



**Submission to the Committee on Economic,
Social and Cultural Rights (CESCR)**

Child rights issues to inform the CESCR List of Issues to
the Australian Government

26 August 2016

1. Introduction

UNICEF Australia and the Australian Child Rights Taskforce welcome to the opportunity to submit to the Committee on Economic, Social and Cultural Rights (CESCR) on current priority child rights concerns. The purpose of this submission is to inform the list of issues in preparation for the review of Australia's fifth periodic report under International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. About the Australian Child Rights Taskforce (the Taskforce)

The Australian Child Rights Taskforce is the peak child rights network in Australia, made up of more than 100 organisations advocating for the protection, promotion and fulfilment of the rights of children in Australia. The primary functions of the Taskforce are to (I) coordinate the civil society report to the Committee on the Rights of the Child (II) to monitor Australian's implementation of child rights and (III) advocate for improved implementation. The Taskforce is co-convened by UNICEF Australia (UA) and the National Children's and Youth Law Centre (NCYLC).

3. About UNICEF Australia

3.1 UNICEF is a multilateral organisation that works in over 190 countries to promote and protect the rights of children. UNICEF supports child health and nutrition, clean water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, abuse and HIV. UNICEF is unique among world organisations in our rights based and participatory approach to working with children and young people. UNICEF Australia is a national committee of UNICEF which advocates for the rights of all children and works to improve public and government support for child rights and international development.

4. Parameters

4.1 This short submission highlights priority child rights issues that have emerged since Australia's last periodic review in 2009.

4.2 This submission is limited to issues with a specific impact on children.

4.3 This submission does not include child rights concerns identified in the *Concluding Observations*¹ to the Australian Government in the Fourth Periodic Review to the CESCR.

¹Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights Australia*, 42nd session, UN Doc E/C.12/AUS/CO/4 (12 June 2009)

5. Issues of concern

5.1 Adequate social security for children and their families (article 9)

5.1.1 As of August 2016, there is no an official measure of poverty in Australia. However, when applying the Organisation of Economic Development and Cooperation (OECD) household poverty measures, there were 603,000 children in Australia living below the poverty line in 2012, or around one in six Australian children. ²

5.1.2 Australian Council for Social Services (ACOSS) analysis demonstrates that current social security support for families with children on the lowest incomes are not adequate, and can result in children and their families living below the poverty line.³

5.1.3 Family Payments are intended to supplement low to middle income families. Proposed cuts to these payments are deeply concerning, particularly for single headed families with children aged over 13 years of age. It is likely to cause significant hardship for these families with increased rates of poverty and deprivation.⁴

5.1.4 Income support for young people (aged 16-21 years) through the Youth Allowance income support payment is significantly less than the equivalent payment for those over 22 years of age; includes unfair and arbitrary eligibility requirements, and results in many young people living below the poverty line.⁵

The Committee may wish to consider asking:

1. What concrete measures has the Australian Government adopted to provide families and children with a minimum, adequate standard of living?

5.2 Child Protection (article 1, 9, 10)

5.2.1 There is significant overrepresentation of Aboriginal and Torres Strait children in out of home care (OOHC) arrangements, Aboriginal and Torres Strait Islander children are nearly 10 times more likely to be in care than non-Indigenous children.⁶ This causes significant harm to children, families and communities, eroding connections to culture, and increases the likelihood of poorer life outcomes.

² Australian Council of Social Services, *Poverty in Australia* (2014), p 8, http://www.acoss.org.au/images/uploads/ACOSS_Poverty_in_Australia_2014.pdf

³ Australian Council of Social Services, *Budget Priorities Statement 2016-17*, (2016), p42, http://www.acoss.org.au/wp-content/uploads/2016/02/ACOSS_Budget-Priorities-Statement_2016-17_web.pdf

⁴ Ibid

⁵ Australian Council of Social Services, *Poverty in Australia* (2014), p10 cited in Australian Child Rights Taskforce, *CRC25: Australian Child Rights Progress Report*, p17, <http://www.childrights.org.au/crc25/>

⁶ Australian Institute of Health and Welfare 2015a, *Child protection Australia 2013-14*, cited in Australian Child Rights Taskforce, *CRC25: Australian Child Rights Progress Report* (2016), p42

5.2.2 The Australian Government developed the *National Framework for Protecting Australia's Children (2009-2020)*⁷ to reform the child protection system. The Framework is currently in its third phase of implementation, which includes measures to address this significant overrepresentation through early intervention, which give greater emphasis to prevention of abuse and strategies built around family support. However, the implementation of the Framework is considerably under-resourced and requires stronger coordinated national leadership from the Australian Government; it is therefore unlikely to achieve its stated ambition.

5.2.3 A fully funded national strategy for Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander leadership and decision making is required. This must include strategies to address underlying social and economic causes of children and young people coming into contact with the child protection system.

5.2.4 Significant reform and funding is required to improve the child protection system. Currently there is significantly more funding toward tertiary interventions when families are in crisis, often resulting in children being placed in care. Proportionally higher funding is required for preventative services. Early and culturally safe interventions that strengthen families must be adopted. Aboriginal and Torres Strait Islander led protection systems and decision making are critical, and children must be supported to participate in the decisions impacting their lives.⁸

5.2.5 In several jurisdictions across Australia, State and Territory governments have increasingly focused on strengthening permanent care solutions in the child protection system. Permanency solutions are mechanisms in which parental responsibility for a child is transferred to someone other than the biological parent/s until the child turns 18. Mandatory timeframes for making permanent care orders and legislated limits on parental contact with their children, remove discretion for the courts to make decisions that consider each child's best interests – this is in clear violation of the child's rights. This causes particular concerns for Aboriginal and Torres Strait Islander children's ability to enjoy their rights to family, cultural identity and community. This diverts policy focus and funding allocation from implementing process, such as the Aboriginal *Child Placement Principle*, early interventions to heal, strengthen and support Aboriginal families and communities in,

⁷ Australian Government Department of Social Services, *National Framework for Protecting Australia's Children (2009-2020)*, <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business> (viewed 26 August 2016)

⁸ SNAICC – National Voice for our Children, *Achieving Stability for Aboriginal and Torres Strait Islander Children in Out of Home Care* (July 2016, p 10, http://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving_stability-1.pdf)

and risks worsening the lifelong impacts that result from erosion of connection to culture and community.⁹

5.2.6 Adequately funded Aboriginal and Torres Strait Islander led legal and community based organisations are fundamental to keeping women and children safe, and for services support and recourse in the event of family violence. Significant Australian Government funding cuts are to come into effect in the 2017-18 budget reducing the viability and capacity of these services.¹⁰

The Committee may wish to consider asking:

1. What targeted, adequately funded measures is the Australian Government taking to reduce over representation of Aboriginal and Torres Strait Islander children in out of home care?
2. What measures and investment is the Australian Government take to strengthen Aboriginal and Torres Strait Islander leadership and decision making in child protection?
3. What measures will the Australian Government take to develop, coordinate and implement an adequately funded national strategy for Commonwealth, State and Territory Governments to address the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system?
4. What targeted measures and investment is the Australian Government delivering in universal and early intervention services to prevent families entering the child protection system?
5. Will the Australian Government reinstate funding cuts made to Aboriginal led family violence services and community legal services in the 2014-15 Federal budget?

5.3. Juvenile Justice (article 1, 9, 10)

5.3.1 Aboriginal and Torres Strait Islander children are 26 times as likely to be in the juvenile justice system compared to non-indigenous children¹¹, eroding connection to culture, family, community, and homelands. The rate of incarceration continues to escalate.

5.3.2 A fully funded national strategy with Aboriginal and Torres Strait Islander control and decision making is required. This must include strategies to address underlying social and economic causes of children and young people coming into contact with the criminal justice

⁹ *ibid*, p6

¹⁰ Law Council of Australia, *2016-17 Federal Budget Commonwealth Treasury* (2016), p8-9, <https://www.lawcouncil.asn.au/lawcouncil/images/3105 - Submission Federal Budget 2016.pdf>

¹¹ Australian Institute of Health and Welfare (AIHW) *Youth detention population in Australia* 2015, Bulletin 131 (December 2015), 1 <<http://www.aihw.gov.au/publication-detail/?id=60129553700>>.

system, justice targets to reduce overrepresentation and increased availability and use of diversion and non-custodial sentences.¹²

5.3.3 The recent national media reports of inhumane treatment of children in the Don Dale Youth Detention Centre¹³ resulted in the Australian Government establishing a *Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory*. While civil society organisations have welcomed this announcement, it is noted that previous inquiries have made recommendations that are yet to be comprehensively implemented, including:

- The Royal Commission into Aboriginal Deaths in Custody (1987)¹⁴
- The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. *Doing time for Doing: Indigenous youth in the criminal justice systems report* (2011)¹⁵
- The Senate and Legal Constitutional Affairs References Committee *Value of justice reinvestment approach to criminal justice in Australia report* (2013)¹⁶

The Committee may wish to consider asking:

1. Will the Australia commit to implementing the national reform recommendations from previous inquiries (noted above) and those arising from the current *a Royal Commission into the Treatment of Children in Juvenile Detention System in the Northern Territory* to ensure the overrepresentation of Aboriginal and Torres Strait Islander children is addressed and harmful practices in juvenile are prevented?

¹² UNICEF Australia, *Submission to the National Children's Commissioner, Australian Human Rights Commission - Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* (2016), p7

¹³ Australian Broadcasting Corporation, *Evidence of 'torture' of children held in Don Dale detention centre uncovered by Four Corners*, <http://www.abc.net.au/news/2016-07-25/four-corners-evidence-of-kids-tear-gas-in-don-dale-prison/7656128>, viewed 29 August 2016

¹⁴ The Royal Commission into Aboriginal Deaths in Custody (1987)
<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html> (viewed 26 August 2016)

¹⁵ Australian Government, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time for Doing: Indigenous youth in the criminal justice systems report* (2011),
<https://www.aph.gov.au/binaries/house/committee/atsia/sentencing/report/fullreport.pdf>

¹⁶ Australian Government Senate and Legal Constitutional Affairs References Committee, *Value of justice reinvestment approach to criminal justice in Australia report* (2013),
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index

5.4 Early Childhood education and care for Aboriginal and Torres Strait Islander children (article 1, 13)

5.4.1 Aboriginal and Torres Strait Islander children comprise 5.5% of the population in Australia but only 2.9% are participating in early education services.¹⁷

5.4.2 Universal free provision would foster the participation of Aboriginal and Torres Strait Islander children, and provide an opportunity to provide early, culturally safe interventions that can divert children from child protection systems. Aboriginal and Torres Strait Islander led and operated early education services often provide integrated services, including cultural and health services. The role of these early education services extends beyond education provision, strengthening community and families.¹⁸

5.4.3 Proposed changes to child care and early education funding from the Australian Government will eliminate targeted funding for Aboriginal and Torres Strait Islander early education and care services. These services will now be required to compete for mainstream funding with all mainstream services. Alternatively, these services will be required to apply for grants that do not provide the certainty of long term sustainable funding required for these community services to provide continual service delivery that meet the needs of the local communities.¹⁹ The reforms will also halve the minimum subsidised access for non-working families to effectively one day of early learning per week – reducing access for the most vulnerable children in the community, contrary to overwhelming evidence of the benefits of early learning to later life outcomes for vulnerable children. The reforms reduce supports for children on the basis of their parent's employment status.²⁰

¹⁷ Productivity Commission 2014c, *Productivity Commission Inquiry Report*, vol. 2, no. 73, Australian Government, Canberra. Accessed February 2016. <http://www.pc.gov.au/inquiries/completed/childcare/report/childcare-volume2.pdf>. cited in Australian Child Rights Taskforce, *CRC25: Australian Child Rights Progress Report*, p26

¹⁸ SNAICC – National Voice for Our Children, *The Jobs and Families Package: Unintended consequences and policy alternatives for Aboriginal and Torres Strait Islander children (2016)*, http://www.snaicc.org.au/wp-content/uploads/2016/02/Factsheet-The_Jobs_for_Families_Child_Care_Package-Edit_ES.pdf

¹⁹ Ibid

²⁰ Ibid

The Committee may wish to consider asking:

1. What existing measures has the Australian Government taken to ensure that Aboriginal and Torres Strait Islander early education services are able to sustain culturally safe and strong integrated services?
2. What long-term funding mechanisms does the Australian Government offer for Aboriginal and Torres Strait Islander early child care and services to target improved access and attendance of Aboriginal and Torres Strait Islander children?
3. Will the Australian government commit to ensure that access to early childhood education and care for the most vulnerable children in Australia is increased and not decreased as a result of 2016 sector reforms?

5.5 Preservation of Indigenous languages (article 1, 13, 15)

5.5.1 UNICEF Australia notes the *Concluding Observation 33 (a)*²¹ regarding the preservation and promotion of bilingual education in school settings. It is recommended that the CESCR request a report on progress from the Australian Government.

The Committee may wish to consider asking:

1. What measures has the Australian Government taken in the protection, promotion and transmission of Indigenous languages in education settings, particularly in implementing the recommendations of the *Indigenous Languages Programmes in Australian Schools - A Way Forward* (2008).²²
2. What net funding has the Australian Government invested in protecting and promoting Aboriginal Languages since the 2009 CESCR review?
3. How many schools across Australia have Aboriginal Languages Programs embedded as part of their curriculum?

5.6 Medical treatment for children who are transgender (article 12)

5.6.1 For gender diverse and transgender young people barriers exist to accessing medical treatment. Hormone treatment is often prescribed to reduce psychological distress caused by the onset of puberty. It is administered in two stages:

Stage 1 hormone treatment suppresses the onset of puberty and is reversible.

²¹ Above n 1, *Concluding Observations 33 (a)*

²² Purdie, Nola, et al., *Indigenous Languages Programmes in Australian Schools-A Way Forward*, (2008), http://research.acer.edu.au/indigenous_education/18/ (viewed 29 August 2016)

Stage 2 hormone treatment involves the administration of cross-sex hormones. (Current guidance indicates that Stage 2 should be administered from 16 years.²³

5.6.2 Parent (s) ordinarily have the power to consent to the medical treatment of their own child/children and can consent to Stage 1 hormone treatment. However, this is not the case regarding access to Stage 2 hormone treatment.²⁴ An application must be made to the Family Court of Australia under the *Family Law Act 1975 (Cth)*²⁵ for a parenting order. This lengthy process can cause undue emotional and financial distress for children and their families to enact a recommended medical intervention.

The Committee may wish to consider asking:

1. What measures will the Australian Government take to remove legal barriers for transgender children to access the treatment prescribed by their doctors and other medical service providers?

5.7 Segregation of children with disability within education systems (article 13)

5.7.1 There has been progress in establishing a standard and mechanisms for children in Australia for inclusive education. However, thousands of children with disability are still segregated into separate schools or classes. Available evidence suggests this segregation is on the rise, particularly for children with autism or cognitive impairment. This is coupled with significant concern about the use of restrictive practices of which there are increasing reports.²⁶

The Committee may wish to consider asking:

1. What adequately funded measures will the Australian Government take to prevent the segregation of children with disability in the education system?
2. What adequately funded measures will the Australian Government take to prevent the use of restrictive practices of children with disability in the education system?

²³ Malcolm K Smith and Ben Mathews, 'Treatment for gender dysphoria in children: the new legal, ethical and clinical landscape', *The Medical Journal of Australia* 202(2), 2 February 2015

²⁴ Ibid

²⁵ *Family Law Act 1975 (Cth)*, section 67ZC.

²⁶ Gearin, M 2011, 'Hidden Shame', Australian Broadcasting Corporation, 17 May, viewed 15 February 2016, <http://www.abc.net.au/7.30/content/2011/s3219518.htm>, cited in Australian Child Rights Taskforce, CRC25: *Australian Child Rights Progress Report*, p52

5.8 Education for refugee and asylum seeking children (article 13,15)

5.8.1 Save the Children has documented significant challenges faced by refugee children in accessing education in the local school system in Nauru while providing program management for the Australian Government. This included bullying, racism and widespread tensions between the refugee and Nauruan communities.

5.8.2 It is worth noting that there were no resources dedicated to building social cohesion between the refugee population and Nauruans as the host population. Community tensions have been the inevitable outcome of Australia's offshore detention policies that transferred a culturally diverse group of people into a very small developing nation with a highly homogenous population of only 10,000 people.

5.8.3 Less than 15 percent of asylum seeker and refugee children are estimated to be in attendance and there is a lack of specialised educational services. The Government of Nauru has commendably put a considerable focus on boosting national education standards. As children were transitioned into the local education setting, the Australian Government did not take adequate steps to address gaps to ensure that curriculum was socially, culturally and linguistically relevant to refugee children and assist in strengthening the local education system.²⁷

The Committee may wish to consider asking:

1. What concrete measures is the Australian Government taking to support the Government of Nauru to increase the school attendance of refugee children?
2. What steps did the Australian Government take to transition refugee children from the Save the Children delivered education programs to the local education systems?
3. What dedicated investment has the Australian Government made to strengthen the education system for all children, and ensure that is safe and relevant for refugee children?

6. Contact

If you have any questions regarding the information contained in this submission please contact Tara Broughan, Senior Policy Adviser, UNICEF Australia on telephone +61 431 107 695 or at tbroughan@unicef.org.au

²⁷ UNICEF Australia and Save the Children Australia. 2016. *At What Cost Report?* Yet to be published and can be provided upon request.