



Law Council
OF AUSTRALIA

Australia's Draft Report to the Committee on the Convention on the Rights of the Child

Attorney-General's Department

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2017 Executive as at 1 January 2017 are:

- Ms Fiona McLeod SC, President
- Mr Morry Bailes, President-Elect
- Mr Arthur Moses SC, Treasurer
- Ms Pauline Wright, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Geoff Bowyer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

The Law Council is grateful to its National Human Rights Committee and the Law Society of New South Wales and for their assistance with the preparation of this submission.

Executive Summary

1. The Law Council is grateful for the opportunity to comment on Australia's joint fifth and sixth report under the Convention on the Rights of the Child (**CRC**), second report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and second report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (**Draft Report**).
2. The Law Council supports Australia's participation in the international human rights system. Pursuant to the Law Council's *Policy Statement on Human Rights and the Legal Profession*, the Law Council commits to promote the timely submission by Australia of periodic reports to international human rights treaty bodies, prepared in consultation with human rights and civil society organisations and in accordance with relevant reporting guidelines, as well as frank and constructive engagement by Australia with international human rights bodies.¹
3. While the Law Council commends the Australian Government for its timely preparation of the Draft Report, given it is not due until January 2018, it is not clear to the Law Council as to why such a tight timeframe (nine business days) was given for public comment on the Draft Report, without possibility of extension. The tight timeframe makes it difficult for non-government organisations to provide constructive suggestions for the Draft Report to ensure that an accurate picture of CRC implementation in Australia is presented to the United Nations (**UN**). This may undermine Australia's frank and constructive engagement with the Committee on the CRC (**Committee on the CRC**).
4. Given the tight timeframe, Law Council has not been able to comment on each aspect of the Draft Report but has addressed issues it considers to be particularly significant. For convenience, these comments follow the structure of the Draft Report. These comments have been informed by the Law Council's previously held positions and the Justice Project, which has examined barriers to access to justice for thirteen underserved groups in Australia, including children and young people.² Drawing on that work, the Law Council highlights the following laws, policies and practices that may exacerbate the full enjoyment of a child's rights under the CRC in Australia:
 - (a) the age of criminal responsibility being 10, despite repeated calls from civil society in Australia and UN bodies to raise it to at least 12, and given research about brain development of children;
 - (b) mandatory sentencing laws which can result in unjust and harsh sentences for minor offences, failing to account for a child's particular circumstances;
 - (c) widespread and systematic abuse in juvenile detention centres;
 - (d) bail laws and practices that justify legally a child's ongoing pre-trial detention if suitable accommodation cannot be found, or which penalise children with custodial sentences for breach of bail conditions;

¹ See Law Council of Australia, *Policy Statement on Human Rights and the Legal Profession: Key principles and commitments* (2016) 8 [27] <<https://www.lawcouncil.asn.au/policy-agenda/human-rights/human-rights-policy>>.

² See Law Council of Australia, *The Justice Project* (2017) <<https://www.lawcouncil.asn.au/justice-project>>.

- (e) immigration policies that require the detention of those seeking asylum that arrive by boat in offshore processing centres that are unsuitable for children;
 - (f) the high numbers of children entering out-of-home care, the drift of children from 'care to crime' and the sexual abuse of children in out-of-home care; and
 - (g) the inability of children to access free or subsidised legal assistance due to significant underfunding by Government, without which makes it difficult for children to meaningfully participate in the justice system.
5. The Law Council considers that review by the international experts of the Committee on the CRC should be viewed as an opportunity to candidly discuss challenges Australia faces with implementation of the CRC and previous recommendations of the Committee on the CRC, and to receive appropriate recommendations to address those challenges. In that spirit, the Law Council has identified some areas of the Draft Report that do not adequately portray the systemic nature of certain issues, including abuse in juvenile detention and issues facing children in out-of-home care.
6. Further, the Law Council has identified some areas in which Australia has not specifically responded to the Concluding Observations issued by the Committee on the CRC in 2012 (**2012 Concluding Observations**),³ including recommendations regarding policies on asylum seekers, abuses in juvenile detention, abuses committed against children by Australian companies abroad, and the non-therapeutic sterilisation of intersex children with children with disabilities.

³ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012).

II. General Measures of Implementation

Reservations and declarations

1. The Law Council is committed to advocating for Australia to withdraw its reservations to international human rights treaties,⁴ as it considers that these are a barrier to full implementation of treaty obligations and the underlying rights they promote. Therefore, the Law Council considers that Australia should withdraw its reservation to article 37(c) of the CRC, which requires children to be separated from adults in prison, unless it is in the child's best interests not to do so.⁵ The Law Council notes that Australia's reservation is in the following terms:

*... the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia.*⁶

2. The Law Council agrees with the Committee on the CRC's appraisal in its 2012 Concluding Observations that this reservation is unnecessary.⁷ The concerns raised by Australia are already addressed by article 37(c), which provides that every child deprived of liberty shall be separated from adults 'unless it is 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'. This would provide latitude, for example, to allow infants to remain with their incarcerated mothers.
3. At the very least, the Law Council considers that Australia's failure to withdraw its reservation to article 37 requires explanation in the Draft Report, given that the Committee on the CRC has previously recommended the reservation be withdrawn.⁸

Legislation and implementation

7. The Draft Report does not address the Committee on the CRC's recommendation to ensure effective remedies for violations of laws that implement CRC obligations or to introduce a comprehensive Children's Rights Act at the national level.⁹ The Law Council considers that the Government should explain why it has not responded to these recommendations.
8. The Law Council also notes the statement in the Draft Report that, '[t]he Parliamentary Joint Committee on Human Rights examines and reports on the human rights compatibility of all bills and legislative instruments that come before the Parliament'.¹⁰

⁴ See Law Council of Australia, *Policy Statement on Human Rights and the Legal Profession: Key principles and commitments* (2016) 7 <<https://www.lawcouncil.asn.au/policy-agenda/human-rights/human-rights-policy>>.

⁵ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 1 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>.

⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), reservation by Australia.

⁷ See Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [10].

⁸ *Ibid.*

⁹ *Ibid* [11]-[12].

¹⁰ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 2 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the->

For completeness, the Draft Report should mention that legislation is sometimes passed before the conclusion of review by the Parliamentary Joint Committee on Human Rights (**PJCHR**) or without responding to issues raised by the PJCHR regarding the legislation's human rights compatibility. This was also raised as a concern by the Human Rights Committee in its recent Concluding Observations on Australia.¹¹

Coordination (Art 4)

9. The Draft Report should explain why Australia has not responded to the Committee on the CRC's recommendation to consider establishing a technical body or mechanism with adequate resources to advise the Government concerning coherence of policies and strategies to implement the CRC.¹²

International Cooperation (Art 4)

10. The Draft Report mentions that 'Australia's foreign aid focuses on private sector engagement'.¹³ This does not address the Committee on the CRC's recommendation that Australia 'accelerate its roadmap' to achieve an Overseas Development Assistance (**ODA**) as a percentage of Gross National Income (**GNI**) of 0.7 per cent, the internationally agreed target.¹⁴ The Law Council considers that the Draft Report should specifically disclose Australia's current ODA as a percentage of its GNI.¹⁵

Child rights and the business sector

11. The Law Council considers that this section should address the Committee on the CRC's recommendations in its 2012 Concluding Remarks to implement the UN 'Protect, Respect and Remedy' Framework, which note that the rights of the child should be considered when exploring the relationship between business and human rights.¹⁶ The Draft Report does not mention any efforts to protect, respect and remedy business-related human rights abuses committed by Australian companies in Australia or extraterritorially. The Draft Report does not explain why, for example, Australia does not have a legal framework that regulates the human rights obligations of Australian corporations overseas.
12. Nor does the section mention non-legal mechanisms. For example, the existence of the Australian National Contact Point (**ANCP**) which is tasked with handling complaints made against Australian companies operating abroad that may be in breach of the

Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>.

¹¹ Human Rights Committee, *Concluding Observations on the sixth periodic report of Australia*, 121st sess, CCPR/C/AUS/CO/6 (9 November 2017) [11].

¹² See *ibid* [14].

¹³ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 6 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>.

¹⁴ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) 6 [26].

¹⁵ The Law Council adopts this view from the submission provided to it by the Law Society of New South Wales.

¹⁶ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) 6 [28].

Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises (**OECD Guidelines**). Relevantly, the OECD Guidelines urge multinational enterprises to contribute to the effective abolition of child labour and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.¹⁷ It should be noted in the Draft Report that the Government recently commissioned a review of the ANCP due to issues regarding its resourcing, independence and structure.¹⁸ The Draft Report should also state whether the Government commits to consider implementing the recommendations that emerge directed towards improving the ability of the ANCP to discharge its functions.

13. Further, the section omits several other developments relevant to child rights and the business sector that the Law Council considers should be included. First, the Draft Report should mention that JPCFADT's Interim Report on the Modern Slavery Inquiry expressed in-principle support for a broad definition of modern slavery to be included in the Modern Slavery Act, to help guide companies, businesses, organisations and governments on what to look for within their supply chains, including child labour.¹⁹
14. Second, the Government's proposed model for a reporting requirement for modern slavery in supply chains in Australia should also be mentioned.²⁰ The Law Council notes that the proposed model does not include child labour within the practices upon which companies should be required to report. The Law Council has recommended that it should, as 'the worst forms of child labour' is not otherwise covered in the Criminal Code's definition of trafficking, slavery and slavery-like practices upon which the definition of 'modern slavery', for the purposes of the reporting requirement, is based.²¹ The Government should consider providing the Committee on the CRC with clarity on whether or not it intends to capture child labour within its proposed reporting requirements as this is highly relevant to child rights and the business sector.
15. Finally, the Law Council considers that the Draft Report should also include an explanation as to why the Government did not adopt the recommendations of the Advisory Group and decided not to proceed with a National Action Plan on Business and Human Rights.

¹⁷ See Organization for Economic Cooperation and Development, *Guidelines for Multinational Enterprises 2011 Edition* (2011) chapter V (1)(c).

¹⁸ The Law Council provided a submission to this review: see Law Council of Australia, *Review of the Australian National Contact Point* (25 July 2017)

<<https://www.lawcouncil.asn.au/resources/submissions/australian-national-contact-point-2017-review->>.

¹⁹ Joint Parliamentary Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Modern Slavery in Global Supply Chains Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia* (August 2017).

²⁰ See Attorney-General's Department, *Modern Slavery in Supply Chains Reporting Requirement: Public Consultation Paper and Regulation Impact Statement* (2017)

<<https://www.ag.gov.au/Consultations/Documents/modern-slavery-in-supply-chains-reporting-requirement/modern-slavery-in-supply-chains-reporting-requirement-public-consultation-paper.pdf>>.

²¹ Law Council of Australia, *Modern Slavery in Supply Chains Reporting Requirement* (2 November 2017) 11-12 <<https://www.lawcouncil.asn.au/resources/submissions/modern-slavery-in-supply-chains-reporting-requirement>>.

III. Definition of the child (art 1)

Age of Majority – Criminal Responsibility

16. The Law Council is concerned that Australia's position of maintaining the minimum age of criminal responsibility at 10 years old²² is incompatible its obligations under the CRC.²³ No explanation is provided in the Draft Report as to why Australia does not intend to reconsider its position on the age for criminal responsibility being 10.
17. The Law Council considers that the Government should reconsider its position, especially in light of the Royal Commission into the Protection and Detention of Children in the Northern Territory's (**Royal Commission**) recommendations on lifting the age of criminal responsibility from 10 to 12.²⁴ The UN and Amnesty International Australia have called for raising the age of criminal responsibility to 12, consistent with international standards and brain development research.²⁵
18. The Law Council considers that raising the age of criminal responsibility to at least 12 would further Australia's commitments to fostering the best interests of the child as a party to CRC. However, raising the minimum age of criminal responsibility should not be used to justify the removal of the doctrine of *doli incapax* which presumes that a child under 14 does not know that his or her conduct is wrong unless proved otherwise.
19. At the very least, given the recommendations to lift the age of criminal responsibility to at least 12, the Law Council considers that the Draft Report should include a more fulsome explanation as to why the Government has no intention to change the age of criminal responsibility.

Minimum marriageable age

20. The Law Council supported Government's action to criminalise forced marriage in 2013, including by stipulating a minimum marriageable age in the *Criminal Code Act 1995* (Cth) (**Criminal Code**). However, despite this minimum marriageable age, section 272.17 of the Criminal Code, provides a defence to several child sex offences, and procuring or 'grooming' a child for sexual activity, where at the time of the offence the child and the offender were in a valid and genuine marriage.
21. For the purposes of 'forced marriage', the Criminal Code defines 'marriage' to include a marriage recognised under the law of a foreign country. While nearly all jurisdictions within the Asia Pacific region set the minimum marital age at over 16, many jurisdictions permit persons younger than the minimum age to be married by order of

²² Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 10 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>.

²³ See for example, Committee on the Rights of the Child, *Concluding Observations: United Kingdom and Northern Ireland*, 49th sess, CRC/C/GBR/CO/4 (20 October 2008) [77](a).

²⁴ Royal Commission into Children and Board of Inquiry into the Protection and Detention of Children I the Northern Territory, *Final Report* (17 November 2017) 28 <<https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-1.pdf>>.

²⁵ See Andrea Booth, 'The age of criminal responsibility must rise, say experts after 11-year old's murder charge', NITV (online), 16 February 2016 . See also Queensland Family and Child Commission, *The Age of Criminal Responsibility in Queensland Information Paper* (2017).

the court for reasons such as religion. There may also be circumstances in some countries where marriage of persons under 16 pursuant to customary law will fall within the definition of a valid and genuine marriage for the purposes of this defence.

22. Given that this defence effectively lowers the minimum marriageable age for children who come to Australia or Australian children that have been married in foreign jurisdictions, the Law Council considers that it should be repealed.²⁶ Further, this defence should be mentioned in the Draft Report, with an explanation as to why it remains in the Criminal Code and any intention by the Government to repeal it.

IV. General principles (Arts 2, 3, 6, 12)

Best Interests of the child

23. In its 2012 Concluding Observations, the Committee on the CRC urged Australia to strengthen its efforts to ensure that 'best interests of the child' is applied to all policies that affect children. Specifically, the Committee on the CRC emphasised that:

*In implementing this recommendation, the Committee stresses the need for the State party to pay particular attention to ensuring that its policies and procedures for children in asylum seeking, refugee and/or immigration detention give due primacy to the principle of the best interests of the child.*²⁷

24. The Law Council considers that the Government's progress in implementing this recommendation, or failure to do so, should be specifically addressed in the Draft Report. In addition, the Draft Report should also address the Committee on the CRC's recommendation to develop procedures and criteria to provide guidance for determining the best interests of the child, in every area, and to disseminate them to public and private social welfare institutions, courts of law, administrative authorities and legislative bodies.²⁸

Respect for the views of the child (art 12)

Legal and administrative decisions

25. The Law Council considers that a major omission of the Draft Report is its failure to mention the legal aid and assistance crisis in Australia and its impact on children.
26. Access by children to legal assistance is relevant to Australia's obligations under article 12, which requires children to be 'provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body', and article 40, where any child accused of violating the penal law has a right to 'legal or other appropriate assistance in the preparation and presentation of his or her defence'.
27. The rights to be heard in judicial and administrative proceedings and be afforded legal assistance in the preparation of a criminal defence are mostly illusory without

²⁶ See also *ibid.*

²⁷ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) 8 [32].

²⁸ *Ibid.*

adequate funding for legal assistance services. The UN Office of the High Commissioner for Human Rights has identified that:

As children are usually at a disadvantage in engaging with the legal system, whether as a result of inexperience or lack of resources to secure advice and representation, they need access to free or subsidized legal and other appropriate assistance to effectively engage with the legal system. Without such assistance, children will be largely unable to access complex legal systems that are generally designed for adults. Free and effective legal assistance is particularly important for children deprived of their liberty.²⁹

28. However, legal aid and legal assistance in Australia has been consistently underfunded in Australia by consecutive Governments over the past twenty years,³⁰ disproportionately impacting the ability of children to have access to justice. A study of Legal Aid NSW's 50 highest service users revealed that, between 2005 and 2010, 80 per cent were children and young people aged 19 years and under and 82 per cent had their first contact with Legal Aid NSW by the age of 14.³¹
29. There appeared to be a strong relationship between Legal Aid NSW's high service users and the experience of family violence, abuse and neglect, with 72 per cent experiencing abuse or neglect at home or witnessing family violence.³² Further, the Productivity Commission has found that 'legal assistance funding for civil matters has not kept pace with increasing costs and demand',³³ especially in relation to domestic violence and care and protection of children. Providing legal assistance for children is also relevant to the Australia's obligation under article 19 to take measures to protect children from violence, abuse and neglect.
30. While the Draft Report notes that 'in family law courts... [an] independent children's lawyer may be appointed for a child...',³⁴ the Law Council considers that this does not accurately reflect that is often unlikely an independent children's lawyer will be appointed, given current resourcing. The Law Council notes that the Productivity Commission has observed that the 'gap in independent lawyer services for children was especially worrying'.³⁵ Therefore, the Law Council considers that, as currently drafted, this section of the Draft Report presents a misleading image of the extent to which a child is able to express their views in legal and administrative proceedings in Australia.
31. The Law Council also considers that Government should address the Committee on the CRC's recommendation to take all necessary measures to ensure guarantee for

²⁹ *Access to justice for children*, UN Doc A/HRC/25/35, 13.

³⁰ Every year, one in four Australians will experience a legal problem substantial enough to require a lawyer. In 2014, 2.5 million Australians were living below the poverty line but at current funding levels many people living below the poverty line cannot access legal aid. Fewer than 74,000 legal aid grants were offered in 2014 – which means 25 per cent of the population with serious legal problems, 10 per cent living below the poverty line, but only 0.3 per cent granted legal aid: see Law Council of Australia, *Legal Aid Matters – the Facts* (2017) <<http://www.legalaidmatters.org.au/>>.

³¹ Pia van de Zandt and Tristan Webb, *High service users at Legal Aid NSW: Profiling the 50 highest users of legal services* (Legal Aid NSW, 2013) 3-4.

³² *Ibid* 3.

³³ Productivity Commission, *Access to Justice Arrangements – Inquiry Report* (2014) 30.

³⁴ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 12 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>.

³⁵ Productivity Commission, *Access to Justice Arrangements – Inquiry Report* (2014) 30.

respect for the view of children at all stages of the migration process including irregular migration.³⁶

V. Civil rights and freedoms

Birth registration, name and nationality (Art 7)

32. The Law Council is concerned that the Draft Report may be misleading insofar as it states that the provisions with the *Australian Citizenship Act 2007* (Cth) which provide for the cessation of Australian citizenship 'do not apply to young children'.³⁷ This may require clarification as the Draft Report itself notes that sections 33AA and 35 can apply to children as young as 14 and section 35A can apply to children as young as 10.³⁸
33. The Law Council considers that this section should also respond to the Committee on the CRC's recommendation in its 2012 Concluding Remarks to review its progress in the implementation of the recommendations of the *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing Them Home Report)*, to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships.³⁹

Health and health services (Art 24)

Sterilisation of children with intersex variations

34. The Draft Report does not explain why the sterilisation of both intersex and children with disabilities, except where required for legitimate health reasons of the intersex child or child with a disability, has not been prohibited by Australia. In its 2012 Concluding Observations, the Committee on the CRC was concerned that Australia had not introduced legislation prohibiting such sterilisation, noting it was discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities.⁴⁰
35. Nor does the Draft Report explain why the Government does not propose adopting the recommendations of Senate Standing Committee on Community Affairs in its 2013 report on its *Inquiry into the involuntary or coerced sterilisation of people with disability and intersex people*.⁴¹ The Law Council considers that this requires an explanation, noting the Human Rights Committee's recent recommendation that:

³⁶ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) 8 [34].

³⁷ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 14 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>

³⁸ The Law Council adopts this view directly from the submission provided to it by the Law Society of New South Wales submission.

³⁹ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) [38].

⁴⁰ *Ibid* [57]-[58].

⁴¹ See Senate Standing Committee on Community Affairs, Parliament of Australia, *Involuntary or coerced sterilisation of intersex people in Australia* (25 October 2013)

[Australia] should give due consideration to the recommendation made by the Senate Standing Committee on Community Affairs in its 2013 inquiry report... and move to end irreversible medical treatment, especially surgery, of intersex infants and children, who are not yet able to provide fully informed and free consent, unless such procedures constitute an absolute medical necessity'.⁴²

Bullying (Art 29)

Cyberbullying

36. This section does not mention the Senate Legal and Constitutional Affairs Committee's inquiry into the adequacy of existing offences in the Commonwealth Criminal Code and of State and Territory criminal laws to capture cyberbullying. The Law Council has previously expressed that the existing offences in the Criminal Code are adequate to capture cyberbullying and has urged Government to ensure any response to cyberbullying is consistent with the rights of the child as enshrined in CRC.⁴³

VI. Family environment and alternative care

Separation from Parents and Alternative Care (Arts 9, 25)

37. The Draft Report states that 'Australia acknowledges ongoing issues with high numbers of children entering out-of-home care'.⁴⁴ While this frankness regarding the numbers is welcome, the Law Council considers that this section does not adequately articulate and acknowledge the issues that face children that enter out-of-home care in Australia that may adversely affect their rights under the CRC.

38. First, children in out-of-home care have high levels of contact with the criminal justice system, leading to 'the almost inevitable progression to the adult corrections system'.⁴⁵ This 'care to crime' drift has been attributed in part to systemic issues regarding the child protection system in Australia, including 'badly trained and poorly supported staff, inadequate matching of children of different ages, experiences and background (offenders and victims of abuse are often placed together), and a readiness to call police to manage children's behaviour'.⁴⁶ For example, the mandatory reporting to police for any property damage to care premises by children, even minor incidents.

39. The use of law enforcement as a behaviour management strategy increases the interaction children have with the criminal justice system, leading to potentially severe

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index>.

⁴² Human Rights Committee, *Concluding Observations on the sixth periodic report of Australia*, 121st sess, CCPR/C/AUS/CO/6 (9 November 2017) 5 [26].

⁴³ See Law Council of Australia, *The adequacy of existing offences under the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying* (20 October 2017) 7-8

<<https://www.lawcouncil.asn.au/resources/submissions/the-adequacy-of-existing-offences-in-the-commonwealth-criminal-code-and-of-state-and-territory-criminal-laws-to-capture-cyberbullying>>.

⁴⁴ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 20 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>.

⁴⁵ Dr Katherine McFarlane, 'From Care to Custody: Young women in out-of-home care in the criminal justice system' (2010) 22(2) *Current Issues in Criminal Justice* 348.

⁴⁶ Dr Katherine McFarlane, 'The faulty child welfare system is the real issue behind our youth justice crisis', *The Conversation* (online), 13 February 2017 <<https://theconversation.com/the-faulty-child-welfare-system-is-the-real-issue-behind-our-youth-justice-crisis-72217>>.

consequences, like incarceration. This is potentially inconsistent with Australia's obligations under article 37 to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence, including to consider alternatives to judicial proceedings.

40. Second, the Law Council notes that children in out-of-home care are often victims of child sex abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse reported that, as of March 2016, the Commission 'held over 4,700 private sessions, in which [out-of-home] care was the largest category of institutions identified, constituting over 40 percent of all reports of child sexual abuse'.⁴⁷ This is particularly concerning given the abovementioned large numbers of children in out-of-home care in Australia. Addressing child sex abuse in out-of-home care is also relevant to Australia's obligations under article 39, which provide that States Parties shall take all appropriate measures to promote recovery of a child victim of exploitation or abuse, in an environment which fosters the health, self-respect and dignity of the child.

Juvenile Justice and Detention (art 25)

Detention

41. The Committee on the CRC has also previously raised its concerns with the serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children in the criminal justice system.⁴⁸ The Law Council notes that, for example, in the Northern Territory, 94% of detainees in youth detention are Aboriginal or Torres Strait Islander.⁴⁹ The Law Council considers that, now the *Final Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory (Royal Commission Report)* has been released, the Draft Report should acknowledge the Royal Commission's findings of 'shocking and systemic failures occurred over many years [which] were known and ignored at the highest levels'.⁵⁰ The Draft Report should also mention the Government's undertaking to carefully consider the Royal Commission's findings directed to the Commonwealth, and commitment to ensuring it carefully, comprehensively and appropriately responds to the substantial work of the Royal Commission.⁵¹
42. The Law Council considers that the Government should commit to adopting the Royal Commission's recommendation that no child under 14 should be sentenced to detention, except in the most serious cases.⁵² If not, then justification for not adopting

⁴⁷ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care* (2016) 4.

⁴⁸ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) 7 [29].

⁴⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Interim Report* (2017) 9.

⁵⁰ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Royal Commission and Board of Inquiry into protection and detention systems of the Northern Territory has revealed systemic and shocking failures* (17 November 2017) <<https://childdetentionnt.royalcommission.gov.au/media-centre/Documents/Royal-Commission-Board-Enquiry-Media-release.pdf>>.

⁵¹ *Ibid.*

⁵² Royal Commission into Children and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (17 November 2017) 28 <<https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-1.pdf>>.

this recommendation should be provided to the Committee on the CRC, given the CRC makes clear that imprisonment should be a measure of last resort for children.⁵³

43. Further, the Draft Report should acknowledge how widespread allegations of mistreatment and abuse of juveniles in detention have been nationwide. Allegations of abuse and mistreatment against children in detention have arisen across Australian jurisdictions.⁵⁴ The Law Council has previously highlighted ‘the pressing need for all jurisdictions to conduct independent, arms-length reviews of their juvenile detention systems’.⁵⁵
44. This reflects an endemic and systemic issue which should be mentioned in the Draft Report, especially, given the Committee on the CRC’s observation in its 2012 Concluding Observations that ‘despite ... earlier recommendations, [Australia’s] juvenile justice system ... still requires substantial reforms for it to conform to international standards’.⁵⁶ The Law Council considers that the Draft Report should include information about specific concerns in places of detention (including with regards to isolation, use of force and restrictive practices) and outline how it intends that children, specifically, will benefit from the implementation of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵⁷

Mandatory Sentencing

45. The Law Council considers that the Draft Report should specifically address the impact of mandatory sentencing laws on children and young people. The Committee on the CRC’s 2012 Concluding Observations recommended the abolition of mandatory sentencing laws in jurisdictions where they still existed or were threatened (then, WA and Victoria). However, mandatory sentencing is not mentioned in the Draft Report at all. This is despite the fact that mandatory sentencing laws that affect children and young people are still in force in Australia. For example, the mandatory sentencing laws in the Northern Territory caused then 19-year-old Zak Grieve to be given a life sentence (20 years) for a murder he did not physically commit and for

⁵³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) article 37(b).

⁵⁴ Including at Reiby Juvenile Justice Centre in NSW, Bimberi Youth Detention Centre in the ACT, Cleveland Youth Detention Centre in Queensland, and Barwon Prison in Victoria: see Amnesty International, ‘Not Just Don Dale: New Canberra child abuse allegations confirm need for national overhaul of “injustice” system’ (Media Release, 4 July 2017) <<https://www.amnesty.org.au/not-just-don-dale-new-canberra-child-abuse-allegations/>>.

⁵⁵ Law Council of Australia, ‘Disturbing images from Qld underscore the need to review youth detention Australia-wide’ (Media Release, 19 August 2016) <<https://www.lawcouncil.asn.au/media/mediareleases/disturbing-images-from-qlld-underscore-the-need-to-review-youth-detention-australia-wide>>.

⁵⁶ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) 20 [82].

⁵⁷ The Law Council adopts this view directly from the submission provided to it by Law Society of NSW. For the Law Council’s views on implementing OPCAT in Australia, see the Law Council’s submission to the Australian Human Rights Commission, *Response to Consultation Paper on implementing OPCAT in Australia* (26 July 2017) <<https://www.lawcouncil.asn.au/resources/submissions/response-to-consultation-paper-opcat-in-australia>> and the Law Council’s submission to the National Children’s Commissioner and the Australian Human Rights Commission, *Optional Protocol to the Convention against Torture in the context of Youth Justice Detention Centres* (27 May 2016) <<https://www.lawcouncil.asn.au/resources/submissions/3152-optional-protocol-to-the-convention-against-torture-in-the-context-of-youth-justice-detention-centres>>.

which he was not present.⁵⁸ In addition, mandatory sentencing laws are again being considered in Victoria.⁵⁹

46. The Law Council also notes a recent attempt by the Government to introduce mandatory sentencing for child sex offenders, through the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) 2017 Bill (Bill)*, which is not mentioned in the Draft Report. While the mandatory sentencing provisions do not apply to children, the Law Council has previously expressed its opposition to the Bill's mandatory sentencing provisions as they may nonetheless criminalise normal young adult behaviours.⁶⁰

Bail laws

47. The Draft Report does not mention the impact of bail laws and practices that affect children. Although bail laws predominately operate at the State and Territory level, the Government, nonetheless, has an obligation under the CRC to ensure that a child is only subjected to imprisonment as a measure of last resort and for as short a time as possible.⁶¹ The Law Council's Justice Project has identified bail laws and a lack of support programs as exacerbating access to justice barriers for children and young people.⁶² In particular, they operate to further disadvantage already marginalised groups of children and young people, including Aboriginal and Torres Strait Islander people, persons experiencing homelessness, and children in out-of-home care.
48. For example, in the Northern Territory, since the introduction of the offence of breach of bail in 2011, there has been a 'substantial growth in breaches of bail across males, females and all age groups',⁶³ rising from 66 detention orders following a breach of bail in 2012-13 to 94 detention orders in 2015-6.⁶⁴ The majority of detainees in the Northern Territory are Aboriginal detainees and are being held on remand and a significant proportion is in detention for breach of a non-criminal condition of bail.⁶⁵
49. Children who experience homelessness are also disadvantaged by State and Territory bail laws, as bail is dependent on the child being released to safe and suitable accommodation. For example, in NSW, a common bail condition is 'to reside as Family and Community Services directs' but, if no suitable accommodation is found, the child remains in custody.⁶⁶ The NSW Committee on Children and Young People has

⁵⁸ For a recent example, see (President of the Law Council) Fiona McLeod SC, *Grieve case shows mandatory sentencing is failing our whole community* (1 September 2017) *The Australian* <<http://www.theaustralian.com.au/opinion/grieve-case-shows-mandatory-sentencing-is-failing-our-whole-community/news-story/565640b25d5735a338c8b8decdbc586a>>.

⁵⁹ See for example, Loretta Florance, 'Mandatory sentencing: Opposition to introduce Victoria's 'toughest' ever penalties' (11 April 2017) *ABC News* <<http://www.abc.net.au/news/2017-04-11/mandatory-minimum-sentences-victorian-opposition-proposal/8433096>>.

⁶⁰ See Law Council of Australia, *Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2017* (6 October 2017) 11 <<https://www.lawcouncil.asn.au/resources/submissions/crimes-legislation-amendment-sexual-crimes-against-children-and-community-protection-measures-bill-2017>>.

⁶¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) article 37(b).

⁶² Law Council of Australia, *The Justice Project Children and Young People Consultation Paper* (August 2017) 3 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>>.

⁶³ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Interim Report* (2017) 12.

⁶⁴ *Ibid.*

⁶⁵ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Interim Report* (2017) 41.

⁶⁶ Dr Katherine McFarlane, 'NSW bail laws mean well but are landing homeless kids in prison', *The*

identified that the failure of support and care services, particularly with respect to children in out-of-home care has contributed to the increase in children on remand.⁶⁷ Further, bail laws such as section 28 of the *Bail Act 2013* (NSW) may operate to have a discriminatory effect on children where a child without suitable accommodation may be detained in circumstances where a homeless adult, charged with a like offence, would not.⁶⁸

50. The Law Council's Justice Project has identified that there remains a need for further development of supported bail programs as alternatives to custodial orders for children and young people on bail, particularly, those with complex needs and/or in out-of-home care. The Law Council considers that the Draft Report should set out the Government's strategy for ensuring that bail laws do not operate to detrimentally impact the rights of the child, noting its obligations under CRC to impose imprisonment except as a measure of last resort and to consider alternatives to dealing with children through judicial proceedings in a manner appropriate to a child's well-being and proportionate both to their circumstances and the offence.⁶⁹

Abuse, neglect and psychological recovery (Arts 19, 39)

51. The Draft Report notes that in 2015-16, about 162,000 children received child protection services.⁷⁰ The Law Council considers that this figure should be put in context, noting that the rate of children receiving child protection services, including investigations, care and protection orders or out of home care, has risen by approximately 20 per cent from 2012 to 2016 – from 135,139 children in 2012-13 to 162,175 children 2015-6.⁷¹
52. This section should also provide general data on the reasons why children are placed in out-of-home care, to respond to the recommendation made by the Committee on the CRC in its 2012 Concluding Observations that such data should be provided. The Law Council considers that the Government should also undertake to investigate this sharp increase in the rate of children receiving child protection services, relevant to its obligation in article 25 of the CRC to undertake a periodic review of treatment provided to children receiving care and protective services.

VI. Disability, basic health and welfare

Conversation (online), 16 December 2016 <<https://theconversation.com/nsw-bail-laws-mean-well-but-are-landing-homeless-kids-in-prison-68490>>. See also Law Council of Australia, *The Justice Project: Children and Young People Consultation Paper* (August 2017) 21 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>>.

⁶⁷ See also Law Council of Australia, *The Justice Project: Children and Young People Consultation Paper* (August 2017) 19 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>>.

⁶⁸ Dr Katherine McFarlane, 'NSW bail laws mean well but are landing homeless kids in prison', The Conversation (online), 16 December 2016 <<https://theconversation.com/nsw-bail-laws-mean-well-but-are-landing-homeless-kids-in-prison-68490>>. See also Law Council of Australia, *The Justice Project: Children and Young People Consultation Paper* (August 2017) 21 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>>.

⁶⁹ See *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) articles 37(b) and 40(3)(b).

⁷⁰ Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 23 <[https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf](https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf)>.

⁷¹ Australian Institute of Health and Welfare, *Child Protection Australia 2015-2016* (2017) 17.

Health and health services

53. The Law Council considers that the Draft Report should set out the specific initiatives it is undertaking to 'close the gap' on the health of Aboriginal and Torres Strait Islander children.

IX. Special protection measures

Child Migrants, Asylum seekers and refugees

54. The Draft Report should explain why the Government has not implemented any of the recommendations in relation to asylum-seeking and refugee children made by the Committee on the CRC in its 2012 Concluding Observations.⁷²

Guardianship of unaccompanied migrant children

55. This section notes that, under current arrangements, the Minister for Immigration and Border Protection is the legal guardian for unaccompanied minors who arrive in Australia. The section does not respond to the Committee on the CRC's recommendation in its 2012 Concluding Observations that Australia should create an independent guardianship institution for unaccompanied immigrant children.⁷³
56. The Law Council and others have also called for an independent guardian to be appointed given that the Minister's role is necessarily political and interferes with decisions that are in the best interests of the child. The Special Rapporteur on Children has echoed these calls, finding that 'child protection is more important than border protection'.⁷⁴ If the Government will not create an independent guardian to safeguard the rights of unaccompanied migrant and asylum-seeking children, then the rationale for not doing so should be explained in the Draft Report.

Children in Immigration Detention

57. While this section addresses the number of children held in Immigration Residential Housing, Immigration Transit accommodation or Alternative Places of Detention in Australia, it does not appear to address children held in offshore detention. According to the Department of Immigration and Border Protection, as at 30 September 2017, there were 280 people, including 43 children, residing at the Regional Processing Centre (**RPC**) in Nauru.⁷⁵ The numbers of children currently being detained at the RPC on Nauru should be mentioned in the Draft Report.
58. In addition, the Draft Report should also respond to the strong concerns regarding the health and wellbeing of children residing in Nauru under regional processing arrangements. The Law Council notes concerns from the group of paediatricians who visited Nauru in 2015 and concluded that 'Nauru is an inappropriate place for asylum seeking children to live, either in the detention centre or the community' and that under

⁷² Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [81].

⁷³ *Ibid* [81](c).

⁷⁴ François Crépeau, Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, UN Doc A/HRC/35/25/Add.3 (24 April 2017) 10.

⁷⁵ Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (30 September 2017) 4.

no circumstances should children be detained there.⁷⁶ Similar concerns have been raised by the UN Special Rapporteur on Children.⁷⁷

Homeless children

59. The Law Council considers that the Draft Report should outline the measures that the Government intends to take to address the increase in the number of homeless children. The Law Council considers that identification of these strategies is essential given that children and young people experience high rates of homelessness in Australia. The Law Council notes that, on the 2011 Census night, young people aged under 25 years represented 42 per cent of homeless people in Australia, with 17 per cent of all homeless persons being children aged under 12 years.⁷⁸ Further, between 2015 and 2016, 52 per cent of persons seeking assistance from specialist homeless services (43,165 people) were aged between 15 and 24 years.⁷⁹
60. As currently drafted, the Draft Report merely references expenditure amounts without addressing the concerns raised in the 2012 Concluding Observations regarding the need for specific strategies to combat homelessness for Aboriginal and Torres Strait Islander children, children from newly arrived communities, children leaving care, and children in regional and remote communities.⁸⁰ The Law Council's Justice Project has also identified that these groups tend to be overrepresented among the homeless.⁸¹

X. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Prevention of the sale of children, child prostitution and child pornography

61. The Law Council notes that the Draft Report's Statement that, 'in July 2017, the Australian Government awarded a total of \$500,000 to four specialist non-government organisations to prevent human trafficking and slavery-related crimes in Australia'.⁸² The Law Council considers that the Draft Report should mention specifically that the Government has moved from funding non-government organisations in the anti-slavery and trafficking space from on a three-year basis to a one-year basis.

⁷⁶ Australian Human Rights Commission, *Asylum seekers, refugees and human rights: Snapshot Report* (2nd edition, 2017) 38.

⁷⁷ François Crépeau, *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru*, UN Doc A/HRC/35/25/Add.3 (24 April 2017) 13-15.

⁷⁸ Homelessness Australia, *Homelessness Statistics* (2012)

<<http://www.homelessnessaustralia.org.au/index.php/about-homelessness/homeless-statistics>>.

⁷⁹ Australian Institute of Health and Welfare, *Young people presenting alone*

<<http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2015-16/presenting-alone/>>.

⁸⁰ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, CRC/C/AUS/CO/ (28 August 2012) [71].

⁸¹ Law Council of Australia, *The Justice Project: Homeless Persons Consultation Paper* (August 2017) 7

<[https://www.lawcouncil.asn.au/files/web-](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Homeless%20Persons.pdf)

[pdf/Justice%20Project/Consultation%20Papers/Homeless%20Persons.pdf](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Homeless%20Persons.pdf)>.

⁸² Attorney-General's Department, *Australia's draft report to the UN Committee on the Rights of the Child* (November 2017) 42 <<https://www.ag.gov.au/Consultations/Documents/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child/Australias-draft-report-on-the-Convention-on-the-Rights-of-the-Child.pdf>>.

XII. Ratification of other Human Rights Instruments

62. The Law Council notes that the Committee on the CRC has encouraged the Government to accede to the Optional Protocol to the Convention on the Rights of the Child on a Communications procedure, and all core human rights instruments, including:

- (a) the International Convention for the Protection of All Persons from Enforced Disappearance;
- (b) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and
- (c) the International Labour Organization's Convention No. 189 on Domestic Workers.

63. The Law Council likewise encourages the Government to commit to ratifying these instruments.⁸³

⁸³ See Law Council of Australia, *Policy Statement on Human Rights and the Legal Profession: Key principles and commitments* (2016) 7 [24] <<https://www.lawcouncil.asn.au/policy-agenda/human-rights/human-rights-policy>>.