



**Australian
Human Rights
Commission**

Information relating to Australia's
joint fifth and sixth report under the
Convention on the Rights of the Child,
second report on the Optional Protocol on
the sale of children, child prostitution and
child pornography, and second report on
the Optional Protocol on the involvement of
children in armed conflict.

Australian Human Rights Commission

Submission to the Committee on the Rights of the Child

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1 Introduction

1. The Australian Human Rights Commission has prepared this report as Australia's 'A status' national human rights institution. It was written by the National Children's Commissioner (NCC), whose position exists within the Commission.
2. In Australia, there are 5.5 million children under the age of 18 years.¹ Of these, 324,581 (5.9%) are Aboriginal and Torres Strait Islander children.² Approximately 9% of children are born overseas.³
3. Most Australian children grow up in safe and healthy environments and do well. However, there are some groups of children whose rights are not adequately protected, which impacts negatively on their wellbeing and ability to thrive.
4. In preparing this report, the NCC has consulted widely with children, key advocates, government and non-government stakeholders.
5. In 2018, she consulted, in person, with approximately 450 children, and with 22,700 children through an online national poll on children's rights (*Children's Rights Poll*). She held 10 roundtables with 162 stakeholders and met with over 100 stakeholders individually. She received 127 written submissions.
6. This report has also been informed by consultations undertaken by the NCC since commencing her role in 2013.
7. The Commission acknowledges the positive steps taken by the Australian Government to protect children's rights since its last report to the Committee. However, the primary purpose of this report is to identify outstanding issues of concern.
8. The Commission is aware that the Australian Government did not respond to the Concluding Observations on its fourth periodic report (2012) until 15 January 2018.

Recommendation 1: The Australian Government responds to Concluding Observations of the Committee on the Rights of the Child in a timely way.

2 General measures

2.1 Reservations

9. The Commission has consistently advocated that Australia withdraw its reservation to article 37(c) of the *Convention on the Rights of the Child* (CRC) regarding the obligation to separate children from adults in prison.
10. In its 2018 report to the Committee, the Australian Government stated that it will not withdraw its reservation at this time.
11. The Australian Government has previously stated that its geography and demography make it difficult to always detain children in juvenile facilities, while also allowing children to maintain contact with their families.⁴ However, the CRC acknowledges that incarceration with adults is prohibited unless it is considered to be in the child's best interests.
12. The NCC's 2016 statutory report to the Australian Parliament identified that each state and territory has legislation that allows children to be detained in adult facilities under certain circumstances. However, most do not place those under 18 years in adult detention facilities, and on rare occasions where it does occur, safeguards exist.
13. Prior to 2016, Queensland automatically transferred 17 year olds to adult detention facilities. Changes to legislation in 2016 mean that 17 year olds are no longer automatically transferred to an adult facility.
14. In representations made to the NCC since 2013, there has been overwhelming support for not placing children under 18 in adult detention facilities.⁵

Recommendation 2: The Australian Government withdraws its reservation to article 37(c) of the CRC.

2.2 Legislation

15. The legal protections of children's rights in Australia are not comprehensive and do not provide an effective remedy for violations.
16. A number of submissions to the NCC, including one from the Law Council of Australia, called for a comprehensive Children's Rights Act at the national level.⁶
17. One of the functions of the NCC is to examine existing and proposed Commonwealth enactments to ensure that the human rights of Australia's children are recognised and protected. With limited funding and resources, the NCC has mainly fulfilled this function through utilising the reports of the Parliamentary Joint Committee on Human Rights (PJCHR), established in 2011.

18. The PJCHR assesses whether legislation is consistent with Australia's human rights obligations. All federal legislation is required to be accompanied by a 'Statement of Compatibility with Human Rights'. The PJCHR raises concerns when it believes that legislation places an unjustifiable limitation on human rights. However, legislators are under no obligation to amend bills to reflect these concerns.⁷
19. While the NCC welcomes the work of the PJCHR, she would like to see specific child rights and wellbeing impact assessments undertaken on all legislative and major policy changes that affect children's rights.

Recommendation 3: The Australian Government fully incorporates into Australian law its human rights obligations to children, by bringing its domestic laws and practice into conformity with the principles and provisions of the CRC, including by ensuring that effective remedies are available.

Recommendation 4: The Australian Government introduces child rights and wellbeing impact assessments on legislative changes that affect children's rights.

2.3 Coordination and National Plan of Action

20. There is no national level coordination of the many policy initiatives that exist across all governments relating to children. Nor is there a national plan of action for the realisation of the principles and provisions of the CRC for children in Australia.⁸
21. National initiatives concentrate on challenges facing specific groups of children. For example, the *National Framework for Protecting Australia's Children (2009–2020)* primarily focuses on child abuse and neglect; *Closing the Gap* addresses the needs of Aboriginal and Torres Strait Islander peoples, including children. Other initiatives acknowledge children, such as the *National Plan to Reduce Violence against Women and their Children (2010–2022)*, but children are not the critical focus.
22. The recent Royal Commission into Institutional Responses to Child Sexual Abuse (National Royal Commission) found that, across Australia, many institutions over many years failed to protect children from abuse. In its final report, in December 2017, it made 409 recommendations. The Australian Government accepted, or accepted in principle, most recommendations directed at it, with 18 recommendations listed 'for further consideration' or 'noted'.⁹ The Commission welcomes the

Australian Government's acceptance of most recommendations directed at it.¹⁰

23. In its recommendations, the National Royal Commission set out ten standards for making institutions child safe.¹¹ Using the National Royal Commission's standards, with the support of the Australian Government, the NCC is developing national principles to provide a consistent approach for achieving organisational cultures that foster child safety and wellbeing across all child related sectors in Australia. This includes tools and resources to support implementation.
24. The National Royal Commission also recommended that a National Office for Child Safety (NOCS) be established, initially within the Department of the Prime Minister and Cabinet (PMC), transitioning by June 2019 to an independent Australian Government statutory body.¹² In June 2018, NOCS was established within the Australian Government Department of Social Services. This has since been transferred back to PMC.
25. In late 2018, as recommended by the National Royal Commission, the newly formed NOCS will facilitate Council of Australian Governments (COAG) endorsement of the National Principles for Child Safe Organisations, developed by the NCC.¹³
26. Through NOCS, the National Royal Commission recommended the development of a National Framework for Child Safety to commence after the expiration of the current *National Framework for Protecting Australia's Children*, and no later than 2020.¹⁴ It is critical that this National Framework is informed by Australia's obligations under the CRC and has a broad focus on child wellbeing.
27. Organisational engagement is complicated by the differences in child abuse mandatory reporting requirements,¹⁵ the capacity for information exchange, and employment screening requirements in each state and territory. On employment screening, the National Royal Commission recommended a national model for 'working with children checks' by introducing consistent standards and facilitating cross-border information sharing.¹⁶
28. In 2017, the National Royal Commission recommended that the Australian Government create a ministerial portfolio with responsibility for children's policy issues, including the National Framework for Child Safety.¹⁷ In 2018, the Australian Government created the role of Assistant Minister for Children and Families for its Department of Social Services. At this stage,

the role of Assistant Minister for Children and Families is in its infancy and how it will engage is unknown.

29. Since Australia's fourth periodic report in 2012, the Standing Council on Community and Disability Services has been discontinued. This means that no ministerial council has direct accountability for the wellbeing of Australia's children. Endorsement by a ministerial council for the National Framework for Child Safety was recommended by the National Royal Commission.¹⁸

Recommendation 5: The Australian Government develops a National Plan for Child Wellbeing, incorporating the National Framework for Child Safety, using the CRC as its foundation.

Recommendation 6: Australian Governments facilitate a nationally consistent, standardised model for checking the suitability of people in child-related work across all jurisdictions.

Recommendation 7: Australian Governments establish a Standing Ministerial Council to oversee the National Plan for Child Wellbeing and the National Framework for Child Safety.

2.4 Independent monitoring

30. State and territory Children's Commissioners/Guardians and Ombudsmen have independent monitoring powers across Australia. Their powers vary and can include oversight of child protection, out-of-home care, juvenile justice systems, and complaints.
31. The NCC does not have the legal mandate to monitor or deal with complaints about individual children.
32. While the Commission can investigate and conciliate complaints of breaches of rights set out in the CRC, recommendations made by the Commission are not legally enforceable. The Commission also handles complaints under national discrimination law, including discrimination on the basis of age.
33. The Australian Government ratified the Optional Protocol to the *Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT) in 2017.¹⁹ This will provide monitoring bodies for places, including where children are deprived of their liberty. The Commission sees it as critical to ensure a child-specific focus is included in monitoring processes.

34. Since 2013, the NCC has recommended that the Australian Government ratify the Optional Protocol to the CRC on a Communications Protocol (the third Optional Protocol).²⁰ Ratification of the third Optional Protocol would provide new protections for children, and a similar level of accountability for children's rights as exist for rights under other UN Conventions.

Recommendation 8: The Australian Government ratifies the Optional Protocol to the CRC on a Communications Protocol.

Recommendation 9: The Commonwealth Ombudsman, as the co-ordinating National Preventative Mechanism in Australia, establishes a children's subgroup to ensure those with expertise and experience of working with children can provide specialist advice, information and recommendations.

2.5 Allocation of resources

35. Australia does not have budgeting processes that specifically track the allocation of resources to all children.
36. In 2017, the Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission) pointed out that:

Knowing where expenditure is directed is a basic requirement for assessing community needs and planning service delivery in a coordinated and resource-efficient manner.²¹
37. The NT Royal Commission recommended a review and audit of Commonwealth expenditure in the Northern Territory in the area of family and children's services relevant to the prevention of harm to children, with the review addressing co-ordination of programs, funding agreements and selection of service providers, service outputs and evaluations.²²
38. In response to this recommendation, the Australian Government supported a review of Commonwealth and Northern Territory governments' expenditure pending further consideration of implementation details.²³
39. The acceptance of this recommendation by the Australian Government shows that it understands the importance of tracking the allocation of resources for children.

2.6 Data collection

40. Since commencing her term in 2013, the NCC has raised as a critical issue the lack of available data on children disaggregated by age, location, socio-

economic status, cultural background, disability, lesbian, gay, bisexual, trans and intersex (LGBTI) status.

41. This includes lack of national information across a range of health and wellbeing domains, such as:
 - child deaths, self-harm deaths and self-harm hospitalisations
 - violence against children
 - outcomes for children in or having left child protection services
 - children with disability, including Fetal Alcohol Spectrum Disorder (FASD)
 - school expulsions and suspensions
 - drug and substance abuse.
42. Disaggregated data across different age ranges is not readily available. For example, payment data on the National Disability Insurance Scheme (NDIS) is only provided in two cohorts, 0–9 years and 10–19 years. These cohorts include children across a wide range of developmental ages, as well as adults, and are too broad to be helpful.
43. Submissions to the NCC in 2018 identified access to disaggregated data as a significant concern.²⁴ For example, the Multicultural Youth Advocacy Network (MYAN) stated that:

Department of Home Affairs (DHA), while reporting on migration categories of arrivals, does not report on different age cohorts, including the specific youth cohort (aged 12 to 24) which hampers efforts to ensure better planning and programming for the needs of young refugees and migrants arriving in Australia.²⁵
44. These data gaps impede Australia’s capacity to monitor and report on child wellbeing, and its ability to understand when and how best to intervene in ways that will support all children to thrive.
45. The Commission values the work of the Longitudinal Study of Australian Children (LSAC) and the Longitudinal Study of Indigenous Children (LSIC) both initiatives of the Australian Government, which contributes to understanding the issues facing children in Australia. However, they do not replace the need for consistent data collection across all children in Australia and for this data to be publicly available.

46. LSAC commenced in 2004 with two cohorts of children aged 0–1 year and 4–5 years. LSIC includes two groups of Aboriginal and/or Torres Strait Islander children who were aged 6–18 months and 3½–5 years when the study began in 2008. Data experts at the NCC’s roundtables advised that new cohorts should be introduced in order to replace expiring ones.
47. The NCC supports this, but also advocates following their development into adulthood; providing outcome-based data, which can inform future policy decision-making.
48. In July 2018, the Australian Government created the Office of the National Data Commissioner. This office will oversee and monitor the integrity of Australia’s data system, and will be responsible for implementing a simpler data sharing and release framework. It is hoped the new framework will break down barriers preventing efficient use and re-use of public data, while maintaining strong security and privacy protections.²⁶ The Commission supports this initiative.

Recommendation 10: Australian Governments, in conjunction with the Office of the National Data Commissioner, develop a national children’s data framework to ensure appropriate data collection that supports policy making on children’s rights issues. This should:

- **address the data concerns expressed throughout this submission**
- **be consistent with the requirements set out by the Committee in its *Guidelines on the inclusion of statistical information and data in periodic reports***
- **enable disaggregation by developmental phases and age groupings, and priority population groups such as Aboriginal and Torres Strait Islander children**
- **ensure national coverage of data collection, addressing gaps in current collection methods.**

2.7 Dissemination, awareness-raising and training

49. Human rights education is a core part of the Commission’s and the NCC’s work. We provide training, conduct public forums and produce human rights education resources.
50. Since 2010, the Commission has been involved with the development of the national school curriculum to provide opportunities for all children in Australia to develop an understanding and appreciation for their human

rights. The Commission has provided submissions to the Australian Curriculum Assessment and Reporting Authority (ACARA) on several learning areas, including English, Mathematics, Science, History, Health and Physical Education, Economics and Business, Civics and Citizenship, and Geography.

51. The NCC worked with Early Childhood Australia (ECA), a national peak early childhood advocacy organisation, to develop a *Statement of Intent on Children's Rights in Early Childhood Education and Care* which outlines concrete steps that early childhood educators can take to reinforce children's rights in their daily practice. The Commission also developed a toolkit, *Building belonging*, for early childhood educators on cultural diversity and responding to prejudice.

2.8 International co-operation

52. The Australian Government Department of Foreign Affairs and Trade (DFAT) has a Child Protection Policy applying to all DFAT partners receiving funding, including those receiving development aid.²⁷
53. In terms of the Sustainable Development Goals (SDGs), the 2030 Agenda sets a globally agreed road map for sustainable development. If the SDGs, its targets and indicators are to be met, a partnership model must be adopted across government, civil society and the business sector. The participation and engagement of children is crucial to track progress and achieve the SDGs.

Recommendation 11: The Australian Government publicly reports data on the implementation of the SDGs and indicators including goals and indicators relating to children's rights.

Recommendation 12: The Australian Government adopts a human rights based approach for all its development aid policy and programs with the rights of children and their engagement included in program design, delivery and evaluation.

2.9 Child rights and the business sector

54. In 2015, the NCC undertook research on the rights of children as consumers of goods and services, focusing on the issue of online consumption. The research explored the adequacy of regulatory regimes, consumer and privacy laws, and the responsibilities of business in relation to children. In response to her work, the Australian Government has

developed new guidance content on children's rights for its business.gov.au resource.²⁸

55. In early 2016, the Australian Government committed to progress national consultations on the implementation of the UN Guiding Principles (UNGPs) on Business and Human Rights in Australia. As part of this process, a stocktake of business and human rights was undertaken and a Multi-Stakeholder Advisory Group convened to provide expert advice on the implementation of the UNGPs.
56. In its final report, the Multi-Stakeholder Advisory Group recommended that the Australian Government develop a National Action Plan on Business and Human Rights which sets out the concrete steps it will take to implement the UNGPs, including its expectations of business and other stakeholders regarding their conduct in Australia and abroad, and what support it will provide in helping them meet those expectations.²⁹ It is essential that children's rights are reflected in this National Action Plan and children participate in its development.

Recommendation 13: The Australian Government develops a National Action Plan on Business and Human Rights, in consultation with key stakeholders, and that it includes measures addressing children's rights particularly exploitation and trafficking in supply chains.

3 General principles

3.1 Non-discrimination

(a) Sex discrimination

57. Women and girls make up just over half of the Australian population (50.7%).³⁰ Despite achievements in the quest for gender equality over recent decades, Australian girls experience the impact of discrimination in a number of key areas:
 - Girls are less engaged with, and outperformed by boys in school subjects such as mathematics, which results in fewer women choosing careers in science, technology, engineering and maths.³¹
 - Sixteen per cent of 15–17 year olds reported experiencing sexual harassment in the 2018 National Sexual Harassment Survey.³²

- Women and girls continue to earn less than their male counterparts, with the national gender pay gap currently at 15.3%.³³
 - One in three Australian women report having experienced physical or sexual violence since the age of 15.³⁴
- (b) Discrimination experienced by Aboriginal and Torres Strait Islander children
58. In consultations with Aboriginal and Torres Strait Islander girls as part of the Wiyi Yani U Thangani project, the Commission has identified experiences of racism as a top emerging issue for girls.
 59. Structural and institutional racism are identified as obstacles to addressing the continued overrepresentation of Aboriginal and Torres Strait Islander children in child protection and youth justice systems.³⁵
 60. In March 2008, governments across the jurisdictions in Australia agreed to work together, through the *Closing the Gap Strategy*, to achieve equity between Aboriginal and Torres Strait Islanders and non-Indigenous Australians.³⁶
 61. Five of the targets specifically relate to children. Three of these targets expire in 2018, including child mortality, school attendance, reading and numeracy and Year 12 equivalent attainment.³⁷
 62. Three targets—child mortality, early childhood education and Year 12 equivalent attainment—are reported as being on track to be met.³⁸ However, this is not occurring across all jurisdictions in Australia.
 63. In terms of child mortality, the national target only includes results for NSW, Queensland, South Australia, Western Australia and the Northern Territory, as they are the only jurisdictions considered to have adequate levels of Indigenous identification.³⁹
 64. Targets for early childhood education are not on track to be met in the Northern Territory.⁴⁰
 65. Year 12 attainment targets are not on track to be met in NSW, Victoria, Queensland and Tasmania.⁴¹
 66. School attendance and literacy and numeracy targets are not on track to be met by the time that they expire in 2018.⁴²

67. A 2018 review of the *Closing the Gap Strategy* suggested that Australia had reached 'a fork in the road' for how it tackles the entrenched inequalities and disparities in health and wellbeing for Aboriginal and Torres Strait Islander peoples.⁴³
68. The Australian Government, through COAG, committed to refresh the *Closing the Gap* agenda and commenced this process in 2017,⁴⁴ involving Aboriginal and Torres Strait Islander peoples about what needs to be done to promote a thriving and prosperous life for Indigenous Australians, beyond existing targets.⁴⁵

Recommendation 14: Australian Governments commit to targets to overcome disadvantage experienced by Aboriginal and Torres Strait Islander children and adopt special measures to address the disparities in the enjoyment of rights, with the effective engagement of their communities.

(c) Race discrimination

69. The first nation-wide census of Australia's multicultural youth conducted in 2017 involved nearly 2000 young people aged 15–25 from refugee and migrant backgrounds.⁴⁶
70. The census revealed that 49% of refugee and migrant young people had experienced some form of discrimination or unfair treatment in the 12 months prior to the census. Sixty-four per cent had witnessed someone else being unfairly treated or discriminated against. Sixty-six per cent of those who had experienced discrimination indicated that this was because of their race, while 25% attributed this discrimination to religion.⁴⁷
71. African-Australian communities, particularly Sudanese-Australian communities in Melbourne, have experienced heightened public attention in response to concerns about youth crime. Political and media debates about crime have contributed to racial fear and anxiety towards African-Australians.⁴⁸ This has exacerbated the high levels of discrimination and racial profiling experienced by people from African backgrounds.⁴⁹
72. In its submission to the NCC, MYAN pointed out the importance of positive leadership in the national conversation and for Governments to refrain from referring to 'broad characteristics and particular cultural groups ... which reinforces inaccurate stereotypes, harming young people, their families and communities'.⁵⁰

(d) Regional inequality

73. Consultations by the NCC since 2013 have identified that service delivery, access to new technologies and infrastructure, and access to adequate healthcare, education and housing vary significantly between cities, regional and remote areas. The NCC found that children in regional and remote areas do not enjoy the same opportunity to thrive as other children.⁵¹ These findings were also reflected in the *Children's Rights Poll*, where a lower proportion of children in regional areas felt they could participate in decisions affecting them at home, online and sport/other out of school activities compared to children living in major cities.
74. Children who lived in remote areas were also more likely to die due to intentional self-harm than by other external causes, compared to children who lived in metropolitan areas.⁵² Data on hospitalisations for intentional self-harm in children aged 3–17 years in regional and remote areas accounted for 38% of all hospitalisations between 2007–2008 and 2012–2013.⁵³
75. Further, the Australian Institute of Health and Welfare (AIHW) reported in 2016–2017 that children from very remote areas were four times as likely as those from major cities to be the subject of a substantiation of abuse or neglect after an investigation of an at-risk notification.⁵⁴

Recommendation 15: The Australian Government addresses inequality experienced by children living in regional and remote Australia through targeted measures.

3.2 Best interests of the child

76. Provisions to consider the best interests of the child are commonly included in Australian legislation relating to children.⁵⁵
77. For example, it is a key principle in child protection legislation in all jurisdictions across Australia.⁵⁶ Amendments to the *Family Law Act 1975* (Cth) (Family Law Act) in 2012 included an acknowledgement of Australia's obligations under the CRC. Section 60B(4) of the Family Law Act now provides that an object of Part VII of the Act is to give effect to the CRC.
78. While all jurisdictions recognise the importance of the best interests principle and have policies to guide its implementation,⁵⁷ its application varies significantly.

3.3 Right to life, survival and development

79. Australia's most recent injury prevention and safety promotion plan expired in 2014. In its May 2018 budget, the Australian Government committed to develop a new *National Injury Prevention Strategy* to reduce the risk of injury for Australian children, and pledged \$0.9 million over three years, from 2018–2019. This is a welcome development.

(a) Child mortality

80. There is no regular national report on all causes of death for Australian children under the age of 18 years.

81. Existing data merges developmental age groups without differentiating between childhood, adolescence and early adulthood. This makes it difficult to use the data to guide interventions, policy-making and planning for children.

82. Since 2008 the number of infant deaths (children less than one year of age) has decreased. The 2016 infant mortality rate was 3.1 infant deaths per 1000 live births—the lowest on record.⁵⁸ Since 2001, the death rate for Indigenous infants also decreased, but it is still almost twice the rate for all infants.⁵⁹

83. There are mechanisms for reviewing child deaths in all states and territories in Australia. Most report on the number and causes of death of children under 18 years of age, and include reviews of deaths where children have been involved in child protection systems. However, as the Australian Institute of Family Studies (AIFS) points out, 'there is no uniform structure or legislation for child death review team responsibilities. Reporting requirements vary for each state or territory'.⁶⁰

84. The Australian and New Zealand Child Death Review and Prevention Group (ANZCDR&PG), of which the NCC is a member, was established in 2005 with the aim of developing national comparable child death statistics, and to better understand and prevent child deaths. In 2014, the NCC recommended that the ANZCDR&PG be supported to continue its work in relation to the development of a national child death database, in conjunction with the AIHW.

(b) Intentional self-harm and suicide in children aged 0–17 years

85. In 2014, the NCC conducted an examination of intentional self-harm and suicide in children aged 0–17 years. Self-harm deaths were reported for

the first time in Australia under the following age groups: 4–9 years; 10–11 years; 12–13 years; 14–15 years; and 16–17 years.⁶¹

86. As a result of this work, the Australian Bureau of Statistics (ABS) commenced publishing data on self-harm resulting in suicide in the age range 5–17 years from 2014. It had not previously reported on self-harm deaths under the age of 15 years.

87. According to current ABS data:

In 2017, suicide remained the leading cause of death of children between 5 and 17 years of age, with 98 deaths occurring in this age group. This represents a 10.1% increase in deaths from 2016. Nearly 80% of the child suicides were aged between 15 and 17 (78.8%).⁶²

88. The NCC's 2014 report found significant increases in the rates of suicide between those aged 10 and 14 years of age.⁶³ For the purposes of this report to the Committee, the NCC updated her 2014 work using data from the National Coronial Information System (NCIS) for the time-period 2007–2015. The findings showed little improvement. Her updated work in intentional self-harm showed the number of hospitalisations in children aged 3–17 years almost doubled between 2007–2008 and 2016–2017.

89. Disaggregated data, rather than a single cohort for children aged 5–17 years, is required to inform interventions, planning and policy-making.

90. The *Growing Up Queer* report, released by the Young and Well Cooperative Research Centre, identified intentional self-harm and suicide as an issue for children and young people who are sexuality diverse, transgender, gender diverse and intersex.⁶⁴ As part of this report, an online national survey completed by 1,032 children and young people aged 16–23 years found that 41% of participants had thought about self-harm and/or suicide, 33% had harmed themselves, and 16% had attempted suicide.⁶⁵

(c) Filicide

91. The National Homicide Monitoring Program recorded 42 children aged 17 years and younger being killed between 2012–2014.⁶⁶ Approximately 8% of homicide victims were children under 18 years of age, a decrease of five percentage points from 2010–2012 (n=61; 13%). Over a third of these children were between one and nine years of age (n=16; 3% of all homicide victims); 14 victims were under one year of age (3% of all homicide victims).⁶⁷ Filicide is the second most frequent group of victims of family and domestic homicides.

92. Data gaps relating to child deaths, self-harm deaths and hospitalisations resulting from intentional self-harm should be considered as part of the national children's data framework referred to in **Recommendation 10** above.

3.4 Respect for the views of the child

93. The NCC has held consultations with over 28,000 children since 2013. Each consultation has provided an invaluable opportunity to hear directly from children about the issues that affect them, what is most important to them, as well as the extent to which they know about children's rights.
94. There has been a trend over the past decade of creating mechanisms for the participation of children in a variety of contexts. For example, child protection legislation in Australian jurisdictions supports involving children in decision-making to the extent that their age and maturity allows.⁶⁸ At the policy development level, governments can engage with children through schools, youth advisory boards, youth parliaments and forums.
95. A number of submissions to the NCC in 2018 called for more opportunities for children's voices to be heard—especially in the context of the family court, on custody and related matters.⁶⁹
96. Children shared insights with the NCC about how their experiences had impacted on their safety, relationships and self-esteem. They emphasised the importance of improving the system's capacity to provide children with relevant information and allow them to participate in meaningful ways. Similar views were reflected in a 2018 AIFS research report on children and young people in separated families.⁷⁰
97. Despite the key role that family consultants and Independent Children's Lawyers play in relaying children's views to the Family Court, the Commission has concerns about whether they are sufficiently child-centred. An AIFS study revealed diverse practices among Independent Children's Lawyers in terms of engagement with children. Some do not have contact with children and prefer to rely on other information such as expert reports.⁷¹
98. Further, the Family Law Act does not extend to considering the views of children in non-contested matters. In the sections of the Family Law Act that refer to 'non-court based family services', there is no obligation for the child's views to be considered.

99. The Commission welcomes the inclusion of the CRC in the Family Law Act, however notes it is not a primary objective of the whole Act but relates to parenting matters only.
100. Through talking to children about human rights, and their rights in particular, it has become clear that rights knowledge strengthens children's agency and capabilities, and engenders respect for the rights of others.
101. The NCC sought the views of children to inform this report. The key themes that emerged from younger children (0–4 years) were that they enjoyed being with their families and friends, loved to play, and appreciated Australia's natural environment. Aboriginal and Torres Strait Islander children in this age-group highlighted connection to culture and cultural activities as important, and those in remote communities emphasised the significance of a safe home.
102. The *Children's Rights Poll*, conducted in partnership with the University of Melbourne and the Australian Broadcasting Corporation (ABC), played a crucial role in the NCC's aim to allow as many children as possible to express their views for the purpose of this report. 22,700 children aged 6–17 years completed the poll. The poll was co-designed by children who assisted in developing the poll questions.
103. The rights that children ranked as most important were: being safe; having a home and being cared for; and having a clean environment. Older children ranked getting an education in their top three rights.
104. Aboriginal and Torres Strait Islander children comprised 6% of the poll's respondents, while 13.7% came from families where English was not the main language spoken at home. The NCC is pleased to report that the majority of children felt that their rights were being met most of the time. However, the poll also revealed that access to accurate information, being treated fairly, and being able to participate in decisions that affect them were the rights least likely to be met. These findings were most pronounced among children from culturally and linguistically diverse (CALD) backgrounds and Aboriginal and Torres Strait Islander children.
105. Consultations conducted with teenagers revealed that they have a keen understanding of areas in which the Australian Government could improve its performance in terms of its obligations under the CRC. Many cited mental health as a significant issue, with one young person saying 'mental health for teenagers needs to be made a priority'. Another reflected on young people in detention, stating: 'I feel detention centres for youth ...

need to be reconsidered and re-evaluated with more access to mental health benefits and changing living conditions'. Other issues highlighted by teenagers included: the lack of education about rights in Australian schools; frustration about their inability to participate in politics; the lack of capacity for schools to respond to individual learning needs; and social structures that diminish the agency of children. One young person told the NCC that a particular problem was 'the stigma surrounding young people being "incapable" of making informed decisions about their own health and education'.

106. Aboriginal and Torres Strait Islander children talked about the importance of maintaining connections to culture and language: 'Cultural background is key to feeling like you belong to something more. More chance to learn about our culture would be absolutely amazing'.
107. Although participation (or lack of it) was an issue frequently raised by children in consultations with the NCC, measuring participation is problematic. A 2018 poll conducted by the ABC provides some insight into children's own views regarding the ways they contribute to their communities. Approximately 11,000 children completed the poll (which was run in a similar fashion to the *Children's Rights Poll*). The poll found that 99% of children regularly contributed at home, at school and in clubs. The children who responded indicated that they greatly valued opportunities to contribute in the places where they live, learn and play. Overall, the poll revealed that girls contributed more and received less monetary rewards. About half of the respondents reported receiving pocket money but were motivated to contribute because of the rewards of feeling proud and helping others.

Recommendation 16: The Australian Government amends the *Family Law Act 1975* (Cth) to require that children are provided with an opportunity to express their views in all matters that affect their rights or interests. A child should not be compelled to express a view, but should be provided with the opportunity to do so in a manner appropriate to their age and maturity.

4 Civil rights and freedoms

4.1 Birth registration, name and nationality

- (a) Registration of Indigenous births

108. The Commission remains concerned about the under-registration of births to Aboriginal and Torres Strait Islander mothers.

109. For example, Queensland Health reported in 2014 that 15–18% of births to Aboriginal and Torres Strait Islander mothers were not registered, compared with 1.8% of births to mothers who were non-Indigenous.⁷²

110. Reasons for this included:

- fees and penalties for the late registration of a birth and obtaining a birth certificate
- the move to an online birth registration process (which has a negative impact on remote Aboriginal and Torres Strait Islander communities)
- methods of interacting with Aboriginal and Torres Strait Islander communities which may not be culturally appropriate.⁷³

Recommendation 17: Australian Governments adopt measures to ensure birth registration of Aboriginal and Torres Strait children, in consultation with their communities.

(b) Identity documents for children in out-of-home care

111. Children in out-of-home care often experience difficulties in accessing identity documents, such as birth certificates, proof of Aboriginality, proof of Australian citizenship, and passports.

112. Since 2016, the NCC has co-chaired the *Identity Documents Working Group*. The group is committed to:

- identifying practical solutions to reduce the complexity of accessing identity documents for children receiving statutory child protection services
- liaising across jurisdictions to discuss reforms and effective practices.

(c) Birth certificate changes for transgender and intersex children

113. There is considerable variability across Australia's jurisdictions in terms of modifying birth certificates.

114. Transgender children have the right to seek legal recognition of their gender identity, but this is not always possible within Australia.

115. Only adults can change the sex marker on their birth certificates, after undergoing surgery or meeting evidentiary requirements.
116. The inability to change the sex marker on birth certificates can make the experience of attending school, for example, difficult for transgender children.
117. The issue of birth registration for intersex children is complex. The Commission is currently conducting a project that considers how best to protect the human rights of people born with variations in sex characteristics in the specific context of non-consensual medical interventions.⁷⁴

(d) Legal recognition of parentage for children born through surrogacy

118. Children born overseas through surrogacy can be granted citizenship by the Australian Government. However, it is the responsibility of parents to seek parentage orders. These orders are determined according to different criteria and processes in each state and territory. The Commission is of the view that these processes lack consistency and certainty.
119. Lack of recognition of legal parentage can affect the ability of children to access a variety of other rights relating to citizenship, medical treatment and benefits, intestacy, passports, child support and workers' compensation entitlements. The Commission has previously recommended that the parents (biological or not) of children born through surrogacy arrangements should be legally recognised.⁷⁵

Recommendation 18: The Australian Government inserts a clearer definition of 'parent' into the *Family Law Act 1975 (Cth)* for the purpose of clarifying the parent/child relationship for children born from surrogacy arrangements.

4.2 Freedom of expression and the right to seek, receive and impart information

(a) Children with disability

120. Children with disability in Australia face particular accessibility issues in terms of online content, audio description and captioning levels.

121. As children's lives are increasingly moving online, it is necessary to ensure that children with disability are provided with the support they need to access online content.

122. Audio description is not available in Australia. In 2017, the Australian Communications and Media Authority (ACMA) convened a series of meetings with advocacy groups, free-to-air and subscription TV providers and access suppliers to look at options for delivering audio description in Australia. A report was prepared, but it has not been released publicly.⁷⁶ In its submission to the NCC, the Centre for Inclusive Design pointed out:

Audio description is an essential service for people who are blind or have vision impairment, and is particularly important for children. It allows them to watch the same TV programs as their sighted peers, so aids social development and participation. It is also important in the context of education.⁷⁷

123. ACMA regulates television captioning services in Australia. Different exemptions exist depending on the type of television service (commercial, national, subscription) and for multi-channels. Concerns about exemptions from captioning were raised with the NCC, especially those for multi-channels. For example:

Free-to-air channels must caption all programs on their primary channels broadcast from 6 am to midnight, but multi-channels (eg ABC Comedy, 7Two, 9Gem and Eleven) are exempt from these requirements. Instead, the only programs on multi-channels that have to be captioned are repeats that were originally screened with captions on the same network's primary channel. This has particular implications for Deaf and hearing impaired children, as the free-to-air networks have now moved virtually all of their children's programs from their primary channels to their multi-channels ... This means that few, if any, children's programs on free-to-air TV are currently required to be captioned.⁷⁸

Recommendation 19: The Australian Government ensures digital accessibility for children with disability, particularly in relation to online content, audio description and captioning to foster participation in wider society and education.

4.3 Freedom of association and of peaceful assembly

124. Legislation that prevents children from associating freely in public spaces is in force in all Australian states and territories, apart from South Australia.⁷⁹

125. Although the Australian Government maintains that this upholds ‘the dual purposes of keeping children safe and maintaining public order’, the Commission is concerned that such legislation allows police to target children and criminalise their behaviour.
126. The Youth Advocacy Centre told the NCC that police powers can also be used to target vulnerable groups:

Children tend to be subject to over-surveillance once known to police. Move-on powers are overused in relation to vulnerable groups who tend to be visible on the street—young people, Aboriginal and Torres Strait Islander people and homeless people.⁸⁰

4.4 Protection of privacy and protection of image

127. Privacy is protected through legislation at the Commonwealth, state and territory levels.
128. There are specific challenges for children’s privacy in the digital environment, where children may not be aware of the risks of providing or sharing their personal data.
129. Children may experience cyber-bullying and the non-consensual sharing of digital images.
130. The Office of the eSafety Commissioner has established processes for children and adults to report image-based abuse.
131. Regulatory frameworks governing cyberbullying and image-based abuse in Australia are inappropriate when children are involved, because it can criminalise the behaviour of children in situations where they are potentially ignorant that their actions may be illegal.⁸¹
132. The Commission is of the view that education and public awareness are the most effective tools for protecting the safety of children in the digital environment. The Office of the eSafety Commissioner has also developed a range of educational resources.
- (a) Access to information from a diversity of sources and protection from material harmful to a child’s wellbeing
133. Access to digital technology and information supports children’s education and their wellbeing. This is especially important for children who identify as belonging to racial, cultural, gender or sexual minorities. The

communities that are formed in digital spaces through social media can provide essential points of connection and support.

134. Aboriginal and Torres Strait Islander children living in rural and remote communities generally have poor or limited access to the internet. However, Australian research indicates that 'digital technologies can be used as an effective means to overcome Indigenous disadvantage through improving capacity to build local economies, affirming Aboriginal identity, and providing culturally relevant information'.⁸²
135. For example, HitNet provides internet kiosks to remote Aboriginal and Torres Strait Islander communities that are predominantly used by teenagers.⁸³
136. Digital access is not without risk to children. A common form of harm that can occur within the digital environment is exposure to pornographic images. Intentional or unintentional exposure to pornography can result in distorted ideas about sexuality and relationships.
137. In Australia, there are laws to protect children from child exploitation material. However, at times, children can be prosecuted under the very laws that are meant to protect them.
138. For example, the Youth Advocacy Centre told the NCC that its

Lawyers regularly make submissions for the withdrawal of charges where children are prosecuted for producing and distributing child exploitation material when taking a photo of themselves and sending it to a boy/girlfriend or similar. They are the victim of their own offence.⁸⁴

Recommendation 20: The Australian Government increases education activities targeted to children to promote an understanding of privacy and prevent image-based abuse and exposure to pornography.

5 Violence against children

5.1 Abuse and neglect

(a) Extent of violence against children

139. Violence against children is a serious problem in Australia. Child protection data indicates that in 2016–2017 there were 67,968 substantiations of child abuse and neglect, a 27% increase since 2012–2013.⁸⁵ This includes

emotional abuse (48% of substantiations), neglect (24%), physical abuse (16%) and sexual abuse (12%).⁸⁶

140. Other data shows that:

- thirteen per cent of Australians aged 18 years and over have experienced physical and/or sexual abuse before the age of 15⁸⁷
- between 4% to 12% of girls and 1.4% to 7.5% of boys have experienced penetrative sexual abuse before the age of 16, and between 14% to 26.8% of girls and 5.2% to 12% of boys have experienced non-penetrative sexual abuse⁸⁸
- family violence resulted in 238 cases of filicide (children killed by their parent) between 2002–2012⁸⁹
- almost 896,700 men and 1.2 million women have witnessed violence against their mother, and 380,000 men and 440,900 women witnessed violence against their father before the age of 15.⁹⁰

141. Girls and young women are at heightened risk of physical and sexual abuse. Those aged 15–19 years have the highest rates of reported sexual abuse of any age and sex group, followed by girls aged 10–14 years.⁹¹ An increasing number of girls aged 15–17 years are victims of violence perpetrated by their partners.⁹²

142. Children with disability are around three times more at risk of sexual abuse than children in the overall population, and are also more likely than other children to have experienced repeated incidents of sexual abuse by the time they are 18 years old.⁹³ They are also disproportionately vulnerable to maltreatment in institutions.⁹⁴

143. Other groups of children, such as those from CALD backgrounds, LGBTI children, and children living in remote areas of Australia may also be disproportionately affected, but data for these children is limited or non-existent.⁹⁵ There is also little information on the extent of sibling violence against children.⁹⁶

144. The NCC has highlighted the need for national, disaggregated data on children's experiences of family and domestic violence.⁹⁷ She welcomed the development of a National Data Collection and Reporting Framework as part of the Second Action Plan in the *National Plan to Reduce Violence against Women and their Children*, but identified a number of gaps in national data, including limited data on age and vulnerable groups of

children. These gaps hinder efforts to prevent and respond to children's distinct needs.

145. The National Royal Commission in 2017 recommended that the Australian Government 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.⁹⁸
146. In June 2018, the Australian Government announced that NOCS would undertake consultations with relevant stakeholders to ascertain how such a study could be conducted.⁹⁹
147. National data on violence against children is a priority area for improved data collection, as proposed in **Recommendation 10** above.

(b) Impacts of family and domestic violence on children

148. While women are predominantly the victims of violence in the family, children are frequently witnesses and bystanders, as well as direct victims.¹⁰⁰ The work of the NCC in 2015 highlighted the damaging effects of family and domestic violence on children.¹⁰¹ The 2016 Victorian Royal Commission into Family Violence, established in the wake of a series of family violence-related deaths in Victoria, also shed light on how children are affected in their own right.¹⁰²
149. The 2016 ABS Personal Safety Survey provides some indication of the long-term impacts of witnessing family and domestic violence as a child.¹⁰³
150. It showed that women who, as children, witnessed violence towards their mother or their father by a partner, were more than twice as likely to be the victim of partner violence themselves, compared with women who had not witnessed this violence.¹⁰⁴
151. Men who witnessed violence towards their mother by a partner were almost three times as likely to be the victim of partner violence compared with men who had not.¹⁰⁵
152. Further, violence against a parent can affect the capacity and ability of a parent to care for a child, which in turn affects a child's wellbeing.¹⁰⁶

Recommendation 21: The Australian Government increases prevention measures and responses to family violence that address the distinct impacts on children.

(c) Aboriginal and Torres Strait Islander children

153. Family and domestic violence disproportionately affects Aboriginal and Torres Strait Islander women and children. In 2014–2015, Aboriginal and Torres Strait Islander women were 32 times more likely to be hospitalised as a result of injuries caused by family and domestic violence than non-Indigenous women.¹⁰⁷ As women are often the primary carers of children, Aboriginal and Torres Strait Islander children are frequently exposed to family violence.¹⁰⁸

154. Submissions to this report argued for all governments to commit to a sustained increase in investment for family violence response and prevention, with a key focus on resourcing Aboriginal and Torres Strait Islander organisations and ensuring their participation in developing long term solutions.¹⁰⁹

Recommendation 22: Australian Governments resource Aboriginal and Torres Strait Islander organisations to prevent and respond to family violence and its impacts on children.

(d) Family violence and family law

155. The Commission welcomes amendments made to the Family Law Act in 2012 to better protect victims of family and domestic violence. These amendments include a broader definition of family violence, giving greater weight to child safety, a new requirement to disclose child protection matters, and provisions giving effect to the CRC.

156. However, the Commission has ongoing concerns relating to the safety and wellbeing of children within the family law system.¹¹⁰ These include:

- insufficient priority given to enabling the views of children to be heard and considered
- recent amendments to the Family Law Act that remove the requirement that certain court orders in parenting matters be explained to children¹¹¹
- the need for judges and other family law professionals to have expertise and training in child development and trauma, the impacts of family and domestic violence on children, children's rights, and how to communicate effectively with children and young people.¹¹²

(e) Respectful relationships education

157. There is a need to address the root causes of family and domestic violence, including gender inequality, in order to see a change in prevalence rates.¹¹³
158. The need to increase community understanding of family and domestic violence is evident in research commissioned by OurWatch in 2015, which shows that a significant number of young people continue to hold views that tolerate violence against women and girls.¹¹⁴
159. The *National Plan to Reduce Violence against Women and their Children* identifies school-based Respectful Relationships Education as one initiative for instilling generational change.¹¹⁵ The Commission welcomes the inclusion of this in the national curriculum, with programs starting from Kindergarten.¹¹⁶ An evaluation of respectful relationships projects in July 2014 indicated that, overall, they have a positive impact on students across all age groups.¹¹⁷

Recommendation 23: Australian Governments ensure all children receive respectful relationships education targeted to different group needs.

(f) Therapeutic interventions and support for children affected by family and domestic violence

160. While there are a number of promising initiatives to support children affected by family and domestic violence, the NCC found that limited information exists about the extent that these are made available to or accessed by children, or the outcomes for children who use such services.¹¹⁸ Children are often supported in the context of the needs of the parent escaping family and domestic violence, rather than in response to their specific therapeutic needs.
161. As highlighted in the final report of the 2016 Victorian Royal Commission on Family Violence:
- Although children are remarkably resilient, and many who experience violence and abuse go on to lead full and productive lives, there are many who will need counselling and/or other support to overcome the impacts of the abuse, which may otherwise render them vulnerable to becoming a victim of family violence as an adult, or using violence themselves.¹¹⁹
162. The Northern Territory Anti-Discrimination Commission in its submission, and other stakeholders at the NT Roundtable, highlighted the critical role that women's shelters and refuges can play in supporting children affected

by family and domestic violence.¹²⁰ Shelters provide an opportunity for co-ordinated assistance, education and programs for children on-site.

Recommendation 24: Australian Governments provide child-specific therapeutic intervention, counselling and early intervention programs for child victims of family and domestic violence, to be delivered across a range of services.

5.2 Harmful traditional practices

(a) Forced marriage

163. The practice of forced marriage, for both children and adults, was criminalised under federal law in 2013¹²¹ and is supported by measures in the National Action Plan to Combat Human Trafficking and Slavery 2015–2019.¹²²
164. The Australian Federal Police has received 174 referrals for forced marriage since its criminalisation, 70 of them in 2016–2017.¹²³ Between March 2013 and July 2015, 32 out of 41 referrals accepted by the Australian Federal Police for further investigation related to children.¹²⁴ The true prevalence of child marriage is unknown, as the large majority of forced marriages are not legally registered.¹²⁵
165. Victims of human trafficking and slavery-related offences are eligible to receive support through the Support for Trafficked People Program. The Australian Government reports that in 2016–2017, 12 children were referred to the Program.¹²⁶ In February 2018, the Australian Government introduced a 12-month pilot to extend clients' access to this Program from 45 to 200 days. However, beyond this, individuals must have been involved in a criminal investigation or prosecution.¹²⁷
166. Stakeholders have highlighted that linking support to engagement with law enforcement is a barrier for children reporting abuse.¹²⁸ Such support programs should be made available to child victims of trafficking and slavery even where they are unwilling or unable to assist police investigations or prosecutions.¹²⁹
167. Child marriage should be recognised as a form of family violence.¹³⁰ This would enable greater recognition of the practice within affected communities, widen access to resources and support services for at-risk individuals and allow prevention strategies to include the topic of forced marriage in 'respectful relationship education'.

Recommendation 25: The Australian Government considers including child marriage in definitions of family and domestic violence for the purposes of data collection, monitoring and access to service delivery, including prevention programs.

(b) Female genital mutilation

168. While female genital mutilation (FGM) for non-therapeutic purposes is criminalised in Australia under all state and territory laws,¹³¹ there are inconsistent penalties, age coverage and extraterritorial provisions that impede information sharing between agencies, jurisdictions and health and legal systems.¹³²

169. Awareness and training programs on FGM are available in most jurisdictions, although surveys suggest there is a low level of awareness of FGM among health practitioners, legal practitioners and communities.¹³³

Recommendation 26: Australian Governments harmonise laws that criminalise female genital mutilation, and conduct awareness education for health professionals.

5.3 Sexual abuse

(a) Child sexual abuse in institutions

170. The National Royal Commission heard from thousands of people who experienced sexual abuse as children in institutions in Australia.¹³⁴ In 2012 approximately 69,600 people in Australia aged over 18 (40,200 males and 29,400 females) reported being sexually abused by a doctor, teacher or minister of religion before the age of 15.¹³⁵ This figure is likely to significantly underestimate the extent of child sexual abuse in institutional settings.¹³⁶

171. Many of the personal accounts made to the National Royal Commission reveal the devastating effects of child sexual abuse, including on physical and mental health, education, career prospects, ability to form relationships and their faith, as well as negative impacts on survivors' children, partners, parents, other family members and communities.¹³⁷ These effects are often compounded by inadequate and ineffective responses to allegations of abuse within an organisation.¹³⁸

172. The National Royal Commission recommended a number of actions to address institutional cultures and practices that continue to allow abuse to

occur and inhibit detection, as referred to in **Recommendations 5, 6 and 7** above.

(b) Redress for victims of institutional child sexual abuse

173. The National Royal Commission recommended the establishment of a national redress scheme for survivors of child sexual abuse in institutions, including the elements of direct personal response, counselling and psychological care and monetary payments.¹³⁹

174. On 1 July 2018, the Australian Government commenced a National Redress Scheme.¹⁴⁰ While the Commission commends many aspects of the Scheme, it has also raised some concerns about its operation.¹⁴¹ The Commission's major concerns are that the Scheme excludes the following groups of survivors from accessing redress, including access to counselling and psychological services:¹⁴²

- non-citizens or non-permanent residents who were sexually abused in institutional settings in Australia.¹⁴³
- survivors who have been convicted of an offence and sentenced to imprisonment for five years or longer.¹⁴⁴
- children currently under eight years old, due to the requirement that a child cannot make an application for redress if they will not turn 18 during the 10-year life of the Scheme.¹⁴⁵

5.4 Torture or other cruel, inhuman or degrading treatment or punishment

(a) Corporal punishment

175. In some jurisdictions in Australia, the defence of 'reasonable chastisement' can still be used to defend a charge of assault of a child by a parent.¹⁴⁶ In some states and territories, a parent's right to use corporal punishment is provided in legislation, while in others it is provided by the common law. NSW is the only state to have made legislative amendments limiting corporal punishment by parents.¹⁴⁷

176. NSW, South Australia, Tasmania and Victoria have explicitly prohibited the use of corporal punishment in all schools. In the ACT, the current interpretation of the law means that a ban applies to non-government schools as well, but it is not explicitly prohibited in all schools.¹⁴⁸ There is

ambiguity in the Northern Territory, Queensland and Western Australia, where the prohibitions do not extend to non-government schools.¹⁴⁹

Recommendation 27: Australian Governments ban corporal punishment across all educational and care settings.

5.5 Helplines for children

177. Kids Helpline is Australia's only national 24/7, confidential support and counselling service specifically for children and young people aged 5–25 years. It offers counselling support via phone, email and its website.¹⁵⁰
178. For more than 25 years, children have been seeking help through Kids Helpline for a range of concerns, including mental health, self-injury, self-harm, relationships, bullying and abuse.¹⁵¹
179. However, the number of contacts is not representative of the greater number of children who need assistance. In her *Children's Rights Report 2014*, the NCC highlighted how the telephone and online counsellors at Kids Helpline were able to respond to only 60% of contacts because of lack of capacity to meet the demand.¹⁵²
180. Information derived from Kids Helpline contacts has been invaluable for the NCC's investigations into child rights issues.

6 Family environment and alternative care

6.1 Assistance to parents and the provision of childcare services

181. A number of submissions made to the NCC were concerned that the New Child Care Package, introduced in July 2018,¹⁵³ would result in vulnerable and disadvantaged children not being able to access early childhood education and care services.¹⁵⁴ This relates to the complexity of the new activity tests that need to be met to access services and a reduction of free access for disadvantaged families from 24 to 12 hours per fortnight, particularly for single parents and parents whose employment is insecure or unpredictable.¹⁵⁵
182. Australia's current Paid Parental Leave Scheme provides 18 weeks of pay, at minimum wage, for the carer of a newborn or newly adopted child, as well as two weeks paid Dad and Partner Pay.¹⁵⁶ However, research indicates that a longer period of six months paid parental leave has a

more positive outcome for the health and wellbeing of mothers and babies.¹⁵⁷

183. The Royal Australasian College of Physicians submitted:

that governmental paid parental leave policies in Australia should provide support for up to 6 months of paid parental leave ... international outcomes following institution of paid parental leave suggest that paid parental leave may be an effective intervention for reducing inequities in health and child achievement.¹⁵⁸

6.2 Children deprived of their family environment

184. Child protection systems in Australia are under substantial pressure, with increased reported incidents of harm requiring investigation, and increased rates of removal of children and placement in out-of-home care. There have been 24 separate inquiries since Australia last reported to the Committee, as well as a Senate Inquiry in 2015 at the federal level. Reform recommendations have been made in each inquiry.¹⁵⁹

185. Despite this, evidence suggests that the situation is worsening, with increased numbers of children becoming involved with the child protection system. Aboriginal and Torres Strait Islander children continue to be overrepresented.¹⁶⁰

186. The number of children receiving child protection services has increased by 25% in the last five years,¹⁶¹ from 135,139 in 2012–2013 to 168,352 in 2016–2017.¹⁶²

187. The number of children in out-of-home care has increased by 18% over the last five years.¹⁶³ Of these children, 47% were in relative/kinship care, 38% were in foster care, 7% were in third-party parental care and 5% were in residential care.¹⁶⁴

188. In 2016–2017, over 37% of all children in out-of-home care were Aboriginal and Torres Strait Islander,¹⁶⁵ and ten times as likely to enter out-of-home care compared with non-Indigenous children.¹⁶⁶

189. Throughout Australia, various inquiries have recommended urgent changes across care and protection systems.¹⁶⁷

190. Reporting the numbers of children in the system and the nature of their abuse is not sufficient, and should be expanded to include outcomes for children, for example in relation to educational attainment, health status, and post care pathways.

191. Data gaps relating to outcomes for children in or having left child protection services should be considered as part of the national children's data framework referred to in **Recommendation 10** above.
192. Despite the numerous inquiries in Australia, there has been little systemic change to address the increasing rates of children involved in the child protection system or to address the reasons why children are being placed in out-of-home care.
193. A review of the NSW out-of-home care system commissioned by the NSW Government published in 2018 concluded that:

Overall, the system is ineffective and unsustainable. Expenditure is directed to an ad hoc collection of programs developed and delivered within agency silos that are not focused on achieving shared objectives, including the priority to prevent children and young people entering the child protection or OOHC system. Programs across government are not adequately tailored to meet the needs of children and families with multiple needs, contributing to poor long-term outcomes across a range of wellbeing domains, child protection and OOHC intervention, and devastating cycles of intergenerational abuse and neglect. Ineffective responses for families with multiple needs has resulted in more children in OOHC and a crisis oriented system in which expenditure is concentrated on OOHC rather than targeted intervention to prevent OOHC entries.¹⁶⁸

194. The NT Royal Commission, in 2017, argued that:

life opportunities are compromised by a complex layering of pervasive disadvantage, poverty, overcrowding, poor parenting, mental health issues, substance misuse, and family or community violence. For Aboriginal children, this adversity is compounded by intergenerational trauma, an erosion of culture, and a lack of access to early support.¹⁶⁹

195. The national cost of operating child protection systems confirms that Australia's jurisdictions are predominately focusing on tertiary services rather than preventative and early intervention services.¹⁷⁰ The Report on Government Services 2018 indicated that:

Total recurrent expenditure on family support services, intensive family support services, protective intervention services and out-of-home care services was \$5.2 billion nationally in 2016–17 (a real increase of 8.5% from 2015–16) of which out-of-home care services accounted for the majority (59.5% or \$3.1 billion).¹⁷¹

196. While Australia must protect those already in its child protection systems and seek to end intergenerational disadvantage, it also must urgently

prioritise measures to prevent further children entering its care and protection systems.

Recommendation 28: Australian Governments urgently prioritise:

- **prevention and early intervention programs to reduce the number of children entering child protection systems**
- **barriers to sustained reunification of children with their families by strengthening services and supports leading up to and post-reunification.**

6.3 Adoption, national and inter-country

197. In Australia, 315 child adoptions were finalised in 2016–2017.¹⁷² Of these, 69 were adopted from overseas and 246 were from Australia. Of these, 42 were local adoptions and 204 were known child adoptions.¹⁷³

198. Adoption is one option included in permanency planning frameworks within child protection systems in Australia.¹⁷⁴

199. The issue of permanent adoption for Aboriginal and Torres Strait Islander children is complex. Stability and permanency are optimal for the development of all children. However, Australia’s historical practices of forced removals and forced adoptions have caused lasting trauma and damage for Aboriginal and Torres Strait Islander peoples, and must be taken into account when considering adoption as an option for Aboriginal and Torres Strait Islander children.¹⁷⁵

200. A number of submissions made to the NCC in 2018 raised concerns about domestic adoption processes and policies.¹⁷⁶

7 Disability, basic health and welfare

7.1 Children with disability

201. The Commission welcomes the establishment of the National Disability Insurance Scheme (NDIS).

202. While the NDIS is designed to make it easier for individuals to access support services, a number of issues have been raised in submissions to the NCC regarding the implementation of the scheme in respect of children, including:

- uncertainty about who is eligible
- a lack of clarity about the types of support covered by the scheme and the responsibility of other service systems
- insufficient funds to cover all supports required
- less funding than previously received
- administrative delays in entering the scheme and reviewing plans.¹⁷⁷

203. In July 2018, the Commission released a report on the challenges of the NDIS reform process, identifying essential elements to effective quality, safeguarding and oversight mechanisms. It made a series of recommendations regarding the incorporation of these elements into practice.¹⁷⁸

(a) Non-therapeutic sterilisation of children with disability

204. Despite a specific recommendation from the Committee to prohibit non-therapeutic sterilisation of children, legislation still allows this to occur. Australian Lawyers for Human Rights told the NCC that:

Sterilisation of a child in Australia can occur with an order from the Family Court or a guardianship tribunal, having consideration to the best interests of the child. ALHR [Australian Lawyers for Human Rights] is concerned that, in some cases, the 'best interests' of the child with a disability will be impacted upon by consideration of the interests of parents, carers and the broader health and disability support system, which may be contrary to the child's wishes.¹⁷⁹

205. There is very little data available about forced sterilisations of children in Australia.

Recommendation 29: The Australian Government introduces legal protections to prevent sterilisation of children with disability without consent.

7.2 Health and health services

(a) Health equality for Aboriginal and Torres Strait Islander children

206. The disparity in health status between Aboriginal and Torres Strait Islander children and their non-Indigenous counterparts remains a crucial human rights issue within Australia.¹⁸⁰

207. Ear disease and skin infections are major health issues currently facing Aboriginal and Torres Strait Islander children.
208. Hearing loss that occurs as a result of ear infection is prevalent in Aboriginal and Torres Strait Islander children and is linked to delays in speech and language development.¹⁸¹ This can have a lasting impact on educational and workforce outcomes.
209. Skin infections are also common in some communities and can have long-term health consequences. The underlying causes of skin infections are primarily related to socio-economic disadvantage, including overcrowded housing, lack of access to basic sanitation and poor levels of education.¹⁸²
210. Limited access to primary health care can result in delayed diagnosis, treatment and management of health conditions.

(b) Fetal Alcohol Spectrum Disorder

211. During 2017, the Australian Government Department of Health undertook consultations across Australia to inform the development of the *National Fetal Alcohol Spectrum Disorder Strategy 2018–2028*, replacing the *Fetal Alcohol Spectrum Disorder Action Plan (2013–2017)*. The FASD Strategy has not yet been released.
212. The Commission is concerned that a serious impediment to developing effective health and policy responses to FASD is the current lack of accurate information about its incidence and prevalence.
213. Data gaps relating to children with FASD should be considered as part of the national children’s data framework referred to in **Recommendation 10** above.

Recommendation 30: The Australian Government releases the National Fetal Alcohol Spectrum Disorder Strategy 2018–2028.

(c) Childhood obesity

214. Childhood obesity rates have almost doubled since the 1980s and obesity is now a major public health issue in Australia.¹⁸³
215. Children with obesity are more likely to be obese as adults and have an ‘increased risk of developing both short and long-term health conditions, such as Type 2 diabetes and cardiovascular disease’.¹⁸⁴

216. Obesity rates in Aboriginal and Torres Strait Islander children are higher than in non-Indigenous children. The AIHW reports that in 2012–2013, 30% of Aboriginal and Torres Strait Islander children and adolescents aged 12–14 were overweight or obese, compared with 25% of their non-Indigenous counterparts.¹⁸⁵

217. The Royal Australasian College of Physicians is concerned that childhood obesity continues to be neglected by the Australian Government, which has 'yet to implement comprehensive actions across society to reduce obesogenic environments and their underlying social determinants'.¹⁸⁶

(d) Immunisation rates and infectious diseases

218. The percentage of Australian children fully immunised has fallen from 92.7% in 2008 to 90.5% in 2017.¹⁸⁷

219. In 2015, Australia ranked 33 of 35 in the OECD for measles immunisation, and 31 of 35 for whooping cough vaccinations.¹⁸⁸

220. Australia's National Immunisation Program protects against 16 infectious diseases. Most vaccines are funded for all children, with a small number of additional vaccines funded for specific high-risk groups.¹⁸⁹

221. The National Centre for Immunisation Research and Surveillance suggests that:

There is scope to prevent further severe disease and death, particularly from influenza, meningococcal B and pertussis. In particular, it is important that clinicians are aware of recommendations for influenza and pneumococcal vaccination for high-risk children as well as maternal influenza and pertussis immunisation programs.¹⁹⁰

(e) Breastfeeding rates

222. Although 90% of Australian mothers initiate breastfeeding, only 15% of infants are exclusively breastfed for the six-month period recommended by the WHO.¹⁹¹

223. Socio-economic status plays a role in breastfeeding practices, according to a recent Australian study, which found that university-educated women are twice as likely to breastfeed their babies for the first six months than women who have not received a tertiary education.¹⁹² This indicates that a woman's level of education is likely to have an impact on her awareness of the benefits of breastfeeding.

224. The length of paid parental leave in Australia (18 weeks) also contributes to low breastfeeding rates, as women find it difficult to maintain exclusive breastfeeding once they return to the workforce.¹⁹³

(f) Medical interventions for intersex children

225. There is domestic and international concern relating to involuntary surgery on infants born with variations in sex characteristics.¹⁹⁴

226. The Commission is currently conducting a research project to better understand these concerns and will develop recommendations for a nationally consistent human-rights based approach to decision making about medical interventions.

227. The Commission is working towards releasing the final report and recommendations in the first half of 2019. The Australian Government has emphasised the responsibility of state and territory governments in this area and has not committed to the implementation of particular reform.¹⁹⁵

(g) Access to appropriate medical care for transgender and gender diverse children and young people

228. Australian transgender and gender diverse children can now access Stage 2 medical treatment without requiring court authorisation, due to a landmark ruling in *Re Kelvin*.¹⁹⁶

229. The decision in *Re Kelvin* brings Australia into conformity with recommendations made by the UN Human Rights Committee, which had previously suggested Australia 'consider ways to expedite access to stage two hormonal treatment for gender dysphoria, including by removing the need for court authorisation'.¹⁹⁷

230. However, the removal of the need for court authorisation does not extend to children in the out-of-home care or juvenile justice systems. These children are still required to obtain court authorisation to commence treatment.¹⁹⁸

231. This is also the case if there is a dispute about whether treatment should be given to a child. In these cases, the Family Court still has jurisdiction to hear and determine the dispute. This may include situations where one parent consents to the procedure but the other parent is opposed.¹⁹⁹

7.3 Mental health

232. The second Australian Child and Adolescent Survey of Mental Health and Wellbeing, commissioned by the Australian Government, was conducted in the homes of over 6,300 families with children aged 4 to 17 years in 2013–2014.²⁰⁰
233. Parents and carers completed a survey and children aged 11 years and older completed their own survey. Some key findings included:
- almost one in seven (13.9%) 4–17 year-olds were assessed as having mental disorders in the previous 12 months
 - males were more likely than females to have experienced mental disorders in the 12 months prior to the survey (16.3% compared with 11.5%)
 - ADHD was the most common mental disorder in children and adolescents (7.4%), followed by anxiety disorders (6.9%), major depressive disorder (2.8%) and conduct disorder (2.1%)
 - almost one-third (30.0% or 4.2% of all 4–17 year-olds) of children and adolescents with a disorder had two or more mental disorders at some time in the previous 12 months
 - about one in thirteen (7.5%) 12–17 year-olds had seriously considered attempting suicide in the previous 12 months
 - around one in ten 12–17 year-olds (10.9%) reported having ever self-harmed and about three quarters (73.5%) of these adolescents had harmed themselves in the previous 12 months.²⁰¹
234. The first national survey of the mental health of children and adolescents in Australia was undertaken in 1998. Between 1998 and 2013–2014, the prevalence of major depressive disorders for 6–17 year olds increased from 2.1% to 3.2%.²⁰²
235. Each year, Mission Australia conducts a national survey of youth aged 15–19 years, asking them about the issues that concern them. In 2017, there were more than 24,000 responses. Mental health was identified as their main concern.²⁰³
236. In 2017, Mission Australia with Black Dog Institute released a joint Five-Year Youth Mental Health Report about the mental health of Australia's

young people (15–19 years) during the years 2012 to 2016. Its findings included:

- one in four young people met the criteria for a serious mental illness, increasing from 18.7% in 2012 to 22.8% in 2016
- females were twice as likely to meet this criteria than males
- the likelihood of probable serious mental illness was found to be consistently higher among Aboriginal and Torres Strait Islander young people compared to their non-Indigenous peers
- the key issues were depression, stress, body image and school issues
- the main sources of help reported were friends, parents and the internet.²⁰⁴

237. While limited in their geographic reach, there are now over 100 Headspace centres across Australia, providing early intervention mental health services to 12–25 year olds. Headspace has also recently established e-Headspace, an online and telephone service to support children and their families.²⁰⁵

238. Notwithstanding this, the National Mental Health Commission indicated in its submission to the NCC that there is a shortage of mental health services in Australia ‘which can result in children and young people presenting later, or at a more advanced stage of ill-health’.²⁰⁶ It also suggested that mental health services tend to be more ‘adult’ focused, which can make them less accessible to children.²⁰⁷

239. The Fifth National Mental Health and Suicide Prevention Plan (the Fifth Plan) and its Implementation Plan were endorsed by COAG Health Council in August 2017. It is critical that the fifth Plan specifically prioritise the needs of children.²⁰⁸

Recommendation 31: The Australian Government expands and funds the delivery of child targeted mental health and other necessary support services.

7.4 Child poverty

240. Approximately 17% of children under the age of 15 live in poverty in Australia.²⁰⁹ However, Australia currently lacks a national poverty reduction plan and has yet to agree to a national definition of poverty.²¹⁰

241. Single parent families are particularly at risk of poverty, with 40% of all children living in poverty in Australia coming from single-parent families.²¹¹

242. The Salvation Army's *National Economic and Social Impact Survey 2017*²¹² surveyed the effects of poverty on 1,380 of its clients. It found that in households with children under 17 years of age:

- approximately one in five could not afford medical treatment and nearly one in three could not afford a yearly dental check-up for their child
- half could not afford school items and 56% did not have the money to participate in school activities
- more than half (55%) could not afford a hobby or outside activities for their child
- almost three in five respondents could not afford an internet connection for their child
- nearly two in five could not afford fresh fruit or vegetables every day and nearly one in four could not afford three meals a day for their child.

243. Poor educational outcomes are a consequence of poverty. Children who are 'deprived of food, clothes and other materials may reduce their engagement with school due to hunger, shame or being excluded or marginalised'.²¹³

Recommendation 32: The Australian Government develops a national poverty reduction plan that explicitly focuses on children.

(a) Child homelessness

244. Homelessness continues to be an issue that affects children in Australia.

245. According to the 2016 census, 15,872 (14%) children under the age of 12 years and 9,955 (9%) aged 12–18 years were homeless.²¹⁴

246. Of homeless children under 12 years, 61% were living in 'severely' crowded dwellings, followed by 26% living in supported accommodation.²¹⁵

247. Similarly, most of the children in the 12–18 age bracket were living in 'severely' crowded dwellings (61%) or in supported accommodation for those homeless (26%). Seven per cent were staying temporarily with other households.²¹⁶

248. A key finding pointed out by ABS is:

Homelessness is not just the result of too few houses. Its causes are many and varied. Domestic violence, a shortage of affordable housing, unemployment, mental illness, family breakdown and drug and alcohol abuse all contribute to the level of homelessness in Australia.²¹⁷

249. Mission Australia conducted a survey of 24,055 young people's experiences of homelessness in 2017. They were aged 15–19 years. Almost one in five of those who 'couch surfed' (19.5%) reported that they had first done so when they were less than 12 years old.²¹⁸

250. Children in out-of-home care are at high risk of homelessness. Nearly 35% of young people who leave out-of-home care become homeless.²¹⁹ One of the key policy recommendations emerging from Mission Australia's survey was improved exit planning and whole of government approaches to prevent young people exiting out-of-home care into homelessness.²²⁰

251. An emerging issue is support for raising the age that children leave out-of-home care. Given the age of majority sits at 18, this is a complex proposition that requires serious consideration.²²¹

Recommendation 33: Australian Governments improve exit planning and supports for young people leaving out-of-home care, including consideration of increasing the age of leaving out-of-home care.

7.5 Sexual health

252. In 2017, the NCC undertook a special investigation into adolescent parents. Although the teenage birth rate is at an historic low, teenagers in rural and remote areas experience young parenthood at four times the rate of their metropolitan counterparts.²²² Teenage pregnancy is associated with poorer health outcomes for both mother and child. Teenage mothers are more likely to experience maternal risk factors such as anaemia and hypertension, and are also more likely to smoke during pregnancy.²²³ Data collected by the ANZCDR&PG also shows that the children of teenage mothers suffer from higher rates of SUDI (sudden unexpected death of infants).²²⁴

253. Research indicates that limited access to information and health services may contribute to higher rates of teenage pregnancy in rural and remote areas. Young people themselves report that 'confidentiality, challenges in being able to discuss sensitive health issues, and cost, all present barriers to using and purchasing contraception'.²²⁵

254. The fertility rates of Aboriginal and Torres Strait Islander teenagers are approximately 5.8 times the rate for non-Indigenous teenagers (52 per 1000 females compared to nine per 1000 females).²²⁶

(a) Sexually transmitted infections

255. The Commission remains concerned at the levels of sexually transmitted infections (STIs) in children, especially those from Aboriginal and Torres Strait Islander communities. The rates of infection within these communities are recognised as being the highest of any identifiable population in Australia.²²⁷

256. For example, according to 2016 data in the Northern Territory, there were 161 notified cases of chlamydia in Aboriginal children under 16 years compared to three in non-Indigenous children; 186 notified cases of gonorrhoea in Aboriginal children under 16 years compared to one non-Indigenous child; 26 notified cases of syphilis in Aboriginal children under 16 years with no notified cases for non-Indigenous children; and 240 notified cases of trichomoniasis in Aboriginal children under 16 years with no notified cases for non-Indigenous children.²²⁸

257. Aboriginal Medical Services play a crucial role in providing health services for Aboriginal and Torres Strait Islander children. As a national study pointed out, 'one of the most productive ways forward with regards to improving knowledge and increasing safe sex practice among young Aboriginal people is through community controlled organisations'.²²⁹

Recommendation 34: The Australian Government funds Aboriginal controlled organisations and, where appropriate, their partners, to develop and implement a comprehensive sexual health education strategy.

7.6 Drug and substance abuse

258. The misuse of drugs and alcohol is a major cause of preventable disease and illness in Australians. Despite substantial evidence that points to the efficacy of prevention programs, government-funding remains focused on law enforcement and treatment.²³⁰

259. The availability of data for children under the age of 18 years is a significant issue in terms of assessing drug and substance abuse. Organisations that provide this data define 'young people' in multiple ways, which makes it difficult to separate children from adults.²³¹

260. A report published by AIHW in 2018 provided some disaggregated data for those aged 12–17 years. It showed an increasing proportion of children aged 12–17 are reporting alcohol abstinence. In 2004, 54.3% reported abstinence. This increased to 81.5% in 2016.²³² While in 2016, 9.1% of males and 6.8% of females aged 12–17 exceeded the adult guidelines for single occasion risk, this was a decrease from 2013 when 13.5% of males and 11.3% of females aged 12–17 exceeded these guidelines.²³³
261. AIHW also provided data on cigarette smoking. Between 2013 and 2016, the average age of smoking initiation increased from 15.9 years to 16.3 years. Females generally smoked their first full cigarette at a slightly younger age than males (16.0 years in 2016 compared with 16.6 years for males).²³⁴
262. The most recent data on illicit drugs for those under 18 years is provided by the 2014 Australian Secondary Students' Alcohol and Drug survey, which showed cannabis as the most commonly used substance amongst those aged 12–17 years.²³⁵ Of those who had used cannabis, 5.1% were aged 12–13 years, 14.8% were 14–15 years and 28.2% were 16–17 years.
263. The Australian Child and Adolescent Survey of Mental Health and Wellbeing showed that in 2013–2014, 45% of young people with major depressive disorder had used cannabis or other drugs.²³⁶
264. Data gaps relating to drug and substance abuse should be considered as part of the national children's data framework referred to in **Recommendation 10** above.

8 Education, leisure and cultural activities

8.1 Early childhood education and care

265. Every three years, Australia conducts an Early Development Census. The most recent data in 2015 shows that one in five Australian children start school developmentally vulnerable.²³⁷ Most affected groups are Aboriginal and Torres Strait Islander children (42.1%), children living in very remote areas (47%), and children with language backgrounds other than English (27.8%).²³⁸ This census was conducted again in 2018 and will be published in 2019.
266. The Australian *Early Years Learning Framework* states that 'early childhood educators will reinforce in their daily practice the principles laid out in the United Nations Convention on the Rights of the Child'.²³⁹

267. The Australian Government has been implementing the *National Quality Framework* (NQF) through the Australian Children’s Education and Care Quality Authority (ACECQA), which is a national system for the regulation and quality assessment of early education and care services, applying to most long day care, family day care, preschool and kindergarten, and outside school hours care services.²⁴⁰
268. As of June 2018, assessment of 94% of services showed that 22% were not meeting the National Quality Standards.²⁴¹
269. In 2018, the Australian Government announced that funding for the NQF would cease.²⁴²
270. The Commission is concerned that this will ‘put at risk the unified national commitment to quality in the early childhood education and care system’.²⁴³
271. Submissions also raised the issue that access to preschool should extend to three year olds.²⁴⁴ Research suggests that children benefit from access to quality early education in the two years before formal schooling, and that such education has a direct impact on a child’s life, safety and future outcomes.²⁴⁵ Only 15% of three year olds in Australia participate in pre-primary education compared with the OECD average of 68.6%.²⁴⁶

Recommendation 35: Australian Governments commit to the *National Quality Framework* and support the Australian Children’s Education and Care Quality Authority on an ongoing basis.

Recommendation 36: Australian Governments invest in Aboriginal and Torres Strait Islander specific programs in early childhood education and care.

8.2 Aboriginal and Torres Strait Islander children

272. Educational outcomes for Aboriginal and Torres Strait Islander children are poor when compared with their non-Indigenous peers. School attendance, literacy and numeracy targets are not on track to meet the *Closing the Gap* goals set by the Australian Government for 2018.²⁴⁷
273. Between 2014 and 2017, the overall school attendance rates for Aboriginal and Torres Strait Islander students across Australia did not improve.²⁴⁸
274. In 2017, retention rates for Aboriginal and Torres Strait Islander children were 62.4% compared with 86% for non-Indigenous children.²⁴⁹

275. In 2017, the percentage of Aboriginal and Torres Strait Islander students that met the national literacy and numeracy standards were much lower when compared to their non-Indigenous peers. A full data set is available from 2008.²⁵⁰

276. In 2017, an average 78.6% of Aboriginal and Torres Strait Islander students met the national literacy and numeracy standards, compared to an average 95.6% of non-Indigenous students.²⁵¹

8.3 LGBTI children

277. Children who are part of, or assumed to be a part of, lesbian, gay, bisexual, transgender and gender diverse or intersex populations can face particular difficulties at school, as well as more generally.

278. The Commission's report on *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights* identified the following concerns:

- harassment and abuse at school and concerns for safety
- lack of visibility in LGBTI representation in school policy, curriculum and leadership
- lack of comprehensive sexual health education.²⁵²

279. Particular concerns were also raised about religious schools and the appropriateness of school chaplaincy programs.²⁵³

8.4 Inclusive education

280. Through COAG, Australian state and territory governments have agreed to report annually, in a nationally consistent way on students with disability, receiving support to enable them to participate in education on the same basis as other students. A full set of data is available from 2015.²⁵⁴

281. In 2017, the Nationally Consistent Collection of Data on School Students with Disability identified 724,624 students receiving such support (18.8%).²⁵⁵

282. The most frequently identified category of disability was 'cognitive' (10.4%).²⁵⁶

283. While it is useful to have this information, it is also critical to know how many children did not qualify for support or could not access mainstream schools. Some students are discouraged from enrolling or not allowed to

attend fulltime. The report *Improving Education Outcomes for Children with Disability in Victoria* found that approximately 15% of interviewed parents had experienced some form of difficulty when enrolling their child in a mainstream Victorian Government School.²⁵⁷

284. A 2017 survey of 771 students with disability conducted by Children and Young People with Disability Australia identified that 19% of all respondents had experienced restraint at school, and 21% of respondents had experienced seclusion.²⁵⁸

285. The Commission is concerned about the use of restrictive practices in schools. Restrictive practices include the inconsistent, unregulated and unmonitored use of seclusion and restraint against students with disability in schools.²⁵⁹

Recommendation 37: The Australian Government in its *Nationally Consistent Collection of Data on School Students with Disability* includes children that do not qualify for support or do not have access to mainstream schools.

Recommendation 38: The Australian Government commissions an investigation into the use of restrictive practices in Australian schools and strategies to promote inclusive education for children with disability.

8.5 Suspension and expulsion

286. Data on suspensions and expulsions in government schools are inconsistent and unavailable in some states and territories.

287. NSW has the most complete dataset, including a categorisation of the types of suspensions and expulsions, as well as the corresponding reasons. The NSW data shows higher rates of suspension in particular groups, including those with a child protection or out-of-home care history.²⁶⁰ Almost 60% of children in out-of-home care were suspended in 2016, and these children lost, on average, 29 school days to suspensions.²⁶¹

288. Aboriginal and Torres Strait Islander students are also overrepresented in NSW. They accounted for 25% of total suspensions in 2016.²⁶² Suspension rates among these students does not appear to be reducing.²⁶³

289. The Commissioner for Children and Young People in Western Australia recently published the views of children and young people on what factors influence their engagement or disengagement from school. This involved

1,986 children and young people from Year 3 to Year 12 who participated in a survey or took part in group discussions.²⁶⁴

290. Data gaps relating to suspensions and expulsions should be considered as part of the national children's data framework referred to in **Recommendation 10** above.

8.6 Bullying

291. The National Safe Schools Framework (NSSF) provides Australian schools with guiding principles for creating safe, supportive and respectful school communities.

292. It is not compulsory to use the framework. In one survey of the effectiveness of anti-bullying strategies used in Australian Government schools, less than half of the schools that participated, reported using the NSSF to assist them in developing their school anti-bullying policy.²⁶⁵ The framework is currently under review.²⁶⁶

293. In a 2016 report on the prevalence and effectiveness of anti-bullying strategies employed in Australian Schools, 50% of students and 35% of parents stated that they were unaware of their school's bullying policy.²⁶⁷

8.7 Cultural rights of children belonging to Indigenous and minority groups

294. In the Commission's consultations with Aboriginal and Torres Strait Islander girls, as part of the Wiyi Yani U Thangani project, they consistently identified the need for stronger cultural connections, support for cultural identity and acknowledgement of Indigenous Australian history.

295. While the National Curriculum includes a framework for Aboriginal and Torres Strait Islander languages, there is no national approach and the programs implemented in schools vary greatly across the jurisdictions.

296. One in ten Aboriginal and Torres Strait Islander people reported speaking an Australian Indigenous language at home in the 2016 Census.²⁶⁸

297. Many submissions made to the NCC raised the urgent need to preserve and promote Aboriginal and Torres Strait Islander languages in the national curriculum.²⁶⁹ Evidence suggests that learning Indigenous languages increases self-esteem, and a sense of identity and pride in Aboriginal and Torres Strait Islander students.²⁷⁰

Recommendation 39: The Australian Government raises awareness of the status and importance of Indigenous languages.

9 Special protection measures

9.1 Children outside their country of origin seeking refugee protection, unaccompanied asylum-seeking children and migrant children

(a) Mandatory immigration detention

298. The number of children in immigration detention has decreased markedly since 2012, and community-based alternatives to detention are used for the majority of children. As at 30 June 2018, there were four children being held in closed immigration detention facilities, with a further 168 living under community-based detention arrangements.²⁷¹

299. In 2014, the Commission conducted a National Inquiry into Children in Immigration Detention. The inquiry found that Australia's detention law, policy and practice do not address the particular vulnerabilities of asylum seeker children, nor do they afford them special assistance and protection. The blanket policy of mandatory detention does not consider the individual circumstances of children or address the best interests of the child as a primary consideration.²⁷²

300. The National Inquiry also found that prolonged detention had a profoundly negative impact on the mental and emotional health and development of children. The deprivation of liberty and the exposure to high numbers of mentally unwell adults were found to cause emotional and developmental disorders amongst children.²⁷³

301. The *Migration Act 1958* (Cth) affirms that, as a general principle, children shall only be detained as a measure of last resort.²⁷⁴ However, under this Act, immigration detention remains mandatory for all unlawful non-citizens, including children.²⁷⁵ Australian courts do not have jurisdiction to remove a person from detention on the basis that their detention is arbitrary under international law, and there is no legislative time limit on detention.

302. The Joint General Comment from the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Committee on the Rights of the Child, states that detaining children as a measure of last resort is not applicable in immigration proceedings as it

would conflict with the principle of the best interests of the child and the right to development.²⁷⁶ It states that any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.²⁷⁷

Recommendation 40: The Australian Government amends the *Migration Act 1958 (Cth)* to forbid placing children in closed immigration detention other than for preliminary medical, security and identity assessments.

(b) Child safety in immigration detention

303. Data provided to the Inquiry by the Department of Immigration described numerous reported incidents of assault, sexual assault and self-harm involving children in detention.²⁷⁸ The National Royal Commission identified immigration detention as an institutional context with an elevated risk of child sexual abuse, and made a number of recommendations for improving child protection in this context.²⁷⁹

304. The Commission welcomes the introduction by the Australian Government of the Child Safeguarding Framework, designed to ensure that the Government meets its child protection and wellbeing obligations in an immigration context (including in relation to immigration detention).²⁸⁰ However, the Commission considers that there is a need to improve processes for monitoring the wellbeing of children seeking asylum who are in community detention or are living in the Australian community on visas of various kinds.

Recommendation 41: The Australian Government reviews current care, protection and support arrangements for children seeking asylum.

(c) Third country processing in Nauru

305. Under Australia's policy of third country processing, asylum seekers arriving by boat (including children) have been transferred to Nauru and Manus Island, Papua New Guinea, for processing their asylum claims. On 31 May 2018, there were 137 children in Nauru subject to third country processing arrangements, the majority of whom were aged 12 or under, and had been there for at least four years.²⁸¹ On 22 October 2018, 52 children remained on Nauru.²⁸²

306. Numerous reports and inquiries have documented serious human rights concerns relating to third country processing in Nauru, particularly with regard to the impact of these arrangements on the mental health of children.²⁸³

307. In its 2014 National Inquiry into Children in Immigration Detention, the Commission found that children on Nauru were suffering from extreme levels of physical, emotional, psychological and developmental distress, and that the conditions in which children were detained were in breach of the CRC.²⁸⁴ Its recommendations were that all children and their families on Nauru be released into the Australian community as soon as practicable, and that no child be sent offshore for processing where they will be detained unless it is clear that their human rights will be respected.²⁸⁵

308. The Commission notes several recent cases where the Federal Court of Australia found that health care services available on Nauru did not meet the needs of children with complex physical and mental health conditions.²⁸⁶ The Commission has expressed concern that delays in transferring unwell children to Australia for treatment may compromise their health and potentially place their lives at risk. The Commission considers that where a child's health and welfare is at risk, the child and their family should be transferred to Australia as a matter of urgency and without delay.²⁸⁷

Recommendation 42: The Australian Government resettles all children and their families held on Nauru as a matter of urgency.

(d) Guardianship of unaccompanied children

309. The Minister for Home Affairs is the legal guardian of unaccompanied children seeking asylum in Australia.²⁸⁸ The Minister can delegate this role to officers of the Australian Government or state or territory governments, including officers of the Department of Home Affairs.²⁸⁹

310. The Commission has repeatedly raised concerns that the Minister, as Guardian, is also responsible for administering the immigration detention system and making decisions about visas, removals and transfers under third country processing arrangements. Given these multiple roles, it is difficult for the Minister (or their delegate) to ensure that the best interests of the child are a primary consideration when making decisions concerning unaccompanied children.

Recommendation 43: The Australian Government introduces legislation to amend the *Immigration (Guardianship of Children) Act 1946 (Cth)* to create an independent guardian role so that the Minister for the Department of Home Affairs is no longer the legal guardian of unaccompanied children seeking asylum.

(e) Temporary protection arrangements

311. Legislative amendments in 2014²⁹⁰ mean that asylum seekers who arrive in Australia without valid visas and are subsequently granted refugee status are no longer eligible for permanent residency. Instead, they are granted a temporary visa for 3–5 years, during which their refugee claims are reassessed. Refugees on temporary visas do not have access to the same support services and entitlements as refugees on permanent visas, and are not eligible to sponsor relatives overseas to join them in Australia.
312. The Commission has found that granting temporary protection to children was more likely to compound mental health problems than facilitate their rehabilitation and integration into Australian society. It results in breaches of those children’s rights to mental health, maximum possible development and recovery from past torture and trauma, and of Australia’s obligations to address the best interests of the child as a primary consideration.²⁹¹

Recommendation 44: The Australian Government reinstates access to permanent Protection Visas for all asylum seekers in Australia who are determined to be in need of protection.

(f) Support for asylum seekers on Bridging Visas

313. Asylum seekers living in the Australian community on Bridging Visas who are facing financial hardship may be eligible to receive a living allowance under the Status Resolution Support Services (SRSS) program.
314. From mid-2018, people with work rights attached to their Bridging Visa will no longer be eligible to receive the SRSS living allowance, unless they face barriers to employment.²⁹² Being unable to find a job is not considered a ‘barrier’ to employment for the purposes of SRSS eligibility.²⁹³
315. The Commission is concerned that this change may result in a number of asylum seekers (including families with children) becoming ineligible for the living allowance, even if they have no alternative source of income and limited prospects of securing employment.

(g) Visa cancellations on character grounds

316. Under s 501 of the Migration Act, a non-citizen of Australia may have an application for a visa refused or have their visa cancelled if they do not pass the ‘character test’.²⁹⁴ In recent years, there has been an increase in the number of visa refusals and cancellations under these provisions.²⁹⁵

317. The extent to which s 501 has been used to refuse or cancel the visas of children is unclear. However, the Commission considers that there would be few circumstances in which a decision to refuse or cancel a child's visa on character grounds would be compliant with the obligation to consider the child's best interests.²⁹⁶

318. Visa refusals and cancellations on character grounds may result in children facing indefinite immigration detention, removal from Australia and/or indefinite or permanent separation from family members (including parents).

9.2 Sale, trafficking and abduction

(a) Trafficking

319. The Commission welcomes a number of positive initiatives taken by the Australian Government to combat human trafficking, including:

- the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012*
- the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*
- the funding of specialist NGOs to deliver education and awareness²⁹⁷
- the introduction of the Modern Slavery Bill 2018, in an effort to address modern slavery in global supply chains.²⁹⁸

320. The Australian Federal Police received 319 new referrals for investigation of human trafficking offences in 2015–2017,²⁹⁹ including 16 for child trafficking. Twenty people have been convicted of trafficking since 2010, only two of them for child trafficking.³⁰⁰ However, these figures relate to criminal investigations only, and are likely to underestimate the problem.³⁰¹

321. There are obstacles that may prevent a victim, including children, from making compensation claims and seeking reparations, including difficulties obtaining legal advice about claiming compensation, a lack of visa options to stay in Australia to pursue compensation claims, and limited legal avenues to pursue compensation claims. Further, the existing compensation mechanisms at the state and territory level are inconsistent with the Commonwealth crimes of trafficking and slavery, so that victims

may not be able to claim compensation for Commonwealth offences under state and territory schemes.³⁰²

322. The Commission has encouraged the Australian Government to strengthen the Modern Slavery Bill 2018 by:

- including financial penalties for non-compliance with the reporting criteria
- providing for a list of reporting entities to be made accessible to the public
- making compliance with the reporting requirement a pre-requisite for participation in Australian Government tender panels for the supply of goods and services to government agencies
- establishing an independent oversight mechanism and Anti-Slavery Commissioner with responsibility for awareness raising, the development of reporting guidelines, maintenance of the modern slavery statement register and oversight of compliance including pursuing penalties for non-compliance.³⁰³

Recommendation 45: The Australian Government develops a federal victims compensation scheme for victims of trafficking, slavery and slavery-like conditions, including children.

(b) Surrogacy arrangements

323. Commercial surrogacy is prohibited under state and territory laws in all jurisdictions, except the Northern Territory, where no surrogacy laws are in place.³⁰⁴ New South Wales, the Australian Capital Territory and Queensland extend their prohibition on commercial surrogacy to arrangements entered into by their residents outside Australia.³⁰⁵ With the exception of those extraterritorial prohibitions, there is currently no regulation by Australia in relation to international surrogacy arrangements (whether altruistic or commercial).³⁰⁶

324. The Commission notes that difficulties in accessing lawful altruistic surrogacy arrangements in Australia have contributed to a number of people travelling overseas for surrogacy.³⁰⁷ Almost all cases where Australians enter into a surrogacy arrangement overseas involve commercial arrangements.³⁰⁸ These unregulated arrangements raise concerns about child trafficking and wellbeing.

325. In 2016, the Commission identified four principles that should guide the development of any regime dealing with surrogacy:³⁰⁹

- the best interests of the child are protected (including the child's safety and wellbeing and the child's right to know about their origins)
- the surrogate mother is able to make a free and informed decision about whether to act as a surrogate
- sufficient regulatory protections are in place to protect the surrogate mother from exploitation
- there is legal clarity about the parent-child relationships that result from the arrangement.

326. A key issue is whether it is possible to make access to safe, well-regulated domestic surrogacy arrangements easier, so that there is less incentive for people to enter into potentially less well-regulated arrangements elsewhere. The Commission submitted that prohibition of surrogacy may be necessary if international surrogacy arrangements (whether altruistic or commercial) cannot be effectively regulated.³¹⁰

Recommendation 46: Australian Governments achieve consistency between surrogacy laws and include criteria directed at the suitability of intended parents. If international surrogacy arrangements are to be permitted, such checks should also form part of the regulation of those arrangements. The Australian Government should:

- **continue to engage with the Hague Conference on Private International Law in relation to the potential for an international convention dealing with the regulation of parentage and surrogacy**
- **engage with countries where Australians enter into surrogacy arrangements, for the purpose of determining whether bilateral agreement can be reached on the regulation of parentage and surrogacy**
- **undertake a systematic review of the structure and enforcement of regulatory regimes in countries where Australians enter into surrogacy arrangements.**

9.3 Children in conflict with the law

(a) Monitoring and oversight of juvenile detention

327. Australia's ratification of OPCAT provides an important opportunity to systematically and regularly monitor juvenile detention facilities across Australia for their compliance with human rights.
328. In 2016, the NCC conducted a national investigation into the treatment and oversight of children detained in correctional facilities in order to evaluate Australia's potential compliance with OPCAT requirements.³¹¹ She found that while there has been considerable recent work undertaken to improve oversight and monitoring mechanisms for children who are detained, all jurisdictions have issues that will need to be addressed for OPCAT compliance. These include: functional independence; expertise of personnel; necessary resources for functioning; access to places of detention and children in detention; power to make recommendations; access to information; and annual and other public reporting.
329. The NCC also spoke to children in juvenile justice centres and an adult correctional facility about their perspectives on their treatment and living conditions. They highlighted their lack of awareness of rights and a reluctance to make complaints about their treatment.³¹² The importance of robust oversight of juvenile justice centres for protecting the rights of detainees was made clear by the NT Royal Commission, which found that the Northern Territory lacked strong oversight and complaints processes for its juvenile justice centres.³¹³ It recommended that the Northern Territory Government provide the Northern Territory Commission for Children and Young People with functions that are compatible with the functions of a National Preventative Mechanism under OPCAT.³¹⁴
330. In 2017, the Commission conducted consultations with civil society to facilitate the effective implementation of OPCAT in Australia. In its interim report, it noted the need to pay particular attention to the needs of children in all forms of detention.³¹⁵

Recommendation 47: Australian Governments review existing systems of monitoring and inspection of juvenile justice facilities for compliance with OPCAT, and amend their legislative frameworks accordingly.

(b) Use of isolation and force in juvenile detention

331. Despite legislation in most states and territories that prohibit the use of isolation and limit the use of force to certain circumstances, allegations of

mistreatment of children in juvenile justice have arisen in several jurisdictions over recent years.³¹⁶

332. The NT Royal Commission final report details the failings of the Northern Territory juvenile justice system, including that child detainees were:

- frequently subjected to verbal abuse and racist remarks
- deliberately denied access to water, food and use of toilets
- restrained in ways that were potentially dangerous, and in situations that were not emergencies
- subjected to isolation excessively, punitively and in breach of the *Youth Justice Act* (NT).³¹⁷

333. The Northern Territory Government has indicated that it supports either in full or in principle all 227 of the recommendations of the NT Royal Commission and has prohibited the use of isolation for the purposes of discipline.

334. The use of isolation practices in juvenile justice detention differs by jurisdiction, and may not conform to the requirements of the CRC. For example, the Commission has raised concerns³¹⁸ that under NSW law a child detainee in a juvenile justice centre in NSW may be 'confined' as a form of punishment for misbehaviour, while 'segregation' specifically may not be used for punishment.³¹⁹ Similarly, the Commission has expressed concerns about how force, including restraint, is permitted in the NSW system. It noted that the NSW regulations allow a juvenile justice officer to use force, which includes instruments of restraint, in a broad range of circumstances, rather than the more limited circumstances specified by the Committee on the Rights of the Child.³²⁰

335. Legislative, regulatory and oversight frameworks need to be complemented by strengthening the culture of the youth detention environment to reflect a rehabilitative and trauma-informed approach. As pointed out by Jesuit Social Services in its submission, part of the challenge of supporting a rehabilitative approach in juvenile justice is that 'staff are often low-paid and operating in a culture of monitoring and compliance'.³²¹

Recommendation 48: Australian Governments explicitly prohibit the use of isolation practices and force as punishment in juvenile justice facilities. These practices should only be permitted when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted.

(c) Detention as a measure of last resort

336. While the numbers of children in juvenile detention have decreased in recent years, on an average day in 2016–2017, 913 (17%) of all the children in contact with the juvenile justice system were in detention.³²² More than half of those children were unsentenced, awaiting the outcome of their legal matter or sentencing. Just over half of all children in detention were Aboriginal or Torres Strait Islanders.³²³

(i) Diversion

337. The availability of appropriate diversionary programs is an essential part of reducing the numbers of children in juvenile justice and juvenile detention. Given the level of contact of Aboriginal and Torres Strait Islander peoples with criminal justice processes, and the integral role that juvenile offending plays in this, diversionary processes are particularly important for ensuring lasting reductions in the rates of Aboriginal and Torres Strait Islander overrepresentation in detention.³²⁴

338. While diversion is a key principle of the juvenile justice systems in all jurisdictions in Australia, it is underutilised for a variety of reasons, including limits to who can access the programs, insufficient staffing allocated to diversion, and lack of sufficient appropriately funded and culturally appropriate programs.³²⁵ The NT Royal Commission showed that in 2015–2016, only 35% of children apprehended in the Northern Territory were diverted. This is despite evidence that diversion has been successful in reducing recidivism.³²⁶ Nationwide, research also shows, Aboriginal children are less likely to be diverted than non-Indigenous children.³²⁷

(ii) Bail laws

339. Onerous bail laws play a role in the disproportionately high, and increasing, numbers of children on remand in juvenile detention. For example, the Law Council of Victoria submitted that, in Victoria, the number of children on remand has increased from 538 in 2007–2008 to 1,069 in 2016–2017. In 2017, the number of children detained on remand accounted for 80% of all detained children in the Parkville Juvenile Justice Centre.³²⁸ The Law Council of Victoria argues that recent amendments to the bail laws, which expand the categories of offences with no presumption in favour of bail and create a more onerous threshold for bail, have contributed to increasing numbers of children on remand.³²⁹

340. The NT Royal Commission reported that, in the Northern Territory on an average day in 2015–2016, 71% of children in detention were on

remand.³³⁰ Some of the reasons for such high numbers on remand in the Northern Territory include the introduction of the offence of breach of bail, the imposition of bail conditions unlikely to be adhered to, the lack of programs to support children on bail, and the lack of suitable accommodation for young offenders released on bail.³³¹

(iii) Mandatory minimum sentences

341. The Commission has repeatedly raised concerns about mandatory sentencing laws and their impact on human rights. Although most states and territories do not have mandatory minimum sentences for juveniles, in the Northern Territory and WA these still exist,³³² despite repeated calls for their repeal.

342. For children in particular, the imposition of mandatory minimum sentences of detention risks breaching article 37 and article 40 of the CRC. They also have an additional impact on Aboriginal and Torres Strait Islander children, who are more likely to have criminal histories and inadequate access to diversionary programs, and are contrary to the findings of the 1991 Royal Commission into Aboriginal Deaths in Custody.³³³

Recommendation 49: Australian Governments:

- **identify and remove barriers for young offenders accessing diversionary programs, in particular for Aboriginal and Torres Strait Islander children**
- **expand the availability and range of diversionary programs for young offenders, including community-controlled and culturally-safe programs**
- **review bail laws for their impact on the number of children on remand in detention**
- **abolish mandatory minimum sentencing laws that apply to children.**

(d) Age of criminal responsibility

343. The Commission notes that the minimum age of criminal responsibility in Australia is comparatively low compared with other countries.³³⁴

344. In her *Children's Rights Report 2016*, the NCC recommended that the age of criminal responsibility be raised from 10 years to at least 12 years in the

first instance, with preservation of *doli incapax*.³³⁵ The Commission recognises that the Committee considers that 12 years is the lowest internationally acceptable age for criminal responsibility. It encourages raising the age to 14 or 16 years.³³⁶

345. Reasons for raising the age of criminal responsibility include:

- many children involved in the criminal justice system come from disadvantaged backgrounds and have complex needs better addressed outside the criminal justice system
- research on brain development shows that 10 and 11 year olds have not developed the requisite level of maturity to form the necessary intent for full criminal responsibility
- studies have shown that the younger the child is when encountering the justice system, the more likely they are to reoffend
- it would bring Australia into line with its obligations under the CRC.³³⁷

346. A number of stakeholders in submissions to this report have also recommended raising the age of criminal responsibility.³³⁸ The NT Royal Commission recently recommended raising the age of criminal responsibility from 10 to 12 years. The NT Government has given in-principle support to this recommendation. Such a move would help decrease the rate of overrepresentation of Aboriginal and Torres Strait Islander children in detention.³³⁹

Recommendation 50: Australian Governments raise the age of criminal responsibility from 10 years to at least 12 years, with preservation of *doli incapax*.

(e) Aboriginal and Torres Strait Islander overrepresentation in juvenile justice

347. While the numbers of children under juvenile justice supervision in Australia on an average day fell by 16% between 2012–2013 and 2016–2017,³⁴⁰ the level of overrepresentation of Aboriginal and Torres Strait Islander children has risen over the same period. On an average day in 2012–2013, Aboriginal and Torres Strait Islander children aged 10–17 were 15 times more likely than non-Indigenous children to be under supervision, rising to 18 times as likely in 2016–2017. This level was higher in detention (24 times as likely) than community-based supervision (17 times as likely).³⁴¹ In the Northern Territory, at 20 June 2018 all of the 38 juveniles in detention were Aboriginal or Torres Strait Islanders.³⁴²

348. Reasons for overrepresentation of Aboriginal and Torres Strait Islander children in the justice system include legal and policy factors, such as restrictive bail laws and mandatory sentencing laws,³⁴³ and socio-economic factors, such as a long history of social disadvantage, cultural displacement, trauma and grief, alcohol and other drug misuse, cognitive disabilities and poor health and living conditions.³⁴⁴
349. A recent Australian Law Reform Commission (ALRC) inquiry into the incarceration rates of Aboriginal and Torres Strait Islander peoples highlighted the strong correlation between juvenile participation in crime and rates of reported neglect and abuse.³⁴⁵ It pointed out that children placed in out-of-home care are 16 times more likely than the equivalent general population to be under juvenile justice supervision in the same year.³⁴⁶ This risk increases when the child is Aboriginal or Torres Strait Islander.³⁴⁷ The NT Royal Commission also noted the crossover of children in out-of-home care into detention.³⁴⁸
350. The Change the Record campaign, led by Aboriginal and Torres Strait Islander organisations, human rights organisations (including the Commission) and community organisations calls for a whole of government strategy, the setting of justice targets, and a commitment to work in partnership with Aboriginal and Torres Strait Islander communities, their organisations and representatives.
351. The Commission has advocated for justice targets to reduce rates of incarceration for Aboriginal and Torres Strait Islander peoples as compared to non-Indigenous peoples.³⁴⁹ Proposed justice targets could be included in the *Close the Gap Strategy*.
352. The Senate Legal and Constitutional Affairs Committee, and successive Social Justice Commissioners, have also recommended justice reinvestment strategies, which involve diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime, in communities with high rates of offending.³⁵⁰ The ALRC has noted a number of trials and initiatives using justice reinvestment in the ACT, NSW, NT, Queensland and South Australia.³⁵¹

Recommendation 51: The Australian Government establishes a national, holistic and whole of government strategy to address Aboriginal and Torres Strait Islander imprisonment rates.

Recommendation 52: Australian Governments commit to introducing national justice targets as part of the *Closing the Gap Strategy* and trial justice reinvestment initiatives.

(f) Children with disability and youth justice

353. Children with disability are overrepresented in the juvenile justice system, particularly children with intellectual disabilities or mental health issues. In NSW, 83.3% of children in the juvenile justice system met the criteria for at least one psychological disorder—six times the prevalence rate children in the general population.³⁵² Disability advocacy organisations have argued that the high incarceration rate is due to the failures in mental health, child protection, housing, disability and community service systems to provide appropriate assessment and supports for children with disability.³⁵³

354. The Commission is concerned that in some jurisdictions declarations of unfitness to stand trial may lead to the indefinite detention of unconvicted people with disability, including children with disability.³⁵⁴ Under Western Australia's *Criminal Law (Mentally Impaired Accused) Act 1996* a person can be indefinitely detained without trial if found unfit to stand trial.³⁵⁵ A person can spend a longer time in detention than if they pleaded guilty and were sentenced to imprisonment for the offence. There are no special procedures for children.³⁵⁶

355. In a submission to the Senate Community Affairs Committee in 2016, the Commission raised concerns with laws that can impose detention on people found to be unfit to stand trial. It recommended that there be effective limits on the period of detention that can be imposed, and requirements for periodic review of the need for detention.³⁵⁷

356. Children with FASD are at particular risk of being held in indefinite detention and are overrepresented in the juvenile justice system.³⁵⁸ A recent Australian study of FASD in Australia's juvenile detention population reports that:

There is increasing concern regarding the forensic implications of FASD in Australia, as the neuropsychological sequelae can affect all aspects of the legal proceedings, including the person understanding the expectations and providing credible evidence in forensic interviews, fitness to plead, capacity to stand trial and the process of sentencing.³⁵⁹

Recommendation 53: Australian Governments ensure that laws that allow for children to be detained following a finding of unfitness to stand trial, or a verdict of not guilty by reason of mental impairment:

- **impose effective limits on the total period of detention**
- **require regular reviews of the need for detention**

- **require a plan to be put in place, including actions to be taken for the child's rehabilitation to facilitate their transition into progressively less restrictive environments, and eventually out of detention.**

(g) Children subject to national security laws

357. The Commission recognises the importance of ensuring that intelligence and law enforcement agencies have appropriate powers to protect Australia's national security and to protect the community from terrorism. However, the Commission is concerned that a number of national security measures limit children's rights disproportionately:

- The minimum age for the subject of a control order was recently lowered to 14.³⁶⁰
- In deciding what conditions should attach to a control order in relation to a child, an issuing court is required to consider the best interests of the child.³⁶¹ However, under the law, protecting the public from a terrorist act is a 'paramount consideration', which could outweigh the best interests of the child.³⁶²
- Children may arbitrarily lose their citizenship as a result of 2015 amendments to the *Australian Citizenship Act 2007*, which provide for the cessation of citizenship where a dual citizen engages in terrorism-related conduct.³⁶³ This applies to children aged 14 years or older.
- There is a lack of clarity and an inconsistent approach when it comes to the procedure in trials of children for terrorism offences.³⁶⁴
- Section 19AG(2) of the *Crimes Act 1914* (Cth), which compels the sentencing court to fix a single non-parole period of at least three-quarters of the sentence imposed, applies to both children and adults sentenced in relation to relevant offences. The INSLM is currently reviewing this provision.³⁶⁵
- Section 15AA of the *Crimes Act* (Cth) establishes a presumption against bail for relevant terrorism offences and puts the onus on a defendant to reverse that presumption by establishing that there are 'exceptional circumstances'.³⁶⁶ However, the Commission considers that the fact an accused person is under 18 should always be considered an exceptional circumstance.

Recommendation 54: The Australian Government ensures that whenever a control order is imposed in relation to a person under 18 years of age, any obligations, prohibitions and restrictions imposed constitute the least interference with the child's liberty, privacy or freedom of movement that is necessary in all the circumstances.

Recommendation 55: The Australian Government amends national security laws so that the best interests of the child is:

- a primary consideration at all stages in proceedings relating to the potential issue of an interim or confirmed control order
- not made subject to any higher order 'paramount consideration'.

Recommendation 56: The Australian Government amends the *Australian Citizenship Act 2007* (Cth) to stipulate that loss of citizenship by conduct should not be possible in the case of children (either their own conduct, or that of their parents).

Recommendation 57: The Australian Government amends the *Crimes Act 1914* (Cth) so that minimum non-parole periods do not apply to children.

Recommendation 58: The Australian Government amends the *Crimes Act 1914* (Cth) so that provisions relating to bail for persons accused of certain Commonwealth offences do not apply to children.

9.4 Children in armed conflicts

(a) Minimum age for taking part in hostilities

358. In Australia, children aged 17 may be recruited into the Australian Defence Force (ADF). However, under ADF policy instructions, defence force personnel must take all feasible measures to ensure that persons under the age of 18 are not deployed to areas of hostilities. This prohibition applies only to 'the maximum extent possible' and only if it does not adversely impact on the conduct of operations.³⁶⁷ Further, although a person under 18 who is part of a unit that is deployed must be removed from the area as soon as possible, this does not have to occur if it would prejudice the effectiveness of the mission.³⁶⁸ The Commission considers these exceptions increase the risk that military operations are put before the best interests and safety of the child.

Recommendation 59: The Australian Government reviews its defence force laws and policies to ensure that safety considerations for those under 18 are not secondary to military operational considerations.

(b) Physical and psychological recovery of children involved in armed conflict

359. The numbers of refugee, asylum seeking and migrant children recruited for, or used in, armed conflict are not widely available. However, in its submission to this report, MYAN notes that children recruited as child soldiers in other countries have been resettled in Australia.³⁶⁹ In the 2016–2017 financial year, Australia resettled nearly 4000 young people (aged 12–24) from Syria and Iraq, making up 65% of the overall humanitarian youth arrivals to Australia.³⁷⁰ Child recruitment continues to be an ongoing practice for children in many countries, including Syria and Iraq, with increases in verified cases of the recruitment and use of children in armed conflict, including children as young as four.³⁷¹

360. Refugees and humanitarian entrants are eligible for trauma counselling through the Program of Assistance for Survivors of Torture and Trauma. However, it is unclear whether there is a specific process for identifying on arrival whether asylum-seeking or refugee children have prior experiences of armed conflict, in order to assist their recovery.

361. The Australian Government indicated in its 2018 report to the Committee that it is concerned at the use of child soldiers in conflicts abroad, including Australian children recruited by the Islamic State group.³⁷² It states that it is ‘working closely with communities to carefully manage the return of children exposed to the terrible effects of violent extremism’, and that ‘each child will receive tailored support to suit their needs’.³⁷³ However, there is no detailed information on the process for identifying and rehabilitating these children.

Recommendation 60: The Australian Government provides appropriate and specific physical and psychological rehabilitation for all children arriving in, or returning to, Australia, who may have been involved in armed conflict.

Appendix 1: Recommendations

Recommendation 1: The Australian Government responds to Concluding Observations of the Committee on the Rights of the Child in a timely way.

Recommendation 2: The Australian Government withdraws its reservation to article 37(c) of the CRC.

Recommendation 3: The Australian Government fully incorporates into Australian law its human rights obligations to children, by bringing its domestic laws and practice into conformity with the principles and provisions of the CRC, including by ensuring that effective remedies are available.

Recommendation 4: The Australian Government introduces child rights and wellbeing impact assessments on legislative changes that affect children's rights.

Recommendation 5: The Australian Government develops a National Plan for Child Wellbeing, incorporating the National Framework for Child Safety, using the CRC as its foundation.

Recommendation 6: Australian Governments facilitate a nationally consistent, standardised model for checking the suitability of people in child-related work across all jurisdictions.

Recommendation 7: Australian Governments establish a Standing Ministerial Council to oversee the National Plan for Child Wellbeing and the National Framework for Child Safety.

Recommendation 8: The Australian Government ratifies the Optional Protocol to the CRC on a Communications Protocol.

Recommendation 9: The Commonwealth Ombudsman, as the co-ordinating National Preventative Mechanism in Australia, establishes a children's sub-group to ensure those with expertise and experience of working with children can provide specialist advice, information and recommendations.

Recommendation 10: Australian Governments, in conjunction with the Office of the National Data Commissioner, develop a national children's data framework to ensure appropriate data collection that supports policy making on children's rights issues. This should:

- address the data concerns expressed throughout this submission

- be consistent with the requirements set out by the Committee in its *Guidelines on the inclusion of statistical information and data in periodic reports*
- enable disaggregation by developmental phases and age groupings, and priority population groups such as Aboriginal and Torres Strait Islander children
- ensure national coverage of data collection, addressing gaps in current collection methods.

Recommendation 11: The Australian Government publicly reports data on the implementation of the SDGs and indicators including goals and indicators relating to children's rights.

Recommendation 12: The Australian Government adopts a human rights based approach for all its development aid policy and programs with the rights of children and their engagement included in program design, delivery and evaluation.

Recommendation 13: The Australian Government develops a National Action Plan on Business and Human Rights, in consultation with key stakeholders, and that it includes measures addressing children's rights particularly exploitation and trafficking in supply chains.

Recommendation 14: Australian Governments commit to targets to overcome disadvantage experienced by Aboriginal and Torres Strait Islander children and adopt special measures to address the disparities in the enjoyment of rights, with the effective engagement of their communities.

Recommendation 15: The Australian Government addresses inequality experienced by children living in regional and remote Australia through targeted measures.

Recommendation 16: The Australian Government amends the *Family Law Act 1975* (Cth) to require that children are provided with an opportunity to express their views in all matters that affect their rights or interests. A child should not be compelled to express a view, but should be provided with the opportunity to do so in a manner appropriate to their age and maturity.

Recommendation 17: Australian Governments adopt measures to ensure birth registration of Aboriginal and Torres Strait Islander children, in consultation with their communities.

Recommendation 18: The Australian Government inserts a clearer definition of 'parent' into the *Family Law Act 1975* (Cth) for the purpose of clarifying the parent/child relationship for children born from surrogacy arrangements.

Recommendation 19: The Australian Government ensures digital accessibility for children with disability, particularly in relation to online content, audio description and captioning to foster participation in wider society and education.

Recommendation 20: The Australian Government increases education activities targeted to children to promote an understanding of privacy and prevent image-based abuse and exposure to pornography.

Recommendation 21: The Australian Government increases prevention measures and responses to family violence that address the distinct impacts on children.

Recommendation 22: Australian Governments resource Aboriginal and Torres Strait Islander organisations to prevent and respond to family violence and its impacts on children.

Recommendation 23: Australian Governments ensure all children receive respectful relationships education targeted to different group needs.

Recommendation 24: Australian Governments provide child-specific therapeutic intervention, counselling and early intervention programs for child victims of family and domestic violence, to be delivered across a range of services.

Recommendation 25: The Australian Government considers including child marriage in definitions of family and domestic violence for the purposes of data collection, monitoring and access to service delivery, including prevention programs.

Recommendation 26: Australian Governments harmonise laws that criminalise female genital mutilation, and conduct awareness education for health professionals.

Recommendation 27: Australian Governments ban corporal punishment across all educational and care settings.

Recommendation 28: Australian Governments urgently prioritise:

- prevention and early intervention programs to reduce the number of children entering child protection systems

- barriers to sustained reunification of children with their families by strengthening services and supports leading up to and post-reunification.

Recommendation 29: The Australian Government introduces legal protections to prevent sterilisation of children with disability without consent.

Recommendation 30: The Australian Government releases the National Fetal Alcohol Spectrum Disorder Strategy 2018–2028.

Recommendation 31: The Australian Government expands and funds the delivery of child targeted mental health and other necessary support services.

Recommendation 32: The Australian Government develops a national poverty reduction plan that explicitly focuses on children.

Recommendation 33: Australian Governments improve exit planning and supports for young people leaving out-of-home care, including consideration of increasing the age of leaving out-of-home care.

Recommendation 34: The Australian Government funds Aboriginal controlled organisations and, where appropriate, their partners, to develop and implement a comprehensive sexual health education strategy.

Recommendation 35: Australian Governments commit to the *National Quality Framework* and support the Australian Children’s Education and Care Quality Authority on an ongoing basis.

Recommendation 36: Australian Governments invest in Aboriginal and Torres Strait Islander specific programs in early childhood education and care.

Recommendation 37: The Australian Government in its *Nationally Consistent Collection of Data on School Students with Disability* includes children that do not qualify for support or do not have access to mainstream schools.

Recommendation 38: The Australian Government commissions an investigation into the use of restrictive practices in Australian schools and strategies to promote inclusive education for children with disability.

Recommendation 39: The Australian Government raises awareness of the status and importance of Indigenous languages.

Recommendation 40: The Australian Government amends the *Migration Act 1958* (Cth) to forbid placing children in closed immigration detention other than for preliminary medical, security and identity assessments.

Recommendation 41: The Australian Government reviews current care, protection and support arrangements for children seeking asylum.

Recommendation 42: The Australian Government resettles all children and their families held on Nauru as a matter of urgency.

Recommendation 43: The Australian Government introduces legislation to amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to create an independent guardian role so that the Minister for the Department of Home Affairs is no longer the legal guardian of unaccompanied children seeking asylum.

Recommendation 44: The Australian Government reinstates access to permanent Protection Visas for all asylum seekers in Australia who are determined to be in need of protection.

Recommendation 45: The Australian Government develops a federal victims compensation scheme for victims of trafficking, slavery and slavery-like conditions, including children.

Recommendation 46: Australian Governments achieve consistency between surrogacy laws and include criteria directed at the suitability of intended parents. If international surrogacy arrangements are to be permitted, such checks should also form part of the regulation of those arrangements. The Australian Government should:

- continue to engage with the Hague Conference on Private International Law in relation to the potential for an international convention dealing with the regulation of parentage and surrogacy
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- require regular reviews of the need for detention
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Appendix 2: Endnotes

¹ Australian Bureau of Statistics, *Population by Age and Sex Tables 3101.0 – Australian Demographic Statistics, Mar 2018* (2018)

<<http://abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Mar%202018?OpenDocument#Data>>.

² Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians Table 1 June 2016* (2018)

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3238.0.55.001June%202016?OpenDocument>>.

³ Australian Bureau of Statistics, *Estimated Resident Population, Country of birth, age and sex* (2017) http://stat.data.abs.gov.au/Index.aspx?DatasetCode=ERP_COB.

⁴ Australian Government, *Australia's Combined Second and Third Reports under the Convention on the Rights of the Child* (2003) [467].

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