



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
GENEVA

23 May 2017

Ms Beatriz Balbin
Chief
Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
Palais Des Nations
1211 Geneva 10
Switzerland

Dear Madam

RE: Joint Communication from Special Procedures relating to fifty-five autistic children

I refer to the communication [AL AUS 2/2017] dated 22 March 2017 from the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the right to education concerning alleged human rights violations against fifty-five children who allegedly have autism in sixty-five schools in various Australian States and Territories over the period 2008 to 2016.

I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Australia takes its obligations under international human rights law seriously and is a longstanding party to the following treaties:

- the International Covenant on Civil and Political Rights (the ICCPR) and its Optional Protocol
- the International Covenant on Economic, Social and Cultural Rights (the ICESCR)
- the International Convention on the Elimination of All Forms of Racial Discrimination (the CERD) and it recognises the competence of the Committee on the Elimination of Racial Discrimination (CERD Committee) to consider individual communications under Article 14¹

¹ The CERD is the main treaty that protects the rights of Indigenous peoples, see, for example, CERD Committee, *General Recommendation No. 23: Indigenous Peoples* (1997), 18 August 1997, UN Doc A/52/18, Annex V.

- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT) and it also recognises the competence of the Committee Against Torture (CAT Committee) to consider individual communications under Article 22
- the Convention on the Rights of the Child (the CRC) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and
- the Convention on the Rights of Persons with Disabilities (the CRPD) and its Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Australia acknowledges that its obligations extend to all parts of federal States, including the Australian Capital Territory, without limitation or exception.

Before responding to the substance of this communication, I would like to take the opportunity to

Notwithstanding the above, the response provides the following general information about how Australia seeks to ensure the rights of children with a disability are protected and respected.

National Disability Strategy 2010-2020

The Australian *National Disability Strategy 2010-2020* (the strategy) provides a 10-year national policy framework for all levels of government to improve the lives of people with disability. The strategy seeks to drive a more inclusive approach to the design of policies, programmes and infrastructure so that people with disability can participate in all areas of Australian life. Improving access to education, health care and employment, as well as buildings, transport and social events, will provide the opportunity for people with disability to fulfil their potential.

The strategy is an important mechanism to ensure that the obligations underpinning the CRPD are incorporated into policies and programmes affecting people with disability, their families and carers.

Access to Education

One of the central outcomes of the strategy is to ensure that people with disability achieve their full potential through their participation in an inclusive high quality education system that is responsive to their needs and that they have opportunities to continue learning throughout their lives.

The strategy commits to a range of Areas for Future Action designed to achieve this outcome. These action areas focus on:

- reducing barriers, and simplifying access, for people with disability to an inclusive education system
- ensuring the needs of students with disability are incorporated into National Agreements, National Partnerships and other learning and skills-related frameworks and policies
- developing innovative learning strategies and support for students with disability to enable them to reach their full potential, and
- identifying and establishing best practice for transition planning and support through all stages of learning and from education to employment.

The Australian Government provides funding to education authorities to help meet the educational needs of all students, including those with disability. This funding, provided through the Commonwealth *Australian Education Act 2013*, also helps schools meet their obligations under the Disability Standards for Education 2005 (see <https://www.education.gov.au/disability-standards-education-2005>).

The Disability Standards for Education 2005 sets out the obligations of education and training providers to ensure that students with disability can access and participate in education and training on the same basis as those without disability. The Standards were reviewed in 2015 and 2010. Guidance Notes, Fact Sheets and Exemplars of Practice are available through the Commonwealth Department of Education website (<https://www.education.gov.au/students-disability>).

As part of the commitment to better support the needs of students with disability, all Australian governments, including State and Territory Governments, have collaborated to implement improvements to data collection to ensure a stronger evidence base from which policy and programs can be developed. The Nationally Consistent Collection of Data on School Students with Disability (the national data collection) represents a major achievement and a highpoint of these efforts. Through the national data collection, schools and governments are reporting for the first time in a nationally consistent way on the number of students with disability and the educational adjustments they receive.

The Australian Government is committed to supporting children and young people on the autism spectrum, their parents, carers, teachers and other education professionals. Since 2008, the Government has funded the Positive Partnerships program which works to build partnerships between schools and families to improve educational outcomes for students on the autism spectrum. It is a national program and includes:

- professional development for teachers, principals and other school staff to build their understanding, skills and expertise in working with children and young people on the autism spectrum

- workshops and information sessions for parents and carers of school-age children and young people on the autism spectrum
- a website providing online learning modules and other resources, including a comprehensive range of resources, in six languages, for parents and carers from Culturally and Linguistically Diverse backgrounds, and resources developed in consultation with Aboriginal and Torres Strait Islander communities.

The Positive Partnerships program is being implemented by Autism Spectrum Australia (Aspect).

Criminal justice

Under Australia's federal system of government, the Commonwealth and States and Territories have different areas of responsibility. Criminal law enforcement is primarily a matter for the States and Territories, with each managing their own criminal justice system and related programs including policing, administration of the courts and prison systems. States and Territories are generally responsible for criminal laws regulating the types of crimes against the person referred to in the Joint Communication, including physical and sexual assault.

Issues relating to the operations and conduct of State and Territory police forces are the responsibility of the State and Territory governments and authorities.

Furthermore, consistent with the presumption of innocence provided in Article 14(2) of the ICCPR, all persons charged with a criminal offence have a right to be presumed innocent until proven guilty according to law. This is a fundamental guarantee to ensure a fair trial. In this regard, Australia notes that the third request for information is framed in relation to 'violence and abuse perpetrated', not allegations of violence and abuse.

Legal Assistance

The Australian Government provides funding to different community legal services to support access to justice by disadvantaged individuals.

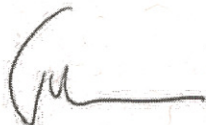
The Indigenous Legal Assistance Program (ILAP) funds Indigenous legal assistance providers to deliver culturally appropriate, accessible legal assistance and related services to Indigenous Australians to ensure that they receive the help they need to assist them to overcome their legal problems and fully exercise their legal rights. Currently, individual funding agreements have been established with eight Indigenous organisations to deliver services under the ILAP. The funding agreements require providers to plan and target service to Indigenous people who are experiencing financial disadvantage and fall within one or more priority client groups. People with a disability or mental illness and children and young people (up to 24 years) are two of the priority client groups as defined in the funding agreements.

The National Partnership Agreement on Legal Assistance Services 2015-2020 (the NPA) is the primary arrangement between the Commonwealth and the States and Territories for the Commonwealth's contribution to legal assistance funding for legal aid commissions and community legal centres. Under the NPA, legal assistance service providers should focus their services on people experiencing financial disadvantage and people who fall within one or more of the priority client groups. People with a disability or mental illness and children and young people (up to 24 years) are two of the priority client groups set out in the NPA.

I hope this information is of assistance to the Special Procedures mandate holders. Australia again reiterates its willingness to respond to further information if it is provided about the allegations and if some of the requests can be more appropriately refined.

Australia also looks forward to receiving further information from the Special Procedures Branch of the Office of the High Commissioner for Human Rights, including on the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on the right to education, and Special Rapporteur on the rights of persons with disabilities to receive individual communications and how the Special Procedures are working with the treaty bodies to reduce duplication both within the UN system and for States.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'J Quinn', written in a cursive style.

John Quinn
Ambassador and Permanent Representative to the United Nations