



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Sixtieth session

29 May – 15 June 2012

Item 4 of the provisional agenda

### Consideration of reports of States parties

## Implementation of the Convention on the Rights of the Child

### List of issues concerning additional and updated information related to the fourth periodic report of Australia (CRC/C/AUS/4)

#### Addendum

#### Written replies of Australia\*

#### Introduction

1. Australia is a constitutional democracy with a parliamentary system of government based on the rule of law. The Australian Constitution establishes a federal system in which legislative, executive and judicial powers are shared or distributed between federal institutions and six States. Australia also comprises three self-governing Territories. In each of these political units there is a parliament elected by the people, an executive responsible to that parliament which is formed by the party (or parties) commanding a majority, and an independent judiciary.

2. Australia's federal system presents some practical challenges in the implementation of Australia's obligations under the Convention. The Australian Government and State governments, and also Territory governments, all have responsibilities for promoting and protecting children's rights. The Council of Australian Governments (COAG) provides a forum for developing national policies and consistent approaches on issues of national significance across these jurisdictions, including formal arrangements such as National Partnership Agreements between all Australian governments.

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

3. The Australian Government has consulted extensively with the State and Territory governments in preparing this response. However, States and Territories have not provided responses for every question in the list of issues.

## **Part I**

### **Reply to the issues raised in part I, paragraph 1, of the list of issues (CRC/C/AUS/Q/4)**

4. The Australian Government is reviewing the reservation to article 37(c) in consultation with the State and Territory governments. Consultation will occur in 2012, but a timeline for a decision cannot be provided at this stage. Australia will include an update in its next report to the Committee.

### **Reply to the issues raised in part I, paragraph 2, of the list of issues**

5. The Australian Government's approach to human rights treaties is to ensure that domestic legislation, policies and practices comply with the Convention prior to its ratification. The Australian Government was satisfied that its legislation complied with and gave effect to the Convention before ratification. Consequently, the Australian Government has no plans to implement a child rights law framework that specifically implements the Convention. However, the Australian and State and Territory governments are working together to develop national approaches to children's rights across a range of areas.

### **Reply to the issues raised in part I, paragraph 3, of the list of issues**

6. In 2009, all Australian governments agreed to establish a National Framework for Protecting Australia's Children 2009–2020, which outlines a long-term, national approach to ensuring the safety and wellbeing of Australian children. The National Framework aims to: deliver a substantial and sustained reduction in levels of child abuse and neglect; ensure that children live in safe and supportive families and communities and have access to adequate support; address risk factors for child abuse and neglect; ensure children who have been abused receive the support and care they need; ensure Indigenous children are supported and safe in their families and communities; prevent child sexual abuse and exploitation; and ensure survivors receive adequate support.

7. To support the National Framework the Australian Government has committed an additional A\$63.1 million over four years and will provide national leadership to keep Australia's children safe and well.

8. The National Framework is designed to work with the National Plan to Reduce Violence Against Women and Their Children (2010) to bring about positive change for women and children experiencing violence. The National Framework is also designed to work with the National Early Years Strategy (2009) to improve outcomes for children.

9. The first, 2009–2012 Action Plan contains more than 70 actions that aim to reduce child abuse, sexual assault and neglect, and improve the body of evidence to assist in setting priorities. These actions build on existing work and are joint undertakings between the Australian Government, State and Territory governments and non-government organizations (NGOs). Actions are led by specific jurisdictions, portfolios or NGOs and include national priorities, major reforms that relate to broader social reform agendas, ongoing initiatives and community initiatives undertaken independent of government. The Australian Government is currently developing the 2012–2015 Action Plan in consultation with State and Territory governments and the community.

### Reply to the issues raised in part I, paragraph 4, of the list of issues

10. Since Australia's report to the Committee on the Rights of the Child in 2008, the National Agenda on Early Childhood has been superseded by the National Early Years Strategy (2009). The following, specific national partnership agreements under the Strategy have been endorsed by the Australian Government and State and Territory governments through COAG.

#### *Indigenous Early Childhood National Partnership Agreement (October 2008)*

11. This agreement is the next step to achieve the Closing the Gap targets for Indigenous children and includes significant Australian Government contributions:

- A\$292.6 million over five years to establish a minimum of 35 Children and Family Centres across Australia by June 2014. The locations of 38 Children and Family Centres have been agreed, exceeding the original target of 35. The Centres work closely with local primary schools to tackle issues that may impede a child's learning. Key partners include NGOs, parent, family and community groups, Indigenous communities and peak bodies
- A\$107 million over five years from 2009–10 to increase access to antenatal care, pre-pregnancy and teenage sexual and reproductive health
- A\$90 million which, together with a combined State and Territory contribution of A\$75 million, will provide increased access to, and use of, maternal and child health services by Indigenous families, and
- A\$67.2 million over five years for preschool and early childhood programmes funded under the *Indigenous Education (Targeted Assistance) Act 2000* (Cth).

#### *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (December 2009)*

12. This Agreement works towards the development of new national quality standards and rating system, enhanced regulatory arrangements, an early years learning framework and a school-age care framework. The Australian Government also has put in place strategies to support the professionalism of the early childhood education and care workforce. The Australian Government committed A\$273.8 million over four years from 2010–11, comprising:

- A\$130.4 million for greater outlays in the Child Care Rebate providing assistance to families to improve the affordability of and access to quality care
- A\$84 million to implement the new National Quality Framework, including payments to States and Territories, establishment of a new national authority, and a quality ratings system for services, and
- A\$59.4 million to improve the quality of Budget Based Funded services.

#### *National Partnership Agreement on Early Childhood Education (November 2008)*

13. This Agreement provides for A\$970 million in Australian Government funding to ensure that by 2013 every child, including Indigenous children in remote communities, has access to a quality early childhood education programme in the year before full-time school. A\$955 million of this funding will go directly to State and Territory governments.

#### Funding under the National Partnership Agreement on Early Childhood Education:

<i>\$A million</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>Total</i>
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<i>\$A million</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>Total</i>
New South Wales	10.2	21.3	26.9	82.3	137.9	278.6
Victoria	7.4	15.3	19.3	59.1	109.5	210.6
Queensland	11.2	23.4	29.5	90.3	97.6	252.0
Western Australia	3.7	7.7	9.7	29.7	47.6	98.4
South Australia	2.5	5.2	6.6	20.2	30.9	65.4
Tasmania	0.7	1.5	1.9	5.9	10.4	20.4
Australian Capital Territory	0.4	0.9	1.2	3.6	7.1	13.2
NT	0.7	1.5	1.9	5.9	5.9	15.9
<b>Total</b>	<b>37.0</b>	<b>77.0</b>	<b>97.0</b>	<b>297.0</b>	<b>447.0</b>	<b>955.0</b>

*Progress to date*

14. Since the implementation of this Agreement, States and Territories have reported improvements in the access to, and quality of, early childhood education. The main target for early childhood participation is 95 per cent enrolment by 2013. Based on State and Territory annual reports, the estimated national enrolment rate in 2010 was 81 per cent. Victoria, WA, Tasmania and the ACT reported enrolments of 95 per cent or above. NSW, SA and the NT did not meet 2010 targets but all showed improvement from 2009 rates. Queensland increased from the lowest base position of 29 per cent to 40 per cent in 2010. Independent analysis has found that it is likely the majority of States and Territories will achieve the objectives of the National Partnership Agreement on Early Childhood Education by 30 June 2013.

*Other initiatives*

15. Other national reform initiatives aimed at improving early childhood outcomes established since Australia's last report in 2008 include:

- A six-year National Partnership Agreement on Preventive Health that includes the Healthy Children's Initiative which through a range of interventions, aims to increase physical activity, and improve nutrition for children from birth to 16 years of age
- The Closing the Gap initiative (see reply to the issues raised in paragraph 12(c) of the list of issues)
- The Melbourne Declaration on Educational Goals for Young Australians, which sets the direction for Australian schooling for the next 10 years
- A National Family Support Program, which brings together eight Commonwealth programmes for children, families and parenting, and paid parental leave arrangements
- Development of an Early Intervention and Prevention Framework under the National Disability Agreement, and
- The National Partnership Agreement on Homelessness, with a focus on intervening early for children and their families at risk of homelessness.

**Reply to the issues raised in part I, paragraph 5, of the list of issues**

16. The Australian Government continues to explore the potential role for a possible National Children's Commissioner. In May 2011, the Senate Committee on Legal and Constitutional Affairs reported its findings on a private members' bill, the Commonwealth

Commissioner for Children and Young People Bill 2010, but recommended against passage of that Bill in the form in which it was introduced. In late 2011, the Government consulted a range of child protection and child welfare organizations; child rights NGOs and representative organizations about the potential role for a National Children's Commissioner. The Government is currently considering the results of these consultations.

**Reply to the issues raised in part I, paragraph 6, of the list of issues**

17. Within the Australian Government, individual agencies maintain their own financial management information systems, which may or may not incorporate the reporting of investment in children. The total Commonwealth Budget for the 2010–11 financial year was A\$356.1 billion. Australian Government budget statements provide a break-up of expenditure across functions and sub-functions, however, these functions do not separately identify the investment in children. While some agencies clearly define spending by 'children', a number of other agencies fund a range of services and other work for children that is not separately identified as 'investment in children'. For example, child health services in Australia are primarily funded through mainstream programmes, such as the Medicare Benefits Scheme and Pharmaceutical Benefits Scheme, and the Department of Health and Ageing uses definitions such as population health, mental health, primary care, and access to services that include services for children.

18. The Australian Government funding for children is largely administered through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) along with the Department of Education, Employment and Workplace Relations (DEEWR). These departments are responsible for delivering programmes, services and benefits for children, as well as for the monitoring and evaluation of their programmes, with each programme having separate evaluation activities.

19. State and Territory governments also invest significant resources in children, which is additional to funding from the Australian Government.

FaHCSIA: 2010–11 spending on children—A\$19.8 billion

20. Spending on children focuses on improved child development, safety and family functioning through support services for all Australians, payments for low and medium income families with children and child support policy. This amount includes the Family Tax Benefit, which is a payment directly to families to assist parents with the costs of raising children.

DEEWR: 2010–11 spending on children—A\$13.5 billion

21. Spending on early childhood and education and other children's matters fall within two categories:

- Improved access to quality services that support early childhood learning and care, and
- Improved learning and literacy, numeracy and educational attainment for young people, through funding for quality teaching and learning environments, and programmes to support young people's engagement.

22. The Australian Government committed an estimated A\$65.5 billion in funding for government and non-government schools between 2009 and 2012. This includes funding for building programmes to improve school facilities, providing information and communications technology in the classroom, trade training, payments to States and Territories for priority reform areas of literacy and numeracy, improving principal leadership development and teacher quality and improving educational outcomes in disadvantaged school communities.

23. FaHCSIA and DEEWR also fund other services that would include children but are not specifically included in the above categories.

Department of Health and Ageing

24. In addition to the overarching health services, smaller programmes exist to address specific health issues in children and young people, including immunizing children against preventable infectious disease, promoting breastfeeding, tackling childhood obesity, teaching children to grow and cook fresh food, and to provide a range of mental health services. Australia provides approximately A\$800 million in funding per year for these kinds of specific child health initiatives.

**Reply to the issues raised in part I, paragraph 7, of the list of issues**

25. The National Action Plan to build on Social Cohesion Harmony and Security was active from September 2005 until 2010. This programme has been completed and evaluated. The Australian Government's current policies promoting social cohesion and addressing discrimination and intolerance are detailed in the reply to the issues raised in paragraph 12(b) of the list of issues.

**Reply to the issues raised in part I, paragraph 8, of the list of issues**

26. State and Territory governments generally have statutory responsibility for child protection in Australia (Please see statistics in part III).

27. As stated in the reply to the issues raised in paragraph 3 of the list of issues, two key national strategies aim to protect and promote the best interests of Australia's children: the National Framework for Protecting Australia's Children 2009–2020 and the National Early Years Strategy. State and Territory governments have developed similar whole-of-government plans. For example, WA's *The State Strategic Plan for Family and Domestic Violence 2009–2013* outlines priority actions to achieve better integrated responses by agencies, for example, child protection staff co-located in police stations. In July 2011, Tasmania launched *Our Children and Young People Our Future* outlining the Tasmanian Government's strategic direction for children over the next 10 years and setting out 13 priority areas for action. Queensland's whole-of-government plan, *Towards Q2*, incorporates the aims of both National Frameworks in its targets, including building safe and caring communities and delivering world class education and training.

*Indigenous children*

28. The Australian Government has implemented a range of programmes since 2008 that specifically deal with protection of Indigenous children in remote communities in the NT and other locations.

29. The Family Support Package is a measure under the Northern Territory Emergency Response (NTER) and is jointly funded by the Australian and NT Governments. It aims to provide a coordinated response to Indigenous family violence in a number of NT communities to protect Indigenous children and families from abuse and violence. The three components of the Package are:

- Twenty-two fully operational Safe Places in 15 remote communities, as well as Darwin and Alice Springs
- A fully operational Mobile Child Protection Team, and
- Remote Aboriginal and Family Community Workers in at least 13 remote communities.

30. On release of the *Growing them strong together report, the Inquiry into the Child Protection System in the NT* in 2010, the Australian Government made additional funding commitments to the measures originally part of the Family Support Package. This additional funding enables the NT Government to establish a second Mobile Child Protection Team, as well as recruit an additional 22 Remote Aboriginal Community Workers.

31. In July 2010, the Australian Government announced the Indigenous Family Safety Program to address the high rates of family violence in Indigenous communities. The Program focuses on four priority areas: addressing alcohol abuse, more effective police presence, strengthening social norms against violence, and coordinating support services to aid the recovery of people who experience or witness violence, including children. In 2011–12 approximately A\$7 million was provided for 32 Indigenous Family Safety projects across Australia.

32. Family Violence Prevention Legal Services provide culturally sensitive assistance to Indigenous victims/survivors of family violence and sexual assault.

#### *Family Law*

33. With the exception of WA, whose *Family Court Act 1997* (WA) operates on a similar basis to the Commonwealth legislation, the Australian Government is responsible for family law across Australia. The Australian Government is also committed to protecting children from violence and abuse while in the family law system. Under the *Family Law Act 1975* (Cth), when making a parenting order, the courts regard the best interests of the child as the paramount consideration. On 24 November 2011, the Australian Parliament passed the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth). The Act prioritizes the safety of children in the family law system while continuing to promote a child's right to a meaningful relationship with both parents where this is safe. The Act amends the Family Law Act to:

- Remove disincentives to the disclosure of family violence
- Improve the understanding of what family violence and abuse is by clearly setting out what behaviour is unacceptable, including physical and emotional abuse and the exposure of children to family violence, and
- Streamline the provisions relating to the reporting of family violence and child abuse to make reporting simpler and remove duplication.

#### *States and Territories—child protection*

##### **New South Wales**

34. Goal 13 of the State-wide plan *NSW 2021: A plan to make NSW number 1 again* relates to child wellbeing. The goal includes increasing the proportion of children who are developmentally on track, reducing the rate of children reported at risk of significant harm and reducing the number of children in statutory out-of-home care.

35. The Aboriginal Care Circle pilot is part of the NSW Government's commitment to improving the wellbeing of Aboriginal families through better meeting their needs in the NSW Children's Court. The Care Circle model uses an Alternative Dispute Resolution process to engage Aboriginal people in care proceedings before the Children's Court. It aims to encourage more culturally appropriate decision-making and care plans for Aboriginal children and young people.

##### **Victoria**

36. The Victorian Government is currently conducting a major independent inquiry into Victoria's child protection system. The Inquiry has comprehensive terms of reference to consider the causes of child abuse, the effectiveness of existing systems and processes, and to recommend change to protect Victoria's children and young people. Victorian policies include *Protecting the safety and wellbeing of children and young people (updated in 2010)* and the *Out-of-Home Care Education Commitment: A Partnering Agreement*, which supports the educational issues and social needs of children and young people in out-of-home care during the years they attend school.

37. Victoria supports culturally appropriate child protection responses to Aboriginal children and their families. These are referred to in the *Children Youth and Families Act 2005* (Vic) and include the Aboriginal Child Placement Principle, which requires that if an Aboriginal child must be placed away from their home priority be given to a placement within the child's Aboriginal extended family or relatives or other extended family or relatives where this is not possible. If placement with extended family or relatives is not possible, the child may be placed with another Aboriginal family, a non-Aboriginal family living close to the child's family or in another suitable placement.

38. The State-wide Aboriginal Child Specialist Advice and Support Service provides advice to Child Protection to ensure a culturally appropriate service response to Aboriginal children at risk of harm. Consultation with the Service continues through all stages of the protective intervention.

#### **Western Australia**

39. Mandatory reporting of child abuse was introduced in 2009. The Mandatory Reporting Service continues to deliver training to key stakeholders to strengthen understanding of the legislation for the mandatory reporting of child sexual abuse. The WA Government has developed a range of supporting resources, including an online child protection professional learning programme for WA Education Department staff and a State-wide protective behaviours programme aligned to the curriculum that focuses on Aboriginal children and children with disability.

40. Pre-hearing conferences, based on collaboration between the WA Children's Court, Legal Aid and the Department of Child Protection, are being implemented in Children's Court proceedings. The goal is to facilitate early resolution of protection applications through a less adversarial dispute resolution process.

41. WA expanded residential care services and placement options in 2010–2011 to assist children and young people with complex needs requiring specialized out-of-home placements for longer periods. A secure care facility was also established in 2011 to provide planned, short-term intensive therapeutic intervention for children and young people at extreme risk. The aim is to develop a culture of healing and begin to address the child's trauma.

#### **South Australia**

42. In 2008, the Commission of Inquiry reported on children in State Care and children on the *Anangu Pitjantjatjara Yankunytjatjara* (APY) lands. The SA Government implemented key recommendations of this Inquiry in the *Children's Protection (Implementation of Report Recommendations) Amendment Act 2009* (SA).

43. SA supports child victims of crime to access health and welfare services and through the court process. SA also provides intervention orders to protect children from abuse and from witnessing abuse in their homes.

44. Schools help to protect children through the *Child Protection – Schools, Early Childhood Education and Care Services* policy (revised in 2011). A range of other policies



aim to protect children from abuse and neglect include: Responding to Abuse and Neglect – training for volunteers (implemented in 2010); *Responding to problem sexual behaviour in children and young people*, which provides guidelines for staff in education and care settings (updated in 2010); and anti-bullying policies in schools.

### **Tasmania**

45. In August 2009, amendments were made to the Tasmanian *Children, Young Persons and Their Families Act 1997* (Tas). These amendments provide a point of referral for concerns regarding the safety and wellbeing of children and allow for information sharing between Child Protection Services and Gateway Services. Gateway Services provide family support services to protect and promote the healthy development of vulnerable children and young people.

46. A Child Protection Worker is based in each of the Gateway Services and is able to act on notifications of neglect and abuse. Therapeutic residential care services and child trauma counselling services have also been established in Tasmania.

### **Northern Territory**

47. The NT Department of Children and Families, *Bright Futures Strategic Framework 2011–2015* guides the development of a new child protection and family support system in the NT. Since 2008, the NT Government has created a separate Department of Children and Families with the primary function of promoting protection and well-being services to children in the NT. In partnership with the Australian Government, the NT launched an enhanced preventative child health programme for remote areas, the *Healthy Under 5 Kids* programme. This programme provides a standardized schedule for assessing child growth and development within the social and environmental context of the NT, including addressing family and domestic violence.

48. The NT Government developed a programme of Remote Services delivered in a range of Aboriginal communities across the NT. Significant Australian Government funding under the NTER has supported this development by contributing to funding a range of services:

- Mobile Outreach Service Plus provides an accessible therapeutic counselling service to children in remote communities who have experienced trauma as a result of child abuse or neglect or display problem sexual behaviours. It also provides information, training, professional development and capacity building in communities.
- Mobile Child Protection Team—Darwin-based, NT wide service to provide additional Child Protection support to regional offices. The team investigates reports of child abuse and neglect, and conducts assessments of children reported at risk of harm.
- Remote Aboriginal Family and Community Workers provide child protection and family support services within their own communities. They work with other government and non-government agencies to provide a range of services including cultural liaison and linkage, specialist advice, early intervention and family support.
- Remote Family Violence Program—Women’s and Men’s Safe Places. Development and operation of 20 Safe Places in 15 remote communities for people escaping family violence and also to offer wellbeing programmes and activities.
- Community Child Safety and Wellbeing Teams in 20 communities to promote a coordinated response to child safety and wellbeing issues and referrals and bring together community members and care and protection workers to improve coordination, collaboration and targeting activities.

### **Reply to the issues raised in part I, paragraph 9, of the list of issues**

49. The National Council to Reduce Violence against Women and their Children provided their report to the Australian Government in April 2009. Subsequently, COAG

agreed to develop a National Plan to Reduce Violence against Women and their Children. In February 2011, the National Plan for 2010–2022 (incorporating the first three-year Action Plan) was released. The National Plan includes national, State and Territory aims and initiatives, and aims to achieve six outcomes:

- Communities are safe and free from violence
- Relationships are respectful
- Indigenous communities are strengthened
- Services meet the needs of women and their children experiencing violence
- Justice responses are effective, and
- Perpetrators stop their violence and are held to account.

50. Since 2009, the Australian Government has committed A\$86 million to initiatives which support the aims and directions of the National Plan, and invested in a broad range of other areas that will have a significant impact on achieving the aims of the National Plan, including housing and homelessness, family support and relationship services, legal services and support, and closing the gap on Indigenous disadvantage.

51. The National Plan has a strong focus on primary prevention and aims to challenge attitudes and behaviours that tolerate violence, and to reduce economic, social and political inequalities between women and men. Activities include advertising and social media initiatives, funding for community action grants, respectful relationships education and supporting the White Ribbon Day Foundation's Workplace project to involve workplaces in preventing violence against women and children. State and Territory actions differ between jurisdictions, reflecting local circumstances and priorities.

#### *Family Relationship Centres*

52. Family Relationship Centres are a source of information and confidential assistance for families at all stages in their lives. Centres have a focus on providing family dispute resolution (mediation) to enable separating families to achieve workable parenting arrangements outside the Court system. Centres also provide support for children and parents in the family law system. Centres are not primarily focused on child protection or family violence matters, although such matters are dealt with throughout the family law system (see replies to the issues raised in paragraphs 3 and 8 of the list of issues). Centres screen and assess clients for a range of issues that are relevant to their pathway through the family law system, including family violence and child abuse.

#### **Reply to the issues raised in part I, paragraph 10, of the list of issues**

53. The Australian Government has not taken steps to prohibit all forms of corporal punishment, but does promote positive parenting.

#### *Positive Parenting*

54. The Australian Government actively supports and promotes positive parenting through the National Framework for Protecting Australia's Children 2009–2020 and the Family Support Program. The Family Support Program aims to complement work done by States and Territories by providing integrated services for families with skilled family support and early childhood workers. The Program focuses on vulnerable and disadvantaged families or disadvantaged communities to improve child wellbeing and development, safety and family functioning, and to help build stronger, more resilient families and communities.

55. Communities for Children Facilitating Partner services are place-based initiatives under the Family Support Program. They provide 'wrap around' services for children and families to provide vulnerable children and families with early intervention and assistance to improve health, wellbeing and development, and to improve parenting skills and engagement with services and providers. Evidence shows this initiative has been effective in reducing harsh parenting practices across the communities where these initiatives are located. The Raising Children Network has developed a website and DVD to promote positive parenting and provide evidence-based parenting information. States and Territories actively promote positive parenting through early childhood health care and education.

56. New South Wales has funded extensive practitioner training in the implementation of the Triple P – Positive Parenting Program. The multi-level course is offered widely throughout the State. Triple P aims to prevent behavioural, emotional and developmental problems in children by enhancing the knowledge, skills and confidence of parents.

57. Victoria promotes and supports positive parenting by providing recurrent funding for parenting information, education and support at the local and State-wide level, in person and via telephone (Maternal and Child Health line and Parent line).

58. Western Australia runs a range of targeted family support services that are aimed at early intervention to prevent the need for a child protection response and promoting positive parenting. These include support for 'hard to reach' families where children and young people are demonstrating criminal or anti-social behaviour; intensive services for 'at risk' young mothers and their babies, which focus on securing attachment and parenting abilities; work with families with complex problems who are engaged with two or more agencies (with considerable success with Aboriginal families); and support for families with children at risk of entering the statutory child protection system.

59. Further initiatives that support positive parenting are outlined in the reply to the issues raised in paragraph 8 of the list of issues.

#### *Legal framework*

60. In all States and Territories, parents (or a person acting for the parent) may use the defence of 'reasonable chastisement' in criminal proceedings brought against that person for applying physical force to a child. All States and Territories have sanctions for unreasonable applications of force under criminal law, as well as child protection laws that seek to prevent abuse and neglect. Examples follow:

#### **New South Wales**

61. Section 61AA of the *Crimes Act 1900* (NSW) was introduced in December 2001 to codify the common law defence of 'lawful correction' available to parents, or those acting on their behalf, when disciplining their children through physical force. The section provides that the application of physical force must be reasonable with regard given to the age, health, maturity and other characteristics of the child. Force is not considered reasonable if applied to any part of the head or neck or if the harm lasts for more than a short period. In 2010, the NSW Government reviewed section 61AA and recommended it be retained. Submissions from key stakeholders, case law and comparative legislation were considered.

#### **Victoria**

62. There is no legislation concerning corporal punishment by parents in Victoria. However, there is a common law defence that allows parents to administer corporal punishment to children in their charge provided the punishment is neither unreasonable nor excessive.

### **Queensland**

63. In 2008, the Queensland Government undertook a review, which studied 200 cases of violence against children, and found the current definitions applied in Queensland's criminal code did not serve as a loophole for violent parents to avoid prosecution.

### **Western Australia**

64. The revised Department of Education Child Protection policy requires that if corporal punishment manifests as physical abuse, it is reported to the Department for Child Protection and WA Police.

### **Northern Territory**

65. The *Criminal Code Act* (NT) provides that the use of force by a parent or guardian of a child (or a person in their place) to discipline, manage or control the child is justified (within the meaning of the Act) provided it is not unnecessary and not intended or likely to cause death or serious harm.

#### *Corporal punishment in schools*

66. The Australian Government recognizes that student resilience and wellbeing are essential for academic and social development and that all students should be able to learn and develop in safe, supportive and respectful environments. The Australian Government does not endorse corporal punishment as an approach to developing values and respect in students.

67. The Australian Government collaborated with State and Territory governments to review and revise the National Safe Schools Framework, endorsed in 2010 by all Australian education ministers. The National Safe Schools Framework launched on 18 March 2011, promotes children's safety from violence and bullying in schools.

68. NSW, Tasmania, Victoria and the ACT expressly ban corporal punishment in all government and non-government schools. In WA, Queensland, SA and the NT, corporal punishment is only banned in government schools. The Criminal Codes in WA, Queensland and NT permit teachers to use reasonable force for discipline or correction.

69. Victoria is investing A\$2 million for the professional development of teachers to understand and manage classroom behaviour, to better identify children and young people with mental health issues and support their referral to appropriate community services. The Victorian Government has also committed A\$14 million over four years to stamp out bullying in schools and improve the resources, training and support available to schools.

### **South Australia**

70. Government guidelines for staff working or volunteering in education and care settings, updated in September 2011, clearly indicates that corporal punishment, including physical discipline and smacking, is a violation of the guidelines.

### **Northern Territory**

71. The Criminal Code Act provides that the parent's power to justifiably apply force to a child is presumed to have been delegated to a teacher of the child unless it has been expressly withheld. Despite this provision, the use of corporal punishment has been prohibited in NT Government schools since 23 August 2005.

**Reply to the issues raised in part I, paragraph 11 of the list of issues**

*National Disability Strategy*

72. The Australian Government and State and Territory and local governments have developed a National Disability Strategy under the auspices of COAG. The Strategy is the result of a large, nation-wide public consultation process, involving more than 2500 people and was formally endorsed on 13 February 2011. It is the first time Australian Government and State and Territory governments have agreed to such a wide ranging set of directions for disability. The Strategy outlines a 10 year national policy framework to guide government activity across six key outcome areas and drive future reforms in mainstream and specialist disability service systems to improve outcomes for people with disability, their families and carers. While the Strategy focuses on all people with disability, some areas are particularly relevant to children, including early intervention, education, family support, and access to parks, social and cultural life through building inclusive and accessible communities.

73. The Australian Government has also commenced work with State and Territory governments to build the foundations for a National Disability Insurance Scheme.

*Better Start for Children with Disability*

74. In July 2011, the Australian Government introduced the *Better Start for Children with Disability Initiative*, which includes up to A\$12,000 per child specifically for early intervention services and treatments for children aged under six years with cerebral palsy, Down Syndrome, Fragile X Syndrome or a moderate or greater vision or hearing impairment. The increased access to targeted early intervention in the pre-school years is intended to complement existing Commonwealth and State and Territory government services and to assist these children to have the best possible preparation for the transition to school. The Australian Government is currently considering expanding this initiative.

*Helping Children with Autism*

75. The Australian Government committed A\$220 million for the four years up to June 2012 to deliver the *Helping Children with Autism* package to help address the need for support and services for children with Autism Spectrum Disorders. All initiatives include support for parents, families, carers and children from Indigenous backgrounds, culturally and linguistically diverse backgrounds and those living in rural and remote areas. The package provides early intervention services, autism advisors, PlayConnect Playgroups, Early Days family workshops, and an Autism Spectrum Disorders website. The Helping Children with Autism funding package was deemed to be an ongoing and uncapped programme in the 2011 budget.

*States and Territories*

76. State and Territory governments are the main providers of specialist disability services, including for children with disability.

**New South Wales**

77. A NSW National Disability Strategy Implementation Plan is being developed that will articulate priorities to improve access for children and their families to mainstream services and facilities and the capacity of the specialist disability sector to respond to their needs, preferences and choices in a manner that is empowering and builds resilience.

78. In 2009, Juvenile Justice NSW implemented a programme designed to assess specific disability needs of young people in custody. Forensic psychologists undertake a

psychological assessment of a young person in custody, which can include psychometric testing, mental health state exams, family assessments and social assessments, aimed at maximizing the possibility of rehabilitation. Forensic psychologists devise an individual case plan, including treatment and programme options that would best meet the needs of the young person. Justice Health works closely with Juvenile Justice NSW to identify and alert the agency that a young person in custody is suspected of having a disability. Specialist adolescent psychiatrists are also able to recommend treatment regimes that can be replicated in the community when the young person is discharged from custody.

### **Victoria**

79. The Victorian Government provides ongoing funding for Early Childhood Intervention Services that support:

- Children with disability and developmental delays to be active and successful participants in their home and community settings
- Families to promote their child's growth, learning and development, and
- Improved access and participation in the community, including early childhood education and care settings.

80. The Victorian Government is currently reforming Victoria's Early Childhood Intervention Services system to significantly enhance its efficiency, effectiveness and sustainability, including development of a Quality Framework to identify desired outcomes for children, their families and communities.

81. The *Disability Act 2006* (Vic) regulates the provision of services to people with disability. The Act includes specific principles for children, including regard for the needs of children with disability, preserving and promoting relationships between the child and their family, and strengthening and building capacity within families to support children with disability.

### **Western Australia**

82. In November 2010, the Disability Services Commission (who are responsible for providing services to over 9500 children) launched a new five year Strategic Plan for 2011–2015. One of the key priority areas is 'Welcoming Communities', which places emphasis on people with disability having opportunities to shape all aspects of community life.

### **South Australia**

83. In October 2011, SA released *Strong Voices: A Blueprint to Enhance the Life and Claim the Rights of People with Disability in South Australia*. A reform recommendation is the safety and protection of people with disability must be recognized as a priority across the justice system. The SA Government is working towards developing a comprehensive Disability Justice Plan, which should cover increased support for vulnerable witnesses, particularly children. A bill is presently before the SA Parliament seeking to improve access to justice for vulnerable victims and SA is also seeking to improve complaints handling procedures.

### **Tasmania**

84. The *Disability Services Act 2011* (Tas) relates to the funding of the provision of specialist disability services for all Tasmanians who have a disability, including children.

### **Northern Territory**

85. The NT Government Aged and Disability Program funds and provides specialist disability services to children based on their assessed level of need through the Children's Development Team. The Children's Development Team comprises speech pathologists,

occupational therapists and physiotherapists, and provides therapy services to children with disability and those with a developmental delay. Children with disability are also eligible for a disability case manager or coordinator where external disability support services are sourced through the National Disability Strategy funding.

**Reply to the issues raised in part I, paragraph 11 (a) of the list of issues**

86. In Australia's federal system, State and Territory governments are the main providers of school education, including for children with disability and special needs. The Australian Government contributes funding towards school education, including specific programmes for children with disability. The Australian Government is responsible for the Disability Education Standards and is presently developing an Australia-wide curriculum, including for children with disability and special needs.

*Disability Education Standards review*

87. As stated in Australia's 2008 report to the Committee, Disability Standards for Education were formulated under the *Disability Discrimination Act 1992* (Cth) and came into effect in August 2005. The Standards clarify the obligations of education and training providers to ensure that students with disability are able to access and participate in education and training on the same basis as those without disability. Part 11 of the Standards provides for a review every five years to determine whether the Standards continue to be effective and remain the most efficient mechanism for achieving the objects of the Disability Discrimination Act. The consultation process for the current Review is complete. National roundtable discussions were conducted in February and March 2011 with key stakeholders and peak organizations in each capital city. Two hundred submissions were received from a wide range of stakeholders, including education providers and users; advocacy and community organizations; parents, carers and student groups; State and Territory governments; and unions. Submissions have been analysed for a report to the Australian Government, which will be publicly released in early 2012.

*Australian Curriculum*

88. In 2009, all Australian governments established the Australian Curriculum, Assessment and Reporting Authority (ACARA) to develop a rigorous and world-class Australian Curriculum from Foundation to Year 12. The Australian Curriculum provides flexibility for schools and teachers to develop programmes that build on, and account for, the different abilities of students, their prior learning experiences, cultural and linguistic backgrounds, and the different rates at which they learn. The objectives of the Australian Curriculum are the same for all students. ACARA acknowledges its obligation as an education and training service provider to articulate the rights of students with disability to access, participate and achieve in the curriculum on the same basis as students without disability. ACARA has also established the Students with Disability Advisory Group to provide high level advice relating to curriculum, assessment and reporting for students with disability.

89. The Australian Curriculum is currently being developed in three phases, with an estimated end date of 2013. The Australian Government is working collaboratively with the Australian Human Rights Commission and ACARA to embed human rights issues and subjects into the draft curriculum. A checklist is also being introduced to ensure that questions of inclusivity are considered in the curriculum development process. An Equity and Diversity Advisory Group provides advice about inclusivity in the Australian Curriculum.



*More Support for Students with Disabilities*

90. Under the *More Support for Students with Disabilities* initiative, the Australian Government is providing A\$200 million to education authorities to build the capacity of schools and teachers to better meet the individual needs of students with disabilities. The funding may be used for a range of activities, including adapting curriculum to students' needs, providing assistive technology to support students' learning and professional development of teachers. The most effective strategies and activities funded through the initiative will be collected and made publicly available to all schools, teachers, parents and carers, to show-case and share good practice. States and Territories began implementing this initiative from the beginning of the 2012 school year.

*States and Territories***New South Wales**

91. Students with special needs, including specific physical, psychological and intellectual needs, are supported to access and participate in education in a range of ways through an extensive range of mainstream and specialist services. How this support is provided is informed by the individual learning and support needs of the student. This support may include:

- Changes or adjustments that teachers make in the classroom to their teaching and learning programmes, and the environment, on a daily basis
- Access to personnel with specialist expertise who support students and their classroom teachers
- Access to specialist support classes
- Additional assistance in the classroom from support staff
- The provision of specialist materials and equipment and modifications to school premises, and
- Access to specialist training for teachers and support staff.

**Victoria**

92. In the 2011–12 State budget the Victorian Government provided an additional A\$10 million over four years to support kindergarten inclusion for children with a severe disability, including expansion of the eligibility criteria to include children with complex medical needs without a disability.

93. Victoria provides a range of support for students with disability, including the *Program for Students with Disabilities* where funding is provided to support students with moderate to severe disabilities in mainstream and specialist schools. The *Language Support Program* provides schools with additional funding for a teaching and learning resource to support students with language disabilities and disorders. Autism Inclusion Support Programs support the inclusion of students with Autism Spectrum Disorders in mainstream schools by providing the necessary teaching expertise, knowledge and facilities for children to participate as fully as possible in the school's curriculum. The *Satellite Units for Intellectual Disability* is a specialist school programme located within a mainstream primary or secondary school. The units have specialist staff and a learning area with built-in flexible spaces and related ancillary rooms, such as toilets and showers that have been developed to suit the needs and requirements of students with disability.

**Queensland**

94. Education Queensland provides an array of special programmes and services to support students with disability with significant educational support needs within an inclusive education framework. Special education programmes and services for students with disability are available across early childhood development programmes, all primary and secondary schools, and special schools. The programmes and services can be provided onsite or as outreach support by staff from special education programmes to another school site.

**Western Australia**

95. Children with recognized disabilities receive extra resourcing from the Department of Education through an online checklist. Specialized placements and prescriptions are available to children when consent is provided by the parents.

**Tasmania**

96. The majority of students with severe disabilities are enrolled in their neighbourhood, mainstream school. Students on the *Register of Students with Severe Disability* receive the highest level of funding support. An Individual Education Plan describes the goals, teaching strategies and accommodations for students who receive funding support. A further three per cent of students have been identified by schools as having additional special needs. Schools utilize targeted additional needs funding from within the School Resource Package for specific programme support for these students. The majority of all special education funding support is used to employ support teachers and teacher aides.

97. The Department of Education has developed a *Student Learning Policy*, which provides a process for schools to tailor learning programmes to meet the individual learning needs of all students, especially those with disability. It provides schools with key indicators against which to measure school improvement data in this area. This will include future work in the area of levels of adjustment descriptions that are envisaged through the trial work on the model for a Nationally Consistent Definition of Disability.

**Australian Capital Territory**

98. The Education and Training Directorate's *Strategic Plan 2010–2013: Everyone Matters* articulates the vision for public schooling that young people in the ACT learn, thrive and are equipped with the skills to lead fulfilling, productive and responsible lives. Central to this vision are safe and inclusive schools. *Excellence in Disability Education in ACT Public Schools Strategic Plan 2010–13* describes how this will be realized for students with disability.

**Northern Territory**

99. The NT Department of Education and Training *Students with Disabilities* policy states that all students in the NT have the right to access a broad and balanced education that will prepare them for participation in society. They have the right to an education that meets their individual, cultural, social, emotional, physical and intellectual needs as lifelong learners. The NT Government provides a range of educational options to provide for the learning and curriculum needs of students with disability, including inclusion in the classrooms of mainstream schools, special centres (specialist facilities within a mainstream school), and special schools. The NT Government also provides specialist advisory services direct to the teacher, parent and student, professional learning for teachers and parents, and additional resourcing to enable schools to purchase additional support. Specialist advisory services include vision, hearing, autism, early childhood intervention, transition from school, school psychologists, and general special education.

### Reply to the issues raised in part I, paragraph 11(b), of the list of issues

100. There has been no change to policies and practices relating to the sterilization of girls with disability since Australia's last report. The sterilization of Australian children may be authorized by the Family Court of Australia under Commonwealth law. Four Australian States have developed laws that operate concurrently with the Commonwealth law. This allows the sterilization of children only if authorized in guardianship tribunals in NSW, Queensland, SA and Tasmania.

101. In the Commonwealth jurisdiction, sterilizations that are not the 'incidental result of surgery performed to cure a disease or correct some malfunction' require Family Court authorization because consent to such a procedure falls outside the scope of parental responsibility.<sup>1</sup> Sterilization is able to be authorized where it is in a child's best interests, but must be a 'step of last resort'. *The Family Law Act (1975)* (Cth) requires that, before a medical procedure is authorized, the Court must have heard evidence to establish:

- The likely long-term physical, social and psychological effects on the child of having or not having the procedure
- The reasons a procedure is recommended over any alternative and less invasive treatments
- The risks to the child from the procedure
- If the child is capable of making an informed decision, that the child agrees to the procedure, and if not, that the child is unlikely to be able to make an informed decision within the time the procedure should be carried out or within the foreseeable future, and
- That the procedure is necessary for the welfare of the child.

102. The Family Court also has the power to order the appointment of an Independent Children's Lawyer to ensure that the best interests of the child are represented in the proceedings.

#### *States and Territories*

##### **New South Wales**

103. Part 1, Chapter 9 of the *Children and Young Persons (Care and Protection Act) 1998* (NSW) provides that consent must not be given to any medical treatment that is intended or reasonably likely to cause permanent infertility unless it is necessary to save the child's life or to prevent serious damage to the child's psychological or physical health.

104. Between October 2008 and January 2011, the NSW Guardianship Tribunal has only received two applications for 'consent to special medical treatment' for a female child. The first application was withdrawn and the second application was dismissed for failing to meet the Act's requirements. Given the terms of the Act it is difficult to envisage any situation in NSW where the Tribunal could consent to special medical treatment for a child that would be *non-therapeutic*.

##### **Victoria**

105. In Victoria, the Family Court continues to hear matters in relation to this issue. In relation to non-surgical menstrual suppression, the Office of the Senior Practitioner

<sup>1</sup> *Secretary, Department of Health and Community Services Appellant, and J.W.B. and S.M.B. Respondents (Marion's Case)* (1992) 175 CLR 218.

monitors all menstrual suppression that is prescribed for non-medical reasons in response to behaviours of concern. The Office of the Senior Practitioner is addressing this matter through the powers of the *Disability Act 2006* (Vic) by requiring that the administration of this medication be reported as a chemical restraint. The Office of the Senior Practitioner has also collaborated with the Centre for Developmental Disability Health on publications that provide information and resources for carers and general practitioners for support of menstrual management.

### **Queensland**

106. The sterilization of children with impairment in Queensland is regulated by Chapter 5A of the Guardianship and Administration Act 2003 (Qld). The Guardianship and Administration Tribunal, by order, can consent to the sterilization of a child with disability. In addition, a Supreme Court Justice can consent to a sterilization procedure of a child provided it is for the treatment of malfunction or disease. Queensland acknowledges that parents may have a conflict of interest in making an objective decision in the best interests of the child in such matters. Queensland supports the continued role of the courts in such matters to protect the rights of children.

### **Western Australia**

107. Where a particular child, whether because of intellectual disability, or simply youth or immaturity, is incapable of giving a valid consent, then his or her parents (or other guardians) are authorized to consent to medical treatment, including therapeutic sterilization. However, court authorization is necessary for non-therapeutic sterilization.

### **South Australia**

108. Girl children with disabilities are not able to be sterilized in SA for non-therapeutic reasons and there are substantial protections in place to deliver this outcome. With the exception of life-saving, emergency procedures performed under section 13 of the Consent to Medical Treatment and Palliative Care Act 1995 (SA), all procedures that result in sterilization of a person unable to give informed and effective consent must be authorized, in writing, by the Guardianship Board, under the Guardianship and Administration Act 1993 (SA). Sterilization is considered as a last resort after all other options have been exhausted. The Act specifies that the Board cannot consent unless it is satisfied that the sterilization is therapeutically necessary, the person will not regain the capacity to give effective consent, the person is capable of procreation and is likely to be sexually active, that no method of contraception could reasonably be applied and in the case of girls, that cessation of her menstrual cycle would be in her best interests. The Board must also be satisfied that the person has never refused consent to sterilization while capable of giving consent.

### *Reform options*

109. The Australian Government is presently investigating options to address concerns raised domestically and internationally about sterilization procedures in Australia with a view to ensuring that sterilizations only occur when they are in the medical best interests of the person. This would apply to both children and adults who are unable to consent. In Australia's draft National Human Rights Action Plan, the Australian Government committed to work with States and Territories to clarify and improve laws and practices governing the sterilization of women and girls with disability.

### **Reply to the issues raised in part I, paragraph 11(c), of the list of issues**

110. Australia provides a number of avenues for families to migrate together and for people to enter Australia to join family members. However, Australia balances the

appropriateness of measures to maintain the family unit and to facilitate family reunification against other legitimate rights and interests. Almost all applicants for visas for Australia need to meet the health requirement set out in Australian migration law. The purpose of the health requirement is to protect the Australian community from public health and safety risks, contain public expenditure of health care and community services, and safeguard access of Australian citizens and permanent residents to health care and community services that may be in short supply.

111. People with disability can and do migrate to Australia and a disability itself will not result in a failure to meet the health requirement. Applicants with a disability are assessed in the same manner as an applicant with any other significant disease or condition. A person with a disability may fail to meet the health requirement if a Medical Officer of the Commonwealth assesses their condition as likely to result in significant health care and community service costs to the Australian community or prejudice the access of Australians to such services during their stay in Australia.

112. On 21 June 2010, the Parliamentary Joint Standing Committee on Migration recommended a more flexible and individualized approach to applying the health requirement to people with disability, with a wider range of positive factors to be considered. The Department of Immigration and Citizenship is reviewing its health policies.

**Reply to the issues raised in part I, paragraph 12(a), of the list of issues**

113. In January 2009, the ARIA Program was replaced by the *Remote Indigenous Housing Program*, which is a component of the Indigenous Housing and Infrastructure budget appropriation. Under the *National Partnership Agreement on Remote Indigenous Housing*, the majority of the A\$5.5 billion in funding allocated (from 2008–09 to 2017–18) to the Indigenous Housing and Infrastructure budget appropriation will be provided to the six State governments and the NT Government for the delivery of up to 4200 new houses and the refurbishment of around 4800 existing houses in remote Indigenous communities. The appropriation also allocates funding towards programmes and projects that directly support the Remote Indigenous Housing Program, including the Army Aboriginal Community Assistance Program, Indigenous Mothers' Accommodation Fund, remote Indigenous housing and infrastructure-related research and the delivery of some municipal and essential services to Indigenous communities to supplement the efforts of the State and Northern Territory governments.

**Reply to the issues raised in part I, paragraph 12(b), of the list of issues**

114. In February 2011, the Australian Government launched *The People of Australia – Australia's Multicultural Policy*. One of the initiatives under this policy is the National Anti-Racism Partnership and Strategy, which will develop and implement a comprehensive Anti-Racism Strategy for Australia. The Partnership is led by the Race Discrimination Commissioner, and consists of the Attorney-General's Department, the Department of Immigration and Citizenship, FaHCSIA, the Australian Multicultural Advisory Council and the Australian Human Rights Commission. The Federation of Ethnic Community Councils of Australia and the National Congress of Australia's First Peoples will also participate in meetings as non-government representatives. The Strategy will focus on research and consultation, education resources, public awareness, youth engagement and ongoing evaluation.

115. On 3 August 2011, the Australian Government appointed a full-time Race Discrimination Commissioner, Dr Helen Szoke, in recognition of the need for a stand-alone commissioner to address the serious issue of race discrimination. Dr Szoke is the first full-time Race Discrimination Commissioner in 13 years. The Australian Human Rights Commission currently has a number of priority projects that relate to discrimination faced

by children. These include a focus on cyber racism and bullying, the treatment of international students and African Australians' experiences.

116. In October 2011, the Australian Government launched the *Resilient Communities* web page. To assist communities to challenge violent extremist ideologies, the website provides information on what communities and the Government are doing to encourage non-violent expression of views and support efforts to reduce marginalization.

117. The Australian Government provides a range of community grants that support social cohesion and human rights outcomes, including:

- Australia's Human Rights Framework – Education Grants, established in 2010, which fund projects that educate the community on human rights
- Building Community Resilience Youth Mentoring Grants, piloted in 2011, which support projects that help young people to actively address intolerance, discourage extremist views and contribute to a safer and more inclusive society, and
- Multicultural Youth Sports Partnership Grants, established in March 2011, which encourage sport and physical activities in multicultural communities.

118. Specialized and intensive case management services offered to eligible humanitarian entrants may include assistance for families and children to understand and interact with Australia's legal system.

#### *Indigenous children and the law*

119. The Australian Government takes a leadership role in Indigenous justice policy development nationally. It led the development of the *National Indigenous Law and Justice Framework*, which was agreed to by all State and Territory governments in November 2009. The Framework aims to eliminate Indigenous disadvantage in law and justice. In particular it outlines actions to reduce the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system by focusing on community safety and reducing rates of alcohol and substance-related crime.

120. While State and Territory governments have primary responsibility for criminal justice services, including police, courts and corrections, the Australian Government funds a number of programmes designed to address Indigenous offending and incarceration. Indigenous Legal Assistance is funded to ensure that Indigenous Australians, including young people, have high quality, culturally sensitive, equitable and accessible legal assistance so they can fully exercise their legal rights. The NT Aboriginal Interpreter Service is jointly funded by the Australian and NT Governments to provide free access to Indigenous language interpreters for NT law and justice agencies, Indigenous Legal Aid and Family Violence Prevention Legal Services.

121. The Indigenous Justice Program funds a range of effective, culturally relevant projects to reduce the number of Indigenous Australians, including children, coming into adverse contact with the criminal justice system. Community Engagement Police Officers are being trialled in eight remote Indigenous communities in the NT. The role of the Officers is to work with communities to identify causes of crime and develop community-led initiatives to address those causes of crime, as well as building trust and understanding between the community and police.

122. The Australian House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* was released in June 2011. The Report made 40 recommendations about changes to the justice system, links between health (including mental health) and the criminal justice system, improving education, improving the

transition from education to the workforce, and improving government policy and coordination. The Australian Government is working with States and Territories to implement these recommendations.

### **New South Wales**

123. NSW has developed a programme of Care Circles to specifically address difficulties that Aboriginal families encounter with the court system within its care jurisdiction. The initial programme has been successfully evaluated and is being rolled out to other sites and is based upon a Victorian model of involving Aboriginal community members in providing advice as part of child protection services. NSW is also rolling out Commonwealth-funded Aboriginal child and family centres to provide a non-stigmatizing single entry point to a range of services for Aboriginal families.

124. NSW developed an action plan to address the issues faced in Western NSW and the high rate of Aboriginal youth in the criminal justice system, covering:

- Increasing access to diversion options under the *Young Offenders Act 1997* (NSW)
- Increasing access to bail
- Increasing bail compliance and reducing breaches
- Reducing costs associated with handling bail matters
- Improving communication and networking, and
- Training opportunities for regional staff.

125. Juvenile Justice NSW is working on the development of an Aboriginal and Torres Strait Islander Cultural Respect Framework to ensure policies, services and programmes respond effectively to the unique needs of Aboriginal clients and staff. A key feature will be the development of cultural standards and practices for programme development and service delivery. The Multicultural Action Plan 2010–2012 outlines the commitment to assist young people in the justice system from culturally diverse communities.

126. The NSW Department of Attorney-General and Justice participates in the Justice and Pacific Communities Steering Committee that aims to strengthen the services provided to and improve long-term outcomes for people from Pacific Island communities. Consultation will be undertaken with the Arabic community in 2012 with the aim of developing similar programmes.

### **Victoria**

127. Victoria funds the Centre for Multicultural Youth (Victoria's peak body for youth multicultural affairs) to provide both policy advice to Government and programmatic responses on a range of issues facing culturally and linguistically diverse young people.

128. The Victorian Aboriginal Justice Agreement is a formal partnership with the Aboriginal community, which aims to improve justice outcomes through minimizing Aboriginal overrepresentation in the criminal justice system, and improving access to services. A range of youth initiatives developed under the second phase of the Aboriginal Justice Agreement focus on preventing initial contact and reducing the likelihood of subsequent contact, with the criminal justice system. Current Aboriginal youth programmes include services to provide culturally appropriate support for Aboriginal Victorian children and youth once they have entered the justice system.

### **Queensland**

129. Indigenous Service Support Officers are located where there is a high proportion of Aboriginal and Torres Strait Islander young people under supervision. These officers

provide culturally appropriate support and intervention for Aboriginal and Torres Strait Islander young people subject to youth justice intervention, as well as better support for their families and caregivers. The Support Officers facilitate communication between youth justice staff and Aboriginal and Torres Strait Islander communities to ensure programmes and services provided to Indigenous young people are culturally appropriate and that the young people are adequately supported.

#### **Western Australia**

130. In WA the Aboriginal Community Court (established in 2006) aims to increase Aboriginal participation in the sentencing process, reduce Aboriginal offending and reduce imprisonment of Aboriginal people. The magistrate is accompanied by respected elders who provide information about the offender's circumstances and the social and cultural issues affecting that person. The Court has recently been evaluated, and will continue on a pilot basis for a further three years. The revised model will be evaluated after two years of operation, in mid 2013. The *Aboriginal Benchbook for Western Australian Courts* provides information to judicial officers on aspects of traditional Aboriginal Australia, aspects of contemporary Aboriginal Australia, Aboriginal people living in WA, language and communication, and on procedures and sentencing.

131. The *Culturally and Linguistically Diverse Services Framework 2010–2012* sets out approaches to working with culturally and linguistically diverse communities, families and partner agencies.

#### **South Australia**

132. Measures are taken to address discrimination against Aboriginal and Torres Strait Islander children and children of ethnic, cultural or linguistic minorities across a range of agencies. Families SA's *Aboriginal and Torres Strait Islander Policy* provides overarching direction and support to ensure all policies, procedures and practices increase the capacity and confidence of Families SA to provide respectful and culturally appropriate services to Indigenous clients.

133. SA initiated a range of services and programmes since 2008 for young people in the justice system. These include the Cultural Supports and Linkages Assessment (Aboriginal), which provides specific cultural assessment for Aboriginal clients that focuses on family and community connections and strengths of the kinship group.

#### **Tasmania**

134. Tasmania Police has developed an Aboriginal Strategic Plan that provides a framework by which the agency focuses on the development of relationships with the wider Aboriginal community and ensures that, through consultation, all reasonable expectations are met. Indigenous persons are appropriately represented in recruiting and welfare requirements and a district network of Aboriginal Liaison Officers is in place.

#### *Police cultural awareness training*

#### **National and the Australian Capital Territory**

135. The Australian Federal Police Culture and Language Centre is the central point for the cultural and language training of AFP. New members are provided with cultural awareness information sessions and learning activities as an integral part of their recruit training programme. This fundamental training is applied throughout various police training modules over the entire course, enhancing each member's core cultural competencies in effective communication, interaction and management of members from diverse communities.



136. Within the training, an Aboriginal and Torres Strait Islander specific programme is included in the ACT Policing programme and many of the policing modules have elements of cultural awareness woven into the training scenarios and activities. The 'Interviewing Vulnerable Witnesses' unit covers off on a number of cultural nuances and minority groups, which includes youth and Aboriginal and Torres Strait Islander peoples. Recruits are also provided with written resources and human rights presentations are also given. Training is delivered by AFP staff and external groups, such as NGOs.

137. In November 2009, the Australian Government launched *Taking the Initiative – Police working with Australia's diverse communities*. This web resource helps Australian police get to know what other jurisdictions are doing to improve relationships with Australia's new arrivals, with a focus on initiatives that foster trust and understanding of the police.

#### **New South Wales**

138. The NSW Police Force provides cultural awareness training to all policing students. Police officers working in rural and remote communities also undergo specialist local cultural awareness training. Police officers undertake cultural diversity training, which provides officers guidance in dealing with culturally and linguistically diverse communities.

#### **Queensland**

139. The Queensland Police Service (QPS) constantly reviews all training provided to personnel. This occurs across all facets of the QPS, from recruit training to specialist training for police working in remote Indigenous communities. Cross-cultural training was reviewed in 2009, and the modified Cultural Appreciation Project is due to start in 2012. Progress will be monitored by the Office of the Commissioner.

#### **Western Australia**

140. WA Police provides a range of training programmes that address discrimination. Every police recruit receives extensive training on equal opportunity and cultural awareness relating to social and cultural minorities, including a component on Aboriginal youth and children. The training also combines sessions on the history of intercultural relations in Australia and the impacts of discrimination and disadvantage.

#### **Tasmania**

141. Tasmanian police receive appropriate cross-cultural awareness training delivered via recruit and promotion courses. Multicultural Liaison Officers are appointed within each police district and respond to any policing issues where there is a perceived attendant racial element. Tasmania Police recruits actively from culturally and linguistically diverse communities.

#### **Northern Territory**

142. Cross cultural training is delivered across the NT by NT Police at a regional level. For example, at Tennant Creek members are inducted on Aboriginal cultural beliefs, sacred sites and business camps facilitated by members and local Aboriginal Community Police Officers. The Investigations Section provides training that focuses on police interactions with Indigenous children and complements techniques taught as part of the Child Forensic Interview Course. Broader subject matter also includes traditional Indigenous beliefs, culture and customs. Police officers in remote stations meet with the community councils and Traditional Owners, which include discussions on specific cultural issues that relate to the community.

143. Trainees receive Policing between Cultures – Aboriginal Culture training, which includes a two day visit to a remote community, and Multicultural Awareness training, including practical sessions such as visiting the Darwin Immigration Centre.

#### *Education*

144. All Australian Governments agreed to implement the *Aboriginal and Torres Strait Islander Education Action Plan (2010–2014)*. The Action Plan identifies 55 national, systemic and local level actions to improve outcomes for Aboriginal and Torres Strait Islander students. The areas for action are readiness for school; engagement and connections; attendance; literacy and numeracy; leadership, quality teaching and workforce development; and pathways to real post-school options. The Action Plan contributes to three of the six Closing the Gap targets agreed by Australian governments. These targets are discussed further in the reply to the issues raised in paragraph 12 (c) of the list of issues.

#### **Australian Capital Territory**

145. The ACT’s *Countering Racism in Public Schools* policy includes requirements for schools to establish practices that are designed to ensure students are protected from racism. The *Every Chance to Learn Curriculum Framework for ACT Schools Preschool to Year 10* includes the requirement that all students have opportunities to learn, understand and value cultural diversity.

#### **Tasmania**

146. In 2011, the Department of Education updated its guidelines on the use of non-discriminatory language and published a new document on its website entitled ‘Without Prejudice, Guidelines for Inclusive Language’.

#### **Reply to the issues raised in part I, paragraph 12(c), of the list of issues**

147. In 2007–08, COAG announced the *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage* (Closing the Gap) and agreed to six targets on Aboriginal and Torres Strait Islander disadvantage. These targets are to:

- Close the life expectancy gap between Aboriginal and Torres Strait Islander and non-Indigenous peoples within a generation (by 2031)
- Halve the gap in mortality rates between Aboriginal and Torres Strait Islander children and non-Indigenous children under five within a decade (by 2018)
- Ensure access to early childhood education for all four year old Aboriginal and Torres Strait Islander children in remote communities within five years (by 2013)
- Halve the gap in reading, writing and numeracy achievements between Aboriginal and Torres Strait Islander and non-Indigenous children within a decade (by 2018)
- Halve the gap between Aboriginal and Torres Strait Islander and non-Indigenous students completing Year 12 or equivalent within 12 years (by 2020), and
- Halve the gap in employment outcomes between Aboriginal and Torres Strait Islander and non-Indigenous Australians within a decade (by 2018).

148. The Australian and State and Territory governments have made significant investments in Indigenous-specific measures in a sustained effort to close the gap in Indigenous disadvantage. Significant investments under Indigenous Specific National Partnership Agreements include:

- A\$5.5 billion to build and refurbish homes and related infrastructure under the National Partnership Agreement on *Remote Indigenous Housing* (see reply to the issues raised in paragraph 12(a))
- A\$1.57 billion to improve the health of Indigenous people under the *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes*
- A\$564.4 million to help ensure that Indigenous children get a good start in life—*National Partnership Agreement on Indigenous Early Childhood Development* (see reply to the issues raised in paragraph 4 of the list of issues)
- A\$228.9 million to create real jobs in Indigenous communities in government service delivery, along with additional measures to help Indigenous people get jobs and generate business income under the *National Partnership Agreement on Indigenous Economic Participation*
- A\$291.2 million to improve remote services under the *National Partnership Agreement on Remote Service Delivery*, and
- A\$807.4 million to continue work in the NT under the Closing the Gap in the NT *National Partnership Agreement*.

#### *Closing the Gap performance*

##### **Early childhood**

149. The principal means of achieving the Closing the Gap early childhood education target are the existing State and Territory government funded preschool services in remote communities and the implementation of the *National Partnership Agreement on Early Childhood Education* (see reply to the issues raised in paragraph 4 of the list of issues).

150. Under the *National Partnership Agreement on Early Childhood Education*, the Australian Government and State and Territory governments have developed a strategy to promote universal access to early childhood education for Aboriginal and Torres Strait Islander children, as well as actions outlined in State and Territory bilateral agreements. The Strategy outlines the current situation regarding the enrolment and attendance of Aboriginal and Torres Strait Islander children in early childhood education in urban, regional and remote settings and across jurisdictions, as well as identifying four key focus areas for future effort:

- Increasing access to early childhood education
- Positive community awareness and engagement
- Quality early childhood programmes and activities, and
- Aboriginal and Torres Strait Islander cultural awareness of teachers and support staff.

151. The best available data indicates nationally approximately 90 per cent of Indigenous children living in remote communities were enrolled in a preschool programme in the year before full time schooling in 2010, an increase from 87 per cent in 2009. However, this national data on preschool enrolments in remote communities has some limitations. Work is progressing under the *National Information Agreement on Early Childhood Education and Care* to establish nationally consistent data collection. It is anticipated that the 2011 National Collection will be published in March 2012 and, while still being considered experimental, will see marked improvements compared to current data collections.

**Other targets**

152. The COAG Reform Council provides independent and regular reporting of progress against the Closing the Gap targets. The first progress report, released in June 2011, noted that between 2007 and 2009 there was a significant decrease in the gap between Indigenous and non-Indigenous child mortality rates. Between 2008 and 2009 there has been some narrowing of the gap in National Assessment Program – Literacy and Numeracy (NAPLAN) results in reading and writing, and to a lesser extent in numeracy, mainly in the primary years of schooling.

153. Monitoring progress against the targets in 2009–10 was challenging. For a number of the targets, new data will not be accessible until 2012 and 2013. In other cases, data quality issues preclude meaningful comparisons over time and between jurisdictions. For some targets, any improvements in outcomes may not be shown in the data for some years given the significant time between the implementation of a policy measure and its effect on outcomes.

154. In a supplement to its first report, the Reform Council analysed 2010 reading, writing and numeracy results and determined that in 2010, Australian governments are generally on track to halve the gap for Indigenous students in literacy and numeracy by 2018. However, progress against the target fell significantly below the indicative trajectories for reading, writing and numeracy for Year 9 students and also for numeracy for Indigenous students in Years 3 and 7.

155. The Prime Minister has committed to report annually to the Australian Parliament on progress in Closing the Gap. The Prime Minister presented the 2012 Report to Parliament on 15 February 2012.

**Reply to the issues raised in part I, paragraph 13(a), of the list of issues**

156. On 31 August 2011, the High Court of Australia found that the proposed transfers to Malaysia under the Transfer and Resettlement Arrangement were not lawful. In October 2011, the Australian Government indicated it was not currently pursuing legislative amendments in response to the High Court decision, but that the Arrangement with Malaysia, and broader regional arrangements under the Regional Cooperation Framework, continue as government policy. The Australian Government remains committed to working with countries in the region under the Regional Cooperation Framework to improve protection outcomes and reduce people smuggling activity.

**Reply to the issues raised in part I, paragraph 13(b), of the list of issues**

157. The Australian Government considers mandatory immigration detention an essential component of strong border control. The Australian Government retains the system of mandatory detention, along with strong border security measures, to ensure the orderly processing of migration to Australia. The Government continues to look to ways to preserve the integrity of Australia's migration programme while treating individuals fairly and humanely. The Government believes that robust border security and humane and risk-based detention policies are compatible.

158. The Government's risk-based detention policies were announced in July 2008. Under these policies, which have been implemented administratively within the framework of existing domestic law, unauthorized arrivals are detained for the purposes of managing health, identity and security risks. In cases where people arrive lawfully in Australia and later become unlawful non-citizens, or later claim asylum, the presumption is that they remain in the community while their claims are assessed, except where they present unacceptable risks to the community.

159. The Government made a clear commitment that children will not be detained in immigration detention centres. In accordance with this commitment, no children are knowingly held in immigration detention centres. However, section 4AA of the Migration Act 1958 (Cth) states that the Parliament affirms as a principle that a minor shall only be detained as a measure of last resort. Where it is considered necessary to detain those under the age of 18, they are placed in the form of accommodation most appropriate to their circumstances. This may be community detention, an alternative place of detention or an immigration detention facility such as immigration residential housing.

**Reply to the issues raised in part I, paragraph 13(c), of the list of issues**

160. The Australian Government's policy is that children are only held in immigration detention facilities as a last resort. All decisions taken by all members of the immigration detention network in relation to children must take into account the best interests of the child, including long-term and short-term welfare concerns, physical and emotional wellbeing, and financial, moral, religious and health interests.

161. Children can be placed in a range of appropriate arrangements. Children and their accompanying families are accommodated at low-security sites, such as immigration transit accommodation, immigration residential housing or other alternative places of detention (which may include commercial accommodation such as motels).

162. On 18 October 2010, the Australian Government announced an expansion of its existing Residence Determination (community detention) programme to progressively move significant numbers of children and vulnerable family groups out of immigration detention facilities and into community-based accommodation. Such placement allows children and their families to move about in the community under the care of the Commonwealth and to receive support from NGOs and State and Territory welfare agencies.

163. Children, whether or not they are accompanied by family, are given high priority to move into community detention. People placed in community detention remain in immigration detention but reside at an address specified by the Minister for Immigration and Citizenship. They are otherwise free to move around the community.

164. The community detention programme covers housing, residential/out-of-home care, case workers, an allowance to meet daily living costs and a range of activities. Children in the programme have access to schooling, including English language classes as needed. These children are also supported to become involved in after-school activities such as soccer clubs, art or music classes and other recreational/creative activities. Health care is provided through a contracted detention health provider. Unaccompanied minors receive a small personal allowance each week to cover costs such as mobile phone credit, transport or personal items.

**Reply to the issues raised in part I, paragraph 13(d), of the list of issues**

165. Under the *Immigration (Guardianship of Children) Act 1946* (Cth) (IGOC Act), the Minister for Immigration and Citizenship is the guardian of certain unaccompanied minors who arrive in Australia without a parent or relative over 21 and with the intention to permanently reside. The Minister has delegated some of his guardianship powers and responsibilities to officers of the Department of Immigration and Citizenship and to State and Territory child welfare agencies.

166. In addition to the role played by delegated guardians, independent observers with expertise in child welfare are available in immigration detention facilities to support unaccompanied minors in interviews and other appointments as necessary. Unaccompanied minors seeking asylum are provided with independent, professional migration advice and

assistance through the Immigration Advice and Application Assistance scheme. Unaccompanied minors accommodated in alternative places of detention receive 24 hour pastoral care and support from a contracted service provider with expertise in child welfare. Unaccompanied minors living in the community, either in community detention or in the unaccompanied humanitarian minors settlement programme, are provided with care and welfare services from agencies with expertise in child welfare and out-of-home care.

167. Alleged people smuggling crew claiming to be minors and unaccompanied minors who are victims of trafficking generally do not fall within the scope of the IGOC Act as they usually do not intend to permanently reside in Australia. Alleged people smuggling crew claiming to be minors are provided independent observers. Victims of trafficking are provided support by the Support for Trafficked People Program and also referred to the relevant State and Territory child protection authority. Suspected crew members are initially transferred to Christmas Island, where they are accommodated in an alternative place of detention. In general, suspected crew member minors are transferred from Christmas Island to Darwin shortly after arriving and accommodated at an alternative place of detention.

**Reply to the issues raised in part I, paragraph 13(e), of the list of issues**

168. The Department of Immigration and Citizenship could not determine which review this question referred to. However, the Department is subject to a range of internal and external review processes. The Commonwealth Ombudsman regularly reports on immigration detention. The Australian Human Rights Commission investigates complaints of discrimination or alleged human rights breaches. The Commission has also carried out eight general reports on immigration detention since 2008.

169. The Department carries out internal reviews of detention service providers, and reviews individual cases every six months (if necessary). The Department provides people in immigration detention with information about how to make complaints or provide feedback.

**Reply to the issues raised in part I, paragraph 14, of the list of issues**

170. Generally States and Territories are responsible for children and young people in the justice system (please see the replies to the issues raised in paragraph 12 of the list of issues). All States and Territories have established separate Children's Courts to deal with criminal matters involving juvenile offenders. All jurisdictions employ diversionary measures for young offenders.

**New South Wales**

171. Key priorities are a review of juveniles and the criminal justice system (the Youth on Track Review) and addressing Aboriginal disadvantage. The *Young Offenders Act 1997* (NSW) and the *Children (Criminal Proceedings) Act 1987* (NSW) are also under review. The Young Offenders Act provides an alternative process to court proceedings for children who commit certain offences through the use of warnings, cautions and youth justice conferences.

172. A range of programmes aim to address Aboriginal offending, such as early intervention to help young people develop life skills, parent training and mentoring, stable accommodation, vocational training and employment opportunities, health care and treatment. Other programmes to reduce young people's risk of offending include alcohol and drug programmes, family focused programmes and support programmes for violent offenders and young people on bail.

### **Victoria**

173. The Youth Justice Court Advice Service provides information in the children's and adult courts (for young people up to the age of 21) on a range of community-based options including diversion, bail, and community support services. The Youth Justice Court Advice Service undertakes suitability assessments for Bail Supervision, Youth Justice Group Conferencing, and Youth Justice Centre orders.

174. In the Children's Court, the Intensive Bail Supervision Program provides support to young people aged 10–18 years who are at immediate risk of remand. When considering a Probation or Youth Supervision Order, the Children's Court can order a Youth Justice Group Conference. Based on restorative justice principles, a Youth Justice Group Conference brings together the young person and their family, the victims and the police to raise the young person's understanding of the impact of their offending. The 2011–12 Victorian State budget committed funding for a significant expansion of the Youth Justice Group Conference programme provided by the community service organizations across the State.

### **Queensland**

175. In Queensland, police have the option of either diverting young people by way of a warning, caution or a youth justice conference, or referring them directly to the courts. The courts can also divert them to youth justice conferencing as a pre-sentence option, sentence option or as an alternative to court. The model provides a restorative justice approach to working with victims, young people and their families. Indigenous Conferencing Support Officers provide culturally responsive and appropriate youth justice conferencing services to Aboriginal and Torres Strait Islander young people, victims, families and communities.

176. If a child is not diverted, the court can either release the child on bail or remand them. In making this decision the court must consider a number of factors, including the type of offence, the child's character and criminal history, community safety and whether the child is likely to receive a detention sentence. If a child receives a supervisory order, the Department of Communities ensures supervision through a case management approach. Young people are able to participate in programmes to address their offending behaviour.

### **Western Australia**

177. The Children's Court of Western Australia deals with offences alleged to have been committed by young people aged 10–17 years. There is a dedicated Children's Court in Perth and children's court cases are also heard in other courthouses throughout the State. The Court also deals with protection and care applications for children under the age of 18 years.

### **South Australia**

178. The *Young Offenders Act 1993* (SA) allows for the following pre-court diversion options for youths (aged 10–17 years inclusive): informal caution, formal police caution, and family conference. Drug and alcohol diversion schemes are also available to eligible youth. In 2011, SA implemented the *Training Centres New Direction Framework*, including through-care case management to reduce the risk of young people reoffending.

### **Tasmania**

179. Tasmania's youth justice system encourages offenders to take responsibility for their offences. Wherever possible, offenders are diverted from the criminal justice system. Young people are encouraged to work with the community and service delivery agencies, including Youth Justice Services, who are responsible for the delivery of restorative justice services to the victims and perpetrators of youth crime aged 10–17 years. Community-

based services such as community conferencing, community service orders and supervision support are provided by Community Youth Justice Teams.

#### **Northern Territory**

180. The NT provides both diversion programmes and re-integration programmes for juvenile offenders or youths who are reasonably believed to have committed offences. The diversion provisions are administered by the NT Police. Young offenders may also be eligible for the Drug Pre-Court Diversion programme. The NT Illicit Drug Pre-Court Diversion Program enables first time illicit drug offenders (use and possession only) to be referred to drug education, counselling and treatment services rather than face prosecution through the court system.

#### **Reply to the issues raised in part I, paragraph 14(a), of the list of issues**

181. In all Australian jurisdictions, the age of criminal responsibility is 10 years, with a rebuttable presumption that children between the ages of 10–14 years are not to be held criminally responsible. A child is considered criminally responsible where the child knows that his or her conduct is wrong. The onus is on the prosecution to prove this, which is a question of fact.<sup>2</sup>

#### **New South Wales**

182. The age of criminal responsibility is currently being considered in the review of the *Children (Criminal Proceedings) Act 1987* (NSW).

#### **Western Australia**

183. In WA, the Court must satisfy itself that a minor understands the nature of the proceedings and, if the minor is not legally represented, to explain the nature of the allegations and the person's rights. There is also provision for the Court to order the attendance of a responsible adult.<sup>3</sup>

#### **Reply to the issues raised in part I, paragraph 14(b), of the list of issues**

#### **New South Wales**

184. In NSW, the Children's Court must have regard to the principles in section 6 of the *Children (Criminal Proceedings) Act 1987* (NSW) where children are found to be criminally responsible. These include: children bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance; it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties; and it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions.<sup>4</sup>

185. Various legislative safeguards include the inadmissibility of the fact that a child has pleaded guilty to a prior offence or has been found guilty of a prior offence in certain circumstances;<sup>5</sup> the inadmissibility of the fact that a child was previously dealt with by a

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<sup>2</sup> *Crimes Act 1914* (Cth), s 4N and *Criminal Code Act 1995* (Cth), s 7.2; *Children (Criminal Proceedings) Act 1987* (NSW), s 5; *Young Offenders Act 1993* (SA); *Criminal Code Act 1924* (Tas), s 18; *Criminal Code Act 1983* (NT), s 43AQ.

<sup>3</sup> *Young Offenders Act 1994* (WA), ss 44–5.

<sup>4</sup> *Children (Criminal Proceedings) Act 1987* (NSW), s 6.

<sup>5</sup> *Children (Criminal Proceedings) Act 1987* (NSW), s 15(1).



warning, caution or youth justice conference,<sup>6</sup> and the Court's discretion to order a range of penalties such as good behaviour bonds, compliance with outcome plans and community service work.<sup>7</sup>

### **Victoria**

186. Safeguards for juveniles in the criminal justice system in Victoria are encompassed by the rights contained in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), specifically section 23 (Children in the criminal process), section 24 (Fair hearing) and section 25 (Rights in criminal proceedings). These rights apply equally to all children involved in the criminal process. Section 32 of the Charter Act provides that the Children's Court must interpret all statutory provisions in a way that is compatible with human rights, including consideration of international law and judgments of domestic, foreign and international courts. All defendants who have matters heard before the criminal division of the Children's Court of Victoria are afforded a right of appeal.

### **South Australia**

187. In SA criminal responsibility for children under 14 is dealt with in the *Young Offenders Act 1993* (SA), although the Act does not distinguish between youths under 18 and children under 14. The Act deals with the manner in which youths are to be dealt with in relation to criminal offending. The objective and underlying policy of the Act is a focus on rehabilitation as opposed to punishment. The Act further provides for dealing with youths (under 18) by way of informal caution (section 6) or by family conference (sections 9–12).

### **Western Australia**

188. After conviction, the court dealing with a young person who has been found guilty of an offence is to apply the general principles of juvenile justice, and consider (among other factors) the cultural background of the young offender, how the young offender may be rehabilitated, and, as a mitigating factor, their age.<sup>8</sup> Children, as with all convicted offenders, have a right to appeal their conviction or sentence to the Supreme Court.<sup>9</sup>

### **Northern Territory**

189. The *Youth Justice Act* (NT) applies to youths who have committed or are alleged to have committed offences. The Act specifies the general principles of justice in respect of youth; provides for the administration of justice in respect of youth; provides how a youth who has committed, or is alleged to have committed, an offence is to be dealt with; intends to ensure that a youth who has committed an offence is made aware of his or her obligations and rights under the law and of the consequences of contravening the law; ensures that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation; and establishes the Youth Justice Court.

### **Reply to the issues raised in part I, paragraph 14(c), of the list of issues**

190. Australia seeks to house juvenile offenders separately from the adult prison population unless it would not be in the best interests of the child to do so. The appropriate management and safety of all prisoners and remandees is a priority for all Australian authorities. As the Australian Government does not operate or own any prisons, federal offenders are housed in State and Territory prisons. The States and Territories are

<sup>6</sup> *Children (Criminal Proceedings) Act 1987* (NSW), s 15(3).

<sup>7</sup> *Children (Criminal Proceedings) Act 1987* (NSW), s 33.

<sup>8</sup> S. 46 *Young Offenders Act 1994* (WA).

<sup>9</sup> S. 7 *Criminal Appeals Act 2004* (WA).

responsible for the management and operation of prisons, including the assessment of each prisoner's security classification and whether it is desirable to physically separate certain classes of prisoners, such as minors.

191. All jurisdictions in Australia have agreed to the Revised Standards for Corrections in Australia, which includes the provision that 'Special care should be taken with any prisoners under 18 years of age that are not kept in a separate juvenile custodial system. These prisoners should be carefully placed to ensure their safety and should be provided with programmes and services appropriate to their age and circumstances'.

192. The Australian Government, in its response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, has also committed to working with all jurisdictions to ensure appropriate accommodation is available for young people and, where possible, that young people be housed in the community rather than on remand in prison or police lock ups.

193. The Department of Immigration and Citizenship (DIAC) conducts an age assessment of young persons from irregular maritime ventures that arrive in Australia where it is not clear whether they are an adult or a minor, in particular the crew from the vessels who may have committed offences against Commonwealth law. DIAC assess the age of the person based on any documents available at the time of the assessment and a focused age interview. If a crew member is assessed by DIAC to be an adult, they are referred to the AFP for consideration of criminal investigation and for age determination processes to be conducted. Crew assessed to be minors are removed to their country of origin unless exceptional circumstances apply.

194. Where a person claiming to be a minor is referred to the AFP for investigation, or where a crew member of a people smuggling vessel claims to be a minor during an investigation or prosecution, the AFP conducts an age determination process in accordance with the *Crimes Act 1914* (Cth). DIAC can provide relevant information to assist the AFP in verifying the person's claim that they are a minor and for disclosure purposes during a prosecution. If age cannot be clearly established, the person is given the benefit of the doubt and returned to their country of origin as soon as possible. Defendants who raise age during a people smuggling prosecution are entitled to apply to the court for bail. Where a defendant seeks bail in a matter where age is an issue, the Commonwealth Director of Public Prosecutions generally does not oppose the request and it is likely the court would grant bail. The person would then be held in an appropriate immigration detention facility while their case is heard.

195. For alleged offenders who are charged with Commonwealth offences and claim to be minors, the AFP provides State and Territory corrections agencies with information about the age of the person to assist those agencies to manage that person appropriately.

196. Please see replies to the issues raised in paragraph 13 of the list of issues, for information on immigration detention arrangements.

#### **New South Wales**

197. In NSW, children under the age of 18 are accommodated separately from adult inmates in juvenile justice centres or the Kariong Juvenile Correctional Centre (for high-risk young people 16 and over). The juvenile justice system is completely separate from the adult prison system. Young people may remain in a juvenile detention centre until the age of 21 unless an order is made for their transfer to an adult correctional facility under section 28 of the *Children (Detention Centres) Act 1987* (NSW). A Court may direct that a child over the age of 16 years be remanded to an adult detention centre under sections 28A and 28B of the Act.

### South Australia

198. The *Family and Community Services Act 1972* (SA) provides for the establishment of Training Centres for the ‘care, correction, detention, training or treatment of young offenders’ under the control of the Minister for Communities and Social Inclusion. Adult detention facilities are established through separate legislation and are under the control of the Minister for Correctional Services.

### Tasmania

199. In Tasmania, young people who are 18 years of age may be remanded or detained at a youth detention centre if they are charged with an offence alleged to have been committed before the age of 18. In addition, young people remanded or sentenced as adults for serious offences prescribed under the *Youth Justice Act 1997* (Tas) may also be detained at a youth detention centre.

### Queensland

200. Young people who are charged with offences committed after they turn 17 are treated as adults within the Queensland criminal justice system. Seventeen year olds charged with offences committed before they turned 17 will continue to be managed through the juvenile justice system.

### Western Australia

201. The *Young Offenders Act 1994* (WA) applies to a young person who has not reached the age of 18 years. Section 7(i) provides that ‘detention of a young person in custody, if required, is to be in a facility that is suitable for a young person at which the young person is not exposed to contact with any adult detained in the facility’. A young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner. Young offenders under 18 years are to serve sentences of imprisonment in detention centres.<sup>10</sup> Young offenders of 16 and 17 years, however, may be transferred to an adult prison upon direction by the Children's Court.<sup>11</sup>

### Northern Territory

202. The *Youth Justice Act 2005* (NT) provides for the establishment of youth detention centres. Two purpose-built youth justice facilities exist in the NT for the detention of youths convicted of offences and sentenced to detention. The Youth Justice Act provides that youths under the age of 15 are not permitted to be imprisoned. The Court may impose a sentence of detention or imprisonment on a youth only as a last resort, and a sentence of imprisonment only if there is no appropriate alternative.

### Reply to the issues raised in part I, paragraph 14(d), of the list of issues

203. The Australian Government Indigenous Justice Program funds a number of initiatives specifically focussed on facilitating the reintegration of young offenders with a focus on reducing reoffending and support for prisoner through-care initiatives. The priority is to fund projects that develop strategies to motivate and change attitudes and behaviours of detainees and provide ongoing support in the community for one to three months. Projects focus on motivating and supporting the rehabilitation of juvenile Indigenous detainees while incarcerated, providing positive pathways on release to support successful reintegration in the community, helping reduce recidivism and create safer communities. Aspects of the through-care approach include assistance to find stable housing, education,

<sup>10</sup> *Young Offenders Act 1994* (WA), s 118A.

<sup>11</sup> *Young Offenders Act 1994* (WA), s 178

training and employment support, and counselling and support services, which are provided through an individual case management approach.

204. Under the National Indigenous Law and Justice Framework the Australian Government is evaluating a range of Indigenous justice programmes to assess whether or not they can be considered good practice. These evaluations will be completed in December 2012.

#### **New South Wales**

205. Juvenile Justice NSW runs a number of key rehabilitation programmes designed to address the cause of a child's offending behaviour, including intensive supervision programmes and post-release support programmes, and a pre-release unit that provides intensive educational, vocational and social support to detainees to enhance their reintegration prospects and reduce their likelihood of re-offending. Grants to community organizations provide support to young offenders to maintain their community links, facilitate the successful reintegration of juvenile offenders into the community upon release from detention, strengthen the existing capacity of the community to meet the identified support needs of juvenile offenders and enable the development and maintenance of innovative services and programmes not currently available to meet the identified needs of juvenile offenders.

#### **Victoria**

206. The Youth Justice Community Support Service is an integrated approach undertaken in partnership with community service organizations. The Support Service provides young people with intensive case management to support their social connectedness, economic participation, and reintegration in the community.

#### **South Australia**

207. The Training Centres New Direction Framework (2011) (SA) will implement re-integration strategies that provide individualized programming, promotion of pro-social learning and lifestyle choices, and social and community connection. Targeted partnerships to support transition back to the community will be established.

#### **Tasmania**

208. The Changing Habits and Reaching Targets programme is used in Tasmania with young people who have been assessed as having a high risk of re-offending in order to specifically address their offending needs. Exit planning and joint case planning by custodial and community youth justice services for young people in custody is undertaken to maximize effective reintegration.

#### **Queensland**

209. A young person exiting detention goes onto a Supervised Release Order. Youth Justice Service Centres case manage these young people to provide follow-up of any programmes commenced while in detention. This ensures that young people are connected with appropriate services and support networks to minimize the likelihood of re-offending at the time when the risk of offending is highest. While in detention young people are involved in a variety of programmes including therapeutic, educational, vocational, cultural and recreational programmes aimed at providing them with the skills to enable rehabilitation into the community upon their release.

#### **Western Australia**

210. In WA, a case management and through-care plan is developed while the young person is in custody. The plan comprehensively outlines the offending behaviour and

individual needs of the young person and identifies strategies to facilitate successful reintegration into the community.

### **Northern Territory**

211. The responsibility for the re-integration of juvenile offenders in the NT sits with Community Corrections and Detention Services in the NT Department of Justice. Reintegration services are supported by the *North Australian Aboriginal Justice Agency Through Care Program* and various other government and NGO initiatives. Accredited vocational education and training courses are available and detainees may participate in courses that provide formal qualifications during their incarceration. Schooling is also provided through the NT Open Education Centre for students in years 8–11.

## **Part II**

### **Reply to the issues raised in part II, of the list of issues**

#### **New bills or enacted legislation and any accompanying regulations**

212. All State and Territory parliaments, except Western Australia, adopted the *Education and Care Services National Law Act 2010*, which establishes a National Quality Framework for early childhood education and care. WA enacted corresponding legislation.

#### **Commonwealth**

213. *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth)—focuses on prioritizing the safety of children in the family law system while continuing to promote a child’s right to a meaningful relationship with both parents where this is safe.

#### **Victoria**

214. *Education and Training Reform Amendment (School Age) Act 2009* (Vic)—increases the compulsory school age to 17 years of age. The change was a part of the legislative framework implementing the *National Youth Participation Requirement*.

#### **Queensland**

215. *Education and Training Legislation Amendment Act 2011* (Qld)—emphasizes the obligations of school staff at state and non-state schools to report sexual abuse or likely sexual abuse of students.

#### **Western Australia**

216. *Child Pornography and Exploitation Material and Classification Legislation Amendment Bill 2009* (WA)—assented to 7 July 2010.

217. *Misuse of Drugs Amendment Act 2011* (WA)—creates an offence for selling or supplying prohibited drugs and plants to children and endangering children through the manufacture or cultivation of a prohibited drug or plants.

#### **Northern Territory**

218. *Youth Justice Amendment (Family Responsibility) Act 2008* (NT)—introduced provisions to provide for family responsibility agreements and family responsibility orders, which provide families with the necessary tools and motivation through increased support services to enable them to become better parents and work to address their children’s behaviour.

219. *Youth Justice Amendment Act 2010* (NT)—amended provisions to clarify that children are entitled to have their matters determined in an exclusive youth jurisdiction.

220. *Domestic and Family Violence Amendment Act 2009* (NT)—introduced mandatory reporting of domestic and family violence.

#### **New institutions, their mandates and funding**

221. The Australian Children's Education and Care Quality Authority implements and monitors the National Quality Framework for early childhood education and care. The Authority is jointly funded by the Australian Government (50 per cent) and the States and Territories (50 per cent).

222. In 2008, the Australian Government launched the Australian Youth Forum as a key communication channel between the Government, the youth sector and young people (aged 15–24 years).

#### **Victoria**

223. In 2011, the Victorian Government established the Victorian Deaf Education Institute to provide professional learning opportunities across the disciplines involved in deaf education, to facilitate research and innovation into best practice, and to enable improved access to learning through technology based solutions.

#### **Queensland**

224. The Family Responsibilities Commission works with community members to address school attendance, tenancy, Magistrate Court convictions and child safety issues as a means of re-establishing forms of local Indigenous authority and restoring positive social norms.

#### **Western Australia**

225. In 2009, the Office of Early Childhood Development and Learning was established within and funded by the WA Department of Education to facilitate better integration of early childhood services across government and non-government agencies.

#### **South Australia**

226. The SA Department of Education and Child Development was created in October 2011 to provide a range of integrated services for the benefit of families, children and young people. Its core purpose is to provide early childhood development and wellbeing and public education services.

#### **Tasmania**

227. The Tasmanian Government created an Office for Children to oversee implementation of the *Our Children and Young People Our Future* Agenda.

#### **Northern Territory**

228. In January 2011, the NT Government funded the establishment of an Aboriginal peak body for child, youth and family safety and wellbeing and child protection, *Strong Aboriginal Families, Together*.

#### **Newly adopted and implemented policies and programmes and their scope**

229. In April 2010, the Australian Government commissioned a comprehensive and independent review of funding arrangements for schooling. The panel reported to the Minister for School Education in December 2011 and the report is expected to be released in early 2012.

#### **New South Wales**

230. The *Supporting Children, Supporting Families Program* is a multi-agency intervention strategy providing tailored support to children and young people at risk of

harm to themselves or others. This programme is not a criminal justice response and a young person does not have to have been charged with a criminal offence to be referred.

### **Victoria**

231. Victorian *Early Years Learning and Development Framework*—designed to advance all children’s learning and development from birth to eight years of age and provides early childhood professionals with a common language for describing outcomes for children.

232. Transition: *A Positive Start to School* initiative—aims to improve experiences of starting school by strengthening the development and delivery of transition programmes.

233. *Transition: Sharing Our Journey Information Kit and Protocol*—distributed to schools, kindergartens and early childhood intervention providers to facilitate smooth transition of children with severe disabilities to move from kindergartens to schools.

234. The Abilities Based Learning and Educational Support model provides schools with the necessary assessment, curriculum, reporting and teaching materials and strategies to ensure students with cognitive impairments can participate in the Department of Education and Early Childhood Development’s curriculum and reporting processes.

235. The Victorian Government has committed A\$2 million to ‘Combat School Violence’—improving student outcomes by providing safe, engaging, productive and inclusive places for children and young people to achieve.

### **Queensland**

236. Queensland Urban and Regional Indigenous Strategy and the Learning Earning Active Places strategy (LEAP)—includes 20 whole-of-government actions to ‘close the gap’ in early childhood development, health, education, housing, disability services, community care and economic participation.

237. Queensland Aboriginal and Torres Strait Islander Foundation—as at 19 December 2011, the Foundation has awarded a total of 848 scholarships to students in 88 schools throughout Queensland.

238. The *Helping Out Families* initiative provides targeted support to vulnerable children, young people and their families and is designed to ensure children and young people have the opportunity to remain in a stable, functioning family environment without the need to enter the statutory child protection system.

### **Western Australia**

239. From 2010, an on-entry assessment of preparatory literacy and numeracy skills and understanding has been conducted for all children early in their first year of full-time schooling. This enables teachers to quickly identify children needing additional support or challenge and to tailor programmes accordingly.

240. From 2013, WA children will be guaranteed access to a preschool (kindergarten) place for 15 hours per week at their local public school.

241. From 2013, the first year of full-time schooling in WA will become compulsory.

### **South Australia**

242. Sierra Program within the Port Augusta Prison is an intervention programme that incorporates the Duke of Edinburgh’s Award and helps to reduce the rate of recidivism of young offenders.

243. The Aboriginal Power Cup program is an early intervention strategy that engages Aboriginal young people at risk in sporting activities to encourage them to continue with their education and make positive lifestyle choices.

244. The Community Club Capacity Building Project aims to engage disadvantaged young people at risk by delivering a range of health and social community benefits through South Adelaide Football Club and local football clubs.

**Northern Territory**

245. The Board of Inquiry into the Child Protection System in the NT was conducted in 2010. The Inquiry classified recommendations into three tiers of urgency and the NT Department of Children and Families is progressing implementation against that schedule.

**Newly ratified human rights instruments**

246. Australia expressed its support for the Declaration on the Rights of Indigenous Peoples in 2009.

**Part III**

**Reply to the issues raised in part III, of the list of issues**

247. Through investment in the Longitudinal Study of Australian Children, the Australian Government is collecting longitudinal representative data on all aspects of children’s social, emotional and cognitive development and the context in which it occurs. The Longitudinal Study of Indigenous Children is providing longitudinal data specifically focussing on the development of Indigenous children and the context in which this occurs. Additional information on the Longitudinal Study may be found at <http://www.aifs.gov.au/growingup/>.

248. The Australian Institute of Health and Welfare collaborates with States and Territories to manage the national child protection data collection. This collection is drawn from the State and Territory administrative data sets. It is reviewed annually to improve data quality and comparability. The national collection provides comprehensive statistical information on State and Territory child protection and support services, and some of the characteristics of the children within these systems. States and Territories provide annual aggregate data for six national child protection sub collections:

- Notifications, investigations and substantiations
- Care and protection orders
- Out-of-home care
- Foster carers
- Relative/kinship carers, and
- Intensive family support services.

249. The fifteenth annual comprehensive report on child protection, Child Protection Australia 2010–11 may be found at <http://www.aihw.gov.au/publication-detail/?id=10737421016>.

**Reply to the issues raised in part III, paragraph 1, of the list of issues**

250. Data is not disaggregated by ethnic origin (other than Indigenous) or by region.

**Total notifications (Australia-wide)**

	<i>Total notifications</i>	<i>Total finalized investigations</i>	<i>Total substantiations</i>	<i>Children on orders</i>	<i>Children in out of home care</i>
2008–09	339,454	162,259	54,621	35,409	34,069
2009–10	286,437	131,689	46,187	37,730	34,069



**Children aged 0–12 years who were the subject of a substantiation of a notification of child abuse or neglect received in 2009–10 (per 1,000 children)**

<i>Group</i>	<i>Group level</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Australia</i>
Sex	Boys	8.7	5.8	6.7	3.2	5.3	8.7	8.4	18.7	6.9
	Girls	8.8	5.9	6.5	3.5	5.1	8.5	7.0	18.7	6.9
Age	<1 year	13.5	13.6	13.6	5.9	11.9	14.1	13.2	43.3	13.0
	1–4 years	9.0	5.8	6.3	3.2	5.4	9.9	7.4	19.9	6.9
	5–12 years	7.4	4.8	5.8	3.0	4.3	7.2	7.0	14.7	5.8
Indigenous status	Indigenous children	60.5	55.7	29.8	24.8	37.5	18.7	69.1	36.4	41.0
	Other children(a)	6.5	5.2	5.0	2.0	4.0	8.0	6.2	5.1	5.2
Total	Persons (rate)	8.8	5.9	6.6	3.4	5.2	8.8	7.7	18.7	6.9
	Persons (number)	10,310	5133	5150	1287	1315	736	438	864	25,233

(a) 'Other children' includes non-Indigenous children and those without a reported Indigenous status.

Variations across the States and Territories may be a reflection of different legislation and departmental policies and practices, definitions and data systems in each jurisdiction rather than a variation in the reported levels of child abuse and neglect. Please refer to the Child Protection Australia publications for further details on factors affecting this data.

Source: Australian Institute of Health and Welfare Child Protection Data Collection.

### **Northern Territory**

251. Available data provided by the NT Department of Children and Families in response to the issues raised in part III, paragraphs 1 and 2 of the list of issues is attached separately for financial years 2009–10 and 2010–11. Please note that regional data is not available. Other NT Government agencies were unable to extract relevant data within the time available.

### **Reply to the issues raised in part III, paragraph 2, of the list of issues**

252. Australia does not classify data on children receiving different types of out-of-home care by ethnic origin, except for Aboriginal and Torres Strait Islander children. The 2009–10 *Child Protection Australia* report showed that:

- The number of children subject to a notification of child abuse or neglect and the number subject to a substantiation of a notification have decreased over the past year.
- The number of children under care and protection orders and the number in out-of-home care are rising.
- Aboriginal and Torres Strait Islander children are overrepresented in all of these areas of the child protection system

Table 4.1: Trends in the number of children admitted to out-of-home care, States and Territories, 2008–09 to 2009–10

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
2008–09	4,564	2,936	3,015	797	660	349	194	318	12,833
2009–10	3,922	3,112	2,618	838(b)	644	334	168	366	12,002

Table 4.2: Children admitted to out-of-home care, by age group, States and Territories, 2009–10

Age (years)	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
<b>Number</b>									
<1	746	399	484	174	109	51	25	63	2,051
1–4	1,007	822	618	240	159	91	37	90	3,064
5–9	969	720	579	216	135	88	33	96	2,836
10–14	880	776	667	167	129	72	50	96	2,837
15–17	320	395	270	41	112	32	23	21	1,214
<b>Total</b>	<b>3,922</b>	<b>3,112</b>	<b>2,618</b>	<b>838</b>	<b>644</b>	<b>334</b>	<b>168</b>	<b>366</b>	<b>12,002</b>
<b>Per cent</b>									
<1	19.0	12.8	18.5	20.8	16.9	15.3	14.9	17.2	17.1
1–4	25.7	26.4	23.6	28.6	24.7	27.2	22.0	24.6	25.5
5–9	24.7	23.1	22.1	25.8	21.0	26.3	19.6	26.2	23.6
10–14	22.4	24.9	25.5	19.9	20.0	21.6	29.8	26.2	23.6
15–17	8.2	12.7	10.3	4.9	17.4	9.6	13.7	5.7	10.1
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Table 4.4: Children in out-of-home care, by type of placement, States and Territories, 30 June 2010

Type of placement	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
<b>Number</b>									
Foster care	6,720	2,234	4,393	1,267	1,013	454	219	251	16,551
Relatives/kin	9,001	2,185	2,390	1,235	847	286	266	126	16,336
Other home-based care	0	572	..	0	4	84	0	102	762
Total home-based care	15,721	4,991	6,783	2,502	1,864	824	485	479	33,649
Family group homes	..	0	..	64	0	19	..	24	107
Residential care	378	454	567	144	216	20	47	6	1,832
Independent living	75	23	..	26	28	0	0	4	156
Other/unknown	1	1	..	1	80	30	0	38	151
<b>Total</b>	<b>16,175</b>	<b>5,469</b>	<b>7,350</b>	<b>2,737</b>	<b>2,188</b>	<b>893</b>	<b>532</b>	<b>551</b>	<b>35,895</b>
<b>Per cent</b>									

Table 4.4: Children in out-of-home care, by type of placement, States and Territories, 30 June 2010

Type of placement	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Foster care	41.5	40.8	59.8	46.3	46.3	50.8	41.2	45.6	46.1
Relatives/kin	55.6	40.0	32.5	45.1	38.7	32.0	50.0	22.9	45.5
Other home-based care	0.0	10.5	..	0.0	0.2	9.4	0.0	18.5	2.1
Total home-based care	97.2	91.3	92.3	91.4	85.2	92.3	91.2	86.9	93.7
Family group homes	..	0.0	..	2.3	0.0	2.1	..	4.4	0.3
Residential care	2.3	8.3	7.7	5.3	9.9	2.2	8.8	1.1	5.1
Independent living	0.5	0.4	..	0.9	1.3	0.0	0.0	0.7	0.4
Other/unknown	—	—	..	—	3.7	3.4	0.0	6.9	0.4
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Symbols:

— Data that are nil or rounded to zero (including null cells)

.. Not applicable

Table A1.15: Children in out-of-home care, by sex, States and Territories, 30 June 2010

Sex of child	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number									
Male	8,453	2,808	3,777	1,398	1,176	477	281	254	18,624
Female	7,722	2,655	3,573	1,339	1,003	416	251	297	17,256
Unknown	0	6	0	0	9	0	0	0	15
Persons	16,175	5,469	7,350	2,737	2,188	893	532	551	35,895
Per cent									
Male	52.3	51.4	51.4	51.1	54.0	53.4	52.8	46.1	51.9
Female	47.7	48.6	48.6	48.9	46.0	46.6	47.2	53.9	48.1
Persons	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Table A1.17: Aboriginal and Torres Strait Islander children in out-of-home care, by Indigenous status and relationship of carer, States and Territories, 30 June 2010

Relationship	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number									
Indigenous relative/kin	2,802	209	571	633	224	15	55	124	4,633
Other Indigenous caregiver	987	52	575	183	131	4	11	58	2,001
Other relative/kin(a)	680	214	299	110	77	25	7	0	1,412
Total placed with relatives/kin or other Indigenous caregivers	4,469	475	1,445	926	432	44	73	182	8,046

Table A1.17: Aboriginal and Torres Strait Islander children in out-of-home care, by Indigenous status and relationship of carer, States and Territories, 30 June 2010

Relationship	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Total not placed with relatives/kin or other Indigenous caregivers	970	339	1,241	312	138	94	52	224	3,370
<b>Total</b>	<b>5,439</b>	<b>814</b>	<b>2,686</b>	<b>1,238</b>	<b>570</b>	<b>138</b>	<b>125</b>	<b>406</b>	<b>11,416</b>
Per cent									
Indigenous relative/kin	51.5	25.7	21.3	51.1	39.3	10.9	44.0	30.5	40.6
Other Indigenous caregiver	18.1	6.4	21.4	14.8	23.0	2.9	8.8	14.3	17.5
Other relative/kin	12.5	26.3	11.1	8.9	13.5	18.1	5.6	0.0	12.4
Total placed with relatives/kin or other Indigenous caregivers	82.2	58.4	53.8	74.8	75.8	31.9	58.4	44.8	70.5
Total not placed with relatives/kin or other Indigenous caregivers	17.8	41.6	46.2	25.2	24.2	68.1	41.6	55.2	29.5
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Table A1.16: Children in out-of-home care, by age and type of placement, 30 June 2010

Type of placement/ age (years)	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number									
Home-based									
<1	469	161	253	88	59	24	19	26	1,099
1-4	3,296	1,075	1,642	674	456	202	117	112	7,574
5-9	4,970	1,443	2,288	833	599	282	156	161	10,732
10-14	4,959	1,468	1,899	675	514	253	127	138	10,033
15-17	2,026	843	701	232	236	63	66	42	4,209
<b>Total</b>	<b>15,721</b>	<b>4,991</b>	<b>6,783</b>	<b>2,502</b>	<b>1,864</b>	<b>824</b>	<b>485</b>	<b>479</b>	<b>33,649</b>
Residential (including family group homes)									
<1	1	1	0	7	0	0	0	1	10
1-4	1	3	13	32	25	1	0	1	76
5-9	13	25	47	41	55	5	1	6	193
10-14	158	173	228	78	89	18	17	12	773
15-17	205	252	279	50	47	15	29	10	887
<b>Total</b>	<b>378</b>	<b>454</b>	<b>567</b>	<b>208</b>	<b>216</b>	<b>39</b>	<b>47</b>	<b>30</b>	<b>1,939</b>
Per cent									
Home-based									
<1	3.0	3.2	3.7	3.5	3.2	2.9	3.9	5.4	3.3

Table A1.16:  
Children in out-  
of-home care, by  
age and type of  
placement, 30  
June 2010

Type of placement/ age (years)	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
1-4	21.0	21.5	24.2	26.9	24.5	24.5	24.1	23.4	22.5
5-9	31.6	28.9	33.7	33.3	32.1	34.2	32.2	33.6	31.9
10-14	31.5	29.4	28.0	27.0	27.6	30.7	26.2	28.8	29.8
15-17	12.9	16.9	10.3	9.3	12.7	7.6	13.6	8.8	12.5
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Residential (including family group homes)									
<1	0.3	0.2	0.0	3.4	0.0	0.0	0.0	3.3	0.5
1-4	0.3	0.7	2.3	15.4	11.6	2.6	0.0	3.3	3.9
5-9	3.4	5.5	8.3	19.7	25.5	12.8	2.1	20.0	10.0
10-14	41.8	38.1	40.2	37.5	41.2	46.2	36.2	40.0	39.9
15-17	54.2	55.5	49.2	24.0	21.8	38.5	61.7	33.3	45.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Table A1.17: Aboriginal and Torres  
Strait Islander children in out-of-home  
care, by Indigenous status and  
relationship of carer, States and  
Territories, 30 June 2010

Relationship	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number									
Indigenous relative/kin	2,802	209	571	633	224	15	55	124	4,633
Other Indigenous caregiver	987	52	575	183	131	4	11	58	2,001
Other relative/kin(a)	680	214	299	110	77	25	7	0	1,412
Total placed with relatives/kin or other Indigenous caregivers	4,469	475	1,445	926	432	44	73	182	8,046
Total not placed with relatives/kin or other Indigenous caregivers	970	339	1,241	312	138	94	52	224	3,370
<b>Total</b>	<b>5,439</b>	<b>814</b>	<b>2,686</b>	<b>1,238</b>	<b>570</b>	<b>138</b>	<b>125</b>	<b>406</b>	<b>11,416</b>
Per cent									
Indigenous relative/kin	51.5	25.7	21.3	51.1	39.3	10.9	44.0	30.5	40.6
Other Indigenous caregiver	18.1	6.4	21.4	14.8	23.0	2.9	8.8	14.3	17.5
Other relative/kin	12.5	26.3	11.1	8.9	13.5	18.1	5.6	0.0	12.4
Total placed with relatives/kin or other Indigenous caregivers	82.2	58.4	53.8	74.8	75.8	31.9	58.4	44.8	70.5
Total not placed with relatives/kin or other Indigenous caregivers	17.8	41.6	46.2	25.2	24.2	68.1	41.6	55.2	29.5
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Reply to the issues raised in part III, paragraph 3, of the list of issues**

253. Australia has been unable to provide comprehensive data on the frequency of children under the age of 14 found criminally responsible.

**New South Wales**

254. The following data is available on the number of persons aged 10–14 years found guilty in NSW criminal courts.

**NSW Criminal Courts Statistics, January 2008 to June 2011****Number of persons aged 10 to 14 years found guilty in NSW criminal courts**

<i>Offender's age</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>Jan to June 2011</i>
10	4	0	0	1
11	25	26	20	8
12	102	74	83	36
13	332	280	285	131
14	744	771	705	296
<b>Total 10-14</b>	<b>1207</b>	<b>1151</b>	<b>1093</b>	<b>472</b>

*Sources:* NSW Bureau of Crime Statistics and Research

## **Annex**

### **List of common acronyms**

ACARA – Australian Curriculum, Assessment and Reporting Authority

ACT – Australian Capital Territory

AFP – Australian Federal Police

COAG – Council of Australian Governments

Cth – Commonwealth

DEEWR – Department of Education, Employment and Workplace Relations

DIAC – Department of Immigration and Citizenship

FaHCSIA – Department of Families, Housing, Community Services and Indigenous Affairs

NSW – New South Wales

NT – Northern Territory

NTER – Northern Territory Emergency Response

QPS – Queensland Police Service

SA – South Australia

WA – Western Australia

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