



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Concluding observations on the combined fifth and sixth periodic reports of Australia\*\*

#### I. Introduction

1. The Committee considered the combined fifth and sixth periodic reports of Australia (CRC/C/AUS/5-6) at its 2402nd and 2403rd meetings (see CRC/C/SR.2402 and 2403), held on 9 and 10 of September 2019, and adopted the present concluding observations at its 2430th meeting, held on 27 September 2019.

2. The Committee welcomes the submission of the combined fifth and sixth periodic reports of the State party and the written replies to the list of issues (CRC/C/AUS/Q/5-6/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

#### II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the progress achieved by the State party in various areas, including the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 December 2017. The Committee notes with appreciation the legislative, institutional and policy measures adopted to implement the Convention on the Rights of the Child, in particular the creation of the position of Assistant Minister for Children and Families in 2018 and the establishment of the National Children's Commission within the Australian Human Rights Commission in 2012. Furthermore, it welcomes the establishment of the Royal Commission into the Detention and Protection of Children in the Northern Territory in 2016.

#### III. Main areas of concern and recommendations

4. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: violence, including sexual violence, abuse and neglect (para. 30), children deprived of a family environment (para. 34),

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\*\* Adopted by the Committee at its eighty-second session (9–27 September 2019).



mental health (para. 38), the impact of climate change on the rights of the child (para. 41), asylum-seeking, refugee and migrant children (para. 45) and administration of child justice (para. 48).

5. The Committee recommends that the State party ensure the realization of children's rights in accordance with the Convention, the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography throughout the process of implementing the 2030 Agenda for Sustainable Development. It also urges the State party to ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Development Goals as far as they concern children.

## **A. General measures of implementation (arts. 4, 42 and 44 (6))**

### **Reservations**

6. The Committee, in line with its previous recommendations on reservations (CRC/C/AUS/CO/4, para. 10, and CRC/C/15/Add.268, para. 8) and given the State party's acceptance of the principle of separation and the existence in the State party of many facilities separating children from adults, again recommends that the State party consider withdrawing its reservation on article 37 (c) of the Convention.

### **Legislation**

7. The Committee recalls its previous recommendations on legislation (CRC/C/AUS/CO/4, para. 12) and again recommends, also as proactive measures, that the State party:

(a) Enact comprehensive national child rights legislation fully incorporating the Convention and providing clear guidelines for its consistent and direct application throughout the states and territories of the State party;

(b) Ensure that the resources of the Parliamentary Joint Committee on Human Rights are adequate and sufficient to effectively examine, including in consultation with the National Children's Commissioner and other interested parties, all proposed legislation and its impact on children's rights;

(c) Guarantee that all proposed legislation is fully compatible with the Convention.

### **Comprehensive policy and strategy**

8. The Committee recalls its previous recommendations on a national plan of action for implementing the Convention (CRC/C/AUS/CO/4, para. 16) and recommends that the State party adopt a national comprehensive policy and strategy on children that encompasses all areas of the Convention, with sufficient human, technical and financial resources for its implementation.

### **Coordination**

9. The Committee urges the State party to provide the Assistant Minister for Children and Families with a clear mandate and sufficient authority to coordinate all activities related to the implementation of the Convention at the cross-sectoral, federal, state, territory and local levels and with the necessary human, technical and financial resources for its effective operation.

### **Allocation of resources**

10. With reference to its general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee recalls its previous recommendations on the allocation of resources (CRC/C/AUS/CO/4, para. 20) and recommends that the State party:

(a) Allocate adequate human, technical and financial resources, at all levels of government, for the implementation of all policies, plans, programmes and legislative measures for children and implement a system for tracking and ensuring the efficient use of resources so allocated;

(b) Conduct regular assessments of the distributional impact of government investment on sectors supporting the realization of children's rights with a view to addressing the disparities in indicators related to children's rights, paying particular attention to Aboriginal and Torres Strait Islander children;

(c) Establish appropriate mechanisms and inclusive processes through which civil society, the public at large and children specifically may participate in all stages of the budget process, including formulation, implementation and evaluation.

#### Data collection

11. The Committee welcomes the creation of the Office of the National Data Commissioner in July 2018 and, with reference to its general comment No. 5 (2003) on general measures of implementation of the Convention, recalls its previous recommendations on data collection (CRC/C/AUS/CO/4, para. 22) and recommends that the State party:

(a) Ensure that data collected on children's rights cover all areas of the Convention, in particular those relating to violence, alternative care, natural disasters and children in conflict with the law, that they are disaggregated by age, sex, disability, geographic location, ethnic origin, national origin and socioeconomic background, and that they identify children in situations of vulnerability, such as Aboriginal and Torres Strait Islander children, children with disabilities and asylum-seeking, refugee and migrant children;

(b) Ensure that the data and indicators are shared among the ministries concerned and used for the formulation, monitoring and evaluation of policies, programmes and projects aimed at implementing the Convention;

(c) Ensure that the Office of the National Data Commissioner has the resources necessary for its effective functioning.

#### Independent monitoring

12. The Committee recommends that the State party:

(a) Ensure that the National Children's Commissioner has adequate and sufficient human, technical and financial resources to implement and monitor the application of the Convention;

(b) Establish by law mandatory consultations between the National Children's Commissioner and children on issues that affect them and ensure that the results of those consultations and any other recommendations made by the Commissioner are taken into consideration in law and policymaking;

(c) Ensure effective coordination between the National Children's Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner on relevant policies and measures.

#### Dissemination, awareness-raising and training

13. The Committee recommends that the State party strengthen its programmes to raise awareness of the Convention, for example by engaging more with the media, including social media, in a child-friendly manner, and by promoting the active involvement of children in public outreach activities, including in measures targeting parents, social workers, teachers and law enforcement officials.

14. Furthermore, the Committee recalls its previous recommendations on dissemination, awareness-raising and training (CRC/C/AUS/CO/4, para. 24) and recommends that the State party include mandatory modules on human rights and

the Convention in the school curriculum and in training programmes for all professionals working with or for children, including all law enforcement officials, teachers, health personnel, social workers and personnel of childcare institutions, as well as State and local government officials.

#### **Cooperation with civil society**

15. The Committee recommends that the State party strengthen its support to:

(a) Aboriginal and Torres Strait Islander organizations, including through capacity-building initiatives and increased resource allocation, and that it prioritizes them as service providers;

(b) Organizations working with asylum-seeking, refugee and migrant children, as well as organizations working on climate change and environmental issues.

#### **International cooperation**

16. The Committee recommends that the State party adopt a child rights-based approach in respect of its trade agreements and development aid policy and programmes, with the rights of children and their engagement included in programme design, delivery and evaluation.

#### **Children's rights and the business sector**

17. With reference to its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 28) and recommends that the State party:

(a) Ensure the legal accountability of Australian companies and their subsidiaries for violations of children's rights, including in relation to the environment and health, committed within the State party or overseas by businesses domiciled in its territory, and establish mechanisms for the investigation and redress of such abuses;

(b) Require companies to undertake assessments and consultations and to make full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts;

(c) Strengthen its support to the Australian Human Rights Commission for the implementation of the Guiding Principles on Business and Human Rights and make information available on the work of the Australian National Contact Point to implement the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development;

(d) Undertake campaigns to raise the awareness of those working in the tourism industry and the public at large on the harmful effects of the sexual exploitation of children in the context of travel and tourism and widely disseminate the Global Code of Ethics for Tourism of the World Tourism Organization.

## **B. Definition of the child**

18. The Committee recommends that the State party review the Marriage Act of 1961 (Commonwealth of Australia) to eliminate any exception to the minimum age of marriage of 18 years for girls and boys.

## C. General principles (arts. 2, 3, 6 and 12)

### Non-discrimination

19. Taking note of target 10.3 of the Sustainable Development Goals, the Committee recalls its previous recommendations on non-discrimination (CRC/C/AUS/CO/4, para. 30) and urges the State party:

(a) To address disparities in access to services by Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care and asylum-seeking, refugee and migrant children, regularly evaluate the enjoyment by those children of their rights and prevent and combat discrimination;

(b) To strengthen its awareness-raising and other activities aimed at preventing discrimination, including through school curricula, and take affirmative action for the benefit of the groups of children mentioned above.

### Best interests of the child

20. With reference to its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration and recalling its previous recommendations on the best interests of the child (CRC/C/AUS/CO/4, para. 32), the Committee recommends that the State party:

(a) Ensure that procedures and criteria guiding all relevant persons in authority for determining the best interests of the child and for giving it due weight as a primary consideration are coherent and consistently applied throughout the State party;

(b) Make publicly available all judicial and administrative judgments and decisions regarding children, specifying the criteria used in the individual assessment of the best interests of the child.

### Right to life, survival and development

21. The Committee recommends that the State party ensure the development and effective implementation of the national injury prevention strategy for 2018–2021 with a view to targeting the underlying causes of child deaths and continue to support the work of the Australian and New Zealand Child Death Review and Prevention Group.

### Respect for the views of the child

22. With reference to its general comment No. 12 (2009) on the right of the child to be heard, the Committee recalls its previous recommendations on respect for the views of the child (CRC/C/AUS/CO/4, para. 34) and recommends that the State party:

(a) Amend the Family Law Act of 1975 (Commonwealth of Australia) to provide all children, in accordance with their age and maturity, the opportunity to have their views heard in all matters concerning them, including in “non-court-based family services”;

(b) Amend the Migration Act of 1958 (Commonwealth of Australia) to guarantee respect for the views of the child at all stages of the migration process;

(c) Provide training and support to independent children’s lawyers so as to ensure that such lawyers have direct contact with the children they represent in the family courts;

(d) Enhance children’s meaningful and empowered participation in the family, in the community and in schools, paying particular attention to girls, children with disabilities and Aboriginal and Torres Strait Islander children;

(e) Develop toolkits for holding public consultations with children on issues that affect them, including on climate change and the environment.

**D. Civil rights and freedoms (arts. 7, 8 and 13–17)**

**Birth registration, name and nationality**

23. Taking note of target 16.9 of the Sustainable Development Goals, the Committee urges the State party:

(a) To ensure that all children, in particular Aboriginal and Torres Strait Islander children, children living in remote areas and children in child protection services, are registered at birth and receive free birth certificates;

(b) To revoke the December 2015 amendments to the Citizenship Act that allow for children under 18 years of age to lose their Australian citizenship if they engage in or are convicted of certain foreign fighting or terrorism-related conduct;

(c) To ensure that children born through international surrogacy arrangements can obtain Australian nationality through a clear process and rules applied uniformly throughout the country.

**Right to an identity**

24. The Committee recalls its previous recommendations on the preservation of identity (CRC/C/AUS/CO/4, para. 38) and recommends that the State party:

(a) Ensure full respect for the rights of Aboriginal and Torres Strait Islander children, including those placed for adoption, to their identity, name, culture, language and family relationships;

(b) Ensure that children born through assisted reproduction technologies, in particular through surrogacy, are able to access information about their origin and that all involved are provided with appropriate counselling and support.

**Freedom of expression**

25. The Committee recommends that the State party promote the right to freedom of expression, paying particular attention to Aboriginal and Torres Strait Islander children, children with disabilities, children with a refugee or migrant background and children living in rural or remote areas.

**Freedom of association and peaceful assembly**

26. The Committee recalls its previous recommendations on freedom of association (CRC/C/AUS/CO/4, para. 40) and recommends that the State party review its legislation so as to ensure respect for children's rights to freedom of association and peaceful assembly, particularly regarding Aboriginal and Torres Strait Islander children.

**Access to appropriate information**

27. The Committee recommends that the State party:

(a) Expand access to information, including through the Internet, in the relevant languages, to children in rural or remote areas;

(b) Promote children with disabilities' access to online information by making available audio description and captioning;

(c) Ensure that children, their parents and other caregivers are taught appropriate online behaviour, including preventive strategies, against online abuse and/or exploitation.

## **E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)**

### **Corporal punishment**

28. **The Committee recalls its previous recommendations on corporal punishment (CRC/C/AUS/CO/4, paras. 44–45) and urges the State party:**

(a) **To explicitly prohibit corporal punishment in law in all settings, including in the home, in public and private schools, in detention centres and in alternative care settings, and to repeal the legal defence of “reasonable chastisement”;**

(b) **To develop awareness-raising and education campaigns that promote positive and alternative forms of discipline and that underscore the adverse consequences of corporal punishment.**

### **Violence, including sexual violence, abuse and neglect**

29. The Committee welcomes the creation in 2018 of the National Office for Child Safety; the financial commitment made in March 2019 towards the establishment of the National Centre for the Prevention of Child Sexual Abuse; the adoption of the National Framework for Protecting Australia’s Children 2009–2020; the adoption of the National Plan to Reduce Violence against Women and their Children 2010–2022; the report of the Royal Commission into Institutional Responses to Child Sexual Abuse of December 2017; and the Prime Minister’s National Apology to Victims and Survivors of Institutional Child Sexual Abuse on 22 October 2018. However, the Committee remains seriously concerned:

(a) About the high rates of violence against children in the home, the fact that the third action plan under the National Plan to Reduce Violence against Women and their Children 2010–2022 focuses on young people between the ages of 12 and 20 years when violence affects children of all ages and the fact that girls between the ages of 10 and 19 years suffer the highest rate of sexual abuse, an increasing amount of which is perpetrated by their partners;

(b) That the National Redress Scheme, which was set up for people who have experienced institutional child sexual abuse, excludes some groups of victims, such as non-citizens and non-permanent residents, persons sentenced to five years of imprisonment or longer and children who were under 8 years of age in 2018;

(c) That victims and survivors of abuse committed by religious personnel of the Catholic Church who participated in two internal church processes – “Towards healing” and “The Melbourne response” – have been required to sign “deeds of release” preventing them from pursuing redress through independent secular justice mechanisms;

(d) About the limited information available on the support provided to child victims of family and domestic violence, including sexual violence;

(e) That Aboriginal and Torres Strait Islander children continue to be disproportionately affected by family and domestic violence, including sexual violence, both as victims and witnesses, that there are significant gaps in the responses to such violence within these communities and about the limited involvement, leadership and participation of these communities in the development of solutions;

(f) That children with disabilities are more vulnerable to violence, neglect and abuse, including sexual abuse, and, in particular, that girls with disabilities are forced to undergo sterilization procedures;

(g) About the limited information available regarding violence against children in remote areas, children with culturally and linguistically diverse backgrounds and lesbian, gay, bisexual, transgender and intersex children.

30. **With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals, the Committee recalls its previous recommendations on violence against children and women (CRC/C/AUS/CO/4, paras. 47–48) and urges the State party:**

(a) To review the action plans under the National Framework for Protecting Australia's Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022 with a view to prioritizing the implementation of key prevention measures and responses to violence against children of all ages, including sexual violence, in particular against girls;

(b) Ensure that the National Centre for the Prevention of Child Sexual Abuse establishes a comprehensive standard with regard to intervention in cases of child sexual abuse, including child-friendly, multiagency measures and appropriate therapeutic services to avoid secondary trauma or the retraumatization of child victims;

(c) Review the National Redress Scheme to include non-citizens and non-permanent residents, persons sentenced to five years of imprisonment or longer and children who were under 8 years of age in 2018;

(d) Disregard the “deeds of release” signed by the victims and survivors of abuse by religious personnel of the Catholic Church who wish to pursue redress through an independent and secular process;

(e) Provide child-specific therapeutic interventions and counselling to child victims of violence, in addition to the support provided to families;

(f) Substantially increase family violence prevention and responses related to Aboriginal and Torres Strait Islander children, including through the indigenous family safety programme;

(g) Review the National Framework for Protecting Australia's Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022 with a view to adequately preventing violence against children with disabilities and prohibit by law the sterilization of girls with disabilities without their prior, fully informed and free consent;

(h) Encourage community-based programmes to address violence in all its forms against children in remote areas, children with culturally and linguistically diverse backgrounds and lesbian, gay, bisexual, transgender and intersex children.

#### **Harmful practices**

31. The Committee welcomes the criminalization of forced marriage and, taking note of target 5.3 of the Sustainable Development Goals, urges the State party:

(a) To strengthen its measures to raise awareness of the harmful effects of child marriage on the physical well-being and mental health of girls;

(b) To enact legislation explicitly prohibiting coerced sterilization or unnecessary medical or surgical treatment, guaranteeing the bodily integrity and autonomy of intersex children and providing adequate support and counselling to families of intersex children.

#### **F. Family environment and alternative care (arts. 5, 9–11, 18 (1) and (2), 20, 21, 25 and 27 (4))**

##### **Family environment**

32. The Committee recalls its previous recommendations on a family environment (CRC/C/AUS/CO/4, para. 50) and urges the State party:

(a) To provide the necessary human, technical and financial resources for family support services to provide children and their families, particularly Aborigines and Torres Strait Islanders, with the support needed to prevent violence, abuse and neglect;

(b) To extend paid maternity leave to six months to support the appropriate care of newborn children.

### **Children deprived of a family environment**

33. The Committee notes the efforts undertaken by the State party to improve the situation of children in alternative care but remains seriously concerned about:

- (a) The persistently high number of children in alternative care;
- (b) The continuing overrepresentation of Aboriginal and Torres Strait Islander children in alternative care, often outside their communities;
- (c) Different criteria being used across jurisdictions in making decisions on child removal and placement in care;
- (d) The fact that, despite the 25 enquiries conducted since 2012, the child protection systems still do not have sufficient human, technical and financial resources and are still unable to provide adequate professional support to children, which often results in:
  - (i) Badly trained and poorly supported staff;
  - (ii) Children of different ages, experiences and backgrounds, in particular child offenders and child victims of abuse, being placed together;
  - (iii) An excessive reliance on the police and the criminal justice system when dealing with children's behavioural problems and an insufficient reliance on appropriate therapeutic services;
- (e) Children with disabilities being more at risk of maltreatment in institutions than other children;
- (f) Children in alternative care having limited access to mental health and therapeutic services.

34. **Drawing the State party's attention to the Guidelines for the Alternative Care of Children (see General Assembly resolution 64/142, annex), the Committee recalls its previous recommendations on children deprived of a family environment (CRC/C/AUS/CO/4, para. 52) and urges the State party:**

- (a) **To strongly invest in measures for children and their families aimed at avoiding the removal of children from their families; to limit removal, when it is deemed necessary, to the shortest time possible; and to ensure that children, their families and communities participate in decision-making in order to guarantee an individualized and community-sensitive approach;**
- (b) **To harmonize, make transparent and publicize across jurisdictions the criteria for removing and placing children in alternative care with a view to providing the highest level of protection;**
- (c) **To ensure adequate human, technical and financial resources to child protection services and proper training to those working with and for children in alternative care and in particular to enhance preventive measures in order to avoid children drifting from care into crime;**
- (d) **To strongly invest in measures developed and implemented by Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide them with adequate support while in alternative care and facilitate their reintegration into their families and communities;**
- (e) **To provide adequate training to child protection carers on the rights and needs of children with disabilities to prevent their maltreatment and abuse;**
- (f) **To ensure that children in alternative care have access to the mental health and therapeutic services necessary for healing and rehabilitation.**

**G. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1)–(3) and 33)**

**Children with disabilities**

35. The Committee welcomes the establishment of the National Disability Insurance Scheme in 2013 and, recalling its previous recommendations on children with disabilities (CRC/C/AUS/CO/4, para. 58) and other recommendations contained in the present concluding observations, further recommends that the State party:

(a) Make clear the eligibility criteria and the types of support covered by the Scheme and ensure that the Scheme has the human, technical and financial resources necessary for its optimal and timely implementation;

(b) Conduct awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of such children.

**Health and health services**

36. With reference to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health and recalling its previous recommendations on health and health services (CRC/C/AUS/CO/4, paras. 60–61), the Committee urges the State party:

(a) To promptly address the disparities in health status of Aboriginal and Torres Strait Island children, children with disabilities, children living in remote or rural areas and children in alternative care;

(b) To address the increasing rate of child obesity.

**Mental health**

37. The Committee is seriously concerned that the number of children with mental health problems is increasing and, while welcoming the adoption in 2017 of the Fifth National Mental Health and Suicide Prevention Plan, is concerned that the Plan does not include enough child-specific measures. The Committee is also particularly concerned:

(a) That almost one in seven children have been assessed to have mental health problems, with suicide being the leading cause of death among those aged 15–24;

(b) That the State party is among the countries in the world with the highest rate of children aged 5–14 years diagnosed with attention deficit hyperactivity disorder and that the number of psychostimulant drugs prescriptions has increased dramatically;

(c) That children themselves have identified mental health as a main issue of concern, one that affects in particular Aboriginal and Torres Strait Islander children, children in alternative care, homeless children, children living in rural and remote areas, asylum-seeking children, children from culturally and linguistically diverse backgrounds and lesbian, gay, bisexual, transgender and intersex children;

(d) That despite the increase in mental health services for children, such as the headspace and youth early psychosis programme, children, in particular those under 14 years of age, still have limited access to services.

38. Taking note of target 3.4 of the Sustainable Development Goals, the Committee recalls its previous recommendations on mental health (CRC/C/AUS/CO/4, para. 65) and urges the State party:

(a) To invest in addressing the underlying causes of suicide and poor mental health among children, to improve knowledge about mental health with a view to promoting children's awareness and access to support services and to ensure that the Fifth National Mental Health and Suicide Prevention Plan has a clear focus on children and that children's perspectives are included in the development of the response services provided;

(b) To prioritize mental health service delivery to children in vulnerable situations, in particular Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care, homeless children, children living in rural and remote areas, asylum-seeking, refugee and migrant children, children from culturally and linguistically diverse backgrounds and lesbian, gay, bisexual, transgender and intersex children;

(c) To strengthen measures to ensure that psychostimulant drugs are prescribed to children with attention deficit hyperactivity disorder only as a measure of last resort and only after an individualized assessment of the best interests of that child and to ensure also that children and their parents are properly informed about the possible side effects of this medical treatment and about non-medical alternatives;

(d) To increase the availability of online mental health services and web-based counselling, while making in-person mental health services child-friendly and accessible to children, including those under 14 years of age, throughout the territory of the State party.

#### **Adolescent health**

39. With reference to its general comments No. 4 (2003) on adolescent health and development in the context of the Convention and No. 20 (2016) on the implementation of the rights of the child during adolescence, the Committee recommends that the State party:

(a) Strengthen measures to prevent teenage pregnancies among Aboriginal and Torres Strait Islanders girls, including by providing culturally sensitive and confidential medical advice and services;

(b) Continue providing children with education on sexual and reproductive health as part of the mandatory school curriculum, paying special attention to preventing early pregnancy and sexually transmitted infections.

#### **Impact of climate change on the rights of the child**

40. The Committee is very concerned about the State party's position that the Convention does not extend to protection from climate change. The Committee emphasizes that the effects of climate change have an undeniable impact on children's rights, for example the rights to life, survival and development, non-discrimination, health and an adequate standard of living. It is also concerned that the State party has made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries, in particular coal. The Committee expresses its concern and disappointment that a protest led by children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for the right of children to express their views on this important issue.

41. The Committee draws attention to target 13.5 of the Sustainable Development Goals and urges the State party:

(a) To ensure that children's views are taken into account in developing policies and programmes addressing climate change, the environment and disaster risk management and to increase children's awareness and preparedness for climate change and natural disasters;

(b) To promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy, including by committing to meeting 100 per cent of its electricity needs with renewable energy.

**Standard of living**

42. The Committee urges the State party to address the high rate of homelessness among children, particularly focusing on children leaving alternative care, and to include children under 12 years of age in the Reconnect Programme.

**H. Education, leisure and cultural activities (arts. 28–31)****Education, including early childhood education and care**

43. The Committee is still concerned that the efforts made to close the gap for Aboriginal and Torres Strait Islander children remain insufficient. The Committee, taking note of target 4.1 of the Sustainable Development Goals, urges the State party:

(a) To address the shortcomings of the Closing the Gap measures for Aboriginal and Torres Strait Islander children and to reach the targets on school attendance, retention rates, literacy and numeracy standards by paying particular attention to these children in remote areas and investing in teachers' cultural competency of these communities' history;

(b) To invest more in improving education at the early childhood, primary and secondary levels, paying particular attention to children living in remote areas, Aboriginal and Torres Strait Islander children, children with disabilities, children in marginalized and disadvantaged situations, children in alternative care and children from refugee and migrant backgrounds;

(c) To ensure that all children with disabilities have access to inclusive education in mainstream schools and are provided with the support they need and to address the use of restraints and seclusion;

(d) To strengthen the school-based Respectful Relationships initiative to promote gender equality and respect;

(e) To intensify its efforts to prevent and address bullying in schools, including online bullying, through the eSafety Commissioner and provide support to child victims, in particular lesbian, gay, bisexual, transgender and intersex children.

**I. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40)****Asylum-seeking, refugee and migrant children**

44. The Committee notes that since 28 February 2019 there are no asylum-seeking, refugee or migrant children in regional processing countries but remains seriously concerned that:

(a) The State party "is not intending to establish an independent guardianship entity for unaccompanied children" (CRC/C/AUS/Q/5-6/Add.1, para. 59) even though the Minister for Home Affairs is also responsible for granting immigration visas and approvals;

(b) The Migration Act still prescribes mandatory detention for persons, including children, involved in irregular migration and that the State party "is not currently considering prohibiting the detention of children in all circumstances" (CRC/C/AUS/Q/5-6/Add.1, para. 60);

(c) The amended Migration Act and the amended Maritime Powers Act of 2013 allow for the return of vessels carrying children who may be in need of international assistance;

(d) The policy of utilizing regional processing countries and detaining children has not been revoked;

(e) The best interests of the child are not a primary consideration in asylum, refugee and migration processes, leading to children going through lengthy assessment and

determination procedures, and that the 286 children transferred from Nauru and the many thousands of children before them (the “legacy caseload”) “will not be settled in Australia and are encouraged to engage in third-country migration options” (CRC/C/AUS/Q/5-6/Add.1, para. 62), leaving them in limbo for an undetermined period of time;

(f) There is limited information on access to protection, education and health services, including mental health services, for all these children;

(g) Migration laws and policies still allow disability to be the basis for rejecting an immigration request;

(h) Inadequate mechanisms for monitoring the well-being of children involved in asylum, refugee and migration processes exist.

**45. The Committee refers to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin and to joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families / No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration and recalls its previous recommendations on asylum-seeking and refugee children (CRC/C/AUS/CO/4, para. 81). The Committee urges the State party immediately:**

(a) **To amend the Immigration (Guardianship of Children) Act of 1946 (Commonwealth of Australia) to create an independent position of guardian for children;**

(b) **To amend the Migration Act (Commonwealth of Australia) to prohibit the detention of asylum-seeking, refugee and migrant children;**

(c) **To amend the Migration Act and the Maritime Powers Act to ensure respect for the State party’s non-refoulement obligations, particularly in the course of maritime interceptions and returns;**

(d) **To enact legislation prohibiting the detention of children and their families in regional processing countries;**

(e) **To ensure that the best interests of the child are a primary consideration in all decisions and agreements related to the relocation of asylum-seeking, refugee and migrant children within Australia or to other countries;**

(f) **To ensure that children who have been detained in regional processing countries have access to adequate child protection, education and health services, including mental health services;**

(g) **To review migration laws and policies with a view to withdrawing disability as a criterion for rejecting immigration requests;**

(h) **To implement durable solutions, including financial and other support, for all refugee and migrant children to ensure their early rehabilitation, reintegration and sustainable resettlement;**

(i) **To introduce adequate mechanisms for monitoring the well-being of children involved in asylum, refugee and migration processes.**

#### **Indigenous children**

**46. The Committee urges the State party to ensure that:**

(a) **Aboriginal and Torres Strait Islander children and their communities are meaningfully involved in the planning, implementation and evaluation of policies concerning them;**

(b) **The Joint Council of Australian Governments and Aboriginal and Torres Strait Islander People on Closing the Gap established in March 2019 has a clear mandate and the human, technical and financial resources necessary to function effectively.**

**Administration of child justice**

47. The Committee again regrets that its previous recommendations have not been implemented and remains seriously concerned about:

- (a) The very low age of criminal responsibility;
- (b) The enduring overrepresentation of Aboriginal and Torres Strait Islander children and their parents and carers in the justice system;
- (c) Reports that children in detention are frequently subjected to verbal abuse and racist remarks, deliberately denied access to water, restrained in ways that are potentially dangerous and excessively subjected to isolation;
- (d) The high number of children in detention, both on remand and after sentencing;
- (e) Children in detention not being separated from adults;
- (f) The continuing existence of mandatory minimum sentences applicable to children in the Northern Territory and Western Australia;
- (g) The continuing overrepresentation of children with disabilities in the justice system;
- (h) Children's lack of awareness about their rights and how to report abuses.

48. **With reference to its general comment No. 24 (2019) on children's rights in the child justice system, the Committee urges the State party to bring its child justice system fully into line with the Convention and:**

- (a) **To raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 years, at which *doli incapax* applies;**
- (b) **To immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of incarceration among indigenous persons;**
- (c) **To explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion or to discipline children under supervision, promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators;**
- (d) **To actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service;**
- (e) **In cases where detention is unavoidable, to ensure that children are detained in separate facilities and, for pretrial detention, to ensure that detention is regularly and judicially reviewed;**
- (f) **To review its legislation to repeal mandatory minimum sentences for children in the Northern Territory and Western Australia;**
- (g) **To ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review;**
- (h) **To provide children in conflict with the law with information about their rights and how to report abuses.**

**Child victims and witnesses of crime**

49. The Committee urges the State party:

- (a) **To apply a child-friendly and multisectoral approach to avoid the retraumatization of child victims and ensure that cases are promptly recorded and investigated and that perpetrators are prosecuted and duly sanctioned;**

(b) To put in place child-sensitive mechanisms to facilitate and promote the reporting of cases and ensure that complaints mechanisms are child friendly and available both online and offline, paying particular attention to alternative care settings, detention facilities and locations for asylum-seeking, refugee and migrant children;

(c) To ensure that the national mechanism for the prevention of torture has access to places where children are placed;

(d) To ensure the development of programmes and policies for the full recovery and social reintegration of child victims;

(e) To guarantee child victims' access to adequate procedures to seek compensation for damages;

(f) To ensure that all child victims and witnesses of crime have access to adequate support, irrespective of whether they assist in police investigations, prosecutions or trials.

**Follow up to the Committee's previous concluding observations on the Optional Protocol on the sale of children, child prostitution and child pornography**

50. The Committee welcomes developments to fight slavery and trafficking in persons and the establishment of the Australian Centre to Counter Child Exploitation in March 2018. With reference to its guidelines on the implementation of the Optional Protocol (CRC/C/156), the Committee urges the State party:

(a) To define and criminalize child prostitution and child pornography (child sexual exploitation) for all children in accordance with articles 1–3 of the Optional Protocol and to harmonize legislation across its states and territories;

(b) To ensure that all crimes under the Optional Protocol, not just cases of trafficking in children, are investigated and that perpetrators are prosecuted and sanctioned;

(c) To ensure that all children subject to any form of sexual exploitation, sale or trafficking are treated as victims and not subject to criminal sanctions;

(d) To amend its legislation to exercise extraterritorial jurisdiction over the sexual exploitation of all children under 18 years of age, including the sexual exploitation in travel and tourism of child victims between 16 and 18 years of age;

(e) To further strengthen its measures to combat and prevent sexual exploitation of children online, including through the criminalization of online grooming of children;

(f) To strengthen training programmes on the identification and referral of child victims of sale, sexual exploitation and trafficking.

**Follow up to the Committee's previous concluding observations on the Optional Protocol on children in armed conflict**

51. The Committee urges the State party:

(a) To develop mechanisms for the early identification of asylum-seeking, refugee and migrant children who may have been recruited or used in hostilities abroad, to conduct training for personnel responsible for the identification and referral of such children to protection services and to provide child victims with appropriate assistance for their full physical and psychological recovery and social reintegration;

(b) To make the National Firearms Agreement binding on all states and territories, allowing firearms licences to be issued only to people over 18 years of age;

(c) To strengthen measures prohibiting the sale of arms to countries known to be or suspected of being involved in the recruitment or use of children in armed conflict or hostilities.

#### **J. Ratification of the Optional Protocol on a communications procedure**

52. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

#### **K. Ratification of international human rights instruments**

53. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, consider ratifying the following core human rights instruments to which it is not yet a party:

(a) International Convention for the Protection of All Persons from Enforced Disappearance;

(b) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

#### **L. Cooperation with regional bodies**

54. The Committee recommends that the State party cooperate, among others, with regional organizations such as the Pacific Community and the Pacific Islands Forum.

### **IV. Implementation and reporting**

#### **A. Follow-up and dissemination**

55. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the combined fifth and sixth periodic reports, the written replies to the list of issues and the present concluding observations be made widely available in the languages of the country.

#### **B. National mechanism for reporting and follow-up**

56. The Committee welcomes the creation by the State party of a standing national human rights mechanism and emphasizes that it should be adequately and continuously supported by dedicated staff in order to enable it to engage with international and regional human rights mechanisms and implement treaty obligations and the recommendations and decisions emanating from the mechanisms.

#### **C. Next report**

57. The Committee invites the State party to submit its seventh periodic report by 15 January 2024 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.

58. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.

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