### C. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)

**Preservation of identity**

37. The Committee is concerned at the large numbers of Aboriginal and Torres Strait Islander children being separated from their homes and communities and placed into care that, inter alia, does not adequately facilitate the preservation of their cultural and linguistic identity. The Committee further notes that a child’s citizenship can be revoked where a parent renounces or loses citizenship in the State party.

38. The Committee recommends that the State party review its progress in the implementation of the recommendations of its “Bringing Them Home Report”, including as recommended by the United Nations Human Rights Committee and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships. With reference to article 8 of the Convention, the Committee further recommends that the State party undertake measures to
Corporal punishment

43. The Committee regrets that notwithstanding its previous recommendation (CRC/C/15/Add.268, para. 36), corporal punishment, in the home and some schools and alternative care settings, remains lawful throughout the State party under the label of so-called “reasonable chastisement”.

44. The Committee reiterates its previous recommendation (CRC/C/15/Add.268, para. 36) that the State party:

(a) Take all appropriate measures to explicitly prohibit corporal punishment in homes, in public and private schools, detention centres and alternative care settings in all states and territories;

(b) Strengthen and expand awareness-raising and education campaigns, in order to promote positive and alternative forms of discipline and respect for children’s rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment.

D. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Family environment

49. While welcoming the State party’s ongoing efforts to strengthen the support provided to families, the Committee is
concerned that the number of children in care continues to rise and that the availability and quality of childcare remain inadequate.

50. The Committee recommends that the State party undertake a systemic evaluation of the efficacy of existing measures for all family types and all children. In doing so, it recommends that the State party collect data disaggregated according to, inter alia, ethnicity, gender, socio-economic status, and geographic location, and correlate the reduction and/or increase in rates of children placed in care vis-à-vis the measures provided to the families of these children. It further recommends that the findings of such an evaluation be used to guide the State party’s implementation of appropriate measures to strengthen current programmes of family support, including ensuring the availability and affordability of quality childcare facilities, the adequacy of family assistance payments and of the recently approved paid parental leave entitlement.

Children deprived of their family environment

51. The Committee is deeply concerned at the significant increase, of approximately 51 per cent between 2005 and 2010, in the number of children placed in out-of-home care and the absence of national data documenting the criteria and decision leading to the placement of a child in care. The Committee is also seriously concerned that there are widespread reports of inadequacies and abuse occurring in the State party’s system of out-of-home care, including:

(a) Inappropriate placements of children;
(b) Inadequate screening, training, support and assessment of care givers;

(c) Shortage of care options; poorly supported home-based carers and mental health issues exacerbated by (or caused in) care;

(d) Poorer outcomes for young people in care than for the general population in terms of health, education, well-being and development;

(e) Abuse and neglect of children in care;

(f) Inadequate preparation provided to children leaving care when they turn 18;

(g) Aboriginal and Torres Strait Islander children who are often placed outside their communities, and in that context, the need for more Aboriginal care providers.

52. The Committee urges the State party to take all necessary efforts to examine the root causes of the extent of child abuse and neglect as well as to provide general data on the reasons that children are being placed in care with a view to addressing them in order to reduce the number of such children. It further reiterates its previous recommendations to the State party that it take measures to strengthen the current programmes of family support, inter alia, by targeting the most vulnerable families, in order to reduce the number of children placed in out-of-home care and, preferring family-based care if needed.
Furthermore, the Committee calls upon the State party to provide all the necessary human, technical and financial resources required for improving the situation of children in alternative care placements and to:

(a) Periodically review placements as required under article 25 of the Convention and in doing so to pay particular attention to signs of maltreatment of children;

(b) Develop criteria for the selection, training and support of childcare workers and out-of-home carers and ensure their regular evaluation;

(c) Increase the number of social workers to ensure that the individual needs of each child can be effectively addressed;

(d) Ensure equal access to health care and education for children in care;

(e) Establish accessible and effective child-friendly mechanisms for reporting cases of neglect and abuse and commensurate sanctions for perpetrators;

(f) Adequately prepare and support young people prior to their leaving care by providing for their early involvement in the planning of transition as well as by making assistance available to them following their departure;

(g) Observe the Committee’s previous recommendations to fully implement the Indigenous Child Placement Principle and
intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.

Adoption

53. The Committee is concerned that only three out of eight jurisdictions in the State party require the consent of the adopted child (as of 12 years of age) prior to adoption. Furthermore, the Committee is concerned that adoption proceedings are not undertaken with the best interests of the child as the paramount consideration.

54. The Committee recommends that the State party undertake measures to ensure that all its states and territories amend legislation on adoption, as required, in order to comply with its obligations under the Convention and the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption to give full effect to the provisions on consent, access to legal representation in adoption proceedings, and to ensure that adoption proceedings are decided upon with the best interests of the child as the paramount consideration.

Abuse and neglect

55. The Committee welcomes the amendment to the national Family Law, which prioritizes the safety of children in the family law system while continuing to promote a child’s right to a meaningful relationship with both parents where this is safe. However, it notes that the rates of domestic violence continue to be high and that the training approaches adopted by the State
56. The Committee recommends that the State party prioritize early intervention approaches, including at the antenatal period, to provide support to families in situations of heightened vulnerability and prevent or mitigate abuse and neglect of children and violence in the home. It further recommends that the State party complement this with a national review of stigma-free best practices policy and programmes that prioritize and support positive reunification of child victims of abuse with their families at the various stages of child-protection decision-making, including through intensive family support services.

E. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

57. The Committee appreciates the State party’s assessment of its disability support system with its Productivity Commission in July 2011. However, taking note of the findings of the Commission, the Committee shares the concerns that the current disability support system is “under-funded, unfair, fragmented and inefficient, and gives people with a disability little choice and..."
no certainty of access to appropriate supports, with children with disabilities frequently failing to receive crucial and timely early intervention services, support for life transitions, and adequate support for the prevention of family or carer crisis and breakdown.” Furthermore, while noting the State party’s five-year implementation of its Disability Standards for Education 2005, the Committee remains concerned that a significant disparity remains between educational attainments for children with disabilities compared to children without disabilities. Further elaborating on its concerns on the non-therapeutic sterilization stated earlier in this report, the Committee is seriously concerned that the absence of legislation prohibiting such sterilization is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities. Furthermore, the Committee is concerned that the State party’s legislation allows for disability to be the basis for rejecting an immigration request.

58. In light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party:

(b) To strengthen support measures for parents to care for their children with disabilities, and, where such placement in care is considered, to ensure that it is done with full regard to the principle of the best interests of the child;
| 65. | Emphasising the importance of access to child and youth friendly mental health support and services, the Committee recommends that the State party:  
(a) Follow-up on the Australian Institute of Health and Welfare health study with measures designed to address the direct and underlying causes of the high rates of mental health problems in children and young people, focusing especially on suicides and other disorders linked to, inter alia, substance abuse, violence and inadequate quality of care in alternative care settings;  

### Children of incarcerated parents  
72. While noting as positive that the State party has legislation requiring courts to take into account “the probable effect” of a sentence on a convicted person’s family, it notes with concern that Aboriginal Australians are severely overrepresented in prison, with a particularly serious overrepresentation of Aboriginal women often resulting in their children being subject to ad-hoc and insecure placement in alternative care that is not culturally appropriate and with low rates of family reunification.  
73. With reference to the Committee’s recommendations during its day of general discussion in 2011 on the “Rights of Children of Incarcerated Parents, the Committee recommends that the State party:  
(a) Review all judicial and administrative arrangements to prevent imprisonment by providing support services to families |
at risk and use diversion and other alternative measures to avoid imprisonment and separation of children from their family members;

(b) Resource and support the implementation of targeted programmes which facilitate tackling the root causes of the offences committed and providing preventive and early intervention services to families at risk;

(c) Where it is in the child’s best interests, resource and support the maintenance of the relationship between parent(s) and child throughout the duration of the latter’s incarceration;

G. Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), and 32-36 of the Convention)

Asylum-seeking and refugee children

80. The Committee notes the State party’s efforts to move children and vulnerable families in immigration detention facilities to alternative forms of detention, including community-based detention arrangements and immigration transit accommodation. However, the Committee is deeply concerned about:

(a) The State party’s Migration Act stipulating the mandatory detention of children who are asylum seeking, refugees or in an irregular migration situation, without time limits and judicial
review;

(b) The best interests of the child not being the primary consideration in asylum and refugee determinations and when considered, not consistently undertaken by professionals with adequate training on determination of best interests;

(c) The high risk of conflict of interest where the legal guardianship of unaccompanied minors is vested with the Minister of Immigration and Citizenship who is also responsible for immigration detention and determinations of refugee and visa applications;

d) Notwithstanding the August 2011 decision of its High Court (Plaintiff M70/2011 v. Minister for Immigration and Citizenship), which held that the State party’s attempted “refugee swap” with Malaysia was in violation of international law and its own domestic law to provide access for asylum seekers to effective procedures for assessing their need for protection; provide protection for asylum seekers pending determination of their refugee status; and provide protection for persons given refugee status pending their voluntary return to their country of origin or their resettlement in another country, the State party continues to pursue its policy of so-called “offshore processing” of asylum and refugee claims.

81. The Committee urges the State party to bring its immigration and asylum laws into full conformity with the Convention and
other relevant international standards. In doing so, the State party is urged to take into account the Committee’s general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin. Furthermore, the Committee reiterates its previous recommendations (CRC/C/15/Add.268, para 64).

In addition to that, the Committee urges the State party to:

(a) Reconsider its policy of detaining children who are asylum-seeking, refugees and/or irregular migrants; and, ensure that if immigration detention is imposed, it is subject to time limits and judicial review;

(b) Ensure that its migration and asylum legislation and procedures have the best interests of the child as the primary consideration in all immigration and asylum processes; and ensure that determinations of the best interests are consistently conducted by professionals who have been adequately trained on best-interests determination procedures;

(c) Expeditiously establish an independent guardianship/support institution for unaccompanied immigrant children;

(d) Adhere to its High Court ruling in Plaintiff M70/2011 v. Minister for Immigration and Citizenship, and, inter alia, ensure
adequate legal protections for asylum seekers and conclusively abandon its attempted policy of so-called “offshore processing” of asylum claims and “refugee swaps”; and evaluate reports of hardship suffered by children returned to Afghanistan without a best interests determination.

Furthermore, the Committee recommends that the State party consider implementing the United Nations High Commission for Refugees Guidelines on International Protection No.8: Child Asylum Claims under articles 1(A)2 and 1(F) of the 1951 Convention and ratifying the 1967 Protocol relating to the Status of Refugees.

| OPSC to CRC | 8 Jan 2007 |
| OPAC to CRC | 26 Sep 2006 |
| ICCPR | 13 Aug 1980 |
| ICESCR | 10 Dec 1975 |
| CEDAW | 28 Jul 1983 |
| CRPD | 17 Jul 2008 |
| Hague Intercountry Adoption | 25 August 1998 |