

ADVANCE UNEDITED VERSION

Distr.: General
30 September 2019

Arabic, Chinese, English, French,
Russian and Spanish only

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 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 Assistant Minister for Children and Families in 2018, and of the National Children's Commission within the Human Rights Commission on 25 June 2012. It further 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: protection from violence (para. 30), alternative care (para. 34), mental health (para. 38), climate change (para. 41), asylum, refugee and children in situations of migration (para. 45), and administration of justice (para. 48).

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

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 (CRC/C/AUS/CO/4, para. 10 and CRC/C/15/Add.268 of 2005, para. 8), and in light of its acceptance of the principle of separation and the existence of many facilities separating children from adults, again recommends that the State party consider withdrawing its reservation regarding article 37 (c) of the Convention.

Legislation

7. The Committee recalls its previous recommendations (CRC/C/AUS/CO/4, para. 12) and again recommends, also as a proactive measure, 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 their impact on children's rights;

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

Comprehensive policy and strategy

8. The Committee recalls its previous recommendations (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 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 implementation of the Convention at 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 (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 in sectors supporting the realisation of children's rights with a view to addressing the disparities in indicators related to children's rights, with particular attention to Aboriginal and Torres Strait Islander children;

(c) Establish appropriate mechanisms and inclusive processes through which civil society, the public and children 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, recalls its previous recommendations (CRC/C/AUS/CO/4, para. 22), and recommends that the State party:

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

(e) 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 for implementation of the Convention;

(f) 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 (NCC) has adequate and sufficient human, technical and financial resources to implement and monitor the application of the Convention;

(b) Establish by law mandatory consultation between the NCC and children on issues that affect them, and ensure that the results of those consultations and any other recommendations from the NCC are taken into consideration in law and policy making;

(c) Ensure effective coordination between the NCC 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 awareness-raising programmes on the Convention, including through greater media and social media engagement, in a child-friendly manner, promoting the active involvement of children in public outreach activities including measures targeting parents, social workers, teachers and law enforcement officials.

14. Furthermore, the Committee recalls its previous recommendations (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 prioritizes them as service providers;

(b) Organizations working with asylum-seeking, refugee and migrant children as well as those 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 programs, with the rights of children and their engagement included in program design, delivery and evaluation.

Children's rights and the business sector

17. With reference to its general comment No. 16 (2013) on 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 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, 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 UN Guiding Principles on Business and Human Rights, and make information available on the work of the Australian National Contact Point in implementation of the OECD Guidelines for Multinational Enterprises;

(d) Undertake awareness-raising campaigns with the tourism industry and the public at large on the harmful effects of sexual exploitation of children in the context of travel and tourism and widely disseminate the World Tourism Organization global code of ethics for tourism.

B. Definition of the child

18. The Committee recommends that the State party review the *Marriage Act of 1961* (Cth) to eliminate any exception to the minimum age of marriage of 18 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 (CRC/C/AUS/CO/4, para.30) and urges the State party to:

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

(b) Strengthen its awareness-raising and other preventative activities against discrimination, including through the 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 (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 effective implementation of the National Injury Prevention Strategy 2018-2021, targeting the underlying causes of child deaths, and continue to support the work of the Australia 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 (CRC/C/AUS/CO/4, para.34), and recommends that the State party:

(a) Amend the *Family Law Act of 1975* (Cth) 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* (Cth) to guarantee respect for the views of the child at all stages of the migration process;

(c) Provide training and support to the Independent Children’s Lawyers to ensure they have direct contact with the children they represent in Family Courts;

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

(e) Develop toolkits for public consultation 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 to:

(a) Ensure that all children, particularly 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) Revoke the December 2015 amendments to the Citizenship Act which allow for children under 18 years to lose their Australian citizenship if they “engage in or are convicted of certain foreign fighting or terrorism related conduct”;

(c) Ensure that children born through international surrogacy arrangements have access to a clear process with uniform rules throughout the country to obtain Australian nationality.

Right to Identity

24. The Committee recalling its previous recommendations (CRC/C/AUS/CO/4, para. 38), 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 (CRC/C/AUS/CO/4, para. 40) and recommends that the State party review its legislation to respect 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 via the Internet, in the relevant language(s), to children in rural or remote areas;**

(b) **Promote children with disabilities' access to online information through 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.**

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

Corporal punishment

28. **The Committee recall its previous recommendations (CRC/C/AUS/CO/4, paras. 44-45) and urges the State party to:**

(a) **Explicitly prohibit corporal punishment in law in all settings, including in homes, public and private schools, detention centres and alternative care settings, and repeal the legal defence of "reasonable chastisement";**

(b) **Develop awareness-raising and education campaigns to promote positive and alternative forms of discipline, and the adverse consequences of corporal punishment.**

Violence, including sexual violence, abuse and neglect

29. **The Committee welcomes the creation of the National Office for Child Safety in 2018, and the commitment to the National Centre for the Prevention of Child Sexual Abuse in March 2019; the adoption of the National Framework for Protecting Australia's Children (2009-2020), and the National Plan to Reduce Violence against Women and their Children (2010-2022). It also welcomes 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 about:**

(a) **The high rates of violence against children at home, the third action plan under the National Plan to Reduce Violence against Women and their Children focuses on young**

people aged 12-20 years, when violence affects children of all ages; and that girls aged 10-19 have the highest rate of sexual abuse, with an increasing number perpetrated by their partners;

(b) The National Redress Scheme for people who have experienced institutional child sexual abuse excluding some groups of victims, such as non-citizens or non-permanent residents, persons sentenced for a crime to five years or longer, and children under 8 in 2018;

(c) Victims and survivors of abuse by religious personnel of the Catholic church who participated in the two internal church processes – Towards Healing and The Melbourne Response – being required to sign “deeds of release” preventing them from pursuing independent secular justice mechanisms;

(d) The limited information about the support provided to child victims of family and domestic violence including sexual violence;

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

(f) Children with disabilities being more vulnerable to violence, neglect and abuse, including girls with disabilities being forced to undergo sterilization procedures and as victims of sexual abuse;

(g) The limited information available regarding violence against children in remote areas, children with a culturally and linguistically diverse background, and LGBTI 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 (CRC/C/AUS/CO/4, paras. 47-48), and urges the State party to:

(a) Review the action plans of the National Framework and the National Plan to prioritize 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, multi-agency measures and appropriate therapeutic services to avoid secondary or re-traumatisation of child victims;

(c) Review the National Redress Scheme to include non-citizens or non-permanent residents, persons sentenced for a crime to five years or longer, and children under 8 in 2018;

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

(e) Provide child-specific therapeutic intervention 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 and the National Plan to adequately address violence prevention 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 and in communities with a culturally and linguistically diverse background, and for LGBTI 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 to:**

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

(b) **Enact legislation explicitly prohibiting coerced sterilisation or unnecessary medical or surgical treatment, guaranteeing bodily integrity and autonomy to intersex children as well as adequate support and counselling to families of intersex children.**

E. 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 (CRC/C/AUS/CO/4, para. 50), and urges the State party to:**

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

(b) **Extend paid maternity leave to six months to support 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 regarding children in alternative care, but remains seriously concerned about:**

(a) **The enduring high number of children in alternative care;**

(b) **The continuing over-representation of Aboriginal and Torres Strait Islander children in alternative care, often outside their communities;**

(c) **Different criteria across jurisdictions for decisions on child removal and placement in care;**

(d) **Despite the 25 enquiries conducted since 2012, the child protection systems still not having sufficient human, technical and financial resources and not being able to provide adequate professional support to children, often resulting in:**

i. **Badly trained and poorly supported staff;**

ii. **Inadequate matching of children of different ages, experiences and background (in particular, child offenders and child victims of abuse are often placed together);**

iii. **Excessive reliance on police interference and the criminal justice system when dealing with children's behavioural problems without ensuring appropriate therapeutic services intervention;**

(e) **Children with disabilities being more at risk of maltreatment in institutions;**

(f) **The limited access of children in alternative care 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 (CRC/C/AUS/CO/4, para. 52), and urges the State party to:**

(a) **Strongly invest in prevention measures for children and their families to avoid child removal and, when this is a necessary measure, to limit it to the shortest time possible, and ensure participation of children, their families and communities in decision-making, to guarantee an individualised and community-sensitive approach;**

(b) **Harmonize, make transparent and publicize the criteria for removal and placement of a child in alternative care across jurisdictions to provide the highest level of protection;**

(c) **Ensure the adequate human, technical and financial resources to child protection services and alternative care and proper training of those working with and for children in alternative care, in particular to enhance preventive measures in order to avoid ‘care to crime drift’;**

(d) **Strongly invest in measures developed and implemented for Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide the adequate support while in alternative care and facilitate their reintegration into their families and communities;**

(e) **Provide adequate training to child protection carers on the rights and needs of children with disabilities to prevent their maltreatment and abuse;**

(f) **Ensure that children in alternative care have access to the mental health and therapeutic services necessary for their healing and rehabilitation.**

F. 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 (CRC/C/AUS/CO/4, para. 58) and the other recommendations herein, further recommends that the State party:**

(a) **Make clear the eligibility criteria and the types of support covered by the Scheme and ensure it has the necessary human, technical and financial resources 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 (CRC/C/AUS/CO/4, para. 60), the Committee urges the State party to:**

(a) **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) **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 of the 2017 Fifth National Mental Health and Suicide Prevention Plan, is concerned that it insufficiently includes child-specific measures. The Committee is also particularly concerned that:**

(a) **Almost one in seven children were assessed with mental health problems, with suicide being the leading cause of death for those aged 15-24;**

(b) **The State party is among the countries with the highest rate of ADHD diagnosis in the world for children 5-14 years, and the number of psychostimulant drugs prescriptions has increased dramatically;**

(c) Children themselves have identified mental health as a main issue of concern, affecting in particular Aboriginal and Torres Strait Islander children, children in alternative care, homeless children, children living in rural and remote areas, asylum-seeker children, children from culturally and linguistically diverse backgrounds and LGBTI children;

(d) Despite the increase in mental health services for children, such as the centres Headspace and the Youth Early Psychosis Programme, children still have limited access to services, in particular those under 14 years.

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

(a) **Invest in addressing the underlying causes of children’s suicide and poor mental health, improve mental health literacy for children to promote children’s awareness and access to support services, and ensure that the Fifth National Mental Health and Suicide Prevention Plan has a clear child focus strategy that involves children’s perspectives in the response services provided;**

(b) **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-seeker, refugee and migrant children, children from culturally and linguistically diverse backgrounds and LGBTI children;**

(c) **Strengthen measures to ensure that the prescription of psychostimulant drugs to children with ADHD is used as a measure of last resort and only after an individualised assessment of the best interests of that child, and that children and their parents are properly informed about the possible side effects of this medical treatment and about non-medical alternatives;**

(d) **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, throughout the territory of the State party.**

Adolescent health

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

(a) **Strengthen its 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, with special attention on 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 emphasises 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 about the State party’s insufficient progress on climate goals and targets committed to in the Paris Climate Agreement and its continuing investment in extractive industries, in particular coal. The Committee expresses its concern and disappointment that the protest of children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for their right 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 to:

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

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

Standard of living

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

G. Education, leisure and cultural activities (arts. 28, 29, 30 and 31)

Education, including early childhood education and care

43. The Committee is still concerned that efforts 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 to:

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

(b) Strengthen its investments in improving education in early childhood, primary and secondary levels, paying particular attention to children living in remote areas, Indigenous 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) Ensure that all children with disabilities have access to inclusive education in mainstream schools, are provided with the support needed, and address cases of restraint and seclusion;

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

(e) 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 LGBTI children.

H. Special protection measures (arts. 22, 30, 32-33, 35-36, 37 (b)-(d), 38, 39 and 40)

Asylum-seeking, refugee and migrant children

44. The Committee notes that since 28 February 2019 there are no asylum-seeking, refugee and 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” even though the Minister for Home Affairs is also responsible for granting immigration visas and approvals;

(b) The Migration Act 1958 still prescribes mandatory detention for irregular migration, including children, and that the State party “is not currently considering prohibiting the detention of children in all circumstances”;

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

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

(e) The best interests of the child is 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", leaving them in limbo for an undetermined period of time;

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

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

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

45. With reference 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 recalling its previous recommendations (CRC/C/AUS/CO/4, para. 81), the Committee urges the State party to immediately:

(a) **Amend the *Immigration (Guardianship of Children) Act 1946* (Cth) to create an independent guardian for children;**

(b) **Amend the *Migration Act* (Cth) to prohibit the detention of asylum seekers, refugee and migrant children;**

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

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

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

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

(g) **Review migration law and policies to withdraw disability as a criterion for immigration decisions;**

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

(i) **Introduce adequate mechanisms for monitoring the wellbeing 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 on Closing the Gap established in March 2019 has a clear mandate and the necessary human, technical and financial resources to function effectively.**

Administration of child justice

47. The Committee again regrets the lack of implementation of its previous recommendations and remains seriously concerned about:

- (a) The very low age of criminal responsibility;
- (b) The enduring over representation of Aboriginal and Torres Strait Islander children, and their parents/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 were potentially dangerous’, and ‘subjected to isolation excessively’;
- (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 over representation 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 to:**

- (a) **Raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 at which *doli incapax* applies;**
- (b) **Immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of indigenous incarceration;**
- (c) **Explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion/discipline of children under supervision, promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators;**
- (d) **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, ensure that the children are detained in separate facilities and for pre-trial detention, that detention is regularly and judicially reviewed;**
- (f) **Review its legislation to repeal mandatory minimum sentences to children in the Northern Territory and Western Australia;**
- (g) **Ensure that children with disabilities are not detained indefinitely without conviction and their detention is regularly and judicially reviewed;**
- (h) **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 to:**

(a) Apply a child-friendly and multisectoral approach to avoid re-traumatization of child victims, and ensure that cases are promptly recorded, investigated and prosecuted, and that perpetrators are duly sanctioned;

(b) Put in place child-sensitive mechanisms to facilitate and promote reporting of cases and ensure that complaint mechanisms are available and child-friendly, both online and off-line, paying particular attention to alternative care places, detention facilities, and locations for asylum-seeking, refugee and migrant children;

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

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

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

(f) Ensure that all child victims and witnesses of crime have access to adequate support, independently of assisting 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 and the establishment of the Australian Centre to Counter Child Exploitation in March 2018. With reference to its 2019 Guidelines on the implementation of the Optional Protocol, the Committee urges the State party to:

(a) Define and criminalize child prostitution and child pornography (child sexual exploitation) for all children in accordance with articles 1, 2 and 3 of the Protocol, and harmonize legislation across its states and territories;

(b) Ensure that crimes under the Protocol are investigated, and perpetrators prosecuted and sanctioned, in addition to trafficking cases;

(c) 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) Amend its legislation to exercise extraterritorial jurisdiction over sexual exploitation of all children under 18 years, including sexual exploitation in travel and tourism where child victims are between 16 and 18 years of age;

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

(f) 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 to:

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

(b) Make the National Firearms Agreement binding on all states and territories, allowing firearms licenses to only be issued to people over 18 years;

(c) Strengthen measures prohibiting the sale of arms to countries known to be, or potentially recruiting or using children in armed conflict and/or hostilities.

I. 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.

J. 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) 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.

K. 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.

V. 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 5th and 6th 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 of the Standing National Human Rights Mechanism by the State party and emphasizes that it should be adequately and continuously supported by dedicated staff 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 7th 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.
