Australia’s 2nd Universal Periodic Review
Joint NGO Submission on behalf of the Australian NGO Coalition

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.

Contact:

Anna Brown
Human Rights Law Centre
Anna.Brown@hrlc.org.au
ph: + 61 3 8636 4456
Level 17, 461 Bourke St
Melbourne VIC 3206
www.hrlc.org.au

Emma Golledge
Kingsford Legal Centre
egolledge@unsw.edu.au
ph: + 61 2 9385 9566
F8-003 UNSW Australia
UNSW Sydney 2052
www.kingsford.unsw.edu.au

Amanda Alford
National Association of CLCs
Amanda_Alford@clc.net.au
ph: + 61 2 9264 9595
PO Box A2245 Sydney South
NSW 1235 Australia
www.naclc.org.au
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). 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. 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.

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. 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.

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.

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. 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; 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. 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. 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.

12. The Australian Constitution does not enshrine the right to equality and permits discrimination on the basis of race. There have been steps taken toward recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution and racial equality. 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. The laws criminalise conduct such as “disturbing” the 2014 G20 meeting or “hindering business activity”. Tasmania’s anti-protest laws criminalise certain protest activities, confer additional powers on police and impose harsh penalties. Western Australia’s proposed legislation would criminalise a broad range of protest activities. 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. Queensland has mandatory minimum sentences of up to 25 years. The laws infringe on peoples’ right to socialise and assemble peacefully. 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 and NSW. Amendments to Commonwealth funding agreements precluding legal assistance services from using federal funds to undertake law reform and advocacy work, 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. Queensland legislation bans all persons serving a sentence of imprisonment from voting, denying prisoners the right to vote. 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, legal assistance services (including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services) have faced further significant funding cuts and funding uncertainty. Additional funding is required to adequately meet the legal needs
of disadvantaged and vulnerable people. Australia should implement the recommendations of the Productivity Commission and the Senate Inquiry into Access to Justice and provide additional funding for legal assistance services, including for strategic advocacy and law reform activities.

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. Particular issues include the disproportionate impact of mandatory sentencing laws, over-representation in prison, and limited access to legal and interpreter assistance. 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 and justice targets.

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, freedom from arbitrary detention, judicial process, retrospective legislation, and the need for clear and unambiguous legislation.

21. Since the last UPR, additional mandatory sentencing legislation has been introduced in four jurisdictions, 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.

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.

24. The majority of people living below the poverty line rely on social security payments as their main source of income and many payments fall below the poverty line. 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.

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, housing affordability has worsened, and there continues to be a social housing shortage. Family violence is now the most common cause of homelessness in Australia. 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’. 51

29. **Australia should maintain its commitment to halve homelessness by 2020** 52 and develop a comprehensive and coordinated national housing strategy. 53

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.** 54

6. **Counter-Terrorism**

32. Many of Australia’s counter-terrorism laws infringe upon fundamental human rights. 55 The Australian Government has criminalised travel to areas of foreign countries where terrorist organisations operate, infringing the right to freedom of movement. 56 The offence of “advocating” terrorism criminalises “encouraging” or “promoting” terrorism and unduly restricts freedom of expression. 57

33. Many counter-terrorism powers will continue to operate until 2018, 58 despite being discredited by major inquiries. 59 **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. 60 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. 61 **Australia should continue to review and implement the Special Rapporteur’s recommendations, consistent with the UN Declaration on the Rights of Indigenous Peoples.** 62

**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. 63 **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. 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' or for the 'Stolen Wages' of many Aboriginal and Torres Strait Islander peoples. 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. 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. 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. There is a lack of culturally appropriate services and significant barriers to education persist, including a lack of bilingual education programs.

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. 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). 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. 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 is a practice that remains legal and sanctioned by Governments in Australia. A 2013 Senate Inquiry recommended regulation of the practice not prohibition. For more than a decade, the UN has made multiple recommendations to Australia to legislate to prohibit forced sterilisation, but these have been ignored. 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 is a national epidemic and people, particularly women, frequently experience sustained episodes of violence. This violence is very difficult to detect, investigate and prosecute, due to the 'closed' nature of institutional settings. 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.

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. 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.

indefinite detention
49. Justice diversion provisions for people with cognitive, psychosocial disability or mental illness within the criminal justice system deemed ‘unfit to stand trial’ have resulted in indefinite detention of people in prisons or psychiatric facilities without conviction. This is exacerbated by a lack of appropriate housing, therapeutic and disability support options. This disproportionately affects Aboriginal and Torres Strait Islander people. 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. 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.\textsuperscript{89}

**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.\textsuperscript{90}

52. **Australia should continue work to date\textsuperscript{91} 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.\textsuperscript{92} **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.\textsuperscript{93} There remain inadequate community-based treatment options for people experiencing mental illness.\textsuperscript{94} 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.\textsuperscript{95}**

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,\textsuperscript{96} 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’.\textsuperscript{97} There have been violent incidents inside both detention centres.\textsuperscript{98} 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.\textsuperscript{99} Australian law requires that they remain in detention until they are either granted a visa or removed from the country.\textsuperscript{100} Release by a court is expressly excluded.\textsuperscript{101} **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. 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. **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. 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.

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. **Australia should develop a National Plan for Children to ensure stronger legislative protections and enforcement of the rights of children under the CROC.**

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. 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.**

**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.* 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.\(^{111}\)

**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).\(^{112}\) However, reported experience of racial discrimination remains high.\(^{113}\) **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.**\(^{114}\)

13. Older Persons

65. Australia faces a demographic shift—by 2056 one-in-four Australians will be over 65\(^{115}\) and will be living\(^{116}\) and staying in the workforce longer.\(^{117}\) Australia has undertaken initiatives to strengthen the rights of older persons,\(^{118}\) 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**\(^{119}\) and the Independent Expert on the enjoyment of all human rights by older persons\(^{120}\) 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**\(^{121}\) and ensuring older people are involved in decisions about their health and care.\(^{122}\)

**Workforce Participation**

68. There are significant barriers to workforce participation by older persons,\(^{123}\) despite the economic benefits of such participation.\(^{124}\) **Australia should implement the recommendations of the ALRC's 2013 Inquiry and develop a National Mature Age Persons Workforce Participation Plan.**\(^{125}\)

**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;\(^{126}\) improved recognition on the basis of affirmed sex/gender including access to passports\(^{127}\) and healthcare\(^{128}\) and some states have improved the legal recognition of same-sex relationships\(^{129}\) and families.\(^{130}\)
Violence

71. Australia should reduce the high levels of violence faced by LGBTI Australians131 by adopting the Australian Senate’s recommendations to ban unnecessary medical intervention132 (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 affirmation133 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,134 overseas marriages not recognised,135 and most jurisdictions not allowing same-sex couples to legally adopt children, including those already in their care.136 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.137

75. Overcrowding and a lack of emphasis on rehabilitation is evident in prisons across Australia.138 Prison conditions are poor, with inadequate access to education, rehabilitation programs,139 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.140 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.141 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.142

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.143 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. Australia should begin a consultative process towards adoption of a National Action Plan on business and human rights.

18. International Assistance

80. The government has abolished AusAID as an independent agency and significantly reduced the aid budget. Contrary to Organisation for Economic Co-operation and Development guidelines and commitments, the stated aim of the aid program is to pursue Australia’s national interest with a focus on supporting private sector involvement.

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 and the Mining for Development Initiative. 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.

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, 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. 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), completion of the National Action Plan to Combat Human Trafficking and Slavery 2015-19, funding to NGOs to develop new responses to awareness raising, and direct services for victims of slavery and trafficking, and forced marriage initiatives.

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.

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. 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'í 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
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.


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.


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.


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.

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.

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.

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).


*Crimes Act 1900* (NSW) s 93X; *Vicious Lawless Association Disestablishment Act 2013* (Qld).

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, ‘Freedoms and Rights Concerns in QLD Biloela’ (Media Release, 18 October 2013).

For example, Queensland Health grant contracts for organisations receiving more than 50% Government funding.

*Principles for the Funding of Legal Assistance*, which exclude ‘political advocacy or political activism’.


*Electoral Act 1992* (Qld) s 106(3).

Joint NGO Submission to the Universal Periodic Review of Australia, July 2010, [25].

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.

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].


Ibid.


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...

34 See, eg, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Australia, 17th 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.


37 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.

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

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


41 See, eg, discussion in submission in relation to counter-terrorism.

42 New South Wales, Victoria, Queensland, Western Australia and the Northern Territory.

43 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).

44 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).


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


53 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.
Economic, Social and Cultural Rights, promote bilingual ed and the UN Child Rights Committee have recommended that the Australian Government preserve and Northern Territory (2012).


Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum

Remote Indigenous Committees, Concluding Observations: Australia

Overcoming Indigenous Disadvantage: Key Indicators 2014

should ratify ILO Convention No 169 on Indigenous and Tribal Peoples.

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)

Superseding the Northern Territory Emergency Response Act 2007 (Cth).

See recommendation in Constitutional, Legislative and Institutional and Framework section that Australia should ratify ILO Convention No 169 on Indigenous and Tribal Peoples.


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).


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
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.


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*; Womans 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).


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.

See, eg, National Cross-Disability Disabled People’s Organisations, Senate Inquiry into Domestic Violence in Australia (2014).


were riots inside the Nauru detention centre.

Disabilities

Mental Health Service Planning Framework and endorsement and implementation of national mental health standard of physical and mental health 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.

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.

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.

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.

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.

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).

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).

Migration Act 1958 (Cth) s 198AD.

See UNHCR, UNHRC Monitoring Visit to the Republic of Nauru 7 to 9 October 2013, (26 November 2013).

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

Migration Act 1958 (Cth) s 189.

Ibid s 196.

Ibid s 196(3).

Ibid s 197C.

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/2904/2011 (23 August 2013).

Australia Human Rights Commission Act 1986 (Cth) as amended under pt IIA.

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

United Nations Committee on the Rights of the Child, Concluding Observations: Australia, UN CRC, 60th session, CRC/C/AUS/CO/4, [16].
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, 60th session, CRC/C/AUS/CO/4, [20], [29(a)].

Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary, (31 January 2015).


The People of Australia: Australia’s Multicultural Policy; Australia’s Multicultural Access and Equity Policy: Respecting Diversity, Improving Responsiveness.

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.

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.


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.


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.

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.

See, eg, Human Rights Council, Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons, 67th sess, Agenda Items 27(b) and 27(c), 20 December 2012, UN Doc A/HRC/Res/67/139.


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.

Advanced Care Planning laws must include Advanced (Care and Health) Directives and ‘Enduring Power of Attorney. See Parliament of Australia, Senate Community Affairs Reference Committee, Palliative care in Australia (October 2012) rec 36.


Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Cth)

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)

The Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway (Study, Bridges ultimately led to the deaths of two children. See, Natalie Bugalski and Jocelyn Medallo, ‘Derailed families had access to adequate housing and could meet other basic needs after they resettled,

133 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.


135 Recognition of Foreign Marriages Bill 2014 (Ch).

136 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

137 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)

138 The exponential increase in prisoner numbers is directly related to harsher sentencing practices, such as mandatory sentencing, and tougher bail and parole laws.

139 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).


141 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 is involved in the Cambodia Railways Project stakeholder responses to such issues.

142 One such example is NSW. See NSW Ombudsman, How are Taser Weapons Used by the NSW Police Force?, (October 2012), ch. 9.1.


144 The Australian Attorney-General has convened a Working Group on Slavery in Supply Chains which will look at multi-stakeholder responses to such issues.


149 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


130 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).


132 Parliament of Australia, Senate Community Affairs References Committee, Involuntary or coerced sterilisation of intersex people in Australia (October 2013).

133The exponent 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).


135 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 is involved in the Cambodia Railways Project stakeholder responses to such issues.


141 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 is involved in the Cambodia Railways Project stakeholder responses to such issues.

142 One such example is NSW. See NSW Ombudsman, How are Taser Weapons Used by the NSW Police Force?, (October 2012), ch. 9.1.


144 The Australian Attorney-General has convened a Working Group on Slavery in Supply Chains which will look at multi-stakeholder responses to such issues.


149 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

28


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>.

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.


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).


