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Information presented by the Australian Human Rights Commission*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Australian Human Rights Commission,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

Annex

[English only]

Contribution of the Australian Human Rights Commission to the Universal Periodic Review progress report

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I. Introduction

1. This Annual Report identifies important milestones as well as challenges that remain in human rights protection in Australia. It provides an annual reflection on Australia's progress in addressing commitments that the Government has made to protect human rights, as well as identifying emerging concerns.

2. The Report is the second in a series of annual reports that are being developed in the lead up to Australia's second Universal Periodic Review (UPR) at the United Nations (UN) Human Rights Council, scheduled for July 2015.[1] The 2012 UPR Progress Report has been prepared by the Australian Human Rights Commission with input from the Australian Council of Human Rights Agencies (ACHRA), a body that brings together all Commonwealth, State and Territory anti-discrimination and human rights bodies.

3. Australia participated in the first cycle of the UPR at the UN Human Rights Council in January 2011. During Australia's review, 52 countries asked questions in regards to Australia's human rights record. One hundred and forty five recommendations were made covering a wide range of human rights issues including the ratification of international human rights treaties, domestic implementation of human rights obligations, the rights of Aboriginal and Torres Strait Islander peoples, the rights of asylum seekers, refugees and migrants, counter-terrorism laws, the rights of persons with disabilities and the rights of women and children.

4. The Australian Government appeared before the Human Rights Council to deliver its formal response to the recommendations in June 2011. The delegation acknowledged that while Australia has a broad range of laws and policies to ensure the promotion and protection of human rights, challenges exist in particular areas. The Australian Government accepted in full or in part over 90 per cent of the recommendations.[2] By doing so, it has agreed to take actions to progress these issues over the four year period from 2011–2015.

5. Since the 2011 UPR Progress Report,[3] the Australian Government has made progress in implementing UPR recommendations in the following areas:

- the development on the National Disability Insurance Scheme
- the implementation of a National Racism Strategy
- the passage of legislation to establish a National Children's Commissioner.

6. In other areas progress has been slow and significant gaps in human rights protection remain. ACHRA is particularly concerned at the ongoing use of mandatory immigration detention and at the transfer of asylum seekers to third countries. The lack of progress in implementing the National Disability Strategy and the *UN Declaration of the Rights of Indigenous Peoples* at the domestic level are also of great concern.

7. ACHRA notes that the Government has committed to finalising a National Action Plan on Human Rights as the framework for responding to the UPR recommendations, and

[1] In March 2012 the then President of the Australian Human Rights Commission presented the first annual UPR implementation report on behalf of ACHRA to the UN Human Rights Council.

[2] Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review – Australia,* UN Doc. A/HRC/WG.6/10/L.8 (2011). At http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx (viewed 5 October 2012).

[3] Australian Council of Human Rights Agencies (ACHRA), *UPR Progress Report (*2011). At http://www.humanrights.gov.au/upr/ACHRA_UPR_Progress_Report_2011.html#fn24/ (viewed 5 October 2012).

monitoring progress. The National Action Plan has been developed with community input and is likely to provide a useful basis for engagement, once finalised.

8. Australia prides itself on its commitment and ongoing support for human rights internationally as well as its involvement in the development of the international human rights system.[4] Australia is a party to seven of the core human rights treaties.[5] Countries raised concerns against Australia's reservations to a number of treaties.[6] ACHRA expresses similar concern and welcomes the Government's commitment to conduct a systematic review of these reservations as outlined in the Draft National Action Plan.[7]

9. A number of countries expressed particular concern regarding Australia's delay in ratifying the *Optional Protocol on the Convention against Torture* (OPCAT).[8] There have been This report is organised in accordance with the thematic groupings and headings that are used in the UPR process.

II. Background and framework for promotion and protection of human rights

A. Scope of international obligations

10. Australia prides itself on its commitment and ongoing support for human rights internationally as well as its involvement in the development of the international human rights system.[9] Australia is a party to seven of the core human rights treaties.[10] Countries

[4] Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Australia*, UN Doc A/HRC/WG.6/10/AUS/1 (2010). At http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx (viewed 5 October, 2012).

[5] Australia is a party to the *International Covenant on Civil and Political Rights* (ICCPR); *International Covenant on Economic, Social and Cultural Rights* (ICESCR), *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), *Convention on the Elimination of Discrimination Against Women* (CEDAW), *Convention on the Rights of the Child* (CRC), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), and *Convention on the Rights of Persons with Disabilities* (CRPD). Australia is not a party to the *International Convention on the Protection of the Rights of All Migrant Workers and members of their Families* (MWC), *International Convention for the Protection of All Persons from Enforced Disappearance*, *Optional Protocol to the ICESCR*, or *International Labour Organisation Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries* (ILO 169).

[6] UPR Recs 13–16.

[7] Attorney General's Department, *Exposure Draft Action Plan 2012*. At http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx (viewed 30 October 2012).

[8] UPR Recs 1–6.

[9] Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Australia*, UN Doc A/HRC/WG.6/10/AUS/1 (2010). At http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx (viewed 5 October, 2012).

[10] Australia is a party to the *International Covenant on Civil and Political Rights* (ICCPR); *International Covenant on Economic, Social and Cultural Rights* (ICESCR), *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), *Convention on the Elimination of Discrimination Against Women* (CEDAW), *Convention on the Rights of the Child* (CRC), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), and *Convention on the Rights of Persons with Disabilities* (CRPD). Australia is not a party to the *International Convention on the Protection of the Rights of All Migrant Workers and members of their Families* (MWC), *International Convention for the Protection of All Persons*

raised concerns against Australia's reservations to a number of treaties.[11] ACHRA expresses similar concern and welcomes the Government's commitment to conduct a systematic review of these reservations as outlined in the Draft National Action Plan.[12]

11. A number of countries expressed particular concern regarding Australia's delay in ratifying the *Optional Protocol on the Convention against Torture* (OPCAT).[13] There have been significant developments to advance ratification in 2012, with the tabling in Parliament of a National Interest Analysis and recommendation by the parliamentary Joint Committee on Treaties that ratification proceed.[14] ACHRA welcomes these developments, and calls for the ratification and implementation of OPCAT to be expedited.

12. ACHRA notes the report of the UN Secretary-General proposing reforms to the UN human rights system to make it more effective.[15] ACHRA looks forward to the Australian Government proactively engaging in this reform process, including by advancing recommendations made directly to countries. In particular, ACHRA urges the Government to develop a Standing National Reporting and Coordination Mechanism for human rights treaty engagement, including reporting and follow up, and to volunteer to be involved in any trial of a new Simplified Reporting Procedure in its upcoming engagement with the UN Committee on the Elimination of Racial Discrimination and UN Committee on the Rights of Persons with Disabilities.

B. National framework

13. On 21 April 2010, the Government launched Australia's Human Rights Framework which outlines the key measures to guide the Governments human rights work. A number of UPR recommendations called for strengthening of the framework particularly through a greater integration of Australia's international obligations.[16] The Australian Government accepted all of these recommendations in full or in part, stating that the Government incorporates obligations into domestic law to the extent necessary, and that some obligations are reflected in policy.

14. Under the Human Rights Framework, the Government released the Draft National Action Plan on Human Rights in December 2011. The National Action Plan is an important step towards improving human rights standards and protections in Australia. ACHRA commends the Government for the level of consultation that has been utilised throughout

from Enforced Disappearance, *Optional Protocol to the ICESCR*, or *International Labour Organisation Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries* (ILO 169).

[11] UPR Recs 13–16.

[12] Attorney General's Department, *Exposure Draft Action Plan 2012*. At http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx (viewed 30 October 2012).

[13] UPR Recs 1–6.

[14] The Joint Standing Committee on Treaties recently recommended that the Australian Government ratify OPCAT. The Parliament of the Commonwealth of Australia, *Report 125: Treaties tabled on 7 and 28 February 2012*. At http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/28february2012/report.htm (viewed 23 October 2012).

[15] Office of the High Commissioner for Human Rights, *United Nations Reform: measures and proposals*, UN Doc A/66/860 (2012). *At* http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening_en.doc *(viewed 20 November 2012).*

[16] UPR Recs 17–22. Treaties included the CRC, ICERD, CEDAW and the ICCPR.

the drafting process at the Commonwealth, State and Territory level and also with civil society. Although this lengthens the drafting process, ACHRA is confident that this will result in a stronger Action Plan. During the planning process the Australian Human Rights Commission urged the Government to include all accepted recommendations from the UPR process within the National Action Plan. The Government has publicly committed to do so, which should see a greater connection between international commitments and domestic systems for implementation.

15. As part of its implementation of the National Human Rights Framework the Government has made efforts to consolidate all Commonwealth anti-discrimination laws into a single Act. The exposure draft of the new legislation was released in November 2012.[17] It is intended that this legislation will reduce unnecessary overlap, address inconsistencies and provide for a more user friendly system. ACHRA commends the Government for the level of stakeholder engagement that was employed in the drafting process, and encourages Parliament to ensure the Consolidation Bill is passed.

16. The Commonwealth Parliament passed the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Scrutiny Act), which came into force on 4 January 2012. The Scrutiny Act provided for the establishment of a Parliamentary Joint Committee on Human Rights. This Committee was established on 13 March 2012, and has been very active in its scrutiny of the compatibility of bills and legislative instruments with Australia's human rights obligations. In the first seven months since its establishment, the Committee produced six reports to Parliament highlighting those bills which it considered raised human rights concerns, as well as an interim report concerning its inquiry into the human rights ramifications of a particular bill. The requirement that all bills and disallowable legislative instruments be accompanied by a statement assessing their compatibility has largely been complied with.[18] As the preparation of statements of compatibility is still a relatively new process, not all statements have adequately identified and analysed the human rights issues raised by the respective bills or legislative instruments.

17. The Australian Government has invested over $12 million in a range of education initiatives to promote a greater understanding of human rights across the community. This has included an education and training program for the Australian Government public sector which has comprised of the development of resources and materials and the training of over 700 public sector employees on human rights principles. Tailored and targeted human rights training to specific sectors of the public service will also take place in 2013. ACHRA welcomes the above initiatives, however notes that such training needs to be comprehensive across agencies and embedded into public service practice.

18. ACHRA believes that the Human Rights Framework would be significantly strengthened by a greater integration of human rights in primary and secondary education. The Australian Human Rights Commission has been working with the Australian Curriculum, Assessment and Reporting Authority (ACARA) to ensure human rights are reflected in the national school curriculum.

19. At the state level, the Victorian Government responded to a review of the *Victorian Charter of Human Rights and Responsibilities Act 2006* in March 2012. Over 4,000 submissions were received during the review, which were overwhelmingly supportive of

[17] Attorney General's Department, *Human Rights and Anti-Discrimination Bill 2012: Exposure Draft Legislation* (2012). At http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/ConsolidationofCommonwealthantidiscriminationlaws.aspx (viewed 23 November 2012).

[18] The Australian Human Rights Commission has noted 6 bills introduced since 4 January 2012 which were not accompanied by any statement of compatibility.

continuing or strengthening human rights protections in state law. ACHRA welcomes the Victorian Government's endorsement of the Charter, but also notes that a number of issues about the Charter's operation are outstanding. ACHRA calls on the Victorian Government to ensure that any future amendments to the law do not reduce human rights protections.

III. Promotion and protection of human rights on the ground

A. Equality before the law and non-discrimination

20. A prominent theme throughout Australia's UPR was the unacceptable level of disadvantage experienced by **Aboriginal and Torres Strait Islander Peoples**, with 50 of the countries that spoke during the interactive dialogue referring to issues affecting Aboriginal and Torres Strait Islander peoples.[19] Since its appearance the Australian Government has made a number of commitments to improving outcomes in life expectancy, education, employment and health. Although achievements have been made, there is still a long way to go to ensuring the full enjoyment of human rights by Aboriginal and Torres Strait Islander peoples in Australia.

21. Countries called upon Australia to ensure full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples* (the Declaration). The Australian Government declared its support for the Declaration in 2009. To date, progress in implementing the Declaration has been slow, particularly in embedding the standards enshrined in the Declaration into domestic policy making processes. ACHRA is concerned that the Government continues to promote the Declaration in aspirational not pragmatic terms. The Australian Government must work in partnership to give full effect to the Declaration, within a framework of self-determination; participation in decision making; non-discrimination and equality; and respect for and protection of culture. This includes revising the Constitution, legislation, policies and programs to ensure sustainable social, economic and cultural development outcomes. Aboriginal and Torres Strait Islander peoples, both men and women, must be included in all levels of decision making, including the development and review of legislation and policy related to Indigenous lands, territories, resources and culture.

22. ACHRA welcomes the Government's commitment to the recognition of Aboriginal and Torres Strait Islanders in the Australian Constitution. Over the past year, the Expert Panel on Constitutional Recognition of Indigenous Australians has made its reform proposals,[20] funds for a community awareness initiative have been provided to Reconciliation Australia and the Government has committed as an interim step to pass an act of Parliament recognising the status of Aboriginal and Torres Strait Islander peoples in our nation and to express a determination to progress constitutional reform in the coming years.[21] ACHRA supports the recommendations of the Expert Panel and encourages the Government to build the consensus to successfully reform the Constitution within the next

[19] Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2011* (2011). At http://humanrights.gov.au/social_justice/sj_report/sjreport11/index.html (viewed 1 November 2012).

[20] Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution* (2012). At http://www.youmeunity.org.au/final-report (viewed 2 November 2012).

[21] Minister for Families, Community Services and Indigenous Affairs, Minister for Disability Reform, 'Progressing Indigenous Constitutional Recognition' (Media Release, 20 September 2012). At http://jennymacklin.fahcsia.gov.au/node/2098 (viewed 20 November 2012).

2–3 years. ACHRA notes the Australian Government's commitment to reconciliation and calls on the Government to ensure a formal process of reconciliation is an ongoing national priority.

23. A number of countries called on the Australian Government during its UPR appearance to intensify efforts to reduce the life expectancy gap between Indigenous and non-Indigenous Australians and increase the commitment to reducing socio-economic inequalities.[22] The Government continues to work in addressing socio-economic inequalities within the Aboriginal and Torres Strait Islander population through its Closing the Gap Strategy.[23] ACHRA welcomes the increased attention yet calls for a more holistic and integrated approach. This includes, promoting coordination within and across government agencies. Resources and foci that are directed at education, housing, employment and healthcare must also be equally distributed across regional, remote and urban areas.

24. A major focus of the Australian Governments activities has been the Close the Gap Campaign for Indigenous Health Equality. Over the last 12 months, the Close the Gap Campaign has made substantial progress. The establishment of the National Health Leadership Forum (NHLF) as the national representative body for Aboriginal and Torres Strait Islander health peak bodies is of particular note. The NHLF is situated within the National Congress of Australia's First Peoples and provides a framework for the Government to engage with Aboriginal and Torres Strait Islander peoples in relation to health matters. Following the establishment of the NHLF, the Government announced its intent to establish a process for the development of the National Aboriginal and Torres Strait Islander Health Plan (Health Plan) with the goal of achieving health equality by 2030.[24] ACHRA commends the Government for working in partnership with the NHLF to develop this Health Plan.[25] The issue of ongoing and sustainable funding is a significant concern. ACHRA is mindful that the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes will end in 2013, and recommends that the Government provide ongoing funding for this important initiative. ACHRA calls for a bipartisan and intergenerational approach to Aboriginal and Torres Strait Islander health to ensure that funding cycles are not constrained by changes in government.

25. ACHRA welcomes the focus during the UPR on the *Racial Discrimination Act 1975* (RDA).[26] ACHRA acknowledges the reinstatement of the RDA within the Northern Territory and calls for all legislation to be reviewed to ensure compliance with the RDA. In June 2012, the Australian Parliament passed the Stronger Futures legislation which sets out a package of measures primarily focused on the Northern Territory for the next decade and replaces the Northern Territory Emergency Response (NTER).[27] ACHRA supports the

[22] UPR Recs 113, 115–118.

[23] Council of Australian Governments (COAG), *Closing the Gap in Indigenous Disadvantage,* http://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage (viewed 13 November 2012).

[24] Minister for Health and Ageing and Minister for Indigenous Health, 'New National Aboriginal and Torres Strait Islander Health Plan' (Media release, 3 November 2011). At http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr11-nr-nr228.htm (viewed 7 November 2012).

[25] The NHLF is working with the Australian Government and is actively involved on the Stakeholder Advisory Group which has been established to guide the development of the Health Plan: Department of Health and Ageing, *National Aboriginal and Torres Strait Islander Health Plan*, http://www.health.gov.au/internet/main/publishing.nsf/Content/natsih-plan (viewed 11 October 2012).

[26] See UPR Recs 23–24 and 26.

[27] See generally Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007* (2007), ch 3. At

intent of the Government to address the critical situation facing Aboriginal peoples in the Northern Territory but remains concerned at the lack of effective engagement and participation with the Northern Territory communities during the drafting process.[28] ACHRA is also concerned that some of the measures contained within the Stronger Futures legislation may be invasive and limiting of individual freedoms and human rights, and require rigorous monitoring.

26. During Australia's UPR appearance recommendations were made in relation to the overrepresentation of Aboriginal and Torres Strait Islanders in prison and also the high mortality rates within places of detention.[29] Sadly no improvement has been made in relation to incarceration rates; with current rates of imprisonment 13 times higher than the rate of imprisonment for non-Indigenous Australians.[30] Although the number of deaths in custody has declined, these figures remain alarmingly high.[31] The UPR recommendations also reflect those recommendations made by the Royal Commission into Aboriginal Deaths in Custody.[32] The recommendations have not been given adequate focus and should be used as a framework for addressing Indigenous incarceration and deaths in custody.

27. ACHRA notes that the recently evaluated Aboriginal Justice Agreement Phase 2 in Victoria identified that the development of effective diversionary options for Koori women remains one of the main unfinished tasks of the Agreement. ACHRA welcomes the priority placed on further work to learn about the social and health impacts of imprisonment for Koori women, their families and communities, as well as relevant considerations for culturally appropriate diversionary options.

28. A number of countries raised concerns about the issue of **equality of women and men**, and the high level of violence against women, particularly amongst Aboriginal and Torres Strait Islander women and other vulnerable groups.[33] In September 2012, the Government released the first implementation plan for the National Plan to Reduce Violence against Women and their Children.[34] ACHRA maintains its concern that to date there is no formal, independent monitoring or evaluation process proposed for the National Plan.

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http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/chap3.html (viewed 5 November 2012).

[28] See generally Australian Human Rights Commission. *Submission to the Senate Community Affairs Legislation Committee Stronger Futures in the Northern Territory Bill 2011 and two related Bill*s (2012). At http://www.humanrights.gov.au/legal/submissions/2012/20120206_stronger.html (viewed 2 November 2012).

[29] UPR Recs 90 and 93.

[30] The rate of imprisonment for Indigenous persons is 2,268 per 100,000 compared the general population rate of 169 per 100,000 (based on average daily imprisonment rate): Australian Bureau of Statistics (ABS), *Corrective Services Australia June Quarter 2012*, 4512.0 (September 2012). At http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0?OpenDocument (viewed 11 October 2012).

[31] Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2012* (2012). At http://humanrights.gov.au/social_justice/sj_report/sjreport12/index.html (viewed 30 November 2012).

[32] Royal Commission into Aboriginal Deaths in Custody, http://www.austlii.edu.au/au/other/IndigLRes/rciadic/ (viewed 12 November, 2012).

[33] UPR Recs 76–80.

[34] Council of Australian Governments (COAG), *The National Plan to Reduce Violence against Women and their Children: Including the first three year action plan* (2012). At http://www.fahcsia.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children/national-plan-to-reduce-violence-against-women-and-their-children (viewed 7 November 2012).

29. Other positive actions that have taken place over the last 12 months include: Australian National Action Plan on Women, Peace and Security 2012–2018 (Action Plan on Women, Peace and Security), a commissioned review into the Treatment of Women in the Australian Defence Force,[35] development of a national domestic and family violence order (DVO) scheme (due to commence in 2013), changes to Australia's migration laws to help those experiencing domestic or family violence on provisional partner visas, and the support by the Government for the UN Special Rapporteur on violence against women to undertake a study tour in Australia in April 2012.

30. ACHRA notes the need for further law reform to recognise domestic and family violence as a protected attribute under anti-discrimination laws and to provide for a right to request flexible working arrangements and leave provisions for employees affected by domestic or family violence under the *Fair Work Act.*

31. Others countries made recommendations on the need to address inequalities in the area of employment and pay.[36] ACHRA welcomes the passage of the Equal Opportunity for Women in the Workplace Amendment Bill 2012, which introduces reforms to the *Equal Opportunity for Women in the Workplace Act 1999* to promote gender equality in Australian workplaces. ACHRA remains concerned about the significant pay gap of 17.5% that continues to exist between men and women in Australia. Further positive developments in this area since the UPR have been the final decision of Fair Work Australia in relation to equal pay in the social and community services industry. Fair Work Australia found that the Social and Community Services workers do not receive remuneration equal to that 'of employees of state and local governments who perform similar work, and that gender has been important in creating that pay gap'. This was the first ever successful claim for an equal remuneration order in the Australian national system and it will mean a significant advance for equal pay for women. Also in October 2011, the government extended requirements for 40% of government board positions to be women to also apply to major government business enterprises.

32. ACHRA welcomes the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 which was tabled in Parliament in 2012. The Bill creates a number of new offences and strengthens provisions of the *Criminal Code Act 2005* relating to trafficking, slavery and slavery-like offences, including forced marriage and forced labour. However, there is a need to ensure the government provides appropriate and accessible information on the legislative amendments and undertakes culturally appropriate forms of engagement with communities, including provision of culturally aware, linguistically acceptable and age-appropriate information.

33. In relation to the **rights of the child**, a number of countries called for the establishment of an independent national Commissioner.[37] The Australian Parliament passed legislation to establish Australia's first National Children's Commissioner on 25 June 2012. ACHRA applauds the decision to appoint a Commissioner, and encourages the development of a comprehensive policy for addressing and monitoring children's rights to be developed in consultation with the new Commissioner. The Commissioner will play an important role in examining whether Australia is meeting its obligations under the *Convention of the Rights of the Child* (CRC). In 2012, the UN Committee on the Rights of the Child considered Australia's progress in implementing the CRC and its Optional

[35] The review was undertaken by the Australian Human Rights Commission and was completed in July 2012. Findings of the Review into the Treatment of Women in the Australian Defence Force can be access at http://humanrights.gov.au/defencereview/index.html.

[36] For example, UPR Rec 54 and UPR Rec 55.

[37] UPR Recs 28–29.

Protocols.[38] ACHRA encourages the Australian Government to implement the Committee's recommendations, particularly the recommendation to develop a comprehensive national plan of action for implementing the CRC.[39]

34. ACHRA also welcomes the announcement by the Prime Minister in November 2012 of the establishment of a Royal Commission into the response of institutions to instances of child abuse. This major inquiry will take several years to complete. ACHRA calls for the inquiry to pay particular attention to the rights of vulnerable people in the community, including Aboriginal and Torres Strait Islander people and people with disabilities (especially those in institutional care); and to adopt a human rights based approach to the protection of children from abuse.

35. Over the past 12 months, Australia has made some progress in protecting the **rights of older persons.** In February 2012, the Attorney-General announced a year-long inquiry into Commonwealth laws that prevent or impede the workforce participation of older workers.[40] The Federal Government has already committed to remove the age limit on superannuation guarantee payments to older workers by July 2013.[41] The Government has also announced major reforms to the aged care system that will increase resources to support people to stay in their homes for as long as they are able.[42] ACHRA welcomes the engagement the Government has made with the Age Discrimination Commissioner and also business leaders to increase the workforce participation of older Australians.

36. A number of countries highlighted the current gaps within Australia's legal framework to provide the necessary protection against discrimination based on **sexual orientation and gender identity** and promote the rights of **people who are lesbian, gay, bisexual, trans and intersex (LGBTI)**.[43] In response the Australian Government committed to including sexual orientation and gender identity as protected attributes in the proposed consolidated federal anti-discrimination legislation.[44] ACHRA welcomes the inclusion of protections against discrimination based on sexual orientation and gender identity in the exposure draft however recommends that coverage of sexual orientation, sex characteristics, gender identity and gender expression be framed to achieve the broadest

[38] See generally Australian Human Rights Commission, *Submission to the Committee on the Rights of the Child* (2011). At http://www.humanrights.gov.au/legal/submissions/2011/201108_child_rights.html (viewed 2 November, 2012).

[39] Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/AUS/CO/4 (2012). At http://www2.ohchr.org/english/bodies/crc/crcs60.htm (viewed 2 November 2012).

[40] Australian Law Reform Commission, *Age Barriers to Work* (2012). At http://www.alrc.gov.au/inquiries/age-barriers-work (viewed 18 October 2012).

[41] Australian Taxation Office, *Changes to the super guarantee*, http://www.ato.gov.au/taxprofessionals/content.aspx?doc=/content/00245692.htm (viewed 18 October 2012)

[42] Department of Health and Ageing, *Living Longer Living Better* (2012). At https://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-aged-care-review-measures-living.htm (viewed 18 October 2012).

[43] UPR Recs 66–70.

[44] Attorney General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (*2011), p 6. At http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/ConsolidationofCommonwealthantidiscriminationlaws.aspx (viewed 1 August 2012).

coverage of people of all sex and/or gender identities and to provide improved protection against discrimination.[45]

37. ACHRA retains its disappointment that the Government rejected the recommendation to amend the *Marriage Act 1961*. ACHRA is disappointed that the Australian Government continues to discriminate against same-sex couples and against people with diverse sex and/or gender identities by denying them the right to marry.

38. Having official documents and government records[46] that contain accurate information about sex and gender is crucial for the full participation in society of people who are sex and gender diverse. Currently there are significant limitations in the way that sex and gender is recorded on such documents.[47] It is encouraging to see that the Australian Government has committed to a number of actions which will address some of these limitations.[48] Recommendations made by the Australian Human Rights Commission arising from its consultation into this issue remain outstanding.[49] ACHRA recommends that the Australian Government implement the outstanding recommendations from the *Sex Files* report to enable broader access to the system for having sex legally recognised to accord with sex identity and streamlining the process for amending documents to make it more user-friendly.[50]

39. Australia accepted a number of recommendations related to the **rights of people with disability**. Following the UPR, the National Disability Strategy (NDS) was formally endorsed by the Council of Australian Governments (COAG) on 13 February 2011. The focus of the first year of the NDS was to be on the development of an implementation plan, with Community and Disability Services Ministers to report on their implementation plans to COAG after the first 12 months. ACHRA is deeply concerned that there has been no discussion at COAG during 2012 regarding the endorsement of implementation plans, placing significant delays on the NDS.

40. A number of countries highlighted that the current laws in Australia fail to protect women and children with a disability from unauthorised, non-therapeutic and forced sterilisation.[51] The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have also expressed concern and have urged the Australian Government to enact national legislation prohibiting the practice, except where there is a serious threat to life or health.[52] The Australian Government has recently

[45] This is discussed further in Australian Human Rights Commission, *Submission to the Attorney-General's Department Review of Commonwealth discrimination laws* (2011), paras 76−88. At http://www.humanrights.gov.au/legal/submissions/2011/20111206_consolidation.html (viewed 1 August 2012); Attorney General's Department, *Human Rights and Anti-Discrimination Bill 2012: Exposure Draft Legislation* (2012), note 13.

[46] Such as passports, birth certificates and citizenship records.

[47] See generally Australian Human Rights Commission, *Sex Files: the legal recognition of sex in documents and government records* (2009), s 9. At http://www.humanrights.gov.au/genderdiversity/index.html (viewed 2 August 2012).

[48] Attorney General's Department, *Australia's National Human Rights Action Plan Exposure Draft* (2012). At http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx (viewed 2 August 2012).

[49] Australian Human Rights Commission, *Sex Files: the legal recognition of sex in documents and government records,* note 43.

[50] Australian Human Rights Commission, *Sex Files: the legal recognition of sex in documents and government records,* note 43, s 10.

[51] UPR Rec 39.

[52] See Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005), paras 45–46. At

undertaken measures to review the current legal framework. On 20 September 2012 the Senate referred the matter of involuntary or coerced sterilisation of people with disabilities in Australia to the Senate Community Affairs Committees for inquiry and report (due 24 April 2013).[53] ACHRA expresses the hope that the inquiry will lead to legislative change and further policy measures given the gravity of the outcome of non-therapeutic sterilisation.

41. ACHRA welcomes the announcement of the first stage of a National Disability Insurance Scheme (NDIS) from July 2013 which will provide people with disability to access to care and support services.[54] ACHRA notes that it will be essential for there to be active engagement with people with disability, their families and carers in the development, implementation and monitoring of the NDIS to ensure that the scheme is comprehensive, robust and responsive to the needs of people with disability. ACHRA is disappointed that the overall employment rates for people with disability remains low, with labour force participation at around 54%, compared to 83% for people without disability[55] and have been stagnant since the passage of the *Disability Discrimination Act 1992*.

B. Migrants, refugees and asylum seekers

42. A number of the recommendations highlighted the situation and treatment of **refugees and asylum seekers** in Australia, and called on the Australian Government to review the policy of mandatory detention.[56] ACHRA welcomes the increased use of community arrangements for asylum seekers and refugees,[57] however remains concerned that a legal and policy framework providing for mandatory and indefinite immigration detention prevails in Australia. ACHRA is deeply concerned by the very large number of people, including children, remaining in immigration detention.[58] ACHRA is also alarmed that there is no indication of when the protection claims of people who arrived on or after

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http://www.unhcr.org/refworld/publisher,CRC,,AUS,45377eac0,0.html (viewed 8 August 2012); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUL/CO/7 (2010), para 43. At http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/485/48/PDF/N1048548.pdf?OpenElement (viewed 8 August 2012).

53 Parliament of Australia, *Senate Committee on the involuntary or coerced sterilisation of people with disabilities in Australia*. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/index.htm (viewed 26 October 2012).

54 Minister for Families, Community Services and Indigenous Affairs, Minister for Disability Reform, 'National Disability Insurance Scheme to launch in 2013' (Media Release, 30 April 2012). At http://jennymacklin.fahcsia.gov.au/node/1845 (viewed 26 October 2012).

55 Australian Bureau of Statistics (ABS), *Disability Australia 2009*, 4446.0 (2011). At http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4446.0main+features92009 (viewed 26 October 2012).

56 UPR Recs 121–134.

57 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/ (viewed 23 October 2012).

58 As at 30 September 2012, there were 7670 people in immigration detention facilities, including 5421 in immigration detention on the mainland and 2249 in immigration detention facilities on Christmas Island. See Department of Immigration and Citizenship, *Immigration Detention Statistics Summary* (30 September 2012). At http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/ (viewed 14 November 2012).

13 August 2012 will be processed, and that these people may experience prolonged and indefinite detention. The harmful impacts of prolonged detention on a detainee's physical and mental health and wellbeing have been well established.[59] The detention of children is also of concern in that children should be detained only as a measure of last resort and for the shortest appropriate period of time.[60]

43. The Australian Human Rights Commission has expressed ongoing concern for those in detention who have received adverse security assessments, many of whom will likely to remain for the foreseeable future.[61] ACHRA welcomes the recent appointment of an Independent Reviewer to provide advisory review of adverse security assessments but is concerned that the review process announced does not go far enough in providing the necessary safeguards in that reviewer's recommendations are advisory only.

44. ACHRA holds serious concerns about the transfer of asylum seekers who have arrived by boat to third countries for processing of their claims for protection.[62] The use of transfers to third countries could potentially violate asylum seekers' human rights, including the right to be free from arbitrary detention and the rights of children to have their best interests considered in all actions concerning them, to be detained only as a measure of last resort and for the shortest appropriate period of time and for asylum seeker children to receive appropriate protection and assistance. Key concerns regarding third country transfers include the conditions of detention in third countries, the potential length of detention, procedures for and delays in processing protection claims. ACHRA is also concerned that third country transfer may undermine Australia's commitments under the *Convention Relating to the Status of Refugees* to ensure respect for the fundamental principle of *non-refoulement* and to ensure that asylum seekers are not penalised for arriving in Australia unauthorised.[63]

45. The Australian Government accepted the recommendations made to Australia to enhance its efforts to tackle racism towards **people from culturally and linguistically diverse backgrounds**.[64] ACHRA welcomes the Australian Government's commitment to combating racism and discrimination and applauds the commencement of the National Anti-Racism Strategy in August 2012. ACHRA particularly welcomes the framework of partnership and stakeholder consultation the Strategy was developed within. Of growing

[59] Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Committees: Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012* (2012). At http://humanrights.gov.au/legal/submissions/2012/20121025_asylum_health.html#fn13 (viewed 8 November 2012).

[60] Australian Human Rights Commission, *A Last Resort? National Inquiry into Children in immigration Detention* (2004). At http://www.humanrights.gov.au/human_rights/children_detention_report/index.html (viewed 31 October 2012).

[61] 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,* note 52.

[62] See generally, Australian Human Rights Commission, *Human rights issues raised by the transfer of asylum seekers to third countries* (2012). At http://www.humanrights.gov.au/human_rights/immigration/transfer_third_countries.html (viewed 22 October 2012).

[63] *Non-refoulement* refers to the obligation not to return a refugee to a situation where his or her life or freedom would be threatened, and not to return a person to a country where there are substantial grounds for believing that he or she would be in danger of being tortured. Further, article 31 of the *Convention Relating to the Status of Refugees* prohibits state parties from penalising asylum seekers on account of their unlawful entry.

[64] UPR Recs 59, 61–65.

concern is the issue of cyber-racism as a form of bullying and racial hatred.[65] The Australian Human Rights Commission has outlined its framework for tackling this form of racism within its *Agenda for Racial Equality*.[66] ACHRA encourages the Australian Government to implement measures that strengthen regulation and to develop coordinated responses to cyber-racism. ACHRA welcomes the current inquiry into multiculturalism in Australia by the Joint Standing Committee on Migration.[67] At the time of writing the Committee had yet to release its report. Also a welcome step was the establishment of an independent panel to conduct an inquiry into Australian Government services to ensure they are responsive to the needs of Australians from culturally and linguistically diverse backgrounds.[68]

C. Right to life, liberty and security of the person

46. ACHRA remains concerned about the lack of proportionality in sentencing in some states, as well as prison conditions such as overcrowding, inadequate physical and mental health services and a lack of access to education. ACHRA is particularly concerned about children being held in maximum security units within adult prisons in Victoria and urges the Victorian Government to review the incarceration practices to ensure vulnerable young people are protected.[69]

47. There is ongoing concern about the availability of appropriate and independent investigation of police use of force, misconduct and deaths associated with police contact.[70] There is also inadequate data-collection and reporting, so that complaints cannot be appropriately assessed for patterns of contact, for example interaction with ethnic groups. ACHRA welcomes the establishment of an Independent Broad-Based Anti-Corruption Commission in Victoria, and calls on this body to provide independent investigation of complaints of serious police misconduct, particularly where the right to life, or the protection from torture or cruel, inhuman or degrading treatment or punishment may be engaged.

48. The use of Tasers in Australia raises a number of human rights considerations and was raised during Australia's UPR appearance. The UN Committee against Torture has

[65] Australian Human Rights Commission, *Agenda for racial equality 2012–2016* (2012), p 16. At http://humanrights.gov.au/racial_discrimination/racial_equality/index.html (viewed 7 November 2012).

[66] Australian Human Rights Commission, *Agenda for racial equality 2012–2016,* above, p 5.

[67] Australian Human Rights Commission, *Submission to the Joint Standing Committee on Migration* (2011). At http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/multiculturalism/subs.htm (viewed 7 November 2012).

[68] Access and Equity Inquiry Panel. *Access & Equity for a multicultural Australia: Inquiry into the responsiveness of Australian Government services to Australia s culturally & linguistically diverse population* (2012). At www.immi.gov.au/living-in-australia/a-multicultural-australia/government-approach/government-services/AandEreport.pdf (viewed 31 October 2012); Statement by Race Discrimination Commissioner welcoming the recommendations of the Access and Equity Inquiry Panel, at http://www.humanrights.gov.au/about/media/media_releases/2012/51_12.html (viewed 7 November 2012).

[69] See J Taylor, 'Aboriginal teen kept in solitary confinement', *ABC News*, 31 October 2012, At http://www.abc.net.au/news/2012-10-26/criticism-over-aboriginal-teen-kept-in-solitary-confinement/4336448 (viewed 20 November 2012).

[70] The Australian Government accepted UPR recommendation 89 calling for appropriate mechanisms to ensure adequate and independent investigation of police use of force, police misconduct and police related deaths.

recognised that the use of Tasers can amount to cruel, inhuman, and degrading treatment or punishment.[71] An inquiry conducted by the New South Wales (NSW) Ombudsman found that overall Taser use by general duties police in NSW has largely been consistent with operational procedures and policies however highlights incidents where the use of the Taser was inappropriate or where the internal review process was either inadequate or inconsistent.[72] The inquiry also found that 30% of Taser use is against Aboriginal and Torres Strait Island peoples, and a number of youth aged 18 or under have also been subjected to Taser use by NSW police (149 between 2008–2011). ACHRA is concerned that Tasers are being inappropriately used and calls for more rigorous police training on Taser use. A recent review of Taser use in Queensland also found over representation of Aboriginal and Torres Strait Islanders as the subjects of Taser use, also over represented were people suspected of having a mental health condition.[73]

IV. Key national priorities, initiatives, and commitments

49. The role of national human rights institutions in promoting and protecting human rights at the national level is well recognised, as is their contribution to the international human rights system.[74] The international community has highlighted the need for the Australian Government to strengthen the Australian Human Rights Commission and for the necessary funding to be provided in order for the Commission to fulfil its mandate.[75] ACHRA welcomes the Australian Government's pledge to adequately fund the Commission.

50. ACHRA commends the Australian Governments appointment of a National Children's Commissioner, and calls for the Commissioner to be independent, adequately resourced and accessible to children.[76] ACHRA hopes to see the appointment made by the end of 2012.

51. As Australia approaches the halfway mark between its UPR appearances, ACHRA urges that the Australian Government present a mid-term report to the UN Human Rights Council on progress made thus far and plans for further implementation of the accepted recommendations.

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[71] Committee against Torture, *Report of the Committee against Torture: Thirty-ninth session (5–23 November 2007), Fortieth session (28 April–16 May 2008),* UN Doc A/63/44 (2008), p 32. At http://daccess-ods.un.org/TMP/1864505.55920601.html (viewed 21 November 2012).

[72] New South Wales Ombudsman, *How are Taser weapons used by the NSW Police Force? A Special Report to Parliament under s. 31 of the Ombudsman Act 1974* (2012). At http://www.ombo.nsw.gov.au/news-and-publications/publications/reports/police/how-are-taser-weapons-used-by-nsw-police-force (viewed 2 November 2012).

[73] Queensland Crime and Misconduct Commission, *An update on Taser use in Queensland* (2012). At http://www.cmc.qld.gov.au/topics/police-and-the-cmc/police-powers-and-practice/taser-use/2011-evaluation-of-taser-reforms (viewed 22 November 2012).

[74] *National institutions for the promotion and protection of human rights,* Human Rights Council Resolution 20/L.15, UN Doc A/HRC/20/L.15 (2012). *National institutions for the promotion and protection of human rights,* General Assembly Resolution 64/161, UN Doc A/RES/64/161 (2010).

[75] UPR recommendation 27, in addition to recommendations from the International Coordinating Committee of National Human Rights Institutions (ICC) Sub-Committee on Accreditation.

[76] Australian Human Rights Commission, *Information concerning Australia and the Convention on the Rights of the Child: Australian Human Rights Commission submission to the Convention on the Rights of the Child* (2011). At http://www.hreoc.gov.au/human_rights/children/index.html (viewed 2 November 2012).

Appendix

Calendar of upcoming key UN treaty dates

Treaty	*Key dates*
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Next report due 2012 (accepting comments and submissions until 11 November 2012)
Convention on the Rights of Persons with Disabilities (CRPD)	To appear before the committee in September 2013
Convention on the Elimination of Racial Discrimination (CERD)	Next report due 2013
International Covenant on Civil and Political Rights (ICCPR)	Next report due 2013
International Covenant on Economic Social and Cultural Rights (ICESCR)	Next report due 2014
Convention on the Elimination of Discrimination Against Women (CEDAW)	Next report due 2014
Convention on the Rights of the Child (CRC)	Next report due 2018