



## Australia's Human Rights Score Card

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# Australia's 2<sup>nd</sup> Universal Periodic Review

## Joint NGO Submission on behalf of the Australian NGO Coalition

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March 2015

This Joint NGO Submission has been prepared by the **Human Rights Law Centre**, the **Kingsford Legal Centre** and the **National Association of Community Legal Centres**, with substantial contributions from a number of NGOs across Australia and is endorsed, in whole or in part, by 190 NGOs.

The **Human Rights Law Centre** is a national specialist human rights legal service that protects and promotes human rights in Australia and beyond through a strategic mix of legal action, advocacy, research and capacity building. HRLC has NGO consultative status with ECOSOC.

The **Kingsford Legal Centre** is a community legal centre in Sydney, which provides free advice and ongoing assistance to members of the community in relation to a number of areas of law, including discrimination law. Kingsford Legal Centre also undertakes law reform and community education work.

The **National Association of Community Legal Centres** is the peak national body for over 200 community legal centres across Australia. NACLC has NGO consultative status with ECOSOC.

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## Joint NGO Submission to the second Universal Periodic Review of Australia

1. This joint submission has been prepared by, and in consultation with, a number of lead Australian non-government organisations (NGOs).<sup>1</sup> It has been endorsed, in whole or part, by the 190 NGOs listed at the end of this submission in Attachment A.
2. The issues highlighted and recommendations made in this submission are considered in particular thematic areas, often however they are relevant to more than one particular group, reflecting the intersectionality of inequality and compounding nature of discrimination and disadvantage. Individuals experience discrimination or disadvantage as a result of a combination of factors—such as race, ethnicity, gender, disability, age and sexual orientation—rather than just one factor.
3. A significant concern for NGOs in Australia is the lack of implementation of recommendations made as part of Australia’s last UPR in 2011. For example, of the 145 recommendations made to Australia as part of the last UPR, only 11% of those accepted (in whole or in part) have been fully implemented and 19.7% have been partially implemented.<sup>2</sup> Unfortunately, the vehicle intended to monitor implementation of the recommendations, Australia’s third National Human Rights Action Plan, has not advanced. This has meant that the status of the implementation of a number of the recommendations is unclear.

### **A. Constitutional, Legislative and Institutional Framework**

4. Despite being a party to seven of the core human rights treaties, Australia has not fully incorporated these treaties into its domestic law and has failed to adopt a comprehensive legal framework for the protection of human rights. There are significant gaps in the protection of human rights by and in Australia and many individuals are unable to access effective remedies.
5. In April 2010, the Australian Government announced a *Human Rights Framework* in response to an independent national consultation on human rights. The Framework did not include a federal Human Rights Act—the consultation’s key recommendation. However, in a positive development, since January 2012, statements of compatibility have accompanied all federal legislation and a Joint Parliamentary Committee on Human Rights was established to scrutinise federal legislation for its compatibility with the seven core human rights treaties.<sup>3</sup>
6. Work has been undertaken to introduce human rights education in the school curriculum and develop resources for public servants, and should be developed further.<sup>4</sup> Remaining key initiatives of the Framework—grants for human rights education, a project to consolidate and strengthen federal anti-discrimination laws and a National Human Rights Action Plan—appear to have been defunded or discontinued.<sup>5</sup>
7. **Australia should fully incorporate its international human rights obligations into domestic law (with the aim of eventual Constitutional entrenchment) by introducing a comprehensive, judicially enforceable federal Human Rights Act. Australia should also further resource human rights education in accordance with the World Program on Human Rights Education.**<sup>6</sup>
8. **Australia should ratify the Convention on Migrant Workers, Optional Protocol to ICESCR, Optional Protocol to the Convention against Torture, ILO Convention No. 169 on Indigenous and Tribal Peoples, the Convention against Enforced Disappearances and the Third Optional Protocol to the Convention on the Rights of the Child.**

### ***Australian Human Rights Commission***

9. Since 2011, there have been welcome developments to establish a National Children's Commissioner and Age Discrimination Commissioner, as well as the appointment of a full-time Race Discrimination Commissioner and Human Rights Commissioner. However, despite being an independent national human rights institution in accordance with the *Paris Principles*, the mandate and powers of the Australian Human Rights Commission (AHRC) are limited.<sup>7</sup> In addition, since the last UPR there have been unprecedented government-led attacks on the AHRC's independence and functioning. These include a very substantial reduction in funding;<sup>8</sup> the appointment of a Commissioner without a transparent process; the reduction of the Disability Discrimination Commissioner and Age Discrimination Commissioner from full-time to part-time roles; and persistent attacks on the President of the AHRC and attempts to procure her resignation.<sup>9</sup> **Australia should urgently restore funding and independence to the AHRC to enable it to effectively carry out its functions.**

### ***Domestic Implementation of UN Recommendations***

10. Australia regularly fails to implement recommendations or views of UN human rights bodies and has not established institutional mechanisms to follow up on recommendations or views.<sup>10</sup> **Australia should extend the mandate of the Joint Parliamentary Committee on Human Rights to include the domestic consideration, follow up and oversight of implementation of recommendations and views of UN human rights mechanisms.**

## **B. Promotion and Protection of Human Rights on the Ground**

### **1. Equality and Non-Discrimination**

11. Australia has enacted federal laws to prevent discrimination on the basis of race, sex, age, disability and, in response to recommendations from the last UPR, enacted amendments to the *Sex Discrimination Act 1984* (Cth) in 2013 to introduce protections for the attributes of relationship status, sexual orientation, gender identity and intersex status. However, federal anti-discrimination laws remain inconsistent and outdated. The laws include significant exceptions and barriers to individuals accessing effective remedies. Among the initiatives included in the new *Human Rights Framework* was the development of a consolidated federal anti-discrimination law. However, this reform was deferred indefinitely in May 2013. **Australia should enact a comprehensive Equality Act that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.**<sup>11</sup>
12. The Australian Constitution does not enshrine the right to equality and permits discrimination on the basis of race.<sup>12</sup> There have been steps taken toward recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution and racial equality.<sup>13</sup> **Australia should ensure that non-discrimination and equality for Aboriginal and Torres Strait Islander Peoples is duly acknowledged and respected in the Australian Constitution, national laws and official policies, consistent with the UN Declaration on the Rights of Indigenous Peoples.**

## 2. Democratic Rights and Freedoms

### *Peaceful Protest*

13. Queensland, Tasmania, Victoria and Western Australia have each introduced anti-protest legislation that unfairly restricts rights to peaceful assembly.<sup>14</sup> The laws criminalise conduct such as “disturbing” the 2014 G20 meeting or “hindering business activity”.<sup>15</sup> Tasmania’s anti-protest laws criminalise certain protest activities, confer additional powers on police and impose harsh penalties.<sup>16</sup> Western Australia’s proposed legislation would criminalise a broad range of protest activities.<sup>17</sup> **Australia should repeal laws that criminalise peaceful protest contrary to international law.**

### *Freedom of Association*

14. Laws that purport to target motorcycle gangs and limit freedom of association, have been passed in Queensland and New South Wales.<sup>18</sup> Queensland has mandatory minimum sentences of up to 25 years.<sup>19</sup> The laws infringe on peoples’ right to socialise and assemble peacefully.<sup>20</sup> **Australia should amend laws to ensure that association does not form the basis of criminal conviction or punishment.**

### *Free Speech*

15. Federal and State Governments have restricted advocacy by NGOs. This has included prohibitions on advocacy for certain government funded NGOs in Queensland<sup>21</sup> and NSW<sup>22</sup> and amendments to Commonwealth funding agreements precluding legal assistance services from using federal funds to undertake law reform and advocacy work,<sup>23</sup> despite the *Not-for-Profit Sector Freedom to Advocate Act 2013* (Cth). **Australia should promote advocacy by NGOs and ensure that Government funding is not tied to conditions that restrict free speech.**
16. The Australian Government has recently referred journalists and whistleblowers inside immigration detention centres for investigation by the Australian Federal Police in relation to their work revealing human rights abuses in Australia's treatment of refugees and asylum seekers. The referrals are part of a trend of intimidation and attack on human rights defenders who seek to expose human rights abuses. **Australia should strengthen the *Public Interest Disclosure Act 2013* (Cth) to provide protection to whistleblowers where the disclosure relates to the alleged violation of human rights or may expose or promote accountability for such violations, whether by State or non-state actors.**

### *Voting*

17. All federal and state electoral laws continue to disenfranchise persons of ‘unsound mind’, violating the right to vote for persons with disability, the right to equality and the right to freedom from discrimination on the basis of disability.<sup>24</sup> Queensland legislation bans all persons serving a sentence of imprisonment from voting, denying prisoners the right to vote.<sup>25</sup> **Australia should ensure that all persons have the right to vote subject only to restrictions that are reasonable, necessary and proportionate, in accordance with international law.**

## 3. Administration of Justice

### *Legal Assistance Funding*

18. Since the last UPR,<sup>26</sup> legal assistance services (including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services<sup>27</sup> and family violence prevention legal services) have faced further significant funding cuts and funding uncertainty.<sup>28</sup> Additional funding is required to adequately meet the legal needs

of disadvantaged and vulnerable people.<sup>29</sup> **Australia should implement the recommendations of the Productivity Commission<sup>30</sup> and the Senate Inquiry into Access to Justice<sup>31</sup> and provide additional funding for legal assistance services, including for strategic advocacy and law reform activities.<sup>32</sup>**

#### **Justice System**

19. The gross overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system continues to be of significant concern, with Aboriginal and Torres Strait Islander people 15 times more likely to be imprisoned.<sup>33</sup> Particular issues include the disproportionate impact of mandatory sentencing laws, over-representation in prison, and limited access to legal<sup>34</sup> and interpreter assistance.<sup>35</sup> **Australia should implement measures to address the underlying causes of overrepresentation of Aboriginal and Torres Strait Islanders peoples in the criminal justice system, including justice reinvestment strategies<sup>36</sup> and justice targets.<sup>37</sup>**

#### **Rule of Law**

20. A range of Government decisions and policies continue to undermine key rule of law principles, including in relation to access to legal advice,<sup>38</sup> freedom from arbitrary detention,<sup>39</sup> judicial process,<sup>40</sup> retrospective legislation, and the need for clear and unambiguous legislation.<sup>41</sup>
21. Since the last UPR, additional mandatory sentencing legislation has been introduced in four jurisdictions,<sup>42</sup> undermining rule of law principles and Australia's international human rights obligations. Such laws prevent courts from imposing appropriate penalties based on the circumstances of the case and disproportionately impact Aboriginal and Torres Strait Islander peoples. In 2014, the UN Committee against Torture recommended that Australia review mandatory sentencing laws with a view to abolishing them.<sup>43</sup>
22. **Australia should review all mandatory sentencing laws, with a view to abolishing such laws.**

#### **4. Poverty**

23. Poverty in Australia has increased since the last UPR, and the 2014-2015 Federal Budget included a range of measures that will further increase poverty.<sup>44</sup>
24. The majority of people living below the poverty line rely on social security payments as their main source of income<sup>45</sup> and many payments fall below the poverty line.<sup>46</sup> **Australia should increase social security payments to above the poverty line.**
25. There has been an increase in the conditions that must be met to receive social security payments, including compulsory income management schemes. These schemes disproportionately affect some groups and restrict individual decision-making, with no evidence of effectiveness.<sup>47</sup>
26. Indexation of social security payments to prices, rather than wages, means that the level of poverty among people relying on these payments will increase over time. **Australia should index all social security allowances and pensions to both wages and prices, whichever is higher, to ensure they keep pace with community living standards over time.**
27. **Australia should increase support to sole parents and their children to reduce child poverty.**

#### **5. Housing and Homelessness**

28. Since the last UPR, homelessness has increased,<sup>48</sup> housing affordability has worsened, and there continues to be a social housing shortage.<sup>49</sup> Family violence is now the most common cause of homelessness in Australia.<sup>50</sup> Australia has failed to implement the

recommendations of the Special Rapporteur on the Right to Adequate Housing, who concluded that Australia was in the midst of a ‘serious national housing crisis’.<sup>51</sup>

29. **Australia should maintain its commitment to halve homelessness by 2020<sup>52</sup> and develop a comprehensive and coordinated national housing strategy.<sup>53</sup>**
30. **Australia should ensure the availability of social and affordable housing suitable for people with diverse housing needs through increased investment in affordable housing programs, specialist homelessness and tenant advisory services.**
31. **Australia should conduct an audit of laws and policies that impact disproportionately or discriminatorily on people experiencing homelessness and encourage amendment of those laws and policies at state and local levels.<sup>54</sup>**

## **6. Counter-Terrorism**

32. Many of Australia’s counter-terrorism laws infringe upon fundamental human rights.<sup>55</sup> The Australian Government has criminalised travel to areas of foreign countries where terrorist organisations operate, infringing the right to freedom of movement.<sup>56</sup> The offence of “advocating” terrorism criminalises “encouraging” or “promoting” terrorism and unduly restricts freedom of expression.<sup>57</sup>
33. Many counter-terrorism powers will continue to operate until 2018,<sup>58</sup> despite being discredited by major inquiries.<sup>59</sup> **Australia should review and amend its counter-terrorism laws and practices to ensure that they are consistent with Australia’s international human rights obligations.**

## **7. Aboriginal and Torres Strait Islander Peoples**

34. Since the last UPR, positive developments for Australia’s Aboriginal and Torres Strait Islander Peoples have included a commitment by the Australian Government to Constitutional Recognition, the adoption of the World Conference of Indigenous Peoples Outcome Document and continued commitment to the strategy for “Closing the Gap” aimed at improving health and life expectancy.
35. However, few of the Special Rapporteur on Indigenous Rights’ recommendations have been implemented.<sup>60</sup> Aboriginal and Torres Strait Islander people continue to suffer significant disadvantage in the enjoyment of their human rights. This is exacerbated by funding cuts of \$603 million over five years to Aboriginal and Torres Strait Islander Peoples organisations, including peak bodies, which has stifled advocacy and self-determination.<sup>61</sup> **Australia should continue to review and implement the Special Rapporteur’s recommendations, consistent with the UN Declaration on the Rights of Indigenous Peoples.<sup>62</sup>**

### ***Northern Territory Intervention***

36. The Commonwealth Government has previously suspended the operation of the *Racial Discrimination Act 1975* (Cth) (RDA) to introduce the Northern Territory Emergency Response for the stated purpose of addressing reported child abuse. While the RDA has been reinstated as part of the Stronger Futures legislation, the legislation continues to disproportionately affect Aboriginal and Torres Strait Islander Peoples, as they make up the majority of people living in affected areas.<sup>63</sup> **Australia should revise the national intervention in the Northern Territory in close cooperation with Aboriginal and Torres Strait Islander Peoples to ensure the policies and programs are rationally connected to, reasonable, and in proportion to the achievement of social development of Aboriginal and Torres Strait Islander Peoples.**

### ***Native Title***

37. The strict requirement of the *Native Title Act 1993* (Cth) of continuous connection to the land since colonisation is incompatible with the UN Declaration on the Rights of

Indigenous Peoples.<sup>64</sup> **Australia should regularly review native title laws to ensure that the lands, territories and resources of Aboriginal and Torres Strait Islander Peoples are returned in accordance with human rights standards for ownership and development.**

38. **Australia should reverse the onus of proof for title to lands to require evidence that lands, territories and resources have been legitimately acquired from Aboriginal and Torres Strait Islander Peoples.**

#### ***Stolen Generations and Stolen Wages***

39. Australia has failed to implement a national reparation scheme, including compensation, for members of the 'Stolen Generations'<sup>65</sup> or for the 'Stolen Wages' of many Aboriginal and Torres Strait Islander peoples.<sup>66</sup> Failure to properly redress the policies of the 'Stolen Generations' has led to ongoing escalation in the removal of Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander children now account for almost 35% of all children in care despite comprising only 4.4% of the nation's child population.<sup>67</sup> **Australia should establish a national reparations scheme, including compensation, for members of the 'Stolen Generations' and implement all recommendations contained in the *Bringing Them Home* Report, especially in relation to current child removal practices.<sup>68</sup> Australia should also establish a national compensation scheme for people adversely affected by Stolen Wages policies.**

#### ***Economic Social and Cultural Rights***

40. Aboriginal and Torres Strait Islander children, particularly those living in remote communities, suffer from severe disadvantage, including in relation to child mortality, living standards, health and education.<sup>69</sup> There is a lack of culturally appropriate services<sup>70</sup> and significant barriers to education persist, including a lack of bilingual education programs.<sup>71</sup>
41. **Australia should ensure availability of, and funding for, quality community controlled services across early childhood, health, family support, housing and youth sectors, including programs to address critical overcrowding and housing shortages.**
42. **Australia should ensure Aboriginal and Torres Strait Islander Peoples give their consent to the development and implementation of policies and programs that impact upon their communities and futures.**

#### **8. Women**

43. Many women in Australia experience human rights violations as a result of an intersection of gender and another aspect of their lived experience.<sup>72</sup> Policy responses to gender inequality often fail to address substantive equality and should be underpinned by data and rigorous research. **Australia should ensure that gender equality policies and programs are grounded in the concept of substantive equality and provide effective remedies to address intersectional discrimination.**

#### ***Gender Equality***

44. Australia needs to ensure economic equality in Australia, including supporting women in leadership, improving access to childcare and addressing the unequal distribution of unpaid caring work. Australia has significant gendered gaps in wages (24.7%) and retirement savings (women retire with 45.7% less superannuation).<sup>73</sup> **Australia should address the gendered wage gap, including collecting a range of gender disaggregated data about the needs of diverse groups of women and preventing any reduction in workplace gender equality reporting.**

### ***Violence against Women***

45. The adoption of a second three-year action plan under the *National Plan to Reduce Violence Against Women and Their Children* has been a positive step; however, violence against women has not decreased.<sup>74</sup> There is a lack of data and policy focus on women of diverse backgrounds and experiences. The National Plan and associated Action Plan are under-resourced and inadequate in some respects. **Australia should adequately fund the National Plan, including women-specific services, and establish an independent mechanism to evaluate the implementation of the National Plan.**

## **9. People with Disability and Mental Illness**

### ***Forced Sterilisation***

46. Forced sterilisation<sup>75</sup> is a practice that remains legal and sanctioned by Governments in Australia. A 2013 Senate Inquiry recommended regulation of the practice not prohibition.<sup>76</sup> For more than a decade, the UN has made multiple recommendations to Australia to legislate to prohibit forced sterilisation, but these have been ignored.<sup>77</sup> **Australia should adopt national uniform legislation prohibiting the use of sterilisation of children, and of adults in the absence of their prior, fully informed and free consent.**

### ***Violence in Institutions***

47. Violence against people with disability and mental illness in institutional and residential settings<sup>78</sup> is a national epidemic and people, particularly women, frequently experience sustained episodes of violence.<sup>79</sup> This violence is very difficult to detect, investigate and prosecute, due to the 'closed' nature of institutional settings.<sup>80</sup> Lack of reporting and cover ups by staff and management, is a widespread and a significant factor in the lack of investigation, prosecution and conviction of perpetrators.<sup>81</sup>
48. The UN has long recommended that Australia investigate and address all forms of violence against people with disability, including urgent recommendations in 2013 to investigate and address violence against women and girls with disability in institutional environments.<sup>82</sup> These recommendations have not been acted upon. **Australian should commission a National Independent Inquiry into Violence and Abuse Against People with Disability and Mental Illness in Institutional and Residential Settings.**<sup>83</sup>

### ***Indefinite Detention***

49. Justice diversion provisions<sup>84</sup> for people with cognitive, psychosocial disability or mental illness within the criminal justice system deemed 'unfit to stand trial'<sup>85</sup> have resulted in indefinite detention of people in prisons or psychiatric facilities without conviction.<sup>86</sup> This is exacerbated by a lack of appropriate housing, therapeutic and disability support options. This disproportionately affects Aboriginal and Torres Strait Islander people.<sup>87</sup> **Australia should establish uniform national legislation, in line with international human rights law, to facilitate due legal process to end indefinite detention of people with disability without conviction.**

### ***Supported Decision-Making***

50. Guardianship, estate management and mental health laws that regulate legal capacity, financial management and substitute decision-making in Australia are inconsistent with or fail to fulfil Australia's obligations under international human rights law.<sup>88</sup> **Australia should establish a nationally consistent supported decision-making framework that strongly and positively promotes and supports people to effectively assert**



**and exercise their legal capacity and enshrines the primacy of supported decision-making mechanisms.<sup>89</sup>**

#### ***Restrictive Practices***

51. Restrictive practices involve the use of interventions by carers, service providers and others that have the effect of limiting the rights or freedom of movement of people with disability and people with mental illness.<sup>90</sup>
52. **Australia should continue work to date<sup>91</sup> to eliminate involuntary treatment and restrictive practices, in all forms and settings, which restrict, inhibit and or limit the free movement and enjoyment of life of people with disability and people with mental illness.**

#### ***Involuntary Treatment***

53. Laws, policy and practice for involuntary treatment of people with mental illness and psychosocial disability in Australia limit individual rights to liberty and security and equal recognition before the law. The rate of forced community psychiatric treatment is increasing.<sup>92</sup> **Australia should conduct a comprehensive audit of laws, policies and administrative arrangements underpinning compulsory treatment to eliminate such laws and practices.**

#### ***Access to Mental Health Services***

54. One in five Australians experiences mental illness every year. People with mental illness and psychosocial disability face stigma and discrimination and experience lower life expectancies, higher rates of chronic and physical health issues, and lower rates of social and economic participation. These outcomes are particularly serious for certain vulnerable groups.<sup>93</sup> There remain inadequate community-based treatment options for people experiencing mental illness.<sup>94</sup> There is currently no whole-of-government approach to improving outcomes for people with mental illness. National health and disability reforms since the last UPR are presenting significant risks of further deterioration in this regard. **Australia should ensure people with mental illness have adequate and increased access to safe, appropriate and recovery-based services and supports.**
55. **Australia should fulfil the commitments made in the Council of Australian Governments Fourth National Mental Health Plan 2009-2014 and recommit to a longer-term and cross-sector national mental health strategy.<sup>95</sup>**

#### **10. Refugees and Asylum Seekers**

56. Any asylum seeker now arriving in Australia/Australian territory by boat is subject to mandatory removal to detention centres on Nauru or Manus Island in Papua New Guinea,<sup>96</sup> including unaccompanied children and gay men, despite criminalisation of male to male sexual conduct in PNG and Nauru. The UNHCR has described the conditions in the centres as unsafe, falling short of international standards and as producing a 'return-orientated environment'.<sup>97</sup> There have been violent incidents inside both detention centres.<sup>98</sup> Two men detained on Manus Island died in 2014. **The Manus and Nauru detention centres should be closed and asylum seekers should have their claims processed in Australia.**

#### ***Mandatory Detention***

57. Asylum seekers in Australia including children are subject to mandatory, indefinite and non-reviewable detention.<sup>99</sup> Australian law requires that they remain in detention until they are either granted a visa or removed from the country.<sup>100</sup> Release by a court is expressly excluded.<sup>101</sup> **Australia should repeal the mandatory detention provisions**

**in the *Migration Act*, codify that asylum seekers be detained only as a last resort, stipulate in law maximum time limits on immigration detention and introduce a system of periodic judicial review of all decisions to detain.**

#### ***Assessment of Protection Claims***

58. Australia continues to intercept and return asylum seekers at sea without a fair or thorough assessment of their protection claims, creating a clear risk of refoulement. Changes to Australian law in relation to boat turn-backs and detaining asylum seekers at sea are in breach of international law, the rules of natural justice and non-refoulement.<sup>102</sup> These laws also introduced a less robust fast-track assessment process for asylum seekers arriving by boat. **Australia should ensure that all asylum seekers have their protection claims fairly and thoroughly assessed under Australia's standard refugee determination process.**

#### ***Adverse Security Assessments***

59. Refugees subject to adverse security assessments continue to be indefinitely detained on the basis of secretive decisions that they cannot appeal.<sup>103</sup> **Australia should ensure that refugees subject to adverse security assessments have the same right to seek merits review as Australian citizens and permanent residents. Where an adverse assessment remains in place, consideration should always be given to whether any risk can be managed in a manner less restrictive than indefinite detention.**

### **11. Children**

60. Since the last UPR there has been progress under the National Framework for Protecting Australia's Children 2009-2020, including the establishment of a Royal Commission into Institutional Responses to Child Sexual Abuse, and the office of the National Children's Commissioner.<sup>104</sup> However, since the office of the National Children's Commissioner was established in 2013, it has not been provided with adequate resources for effective monitoring, as recommended.<sup>105</sup>

61. The National Framework does not encompass all the rights of children in Australia as provided for under the Convention on the Rights of the Child.<sup>106</sup> **Australia should develop a National Plan for Children to ensure stronger legislative protections and enforcement of the rights of children under the CROC.**<sup>107</sup>

62. At 31 January 2015, there were 211 children in immigration detention facilities in Australia and 119 children held in the offshore processing centre on Nauru.<sup>108</sup> Prolonged detention causes acute stress and a rapid decline in mental health and wellbeing. **Australia should implement the recommendations of the Australian Human Rights Commission's 2014 *The Forgotten Children Report*.**<sup>109</sup>

### **12. Culturally and Linguistically Diverse People and Communities**

#### ***Equitable Access to Programs and Services***

63. Positive developments since the last UPR include Australia's multicultural policy, *The People of Australia* and Australia's *Multicultural Access and Equity Policy: Respecting Diversity, Improving Responsiveness*.<sup>110</sup> However, Australians from culturally and linguistically diverse communities continue to face multiple disadvantages. The Multicultural Access and Equity framework lacks oversight and enforcement mechanisms to ensure policy implementation by all government agencies. This has resulted in fragmented program design and delivery that does not fully cater to the needs of culturally and linguistically diverse communities. **Australia should ensure that the Multicultural Access and Equity Policy is underpinned by a strong social**

**inclusion agenda, and that its implementation is binding on all government programs and agencies, as part of a whole-of-government approach.<sup>111</sup>**

### ***Racial Discrimination***

64. Australian Government support for the National Anti-Racism Strategy and ‘*Racism. It Stops with Me*’ campaign has been a positive step, along with the decision not to proceed with proposed amendments to the *Racial Discrimination Act 1975* (Cth).<sup>112</sup> However, reported experience of racial discrimination remains high.<sup>113</sup> **Australia should strengthen measures to combat race discrimination, including against incitement of discrimination or violence on racial, ethnic or religious grounds, particularly through education and intercultural dialogue.<sup>114</sup>**

### **13. Older Persons**

65. Australia faces a demographic shift—by 2056 one-in-four Australians will be over 65<sup>115</sup> and will be living<sup>116</sup> and staying in the workforce longer.<sup>117</sup> Australia has undertaken initiatives to strengthen the rights of older persons,<sup>118</sup> however their rights are often within the domain of ‘other status’ or missing from human rights dialogue, including in the last UPR.

### ***Convention on the Rights of Older Persons***

66. The development of a Convention on the Rights of Older Persons is needed to address the normative and implementation gaps in international human rights protection for older persons. **Australia should engage with the work of the UN Open-Ended Working Group on Ageing<sup>119</sup> and the Independent Expert on the enjoyment of all human rights by older persons<sup>120</sup> to strengthen protection and promotion of the rights of older persons.**

### ***Model Laws***

67. Legislative protections for older persons are inconsistent across jurisdictions. **Australia should review and enact model, uniform national laws protecting older persons from abuse, neglect and exploitation<sup>121</sup> and ensuring older people are involved in decisions about their health and care.<sup>122</sup>**

### ***Workforce Participation***

68. There are significant barriers to workforce participation by older persons,<sup>123</sup> despite the economic benefits of such participation.<sup>124</sup> **Australia should implement the recommendations of the ALRC’s 2013 Inquiry and develop a National Mature Age Persons Workforce Participation Plan.<sup>125</sup>**

### ***Longevity***

69. As Australians live longer there is a need for social policy and programs that improve participation of older persons. **Australia should develop and fund targeted programs to support longevity including in relation to combating social isolation, intergenerational activities and use of technology.**

### **14. Sexual Orientation, Gender Identity and Intersex Status**

70. Since 2011, Australia has introduced federal discrimination protections for lesbian, gay, bisexual, transgender and intersex (LGBTI) people;<sup>126</sup> improved recognition on the basis of affirmed sex/gender including access to passports<sup>127</sup> and healthcare<sup>128</sup> and some states have improved the legal recognition of same-sex relationships<sup>129</sup> and families.<sup>130</sup>

## **Violence**

71. **Australia should reduce the high levels of violence faced by LGBTI Australians<sup>131</sup> by adopting the Australian Senate's recommendations to ban unnecessary medical intervention<sup>132</sup> (including genital surgeries) on people with intersex variations; and conduct activities to reduce bullying and harassment of LGBTI people, particularly youth.**

## **Classification of Sex/Gender**

72. People who seek gender affirmation<sup>133</sup> continue to face unjust hurdles obtaining accurate birth certificates. In addition, people with intersex variations may face failures to recognise their sex assigned at birth. **Australia should recognise self-affirmed sex/gender on birth certificates without requiring medical treatment, or a person to be unmarried, and should include classifications other than male or female, such as 'X'.**

## **Relationships and Parenting**

73. Inequality in family life persists, with LGBTI couples unable to marry,<sup>134</sup> overseas marriages not recognised,<sup>135</sup> and most jurisdictions not allowing same-sex couples to legally adopt children, including those already in their care.<sup>136</sup> **Australia should legislate for marriage equality and harmonise the legal protection of children in LGBTI-headed families.**

## **15. Prisoners and Prison Conditions**

74. Australian prisons continue to use harmful practices, such as routine strip-searches and solitary confinement. Substandard healthcare, including mental health care, is a significant problem, despite prisoners having more chronic health needs than the general population.<sup>137</sup>
75. Overcrowding and a lack of emphasis on rehabilitation is evident in prisons across Australia.<sup>138</sup> Prison conditions are poor, with inadequate access to education, rehabilitation programs,<sup>139</sup> as well as information and communication technology.
76. Many jurisdictions do not have minimum legislation protecting the basic rights of prisoners to be treated with dignity and there is no independent oversight mechanism for places of detention.<sup>140</sup> **Australia should provide prisoners with community standard healthcare, including access to quality mental health care. Harmful practices, such as strip-searching and solitary confinement, should be phased out.**

## **16. Police**

77. Excessive use of force by police due to inadequate regulation and training remains a serious concern, as does lack of adequate mechanisms to independently investigate police related deaths and complaints.<sup>141</sup> The deployment of Tasers has contributed to an overall rise in the use of force in some jurisdictions and nationally Tasers have been associated with five deaths, all of which raise credible allegations of excessive or inappropriate use.<sup>142</sup>
78. While there have been some welcome steps to tackle racism in Victoria, racial minorities and Aboriginal and Torres Strait Islander people continue to be disproportionately targeted by police.<sup>143</sup> **Australia should establish independent effective mechanisms to investigate police related deaths and complaints, legislate to regulate the use of force in a human rights compliant manner, and mandate human rights and anti-racism training for police.**

## **17. Business and Human Rights**

79. Australian companies have significant human rights impacts both in Australia and abroad. There is no coherent legal or policy framework that guides corporations on their responsibility to respect human rights when they are operating overseas, particularly in

areas of weak regulation or in indirect relationships with impacted individuals or communities. Of particular concern are labour violations in transnational supply chains, particularly the garment sector, and the impacts of extractives companies.<sup>144</sup> **Australia should begin a consultative process towards adoption of a National Action Plan on business and human rights.**<sup>145</sup>

#### 18. International Assistance

80. The government has abolished AusAID as an independent agency and significantly reduced the aid budget.<sup>146</sup> Contrary to Organisation for Economic Co-operation and Development guidelines and commitments, the stated aim of the aid program<sup>147</sup> is to pursue Australia's national interest with a focus on supporting private sector involvement.<sup>148</sup>
81. Government aid finances Australian companies to operate in developing countries without regard to protecting human rights, or assessing their human rights record. This is a concern in light of projects such as the Australian Aid funded Cambodia Railways Project<sup>149</sup> and the Mining for Development Initiative.<sup>150</sup> There are limited accountability measures for private sector entities, and currently no guidelines or monitoring processes against human rights indicators. This leaves communities unsupported and at risk of human rights violations with no formal avenue for recourse or redress.<sup>151</sup>
82. **Australia should implement a human rights-based approach to overseas development co-operation, including through the establishment of human rights safeguards and monitoring mechanisms such as an Independent Ombudsman for its aid program.**

#### 19. Privacy

83. There are a range of new and proposed laws,<sup>152</sup> largely relating to the threat of terrorism, including a mandatory data retention regime, that pose a significant risk to the privacy of people in Australia.<sup>153</sup> **Australia should guarantee the right to privacy of all people in Australia and should ensure any measures relating to metadata are reasonable, necessary and proportionate and contain appropriate safeguards.**

#### 20. Trafficking

84. Since the last UPR, Australia has strengthened anti-trafficking strategies, including the amendment of the *Commonwealth Criminal Code Act 1995 (Cth)*,<sup>154</sup> completion of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*,<sup>155</sup> funding to NGOs to develop new responses to awareness raising, and direct services for victims of slavery and trafficking, and forced marriage initiatives.<sup>156</sup>
85. Nevertheless, victims of trafficking require further support, including support separate from and not contingent upon participation in the criminal justice investigatory or prosecutorial framework.<sup>157</sup>
86. **Australia should promote a human rights based approach and ensure the rights of victims of trafficking are protected, including the right to redress and economic and social support for victims.**

#### 21. Sex Workers

87. Australia's HIV response has included effective strategies such as supporting sex worker community organising and peer education. This has supported sex workers implementing safer sex practices resulting in low rates of HIV.<sup>158</sup> However, sex workers still experience high levels of discrimination and stigma and are negatively impacted by criminalisation of sex work. **Australia should encourage a consistent approach to decriminalisation of sex work and introduce measures to tackle discrimination against sex workers.**

## **Attachment A – List of Endorsing Organisations**

This submission is endorsed, either in part or in whole, by the following organisations:

2020Women

Aboriginal Legal Rights Movement

ActionAid Australia

Advocacy for Inclusion

Androgen Insensitivity Syndrome Support Group Australia

Aleph Melbourne

All Together Now

Amnesty International Australia (National Women’s Rights Team)

Anti-Slavery Australia

Association for Services to Torture and Trauma Survivors

Asylum Seekers Centre Inc.

Asylum Seekers Resource Centre

Australasian Council of Women and Policing

Australian Baha’i Community – Office of Equality

Australian Capital Territory Disability Aged and Carer Advocacy Service

Australian Catholic Religious Against Human Trafficking

Australian Centre for Leadership for Women

Australian Council for International Development Gender Equity Working Group

Australian Federation of AIDS Organisations

Australian Federation of Graduate Women

Australian Federation of Medical Women

Australian Lawyers for Human Rights

Australian Marriage Equality

Australian Motherhood Initiative for Research and Community Involvement

Australian National Committee for UN Women  
Australian Reproductive Health Alliance  
Australian Tamil Congress  
Australian Women Against Violence Alliance  
Australian Women's Health Network  
Australian Womensport and Recreation Association  
Australians for Native Title and Reconciliation (ANTaR)  
Australians for Native Title and Reconciliation (ANTaR) Queensland  
Baptistcare Inc  
Basic Rights Queensland Inc  
Bisexual Alliance Victoria Inc  
Brigidine Asylum Seeker Project  
Carmen Rupe Memorial Trust  
Castan Centre  
Central Coast Community Legal Centre  
Centre for Human Rights Education at Curtin University  
Centre for Multicultural Youth  
Cerebral Palsy Alliance  
Child Rights Task Force  
Children by Choice  
Children with Disability Australia  
ChilOut  
Civil Liberties Australia  
Coffs Harbour Aboriginal Family Community Care Centre Inc  
Combined Refugee Action Group  
Communication Rights Australia  
Community Information & Support Victoria (CISVic)

Community Legal Centres New South Wales  
Conference of Leaders of Religious Institutes New South Wales  
COTA Australia  
Council of Social Service of NSW (NCOSS)  
Council to Homeless Persons  
CREATE Foundation  
Darwin Asylum Seeker Support and Advocacy Network (DASSAN)  
Doctors for Refugees  
Eastern Community Legal Centre  
economic Security4Women  
Edmund Rice Centre Sydney  
Elizabeth Evatt Community Legal Centre  
Enlighten Education  
FECCA Women's Committee  
Federation of Community Legal Centres (Victoria) Inc  
Federation of Ethnic Communities' Councils of Australia  
Fitted for Work  
Footscray Community Legal Centre Inc  
Gay & Lesbian Health Alliance SA  
Geraldton Resource Centre  
GetUp!  
Gippsland Community Legal Service  
Girl Guides Australia  
Homebirth Australia  
Home Ground  
Human Rights Law Centre  
Humanitarian Research Partners



Illawarra Legal Centre  
Immigrant Women's Speakout Association NSW  
International Commission of Jurists Victoria  
International Social Service (ISS) Australia  
International Women's Development Agency  
JERA International  
Jessie Street National Women's Library  
Justice Connect  
Justice Connect Homeless Law  
Kaleidoscope Australia Human Rights Foundation  
Kingsford Legal Centre  
Lentara Uniting Care  
Liberty Victoria  
Marist Asylum-Seekers Refugee Service  
Marrickville Legal Centre  
Maternity Choices Australia  
Melbourne Catholic Migrant & Refugee Office  
Mental Health Australia  
Mercy Works  
Migrant Women's Lobby Group of South Australia  
Missionaries of the Sacred Heart Justice and Peace Centre  
Multicultural Women's Advocacy ACT  
Murri Ministry Aboriginal Catholic Ministry of the Archdiocese of Brisbane, Queensland  
National Aboriginal & Torres Strait Islander Legal Service (NATSILS)  
National Association of Community Legal Centres (NACLC)  
National Association of Services Against Sexual Violence  
National Children's and Youth Law Centre

National Congress of Australia's First Peoples

National Council of Churches of Australia Gender Commission

National Council of Jewish Women of Australia

National Council of Single Mothers and Their Children

National Council of Women of Australia

National Family Violence Prevention Legal Services

National Foundation for Australian Women

National LGBTI Health Alliance

National Liaison Committee for International Students in Australia – Women's Department

National Mental Health Consumer and Carer Forum

National Rural Women's Coalition

National Union of Students (Women's Department)

National Welfare Rights Network

New South Wales Council for Civil Liberties

New South Wales Gay and Lesbian Rights Lobby

Northern Rivers Community Legal Centre

Northern Territory Council of Social Service

Older Women's Network Australia Inc

Older Women's Network New South Wales Inc

Organisation Intersex International Australia

Oxfam Australia

Pax Christi Australia

Peninsula Community Legal Centre

People with Disability Australia

People with Disabilities WA Inc

Project Respect

Public Health Association of Australia (Women's Special Interest Group)

Public Interest Law Clearing House (VIC) Inc  
Queenscliff Rural Australians for Refugees  
Queensland Advocacy Incorporated  
Queensland Association of Independent Legal Services  
Redfern Legal Centre  
Refugee Advice and Casework Service  
Refugee Council of Australia  
Remedy Australia  
Safe Asylum  
Save the Children Australia  
Scarlet Alliance Australian Sex Workers Association  
Secretariat of National Aboriginal and Islander Child Care  
Sexual Health and Family Planning Australia  
Shoalcoast Community Legal Centre Inc.  
Sisters Inside  
Soroptimist International  
Soroptimist International Moreton North Inc.  
South Australian Council of Social Services (SACOSS)  
Sydney Multicultural Community Services  
Tasmania Opportunity  
Taylor Street Community Legal Service  
Tenants' Union of NSW  
Tenants' Union of Victoria  
The Addison Road Community Centre for Art, Culture, Community and Environment  
The Australian Centre for Leadership for Women (ACLW)  
The Bridge of Hope Foundation Inc  
The Ethnic Community Services Co-Operative Ltd

The House of Welcome  
Touching Base Inc  
Townsville Community Legal Centre  
Transgender Victoria Inc  
UNICEF Australia  
Union of Australian Women  
United Nations Association of Australian Status of Women Network  
Uniting Justice Australia  
Victorian Council of Social Service  
Victorian Gay & Lesbian Rights Lobby  
Victorian Immigrant and Refugee Women's Coalition  
VIEWS Club of Australia  
Western New South Wales Community Legal Centre Inc  
Wirringa Baiya Aboriginal Women's Legal Centre Inc.  
Women in Adult and Vocational Education  
Women in Engineering Australia  
Women on Boards  
Women with Disabilities Australia  
Women with Disabilities Victoria  
Women's Electoral Lobby  
Women's Environment Network Australia  
Women's Equity Think Tank  
Women's Housing Ltd  
Women's Information Referral Exchange (WIRE)  
Women's International League for Peace and Freedom (WILPF) Australia  
Women's Legal Centre (ACT & Region)  
Women's Legal Services Australia

Women's Legal Services New South Wales

Women's Property Initiatives

Working Against Sexual Harassment

Wyndham Legal Services Inc.

Yfoundations

Youthlaw

YWCA Australia

Zonta International Districts 22, 23, and 24

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<sup>1</sup> The consultation process involved a series of workshops across Australia, meetings and teleconferences and the involvement of 22 lead NGOs which coordinated individual sections of the submission and formed an Advisory Committee, as well as overall coordination by a Coordinating Committee.

<sup>2</sup> See: Australian Human Rights Commission, *Australia's Universal Periodic Review: 2014 Progress Report* (2014).

<sup>3</sup> *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

<sup>4</sup> Attorney-General's Department, *Human Rights and Public Service E-learning Toolkit* (<http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSector/Pages/default.aspx>)

<sup>5</sup> The status of the National Human Rights Plan launched on 10 December 2012 is unclear but it has not been reported on publicly under the current Federal Government.

<sup>6</sup> Office of the High Commission for Human Rights, *World Programme on Human Rights Education (2005-Ongoing)*

<sup>7</sup> For example, the determinations of the AHRC are unenforceable and there is no requirement for the Australian Government to implement, or even respond to, the Commission's recommendations.

<sup>8</sup> The funding cuts to the AHRC announced on 15 December 2014 amount to \$5 million over three years, or more than \$1.6 million per year: see Australian Government, *Mid-Year Economic and Fiscal Outlook: Appendix A – Policy Decisions Taken since the 2014-2015 Budget: Expense Measures* (2014). See also Human Rights Law Centre, 'Slashing funding for human rights watchdog is dangerous for human rights and democracy', (Media Release, 15 December 2014)

<<http://hrlc.org.au/slashing-funding-for-human-rights-watchdog-is-dangerous-for-human-rights-and-for-democracy/>>.

<sup>9</sup> See, eg, Commonwealth, *Senate Estimates – Legal and Constitutional Affairs Legislation Committee*, Senate, 24 February 2015, 31 (Chris Moraitis); International Service for Human Rights, 'Australia: UN should act to end reprisals against Australian Human Rights Commission' (Media Release, 16 February 2015) <<http://www.ishr.ch/news/australia-un-should-act-end-reprisals-against-australian-human-rights-commission>>.

<sup>10</sup> See Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* (March 2009), UN Doc CCPR/C/AUS/CO/5, [10]. For detail and analysis of the adequacy of Australia's response to individual communications please see <http://remedy.org.au/cases/>.

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<sup>11</sup> Additional attributes should include religion, homelessness, irrelevant criminal record, political opinion, nationality and industrial activity, victim of family violence, and enhancements to family and carer responsibilities.

<sup>12</sup> The 'race power' in the Australian Constitution has been held by the High Court of Australia to permit the Australian Government to pass both beneficial and detrimental legislation in relation to persons of a particular race. See: *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

<sup>13</sup> An independent Expert Panel recommended a model for recognition to the Government in 2012. The *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed and funding has been provided for a public campaign to build community support.

<sup>14</sup> See, eg, *Workplaces (Protection from Protesters) Act 2014* (Tas); *Summary Offences and Sentencing Amendment Act 2014* (Vic); *G20 (Safety and Security) Law 2013* (Qld). We note that legislation has been introduced into the Victorian Parliament to repeal the *Summary Offences and Sentencing Amendment Act 2014* (Vic) but is yet to be passed.

<sup>15</sup> See, eg, Human Rights Law Centre, Submission to Legal Affairs and Community Safety Committee, Parliament of Queensland, *Submission on the G20 bill*, 17 October 2013.

<sup>16</sup> Three UN Special Rapporteurs warned that the Tasmanian legislation could silence legitimate and lawful protest, is disproportionate and targets environmental protesters: OHCHR, 'UN experts urge Tasmania to drop its anti-protest law' (Media Release, 9 September 2014).

<sup>17</sup> Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 (WA).

<sup>18</sup> *Crimes Act 1900* (NSW) s 93X; *Vicious Lawless Association Disestablishment Act 2013* (Qld).

<sup>19</sup> *Vicious Lawless Association Disestablishment Act 2013* (Qld).

<sup>20</sup> The AHRC has expressed its concern that the laws violate the right to equality before the law, freedom of association, freedom of expression and the right to take part in public affairs: Australian Human Rights Commission, 'Freedom and Rights Concerns in QLD Bokie Laws' (Media Release, 18 October 2013).

<sup>21</sup> For example, Queensland Health grant contracts for organisations receiving more than 50% Government funding.

<sup>22</sup> See, eg, in relation to community legal centres, NSW Government, *Principles for the Funding of Legal Assistance*, which exclude 'political advocacy or political activism'.

<sup>23</sup> See, eg, National Association of Community Legal Centres, Supplementary Submission to Productivity Commission Access to Justice Arrangements Inquiry, *Community Legal Centres, Law Reform and Policy Advocacy* (June 2014).

<sup>24</sup> See *Commonwealth Electoral Act* s 93(8)(a); *Electoral Act 2004* (Tas) s 31(1); *Electoral Act 1992* (QLD) s64; *Northern Territory (Self Government) Act 1978* (Cth) s 14(1); *Electoral Act 1992* (ACT) s 72(1); *Constitution Act 1975* (Vic) s 48(2)(d); *Parliamentary Electorates and Elections Act 1912* (NSW) s 25. See, Australian Law Reform Commission, *Equality Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (November 2014) ch 9.

<sup>25</sup> *Electoral Act 1992* (Qld) s 106(3).

<sup>26</sup> Joint NGO Submission to the Universal Periodic Review of Australia, July 2010, [25].

<sup>27</sup> Including Aboriginal and Torres Strait Islander legal services across Australia, as well as the de-funding of the peak body for all ATSILS, National Aboriginal and Torres Strait Islander legal services.

<sup>28</sup> See, eg, National Association of Community Legal Centres, Submission to Parliament of Australia, *Senate Select Committee Inquiry into Abbott Government Budget Cuts*, 22 August 2014; National Aboriginal Torres Strait Islander Legal Services, 'Productivity Commission calls for \$200 million funding injection for legal assistance services as cuts loom' (Media Release, 3 December 2014); National Family Violence Prevention Legal Services, Submission to Parliament of Australia, *Senate Select Committee Inquiry into Abbott Government Budget Cuts*, August 2014; and National Family Violence Prevention Legal Services, *Step Up in Commitments to the National Crisis of Family Violence*, (Media Release, 6 March 2015). For analysis of Legal Aid funding, see, eg, Law Council of Australia, Submission to Productivity Commission, Parliament of Australia, *Access to Justice Arrangements Inquiry*, 5 June 2014 [427]-[437]. This issue has been raised by a number of UN bodies, see, eg, Human Rights Committee, *Concluding observations on the fifth periodic report of Australia*, UN Doc CCPR/C/AUS/CO/5 (2 April 2009)[25].

<sup>29</sup> As quantified and identified by the Productivity Commission: Productivity Commission, *Access to Justice Arrangements, Inquiry Report*, Report No 72 (September 2014), recs 21.4 and 21.5.

<sup>30</sup> *Ibid.*

<sup>31</sup> Parliament of Australia, Senate Legal and Constitutional Affairs References Committee, *Access to Justice* (2009).

<sup>32</sup> Productivity Commission, *Access to Justice Arrangements, Inquiry Report*, Report No 72 (September 2014), rec 21.1.

<sup>33</sup> For example: 'The Aboriginal re-imprisonment rate (58% within 10 years) is actually higher than the Aboriginal school retention rate from Year 7 to Year 12 (46.5%). Nationally, Aboriginal and Torres Strait Islander adults are 15 times more likely to be imprisoned than non-Indigenous Australians, while around half of the young people in juvenile detention facilities are Aboriginal: Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 4.1. The imprisonment rate increased by 73.7% for Aboriginal women and by 38.6% for Aboriginal men between 2000 and 2013: Steering

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Committee for the Review of Government Service Provision, Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), ch 4.12. Aboriginal women are the fastest growing prisoner demographic in Australia: Australian Bureau of Statistics, Corrective Services, *June Quarter 2014* (11 September 2014). See, eg, Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014); Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, Australia, 17<sup>th</sup> sess, UN Doc A/HRC/17/10 UPR 2010 (March 2011)[86.93].

<sup>34</sup> See, eg, Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, Australia, 17<sup>th</sup> sess, UN Doc A/HRC/17/10 UPR 2010 (24 March 2011) [86.92]. Aggregated across both Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services, real funding per person declined by approximately 20 per cent between 2000-01 and 2010-11. The Productivity Commission recommended an increase in funding to Aboriginal and Torres Strait Islander Legal Services and Aboriginal Family Violence Prevention Legal Services: Productivity Commission, *Access to Justice Arrangements, Inquiry Report*, No 72 (September 2014), 700, 801.

<sup>35</sup> See, eg, Productivity Commission, *Access to Justice Arrangements, Inquiry Report*, No 72, (September 2014), ch 22 and rec 22-3. See also Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, Australia, 17<sup>th</sup> sess, UN Doc A/HRC/17/10 UPR 2010 (24 March 2011) [86.92]; Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia* UN Doc CAT/C/AUS/CO/4-5 (23 December 2014); Human Rights Committee, *Concluding observations on the fifth periodic report of Australia*, UN Doc CCPR/C/AUS/CO/5 (2 April 2009).

<sup>36</sup> See, eg, Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 4.2; Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (20 June 2013).

<sup>37</sup> Justice targets involve the Government setting measurable goals to reduce imprisonment rates, particularly of Aboriginal and Torres Strait Islander peoples. See, eg, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (2014), 117-123.

<sup>38</sup> See discussion above in relation to funding cuts and uncertainty for legal assistance services.

<sup>39</sup> See discussion in submission in relation to: counter-terrorism, indefinite detention of people with disability, refugees and asylum seekers.

<sup>40</sup> See discussion in submission in relation to: indefinite detention of people with disability and counter-terrorism. In relation to people with disability and unfit to plead, see, eg, Australian Law Reform Commission, *Equality Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (November 2014), ch 7. Note also concerns in relation to continued detention orders for sex offenders.

<sup>41</sup> See, eg, discussion in submission in relation to counter-terrorism.

<sup>42</sup> New South Wales, Victoria, Queensland, Western Australia and the Northern Territory.

<sup>43</sup> See, eg, Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014).

<sup>44</sup> In Australia 2.55 million people (13.9% or one in seven), including 603,000 children (17.7% or one in six) live below the poverty line and the level of poverty increased by 0.9% between 2010 and 2012: Australian Council of Social Service, *Poverty in Australia 2014*, (2014). For Budget analysis, see, eg, Australian Council of Social Service, *A Budget that divides the nation – 2014-15 Budget Analysis* (May 2014).

<sup>45</sup> Ibid. Population groups at highest risk of poverty include those who are unemployed sole parents, people with disability, women, Aboriginal and Torres Strait Islander people, adults born in non-English speaking countries, children and older people: Australian Council of Social Service, *Poverty in Australia 2014* (2014); Australian Council of Social Service, *Poverty in Australia 2013* (2013); Melbourne Institute, *The Household, Income and Labour Dynamics in Australia Survey* (2011).

<sup>46</sup> Australian Council of Social Service, *Poverty in Australia 2014* (2014).

<sup>47</sup> For further information, see, eg, Australian Council of Social Service, *Compulsory income management: a flawed answer to a complex problem* (September 2014).

<sup>48</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness*, (12 November 2012) 5.

<sup>49</sup> Australian Institute of Health and Welfare, *Specialist homelessness services: 2013–2014, Cat No HOU 276* (2014); Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014* (2014).

<sup>50</sup> Australian Institute of Health and Welfare 2014: *Specialist homelessness services: 2013–2014*. Cat. No. HOU 276 (2014), 39.

<sup>51</sup> Miloon Kothari, Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living: Mission to Australia*, UN Doc A/HRC/4/11/Add.2 (11 May 2007) [52].

<sup>52</sup> Commonwealth of Australia, *The Road Home: A National Approach to Reducing Homelessness* (2008) viii.

<sup>53</sup> The Strategy must give proper consideration to the human rights of those people most vulnerable to homelessness, including people at risk for reasons of age, gender, race, disability, sexuality, locality or cultural background.

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- <sup>54</sup> For example, particular laws and policies that may violate civil rights and the right to be free from inhuman or degrading treatment or punishment, include begging offences, public intoxication offences, 'move on' powers and Prohibitive Behaviour Orders.
- <sup>55</sup> Since 2001, Australia has enacted over 60 counter-terrorism laws. See, eg, George Williams, 'The Legal Legacy of the War on Terror' (2013) 12 *Macquarie Law Journal* 3, 7.
- <sup>56</sup> *Criminal Code Act 1995* (Cth) s119.2(1). The Minister for Foreign Affairs may declare part of a foreign country as a 'declared area' where he or she is satisfied that a terrorist organisation is engaged in hostile activity in that area: *Criminal Code Act 1995* (Cth) s 119.3(1).
- <sup>57</sup> *Ibid* s 80.2C. An organisation may also be declared a 'terrorist organisation' on this basis: *Criminal Code Act 1995* (Cth) s 102.1(1A)(a). This has implications for the right to freedom of association, as it is an offence for a person to associate with a member of a terrorist organisation on two or more occasions: *Criminal Code Act 1995* (Cth) s 102.8, *Criminal Code Act 1995* (Cth) s 11.4.
- <sup>58</sup> *Ibid* ss 104.32, 105.53; *Australian Security Intelligence Organisation Act 1979* (Cth) s 34ZZ.
- <sup>59</sup> These include control orders, preventative detention orders (PDOs), and a power that allows ASIO (Australia's domestic intelligence agency) to question non-suspects while detaining them for up to one week. These powers allow the police and ASIO to place significant restrictions on individual liberty without a finding of criminal guilt. Independent National Security Legislation Monitor, *Declassified Annual Report* (2012) 44, 67; Australian Government, *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013) 68; Parliamentary Joint Committee on ASIO, ASIS and DSD, Parliament of Australia, *An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* (2002) vii.
- <sup>60</sup> Australian Council of Human Rights Authorities, *Australia's Universal Periodic Review, 2014 Progress Report* (December 2014) 25.
- <sup>61</sup> As announced in the 2014-15 Federal Budget, this includes cuts to health, education, welfare and legal services. See Dr Leslie Russell, *Impact of the 2014-15 Federal Budget on Indigenous Programs and Services* (2014) 4.
- <sup>62</sup> James Anaya, Special Rapporteur, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010)
- <sup>63</sup> Superseding the *Northern Territory Emergency Response Act 2007* (Cth).
- <sup>64</sup> See recommendation in Constitutional, Legislative and Institutional and Framework section that Australia should ratify ILO Convention No 169 on Indigenous and Tribal Peoples.
- <sup>65</sup> Stolen Generations refers to Aboriginal and Torres Strait children who were forcibly removed from their families under official government policies between 1909 and 1969 to promote assimilation. The UN Human Rights Committee, the Special Rapporteur on Indigenous People and the Australian Human Rights Commission have all called on the government to provide compensation to the Stolen Generations. See, James Anaya, Special Rapporteur, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010) [19]; Australian Human Rights Commission, *Social Justice Report 2008* (2008) ch 4; Human Rights Committee, *Concluding Observations: Australia*, UN Doc CCPR/C/AUS/CO/5 (3 April 2009) [15].
- <sup>66</sup> Stolen wages is a term used to refer to the wages of 'Indigenous workers whose paid labour was controlled by the Government' – in many cases, Aboriginal and Torres Strait Islander people did not receive any wages at all, or received insufficient wages. See, Parliament of Australia, Senate Legal and Constitutional Affairs Committee, *Unfinished Business: Indigenous Stolen Wages* (2006).
- <sup>67</sup> Nationally, 14 991 Aboriginal and Torres Strait Islander children and 27 827 non-Indigenous children were in out-of-home care at 30 June 2014: Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services* (2015) 15.13.
- <sup>68</sup> Australian Human Rights Commission, *Bringing them Home: The 'Stolen Children' Report* (1997).
- <sup>69</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4 (19 June 2012); Select Committee on Regional and Remote Indigenous Committees, *First Report* (2008); James Anaya, Special Rapporteur, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010) ; Secretariat of National Aboriginal and Islander Child Care, Submission in relation to General Assembly Resolution A/RES/66/141 on the Rights of Aboriginal and Torres Strait Islander Children in Australia 30 April 2012.
- <sup>70</sup> Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4 (19 June 2012).
- <sup>71</sup> See Bruce Wilson, NT Ministry for Education, *A Share in the Future – Review of Indigenous Education in the Northern Territory* (May 2014). Note that both the UN Committee on Economic, Social and Cultural Rights and the UN Child Rights Committee have recommended that the Australian Government preserve and promote bilingual education at schools as well as to ensure adequate resources are provided: Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and*



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*Cultural Rights*, Geneva, 42<sup>nd</sup> session, (4-22 May 2009) [33]; Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4(19 June 2012) [75].

<sup>72</sup> Women with disability, Aboriginal and Torres Strait Islander women, women in remote, rural and regional areas, older women, women from culturally and linguistically diverse communities, women in prison, young women and girls and people who are lesbian, gay, bisexual, trans or intersex are particularly vulnerable to experiencing a diminution of their rights in Australia

<sup>73</sup> The current national gender pay gap is 19.9% calculated on full-time base remuneration and 24.7% calculated on full-time total remuneration: Workplace Gender Equality Agency, *Gender Pay Gap Biggest In Manager Ranks* (Media Release, 17 February 2015) <https://www.wgea.gov.au/media-releases/gender-pay-gap-biggest-manager-ranks>. Women in Australia retire with 45.7% less superannuation (retirement savings) than men: Ross Clare, *An update on the level and distribution of retirement savings*, Association of Superannuation Funds of Australia Research and Resources Centre, (March 2014).

<sup>74</sup> One in three women in Australia experience physical violence (85% of whom were assaulted by an current or former partner, family member, friend or known male) and almost one in five women experience sexual violence. There has been 'no statistically significant change from 2005 to 2012'. Such violence disproportionately impacts a number of groups of women, including Aboriginal and Torres Strait Islander women (who are 35 times more likely to be admitted to hospital for family violence-related injuries); women with disability, women in rural or remote areas, and women in culturally and linguistically diverse communities: See, eg, Australian Bureau of Statistics, *Gender Indicators, Australia*, Feb 2014, Cat No 4125.0. *Australian Institute of Health and Welfare, Family Violence among Aboriginal and Torres Strait Islander Peoples 2006*; Women with Disabilities Australia, *Stop the violence : addressing violence against women and girls with disabilities in Australia : background paper* (2013); Women's Services Network, *Domestic violence in rural Australia: a literature review*, Department of Transport and Regional Services (2000); and Australian Institute of Criminology, 'Emerging Issues in domestic/family violence research', *Research in Practice Report*, No10, (April 2010).

<sup>75</sup> 'Forced sterilisation' refers a procedure which results in sterilisation of children with disability where there is no serious threat to life and health and adults with disability in the absence of the prior, free and informed consent. It also refers to a procedure which results in the sterilisation of intersex children in the absence of prior, free and informed consent in line with human rights and affirming peer support, or intersex adults in the absence of prior, free and informed consent. See: World Health Organisation, *Eliminating forced, coerced and otherwise involuntary sterilisation: An interagency statement* (2014); UN General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/67/227 (3 August 2012). UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/22/53 (1 February 2013).

<sup>76</sup> Parliament of Australia, Senate Community Affairs References Committee, *Involuntary or coerced sterilization of people with disabilities in Australia* (2013). See also Parliament of Australia, Senate Community Affairs References Committee, *Involuntary or coerced sterilization of intersex people in Australia* (October 2013).

<sup>77</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Australia*, UN Doc CRPD/C/AUS/CO/1 (4 October 2013); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/AUS/CO/4. (19 June 2012); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268. (20 October 2005); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUS/CO/7. (30 July 2010); UN General Assembly, Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc. A/HRC/17/10 (24 March 2011); Committee Against Torture, *Concluding Observations: Australia*, UN Doc. CAT/C/SR.1284 (November 2014). See also: Human Rights Committee, International Covenant on Civil and Political Rights, *List of issues prior to the submission of the sixth periodic report of Australia*, UN Doc. CCPR/C/AUS/Q/6. (9 November 2012).

<sup>78</sup> 'Institutional and residential settings' include: residential institutions; boarding houses; group homes; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out of home care; special schools, boarding schools, school buses; hospitals; juvenile justice facilities; disability services; aged care facilities.

<sup>79</sup> See, eg, National Cross-Disability Disabled People's Organisations, *Senate Inquiry into Domestic Violence in Australia* (2014).

<sup>80</sup> Phillip French, Julie Dardel and Sonya Price-Kelly, People with Disability Australia, *Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment* (2009).

<sup>81</sup> See for example *Director of Public Prosecutions v Vinod Johnny Kumar* [20 November 2013] VCC. See also Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime - Research findings* (2014).

<sup>82</sup> See, eg, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Australia*, UN Doc. CRPD/C/AUS/CO/1. (4 October 2013); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc. CEDAW/C/AUS/CO/7. (30 July 2010); Committee Against Torture, *Concluding Observations: Australia*, UN Doc. CAT/C/SR.1284. (November 2014).

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Human Rights Committee, International Covenant on Civil and Political Rights, *List of issues prior to the submission of the sixth periodic report of Australia*, UN Doc. CCPR/C/AUS/Q/6. (9 November 2012); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc. CRC/C/AUS/CO/4. (19 June 2012).

<sup>83</sup> The Australian Parliament has initiated an inquiry in the Senate, but an independent judicial inquiry is still required.

<sup>84</sup> Justice diversion provisions are applied when people are deemed 'unfit' to stand trial. All Australian jurisdictions have enacted legislation dealing with fitness to stand trial. See, eg, Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (2014).

<sup>85</sup> In reviewing Commonwealth laws and programs and legal capacity for people with disability, the Australian Law Reform Commission recommended reform of the 'unfitness' test, provision of supports, limits and reviews on detention. Australia has not responded to this report: Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (2014).

<sup>86</sup> Note also that people with disability are disproportionately represented in all Australian prisons.

<sup>87</sup> The Australian Human Rights Commission recently found that Australia breached its obligations under international law regarding four Aboriginal men with disability indefinitely detained in prisons. The Attorney-General disagreed with the AHRC findings and refused to engage with the recommendations. *KA, KB, KC and KD v Commonwealth (Department of Prime Minister and Cabinet, Department of Social Services, Attorney-General's Department)* [2014] AusHRC 80.

<sup>88</sup> Substituted decision-making occurs through formal frameworks (eg guardianship or involuntary treatment) and informally through the use of restrictive practices such as coercion, seclusion and restraint, and other practices that have the effect of limiting the rights or freedom of movement of people with disability and people experiencing mental illness. Australia has an Interpretative Declaration in relation to Article 12 of the Convention on the Rights of Persons with Disabilities.

<sup>89</sup> See, eg, Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (2014).

<sup>90</sup> The CRPD has recommended that Australia 'take immediate steps to end such practices, including by establishing an independent national preventive mechanism to monitor places of detention—such as mental health facilities, special schools, hospitals, disability justice centres and prisons—in order to ensure that persons with disabilities, including psychosocial disabilities, are not subjected to intrusive medical interventions': United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10<sup>th</sup> Session (4 October 2013) [35]–[36].

<sup>91</sup> Such as the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, and the National Mental Health Commission's seclusion and restraint project.

<sup>92</sup> For example, data indicates that in Victoria in 2008, 6,971 patients were detained (with 316 discharges in 2007–2008) and 5,099 involuntary CTOs were made. This compares to a rate of 1,951 CTO orders during 1995–1996.

<sup>93</sup> Including Aboriginal and Torres Strait Islander people, people with disability, people in rural and remote regions, refugees and asylum seekers (particularly those in detention), people from culturally and linguistically diverse backgrounds, LGBTI people, children and adolescents, prisoners, and people experiencing chronic disease, unemployment and homelessness.

<sup>94</sup> Anand Grove, Special Rapporteur, *Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/HRC/14/20/Add.4 (3 June 2010).

<sup>95</sup> Including greater support for community-based services, release and ongoing development of a National Mental Health Service Planning Framework and endorsement and implementation of national mental health targets and indicators (consistent with Article 31 of the *Convention on the Rights of Persons with Disabilities*).

<sup>96</sup> *Migration Act 1958* (Cth) s 198AD.

<sup>97</sup> See UNHRC, *UNHRC Monitoring Visit to the Republic of Nauru 7 to 9 October 2013*, (26 November 2013).

<sup>98</sup> One asylum seeker was beaten to death inside the Manus camp on 17 February 2014. There have also been riots inside the Nauru detention centre.

<sup>99</sup> *Migration Act 1958* (Cth) s 189.

<sup>100</sup> *Ibid* s 196.

<sup>101</sup> *Ibid* s 196(3).

<sup>102</sup> *Ibid* s 197C.

<sup>103</sup> The UN Human Rights Committee has found Australia's detention of refugees in such circumstances to breach the ICCPR: *MMM et al v Australia*, UN Doc CCPR/C/108/D/2136/2012 (20 August 2013) and *FKAG et al v Australia*, UN Doc CCPR/R/108/D/2094/2011 (23 August 2013).

<sup>104</sup> *Australia Human Rights Commission Act 1986* (Cth) as amended under pt IIAA.

<sup>105</sup> United Nations Committee on the Rights of the Child, *Concluding Observations: Australia*, UN CRC, 60<sup>th</sup> session, CRC/C/AUS/CO/4, [16].

<sup>106</sup> United Nations Committee on the Rights of the Child, *Concluding Observations: Australia*, UN CRC, 60<sup>th</sup> session, CRC/C/AUS/CO/4, [16].

- <sup>107</sup> The Plan could include more thorough collection of disaggregated data on children and better monitoring of services, including early intervention services, delivered to children and their families, including specifically targeted measures to address the high rates of incarceration of Indigenous children and the high rates of removal of Indigenous children into care. The need for funding for services has been highlighted by the UN Committee on the Rights of the Child, Concluding Observations: United Nations Committee on the Rights of the Child, Concluding Observations: Australia, UN CRC, 60<sup>th</sup> session, CRC/C/AUS/CO/4, [20], [29(a)].
- <sup>108</sup> Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary*, (31 January 2015).
- <sup>109</sup> *The Forgotten Children: The National Inquiry into Children in Immigration Detention* Report was delivered to the Australian Government on 11 November 2014 and tabled in the Australian Parliament on 11 February 2015.
- <sup>110</sup> *The People of Australia: Australia's Multicultural Policy; Australia's Multicultural Access and Equity Policy: Respecting Diversity, Improving Responsiveness*.
- <sup>111</sup> In implementing the Multicultural Access and Equity Policy, Australia should work with culturally and linguistically diverse communities, through their representative organisations, to ensure ongoing engagement in evaluating progress and enhancing outcomes.
- <sup>112</sup> The Australian Government proposed changes to section 18C of the *Racial Discrimination Act* (Cth) that provides protection from behavior which could "offend, insult, humiliate or intimidate" someone because of their race or ethnicity. These changes were later abandoned due to community support for the law.
- <sup>113</sup> According to recent surveys, 18% in 2014, as compared to 9% in 2007: Andrew Markus, *Mapping Social Cohesion 2014: The Scanlon Foundation Surveys 2014* (2014).
- <sup>114</sup> Any measures should be supported by enhanced data collection concerning reported discriminatory acts, disaggregated on the basis of gender, religion and country of origin of the victims or targets.
- <sup>115</sup> Australian Bureau of Statistics, *Population Projections, Australia, 2006 to 2101* (2008). See also: The Treasury, *Intergenerational Report 2002–03* (2002); The Treasury, *Intergenerational Report 2007* (2007); The Treasury, *Intergenerational Report 2010—Australia to 2050: Future Challenges* (2010).
- <sup>116</sup> Australian Institute of Health and Welfare, *Changes in life expectancy and disability in Australia 1998 to 2009* (2012).
- <sup>117</sup> Australia's eligible pension age of 65 will be increasing to 70 by 2035. See Department of Human Services, *Budget 2014-15: Increase the Age Pension qualifying age to 70 years*.
- <sup>118</sup> Including for example, anti-discrimination legislation, the *Age Discrimination Act 2004* (Cth); and an Age Discrimination Commissioner in 2011 undertakes a range of activities. However, from July 2014 the Age Discrimination Commissioner has also been appointed the Disability Discrimination Commissioner and has less time focused on the rights of older persons.
- <sup>119</sup> See, eg, Human Rights Council, *Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons*, 67<sup>th</sup> sess, Agenda Items 27(b) and 27(c), 20 December 2012, UN Doc A/HRC/Res/67/139.
- <sup>120</sup> See, eg, Human Rights Council, *The Human Rights of Older Persons*, 24<sup>th</sup> sess, Agenda Item 3, (27 September 2013), UN Doc A/HRC/Res/24/20
- <sup>121</sup> Laws must address all forms of elder abuse, exploitation and neglect including physical, emotional, psychological, sexual, neglect and financial abuses. This is particularly an issue for older women.
- <sup>122</sup> Advanced Care Planning laws must include Advanced (Care or Health) Directives and 'Enduring Power of Attorneys. See Parliament of Australia, Senate Community Affairs Reference Committee, *Palliative care in Australia* (October 2012) rec 36.
- <sup>123</sup> See, Australian Law Reform Commission, *Access All Ages—Older Workers and Commonwealth Laws* (ALRC Report 120), 2013; National Seniors Productive Ageing Centre, *Barriers to Mature Age Employment: Final Report of the Consultative Forum on Mature Age Participation*, (2012).
- <sup>124</sup> See, eg, Australian Law Reform Commission, *Access All Ages—Older Workers and Commonwealth Laws*, ALRC Report 120, (2013); Deloitte Access Economics, *Increasing Participation Among Older Workers: The Grey Army Advances* (Report prepared for the Australian Human Rights Commission) (2012).
- <sup>125</sup> Australian Law Reform Commission, *Access All Ages—Older Workers and Commonwealth Laws*, ALRC Report 120, (2013) rec 3-1.
- <sup>126</sup> *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth)
- <sup>127</sup> In 2011, Australia improved access to passports in the affirmed gender of Australian citizens without invasive medical procedures and improved access to an 'X' marker (in addition to M and F) for people who did not identify as male or female. In 2013, this policy was extended to all federal government departments and agencies. See Attorney General's Department, *Australian Government Guidelines on the Recognition of Sex and Gender* (July 2013)
- <sup>128</sup> The Australian Government removed many sex-specific requirements enabling broader access to healthcare for transgender Australians. See Trans Gender Victoria, 'Gender Discrimination Removed from Medicare' (25 July 2013) < <http://www.transgendervictoria.com/news/general-news/item/gender-discrimination-removed-from-medicare>>.

- <sup>129</sup> The Queensland Government, *Registering a relationship* (3 November 2014) <<https://www.qld.gov.au/law/births-deaths-marriages-and-divorces/marriage-weddings-and-registered-relationships/registered-relationships/registering-a-relationship/>> and the New South Wales Government, *Registering a relationship* (3 November 2014)(<<https://www.qld.gov.au/law/births-deaths-marriages-and-divorces/marriage-weddings-and-registered-relationships/registered-relationships/registering-a-relationship/>>) have enacted registers to recognise same-sex relationships since our last NGO report.>
- <sup>130</sup> NSW amended their laws to allow LGBTI couples to adopt: *Adoption Amendment (Same Sex Couples) Bill 2010 (No 2)* (NSW) and South Australia recognised lesbian co-parents on birth certificates of their children: *Family Relationships (Parentage) Amendment Act 2011* (SA).
- <sup>131</sup> Elizabeth Smith, et al, *From Blues to Rainbows: Mental health and wellbeing of gender diverse and transgender young people in Australia* (2014); Kerry H. Robinson, et al, Young and Well Cooperative Research Centre, *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse* (2013).
- <sup>132</sup> Parliament of Australia, Senate Community Affairs References Committee, *Involuntary or coerced sterilisation of intersex people in Australia* (October 2013).
- <sup>133</sup> Gender affirmation is the consensual process of affirming one's own understanding of one's gender socially, medically, and/or on identity documents. This process is one of affirmation rather than 'transition' or 'sex change' (sic), as many people say their desire to affirm their gender is based on who they already are before they obtain medical intervention or social recognition.
- <sup>134</sup> Mary Anne Neilsen, *Same-sex marriage*. Law and Bills Digest, Commonwealth of Australia<[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook44p/Marriage](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/Marriage)>.
- <sup>135</sup> [Recognition](#) of Foreign Marriages Bill 2014 (Cth).
- <sup>136</sup> Queensland, Northern Territory, Victoria and South Australia do not currently permit same-sex couples to adopt children in their care. Victoria and South Australia will review these policies in 2015
- <sup>137</sup> Prisoners are not given access to harm minimisation programs, such as needle and syringe programs. Australian Institute of Health and Welfare, '*Prisoner Health Services in Australia 2012*', Bulletin No 123, (August 2014)
- <sup>138</sup> The exponential increase in prisoner numbers is directly related to harsher sentencing practices, such as mandatory sentencing, and tougher bail and parole laws.
- <sup>139</sup> Prisoners serving short sentences almost never have access to education or rehabilitation programs. This is similar to prisoners subject to internal disciplinary orders and those in solitary confinement. See, eg, Victorian Ombudsman, *Discussion Paper: Investigation into the rehabilitation and reintegration of prisoners in Victoria*, (October 2014).
- <sup>140</sup> Castan Centre for Human Rights Law, *Castan Human Rights Report 2014*, 2014, 8.
- <sup>141</sup> While complaints regarding police conduct can be made directly to the Ombudsman and/or integrity or oversight bodies in some jurisdictions, generally these matters are referred back to the law enforcement agency in question for investigation. In 2011 Queensland announced that the primary investigation of deaths in custody would be undertaken by the Coroner, this has not been implemented in practice (See QLD State Coroner, *State Coroner's Guidelines 2013*, November 2014, ch 11. It would appear the MOU does not require direct investigation by the Coroner.)
- <sup>142</sup> One such example is NSW. See NSW Ombudsman, *How are Taser Weapons Used by the NSW Police Force?*, (October 2012), ch. 9.1.
- <sup>143</sup> Victoria Police, *Equality is not the same*, (December 2012). NSW Ombudsman, *Consorting Issues Paper: review of the use of the consorting provisions by the NSW Police Force*, Division 7, Part 3A of the *Crimes Act 1900*(November 2013) 9; NSW Ombudsman, *How are Taser Weapons Used by the NSW Police Force?* (October 2012)99.
- <sup>144</sup> The Australian Attorney-General has convened a Working Group on Slavery in Supply Chains which will look at multi-stakeholder responses to such issues.
- <sup>145</sup> For other countries' plans, see Office of the High Commissioner for Human Rights, *State national action plans* <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>
- <sup>146</sup> See Dr Ravic Tomar and Wendy Bruere, *Official Development Assistance—the future of Australian aid* <[http://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/budgetreview201415/oda](http://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/budgetreview201415/oda)> for detail of cuts amounting to \$650 million.
- <sup>147</sup> See Department of Foreign Affairs and Trade, *Australia's aid program* <<http://www.dfat.gov.au/aid/Pages/australias-aid-program.aspx>>.
- <sup>148</sup> See OECD, *Paris Declaration and Accra Agenda for Action* <<http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>>.
- <sup>149</sup> An Australian company is involved in the Cambodia Railways Project. The project forcibly evicted 4000 families and compensation and resettlement packages provided were not sufficient to ensure that affected families had access to adequate housing and could meet other basic needs after they resettled, , which ultimately led to the deaths of two children. See, Natalie Bugalski and Jocelyn Medallo, 'Derailed: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway' (Study, Bridges

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Across Borders Cambodia, 2012) <<http://www.babcambodia.org/derailed/derailed.pdf>>; AID/WATCH, *Off the Rails* (February 2012).

<sup>150</sup> The Mining for Development Initiative funded 9 Australian mining companies to subsidise the costs of their corporate social responsibility projects in sub-Saharan Africa with more than one accused of human rights abuses. See, eg, AID/WATCH and Minerals Policy Institute, *Open Letter to Foreign Minister Bob Carr: Australian aid must not support the expansion of Australian mining interests overseas* <<http://www.aidwatch.org.au/wp-content/uploads/2014/06/International-NGO-Letter-to-Aus-Govt-2012.pdf>>.

<sup>151</sup> For example, a complaint was submitted on behalf of families affected by the Cambodian Railways Project to the Australian Human Rights Commission which declined to conduct an inquiry into the complaint because it found that the complainants were not subject to the Commission's jurisdiction due to the lack of effective control by Australia over those alleging human rights violations. See Inclusive Development International and Equitable Cambodia, *Complaint to Australian Human Rights Commission* <<http://www.inclusivedevelopment.net/wp-content/uploads/2012/10/Complaint-to-the-Australian-Human-Rights-Commission-FINAL.pdf>>.

<sup>152</sup> See, Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 (Cth) which would implement a mandatory telecommunications data retention regime. The Australian Parliament's Intelligence and Security Committee recommended the Bill be passed, but with amendment including further review and safeguards in relation to the use of telecommunications data for the purpose of determining the identity of a journalist's sources. See also ASIO's power to seek computer access warrants: *Australian Security Intelligence Organisation Act 1979* (Cth) s 25A.

<sup>153</sup> The collection of metadata, not only the collection of the content of communications, constitutes an interference with privacy: United Nations General Assembly Third Committee, *The Right to Privacy in the Digital Age*, 69<sup>th</sup> session, UN Doc A/C.3/69/L.26/Rev.1 (19 November 2014) 3.

<sup>154</sup> For example, create new offences of forced labour and forced marriage and to redefine the meaning of coercion relevant to slavery, slavery-like practices and human trafficking: *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth).

<sup>155</sup> Australian Attorney-General's Department, *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, Commonwealth of Australia, 2014.

<sup>156</sup> See, Minister for Justice, *New measures to tackle human trafficking, slavery and forced marriage*, Media Release, 2 December 2014,

<http://www.ministerjustice.gov.au/Mediareleases/Pages/2014/FourthQuarter/2December2014-NewMeasuresToTackleHumanTraffickingSlaveryAndForcedMarriage.aspx>

<sup>157</sup> See, UN Special Rapporteur to the Human Rights Council in the Country Report of the Special Rapporteur on trafficking in persons May 2012, UN Doc GEN/G12/135/48; Report to the General Assembly by the Special Rapporteur assessing 10 years of the trafficking rapporteur's mandate, 28 July 2014, UN Doc A/69/33797.

<sup>158</sup> Australian Government Department of Health and Ageing, *Seventh National HIV Strategy 2014-2017*.