencies’ compliance with these policies;

45. review the adequacy and availability of funding for children with disability through the National Disability Insurance Scheme, including:
 - (1) early intervention funding to support children with disability remaining at home in the care of their parents;
 - (2) case management support for children with disability and families with disability, to access family support services to assist children remaining at home in the care of their parents;
46. improve linkages between the child protection system and the National Disability Insurance Scheme to ensure that children with disability have stable and secure accommodation, consistent support services and meaningful relationships with their families;
47. implement nationally consistent standards with respect to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle and linked jurisdictional reporting requirements through the National Forum for Protecting Australia's Children;
48. commit to 'Closing the Gap' targets to:
 - (1) reduce the rate of Aboriginal and Torres Strait Islander children in out-of-home care;
 - (2) eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040;
 - (3) address the drivers of child protection intervention through sub-targets;
49. prioritise investment in service delivery by Aboriginal and Torres Strait Islander community controlled organisations, including through investment targets aligned to need and 'Aboriginal and Torres Strait Islander first' procurement policies;
50. increase commitment to connect Aboriginal and Torres Strait Islander children in out-of-home care to family and culture, through cultural support planning, family finding, return to country, and kinship care support programs;
51. ensure commitments to fund Aboriginal and Torres Strait Islander community driven cultural/healing centres, to address the prolonged impacts of intergenerational trauma and to support improved mental health and wellbeing;
52. significantly increase investment, beyond the current 17.4% of total child protection expenditure nationally, in early intervention and prevention strategies that support families before neglect or abuse occurs;
53. design targeted prevention and early intervention approaches as part of a 'public health model', in consultation with Aboriginal and Torres Strait Islander peak organisations and other vulnerable cohorts;
54. invest resources in developing culturally appropriate alcohol and drug detoxification programs, and culture based interventions for Aboriginal and Torres Strait Islander communities;
55. resource and support the development of facilities, services and programs that facilitate the maintenance of parent-child relationships for children of incarcerated parents, where it is in the child's best interests to do so;
56. ensure that children adopted from overseas retain their birth nationality unless it is not in the child's best interests to do so;
57. provide funding for intercountry adoption tracing and reunification services;
58. place an immediate moratorium on permanency orders for Aboriginal and Torres Strait Islander children until current high risk and harmful approaches are remedied;
59. develop nationally consistent statutory guidelines that outline key considerations for determining the best interests of the child in permanency arrangements;
60. reform permanency planning measures across all Australian jurisdictions; towards a focus on holistic stability of care, ensuring adequate mechanisms to strengthen families and protect children's rights to family and culture;
61. strengthen legislation in line with the 1993 *Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption*, to prevent international commercial surrogacy;
62. allocate funding for information and support for families of children with disability and developmental delay to connect with early intervention services;
63. ensure public funding for the development of an Aboriginal and Torres Strait Islander community controlled disability sector;
64. implement policies that ensure equity of access to health services, with special attention to marginalised and excluded groups of young people;
65. grant an exemption under section 19(2) of the *Health Insurance Act 1973* (Cth), to permit health care providers in custodial settings to claim Medicare and Pharmaceutical Benefits Scheme subsidies for the provision of health care services not currently funded by prison health services;
66. ensure that all children have complete health and wellbeing assessments upon entry into the youth justice or child protection systems;
67. develop and fund a national strategic response to chronic otitis media by a National Indigenous Hearing Health Taskforce under Aboriginal and Torres Strait Islander leadership, as part of the 'Closing the Gap' strategy;
68. regionalise and resource Aboriginal and Torres Strait Islander community controlled health services to enable more effective, culturally appropriate and cost effective service delivery;

Recommendations

69. fully implement universal, indicated and targeted measures across quality antenatal and postnatal care, nurse home visitation, parenting programs, intensive child development programs and preschool;
70. ensure the availability of diagnosis and support services for children with suspected or actual cognitive and/or mental health impairments, including fetal alcohol spectrum disorders; through early referrals via government-provided services (i.e., schools, health care, child protection services, youth justice);
71. improve awareness of the illegality and risks of female genital mutilation among health practitioners and the general public;
72. establish and fund a youth focused national strategy on mental health that engages young people's perspectives as part of the response and service delivery;
73. provide targeted funding and service delivery to meet the mental health needs of key vulnerable cohorts of children and young people; including Aboriginal and Torres Strait Islander, LGBTIQ+, asylum seeker and refugee children and young people, and those experiencing homelessness, and/or living in rural and remote areas;
74. commit to an official, national measure of poverty and collect biannual data on the number of adults and children living below the poverty line;
75. develop a national strategy to end child poverty and commit to reducing child poverty by at least 50% by 2030, in line with the Sustainable Development Goals;
76. increase social security payments including Newstart and Youth Allowance to a level that is above the poverty line, with payments indexed in accordance with movements in median income;
77. fund research into effective housing crisis models for children experiencing or at risk of homelessness; and trial the most effective model as an alternative to crisis accommodation for homeless youth;
78. increase investment in housing for Aboriginal and Torres Strait Islander communities, including in urban areas, to reduce overcrowding; and ensure adequate resources for ongoing repairs and maintenance;
79. establish and resource Aboriginal and Torres Strait Islander community controlled housing organisations, to manage new and existing housing stock and provide opportunities for local skills and employment;
80. ensure the right to quality and inclusive education for all children is legally protected across all Australian jurisdictions;
81. resource a national study to better understand the drivers of student disengagement and how it can be effectively and systematically measured in schools;
82. improve investments in quality facilities and adequate resourcing of teachers and schools at a local level in remote communities, with a commitment to maintenance of existing and new facilities;
83. establish a common Diversity Fund to encourage increased diversity in the teacher workforce, particularly for underrepresented population groups, including for Aboriginal and Torres Strait Islanders;
84. commission research to examine the rates, trends and characteristics of students subject to exclusion from education (suspensions and expulsions), and update policies and school practices to minimise resort to school exclusion;
85. increase investment to support the learning and teaching of Aboriginal and Torres Strait Islander languages and to strengthen existing language and cultural maintenance programs at school and university levels;
86. implement the recommendations of the report by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Our Land: Our Languages: Language Learning in Indigenous Communities*;
87. ensure the adoption of a standard definition of inclusive education, and develop a system for consistently measuring and reporting academic progress and outcomes for students with special educational needs across all Australian jurisdictions;
88. develop a National Inclusive Education Action Plan that specifically identifies current inadequacies in funding, allocates sufficient funding, sets appropriate benchmarks, targets and goals, and increases school accountability for the academic progress of children with disabilities;
89. increase investment in programs that support young people's transition from intensive English language programs into mainstream secondary schools, or from the Adult Migrant English Program into further training/higher education;
90. ensure that all school and university aged asylum seekers and refugees on temporary visas have access to education and loan schemes, on a similar basis to other Australian students;
91. reinstate funding to the Safe Schools Program, or an equivalent program that provides safe, inclusive and non-discriminatory support for LGBTIQ+ students;
92. collect standardised statistical data on cases of bullying by cause (e.g., race, gender, physical appearance, sexual orientation, gender identity and sex characteristics) on an annual basis;
93. ensure universal access to early childhood education and care for all three and four year old children in Australia;

94. ensure at least two full days (22.5 hours) of subsidised quality early childhood education and care per week for all children;
95. provide sustainable funding for a dedicated Aboriginal and Torres Strait Islander community controlled early years sector;
96. address the 15,000 place participation gap for Aboriginal and Torres Strait Islander children, delivered through Aboriginal and Torres Strait Islander community controlled services;
97. strengthen the early education target in the 'Closing the Gap' Refresh to ensure that 95% of all Aboriginal and Torres Strait Islander three and four year olds access 30 hours per week of early childhood education by 2040;
98. strengthen the current 'Closing the Gap' target for early childhood education by including early childhood developmental outcomes, rather than the narrow focus on participation in early childhood education, and include outcomes for children from birth to three years;
99. amend Australia's immigration laws to incorporate the following minimum features, including:
 - (1) a presumption against the detention of children for immigration purposes; as well as legal protection of the principle that detention of children be only a measure of last resort and for the shortest practicable time, when all other reasonable alternatives have been considered and exhausted;
 - (2) that a court or independent tribunal assess whether there is a need to detain children for immigration purposes within 48 hours of any initial detention;
 - (3) that all courts and independent tribunals be guided by the principles of the best interests of the child as a primary consideration, detention as a last resort and for the shortest period of time, the preservation of family unity, and special protection and assistance for unaccompanied children;
 - (4) that appropriate services, living conditions, health care and activities be provided to all people who remain in closed detention;
100. amend section 197AB of the *Migration Act 1975* (Cth) and other relevant regulations, to require the Minister for Immigration to immediately make a 'residence determination' for all minors;
101. abide by its legislative requirement to ensure all children within its jurisdiction are enrolled in school;
102. take all necessary measures to urgently remove all asylum seeker and refugee children and families on Nauru to Australia, or an appropriate third country where they can enjoy the rights to which they are entitled under the Children's Convention;
103. amend its contracts with service providers to ensure all critical information is recorded and reported to Australian Parliament on a regular basis;
104. establish an independent monitor with a routine presence in immigration detention and detention-like settings, onshore and offshore, who should:
 - (1) have a clear and comprehensive monitoring methodology;
 - (2) be multidisciplinary, with relevant expertise in child rights and human rights;
 - (3) monitor children's access to core services, basic living conditions, and children's mental and physical health; and assist in mitigating abuse, violence and exploitation;
 - (4) have adequate human and financial resources, the power to access immigration detention and detention-like settings, and the power to make policy and legal recommendations;
105. repeal section 197C of the *Migration Act 1958* (Cth) and establish a prohibition of *refoulement* in domestic law;
106. ensure that all people who seek asylum in Australia have access to refugee status determination procedures that are consistent with international standards;
107. work in cooperation with neighbouring countries in South-East Asia to resource and establish a regional protection framework for asylum seekers;
108. develop a cooperative framework with Bali Process member states for the maritime rescue of asylum seekers in distress, with dedicated protocols to safeguard unaccompanied children;
109. amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to remove the Minister for Immigration's status as legal guardian of unaccompanied asylum seeker children, and legislate an alternative guardian at a federal ministerial level;
110. establish and provide adequate resources for an independent guardianship and support institution for unaccompanied minors. The guardian should be:
 - (1) required to act to ensure that the best interests of the child are upheld;
 - (2) vested with sufficient powers to ensure that the best interests of the child can be upheld, including legal powers to make enquiries on behalf of children held in immigration detention and detention-like settings when there are concerns about their safety or interests;
 - (3) provided with access to meet with the children in their care in confidential and child friendly locations, at times of their choosing;
 - (4) suitably qualified, with specific training in child protection and children's rights, asylum and migration law, and the challenges faced by unaccompanied minors;
 - (5) monitored and overseen in the execution of their responsibilities by an independent third party;

Recommendations

111. develop a National Policy Framework for Unaccompanied Children, to provide an explicit and integrated national policy for the guardianship, care and support of all unaccompanied children, to apply uniformly across all Australian jurisdictions;
112. amend the current practice of separating pregnant women from spouses and other children when transferring from Nauru to the mainland for perinatal care;
113. immediately reunite families in Australia that are split between offshore processing countries and Australia;
114. allocate at least 5,000 visas under the family stream of the Migration Program for refugee and humanitarian entrants, and introduce needs based concessions under this stream to make family visas more accessible;
115. commit to revising legislation and policy to allow for more timely reunification of children with their families, and to allow for a more flexible application of the 'split family' policy, which recognises the nature of family relationships in the countries of origin of most asylum seeker children, particularly in times of conflict;
116. permit Temporary Protection Visa and Safe Haven Enterprise Visa holders to sponsor family members;
117. restore access to the Status Resolution Support Services program for all people seeking asylum;
118. prevent the criminalisation of children between ten and 13 years of age by:
 - (1) raising the minimum age of criminal responsibility in all Australian jurisdictions to at least 14 years;
 - (2) ensuring the availability of age appropriate, therapeutic, family strengthening and evidence based programs to prevent and address identifiable risk factors and anti-social behaviour for children between ten and 13 years of age; with priority for funding given to community controlled programs and services for Aboriginal and Torres Strait Islander children;
119. include justice targets in the 'Closing the Gap' Refresh to:
 - (1) end the overrepresentation of Aboriginal and Torres Strait Islander children (10–17 years) and adults under justice supervision (community based and in prison) by 2040;
 - (2) cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to at least close the gap by 2040, with priority strategies for women and children;
120. adequately fund and ensure access to Aboriginal and Torres Strait Islander community controlled legal and other support services that relate to children, including Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services;
121. establish a national, holistic and whole-of-government strategy to address imprisonment and violence rates impacting Aboriginal and Torres Strait Islander children, based on Change the Record's *Free to be Kids: National Plan of Action*;
122. establish or expand, and appropriately resource, specialist children's courts, including culturally adapted youth courts to work with Aboriginal and Torres Strait Islander children;
123. establish or expand, and appropriately resource, specialist, accredited children's legal services, including culturally appropriate and community controlled legal services for Aboriginal and Torres Strait Islander children;
124. ensure all judicial officers hearing child related proceedings receive specialist training on children's cognitive development, adolescent behaviour, and communicating effectively with children appearing in court;
125. ensure mandatory sentencing laws that apply to children are repealed across all Australian jurisdictions;
126. develop youth specific bail laws to reduce the number of children held on remand;
127. establish and prioritise safe, community based accommodation options for children as alternatives to detention;
128. address laws and policies that unfairly contribute to the growing number of children in unsentenced detention, particularly Aboriginal and Torres Strait Islander children;
129. ensure adequate access to health, education and rehabilitation services and programs for children in community and detention facilities;
130. review the adequacy of youth justice legislation and youth diversion programs (as has occurred in New South Wales), and ensure end-to-end diversion options are available and used, including through specialist education, health and community services;
131. ensure transparent and proportionate policing methods, including safeguards that are consistent with the Children's Convention;
132. establish a nationally consistent approach to tracking children through the criminal justice system, including collecting disaggregated data on diversion and recidivism;
133. implement the Australian Law Reform Commission's *Pathways to Justice Report* recommendation for an independent national justice reinvestment body;
134. implement the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, and consider the application of these recommendations in all Australian jurisdictions;

135. review and amend youth justice legislation, policy and practice to ensure that children are treated consistently with the Children's Convention and the *Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules);
136. prioritise detention centres where children are placed as requiring immediate action as part of the implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;
137. ensure the existence of child specific, independent inspectorates and complaint mechanisms;
138. ensure enforceable minimum standards in places of youth detention in line with international human rights standards, including to prohibit:
 - (1) the use of solitary confinement other than as a last resort;
 - (2) the use of restraints against children, except where all other control measures have been exhausted and have failed;
 - (3) routine strip searches, unless other less invasive search options have been exhausted;
139. update relevant policies, procedures and staff training to ensure alignment with the Australian Children's Commissioners and Guardians *Statement on Conditions and Treatment in Youth Justice Detention*.

Recommendations under the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (Appendix 1)

The Australian Child Rights Taskforce recommends that the Australian Government, in cooperation with state and territory governments where relevant:

140. improve data collection and research into child trafficking, sexual exploitation, forced labour and other offences against children, including on the prevalence of child survivors of trafficking and slavery, and with focus on groups with high risk – Aboriginal and Torres Strait Islander girls, migrants, and children living in poverty in Australia;
141. collect and analyse data on the prevalence of child abuse material offences, particularly those involving live streaming;
142. support the Australian Centre to Counter Child Exploitation, or another independent national body, to develop and maintain a comprehensive database on the incidence of sale of children, child prostitution and child pornography;
143. establish a mechanism to implement the operational protocol for minors under the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*, and a forum to discuss related issues;
144. establish a coordinating body or mechanism specifically in charge of coordinating the implementation of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* and ensure effective coordination and collaboration across agencies, both domestically and internationally;
145. conduct further research into:
 - (1) the extent and nature of domestic trafficking of children;
 - (2) sentencing outcomes for child online exploitation offences;
 - (3) the relationship between human trafficking and online child exploitation to facilitate the development of a coordinated Australian response to these emerging crimes;
 - (4) victim and offender behaviours, to prevent the future exploitation of children online;
146. require the Australian Communications and Media Authority to develop an industry code, guideline or standard to assist telecommunications providers to 'do [their] best' to prevent telecommunication networks and facilities from being used in, or in relation to, the commission of offences against federal, state or territory law under the provisions of the *Telecommunications Act 1997* (Cth);
147. pass the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017, particularly the provisions addressing the sentences for offences covering online sexual exploitation of children and targeting criminal networks facilitating the online sexual exploitation of children, and the provisions that increase penalties for Internet service providers that do not provide information to law enforcement regarding online sexual exploitation of children;
148. introduce federal offences concerning the administration of online networks in their distribution of child abuse material, analogous to those in New South Wales and Victoria;
149. update the *Broadcasting Services Act 1992* (Cth) to reflect the emergence of new technologies and ensure that instances of online child exploitation material hosted in Australia and overseas are effectively identified and investigated;

Recommendations

150. provide further funding support for the Australian Centre to Counter Child Exploitation;
151. identify federal, state and territory responses to forced child marriage, define roles, coordinate responsibilities and develop national best practice responses;
152. ensure the response to forced child marriage is integrated into the family violence and child protection framework, with a greater focus on early intervention rather than the future prosecution of offenders who are usually the parents of the children affected;
153. revise the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* to include specific, measurable and funded steps to facilitate a more coordinated response to forced child marriage:
 - (1) update relevant legislation and ensure it is effectively synchronised with federal legislation across all Australian jurisdictions;
 - (2) develop a nationwide operational framework delineating clear response protocols across key stakeholders;
 - (3) build capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage of children across all Australian jurisdictions;
154. ensure the harmonisation of laws in respect of the definition, prohibition and criminalisation of the crimes under the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*;
155. amend the *Criminal Code Act 1995* (Cth) to ensure all aspects of orphanage trafficking and the facilitation of orphanage tourism are identified as forms of child exploitation;
156. pass and implement the Modern Slavery Bill 2018;
157. develop processes and protocols to ensure the rights and best interests of child victims are met, including that child victims and children of victims of trafficking be guaranteed access to support and information in a child friendly format, with interpreter/translator and independent legal assistance where required;
158. prioritise processing of visa applications for victims of trafficking who are separated from their children, and children of victims of trafficking, and consider permanent settlement in Australia for such cases;
159. grant permanent visas in compassionate circumstances, where trafficked children are unable to participate in a criminal investigation;
160. review current legislation on guardianship as it applies to children who have been trafficked into Australia and develop clear reporting and accountability guidelines, especially where children with substantive visas are concerned;
161. provide an effective remedy for trafficked children that is guided by the general principles of the Children's Convention and the best interests of the child, and that reparative measures for child victims are built into a comprehensive child protection system which will guarantee children's rights;
162. resource the Support for Trafficked Persons Program to provide specialist, child specific services for child victims of trafficking;
163. conduct an independent evaluation of the impact and effectiveness of the Support for Trafficked Persons Program and related Human Trafficking Visa Framework to better understand the impact of the services on children and the post-support pathways offered to those who access the program; assess its applicability to children facing forced marriage; and better interrogate the link between the program and the criminal justice response;
164. expand international cooperation through multilateral, regional and bilateral arrangements to respond to issues of child trafficking and sexual exploitation in other regions outside the Asia–Pacific region;
165. incorporate an integrated response to child marriage in its key overseas development and assistance policies and priorities, and work with development partner governments to develop effective monitoring and reporting mechanisms on child forced marriage;
166. undertake further review, research and data collection in relation to child sex tourism;
167. improve international collaboration to address online sexual exploitation of children and continue investment in projects designed to strengthen the response of public justice in countries in which online sexual exploitation is being facilitated.

Recommendations under the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (Appendix 2)

The Australian Child Rights Taskforce recommends that the Australian Government, in cooperation with state and territory governments where relevant:

168. conduct a comprehensive review of legislation affecting children in order to ensure national policy is consistent with the principles of the *Optional Protocol on the Involvement of Children in Armed Conflict*;
169. ensure that the Children's Committee's recommendations are transmitted to all relevant agencies in Australia for appropriate consideration and action;

170. ensure that all relevant personnel within the Australian Defence Force as well other personnel who work with children in other capacities such as medical professionals, social workers, lawyers and police, are appropriately trained on the *Optional Protocol on the Involvement of Children in Armed Conflict* and that any training manuals or information be made publically available for review;
171. legislate and amend Australian Defence Force policy to raise the minimum age of voluntary recruitment to join the Australian Defence Force to 18 years of age;
172. ensure that the Australian Defence Force prohibit the use of minors in direct hostilities or at a minimum define what would constitute 'direct participation', 'hostilities' and 'feasible measures' in relation to the use of minors in hostilities;
173. ensure the Australian Defence Force Cadets scheme prohibits all activities involving the handling and use of firearms and other explosives;
174. ensure the Australian Defence Force Cadets scheme develops guidelines outlining the appropriateness of military-like activities for specific age brackets;
175. ensure that an appropriate organisation with expertise in child rights reviews the relevant sections of the Youth Policy Manual and monitors the operations of the Australian Defence Force Cadets scheme to ensure all activities are age appropriate;
176. ensure that the Australian Defence Force implement measures to protect minors from different linguistic or marginalised backgrounds from being targeted in recruiting for the Australian Defence Force Cadets scheme;
177. ensure that the Australian Defence Force make publically available disaggregated data according to sex and ethnicity regarding voluntary recruits under the age of 18 years;
178. ensure that an independent organisation is responsible for oversight of the Australian Defence Force Cadets scheme;
179. amend the *Criminal Code 1995* (Cth) to raise the age for legal recruitment, conscription and active participation in hostilities for its national armed forces to 18 years of age;
180. ensure that there is an explicit statutory requirement that an individual must be 18 years of age or older to obtain a security licence in all Australian jurisdictions;
181. amend the *Migration Act 1958* (Cth) to include specific protections for minors who fear returning to a country in which they may be (re)recruited as child soldiers, including legislating for the provision of protection visas specifically for this category of applicants;
182. ensure that the Department of Home Affairs obtains information on the numbers of children granted complementary protection;
183. collect data on refugee, asylum seeker and migrant children within Australia's jurisdiction who may have been recruited in armed conflict and or hostilities in their home country;
184. establish a national system of registration for all asylum seeker and refugee children, including identification of, and statistics for, children who have been or may have been involved in armed conflict;
185. ensure that the Department of Home Affairs develop and implement a targeted and specialised recovery program for those minors who have been involved in armed conflict;
186. increase funding priorities to Africa and the Middle East, given the proportionately higher number of countries in these regions utilising child soldiers;
187. earmark a portion of overseas humanitarian funding for funding sectors directly involved in preventing the recruitment of child soldiers and supporting disarmament, demobilisation, and reintegration of child soldiers;
188. align the Humanitarian Strategy and Protection in Action Framework with regard to the issue of children in armed conflict;
189. enact or amend legislation to specifically prohibit the export of arms to countries that are known to, or potentially are, recruiting and using children in hostilities;
190. clarify whether it takes the recruitment of child soldiers into account in its sanctions regime and Defence and Strategic Goods List export permits;
191. amend the *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012* (Cth) in line with the requirements of the 2008 *Convention on Cluster Munitions* in order to prevent the proliferation or use of these weapons in hostilities where children may be involved.

APPENDIX 4

National consultation with children and young people

In its role as convenor of the Australian Child Rights Taskforce, UNICEF Australia conducted a national consultation with children and young people to inform the content of this report. In 2018, UNICEF Australia met face to face with and heard from 527 children and young people ranging from four to 24 years of age, holding 58 consultations in 30 different geographical locations around Australia (see map in *Chapter 1: Introduction*).

The national consultation was developed and conducted by Freyana Irani (Senior Policy Advisor, UNICEF Australia) and Alasdair Roy OAM (Consultant Psychologist and former Children and Young People Commissioner in the Australian Capital Territory, 2008–16).

A total of 45 sessions were conducted by UNICEF Australia, and a further 13 sessions were conducted by ten partner organisations (identified with an * below), under guidance from UNICEF Australia.

On behalf of the Australian Child Rights Taskforce, UNICEF Australia wishes to thank all 527 children and young people involved for their insights, honesty and trust; and the following organisations and groups for their support and commitment to advancing child rights in Australia:

Australian Capital Territory

Ainslie School (Canberra)
Campbell High School (Canberra)
Canberra College (Canberra)
CCCare and Big Picture (Canberra)
Kingsford Smith School (Canberra)
Lyneham High School (Canberra)
STEPS Residential Service (Canberra)

Northern Territory

Borroloola High School (Borroloola)
Darwin High School, through the Melaleuca Refugee Centre (Darwin)*
Don Dale Youth Detention Centre (Darwin)
Keep Talking (Katherine)
Keep Talking (Katherine)*
Northern Territory School of Distance Education (Darwin)*
Robinson River School (Robinson River)
Sanderson Middle School, through the Melaleuca Refugee Centre (Darwin)*

Queensland

Bellbird Park State Secondary College (Ipswich)
Queensland Pathways State College (Brisbane)
Redbank Plains State High School (Ipswich)

South Australia

Aboriginal Family Support Services (Adelaide)
CREATE Foundation Young Consultants (Adelaide)
Headspace Youth Reference Group (Mount Gambier)
JFA Purple Orange (Unley)
Open Air College – Port Augusta School of the Air (Port Augusta)*
Ruby's Reunification Program (Marion)
Ruby's Reunification Program (Mount Gambier)

Western Australia

Bamburra Hostel (Yokine)
Banksia Hill Detention Centre (Canning)
Karratha Senior High School (Karratha)
Roebourne Youth Centre (Roebourne)
Roebourne Youth Centre (Roebourne)*
The Base (Wickham)
The Base (Wickham)*
Youth Pride and the Freedom Centre (Perth)

Victoria

Collingwood College (Yarra)
Gender and Sexuality Program and the South Coast Youth Inclusion Group (Geelong)
Nobody's Fool Theatre Group (Geelong)
SHINE for Kids (various)*

Tasmania

Ashley Youth Detention Centre (Deloraine)
Project O – Big hArt (Wynyard)
Smithton High School (Smithton)
Wynyard High School, through Project O – Big hArt (Wynyard)

New South Wales

2168 Children's Parliament (Liverpool)
AbSec Youth Ambassadors (Sydney)
Asylum Seekers Centre (Sydney)*
Goodstart Early Learning (Dubbo)*
SHINE for Kids (various)*

National

Livewire (online)

APPENDIX 5

List of contributors

- Aboriginal Child, Family and Community Care State Secretariat
- Aboriginal Legal Service of Western Australia Ltd
- Aboriginal Peak Organisations Northern Territory
- ACCI Relief
- Alasdair Roy OAM (DelRoy Consulting)
- Dr Amanda Third (Western Sydney University)
- Dr Ani Wierenga (University of Melbourne)
- Anti-Slavery Australia
- Asylum Seeker Resource Centre
- Australian Association for Adolescent Health
- Australian Council of Social Service
- Australian Education Union
- Australian Lawyers for Human Rights
- Australian Red Cross
- Australian Research Alliance for Children and Youth
- Better Care Network
- Dr Caroline Norma (RMIT University)
- Prof Caroline Taylor (Children of Phoenix)
- Cassandra Seery (Deakin University)
- Dr Catherine Lynch (Adoptee Rights Australia Inc)
- Centre for Adolescent Health (University of Melbourne, Murdoch Children's Research Institute and Royal Children's Hospital)
- Change the Record
- Children and Young People with Disability Australia
- Children's Lives Research Initiative
- Chris Cumming (University of Western Australia)
- Collective Shout
- Commissioner for Children and Young People (Western Australia)
- Council of Single Mothers and their Children
- Prof Daryl Higgins (Australian Catholic University)
- Disability Discrimination Legal Service
- DLA Piper Australia
- End Slavery Solutions
- Families Australia
- Federation of Community Legal Centres Victoria Inc
- Fiona Robards (University of Sydney)
- First Peoples Disability Network Australia
- Good Shepherd
- Dr Hannah McGlade (Curtin University)
- Dr Holly Doel-Mackaway (Macquarie University)
- Human Rights Law Centre
- I CAN Network Ltd
- InterCountry Adoptee Voices
- International Justice Mission Australia
- International Social Service Australia
- Intersex Human Rights Australia
- James McDougall
- Jesuit Social Services
- JFA Purple Orange
- Julie Phillips
- Dr Kate Fitz-Gibbon (Monash University)
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- Multicultural Youth Advocacy Network
- National Aboriginal and Torres Strait Islander Legal Services
- National Aboriginal Community Controlled Health Organisation
- National Family Violence Prevention Legal Services Forum
- National Social Security Rights Network
- Northside Community Service
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- Prof Paula Gerber (Monash University)
- People with Disability Australia
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- Plan International Australia
- Public Health Association of Australia Inc
- ReachOut
- Refugee Council of Australia
- Remedy Australia
- Save the Children
- SCALES Community Legal Centre
- SHINE for Kids
- SNAICC – National Voice for our Children
- Dr Sonia Allan (Deakin University)
- Prof Steven Freeland (Western Sydney University)
- Prof Stuart Kinner (University of Melbourne)
- The Benevolent Society
- The Center for Excellence in Child and Family Welfare
- The George Institute for Global Health
- The National Council of Single Mothers and their Children
- The Royal Australasian College of Physicians
- The Salvation Army Australia
- Dr Tim Moore (University of South Australia)
- UNICEF Australia
- Uniting Church in Australia (Synod of Victoria and Tasmania)
- Uniting Communities
- Valuing Children Initiative
- Victorian Council of Social Services
- World Vision Australia
- yourtown
- Youth Advocacy Centre Inc
- Youth Justice Coalition
- Youth Law Australia (formerly National Children's and Youth Law Centre)

APPENDIX 6

List of endorsements

This report has been endorsed by the Australian Child Rights Taskforce, whose confirmed membership includes:

- Aboriginal Child, Family and Community Care State Secretariat
- Aboriginal Medical Services Alliance of the Northern Territory
- Act for Kids
- Adoptee Rights Australia Inc
- Dr Amanda Third (Western Sydney University)
- Dr Ani Wierenga (University of Melbourne)
- Dr Anna Copeland (Murdoch University)
- Annette van Gent
- Asylum Seeker Resource Centre
- Australian Association for Adolescent Health
- Australian Education Union
- Australian Lawyers for Human Rights
- Australian Research Alliance for Children and Youth
- Bravehearts
- Dr Briony Horsfall
- Cassandra Seery (Deakin University)
- Centre for Adolescent Health (University of Melbourne, Murdoch Children's Research Institute and Royal Children's Hospital)
- Child Development Council
- ChildFund Australia
- Children and Young People with Disability Australia
- Children's Lives Research Initiative
- Disability Discrimination Legal Service
- DLA Piper Australia
- Edmund Rice Centre for Justice and Community Education
- Emma Sydenham (Schokman Consulting Group)
- Family Advocacy
- Fiona Robards (University of Sydney)
- GLD Australia
- Dr Hannah McGlade (Curtin University)
- Dr Holly Doel-Mackaway (Macquarie University)
- Human Rights Law Centre
- I CAN Network
- Institute of Child Protection Studies (Australian Catholic University)
- InterCountry Adoptee Voices
- International Social Service Australia
- Intersex Human Rights Australia
- James McDougall
- Jesuit Social Services
- Jody Barney (Deaf Indigenous Community Consultancy Pty Ltd)
- Dr Judith Cashmore (University of Sydney)
- Julie Phillips
- Dr Kate Fitz-Gibbon (Monash University)

- Katie Acheson
- King & Wood Mallesons
- Krystal Bartlett
- Melissa Stewart
- Multicultural Youth Advocacy Network
- National Aboriginal and Torres Strait Islander Legal Services
- National Social Security Rights Network
- Nathan Kennedy
- Dr Patricia Fronek (Griffith University)
- Prof Paul Monagle (University of Melbourne)
- People with Disability Australia
- Peter Harney
- Dr Philippa Collin (Western Sydney University)
- Plan International Australia
- Protect All Children Today Inc
- Remedy Australia
- Save the Children
- SHINE for Kids
- SNAICC – National Voice for our Children
- The Benevolent Society
- The Brotherhood of St Laurence
- The Centre for Excellence in Child and Family Welfare
- Dr Tony Ward (University of Melbourne)
- Uniting Communities
- Valuing Children Initiative
- Youth Justice Coalition
- Youth Law Australia
- World Vision Australia
- Young Workers Centre
- yourtown
- Youth Advocacy Centre Inc
- Youth Affairs Council of South Australia
- Youth Affairs Council of Western Australia
- Youth Network of Tasmania

This report has also been endorsed in whole or in part by the following organisations and individuals:

- Anti-Slavery Australia
- Better Care Network
- Dr Caroline Norma (RMIT University)
- Collective Shout
- Disabled People's Organisations Australia
- Federation of Community Legal Centres Victoria Inc
- First Peoples Disability Network Australia
- JFA Purple Orange
- Dr Marnie O'Bryan (University of Melbourne)
- Public Health Association of Australia Inc
- Refugee Council of Australia
- Uniting Church in Australia (Synod of Victoria and Tasmania)

Endnotes

¹ In this report, 'children' refers to those aged 0–18 years, and 'young people' refers to those aged 19–25 years.

² United Nations Committee on the Rights of the Child, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention on the Rights of the Child*, UN Doc CRC/C/58/Rev.3, 3 March 2015; Child Rights Connect, *The Reporting Cycle of the Committee on the Rights of the Child: A Guide for NGOs and NHRIs*, Child Rights Connect, Geneva.

³ United Nations Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention—Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012). In this report, the 2012 Concluding Observations are identified as 'CO' where relevant.

⁴ UNICEF Australia's national consultation was developed and conducted by Freyana Irani (Senior Policy Advisor, UNICEF Australia) and Alasdair Roy OAM (Consultant Psychologist and former Children and Young People Commissioner in the Australian Capital Territory, 2008–16). A rough consultation outline provided a uniform framework for each consultation, while also providing scope to adapt and pay respect to the individual circumstances and personal preferences of the children and young people. The national consultation involved a total of 58 consultation sessions, comprising 45 sessions conducted by UNICEF Australia. In the interests of ensuring consistency and developing a cumulative understanding of the lived experiences of children and young people in Australia, all UNICEF Australia-led consultations were conducted by the two consultation leads. A further 13 sessions were conducted by 10 partner organisations, under guidance from the two consultation leads, where it was deemed more appropriate due to logistical constraints and/or pre-existing relationships with groups of children and young people. A complete list of all consultations is provided in Appendix 4.

⁵ In accordance with United Nations Committee on the Rights of the Child, *Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child*, UN Doc CRC/C/66/2 (16 October 2014).

⁶ United Nations General Assembly, *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁷ .idcommunity 2016, *Australia service age groups*, viewed 15 October 2018, <<https://profile.id.com.au/australia/service-age-groups?BMID=50>>.

⁸ Australian Research Alliance for Children and Youth 2018, *Report Card 2018: The Wellbeing of Young Australians*, pp 4, 6, viewed 9 October 2018, <https://www.aracy.org.au/publications-resources/command/download_file/id/361/filename/ARACY_Report_Card_2018.pdf>.

⁹ Consultation conducted at Redbank Plains State High School (Ipswich, Queensland), Years 9–12, 27 June 2018.

¹⁰ In 2016, 1000 Australian adults participated in the *Valuing Children Initiative Benchmark Survey*, providing a snapshot of Australians' baseline attitudes to children and policy consideration of children's needs: Whelan, K 2016, *Australians Attitudes to Children—The Valuing Children Initiative Benchmark Survey: 2016*, p 9, viewed 12 October 2018, <<http://valuingchildreninitiative.com.au/wp-content/uploads/2017/02/Australians-Attitudes-to-Children-The-Valuing-Children-Initiative-Benchmark-survey-2016.pdf>>.

¹¹ Consultation conducted at Bellbird Park State Secondary College (Ipswich, Queensland), Year 8, 26 June 2018; Consultation conducted at Karratha Senior High School (Karratha, Western Australia), Year 8, 20 July 2018; Consultation conducted with 2168 Children's Parliament (Liverpool, New South Wales), Years 4–6, 1 August 2018.

¹² Consultation conducted with 2168 Children's Parliament (Liverpool, New South Wales), Years 4–6, 1 August 2018.

¹³ Consultation conducted at Canberra College (Canberra, Australian Capital Territory), Year 12, 28 March 2018.

¹⁴ Consultation conducted at Redbank Plains State High School (Ipswich, Queensland), Years 9–12, 27 June 2018.

¹⁵ Consultation conducted with Headspace Youth Reference Group (Mount Gambier, South Australia), 15–23 years of age, 10 July 2018.

¹⁶ Consultation conducted with AbSec Youth Ambassadors (Sydney, New South Wales), 16–24 years of age, 18 August 2018.

¹⁷ Consultation conducted with Youth Pride and the Freedom Centre (Perth, Western Australia), 17–21 years of age, 18 July 2018.

¹⁸ United Nations Committee on the Rights of the Child, *General Comment No. 19 (2016) on public budgeting for the realisation of children's rights* (art. 4), UN Doc CRC/C/GC/19 (20 July 2016).

¹⁹ Such as the 'Closing the Gap' strategy, the *National Framework for Protecting Australia's Children 2009–2020*, and the *National Plan to Reduce Violence Against Women and their Children 2010–2022*.

²⁰ United Nations Committee on the Rights of the Child, *General Comment No. 2 (2002): The role of National Human Rights Institutions in the Promotion and Protection of Children's Rights*, 22nd sess, UN Doc CRC/GC/2002/2 (15 November 2002).

²¹ International Labour Organization, *Minimum Age Convention, C138*, 26 June 1973, C138; *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 19 December 2011, UNTS 2983 (entered into force 14 April 2014).

²² United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under article 44 of the Convention, Concluding observations: Australia*, UN Doc CRC/C/15/Add.268 (20 October 2005).

²³ See *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), and *Australian Human Rights Commission Act 1986* (Cth).

²⁴ Bullot, A, Cave, L, Fildes, J, Hall, S and Plummer, J 2017, *Mission Australia's 2017 Youth Survey Report*, Mission Australia.

²⁵ Australian Research Alliance for Children and Youth, *Report Card 2018: The Wellbeing of Young Australians*, pp 48–49, viewed 9 October 2018, <https://www.aracy.org.au/publications-resources/command/download_file/id/361/filename/ARACY_Report_Card_2018.pdf>.

²⁶ Consultation conducted with Headspace Youth Reference Group (Mount Gambier, South Australia), 15–23 years of age, 10 July 2018.

²⁷ Consultation conducted at Bellbird Park State Secondary College (Ipswich, Queensland), Year 8, 26 June 2018.

²⁸ Consultation conducted with Youth Pride and the Freedom Centre (Perth, Western Australia), 17–21 years of age, 18 July 2018.

- ²⁹ Consultation conducted at Redbank Plains State High School (Ipswich, Queensland), Years 9–12, 27 June 2018.
- ³⁰ Consultation conducted with AbSec Youth Ambassadors (Sydney, New South Wales), 16–24 years of age, 18 August 2018.
- ³¹ Australian Research Alliance for Children and Youth 2018, *Report Card 2018: The Wellbeing of Young Australians*, pp 48–49, viewed 9 October 2018, <https://www.aracy.org.au/publications-resources/command/download_file/id/361/filename/ARACY_Report_Card_2018.pdf>; Bullo, A, Cave, L, Fildes, J, Hall, S and Plummer, J 2017, *Mission Australia's 2017 Youth Survey Report*, Mission Australia.
- ³² Consultation conducted with AbSec Youth Ambassadors (Sydney, New South Wales), 16–24 years of age, 18 August 2018.
- ³³ Consultation conducted with Youth Pride and the Freedom Centre (Perth, Western Australia), 17–21 years of age, 18 July 2018.
- ³⁴ See, for example, *Sex Discrimination Act 1984* (Cth), section 38.
- ³⁵ Human Rights Law Centre 2017, 'Protecting fundamental rights and freedoms in Australia: Submission to the Expert Panel on the Religious Freedom Review', viewed 10 October 2018, <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5a8bc42fe2c4831ac9c57e2a/1519109175677/Religious+Freedom+Review+Submission+-+HRLC.pdf>>.
- ³⁶ See, for example, Australian Research Centre in Sex, Health and Society 2012, *Private Lives 2, the second national survey of the health and wellbeing of GLBT Australians*, La Trobe University, p 46, viewed 10 October 2018, <<https://www.glhv.org.au/report/private-lives-2-report>>; Intersex Human Rights Australia (2016), *Intersex: Stories and Statistics from Australia*, viewed 10 October 2018, <<https://ihra.org.au/30313/intersex-stories-statistics-australia/>>; Australian Research Centre in Sex, Health and Society 2010, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, La Trobe University, p 39, viewed 10 October 2018, <<http://www.latrobe.edu.au/arcshs/downloads/arcshs-research-publications/WTi3.pdf>>.
- ³⁷ Australian Research Centre in Sex, Health and Society 2012, *Private Lives 2, the second national survey of the health and wellbeing of GLBT Australians*, La Trobe University, pp 45–46, viewed 10 October 2018, <<https://www.glhv.org.au/report/private-lives-2-report>>.
- ³⁸ Consultation conducted with Youth Pride and the Freedom Centre (Perth, Western Australia), 17–21 years of age, 18 July 2018.
- ³⁹ Consultation conducted with Youth Pride and the Freedom Centre (Perth, Western Australia), 17–21 years of age, 18 July 2018.
- ⁴⁰ Law Council of Australia 2018, *The Justice Project Final Report*, Chapter 1, p 18, viewed 10 October 2018, <<https://www.lawcouncil.asn.au/justice-project/final-report>>.
- ⁴¹ Article 22 of the *Convention on the Rights of the Child* explicitly extends its protections to children who are seeking asylum, and underscores the importance of rights applicable to children under other international agreements: United Nations Committee on the Rights of the Child, *General comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6. Other treaty bodies and regional human rights courts have made similar statements, see, for example, United Nations Human Rights Committee, *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986; United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20 on Non-discrimination in economic, social and cultural rights (art. 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, para 30.
- ⁴² See definitions of 'unauthorised maritime arrival' and 'excluded maritime arrival' in the *Migration Act 1958* (Cth), sections 5(1) and 5AA(1)(c); Migration Regulations 1994 (Cth), regulations 1.15J and 1.11B; Specification of ETA Eligible Passports 2016/066 - IMMI 16/066 (F2016L01198), viewed 10 October 2018, <<https://www.legislation.gov.au/Details/F2016L01198>>.
- ⁴³ See further, Australian Human Rights Commission 2017, *Snapshot Report 2nd Edition*, p 33, viewed 10 October 2018, <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/asylum-seekers-refugees-and-human-rights-snapsho-0>>.
- ⁴⁴ Australian Research Alliance for Children and Youth 2018, *Report Card 2018: The Wellbeing of Young Australians*, pp 50–51, viewed 9 October 2018, <https://www.aracy.org.au/publications-resources/command/download_file/id/361/filename/ARACY_Report_Card_2018.pdf>.
- ⁴⁵ Australian Human Rights Commission 2013, *Racism. It Stops With Me and the National Anti-Racism Strategy: One Year On*, viewed 10 October 2018, <https://www.humanrights.gov.au/sites/default/files/document/publication/WEB_RISWM_one_year_on_report%20final.pdf>.
- ⁴⁶ Priest, N et al 2013, 'A systematic review of studies examining the relationship between reported racism and health and wellbeing for children and young people', *Social Science & Medicine*, vol. 95, pp 115–127.
- ⁴⁷ Australian Child Rights Taskforce 2016, *CRC25: Australian Child Rights Progress Report*.
- ⁴⁸ Consultation conducted at Collingwood College (Yarra, Victoria), 13–16 years of age, 25 July 2018.
- ⁴⁹ This includes, for example, family law, adoption, surrogacy and assisted reproductive technologies.
- ⁵⁰ Australian Research Alliance for Children and Youth 2018, *Report Card 2018: The Wellbeing of Young Australians*, pp 42–43, viewed 9 October 2018, <https://www.aracy.org.au/publications-resources/command/download_file/id/361/filename/ARACY_Report_Card_2018.pdf>.
- ⁵¹ See *Family Law Act 1975* (Cth), section 60CE.
- ⁵² See, for example, Victoria Legal Aid 2017, *Child Protection Legal Aid Services Review*, viewed 6 October 2018, <<https://www.legalaid.vic.gov.au/information-for-lawyers/how-we-are-improving-our-services/child-protection-legal-aid-services-review>>.
- ⁵³ Australian Centre for Child Protection 2018, *Assessing the Quality and Comprehensiveness of Child Protection Practice Frameworks*: p 36.
- ⁵⁴ Whelan, K 2016, *Australians Attitudes to Children – The Valuing Children Initiative Benchmark Survey: 2016*, p 7, viewed 12 October 2018, <<http://valuingchildreninitiative.com.au/wp-content/uploads/2017/02/Australians-Attitudes-to-Children-The-Valuing-Children-Initiative-Benchmark-survey-2016.pdf>>.
- ⁵⁵ Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final Report*, Volume 6, Chapter 3, pp 157–158, viewed 11 October 2018, <https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf>.
- ⁵⁶ Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final Report*, Volume 6, Chapter 3, p 141, viewed 11 October 2018, <https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf>.
- ⁵⁷ Consultation conducted with CREATE Foundation Young Consultants (Adelaide, South Australia), 18–21 years of age, 13 July 2018.
- ⁵⁸ Consultation conducted at Redbank Plains State High School (Ipswich, Queensland), Year 10, 27 June 2018; Consultation conducted at Karratha Senior High School (Karratha, Western Australia), Year 8, 20 July 2018.
- ⁵⁹ Consultation conducted at Bellbird Park State Secondary College (Ipswich, Queensland), Year 8, 26 June 2018.
- ⁶⁰ Consultation conducted at Bellbird Park State Secondary College (Ipswich, Queensland), Year 8, 26 June 2018; Consultation conducted at Campbell High School (Canberra, Australian Capital Territory), 27 March 2018.

- ⁶¹ Consultation conducted at Redbank Plains State High School (Ipswich, Queensland), Years 9–12, 27 June 2018.
- ⁶² Consultation conducted at Campbell High School (Canberra, Australian Capital Territory), 27 March 2018.
- ⁶³ Consultation conducted at Redbank Plains State High School (Ipswich, Queensland), Years 9–12, 27 June 2018.
- ⁶⁴ Consultation conducted at Smithton High School (Smithton, Tasmania), Years 8–9, 30 July 2018.
- ⁶⁵ Consultation conducted at Smithton High School (Smithton, Tasmania), Years 8–9, 30 July 2018.
- ⁶⁶ Consultation conducted at Bellbird Park State Secondary College (Ipswich, Queensland), Year 8, 26 June 2018.
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⁶⁹⁴ *Criminal Code Act 1995* (Cth), sections 268.68 and 268.88.

⁶⁹⁵ The *Criminal Code Act 1995* (Cth) criminalises the use of children under 18 years of age by 'other armed forces and groups', while permitting the 'national armed forces' to conscript and enlist children over 15 years of age during an international armed conflict: *Criminal Code Act 1995* (Cth), sections 268.68 and 268.88.

⁶⁹⁶ *Security Industry Act 2003* (ACT), section 21(1)(b)(i); *Security Industry Act 1997* (NSW), section 15(1)(b); *Security Providers Act 1993* (Qld), section 11(2)(a)(i); *Security and Investigations Act 2002* (Tas), section 5(5); *Private Security Act 2004* (Vic), section 25(2)(b); *Security and Related Activities (Control) Act 1996* (WA), section 52(1)(b).

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⁶⁹⁸ The primary immigration legislation in Australia is the *Migration Act 1958* (Cth), which does not contain any reference to the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, the *Convention on the Rights of the Child*, child soldiers, or armed conflict.

⁶⁹⁹ Complementary protection is intended to include Australia's *non-refoulement* obligations under various international agreements, including the *International Covenant on Civil and Political Rights*, the *Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty*, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Children's Convention: Migration Act 1958* (Cth), sections 36 and 5H; *Migration Amendment (Complementary Protection) Act 2011* (Cth); *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth); and Administrative Appeals Tribunal, *Guide to Refugee Law*, Chapter 1, viewed 10 October 2018, <<http://www.aat.gov.au/migration-and-refugee-division/mrd-resources/guide-to-refugee-law>>.

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⁷⁰⁹ *Defence Trade Controls Act 2012* (Cth), section 11(7).

⁷¹⁰ *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012* (Cth), sections 72.41 and 72.42; *Convention on Cluster Munitions*, signed 3 Dec 2008, 2688 UNTS 39 (entered into force 1 April 2013).

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