



Australian  
Human Rights  
Commission

# Australia's Second Universal Periodic Review

SUBMISSION BY THE AUSTRALIAN  
HUMAN RIGHTS COMMISSION UNDER THE  
UNIVERSAL PERIODIC REVIEW PROCESS • 2015



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**Australia's Second Universal Periodic Review: Submission by the Australian Human Rights Commission under the Universal Periodic Review Process**

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**Gillian Triggs**

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*President  
Australian Human Rights Commission*



# Foreword

Australia's human rights record will be the subject of a global dialogue between governments at the United Nations (UN) Human Rights Council in November 2015 when Australia participates in the Universal Periodic Review (UPR).

The UPR is a unique process. As its name suggests, it is a **universal** process, which all countries in the world participate in and which considers progress in the realisation of **all** human rights; **periodic** in nature, occurring every four years; and a **review**, identifying the key challenges and achievements of each member of the UN.

The UPR complements the other processes at the UN level that provide accountability for human rights outcomes – such as the monitoring role of treaty committees and the thematic work of special rapporteurs and other procedures. How it differs is that rather than the dialogue being between independently appointed experts and the government, it is a diplomatic engagement between nations.

As a peer review process, it enables Member States to ask questions about the human rights situation in the country under review and to make recommendations for priority actions. The country under review is required to indicate whether it will implement the recommendations made over the subsequent four year period, or not. Often, the issues that are raised in this process are followed up through bilateral dialogue and diplomatic engagement between countries.

As Ban Ki-Moon, UN Secretary-General, has said, the UPR 'has great potential to promote and protect human rights in the darkest corners of the world.'

National Human Rights Institutions are encouraged to be part of the process and provide an independent assessment of the country under review.

The Australian Human Rights Commission has been actively engaged in the UPR process since its inception. We took a key role in bringing government, NGOs and the civil society together ahead of Australia's first UPR appearance in 2011. For the past four years, we have also published an annual implementation report that reflects on Australia's progress in addressing the commitments made by the Government in the first cycle review.

This document is the next step in our engagement in this process. Under the rules of engagement for the UPR, national commissions can make a submission to the Office of the High Commissioner for Human Rights for inclusion in what is referred to as the 'stakeholder report' for the UPR. This report is a compilation of inputs from a country's NHRI, as well as NGOs. The compilation report is one of three documents that form the basis of the UPR dialogue.

The submission was developed with input from all state and territory human rights and anti-discrimination commissions.

It describes the current background and framework for human rights in Australia and details what is being achieved 'on the ground' for the promotion and protection of human rights. The positive developments that have occurred over the past four years are welcomed: the Australian Government's continued support of the National Disability Insurance Scheme, the appointment of a full-time Human Rights Commissioner and the launch of a National Action Plan to combat trafficking and slavery.

The document also reflects on the 145 recommendations made by 53 countries at Australia's first cycle review. Over 90% of the recommendations were accepted in whole or in part by the Australian Government. At this time, 62% have been partially implemented. Disappointingly, only 10% have been fully implemented.

Substantial weaknesses are evident in Australia's human rights protections. The implementation of many actions contained in Australia's National Action Plan on human rights has been limited, and Australia has still not ratified the Optional Protocol to the Convention against Torture. Australia's policies in relation to refugees and asylum seekers continue to present challenges.

The UPR provides a unique opportunity to reflect on our ambitions for better human rights protection in Australia – by targeting the areas of greatest need and developing a plan for addressing these over the next four years.

It is a positive process aimed at encouraging reflection and debate. I look forward to engaging with government, NGOs and the community as the process unfolds, and as we all strive together to realise human rights in Australia for everyone, everywhere, everyday.

A handwritten signature in black ink, reading "Gillian Triggs". The signature is fluid and cursive, with a large initial 'G' and a long horizontal stroke at the end.

Professor Gillian Triggs

**President**

Australian Human Rights Commission

April 2015

# Contents

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1.	Introduction	4
2.	Background and framework for human rights promotion and protection	4
2.1	Implementation of UPR recommendations	4
2.2	Scope of international obligations	4
2.3	National framework	5
3.	Promotion and protection of human rights on the ground	6
3.1	Equality before the law and non-discrimination	6
3.2	Migrants, refugees and asylum seekers	8
3.3	Right to life, liberty and security of the person	9
Annex 1:	References	11
Annex 2:	Implementation status of first cycle UPR recommendations	17
Annex 3:	Recommendations by the Australian Human Rights Commission for Australia's UPR appearance	27

# 1. Introduction

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1. This submission is made by the Australian Human Rights Commission, with input from state and territory human rights authorities.<sup>1</sup> The Australian Human Rights Commission is established and operates under the *Australian Human Rights Commission Act 1986* (Cth). The Commission has been accredited as an 'A status' national human rights institution by the International Coordinating Committee of National Human Rights Institutions, and operates in conformity with the 'Paris Principles'.

## 2. Background and framework for human rights promotion and protection

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### 2.1 Implementation of UPR recommendations

2. The Commission has lodged annual progress reports with the UN Human Rights Council on the implementation of recommendations from Australia's first UPR.<sup>2</sup> These reports identify the status of all actions committed to, as reflected in Australia's National Action Plan on Human Rights.
3. A recurring theme over the past four years is the lack of implementation of UPR commitments. Of the 145 recommendations made to Australia in 2011, **10%** of those accepted (in whole or in part) have been **fully** implemented over the past four years.<sup>3</sup> However, a further **62%** have been **partially** implemented.

### 2.2 Scope of international obligations

4. Six years have passed since Australia signed OPCAT, with limited progress towards ratification and establishment of a National Preventive Mechanism. Since 2011, ratification has been endorsed through parliamentary processes.<sup>4</sup> Model legislation to enable visits of the Sub-Committee on Prevention of Torture has been prepared but not passed.<sup>5</sup> **Recommendation: The Commission recommends that Government expedite the ratification of OPCAT and establishment of a National Preventive Mechanism for places of detention.**
5. Since 2011, limited consideration has been given to ratification of a range of human rights treaties and individual communication processes, and to the withdrawal of reservations. **Recommendation: The Commission recommends that the Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification of ILO Convention 169, Migrant Workers Convention and Optional Protocols for communications under ICESCR and CRC. The Commission recommends that Government confirm a timetable for the withdrawal of reservations to ICERD, CEDAW and CRC.**

## 2.3 National framework

6. The Commission commends the establishment of the Joint Committee on Human Rights in the federal Parliament and the requirement for all legislation to be accompanied by a Statement of Compatibility which assesses consistency with Australia's human rights obligations.<sup>6</sup> The Committee has raised concerns about legislation unjustifiably infringing human rights, particularly civil and political rights such as privacy and procedural fairness.<sup>7</sup>
7. Since 2011, the Commission has welcomed the establishment of an Age Discrimination Commissioner and National Children's Commissioner,<sup>8</sup> as well as the appointment of a Race Discrimination Commissioner and Human Rights Commissioner (focused on protection of fundamental freedoms as well as the rights of lesbian, gay, bisexual, trans, gender diverse and intersex people).<sup>9</sup>
8. Despite these developments, Australia continues to have limited legislative protection of human rights and fundamental freedoms at the federal level, with many of Australia's human rights obligations not directly incorporated into Australian law. **Recommendation: The Commission recommends that Australia's human rights obligations be directly incorporated into Australian law.**

### (a) Human rights education

9. The Commission welcomes the inclusion of human rights in the national school curriculum and the development of human rights resources for public servants.<sup>10</sup>
10. There remains a need for ongoing human rights education across the public sector, in the administration of justice and places of detention, within the tertiary and vocational education sector and across the community. Australia's activities for the World Program for Human Rights Education have been ad hoc. **Recommendation: The Commission recommends that Government expand its support for human rights education initiatives, including targeted initiatives for public officials.**

### (b) Business and human rights

11. The Commission commends the Australian business community's support for the Guiding Principles on Business and Human Rights through the Global Compact Network Australia.<sup>11</sup> **Recommendation: The Commission recommends that Government formulate a National Action Plan on Business and Human Rights, in consultation with the business sector.**
12. The Commission commends Australian businesses on their commitment to promote diversity and equality. Examples include Reconciliation Action Plans (to promote Indigenous equality), Disability Action Plans, and other measures to promote gender equality and diversity on the basis of race, and Sexual Orientation, Gender Identity and Intersex.
13. The Commission is concerned that significant complexity continues to exist between discrimination laws across jurisdictions in Australia. There remains a need to support business, particularly small business, to understand these laws and prevent discrimination. **Recommendation: The Commission recommends that Government consider options to reduce complexity and improve consistency of discrimination protections across Australia, to clarify businesses' obligations and support best practice.**

## 3. Promotion and protection of human rights on the ground

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### 3.1 Equality before the law and non-discrimination

#### (a) Aboriginal and Torres Strait Islander peoples

14. The UN Declaration on the Rights of Indigenous Peoples has yet to be implemented in law, policy and practice.<sup>12</sup> **Recommendation: The Commission recommends that Government develop, in partnership with Aboriginal and Torres Strait Islander peoples, a National Strategy to give effect to the Declaration; include the Declaration in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*; and review existing legislation, policies and programmes for conformity with the Declaration.**<sup>13</sup>
15. Government has wound back funding support for the National Congress of Australia's First Peoples, a national NGO voice for Indigenous peoples, and for Indigenous legal services.<sup>14</sup> **Recommendation: The Commission recommends that adequate funding be provided to the National Congress to build a representative Indigenous voice at the national level and for Indigenous legal aid.**
16. The Commission acknowledges steps taken towards recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.<sup>15</sup> No model for constitutional change has been finalised nor the timeframe for a referendum announced. **Recommendation: The Commission recommends that Government finalise a model for constitutional recognition, following engagement of Indigenous peoples, so that the process of building community support can advance.**
17. The Commission welcomes the commitment of Australian governments to targets to close the gap between Indigenous and non-Indigenous Australians across a range of key wellbeing indicators. Since 2011, there have been long-term improvements in infant mortality, maternal health, life expectancy rates and pre-school attendance. Other areas, such as employment and school attendance, have not seen improvements. **Recommendation: The Commission recommends that Government, working with Indigenous peoples, redouble efforts to achieve the closing the gap targets, and implement the recommendations of the Close the Gap Campaign's *Progress and Priorities Report 2015*.**<sup>16</sup>

#### (b) Equality of women and men

18. The Commission welcomes the *Workplace Gender Equality Act 2013 (Cth)* and the increase in the number of women on boards.<sup>17</sup> The Commission notes that the gender pay gap has widened,<sup>18</sup> women in Australia continue to do the majority of unpaid caring and domestic work,<sup>19</sup> and experience discrimination in the workplace, including on the basis of pregnancy, parental leave and return to work.<sup>20</sup> Each of these factors has contributed to a significant gap in women's retirement savings. **Recommendation: The Commission recommends that Government implement measures to close the gender pay gap, strengthen the representation of women in leadership and managerial roles, value and recognise unpaid caring work, and address the gap in retirement savings to assure women economic security in later life.**<sup>21</sup> The Commission further recommends that Government amend the *Sex Discrimination Act 1984 (Cth)* to improve its effectiveness.<sup>22</sup>
19. The Commission welcomes the National Plan to Reduce Violence Against Women and their Children (2010–2022), the establishment of Ourwatch, Australia's National Research Organisation for Women's Safety, and an advisory panel on violence against women.<sup>23</sup> The Commission also welcomes legislative amendments that strengthen responses to domestic violence.<sup>24</sup>



20. However, violence against women is endemic and the prevalence of domestic violence, sexual assault, sexual harassment and community attitudes about violence against women have not substantially improved. The Commission is concerned at the under-resourcing of crisis and support services and the inadequate levels of support available for women in rural and remote areas, women from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander women, women with disabilities, and lesbian, trans and intersex women. **Recommendation: The Commission recommends that implementation of the National Plan to Reduce Violence Against Women and their Children reflect the diversity of women, and include adequate, sustained funding for programs and services and independent monitoring and evaluation.**
21. The Commission acknowledges the commitment of the Australian Defence Force to cultural reform, including efforts towards ensuring organisational diversity and inclusivity, particularly for women.

### (c) Older persons

22. Australia has a significant ageing population. Older people face human rights challenges relating to poverty, violence, discrimination in the workforce and stereotyping.
23. The Commission welcomed amendments to the *Age Discrimination Act 2004* (Cth) in 2011, initiatives to improve the retention and recruitment of older workers and the recent announcement of a national review into barriers facing older workers and people with disability in employment.<sup>25</sup> **Recommendation: The Commission recommends that Government ensure programs support positive ageing, reduce workplace discrimination against older Australians and address poverty in old age.**

### (d) People with disability

24. The Commission welcomes the introduction of the world leading National Disability Insurance Scheme, which provides individualised support packages to people with disability. **Recommendation: The Commission recommends that Government fully fund the National Disability Insurance Scheme.**
25. The Commission is concerned at the limited employment of people with disability,<sup>26</sup> and the falling rates of such employment in the public service.<sup>27</sup> **Recommendation: The Commission recommends that Government support an inclusive employment culture through resourcing transition to work programs, educational support and reasonable accommodation, and a targeted increase in public service employment.**
26. The Commission remains concerned at the high rates of violence against people with disabilities.<sup>28</sup> The Commission is concerned that sterilisation of people with disabilities, including children, continues to take place in Australia without consent. **Recommendation: The Commission recommends that Government adopt a national approach to address violence against people with disabilities and introduce legal protections to ensure no sterilisation of people with disabilities without their consent.**

### (e) Lesbian, gay, bisexual, trans, gender diverse and intersex people

27. The Commission welcomes the enactment of legislation in 2013,<sup>29</sup> prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status.<sup>30</sup> Exemptions to these provisions continue in state and territory laws. **Recommendation: The Commission recommends that federal, state and territory laws that continue to discriminate be brought into compliance with the *Sex Discrimination Act 1984* (Cth).**
28. The Commission welcomes the enactment of legislation at the state and territory level expunging historic criminal convictions for consensual homosexual sex.<sup>31</sup> **Recommendation: The Commission recommends that all jurisdictions pass legislation expunging historic criminal convictions for consensual homosexual sex.**

29. The *Marriage Act 1961* (Cth) discriminates against same-sex couples and people with diverse sex and genders by denying them the right to marry. **Recommendation: The Commission recommends that the Australian Parliament legislate to provide marriage equality as a matter of priority.**
30. The Commission is concerned that intersex people face non-essential medical interventions to erase intersex characteristics.<sup>32</sup> **Recommendation: The Commission recommends that Government conduct an inquiry into the issue of surgical intervention on intersex infants.**

#### (f) Rights of the child

31. The Commission welcomes progress under the National Framework for Protecting Australia's Children 2009–2020,<sup>33</sup> the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse,<sup>34</sup> amendments to the *Family Law Act 1975* (Cth) in 2012 which strengthen protection of the rights of the child, especially in violent situations,<sup>35</sup> and efforts by government and across the community to address cyber-bullying and online safety of children.<sup>36</sup>
32. The Commission is concerned that the rate of children in out-of-home care has increased,<sup>37</sup> with Indigenous children over-represented.<sup>38</sup> **Recommendation: The Commission recommends that Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection and out-of-home care.**

## 3.2 Migrants, refugees and asylum seekers

### (a) Refugees and asylum seekers

33. The Commission welcomes Australia's increased use of community arrangements for asylum seekers<sup>39</sup> and the release of many children from closed detention since the last UPR.<sup>40</sup> Despite these developments, Australia's current treatment of refugees and asylum seekers continues to present serious human rights challenges. Australia maintains a policy of mandatory immigration detention, with all people who arrive by boat liable for such detention, and transfer for processing to third countries. **Recommendation: The Commission recommends that Government introduce time limits and access to judicial oversight of detention so that detention occurs only when necessary, for a minimal period, and where it is a reasonable and proportionate means of achieving a legitimate aim. The Commission further recommends the Government continue to expand the use of alternatives to closed detention.**
34. Australia has reintroduced third country processing arrangements<sup>41</sup> under which asylum seekers who arrive by boat, including children,<sup>42</sup> are transferred to the jurisdiction of third countries for processing of their asylum claims. The Commission is concerned that people are detained for lengthy periods<sup>43</sup> under extreme conditions<sup>44</sup> with detrimental impacts on their physical and mental health.<sup>45</sup> If owed protection, refugees subject to these arrangements are resettled in Papua New Guinea or Nauru.<sup>46</sup> **Recommendation: The Commission recommends that Government immediately cease the transfer of people to Papua New Guinea and Nauru, return people transferred back to Australia, and continue to negotiate through the Bali Process Regional Cooperation Framework.**<sup>47</sup>
35. The Commission commends Australia for establishing a statutory complementary protection framework, but notes that this faces repeal.<sup>48</sup> Recent legislative change has empowered the government to remove asylum seekers from Australia even where this violates non-refoulement obligations.<sup>49</sup> The Commission is also concerned by the government's removal of references to the Refugee Convention from the *Migration Act 1958* (Cth); the reintroduction of temporary protection visas; and limitations that have been placed on merits review of claims.<sup>50</sup> **Recommendation: The Commission recommends that Government retain its complementary protection framework, codify the obligation of non-refoulement in law, review the impact of temporary protection visas and restore full access to merits review to all asylum seekers.**

## (b) People from culturally and linguistically diverse backgrounds

36. Since 2011, Australia has introduced a new multicultural policy,<sup>51</sup> appointed an Australian Multicultural Council, and developed a National Anti-Racism Strategy. The *Migration and Multiculturalism Inquiry* and *Access and Equity Inquiry* have identified further actions to build on our strong multicultural foundation.<sup>52</sup> Despite these efforts, racial discrimination and vilification continue in Australia.<sup>53</sup> **Recommendation: The Commission recommends that Government affirm its commitment to an inclusive society by continuing to support the National Anti-Racism Strategy and programs building social cohesion and community harmony. The Commission further recommends that Government implement recommendations of the *Migration and Multiculturalism* and *Access and Equity* inquiries.**

## 3.3 Right to life, liberty and security of the person

### (a) Counter-terrorism laws

37. Australia's counter-terrorism laws restrict human rights. In particular, control orders, preventive detention orders and questioning and detention orders, may result in arbitrary interference with rights protected by the ICCPR. The Commission commends the creation of an Independent National Security Legislation Monitor (INSLM).<sup>54</sup> The recommendations of the INSLM to moderate counter-terrorism provisions have not been adopted to date.<sup>55</sup>
38. Recent amendments to counter-terrorism laws have raised concerns about restrictions on free speech by limiting journalists' ability to report on terrorist related issues, and the expansion of powers of security agencies to obtain information without warrant that are disproportionate.<sup>56</sup> **Recommendation: The Commission recommends that Government ensure all counter-terrorism laws remain under constant review to ensure that any infringement of human rights is legitimate and proportionate.**

### (b) Extradition and mutual assistance

39. The Commission welcomes the introduction of legislation in 2012 that brings the *Extradition Act 1988* (Cth) further into line with Australia's non-refoulement obligations under CAT.<sup>57</sup>

### (c) Trafficking

40. The Commission commends legislative amendments that strengthen Australia's response to human trafficking, including by recognising various slavery-like practices as offences<sup>58</sup> and extending witness protections to victims of trafficking.<sup>59</sup> The Commission commends Australia for developing a National Action Plan to Combat Human Trafficking and Slavery 2015–2019.<sup>60</sup> **Recommendation: The Commission recommends that Government fully implement the National Action Plan to Combat Human Trafficking and Slavery 2015–2019.**

### (d) Freedom of association and peaceful assembly

41. The Commission is concerned about state and territory laws that disproportionately restrict freedom of association,<sup>61</sup> and the right to peaceful assembly.<sup>62</sup> **Recommendation: The Commission recommends that state and territory governments amend anti-protest and anti-bikie laws so they do not unduly restrict human rights.**

**(e) Mental health**

42. The Commission commends the 2012 establishment of the National Mental Health Commission (NHMC).<sup>63</sup> Key concerns identified to date include lack of support for severely mentally ill people; over-representation of Indigenous peoples death by suicide; and use of seclusion and restraint practices for people with mental illness. The Commission is concerned at the prevalence of self-harm among children.<sup>64</sup> **Recommendation: The Commission recommends that Government fund mental health services and implement the recommendations of the National Mental Health Council and the *Children's Rights Report 2014*.**<sup>65</sup>

**(f) Criminal justice system**

43. Aboriginal and Torres Strait Islander adults and juveniles, and people with disability<sup>66</sup> are significantly over-represented in Australia's prison population.<sup>67</sup> Child offenders are sometimes held in the same correctional centres as adults.<sup>68</sup> The Commission notes that some jurisdictions have progressed the use of non-custodial measures and strengthened diversionary programs.<sup>69</sup> The Commission notes that the government has reduced funding for Indigenous legal aid.<sup>70</sup> **Recommendation: The Commission recommends that Government adopt targets<sup>71</sup> and introduce justice reinvestment trials to reduce Indigenous incarceration rates,<sup>72</sup> adopt measures to improve access to justice for people with disabilities, develop alternative care arrangements where people are found unfit to plead for reasons including cognitive impairment or acquired brain injury, expand the use of diversionary programs for juveniles, raise the minimum age of criminal responsibility and cease detention of children in adult facilities.**
44. Several Australian jurisdictions have expanded or introduced mandatory sentencing laws, which prevent appropriate non-custodial measures for certain offences and may lead to disproportionate and arbitrary detention.<sup>73</sup> Victoria has phased out the use of suspended sentences.<sup>74</sup> There is overcrowding in some prisons.<sup>75</sup> **Recommendation: The Commission recommends that Australian governments review mandatory sentencing and laws that limit judicial discretion, and expand the use of non-custodial measures where appropriate.**

# Annex 1:

## References

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- 1 The Commission acknowledges input from the ACT Human Rights Commission, Anti-Discrimination Board of New South Wales, Anti-Discrimination Commission of Queensland, Equal Opportunity Commission Western Australia, Northern Territory Anti-Discrimination Commission, Office of the Anti-Discrimination Commissioner (Tasmania), South Australia Equal Opportunity Commission and Victorian Equal Opportunity and Human Rights Commission.
- 2 The Commission's annual progress reports are available at Australian Human Rights Commission, *Australia's Universal Periodic Review on human rights*. At <https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights> (viewed 21 March 2015).
- 3 A table listing the implementation status of the 145 recommendations made to Australia in the first UPR is included at Annex 2. The table indicates which recommendations have been implemented, partly implemented, not implemented and not supported at the time of the UPR.
- 4 The Joint Standing Committee on Treaties recommended ratification of the OPCAT in June 2012. See Joint Standing Committee on Treaties, Parliament of Australia, *Report 125: Treaties tabled on 7 and 28 February 2012* (June 2012), recommendation 6. At [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jsct/28february2012/tor.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsct/28february2012/tor.htm) (viewed 21 March 2015): 'The Committee supports the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 2002* and recommends that binding treaty action be taken.'
- 5 The Northern Territory government introduced the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 to Parliament on 22 August 2013. The Bill has not been enacted to date.
- 6 The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) establishes the Parliamentary Joint Committee on Human Rights. The Act defines human rights as the rights and freedoms recognised or declared by the International Convention on the Elimination of all Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. See further Parliament of Australia, *Parliamentary Joint Committee on Human Rights*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights) (viewed 21 March 2015).
- 7 Regular concerns have been raised about reversing the onus of proof and ensuring merits review of decisions. Parliamentary Joint Committee on Human Rights, *Annual Report 2012–2013* (2013), pp 15-25. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Annual\\_Reports](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Annual_Reports) (viewed 21 March 2015).
- 8 The position of Age Discrimination Commissioner is established by the *Sex and Age Discrimination Legislation Amendment Act 2011* (Cth). See Australian Human Rights Commission, 'Passage of sex and age discrimination legislation amendment a great day', (Media Release, 25 May 2011). At <https://www.humanrights.gov.au/news/media-releases/2011-media-release-passage-sex-and-age-discrimination-legislation-amendment> (viewed 21 March 2015). The position of National Children's Commissioner is established by the *Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012* (Cth). See Australian Human Rights Commission, 'Commission welcomes inaugural Children's Commissioner', (Media Release, 25 February 2013). At <https://www.humanrights.gov.au/news/media-releases/commission-welcomes-inaugural-children-s-commissioner> (viewed 21 March 2015). The National Children's Commissioner has a legislative requirement to report annually to Parliament on the status of enjoyment of human rights by children.
- 9 Australian Human Rights Commission, 'Race Discrimination Commissioner appointed', (Media Release, 3 August 2011). At <https://www.humanrights.gov.au/news/stories/2011-news-race-discrimination-commissioner-appointed> (viewed 21 March 2015); Australian Human Rights Commission, 'Commission welcomes new Commissioner', (Media Release, 18 December 2013). At <https://www.humanrights.gov.au/news/media-releases/commission-welcomes-new-commissioner> (viewed 21 March 2015).
- 10 Attorney-General's Department, *Human rights and the public sector*. At <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSector/Pages/default.aspx> (viewed 21 March 2015).
- 11 The network is comprised of business stakeholders ranging from multi-nationals and top 200 companies down to smaller enterprises.
- 12 The Commission commends the leading role played by the Australian Government at the World Conference on Indigenous Peoples in September 2014 and its agreement to the Outcomes Document which commits Member States to develop national measures to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples: *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, GA Res 69/2, UN Doc No A/69/L.1, 2014, paras 7-8. At <http://wcip2014.org/wp-content/uploads/2014/09/N1453491-WCIP-FINAL-DOCUMENT-EN.pdf> (viewed 21 March 2015).
- 13 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Report to the Human Rights Council 12th session, UN Doc A/HRC/12/34/Add.10 (2009), p 4. At <http://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/CountryReports.aspx> (viewed 21 March 2015).
- 14 Australian Government, *Budget 2014–15: Budget Measures, Budget Paper No 2* (2014), p 185. At [http://budget.gov.au/2014-15/content/bp2/download/BP2\\_consolidated.pdf](http://budget.gov.au/2014-15/content/bp2/download/BP2_consolidated.pdf) (viewed 21 March 2015).

- 15 Australian Human Rights Commission, *Australia's Universal Periodic Review 2014 Progress Report*, p 8-9: 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 – this acknowledges that Aboriginal and Torres Strait Islander people are the first inhabitants of this nation and identifies a broad timeframe for the holding of the referendum to recognise this, and provide other protection, in the Constitution; funding has been provided to Reconciliation Australia for the *Recognise* campaign to build community support.
- 16 Close the Gap Campaign Steering Committee, *Progress and Priorities Report 2015*. At <https://www.oxfam.org.au/2015/02/close-the-gap-progress-and-priorities-report-2015/> (viewed 21 March 2015).
- 17 Women on Boards, *ASX200 in 2013*. At <http://www.womenonboards.org.au/pubs/bdi/2013/asx.htm> (viewed 21 March 2015). The Commission notes the decrease in numbers of women on government boards. See Australian Government, *Gender Balance on Australian Government Boards Report 2013–2014* (2014), p 5. At <http://www.dpvc.gov.au/office-women/publication/gender-balance-australian-government-boards-report-2013-14> (viewed 21 March 2015).
- 18 Workplace Gender Equality Agency, 'National gender pay gap at record high of 18.8%' (Media Release, 26 February 2015). At [https://www.wgea.gov.au/sites/default/files/20150226\\_MR\\_GenderPayGapRecord.pdf](https://www.wgea.gov.au/sites/default/files/20150226_MR_GenderPayGapRecord.pdf) (viewed 21 March 2015); Workplace Gender Equality Agency, *Australia's gender equality scorecard* (November 2014), p 3. At [https://www.wgea.gov.au/sites/default/files/2013-14\\_summary\\_report\\_website.pdf](https://www.wgea.gov.au/sites/default/files/2013-14_summary_report_website.pdf) (viewed 21 March 2015).
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- 20 Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report* (2014), p 8. At <https://www.humanrights.gov.au/publications/supporting-working-parents-pregnancy-and-return-work-national-review-report> (viewed 21 March 2015).
- 21 Australian Human Rights Commission, *Investing in Care: Recognising and valuing those who care. Volume 1: Research Report* (2013), pp 10-15. At <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/investing-care-recognising-and-valuing-those-who-care> (viewed 21 March 2015).
- 22 The Commission has noted the need for outstanding recommendations from the 2008 Senate Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender to be implemented to strengthen the effectiveness of the *Sex Discrimination Act*; as well as the need for other amendments to the *Sex Discrimination Act* relating to domestic violence. See Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report* (2014), p 118. At <https://www.humanrights.gov.au/publications/supporting-working-parents-pregnancy-and-return-work-national-review-report> (viewed 21 March 2015); Australian Human Rights Commission, *Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law* (2011). At <http://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law#Heading689> (viewed 21 March 2015); Australian Human Rights Commission, *Supplementary Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law – Domestic and Family Violence* (2012). At <http://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law-domestic-and-family-violence> (viewed 21 March 2015). A 2008 report reviewed the effectiveness of the Sex Discrimination Act. Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act* (December 2008). At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 21 March 2015).
- 23 Prime Minister of Australia and Minister Assisting the Prime Minister for Women, 'COAG agenda to address ending violence against women' (Media Release, 28 January 2015). At <https://www.pm.gov.au/media/2015-01-28/coag-agenda-address-ending-violence-against-women-0> (viewed 21 March 2015).
- 24 See *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), which seeks to respond more effectively to domestic and family violence and child abuse in the family law system, and *Fair Work Amendment Act 2013* (Cth), which expands the right to request a flexible working arrangement to include those experiencing or supporting an immediate family or household member who is enduring violence in the family or household. The Commission further notes the announcement of the Victorian Royal Commission into violence against women: Premier of Victoria, 'Premier Announces Royal Commission Into Family Violence', (Media Release, 23 December 2014). At <http://www.premier.vic.gov.au/premier-announces-royal-commission-into-family-violence> (viewed 21 March 2015).
- 25 The review is to be conducted by the Age and Disability Discrimination Commissioner at the Australian Human Rights Commission.
- 26 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2012*, 4430.0 (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument> (viewed 21 March 2015).
- 27 Australian Government, Australian Public Service Commission, *State of the Service Report: State of the Service Series 2012–13* (2013) p 104. At <http://www.apsc.gov.au/about-the-apsc/parliamentary/state-of-the-service/sosr-2012-13> (viewed 21 March 2015).

- 28 The Commission welcomes the establishment of a parliamentary inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, to be conducted in 2015. See Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect) (viewed 21 March 2015).
- 29 *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth).
- 30 *Sex Discrimination Act 1984* (Cth) ss 5A, 5B and 5C.
- 31 *Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014* (Vic); *Criminal Records Amendment (Historical Homosexual Offences) Act 2014* (NSW).
- 32 Australian Human Rights Commission, *Surgery on intersex infants and human rights* (July 2009). At <https://www.humanrights.gov.au/surgery-intersex-infants-and-human-rights-2009> (viewed 21 March 2015).
- 33 Annual reports to the Council of Australian Governments measure the progress made in implementing the National Framework. Department of Social Services, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020 – Annual Report 2012–2013* (2013). At <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business/protecting-children-is-everyones-business-national-framework-for-protecting-australias-children-2009-2020-annual-report-2012-13> (viewed 21 March 2015).
- 34 Royal Commission into Institutional Responses to Child Sexual Abuse, *Royal Commission into Institutional Responses to Child Sexual Abuse*. At <http://www.childabuseroyalcommission.gov.au/> (viewed 21 March 2015).
- 35 The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) introduced changes to the *Family Law Act 1975* (Cth) that better ensure the safety of children by expanding the definition of 'family violence' to include socially and financially controlling behaviour and exposing a child to family violence and making it easier for victims to report violence.
- 36 Australian Human Rights Commission, *Children's Rights Report 2014* (2014), pp 16–18. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014> (viewed 21 March 2015). The federal Parliament has recently passed the Enhancing Online Safety for Children Bill 2014 which will establish a Children's e-Safety Commissioner.
- 37 Productivity Commission, *Report on Government Services* (2015), Table 15A.18, Column N. As at 30 June 2014, there were 43,009 children in out-of-home care in Australia: Productivity Commission, *Report on Government Services* (2015), Table 15A.18, Column N, Row 9. Rates have increased from 6.8 to 8.1 per 1,000 between 2009 and 2014. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/data/rogs-2015-volumef-chapter15-attachment.xlsx> (viewed 21 March 2015).
- 38 The national rate of Indigenous children in out-of-home care was 9.1 times the rate for non-Indigenous children. In all jurisdictions, the rate of Indigenous children in out-of-home care was higher than for non-Indigenous children, with rate ratios ranging from 6.1 in Victoria to 14.3 in the Northern Territory: Productivity Commission, *Report on Government Services* (2015), Table 15A.18, Columns F–M, Rows 11–12. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/data/rogs-2015-volumef-chapter15-attachment.xlsx> (viewed 21 March 2015).
- 39 In 2005 a community detention mechanism was introduced to allow the Minister for Immigration and Citizenship the power to make a 'residence determination', which permitted a person in immigration detention to live in a specified residence in the community. In 2010, following the announcement of the *New Directions in Detention policy* (2008) significant numbers of children and their families were moved to community detention. On 25 November 2011, the government announced that asylum seekers who arrive in Australia by boat would be placed into the community while their claims were assessed, and bridging visas were announced. At the time of the Commission's report into these arrangements (19 July 2012), there were 1320 people in community detention and 2418 who had arrived by boat on bridging visas. See Australian Human Rights Commission, *Community arrangements for asylum seekers, refugees and stateless persons: Observations from visits conducted by the Australian Human Rights Commission from December 2011 to May 2012* (2012). At [http://www.humanrights.gov.au/human\\_rights/immigration/2012community-arrangements/](http://www.humanrights.gov.au/human_rights/immigration/2012community-arrangements/) (viewed 21 March 2015). As at 28 February 2015, there were 2995 people living in the community under a residence determination and 26 586 people living in the community after grant of a Bridging Visa E. See Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary 28 February 2015* (2015), p 3. At <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx> (viewed 21 March 2015).
- 40 In 2014 there was a decrease in the number of children held in closed detention. Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary 28 February 2015* (2015), p 8. At <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx> (viewed 21 March 2015).
- 41 MOUs establishing third country processing were ratified with Nauru and Papua New Guinea on 3 August 2013 and 6 August 2013 respectively. As at 30 June 2014, a total of 2026 people had been transferred to Nauru and 1959 people to Manus Island, Papua New Guinea. Department of Immigration and Border Protection, *Annual Report 2013–2014 Part 3 – Report on performance* (2014), pp 198–199. At <http://www.immi.gov.au/about/reports/annual/2013-14/pdf/index.htm> (viewed 21 March 2015).
- 42 As at 28 February 2015 107 children were held in the Nauru Offshore Processing Centre. Minister for Immigration and Border Protection, *Immigration Detention and Community Statistics Summary 28 February 2015* (2015), p 3. At <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx> (viewed 21 March 2015).

- 43 The average period of detention in detention facilities is currently 408 days (approximately 13 months). Minister for Immigration and Border Protection, *Immigration Detention and Community Statistics Summary 28 February 2015* (2015), p 10. At <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx> (viewed 21 March 2015).
- 44 In June 2013 UNHCR noted cramped, crowded, hot conditions, hygiene concerns and insufficient division between families and single adult males at the Manus Island Regional Processing Centre. UNHCR found that the conditions on Manus Island were harsh and remained below international standards. UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11–13 June 2013* (2013), p 10-11. At <http://www.refworld.org/docid/51f61ed54.html> (viewed 21 March 2015). In December 2012 UNHCR found the conditions in the Nauru regional processing centre to be ‘harsh and unsatisfactory’ with similar concerns to those on Manus Island: extreme heat, overcrowding, and lack of privacy. UNHCR, *UNHCR Mission to the Republic of Nauru, 3–5 December 2012* (2012). At <http://www.refworld.org/docid/50cb24912.html> (viewed 21 March 2015).
- 45 A two-year long investigation by the Commonwealth Ombudsman has clearly established a link between prolonged detention and deterioration in mental health. The mental health impacts of detention are reflected in high rates of self-harm. Between January 2011 and February 2013, there were 4313 incidents of self-harm across the immigration detention network. See Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), p 150. At <http://www.ombudsman.gov.au/reports/investigation/2013> (viewed 21 March 2015). The Commission’s 2014 National Inquiry into Children in Immigration Detention, which examined the impacts of detention on children, has provided unequivocal evidence that detention of children for lengthy periods results in significant mental and physical illness and developmental delays in these children. Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014), p 13. At <https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014> (viewed 21 March 2015).
- 46 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia*, relating to the transfer to and assessment of persons in Nauru, and related issues (29 August 2012). At <http://www.dfat.gov.au/geo/nauru/Pages/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and.aspx> (viewed 21 March 2015); *Memorandum of Understanding Between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues* (6 August 2013). At <http://www.dfat.gov.au/geo/papua-new-guinea/Pages/memorandum-of-understanding-between-the-government-of-the-independent-state-of-papua-new-guinea-and-the-government-of-austr.aspx> (viewed 21 March 2015).
- 47 The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime agreed on a Regional Cooperation Framework in 2011, underpinned by a set of core principles including, inter alia, “ii. Where appropriate and possible, asylum seekers should have access to consistent assessment processes, whether through a set of harmonised arrangements or through the possible establishment of regional assessment arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements.” See further Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, *Regional Cooperation Framework*. At <http://www.baliprocess.net/regional-cooperation-framework> (viewed 21 March 2015).
- 48 Complementary protection provisions were introduced through the passage of the *Migration Amendment (Complementary Protection) Act 2011* (Cth), which inserted s 36(2)(aa) of the *Migration Act 1958* (Cth). The Migration Amendment (Regaining Control Over Australia’s Protection Obligations) Bill 2013, which is currently before the Senate, proposes to repeal s 36(2)(aa), with administrative arrangements to be used to assess claims for complementary protection in its place. The Commission has expressed concern that this move will lead to breaches of Australia’s non-refoulement obligations. See Australian Human Rights Commission, *Submission to the Senate Legal Constitutional Affairs Committee Inquiry into the Migration Amendment (Regaining Control Over Australia’s Protection Obligations) Bill 2013* (30 January 2014). At <http://www.humanrights.gov.au/submissions/inquiry-migration-amendment-regaining-control-over-australia-s-protection-obligations> (viewed 21 March 2015).
- 49 *Migration Act 1958* (Cth) s 197C.
- 50 *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth). See further the Commission’s submission to the Senate Inquiry into the Bill. Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Australian Government’s Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth)* (31 October 2014). At <https://www.humanrights.gov.au/submissions/migration-and-maritime-powers-legislation-amendment-resolving-asylum-legacy-caseload> (viewed 21 March 2015).
- 51 Department of Social Services, *The People of Australia – Australia’s Multicultural Policy* (2011). At <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/publications/the-people-of-australia-australias-multicultural-policy> (viewed 21 March 2015).
- 52 See Joint Standing Committee on Migration, Parliament of Australia, *Inquiry into Migration and Multiculturalism in Australia* (2013). At [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=mig/multiculturalism/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/multiculturalism/report.htm) (viewed 21 March 2015); Access and Equity Inquiry Panel, *Access and Equity for a multicultural Australia: Inquiry into the responsiveness of Australian Government services to Australia’s culturally and linguistically diverse population* (2012). At <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/access-and-equity/access-and-equity-inquiry> (viewed 21 March 2015).
- 53 In the 2013-2014 financial year, the Commission received 380 complaints under the *Racial Discrimination Act 1975* (Cth).



- 54 The Independent National Security Legislation Monitor's annual reports are available at Department of the Prime Minister and Cabinet, *Independent National Security Legislation Monitor*. At <http://www.dpmc.gov.au/inslm> (viewed 21 March 2015). A review of Counter-Terrorism Legislation was also conducted in 2012: Council of Australian Governments, *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013). At <http://www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx> (viewed 21 March 2015).
- 55 Independent National Security Legislation Monitor, *Annual Report 28th March 2014* (2014), p 2. At <http://www.dpmc.gov.au/pmc/publication/independent-national-security-legislation-monitor-annual-report-2014> (viewed 21 March 2015).
- 56 *National Security Legislation Amendment Act (No.1) 2014* (Cth), *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth) and *Counter-Terrorism Legislation Amendment Act (No.1) 2014* (Cth). The Commission's concerns about this legislation are detailed in its submissions on the proposed legislation. See *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment Bill (No. 1) 2014* (21 August 2014). At <https://www.humanrights.gov.au/submissions/submission-inquiry-national-security-legislation-amendment-bill-no-1-2014> (viewed 21 March 2015); Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (2 October 2014). At <https://www.humanrights.gov.au/submissions/inquiry-counter-terrorism-legislation-amendment-foreign-fighters-bill-2014> (viewed 21 March 2015) and Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014* (11 November 2014). At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/Amendment\\_Bill/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Amendment_Bill/Submissions) (viewed 21 March 2015).
- 57 The *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* (Cth), passed in 2012, amended s 22(3) (b) of the *Extradition Act 1988* (Cth) to align the wording of the Extradition Act with Australia's non-refoulement obligations under article 3 of CAT. The Act also amended the *Mutual Assistance in Criminal Matters Act 1987* (Cth) to provide for mandatory refusal of mutual assistance where there are substantial grounds for believing that if the request for mutual assistance was granted, the person would be in danger of being subjected to torture. This was previously a discretionary ground.
- 58 New offences were created through the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth), passed in 2012. The Act amends the *Criminal Code Act 1995* (Cth) to introduce offences of servitude (s 270.5), forced labour (s 270.6A), deceptive recruiting for labour or services (s 270.7), forced marriage (s 270.7B), organ trafficking (s 271.7A – 271.7E), and harbouring a victim (s 271.7F).
- 59 The *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Cth), extends existing vulnerable witness protections to adult victims of slavery, slavery-like and human trafficking offences, and includes specific protections for witnesses who may be vulnerable due to a particular characteristic such as a disability or their cultural background. The Act also places the burden of proving the defendant was aged 18 or over on the prosecution.
- 60 Attorney-General's Department, *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* (2014). At <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australiasresponsetohumantrafficking.aspx> (viewed 21 March 2015).
- 61 *Crimes Act 1900* (NSW) s 93X; *Vicious Lawless Association Disestablishment Act 2013* (Qld). These laws, purporting to target motorcycle gangs, have severe penalties and unreasonably limit freedom of association.
- 62 *Workplaces (Protection from Protesters) Act 2014* (Tas); *Summary Offences and Sentencing Amendment Act 2014* (Vic); *G20 (Safety and Security) Law 2013* (Qld). These laws unfairly limit freedom of association and peaceful assembly, criminalise certain protest activities and impose harsh penalties.
- 63 National Mental Health Commission, *Leading, Collaborating, Advising, Reporting*. At <http://www.mentalhealthcommission.gov.au/our-reports.aspx> (viewed 21 March 2015).
- 64 Australian Human Rights Commission, *Children's Rights Report 2014* (2014). At <http://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014> (viewed 21 March 2015).
- 65 Australian Human Rights Commission, *Children's Rights Report 2014* (2014), pp 10-11. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014> (viewed 21 March 2015).
- 66 The Commission's report, *Equal Before The Law*, concluded that people with disabilities have higher rates of interaction with the criminal justice system than other Australians, citing 2012 statistics that indicate 38% of prison entrants reported that they have ever been told by a doctor, psychiatrist, psychologist or nurse that they have a mental health disorder and 46% of prison discharges reported that they have ever been told they have a health condition – mental health, including drug and alcohol abuse. Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies* (2014) p 12. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 21 March 2015). In 2014 the Commission inquired into complaints by four Aboriginal men with intellectual and cognitive disabilities who had been incarcerated for a number of years despite being found unfit to stand trial or not guilty by reason of insanity. *KA, KB, KC and KD v Commonwealth of Australia* [2014] AusHRC 80. At <https://www.humanrights.gov.au/our-work/legal/publications/ka-kb-kc-and-kd-v-commonwealth-australia> (viewed 21 March 2015). The Aboriginal Disability Justice Campaign advocates for progress in relation to the indefinite incarceration of Aboriginal people with intellectual and cognitive disabilities. People with Disability Australia, *Aboriginal Disability Justice Campaign* (2015). At <http://www.pwd.org.au/adjc/about-us-adjc.html> (viewed 21 March 2015).

- 67 Between 2000 and 2013 the imprisonment rate for Aboriginal Torres Strait Islander adults increased by 57%. Most recent statistics show Aboriginal and Torres Strait Islander adults are imprisoned at 13 times the rate of non-Indigenous adults. Aboriginal children are imprisoned at 24 times the rate of non-Indigenous young people. Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2014* (2014), p 4.103. At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014#report> (viewed 27 January 2015). On an average day, Indigenous children aged 10–17 were 16 times as likely to be under community-based supervision as non-Indigenous young people and 28 times as likely to be in juvenile detention: Australian Institute of Health and Welfare, *Youth Justice in Australia 2012–13* (2014), p 13. At <http://www.aihw.gov.au/publication-detail/?id=60129546738> (viewed 21 March 2015).
- 68 In particular, children have been held in adult detention facilities in Western Australia and Victoria. These transfers have been examined through litigation in which the Commission intervened, *Wilson v Joseph Michael Francis, Minister for Corrective Services for the State of Western Australia* [2013] WASC 157 (3 May 2013), and a Victorian Ombudsman investigation, *Investigation into Children Transferred from the Youth Justice System to the Adult Prison System* (2013). At <https://www.ombudsman.vic.gov.au/getattachment/6a579e49-212e-42b0-9d3c-791e2d60e102//reports-publications/parliamentary-reports/investigation-into-children-transferred-from-the-y.aspx> (viewed 21 March 2015). The National Children Commissioner raised this concern in her inaugural report. Australian Human Rights Commission, *Children's Rights Report 2013* (2013), p 33. At <https://www.humanrights.gov.au/publications/childrens-rights-report-2013> (viewed 21 March 2015).
- 69 The Australian Human Rights Commission's consultations in the lead up to the UPR identified successful diversionary initiatives in Victoria, the ACT and Tasmania.
- 70 In December 2013 the Australian Government announced a \$13.4 million reduction in funding of the Indigenous Legal Aid and Policy Reform Program. The cuts will take effect from 1 July 2015. The reduction in funding may affect various services provided by the community controlled not-for-profits funded out of this program, including legal assistance, community legal education, prison, law reform and advocacy activities. Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (2014), p 24. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 21 March 2015).
- 71 Justice targets refer to targets to address the overrepresentation of Aboriginal and Torres Strait Islander peoples as both offenders and victims in the criminal justice system. It has been recommended by the National Congress of Australia's First Peoples that targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander people. Proposed justice targets could be included in the existing Close the Gap framework. The government has stated that it rejects the adoption of justice-related targets, although this has been considered. See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (2014), pp 117-123. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 21 March 2015).
- 72 Justice reinvestment involves diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending. Justice reinvestment trials have been recommended by the Senate Legal and Constitutional Affairs Committee in its inquiry into justice reinvestment. Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013), p 124. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index) (viewed 21 March 2015). The Aboriginal and Torres Strait Islander Social Justice Commissioner has advocated for justice reinvestment over the past five years. The 2014 Social Justice and Native Title Report recommends that, 'the Australian Government take a leadership role on justice reinvestment and works with states, territories and Aboriginal and Torres Strait Islander communities to identify further trial sites.' Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), p 12. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0> (viewed 5 March 2015).
- 73 New mandatory sentencing laws for a range of offences have been introduced by the states of Queensland (2012 and 2013), Victoria (2013 and 2014) and New South Wales (2014). Existing mandatory sentencing regimes were expanded in Western Australia and the Northern Territory in 2013. See L Roth, 'Mandatory Sentencing Laws', *NSW Parliamentary Research Service e-brief*. At [http://www.parliament.nsw.gov.au/prod/parment/publications.nsf/key/MandatorySentencingLaws/\\$File/mandatory+sentencing+laws.pdf](http://www.parliament.nsw.gov.au/prod/parment/publications.nsf/key/MandatorySentencingLaws/$File/mandatory+sentencing+laws.pdf) (viewed 21 March 2015). For analysis of the human rights impact of mandatory sentencing laws, see the Commission's submissions as amicus curiae in *Magaming v The Queen* [2013] HCA 40 (11 October 2013). At <https://www.humanrights.gov.au/our-work/legal/submissions/submission-court-intervener-and-amicus-curiae> (viewed 21 March 2015).
- 74 Suspended sentences were abolished in the state of Victoria for offences committed on or after 1 September 2014 by the *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).
- 75 Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (2014), p 27. At <https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921> (viewed 21 March 2015); Information provided in relation to Australian Human Rights Commission submission to UN Committee Against Torture from ACT Human Rights Commission to Australian Human Rights Commission, August 2014.

## Annex 2: Implementation status of first cycle UPR recommendations

No	Country	Recommendations	Response	Implementation
1	Republic of Moldova	Ratify the OPCAT	Accepted	Not implemented
2	Azerbaijan	Speed up process of ratification of OPCAT	Accepted	Not implemented
3	Maldives	Ratify OPCAT and designate a National Preventive Mechanism	Accepted	Not implemented
4	New Zealand	High priority ratification of the OPCAT and establish a National Preventative Mechanism	Accepted	Not implemented
5	Mexico	Establish an independent supervision mechanism with access to all detention centres to facilitate prompt ratification of OPCAT	Accepted	Not implemented
6	Denmark	Ratify OPCAT without further delay	Accepted	Not implemented
7	Thailand	Accede to the remaining core human rights instruments to which it is yet to become a party, especially CED	Accepted-in-part	Not implemented
8	France	Sign and ratify CED	Accepted-in-part	Not implemented
9	Argentina	Study the possibility of signing and ratifying CED and ICRMW	Accepted-in-part	Not implemented
10	Algeria, Bolivia, Turkey, Philippines, Bosnia and Herzegovina	Consider acceding to ICRMW; ratify ICRMW; complete the ratification process of ICRMW; engage in consultations with a view to possible accession to ICRMW; ratify ICRMW	Rejected	
11	Bolivia	Ratify ILO Convention No. 169 and incorporate it into its national norms	Accepted-in-part	Not implemented
12	Norway	Consider ratifying ILO Convention No. 169	Accepted	Not implemented
13	Hungary	Withdraw reservations to CRC	Accepted-in-part	Not implemented
14	Republic of Korea	Consider withdrawing reservations to article 4 (a) of ICERD	Accepted	Not implemented
15	South Africa	Withdraw reservations to article 4 (a) of ICERD	Accepted-in-part	Not implemented
16	Denmark	Withdraw reservations to ICERD, CEDAW, ICCPR and CRC (Denmark)	Accepted-in-part	Not implemented
17	Sweden	Bring its legislation and practices into line with international obligations	Accepted	Partly implemented
18	France	Incorporate human rights obligations into domestic law	Accepted-in-part	Partly implemented
19	Jordan	Incorporate human rights obligations into domestic law	Accepted-in-part	Partly implemented
20	Argentina	Continue efforts in strengthening mechanisms for the effective incorporation of international human rights obligations and standards into its domestic legislation	Accepted	Partly implemented
21	Timor-Leste	Incorporate human rights obligations into domestic law	Accepted-in-part	Partly implemented

No	Country	Recommendations	Response	Implementation
22	Canada, Ukraine, Russian Federation, Norway	Consider a comprehensive Human Rights Act; incorporate international human rights obligations into domestic law through a comprehensive, judicially enforceable human rights act; incorporate international human rights obligations in domestic law through the adoption of a comprehensive justiciable law on human rights; implement a federal human rights act	Rejected	
23	United States	Focus on nationwide enforcement of its existing anti-discrimination law	Accepted	Partly implemented
24	Norway	Fully implement the Racial Discrimination Act and the revision of federal laws to be compatible with the United Nations Declaration on the Rights of Indigenous Peoples	Accepted-in-part	Partly implemented
25	Canada	Consider re-instating the Racial Discrimination Act into the Northern Territory Emergency Response and other subsequent arrangements	Accepted	Partly implemented
26	Slovenia	Consult with Aboriginal and Torres Strait Islander people, and take into consideration the guidelines proposed by the Australian Human Rights Commission before considering suspension of the Racial Discrimination Act for any future intervention affecting the Aboriginal and Torres Strait Islander people	Accepted	Partly implemented
27	Bolivia	Facilitate the provision of sufficient funding and staffing for the Australian Human Rights Commission and different commissioners	Accepted	Partly implemented
28	New Zealand	Establish a National Children's Commissioner	Accepted-in-part	Implemented
29	Poland	Consider establishing an independent commissioner for child rights	Accepted	Implemented
30	Azerbaijan	Continue measures for the adoption of the new National Action Plan on Human Rights	Accepted	Partly implemented
31	Maldives	Adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights	Accepted-in-part	Partly implemented
32	Ghana	Develop a comprehensive poverty reduction and social inclusion strategy, which would integrate economic, social and cultural rights	Accepted-in-part	Partly implemented
33	Pakistan	In line with the Committee on Economic, Social and Cultural Rights recommendation, develop a comprehensive poverty reduction and social inclusion strategy, which would integrate economic, social and cultural rights	Accepted-in-part	Partly implemented
34	France	Adopt the necessary legislation to ensure that no one is extradited to a State where they would be in danger of the death penalty	Accepted	Implemented
35	Austria	Follow-up on the implementation of recommendations of human rights mechanisms	Accepted	Partly implemented
36	Jordan	Consider implementing the recommendations of human rights treaty bodies and special procedures concerning indigenous people	Accepted	Partly implemented

No	Country	Recommendations	Response	Implementation
37	Norway	Implement the recommendations made by the United Nations Special Rapporteur on the rights of indigenous people after his visit in 2009	Accepted-in-part	Partly implemented
38	Jordan	Consider implementing the recommendations of UNHCR, human rights treaty bodies and special procedures with respect to asylum-seekers and irregular immigrants especially children	Accepted	Not implemented
39	Denmark, United Kingdom, Belgium, Germany	Comply with recommendations of CRC and CEDAW Committee's concerning the sterilization of women and girls with disabilities; enact national legislation prohibiting non-therapeutic sterilization of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent; repeal all legal provisions allowing sterilization of persons with disabilities without their consent and of non-therapeutic reasons; abolish non-therapeutic sterilization of women and girls with disabilities	Accepted-in-part	Not implemented
40	Botswana	Continue pursuance of the draft National Disability Strategy and share it's experience;	Accepted	Implemented
41	Republic of Moldova	Complete a general framework of measures to ensure equality of chances for people with disabilities	Accepted	Implemented
42	United Kingdom	Ensure efforts to harmonize and consolidate Commonwealth anti-discrimination laws address all prohibited grounds of discrimination and promote substantive equality	Accepted	Not implemented
43	Pakistan; India	Enact comprehensive equality at the federal level; grant comprehensive protection to rights of equality and non-discrimination in federal law	Accepted-in-part	Partly implemented
44	South Africa	Enact comprehensive legislation which prohibits discrimination on all grounds to ensure the full enjoyment of all human rights by every member of society	Accepted	Partly implemented
45	Argentina	Continue its efforts to harmonize and consolidate its domestic legislation against all forms of discrimination	Accepted	Not implemented
46	Morocco	Strengthen the federal legislation to combat discrimination and ensure an effective implementation with a view to a better protection of the rights of vulnerable persons, in particular, children, persons in detention and persons with disabilities	Accepted	Partly implemented
47	Viet Nam	Adopt firm measures to end discrimination and violence against women, children and people from vulnerable groups so as to enhance a better respect for their dignity and human rights	Accepted	Partly implemented
48	Islamic Republic of Iran	Put an end, in practice and in law, to systematic discrimination on the basis of race in particular against women of certain vulnerable groups	Accepted	Partly implemented
49	Cambodia	Further ensure that everyone is entitled to equal respect and to a fair participation with full enjoyment of equal rights and opportunities in economic, political, social and cultural developments as incorporated in the laws and plans of action	Accepted	Partly implemented

No	Country	Recommendations	Response	Implementation
50	Viet Nam	Take appropriate measures to reduce the development gap and social disparities so as to enhance the full enjoyment of all human rights for all Australian people, especially in the areas of economic, cultural and social rights	Accepted	Partly implemented
51	Norway	Intensify its efforts to further combat gender discrimination	Accepted	Partly implemented
52	Israel	Strengthen the Sex Discrimination Act as indicated in the national report, and consider the adoption of temporary special measures as recommended by CEDAW Committee	Accepted	Not implemented
53	South Africa	Develop and implement policies to ensure gender equality and strengthen the promotion and protection of the rights of women, especially women from indigenous communities	Accepted	Partly implemented
54	Japan	Persist in efforts to redress remaining gender inequalities, in particular with regard to the employment of women in the private sector	Accepted	Partly implemented
55	Norway	Adopt targets of 40 per cent representation of women on public and private sector boards	Accepted-in-part	Partly implemented
56	Botswana	Remain steadfast in pursuing its policies towards gender equality, in particular through its Fair Work Act	Accepted	Partly implemented
57	Thailand	Further strengthen its efforts to promote equality, non-discrimination and tolerance through the monitoring of racially motivated violence and inclusion of human rights education in school and university curriculum	Accepted	Partly implemented
58	Japan	Step up measures, such as human rights education in schools, so as to promote a more tolerant and inclusive society	Accepted	Partly implemented
59	Algeria	Strengthen further the measures to combat discrimination against minority communities, including Muslim communities in Australia	Accepted	Partly implemented
60	Sweden	Take measures towards ensuring the equal and the full enjoyment of the basic rights of all its citizens including persons belonging to indigenous communities, and to effectively prevent and, if necessary, combat racial discrimination	Accepted	Partly implemented
61	Singapore	Continue efforts to promote multicultural and racial tolerance through initiatives such as the Australian Multicultural Advisory Council and the Diversity and Social Cohesion Programme	Accepted	Partly implemented
62	Malaysia	Take more effective measures to address discrimination and other problems related to racial and ethnic relations including by developing and implementing appropriate policy and programmes to improve and strengthening relations between races and cultures	Accepted	Partly implemented
63	Morocco	Strengthen its measures and continue its efforts in promoting multiculturalism and social inclusion	Accepted	Partly implemented

No	Country	Recommendations	Response	Implementation
64	Yemen	Continue the great efforts to put an end to all practices likely to interfere with the peaceful coexistence among the different groups of the multi-ethnic society of Australia	Accepted	Partly implemented
65	Russian Federation	Implement additional measures to combat discrimination, defamation and violence (including cyber racism) against the Arab population and Australian Muslims, against recently arrived migrants (primarily from Africa) and also foreign students (essentially coming from India)	Accepted	Partly implemented
66	Colombia	Continue to implement the harmonization and consolidation of anti-discriminatory laws and to move forward with the promulgation of laws protecting persons against discrimination on the grounds of sexual orientation or gender	Accepted	Partly Implemented
67	Switzerland	Introduce a national legal provision prohibiting discrimination and harassment based on sexual orientation and gender	Accepted	Implemented
68	New Zealand	As a high priority, introduce federal law which prohibits discrimination on the grounds of sexual orientation	Accepted	Implemented
69	United Kingdom	Take measures to ensure consistency and equality across individual States in recognizing same-sex relationships	Accepted	Implemented
70	Norway	Amend the Marriage Act to allow same-sex partners to marry and to recognize same-sex marriages from overseas	Rejected	
71	Hungary	Enact legislation to ensure the humane treatment of prisoners	Accepted	Not implemented
72	United States	Strengthen efforts to combat family violence against women and children with a particular focus on indigenous communities	Accepted	Partly implemented
73	Islamic Republic of Iran	Adopt special legislation to prevent and combat violence against women and girls and to prosecute and punish the perpetrators	Accepted	Partly implemented
74	Switzerland	Adapt its legislation to ensure greater security for women and children	Accepted	Partly implemented
75	Russian Federation	Introduce a full prohibition of corporal punishment within the family in all states and territories	Rejected	
76	Azerbaijan	Speed up the process for the adoption of the National Plan to Reduce Violence against Women and their Children	Accepted	Partly implemented
77	Canada	Take steps, in partnership with State, Territory and Local governments, to further advance and accelerate implementation of the National Action Plan to Reduce Violence against Women and Their Children, so as to effectively address prevalence of violence against these vulnerable groups	Accepted	Partly implemented

No	Country	Recommendations	Response	Implementation
78	Switzerland	Implement a national action plan to reduce violence against women and children	Accepted	Partly implemented
79	Norway	Implement immediately the National Plan to Reduce Violence against Women and their Children	Accepted	Partly implemented
80	Mexico	Implement the National Action Plan to reduce violence against women and their children, including through an independent supervision mechanism that involves civil society organizations and take into account the specific situation of indigenous women and migrants	Accepted	Partly implemented
81	Philippines	Effectively implement the national policy to reduce violence against women	Accepted	Partly implemented
82	Hungary	Ensure that all victims of violence have access to counselling and assistance with recovery	Accepted	Partly implemented
83	Thailand	Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner	Accepted	Partly implemented
84	Indonesia	Strengthen further its commitment to the Bali process as the principal mechanism in the region which deals with people smuggling and trafficking (Indonesia)	Accepted	Implemented
85	Philippines	Consider using the OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking as a guide in its anti-trafficking measures	Accepted	Implemented
86	Azerbaijan	Increase its efforts to fight human trafficking	Accepted	Partly implemented
87	United States	Increase efforts to criminally prosecute trafficking offenders	Accepted	Implemented
88	Islamic Republic of Iran	Take effective legal measures to prohibit the use of excessive force and the use of "Tasers" by the police against various groups of peoples	Accepted-in-part	Not implemented
89	Malaysia	Further improve the administration of justice and the rule of law including by setting up appropriate mechanisms in order to ensure adequate and independent investigation of police use of force, police misconduct and police-related deaths	Accepted	Not implemented
90	Russian Federation	Implement specific steps to combat the high level of deaths of indigenous persons in places of detention	Accepted	Partly implemented
91	New Zealand	Introduce a requirement that all deaths in custody be reviewed and investigated by independent bodies tasked with considering prevention of deaths and implement the recommendations of Coronial and other investigations and enquiries	Accepted	Partly implemented
92	Bolivia	Increase the provision of legal advice to indigenous peoples with due translation services reaching especially indigenous women of the most remote communities	Accepted	Not implemented
93	Austria	Implement measures in order to address the factors leading to an overrepresentation of Aboriginal and Torres Strait Islander communities in the prison population	Accepted	Partly implemented



No	Country	Recommendations	Response	Implementation
94	Austria	Examine possibilities to increase the use of non-custodial measures	Accepted	Partly implemented
95	Austria	Enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and representatives of the law enforcement officials and enhance the training of those officials with respect to cultural specificities of the above communities	Accepted	Partly implemented
96	United States	Improve the human rights elements of its training for law enforcement personnel	Accepted	Partly implemented
97	Slovenia	Establish a National Compensation Tribunal to provide compensation to Aboriginal and Torres Strait Islander people that are negatively affected by the assimilation policy	Rejected	
98	Brazil	Take regular measures to prevent hate speech, including prompt legal action against those who incite discrimination or violence motivated by racial, ethnic or religious reasons	Accepted	Partly implemented
99	Israel	Develop a national pay strategy to monitor pay gaps mechanisms and establish a comprehensive childcare policy, as recommended by the Committee on the Elimination of All Forms of Discrimination against Women	Accepted-in-part	Partly implemented
100	Israel	Remove, in law and in practice, restrictions on the rights of workers to strike, as recommended by the Committee on Economic, Social and Cultural Rights	Accepted-in-part	Not implemented
101	Malaysia	Step up efforts to ensure that people living in the remote and rural areas, in particular the indigenous peoples, receive adequate support services relating to accommodation and all aspects of health and education	Accepted	Partly implemented
102	United Kingdom	Reform the Native Title Act 1993, amending strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life	Accepted-in-part	Partly implemented
103	Slovenia	Institute a formal reconciliation process leading to an agreement with Aboriginal and Torres Strait Islander people (Slovenia)	Accepted-in-part	Partly implemented
104	France	Continue the process of constitutional reform in order to better recognize the rights of indigenous peoples	Accepted	Partly implemented
105	Colombia	Continue to implement its efforts to attain the constitutional recognition of indigenous peoples	Accepted	Partly implemented
106	Bolivia; Ghana; Hungary; Denmark	Revise its Constitution, legislation, public policies and programmes for implementation of the United Nations Declaration of the Rights of Indigenous Peoples; ensure effective implementation of the Declaration on the Rights of Indigenous People, including in the Northern Territory, and provide adequate support to the National Congress of Australia's First Peoples to enable it to address the needs of indigenous people; develop a detailed framework to implement and raise awareness about the Declaration in consultation with indigenous peoples; take further steps to ensure the implementation of the Declaration on the Rights of Indigenous Peoples	Accepted-in-part	Partly implemented

No	Country	Recommendations	Response	Implementation
107	Guatemala	Launch a constitutional reform process to better recognize and protect the rights of the Aborigines and Torres Strait Islanders which would include a framework covering the principles and objectives of the United Nations Declaration on the Rights of Indigenous Peoples and would take into account the opinions and contributions of indigenous peoples	Accepted	Partly implemented
108	Bolivia	Include in its national norms recognition and adequate protection of the culture, values and spiritual and religious practices of indigenous peoples (Bolivia)	Accepted	Partly implemented
109	Bolivia	Promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in processes or decision-making that may affect their interests	Accepted	Not implemented
110	Bosnia and Herzegovina	Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people, including participation in decision-making bodies	Accepted	Not implemented
111	Mexico	Ensure that its legislation allows for processes of consultations in all actions affecting indigenous peoples	Accepted	Not implemented
112	Indonesia	Continue to engage with the Aboriginal population and Torres Strait Islanders and ensure the equal protection of their fundamental rights	Accepted	Not implemented
113	Austria	Increase the participation of the Aboriginal and Torres Strait Islander communities in the process of closing the gap in opportunities and life outcomes	Accepted	Not implemented
114	France	Continue the implementation of policies aimed at improving the living standards of indigenous peoples and take all the necessary measures to eradicate discrimination against them	Accepted	Partly implemented
115	Singapore	Continue its efforts to narrow the gap in opportunities and life outcomes between indigenous and non-indigenous Australians	Accepted	Partly implemented
116	Thailand	Intensify its on-going efforts to close the gap in opportunities and life outcomes between Indigenous and non-Indigenous peoples, especially in the areas of housing, land title, health care, education and employment	Accepted	Partly implemented
117	Jordan	Continue addressing effectively the socio-economic inequalities faced by indigenous people	Accepted	Partly implemented
118	Belgium	Carry out, in consultation with the communities concerned, a comprehensive assessment of the effectiveness of actions and strategies aimed at improving socio-economic conditions of indigenous peoples and if necessary correct these actions	Accepted	Partly implemented
119	Islamic Republic of Iran	Take immediate legal measures to remove restrictions against access of indigenous women and children to appropriate health and education services and employment opportunities	Accepted	Partly implemented

No	Country	Recommendations	Response	Implementation
120	Morocco	Continue efforts to increase the representation of indigenous women in decision-making posts	Accepted	Partly implemented
121	Sweden	Safeguard the rights of refugees and asylum-seekers	Accepted	Partly implemented
122	Slovenia	Honour all obligations under articles 31 and 33 of the Convention relating to the Status of Refugees and ensure that the rights of all refugees and asylum-seekers are respected, providing them access to Australian refugee law	Accepted	Partly implemented
123	Norway	Ensure the processing of asylum-seekers' claims in accordance with the United Nations Refugee Convention and that they are detained only when strictly necessary	Accepted	Partly implemented
124	Slovenia	Cease the practice of refoulement of refugees and asylum-seekers, which puts at risk their lives and their families' lives	Accepted	Not implemented
125	Ghana	Ensure in its domestic law that the principle of non-refoulement is respected when proceeding with the return of asylum-seekers to countries	Accepted	Not implemented
126	Pakistan; Guatemala	Repeal the provisions of the Migration Act 1958 relating to the mandatory detention; revise the Migration Law of 1958 so that federal initiatives do not penalize foreign migrants in an irregular situation	Rejected	
127	Ghana	Review its mandatory detention regime of asylum-seekers, limiting detention to the shortest time reasonably necessary	Accepted	Not implemented
128	Philippines	Address the issue of children in immigration detention in a comprehensive manner	Accepted	Not implemented
129	Brazil	Ensure that no children are held in detention on the basis of their migratory status and that special protection and assistance is provided to unaccompanied children	Accepted-in-part	Not implemented
130	Islamic Republic of Iran	Take efficient measures to improve the harsh conditions of custody centres in particular for minorities, migrants and asylum-seekers (Islamic Republic of Iran)	Accepted	Not implemented
131	Brazil	Consider alternatives to the detention of irregular migrants and asylum-seekers, limit the length of detentions, ensure access to legal and health assistance and uphold its obligations under the Vienna Convention on Consular Relations	Accepted-in-part	Partly implemented
132	Switzerland	Do not detain migrants other than in exceptional cases, limit this detention to six months and bring detention conditions into line with international standards in the field of human rights	Rejected	
133	Timor-Leste	Ensure all irregular migrants have equal access to and protection under Australian law	Rejected	
134	Thailand	Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner, bearing in mind international human rights and humanitarian principles	Accepted	Partly implemented

No	Country	Recommendations	Response	Implementation
135	Algeria	Protect Official Development Assistance from budgetary cuts in the context of the international crisis and make every effort to bring it to the internationally agreed target of 0.7 per cent of GDP (Algeria)	Accepted	Not implemented
136	Brazil	Investigate allegations of torture in the context of counter-terrorism measures, give publicity to the findings, bring perpetrators to justice and provide reparation to the victims	Accepted	Implemented
137	Russian Federation	Carry out a review of all 50 newly adopted laws since 2001 on combating terrorism, and of their application in practice so as to check their compliance with Australia's human rights obligations	Accepted	Partly implemented
138	Belgium	Review the compatibility of its legislative framework to combat terrorism with its international obligations in the field of human rights and remedy any possible gaps	Accepted	Partly implemented
139	Republic of Moldova	Continue to ensure that its legislation and methods to combat terrorism are in accordance with the International Covenant on Civil and Political Rights	Accepted	Partly implemented
140	Switzerland	Ensure, in particular through its Independent National Security Legislation Monitor, that its national legislation is in keeping with its international obligations in the field of human rights	Accepted	Partly implemented
141	Lao People's Democratic Republic	Continue to share its experiences for the promotion of human rights in the region and the world	Accepted	Implemented
142	Lao People's Democratic Republic	Actively continue to implement the best practice and policy for the promotion and protection of the rights and living conditions, and to narrow the gap in living standards in favour of the vulnerable groups in the country (Lao People's Democratic Republic)	Accepted	Partly implemented
143	Poland	Continue the consultation with civil society in a follow-up to its universal periodic review	Accepted	Implemented
144	Cambodia	Continue to promote and protect human rights internationally to enhance human rights capacity regionally across the Asia-Pacific and globally through the AusAID programme	Accepted	Partly implemented
145	Chad	Continue its efforts for the promotion and protection of human rights in the world and in their country	Accepted	Partly implemented

# Annex 3:

## Recommendations by the Australian Human Rights Commission for Australia's UPR appearance

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### 2. Background and framework for human rights promotion and protection

#### 2.2 Scope of international obligations

1. The Commission recommends that Government expedite the ratification of OPCAT and establishment of a National Preventive Mechanism for places of detention.
2. The Commission recommends that the Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification of ILO Convention 169, Migrant Workers Convention and Optional Protocols for communications under ICESCR and CRC.
3. The Commission recommends that Government confirm a timetable for the withdrawal of reservations to ICERD, CEDAW and CRC.

#### 2.3 National framework

4. The Commission recommends that Australia's human rights obligations be directly incorporated into Australian law.

##### (a) Human rights education

5. The Commission recommends that Government expand its support for human rights education initiatives, including targeted initiatives for public officials.

##### (b) Business and human rights

6. The Commission recommends that Government formulate a National Action Plan on Business and Human Rights, in consultation with the business sector.
7. The Commission recommends that Government consider options to reduce complexity and improve consistency of discrimination protections across Australia, to clarify businesses' obligations and support best practice.

### 3. Promotion and protection of human rights on the ground

#### 3.1 Equality before the law and non-discrimination

##### (a) Aboriginal and Torres Strait Islander peoples

8. The Commission recommends that:
  - Government develop, in partnership with Aboriginal and Torres Strait Islander peoples, a National Strategy to give effect to the UN Declaration on the Rights of Indigenous Peoples;
  - include the Declaration in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth); and
  - review existing legislation, policies and programmes for conformity with the Declaration.
9. The Commission recommends that adequate funding be provided to the National Congress of Australia's First Peoples to build a representative Indigenous voice at the national level and for Indigenous legal aid.
10. The Commission recommends that Government finalise a model for constitutional recognition, following engagement of Indigenous peoples, so that the process of building community support can advance.
11. The Commission recommends that Government, working with Indigenous peoples, redouble efforts to achieve the closing the gap targets, and implement the recommendations of the *Close the Gap Campaign's Progress and Priorities Report 2015*.

**(b) Equality of women and men**

12. The Commission recommends that Government implement measures to close the gender pay gap, strengthen the representation of women in leadership and managerial roles, value and recognise unpaid caring work, and address the gap in retirement savings to assure women economic security in later life.
13. The Commission further recommends that Government amend the *Sex Discrimination Act 1984* (Cth) to improve its effectiveness.
14. The Commission recommends that implementation of the National Plan to Reduce Violence Against Women and their Children reflect the diversity of women, and include adequate, sustained funding for programs and services and independent monitoring and evaluation.

**(c) Older persons**

15. The Commission recommends that Government ensure programs support positive ageing, reduce workplace discrimination against older Australians and address poverty in old age.

**(d) People with disability**

16. The Commission recommends that Government fully fund the National Disability Insurance Scheme.
17. The Commission recommends that Government support an inclusive employment culture through resourcing transition to work programs, educational support and reasonable accommodation, and a targeted increase in public service employment.
18. The Commission recommends that Government adopt a national approach to address violence against people with disabilities and introduce legal protections to ensure no sterilisation of people with disabilities without their consent.

**(e) Lesbian, gay, bisexual, trans, gender diverse and intersex people**

19. The Commission recommends that federal, state and territory laws that continue to discriminate be brought into compliance with the *Sex Discrimination Act 1984* (Cth).
20. The Commission recommends that all jurisdictions pass legislation expunging historic criminal convictions for consensual homosexual sex.
21. The Commission recommends that the Australian Parliament legislate to provide marriage equality as a matter of priority.
22. The Commission recommends that Government conduct an inquiry into the issue of surgical intervention on intersex infants.

**(f) Rights of the child**

23. The Commission recommends that Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection and out-of-home care.

**3.2 Migrants, refugees and asylum seekers**

**(a) Refugees and asylum seekers**

24. The Commission recommends that Government introduce time limits and access to judicial oversight of detention so that detention occurs only when necessary, for a minimal period, and where it is a reasonable and proportionate means of achieving a legitimate aim.
25. The Commission further recommends the Government continue to expand the use of alternatives to closed detention.

26. The Commission recommends that Government immediately cease the transfer of people to Papua New Guinea and Nauru, return people transferred back to Australia, and continue to negotiate through the Bali Process Regional Cooperation Framework.
27. The Commission recommends that Government:
  - retain its complementary protection framework;
  - codify the obligation of non-refoulement in law;
  - review the impact of temporary protection visas; and
  - restore full access to merits review to all asylum seekers.

**(b) People from culturally and linguistically diverse backgrounds**

28. The Commission recommends that Government affirm its commitment to an inclusive society by continuing to support the National Anti-Racism Strategy and programs building social cohesion and community harmony.
29. The Commission further recommends that Government implement recommendations of the *Migration and Multiculturalism* and *Access and Equity* inquiries.

### 3.3 Right to life, liberty and security of the person

**(a) Counter-terrorism laws**

30. The Commission recommends that Government ensure all counter-terrorism laws remain under constant review to ensure that any infringement of human rights is legitimate and proportionate.

**(c) Trafficking**

31. The Commission recommends that Government fully implement the National Action Plan to Combat Human Trafficking and Slavery 2015–2019.

**(d) Freedom of association and peaceful assembly**

32. The Commission recommends that state and territory governments amend anti-protest and anti-bikie laws so they do not unduly restrict human rights.

**(e) Mental health**

33. The Commission recommends that Government fund mental health services and implement the recommendations of the National Mental Health Council and the *Children's Rights Report 2014*.

**(f) Criminal justice system**

34. The Commission recommends that Government:
  - adopt targets and introduce justice reinvestment trials to reduce Indigenous incarceration rates;
  - adopt measures to improve access to justice for people with disabilities;
  - develop alternative care arrangements where people are found unfit to plead for reasons including cognitive impairment or acquired brain injury;
  - expand the use of diversionary programs for juveniles;
  - raise the minimum age of criminal responsibility; and
  - cease detention of children in adult facilities.
35. The Commission recommends that Australian governments review mandatory sentencing and laws that limit judicial discretion, and expand the use of non-custodial measures where appropriate.









## Further Information

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