

CONCLUDING OBSERVATIONS  
COMMITTEE ON THE RIGHTS OF THE CHILD

**AUSTRALIA**

40<sup>th</sup> Session

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

1. The Committee considered the combined second and third periodic reports of Australia (CRC/C/129/Add.4) at its 1054<sup>th</sup> and 1055<sup>th</sup> meetings (see CRC/C/SR.1054 and 1055), held on 13 September 2005, and adopted at its 1080<sup>th</sup> meeting, held on 30 September 2005, the following concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the State party's combined second and third periodic reports, as well as the timely responses to the list of issues, which allowed the Committee to have a better understanding of the situation of children in the State party. The Committee further appreciates the constructive and open dialogue with a cross-sectoral and high-level delegation.

**B. Follow-up measures undertaken and progress achieved by the State Party**

3. The Committee notes with appreciation:
  - a) the establishment of the Department of Family and Community Service (FaCS) and the Stronger Families and Communities Strategy initiative;
  - b) the establishment of "Families Australia", a national body seeking to improve coordination between Federal, State and Territory Governments in policies, programs and services affecting families, young people and children;
  - c) the National Plan of Action against the Sexual Exploitation of Children, "Tomorrow's Children" of 2000;
  - d) the National Plan of Action to Eradicate Trafficking in Persons of October 2003;
  - e) the launching of a new National Framework for the protection of human rights in Australia on 23 December 2004;

4. The Committee also wishes to welcome the ratification of:
  - i) the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, on 25 August 1998;
  - ii) the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect to Parental Responsibility and Measures for the Protection of Children, on 29 April 2003;
  - iii) the Rome Statute of the International Criminal Court, on 1 July 2002.

### **C. Main subjects of concern and recommendations**

#### **1. General Measures of Implementation**

(arts. 4, 42 and 44, paragraph 6 of the Convention)

#### **Committee's previous recommendations**

5. The Committee notes with satisfaction that most concerns and recommendations (CRC/C/15/Add.79 of 10 October 1997) made upon the consideration of the State party's initial report (CRC/C/8/Add.31) have been addressed. However, it notes that some concerns and recommendations have been insufficiently or partly addressed, regarding, *inter alia*, the special problems still faced by indigenous children, corporal punishment, the spread of homelessness among young people, children in immigration detention, juvenile justice and the disproportionately high percentage of indigenous children in the juvenile justice system.
6. **The Committee urges the State party to take all necessary measures to give more effective follow up to the recommendations from the concluding observations of the initial report that have not yet been implemented and to provide concrete and effective follow-up to the recommendations contained in the present concluding observations on the second and third periodic reports.**

#### **Reservations**

7. The Committee is of the opinion that the State party's reservation to article 37 (c) is unnecessary since there appears to be no contradiction between the logic behind it and the provisions of Article 37 (c) of the Convention. In fact, the concerns expressed by the State party in its reservation are well taken care of by article 37 (c) which provides that every child deprived of liberty shall be separated from adults "unless it is considered in the best interests of the child not to do so" and that the child "shall have the right to maintain contact with his or her family".
8. **The Committee, in light of the 1993 Vienna Declaration and Programme of Action, recommends that the State party continue and strengthen its efforts for a full withdrawal of its reservation.**

#### **Legislation and implementation**

9. The Committee appreciates the careful scrutiny by the State party of existing and new laws in order to ensure their compliance with the Convention. However, it remains concerned that, while the Convention may be considered

and taken into account in order to assist courts to resolve uncertainties or ambiguities in the law, it cannot be used by the judiciary to override inconsistent provisions of domestic law.

10. **The Committee recommends that the State party strengthen its efforts to conform its domestic laws and practice to the principles and provisions of the Convention, and to ensure that effective remedies would be always available in case of violation of the rights of the child.**

#### National Plan of Action

11. The Committee notes that the Department of Family and Community Service has constituted a Task Force in charge of developing a “National Agenda for Early Childhood” by the end of 2005, as well as the recently revised “National Action Plan”, but it remains concerned that there is no comprehensive policy at national level for children specifically addressing human rights issues that may impact on them.
12. **The Committee encourages the State party to complete the development of the National Agenda for Early Childhood, taking into account the Committee’s General Comment n° 7 on Implementing Child Rights in Early Childhood (2005), and to provide the necessary budget for its full implementation. At the same time, the Committee recommends that the State party develop and implement effectively a National Plan of Action for children, taking into account the Declaration and the Plan of Action “A World Fit for Children” adopted by the General Assembly special session in May 2002. This Plan should have specific goals, strategies and guaranteed resources, which would allow for an appropriate implementation of the Convention across all States and Territories.**

#### Coordination

13. The Committee notes that State and Territory Governments have increased coordination of policies and monitoring mechanisms for children. It is concerned, however, that the position of Minister for Children and Youth Affairs established in 2002 was downgraded to a Parliamentary Secretary for Children and Youth Affairs (under the Minister for Family and Community Services) in late 2004.
14. **The Committee recommends that the State Party assign adequate powers as well as human and financial support to the Parliamentary Secretary for Children and Youth Affairs so that it would be able to develop, coordinate and monitor law and policy for children throughout the country.**

#### Independent Monitoring

15. The Committee welcomes the establishment of specific Commissioners for Children in three States: New South Wales, Queensland and Tasmania as well as the existence – at federal level – of the Human Rights and Equality Opportunity Commission (HREOC). While acknowledging the very valuable work of the HREOC in the area of children’s rights, the Committee is

concerned that there is no specific Commissioner within HREOC devoted to child rights and that substantial cuts to its funding over the past 10 years have severely affected its work-force and its ability to effectively handle individual complaints, public inquiry and policy work.

16. **The Committee recommends that the State party ensure, within the HREOC, the independent and effective monitoring of the implementation of children's rights, in accordance with the Committee's General Comment No. 2 on the role of independent national human rights institutions (2002), by providing adequate human and financial resources to this end. In addition, the State party could create specialized sections within the various State and Territory Ombudsman offices to deal with children issues.**

#### Resources for children

17. The Committee notes that despite the increase in budget allocations in many areas of child care and well-being, indigenous children and other vulnerable groups continue to be in need of a considerable improvement of their standard of living, health and education.
18. **The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention, by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to disadvantaged groups, such as indigenous children, "to the maximum extent of....available resources".**

#### Data collection

19. While welcoming the information that the Australian Bureau of Statistics is currently reviewing the available information on children and youth in order to improve the scope and quality of data available, the Committee notes some gaps in the collection of data, especially in the area of special protection and vulnerable groups.
20. **The Committee recommends that the State party strengthen its existing mechanism of data collection in order to ensure that data are collected on all areas of the Convention in a way that allows for disaggregation, *inter alia*, by those groups of children who are in need of special protection.**

#### Training/dissemination of the Convention

21. The Committee notes with appreciation the efforts made by the State to promote awareness of the Convention, including through an online Government strategy and the establishment of a National Committee on Human Rights Education.
22. **The Committee recommends that the State party continue its efforts to disseminate the principles and provisions of the Convention and to raise**

**public awareness, in particular among children themselves and parents, about the Convention.**

23. **The Committee also recommends that the State party strengthen its efforts to provide adequate and systematic training and/or sensitization on children's rights of professional groups working with and for children, in particular law enforcement officials, as well as parliamentarians, judges, lawyers, health personnel, teachers, school administrators and others as required.**

## **2. General Principles**

**(arts. 2, 3, 6 and 12 of the Convention)**

### Non-discrimination

24. While the Committee notes the initiatives taken against racial, ethnic and religious discrimination, it is particularly concerned at the discriminatory disparities existing towards Aboriginal and Torres Strait Islander children, especially in terms of provisions of and accessibility to basic services. Furthermore, the Committee is concerned that discriminatory attitudes and stigmatization continue to exist, especially towards certain groups of children such as asylum-seeking children and children belonging to ethnic and/or national minorities, including Arabs and Muslims. In this respect, the Committee is also concerned at the possible side-effects that the enforcement of the Anti-Terrorism legislation may have on certain groups of children.
25. **In accordance with article 2 of the Convention, the Committee recommends that the State party regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures in a time-bound manner to prevent and eliminate de facto discrimination and discriminatory attitudes towards especially vulnerable groups of children and ensure, while enforcing its Anti-Terrorism legislation, a full respect of the rights enshrined in Convention.**
26. **The Committee also requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account General Comment n° 1 on article 29(1) of the Convention (aims of education).**

### Best interests of the child

27. The Committee is concerned that this principle, while laid down in many laws and policies, is not always reflected in the implementation phase of legislation and policies, e.g. in the area of alternative care.

28. **The Committee recommends that the State party strengthen its efforts to ensure an effective implementation of the general principle of the best interests of the child as enshrined in article 3 of the Convention in all legal provisions as well as in judicial and administrative decisions and in projects, programs and services which have an impact on children.**

Respect for the views of the child

29. The Committee notes the efforts of the State party to give full implementation to article 12 of the Convention, but is concerned that the views of the child are not always sufficiently taken into account in judicial and administrative proceedings affecting the child. Furthermore, while the Committee notes the existence of a National Youth Roundtable, it expresses concern that participation in the Roundtable for children is limited in practice (the average age of participants in 2004 was 20 years) and that it does not always reflect a balanced geographical distribution.
30. **The Committee recommends that in the Family Law reform the right of the child to express views in all matters affecting him/her be expressly provided. Furthermore, the Committee recommends the establishment of a Roundtable specifically for children, who should be selected according to an equitable geographic distribution.**

**3. Civil Rights and Freedoms**

**(arts. 7, 8, 113-17 and 37(a) of the Convention)**

Preservation of identity

31. The Committee notes the 1997 National Inquiry carried out by the Human Rights and Equality Opportunity Commission (HREOC) into Separation of Aboriginal and Torres Strait Island children (“Bringing Them Home”) which acknowledged the past policies whereby indigenous people were deprived of their identity, name, culture, language and family. In this respect, the Committee welcomes the activities undertaken by the State party to assist family reunions and improve access to records to help indigenous people to trace their families.
32. **The Committee encourages the State party to continue and strengthen as much as possible its activities for a full implementation of the recommendations of the 1997 report of the HREOC “Bringing Them Home”, and to ensure the full respect of the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationship.**

Access to appropriate information

33. While the Committee welcomes the State party’s measures in this respect—including the “Telecommunications Offences and Other Measures Act 2004”, which includes new offences targeting the use of the Internet to access, transmit

and make available child pornography and child abuse material, as well as the Criminal Code Amendment (Suicide Related Material Offences) Act 2005 - it still expresses concern about the exposure of children to violence, racism and pornography, especially through the Internet.

34. **The Committee recommends that the State party continue and strengthen its efforts to protect children effectively from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet. The Committee further suggests that the State party develop programs and strategies to use mobile technology, media advertisements and the Internet as means for raising awareness among both children and parents on information and material injurious to the wellbeing of children. The State party is also encouraged to develop agreements with journalists and media with a view to protecting children from being exposed to harmful information in the media and improving the quality of information addressed to them.**

#### Corporal punishment

35. The Committee notes with concern that corporal punishment in the home is lawful throughout Australia under the defence of “reasonable chastisement” and other similar provisions in states’ legislation. Furthermore, the Committee is concerned that, while corporal punishment has been prohibited in government schools and some private ones in most states and territories, it is still lawful in many private education institutions and in both government and private schools in South Australia and the Northern Territory.
36. **The Committee recommends the State party to:**
- a) **take appropriate measures to prohibit corporal punishment at home, in public and private schools, detention centers and all alternative care settings in all States and Territories;**
  - b) **strengthen awareness-raising and education campaigns with the involvement of children in order to promote positive, non-violent forms of discipline and respect for children’s rights, while raising awareness about the negative consequences of corporal punishment.**

#### **4. Family Environment and Alternative Care**

**(arts. 5; 18 (paras. 1-2); 9-11; 19-21; 25; 27 (para.4); and 39 of the Convention)**

#### Alternative care for children without parental care

37. The Committee notes with concern the considerable increase in the number of children in out-of-home care in the last years as well as the over-representation of indigenous children placed in out-of-home care. Furthermore the Committee is concerned about:
- a) the lack of stability and security of children placed in alternative care;
  - b) the difficulties for children to maintain contacts with their families;

- c) the inadequate medical care, e.g. physical, dental and mental health service.
38. **The Committee recommends that the State Party take measures to strengthen the current programs of family support, e.g. by targeting the most vulnerable families in order to reduce the placement of children in out-of-home care. It further recommends that the State party:**
- strengthen its support for foster care, e.g. by improving equal access to adequate medical care of children in foster care;
  - strengthen supervision of foster care and establish regular review of this kind of placement with a view to reuniting the child with his/her natural family;
  - promote and facilitate that the child in foster care maintains contact with his/her natural family.
39. **The Committee also recommends that the State Party maximize its efforts to reduce the significant number of indigenous children placed in out-of-home care in a time-bound manner, *inter alia*, by strengthening its support for indigenous families. It further recommends that the State party fully implement the Indigenous Child Placement Principle and intensify its cooperation with indigenous community leaders and communities to find, within indigenous families, suitable solutions for indigenous children in need of alternative care.**

#### Children of imprisoned parents

40. While the Committee notes the efforts undertaken to tackle this issue, including the Prisoners and their Families Program, it is concerned at the information that a considerable number of children has one parent in prison, and that indigenous children are significantly over-represented in this figure.
41. **The Committee recommends that the State party continue and strengthen its measures to provide these children with adequate support, including counselling, and to facilitate contacts with their parents in prison, whenever it is not contrary to the child's best interest.**

#### Violence, abuse, neglect and maltreatment

42. While the Committee notes with appreciation the State party's activities and measures addressing this problem, including two programs against family violence seeking to reduce family violence in indigenous communities, it shares the State party's concern that child abuse remains a major problem for the Australian society, affecting children's physical and mental health, as well as their educational and employment opportunities. The Committee is further concerned at the exposure of children to high level of domestic violence.
43. **In light of article 19 of the Convention, the Committee recommends that the State party:**
- (a) continue to take measures to prevent and combat child abuse and violence against children and strengthen measures to encourage reporting of instances of child abuse;
  - (b) adequately investigate and prosecute reported cases of abuse and violence;

- (c) ensure that all victims of violence have access to counselling and assistance with recovery and social reintegration;
  - (d) provide adequate protection to child victims of abuse;
  - (e) strengthen measures to address the root causes of violence within the family, paying special attention to the marginalized and disadvantaged groups.
44. In the context of the Secretary-General's ongoing in-depth study on the question of violence against children (A/RES/56/138) and the related questionnaire to Governments, the Committee acknowledges with appreciation the State party's written replies to this questionnaire and its participation in the Regional Consultation for East Asia and the Pacific held in Thailand from 14 to 16 June 2005. The Committee recommends that the State party uses the outcome of the regional consultation as a tool to take action, in partnership with the civil society, to ensure the protection of every child from all forms of physical, sexual or mental violence, and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse.

## 5. Basic Health and Welfare

(arts. 6; 18, para.3; 23; 24; 26; 27, paras 1-3 of the Convention)

### Children with disabilities

45. While the Committee notes the initiatives addressing the rights of children with disabilities, it is concerned about the paucity of information on disabled children, especially when it comes to data on indigenous disabled children, alternative care for children with disabilities and children with disabilities living in remote or rural areas. The Committee also notes that a Governmental Working Group is addressing the issue of sterilization of children with so-called "decision making" disabilities.
46. In the light of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations adopted at its day of general discussion on "Children with disabilities" (see CRC/C/69), the Committee encourages the State party to actively pursue its current efforts and to:
- a) adopt a consistent national approach to the collection of data on children with disabilities;
  - b) ensure equal opportunities for full participation of children with disabilities in all spheres of life and strengthen public awareness campaigns to change negative public attitudes;
  - c) undertake greater efforts to make available the necessary professional (i.e. disability specialists) and financial resources, especially at the local level and to promote and expand community-based rehabilitation programmes, including parent support groups;

- d) **implement the Disability Standards for Education and give adequate support to the Literacy, Numeracy and Special Learning Needs (LNSLN) Programme, a key targeted programme aiming at improving the literacy, numeracy and other learning outcomes of students who are educationally disadvantaged, including students with disabilities;**
- e) **prohibit the sterilization of children, with or without disabilities, and promote and implement other measures of prevention of unwanted pregnancies, e.g. injection of contraceptives, when appropriate.**

#### Health and access to health care services

- 47. The Committee notes the State party's efforts with regard to prevention of overweight and obesity, promotion of breast-feeding, injury prevention and control. However, the Committee remains concerned at indigenous children malnutrition and under-nutrition compared with over-nutrition, overweight and obesity at national level. Furthermore, the Committee, despite recent studies suggesting that indigenous infant mortality has declined in the past years, remains concerned at the disparity in the health status between indigenous and non-indigenous children and at unequal access to health care experienced by children living in rural and remote areas.
- 48. **The Committee recommends that the State Party undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services, with special attention to children belonging to vulnerable groups, especially indigenous children and children living in remote areas. In addition, the Committee recommends that the State party take all adequate measures to overcome, in a time-bound manner, the disparity in the nutritional status between indigenous and non-indigenous children.**
- 49. The Committee is also concerned at the information that Attention Deficit Hyperactivity Disorder (ADHD) and Attention Deficit Disorder (ADD) are being mis-diagnosed and therefore psycho-stimulant drugs are being over-prescribed, despite the growing evidence of the harmful effects of these drugs.
- 50. **The Committee recommends that further research be undertaken on the diagnosis and treatment of ADHD and ADD, including the possible negative effects of psycho-stimulants on the physical and psychological well-being of children, and that other forms of management and treatment are used as much as possible to address these behavioural disorders.**

#### Adolescent health

- 51. The Committee welcomes the various efforts of the State party to reduce youth suicide in the last years, but it remains concerned that youth suicide rate is still high, especially among indigenous children and homeless adolescents, and that mental health problems and substance abuse are increasing.
- 52. **The Committee, in light of its General Comment No. 4 on Adolescent Health (2003), encourages the State party to continue and strengthen its efforts aimed at youth suicide prevention. Particular focus should be put on mental health services, including prevention and management of substance abuse.**

## HIV/AIDS

53. The Committee notes the efforts undertaken by the State party to combat the threat that HIV/AIDS represents for children, including the newly established ministerial advisory committee on AIDS, Sexual Health and Hepatitis, but it is concerned at recent reports showing that the number of indigenous diagnosed with AIDS has more than doubled in the past four years.
54. **The Committee recommends that the State party continue to closely look into the issue of HIV/AIDS, and in particular:**
- a) **continue its efforts to prevent the spread of HIV/AIDS, taking into account the Committee's General Comment No. 3 on HIV/AIDS (2003) and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37);**
  - b) **strengthen its efforts by establishing campaigns and programmes to raise awareness about HIV/AIDS among adolescents, particularly among those belonging to vulnerable groups as well as the population at large, so as to reduce discrimination against children infected and affected by HIV/AIDS;**
  - c) **urgently address the marked increase of AIDS diagnosis among indigenous peoples, including through culturally sensitive safe sex campaigns tailored for indigenous communities**

## Standard of living

55. The Committee notes with appreciation the Federal Government's considerable expenditures on indigenous housing and infrastructure and the good initiative of the "Community Housing and Infrastructure Program", but it reiterates its concern at the still inadequate standard of living of indigenous children and children living in rural and remote areas.
56. The Committee also notes that the State party has not defined an official poverty line and is concerned that the impact of poor living conditions on the well-being and development of children is not adequately considered.
57. **In light of article 27 of the Convention, the Committee recommends that the State party increase its efforts to provide affordable housing options and take all possible measures to raise the standard of living of indigenous children and children living in rural and remote areas.**
58. **The Committee further recommends that the State party address and systematically investigate the consequences of economic hardship on children, with a view to developing measures aimed at reducing its negative impact on children's healthy development.**

## **6. Education, Leisure and Cultural Activities**

### **(arts. 28, 29 and 31 of the Convention)**

59. While the Committee acknowledges the State party's efforts in this field, including the Jobs Education and Training Child Care Program, it continues to be concerned at the serious difficulties that indigenous children and children living in remote areas face with regard to education, and in particular their lower level of achievement and high drop-out rate from school.

60. The Committee welcomes the measure taken to combat bullying in schools, such as the National Safe School Framework (NSSF) and the “Bullying. No Way!” website, but it shares the State party’s concern regarding the impact that this pervasive practice has on affected children, especially on their psychological health, educational achievements and social developments.
61. **The Committee recommends that the State party:**
- a) **take all necessary measures to ensure that article 28 and 29 of the Convention are fully implemented, in particular with regard to children belonging to the most vulnerable groups (i.e. indigenous children, homeless children, children living in remote areas, children with disabilities etc.);**
  - b) **continue to take appropriate measures to combat the phenomenon of bullying in schools, including by carrying out periodical surveys amongst students, staff and parents to learn more about peer relations being fostered by the school;**
  - c) **ensure that public education policy and school curricula reflect in all their aspects the principle of full participation and equality and to include children with disabilities in the mainstream school system to the extent possible; and provide them with the necessary assistance;**

## 7. Special Protection Measures

(arts. 22; 38; 39; 40; 37 (b)-(d); 32-36 of the Convention)

### Children in immigration detention

62. The Committee is encouraged by the recent changes of the Migration Act 1958, which came into effect on 29 July 2005, accepting the principle of the detention of children only as a measure last resort, and welcomes the information that all families with children were moved from immigration detention facilities to community detention arrangements. However, the Committee remains concerned that children who are unlawfully in the Australian territory are still automatically placed in administrative detention –whatever form- until their situation is assessed. In particular the Committee is seriously concerned that:
- a) administrative detention is not always used as a measure of last resort and it is not applied for the shortest appropriate period of time;
  - b) conditions of immigration detention have been so far very poor with harmful consequences on children’s mental and physical health and overall development;
  - c) there is a lack of a regular system of independent monitoring of detention conditions.
63. The Committee is further concerned that children who are granted a Temporary Protection Visa (those arriving in the country without any travel document) do not have the right to family reunification and have limited access to social security, health services and education.

64. **The Committee recommends the State Party to implement the recommendations of the Human Rights and Equal Opportunity Commission Report “A Last Resort?” and to fully conform its immigration and asylum laws to the Convention and other relevant international standards, taking into account the Committee’s General Comment No. 6 on the treatment of unaccompanied and separated children outside their country origin (2005). In particular the State party should:**
- a) **ensure that detention of children for immigration purposes is not automatic and is only used as a measure of last resort and for the shortest appropriate period of time;**
  - b) **a court or an independent tribunal should assess –within 48 hours of any initial detention – whether there is a real need to detain children for immigration purposes;**
  - c) **considerably improve conditions of children in immigration detention, if such detention is necessary in the best interests of the child, and bring them in line with international standards;**
  - d) **guarantee a periodic review of detention of children for immigration purposes;**
  - e) **consider permitting family reunification in cases where children or their family members are holders of temporary protection or temporary humanitarian visas;**
  - f) **consider creating speedily an independent guardianship/support institution for unaccompanied children;**
  - g) **consider becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

#### Homeless children

65. While the Committee welcomes that the State party is seriously considering the issue of youth homelessness, including with the National Homelessness Strategy (NHS) and the “Reconnect” program, it wishes to express concern at the situation of homeless children, which are also more likely to be affected by educational and relational problems and are more exposed to substances abuse and sexual exploitation.
66. **The Committee recommends that the State party intensify its efforts in order to address the urgent needs and rights of homeless children, especially as to their housing, health and education. Furthermore, the State party should provide homeless children with adequate recovery and social reintegration services for physical, sexual and substance abuse and to promote reunification with their families, when feasible.**

#### Sexual exploitation and trafficking

67. While the Committee welcomes some positive developments in the context of prevention of trafficking and forced prostitution, such as the adoption of the National Plan of Action to Eradicate Trafficking in Persons of October 2003 and the changes to the Criminal Code in 2005 whereby, *inter alia*, trafficking in persons and child pornography have been criminalized, the Committee is

concerned that Australia continues to be a destination country for trafficked women and girls in the sex industry.

68. **In light of article 34 and other related articles of the Convention, the Committee recommends that the State party strengthen its efforts for an effective implementation of its plan to combat sexual exploitation and trafficking in persons and conduct a comprehensive study to assess the nature and magnitude of the problem, especially with respect to children.**
69. **The State party is also encouraged to become a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime, to which Australia is a party.**

#### Substance abuse

70. The Committee is concerned about substance abuse, especially among the indigenous communities, as well as about the high-risk practice of petrol sniffing notably among the communities living in remote areas of Central Australia.
71. **The Committee encourages the State party to continuously monitor the issue of substance abuse with especial focus on raising awareness among indigenous children and children living in remote areas. The State party is also encouraged to develop free and easily accessible drug abuse treatment and social reintegration services for children who are victims of drug and substance abuse.**

#### Administration of juvenile justice

72. While the Committee notes the measures taken by the State party in the field of juvenile justice, such as the options for juvenile diversion considered by many States and Territories and the strategies to reduce the incarceration rates for indigenous Australians, it shares the State party's concern that the percentage of indigenous children in conflict with the law is disproportionately high.
73. Furthermore, the Committee is concerned that:
  - a) the age of criminal responsibility, set at 10 years, is too low, although there is a presumption against criminal responsibility until 14 years (common law *doli incapax*);
  - b) children with mental illness and/or intellectual disabilities are over-represented in the juvenile justice system;
  - c) in Queensland, persons of 17 in conflict with the law may be tried as adults in particular cases;
  - d) mandatory sentencing legislation (so-called 'three strikes laws') still exists for persons below 18 in the Criminal Code of Western Australia;
  - e) local legislation in some States and Territories allows police to remove children and young people congregating.
74. **The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile**

justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, § 203-238). In this regard, the Committee recommends the State party in particular to:

- a) **consider raising the minimum age of criminal responsibility to an internationally acceptable level;**
- b) **take all necessary measures to ensure that persons below 18 in conflict with the law are only deprived of liberty as a last resort; and detained separately from adults, unless it is considered in the child's best interest not to do so;**
- c) **urgently remedy the over-representation of indigenous children in the criminal justice system;**
- d) **deal with children with mental illnesses and/or intellectual deficiencies in conflict with the law without resorting to judicial proceedings;**
- e) **improve conditions of detention of children and bring them in line with international standards;**
- f) **take measures with a view to abrogating the mandatory sentencing in the criminal law system of Western Australia;**
- g) **remove 17 years old from the adult justice system in Queensland;**
- h) **address the problems which may be related to the gathering of young people in certain places without necessarily resorting to policing and/or criminalization and consider reviewing legislation in this respect.**

#### Children belonging to indigenous groups

75. Despite the numerous measures taken by the State party's authorities, including the Indigenous Child Care Support Programme, the Committee remains concerned about the overall situation of indigenous Australians, especially as to their health, education, housing, employment and standard of living.
76. The Committee notes the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC)- a key policy advisor to the Government and its agencies on indigenous affairs- which has been replaced with a government's ministerial taskforce.
77. **The Committee recommends that the State party strengthen its efforts to continue developing and implementing – in consultation with the indigenous communities – policies and programmes ensuring equal access for indigenous children to culturally appropriate services, including social and health services and education. The Committee further recommends that an evaluation of the new arrangements for the administration of**

**indigenous affairs take place soon in order to assess whether the abolition of ATSIC has been in the best interests of the indigenous children.**

#### **8. Optional Protocols to the Convention on the Rights of the Child**

78. The Committee welcomes the assurances given by the State party during the dialogue that the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography is imminent and that steps have been undertaken to ratify the Optional Protocol on the involvement of children in armed conflict.
79. **The Committee recommends that the State party become a party to both the Optional Protocols to the Convention on the Rights of the Child at the earliest possible time.**

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

##### Follow-up

80. **The Committee recommends the State party to take all appropriate measures to ensure full implementation of the present recommendations, *inter alia*, by transmitting them to the members of the Council of Ministers, the Parliament, and to State and Territory Governments and Parliaments for appropriate consideration and further action.**

##### Dissemination

81. **The Committee further recommends that the combined second and third periodic reports and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.**

#### **10. Next report**

82. **The Committee invites the State party to submit its fourth periodic report, which should not exceed 120 pages (see CRC/C/148), by 15 January 2008.**