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## Informations communiquées par la Commission australienne des droits de l'homme*

### Note du Secrétariat

Le secrétariat du Conseil des droits de l'homme fait tenir ci-joint la communication soumise par la Commission australienne des droits de l'homme**, qui est reproduite ci-après conformément à l'article 7 b) du Règlement intérieur figurant en annexe à la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, notamment la résolution 2005/74 du 20 avril 2005.

* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation «A».

** La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

# Annexe

## I. Introduction

1. In January 2011 Australia participated in the Universal Periodic Review at the United Nations Human Rights Council for the first time. The Universal Periodic Review (UPR) is a new process that involves a review of a country's human rights record on a periodic basis – at present, every four years.

2. By participating in the UPR, Australia was able to take advantage of two opportunities:

- It allowed the Australian community and Government to take stock of how well it was protecting the human rights of all people in Australia; and
- It permitted the Australian Government to inform the international community of the human rights situation in Australia and to engage with other countries about specified steps it will take to improve the enjoyment of human rights in Australia.

3. At Australia's UPR appearance on 27 January 2011, 53 countries asked questions of Australia in regard to its human rights record and made 145 recommendations. These covered a wide range of human rights issues including the treatment of asylum seekers, Aboriginal and Torres Strait Islander peoples, multiculturalism and racism, and the status of Australia's obligations under international human rights law.

4. The Australian Government is to be commended for its frank and robust engagement in the UPR process to date, both in the formal working group session and in engaging with the Australian Human Rights Commission (AHRC), NGOs and civil society throughout the process.

5. The Government delivered its formal response to the UPR recommendations in June 2011. It accepted in full or in part 137 – or almost 95% – of the recommendations. In addition, Australia announced a number of voluntary commitments during the dialogue including, amongst other things:

- The establishment of a full-time Race Discrimination Commissioner in the AHRC;
- The tabling in Parliament of concluding observations of UN treaty bodies and UPR recommendations; and
- The establishment of a systematic process for the regular review of Australia's reservations in international human rights treaties.

6. Significantly, the Government also announced that it would include actions (with timeframes) against all accepted recommendations from the UPR process in Australia's new National Action Plan on Human Rights.

7. In the 11 months since its UPR appearance, Australia has made some progress towards implementing the recommendations that it accepted. The draft National Action Plan on Human Rights, released in December 2011, provides an overview of this progress.

8. In some areas, much work remains to be done. The AHRC has continued to express concern, for example, in relation to the ongoing system of mandatory immigration detention. The Australian Council of Human Rights Agencies was disappointed that the Government chose to reject certain key recommendations urging it to overturn Australia's mandatory system of immigration detention – as well as others relating to the introduction of a Human Rights Act, compensation for members of the Stolen Generations and recognition of same-sex marriage.

9. This document was prepared with input from the Australian Council of Human Rights Agencies (ACHRA). ACHRA is comprised of Australia's national human rights institution and its sister bodies at the state and territory level. Each of these agencies has an important role in monitoring the human rights performance of all Australian governments.

10. This document takes the outcomes of Australia's UPR appearance as the starting point in assessing progress across the country in respecting and protecting human rights.

11. It is intended to be the first in a series of annual progress reports by ACHRA in the lead up to Australia's second UPR appearance, scheduled for 2015.[1]

12. This statement is made in the context of the development of Australia's new National Action Plan on Human Rights (NAP). Through the Australian Human Rights Framework, our national Government has committed to introducing a four year plan of actions to be taken by governments to improve human rights through Australia's domestic and foreign policies and programs. The NAP should be in place during 2012. Its development is a most welcome and long overdue development.

13. ACHRA hopes that this annual statement will contribute to the National Action Plan being a vibrant, living document over the next four years. It will celebrate advances in human rights protection, while also acknowledging those areas of emerging or ongoing concern.

14. As an 'A status' national human rights institution, the Australian Human Rights Commission submits this statement to the UN Human Rights Council. The Commission intends to do the same with future status reports as part of its ongoing monitoring of Australia's UPR implementation.

15. This will contribute to a high level of accountability for measures taken through the National Action Plan. It will also serve as an appropriate reminder that the Australian Government, representing all governments in Australia, will be asked to account for how it has implemented the commitments it has made through the UPR process at the UN Human Rights Council in 2015.

16. For consistency purposes, this document 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*

17. During its UPR appearance, Australia noted its close involvement in the development of the international human rights system and its ongoing support for human rights internationally.[2] Australia is a party to seven of the core human rights treaties.[3]

[1] Office of the High Commissioner for Human Rights, *Universal Periodic Review*, http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx (viewed 1 November 2011).

[2] 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/L.8 (2010).

[3] 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

Several countries made recommendations calling for Australia to strengthen and broaden the scope of its international obligations, including by expediting the ratification of the Optional Protocol to the Convention Against Torture (OPCAT)[4]; and considering the ratification of the ILO Convention 169 concerning Indigenous peoples.[5]

18. As part of the National Action Plan, the Government has committed to take the necessary steps towards ratifying OPCAT, including by tabling a National Interest Analysis in Parliament; developing model legislation for consideration by jurisdictions; seeking endorsement of Australia ratifying the OPCAT from the Parliamentary Joint Standing Committee on Treaties; and lodging the instrument of ratification with the UN.[6] ACHRA welcomes this commitment and urges all state and territory jurisdictions to cooperate in ensuring that these steps are promptly taken within a clear timeframe. Ultimately, OPCAT is about ensuring that appropriate safeguards against torture exist in all places of detention. This is an objective which should attract universal support.

19. ACHRA also welcomes the development by the Government of an online database of UN treaty body recommendations, including from the UPR, which was launched earlier this year.[7]

*(b) National framework*

20. Many of the UPR recommendations received by Australia related to the overall state of human rights protections is Australia. ACHRA was disappointed that the Government rejected the recommendation calling on Australia to consider establishing a Human Rights Act as recommended by the National Human Rights Consultative Committee.[8] ACHRA maintains that a Human Rights Act would provide a more comprehensive framework for the consideration of human rights at the federal level, and accordingly would strengthen human rights protections in Australia and help to bridge Australia's domestic 'implementation gap' in relation to its international obligations.[9]

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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).

[4] UPR Recs 1-6.

[5] UPR Rec 11; UPR Rec 12.

[6] Attorney General's Department, *Australia's National Human Rights Action Plan* (Exposure Draft), 2012, p. 4. At http://www.ag.gov.au/nhrap (viewed 16 December 2011).

[7] Attorney General's Department, *United Nations Human Rights Recommendations Database*, http://www.ema.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_UNHumanRightsRecommendationsDatabase (viewed 2 November 2011).

[8] UPR Rec 22.

[9] The United Nations treaty bodies charged with monitoring implementation of the ICCPR, ICESCR, CRC and CAT have each expressed concern that those treaties have not been adequately incorporated into Australia's legal system. See further: UN Human Rights Committee, *Concluding Observations: Australia* (2009), para 8; UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia* (2009), para 11; UN Committee on the Rights of the Child, *Concluding Observations: Australia* (2005), paras 9–10; UN Committee against Torture, *Concluding Observations: Australia* (2008), para 9. At present, there is also no formal institutional process in Australia for responding to and implementing the concluding observations of human rights treaty committees, or to the recommendations of other special procedures. However, the Australian Government has recently established a Joint Parliamentary Committee on Human Rights, as part of the Human Rights Framework, which could fulfil this role.

21. Other UPR recommendations went into the Human Rights Framework launched by the Commonwealth Attorney-General in April 2010.[10] The Human Rights Framework provides for human rights education for the community and public sector; developing a National Action Plan on Human Rights; establishing a federal parliamentary scrutiny committee on human rights; requiring that all new federal legislation be accompanied by a statement of compatibility with Australia's human rights obligations; and developing a consolidated federal anti-discrimination law.

22. The Government is to be commended for its efforts to date in implementing the Framework: the first round of human rights training for Commonwealth public servants was delivered in Canberra from August to October 2011[11]; and the Government is currently seeking submissions in regard to a public discussion paper on the consolidation of the anti-discrimination laws released on 22 September 2011.[12] ACHRA also welcomes the enactment in November 2011 of the Human Rights (Parliamentary Scrutiny) Act.

23. These measures will contribute to improved protection of human rights in Australia and address some, but not all, of the weaknesses in Australia's human rights protection system.[13]

24. At the state and territory level, the Victorian Charter of Human Rights and Responsibilities was recently reviewed. The report of that review was tabled in the Victorian Parliament in September 2011. There is concern that acceptance of many of its recommendations would undermine valuable progress made in human rights since the Charter's introduction in 2007.[14] The ACT Government is expected to respond to a review of the ACT Human Rights Act 2004 – following the first five years of its operation – in early 2012.

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

## *(a) Equality before the law and non-discrimination*

25. One recurring theme during Australia's UPR appearance was the unacceptable level of disadvantage experienced by ***Aboriginal and Torres Strait Islander Peoples***. While taking note of the poor outcomes experienced by Aboriginal and Torres Strait Islander peoples – in areas such as education, employment and health – compared with other Australians, countries also welcomed the Government's 'Close the Gap' strategy to address

[10] For example, UPR Rec 21.

[11] Attorney General's Department, *Human rights and the public sector*, http://www.ema.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrightsandthepublicsector_Humanrightsandthepublicsector (viewed 2 November 2011).

[12] Attorney General's Department, *Consolidation of Commonwealth anti-discrimination laws*, http://www.ema.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_AustraliasHumanRightsFramework_ConsolidationofCommonwealthAnti-DiscriminationLaws (viewed 2 November 2011).

[13] Australian Human Rights Commission, 'Stronger human rights laws will ensure more scrutiny of law-making', (Media Release, 28 November 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/116_11.html (viewed 28 November 2011).

[14] Victorian Equal Opportunity and Human Rights Commission, 'Parliamentary Review of the Victorian Charter of Human Rights', (Media Release, 14 September 2011). At http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1493:parliamentary-review-of-the-victorian-charter-of-human-rights-14-sep-2011&Itemid=3 (viewed 2 November 2011).

these issues.[15] Other countries welcomed the National Apology to Aboriginal and Torres Strait Islander peoples made in 2008.[16]

26. In responding to the UPR, Australia noted the recent creation of the National Congress of Australia's First Peoples.[17] The Government has committed to work closely with its newly elected board. ACHRA welcomes this development which – alongside the current consultation towards constitutional recognition – is consistent with the spirit of the UN Declaration on the Rights of Indigenous Peoples. Concerns remain, however, about the Government's efforts to promote inclusion and participation of Aboriginal and Torres Strait Islander peoples in consultation and decision making processes, despite the Government recognising in its UPR response 'the importance of engaging in good faith consultation'.[18]

27. Recent consultations in the Northern Territory around the Government's *Stronger Futures in the Northern Territory: Policy Statement* demonstrated that despite good intentions, the Government's ability to genuinely consult with Aboriginal and Torres Strait Islander peoples is hampered by short time frames, inadequately trained facilitators and culturally inappropriate practices. These consultations illustrated that more remains to be done to ensure that the Government engages with Aboriginal and Torres Strait Islander peoples in negotiating, developing, and collaboratively implementing an action plan to give full effect to the UN Declaration.

28. Other UPR recommendations were made in relation to the Northern Territory Emergency Response (NTER).[19] Several countries welcomed positive steps taken to address problems with the operation of the NTER, including the 2010 reinstatement of Racial Discrimination Act.[20] Some concerns remain, however, and there is a continuing need to ensure that the NTER is conducted in a manner that is fully consistent with Australia's human rights obligations and that it is rigorously monitored. ACHRA is of the view that while the suspension of the RDA has been lifted, there are some practical limitations on the reinstatement of the RDA which has resulted in only its partial reinstatement.[21]

29. One UPR recommendation called on Australia to put an end, in practice and in law, to systematic discrimination on the basis of race, particularly against women of certain vulnerable groups.[22] A December 2006 amendment to the Commonwealth *Crimes Act* and the Commonwealth *Northern Territory National Emergency Response Act* have prohibited courts from taking into account 'customary law or cultural practice' of Aboriginal or Torres

[15] For example, Japan, Singapore and UK. See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/WG.6/10/L.8 (3 February 2011).

[16] For example, Algeria, Canada and Morocco. See above.

[17] The Congress is intended to be a 'national leader and advocate for recognising the status of Aboriginal and Torres Strait Islander peoples as First Nation peoples'. See National Congress of Australia's First Peoples, *About Us*, http://nationalcongress.com.au/about-us/ (viewed 2 November 2011).

[18] UPR Recs 109-113. See also Human Rights Council, *Australia's Formal Response to the UPR Recommendations*, UN Doc A/HRC/17/10/Add.1 (2011), p 7.

[19] UPR Rec 25; UPR Rec 26.

[20] For example, Norway and Slovenia. See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/WG.6/10/L.8 (3 February 2011).

[21] During its UPR appearance, Australia was also called on to enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and law enforcement officials (UPR Rec 95). On this point, the recent introduction by the Northern Territory Police of Community Engagement Officers in selected communities, whose role is to develop relationships with the community, is to be welcomed. However, the effectiveness of these officers is yet be measured.

[22] UPR Rec 48.

Strait Islander people as mitigating or aggravating factors in sentencing or in considering bail in the Northern Territory. This contributes to systematic discrimination against Aboriginal and Torres Strait Islander people in sentencing and bail considerations. ACHRA is disappointed that the recent opportunity for the Government to consult with Aboriginal and Torres Strait Islander people on this issue through the *Stronger Future* consultations was not taken advantage of by the Government.

30. Another recommendation related to the overrepresentation of Aboriginal and Torres Strait Islander peoples in the prison population.[23] ACHRA acknowledges the efforts of the Australian Government in funding Aboriginal and Torres Strait Islander Legal Services (ATSILS) and diversion and recidivism programs. However, funding to ATSILS has continued to fall well below funds received by legal aid commissions reducing Aboriginal and Torres Strait Islander peoples' access to justice. In the Northern Territory, concerns exist about the likelihood of reduced funding following the conclusion of NTER funding in June 2012. Although the Australian Government has committed to continuing to fund additional police in the Territory, no concomitant commitment has been made to continue providing additional funding to Northern Territory ATSILS to service the increasing numbers of people arrested and charged by police. ACHRA is concerned about the adequacy of measures to reduce Aboriginal and Torres Strait Islander incarceration rates, particularly in the Northern Territory, where the incarceration rate of Aboriginal and Torres Strait Islander people continues to increase.

31. Another issue that received attention during the UPR was the area of ***equality for women and men***. Several countries raised concerns about the high level of violence against women.[24] In responding to the UPR, Australia noted the endorsement of the National Plan to Reduce Violence against Women and their Children by the Federal, State and Territory Governments in February 2011. ACHRA welcomes the plan as a significant initiative toward eliminating the violence experienced by 300,000 women in Australia each year. It remains concerned, however, that to date there is no proper independent monitoring or evaluation process proposed for the plan.

32. Others countries made recommendations on the need to address inequalities in the area of employment and pay.[25] In its response to the UPR, the Government flagged the announcement in March 2011 of reforms to the Equal Opportunity for Women in the Workplace Act 1999.[26] Further positive developments in this area since the UPR have been the May 2011 interim decision of Fair Work Australia in relation to equal pay in the social and community services industry; and the decision to remove gender restrictions for Australian Defence Force combat roles over the next five years. However ACHRA remains concerned about the significant pay gap of 17.2% that continues to exist between men and women in Australia, as well as the significant gap in retirement savings women when compared with men, and the comparatively lower levels of participation of women in senior and leadership positions in employment.

33. Australia's record in regard to the ***rights of children*** was a further focus of its UPR appearance. Recommendations called on Australia to establish, or consider establishing, a

[23] UPR Rec 93.

[24] For example, Norway and Switzerland.

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

[26] These reforms will 'require large employers to report on gender equality outcomes, including the gender composition of their organisations and their boards, pay equity, and on the availability of flexible work arrangements for men and women.' See Mr **Peter Woolcott, 'Consideration of the Universal Periodic Review Report of Australia', (Statement at Human Rights Council, Geneva, 18 June 2011). At** http://www.geneva.mission.gov.au/gene/Statement213.html **(viewed 2 November 2011.**

Federal Children's Rights Commissioner.[27] The Government has committed to investigate this possibility. ACHRA believes that a properly-funded, independent and rights-based national Children's Commissioner – together with existing children's commissioners at the state and territory level – is one important way to ensure a national approach to children's rights that will assist in protecting the rights of all children, especially the most vulnerable. A discussion paper exploring options for a national Children's Commissioner was released in late November and ACHRA awaits the outcome of this process.

34. Following the UPR, Australia has made some progress in protecting the ***rights of older persons***. The *Age Discrimination Act 2004* was amended in May 2011 to create an office for an Age Discrimination Commissioner within the Australian Human Rights Commission. The first Commissioner was appointed in July 2011 and has begun working on issues such as workplace participation and financial security. Progress at the state and territory level since the UPR includes changes to the driver licensing system for older drivers in Tasmania made in August 2011 that will remove barriers to participation[28]; and reforms to the Workers' Compensation Act in Western Australia, also in August 2011, which remove compensation limitations based on age.[29]

35. Countries also engaged with Australia in regard to the rights of persons who are ***Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI)***. Countries noted the lack of a federal law prohibiting discrimination on the grounds of sexuality.[30] The Government has committed to introducing new legislative protections against discrimination on the basis of sexual orientation and gender identity as part of its consolidation of Commonwealth anti-discrimination legislation. In 2010 both major political parties affirmed their support for the inclusion of protection from discrimination on the basis of sexual orientation and gender identity in federal law. ACHRA was disappointed, however, by the Government's rejection of the UPR recommendation relating to the recognition of same-sex marriage.[31]

36. A positive development in this area since the UPR was the creation of new guidelines that will remove difficulties faced by sex and/or gender diverse people in obtaining passports that reflect their affirmed sex.[32]

37. Other UPR recommendations accepted by Australia related to the ***rights of people with disability***. Some countries commended initiatives by the Australian government to promote and protect the rights of persons with disability, including through the National

[27] UPR Rec 28; UPR Rec 29.

[28] Tasmanian Anti-Discrimination Commission, 'Commissioner welcomes removal of barriers to older drivers', (Media Release, 30 August 2011). At http://www.antidiscrimination.tas.gov.au/__data/assets/pdf_file/0009/176382/WEB_-_11.08.25-MR-Older_drivers.pdf#Older%20drivers (viewed 2 November 2011).

[29] Western Australia Equal Opportunity Commission, 'Removal of age discrimination in workers' compensation welcomed', (Media Release, 18 August 2011). At http://www.eoc.wa.gov.au/community/news.aspx?NewsItem=bc40adb4-a219-4139-8646-4d34644f9479 (viewed 2 November 2011).

[30] For example, New Zealand and Switzerland. See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/WG.6/10/L.8 (3 February 2011).

[31] UPR Rec 70.

[32] Australian Minister for Foreign Affairs, 'Getting a passport made easier for sex and gender diverse people', (Media Release, 14 September 2011). At http://foreignminister.gov.au/releases/2011/kr_mr_110914b.html (viewed 2 November 2011). See also Australian Human Rights Commission, *Sex Files: The legal recognition of sex in documents and government records*, March 2009. At http://www.hreoc.gov.au/genderdiversity/index.html (viewed 16 December 2011).

Disability Strategy.[33] Others expressed concern about the sterilisation of women and girls with disability.[34] The publication of a recent report which found, amongst other things, that Australia ranks 21st of 29 OECD countries in employment participation for people with a disability, should cause the Government to redouble its efforts in this area.[35]

38. ACHRA welcomes the adoption of the National Disability Strategy by the Council of Australian Governments in February 2011. Further positive developments since Australia's UPR appearance, include the commencement of the Disability (Access to Premises – buildings) Standards 2010 in May 2011; the Government's acceptance of the Productivity Commission's final report into Disability Care and Support and its recommendation for a National Disability Insurance Scheme in August 2011; and the new program of Government funding for people with disability to attend key international forums on human rights, announced in September 2011. However, ACHRA remains concerned, amongst other things, about the overrepresentation of persons with a disability, particularly people with an intellectual impairment or psychosocial impairment, in the criminal justice system – as victims of crime, and as suspects, defendants and offenders.[36]

*(b) Migrants, refugees and asylum seekers*

39. The AHRC welcomed the Government's acceptance of UPR recommendations 122, 124 and 125. The AHRC saw the Government's acceptance of these recommendations as acknowledgement that any initiatives relating to regional processing of asylum seekers' claims would only be pursued if they fully complied with the Refugee Convention and Australia's human rights obligations. The AHRC has expressed concern that the Government has continued since its UPR appearance to pursue a policy of offshore processing seemingly at odds with these recommendations.[37] The AHRC welcomed the Government's announcement in October 2011 that it would process in Australia the claims made by asylum seekers who arrive here. However it remains concerned that the Government has stated that it is still committed to offshore processing and to pursuing legislative change that would enable it to implement its proposal to transfer asylum seekers to Malaysia.

40. The AHRC welcomed reforms by the current government including its 'New Directions in Detention Policy' announced in 2008.[38] It has, however, expressed disappointment about the lack of implementation of key aspects of this policy, in particular in relation to the prolonged detention of asylum seekers who arrive by boat. The AHRC welcomes Government efforts since late 2010 to move many families with children and unaccompanied minors into community detention as well as the November 2011 announcement that community detention and bridging visas will be used more widely for

[33] For example, Botswana. See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/WG.6/10/L.8 (3 February 2011).

[34] For example, Belgium, Denmark, Germany and UK. See above.

[35] PricewaterhouseCoopers, *Disability expectations: Investing in a better life, stronger Australia*, November 2011. At http://www.pwc.com.au/industry/government/publications/disability-in-australia.htm (viewed 15 December 2011).

[36] There are also concerns that people with an impairment tend to serve longer sentences than those without an impairment for a variety of reasons, including the lack of reasonable arrangements to accommodate them in rehabilitation programs.

[37] See further: http://humanrights.gov.au/human_rights/immigration/index.html#media_releases

[38] See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008). At http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm (viewed 19 December 2011).

asylum seekers who arrive by boat. However, the legal architecture of mandatory detention remains. Many people, including children, still spend prolonged periods in detention facilities.[39] The AHRC continues to be seriously concerned about the harmful impacts of prolonged detention on people's mental health and wellbeing and about high rates of self-harm and suicide in detention facilities.

41. UPR Working Group countries welcomed Government initiatives to tackle racism towards people from culturally and linguistically diverse backgrounds.[40] However they also noted the ongoing incidence of discrimination, vilification and violence – increasingly through cyber-racism – experienced by people because of their ethnic, racial, cultural, religious or linguistic background.[41] UPR recommendations included calls to further combat racial discrimination and strengthen efforts to promote multiculturalism and social inclusion.[42] ACHRA welcomes developments since January consistent with those recommendations, including: the announcement of a new national multicultural policy – The People of Australia – in February 2011; and the development of the National Anti-Racism Strategy, being led by the newly appointed federal Race Discrimination Commissioner, a draft of which is expected to be launched around July 2012 with implementation of the Strategy rolled out over three years.

*(c) Right to life, liberty and security of the person*

42. In accepting a UPR recommendation made in relation to the humane treatment of prisoners[43], Australia noted that 'States and Territories are responsible for managing and operating prisons and consider that existing legislation and policies ensure humane treatment of prisoners'.[44] Ongoing concerns include the lack of proportionality in sentencing in some states contributing to a burgeoning prison population,[45] as well as prison

[39] For further details, see Australian Human Rights Commission, *Information provided to the OHCHR study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration* (2010). At http://www.humanrights.gov.au/legal/submissions/2010/201004_OHCHR_child_migration.html (viewed 19 December 2011).

[40] For example, Malaysia. See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/WG.6/10/L.8 (3 February 2011).

[41] For example, Russia. See above. See also Human Rights and Equal Opportunity Commission, *Voices of Australia: 30 years of the Racial Discrimination Act: 1975–2005* (2005). At http://www.humanrights.gov.au/racial_discrimination/voices/index.html (viewed 19 December 2011).

[42] UPR Recs 59-65.

[43] UPR Rec 71.

[44] Human Rights Council, *Australia's Formal Response to the UPR Recommendations*, UN Doc A/HRC/17/10/Add.1 (2011).

[45] The WA Equal Opportunity Commission notes that the state of Western Australia has a burgeoning prison population as a result of (a) tougher penalties (b) withdrawal of automatic parole with a dramatic escalation in the numbers of prisoners refused parole and (c) mandatory sentencing. State laws currently see significant numbers of people imprisoned for traffic offences (particularly driving without a licence) which disproportionately affects Aboriginal people in remote communities (where there are insufficient number of people qualified to teach others to drive or supervise log book hours so that driving unlicensed is endemic); and failure to pay fines. This contributes to a situation where rates of serious crime are decreasing but prison numbers are ever increasing. This is also a particularly disturbing matter in relation to juveniles where between 70-80% of juveniles held in custody (many on remand) are indigenous. The NT Anti-Discrimination Commission notes that the introduction of breach of bail as an offence has resulted in people significantly increasing their contact with police and the courts and their entrenchment in the criminal justice system. In Victoria, movements towards the introduction of mandatory minimum sentences and the abolition of options such as home detention are likely to increase the overrepresentation of Aboriginal peoples in prisons.

conditions such as overcrowding, inadequate physical and mental health services, including drug and alcohol rehabilitation and harm minimisation programs, and lack of access to education.

43. In its 2011 Review of the ACT Youth Justice System 2011, the ACT Human Rights Commission found that the system has significant potential, but needs a clear vision, strong leadership and a greater investment in staff and programming for this potential to be realised. In particular, continuous improvement is needed in the following areas at Bimberi, the ACT's Youth Justice Centre: use of force and restraints; behaviour management; searches; segregation; communication; discrimination; oversight and health.[46]

44. Following the Review of the Northern Territory Youth Justice System, commissioned by the Northern Territory Government, a new Youth Justice Unit has been established which is currently tasked with reviewing the operation of the Youth Justice System with a view to improving its effectiveness, relevance and accessibility. While ACHRA welcomes this move, several concerns remain in relation to the youth justice system in the Northern Territory, including the co-location of a juvenile detention facility with an adult prison in Alice Springs, and the absence of properly resourced and purpose built separate Youth Justice Courts.

45. The Government accepted a UPR recommendation calling for appropriate mechanisms to ensure adequate and independent investigation of police use of force, police misconduct and police related deaths.[47] ACHRA welcomes the Government's recognition of the need for independent investigation of the police force.[48] However, current mechanisms in the Northern Territory are inadequately empowered to respond to police complaints as they are unable to make enforceable orders around restitution or penalty. Additionally, police complaints are initially required to be lodged internally within police, and are investigated by police. While an independent office such as the Ombudsman may be able to later provide review or investigation services, ACHRA submits that in order to implement this recommendation the Northern Territory government will need to empower a body independent from the police to receive and investigate police complaints from the outset and have increased powers to make enforceable orders rather than recommendations alone.

# IV. Key national priorities, initiatives and commitments

46. During the UPR, the Australian Government was urged to ensure that sufficient funding and staff are provided to the Australian Human Rights Commission.[49] The Government has committed to doing so in its National Action Plan. Of particular note is the Government's decision to provide funding for a stand-alone Race Discrimination Commissioner and for the new position of Age Discrimination Commissioner. Appointments were made to these positions in September 2011 and July 2011 respectively.

47. The AHRC was re-accredited in August 2011 as an 'A status' national human rights institution; that is, as an institution that complies with the UN Principles relating to the

[46] ACT Human Rights Commission, *The ACT Youth Justice System 2011* (July 2011). At http://www.hrc.act.gov.au/content.php/content.view/id/251 (viewed 19 December 2011).

[47] UPR Rec 89.

[48] Human Rights Council, *Australia's Formal Response to the UPR Recommendations*, UN Doc A/HRC/17/10/Add.1 (2011), p 5.

[49] UPR Rec 27.

Status of National Institutions (the 'Paris Principles').[50] The accreditation committee, however, expressed concern that 'the regular application of an efficiency dividend to the AHRC has the potential to gradually erode its base level of funding and therefore reduce its capacity to fulfil its mandate. The Sub-Committee notes that to function effectively, a national human rights commission must be provided with an appropriate level of funding and staffing in order to allow it to fulfil its mandated activities.'[51] This remains a matter of concern to ACHRA, particularly since the Australian Government has announced a one-off increase in the efficiency dividend of 2.5%.

48. ACHRA continues to call for the establishment of a National Children's Commissioner to monitor compliance with the Convention on the Rights of the Child. As noted above, the Government responded to specific UPR recommendations on this issue by saying that it is currently exploring the possible role for a national Children's Commissioner.[52] ACHRA supports the establishment of a national Children's Commissioner with the primary functions of monitoring, investigating and reporting on the protection of children's rights as set out in the Convention on the Rights of the Child. The Children's Commissioner should be independent, adequately resourced and accessible to children.[53]

[50] *Principles relating to the Status of National Institutions (The Paris Principles)*, Adopted by the United Nations General Assembly - Resolution 48/134 of 20 December 1993. See: http://www2.ohchr.org/english/law/parisprinciples.htm.

[51] ICC Sub-Committee on Accreditation, Report – 23-27 May 2011, Specific comments on the re-accreditation application of the Australian Human Rights Commission, pp 10-11. At http://www.asiapacificforum.net/working-with-others/icc/sub-committee-on-accreditation (viewed 16 December 2011).

[52] UPR Rec 28; UPR Rec 29; Human Rights Council, *Australia's Formal Response to the UPR Recommendations*, UN Doc A/HRC/17/10/Add.1 (2011).

[53] 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*, August 2011. At http://www.hreoc.gov.au/human_rights/children/index.html (viewed 1 November 2011).

# Appendix

## Calendar of upcoming key UN treaty dates

| *Treaty* | *Key Dates* |
|---|---|
| Convention on the Rights of the Child (CRC) | Australia to appear before the committee in May 2012 |
| Convention Against Torture (CAT) | Next report due 2012 |
| Convention on the Rights of Persons with Disabilities (CRPD) | Australia likely to appear before the committee in 2012 |
| Convention on the Elimination of Racial Discrimination (CERD) | Next report due 2012 |
| 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 |