



THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

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*Human Rights and
Equal Opportunity
Commission*



ADVISORY COUNCIL OF JURISTS & ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Terms of Reference on the legal obligations of States for the implementation of economic, social and cultural rights, with respect to the right to education

Questionnaire for the Background Paper on the right to education

Response of the Australian Human Rights and Equal Opportunity Commission

12 May 2006

Documentation

The APF Secretariat requested the following documentation:

Constitutional provisions relating to:

- ***Right to education;***
- ***Non-discrimination and the access for all; and***
- ***Relevance of international law in the national jurisdiction.***

The relevant Constitutional provisions relating to the right to education, non-discrimination and access for all.

There are no specific provisions in the Commonwealth Constitution which enshrine a right to education or non-discrimination.

The relevant Constitutional provisions relating to the relevance of international law in the national jurisdiction.

In Australia, developments in international law have no direct effect for domestic purposes unless the law has been integrated into domestic law through an Act of Parliament. Section 51(xxix) of the *Australian Constitution* 1901 gives the Commonwealth Parliament of Australia the right to legislate with respect to "external affairs" including use of the power to pass legislation giving effect within Australia to its obligations under international treaties and conventions.

Relevant legislation referring to:

- ***Right to compulsory and free primary (or basic) education on a non-discriminatory basis;***
- ***Right to secondary and higher education;***
- ***Financing of education;***
- ***Minimum age of employment;***
- ***Minimum age of marriage; and***
- ***Minimum age of criminal responsibility***

The relevant legislation referring to the right to compulsory and free primary (or basic) education on a non-discriminatory basis, the right to secondary and higher education, the financing of legislation and the minimum age of marriage is listed below. The legislation relating to the minimum age of employment is extensive and is identified in answer 28 in the questionnaire.

- *Education Act* 2004 (ACT) and the *Tertiary Accreditation And Registration Act* 2003
- *Education Act* (NT)
- *Education Act* 1990 (NSW), *Technical And Further Education Commission Act* 1990 and the *Vocational Education And Training Act* 2005

- *Education (General Provisions) Act 1989 (Qld), Education (General Provisions) Regulation 1989 (Qld), Education (Accreditation Of Non-State Schools) Act 2001 and the Education (Capital Assistance) Act 1993*
- *Education Act (South Australia) 1972 and the Technical and Further Education Act 1975*
- *Education Act (Victoria) 1958, Community Services Act (1970), Education (Special Developmental Schools) Act 1976 and the Educational Grants Act 1973*
- *Education Act 1994 (Tasmania) and TAFE Tasmania Act 1997 (Tasmania)*
- *School Education Act (Western Australia) 1999*
- *Federal States Grants (Primary and Secondary Assistance) Act 1996 (Cth)*
- *Higher Education Funding Act 1988 (Cth)*
- *Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005 (Cth)*
- *Higher Education Support (Transitional Provisions And Consequential Amendments) Act 2003 (Cth)*
- *Higher Education Support Act 2003 (Cth)*
- Each of Australia's universities has legislation passed by the State or Territory where it is situated.
- *The Marriage Act 1961 (Cth)*

NGO reports

- ***Reports on education by local, national and / or international non-governmental organisations within your country, especially the shadow reports produced for the country sessions of the UN Treaty Bodies.***

The following NGO reports are relevant:

- *Australia's Compliance with the UN Covenant on Economic, Social And Cultural Rights, ASERP, April 2000*
- *Shadow Report to Australia's Third Periodic Report to the Committee on Economic, Social and Cultural Rights, covering the period 1990-1997, Prepared for WRANA by Dianne Otto, Senior Lecturer, Faculty of Law, University of Melbourne, December 1999*
- *"What's Up CROC"; NGO report to the Committee on the Rights of the Child on the Implementation of the UNCROC in Australia, DCI, 2005*

Part 1: Issues raised in the Terms of Reference

Preliminary Questions

Education Policy and Programs

1. Please provide an overview of the framework of government education policies and programs in your country, including the division of responsibilities and financing between national, state and local governments.

The framework of government education policies and programs in Australia is determined by the fact that Australia, as a federation, has a Commonwealth government as well as six State and two Territory governments. The Commonwealth and State/Territory governments each have specific funding, policy and administrative responsibilities for the education system (which includes primary, secondary and tertiary (university) education as well as vocational and educational training.

The eight State and Territory government education departments are responsible for developing and implementing primary and secondary education policy in their state or territory and regulating and managing the government school system in their state or territory¹. Each State and Territory has their own legislation governing the delivery of primary and secondary education. However, primary² and secondary³ schooling is compulsory from age 6 to 15 except in Tasmania, South Australia and Western Australia where it extends to 16. Government schools operate under the direct responsibility of the State or Territory Education Minister. The policies of each State and Territory in relation to education are determined by the responsible State and Territory Departments. These are:

- Department of Education and Children's Services (South Australia)
- Department of Education and Training (New South Wales)
- Department of Education and the Arts (Queensland)
- Department of Education (Tasmania)
- Department of Education and Training State of (Victoria)

¹ In August 2005, there were 9,623 schools in Australia, of which 6,929 (72.0%) were government schools and 2,694 (28.0%) were non-government schools. In 2005 there were 3,348,139 full-time school students. The proportion of these students attending government schools was 67.1%
Australian Bureau of Statistics, *Schools, Australia 2005*
<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

² Children generally start primary school at the age of 5 and primary education continues for either six or seven years, depending on the State.

³ Students usually commence their secondary schooling when aged 12 or 13 and that continues for either five or six years, depending on the State.

- Department of Education and Training (Western Australia)
- Department of Education, Youth and Family Services (Australian Capital Territory); and the
- Department of Employment, Education and Training (DEET) Northern Territory

These Departments are responsible for providing appropriately trained and qualified teachers; providing a properly resourced and maintained physical environment; curriculum delivery; reporting on the performance of government schools and the standard of student learning; provision of specialist services designed to meet the needs of students with a disability or impairment or who have a specific learning or social need and provision of financial support to and regulation of non-government schooling.

The Commonwealth, through the Department of Education, Science and Training (DEST) develops national education policies and initiatives to support the coordination and implementation of national education priorities and strategies as well as providing significant supplementary funding for primary and secondary schools and financial support for families of primary and secondary students.

State and territory governments also have responsibility for the administration and delivery of vocational education and training (VET) within their jurisdictions (including regulation, primary funding and legislative responsibility for issuing qualifications). VET is available in all three sectors of the education system—school, postsecondary and higher education. As it is competency-based it can be undertaken through multiple pathways, allowing people to move between different levels of education -including school, postsecondary and higher education and the workplace⁴.

The postsecondary vocational education and training sector is diverse and includes government-funded Technical and Further Education (TAFE) colleges and other Government providers (public registered training organisations), private registered training organisations, and community-based registered training organisations. The States and Territories allocate public funding to the public TAFE colleges and registered community-based and private providers of VET. They are also responsible for the administration of TAFE colleges.

As a national system, VET is also supported by the Federal Government and major industry bodies. The Ministerial Council (MINCO) of Federal, State and Territory Ministers responsible for VET makes decisions on national objectives and priorities, and strategic policy and planning (including funding) and the Federal Government, through the Department of Education, Science and Training (DEST), promotes national consistency and coherence in the provision of VET and provides advice on national

⁴ In 2004 over 1.7 million students were engaged in the vocational education and training system. Training is delivered by both public providers (90 providers at over 1500 sites servicing over 78 per cent of students) and private providers (servicing the remainder)
www.dfat.gov.au/aib/education.html viewed 5 May 2006

VET issues.

The Commonwealth Government has administrative, regulatory, funding and legislative responsibility for the university higher education sector which comprises 37 public universities; three private universities, which are autonomous and self-accrediting; four other self-accrediting higher education institutions; and over 100 other institutions, such as theological colleges and providers specialising in professional and artistic courses of study⁵.

Justiciability of economic, social and cultural rights with respect to the right to education

2. Please provide details of cases from the national courts of your country with respect to the justiciability of economic, social and cultural rights, with a particular focus on the right to education.

Although Australia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10 December 1975 - and the Commonwealth may, through its Constitutional external affairs power, incorporate international instruments into domestic law - article 13 of the ICESCR is not justiciable in the national courts of Australia because ICESCR has not been incorporated into Australian domestic law⁶.

Article 13 requires that education be available, accessible, acceptable and adaptable. However, Australia's Commonwealth parliament does not have a constitutionally specific power to legislate for the provision of primary and secondary education⁷.

The rights recognised in ICESCR are not included in the definition of the human rights under the *Human Rights and Equal Opportunity Commission Act* (HREOC Act) which defines human rights in section 3 as being those rights recognised under the *International Covenant for Civil and Political Rights* (ICCPR), the *Convention for the Rights of the Child* (CROC), the *Declaration on the Rights of Mentally Retarded Persons*, the *Declaration on the Rights of Disabled Persons*, the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* and the *Convention on the Elimination of All Forms of Discrimination in Employment and Occupation*. HREOC cannot, therefore, investigate complaints that the Commonwealth has violated economic, social or cultural rights as set out in ICESCR (unlike complaints of violations of the other Conventions). The HREOC Act does provide, however, that the Aboriginal and Torres Strait Islander Social Justice Commissioner must have regard to ICESCR in the performance of his functions (s

⁵ In 2004, 900,000 students were studying at Australian universities www.dfat.gov.au/aib/education.html viewed 5 May 2006

⁶In Australia's third periodic report, 23 July 1998, paragraph 7: UN Doc. E/1994/104/Add.22. the government asserts that the Covenant rights are already protected by law in various forms: the common law, legislation and subordinate legislation from the federal Parliament and any of the six state or the three territory parliaments

⁷ It has only a limited power to enact legislation providing "benefits to students" pursuant to section 51(xxiiiA) of the *Constitution* 1901.

46C(4) of the HREOC Act). Moreover, many of the rights (particularly the right to education) recognised in ICESCR are also recognised in instruments that define human rights for the purposes of the HREOC Act (for example, articles 28 and 29 of CROC and article 5(e)(v) of CERD).

Further, the right to free, non-discriminatory, government or non-government education that is, in limited respects, adaptable (accessibility, availability and adaptability) do appear, to some extent, legislatively in Australia through the combined operation of legislation relating to education and anti-discrimination.

Each State and Territory has their own Constitution that gives their Parliaments broad powers to enact legislation. It is pursuant to these powers⁸ that each State and Territory government has enacted legislation pertaining to the right to education⁹. These Acts each prescribe the “legislative framework” for the provision of educational services and facilities in their respective State or Territory (including the functions of the Education Minister and curriculum, attendance and establishment/ registration of non-government schools requirements).

Durbach and Moran¹⁰ argue that the extensive objects provision of the NSW *Education Act* (which are generally reflected in the legislation of the other States and Territories) “reflect the principles underlying the four essential features of the right to education at international law” (availability, accessibility, acceptability and adaptability).

The Objects of this Act are found in section 6, which provides:

Objects for administration of this Act or of education

(1) It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects:

(a) assisting each child to achieve his or her educational potential,

...

(d) provision of an education for children that gives them access to opportunities for further study, work or training,

...

(h) provision of an education for children from non-English speaking

⁸ See, for example, section 5 of the *Constitution Act of NSW*

⁹ *Education Act (ACT) 2004 and the Tertiary Accreditation And Registration Act 2003, Education Act (NT), Education Act (NSW) 1990, Technical And Further Education Commission Act 1990 and the Vocational Education And Training Act 2005, Education (General Provisions) Act (Qld) 1989, Education (General Provisions) Regulation (Qld) 1989, Education (Accreditation Of Non-State Schools) Act 2001 and the Education (Capital Assistance) Act 1993, Education Act (South Australia) 1972 and the Technical and Further Education Act 1975, Education Act (Victoria) 1958, Community Services Act (1970), Education (Special Developmental Schools) Act 1976, the Educational Grants Act 1973, Education Act (Tasmania) 1994 and TAFE Tasmania Act (Tas) 1997 and the School Education Act (Western Australia) 1999.*

¹⁰ Durbach, A. and Moran, S. *3R's Rights, roles and responsibilities: The Right to Education and the Nature of Obligations on Australian Governments*, PIAC, April 2004.
http://www.dsfg.org.au/papers/155/3Rs_PIAc_APR04_0.pdf

backgrounds that has regard to their special needs,
(i) recognition of the special problems of rural communities, particularly small and isolated communities,
(j) provision of opportunities to children with special abilities,
(k) provision of special educational assistance to children with disabilities,
(l) development of a teaching staff that is skilled, dedicated and professional.

However, they note further that when the Objects are read together with the Principles (section 4: “*it is the duty of the State to ensure that every child receives an education of the highest quality*”) the provisions do not impose specific duties to ensure that education must be “Acceptable” and/or “Adaptable”, “that is, relevant, of good quality and reflecting the needs of individual students”¹¹. They conclude that:

In summary, at best, Governments in Australia have recognised, via legislative measures, that education must be available and accessible at both primary and secondary levels. Issues pertaining to “Acceptability” and “Adaptability”, which go to the quality and relevance of education, are only canvassed in the objects provision of the *NSW Education Act* and in similar legislation of other States.”¹²

Durbach and Moran go on to note, however, in relation to adaptability, that Section 10(c) of the *NSW Education Act*, which provides for minimum curriculum for secondary education, states that the curriculum for secondary school children during Year 7 to Year 10 (other than for candidates for the School Certificate) does require that...

c) courses of study in a key learning area are to be appropriate for the children concerned having regard to their level of achievement and needs.

although, it does not contain a similar requirement in relation to the curriculum for more senior students¹³.

Cases in Australia regarding the right to education have generally arisen in the anti-discrimination jurisdiction. Each State and Territory have their own anti-discrimination legislation which makes it unlawful for an educational authority (all public and private educational institutions, primary and secondary schools, and tertiary institutions such as TAFE, private colleges and universities) to discriminate against someone because that person has a disability in relation to admission or access or the provision of educational services¹⁴. These laws, unlike the Commonwealth laws, do not cover all of Australia.

11 *ibid.* p.10

12 *ibid.* p. 11

13 *ibid.* pp.11-12

14 *Discrimination Act 1991 (ACT), Anti-Discrimination Act 1977 (NSW), Anti-Discrimination Act 1992 (NT), Anti-Discrimination Act 1991 (Qld), Equal Opportunity Act 1984 (SA), Anti-Discrimination Act 1998 (Tasmania), Equal Opportunity Act 1995 (Vic) and the Equal Opportunity Act 1984 (WA).*

They are limited to the particular State or Territory. Additional coverage is provided by Commonwealth anti-discrimination legislation¹⁵.

The seminal cases have related to the right of students with disabilities to an accessible, acceptable and adaptable education although those concepts do not appear overtly in the decisions. For example, cases have included consideration of: the extent of the obligation of an educational institution to provide an Auslan interpreter¹⁶, whether education institutions are required to provide information in an accessible and convenient format¹⁷; the extent of reasonable adjustment a school is obliged to make to continue the enrolment of a child with a disability; whether standard disciplinary treatment for a student with poor and impulsive behaviour manifesting itself because of a brain injury is disability discrimination¹⁸ and the obligation of a private primary school to accept the request for enrolment of a child with a physical disability¹⁹.

Apart from the anti-discrimination jurisdiction, other common law actions include actions in tort. A body of case-law has recognised actions in tort against educational authorities²⁰ but these generally relate to the extent of a schools' duty of care to prevent injury to students rather than their duty to provide available, accessible, acceptable and adaptable education.

3. Please provide information about remedies available and the enforceability of the decisions of national courts with respect to the right to education.

Complaints of unlawful discrimination pursuant to Commonwealth anti-discrimination legislation are made to the Human Rights and Equal Opportunity Commission. The Commission investigates complaints and attempts to resolve complaints through a conciliation process. If the complaint cannot be resolved through conciliation parties may pursue the matter in the Federal Court or Federal Magistrates Court to obtain such remedies as a direction to perform a certain act, payment of compensation or an apology. The State and Territory anti-discrimination laws are administered by specialist commissions that investigate complaints and try to resolve them by conciliation. Where the complaints cannot be resolved by conciliation, they are referred to specialist

15 The *Racial Discrimination Act* 1975 (Cth), the *Sex Discrimination Act* 1984 (Cth), *Disability Discrimination Act* 1992 (Cth) and the *Age Discrimination Act* 2004 (Cth).

16 *Hurst and Devlin v Education Queensland* (Federal Court 15 April 2005); *Clarke v Catholic Education Office* (Federal Court, 8 October 2003)

17 *Hinchcliffe v University of Sydney* [2004] FMCA 85 (17 August 2004)

18 *Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62 (11 November 2003); *Purvis v NSW* (Full Federal Court 24 April 2002); *State of NSW v HREOC and Purvis* (Federal Court, 29 August 2001)

19 *Hills Grammar School v HREOC* (18 May 2000)

20 See for example, negligence cases against educational authorities concern school children who have suffered personal injury during school hours, *Johns v Minister for Education* (1981) 28 SASR 206 or on school excursions *Munro v Anglican Church of Australia* Unreported, NSW Supreme Court, Court of Appeal, 14 May, 1987.

tribunals that hold hearings into the complaints. These tribunals provide remedies similar to those available in the Commonwealth jurisdiction.

4. Please provide information relevant to your government's position regarding the proposed Optional Protocol for the International Covenant on Economic, Social and Cultural Rights.

Information not available – government would need to answer this question

***The right to receive an education:
available, accessible, acceptable, and adaptable***

Availability

Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. (CESCR General Comment No. 13)

Expenditure

5. Please provide an overview of government expenditure on all levels of education in your country. Where there is a divide in education expenditure between national, state and local governments please provide this information. Where possible, figures should be disaggregated (primary, secondary, higher education, formal and non-formal) and expressed in both real terms and as a percentage of gross national product.

HREOC does not have access to disaggregated information

Primary responsibility for funding government school education in the States rests with the respective governments who provide about 88% of their public funding. However, it is very difficult to calculate disaggregated government expenditure on primary and secondary education in Australia because each State and Territory education department is responsible for its own expenditure in that State or Territory, some educational programmes are inter-departmental, some are jointly funded and run cooperatively with the Commonwealth and because of the overlap of funding generally between the Commonwealth and the States and Territories. The most recent Australian Bureau of Statistics Government Finance Statistics²¹ for education state that for all Australian governments in 2000-01, primary and secondary education operating expenses were \$19,490m which accounted for 56.2% of total education expenses.

It is easier to calculate total operating expenses on tertiary education because this is funded primarily by the Commonwealth. For 2000-2001, the total operating expenses on tertiary education for all Australian governments were \$12,769m accounting for

²¹

<http://abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/3A1EA5484BB3D47BCA256B9F00046B19?OpenDocument>

36.8% of total education expenses (with university education accounting for 71.2% of the total amount spent on tertiary education)²². Of this, the total operating expenses on education by the Commonwealth Government were \$10,881m with \$9,889m (90.9%) comprising grants to other levels of government (including universities).

As a percentage of Gross Domestic Product (GDP), total expenses on education increased from 5.1% in 1999-2000 to 5.2% in 2000-01.

Disaggregation of expenditure on VET is difficult for reasons similar to disaggregating spending on primary and secondary education. Commonwealth funds make up approximately one third of public expenditure on the VET system (in school, as a pathway alternative to school and post-school) in Australia. A significant part of the Commonwealth's expenditure has been by way of grants to the States and Territories to support them in their role as providers and administrators of VET. Other Commonwealth funds for VET include funding for specific Commonwealth programmes such as New Apprenticeships and school based vocational education and training²³. The government provides around \$21.3 million per year in direct funding to VET in Schools and \$4 million for School Skill Centres²⁴.

6. Please provide information about education funding models used in your country. Issues for consideration could include (but are not restricted to):

- **Funding for state and non-state (private) education institutions;**
- **The dependence on school fees in any form, direct or indirect**
- **Use of education vouchers;**
- **Privatization of the education system.**

Please see the answers to question 5, 15 and 17.

7. Please provide information about your government's laws, policies and programs regarding acceptance of international assistance and cooperation in relation to education.

Not available to HREOC

8. Please describe the role and impact of non-state actors such as international financial institutions and trans-national corporations on the realisation of the right to education in your country. For example, if your country has adopted a structural adjustment program, has this impacted upon government expenditure on education policies and programs?

Not available to HREOC

²² Ibid.

²³ Note, the *Skilling Australia's Workforce Bill* 2005 proposes to establish a new framework under which grants to the states and territories will be allocated. It will take the place of the ANTA Agreement funding framework.

²⁴ www.dest.gov.au/NR/rdonlyres/DA7C8375-A076-4561-9E...

Infrastructure

9. Please provide information the availability and adequacy of infrastructure, especially for girls, for schools and other educational institutions in your country, including classrooms, library, sanitation facilities, safe drinking water and any other relevant facilities.

Australian schools generally have adequate educational infrastructure. There are, however, exceptions in certain parts of Australia where facilities are of a lesser and unacceptable standard. In particular, students living in remote and rural areas (and particularly, Indigenous students) may lack access to library and Information Technology resources and other relevant educational facilities which students not living in remote or rural areas enjoy²⁵. In particular, the *HREOC Inquiry into Rural and Remote* education found that students attending rural and remote schools had more limited sporting and library facilities and insufficient access to appropriate technology infrastructure and maintenance support²⁶.

Teachers and support staff

10. Please provide information about the availability of qualified teachers and support staff for all levels of education in your country, on teacher training initiatives to meet 'education for all' goals, and any other relevant issues that impact upon this availability.

There are no national requirements for the teaching profession in Australia. Accordingly, the responsibility for the qualifications, and employment, of teachers lies with both government and non-government education authorities in each State and Territory²⁷.

In Australia, the key issues that impact on the availability of qualified teachers and support teachers are the aging workforce²⁸, domination of female teachers in the profession²⁹, inadequate supply of teachers for certain secondary specialisations—

²⁵ See HREOC, *National Inquiry into Rural and Remote Education and Education Access 2000* which recommend ways of improving access to education for school children in rural and remote areas.

²⁶ Ibid. p.40

²⁷ There was 235,794 full-time equivalent teaching staff in 2005, 156,564 at government schools and 79,231 at non-government schools.

Australian Bureau of Statistics, *Schools, Australia 2005*;

<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

²⁸ In fifteen years, to 2001, the median age of the teaching population rose from 34 to 43 years, 44 per cent being older than 45 years. See

http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/reviews/teaching_teacher_education/

²⁹ The proportion of FT teaching staff who are female continues to rise — in 2005, 68.0% of all FT teachers were female. The figure was 79.7% in primary schools and 56.0% in secondary schools. The comparable figures in 1995 were 64.2%, 76.1% and 52.3% respectively. See Australian Bureau of Statistics, *Schools, Australia 2005*;

including physics, chemistry, mathematics, technology studies and languages other than English (LOTE), inadequate recruitment and retention of teachers in many rural and remote (and some metropolitan locations)³⁰ and the poor representation of prospective teachers from Indigenous and other cultural, social and ethnic groups who need to be recruited to achieve a more diverse population of teachers more representative of the diversity of the Australian community³¹.

Teaching facilities and materials

11. Please provide information about the availability and adequacy of teaching facilities and materials including: classrooms, books and writing materials, information and communications technology equipment, libraries, laboratories, workshops, sporting equipment and facilities and other relevant materials.

In answering questions 5-11, please give consideration to the issue of diversity and the impact of 'availability' on the rights of minorities and indigenous people.

State and Territory education departments provide funding for the purchase of teaching materials and equipment to each school. The schools then allocate their resources according to their school's strategic plan. However, because all primary and secondary schools rely on both government-funded or subsidised facilities, materials and services as well as parent supported materials and services then inequities will arise according to the socio-economic status of the school area. Accordingly, there is great variance between schools regarding the availability and adequacy of teaching facilities and materials. In particular, as outlined in the response to question 9, students living in remote and rural areas (and particularly, Indigenous students) lack access to resources which the majority of students not living in remote or rural areas enjoy³².

Accessibility

Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. (CESCR General Comment No. 13)

Non-discrimination

<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

³⁰Due to the isolation and the cost of travel, the cost of living including higher telephone, food and power costs, poor quality and often expensive housing and limited opportunities to participate in professional development with resulting impacts on promotional opportunities. See HREOC, *National Inquiry into Rural and Remote Education, 2000 p.33*

³¹

http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/reviews/teaching_teacher_education/

³² See HREOC, *National Inquiry into Rural and Remote Education and Education Access 2000* which recommend ways of improving access to education for school children in rural and remote areas.

12. Please provide details of legislation and government policies and programs relevant to issues of non-discrimination, equal treatment and equality of opportunity in education. Information provided should include (but is not limited to) consideration of issues of access for people living with disabilities, internally displaced persons, non-nationals, prisoners, refugees and other minorities.

legislation relevant to issues of non-discrimination, equal treatment and equality of opportunity in education

All schools and universities are subject to the Federal and State/Territory anti-discrimination legislation (listed in footnotes 14 and 15) which, cumulatively, make discrimination, inequality of treatment and inequality of opportunity in education, on the basis of sex, race and disability, unlawful.

In addition the State and Territory Education Acts require equal treatment of students. For example, Section 6 of the NSW Education Act provides as follows:

Objects for administration of this Act or of education

(1) It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects:

(h) provision of an education for children from non-English speaking backgrounds that has regard to their special needs,

(i) recognition of the special problems of rural communities, particularly small and isolated communities,

(j) provision of opportunities to children with special abilities,

(k) provision of special educational assistance to children with disabilities,

Government policies and programs relevant to issues of non-discrimination, equal treatment and equality of opportunity in education (consideration of issues of access for people living with disabilities, internally displaced persons, non-nationals, prisoners, refugees and other minorities)

Each State and Territory has their own policies and programs relevant to issues of non-discrimination, equal treatment and equality of opportunity in education which is accessible on their Department websites. In addition the Commonwealth has relevant policies and programs. Some examples of the Commonwealth and State/Territory programs are listed below.

access for people living with disabilities

Significantly, the Australian government enacted *Disability Standards for Education* in 2005 (the Standards). These Standards clarify, and make more explicit, the obligations of education and training service providers under the *Disability Discrimination Act* 1992 (Cth) and the rights of people with disabilities in relation to education and training. The Standards apply to Commonwealth, State and Territory education and

training and service providers who are required to give students and prospective students with disabilities the right to education and training opportunities on the same basis as students without disabilities (including the right to comparable access, services and facilities, and the right to participate in education and training unimpeded by discrimination). Education providers have a positive obligation to make changes to reasonably accommodate the needs of a student with a disability.

All State and Territory Education Departments have programs and policies to facilitate educational access for people living with disabilities. In NSW, for example, the Department of Education and Training has funding and support programs to support the integration of students with physical disabilities into NSW public primary and secondary schools; TAFE; VET; TVET (TAFE delivered HSC). The Department also funds the NSW Apprenticeship Program for People with Disabilities which provides on-the-job trade training opportunities in state government departments and statutory authorities to people with assessed disabilities.

access for prisoners

Young people who have been charged with, or convicted of, committing a criminal offence may be remanded into custody, or sentenced to a period of custody, in a detention centre. State and Territory legislation govern the operation and administration of juvenile detention centres³³ and State and Territory Education Departments operate education and training units in the juvenile justice centres.

In NSW, for example, the Department of Juvenile Justice and the Department of Education and Training together deliver educational programs.

access for refugees

Australian schools can be attended by children who arrive in Australia with a visa who seek asylum and live in the community on bridging visas, children who arrive under Australia's Refugee and Humanitarian Program, and children released from immigration detention and living in the community on temporary protection visas. . These students usually attend Intensive English Centres (IECs) partially funded through the Commonwealth's New Arrivals Program. Children attending these schools are provided with an intensive English program, which in each State is taught within the context of the key learning areas of the relevant mainstream curriculum.

For example, in South Australia, the New Arrivals Program provides intensive English support for children newly arrived in Australia. Students attend New Arrivals Program

³³ See for example, the *Children (Detention Centres) Act 1987* (NSW) and the *Children (Detention Centres) Regulation 2000*.

centres for approximately one year before they enrol in local schools; classes are small, organised by age, and students are taught the full range of primary school subjects in English. In the Secondary New Arrivals Program, students follow an intensive ESL course in all subject areas.

Between 1992 and 2003 asylum seekers who arrived in Australia without a visa - both adults and children - were subject to mandatory detention in mainland detention centres where they generally remained until they were either recognised as refugees and granted a protection visa or were removed from the country. *The National Inquiry into Children in Immigration Detention* was conducted by the Human Rights and Equal Opportunity Commission. The Inquiry looked at the treatment of child asylum seekers held in immigration detention centres between 1999 and 2002 and examined, amongst other things whether children in detention received an appropriate education.

The Inquiry found that despite the significant efforts of teachers there were fundamental problems associated with providing education services in on-site schools at immigration centres such as insufficient infrastructure, the lack of an appropriate curriculum, the shortage of teachers, inadequate hours of tuition and inadequate educational assessments and reporting of children's progress. The Inquiry found that the Commonwealth failed to take all appropriate measures to provide children in immigration detention with an adequate education over the period of the Inquiry. The Inquiry also found that “many of these problems were substantially addressed when, in 2002, the Department arranged for increasing numbers of children to attend local schools”³⁴.

Since 2005 asylum seekers arriving in Australia are largely sent to offshore processing Centres.

access for minorities

access for indigenous students

The significantly poorer educational outcomes of Indigenous students, compared to non-Indigenous students (particularly in rural and remote areas in Australia) are well documented by Australian Government and non-government organisations. In order to improve educational accessibility for Indigenous students a National Aboriginal and Torres Strait Islander Education Policy was endorsed by all Australian governments and is reflected in the *Indigenous Education (Targeted Assistance) Act 2000*. The policy guides program initiatives across Australia with the aim of achieving greater equity between Indigenous and non-Indigenous Australians. The Australian Government provides Indigenous-specific funding as a supplement to other mainstream funds for

34

http://www.humanrights.gov.au/human_rights/children_detention_report/summaryguide/text/index.html

strategic interventions which aim to accelerate learning outcomes for Indigenous students³⁵.

Individual State and Territory Education Departments also have specific programs and policies for providing Indigenous Education. An example is the Indigenous Education Strategic Initiatives Program (IESIP) which is managed in the Northern Territory Education Department's Indigenous Education Division. The IESIP is funded by the Australian government and the IED allocates funding for school projects targeting improved enrolment, higher attendance and retention, improved literacy and numeracy outcomes for Indigenous students and greater awareness of Indigenous language and culture.

access for students who have disengaged from mainstream schooling

State and Territory Education Departments have programs and policies for providing pathways back into formal or informal education for students who have disengaged from mainstream schooling. An example is the Alternative Education Provision (AEP) initiative which has been established in the Northern Territory in Darwin's northern suburbs and Palmerston. The AEP focus is on young people aged 10-15 who have disengaged from mainstream schooling or are at strong imminent risk of disengagement. Individuals are case managed with a view to re-engaging them in education, training or employment³⁶.

Gender parity and gender equality

13. Please provide details of legislation and government policies and programs directed to improving gender parity and gender equality in education at all levels.

Commonwealth and State/Territory Anti-Discrimination legislation (listed in footnotes 14 and 15), government policy and programs result broadly in gender parity in terms of access to education, educational curriculum and educational opportunities of boys and girls. There is no difference between net primary school enrolment for boys and girls in Australia³⁷.

Rather, the poorer educational outcomes and retention rates for boys (than for girls) in Australian schools is a key issue for the Australian education system. For example, in 2005 the retention rate of full-time school students from Year 7 to Year 12 was 75.3%. As in previous years, the retention rate for females (81.0%) was significantly higher

³⁵ http://www.dest.gov.au/sectors/school_education/School_education_summary2.htm

³⁶ http://www.deet.nt.gov.au/...on/alternative_education/index.shtml

³⁷ UNICEF, *The State of the World's Children 1999*, New York, 1998 pp. 106-109.

than the rate for males (69.9%). The Year 10 to Year 12 rate for females in 2005 was again considerably higher than that for males (81.6% and 71.5% respectively)³⁸.

In response, government policies and programs have been introduced that specifically target the learning styles and characteristics of boys. The NSW Department of Education and Training, for example, has been implementing a “Boys at School: Gender Equity Strategy” since 1996 to ensure that NSW schools continue to address gender as an educational issue³⁹.

Physical accessibility

14. Please describe the main issues regarding geographical location of and physical access to educational institutions for people from urban, rural and remote communities, as well as for people with physical disabilities.

Main issues regarding geographical location of and physical access to educational institutions for people from urban, rural and remote communities.

Australia is a geographically vast country with many rural and remote communities. Some students may be hundreds or thousands of kilometres from the nearest educational institution.

As at 2000, between one-quarter and one-third of Australian students attend school in rural and remote areas⁴⁰. The Human Rights and Equal Opportunity Commission conducted a *National Inquiry into Rural and Remote Education*⁴¹ in 1999-2000 because of concerns about the quality of school education in rural and especially remote areas and the fact that fewer rural students finish their formal schooling and go on to tertiary education⁴².

The main issues for these students are:

- a lack of equivalent teaching and school facility resources;
- a lack of opportunities to participate in sporting competitions, cultural and other performances, excursions, university visits and visiting speakers⁴³;
- poorer educational outcomes and school performance;
- reduced school retention rates;

³⁸ Australian Bureau of Statistics, *Schools, Australia 2005*;
<http://www.abs.gov.au/Ausstats/abs@.nsw/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

³⁹ See http://www.icponline.org/...om_content&task=view&id=120&Itemid=50

⁴⁰ In Victoria, for example, 66% of students attend school in metropolitan Melbourne, 11% in provincial cities, 15% in rural areas and 8% in remote parts of the State. In comparison, in NSW 34.6% of students attend rural and remote schools. See

http://www.humanrights.gov.au/human_rights/rural_education/index.html#5

⁴¹ http://www.humanrights.gov.au/human_rights/rural_education/index.html#5

⁴² The inquiry concluded with 73 recommendations for implementation by public and private education systems across the country.

⁴³ *ibid*, p.43

- a paucity of funding assistance (only about 5% of students attend schools which qualify for the Commonwealth's Country Areas Program (CAP) funding and fewer than 1 % of Australian students receive the Commonwealth's Assistance for Isolated Children)⁴⁴; and
- poor tertiary attendance of rural and remote students. Although they are around one-third of school students, rural and remote students constitute only about 17% of tertiary students in Australia.⁴⁵

Policies and initiatives have been introduced to address these issues including the establishment of the School of the Air⁴⁶ and Distance Education Units. Funding initiatives include the Assistance for Isolated Children scheme's (AIC's) Basic Boarding Allowance, ABSTUDY's Basic School Fees Allowance, the AIC's Distance Education Allowance and the Non-government School Term Hostels Programme.

Main issues regarding geographical location of and physical access to educational institutions for people with physical disabilities.

Access to the variety of schooling available for students with physical disabilities is limited by various factors, including the type of disability and geography.

Key issues for children with physical disabilities accessing education are:

- lack of available options (physical access limits choice, as does provision of support services);
- lack of information to families or prospective students about educational options and funding availability and application procedures;
- lack of equivalence and inadequacy of transitional programs and procedures between various education providers and sectors (when moving from one educational sector to the next);
- inadequate co-ordination between services, departments and ancillary staff;
- inadequate training and availability of Trained Aides and ancillary and support staff;
- insufficient provision of equipment, technological aids and other devices;
- difficulties adapting the curriculum to address the needs and capacities of individual students; and the
- functional and financial transport: barriers (to transport to and from school/college/university)⁴⁷.

⁴⁴ *ibid*, pp.10-11

⁴⁵ *ibid*. p.12

⁴⁶ The School of the Air, based in Alice Springs (Northern Territory) has approximately 140 students (located across an area of about 1.3 million square kilometres) who are taught via two-way radio, the internet, satellite and the telephone.

⁴⁷ See http://www.hreoc.gov.au/disability_rights/education/barriers_96.htm

Additional issues for children with physical disabilities accessing education in rural and remote areas are:

- very restrictive choice in schools;
- travel distance involved if a special school or special unit was required by the student but not available in close proximity to home;
- difficulty in attracting and keeping skilled teaching staff and aides (particularly) in country areas;
- severe shortage or lack of appropriately trained therapists;
- failure to expedite building adjustments to accommodate students with physical disabilities – for example, to permit wheelchair access
- inaccessibility of much school transport provision and impact of long journeys on students with disabilities
- inequity in funding distribution formulae; and
- lack of specialist support services in rural and, especially, remote areas is common, including special education support staff and a range of essential health and disability services⁴⁸.

Economic accessibility

Primary education and Secondary education

15.and 17. Is primary and secondary education compulsory and free for all? Please provide details of relevant legislation and government policies and programs.

In Australia legislation stipulates that primary and secondary education at government schools is free. State and Territory Education legislation provide, as in New South Wales, that “The instruction provided in government schools is to be free of charge”⁴⁹.

Attendance at private or independent schools is not free. These schools have their own fee structure although they receive subsidies from both Federal and State governments.

Does your government have a plan of action for making primary education free?

N/A

16.and 18 Please provide information about any school fees, charges and other costs imposed on parents or guardians for primary and secondary education. Please describe the extent of financial assistance available for the completion of primary and secondary education.

⁴⁸ http://www.humanrights.gov.au/human_rights/rural_education p.52

⁴⁹ Section 31 of the *Education Act* 1990 (NSW)

school fees, charges and other costs imposed on parents or guardians for primary and secondary education

Although education at Australian primary and secondary schools is required to be provided free of charge, this only relates to the Standard Educational Program and parents are expected to provide, or pay the school to provide, their children with text books, individual student requisites and school uniform. In addition, they may be required to pay a ‘voluntary contribution’ if they wish their child to be provided with optional school materials and services such as school magazines, photographs, access to excursions and camps, school concerts and productions and access to graduation dinners, camps and excursions. Schools may also seek voluntary contributions for special projects such as building and grounds beautification, library purchases or extra equipment purchases. The Senate Employment, Education and Training References Committee in its report *Not a Level Playground: The Private and Commercial Funding of Government Schools* (1997), estimated that the average amount paid by parents in fees and levies to government schools was of the order of \$200 per annum.

State and Territory education departments may provide guidelines for the collection of voluntary contributions. In Victoria, for example, the Department of Education and Training issued an Executive Memorandum in 2005 relating to “School materials charges and parent voluntary contributions”. These guidelines state that schools may seek contributions from parents for materials and services that augment the student program, that parents should provide or pay the school to provide; materials and services that parents have the option of paying for, if they choose to use these materials and services and school materials and services that are supported by voluntary contributions.

The Guidelines state clearly that “a student cannot be refused access to programs, materials or services which are part of the school program” and that “a student must not be denied access to a particular subject which is part of the school program due to their inability to contribute to the relevant program/elective charge or where parents choose not to pay for that program/elective charge”. However, NGO’s have raised concerns that voluntary fees and levies in Australian primary and secondary schools undermine the right to free education by effectively reducing accessibility to education for children from families with low incomes, due to the humiliation many of them feel when they cannot pay and the discrimination or humiliation they are subjected to by school authorities because of difficulties in paying ‘voluntary’ fees⁵⁰.

extent of financial assistance available for the completion of primary and secondary education

⁵⁰ ASERP, *Australia's Compliance with the UN Covenant on Economic, Social And Cultural Rights 2000* pp. 50-51

A variety of mostly means tested financial assistance is available for the completion of primary and secondary education including Abstudy, Austudy, Assistance for Isolated Student and subsidised school travel schemes.

In addition, different State and Territories offer varying forms of financial assistance for students completing primary and secondary school. NSW, for example, provides a Back to School Allowance of \$50 for each child each year, access to a Special Needs Transport Service and, specifically for secondary students, a Living Away from Home Allowance (LAFHA) and access Scholarships for Isolated Students (ASIS) and Agricultural High School Boarder Scholarships (AHSBS) In Victoria, eligible parents can apply for financial assistance through the Education Maintenance Allowance⁵¹ (EMA) which is provided to low income families to assist them with educational costs for students. One half of the EMA is paid directly to the parents through the school, and the other half of the EMA is paid to the school to expend on behalf of the student. The school portion of the EMA can only be put towards the cost of parent supported materials and services for which all parents are expected to contribute.

Higher education

17. Please provide information about fees, charges and other costs for higher education. Please describe the extent of financial assistance (if any) available for the completion of higher education.

information about fees, charges and other costs for higher education

Australian students studying higher education award courses that are funded by the Commonwealth government, which lead to degrees, diplomas, associate diplomas, graduate diplomas and graduate certificates contribute to the cost of their higher education through the Higher Education Contribution Scheme (HECS), which was introduced in the *Higher Education Funding Act* (Cth) 1988. Students studying postgraduate courses are generally required to pay full up-front fees.

Students taking courses at private institutions or taking courses not funded by the Commonwealth (i.e. undergraduate or graduate courses for which fees are being charged) are not required to pay HECS. Nor are students taking adult and continuing education courses that do not lead to an award, courses fully-funded by employers or courses which are approved work experience in industry.

HECS is administered by the Commonwealth Department of Education, Science and Training, the Australian Tax Office and higher education institutions. HECS is differentiated into 3 cost bands based on a combination of the relative cost of course delivery and profitability of programs. Generally, students pay between 25 and 35 percent of their tuition costs and they can either pay HECS upfront directly to their university (and receive a 25% discount) or they can chose to defer payment and take out a loan with the Commonwealth Government at a real interest rate of zero. The

⁵¹ *Education Regulations 2000*; Section 45(1) (Vic)

Commonwealth then pays an amount equivalent to the discount for up-front payments and the loans directly to the institution. Students can also choose a combination of both payment options, paying part of the fees upfront (at least A\$500) with a 25 percent discount and deferring the rest. Students must start payment via the taxation system once their annual salary reaches the average Australian earning income (A\$22,346 for the 2000-01 income year). Each income range has a repayment rate which increases with the former student's income, i.e. the more he/she earns, the higher the repayments until the debt is paid⁵².

Students studying with Open Learning Australia (OLA) are also eligible to defer the payment of part of the fee charged by OLA by taking out a loan from the Commonwealth.

The other costs of higher education are compulsory union fees, books, IT and other educational expenses, lodging transport and living expenses.

extent of financial assistance (if any) available for the completion of higher education

In Australia, there are a variety of public and university financial grants, scholarships, bursaries and loan support schemes available to tertiary students in both the higher education and vocational education and training sectors to cover living expenses. Support for Higher Education is provided largely through the Commonwealth Grant Scheme which provides for a specified number of Commonwealth supported places each year and the Higher Education Loan Programme which provides means tested financial assistance to students.

A means-tested Youth Allowance is available to eligible full-time students aged 16 to 25; full-time students over the age of 25 if they were getting Youth Allowance before they turned 25 and they are still pursuing the same course of study; and young people up to the age of 21, who are combining part-time job and part-time study. In addition, an allowance called Austudy is available to eligible full-time students ages 25 and older who are enrolled in an approved course of study. Both payments are subject to income and assets tests and to a parental means test if the student does not qualify as independent. Abstudy is also available which provides financial assistance for Aboriginal and Torres Strait Islander Australians who undertake full and part-time study.

Additional benefits are also available to students receiving these kinds of allowances including fare allowances for transportation between home and the educational institutions, a Health Care Card to help with medical costs, a pharmaceutical allowance to help cover the cost of certain prescriptions, a remote area allowance for students

⁵² For more information see the Dept of Education Science and Training website <http://www.goingtouni.gov.au/Main/CoursesAndProviders/GettingStarted/CostsAndEntranceRequirements/ScheduleOfStudentContributionAmountsAndFees.htm>

living in remote parts of Australia, an interest free Advance Payment of up to \$500 and access to the Student Financial Supplement Scheme⁵³. Students ages 16 to 24 may also be eligible for Rent Assistance if they live away from home to study.

Non-formal education

18. Please provide information about access to non-formal education in your country. Issues for consideration include (but are not restricted to):

- ***The existence of and support for Community Learning Centres***
- ***The legal and policy framework for the improvement of literacy for women.***

All Australian State and Territory education departments provide non-formal adult and community education programs⁵⁴. Access to a wide range of vocational training for trade, technical, professional and para-professional occupations as well as a range of adult education, leisure and general enrichment programmes are widely available through TAFE colleges and other Government providers (public registered training organisations) but also through private registered training organisations and community-based registered training organisations.

For example, NSW, through the Dept of Education and Training, provides non-formal education through Adult and Community Education (ACE) and through the Community Grants Programs. ACE offers courses to all adults at hundreds of locations in New South Wales, regardless of age or previous education. The Community Grants Program allocates funding for community organisations to provide educational opportunities for people with specific needs, for example, Aboriginal Community Programs, Community Language Schools Program, Mature Workers Program, Links to Learning Program (for young people) and Intervention Support Program (for children and students with disabilities).

Acceptability

The form and substance of education, including curricula and teaching methods, have to be acceptable (eg – relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. (CESCR General Comment No. 13)

Quality education and minimum standards

19. Please identify the relevant national and/or local institutions which are responsible for the implementation of the right to education. In

⁵³ The Student Financial Supplement Scheme is available to tertiary students who are eligible to receive Youth Allowance, Austudy, Pension Education Supplement or Abstudy to help pay for expenses such as accommodation, transport, food or books. Under the scheme, a student can elect to trade in part of their payment for double the amount that then becomes a repayable loan.

⁵⁴ See <http://www.education.gov.au/goved/browse/0,15500,15974,15941>

particular, are there any specialised agencies, authorities or officials that have a mandate on the right to education?

Legislative measures in relation to “Acceptability” are notable omissions from Australian education statutory schemes. There are no provisions, beyond the objects clauses, which encompass the acceptability of education to students (or parents⁵⁵).

relevant national institutions responsible for the implementation of the right to education

The Department of Education, Science and Training (DEST) is the key national department that, in collaboration with the States and Territories, industry, other agencies and the community, develops policies to implement the right to education in Australia⁵⁶. The Australian National Training Authority's Ministerial Council leads the national VET system. Each year, the Ministerial Council (which is made up of the Australian and state and territory ministers responsible for vocational education and training) sets national priorities for the system.

relevant State and Territory institutions responsible for the implementation of the right to education

Each State and Territory have a number of specialised agencies, apart from the education departments, that directly or indirectly implement the right to education across the various education sectors. These include the ACT Department of Education and Training - Office of Training and Adult Education, Western Australia - Training Accreditation Council, the South Australia Further Education, Employment, Science and Technology organisation, the Office of Training & Tertiary Education, the Tasmanian Office of Post-Compulsory Education & Training, Tasmanian Qualifications Authority and the NSW Board of Vocational Education and Training (a statutory body established by the *Vocational Education and Training Accreditation Act 1990* (NSW) whose mission is to foster vocational education and training of the highest possible quality and with the widest possible community access).

Are there any specialised agencies, authorities or officials that have a mandate on the right to education?

The Federal, State and Territory Education Ministers each have a mandate to provide education in accordance with relevant legislative and common-law obligations.

⁵⁵ Durbach and Moran, op cit. p.11

⁵⁶ There are numerous other national institutions are responsible for providing particular aspects of education. For example, Adult Learning Australia (ALA) is Australia's peak organisation for adult and community education providers; the Australian Council for Private Education and Training (ACPET) is the peak body which represents the Australian private education and training sector in dealings with federal and state governments and other agencies and the Australian Council of Independent Vocational Colleges is a non-profit organisation which caters for the specific needs of private Education and Training Colleges and organisations associated with international and domestic Education and Training.

The Human Rights and Equal Opportunity Commission (although it cannot receive complaints about breaches of the right to education under ICESCR), can consider complaints about breaches of the right to education that are contained in CROC and CCPR which are both declared as relevant international instrument under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). The Commission can also conduct National Public Inquiries, and develop and deliver human rights education, which focus on the right to education in Australia.

In addition, State and Commonwealth Ombudsman have power to investigate the administrative actions and decisions of State or Commonwealth education departments alleged to be wrong, unjust, unlawful or discriminatory.

20. Please provide information about measures adopted by education authorities to provide quality education and to establish minimum education standards and an effective and transparent system for monitoring standards.

The Declaration on the National Goals for Schooling in the Twenty-First Century⁵⁷ was adopted by the State, Territory and Australian Government Ministers of Education in 1999 sought, amongst other things, to establish Australian minimum education standards. Accordingly, all Australian Education Ministers have adopted a National Literacy and Numeracy Plan which sets national benchmarks (nationally agreed minimum acceptable standards at a particular year level) in literacy and numeracy⁵⁸. All States and Territories have agreed to report student achievement data against the benchmarks to the Australian community through the MCEETYA annual National Report on Schooling in Australia⁵⁹.

A National Goals for Teaching strategy is also in the process of being implemented. It focuses on identifying and promoting national standards and priorities for students, providing learning outcomes of students, providing a framework for reporting nationally comparable data on student achievement and for public accountability by school education authorities. Particular measures being discussed and implemented currently include establishing greater national consistency in schooling across Australia through implementing a common school starting age by 2010; developing statements of learning in key subjects to build more consistency in curriculum outcomes; introducing national tests in key subject areas; the development of a national system for the transmission of

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http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/national_goals_for_schooling_in_the_twenty_first_century.htm

⁵⁸ Students who fall below the national reading benchmark are eligible to receive a tutorial voucher valued at up to \$700 exclusive of GST. The tutorial voucher will provide for a pre and post tuition assessment, and a number of hours of reading tuition delivered on a one-to-one basis outside school hours.

⁵⁹ http://www.dest.gov.au/...lish_literacy_and_numeracy_strategy.htm

student information for students moving from one jurisdiction to another; and implementing an Australian Certificate of Education for year 12.

In addition, the Australian government has also introduced the National Indigenous English Literacy and Numeracy Strategy (which targets English literacy and numeracy for Indigenous students at levels comparable to those achieved by other young Australians) and the Australian Government Quality Teacher Programme (AGQTP) (which funds the realisation of national initiatives such as targeting improvements in the education of boys and Indigenous students).

In relation to VET, the quality of the education delivered is standardised and monitored by the Australian Qualifications Framework (“AQF”) which provides a single framework for all qualifications from Senior Secondary Certification to PhD. Consistent teaching delivery is established through the Australian Quality Training Framework (“AQTF”) which requires training providers and registering authorities to adhere to two sets of nationally agreed standards: standards for registered training organisations and standards for state and territory registering and course accrediting authorities. Training organisations must meet AQTF standards to become registered and only registered training organisations can issue AQF qualifications and deliver accredited training and assessment. Registering authorities in each state and territory are responsible for registering and monitoring training organisations and ensuring they comply with AQTF standards and with accrediting VET courses and approving training organisations’ delivery of VET to overseas students.

Although Australian universities and self-crediting training institutions are established by or under relevant State, Territory and Commonwealth legislation and have authority to accredit their own courses, the qualifications which each of them confer comply with the requirements of the Australian Qualifications Framework⁶⁰

21. Please describe the indicators (including human-rights-based indicators) used by education authorities to monitor the realisation of the right to education in your country.

Not available to HREOC

22. Please provide details of legislation and government policies, practices and programs which may impact upon academic freedom and the autonomy of educational institutions.

The law provides for freedom of speech and of the press in Australia. There are no significant legislative provisions or government policies, practices and programs in Australia which impact upon academic freedom and the autonomy of educational institutions.

⁶⁰ For more information see <http://www.aqf.edu.au/aboutaqf.htm>

Discipline

23. Please provide information about the legal status of corporal punishment and other forms of discipline that operate within the education system in your country.

Corporal punishment is not allowed in Australian schools. The decision to exclude a student from a school, either temporarily or permanently, is the most serious form of discipline that a school can exercise.

Government schools

Over the past eight years, several states and territories have reviewed and updated the procedures and principles regulating suspensions and expulsions in government schools. However, concern remains about the high rate of suspensions, disproportionate rate of suspensions of students of Aboriginal or Torres Strait Islander descent, the need for suspension and expulsion procedures to be further developed to give greater consideration to a student's right to representation, arrangements for the continuing education of expelled students, impartiality in review processes and proper documentation and records management⁶¹.

Non-government schools

Since discipline in non-government schools is regulated on a contractual basis between the parents and each school the key issues are the lack of natural justice, clear accountability, uniformity and regulation of non-government school authorities and denying a student the opportunity to answer claims that decision-makers rely upon to justify suspensions and expulsions.

Curriculum

24. Please provide an overview of how education authorities determine curriculum development at all levels of education within your country.

Education departments in each State and Territory are responsible for developing and implementing primary and secondary school education policy and regulating and managing the government school system in their state and territory. This includes the development of quality curriculum for government and non-government schools.

Curriculum development is achieved by way of statutory organisations such as the Board of Studies in NSW and the Victorian Curriculum and Assessment Authority.

⁶¹ *The Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia*, DCI, 2005
http://www.ncylc.org.au/croc/images/CROC_Report_for_Web.pdf

Their role is set the core curriculum by developing syllabus for Kindergarten to Year 12, and to provide support materials for teachers and parents in their State or Territory; to assess student learning and monitor student achievement as well as conduct research leading to innovative education programs. These statutory organisations manages external examinations such as in the NSW, the School Certificate (Year 10) and the Higher School Certificate (Year 12) Examinations each Year.

The curriculum is developed in conjunction with a range of teachers and teacher and parent organisations, school principals and principals' organisations as well as academic authorities and is reviewed regularly. The process is transparent and all curriculum documents can be found on the websites of the relevant statutory authorities

25.To what extent is human rights education incorporated into the curriculum of primary, secondary and higher education?

'Human rights' does not exist as a discrete subject in any state or territory curricula. However, an understanding of rights and responsibilities – and their relevance to young people as active citizens – is an identified learning outcome in a range of secondary school subjects.

Defining human rights education

As part of the United Nations Decade for Human Rights Education (1995-2004), human rights education has been defined, in part, as 'training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes.'

However, strong debate continues amongst human rights educators about issues such as content, outcomes and modes of delivery.

A useful understanding of human rights education is that human rights education must include a focus on both rights and responsibilities, 'as the two are inseparable and one cannot sensibly talk about one without the other'.

Human rights education should include an understanding of human rights 'from above' (as defined in laws, conventions, treaties and so on), as well as human rights 'from below' (as understood through our daily interactions with friends, family, colleagues and so on).

By incorporating a focus on human rights 'from below', human rights education engages people on questions such as what they understand their rights to be, how they view the rights of others in the community and where the responsibilities to meet those rights might lie.

This approach helps to ground human rights in everyday experience.

It is the approach that HREOC has taken in developing and implementing its human rights education programme for secondary school students.

The World Programme for Human Rights Education was launched on 1 January 2005 – the first phase of which (2005-2007) will focus on human rights education in the school system. The Australian Government sponsored the resolution for the Programme at the General Assembly.

Outline of educational responsibilities in Australia

Constitutional responsibility for school education in Australia rests with the States and Territories. Within each State and Territory, education ministers, education departments, statutory authorities and individual schools determine policies and practices on areas such as curriculum, assessment, teacher training and so on.

At the Commonwealth level

The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) is a national body, made up of State, Territory and Australian Government Ministers with responsibility for education, employment, training and youth affairs.

MCEETYA has the authority to set standards and measure outcomes in the delivery of school curriculum on a national basis. In 1999, MCEETYA released a set of *National Goals for Schooling in the Twenty-First Century*, known as ‘The Adelaide Declaration’.

According to the National Goals, students should:

- be active and informed citizens with an understanding and appreciation of Australia's system of government and civic life (Goal 1.4)
- have the capacity to exercise judgement and responsibility in matters of morality, ethics and social justice, and the capacity to make sense of their world, to think about how things got to be the way they are, to make rational and informed decisions about their lives and to accept responsibility for their own actions (Goal 1.3), and
- be free from the effects of negative forms of discrimination based on sex, language, culture and ethnicity, religion or disability; and of differences arising from students' socio-economic background or geographic location (Goal 3.1).

The Adelaide Declaration also sets out the eight ‘Key Learning Areas’ (KLAs) that must be addressed in a ‘comprehensive and balanced curriculum’:

- The Arts
- English
- Health and physical education
- Languages other than English
- Mathematics
- Science
- Studies of Society and the Environment

- Technology

The Commonwealth Government plays no role in developing the curricula for use in schools – that is the Constitutional responsibility of the States and Territories.

Within the current framework, ‘human rights’ as a discrete area of study falls most naturally in subjects that comprise the ‘Studies of Society and the Environment’ KLA, such as Australian Studies or Legal Studies.

However, in reality, discussion and teaching about issues of human rights and responsibilities is common across most KLAs.

At the State and Territory level

Boards of Study/Curriculum Councils (or equivalent) operate in each State and Territory. They have the responsibility to set the curriculum for schools in their jurisdiction by developing subject syllabuses for Kindergarten to Year 12, in line with the National Goals established by MCEETYA.

Each subject syllabus describes a range of learning outcomes, which are a set of competencies that a student is required to develop as part of that course of study.

The Boards develop and distribute materials and resources to help teachers and students meet the learning outcomes, such as a list of recommended texts.

However, the Boards do not specify how individual schools are required to teach the subject - there is no ‘one size fits all’ approach.

The Boards of Study also have the responsibility to co-ordinate and assess external examinations, such as, in NSW, the School Certificate (Year 10) and the Higher School Certificate (Year 12) Examinations.

These external examinations measure the ability of students to demonstrate the learning outcomes of their respective subjects.

At the school level

Individual schools have the responsibility for implementing the syllabus in each subject area in such a way that students are best able to meet the required learning outcomes.

Teaching strategies, and the resources that are used, vary greatly between schools, and are adapted to suit the learning needs of the students.

All schools are required to annually report to MCEETYA on their achievement of the National Goals for Schooling.

A major stress for contemporary teachers is the ‘crowded curriculum’, which leaves little time for teachers to present material that is not immediately relevant to the required learning outcomes for each subject.

Human rights education modules or resources that do not assist teachers meet these learning outcomes are unlikely to be used.

Commonwealth initiatives in education

Discovering Democracy

A recent priority of the Commonwealth Government has been the development and promotion of civics and citizenship education for primary and secondary school students, through the *Discovering Democracy* programme.

Civics and Citizenship forms part of the 'Studies of Society and the Environment' key learning area. It is not, however, a compulsory subject.

Discovering Democracy has been designed to help students learn about:

- Australia's democratic heritage and the values underpinning it, including ideas of equality, liberty, fairness, trust, respect and social co-operation
- the Australian system of government and its laws (including a minor unit of work on human rights)
- Australian national identity and how it has changed over time.

The *Discovering Democracy* teaching programme includes a small unit on the origins of modern human rights, human rights laws in Australia today and Australia's treatment of Aboriginal and Torres Strait Islander people.

Discovering Democracy received \$31.6 million in Commonwealth funding over seven years (1997-2004), which has been used to develop teaching resources, run professional development programmes for teachers, co-ordinate national activities and 'embed' civics education in schools.

An evaluation of the *Discovering Democracy* initiative (2000-2003) was recently completed.

It indicated that implementation of civics and citizenship education between states and territories, and within individual schools, has been piecemeal.

Only 10% of schools who participated in the evaluation reported teaching a comprehensive programme of civics and citizenship. The vast majority of respondent schools, however, 'dipped into' the *Discovering Democracy* resources to augment their existing teaching programme for subjects that had a similar focus, such as Australian Studies or History.

As the evaluation stated, the most significant reason that *Discovering Democracy* was not implemented more thoroughly in schools was that it was 'seen to be in competition with other priorities for time and space within the implemented curriculum.'

Alternatively, civics and citizenship education had been ‘absorbed into values education, or is part of the community activity aspect of enterprise education.’

The end result, according the evaluation, is that the present approach to teaching civics and citizenship – and the use of *Discovering Democracy* resources – can ‘encourage only a superficial understanding’ and ‘may therefore not adequately address the principal objective of providing depth and breadth to civics education.’

However, the authors make the point that ‘best practice is achieved when learning concepts permeate the culture and fabric of schools ... as much as by direct instruction in schools. In the area of civics and citizenship education, cross-curricular and co-curricular applications must be considered alongside more traditional approaches to learning.’

This understanding obviously has direct relevance to developing and implementing human rights education programmes in schools.

Indeed it appears likely that civics and citizenship will be merged with ‘values education’ (see below), which has recently emerged as a Commonwealth Government priority, to create a ‘civic values’ framework.

Values education

The Commonwealth Minister for Education, with the support of MCEETYA, commissioned a Values Education Study in 2002. The final report was presented to the Commonwealth Government in August 2003.

The study defines values education as ‘any explicit and/or implicit school-based activity to promote student understanding and knowledge of values, and to inculcate the skills and dispositions of students so that they can enact particular values as individuals and members of the wider community.’

The study, which evaluated 50 projects involving 69 schools, was principally undertaken in order to make recommendations on a set of Principles and a Framework for improved values education in Australian schools.

A Draft National Framework for Values Education in Australia was distributed for discussion, with the consultation period ending in May 2004.

The draft Framework had as its ‘underpinning vision’ an approach whereby ‘Australian schools will promote values education in an ongoing, planned and systematic way by:

- examining, in consultation with the community, the school’s mission/ethos
- developing student civic and social skills and building resilience, and
- ensuring values are incorporated into teaching programmes across the key learning areas.’

As part of the draft Framework, ten values were identified that schools may wish to use as a ‘discussion starter’ when consulting with their local community on values education:

- | | |
|--------------------------------|------------------------|
| 1. Tolerance and understanding | 6. Care |
| 2. Respect | 7. Inclusion and trust |
| 3. Responsibility | 8. Honesty |
| 4. Social justice | 9. Freedom |
| 5. Excellence | 10. Being ethical |

The process for developing a final Framework for Values Education will likely not be a short one, particularly if, as seems likely, a civics and citizenship dimension is also considered for inclusion.

Joint Standing Committee on Foreign Affairs, Defence and Trade

The Joint Standing Committee recently released its inquiry report on *Human Rights and Good Governance Education in the Asia Pacific Region* (June 2004).

Among other areas of inquiry, the Committee looked at the place of human rights education in the Australian school system.

The Committee heard evidence from a range of organisations involved in the development and delivery of human rights and ‘civics’ education, including HREOC.

However, the fact that no submissions were provided to the inquiry from any of the state and territory education departments (except Western Australia) made it impossible to develop a comprehensive picture of how human rights education is incorporated and taught across the different jurisdictions.

Nevertheless, the Committee identified the importance of developing formal and non-formal approaches to human rights education, specifically targeted at school-aged children and young people.

Accordingly the Committee made a number of recommendations with specific reference to the school system.

- Recommendation 2: The Committee recommends that human rights education be incorporated into all levels of civics and citizenship education initiatives.
- Recommendation 3: The Committee recommends that the Minister for Education, in collaboration with State and Territory Ministers on the Ministerial Council on Education, Employment, Training and Youth Affairs, develop a coherent and consistent approach to human rights education with a formal role in the education system.

Parents / Legal Guardians

26. Please describe the extent to which parents and legal guardians are able to exercise freedom of choice with regards to educational institutions and educational programs.

Australian parents and legal guardians are able to exercise freedom of choice with regards to educational institutions and educational programs subject to their ability to physically access the program and to finance participation in it.

Religious and cultural practices, languages of minority groups

27. Please provide details of relevant legislation and government policies and programs regarding respect for religious and cultural practices and the use of languages of minority groups within schools and other educational institutions.

The *Racial Discrimination Act 1975* (Cth) and State and Territory anti-discrimination acts proscribe discrimination in education on the basis of race, colour, descent, national or ethnic origin. In addition, certain State and Territory Education acts require schools to have regards to the

(h) provision of an education for children from non-English speaking backgrounds that has regard to their special needs⁶².

State and Territory Education departments all have a variety of policies and programs targeting respect for religious and cultural practices and addressing the needs of minority language groups within schools (as opposed to the use of languages of minority groups (for example in two-way language schools for Indigenous students).

The Victorian Department of Education and Training, for example, has established a Languages and Multicultural Education Resource Centre and has developed resources on LOTE, ESL and Multicultural Education⁶³.

In South Australia, the Department of Education and Children's Services (DECS) has developed the DECS Aboriginal Education Strategy 2005-2010 with one of the four targets being the development of Culturally Appropriate Curriculum and Teaching⁶⁴.

Other Commonwealth and State departments develop resources and programs targeting respect for diversity and education about different religious and cultural practices. For example, the Human Rights and Equal Opportunity Commission has developed a

⁶² For example, see section 6 of the NSW *Education Act 1990*

⁶³ www.sofweb.vic.edu.au/lem/lmerc/index.htm

⁶⁴ <http://www.aboriginaleducation.sa.edu.au/>

number of educational resources on multiculturalism, racism and diversity, including: Face the Facts and Voices of Australia⁶⁵.

Significantly, in terms of addressing the needs of minority language groups within schools, a review by the Northern Territory Department of Employment, Education and Training (DEET) into Indigenous language and culture programs in Northern Territory schools culminated in the release of the Indigenous Languages and Culture Report which recommended an increased focus on Indigenous languages and culture programs in DEET schools and the placement of bilingual education back on the agenda (Ministerial Statement, 24 August 2005)⁶⁶.

Adaptability

Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. (CESCR General Comment No. 13)

Education and work

28. Please provide details of legislation which prescribes the age for the completion of compulsory education and the minimum age of employment in your country.

The State and Territory Education Acts provide that children must remain at school in Australia until they are 15 or 16 years old depending upon the State or Territory in which they reside⁶⁷. The Western Australian Parliament recently amended its Act to raise the school leaving age to 16 in 2006 and 17 in 2008. Moves to increase the school leaving age in various states have attracted criticism that such measures do not achieve adaptability in education because “increasing the school age will compound the already deficient right of students to an education which is relevant, of good quality and reflects individual needs”⁶⁸. Some of these criticisms might be met by the approach adopted in Western Australia which requires students, until they reach the minimum leaving age, to be *either* in school, training, an apprenticeship or a traineeship, or approved full-time employment - or combinations of part-time education/training and employment⁶⁹.

Australia has not ratified the ILO Convention 138 or ILO Convention 182. Australia does not have Commonwealth legislation that specifically regulates the minimum age of employment of children or the conditions of children’s employment. However, all states and territories have laws prohibiting the employment of children under school-leaving

⁶⁵ www.hreoc.gov.au

⁶⁶ http://www.deet.nt.gov.au/education/indigenous_education/indigenous_languages_culture_report/

⁶⁷ *Education Act (ACT) 2004, Education Act (NT), Education Act (NSW) 1990, Education (General Provisions) Act (Qld) 1989 and Education (General Provisions) Regulation (Qld) 1989, Education Act (South Australia) 1972, Education Act (Victoria) 1958 (and Community Services Act (Vic) 1970), Education Act (Tasmania) and School Education Act (Western Australia) 1999*

⁶⁸ Durbach and Moran, op cit, p.14

⁶⁹ <http://www.det.wa.edu.au/schoolleavingage/>

age during school hours but the laws differ in relation to the employment of young children outside school hours⁷⁰.

In the Australian Capital Territory, for example, the *Children's Services Act 1986* (ACT) regulates the employment of children under the age of 15. The Act prohibits the employment of a child in hazardous employment without the consent of the Director of Welfare. Conditions are outlined for children employed for light work (eg errands, distributing newspapers, baby-sitting etc). A person may only employ a child in certain occupations, which are listed, or in a family business. The employment must be for less than 10 hours per week, and must not have a detrimental effect on the child's schooling. The Act imposes a penalty where activities may be dangerous to the health and safety of the child.

In New South Wales, the employment of children under the age of 15 years is regulated by the Department of Community Services under Part 4 of the *Children (Care and Protection) Act 1987* (NSW) which protects children from abuse and exploitation. The employment of children aged 16 to 18 years is regulated by the Department of Industrial Relations, Employment, Training and Further Education.

In the Northern Territory the *Education Act 1979* (NT) provides that no child between the age of six and 15 years is to be employed during school hours or at any other time which would make the child unfit or unable to attend school or receive instruction provided. The *Community Welfare Act 1983* (NT) provides that children under 15 years of age will not be employed between 10.00 pm and 6.00 am and prohibits employment of children in dangerous activities without the consent of the Minister.

In Queensland, the *Education (General Provisions) Act 1989* (Qld) provides that a parent shall not employ or cause to be employed his or her child during school hours unless special dispensation has been granted. The *Workplace Health and Safety Act 1989* (Qld) provides that an employer shall not permit any male under the age of 18 years or any female to operate at a workplace where lead processing is used. The *Health Act 1937* prohibits persons under 18 years from obtaining a pest control operators licence and prohibits a person under the age of 17 years from mixing or loading agricultural chemicals. Curiously, the *Children's Services Act 1965* prohibits any female child under the age of 17 years from engaging in street trading but not boys over the age of 12 years who may engage in street trading between the hours of 6.00 am and 10.00 pm, under certain conditions. Finally, section 78 of the *Education Act* provides that a child of compulsory school age may not be employed during the hours at which he or she is required to attend school or during any part of a day of night in any labour or occupation that is such as to render the child unfit to attend school or to obtain the proper benefit from the instruction provided for him or her.

⁷⁰ The information in this section was obtained from <http://www.right-to-education.org/content/age/australia.html> viewed 8 May 2006

In Tasmania, the *Child Welfare Act* 1960 governs the public performance of children under 14 years, trading in a public place under the age of 11 years and trading in a public place under the age of 14 years after 9.00 pm.

In Victoria the *Community Services Act* 1970 prohibits the employment of a child under 15 years of age without a child employment permit issued by the Department of Labour.

In Western Australia a child may engage in part-time employment at any age subject to any restrictions relating to the particular occupation such as those imposed by the *Child Welfare Act* 1947 which limits the part-time employment of children in street trading to those aged 12 and above and to daylight and out of school hours and licences the employment of children under 15 in entertainment and advertising.

29. Please provide an overview of the strategies, policies and programs of governments and education institutions which enable the education system in your country to adapt to the education needs of those people who would otherwise not be able to undertake education. For example: working children and young people; children and young people in juvenile detention; working women; prisoners and other people in detention

Please see the answers to questions 12 and 31.

Education for women

30. Please provide details of legislation which impacts upon the right to education of women. Issues for consideration could include (but are not restricted to):

- **The minimum age of marriage**
- **Pregnancy**

State and Territory Education Acts, anti-discrimination legislation and the *Sex Discrimination Act* (Cth) 1984 provide for equal access to education for women in Australia.

The minimum age for marriage in Australia is 18 although a couple where one person is between the age of 16 years and 18 years may marry with parental or guardian consent and an order from a judge or magistrate (*The Marriage Act* 1961 (Cth))

31. Please provide an overview of the strategies, policies and programs of governments and education institutions which enable the education system in your country to adapt to the education needs of women.

All Australian States and Territories education and related government departments have in place strategies, policies and programs which are targeted at, and adapted to, the education needs of women.

For example, In NSW, the Department of Education and Training has developed the NSW state program of Action for Women in TAFE which aims to better meet the diverse needs of women within the TAFE system. Some programs and initiatives run by the NSW government through this program include English for living courses, Women only certificate in carer education and employment for women, Job's for girls courses, Careers for women in IT and video and a Science is for girls program.

Special Needs Education

32. Please provide information about any special needs education policies and programs that have been developed and implemented by government and non-governmental organisations in your country.

In Australia most children with special needs are educated in their local schools. Where this is not possible there are also small special classes attached to local schools, and special schools, which accept children who have moderate, severe, or profound disabilities. Distance Education Units also provides special education to students who live in isolated regions.

State and Territory education departments all have policies and programs that have been developed to provide targeted services for students with special needs including educational, psychological, and vocational counselling, literacy and numeracy assistance for Aboriginal children and adults, programs offering English as a second language, courses for gifted and disabled children, and programs to assist children in remote areas. The Commonwealth Department of Education also develops policies and programs targeting a national approach to special needs education.

In relation to offering English as a Second language, each State and Territory has either an English as a Second Language (ESL) curriculum or an established practice of using ESL documents as a guide for targeted language teaching for ESL learners within the general curriculum and students are often taught by specialist subject teachers who also have ESL qualifications⁷¹. However, the manner in which ESL is taught differs between States⁷². National ESL documents are used as a guide to help teachers record and assess the progress of students learning English as a second language in reading, writing, speaking and listening. Generally, these documents provide a set of benchmarks for ESL learner achievement, a common language for reporting student achievement, guidance to teachers in making judgments about students' level of achievement and help in identifying ESL learners' needs to assist program and curriculum development.

33. To what extent are schools able to adapt to the special education needs of individual students?

⁷¹ This information was obtained from the http://www.hreoc.gov.au/human_rights/children_detention_report/report/chap12.htm

⁷² Some states have a full ESL curriculum; some have documentation supporting ESL learning in mainstream curriculum areas; and some use national documents to assist in adapting curriculum for ESL learners.

Australian primary and secondary schools are expected to be able to adapt to the special education needs of individual students. For example, the long title of the Northern Territory Education Act is “An Act to make provision for the availability of education to all people of the Northern Territory and in particular to provide for the access of all children to education programmes appropriate to their individual needs and abilities”.

To gain Special Education support, children need to have a diagnosis provided by a paediatrician or a psychologist. Families have the right to choose their own placement - special school, special class, or local school - dependent on places available. Students who are identified with a special need are placed on an Individual Education Plan (“IEP”) in both primary and secondary school and may be entitled to funding assistance and the provision of an aide in the classroom. IEP’s are required to be written with the family at least once a year so that goals for individual children are agreed upon by all those working with the child. Provisions differ enormously state by state - for example, NSW is the only state which does not provide therapists (speech, physio) for students. Western Australia has Education Support teachers working to support students in school, while Victoria relies a great deal on untrained integration aides.

In general terms, a school’s capacity to adapt to the special education needs of individual students is dependent on funding, resources, the teacher’s level of experience, the extent of the aide’s experience and the relationship between the school and the student and their family.