



**Convention on the
Rights of the Child**

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

Second and third periodic reports of States parties due in 1998 and 2003

AUSTRALIA* ** ***

[30 September 2003]

* For the initial report submitted by Australia, see CRC/C/8/Add.31; for its consideration by the Committee on 24 and 25 September 1997, see CRC/C/SR.403-405, and CRC/C/15/Add.79.

** The annexes may be consulted in the files of the Secretariat.

*** 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.

**AUSTRALIA'S SECOND AND THIRD REPORTS UNDER
THE CONVENTION ON THE RIGHTS OF THE CHILD**

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Summary

The Australian Government is pleased to present to the Committee on the Rights of the Child Australia's combined Second and Third Reports under the Convention on the Rights of the Child.

The Australian Government believes that, when read together with the initial Australian report (CRC/C/8/Add.31), this report demonstrates the special place that children hold in Australian society. High levels of effort and resources are committed to ensuring that Australian children are able to reach their full potential and that the rights to be found in the Convention are available to them. The statistics in the annexes to this report provide a snap-shot of the outcome of these efforts and the important position that children enjoy in Australian society. Most Australian children enjoy lower infant mortality rates, better health, higher educational outcomes and greater leisure opportunities than their counterparts in many other countries.

This report shows that Australian governments have continued to seek opportunities to improve the implementation of the Convention in Australia. One of the main achievements in the period covered by this report has been the increased coordination of policies and monitoring mechanisms for children. In 2002, the Prime Minister created the position of Minister for Children and Youth Affairs to ensure an integrated government approach across the spectrum of Federal Government policies and programs for children. A new federal Department of Family and Community Services has also been created in recognition of the need for leadership in issues relating to children and families.

The Convention is implemented in Australia by nine governments. The Federal, six State and two Territory governments each develop initiatives to implement the Convention that best meet the needs of their respective jurisdictions. This does not mean that the Convention is not fully implemented across Australia, but rather that it is implemented in a variety of ways. Australia's federal system of government means that there will never be complete consistency across Australia in the policies and programs that are implemented for the benefit of children. Such consistency is not required to implement the Convention and each government must retain the discretion to respond to issues in the manner that most suits that jurisdiction. However, State and Territory governments have increased coordination of policies and monitoring mechanisms for children. They have adopted a whole-of-government approach to developing many of the policies affecting children. The cooperative approach that is evident in Australia means that the Commonwealth and the States and Territories can learn from each other's experience and that there can be a coordinated approach to issues of common interest.

Another area where there has been much activity since the Committee considered Australia's First Report is the provision of mental health services to children, particularly programs aimed at reducing the incidence of youth suicide. National strategies designed to address this most tragic of problems have achieved great results with a 35% decrease in the suicide rate amongst young Australians since 1997.

This report also demonstrates Australia's commitment to children outside of Australia. Australia has always been supportive of the two Optional Protocols to the Convention and is a signatory to both of them. Domestic processes that must be finalised prior to ratification of a treaty are being undertaken in relation to each of the Optional Protocols. Australia has already

provided practical support for these instruments in its international aid programs and in enacting legislation establishing new offences in relation to sexual servitude and the sale of and trafficking in people for the purposes of sexual exploitation. Australia's international aid program has a focus towards implementing the Convention generally.

Despite the efforts on behalf of children, significant challenges remain.

Australian governments continue to address the needs of indigenous children, particularly in the areas of health, education, family violence and the juvenile justice system. Yet indigenous children continue to suffer disadvantage in these areas compared with non-indigenous children. Indigenous children comprise an increasingly significant proportion of the Australian population. It is estimated that approximately 5% of all Australian children are indigenous and that if current patterns continue, by 2042, indigenous Australians will make up approximately 12% of the 0-14 age group in Australia. These statistics mean that the need to address the relative disadvantage of indigenous children is more pressing than ever.

The child protection system is another area of concern. Despite extensive efforts since the Committee's consideration of Australia's initial report, including a number of reviews into the operation of child protection services in a number of States and significantly increased funding for initiatives targeted at high risk groups, the number of children in need of care and protection remains unacceptably high.

In order to address concerns relating to children in immigration detention, the Federal Government has developed flexible detention arrangements to cater for women and children detainees. The Federal Government has also continued to improve the services available to children whilst they are in immigration detention.

Of course, this report is only the first stage in this periodic review of the implementation of the Convention in Australia. The Government will welcome the opportunity to expand on the initiatives that have occurred since the Committee considered Australia's initial report when the time comes to consider this report.

Non-government organisations have indicated that they will separately report to the Committee on the implementation of the Convention in Australia from their perspective. Civil society and the Human Rights and Equal Opportunity Commission play an important role in the implementation of the Convention in Australia and the Government looks forward to their positive contribution in the dialogue with the Committee.

Introduction

A. Preparation and structure of report

1. This is Australia's combined Second and Third Report to the Committee on the Rights of the Child (the Committee) submitted under Article 44, paragraph 1 of the Convention on the Rights of the Child (the Convention).

2. Australia ratified the Convention on 17 December 1990. Pursuant to Article 49, the Convention came into force for Australia on 16 January 1991. Australia's First Report under the Convention (Australia's First Report) was submitted in December 1995 and considered by the Committee, along with much updated information, in September 1997. As Australia's Second Report was due in January 1998, the Committee agreed that Australia should submit a combined Second and Third Report at the time the Third Report fell due.

3. This report has been prepared in accordance with the Committee's Guidelines for Periodic Reports.¹ Accordingly, this Report updates Australia's First Report and highlights significant changes to law and practice that occurred between September 1997 and 15 January 2003, including those that address the suggestions and concerns of the Committee in relation to Australia's First Report. Areas in which there have been no developments are not commented on in this report; the situation in relation to such areas remains as reported in Australia's First Report. Where relevant, this report contains cross-references to relevant parts of Australia's First Report and Australia's Core Document.²

4. To avoid adding to the burden on the secretariat resources of the Committee, the Federal Government has endeavoured to produce a concise report and has not attached documents relevant to every initiative, legislative change and judicial decision mentioned in this report. The Federal Government looks forward to providing further information on the initiatives which the Committee indicates are of interest to it when it comes to consider this report. A number of web sites that may be of interest to Committee members are included in the footnotes contained in the report.

B. Consultation with state and territory governments

5. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Federal Government and those of the six States - New South Wales, Victoria, Queensland, South Australia, Tasmania and Western Australia - and two internal self-governing territories - the Australian Capital Territory and the Northern Territory.³ For the purposes of this report, the two internal self-governing territories may be regarded as standing substantially in the same position as the States. As the State and Territory Governments are responsible for many of the government activities that give effect to the Convention, extensive consultations have occurred between the Federal Government and State and Territory Governments in the preparation of this report.

C. Consultation with non-government organisations

6. Non-government organisations (NGOs) play an important role in promoting, respecting and implementing the rights of children through advocacy, service provision and fund-raising.

The Federal Government sought the views of NGOs in the process of drafting the report. The Federal Government is grateful to the UNICEF Task Force on Child Rights, the members of the Attorney-General's Human Rights NGO Forum and the Human Rights and Equal Opportunity Commission (HREOC) for their assistance and comments.

D. External territories

7. The territory of Australia includes a number of external territories.⁴ Of these, only Norfolk Island and the Indian Ocean Territories (IOTs), comprising the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, are inhabited. At paragraph 2 of its Concluding Observations on Australia's First Report (Concluding Observations), the Committee expressed its regret that Australia "did not include full information in its report on the External Territories that are administered by it" and noted Australia's obligation under Article 2 of the Convention "to report on progress achieved in all its territories".

8. Norfolk Island, is essentially self-governing, for example, it has its own health and social security systems. However, the Federal Government retains the power of veto over legislation in some areas, for example, education and industrial relations. The arrangements for Norfolk Island are detailed further at Annexure 3 to Australia's First Report.

9. The Federal Government administers the IOTs and is responsible for all regulations and services. Almost all federal Acts extend to the IOTs of their own force. In 1992, the Federal Government "adopted" the Western Australian legal regime as IOT laws to provide a body of State equivalent laws in the Islands. It is important to note that these Western Australian laws, when applied in the IOTs, are federal laws, not Western Australian laws. All powers and obligations under these "mirrored" Western Australian laws are vested in the Federal Government.

10. The Federal Government has a number of service arrangements with the Western Australian Government to administer the applied laws. For example, the Federal Government has a Service Delivery Arrangement with the Western Australian Department of Community Development. Under this Arrangement, the Department provides supervision and support to the IOT Social Work service, and advice and assistance to the IOT Health Service Manager and Administration.

11. In general, the comments made in this report regarding Western Australia are relevant to the situation in the IOTs under the applied Western Australian laws. However, in some cases, the remoteness of IOTs and their small populations mean that the infrastructure to administer the laws may not be in place, or is provided in a modified form by the administrations of the IOTs.

12. The arrangements for the IOTs are detailed further at Annexure 3 to Australia's First Report and at Annexure 4 to this report.

13. In this Report, a reference to the States and Territories excludes a reference to the IOTs and Norfolk Island, unless a specific reference is made to them.

I. GENERAL MEASURES FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION

A. Implementation of the rights of the child (art. 4)

14. The Committee is referred to pages 1-26 of the English version of Australia's First Report (CRC/C/8/Add.31).

Coordination of policies and monitoring mechanisms for children

15. The Committee is referred to pages 19-25 of Australia's First Report. Since the consideration of that report by the Committee, the Federal Government has increased co-ordination of policies for children.

16. In 2002, the new position of Minister for Children and Youth Affairs was created to ensure an integrated government approach across the spectrum of Federal Government policies and programs for children and young people.

17. Another major Federal Government initiative has been the establishment of the Department of Family and Community Services (FaCS). The Department was formed in 1998 in recognition of the need for Federal leadership in issues relating to children and families.

18. The objectives of FaCS are to build stronger families and stronger communities and enhance economic and social participation, through a range of programs, many of which are directed specifically at children. It is responsible for approximately one third of Australian expenditure on community services.

19. Through these policies and programs, FaCS supports families and promotes the health and wellbeing of children and young people by providing financial assistance to families with children (see further the section on social security commencing at paragraph 320 below), assisting parents in their parenting role, ensuring access to quality, affordable child care, and preventing child abuse and neglect.

20. FaCS is entrusted with ensuring a whole-of-government approach to issues relating to children. Several mechanisms have been put in place to promote this. A Task Force on Child Development, Health and Well Being, comprising government representatives, was established in September 2001 to develop better coordination across the Federal Government on early childhood policies and programs.

21. In September 2002, the Federal Government announced that the Taskforce would develop a *National Agenda for Early Childhood*. The aim of the Agenda will be to give Australian children the best possible start in life by:

- Articulating a national vision to underpin future activity in the area of early childhood;
- Enabling national consultation and collaboration on priorities in the area of early childhood;

- Coordinating action on agreed national priorities;
- Identifying intervention initiatives to best prevent or manage risk to children;
- Identifying and establishing intersectoral and interdisciplinary partnerships on early childhood issues; and
- Monitoring progress and measuring outcomes at a national level.

22. The Agenda will combine the knowledge, ideas and efforts of all levels of government, research organisations, business, volunteers and NGOs with an interest in early childhood. In particular, the key action areas for the Agenda will be early childhood and maternal health, early learning and care and supporting child-friendly communities. Consultations on the framework for the Agenda have commenced.

23. The Federal Government, through FaCS, also recently funded the establishment of Families Australia, a national peak body with membership from the Association of Services Supporting Australia's Families, Australian Foster Care Association, Child and Family Welfare Association of Australia and the Secretariat for National Aboriginal and Islander Child Care. As one of its priorities, Families Australia seeks to improve co-ordination between Federal, State and Territory Governments in policies, programs and services affecting families, young people and children.

24. The Federal Government believes that the creation of a Ministry for Children and Youth Affairs and the establishment of FaCS addresses the concern of the Committee, outlined at paragraph 9 of its Concluding Observations on Australia's First Report, "about the absence of a comprehensive policy for children at the federal level" and its concern about the "lack of monitoring mechanisms" for children "at federal and local levels".

25. Since Australia's First Report, there has also been increased coordination of policies and monitoring mechanisms for children in the States and Territories. State and Territory governments have adopted a whole-of-government approach in developing policies affecting children and young people.

26. In every State and Territory, there is an Office of Youth Affairs or equivalent, which is responsible for coordinating policies affecting children and young people. These Offices often also act as monitoring mechanisms for children, together with the Ombudsman in each State or Territory.

27. In three of the States, a specific Commission for Children has been established: New South Wales (Commission for Children and Young People), Queensland (Commission for Children and Young People) and Tasmania (Commissioner for Children).

28. In New South Wales, the Commission for Children and Young People was established in 1998 to act as the central body entrusted with overseeing the health and welfare of children. The Commission cooperates with the New South Wales Government and NGOs on laws, policies, practices and services that affect children and young people.

29. An independent organisation, the Commission advocates for the children and young people of New South Wales by:

- Monitoring all new New South Wales legislation to assess its impact on children;
- Making submissions on New South Wales Bills, Acts of Parliament and Regulations;
- Making submissions on government and non-government inquiries and discussion papers;
- Undertaking inquiries and research into aspects of children's health and welfare;
- Informing and educating children, professionals and the community;
- Implementing and monitoring the system for screening workers who work with children and young people; and
- Implementing a voluntary accreditation scheme for counsellors who work with people who have committed sexual offences against children.

30. In Queensland, the Commission for Children and Young People was established in 2000 to promote and protect the rights, interests and wellbeing of all children and young people in Queensland. The Commission's functions include:

- Monitoring, reviewing and informing the development of laws, policies and practices which impact on children and young people;
- Providing advocacy and other support services at residential facilities, detention centres, foster homes and mental health centres;
- Conducting research on issues affecting children and young people;
- Investigating and seeking to resolve complaints about services for young people; and
- Screening persons seeking employment in certain child-related industries.

31. The position of the Tasmanian Commissioner for Children was established in July 2000 to promote and protect the rights of all children and young people in Tasmania with respect to their health, welfare, care, protection and development. The Commissioner is required to act independently, impartially and in the public interest. A Consultative Council of young people advises the Commissioner. The functions of the Commissioner are:

- To examine and report on the policies and practices of government and non-government agencies, organisations or other persons affecting the health, welfare, care, protection and development of those under the age of 18;
- To act as an advocate for law and procedural reform in matters affecting children;
- To take complaints from individual children and attempt to conciliate their resolution;

- At the request of the relevant minister, to investigate a decision, recommendation, act or omission under the *children, young persons and their families act 1997* in relation to a particular child (generally child protection matters); and
- To increase public awareness of matters relating to the health, welfare, care, protection and development of children.

32. Other States and the Territories have not considered it necessary to establish a Children's Commissioner or similar office, believing that it may result in duplication with established processes. For example, the Western Australian Government considered the need for a Children's Commissioner as part of preparing its response to an inquiry into its child protection system. The Western Australian Government determined that having a Children's Commission would duplicate existing accountability and advocacy processes, such as existing legislation, the Office of Children and Young People's Policy and the Ombudsman.

33. At the federal level, HREOC continues to play a significant role in monitoring policies and programs affecting children. HREOC is a national independent statutory government body, established in 1986 by an Act of the Federal Parliament, the *Human Rights and Equal Opportunity Commission Act 1986* (HREOC Act).

34. The HREOC Act gives HREOC the function of promoting the Convention and monitoring and reporting on compliance with the Convention. The functions of HREOC also include the power to inquire into complaints in relation to Federal Government practices that are alleged to be inconsistent with the Convention. If HREOC is satisfied that an act or practice is inconsistent with the Convention, but has been unable to resolve the matter by conciliation, HREOC issues a report to the Federal Attorney-General, who must table the report in Parliament. The Act also empowers HREOC to report to the Attorney-General on steps that need to be taken by Australia to comply with the provisions of certain international instruments, including the Convention.

35. HREOC has undertaken a number of major inquiries into issues arising under the Convention, including children in the legal system;⁵ age discrimination;⁶ rural and remote education;⁷ and children in immigration detention.⁸ HREOC conducts widespread and direct consultation with children and young people in the course of fulfilling its functions in relation to the rights in the Convention. Further details on the activities of HREOC are provided at Annex 2.

36. The Federal Government notes the concern of the Committee, expressed at paragraph 7 of its Concluding Observations, that there is not a legitimate expectation that an administrative decision will be made in conformity with the Convention. In the same paragraph, the Committee also expressed its concern that 'there is no right of citizens to launch complaints in the local courts on the basis of 'the Convention''. The Committee is referred to the Core Document of Australia for information on how treaties are implemented in Australia. In particular the Committee is referred to pages 52-66 for information on the implementation of Australia's obligations under human rights treaties.

37. In 1995, a majority of the High Court of Australia in the matter of *Minister for Immigration and Ethnic Affairs v. Teoh*⁹ held that the act of entry into a treaty gave rise to a legitimate expectation in administrative law that the treaty would be followed, even in the absence of implementing legislation.

38. The Federal Government believes the High Court's decision in *Teoh* gave treaties an effect in Australian law which they did not previously have and that the development was not consistent with the proper role of Parliament in implementing treaties in Australian law.

39. On 25 February 1997, the Minister for Foreign Affairs and the Attorney-General made a joint statement that set aside legitimate expectations arising out of entry into treaties. The Federal Government also introduced legislation into the Parliament to displace the legitimate expectation in administrative law that would otherwise arise out of the entry into treaties. That legislation is currently lapsed.

40. In a judgment dated 12 February 2003 in the matter of *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam*,¹⁰ four members of the current High Court indicated their dissatisfaction with the decision in *Teoh's Case*. If *Teoh's Case* was to be formally relied upon by a party in a future case the Court would likely overturn that aspect concerning legitimate expectations arising out of treaties.

International aid

41. Australia's international aid program continues to foster the implementation of the Convention. The objective of Australia's aid program is to advance Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development. Australia's aid contributes to the reduction of poverty in the Asia-Pacific region by strengthening frameworks for sustainable and inclusive economic growth; supporting interventions that enable the poor to increase their productivity; encouraging governments, institutions and donors to be more accountable; and reducing vulnerability associated with conflict and disasters.

42. Children benefit directly from the poverty reduction focus of Australia's aid program. Over the past decade, Australia has continued to strengthen its assistance for women and children in developing countries, in response to the 1990 World Summit for Children's *Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s*.

43. Children and women have directly benefited from Australia's increased funding of social development activities (such as education, health, water supply and sanitation, governance and civil society, and other social infrastructure and services). The Australian aid program has more than doubled its funding for social development, from \$287 million in 1989-90 to more than \$638 million in 2001-02, representing 36% of total direct aid flows. Broader measures aimed at increasing economic development, including income and employment generation for the poor, further contribute to improving the well being of children and women.

44. The Federal Government's efforts to progress the goals of the 1990 World Summit for Children have also been reinforced through the adoption of a gender mainstreaming approach. This ensures gender considerations are strategically incorporated into assistance policies and

programs. In this context, the needs of children are addressed through activities aimed at improving the access of women (generally primary carers) to education, health care and economic resources and through assisting efforts to eliminate discrimination against, and exploitation of, women and children.

45. Australia's aid program includes provision of funding to the United Nations and multilateral organisations whose activities directly benefit children in developing countries. Between 1997-98 and 2001-02, Australia has provided \$112 million in funding to UNICEF, in core contributions and for specific activities and programs. The Federal Government values Australia's partnership with UNICEF and will continue to work closely with the agency to ensure activities address the priority needs of children and women in the region.

46. In addition to its substantial bilateral program of assistance, in 2002-03 Australia is providing \$68.8 million in core funding to United Nations development and humanitarian organisations including UNICEF, WFP, UNDP and UNHCR. In the same period Australia will provide almost \$15 million to international health programs, including WHO, UNAIDS and UNFPA, and over \$101 million in emergency and humanitarian assistance, including support for the ICRC and food aid, as well as \$15 million for an International Refugee Fund.

47. The Federal Government notes the encouragement of the Committee, at paragraph 25 of its Concluding Observations, for Australia to "allocate special funds in its international cooperation programs and schemes to children" and "to use the principles and provisions of the Convention as a framework for its program of international development assistance." The Federal Government also notes that NGOs have called for Australia's aid program to be structured around the Millennium Development Goals, endorsed by the UN General Assembly in 2000. Four of these Goals relating directly to children are, by 2015, to achieve universal primary education, to eliminate gender disparity in education, to reduce by two thirds the under five mortality rate, and to reduce by three quarters the maternal mortality ratio.¹¹ The Federal Government believes that the focus of Australia's international aid program outlined above meets both of these concerns.

48. Due to competing resource requirements, the Australian aid program is not currently at the level encouraged by the Committee. In its Concluding Observations (at paragraph 6) the Committee encouraged Australia to "achieve the 0.7 per cent of GDP target for international assistance to developing countries". NGOs have also called on the Federal Government to increase Australia's level of overseas development assistance to at least 0.5% (with an ultimate aim of 0.7%) of Gross National Income (GNI). Currently, Australia is placed 12th out of 22 OECD countries at around 0.25% of GNI.

49. Australia was an active participant in the UN General Assembly Special Session on Children, which was held in New York from 8 to 10 May 2002. The Federal Government is giving consideration as to how best to take forward the outcomes of the Special Session and the new global agenda for children outlined in the outcomes document: *A world fit for children*.¹²

50. The Australian Council for Overseas Aid (ACFOA), the national coordinating body for some 90 Australian NGOs working in international development, has developed a Code of Conduct which includes a commitment by signatories to "have policies and procedures to

promote the safety and well-being of all children accessing their services and programs, particularly to minimise the risk of abuse of children”. Adherence to the Code is required for organisations to be accredited with the Federal Government in order to apply for funding from the Government aid program.

51. The Australian Government acknowledges the pivotal role played by NGOs in promoting, respecting and fulfilling the rights of children through raising funds, advocacy and providing targeted community development assistance. The Convention provides the framework for all the activities of a number of Australian child-focused development agencies, such as UNICEF Australia, Save the Children Fund Australia and PLAN Australia. In addition, the promotional activities of agencies such as World Vision Australia, the Christian Children’s fund, Caritas and AngliCORD graphically illustrate to the Australian public the situation of children in developing countries and the ongoing need for development assistance.

B. Making the principles and provisions of the Convention widely known (art. 42)

52. The Committee is referred to pages 25-26 of Australia’s First Report.

53. The Federal Government places great importance on human rights education, including promotion of the Convention. As set out in this section, the Federal Government has undertaken measures to ensure a strong focus on human rights education at a national level, including awareness raising about the principles of the Convention. The Federal Government’s efforts in promoting human rights education have contributed to making the principles and provisions of the Convention widely known.

National Committee on Human Rights Education

54. In 1998, the Federal Government provided funding for the establishment of a National Committee on Human Rights Education. The Committee is comprised of NGOs, trade unions and business representatives and other individuals with an interest in human rights education. The Committee’s objectives include assessing the existing needs of the Australian community in relation to human rights education and developing strategies to deliver human rights education to meet those needs. The Government has provided financial assistance to the Committee, including making \$10,000 available as seed funding, and providing two grants of \$20,000 (in December 2001 and October 2002) to assist in raising awareness and appreciation of human rights education. The Government also granted the Committee tax deductibility status that will assist it in seeking donations from the private sector.

55. The Committee held a National Strategic Conference on Human Rights Education in August 2002. The Conference provided an opportunity for different sectors involved in human rights education to meet and exchange ideas, and to discuss human rights education initiatives currently under way in the community. A report of the discussions and outcomes of the Conference will be distributed throughout the human rights education sector in Australia. This initiative is part of Australia’s commitment to the United Nation’s Decade on Human Rights Education.

Youth Portal

56. The Federal *Youth Portal* has been developed as part of the *Government Online Strategy*.¹³ The Portal provides a single point of access for Federal Government online information for and about young people including programs, services, research, publications and events, many of which are based on the principles underpinning the Convention.

Human Rights and Equal Opportunity Commission

57. One of the key functions of HREOC is to educate the community about human rights, including those rights established by the Convention. HREOC has developed innovative and effective methods for fulfilling this function.

58. HREOC's human rights education strategy is aimed at school students and teachers. The strategy includes conducting workshops, such as the Human Rights value workshops, which bring together secondary school students, teachers, community representatives and human rights leaders to explore human rights principles and practices. Online initiatives are also an important part of the education strategy. HREOC has a website containing a specific schools page with information about human rights, including the Convention.¹⁴

59. In 2001 HREOC launched the *Youth Challenge Online* website.¹⁵ The website uses role plays, guided activities, surveys, personal stories and discussion, and forms a significant resource to assist schoolteachers to educate students about human rights and responsibilities. The education modules include materials about international instruments and domestic laws, which are presented in a user friendly and relevant manner for children. Students focus on real life issues such as discrimination based on sex, race or disability, sexual harassment and rights in the workplace. In addition to the modules the website contains a current issues series, with a new issue each month. The online education strategy is promoted through posters and postcards.

Children's Commissions

60. In the States and Territories, the three Children's Commissions (the Commission for Children and Young People in New South Wales, the Commission for Children and Young People in Queensland and the Commissioner for Children in Tasmania) have been particularly active in promoting the principles and provisions of the Convention.

61. Each Commission is founded on the principles and provisions of the Convention and their submissions on laws and policies affecting children regularly make reference to relevant Articles of the Convention, as do speeches and addresses by each Commissioner.

62. The websites of the New South Wales Commission for Children and Young People and the Commissioner for Children in Tasmania both include links to the text of the Convention on the website of the Office of the High Commissioner for Human Rights. The New South Wales website also includes information about the Convention and access to information sheets that give more detailed coverage of issues dealt with in the Convention.¹⁶

63. Other promotional activities have included, for example, in New South Wales, the development of teaching materials on the Convention for use in primary schools and the inclusion of information about the Convention in the Commission's Newsletter *Exchange*. In Tasmania, the Commissioner for Children has also distributed a Policy for Children and a Policy for Youth to all local councils. These policies are based on the Convention on the Rights of the Child and set out the rights of children and youth in Tasmania as expressed in Tasmanian legislation.

Chair in Human Rights Education

64. In 2002 the Curtin University of Technology in Western Australia established the Dr Haruhisa Handa Chair in Human Rights Education. Activities to be undertaken through the Chair will include development of course material in human rights education; public education including online material, teacher training and supervision of delivery within schools; and development of partnerships with national, regional and international organisations.

Professional training

65. Professional training in the provisions of the Convention is provided in New South Wales to youth justice conference convenors, all police officers with responsibilities under the *Young Offenders Act 1997* and specialist Youth Liaison Officers. In South Australia, the government has incorporated the principles of the Convention into clinical practice in the youth mental health area.

66. The Federal Government believes that the developments outlined in this section are important first steps towards meeting the recommendation of the Committee, outlined at paragraph 27 of its Concluding Observations, that:

awareness-raising campaigns on the [Convention] be conducted, with a particular focus on its general principles and on the importance the Convention places on the role of the family. [...] The Committee also suggests that the rights of the child be incorporated in school curricula. It further recommends that the Convention be incorporated in the training provided to law enforcement officials, judicial personnel, teachers, social workers, care givers and medical personnel.

C. Making the report widely available (art. 44, para. 6)

67. The Committee is referred to page 26 of Australia's First Report. That report was tabled in Federal Parliament and copies were distributed to State and Territory Governments, Federal Departments and major public libraries. Copies of the report were available to NGOs and interested members of the public. In all, around 1200 copies of the report were printed and distributed.

68. In addition, Australia's response to the questions on notice from the Committee ahead of the consideration of Australia's First Report, the summary record of the Committee's consideration of that report and the Committee's Concluding Observations were tabled in Federal Parliament. The Committee's Concluding Observations were provided to each State and Territory Government.

69. The Federal Attorney-General's Department has published Australia's First Report and the documents pertaining to the Committee's consideration of the report on its website.¹⁷ Hard copies of these documents are available from the Federal Attorney-General's Department on request.

70. It is proposed to disseminate this combined Second and Third Report in the same way.

II. DEFINITION OF THE CHILD

71. The Committee is referred to pages 27-36 of Australia's First Report.

A. Criminal responsibility

72. The Committee is referred to pages 33-34 of Australia's first Report and paragraph 11 of its Concluding Observations. Recent changes to State, Territory and federal laws have resulted in the standardisation of the age of criminal responsibility to 10 years of age in all jurisdictions. Furthermore, there is a rebuttable presumption that children aged between 10 and 14 are incapable, or will not be held accountable, for committing a crime, either because of the absence of criminal intent, or because they did not know that they should not have done certain acts or omissions.¹⁸

B. Deprivation of liberty and imprisonment

73. The Committee is referred to pages 34-36 of Australia's First Report.

74. In June 2000, the Northern Territory Government amended the definition of a child in terms of the judicial process in that jurisdiction. The changes raised the age at which a person can be treated as an adult for sentencing purposes from 17 to 18 years old.

III. GENERAL PRINCIPLES

75. The Committee is referred to pages 37-60 of Australia's First Report.

A. Principle of non-discrimination (art. 2)

76. The Committee is referred to pages 37-44 of Australia's First Report.

77. Since the consideration of Australia's First Report by the Committee, the Federal Government has adopted a number of initiatives that implement the principle of non-discrimination contained in the Convention. The Federal Government considers that the measures set out below address the concern of the Committee, expressed at paragraph 12 of its Concluding Observations, that the principle of non-discrimination was not being fully applied.

Age discrimination legislation

78. On 9 January 2003, the Federal Government released an information paper on proposed federal age discrimination legislation. Whilst age is not one of the characteristics listed in Article 2 of the Convention, prohibiting discrimination on the basis of age is an important boost

to the principle of non-discrimination as it will remove potential barriers to the economic and social participation of younger Australians in public life. The legislation will be designed to ensure that people are not prevented from enjoying all aspects of Australian community life because of their age. The proposed legislation will strengthen the protection of children from discrimination that currently exists in State and Territory anti-discrimination legislation.

79. Prohibiting age discrimination at the national level demonstrates the importance the Federal Government gives to addressing this problem. The proposed legislation will apply consistently throughout Australia and to the Federal and State and Territory Governments. The legislation will cover a number of areas of public life including: work (including recruitment, training, promotion, redundancy/retirement); access to goods, services and facilities (which would include areas such as superannuation, insurance and financial services, and health and medical services); access to premises, and/or places and transport; administration of Commonwealth laws and programs; education; accommodation; land; and requests for information on which unlawful age discrimination might be based.

80. Exemptions from the prohibition on age discrimination will be specified in the legislation, where appropriate. For example, the legislation will permit favourable treatment for people of a particular age or age group, where it is to meet a particular need for people of that age group, or to redress disadvantage suffered by that age group, or to provide fair and legitimate benefits to people of that age group.

81. The Federal Government has undertaken an extensive consultation process with other levels of government and business and community groups to ensure that the legislation strikes the right balance between the need to eliminate unfair age discrimination and the need to allow for situations where age requirements are necessary.

82. The Federal Government hopes to introduce age discrimination legislation into Parliament in 2003. Passage of the legislation will be accompanied by a nationwide education and awareness-raising campaign.

83. If passed by Parliament, the age discrimination legislation will be administered by HREOC.

Disability standards

84. Under the *Disability Discrimination Act 1992* (DDA) the Federal Government is empowered to formulate “disability standards” in a range of specified areas. Disability standards provide a practical means of working towards meeting the key objective of the DDA, which is to eliminate, to the extent possible, discrimination against persons on the ground of disability. Disability standards aim to clarify legal obligations by spelling out in detail rights and obligations under the DDA in areas such as access to education, transport and premises. In this way, disability standards can be an important tool for ensuring that children living with a disability can enjoy the rights set forth in the Convention.

85. Disability Standards for Accessible Transport commenced on 23 October 2002.¹⁹ These standards provide practical measures to be taken by transport operators and providers so that public transport will become more accessible, particularly for people with disabilities, as well as

those travelling with young children and the elderly. The Federal Government is also progressing the development of disability standards in the areas of access to education and public premises.

Anti-discrimination legislation

86. In Tasmania, the *Anti-Discrimination Act 1998* commenced operation on 10 December 1999. This Act prohibits discrimination in public life on the ground of a number of attributes, most of which are relevant to children, such as: race; age; sexual orientation; lawful sexual activity; gender; disability; political belief or affiliation; political activity; religious belief or affiliation; religious activity; irrelevant criminal record; irrelevant medical record; and association with a person who has, or is believed to have, any of the protected attributes.

Action against racial and religious discrimination

87. Since the consideration by the Committee of Australia's First Report, Australian governments have taken substantial action to promote harmony and eradicate racial discrimination. The action outlined in this section has the effect of ensuring that children are not denied the rights set out in the Convention on the basis of religion, race or national or ethnic origin.

Living in Harmony initiative

88. The Federal Government's *Living in Harmony* initiative was launched in 1998. It comprises three linked elements: a community grants program, a partnership program and a public information strategy. Children and youth are a major target group of the initiative. To date a total of \$12.5 million has been committed to the initiative. A further \$14 million over four years has been committed from 2002-03.

89. The community grants program is the centrepiece of the initiative, and relies on local groups to identify relevant issues of racism at the "grass roots" level and propose suitable projects that address their own community needs. Over 50% of the 179 community grants awarded since the inception of the *Living in Harmony* initiative have had a youth focus.

90. The projects resulting from these grants have operated in a variety of settings including schools, sporting and youth clubs. They have covered a wide range of issues such as enhancing respect for marginalised indigenous youth, identifying and addressing elements of discrimination and vilification that are causal links to juvenile offending, and enhancing participation and acceptance of young people from all backgrounds within sporting clubs and teams.

91. As well, through the partnerships program of the initiative, the Federal Government is working with a number of key Australian businesses and community organisations to develop demonstration projects aimed at improving social cohesion and tackling racism, or generating better understanding, respect and cooperation among people from different cultural backgrounds.

92. An example of such a partnership was that with the Conference of Education Systems' Chief Executive Officers (a body composed of representatives from the Commonwealth, the States and Territories, the Catholic education system and independent schools) which created a comprehensive website of a variety of educational resources through which schools and students can be made aware of and address racism in schools.²⁰ Another example was the partnership with the Australian Multicultural Foundation to conduct a series of multi-faith forums in primary and secondary schools around Australia to facilitate appreciation of religious diversity among younger Australians.

93. The third element of the *Living in Harmony* initiative is a public information strategy. The strategy promotes and reinforces the concepts and practice of acceptance and fairness in our community. The main feature of the public information strategy is Harmony Day, which coincides with the United Nations International Day for the Elimination of Racial Discrimination (21 March). For Harmony Day 2002, a specific resource kit with activities to address racism for primary schools was developed and distributed.

94. The *Living in Harmony* initiative will continue to have a focus on the prevention of racial discrimination experienced by children and young people through the ongoing promotion of the *Living in Harmony* messages and by practically addressing these issues at both the local and national levels.

Racial and religious vilification legislation

95. In Victoria, the *Racial and Religious Tolerance Act 2001* commenced operation on 1 January 2002. The Act makes it unlawful for a person to engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of another person or class of persons on the basis of race or religious belief or activity. The Act also creates offences of serious racial or religious vilification.

96. In Queensland, the *Anti-Discrimination Act 1991* was amended to prohibit public acts of racial or religious hatred or vilification and to create offences of serious racial or religious vilification.

97. In Tasmania, the *Anti Discrimination Act* outlined above at paragraph 86 prohibits racial and religious vilification.

Pregnancy, breastfeeding and discrimination

98. In February 2002, the Federal Government introduced into Parliament amendments to the *Sex Discrimination Act 1984*. The amendments clarify that discrimination against women who are breastfeeding is prohibited by the Act, that questions regarding pregnancy or potential pregnancy may not be asked during recruitment processes, and that information about pregnancy gained from medical examinations may not be used for discriminatory purposes. The amendments are part of the response of the Federal Government to the HREOC report *Pregnant and Productive - It's a right not a privilege to work while pregnant*.

99. Victoria has also enacted legislation, the *Equal Opportunity (Breast Feeding) Act 2000*, to prohibit discrimination in public life, including employment or the supply of goods or services, on the basis of breastfeeding or expressing milk.

100. Whilst primarily aimed at protecting breastfeeding mothers from discrimination, these amendments will also protect their children as the discrimination prohibited, if unchecked, may impact on the full implementation of the rights set out in articles 5, 6, 16, 18, 24 and 27.

B. Principle of the best interests of the child (art. 3)

101. The Committee is referred to pages 44-50 of Australia's First Report.

102. Acting in the best interests of the child remains a key principle underpinning legislation and practices concerning children in all Australian jurisdictions, including the developments outlined throughout this report. In particular, the Committee is referred to the discussion beginning below at paragraph 421 of this report for details of how the principle of the best interests of the child underpins decision-making in an immigration context.

103. An example of the continuing implementation of this principle at a State or Territory level is the establishment of the Queensland Children Services Tribunal. This body was established in 2000 as an independent tribunal to review certain decisions made by Queensland government agencies about the provision of services to children in State care. Acting in the best interests of the child is established as the paramount consideration for the tribunal in making its decisions.

C. Right to life, survival and development (art. 6)

104. The Committee is referred to pages 50-53 of Australia's First Report.

105. The situation outlined at paragraph 229 of Australia's First Report has changed, with the Australian Capital Territory Government legislating in August 2002 to remove the statutory and common law abortion offences.

106. Other developments relevant to the right to survival and development are discussed below in Chapter VI, Basic Health and Welfare.

D. Respect for the views of the child (art. 12)

107. The Committee is referred to pages 53-60 of Australia's First Report.

108. Australian governments have continued their efforts to ensure that the rights under Article 12 of the Convention are fully implemented. The Federal Government trusts that the measures outlined in this section address the concern of the Committee, expressed in paragraph 12 of its Concluding Observations, that the principle of respect for the views of the child was not being fully applied.

Participation by children in government processes

109. The Federal Government has established a National Youth Roundtable to create direct dialogue with young Australians to ensure that their views are taken into account in policy-making processes. Roundtable members undertake a series of consultations with their peers across Australia to develop a comprehensive picture of the views and attitudes of young people, which are reported back to the Government.

110. State and Territory governments have also established a range of mechanisms to enable children and young people to participate in the development of policies, programs and services affecting them. For example, the Queensland Government has enshrined the right of young people to participate in government processes in its Queensland Youth Charter. The Charter specifically refers to the Convention and states that Queensland Government departments and agencies are obliged to engage actively with young people when making decisions about policies, programs and services, including establishing diverse and accessible participation mechanisms. A number of States and Territories have implemented measures to ensure that children and young people have the opportunity to advise government on child and youth policies, programs and services. These include Youth Advisory Councils in New South Wales and Queensland and Youth Round Tables in Victoria.

111. In South Australia, the Government has adopted a range of youth empowerment initiatives through its *Integrated Youth Strategy*. These initiatives include funding Youth Advisory Committees throughout the State (which collectively provide advice to State youth groups such as Youth Plus, the ministerial advisory committee on youth issues) and at supporting youth network initiatives within individual communities across the State.

Children's Commissions

112. The three Children's Commissions outlined previously work to ensure that the views of children are respected both in their own activities and generally.

113. Children and young people play an active role in decision-making by the Queensland Commission for Children and Young People. In Tasmania, a Committee of Children assists the Commissioner for Children in the performance of his or her functions and powers. In New South Wales, children act as members of selection panels when Commission staff are appointed and when contractors are selected for projects.

114. Children and young people also advise the Commissions on strategic directions and activities, for example in New South Wales through a Young People's Reference Group made up of 12 young people aged 13 to 17 representing a broad range of cultures and regions. In Tasmania, children and young people can comment on issues that they feel are important through the *Step Up to the Mike* Forum on the Commissioner's website.

115. The Commissions also encourage the participation of children and young adults in decision-making in other organisations. For example, the New South Wales Commission has funded seminars and workshops on children's and young people's participation and on advocacy

skills for children and young people. It has also provided financial support for children's participation at major conferences including World Forum 2000 and International Youth Parliament 2000.

Family services

116. The Federal Government has demonstrated its commitment to promoting child inclusive practice in the provision of government funded services for families, particularly in relation to parental conflict or separation. The reports *Through a Child's Eyes - Child Inclusive Practice in Family Relationships Services* and *Child Inclusive Practice in Family and Child Counselling and Family and Child Mediation* were developed from a series of forums aimed at exchanging ideas, experiences and good practice in listening to children when delivering counselling services to families.

117. In 2002, the Federal Government developed two family law professional development programs to assist legal practitioners and other professionals such as counsellors, mediators and child therapists who work with separating parents. These programs promote child-focused practice in family law disputes to ensure that practitioners make the best interests of the children paramount.

118. In May 2001, the Marriage and Family Council, in collaboration with FaCS, convened a conference on the theme of "Family and Work: Listening to our Children". The purpose of the Conference was to raise awareness of and inject the children's perspective into the family and work debate.

National Indigenous Youth Leadership Group

119. The National Indigenous Youth Leadership Group is a federal initiative recommended by the National Youth Roundtables held in 1999 and 2000. The Leadership Group is designed to provide an opportunity for young indigenous people to discuss with government their experiences and perspectives on issues important to them and to identify key issues for promoting leadership and role models in indigenous communities.

120. The Leadership Group is comprised of 16 young indigenous Australians aged 15-24 years. The first formal meeting of the Leadership Group occurred in July 2001.

Care and protection

121. During the period covered by this combined Second and Third Report, Australian governments have taken efforts to ensure that there is sufficient consultation with children in out of home care.

122. For example, in New South Wales, the *Children and Young Persons (Care and Protection) Act 1998* clarifies the principles and values in relation to children's participation in decision-making processes aimed at ensuring their care and protection. The Act recognises that children ought to be involved, as best they can be, in terms of their age and understanding. Respect for children as human beings is at the heart of the legislation, which enshrines the view that children have a right to know what is taking place and to be heard and understood.

123. Under the Act, children and young people are entitled to explanations about any actions taken to protect them and as far as possible are to be allowed to participate in making decisions which vitally affect their lives. Indigenous families and communities are to be involved in decisions concerning the protection of indigenous children.

124. In summary, the Act sets out that children and young people must have:

- Access to adequate information about decisions made and reasons for any intervention;
- Opportunity to express their views;
- Assistance to express their views;
- Information about how their views will be recorded and taken into account;
- Information about outcomes of decisions; and
- Opportunity to respond to decisions.

125. The Act also provides that the New South Wales Children's Court may appoint a legal representative for a child or young person, if it appears to the Court that the child or young person needs to be represented in any proceedings before it. As a general rule, all children and young people who are subject of care proceedings before the Children's Court have a legal representative acting for them. The role of such a legal representative involves:

- Explaining the proceedings to the child or young person;
- Ensuring that the views of the child or young person are placed before the Children's Court;
- Ensuring that all relevant evidence is adduced and, where necessary, tested;
- Acting in the best interests of the child or young person or their guardian *ad litem* (if one is appointed for the child or young person); and
- If appointed as a separate representative, acting in the best interests of the child or young person and not being limited to the child's or young person's instructions.

126. The legislation makes a rebuttable presumption at law that a child aged 10 years and above is capable of giving instructions, but a child under that age is not.

127. In Queensland, the *Children Services Tribunal Act 2000* established an independent tribunal, the Children Services Tribunal,²¹ to review certain decisions made by the State about the provision of services to children in State care. The best interests of the child, having regard to the child's views and wishes, are the paramount consideration for the tribunal in making its decisions. The Act establishes a number of mechanisms for the appropriate participation of children and young people in reviews of decisions about their care.

128. The Queensland *Child Protection Act 1999* has as one of its guiding principles that the views of the child must be considered in taking action or exercising powers under the Act to protect the child. Under the Act, children and young people must be given an opportunity to express their views about any action or decision affecting them and must be informed about any decisions made about them. The Act requires the holding of family meetings to make decisions about a child's protective needs. Where appropriate, given the child's age, maturity and level of understanding, the child will participate in these meetings. The outcome of the meeting must be recorded and a copy provided to the child.

129. The Act enables the Children's Court to appoint a separate representative for a child to ensure that the child's views and wishes are put to the Court and to act in the child's best interests.

130. The Act sets out a Charter of Rights for a Child in Care. One of the rights established by the Charter is the child's right to be consulted about, and to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about where the child is living, contact with the child's family and the child's health and schooling.

131. Children and young people have a right to apply to the Children Services Tribunal for review of a range of decisions about the child's care.

132. The Queensland Government has also produced a number of resources aimed at informing children and young people in State care and their carers of children's rights under the Charter of Rights in the *Child Protection Act 1999*, including the right of children and young people to express their views and wishes. These resources include a child's storybook and a music video.

Children and the legal system

133. During the period covered by this combined Second and Third Report, Australian governments have taken efforts to ensure respect for the views of children involved in the legal system.

134. In New South Wales, the *Young Offenders Act 1997* established a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences. This involves the use of youth justice conferences, cautions and warnings. The Act is premised on the right of the child to understand and participate in decisions affecting him or her. For example, when giving a warning, police are required to take steps to ensure that the child understands the purpose, nature and effect of the warning. Police can only administer a caution where the child consents to be dealt with by way of caution.

135. The Act also establishes the right of a children to state their views in a youth justice conference, and to be heard with respect.

136. Similarly, the police and the court can only refer a child for a youth justice conference under the Act where the child consents. The police are also required to explain to the child the nature of the offence and the circumstances out of which it is alleged to have arisen, that the

child is entitled to obtain legal advice and where that advice may be obtained, that the child is entitled to elect that the matter be dealt with by a court, and what a conference is and the effect of the conference. A conference may be adjourned at the request of the child, to allow discussions between the child and the child's family, or the child and a person responsible for the child and a child may, at any time before a conference is held, decide not to proceed with the conference and elect that the matter be dealt with by a court. Any outcome plan negotiated at a conference has no effect unless the child agrees to it.

137. In South Australia, amendments in 1999 changed the law so that any person, regardless of age, is presumed to be capable of giving sworn evidence in any proceedings unless the judge determines that the person does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence. This removed the arbitrary distinction between the evidence of children under the age of 12 and the evidence of adults that had previously existed.

IV. CIVIL RIGHTS AND FREEDOMS

138. The Committee is referred to pages 61-100 of Australia's First Report.

A. Name and nationality (art. 7)

139. The Committee is referred to pages 61-63 of Australia's First Report.

140. In May 2001, the Federal Government agreed to provide individual certificates of Australian citizenship to children under 16 years of age who acquire Australian citizenship with their parents. It also agreed to extend the period during which children born overseas may be registered as Australian citizens by descent from 18 years of age to 25.

B. Preservation of identity (art. 8)

141. The Committee is referred to pages 64-65 of Australia's First Report.

Loss of citizenship

142. In its Concluding Observations on Australia's First Report, at paragraph 14, the Committee expressed concern that, "in some instances, children can be deprived of their citizenship in situations where one of their parents loses his/her citizenship." The Committee also recommended, at paragraph 30, "that no child be deprived of his/her citizenship on any ground, regardless of the status of his/her parent(s)."

143. Under the *Australian Citizenship Act 1948*, a child under 18 years of age may only lose Australian citizenship in very limited circumstances and never where one responsible parent is an Australian citizen or where such loss would render the child stateless.

144. In order to ensure that children are not arbitrarily deprived of their Australian citizenship, the Federal Government passed amendments to the *Australian Citizenship Act 1948* with effect from 1 July 2002. The amendments allow a person who renounces his or her Australian citizenship before the age of 25 in order to retain another citizenship, to resume Australian citizenship up to the age of 25. The Government also repealed section 17 of the *Australian*

Citizenship Act 1948 with effect from 4 April 2002. This means that Australian citizens who acquire the citizenship of another after 4 April 2002 no longer lose their Australian citizenship.

Indigenous children

145. In April 1997, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children released the report *Bringing Them Home*. This report documented the past and continuing effects of the forcible removal of indigenous children from their families, which ceased in the 1970s, and contemporary separations of indigenous children from their families and made recommendations about what should be done in response.

146. In order to assist indigenous people affected by these past policies to trace their identity, the Federal Government has established a national network of link-up services to assist family reunions and has improved access to Federal Government records to help indigenous people trace family members.

147. Some State and Territory governments have adopted similar initiatives to ensure the preservation of identity by indigenous children. For example, since 1998 in New South Wales provision has been made for the early identification of children as indigenous children and for the preservation of records concerning indigenous children, to ensure their history and identity is maintained and accessible for those children.

C. Freedom of expression (art. 13)

148. The Committee is referred to pages 65-66 of Australia's First Report.

149. The Federal Government has undertaken a number of initiatives to encourage and enable children to seek, receive and impart information and ideas. For example, several projects have enabled children to develop radio broadcasts designed to express their views on issues of interest. These projects are aimed at and delivered to children in both rural and urban areas.

150. The Australian Broadcasting Corporation (ABC) produces a range of television, radio and Internet projects offering children and youth the opportunity to voice their views (see section on access to appropriate information, commencing at paragraph 160 below).

D. Freedom of association and peaceful assembly (art. 15)

151. The Committee is referred to pages 80-82 of Australia's First Report.

152. The Federal Government has recently undertaken a youth participation pilot project in Tasmania that engaged the wider community to effectively identify and respond to community perception about children's use of public space. The program will be replicated and adapted for use in other Australian jurisdictions.

153. State and Territories are also attempting to devise programs to remedy inappropriate behaviour in public places without involving the police. For example, under Western Australia's *Hillary's Youth Project Enquiries Program* (HYPE) young people found acting inappropriately in the vicinity of shopping malls are referred to support workers, who provide them with

information to help address personal issues that result in unacceptable behaviour. In November 2002, the HYPE program was awarded an Australian Crime and Violence Prevention Award by the Council of Australian Governments.

154. In addition, the recognition of young people's need for public space, has led to efforts to develop youth-oriented cultural venues and public spaces. For example, Western Australia has provided \$1 million in funding over four years for the development of youth oriented cultural venues and public spaces. Other States are providing more public places for children in urban areas. Areas being developed include play areas, community gardens and meeting places for children.

155. Australian Governments have noted the concern of the Committee, set out at paragraph 16 of its Concluding Observations, about local legislation allowing police to remove children and young people congregating in public areas. Whilst the Committee did not clarify exactly which legislation it was referring to, the Federal Government notes that Article 15(2) of the Convention permits restrictions on the right of peaceful assembly where these are imposed in conformity with the law and are necessary in a democratic society in the interests of, among other things, public safety and public order. The restrictions placed on children's right to associate freely and peacefully assemble are designed to ensure public safety and order, including the safety of children, as well as to prevent children from committing crimes and thereby becoming involved in the criminal justice system.

E. Protection of privacy (art. 16)

156. The Committee is referred to pages 82-89 of Australia's First Report.

157. In 2001, the Federal Government amended the *Privacy Act 1988* to require many private sector organisations to comply with the National Privacy Principles, which are standards for the collection, handling and use of personal information. The Act applies to personal information held by private sector organisations, including that of children.

158. The Attorney-General has also convened a consultative group to assist with a review into whether additional provisions are required for the protection of personal information of children. The group has assisted with the preparation of a discussion paper, which will form the basis for wider public consultation in 2003.

159. The New South Wales *Privacy and Personal Information Protection Act 1998* established a new regime for protecting privacy in New South Wales. It requires each public sector agency to make a privacy management plan and sets out information privacy principles for the handling of personal information, including personal information relating to children. The Act also provides for the handling of information on public registers.

F. Access to appropriate information (art. 17)

160. The Committee is referred to pages 67-75 of Australia's First Report.

Protection of children

161. Since the consideration of Australia's First Report by the Committee, a number of initiatives have been undertaken to ensure the protection of the child from information and material injurious to his or her well-being.

Television - reporting and depiction of suicide

162. In April 1999, the Australian Broadcasting Authority (ABA) registered a revised Commercial Television Industry Code of Practice, developed by the Federation of Australian Commercial Television Stations (FACTS). The revised Code sets clearer limits on the reporting and depiction of suicide. The Code requires that reports of suicide or attempted suicide should only be broadcast where there is an identifiable public interest reason to do so, and should exclude any description of the method used. The report must be straightforward, and must not include graphic details or images, or glamorise suicide in any way.

163. FACTS are currently undertaking a review of the Industry Code of Practice. The Federal Government has asked FACTS to examine the portrayal of violence in its current Code review. The ABA is conducting attitudinal research to feed into this review process. The ABA will use the results of this research to ascertain whether the current codes are providing adequate community safeguards, including safeguards for child audiences.

Radio

164. In October 1999, the ABA registered a revised Commercial Radio Code of Practice, which strengthens the emphasis on the need to avoid offensive language and limits the broadcasting of programs with explicit sexual themes to the hours of 9.30 pm to 5.00 am.

Online content

165. The ABA has responsibility for implementing a scheme for the regulation of Internet content. The scheme was established in January 2000. It is based on industry compliance with codes of practice and the operation of an online complaint "hotline" by the ABA.

166. The ABA has registered three codes of practice that outline the obligations that Internet service providers and Internet content hosts within Australia must comply with in relation to Internet content that is unsuitable for children. The codes were developed by the Internet Industry Association (IIA). In registering the codes, the ABA was satisfied that IIA had undertaken appropriate consultation with industry, interested community groups and members of the public, and that the codes contained appropriate community safeguards.

167. The Federal Government's approach to this area does not rely on regulation alone. In order to ensure that children are protected from material injurious to their health, NetAlert, a wholly Federal Government owned company, has been established to research new filtering technologies and run national education and awareness campaigns to promote a safer Internet for young people. The ABA also has an important role to play in relation to community education, and has used the findings of research to develop online and printed resources to assist children and families in staying safe on the Internet.

168. The South Australian Parliament has enacted provisions complementary to the Commonwealth regime under the *Broadcasting Services Act 1992*. The *Classification (Publications Films and Computer Games) (On-line Content) Amendment Act* came into operation in November 2002. Under this Act, it is an offence to make available on the Internet material that is or would be classified RC or X. Material that is or would be classified R must be protected by a restricted access system.

Material of social and cultural benefit

169. The Committee is referred to pages 73-75 of Australia's First Report.

170. The Australian Broadcasting Corporation continues to broadcast and publish entertainment and information programs for children of all ages. The ABC's editorial policies include detailed policies on programs for and about children and special provisions for news flashes, updates and promotions that might be shown during children's viewing times. The ABC also runs programs that provide material of social and cultural benefit to children as well as encourage children to exercise their right to freedom of expression. ABC Online provides children's youth and educational content across its range of services, including the children's gateways: *The Playground* (2-8 years), *Rollercoaster* (8-14 years), *Learn Online*, an educational gateway and the youth Triple J site.

171. In 1998, the ABC commenced *Heywire*, a program that aims to raise awareness of issues facing young people in regional and rural Australia and to provide them with an opportunity to voice their opinions. The program urges young people to provide a three-minute piece for radio telling their stories about life in Australia. Winners of these competitions have their pieces broadcast across the country and internationally through Radio Australia and ABC Online. Winners of the competition meet in Canberra and participate in the *Heywire* Youth Issues Forum, which aims to increase their capabilities in the areas of goal setting, communication, leadership and teamwork.

172. The ABC also runs *Behind the News*, a weekly television and online series, viewed by 1.3 million school students, that provides context and background to topical events in Australia and around the world.

173. The ABA has doubled the minimum amount of first release Australian children's drama required to be shown by each network to 32 hours each year. This quota ensures that Australian children are exposed to high quality children's drama telling Australian stories. Extra quota value is given to Australian children's telemovies and feature films broadcast in prime time. This genre is highly popular with its target audience.

174. The Federal Government has established a Networking the Nation Fund to bridge the gap in provision of telecommunications infrastructure and services between metropolitan and regional Australia. An example of funding is to the South Australian Department of Education, Training and Employment to conduct a trial of satellite Internet access for students of the School of the Air. The Internet lessons have replaced lessons by HF radio and last on average for 2 hours per day. The trial has proved to be very successful and is being extended. The technology allows a 'whiteboard' to be used by both teacher and students and real-time sound

and vision as well as improved sound quality. The project is providing improved access to education for children in remote Australia through participating in an online classroom environment.

175. The Federal Government is also taking steps to provide children with the means of sharing information. For example, under the Connecting Tasmanian Schools program, the Federal Government will provide \$15 million to establish local and wide area networks linking Tasmanian schools, and will provide additional computers and support resources for the State's government and non-government schools.

G. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

176. The Committee is referred to pages 89-100 of Australia's First Report.

Female genital mutilation

177. The Federal Government opposes the practice of female genital mutilation (FGM) seeing it as a form of violence against women. Strategies for eradicating FGM in Australia have a dual focus: to prevent the mutilation of girls who may be at risk and to support girls and women who have been mutilated.

178. Since the consideration of Australia's First Report by the Committee, all States and Territories, except for Western Australia, have joined New South Wales and South Australia in legislating to prohibit FGM. Western Australia has introduced legislation, which is expected to pass through Parliament in early 2003. The legislation of the States and Territories is designed to both prevent the mutilation of girls and to prevent the removal of a girl from a jurisdiction for the purposes of FGM.

179. Efforts to eradicate FGM are not limited to criminal prohibitions. For example, the Federal Government provides funding for educational activities to prevent FGM and to assist those girls who have undergone the practice. The Federal Government has also provided funding to the Royal Australian College of Obstetricians and Gynaecologists to develop a booklet, *Female Genital Mutilation: Information for Australian Health Professionals*.

180. In New South Wales, since 1997 FGM has been included in child protection procedures as a form of child abuse and as grounds for concern about risk of harm which must be reported to the Department of Community Services. In Western Australia, the Female Genital Mutilation Task Force, established in 1999, has produced and distributed a policy manual for service delivery agencies in contact with girls who have undergone FGM or who are at risk thereof. The manual provides guidelines and procedures to assist service delivery agencies.

181. States and territories have also undertaken awareness raising campaigns aimed at reducing the incidence of FGM. For example, the Queensland Government provides \$85,000 per annum to the Family Planning Association of Queensland to develop and implement education programs targeting immigrants from countries that practice FGM. In New South Wales, the Education Program on FGM aims to prevent the occurrence of FGM through community education strategies. The program consists of a community education

program, the development of resources and the training of counsellors and clinicians and a communication strategy to raise awareness of the legislation relating to FGM and the health risks associated with the practice.

182. South Australia has developed a plan for education about FGM, which will be implemented in the period 2002-05. The plan responds to the fact that new communities are arriving in South Australia from areas where FGM may be practiced.

183. The Federal Government trusts that these initiatives address the concern of the Committee, expressed at paragraph 19 of its Concluding Observations, about the absence of legislation prohibiting FGM and the recommendation, at paragraph 34, that further awareness raising campaigns be conducted about the dangers and harm that result from FGM.

Corporal punishment

184. The Committee is referred to pages 92-94 of Australia's First Report.

185. The Committee was advised, in paragraph 405 of Australia's First Report, that the status of the lawful chastisement by parents defence was being considered by the Model Criminal Code Officers Committee. The Committee reported on this issue in September 1998.²² In doing so, the Committee considered Articles 19(1), 28(2) and 37 of the Convention. The Committee was of the opinion that "at the present, it goes too far to criminalise a corrective smacking by a parent or guardian, so long as the force used is reasonable."²³ The Committee did recommend that a legislative standard of reasonableness be established and that the use of objects in such a way as to cause or risk causing injury be prohibited.

186. The model provisions developed by the Committee have been included in legislation enacted in New South Wales, which restricts the right of parents to use excessive punishment by banning the use of a stick, strap or other object, any blows to the head or neck of the child, and any force which might cause harm to the child. Only a parent, or someone acting for the parent, may apply reasonable physical force to a child. Some states are also undertaking community education programs relating to the use of corporal punishment administered by parents or carers.

187. Corporal punishment in Australian government schools and some non-government schools has been prohibited in the Australian Capital Territory, New South Wales, South Australia, Tasmania, Victoria and Western Australia.

188. This goes some way to addressing the concern of the Committee, expressed at paragraph 15 of its Concluding Observations, about the lack of prohibition in local legislation on the use of corporal punishment in schools, at home and in institutions. The Committee suggested, at paragraph 26, that corporal punishment be prohibited in private schools and at home and that "awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention".

School bullying

189. Bullying in schools is of concern to the Australian community, as it impacts on the physical and psychological health, educational achievements and social development of affected students.

190. The Commonwealth Government is leading development of a National Safe Schools Framework, which will consist of a set of nationally agreed principles for a safe and supportive school environment and include appropriate responses that schools can adopt to address the issues of bullying, harassment, violence, child abuse, including sexual abuse, and neglect.

191. Initiatives to prevent and combat bullying, harassment, violence and all forms of child abuse in schools, include the *Bullying. No way!* website.²⁴ This website, which was launched on 16 June 2002, provides a nationwide resource of best practice, State and Territory solutions to bullying, violence and other forms of harassment in schools.

192. In 2000, the Federal Government also contributed \$500,000 to a project to identify strategies to reduce school bullying. The project involves an analysis of strategies used across Australia to prevent bullying in an effort to find those that are most effective. Resources in the form of booklets and a video will then be produced to aid teachers, carers and parents in dealing with bullying.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

193. The Committee is referred to pages 101-166 of Australia's First Report. The belief that the family, as the fundamental unit of society, should be given the greatest possible protection and assistance and that there should be intervention by the Government only if the family breaks down and only then if the family has failed to reach certain standards of care continues to underpin government action in this area.

A. Parental guidance (art. 5)

194. The Committee is referred to pages 101-104 of Australia's first Report.

195. Programs designed to strengthen and support Australian families are outlined below. The support offered by these programs assists parents with their vital role recognised in Article 5 of the Convention.

B. Parental responsibilities (art. 18)

196. The Committee is referred to pages 104-115 of Australia's First Report.

Parenting support services

197. The Federal Government is committed to a national approach to parenting and childhood. It funds initiatives to support and strengthen parenting roles and contribute to the development and wellbeing of children in their early years.

198. Major initiatives and funding programs include the *Stronger Families and Communities Strategy*, aimed at strengthening and supporting Australian families and building community capacity. Under the Strategy there is a specific focus on early childhood and effective parenting. Specific initiatives include early intervention parenting projects, flexibility and choice in child care, community awareness of positive parenting and research on children's health, education, childcare and family support. The Strategy has been allocated \$240 million across four years up until June 2004, with \$20 million of this having been earmarked for projects that specifically target indigenous families and communities.

199. A number of information resources are available to help families with parenting, including *Tips for parents* booklets.

200. State and Territory governments have also established a number of new parenting support services. For example, a confidential telephone information and counselling service to parents and primary care givers on any concern about child or youth health, parenting, development or behaviour is available in the Australian Capital Territory, Queensland, Victoria, New South Wales, South Australia and Western Australia.

Balancing work and family

201. Balancing work and family has become an area of increasing policy interest to the Federal, State and Territory governments, as well as within the community more generally. A range of policy approaches, such as the provision of quality child care options, increased family benefits and other support for parents under the *Australians Working Together* initiatives, are facilitating choice for parents. Furthermore, initiatives that facilitate more flexible approaches to work and work redesign that allow people to meet their parenting responsibilities will result in a better balance that ultimately is of benefit to employers as well as the individual.

Family friendly provisions in work agreements

202. Major legislative and policy developments have occurred in this area as a result of the federal *Workplace Relations Act 1996* (the WR Act). Previously, minimum terms and conditions of employment in Australia were contained in "awards" set down by the Industrial Relations Commission following representation by employee unions and employers. Under the new regime, the awards are supplemented by, or in some cases even replaced by, Certified Agreements (CAs) and Australian Workplace Agreements (AWAs) negotiated between employers and employees. Awards have been simplified to meet the requirements of the WR Act where necessary.

203. One of the objects of the WR Act is to assist employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers. For example, the WR Act facilitates negotiation between employers and employees of family-friendly provisions in CAs and AWAs.

204. Analysis of workplace agreements made under the WR Act shows that, of current agreements as at September 2002, 83 per cent of CAs contained at least one family-friendly provision. The most frequent provisions are:

- Flexible working hours, providing employees with some scope in determining their working hours to meet the needs of their families as well as their work commitments, such as part-time work arrangements or access to accrual of rostered days off to care for young children; and
- Family/carer's leave, enabling employees to access paid leave to care for a family member.

205. Similar provisions have been established in awards, following the *Award Simplification Test Case Decision*, handed down in December 1997, together with a supplementary decision handed down in September 1998.

206. The WR Act also encourages the spread of regular part-time work in awards. Federal Government research conducted in 2002 found that, of a selection of 50 awards, 74% contained regular part-time provisions with pro rata wages and conditions.

Paid maternity leave

207. At paragraph 17 of its Concluding Observations, the Committee expressed its concern that women in the private sector "are not systematically entitled to maternity leave, which could result in different treatment between children of State employees and those working in other sectors". The Committee then went on (at paragraph 31) to encourage Australia to "review its legislation and make paid maternity leave mandatory for employers in all sectors".

208. The Federal and some State and Territory governments provide for paid maternity leave in the public sector. Paid maternity leave is also paid by many employers in both the public and private sectors through awards, workplace agreements or informal agreements.

209. Analysis of workplace agreements made under the WR Act show that as at September 2002, 39% of women currently covered by a CA have an entitlement (subject to eligibility requirements) to paid maternity leave which is funded directly by employers in Australia. With regard to the incidence of paid maternity leave in agreements, 7% of all current certified agreements have provision for paid maternity leave. The duration of paid maternity leave provisions in these agreements ranges from two days to twelve weeks on full pay and forty weeks at sixty percent of full pay, with the most frequent periods offered as at March 2002 being six weeks (34%), 12 weeks (30%) and two weeks (10%). The average duration across all current agreements is seven weeks.

210. In August 2001, HREOC's Sex Discrimination Commissioner announced an investigation of the options available for the implementation of an equitable and workable paid maternity leave scheme in Australia. This investigation has led to a great deal of community debate on the issue of paid maternity leave. A final report was released in December 2002 and is currently under consideration by the Government.

Access to parental leave

211. The *Parental Leave Test Case* in 1990 provided an award entitlement to 52 weeks unpaid parental leave, to be shared by parents if desired, for permanent employees who have 12 months

continuous service with their employer. In May 2001, the Australian Industrial Relations Commission established a new *Parental Leave Case* standard. This extended unpaid parental leave to casual employees who have been employed by an employer on a regular and systematic basis for several periods of employment or an ongoing period of employment during a period of at least 12 months. The decision recognised, however, that there may be some awards or industries for which the new parental leave standard is not appropriate and set out a process for parties wishing to diverge from the new standard.

212. The WR Act provides a legislated minimum entitlement to unpaid parental leave for permanent employees. The Act entitles parents (both mothers and fathers) who have completed 12 months' continuous service with an employer to a total of 52 weeks unpaid leave on a shared basis to care for their newborn or newly adopted child. Employees taking parental leave have a right to return to the position they held prior to taking leave, or to one similar in status. Parental leave will not break an employee's continuity of service. This entitlement supplements, not overrides, entitlements under other Federal, State and Territory legislation and awards. Employees are required to use any parental leave entitlements that exist under relevant agreements, awards or State or Territory laws before accessing the Act's entitlements.

Family support measures

213. New and expanded Federal Government initiatives in this area have included:

- The expansion of the original pilot program of Handover and Visiting Centres to a national program of 35 Children's Contact Services (see the section on Establishment of "safe points" for handing over children under shared parenting agreements, below at paragraphs 215-216);
- The Contact Orders Pilot, established in 1999, a counselling and education program targeted at parents in high conflict following separation where that conflict is negatively impacting on children's contact arrangements;
- The expansion of non-adversarial dispute resolution services in metropolitan, rural and regional areas through the provision of Federal Government funding of \$15.7 million over three years from 1999-00 and \$22.8 million over four years from 2002-03; and
- The establishment, in June 2001 of Australian Law Online,²⁵ which consists of a website to improve access to family law information and dispute resolution services and a free telephone information and referral service called the Family Law Hotline.²⁶

Enforcement of parenting orders

214. The *Family Law Amendment Act 2000*, which was passed by the Federal Parliament in November 2000, now enables the Family Court to enforce effectively orders made by it concerning contact between the non-resident parent and their child. The Act introduces a new, three-tiered approach for dealing with contraventions of arrangements for children, comprising preventative, remedial and, as a last resort, punitive measures. This approach emanates from the 1992 report of the Family Law Council entitled *Child Contact Orders: Enforcement and Penalties*.

Establishment of “safe points” for handing over children under shared parenting agreements

215. The Federal Government has expanded the original pilot program, Handover and Visiting Centres (see paragraph 490 of Australia’s First Report). Now known as Children’s Contact Services, the program was expanded by 25 new centres in 2000-01. As part of the Government’s commitment to rural and regional Australia, 80% of the new services were established in rural and regional areas.

216. An evaluation of the centres was carried out between 1997 and 1999. It was found that contact services were making a difference for many children in reducing their anxiety about visiting their non-residential parent, assisting with building that relationship and enabling them to feel safe. The evaluation found that the pilot sites had established a strong presence in their local communities and there was strong support in the broader community for the expansion of the services.

C. Separation from parents (art. 9)

217. The Committee is referred to pages 115-124 of Australia’s First Report.

218. The Committee is referred to pages 131-132 of Australia’s First Report for details of the indigenous child placement principle. The Ministerial Council for Aboriginal and Torres Strait Islander Affairs, which is comprised of relevant government ministers as well as the Chair of ATSIC, is currently developing guidelines regarding to separation of indigenous children from their family.

219. The Committee is also referred to the discussion of the Federal Government’s response to the *Bringing Them Home* report, below at paragraph 519.

D. Family reunification (art. 10)

220. The Committee is referred to pages 124-125 of Australia’s First Report.

221. When it considered Australia’s First Report, the Committee recommended, at paragraph 30 of its Concluding Observations, that legislation and policy reform be introduced to guarantee that children of asylum seekers and refugees are reunified with their parents in a speedy manner. A number of changes have occurred to the system for reunifying the children of asylum seekers and refugees with their parents.

222. Permanent Protection Visa holders, refugees and permanent entrants to Australia under its Humanitarian Program are able to sponsor family members under the Humanitarian Program in addition to accessing the normal Migration Program sponsorship avenues. The Humanitarian Program arrangements are more generous than those applying to other permanent residents and Australian citizens in that holders of permanent humanitarian visas may receive assistance to travel to Australia, and immediate access to social security benefits on arrival. Further, proposers are not required to provide assurances of support for migrating family members as is often the case with sponsors under the family stream.

223. Where children of asylum seekers and refugees are separated from their families in Australia by virtue of the release of one party or other from detention, children are reunited with their parents as soon as practicable. In cases where individual family members have made separate and discrete applications for protection, the Minister has agreed to the Department identifying and expediting applications involving members of split families to ensure, wherever possible, early release from detention and family reunification.

224. In addition, Federal Government agencies take positive steps to facilitate family reunification by identifying the current location of released family members and notifying them of release dates for other family members as soon as practicable upon grant. In this practical way, the Federal Government facilitates family reunification outside of statutory obligations.

225. Australian citizens and permanent residents are given priority to family reunification over holders of Temporary Protection Visas. However, there is provision in immigration legislation allowing the Minister to grant holders of temporary protection or humanitarian visas access to the permanent visa regime (and its associated entitlements) where it is considered to be in the public interest.

226. The Federal Government does not consider it appropriate to provide family reunion avenues for asylum seekers per se. An asylum seeker does not have the same status as a refugee. Also unsuccessful asylum seekers - that is persons who have been determined not to be Convention refugees - face no impediments to their departure from Australia, where they might rejoin family members overseas.

227. On 1 November 1999, the Federal Government amended the *Migration Regulations* to widen the definition of "dependent child" to include all children who have not turned 18 who are the natural, adopted, or step child of the sponsor or principal applicant (as the case requires). Parents are no longer required to demonstrate that they already have "daily care and control" of the child. This definition is relevant to children included on a parent's visa application, and also to children outside Australia who may be sponsored for migration by a parent who is an Australian citizen or permanent resident. This change reflects the concept of parental responsibility enshrined in the *Family Law Act 1975* (referred to in paragraph 65 of Australia's First Report), and recognises the right of a child to live with either parent.

228. Recently the Federal Government further amended the *Migration Regulations* to give full effect to family reunification and to further implement relevant international obligations. Formerly, where a child was not entering Australia into the care of both parents, the Minister had to be satisfied that the grant of a visa would not prejudice the rights and interests of any person who had custody or guardianship of, or access to, the child. The regulations now provide that, before a visa may be granted, each person who can lawfully determine where the child is to live must consent to the grant of the visa. In most cases, this refers to both parents. However, parenting orders, court orders and other access rights are also taken into consideration. The grant of the visa must also be consistent with any Australian child order in force in relation to the child. Where there is a dispute between parents about the removal of a child to Australia, the migrating or sponsoring parent is required to demonstrate that they have the legal right to decide where the child can live before a visa can be granted. There is also provision to refuse to grant a visa where this is considered to be in the child's best interests. These changes are designed to assist Australia to meet its obligations under the Hague Convention on Civil Aspects of

International Child Abduction. In this way the Federal Government seeks to protect the interests of children and minimise the need for reunification by ensuring that Australia's visa system is not misused by parents to the detriment of the child and his or her other parent or relatives.

E. Recovery of maintenance for the child (art. 27, para. 4)

229. The Committee is referred to pages 125-130 of Australia's First Report.

Recovery of maintenance abroad

230. The Federal Government has taken a range of steps to secure the recovery of maintenance for children. For example, Australia acceded to the Hague Convention on Recognition and Enforcement of Decisions relating to Maintenance Obligations on 20 October 2000. The Convention came into force for Australia on 1 February 2002. Changes have been made to the regulations governing overseas-related maintenance obligations, the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*, and the *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*, were enacted to enable Australia to give effect to its responsibilities under the Convention in relation to child maintenance.

231. Australia also entered into a number of bilateral agreements and reciprocal arrangements to secure the recovery of maintenance. For example, an agreement was reached with New Zealand on 12 April 1999 for the collection and enforcement of child support liabilities. The agreement will allow Australia to accept and enforce assessments and orders for child support made in New Zealand, and vice versa, without the need for litigation or the involvement of the court system. A similar agreement with the United States of America was signed on 12 December 2002.

232. New laws, which came into force on 1 July 2000, allow the Child Support Agency (CSA) to issue administrative assessments in almost all maintenance cases where one party resides abroad in one of the listed reciprocal jurisdictions (see Annex 1-Table 18). CSA assessments will also apply to both incoming and outgoing applications under the United Nations Convention on the Recovery Abroad of Maintenance. An Australian court must not make a child maintenance order if an application for administrative assessment could properly be made.

F. Children deprived of their family environment (art. 20)

233. The Committee is referred to pages 130-137 of Australia's First Report.

234. Since the consideration of Australia's First Report by the Committee, inquiries have been conducted into the child protection system in Queensland, Western Australia and Victoria.

235. In Western Australia two reports into the child protection system were produced in 2002. The Gordon Inquiry report, *Putting the Picture Together*, reported on the responses of government agencies to allegations of family violence and abuse in indigenous communities. The Harries report, *Mandatory Reporting of Child Abuse: Evidence and Options*, reported on the merits of introducing mandatory reporting of child abuse in Western Australia.

236. In light of the recommendations of these reports, the Western Australian Government has developed an approach to child protection characterised by:

- A move from the concept of one agency with sole responsibility for child protection to an approach whereby a continuum of services is provided with other government agencies and NGOs to address the needs of children at risk of abuse;
- Building strong relationships with communities, particularly indigenous communities;
- A focus on community capacity building and prevention through appropriate programs;
- An increased focus on the welfare of children by increasing the avenues available to children to disclose abuse and developing safe places for children and women escaping abuse;
- Increasing the level of services available to support children in need and their families and increasing coordination across agencies in complex cases; and
- Increasing the number of child protection workers, particularly in rural areas.

237. Within this framework, the Western Australian Government provides and funds a range of child protection services. For example, programs are provided to appropriate families strengthen parenting skills and to help people cope with family conflict. When abuse does occur, counselling treatment and, if necessary, out of home care services are provided. The Western Australian Government has committed \$75 million worth of new initiatives over four years to implement the recommendations of the Gordon Inquiry.

238. In Queensland the 1999 Commission of Inquiry into Abuse of Children in Institutions (the Forde Inquiry) made a number of recommendations in regards to the child protection system in Queensland. The Queensland Government has implemented a number of changes to the child protection system in response to the Inquiry. For example, in 2002, the Queensland government increased its investment in prevention and early intervention services from 13% to 25% of annual expenditure on child protection over five years. Prevention and early intervention service delivery trials are being conducted to establish the most effective models. The trials are targeted at families who are at risk of entering the statutory child protection system. These are families who may be at key transition points such as the birth of a child, a child starting school, children moving into adolescence or a young person leaving home and who, without support, would enter the statutory system.

239. In Victoria, a review of child protection and support services, conducted in 2001-02, resulted in the report: *An Integrated Strategy for Child Protection and Placement Services*. The report examined the characteristics of children and families involved in the child protection system in Victoria.

240. The Report recommended approaches to strengthen prevention and early intervention services as well as improvements to services for children involved in more complex cases. The Victorian Government has developed a number of initiatives in response to the Report. These include:

- Improved family support services in a number of local government areas that are designed to reduce re-notifications through the provision of support to high risk families and therapeutic services for abused children;
- A new protocol for dealing with indigenous children and families; and
- The completion of a Child Protection Client and Family Survey and audit of home-based care services to inform and improve child protection services.

241. The Australian Capital Territory, Northern Territory, Queensland, South Australian, Victorian and Western Australian governments have also implemented agreements for the efficient transfer of child protection orders and proceedings for children who cross State or Territory borders. Considerable difficulties have been experienced in the past in the transfer of child protection orders across these jurisdictions, due to differences in child welfare legislation and procedures. The new arrangements allow for the interstate registration and transfer of child protection orders so that a child may be protected if the child moves to another jurisdiction.

242. The Western Australian Government has funded the CREATE Foundation for \$90,000 per annum to establish an office in Western Australia. CREATE is a national organisation with a mission to ensure that children and young people in care are afforded the same life opportunities as all Australian children. CREATE connects children and young people with others in care, provides skill development programs and ensures a consumer voice for children and young people in care in policy and service development in the out-of-home care field.

243. The Western Australian Government is also developing additional supports for relatives who are caring for children full time as a result of family crisis such as drug abuse. For example, a Grandparents Support Service was established during 2002-03 to assist these carers through support groups, assistance with parenting skills and child behaviour management. A total of \$99,000 has been allocated over three years for this service.

Indigenous family support

244. Australian governments recognise that indigenous families need intensive support, particularly given the large numbers of indigenous children that are placed in care. As discussed at paragraphs 569-572 of Australia's First Report, all jurisdictions in Australia recognise the Aboriginal Child Placement Principle, that is, where possible, indigenous children in substitutive care should be cared for within their community or by another indigenous family or community.

245. In addition to the projects specifically targeted at indigenous families funded under the Stronger Families and Communities Strategy (see paragraph 198 above), the Federal Government has funded the following programs and initiatives:

- Children and family centres are being developed on remote indigenous communities to provide stability for the social, educational and cultural wellbeing of children by identifying children at risk and providing support for early and appropriate intervention to prevent/minimize long term disadvantages;
- FaCS has funded Waltja Tjutanku Palyapayi (meaning “doing good work for families”), a community based organisation working with indigenous families in remote Central Australia, to develop an *Aboriginal Child Rearing Strategy* to develop culturally appropriate children’s services based on indigenous child rearing and parenting practices for children up to four years of age; and
- Indigenous parenting and family wellbeing projects, initiated in response to the *Bringing Them Home* report, promote culturally appropriate parenting and family wellbeing, knowledge and skills.

246. Federal, State and Territory governments have developed an *Action Plan for Advancing the Reconciliation Process*. A priority of the Plan is to develop strategies to address the disproportionate number of indigenous children in institutions. Performance indicators and a reporting process for the plan are currently being developed.

247. The Western Australian Government is working with NGOs involved in out of home care to develop an appropriate mix of services to meet the needs of children who are at immediate risk of being unable to live with their parents or who are unable to live with their parents. The recruitment, training and support of foster carers, including indigenous carers, has been identified as a priority need. Strategies include the development of individual carer support plans, and the exploration of peer support and mentor models for foster carers.

G. Adoption (art. 21)

248. The Committee is referred to pages 137-146 of Australia’s First Report.

249. Australia ratified the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption in August 1998 and the Convention entered into force for Australia on 1 December 1998. The Convention is being used on a regular basis in Australia for the purpose of inter-country adoptions. As at November 2002, the Convention was in force between Australia and 51 other countries.

H. Illicit transfer and non-return (art. 11)

250. The Committee is referred to pages 147-148 of Australia’s First Report.

251. Australia is a party to the Hague Convention on the Civil Aspects of International Child Abduction and the Convention’s objectives - securing the prompt return of wrongfully removed children and ensuring that rights of custody and access are respected - have been incorporated into Australian domestic law.

252. On 1 July 2000, the *Migration Regulations* were amended to ensure that a visa would not be granted to a child without the permission of everyone who has the right to decide where the

child can live. In most cases, this refers to both parents. However, Parenting Orders, Court Orders, and other access rights are also taken into consideration. Where there is a dispute between parents about the removal of a child to Australia, the migrating or sponsoring parent is required to demonstrate that they have the legal right to decide where the child can live before a visa can be granted. There is also provision to refuse to grant a visa where this is considered to be in the child's best interests.

**I. Abuse and neglect (art. 19), including
recovery and reintegration (art. 39)**

253. The Committee is referred to pages 148-162 of Australia's First Report.

Child abuse and neglect

254. The Committee is referred to pages 148-157 of Australia's First Report. The Committee is also referred to the initiatives outlined above commencing at paragraph 234, that are relevant to this section.

255. Despite the ongoing efforts of governments and NGOs, child abuse remains a major concern in the Australian community. Victims of child abuse experience poorer mental and physical health, poorer educational and employment outcomes, and higher levels of contact with the criminal justice system over their lifetime. Indigenous children remain significantly over-represented in the child protection system.

256. Australian governments have noted the concern of the Committee, expressed at paragraph 15 of its Concluding Observations, about the existence of child abuse and violence within the family and the Committee's recommendation that measures be taken with a view to ensuring the physical and psychological recovery and social reintegration of the victims of abuse, neglect, ill treatment, violence or exploitation (paragraph 26). Australian NGOs have also expressed concern that the rates of abuse and neglect within the family are too high and that there are inadequate services to help children once family problems have arisen.

257. Australian governments have investigated ways of improving the operation of the child protection system and implemented many new initiatives in response to their findings. In particular the Committee is referred to the discussion commencing at paragraph 234 in this regard. Australian Governments have also greatly increased the real recurrent expenditure on child protection and out-of-home care services. In 2001-02, Australian Governments spent over \$796 million on childcare and out-of-home services, up from \$599 million in 1998-99 (see Annex 1-Table 21).

258. Whilst child protection is an area of State and Territory responsibility under the Australian Constitution, the Federal Government announced in the last meeting of the Council of Australian Governments (COAG) that it is willing to work with States and Territories to facilitate a national effort on indigenous child protection issues.

259. The Federal Government has also established the National Child Abuse Prevention Awards, to increase community awareness of child abuse issues and to give recognition to achievements in this field.

260. In addition to the initiatives established by governments, the Family Court has trialed innovative projects to improve the processes for family law cases involving physical and/or sexual child abuse. The *Magellan Project* in Victoria commenced in 1998 and the *Columbus Project* in Western Australia commenced in July 2001. Each program has involved 100 families. An evaluation of the Magellan project has found that the project was successful in reducing the time taken for the cases and the number of hearings required, reducing the breakdown rate of final orders and reducing the incidence of child distress (from 28% to 4%).

Reporting requirements

261. States and Territories have increased protection for children by introducing requirements on certain workers who deliver health or welfare services to children to report the details of any child they suspect is at risk of harm. For example, the New South Wales Government introduced extensive reporting requirements in 1998.

Working with children checks

262. Screening systems have also been established in both New South Wales and Queensland for a range of workers who work with children to prevent unsuitable people such as those convicted of serious sexual offences, from working with children and young people. In New South Wales, screening includes a criminal record check and a check for relevant completed disciplinary proceedings. It will soon incorporate checks for relevant apprehended violence orders. In Queensland, the Commission for Children and Young People has the authority to access a person's complete criminal history, including charges, regardless of when or where they occurred, to determine whether a person is suitable to work with children.

263. In South Australia, national police checks currently occur for people seeking registration as a teacher. National police checks also occur for family day-care workers and adult family members, childcare licensees and child care workers.

Domestic violence

264. The Committee is referred to pages 158-162 of Australia's First Report.

265. Since 1997, the Federal Government has committed \$50 million to the *Partnerships Against Domestic Violence Program* (PADV). PADV aims to reduce domestic violence and violence perpetrated against children. An evaluation of the first phase of PADV found that children suffer great harm from living in violent households with effects similar to those from child abuse and akin to post-traumatic stress disorder. It is estimated that child abuse and domestic violence co-exist in between 30% and 60% of cases and that greater integration and collaboration between the justice sector and children's, men's and women's services improves women's and children's safety, makes better use of resources and increases prosecution rates.

266. A major function of PADV is to test and measure domestic and family violence programs and to identify and develop the most effective programs. Priority areas for this initiative include: children at risk, indigenous family violence, work with perpetrators and community education. The initiative also assists children and young people in developing healthy relationships without using violence.

267. The Federal Government has funded a number of initiatives to address the high rates of indigenous family domestic violence. As part of PADV, \$6.2 million has been allocated to the Indigenous Grants Program, which provides pilot funding to organisations to build the capacity of indigenous communities to respond to family violence. ATSIC also funds a national *Family Violence Prevention Program* that provides funding to 13 Family Violence Prevention Legal Services (FVPLS), located in high need areas throughout Australia. In 2001-02, FVPLSs assisted 3,704 people, the majority of whom were women and children. FVPLSs provide information, referral, crisis counselling, court support, outreach services, legal assistance and community education and other support services that assist the victim to live free from family violence.

268. In 2001-02, ATSIC allocated \$4.896 million specifically to family violence prevention. A further \$7.5 million was also granted to other programs, which while not solely aimed at preventing family violence, had as an aim the reduction of such violence.

269. ATSIC has also established a National Indigenous Working Group on Violence to advise ATSIC Commissioners on family violence issues. In September 2002, this group developed a report on strategies and a policy statement to address family violence. These are expected to be considered by the ATSIC Board of Commissioners early in 2003.

270. State and Territory governments have also injected significant resources into addressing indigenous family violence. In its *Family Violence Strategies* released in January 2002, the Northern Territory Government announced increased funding to the *Aboriginal Family Violence Strategy* of \$500,000 in 2002-03, in addition to the \$780,000 already allocated annually as part of its *Domestic Violence Strategy*.

271. There has been a strong focus on involving indigenous communities in the development of family violence policy and programs. For example, the *Derby Project*, funded under the National Crime Prevention Program, has sought to develop and implement culturally appropriate strategies for the prevention and/or reduction of domestic violence in Derby, Western Australia through active participation of adolescents, families and communities, as well through partnerships formed with key Aboriginal organisations.

272. The Northern Territory *Aboriginal Family Violence Strategy* mentioned above is also noteworthy for its efforts to build the capacity of indigenous communities to participate in the design and delivery of relevant programs and service responses. The Strategy was developed following consultations with over 550 Aboriginal Territorians, and a series of discussions, workshops, gatherings and meetings. The Strategy specifically recognises the vital role of indigenous communities in developing solutions to family violence.

VI. BASIC HEALTH AND WELFARE

273. The Committee is referred to pages 167-254 of Australia's First Report.

A. Survival and development (art. 6, para. 2)

Food, nutrition and infant health

274. The Committee is referred to pages 167-173 of Australia's First Report.

275. During 1999-2000, the Federal Government took a lead role in developing a ten-year agenda for action in public health nutrition, titled *Eat Well Australia*. Priority nutrition areas identified include: prevention of overweight and obesity; increasing the consumption of fruits and vegetables; promotion of optimal nutrition for women, infants and children; and improving nutrition for vulnerable groups.

276. The *National Childhood Nutrition Program* commenced in 1999. It is a \$15 million, three-year community grants program aimed at improving the diet and long-term eating patterns of children aged 0-12 and of pregnant women. Projects run under this program are targeting high need environments such as rural areas and remote and indigenous communities. The objectives of the program are to improve:

- Awareness of healthy diets and outcomes in healthy eating patterns;
- Community knowledge, skills and capacity to promote nutritional health; and
- Availability of and access to nutritious foods.

277. The Federal Government is committed to promoting, protecting and encouraging breastfeeding in the Australian community. Between 1996-2001, the *National Breastfeeding Strategy* funded a total of nine projects at a combined cost of \$2 million. These projects were aimed at increasing the national incidence and duration of breastfeeding. The Federal Government is providing funding for two years to the Australian College of Midwives to implement and promote the *Baby Friendly Hospital Initiative* in Australia. Funding for three years (commencing in 2001) is also being provided to the *Australian Breastfeeding Association* to continue its work in educating mothers and counsellors about breastfeeding and in developing resources for the public.

278. The Committee is referred to paragraph 98 above for information on legislation prohibiting discrimination against breastfeeding mothers.

279. Action to increase folate intake by women of childbearing age commenced in 1996 to add to the effort to reduce the incidence of neural tube defects. Action includes:

- Increasing the knowledge of health care providers about the importance of folate;
- Increasing the awareness of consumers; and
- The production of folate intake kits for consumers.

Injury prevention and control

280. The Committee is referred to page 167 of Australia's First Report.

281. Recognising that injuries can seriously affect the health of Australia's children, the Federal Government developed the *National Injury Prevention Plan: Priorities for 2001-2003* in collaboration with State and Territory governments and injury prevention stakeholders. This Plan aims to reduce the incidence and severity of injury to Australians. Three of its priority areas relate to children, these being drowning, falls, and poisoning.

282. According to the Australian Centre for Agricultural Health and Safety there are approximately 30 childhood fatalities on farms each year in Australia. This represents approximately 20 per cent of injury deaths on Australian farms and a similar proportion of hospital admissions for farm related injury. The most common environmental factors for injury for younger children are bodies of water, while for older children the most common factors are vehicles and tractors.

283. The Federal Government is providing funding of \$887,000 over three years from 2001-02 to implement the *Child Safety on Farms Strategy* in all States and Territories. The strategy is aimed at reducing injury and death of children aged 0 to 14 years on Australian farms.

284. State and Territory measures to reduce injuries include a new program by the Western Australian Government aimed at reducing the involvement of children in road trauma. The "Road Aware" program targets three age groups (0 to 4 year olds; 4 to 14 year olds; and 15 to 20 year olds).

Indigenous children

285. At paragraph 13 of its Concluding Observations, the Committee expressed its concern about the:

special problems still faced by Aboriginals and Torres Strait Islanders, as well as by children of non-English-speaking backgrounds, with regard to their enjoyment of the same standards of living and levels of services, particularly in [...] health.

286. The Committee also recommended, at paragraph 32, that further steps be taken to raise the standards of health of disadvantaged groups, particularly indigenous Australians.

287. Health and infant mortality rates among indigenous Australians continue to be of concern. However, studies indicate that Aboriginal infant mortality has declined significantly in the past 30 years, from 150 deaths per 1,000 live births in the Northern Territory in the 1960s to around 30 to 35 deaths per 1,000 live births in the 1980s.²⁷ In 1998-2000, the indigenous infant mortality rate for Queensland, the Northern Territory, Western Australian and South Australia combined was approximately 15 per 1,000 live births, a rate approximately three times higher than the total Australian infant mortality rate of 5 deaths per 1,000 live births. It should be noted however, that any reporting of trends in infant mortality over time should be considered with caution. Changes in the rates of identification of infants as indigenous and problems with accurately identifying the indigenous population constrain the ability to assess accurately changes in the infant mortality rate.

288. The disparity in health between indigenous and non-indigenous infants may possibly be attributed to a multitude of historical and contemporary factors, for example:

- *Socioeconomic* - low education, employment and income levels;
- *Social and political* - dislocation of communities, problems with mainstream services and lack of culturally appropriate services;
- *Environmental* - Poor living environments, poor housing, poor environmental infrastructure, poor access to healthy and fresh foods for those in remote areas;
- *Access* - Location, poor health linkages between Aboriginal Community Controlled Health Services and mainstream health providers, cultural/social issues, workforce issues (numbers and qualifications), financial barriers; and
- *Specific Health Risks* - Low birthweight, poor nutrition, hazardous levels of alcohol use, high tobacco use, low levels of physical activity.

289. There is evidence that antenatal and related population health programs, provided as a component of comprehensive primary health care, can reduce complications of pregnancy, the incidence of low birthweight and perinatal deaths. Improving access to antenatal, postnatal and general child and maternal health programs is a high priority to reduce infant mortality, morbidity and poor early growth in indigenous babies, and prevent the short and long-term implications of these factors.

290. The Federal Government sponsors a number of initiatives aimed at improving the health of indigenous children. For example, the Federal Government has contributed \$1.5 million to the Western Australian *Aboriginal Child Health Survey*. This survey is designed to provide the Government with planning data similar in quality and relevance to the information that is currently available in relation to non-indigenous children. The information will assist in the identification of priority targets for existing services and provide a knowledge base from which preventive strategies, health development and educational programs can be developed to optimize healthy development.

291. State and Territory governments have also funded initiatives to improve the health of indigenous children. For example, the New South Wales Government has instituted the *Aboriginal Health Strategic Plan*. A key aim of this Plan is to improve the health of indigenous mothers and their children. In December 2000, the New South Wales Government allocated \$1.5 million to improve indigenous maternal and infant health across the state. The Government also funded a training and support program for midwives and Aboriginal health workers.

Children in rural and remote areas

292. Action is being taken to implement the recommendation of the Committee, at paragraph 32 of its Concluding Observations, that further steps be taken to raise the standards of health of disadvantaged groups, particularly children living in rural and remote areas.

293. The Australian Institute of Health and Welfare is undertaking a Rural Health Information Project for the Commonwealth Department of Health and Ageing which will look at the health status of regional, rural and remote Australians covering all age groups. It is expected that a report will be available in 2003.

294. The Federal Government is concerned about the unequal access to health care experienced by Australians living in rural and remote areas, including children, as compared to those living in metropolitan areas. In recognition of these concerns the Federal Government has spent around \$2 billion since 1996 on specific rural health and aged care programs to promote and support access to doctors, specialists and nurses in rural and remote areas.

295. While many of these rural health programs are mainstream programs and not solely targeted towards children, a number have components that provide services or activities specifically for children.

Youth suicide

296. This section focuses on initiatives specifically aimed at suicide prevention. Information on mental health generally appears below commencing at paragraph 310.

297. Australian governments share the concern of the Committee about the incidence of suicide among young people (see paragraph 18 of the Committee's Concluding Observations).

298. Figures for youth suicide are decreasing. Among young people aged 15 to 24 years, some 41 fewer suicides were recorded for 2001 compared with the figures of 1999. Since 1997 there has been a 35% decrease in suicides in this age group.²⁸

299. The *National Youth Suicide Prevention Strategy* (NYSPS) represented the first attempt to provide a nationally coordinated approach to youth suicide prevention throughout Australia. The strategy, which ran from 1995-1999, was the Federal Government's response to growing community concern in relation to rates of suicide among Australia's young people. As part of the Strategy, a range of projects within a public health framework were funded, guided and informed by panels of experts and community representatives providing broad consultation and research. State and Territory governments also developed and implemented strategies aimed at identifying "at risk" young people and developing programs to meet their needs.

300. At the completion of the NYSPS, the Federal Government announced a *National Suicide Prevention Strategy* (NSPS) to build on the good results of the NYSPS. Initially, \$48 million was allocated over five years for the NSPS. The NSPS has now been extended to June 2006, with a total budget allocation of \$66 million.

301. The focus of the NSPS is fostering strategic partnerships and to position suicide prevention effort across all sectors. The NSPS was endorsed by the National Advisory Council on Suicide Prevention, guided by consultation with key groups and evidence that suicide prevention requires a multi-faceted approach involving collaboration between all levels of government and the community.

302. *Auseinet*, the Australian Network for Promotion, Prevention and Early Intervention for Mental Health, is a vehicle for the co-ordination, promotion and dissemination of high quality information to support implementation of NSPS. Further details on *Auseinet* can be found in the Health and Health Services section, below at paragraph 314 below.

303. In an effort to address the rising rates of suicide by indigenous youth, ATSIC has been involved in developing the NSPS. The significance of substance misuse in indigenous youth suicide has led ATSIC to establish a Substance Misuse and Family Violence Taskforce to monitor programs and provide strategic advice to the ATSIC Board of Commissioners on this issue.

B. Disabled children (art. 23)

304. The Committee is referred to pages 175-194 of Australia's First Report.

305. The Committee is referred to the section on the Principle of Non-Discrimination, above at paragraph 84, for information on the development of disability standards.

306. Several of the States and Territories have implemented programs to address the needs of disabled children. For example, South Australia has established the *Options Coordination Program*. This is a statewide network of five core agencies that work together to assist people with significant and permanent disabilities in obtaining access to assistance, information and community services. The Crippled Children's Association *Option Coordination Program* is specifically for children under the age of 18 who have a physical or neurological disability or an acquired brain injury. South Australia has also funded initiatives such as the Disability Information and Resource Centre, which provides carers and parents of disabled children with support and resources.

C. Health and health services (art. 24)

307. The Committee is referred to pages 195-230 of Australia's First Report.

Provision of medical assistance

308. Several States and Territories have taken steps to increase the level of medical assistance available to children. For example, Queensland has instituted the *School Based Youth Health Nurses Program*. By July 2001 there were 112 nurses trained in preventative primary attending the State's 260 state secondary schools.

Female genital mutilation

309. Information on this issue is provided in the section on the right not to be subjected to torture, commencing above at paragraph 176 above.

Mental health

310. Developments in mental health generally are outlined in this section. The Committee is referred to the section on Survival and Development, commencing above at paragraph 296 above for an outline of suicide prevention initiatives.

311. The emphasis on promotion, prevention and early intervention for mental health under the *Second National Mental Health Plan* is reflected in recent *National Mental Health Strategy* initiatives.

312. The *National Action Plan for Promotion, Prevention and Early Intervention for Mental Health*, released in November 2000, identified priority groups including perinatal, toddlers and preschool, children aged 5 to 11 years, and young people aged 12 to 17 years. National action areas include providing workplace support for parents, improving the mental health literacy of parents and school communities and the implementation of effective school based prevention programs.

313. NGOs have expressed concern about the inadequacy of mental health services for adolescents. The National Action Plan has identified adolescents as a priority group. The Federal Government has also funded *Mind Matters*, a mental health promotion resource for secondary schools, providing a whole-of-school approach to mental health promotion and suicide prevention. The curriculum aims to help schools build environments where young people feel safe, valued, engaged and purposeful. The resource is available free of charge to every secondary school in Australia and includes curriculum resources, professional development for school staff and links to appropriate community supports.

314. The Federal Government has funded a number of projects aimed at improving the mental health of children, including *Auseinet*, a national early intervention network to promote early intervention in mental health problems in children, which commenced in May 1997. The scope of the project now includes mental health promotion, illness prevention and suicide prevention. The project also extends beyond the health sector and takes the concepts of mental health promotion, prevention and early intervention into other sectors such as education, general practice and justice. Support has also been provided to States and Territories to develop infrastructure for mental health promotion, prevention and early intervention.

International cooperation and the needs of developing countries

315. The Committee is referred to pages 208-210 of Australia's First Report.

316. A large proportion of Australia's aid program is directed to assisting the health sectors of developing countries. Australia concentrates on helping those people most in need, especially women and children. In 2002-03, Australia will provide an estimated \$230 million of direct health assistance to developing countries. This represents about 13% of overall expenditure.

317. Australia's aid program has a strong focus on primary health care and disease prevention, placing emphasis on targeting the major causes of child and maternal mortality and morbidity. The Federal Government funds projects aimed at improving the health of children through projects targeting nutrition and vaccination, amongst others. The Federal Government has pledged to provide \$1 billion for food security activities in developing countries for the four years ending 2001-02. Of this commitment, \$268.1 million was spent in 2001-02. Australia has also provided longstanding and sizeable financial contributions to immunisation campaigns in the Asia-Pacific region.

318. Recognising the severe threat that HIV/AIDS presents to children, Australia has taken a prominent role in the international response to the epidemic. The Federal Government announced a six-year \$200 million global HIV/AIDS initiative in July 2000. Australia also hosted a regional ministerial meeting on HIV/AIDS in October 2001. Stemming from the

meeting, Australia is working in collaboration with the Joint United Nations Program on HIV/AIDS (UNAIDS) to establish an Asia-Pacific Leadership Forum for HIV/AIDS and Development, committing over \$1 million in seed funding. The Federal Government HIV/AIDS Taskforce was also set up in early 2002 to advance Australia's efforts in assisting developing countries to combat HIV/AIDS.

**D. Social security and childcare services and facilities
(arts. 26 and 18, para. 3)**

319. The Committee is referred to pages 230-246 of Australia's First Report.

Family assistance and Social Security

320. The Federal Government has implemented initiatives to increase access to social security. One of the major focus areas for the Federal Government has been supporting Australian families through family assistance benefits. From 1 July 2000, the Federal Government, as part of the new tax system, replaced 12 complex ways of paying family assistance with three simplified payments:

- Family Tax Benefit Part A: helps families with the cost of raising children;
- Family Tax Benefit Part B: gives extra help to single income families including sole parents; and
- Childcare Benefit: helps families with the cost of childcare.²⁹

321. The changes were legislated in the *Family Assistance Act 1999* and the *Family Assistance (Administration) Act 1999*. The Department of Family and Community Services oversees the scheme, whilst the newly created Family Assistance Office administers the scheme.

322. The changes represent an increase in financial assistance to many families with children. Family assistance payments have expanded to cover a greater number of families, increasing assistance to over \$12 billion each year, thus committing financial resources to 90 per cent of Australian families with dependent children. Two million Australian families and four million children benefit from the initiative.

323. In 2002, the Federal Government also introduced the *Baby Bonus*. The Bonus is a payment of \$500 per year for up to five years to assist families with the cost of raising children. Families are eligible to receive the Bonus whether or not they receive any other family benefits such as a maternity allowance or the family tax benefit.

Childcare

324. The Federal Government has a strong commitment to supporting affordable, flexible and quality childcare services. Childcare is an essential element in helping families to balance their work and parenting roles and provides a stimulating and nurturing environment for children.

325. Around 6 billion dollars has been allocated over the four years to 2005-06. This consists of:

- Child care benefit, which is mostly paid direct to services on behalf of families to reduce the fees paid, with some payment going direct to families; and
- Support for childcare, subsidies and other financial assistance to support services, which is paid by way of government grants to services and local government.

326. High quality flexible childcare is important to support families and help build stronger communities in rural and regional Australia, particularly in indigenous communities. These communities may require different types of services to meet their particular needs or may need to be funded in a different way. The Federal Government funds a range of innovative and flexible services, such as Multi-functional Aboriginal Children's Services and mobile services.

327. Other examples of funding assistance are the private provider incentives aimed at encouraging the establishment of child care centres where no other centre exists and the Disadvantaged Area Subsidy, which assists eligible services in rural, remote or urban fringe areas that may have small or fluctuating numbers of children in care.

328. Another example which assists families in rural and remote areas to access childcare is the exemption for eligible childcare services from the 20 hour limit on non-work related care. This enables all families using eligible services to access and receive childcare benefit for up to 50 hours per child per week for non-work related care. This ensures childcare services remain viable where access to alternative childcare is not readily available.

329. Federal Government funding is also provided to assist children with special needs, those from diverse cultural and linguistic backgrounds, indigenous children and South Sea Islander children, to access and participate in child care. This assistance is provided through the *Special Needs Subsidy Scheme* and the *Supplementary Services Program*.

330. The Government has placed more emphasis on quality childcare through the introduction of more rigorous requirements that services must meet in order to continue to receive federal funding.

331. In addition to the federal Child Care Benefit scheme, the Northern Territory Government provides a subsidy to all licensed child care services at a rate of \$20.20 per child per week for children over the age of two and an extra \$7.17 per week per child for children under the age of two (2002-03 rates). The aim of the subsidy is to contain the cost of care for families and maintain fee charges at an acceptable level.

Children at risk

332. The Federal Government has established a number of social security programs for children considered to be at risk, which take into account the circumstances of the child. For example, Special Childcare Benefit is available to cover the full costs of childcare for children at risk of serious abuse or neglect.

E. Standard of living (art. 27)

333. The Committee is referred to pages 246-253 of Australia's First Report.

Youth homelessness

334. Australian Governments are committed to preventing youth homelessness, particularly through early intervention.

335. In May 1996, the Prime Minister announced the formation of a Youth Homelessness Taskforce to explore more effective responses to youth homelessness, focused on early intervention. An outcome of this Taskforce was the establishment of a new youth homelessness early intervention program: *Reconnect*. This program is designed to target young people, aged 12 to 18 years, at risk of homelessness. It focuses on supporting families and young people in the early stages of home leaving and encouraging young people to reconcile with their families and to re-engage with education, training, employment and the community. There are currently 89 *Reconnect* services operating throughout Australia, with a further 11 being developed through community development processes.

336. An evaluation of *Reconnect* done in October 2002 found substantial evidence that the program is working effectively in:

- Achieving reconciliation between young people and their families;
- Improving the stability of young people's living situations;
- Engaging young people in employment, education and training and with their community; and
- Improving community capacity for early intervention into youth homelessness.

337. The Federal Government has also developed the *National Homelessness Strategy*. A key initiative funded under this strategy is the *Family Homelessness Prevention pilots*. Five million dollars has been allocated over 3 years, starting from 2001-02 to establish pilot programs. By using data and a voluntary assessment, Centrelink will identify families at risk of homelessness and refer them to NGOs for assistance such as family support, counselling, and diverse community and housing support services. The pilots will assist around 1,000 families in locations around the country. There will be approximately one service located in each State and Territory.

338. Another key element of the *National Homelessness Strategy* is the *Demonstration projects*. One million dollars will be provided per year for three years commencing 2000-01, for demonstration projects to test innovative homelessness prevention and early intervention strategies that will inform future policy and program directions. Examples of projects funded to date include the *Schools Research Project* and the *Young Offenders Support Program*.

339. In New South Wales, the *Wood Accommodation Support Program* was established in response to the link between homelessness, sexual exploitation and offending identified by the Royal Commission into the New South Wales Police Force - the Paedophilia Enquiry. The New South Wales Government funds six accommodation programs through this program. These accommodation programs assist young people who are at risk of sexual exploitation, homeless or at risk of entering the juvenile justice system because of the former reasons.

340. The Federal Government notes that the concern of the Committee, expressed at paragraph 18 of its Concluding Observations, at the spread of homelessness amongst young people and the resultant risk of exploitation. The Federal Government considers that the initiatives outlined above demonstrate its commitment to addressing this problem.

Indigenous housing

341. The Federal Government notes the concern of the Committee, expressed at paragraph 13 of its Concluding Observations, at:

the special problems still faced by Aboriginals and Torres Strait Islanders, as well as by children of non-English-speaking backgrounds, with regard to their enjoyment of the same standards of living.

342. The Federal Government currently spends over \$300 million each year on indigenous housing and infrastructure. In the 2001 Budget, it allocated an additional \$75 million over four years to expand the supply of healthy housing and housing related infrastructure for indigenous people living in rural and remote areas. The additional housing funds will be targeted to: upgrading the standard of existing houses; training indigenous community housing organisations to manage and maintain their houses; and regular maintenance of houses.

343. In May 2001, Federal, State and Territory ministers with responsibility for housing adopted the Federal/State Working Group on Indigenous Housing's recommendation of a 10-year statement of future direction, *Building a better future: Indigenous housing to 2010*. In this statement, the ministers affirmed their commitment to a national effort to make a real difference in housing and environmental health outcomes for indigenous Australians. They also established a Standing Committee on Indigenous Housing to monitor progress in this area.

344. ATSIC administers the *Community Housing and Infrastructure Program* (CHIP). CHIP is, in most instances, a supplementary program aimed at improving environmental health and housing conditions in indigenous communities. Services that are provided through CHIP include housing, infrastructure and the servicing and maintenance of both housing and infrastructure, with most provided in rural and remote areas. Through CHIP and an improved focus on servicing need through mainstream housing programs, governments hope to reduce the level of over-crowding in indigenous households and improve the standard of housing for indigenous Australians.

345. ATSIC also facilitates the *Home Ownership Program*, which has as its objectives:

- Assisting in increasing the home ownership rate of indigenous peoples to 40% by the year 2010; and
- Providing a range of competitive housing loan products to eligible indigenous Australians who may not qualify for assistance from conventional lending institutions to assist them to buy and eventually own their own home.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

346. The Committee is referred to pages 255-313 of Australia's First Report.

A. Education, including vocational training and guidance (arts. 28 and 29)

Literacy and numeracy

347. A key priority for the Federal Government has been to focus on achieving real, sustained improvements in the literacy and numeracy skills of Australian children.

348. As part of the *National Literacy and Numeracy Plan* agreed to by Federal, State and Territory Education Ministers in 1997, national literacy and numeracy benchmarks for Years 3, 5 and 7 (that is, children aged between 8 and 13) have been developed, against which all children's achievement in these years can be measured. The benchmarks represent minimum standards required by all students for successful progress at school and ensure that problems with reading and numeracy are picked up before students enter high school. Literacy benchmarks include reading, writing and spelling.

349. Student performance against the national benchmarks was assessed for the first time in 1999 using jurisdiction-based tests, with the results reported by all States and Territories publicly in the annual *National Report on Schooling in Australia*. The national benchmarks also enable comparison of performances by indigenous students and students with a language background other than English.

350. The Federal Government has developed a range of programs to increase the literacy and numeracy of Australian children. They include:

- The *Strategic Assistance for Improving Student Outcomes Program*, introduced in 2001, which aims to improve the learning outcomes of educationally disadvantaged students and the educational participation and outcomes of students with disabilities;
- *National Literacy and Numeracy Week*, an event held annually since 1999 to celebrate literacy and numeracy achievement, featuring federally funded awards to schools totalling \$200,000;
- Preschool profile guide, which assists preschool teachers in measuring and monitoring literacy and numeracy skills of preschool children; and
- *Strategic Results Projects*, to which the Federal Government committed \$37 million in 1998-99, to including projects focused on student retention, literacy and numeracy.

Indigenous education

351. The Committee is referred to pages 255-282 of Australia's First Report, in particular, pages 260-264.

352. Australian governments share the Committee's concern, expressed at paragraph 13 of its Concluding Observations, about "the special problems still faced by Aboriginals and Torres Strait Islanders [...] with regard to their enjoyment of the same [...] levels of service, particularly in education [...]". The Committee then went on, at paragraph 32, to encourage Australia to "take further steps to raise the standards of [...] education of disadvantaged groups, particularly Aboriginals [and] Torres Strait Islanders".

353. Since the consideration of Australia's First Report by the Committee, Federal, State and Territory governments have continued to work collectively to improve the education outcomes for indigenous children.

354. The *National Aboriginal and Torres Strait Islander Education Policy* pays particular attention to the key areas of literacy, numeracy and school attendance in order to accelerate the pace of change. A major initiative under this strategy is *Australians Working Together - Helping People to Move Forward*. Under this program the Federal Government has provided \$10.2 million in funding from 2001-04 for measures to encourage indigenous students to complete Year 12 and to progress to further education and training, and to provide vocational learning opportunities for indigenous secondary school students.

355. Another major initiative under the *National Aboriginal and Torres Strait Islander Education Policy* is the *National Indigenous English Literacy and Numeracy Strategy*. This strategy is a "blueprint" to lift school attendance rates; address health problems that undermine learning; attract and retain good teachers; and use the most effective teaching methods to obtain the most successful results for indigenous children. This includes intensive education in English as a second language for indigenous students from non-English speaking communities commencing school for the first time. In 2000, some 1,300 students benefited from this initiative.

356. State and Territory governments have also developed initiatives to improve the education of indigenous students. In New South Wales, a *State Literacy Strategy* involving specific supplementary programs for indigenous students has been implemented and the number of trained indigenous education workers has been increased.

357. In South Australia, Yurrekaityarindi, an Aboriginal decision-making model, has recently been introduced to ensure that indigenous parents and community members are included in educational decision-making in all government schools where indigenous students are enrolled. The recognition of indigenous community decision-making in the development of educational practices has supported an increase in the retention of indigenous students to year 12. Since 1998 the number of indigenous students has more than doubled.

358. In Western Australia, the *Follow the Dream* strategy was introduced into selected Western Australian government schools to improve secondary retention of indigenous students. The strategy involves the identification of indigenous students who have been achieving at or above literacy and numeracy benchmarks in Year 7. These students are provided with the opportunity to join the program in Year 8 in participating secondary schools. Students involved in the strategy will receive comprehensive cross-agency personal development support throughout Years 8-12.

Children from a non-English speaking background

359. Australian governments note the concern of the Committee, expressed at paragraph 13 of its Concluding Observations, at “the special problems still faced by [...] children of non-English-speaking backgrounds, with regard to their enjoyment of the same [...] levels of service, particularly in education [...]”. The Committee then went on (at paragraph 32) to encourage Australia to “take further steps to raise the standards of [...] education of disadvantaged groups, particularly [...] new immigrants, and children living in rural and remote areas.”

360. According to results published in the *National Report on Schooling in Australia* in 2000 and *Program for International Student Assessment (PISA)* data, the literacy and numeracy achievement rates of children with a language background other than English (LBOTE) remain lower than those for the general population.

361. The *English as a Second Language Program* (outlined in Australia’s First Report at page 258) remains an important part of addressing the special educational needs of newly arrived migrant students. Eligibility for this program has been extended. Prior to 1 July 2002, to be eligible for funding, students were required to be Australian citizens or permanent residents of Australia and determined at the local level to require intensive English language assistance in order to participate fully in mainstream classroom activities. From 1 July 2002, any minors accepted under any part of the Immigration Humanitarian Program, whether permanent or temporary, are eligible. The Federal Government will provide \$14.3 million over the period 2002-06 for this initiative.

Disabled children

362. In its National Inquiry into Rural and Remote Education, HREOC found that some schools in rural and remote areas were inaccessible to children with physical disabilities. HREOC also found that there was a lack of awareness in schools and in the community of the requirements of the *Disability Discrimination Act 1992*.

363. Australian Governments are committed to ensuring access to education for all children with disabilities, irrespective of where they live in Australia. To this end, a disability standard for education under the federal *Disability Discrimination Act 1992* is currently being developed under the auspices of the Ministerial Council on Education, Employment, Training and Youth Affairs. The purpose of the standard is to clarify the rights of students with disabilities to receive, and the obligations of providers to supply, education and training free from discrimination. The draft standard and accompanying guidance notes have been the subject of extensive consultation, and HREOC has been integrally involved in their development.

Children at risk

364. The Committee is referred to pages 259-260 of Australia’s first Report.

365. Federal, State and Territory ministers for education, training, employment, youth and community services joined together in 2002 to make the *Stepping Forward* Declaration. The Declaration commits governments to developing practical ways to increase social, education and employment outcomes for young people at risk.

366. A new initiative is the establishment of Youth Activities Services (YAS). These services provide structured activities and positive peer support, generally outside school hours, to young people aged 11 to 16 years living in disadvantaged areas, with the aim of keeping young people engaged in their community. The YAS offer creative and challenging alternatives to activities that place young people at risk and help prevent them from developing patterns of behaviour that will place them at risk. There are 93 YAS nationally. Funding in the 2001-02 financial year was \$4.5 million.

367. State and Territory governments have also funded programs targeted at addressing the needs of children at risk. For example, in the Australian Capital Territory, the *Schools as Communities Program* has been developed to address the needs of children at risk and now operates in 10 schools. This program improves the social and educational outcomes of at-risk children and young people by creating strong and effective working relationships between families, communities and their schools.

368. In New South Wales, the *Links to Learning Program* provides young people aged 12 to 24 years who have left school early and are unemployed, or who are at risk of leaving school early, with a range of opportunities to remain in or re-enter mainstream education and training. Within the *Links to Learning Program*, specific projects are designed to help young people from language backgrounds other than English to develop literacy and social skills and to develop individual education, training and career goals so that they can continue their school education, return to school or access post-school education or training courses.

369. The New South Wales Government has also sought to strengthen the links between schools and communities to increase supports available to children and young people who are at risk of disengaging from education and training. This has occurred through peer support and mentoring programs, targeted initiatives to provide tutoring and homework assistance, and grants programs which fund community organisations to assist young people who experience difficulties participating in formal learning environments.

Overseas Aid

370. Through its aid program, Australia will assist countries in the Asia-Pacific region by providing approximately \$280 million on basic education, technical and vocational skills training and a tertiary education scholarship scheme in 2002-03. Special attention will be paid to children who face greater hurdles in accessing education, such as girls and minority populations.

371. Australia is also using information communication technology to improve the quality of and access to basic education in developing countries. The Federal Government and the World Bank launched the Virtual Colombo Plan in August 2001, with an Australian commitment of \$200 million over five years.

B. Aims of education (art. 29)

372. The Committee is referred to pages 202-301 of Australia's First Report.

373. Australian school systems are committed to promoting respect for all peoples and to ensuring a safe school environment whilst also respecting the human rights of children. This includes the development of anti-racism programs and policies to combat child sexual abuse, as well as improving school discipline processes.

Anti-racism measures

374. A program, *Racism. No way!* was initiated in 1997 as a national response to counter racism in schools. Resources were developed with the input of teachers, curriculum officers and community members across Australia. Funding of \$150,000 was provided by the Federal Government through the *Living in Harmony* initiative. State and Territory government education systems and the New South Wales Catholic Education Commission also contributed.

375. The aim of the *Racism. No way!* project was to assist school communities and education systems to recognise and address racism in the learning environment. The project resulted in the development of a number of resources for Australian schools including a guide and a newsletter.

376. In 2000, the Commonwealth contributed \$50,000 towards a *Racism. No way!* website to help Australian school communities and education systems recognise and address racism in the learning environment.³⁰ The website includes a library containing resources about topics such as understanding racism, recognising racism in schools and the effects of racism in schools.

377. In New South Wales, the *Youth Partnership with Arabic Speaking Communities*, a whole-of-government and community strategy, has been established to promote the well-being of young people of Arabic-speaking background. The Strategy aims to:

- Improve the learning experiences of young people at risk of disengaging from education and training;
- Improve connections between schools, families and communities;
- Assist parents' capacity to parent children and young people;
- Provide a range of programs to young people which helps lead to a reduction in risk-taking and anti-social behaviour; and
- Ensure effective participation by young people, parents and representatives of the Arabic-speaking communities in the decision-making processes of government and non-government organisations.

378. In South Australia, an updated *Countering Racism Policy* will be released in 2003. The updated policy aims to renew the focus on and commitment to challenging and addressing racist behaviours and affirming and promoting cultural and linguistic diversity in all care and educational communities.

379. The South Australian Government has also developed a languages plan to affirm the commitment to languages within the South Australian educational curriculum as a means of countering racism and expanding learners' abilities to develop respect for diversity and cross cultural communication skills. It also supports the human rights of learners to maintain and develop their first language and to renew and reclaim endangered indigenous languages. The South Australian educational curriculum includes alphabetic, non- alphabetic and indigenous languages as an equal and mandated part of the curriculum. Information booklets for parents about the languages plan have been printed in six community languages.

380. Children and students in South Australian schools have supported reconciliation and cultural and linguistic diversity through participation in many community festivals and events including for the first time in 2002 a *Youth Voice Project* which promoted cultural and linguistic diversity as part of the South Australian Multicultural and Ethnic Affairs Commission's Cultural Diversity Week.

Sexual abuse

381. In Queensland, legislation has been enacted (*Education (Accreditation of Non-State Schools) Act 2001*) to establish a regime for the accreditation of non-State schools, including requirements that they have policies to deal with issues of child sexual abuse. Public schools, teachers and all employees of the Queensland Department of Education are subject to the requirements of a student protection policy that is administered by the Department of Education.

School discipline

382. The issue of corporal punishment is discussed above, commencing at paragraph 184 above.

383. In Western Australia, a significantly enhanced focus on procedural fairness in dealing with student behaviour has ensured that the views of children are given due weight in all stages of the behaviour management processes, particularly in the areas of student suspension and student exclusion. For example, for less severe behaviour, schools are required to discuss their intention to suspend with the student and his or her parents, which enables the parents and student a right of reply, and ensures procedural fairness. With regard to exclusions, members of the School Discipline Advisory Panel are briefed on these concepts to ensure they can appraise school level processes utilised and demonstrate procedural fairness in their own recommendations.

384. In addition, the Western Australian Government has allocated \$7 million over four years to the 'Behaviour Management and Discipline Strategy' to reduce class sizes in Years 8 and 9 and to address issues of challenging behaviour. The focus of the strategy is to:

- Reduce class sizes in years 8 and 9;
- Support secondary schools where the students are identified as having behavioural issues;

- Provide intensive training in behaviour management; and
- Provide support to schools through specific initiatives that are developed over time.

C. Leisure, recreation and cultural activities (art. 31)

385. The Committee is referred to pages 301-313 of Australia's First Report.

Programs and activities

386. Federal, State and Territory governments have continued to develop a range of programs to promote leisure and cultural activities for children. An example of this is the Croc Eisteddfod Festivals that are held with the participation of the Federal, State and Territory governments. The festivals are held in regional centres, and are designed to promote health, education and employment in a spirit of reconciliation. They involve young indigenous and non-indigenous Australians in visual and performing arts, sports clinics and careers markets in a 100% drug and alcohol free environment. Federal Government funding is provided as part of the National Crime Prevention Program.

387. National Youth Week, coordinated by FaCS in collaboration with State and Territory Departments, involves a range of youth focused events including competitions, film festivals, debates, skateboarding exhibitions, forums, concerts and online events.

388. National Reconciliation Week events and activities promoting reconciliation between indigenous and other Australians are held throughout Australia. In New South Wales, National Reconciliation Week activities have included the release in all schools of a kit of activities titled *Towards Reconciliation* and an exhibition held at the Art Gallery of New South Wales featuring both indigenous and non-indigenous student artwork from around New South Wales.

National Museum of Australia

389. The National Museum of Australia opened to the public on 11 March 2001 as the Federal Government's contribution to mark the centenary of Federation. The Museum interprets and communicates the history and cultures of Australia and its peoples. Its exhibitions, education and other public programs include services and activities specifically directed towards children. In its first year of operation it attracted over 80,000 children through its schools program and many of its exhibits are purposely designed for children to be educational, interactive and fun. In addition, the Museum conducts several other initiatives for children including education programs, talkback radio sessions (where young people interview leading politicians) and child-friendly information and layout throughout the museum.

VIII. SPECIAL PROTECTION MEASURES

390. The Committee is referred to pages 315-431 of Australia's First Report.

A. Children in situations of emergency

1. Refugee children (art. 22)

Refugee protection

391. The Committee is referred to pages 315-321 of the Australia's First Report.

392. The Federal Government is aware that Australia's immigration detention policy is of concern to certain NGOs and the Committee (see paragraph 20 of the Committee's Concluding Observations). However, the Federal Government maintains that this policy is not inconsistent with Australia's obligations under the Convention.

393. As a signatory to the 1951 UN Convention on the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (collectively referred to as the Refugees Convention), Australia provides protection to those applicants who engage protection obligations under the Convention. Australia endorses the right of children to apply for protection, the importance of seeking durable solutions for children who are refugees, and the need to consider the best interests of the child as part of the refugee determination process.

394. People who seek Australia's protection have their claims to be a refugee assessed according to the definition stated in the Refugees Convention. This assessment is undertaken within the framework of the *Migration Act 1958*. The primary purpose of this Act is to regulate, in the national interest, the entry and presence in Australia of people who are not Australian citizens. This reflects Australia's sovereign right under international law to determine which non-citizens are admitted or permitted to remain and the conditions under which they may be removed.

395. The Protection Visa is the mechanism by which Australia offers asylum to persons who fall under the Refugees Convention. As detailed at paragraph 1355 of Australia's First Report, applications for a protection visa are assessed by trained officers of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), appointed as delegates of the Minister.

396. Persons who are found to require asylum in Australia may be granted one of two types of visas, depending on the nature of their arrival into Australia, that is, whether they have arrived lawfully or unlawfully.

397. If asylum seekers arrive lawfully in Australia, and are found to require protection, they may be granted a permanent protection visa (PPV), enabling them to live permanently in Australia.

398. An unlawful non-citizen is a person who held a visa that has expired or a person who has arrived in Australia without authority to enter. An asylum seeker who arrives in Australia unlawfully, who applies for asylum after 20 October 1999 and is found to require protection, may be granted a temporary protection visa (TPV) which provides temporary residence for three years in the first instance.

399. Children whose parents have lodged a Protection Visa application would usually be included in their parents' application. Amendments to the *Migration Regulations* from 1 July 2001 provide that all members of the family unit (including newborn babies) are to be granted the same Protection Visa subclass as the applicant who is found to require protection. However, all members of a family unit included in an application are applicants for Protection Visas in their own right and have the opportunity to make separate claims if they wish. This part of the assessment process is intended to ensure, among other things, full exploration of all claims including those claims made by or relevant to children.

400. A child may be found to meet the definition of "refugee" even though the parents of the child have failed to meet that definition. The High Court of Australia in *Chen Shi Hai v Minister for Immigration and Multicultural Affairs*³¹ considered issues relevant to Article 22 of the Convention. In relation to an infant who claimed refugee status separately from his parents, the Court found that a previous court had erred in assuming that, since the parents of the child had been found not to meet the definition of "refugee", the dependent child would necessarily fail to meet that definition.

Placement of children in immigration detention

401. It is a fundamental principle of international law that a country has the right to determine which non-citizens are admitted to its territory and the conditions under which they are permitted to remain.

402. Detention of children in Australia occurs only "in conformity with the law" as required by Article 37(b) of the Convention, specifically under the *Migration Act 1958*.

403. The *Migration Act* requires that all non-citizens who are unlawfully in Australia must be detained. The detention requirement continues until the person is determined to be a refugee (and is granted a protection visa) or is removed from Australia. Unlawful non-citizens are required to be removed as soon as reasonably practicable.

404. Immigration detention in Australia is for administrative, not correctional purposes. It ensures that where people have arrived unlawfully, they do not enter the Australian community until their claims to do so have been properly assessed against internationally agreed standards; ensures essential health, identity and security checks are conducted; and provides asylum seekers with access to appropriate services for the processing of visa applications. It also ensures that, where applications to remain in Australia are unsuccessful or where people have been located in the Australian community in breach of previously granted visa conditions, they are available for removal.

405. The Federal Government seeks to minimise the period of time taken to progress through the determination process, and hence the period of detention.

Treatment of children in detention

406. As immigration detention is for administrative purposes, every effort is made to ensure that people in detention are able to go about their daily life with as few restrictions as possible. In addition, immigration detention is usually communal with families remaining together and men,

women and children able to mix. This is consistent with the focus in the Convention on the family as the fundamental group of society and as the natural environment for the growth and wellbeing of children. Article 5 of the Convention also recognises the responsibilities, rights and duties of parents. In immigration detention facilities, the role of parents as the primary care givers and guardians is fully recognised and respected.

407. The Federal Government's commitment to ensure that children in immigration detention receive appropriate care is evidenced through the Immigration Detention Standards (IDS), which outlines the quality of life expected in immigration detention facilities and takes into consideration individual needs such as gender, culture and the age of detainees.

408. A number of programs are run within the immigration detention facilities that contribute to detainee development and quality of life, in accordance with the IDS. These include education services for children and adults, including English language instruction, cultural classes and sporting activities. In some facilities, children attend local school; in others a school curriculum based program is provided. Social and recreational activities for children are also organised. All detainees are free to practise their religion of choice, and religious services are conducted within the centres on special observance days.

409. Qualified medical personnel identify the health care needs of all detainees as soon as possible after they are taken into immigration detention. All detainees are provided with necessary medical or other health care, including psychiatric care and referral to specialists, when required.

410. The conditions of detention of children for immigration purposes are subject to administrative review. In February 2001, an Immigration Detention Advisory Group was established to provide advice to the Minister on the appropriateness and adequacy of services, accommodation and facilities at immigration detention facilities. The group is comprised of individuals selected for expertise on immigration and humanitarian issues. The group is able to visit detention centres without warning. Since its formation, the Group has visited all of the detention centres collectively and/or individually.³²

411. Additionally, a permanent working party of senior departmental officers meets regularly to undertake an administrative review of all detention cases and, in particular, cases of concern such as long term detainees and children.

412. In addition to the programs outlined above, the Federal Government has in place special arrangements for unaccompanied children in immigration detention. These arrangements take into account the needs of the particular age and gender of the child, and includes placement, where possible, within the facility with an adult or adults, able and willing to take a care and custody role in relation to the child. Provision for contact with family members overseas is available.

413. HREOC is currently conducting a national inquiry into children in immigration detention and child asylum seekers. The Federal Government has cooperated fully with the inquiry and provided a substantial body of information and documents to assist HREOC. The final report is expected to be tabled in mid-2003.

Alternative detention arrangements

414. The Federal Government seeks to minimise the period of time people remain in immigration detention. There are in place arrangements to enable children in detention to be released on a bridging visa into the community. Criteria for release hinge on appropriate care and welfare arrangements being available in the community with the best interests of the child being the primary consideration. The child's best interests are assessed on the particular circumstances of the individual case. Generally, it is not considered to be in the best interests of the child to be separated from her or his parents, family or fellow country persons.

415. Alternative detention arrangements for some women and children detained at the Woomera Immigration Reception and Processing Centre were established in August 2001. The project enables volunteer women and their children, who meet the participation criteria and have the necessary health checks completed, to live in family style accommodation away from the detention centre whilst remaining under the supervision of detention centre officers. The participants are able to regularly visit family members remaining in the centre. Although the participants are not able to freely come and go, they have regular opportunities to go on supervised excursions to community facilities.

416. An evaluation of the initial trial in early 2002 found that it had been a success. The participants reported positively on being able to have greater control over managing their homes, their time and the priorities and activities of their children in a domestic environment. The key concern expressed was separation from adult male family members. However, both the men who remained in the centre and the participants were of the view that the separation was acceptable in light of the benefits of the arrangements. Following the evaluation, the Federal Government announced the alternative detention arrangements would continue, with extension to the eligibility criteria for participation.

417. More information on the alternative detention arrangements for women and children in immigration detention can be found on DIMIA's website <<http://www.immi.gov.au>>.

Unaccompanied Humanitarian Minors Program

418. An Unaccompanied Humanitarian Minor (UHM) is a non-citizen, under 18 years of age who does not have a parent to care for them in Australia and who has been granted a visa under Australia's humanitarian program.

419. The Federal Government (on a cost share basis with State and Territory Governments) provides an Unaccompanied Humanitarian Minors Program to support, and ensure the proper care of, all UHMs living in the Australian community, until they are 18 years of age or otherwise leave the program.

420. UHMs are cared for by the relevant state child welfare departments who provide for their supervision and welfare by ensuring their needs for shelter, food, health-care and education are appropriately met.

The best interests of the child

421. The principle of acting in the best interests of the child is reflected in Australia's practices concerning children seeking asylum.

422. Claims are identified as soon as possible and minors in detention are given the highest processing priority. Minors are encouraged to initiate tracing of family through the Australian Red Cross tracing service. The assistance of a migration agent (who may also be a qualified lawyer) and an interpreter is provided throughout the processing of the Protection Visa application.

423. Australia undertakes appropriate measures to ensure that a child who is not accompanied by a parent or other person and who is seeking protection is given appropriate assistance. A child is able to make a protection visa application in his or her own right. The *Migration Act* makes no distinction between children and adults in relation to the making of protection visa applications.

424. Claims from children, as for other applicants, are assessed on a case by case basis. In assessing claims, the decision maker will consider the age, degree of maturity and cultural background of the child, and the capacity of the child to recall past events and to communicate his or her experiences. Where the child is not able to articulate a subjective fear of persecution, the decision maker will consider objective factors, such as the circumstances of the child's departure from his or her country of origin and information about his or her country. Interviews are conducted in a non-adversarial and sensitive manner, appropriate to the age of the child. Decision makers are trained to be culturally sensitive and interpreters are used when necessary. Particular care is taken where there is evidence, or it is suspected, that a minor has been subjected to torture and/or trauma or otherwise subjected to harm. The interview allows a child to discuss freely the elements and details of his or her claim, and the decision maker aims to ascertain the objective evidence to evaluate the child's claim.

425. All unaccompanied minors who may engage Australia's protection obligations are provided with an adviser under the Immigration Advice and Application Assistance Scheme (IAAAS). Assistance under IAAAS includes advice by lawyers or other suitably qualified people in preparing, lodging and presenting applications for protection visas at primary and merits review stages.

426. Where the parents of a child are in detention, in almost all cases it will be in the child's best interests that children remain with their parents. This is consistent with Article 9(1), which obliges Australia to:

ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures that such separation is necessary for the best interests of the child.

427. Notwithstanding this, as outlined above the Federal Government has developed further flexible detention arrangements to cater for immigration detainees with specific needs, including

women and children. On 3 December 2002, the Government announced that it would usually be in the best interests of unaccompanied children in immigration detention facilities to be transferred to an alternative place of detention, or if eligible released from detention on a Bridging Visa, as soon as possible after arriving at a detention facility. These flexible detention arrangements will also enable the individual needs of other detainees, such as children accompanied by their families, to be addressed, while still maintaining the effective controls of immigration detention.

428. In many visa classes, where an applicant is under 18 years of age, the *Migration Regulations* require that, in order for the visa to be granted, the Minister must be satisfied that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

429. In the administration of Australia's immigration system, a number of powers vested in the Minister for Immigration and Multicultural and Indigenous Affairs by the *Migration Act* have been delegated to DIMIA officers.

430. The directions and guidelines applicable to the exercise of these discretions set out the obligation to treat the best interests of children as a primary consideration in administrative decision-making under the Act. For example, the following policy documents require decision makers to treat the best interests of the child as a primary consideration:

- Minister's policy on criminal deportation;
- Minister's policy on refusal or cancellation of visa for failure to satisfy the Character Test;
- Minister's guidelines on the exercise of the Minister's discretion to substitute a more favourable decision in the public interest; and
- Departmental policy on general cancellation powers regarding visas.

431. Merits and judicial review of many types of decisions involving the consideration of the best interests of the child is available. The Courts have found that a decision maker must give proper, genuine and realistic consideration to the best interests of a child. See for example *Wan v Minister for Immigration & Multicultural Affairs*³³ and *Vaitaiki v Minister for Immigration and Ethnic Affairs*.³⁴

2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)

432. The Committee is referred to pages 322-325 of Australia's First Report.

Involvement of children in armed conflict

433. Australia signed the Optional Protocol to the Convention on the involvement of children in armed conflict on 21 October 2002. Consultations on ratification of the Optional Protocol will commence in the near future, in accordance with Australia's domestic treaty making practices.

434. The obligations under the Optional Protocol are already implemented in Australia. By virtue of a defence force directive of 28 June 2002, the minimum recruitment age is set at 17 years with the protection in regard to voluntary recruitment, proof of age, informed consent and duty of care obligations required under the Protocol. Measures are to be taken to ensure that minors are not deployed to an area of hostilities, and commanders are obliged to do everything within their power to prevent minors from participating directly in hostilities.

International aid to assist recovery and integration

435. The adoption of the Optional Protocol is a critical step towards prevention of the use of child soldiers and improving protection of children in the context of armed conflict. It is important that the standards set by the Protocol are backed up by effective measures on the ground. Australia has taken a practical approach to addressing the situation of children who have found themselves caught up in armed conflicts either as child soldiers or refugees, or who have been subject to civil disorder and famine which often follow in the aftermath of armed conflict.

436. In recent years, the Federal Government has contributed funding to projects in countries such as Rwanda, Angola, Sierra Leone, Uganda, and Sri Lanka. These projects have supported activities such as trauma counselling services, unaccompanied children's centres, child soldier demobilisation and reintegration programs, and community resettlement programs. Australia will provide a further \$400,000 in the 2002-03 financial year for the rehabilitation of child soldiers in Sri Lanka. This assistance is part of a broader package of \$7.5 million for humanitarian objectives in Sri Lanka including action on mines, food aid, rehabilitation and conflict reduction. Australia has also played, and will continue to play, a vital role in providing substantial assistance to conflict resolution and peace building activities in neighbouring countries affected by conflict, for example in Bougainville, the Solomon Islands and East Timor.

437. The Federal Government's international emergency and humanitarian program aims to mitigate the adverse impact of conflict, and natural and natural disasters on vulnerable populations, particularly children and women. Australia will spend more than \$116 million on emergency humanitarian aid programs in 2002-03, including \$15 million for an international refugee fund. Australia is committed to providing \$100 million towards mine action activities over the decade ending in 2005.

B. Children and the administration of juvenile justice

1. The administration of juvenile justice (art. 40)

438. The Committee is referred to pages 325-344 of Australia's First Report.

439. Since the consideration by the Committee of Australia's First Report, Federal, State and Territory governments have taken major steps to improve the juvenile justice system. These steps demonstrate the commitment of Australian governments to addressing the concern of the Committee, expressed at paragraph 21 of its Concluding Observations, in relation to children deprived of their liberty.

440. The administration of juvenile justice is an area of State and Territory responsibility under the Australian Constitution. However, the Federal Government has taken a strong leadership role in preventing youth crime. Its 1999 report *Pathways to Prevention* pointed to the importance of prevention and early intervention in preventing youth crime and other forms of at risk behaviour. This report has formed the basis for a number of major programs by Australian governments, including the Commonwealth's *Stronger Families and Communities* strategy. At a federal level, it has also influenced projects under the *National Illicit Drugs Strategy*, *Partnerships against Domestic Violence* and the *National Youth Suicide Prevention Strategy*.

441. In the 1999-00 budget, the Federal Government committed \$21 million over four years to the *National Crime Prevention Program*, \$8 million of which was for the *Youth Crime and Family Strategy* with an emphasis on early intervention work with families and young people. The *Youth Crime and Family Strategy* is aimed at identifying and promoting ways to reduce and prevent crime and fear of crime in society and to prevent future involvement of young people in crime and delinquent behaviour.

442. The Federal Government is strongly committed to working with the States and Territories to prevent juveniles from entering the criminal justice system. This is demonstrated by the agreement between the Federal Government and the Northern Territory, which came into effect on 1 September 2000. Under the agreement, the Federal Government agreed to provide \$20 million over four years for a juvenile pre court diversion scheme and to fund jointly an Aboriginal Interpreter Service.

Diversion schemes

443. Many jurisdictions in Australia have been exploring options for juvenile diversion (the practice of dealing with offenders through means other than the formal criminal justice process). The overriding aims of these schemes are to:

- Maximise the appropriate diversion of young people charged with an offence away from the formal justice system by providing alternative options for dealing with offending juveniles;
- Minimise the likelihood of re-offending by young people who enter the juvenile justice system and maximise their chances of rehabilitation; and
- Engender public support for and confidence in the juvenile justice program by balancing community safety and security needs with programs that address the developmental needs of young people.

444. For example, in Victoria, juvenile offenders may receive a community-based order or Youth Training Centre order rather than a custodial court sentence.

445. Other juvenile diversion schemes (such as those operating in New South Wales, the Northern Territory and Western Australia) operate a hierarchy of interventions into juvenile offending. For example, in the Northern Territory, juvenile diversion schemes may include programs where juveniles may have to agree to certain minor conditions over a period of time, such as attending school and being of good behaviour, to informal programs where juveniles

may be required to perform a community service to programs formally registered with the police, including case management through a range of actions such as counselling, employment, special education or substance abuse programs.

446. As part of its *National Crime Prevention Program*, the Federal Government has commissioned research to assess current juvenile diversion schemes.

447. Conferencing has proven to be a successful diversionary option for juvenile offenders in a number of jurisdictions. These conferences bring together the victim and the offender in order that the offender may acknowledge their actions, and that a plan can be developed to allow the young person to repair the harm done to the victim. Underpinning the conferences is the notion of restorative justice; the offence committed is seen as harm that is done to an individual or the community.

448. In the first twelve months of the Northern Territory diversionary scheme (which commenced in 2000), detentions of indigenous juveniles for property offences were reduced by 41% whilst detentions of non-indigenous juveniles were reduced by 38%. Court appearances by juveniles were reduced by 31%.

449. In New South Wales, the Bureau of Crime Statistics and Research (BOCSAR) released a report in 2000 evaluating that State's conferencing schemes. The report provides strong endorsement for the use of alternatives to court proceedings for dealing with juvenile offenders, outlining the high level of satisfaction experienced by all those involved in youth conferencing, including the victims of the offence. The report also confirms that offenders accepted responsibility for their offences, felt that the offence they had committed was wrong, understood what it felt like for those affected by their actions, and understood the harm they had caused to the victim.

450. BOCSAR has also conducted a study into the re-offending rates of juvenile offenders who had participated in a conference compared to those who have been dealt with by courts. The report finds that the risk of re-offending and the rate of reappearances per year was up to 28% lower for juvenile offenders who had participated in a conference than for those who went to court. It also found that, of the juvenile offenders who re-offended, those who had participated in a conference had a greater crime free period than those who went to court. The difference in the crime free period between the conference and court groups increased over time.

Indigenous people in the juvenile justice system

451. Australian governments share the concern of the Committee, expressed at paragraph 22 of its Concluding Observations, about the disproportionately high percentage of indigenous children in the juvenile justice system and have, in accordance with the recommendation of the Committee, developed initiatives to address this problem (see Concluding Observations, paragraph 31).

452. Following the Communiqué produced at the Ministerial Summit on Indigenous Deaths in Custody in 1997 (see paragraph 83 of Australia's 10th, 11th and 12th Reports under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination),³⁵ most

State and Territory governments agreed to develop, in consultation with indigenous organisations, justice strategies to reduce the incarceration rates for indigenous Australians.

453. For example, the Queensland Government directed \$3.5 million over three years from 1998 to youth crime prevention, in partnership with local communities. In 2000-01, over 40% of this funding was specifically directed at reducing the factors contributing to offending by indigenous young people. The Queensland Aboriginal and Torres Strait Islander Justice Agreement, signed on 19 December 2000, also puts in place a set of strategies aiming to achieve by 2011 a 50% reduction in the rate at which indigenous people are incarcerated in Queensland. This includes a commitment to reducing the number of indigenous people in youth detention centres.

454. Reviews into the state of indigenous justice such as the Cape York Justice Study (also known as the Fitzgerald Report) in Queensland (released in November 2001) have led to a further increase in the focus by State and Territory governments on addressing the over-representation of indigenous young people in the juvenile justice system. For example, as part of its response to the Cape York Justice Study, the Queensland Government has actioned the expansion of Community Conferencing across the State, in particular an identified Community Conferencing Co-ordinator position has been created to work in the Cape and Torres area.

455. ATSIC has been exploring initiatives aimed at preventing and diverting indigenous youth from contact with the criminal justice system. Its *Youth Strategy* recognises that, for a wide variety of reasons, indigenous young people are at particularly high risk of coming into adverse contact with the criminal justice system, and emphasises the importance of preventative intervention at an early stage.

456. As part of the strategy, funding was provided during 2001-02 for a pilot project to promote involvement in sporting activities among young indigenous people in New South Wales. If successful, this project will be replicated in other areas. Numerous other local initiatives aimed at promoting self esteem, rehabilitating young indigenous offenders and reducing the likelihood of indigenous young people coming into contact with the criminal justice system have also been supported by ATSIC's Regional Councils.

Crime prevention

457. Governments across Australia have committed to the use of a variety of mechanisms to prevent the commission of crime by indigenous young people. For example, funding at both the Federal and State or Territory level has been allocated to mentoring schemes for young indigenous people at risk of, or in the early stages of, contact with the juvenile justice system. A mentor is a significant person from the juvenile network, or the wider community, responsible for offering the young person assistance, encouragement, advocacy and support whilst acting as a role model. The projects seek to direct young people away from an offending lifestyle and contact with the juvenile justice system.

458. Another example has been the funding in Queensland of Youth Justice Services officers, who work with indigenous young people on youth justice orders. The Youth Justice Services also work and foster the development of community partnerships in developing programs in the communities with indigenous organisations. Similarly, the New South Wales Government has

funded six Aboriginal Program Support Officer positions within the Department of Juvenile Justice, who liaise and consult with indigenous communities, support local and regional programs run by indigenous organisations and, when necessary, provide training.

459. The New South Wales Government also funds a number of Aboriginal Community Patrols across the State. This initiative involves volunteer patrols taking young Aboriginal people to their homes or other safe places when they are at risk in public places at night. The patrols have proved successful as a juvenile crime prevention measure, and, in some communities, have minimised the harm associated with drug and alcohol use, and reduced the occurrence of drug and alcohol related crimes such as assault, malicious damage and street offences.

Diversion schemes

460. Effective diversion schemes for young indigenous offenders (discussed above at paragraph 443) play an important role in addressing some of the factors which contribute to an over-representation of young indigenous people in the criminal justice system, including:

- The impact of policing: diversion schemes encourage the appropriate use of cautioning and other diversionary strategies by police services with indigenous young people. This reduces the impact of policing in indigenous communities and encourages police communication and co operation with indigenous communities;
- Offending patterns: indigenous young people are more likely than other young people to be arrested for the commission of more serious break and enter offences, and for a smaller proportion of “minor other theft”, such as larceny. These are the kinds of offences most suitable for diversion; and
- Judicial decision-making: A 1998 study by the Judicial Commission of New South Wales, (*Sentencing Disparity and the Ethnicity of Juvenile Offenders*, found that there were statistically significant differences in the penalties received by indigenous juvenile offenders and their Anglo-Australian counterparts, with the former receiving penalties at the more severe end of the penalty hierarchy. Diversion schemes help to address this factor as they are specifically designed to divert indigenous offenders away from the court system. In addition, judicial education schemes both federally and in some States and Territories, aim to raise judicial awareness on matters such as sentencing and indigenous issues.

461. Many of the juvenile diversion schemes operating in States and Territories include a strong focus on diverting indigenous juveniles to culturally appropriate diversion programs. For example, in Queensland, amendments in 2000 to the *Juvenile Justice Act 1992* provide that, when an indigenous child is being sentenced, the court must have regard to submissions by a representative of the community justice group (or elder or other respected person) from that child’s community. Such submissions would assist the sentencing process by providing information on the child’s relationship to the community, cultural considerations, or considerations relating to offender programs and services.

462. Indigenous communities have been involved in the development of diversion programs for indigenous youth. For example, the Queensland Government is progressing the expansion of community conferencing as a diversion option. The Northern Territory Government has funded the establishment of a number of Community Youth Development/Support Units (CYDUs). The CYDUs not only offer a range of programs but further provide a community consultation and coordination source for juvenile interventions. The activities of each CYDU are overseen by an independent committee made up of key representatives living in the community, including Traditional Elders, Council President, School Principals, Police, Health and Corrections. The CYDU develops a specific plan for young people identified as offenders or at-risk which could include compulsory attendance at nominated sport and recreation activities, counselling, community service, education or employment training.

463. In its *Social Justice Report 2001*, HREOC criticised juvenile diversion schemes in Western Australia as discriminatory against indigenous children on the basis that: juvenile justice teams in country regions are not available as an alternative to detention, community based programs in country areas for indigenous youth are lacking; diversion is not occurring at the earliest possible stage of the process; indigenous juveniles tend to be dealt with more harshly by police; and diversionary options are not culturally appropriate.

464. Many of these concerns are being addressed by the Western Australia Government. It is expected that legislative amendments will be introduced into Parliament in the first half of 2003 to address the concerns.

2. Children deprived of their liberty (art. 37 (b)-(d))

465. The Committee is referred to pages 345-379 of Australia's First Report.

466. Australia notes the Committee's concern, expressed at paragraph 8 of its Concluding Observations, in relation to Australia's reservation to Article 37(c) of the Convention. That reservation states:

Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).

467. The reservation is still considered necessary because of the demographics of Australia. The small centres of population in remote areas and the distance of some of these centres from larger towns and cities necessitate this reservation.

468. In paragraph 22 of its Concluding Observations the Committee expressed its concern at the enactment of legislation in two jurisdictions providing for mandatory detention of juveniles.

469. Northern Territory was one of these jurisdictions. The Northern Territory *Juvenile Justice Amendment Act (No 2) 2001* repealed all mandatory sentencing legislation in relation to juvenile offenders.

470. Western Australia was the second of these jurisdictions. Section 401 (4) of the Western Australian *Criminal Code 1913* provides for a mandatory sentence of 12 months detention for a juvenile following his or her third conviction for home burglary. However, a judge imposing a sentence under section 401 can, depending on the characteristics of the offender and the nature of the offence, sentence a juvenile offender to a Juvenile Custodial Release Order, which is a sentence of detention, but with immediate release on an Intensive Youth Supervision Order. The mandatory sentencing provision plays a minor role in the Western Australia juvenile justice system. Its operation is restricted to the serious offence of repeat home burglary and therefore affects only a small number of juvenile offenders.

471. The Western Australian Government conducted a review of section 401 in November 2001. It found that in the period between November 1996 (when the offence was introduced) and November 2001:

- There were 143 convictions of juveniles, involving 119 individuals (compared to 13,000 juveniles convicted of other offences over the same period);
- On average, the offenders had previously been convicted of 21 burglary offences and 51 offences in total;
- 98% of the juveniles convicted were male and 81% were indigenous; and
- The majority of juveniles convicted were aged between 14-17 years.

472. The review concluded that the courts have sufficient discretion to make non-custodial orders in relation to juveniles in appropriate circumstances. Therefore the Western Australian Government decided against repealing section 401.

C. Children in situations of exploitation, including recovery and social reintegration (art. 39)

473. The Committee is referred to pages 389-409 of Australia's First Report.

474. Australia signed the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography on 18 December 2001. In line with the Federal Government's consultative approach on international instruments, the views of the Joint Standing Committee on Treaties and the States and Territories will be sought prior to consideration of ratification of the Optional Protocol.

475. The Federal Government is supporting a number of projects designed to combat and ameliorate child exploitation and abuse internationally. Current initiatives include:

- A \$5 million project to improve regional cooperation to stamp out illegal trafficking of children and women, as part of a broader commitment to combat people trafficking;
- The Pacific Children's Program, supporting the children of Fiji, Samoa and Vanuatu to reduce the levels of violence against them by strengthening existing community based initiatives and increasing government commitment to child protection;
- Vocational training designed to increase opportunities for employment and self sufficiency for working and street children in Southern India, Bangladesh and Sri Lanka;
- Assistance provided to local community groups in Bangladesh, Papua New Guinea, Laos, the Solomon Islands and Vanuatu to increase awareness of child rights;
- Support for the development of a sustainable birth registration system and to facilitate social and health services planning in Bangladesh;
- Assistance for children and women in need of special protection by strengthening protection services and establishing community-based centres in East Timor;
- Provision of effective and coordinated services for victims of child abuse in Papua New Guinea; and
- Support for the development and implementation of appropriate support measures and local policies to ensure healthy development of working children in Nepal and to safeguard them from exploitation.

1. Economic exploitation, including child labour (art. 32)

476. The Committee is referred to pages 389-395 of Australia's First Report.

Minimum age for employment of children

477. In its Concluding Observations on Australia's First Report, the Committee expressed concern, at paragraph 11, that employment legislation in Australia does not specify minimum age(s) below which children are not allowed to be employed. In addition, the Committee recommended, at paragraph 29, that specific minimum ages be set for the employment of children, and encouraged Australia to consider ratifying International Labour Organisation (ILO) Convention No 138, the Minimum Age Convention, 1973.

478. Australian governments have not found it necessary to legislate for a general minimum age for employment (as per Article 2 of ILO Convention No. 138). As current law and practice is sufficient to protect children from harmful or exploitative forms of child labour, there is no perceived need for additional legislation.

479. In considering whether Australia should ratify ILO Convention No. 138, Australian governments have taken into account the lack of evidence of any significant problem of harmful

child labour in Australia. Most Australian children who work do so at weekends and during school holidays in order to supplement allowances from parents, or to help pay their education expenses. Such activity might also be reasonably expected to help them acquire important life skills. Furthermore, Australian children benefit from a highly developed education system, and a sophisticated system of industrial regulation which provides a safety net of minimum employment conditions, including health and safety standards that are more than adequate.

480. While it has not ratified ILO Convention No. 138, Australia has ratified a number of related ILO minimum age Conventions (see paragraphs 1692-1693 of Australia's First Report).

481. Furthermore, Australia's legislation providing for compulsory education, minimum ages for employment in selected occupations, child welfare and occupational health and safety demonstrates Australia's support for the principles of ILO Convention No. 138. These legislative provisions are supported by an Australian culture characterised by protective attitudes towards children, and news media which are strongly predisposed to reporting instances of exploitation of children. This combination of laws and cultural factors prevents the admission of children to harmful employment and promotes their fullest physical and mental development.

482. The Committee also expressed concern, at paragraph 11 of its Concluding Observations, that Australian law does not prohibit the employment of children who are still in compulsory education. It should be noted that legislation in all States and Territories prohibits the employment of children under the school leaving age during school hours. The school leaving age is defined by law as 16 in Tasmania and (as of 1 January 2003) in South Australia, and 15 in all other States and Territories.

2. Drug abuse (art. 33)

483. The Committee is referred to pages 395-398 of Australia's First Report.

484. Through the *National School Drug Education Strategy*, the Federal Government has provided \$27.3 million over four years to 2002-03 for school drug education. The funding is directed towards both the enhancement of school drug education programs and the management of drug-related issues and incidents in schools.

485. Petrol sniffing remains a health issue in many remote communities in central Australia. This form of substance abuse is particularly damaging, causing burns to skin, eyes and throat, nausea, vomiting, hallucinations, delusions, cataracts and dermatitis. A number of communities are participating in the Federal Government *Comgas Scheme* that subsidises the costs associated with substituting petrol with aviation gas that is markedly lower in hydrocarbons and therefore less desirable to sniffers.

486. The *New South Wales Drug Summit* consolidates a whole-of-government response to breaking the cycle of drug problems in that State. It includes the New South Wales Departments of Health, Community Services, Education, Housing, Police, Corrective Services, Juvenile Justice and the Attorney General's Department. The summit has initiated major projects covering: prevention of drug use, young people and drug abuse, health maintenance and

treatment, training and building skills, breaking the drug/crime cycle, drug use in correctional facilities, drug law enforcement, and drugs in schools, urban, regional and rural communities.

487. In July 2001 the New South Wales Government launched a new framework, *Better Futures: An Action Framework for Vulnerable Young People*. The framework is designed to improve the help available to vulnerable young people who are either encountering problems with drug use, or are at risk of encountering such problems. It provides a comprehensive early intervention and prevention approach to illicit drug use by young people.

488. New South Wales's *Better Futures Framework for Vulnerable Young People* has introduced strategies that promote a collaborative, youth focussed service culture through participation, training and development of young people, particularly those who may be difficult to reach through government initiatives. Significant strategies include:

- Establishment of an expert Youth Interagency Taskforce, chaired by the Minister Assisting the Premier on Youth;
- Development of kits for schools, local councils, community and other organisations to make meetings, seminars and conferences more accessible to young people, and increase the participation of children and young people in community life;
- Promotion of youth participation in service planning;
- Promotion of the principles of working effectively with vulnerable young people; and
- The Youth Advisory Council's forum which seeks to broaden participation in government and community decision-making by young people.

489. Also in New South Wales, a *Youth Drug Court Pilot Program* commenced on 31 July 2000 at the Campbelltown Children's Court and at the Cobham Children's Court. The Program allows Magistrates at these Children's Courts to adjourn proceedings and grant bail for the purpose of rehabilitation or make an order suspending a sentence if the young person enters a good behaviour bond for a specific period.

490. The *Youth Drug Court Program* combines intensive judicial supervision, drug treatment and case management for young people who are charged with criminal offences that result from drug/alcohol use and who are considered legally eligible and suitable for participation in the Program. These young people are referred to programs aimed at eliminating or reducing their drug/alcohol misuse and related criminal behaviour and increasing their ability to function as law abiding members of the community.

491. The New South Wales Government has also established a large program of counselling and other diversionary measures to address the needs of young people drawn to crime through their use of alcohol and other drugs. It supplies specialist staff to review those children who are involved in the Youth Drug Court. In addition, five community based outpatient counselling services have been established in Western Sydney to support this program. The Government also employs nine alcohol and other drug counsellors in rural New South Wales, to run specialist programs for young offenders and is establishing two new rural rehabilitation services for young

rural people who have drug problems which have led them to be at risk of contact with the justice system. These will be in addition to the two existing metropolitan rehabilitation services.

492. The New South Wales Joint Parliamentary Committee for Children and Young People is currently conducting an inquiry into the use by children of prescription drugs and over the counter medications. The New South Wales Commission for Children and Young People has made submissions to the inquiry. The submissions were based on research commissioned by the Commission, asking children about their experiences with prescription drugs. The views of children and young people about prescription and over the counter medicines will be published as part of the *Ask the Children* series of the Commission when the Inquiry has concluded in 2003.

493. The New South Wales and Queensland Governments have jointly applied for funds under the Federal Government's *Pathways to Prevention Program* to trial and evaluate early interventions that would protect and prevent young people at risk of becoming involved in experimental drug use and juvenile crime.

494. Queensland has passed legislation to amend the *Penalties and Sentence Act 1992* and the *Juvenile Justice Act 1992* to facilitate the provision of drug assessment and education courses to eligible young drug offenders in lieu of a sentence and conviction being recorded. The primary objective of the scheme is to identify and treat drug use early and to help young people stop using drugs and reduce their likelihood of being caught up in the criminal justice system.

495. The Queensland Government held a second Youth Drug Summit in October 2001. This initiative aims to increase young people's participation in local decisions affecting their lives, to inform service delivery and to link young people to local agencies in 20 locations including remote and indigenous communities. About 100 people attended this Summit, including 50 young people from around Queensland. At the close of the summit, fourteen recommendations on addressing youth drug prevention issues were presented to the Queensland Minister for Health and the full report of the Summit was later tabled before the Queensland Drug Coordinating Committee. A follow up *Marginalised Young People's Project* is planned in six communities who had participated in the Summit, with young people involved in the planning and development of local youth drug prevention action plans.

496. The Victorian Government commenced a three year *Drug Court Pilot Program* in May 2002. The aim of the program is to reduce drug dependency and drug related crime. The *Drug Court Pilot Program* is available for offenders (including young offenders) who commit offences to support a drug or alcohol addiction. Drug Court participants are placed on a sentencing order known as the drug treatment order, and required to undergo drug treatment and comply with other conditions aimed at addressing the underlying causes of their offending.

497. The South Australian Government has implemented a strategy to assist schools to develop effective practices in relation to reducing drug use amongst students. By the end of 2002 over 300 schools had developed their own whole school drug strategy within a common framework based on harm minimisation and a concern for student wellbeing. In addition 2,600 teachers had attended training in the use of new drug education materials, which were distributed to all schools in 2001. The strategy has adopted a whole of school approach

encompassing curriculum, positive school environment, partnerships and policy and has involved parents, students, staff and community representatives in its development.

3. Sexual exploitation and sexual abuse (art. 34)

498. The Committee is referred to pages 399-406 of Australia's First Report.

Sexual abuse

499. Australia has a strong record of protecting children from all forms of sexual abuse and exploitation, with legislative, regulatory and policy measures at the Federal, State and Territory level. Australia was one of the first countries to take definitive action internationally by implementing legislation against child sex tourism.

500. Australia's National Plan of Action against the Sexual Exploitation of Children, *Tomorrow's Children*, released in 2000 is the Federal Government's response to adopting the Declaration and Agenda for Action arising from the World Congress Against the Commercial Sexual Exploitation of Children held in 1996.

501. Australian Government representatives attended the Second World Congress Against the Commercial Sexual Exploitation of Children held in Yokohama in December 2001. The Australian delegation joined with other delegations in adopting the concluding document of the Congress, *The Yokohama Global Commitment*.

502. Since the Congress, Australia has signed the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see paragraph 474, above).

503. In its Concluding Observations, at paragraph 26, the Committee expressed its belief that cases of abuse and ill-treatment of children, including sexual abuse within the family, should be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken. Whilst concurring with this belief, the Federal Government believes that the relevant legislation and programs outlined in Australia's First Report demonstrate that the suggested action did occur in Australia at the time the Committee considered Australia's First Report. In addition, a number of initiatives have been implemented since that time to strengthen the protection of all children against sexual exploitation and abuse.

504. Amendments to the *Criminal Code Act 1995*, which came into force on 21 September 1999, modernise Australia's slavery laws and address the growing international trade in persons for the purpose of sexual exploitation. The amendments, contained in the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*, created new offences relating to:

- Slavery - maximum penalty of 25 years imprisonment;
- Sexual servitude - where a person is engaged to provide sexual services subject to force or threats and is not free to cease or leave, which warrants a penalty of up to 15 years imprisonment, or 19 years if the victim is under 18 years of age; and

- Deceptive recruiting - where a person who deceptively induces another person to provide sexual services faces a penalty of up to seven years imprisonment, or nine years if the victim is under 18 years of age.

505. The offences in the Act are part of a proposed package of complementary Federal, State and Territory legislation. New South Wales, South Australia, the Northern Territory and the Australian Capital Territory have enacted sexual servitude legislation. Western Australia is in the process of introducing sexual servitude legislation based on the federal provisions.

506. In May 1999, the report by the Model Criminal Code Officers Committee on sexual offences proposed updated sexual offences and procedures as a model for a nationally consistent approach. The report proposed that there be severe and specific penalties for those who sexually abuse children, particularly by perpetrators who are in a position of authority, and special procedures for trials involving those offences. The Model Criminal Code Officers Committee considered a range of offences dealing with sexual abuse of children, recommending an offence of persistent sexual abuse of a child where there is sexual contact with a child on three or more separate occasions. All States and Territories have now adopted an offence of persistent sexual abuse of a child, or the comparable offence of maintaining a sexual relationship with a child.

Sex Offenders Register

507. Federal, State and Territory Police Ministers have agreed to develop a nationally consistent approach to the registration with police of child sex offenders. A working party has been established to consider the issue.

508. In New South Wales, the *Child Protection (Offenders Registration) Act 2000* commenced operation in September 2001. The Act requires persons sentenced in respect of sexual and other specified offences against children to keep local police informed of their name, address, employment and motor vehicle details for a period of time after their release into the community.

509. This Act will assist police to monitor child sex offenders in the community and investigate child sex offences committed by recidivist offenders. It is also anticipated to have a deterrent effect on child sex offending behaviour.

510. The Act acknowledges the link between child sex offending and certain other offences against children, in that it extends to persons sentenced in respect of child prostitution, child pornography and child trafficking offences. As such, it complies with recommendation 190 of ILO Convention 182, Worst Forms of Child Labour. It also extends to relevant offences committed in other jurisdictions.

511. The Act contains special provisions for relevant offenders who were themselves children at the time of committing the offence, in recognition of their special needs and their increased responsiveness to rehabilitation.

Child witness protection

512. On 29 October 2001, new federal provisions were enacted to protect the interests of child complainants and child witnesses in proceedings for federal sex offences, including child sex

tourism and sexual servitude offences. The protective provisions recognise that child complainants and child witnesses in sex offence proceedings are particularly vulnerable because of their age and the nature of the crime involved. The provisions are intended to minimise the distress and trauma experienced by child complainants and child witnesses in giving evidence and to protect their privacy.

513. The New South Wales Government introduced similar provisions in 1997 to enable electronically recorded interviews with a child witness (other than a defendant) to be admitted into evidence as part or all of a child's evidence-in-chief in any criminal and certain other proceedings. This enables children to give evidence whilst alleviating to some extent the trauma associated with giving evidence in court.

514. In South Australia, courts have a discretion to order the use of closed circuit television, a screen, partition or one-way glass, and/or permit a relative or a friend to accompany a child witness.

4. Sale, trafficking and abduction (art. 35)

515. The Committee is again referred to Australia's signature of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see paragraph 474, above).

516. The federal *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*, (referred to above at paragraph 504), contains the new offences of sexual servitude and deceptive recruiting, targeted at the sale of and trafficking in people for the purposes of sexual exploitation.

517. This Act is particularly aimed at cases with an international connection. In this regard, the Federal Government has sought the cooperation of relevant countries in the enforcement of the new laws.

D. Children belonging to a minority or indigenous group (art. 30)

518. The Committee is referred to pages 409-431 of Australia's First Report.

Bringing them home initiatives

519. In December 1997, the Federal Government responded to the *Bringing Them Home* report (referred to above at paragraph 145), announcing a \$63 million package of measures to assist those affected by past practices. They include:

- Establishing a national network of family tracing and reunion services;
- A government records identification project to enable indigenous people to access historical information about themselves and their families;
- An oral history project to record people's stories of separation;
- Counselling services and the expansion of professional counselling support services and counsellor training;

- Programs to preserve, revive and develop indigenous culture and languages; and
- Family support and parenting programs.

520. In the 2001-02 financial year, the Federal Government announced a further \$53.9 million over four years to continue the counselling and family reunion services funded under its original response.

521. The Federal Government has commissioned, through the Ministerial Council for Aboriginal and Torres Strait Islander Affairs, an independent evaluation of Federal, State and Territory responses to the *Bringing Them Home* report. This arose in response to a Senate Inquiry (held in 2000) into the Federal Government's response to the report. The outcome of the independent evaluation is due in 2003.

522. State and Territory governments have also responded to the *Bringing Them Home* report. For example, the South Australian Government has convened and chairs the Bringing Them Home Key Advisory Group comprising senior representation from state government agencies, SA *Link-Up*, the churches and ATSIC to monitor the implementation of commitments made by the South Australian Government. An annual progress report is provided to the Government.

Notes

¹ Committee on the Rights of the Child, *General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Article 44, paragraph 1 (b), of the Convention*, CRC/C/58.

² Core Document, Australia, 19 April 1994.

³ The Committee is referred to Australia's Core Document for an explanation of the Australian federal system, and the implementation in Australia of obligations arising under international human rights treaties.

⁴ The Committee is referred to paragraph 8 of Australia's First Report.

⁵ This inquiry was undertaken jointly with the Australian Law Reform Commission, resulting in the report *Seen and Heard: Priority for Children in the Legal System* (1997).

⁶ Resulting in the report *Age Matters* (2000).

⁷ The inquiry was conducted in 1999-2000 and resulted in several publications and recommendations.

⁸ The inquiry commenced in 2001.

⁹ (1995) 183 CLR 273.

¹⁰ [2003] HCA 6.

¹¹ A/RES/55/2.

¹² A/RES/S-27/2.

¹³ <<http://www.youth.gov.au>>

¹⁴ <http://www.humanrights.gov.au/info_for_students/index.html>

¹⁵ <<http://www.humanrights.gov.au/youthchallenge/index.html>>

¹⁶ <<http://www.kids.New South Wales.gov.au/rights.html>>

¹⁷ <<http://www.ag.gov.au/publications/CROCREports/Welcome.html>>

¹⁸ See, for example, Commonwealth *Crimes Act 1914*, sections 4M and 4N.

¹⁹ <<http://www.law.gov.au/DSFAPT/Welcome.html>>

²⁰ <<http://www.racismnoway.com.au>>

²¹ Discussed previously at paragraph 103.

²² Report of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 5, Non Fatal Offences Against the Person, September 1998, pages 131-139.

²³ Report of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 5, Non Fatal Offences Against the Person, September 1998, page 137.

²⁴ <<http://www.bullyingnoway.com.au>>

²⁵ <<http://www.law.gov.au>>

²⁶ <<http://www.familylaw.gov.au>>

²⁷ Reid, J. and Trompf, P., 1991 *The Health of Aboriginal Australia*, Harcourt Brace Jovanovich, page 47.

²⁸ Australian Bureau of Statistics, 2000.

²⁹ Fact sheets on the new benefits are available at
<<http://www.facs.gov.au/internet/facsinternet.nsf/whatfacsddoes/families-FamilyAssistance.htm>>

³⁰ <<http://racismnoway.com.au>>

³¹ (2000) 170 ALR 553.

³² Further information on the group is available at
<<http://www.immi.gov.au/detention/idag/index.htm>>

³³ [2001] FCA 568.

³⁴ (1998) 150 ALR 608.

³⁵ CERD/C/335/Add.2.
