



## Генеральная Ассамблея

Distr.: General  
26 February 2015  
Russian  
Original: English

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### Совет по правам человека

Двадцать восьмая сессия

Пункт 6 повестки дня

Универсальный периодический обзор

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\* Национальное правозащитное учреждение с аккредитационным статусом категории "А", присвоенным Международным координационным комитетом национальных учреждений, занимающихся поощрением и защитой прав человека.

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GE.15-03647 (R) 170315 170315



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*[English only]*

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## 2014 Mid-term Universal Periodic Review Report by the Australian Human Rights Commission

### I. Introduction

1. This 2014 UPR Progress Report is the fourth in a series of annual reports developed in the lead up to Australia's Second Cycle Universal Periodic Review (UPR) at the United Nations (UN) Human Rights Council.<sup>1</sup> The second cycle review is tentatively scheduled for 9 November 2015.<sup>2</sup>

2. The reports are lodged with the Human Rights Council annually to provide accountability for Australia's progress under the UPR.

3. The UPR is a unique process which involves a review of the human rights records of all 193 UN Member States once every four years. It is a Member State-driven process, under the auspices of the Human Rights Council. As it is a peer review process, recommendations are made by other governments rather than by independent experts. The UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.

4. The UPR was created through the UN General Assembly on 15 March 2006. The first cycle reviews of all Member States were completed by October 2011. The second cycle of reviews commenced in 2012 and are due to be completed by 2016.

5. The first cycle review of Australia was conducted in 2011. 52 countries asked questions about Australia's human rights record and made 145 recommendations. The Australian Government accepted in full or in part over 90 per cent of these and also made a number of voluntary commitments to actions. The 2014 report has been prepared by the Australian Human Rights Commission (the Commission) on behalf of the Australian Council of Human Rights Authorities (ACHRA), a body that brings together all Commonwealth, State and Territory anti-discrimination and human rights bodies.

6. Over the last 12 months there have been some positive developments in the protection and promotion of human rights in Australia. ACHRA welcomes the following achievements:

- The continued roll out of the National Disability Insurance Scheme
- The appointment of a Human Rights Commissioner at the Australian Human Rights Commission
- The robust human rights analysis of proposed legislation by the Parliamentary Joint Committee on Human Rights
- Launch of Australia's National Action Plan to Combat Human Trafficking and Slavery 2015–19.

<sup>1</sup> Australian Human Rights Commission, Australia's Universal Periodic Review on human rights – Annual Progress Reports. At <https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights> (viewed 18 November 2014).

<sup>2</sup> Office of the High Commissioner for Human Rights, UPR Sessions. At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx> (viewed 18 November 2014).

7. Despite these positive developments, ACHRA is concerned that there has been limited action taken to advance human rights across a range of subject areas. Many actions committed to through the UPR process, and reflected in Australia's National Action Plan on Human Rights, have not been implemented or advanced over the past year.

8. This report contains a table (Appendix 2) listing the 145 recommendations made to Australia in the first round of the UPR. It indicates which recommendations have been:

- Implemented
- Partly implemented
- Not implemented
- Not supported at the time of the UPR review.

9. The information in the table reveals that at the present time only 11 per cent of recommendations that Australia accepted (in whole or in part) have been fully implemented since 2012. ACHRA is concerned at regressions in human rights protection in relation to asylum seekers. Of particular concern is the lengthy detention of asylum seekers, including children, through: Australia's mandatory immigration detention system; the use of third country processing; and the removal of direct references to Australia's non-refoulement obligations under the *International Covenant on Civil and Political Rights* (ICCPR), *Convention on the Rights of the Child* (CRC), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and *Convention Relating to the Status of Refugees* from the *Migration Act 1958* (Cth). Bills still before Parliament also raise significant concerns about human rights protection, such as amendments to the *Australian Citizenship Act 2007* (Cth),<sup>3</sup> and confirm that refugee law and asylum seeker policy remains one of Australia's biggest human rights challenges.

10. ACHRA continues to be concerned at the lack of progress towards ratifying the *Optional Protocol to the Convention against Torture* (OPCAT), as well as lack of progress in advancing commitments made in the UPR process to review reservations to treaties.

11. This report is organised in accordance with the thematic groupings and headings that are used in the UPR reporting process.

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

### **2.1 Scope of international obligations**

12. Australia prides itself on its commitment to the promotion and protection of human rights and has announced its candidacy for election to the Human Rights Council for the 2018–20 term.<sup>4</sup> The Australian Government considers that the pro-

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<sup>3</sup> Australian Citizenship and Other Legislation Amendment Bill 2014 (Cth).

<sup>4</sup> Department of Foreign Affairs and Trade, Human Rights – Australia's Multilateral Initiatives. At <http://www.dfat.gov.au/issues/human-rights/> (viewed 23 November 2014).

motion and protection of human rights is crucial to achieving peace, security, freedom and dignity for all.<sup>5</sup>

13. The Australian Government made several voluntary commitments at the UPR first cycle review.<sup>6</sup> ACHRA acknowledges the fulfilment of the commitment to appoint a full time Race Discrimination Commissioner. However, ACHRA is disappointed that there continues to be limited action taken to implement other commitments such as the proposed review of Australia's reservations to human rights treaties and the tabling in Parliament of concluding observations from treaty bodies.

14. During the UPR Review, several countries encouraged the Australian Government to ratify the OPCAT.<sup>7</sup> Australia signed the OPCAT on 19 May 2009, but has not yet ratified it. It is practice in Australia that new treaty obligations are not entered into prior to a National Interest Analysis being conducted and reviewed by the Joint Standing Committee on Treaties (JSCOT) of the federal Parliament. In 2012, the JSCOT recommended that the government ratify the OPCAT.<sup>8</sup> However, there has been limited progress towards this since 2012:

- Section 14(1)(e) of the *Human Rights Commission Act 2005* (ACT) in the Australian Capital Territory (ACT) provides the ACT Human Rights Commission with powers of inspection and own-motion reviews.<sup>9</sup> These powers have been used to develop reports on conditions of detention and health provision to detainees in the ACT.
- The Northern Territory (NT) Government introduced the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 to Parliament on 22 August 2013. However the Bill has not been enacted to date.
- The Australian Government released the country's third National Human Rights Action Plan (NAP) on 10 December 2012. The NAP indicates that the federal government would work with states and territories to move towards ratifying the OPCAT. This commitment was also made at the first review of Australia at the Human Rights Council's UPR in 2011.

15. ACHRA is unaware of any action having been taken by the Standing Council on Law and Justice regarding efforts to encourage ratification of the OPCAT or the development of a National Preventive Mechanism since the above commitments were made. The Commission has called for the Australian Government to expedite

<sup>5</sup> Department of Foreign Affairs and Trade, Human Rights – Australia and Human Rights. At <http://www.dfat.gov.au/issues/human-rights/> (viewed 23 November 2014).

<sup>6</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review – Australia, UN Doc A/HRC/17/10 (2011), para 88. At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx> (viewed 24 November 2014).

<sup>7</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review – Australia, UN Doc A/HRC/17/10, Recommendations 1, 4 and 6. At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx> (viewed 25 November 2014).

<sup>8</sup> Joint Standing Committee on Treaties, Report 125: Review into 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](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/28february2012/report.htm) (viewed 19 February 2015)

<sup>9</sup> Powers of inspection: Corrections Management Act 2007 (ACT) s 6; Children and Young People Act 2008 (ACT) s 153. Own-motion reviews: Human Rights Commission Act 2005 (ACT) ss 14(1)(e) and 48 and Human Rights Act 2004 (ACT) s 41.

ratification of the OPCAT on a number of occasions, most recently in the Commission's Submission to the UN Committee Against Torture.<sup>10</sup>

16. In 2014, a series of reforms to strengthen the UN treaty body system have been implemented by the UN. The reforms were prompted by a report from the UN High Commissioner for Human Rights (Navanethem Pillay 2008–2014),<sup>11</sup> and are set out in UN General Assembly (GA) Resolution Number 68/268.<sup>12</sup> ACHRA encourages the government to adopt the state relevant processes set out in the UNGA resolution.

17. ACHRA welcomes the Australian Government's ongoing assistance to representatives of people with disabilities to participate in key international forums on human rights. This assistance has enabled the capacity building of more than 30 participants (including six young emerging leaders) from more than 10 disability peak organisations and disability advocacy organisations to attend and participate in international events related to the *Convention on the Rights of Persons with Disabilities*.

18. ACHRA is nevertheless disappointed that the Australian Government has taken no action to consider or review its position on the *International Convention for the Protection of All Persons from Enforced Disappearance* and on the International Labour Organisation *Convention concerning Indigenous and Tribal Peoples in Independent Countries*.

## 2.2 National Framework

19. Australia has limited legislative protection of human rights at a federal level. The protection available is largely confined to broad protections against discrimination. ACHRA notes that the ACT and the state of Victoria have legislative protection of human rights.<sup>13</sup>

20. Last year's UPR Progress Report recorded that the previous Australian Government released exposure draft legislation to consolidate anti-discrimination law and address technical, definitional and operational differences between existing federal anti-discrimination laws. Due to significant public concern on several matters including the grounds of discrimination covered and changes to the onus of proof, the bill did not proceed beyond the draft exposure stage. Accordingly, significant technical and operational differences between the four existing federal discrimination laws remain. ACHRA encourages the Australian Government to consider options to reduce this complexity and create better consistency between the laws. This would not only assist the general community but also the business community, particularly small business.

<sup>10</sup> Australian Human Rights Commission, Information concerning Australia's compliance with the Convention Against Torture. At <https://www.humanrights.gov.au/our-work/legal/submissions/submissions-united-nations> (viewed 24 November 2014).

<sup>11</sup> N Pillay, Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights (2012). At <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> (viewed 23 November 2014).

<sup>12</sup> Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Resolution 68/268, UN Doc A/Res/68/268 (2014). At <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> (viewed 23 November 2014).

<sup>13</sup> Human Rights Act 2004 (ACT). At [http://www5.austlii.edu.au/au/legis/act/consol\\_act/hra2004148/](http://www5.austlii.edu.au/au/legis/act/consol_act/hra2004148/) (viewed 23 November 2014); Charter of Human Rights and Responsibilities Act 2006 (Vic). At [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/cohrara2006433/](http://www5.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/) (viewed 23 November 2014).

21. The President of the Commission has described the Australian approach to the protection of human rights as a form of ‘exceptionalism’:

By this I mean that relative to comparable common and civil law systems, Australia has adopted a multifaceted and unique regime for human rights protection. We have few constitutional or legislative protections for our traditional freedoms such as freedom of speech or protection from arbitrary detention without trial. We have no Charter or Bill of rights, unlike all other common law countries; for most legal systems, all domestic laws are viewed through the prism of the rights defined in either the relevant Constitution or legislative Charter or Bill of Rights; Australia has no regional court like the European Court of Human Rights or similar courts in Latin America, Africa and the Middle East.

The consequence is that Australia is increasingly isolated from evolving jurisprudence and from the legal systems with which we share common values.<sup>14</sup>

22. ACHRA is concerned that the Australian Government has not yet implemented outstanding recommendations from the 2008 Senate Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender equality, and encourages the Australian Government to implement these amendments.

23. The Australian Government has continued to support a number of initiatives under the Human Rights Framework,<sup>15</sup> in particular, the Parliamentary Joint Committee on Human Rights (PJCHR). The PJCHR has quickly established itself as an important mechanism to implement Australia’s international human rights obligations at the domestic level and has continued its role to:

- Scrutinise all bills and legislative instruments for compliance with human rights.
- Require the production of statements of compatibility of bills and legislative instruments with the seven main human rights treaties to which Australia is a party.

24. Since its establishment the PJCHR has produced 35 reports to Parliament scrutinising hundreds of bills and legislative instruments and highlighting those bills which it considered to either raise human rights concerns or to be incompatible with human rights. In 2014 the PJCHR’s reports have included thematic examinations of three particular policy areas which were of concern: counter-terrorism legislation; migration and border protection; and social security.<sup>16</sup> The PJCHR has continued to be concerned about the *Stronger Futures* measures directed towards Aboriginal communities in the NT and is currently undertaking a 12 month review to consider

<sup>14</sup> Professor Gillian Triggs, Free speech and human rights in Australia (Speech delivered at the Free Speech 2014 Symposium, Ultimo, 7 August 2014). At <https://www.humanrights.gov.au/news/speeches/free-speech-and-human-rights-australia> (viewed 23 November 2014).

<sup>15</sup> Australian Government, Australian Human Rights Framework (2010). At <http://www.ag.gov.au/Consultations/Documents/Publicsubmissionsonthedraftbaselinestudy/AustraliasHumanRightsFramework.pdf> (viewed 5 December 2014).

<sup>16</sup> Parliamentary Joint Committee on Human Rights, Committee Reports. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Complete\\_d\\_inquiries](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Complete_d_inquiries) (viewed 24 November 2014).

the evidence and test the continuing necessity for the *Stronger Futures* measures. The PJCHR intends to table its report in mid-2015.<sup>17</sup>

25. ACHRA welcomed the release of the National Human Rights Action Plan (NAP) in December 2012. The Australian Government then commented that all UPR recommendations accepted or accepted in-part were referenced against specific actions in the NAP.<sup>18</sup> The NAP included a monitoring arrangement that involves progress reporting to coincide with the Australian Government's next UPR report planned for 2015.<sup>19</sup>

26. Disappointingly, many of the measures committed to in the Australian Human Rights Framework and in the NAP have not occurred or have dissipated. For example:

- Grants for human rights education activities were discontinued after the first round of funding
- A proposed review of the compatibility of all existing legislation with human rights was not completed, nor any results published
- Implementation of the NAP to date has been slow and many of the actions included will not be achieved within the agreed timeframe
- No review of the Human Rights Framework has been conducted despite the commitment to complete this in 2014.

27. Human rights education is foundational to the realisation of human rights and fundamental freedoms. Accordingly, human rights education must remain as a key priority and commitment for the Australian Government. The Commission has continued to host the Australian Public Service Human Rights Officer's Network in order to support Australian Public Service employees to understand how human rights relate to their work. The Commission has also developed a suite of resources, to be launched in February 2015, which will assist businesses to understand, promote and protect human rights. The Victorian Equal Opportunity and Human Rights Commission has also established a Victorian Public Sector Human Rights Network for those working in the Victorian Public Sector.

28. The Commission has continued to work with the Australian Curriculum, Assessment and Reporting Authority to mainstream human rights education in the national school curriculum. In December 2014, the Commission released a suite of resources as part of the *RightsEd* series that have been mapped to the Australian Curriculum.<sup>20</sup> The resources focus on the topics of anti-racism and disability rights, and are linked to the History, Geography and Health and Physical Education curricula. The Commission has also developed a mapping resource for teachers called *Human*

<sup>17</sup> Parliamentary Joint Committee on Human Rights, Review of Stronger Futures in the Northern Territory Act 2012 and related legislation. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Committee\\_Inquiries/strongerfutures2](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures2) (viewed 24 November 2014).

<sup>18</sup> Australian Government, National Action Plan on Human Rights, p 5. At <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf> (viewed 23 November 2014).

<sup>19</sup> Australian Government, National Human Rights Action Plan, p 81. At <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf> (viewed 23 November 2014).

<sup>20</sup> Australian Human Rights Commission, Human rights in the school classroom. At <http://www.humanrights.gov.au/education/human-rights-school-classroom> (viewed 19 February 2015).



*Rights Examples for the Australian Curriculum*.<sup>21</sup> This mapping resource is designed as a guide for teachers to provide human rights related examples that are consistent with key learning area content descriptions.

29. Additionally, the Commission has worked in partnership with ABC Splash to create an interactive educational website called *Choose Your Own Statistics*.<sup>22</sup> The content of this website has been closely mapped to the Australian Curriculum for Mathematics and is designed to assist children and young people in years 5 to 8 to analyse data in order to understand important human rights issues in Australian society.

30. The ACT celebrated the tenth anniversary of the *Human Rights Act 2004* (ACT). To mark the occasion the ACT Human Rights Commission and the Australian National University jointly presented a symposium on the *Human Rights Act 2004* (ACT).<sup>23</sup> In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) is scheduled for a review after eight years of operation in 2015. ACHRA notes that a number of issues arising from the Charter's four year review remain outstanding. ACHRA calls on the Victorian Government to ensure that any future amendments to the Charter do not reduce human rights protections.

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

31. Numerous countries called upon Australia to intensify efforts to address the unacceptable level of disadvantage experienced by **Aboriginal and Torres Strait Islander peoples**.<sup>24</sup> Australia was requested to ensure the full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples* (the Declaration).<sup>25</sup>

32. During 2014 a series of consultations about giving effect to the Declaration were held with Aboriginal and Torres Strait Islander communities and organisations.<sup>26</sup> The *Declaration Dialogues* were conducted by the Commission in partnership with the National Congress of Australia's First Peoples. The *Declaration Dialogues* revealed that communities find the Declaration to be an empowering tool they can use to assert their rights in everyday life and that businesses are demonstrating their willingness and commitment to use the Declaration as a basis for their engagement with Aboriginal and Torres Strait Islander communities.<sup>27</sup>

33. ACHRA is concerned that the continuation of the important work of the National Congress of Australia's First Peoples has been threatened by budget cuts of

<sup>21</sup> Australian Human Rights Commission, *Human Rights Examples for the Australian Curriculum*. At <http://www.humanrights.gov.au/our-work/education/publications/human-rights-examples-australian-curriculum> (viewed 19 February 2015).

<sup>22</sup> ABC Splash, *Choose your own statistics*. At <http://splash.abc.net.au/statistics-game/#/> (viewed 19 February 2015).

<sup>23</sup> ACT Human Rights Commission, *Ten Years of the ACT Human Rights Act: Continuing the Dialogue Conference*. At <http://www.hrc.act.gov.au/humanrights/> (viewed 24 November 2014).

<sup>24</sup> See generally Recommendations 23, 24, 36-37, 53, 60, 72, 80, 90, 92, 101, 104-111, 114-120.

<sup>25</sup> Recommendations 106 and 107.

<sup>26</sup> Australian Human Rights Commission, *Social Justice Report 2014*, p 162. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 3 December 2014).

<sup>27</sup> Australian Human Rights Commission, *Social Justice Report 2014*, p 162. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 3 December 2014).

\$15 million.<sup>28</sup> Although the Australian Government continues to declare its support for the Declaration, progress to implement it has been slow.

34. ACHRA does note and commends the leading role played by the Australian Government at the World Conference on Indigenous Peoples in September 2014. The World Conference Outcomes Document commits Member States to develop, in consultation and cooperation with Indigenous peoples, national measures to achieve the ends of the Declaration.<sup>29</sup> Australia agreed to the Outcomes Document, which is a collective commitment by Member States to focus action on the Declaration and Indigenous rights. ACHRA welcomes this significant commitment, however it notes that more work needs to be done to improve engagement and action to embed the Declaration in activities by all sectors of society including governments, civil society, the private sector, and by Aboriginal and Torres Strait Islander communities.

35. In particular, ACHRA calls for the development of a National Strategy to give effect to the Declaration and the inclusion of the Declaration in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

36. Several countries called upon Australia to commit to the recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution.<sup>30</sup> ACHRA acknowledges that a number of steps have been taken towards achieving recognition of Aboriginal and Torres Strait Islander people in Australia's Constitution:

- An independent Expert Panel recommended a model for recognition to the Government in 2012
- In February 2013 the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed – this acknowledges that Aboriginal and Torres Strait Islander people are the first inhabitants of this nation and identifies a broad timeframe for the holding of the referendum to recognise this, and provide other protection, in the Constitution
- Funding has been provided to Reconciliation Australia for the *Recognise* campaign to build community support.

37. ACHRA commends the government for these developments. However, ACHRA is concerned that the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) is due to sunset in March 2015 and the Australian Government has not finalised a model for constitutional change nor announced a timeframe for a referendum to occur. ACHRA calls on the Australian Government to finalise a model for recognition so that the process of building community understanding and support can occur.

38. ACHRA supports the work of the *Close the Gap Campaign for Indigenous Health Equality*.<sup>31</sup> On 12 February 2014, Prime Minister Abbott presented his first

<sup>28</sup> Australian Government, Budget 2014-15: Budget Measures, Budget Paper No 2 (2014), p 185. At [http://budget.gov.au/2014-15/content/bp2/download/BP2\\_consolidated.pdf](http://budget.gov.au/2014-15/content/bp2/download/BP2_consolidated.pdf) (viewed 16 October 2014).

<sup>29</sup> Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, GA Res 66, UN Doc No A/69/L.1, 2014, paras 7-8. At <http://wcip2014.org/wp-content/uploads/2014/09/N1453491-WCIP-FINAL-DOCUMENT-EN.pdf> (viewed 25 November 2014).

<sup>30</sup> Recommendations 104, 105, 106 and 107.

<sup>31</sup> Close the Gap Campaign, Statement of Intent. At <http://www.humanrights.gov.au/publications/closegap-indigenous-health-equality-summit-statement-intent> (viewed 26 November 2014).

*Closing the Gap Prime Minister's Report* to the House of Representatives.<sup>32</sup> The report revealed that the targets to halve the gap in child mortality within a decade and to have 95 per cent of remote children enrolled in preschool are on track. Whilst Aboriginal and Torres Strait Islander life expectancy has modestly increased, there has been almost no progress in closing the life expectancy gap.<sup>33</sup> It should be noted that the current data represents changes occurring prior to the *Closing the Gap Strategies* having their full impact. ACHRA believes time must be allowed for improvements in life expectancy rates. Life expectancy is a summary measure of overall population health, and can only be expected to change at a slow pace. Echoing the campaign, ACHRA believes the persistence of life expectancy inequality demonstrates why the national effort to close the life expectancy gap is required, how much time is required and why this task must be placed above politics and remain a constant across political cycles.

39. ACHRA welcomes the Australian Government's commitment to the National Aboriginal and Torres Strait Islander Health Plan 2013–2023 (Health Plan) launched in July 2013. ACHRA acknowledges and welcomes the work commenced by the Australian Government on an implementation plan for the Health Plan. Importantly, this work is being undertaken in partnership with Aboriginal and Torres Strait Islander leadership in the sector. ACHRA however remains concerned about ongoing and sustainable nationally coordinated funding. The National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes expired in 2013. In December 2013 the Council of Australian Governments announced it would not seek to renew the agreement and would focus efforts on bilateral agreements with each jurisdiction. This approach could potentially fragment the *Closing the Gap Strategies* from a national to jurisdictional response. ACHRA calls on the Australian Government to retain its leadership position in working with state and territory governments to ensure that funding arrangements facilitate a nationally coordinated approach.

40. ACHRA notes that Aboriginal and Torres Strait Islander women are 45 times more likely to be victims of domestic and family violence<sup>34</sup> and 35 times more likely to be hospitalised as a result of violence-related assault than non-Indigenous women in Australia.<sup>35</sup> ACHRA considers that culturally appropriate and adequately funded prevention and support services are needed and supports the full engagement of Aboriginal and Torres Strait Islander women in designing and delivering these services.

41. Several countries raised the issue of disproportionate representation of Aboriginal and Torres Strait Islander peoples within the criminal justice system.<sup>36</sup> The overrepresentation of Aboriginal and Torres Strait Islander peoples as both victims and offenders in the criminal justice system remains one of the most glaring disparities between Aboriginal and Torres Strait Islander Australians and non-Indigenous

<sup>32</sup> Australian Government, *Closing the Gap Prime Minister's Report* 2014. At <http://www.dpmc.gov.au/PUBLICATIONS/index.cfm> (viewed 26 November 2014).

<sup>33</sup> Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators* 2014. At <http://www.pc.gov.au/gsp/overcoming-indigenous-disadvantage/key-indicators-2014> (viewed 4 December 2014).

<sup>34</sup> C Cunneen, 'Preventing Violence against Indigenous Women through Programs which Target Men', *University of New South Wales Law Journal*, (2005), p 242.

<sup>35</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2009), p 26. At [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0003/90129/key-indicators-2009.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0003/90129/key-indicators-2009.pdf) (viewed 8 January 2015).

<sup>36</sup> Recommendations 90, 92, 93 and 95.

Australians. ACHRA remains concerned about high and increasing incarceration rates of Aboriginal and Torres Strait Islander children and adults.

- Aboriginal and Torres Strait Islander peoples are currently imprisoned at a rate of 2208 per 100 000, which is over 11 times higher than the rate of imprisonment for non-Indigenous people<sup>37</sup>
- Aboriginal and Torres Strait Islander young people are currently imprisoned at a rate of 364.8 per 100 000, which is around 24 times higher than their non-Indigenous counterparts<sup>38</sup>
- Although Aboriginal and Torres Strait Islander Australians make up only 2.3 per cent of the adult population, they represent over a quarter (27.4 per cent) of the adult prison population as at 30 June 2013<sup>39</sup>
- The adult imprisonment rate for Aboriginal and Torres Strait Islander people has increased by 57.4 per cent since 2000<sup>40</sup>
- At 30 June 2013, the rate of imprisonment for Aboriginal and Torres Strait Islander males (3765.1 per 100 000 adult males) was more than 10 times the rate for Aboriginal and Torres Strait Islander females (365.9 per 100 000 adult females).<sup>41</sup> However, the female imprisonment rate is growing faster (a 73.7 per cent increase since 2000 compared with a 38.6 per cent increase for males)<sup>42</sup>
- The rate of imprisonment for Aboriginal and Torres Strait Islander women has grown by 58.6 per cent between 2000 and 2010.

42. ACHRA advocates that the solution to this issue lies in focusing on creating safer communities where violence is not tolerated, where victims have access to the entire spectrum of support services and where the emphasis is on the prevention of crime and violence occurring in the first place. To achieve this, ACHRA encourages

<sup>37</sup> The rate of imprisonment for the general population rate of 188 per 100,000 (based on average daily imprisonment rate): Australian Bureau of Statistics (ABS), Corrective Services Australia June Quarter 2014, 4512.0 (September 2014). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0?OpenDocument> (viewed 26 September 2014).

<sup>38</sup> Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission (2014), p.4.12. At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014> (viewed 8 January 2015).

<sup>39</sup> Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011, Productivity Commission (2011), p 4.132. At <http://www.pc.gov.au/gsp/overcoming-indigenous-disadvantage/key-indicators-2011> (viewed 14 October 2014).

<sup>40</sup> Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011, Productivity Commission (2011), p 4.132. At <http://www.pc.gov.au/gsp/overcoming-indigenous-disadvantage/key-indicators-2011> (viewed 14 October 2014).

<sup>41</sup> Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission (2014), p.4.12.1 At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014> (viewed 8 January 2015).

<sup>42</sup> Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission (2014), p.4.12.1 At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014> (viewed 8 January 2015).

the Australian Government to adopt justice reinvestment programs as well as justice targets and benchmarks. This approach looks beyond offenders, to the needs of victims and communities. A portion of the funds for imprisonment is diverted to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities, such as parenting programs, early education and care, youth mentoring, numeracy and literacy programs, training and employment pathways.

43. The Senate Legal and Constitutional Affairs Committee has recommended that the Australian Government should support justice reinvestment trials.<sup>43</sup> In particular, the Senate Committee has recommended that any trial should actively involve communities in the process, be conducted on the basis of rigorous justice mapping (the identification of place-based communities and of existing services and gaps in services required to reduce crime) over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process.<sup>44</sup>

44. ACHRA encourages the Australian Government to adopt justice reinvestment approaches and justice targets, such as a target to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples. Adopting justice targets in line with existing strategies to address Indigenous disadvantage, such as through the *Close the Gap* campaign will provide additional visibility, clear benchmarks and targeted action to this area.

45. At a state level, the Victorian Equal Opportunity and Human Rights Commission completed research in 2013 which confirmed the compelling need for a more comprehensive and effective approach to reducing the increasing incarceration of Aboriginal and Torres Strait Islander women, noting that 80 per cent of Aboriginal and Torres Strait Islander women in Victorian prisons are mothers.<sup>45</sup> Accordingly, preventative and diversionary responses must be tailored to the particular needs and circumstances of these women.

46. ACHRA welcomes the inclusion of the development of diversionary options for Koori women as an action item under the Victorian Aboriginal Justice Agreement 3 (AJA3) and the re-affirmation of this commitment by the Victorian Government in

<sup>43</sup> Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013), p 124. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index) (viewed 8 January 2015).

<sup>44</sup> Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013), p 125. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index) (viewed 8 January 2015).

<sup>45</sup> Victorian Equal Opportunity and Human Rights Commission, *Unfinished business: Koori women and the justice system* (2013). At <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/679-unfinished-business-koori-women-and-the-justice-system> (viewed 14 October 2014).

2012.<sup>46</sup> A residential diversion facility remains the highest priority for the Koori Caucus of the Aboriginal Justice Forum, Victoria.<sup>47</sup>

47. ACHRA notes the recent report by the Commission into the imprisonment of four Aboriginal men for a number of years in maximum security prisons in the NT, despite having existing cognitive disabilities and otherwise being found unfit to stand trial by reason of insanity. The Commonwealth were found to have failed to work with the NT government to provide adequate accommodation and support services. This also included a failure to act in line with a number of international law obligations, as articulated in the ICCPR and the *International Convention on the Elimination of All Forms of Racial Discrimination*. The Commission made a number of recommendations about ways to improve support services, access to advice and accommodation for people with cognitive disabilities when faced with a custodial sentence. The Commission's report also stressed the need for the Commonwealth to cooperate with the NT to develop model service system standards for the detention of people with a cognitive impairment.<sup>48</sup>

48. **Gender equality** was raised by a number of countries. ACHRA commends the Australian Government for continued support of the National Women's Alliances.<sup>49</sup> In the area of pay and employment, ACHRA welcomes the *Workplace Gender Equality Act 2013* (Cth), and the recent release of the first benchmark data using the reporting framework.<sup>50</sup> The benchmark data identified the under-representation of women in management positions with women comprising only 26.1 per cent of management positions and 17.3 per cent of Chief Executive Officer positions. The data confirmed a gender pay gap for full-time remuneration of 19.9 per cent, and a gender pay gap of full-time total remuneration of 24.7 per cent. The data also identified gaps in the policies and strategies within workplaces to combat gender inequality. ACHRA welcomes the release of the data and emphasises the importance of maintaining the collection of workplace gender equality data.

49. Violence against women remains a critical and endemic issue in Australia with statistics suggesting that 41 per cent of women aged 18 and over have experienced violence in their lifetime. ACHRA notes that the Australian Government has taken significant positive steps to reduce violence against women in the last five years. In particular, through the National Plan to Reduce Violence against Women and their Children 2010–22 delivered through four three-year Action Plans. ACHRA wel-

<sup>46</sup> Department of Justice, Victorian Aboriginal Justice Agreement. At <http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement> (viewed 14 October 2014).

<sup>47</sup> The Aboriginal Justice Forum is a coordinating body made up of government agencies and the Aboriginal community, which meets regularly to oversee the implementation of the AJA3. The Koori Caucus of the Aboriginal Justice Forum is comprised of representatives of the Aboriginal community.

<sup>48</sup> Australian Human Rights Commission, President reports on KA, KB, KC and KD v Commonwealth (Department of Prime Minister and Cabinet, Department of Social Services, Attorney-General's Department) [2014] AusHRC 80. At <https://www.humanrights.gov.au/news/media-releases/president-reports-ka-kb-kc-and-kd-v-commonwealth-department-prime-minister-and> (viewed 5 December 2014).

<sup>49</sup> The five National Women's Alliances (the Alliances) represent over 180 women's organisations. See Department of the Prime Minister and Cabinet, Engaging with Women's Organisations, <https://www.dpmc.gov.au/office-women/wlds-and-grants/national-womens-alliances> (viewed 8 January 2015).

<sup>50</sup> Workplace Gender Equality Agency, Australia's gender equality scorecard (November 2014), p 3. At [https://www.wgea.gov.au/sites/default/files/2013-14\\_summary\\_report\\_website.pdf](https://www.wgea.gov.au/sites/default/files/2013-14_summary_report_website.pdf) (viewed 5 December 2014).

comes the development of plans for every state and territory,<sup>51</sup> and initiatives under these plans such as a Crisis Support Scheme in the ACT.<sup>52</sup> ACHRA also welcomes the establishment of the National Foundation to Prevent Violence against Women and their Children (Ourwatch) and the establishment of Australia's National Research Organisation for Women's Safety.

50. In November 2011 the federal Parliament enacted the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) which seeks to respond more effectively to domestic and family violence and child abuse in the family law system. In June 2013, the federal Parliament enacted the *Fair Work Amendment Act 2013* (Cth) that expanded the right to request a flexible working arrangement to include those experiencing or supporting an immediate family or household member who is enduring violence in the family or household.

51. ACHRA remains concerned that a range of crisis and longer term support services for women experiencing violence continues to be under-resourced, and that there continue to be inadequate levels of specific support available for women living in rural and remote areas, women from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander women, women with disabilities, as well as lesbian, trans and intersex women. ACHRA recommends an inclusive implementation of the National Plan to Reduce Violence against Women and their Children that accommodates all women's needs and includes adequate, sustainable funding for specific programs and services, including prevention programs, critical response services, accommodation services and legal services.

52. ACHRA welcomes continued periodic data collection, including regular prevalence surveys such as the Australian Bureau of Statistics' *Personal Safety Survey* and the *National Community Attitudes to Violence Against Women Survey*, and notes that cross-jurisdictional data is essential to inform public policy responses to violence against women. ACHRA notes however the limited available data on the experiences of violence of specific groups of women, including culturally and linguistically diverse women, Aboriginal and Torres Strait Islander women, women with disabilities and lesbian, trans and intersex women, and recommends addressing this gap as a matter of priority.

53. ACHRA remains concerned at the prevalence of discrimination in the workplace, including discrimination on the basis of pregnancy, parental leave and return to work. The recent National Review on discrimination in the workplace related to pregnancy, parental leave and return to work found that one in two women reported that they had experienced these forms of discrimination.<sup>53</sup>

<sup>51</sup> For example, the Action Plan to Address Violence against Women and Children 2012-2015 by the Victorian Government. Victorian Government, *Victoria's Action Plan to Address Violence against Women and Children 2012-2015* (2012). At <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/women/action-plan-to-address-violence-against-women-and-children> (viewed 10 October 2014).

<sup>52</sup> A Morozow, 'ACT women with disabilities offered way to escape domestic violence' (ABC News, 5 August 2015). At <http://www.abc.net.au/news/2014-08-05/new-service-for-women-with-disabilities/5650490> (viewed 13 October 2014).

<sup>53</sup> Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report* (2014), p 8. At <https://www.humanrights.gov.au/publications/supporting-working-parents-pregnancy-and-return-work-national-review-report> (viewed 10 December 2014).

54. ACHRA also remains concerned about the significant gap in women's retirement savings with women on average retiring with half the retirement savings of men. ACHRA notes that the retirement savings pay gap is caused by a range of factors including the gender pay gap, discrimination in the workplace, the disproportionate amount of unpaid care work carried out by women, and that women live longer. ACHRA urges the Australian Government to examine a range of options for addressing this issue such as those outlined in the Commission's *Investing in Care* report.<sup>54</sup>

55. ACHRA acknowledges the commitment of the senior leadership of the Australian Defence Force to cultural reform including its efforts towards ensuring that the organisation is diverse and inclusive. ACHRA also commends Victoria Police for recently commissioning an independent review into sex discrimination and sexual harassment, including predatory behaviour, amongst Victoria Police personnel.

56. Several countries posed questions on Australia's progress in protecting and promoting the **rights of the child**. ACHRA is disappointed to note that the Australian Government has not yet formed a formal position on the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPCP)* which establishes a communications procedure. ACHRA encourages the Australian Government to develop a formal view on the OPCP as a matter of priority.

57. The second statutory report of the National Children's Commissioner investigates how the human rights of children and young people engaging in intentional self-harm with and without suicidal intent can be better protected. The report's primary finding is that too much continues to be unknown and this is impeding the prediction and prevention of injury and death resulting from intentional self-harm, with or without suicidal intent, in children and young people. The National Children's Commissioner makes four recommendations that provide direction for moving forward.

58. ACHRA welcomes the progress under the National Framework for Protecting Australia's Children 2009–2020 and its third Three-Year Action Plan. ACHRA also welcomes the two year extension of time granted to the Royal Commission to investigate Institutional Responses to Child Sexual Abuse.<sup>55</sup>

59. ACHRA welcomes the appointment in 2013 of Victoria's first Commissioner for Aboriginal Children and Youth. The Commissioner will oversee a five-year plan for Aboriginal children in out-of-home care, and provide advice to government and service providers about policies and practices that promote the safety and well-being of Aboriginal children. ACHRA also welcomes the commencement of an inquiry in 2014 by the Victorian Commission for Children and Young People into the adequacy

<sup>54</sup> Australian Human Rights Commission, *Investing in Care: Recognising and valuing those who care*. Volume 1: Research Report (2013), pp 10-15. At [https://www.humanrights.gov.au/sites/default/files/UnpaidCaringVolume1\\_2013.pdf](https://www.humanrights.gov.au/sites/default/files/UnpaidCaringVolume1_2013.pdf) (viewed 5 December 2014).

<sup>55</sup> Attorney-General for Australia, Minister for the Arts and Minister for Social Services, 'Child Abuse Royal Commission granted a two year extension', (Media Release 2 September 2014). At <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/ThirdQuarter/2September2014-ChildAbuseRoyalCommissionGrantedATwoYearExtension.aspx> (viewed 26 November 2014).



of the provision of services to children and young people who have been subjected to sexual exploitation or sexual abuse whilst residing in state-funded residential care.<sup>56</sup>

60. Initiatives that strengthen the **rights of older persons** in Australia have continued. ACHRA welcomes the continued implementation of the 2013 reforms to the Australian aged care system. The ten year reform program aims to create a more flexible and consumer focussed system aimed at providing greater control and choice of aged care services.

61. Australian workforce participation rates amongst older people when compared with other OECD countries remain low. ACHRA welcomes the Commission's 2014 campaign, *The Power of Oldness*.<sup>57</sup> The campaign exposes the stark difference between the skills and strengths of mature workers with the discrimination they face when trying to gain or maintain jobs.

62. ACHRA notes the Australian Government's decisions to discontinue advisory panels on issues affecting older people including the Advisory Panel on Positive Ageing (APPA) and the Insurance Reform Advisory Group (IRAG). APPA's role was to lead a national dialogue on ageing issues. While the Panel continued its work with backing from the private sector, ACHRA is concerned that the Australian Government remains without comparable independent expert advice on issues affecting older Australians.

63. ACHRA also notes that IRAG had been working on limitations for older people in access to insurance, including limitations that apply to income protection insurance for older people. ACHRA welcomes the continued engagement between the Age Discrimination Commissioner, insurers and other stakeholders to facilitate better information and access to insurance products. This work is aligned with the Australian Law Reform Commission's recommendation for the Commission to undertake work on the insurance exception in the *Age Discrimination Act 2004* (Cth).

64. ACHRA urges the Australian Government to support the drafting of a Convention on the Rights of Older Persons. The Australian Government has not yet expressed a position.

65. Several countries made recommendations related to the **rights of people with disabilities**. As the 2013 UPR Progress Report noted, the National Disability Strategy 2010–2020 was formally endorsed by the Council of Australian Governments in 2011, and the first implementation plan *Laying the Groundwork 2011-2014* was included in the 2010–2020 Report to the Council of Australian Governments. ACHRA is concerned with the continued lack of implementation of the National Disability Strategy as a foundation to ensuring that the principles underpinning the *Convention on the Rights of Persons with Disabilities* are incorporated into policies and programs affecting people with disabilities, their families and their carers.

66. ACHRA welcomes the continued support and roll out of the National Disability Insurance Scheme (NDIS) by the Australian Government. The scheme is operating within budget, with \$130.9 million of support being provided to people with disability in the first year of operation. \$4.5 million was invested through the Sector Development Fund to assist individuals and service providers to transition from

<sup>56</sup> Commission for Children and Young People, Inquiry into the adequacy of the provision of services to children and young people who have been subjected to sexual exploitation or sexual abuse whilst residing in residential care. At <http://www.ccyp.vic.gov.au/> (viewed 8 December 2014).

<sup>57</sup> Australian Human Rights Commission, *The Power of Oldness*. At <http://www.powerofoldness.com/> (viewed 19 February 2015).

state-based models of support to the NDIS. The National Disability Insurance Agency has reported a 94 per cent rate of satisfaction amongst participants across the four trial sites that commenced roll out in July 2013. Personal increases in independence and participation have been highlighted by qualitative data.

67. ACHRA remains concerned that employment rates of people with disabilities are comparable with 1993 levels when the *Disability Discrimination Act 1992* (Cth) came into effect. Overall employment rates for people with disability remain low, with labour force participation at around 53 per cent, compared to 83 per cent for people without disability.<sup>58</sup> The rate of unemployment for people with disabilities also increased in 2012 from 7.8 per cent in 2009 to 9.4 per cent in 2012.<sup>59</sup> There has been a consistent decline in employment levels of people with disability in the Australian Public Service over the last 20 years from 5.8 per cent in 1992, to 3.7 per cent in 2001, to 3.1 per cent in 2014.<sup>60</sup>

68. ACHRA remains concerned at the ongoing barriers facing people with disabilities in accessing public transport. The final report from the 2012 Review of the Disability Standards for Accessible Public Transport has not yet been published. However, key recommendations in the draft concern the development of industry-specific guidelines, national compliance reporting and standards modernisation.<sup>61</sup> ACHRA continues to monitor progress through its involvement in the Accessible Public Transport National Advisory Committee.

69. ACHRA notes with concern reports that the practice of involuntary sterilisation of children and adults with disabilities is continuing. ACHRA also notes the persistence of violence against women with disabilities. ACHRA encourages the Australian Government to take note of and implement the recommendations in the Concluding Observations on Australia by the United Nations Committee Against Torture on this issue.<sup>62</sup>

70. Access to justice for people with disabilities continues to present significant challenges. The Commission's 2014 report, *Equal Before the Law*, expressed concerns about access to justice in the criminal justice system for people with disabili-

<sup>58</sup> Australian Bureau of Statistics (ABS), *Disability, Ageing and Carers, Australia: Summary of Findings, 2012*, 4430.0 (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument> (viewed 26 November 2014).

<sup>59</sup> Australian Bureau of Statistics (ABS), *Disability, Ageing and Carers, Australia: Summary of Findings, 2012*, 4430.0 (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument> (viewed 26 November 2014).

<sup>60</sup> Australian Public Service Commission, *Workplace Diversity Report 2000–01* (2001) p 73. At <http://www.apsc.gov.au/publications-and-media/print-only> (viewed 23 October 2013); Australian Public Service Commission, *State of the Service Report, State of the Services Series 2013–14* (2014) p 209. At <http://www.apsc.gov.au/publications-and-media/current-publications/state-of-the-service/state-of-the-service-2013-14> (viewed 4 December 2014).

<sup>61</sup> Australian Government, *Review of the Disability Standards for Accessible Public Transport 2002 – Draft Report*, Department of Infrastructure and Regional Development (May 2014). At <http://www.infrastructure.gov.au/transport/disabilities/review/2012.aspx> (viewed 4 December 2014).

<sup>62</sup> United Nations Committee Against Torture, *Concluding observations on the fourth and fifth periodic reports of Australia – Advanced Unedited Version*. At [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT\\_C\\_AUS\\_CO\\_4-5\\_18888\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT_C_AUS_CO_4-5_18888_E.pdf) (viewed 5 December 2014).

ties.<sup>63</sup> The report found that necessary supports and adjustments for people with disabilities were frequently not provided in the criminal justice system. The report emphasised the need for Australian jurisdictions to develop a Disability Justice Strategy to address barriers and gaps in access to justice for people with disabilities.<sup>64</sup> ACHRA notes that South Australia has developed a Disability Justice Plan.<sup>65</sup> In the ACT, the Disability and Community Services Commissioner and the Human Rights and Discrimination Commissioner have proposed that the ACT Government adopt a Disability Justice Plan. In Tasmania, discussions have begun on the development of a Disability Justice Plan.

71. The Victorian Equal Opportunity and Human Rights Commission has also recently completed research which examines whether police services are delivered on an equal footing for people with disabilities who are victims of crime, compared to those without disability. The research found that people with disabilities face significant and multifaceted barriers when it comes to reporting crime to police, and raises the need for better coordination and governance across and within services' systems.<sup>66</sup>

72. ACHRA is also concerned about cases of indefinite detention of people with a cognitive impairment. In some Australian jurisdictions, when people with cognitive impairment are found to be unfit to plead to criminal charges, they become subject to mental health legislation.<sup>67</sup> The Commission has previously expressed serious concern about the cases of Marlon Noble and Christopher Leo.<sup>68</sup> Both of these men have been held in indefinite detention. Marlon Noble, prior to his release was in prison for 10 years without being tried or convicted of any crime.<sup>69</sup>

73. ACHRA welcomes the Australian Law Reform Commission's inquiry report into *Equality, Capacity and Disability in Commonwealth Laws* and notes that the re-

- 
- <sup>63</sup> Australian Human Rights Commission, *Equal Before the Law*. At <http://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 19 February 2015)
- <sup>64</sup> Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies* (February 2014), p 11. At [http://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf) (viewed 13 October 2014).
- <sup>65</sup> Attorney-General's Department, *Disability Justice Plan 2014-2017*. At <http://www.agd.sa.gov.au/initiatives/disability-justice-plan> (viewed 13 October 2014).
- <sup>66</sup> Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: the Experiences of People with Disabilities Reporting Crime* (2014). At <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime> (viewed 14 October 2014).
- <sup>67</sup> Detention can occur in prisons in Western Australia under the Criminal Law (Mentally Impaired Accused) Act 1996 (WA) and in the Northern Territory under the Criminal Code Act 1983 (NT), Part IIA. Detention occurs in psychiatric hospitals in Queensland under the Mental Health Act 2000 (Qld) and the Forensic Disability Act 2011 (Qld) and in Tasmania under the Tasmania Criminal Justice (Mental Impairment) Act 1999 (Tas).
- <sup>68</sup> Australian Human Rights Commission, *Social Justice and Native Title Report 2013* (2013), p. 55. At <http://www.humanrights.gov.au/publications/aboriginal-and-torres-strait-islander-social-justice?source=our-work> (viewed 14 October 2014).; Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies* (February 2014), pp 12-13. At [http://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf) (viewed 13 October 2014).
- <sup>69</sup> Australian Human Rights Commission, *Twenty Years: Twenty Stories: Presumed Guilty*. At <http://www.humanrights.gov.au/twentystories/videos.html> (viewed 14 October 2014).

port recommends significant changes to individual decision-making at the Commonwealth and state and territory level. These changes include that individual decision-making should be guided by a set of National Decision-Making Principles and Guidelines to ensure that supported decision-making is encouraged, representative decision-makers are appointed only as a last resort, and the will, preferences and rights of persons direct decisions that affect their lives.<sup>70</sup> ACHRA encourages the Australian Government to accept the recommendations of the inquiry. ACHRA also encourages the Australian Government to work with state and territory governments to implement the recommended reforms at the state and territory level.

74. Several countries raised questions concerning the **rights of people who are lesbian, gay, bisexual, trans, gender diverse and intersex (LGBTI)**. ACHRA welcomes the consultation conducted by the national Human Rights Commissioner to explore the key rights issues affecting LGBTI people in Australia. These consultations will be conducted through an online survey and email submission process. The online consultation period will be supported by a number of targeted meetings and community forums with LGBTI groups, organisations and individuals across the country. The outcomes of this process will inform the work of the Commissioner in the area of Sexual Orientation, Gender Identity and Intersex (SOGII) Rights over his tenure as Human Rights Commissioner.

75. ACHRA also welcomed the launch of *Sogi's Story* at the Commission.<sup>71</sup> *Sogi's Story* is an educational resource pack which has been developed with and for African national human rights institutions, civil society organisations and local community groups to encourage learning and awareness of SOGII rights.

76. In 2013, the Australian Government passed the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) which has introduced new grounds of discrimination into the *Sex Discrimination Act 1984* (Cth), in effect from 1 August 2013. ACHRA welcomed these amendments which prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in specific areas of public life, as set out in the *Sex Discrimination Act 1984* (Cth).<sup>72</sup>

77. However, in view of the High Court of Australia's unanimous decision that the ACT's *Marriage Equality (Same Sex) Act 2013* could not operate concurrently with the federal *Marriage Act 1961* (Cth) and was therefore invalid, ACHRA remains concerned that the Australian Government continues to discriminate against same-sex couples and against people with diverse sex and genders by denying them the right to marry. ACHRA notes the Freedom to Marry Bill 2014 introduced into the Australian Senate on 26 November 2014. The Bill seeks to amend the *Marriage Act 1961* (Cth) to enable all Australians regardless of sex, sexual orientation, and gender identity to marry. The second reading debate on the Bill has been adjourned.

78. ACHRA welcomes the recent enactment of legislation in Victoria which provides a scheme for expunging old criminal convictions of Victorians who were prosecuted for engaging in consenting homosexual sex prior to 1981.<sup>73</sup> The legislation also amends Victoria's equal opportunity legislation to prohibit discrimination on the

<sup>70</sup> Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws, ALRC Report 124. At <https://www.alrc.gov.au/publications/equality-capacity-disability-report-124> (viewed 26 November 2014).

<sup>71</sup> Australian Human Rights Commission, *Sogi's Story*. At <http://www.humanrights.gov.au/news/stories/sogis-story> (viewed 26 November, 2014).

<sup>72</sup> Sex Discrimination Act 1984 (Cth) ss 5A, 5B and 5C.

<sup>73</sup> Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014 (Vic).

basis of an expunged homosexual conviction. ACHRA also welcomes the recent enactment of legislation in New South Wales, amending the *Criminal Records Act 1991* (NSW) to allow convictions for certain homosexual sexual conduct offences to become extinguished.

79. ACHRA is concerned about the issue of surgical or hormonal interventions on intersex infants.<sup>74</sup> The Tasmanian Anti-Discrimination Commissioner advised that whilst there are some instances where surgery or other medical intervention is necessary for the physical well-being of the child, a large number of interventions continue to be made to make children more typically male or female on the pretext that it will protect the child from future discrimination.

## 2.4 Migrants, refugees and asylum seekers

80. ACHRA remains deeply concerned about Australia's treatment of refugees and asylum seekers. The Australian Government accepted recommendations in the UPR process to limit the detention of asylum seekers to cases where it is strictly necessary,<sup>75</sup> and for the shortest time reasonably necessary.<sup>76</sup> ACHRA is concerned that the Australian Government continues to implement a policy of mandatory indefinite detention, under which broad categories of people are detained without individualised assessment or judicial review of the need for their detention. Large numbers of people are held in immigration detention within Australia and in offshore processing centres in Nauru and Manus Island, Papua New Guinea. As at 31 October 2014, 3084 people were held in immigration detention in Australia, with a further 2151 held in offshore processing centres.<sup>77</sup>

81. The majority of those detained are held in closed detention centres where they have no freedom of movement. The absence of a limit on the length of time a person can be detained under the *Migration Act 1958* (Cth) coupled with significant delays in the processing of claims has resulted in larger numbers of people being subject to prolonged detention. ACHRA is extremely concerned that over the last year the average period of detention has increased to 426 days as at 31 October 2014,<sup>78</sup> compared to an average period of detention of 139 days at 31 October 2013.<sup>79</sup>

82. Prolonged detention has detrimental impacts on mental health. ACHRA notes that despite the Australian Government's efforts to improve mental health support services, there have been numerous reports of self-harm incidents and attempted sui-

<sup>74</sup> Australian Human Rights Commission Paper on surgery on intersex infants and human rights (July 2009). At: <https://www.humanrights.gov.au/surgery-intersex-infants-and-human-rights-2009> (viewed 17 October 2014).

<sup>75</sup> Recommendation 123.

<sup>76</sup> Recommendation 127.

<sup>77</sup> Department of Immigration and Border Protection Immigration Detention and Community Statistics Summary 31 October 2014 (2014) At <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-oct2014.pdf> (viewed 24 November 2014).

<sup>78</sup> Department of Immigration and Border Protection Immigration Detention and Community Statistics Summary 31 October 2014 (2014), p 10. At <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-oct2014.pdf> (viewed 24 November 2014).

<sup>79</sup> Department of Immigration and Border Protection Immigration Detention and Community Statistics Summary 31 October 2013 (2013), p 10: As at 31 October 2014 68.4% of those in detention have been detained for more than one year as at that date. In comparison, at the same time last year only 5% of people had been held for more than a year. At [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-oct2013.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-oct2013.pdf) (viewed 24 November 2014).

cide amongst detained asylum seekers including children.<sup>80</sup> ACHRA urges the Australian Government to continue to increase the use of community arrangements as an alternative to detention in closed facilities.

83. ACHRA is disappointed by the lack of policy progress in relation to refugees who have received adverse security assessments and their children. Refugees subject to adverse security orders must remain in closed immigration detention facilities, unless a third country agrees to their resettlement. As this commonly does not occur, they face indefinite detention.

84. At present, there are approximately 40 refugees with adverse security assessments in immigration detention. Many have been in detention for over five years. ACHRA urges the Australian Government to consider alternatives to closed immigration detention for these people. Alternatives may include community detention or a bridging visa, if necessary with strict conditions to mitigate any identified risks an individual may pose. For example, conditions might include a requirement to reside at a specified location, curfews, travel restrictions, regular reporting and possibly even electronic monitoring. ACHRA welcomes the government's announcement that the Independent Reviewer for Adverse Security Assessments will continue in her role for a further two years. Continuation of this appointment is critical to ensuring security assessment transparency.<sup>81</sup>

85. ACHRA holds serious concerns for those who arrive to Australia by boat and are transferred to Nauru and Papua New Guinea for processing as a result. A number of Australia's international human rights obligations are potentially undermined by third country processing arrangements. ACHRA considers that existing arrangements do not contain adequate safeguards to protect asylum seekers from the risk of refoulement or arbitrary detention. ACHRA is particularly alarmed by the Australian Government's failure to exclude LGBTI asylum seekers from eligibility for transfer to Papua New Guinea, where homosexual activity is a criminal offence. ACHRA is concerned that asylum seekers transferred to Nauru and Papua New Guinea are subject to mandatory and indefinite detention in conditions that are reported to be harsh and well below international standards.<sup>82</sup>

86. ACHRA welcomed the Australian Government's decision to release children under the age of 10 who arrived prior to 19 July 2013 (and their families) from

<sup>80</sup> See Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), part 6. At [http://www.ombudsman.gov.au/files/suicide\\_and\\_self-harm\\_in\\_the\\_immigration\\_detention\\_network.pdf](http://www.ombudsman.gov.au/files/suicide_and_self-harm_in_the_immigration_detention_network.pdf) (viewed 4 December 2014); Australian Human Rights Commission, 'New Mothers on Suicide Watch on Christmas Island' (24 July 2014). At <http://www.humanrights.gov.au/news/stories/new-mothers-suicide-watch-christmas-island> (viewed 4 December 2014); L Elliott, Report to the Australian Human Rights Commission Inquiry into the Impact of Immigration Detention on Christmas Island: Christmas Island Visit, July 14th to July 17th 2014, p 13. At <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014/expert> (viewed 4 December 2014).

<sup>81</sup> Attorney-General of Australia, Media Release - Continuation of the Office of the Independent Reviewer of Adverse Security Assessments, 11 December 2014. At <http://www.attorneygeneral.gov.au/MediaReleases/Pages/2014/FourthQuarter/11December2014-ContinuationoftheOfficeoftheIndependentReviewerofAdverseSecurityAssessments.aspx> (viewed 19 February 2015).

<sup>82</sup> UNHCR, UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11–13 June 2013 (2013). At [www.refworld.org/docid/51f61ed54.html](http://www.refworld.org/docid/51f61ed54.html) (viewed 24 November 2014); UNHCR Mission to the Republic of Nauru, 3–5 December 2012 (2013). At [www.refworld.org/docid/50cb24912.html](http://www.refworld.org/docid/50cb24912.html) (viewed 24 November 2014).

closed detention.<sup>83</sup> However, ACHRA is disappointed that the Government continues to pursue a policy of the mandatory detention of children who do not fall within this group, in contravention of Australia's commitment under the CRC to detain children only as a measure of last resort. ACHRA holds grave concerns for the 167 children held in conditions inappropriate for children at Nauru as at 31 October 2014.<sup>84</sup> During 2014, the Commission conducted a National Inquiry into Children in Immigration Detention to examine the impact of closed immigration detention on the health, well-being and development of children. The Inquiry report has been transmitted to the Australian Government and it is expected it will be tabled in the near future.

87. As noted above at paragraph 10, the Australian Government has introduced several bills to amend the *Migration Act 1958* (Cth).<sup>85</sup> ACHRA is gravely concerned that changes proposed by the legislation are inconsistent with Australia's obligations under several international human rights instruments, in particular Australia's obligation of non-refoulement.

88. The Australian Government accepted a number of recommendations to strengthen measures aimed at combatting racial discrimination against people from **culturally and linguistically diverse backgrounds**.<sup>86</sup> ACHRA welcomed the government's decision not to proceed with proposed amendments to the *Racial Discrimination Act 1975* (Cth) that would weaken existing legal protections against racial vilification and intimidation. ACHRA applauds the Australian Government for their continued support of the National Anti-Racism Partnership Strategy. The national anti-racism campaign central to the strategy, *Racism. It Stops With Me*, now has more than 320 organisational supporters.<sup>87</sup>

89. In 2012, an independent inquiry was conducted into the responsiveness of Australian Government services to the needs of Australians from culturally and linguistically diverse backgrounds.<sup>88</sup> In March 2013, the Australian Government expressed support for all of the inquiry's recommendations aimed at improving the response of government services to the needs of people from culturally and linguisti-

<sup>83</sup> Minister for Immigration and Border Protection, 'Getting children safely out of detention', (Media Release, 19 August 2014). At <http://www.minister.immi.gov.au/media/sm/2014/sm217171.htm> (viewed 24 November 2014).

<sup>84</sup> Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary 31 October 2014 (2014), p 3. At <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-oct2014.pdf> (viewed 5 December 2014).

<sup>85</sup> Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013 (Cth), Migration Amendment (Protection and Other Measures) Bill 2014 (Cth), Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth), passed by both houses 26 November 2014, Migration and Maritime Powers Legislation (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth), passed by both houses 4 December 2014.

<sup>86</sup> Recommendations 59-64.

<sup>87</sup> Australian Human Rights Commission, *Racism. It Stops With Me*. At <http://itstopswithme.humanrights.gov.au/> (viewed 19 February 2015)

<sup>88</sup> Australian Government, (2013). Access and Equity for a multicultural Australia: Inquiry into the responsiveness of Australian Government services to Australia's culturally and linguistically diverse population. At <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/access-and-equity/access-and-equity-inquiry> (viewed 4 December 2014).

cally diverse backgrounds.<sup>89</sup> ACHRA encourages the Australian Government to take action on the recommendations.

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

90. ACHRA has ongoing concerns about the criminal justice system in Australia.

91. ACHRA notes a modest national decline in the average number and rate of children in detention over the past year, continuing a four year trend.<sup>90</sup> ACHRA applauds the ACT, Victorian and Tasmanian governments for strengthening diversionary responses for youth. However, ACHRA notes that the decrease in overall rates of young people aged 10-17 in detention over the past four years is mainly due to a decrease in the sentenced detention rate. The rate of unsentenced detention has remained relatively stable over the past year, as it has over the past four years.<sup>91</sup> As at June 2014, 52 per cent of young people in detention were in unsentenced detention, awaiting a court appearance or sentencing.<sup>92</sup> ACHRA is seriously concerned that children are still being held in correctional centres with adults and that some legislatures are extending this practice.<sup>93</sup>

92. The need to improve systems of oversight over police use of force, misconduct and police related deaths was raised during Australia's UPR appearance. ACHRA welcomes the creation of the Independent Broad-based Anti-corruption Commission (IBAC) in Victoria. Since it became operational in 2013 the IBAC has dealt with matters in relation to allegations of misconduct against Victoria Police, including 79 independent reviews of Victoria Police investigations.<sup>94</sup> The Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides a statutory right to protection from cruel, inhuman or degrading treatment by public authorities, including Victoria Police. However, ACHRA notes that in 2013 the Supreme Court of Victoria held that the Charter does not imply a right to an effective and independent investigation of allegations of cruel, inhuman and degrading treatment under the Charter.<sup>95</sup> ACHRA urges the ratification of the OPCAT as a means of implementing a right to an effective and independent investigation.

<sup>89</sup> See Australian Government, Government Response to the Recommendations of the Access and Equity Inquiry (2013). At [https://www.dss.gov.au/sites/default/files/files/settle/multicultural\\_australia/government-response.pdf](https://www.dss.gov.au/sites/default/files/files/settle/multicultural_australia/government-response.pdf) (viewed 4 December 2014).

<sup>90</sup> Australian Institute of Health and Welfare, Youth detention population in Australia 2014 (2014), p. vii. At <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675> (viewed 5 December 2014).

<sup>91</sup> Australian Institute of Health and Welfare, Youth detention population in Australia 2014 (2014), p. vii. At <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675> (viewed 5 December 2014).

<sup>92</sup> Australian Institute of Health and Welfare, Youth detention population in Australia 2014 (2014), p. 11. At <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675> (viewed 5 December 2014).

<sup>93</sup> The Youth Justice Act 2005 (NT) has recently been amended to permit detainees younger than 15 to be transferred to a custodial correctional facility temporarily where there is 'no practical alternative'. See Youth Justice Act 2005 (NT), s 154(6).

<sup>94</sup> Independent Broad-based Anti-corruption Commission Annual Report 2013-2014 (2014). At <http://www.ibac.vic.gov.au/docs/default-source/ibac-annual-reports/web-pdf---ibac-annual-report-2013-14---20140926.pdf?sfvrsn=4> (viewed 5 December 2014).

<sup>95</sup> *Bare v Small* [2013] VSC 129.



93. ACHRA holds concerns about overcrowding in prisons.<sup>96</sup> The Victorian Ombudsman has reported that Victorian prisons are overcrowded and that there is an increased likelihood of deaths and harm in custody.<sup>97</sup> ACHRA is concerned by the Victorian Government's abolition of the use of suspended sentences for all offences as of 1 September 2014.<sup>98</sup> It is also noted that the Tasmanian Government intends to implement a similar policy.<sup>99</sup> Research by the Victorian Auditor-General has shown that the abolition of suspended sentences has contributed to a growth in prisoner numbers in Victoria.<sup>100</sup> ACHRA is further concerned about a lack of improvement in practices to review and investigate deaths in custody.<sup>101</sup> While all deaths in custody are currently investigated by state coroners, it does not appear that any significant improvements to the system have been made. The Victorian Ombudsman has recently identified shortcomings in the system of review for the prison system in Victoria, finding that the body tasked with review of custodial services in Victoria, the Office of Correctional Services Review, lacks independence and transparency.<sup>102</sup>

94. ACHRA is disappointed to note that several Australian jurisdictions have retained or recently introduced legislation that requires mandatory minimum sentences to apply to certain offences.<sup>103</sup> ACHRA notes that mandatory minimum sentencing laws disproportionately affect children and Aboriginal and Torres Strait Islander peoples.<sup>104</sup>

95. ACHRA welcomed the creation of the position of Independent National Security Legislation Monitor (INSLM) in 2012. The annual reports to parliament of the

<sup>96</sup> Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (2014). At <https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921> (viewed 5 December 2014).

<sup>97</sup> Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (2014), pp. 10, 27 and 28. At <https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921> (viewed 5 December 2014).

<sup>98</sup> Premier of Victoria, 'All suspended sentences abolished from today', (Media Release, 1 September 2014). At <http://archive.premier.vic.gov.au/2014/media-centre/media-releases/10823-all-suspended-sentences-abolished-from-today.html> (viewed 5 December 2014).

<sup>99</sup> E Bevin, Plan to scrap suspended sentences in Tasmania to go ahead despite Risdon Prison capacity concerns, ABC News, 10 June 2014. At <http://www.abc.net.au/news/2014-06-10/tasmanian-attorney-general-planning-to-scrap-suspended-sentences/5511766> (viewed 5 December 2014).

<sup>100</sup> Victorian Auditor-General, *Prisoner Transportation* (2014). At [http://www.audit.vic.gov.au/reports\\_and\\_publications/latest\\_reports/2013-14/20140611-prisoner-transport.aspx](http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2013-14/20140611-prisoner-transport.aspx) (viewed 5 December 2014).

<sup>101</sup> Recommendation 91.

<sup>102</sup> Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (2014), p 12. At <https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921> (viewed 5 December 2014).

<sup>103</sup> L Roth, 'Mandatory Sentencing Laws', NSW Parliamentary Research Service e-brief (2014). At [http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/Mandatory%20sentencing%20laws/\\$File/mandatory+sentencing+laws.pdf](http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/Mandatory%20sentencing%20laws/$File/mandatory+sentencing+laws.pdf) (viewed 5 December 2014).

<sup>104</sup> Australian Human Rights Commission, *Social Justice Report 2013* (2013), p 52-53. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2013> (viewed 14 October 2014); Australian Human Rights Commission, *Children's Rights Report 2013* (2013), p 32. At <https://www.humanrights.gov.au/publications/childrens-rights-report-2013> (viewed 14 October 2014); T Wilson, Queensland Law Society Mandatory Sentencing Policy Paper Launch (Speech delivered at Queensland Law Society, Brisbane, 4 April 2014). At <https://www.humanrights.gov.au/news/speeches/queensland-law-society-mandatory-sentencing-policy-paper-launch> (viewed 14 October 2014).

INSLM have highlighted concerns about control orders, preventative detention orders, questioning and detention orders, and the need for enhancements to terrorism laws to address involvement of Australians in armed conflict abroad. ACHRA is concerned that many key recommendations in the reports have not been implemented. ACHRA is pleased that the government has recently announced a new appointment to the position of INSLM, which had been vacant since 21 April 2014.<sup>105</sup>

96. ACHRA holds concerns about national security laws introduced to parliament in 2014, three of which have been enacted.<sup>106</sup> ACHRA is concerned that elements of these laws will infringe upon human rights in a manner that is disproportionate to the legitimate aim of protecting the public against terrorism. The Commission has further detailed these concerns in its submissions to parliamentary inquiries examining the bills.<sup>107</sup>

### III. Key national priorities, initiatives and commitments

97. The Commission is an ‘A status’ national human rights institution established and operating in full compliance with the Paris Principles. The sufficiency of funding and staffing for the Commission was called into question during Australia’s UPR. ACHRA encourages the Australian Government, through the regular federal budget process, to ensure the Commission continues to operate as an effective ‘A status’ national human rights institution. ACHRA reiterates its note that the Commission’s functions could be enhanced, through legislative amendment, to provide a clearer focus on individual liberties, fundamental freedoms and human rights reflected in the common law.

98. As Australia approaches its second cycle review, ACHRA commends the Australian Government for conducting a consultation process with civil society through the NGO Forum. ACHRA encourages the government to continue consultation and engagement with civil society during the drafting of the Australian Government report to the Human Rights Council UPR.

<sup>105</sup> Prime Minister of Australia, Media Release - Appointment of Independent National Security Legislation Monitor, 7 December 2014. At <https://www.pm.gov.au/media/2014-12-07/appointment-independent-national-security-legislation-monitor> (viewed 19 February 2015).

<sup>106</sup> National Security Legislation Amendment Act (No.1) 2014 (Cth); Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014 (Cth); Counter-Terrorism Legislation Amendment Bill (No.1) (passed both houses on 2 December); Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014.

<sup>107</sup> See Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment Bill (No. 1) 2014 (21 August 2014). At <http://www.humanrights.gov.au/submissions/submission-inquiry-national-security-legislation-amendment-bill-no-1-2014> (viewed 4 December 2014); Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (2 October 2014). At <http://www.humanrights.gov.au/submissions/inquiry-counter-terrorism-legislation-amendment-foreign-fighters-bill-2014> (viewed 4 December 2014); Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 (11 November 2014). At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/Amendment\\_Bill/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Amendment_Bill/Submissions) (viewed 4 December 2014).

## Appendix I

### Calendar of upcoming key UN treaty dates

<i>Treaty</i>	<i>Key dates</i>
<i>Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</i>	Australia appeared before the committee in November 2014  Next report due November 2018
<i>Convention on the Rights of Persons with Disabilities (CRPD)</i>	Next report due August 2018
<i>Convention on the Elimination of Racial Discrimination (CERD)</i>	The report was due October 2012. A combined 18–20th periodic report will be transmitted in 2015
<i>International Covenant on Civil and Political Rights (ICCPR)</i>	Next report was due December 2013
<i>International Covenant on Economic Social and Cultural Rights (ICESCR)</i>	Next report was due June 2014
<i>Convention on the Elimination of Discrimination Against Women (CEDAW)</i>	Next report was due July 2014
<i>Convention on the Rights of the Child (CRC)</i>	Next report due January 2018

## Appendix II

### Implementation status of UPR recommendations

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
1-4, 6	Ratify the OPCAT (Republic of Moldova, Azerbaijan, Maldives, New Zealand, Denmark)	Accepted	Not implemented
3-5	Establish a National Preventative Mechanism (Maldives, New Zealand, Mexico)	Accepted	Not implemented
7	Accede to the remaining core human rights instruments to which it is yet to become a party (Thailand)	Accepted-in-part	Not implemented
7-9	Ratify or consider ratifying CED (Thailand, France, Argentina)	Accepted-in-part	Not implemented
9	Study the possibility of signing and ratifying CED and ICRMW (Argentina)	Accepted-in-part	Not implemented
10	Consider acceding to ICRMW; ratify ICRMW; engage in consultations with a view to possible accession to ICRMW; ratify ICRMW (Algeria, Bolivia, Turkey, Philippines, Bosnia and Herzegovina)	Rejected	
11	Ratify ILO Convention No. 169 (Bolivia)	Accepted-in-part	Not implemented
12	Consider ratifying ILO Convention No. 169 (Norway)	Accepted	Not implemented
13, 16	Withdraw reservations to CRC (Hungary, Denmark)	Accepted-in-part	Not implemented
14	Consider withdrawing reservations to article 4 (a) of ICERD (Republic of Korea)	Accepted	Not implemented
15-16	Withdraw reservations to article 4 (a) of ICERD (South Africa, Denmark)	Accepted-in-part	Not implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
16	Withdraw reservations to ICERD, CEDAW, ICCPR and CRC (Denmark)	Accepted-in-part	Not implemented
17	Bring its legislation and practices into line with international obligations (Sweden)	Accepted	Partly implemented
18, 19, 21	Incorporate human rights obligations into domestic law (France, Jordan, Timor-Leste)	Accepted-in-part	Partly implemented
20	Continue efforts in strengthening mechanisms for the effective incorporation of international human rights obligations and standards into its domestic legislation (Argentina)	Accepted	Partly implemented
22	Consider adopting or adopt a comprehensive Human Rights Act (Canada, Ukraine, Russian Federation, Norway)	Rejected	
23	Focus on nationwide enforcement of its existing anti-discrimination law (United States)	Accepted	Partly implemented
24	Fully implement the Racial Discrimination Act and the revision of federal laws to be compatible with the United Nations Declaration on the Rights of Indigenous Peoples (Norway)	Accepted-in-part	Partly implemented
25	Consider re-instating the Racial Discrimination Act into the Northern Territory Emergency Response and other subsequent arrangements (Canada)	Accepted	Partly implemented
27	Facilitate the provision of sufficient funding and staffing for the Australian Human Rights Commission and different commissioners (Bolivia)	Accepted	Partly implemented
28	Establish a National Children's Commissioner (New Zealand)	Accepted-in-part	Implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
29	Consider establishing an independent commissioner for child rights (Poland)	Accepted	Implemented
30	Continue measures for the adoption of the new National Action Plan on Human Rights (Azerbaijan)	Accepted	Partly implemented
31	Adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights (Maldives)	Accepted-in-part	Partly implemented
32-33	Develop a comprehensive poverty reduction and social inclusion strategy, which would integrate economic, social and cultural rights (Ghana, Pakistan)	Accepted-in-part	Partly implemented
34	Adopt the necessary legislation to ensure that no one is extradited to a State where they would be in danger of the death penalty (France)	Accepted	Implemented
35	Follow-up on the implementation of recommendations of human rights mechanisms (Austria)	Accepted	Partly implemented
36	Consider implementing the recommendations of human rights treaty bodies and special procedures concerning indigenous people (Jordan)	Accepted	Partly implemented
37	Implement the recommendations made by the United Nations Special Rapporteur on the rights of indigenous people after his visit in 2009 (Norway)	Accepted-in-part	Partly implemented
38	Consider implementing the recommendations of UNHCR, human rights treaty bodies and special procedures with respect to asylum-seekers and irregular immigrants especially children (Jordan)	Accepted	Not implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
39	Abolish non-therapeutic sterilisation without consent (Denmark, United Kingdom, Belgium, Germany)	Accepted-in-part	Not implemented
40, 41	Continue pursuance of the draft National Disability Strategy; complete a general framework of measures to ensure equality of chances for people with disabilities (Botswana, Republic of Moldova)	Accepted	Implemented
42	Ensure efforts to harmonize and consolidate Commonwealth anti-discrimination laws address all prohibited grounds of discrimination and promote substantive equality (United Kingdom)	Accepted	Not implemented
43	Grant comprehensive protection to rights of equality in federal law (Pakistan, India)	Accepted-in-part	Partly implemented
44	Enact comprehensive legislation which prohibits discrimination on all grounds to ensure the full enjoyment of all human rights by every member of society (South Africa)	Accepted	Partly implemented
45, 66	Continue its efforts to harmonize and consolidate its domestic legislation against all forms of discrimination (Argentina, Colombia)	Accepted	Not implemented
46	Strengthen the federal legislation to combat discrimination and ensure an effective implementation with a view to a better protection of the rights of vulnerable persons, in particular, children, persons in detention and persons with disabilities (Morocco)	Accepted	Partly implemented
48	Put an end, in practice and in law, to systematic discrimination on the basis of race in particular against women of certain vulnerable groups (Islamic Republic of Iran)	Accepted	Partly implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
49	Further ensure that everyone is entitled to equal respect and to a fair participation with full enjoyment of equal rights and opportunities in economic, political, social and cultural developments as incorporated in the laws and plans of action (Cambodia)	Accepted	Partly implemented
50	Take appropriate measures to reduce the development gap and social disparities so as to enhance the full enjoyment of all human rights for all Australian people, especially in the areas of economic, cultural and social rights (Viet Nam)	Accepted	Partly implemented
51, 53-54	Intensify its efforts to further combat gender discrimination (Norway, South Africa, Japan)	Accepted	Partly implemented
52	Strengthen the Sex Discrimination Act as indicated in the national report, and consider the adoption of temporary special measures (Israel)	Accepted	Not implemented
55	Adopt targets of 40 per cent representation of women on public and private sector boards (Norway)	Accepted-in-part	Partly implemented
56	Remain steadfast in pursuing its policies towards gender equality, in particular through its Fair Work Act (Botswana)	Accepted	Partly implemented
57	Further strengthen its efforts to promote equality, non-discrimination and tolerance through the monitoring of racially motivated violence (Thailand)	Accepted	Partly implemented
57-58	Step up measures, such as human rights education in schools, so as to promote a more tolerant and inclusive society (Thailand, Japan)	Accepted	Partly implemented



<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
59-64	Strengthen further the measures to combat discrimination against minority communities and continue its efforts to promote multicultural and racial tolerance (Algeria, Sweden, Singapore, Malaysia, Morocco, Yemen)	Accepted	Partly implemented
65	Implement additional measures to combat discrimination and violence against the Arab population and Australian Muslims, against recently arrived migrants and also foreign students (essentially coming from India) (Russian Federation)	Accepted	Partly implemented
66-68	Move forward with the promulgation of laws protecting persons against discrimination on the grounds of sexual orientation and/or gender (Columbia, Switzerland, New Zealand)	Accepted	Implemented
69	Take measures to ensure consistency and equality across individual States in recognizing same-sex relationships (United Kingdom)	Accepted	Implemented
70	Amend the Marriage Act to allow same-sex partners to marry and to recognize same-sex marriages from overseas (Norway)	Rejected	
71	Enact legislation to ensure the humane treatment of prisoners (Hungary)	Accepted	Not implemented
47, 72	Strengthen efforts to combat family violence against women and children (Viet Nam, United States)	Accepted	Partly implemented
73-74	Adapt its legislation to ensure greater security for women and children (Islamic Republic of Iran, Switzerland)	Accepted	Partly implemented
75	Introduce a full prohibition of corporal punishment within the family in all states and territories (Russian Federation)	Rejected	

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
76-81	Advance and accelerate implementation of the National Plan to Reduce Violence against Women and their Children (Azerbaijan, Canada, Switzerland, Norway, Mexico, Philippines)	Accepted	Partly implemented
82	Ensure that all victims of violence have access to counselling and assistance with recovery (Hungary)	Accepted	Partly implemented
83	Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner (Thailand)	Accepted	Partly implemented
84	Strengthen further its commitment to the Bali process as the principal mechanism in the region which deals with people smuggling and trafficking (Indonesia)	Accepted	Implemented
85	Consider using the OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking as a guide in its anti-trafficking measures (Philippines)	Accepted	Implemented
86	Increase its efforts to fight human trafficking (Azerbaijan)	Accepted	Partly implemented
87	Increase efforts to criminally prosecute trafficking offenders (United States)	Accepted	Implemented
88	Take effective legal measures to prohibit the use of excessive force and the use of "Tasers" by the police against various groups of peoples (Islamic Republic of Iran)	Accepted-in-part	Not implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
89	Further improve the administration of justice and the rule of law including by setting up appropriate mechanisms in order to ensure adequate and independent investigation of police use of force, police misconduct and police-related deaths (Malaysia)	Accepted	Not implemented
90	Implement specific steps to combat the high level of deaths of indigenous persons in places of detention (Russian Federation)	Accepted	Partly implemented
91	Introduce a requirement that all deaths in custody be reviewed and investigated by independent bodies tasked with considering prevention of deaths and implement the recommendations of Coronial and other investigations and enquiries (New Zealand)	Accepted	Partly implemented
92	Increase the provision of legal advice to indigenous peoples with due translation services reaching especially indigenous women of the most remote communities (Bolivia)	Accepted	Not implemented
93	Implement measures in order to address the factors leading to an overrepresentation of Aboriginal and Torres Strait Islander communities in the prison population (Austria)	Accepted	Partly implemented
94	Examine possibilities to increase the use of non-custodial measures (Austria)	Accepted	Partly implemented
95	Enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and representatives of the law enforcement officials and enhance the training of those officials with respect to cultural specificities of the above communities (Austria)	Accepted	Partly implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
96	Improve the human rights elements of its training for law enforcement personnel (United States)	Accepted	Partly implemented
97	Establish a National Compensation Tribunal to provide compensation to Aboriginal and Torres Strait Islander people that are negatively affected by the assimilation policy (Slovenia)	Rejected	
98	Take regular measures to prevent hate speech, including prompt legal action against those who incite discrimination or violence motivated by racial, ethnic or religious reasons (Brazil)	Accepted	Partly implemented
99	Develop a national pay strategy to monitor pay gaps mechanisms and establish a comprehensive childcare policy, as recommended by the Committee on the Elimination of All Forms of Discrimination against Women (Israel)	Accepted-in-part	Partly implemented
100	Remove, in law and in practice, restrictions on the rights of workers to strike, as recommended by the Committee on Economic, Social and Cultural Rights (Israel)	Accepted-in-part	Not implemented
101	Step up efforts to ensure that people living in the remote and rural areas, in particular the indigenous peoples, receive adequate support services relating to accommodation and all aspects of health and education (Malaysia)	Accepted	Partly implemented
102	Reform the Native Title Act 1993, amending strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life (United Kingdom)	Accepted-in-part	Partly implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
103	Institute a formal reconciliation process leading to an agreement with Aboriginal and Torres Strait Islander people (Slovenia)	Accepted-in-part	Partly implemented
104, 105, 107	Continue the process of constitutional reform in order to better recognize the rights of indigenous peoples (France, Columbia, Guatemala)	Accepted	Partly implemented
106	Revise its Constitution, legislation, public policies and programmes for implementation of the United Nations Declaration of the Rights of Indigenous Peoples (Bolivia, Ghana, Hungary, Denmark)	Accepted-in-part	Partly implemented
108	Include in its national norms recognition and adequate protection of the culture, values and spiritual and religious practices of indigenous peoples (Bolivia)	Accepted	Partly implemented
26, 109, 111-113	Promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in processes or decision-making that may affect their interests (Slovenia, Bolivia, Mexico, Indonesia, Austria)	Accepted	Not implemented
110	Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people, including participation in decision-making bodies (Bosnia and Herzegovina)	Accepted	Not implemented
114-117	Continue and/or intensify efforts to narrow the gap in opportunities and life outcomes between indigenous and non-indigenous Australians (France, Singapore, Thailand, Jordan)	Accepted	Partly implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
118	Carry out, in consultation with the communities concerned, a comprehensive assessment of the effectiveness of actions and strategies aimed at improving socio-economic conditions of indigenous peoples and if necessary correct these actions (Belgium)	Accepted	Partly implemented
119	Take immediate legal measures to remove restrictions against access of indigenous women and children to appropriate health and education services and employment opportunities (Islamic Republic of Iran)	Accepted	Partly implemented
120	Continue efforts to increase the representation of indigenous women in decision-making posts (Morocco)	Accepted	Partly implemented
121	Safeguard the rights of refugees and asylum-seekers (Sweden)	Accepted	Partly implemented
122-123	Ensure the processing of asylum-seekers' claims in accordance with the United Nations Refugee Convention (Slovenia, Norway)	Accepted	Partly implemented
124-125	Ensure in its domestic law that the principle of non-refoulement is respected when proceeding with the return of asylum-seekers to countries (Slovenia, Ghana)	Accepted	Not implemented
126	Repeal the provisions of the Migration Act 1958 relating to the mandatory detention; revise the Migration Law of 1958 so that federal initiatives do not penalize foreign migrants in an irregular situation (Pakistan, Guatemala)	Rejected	
123, 127	Review its mandatory detention regime of asylum-seekers, limiting detention to when strictly necessary (Norway) or the shortest time reasonably necessary (Ghana)	Accepted	Not implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
128	Address the issue of children in immigration detention in a comprehensive manner (Philippines)	Accepted	Not implemented
129	Ensure that no children are held in detention on the basis of their migratory status and that special protection and assistance is provided to unaccompanied children (Brazil)	Accepted-in-part	Not implemented
130	Take efficient measures to improve the harsh conditions of custody centres in particular for minorities, migrants and asylum-seekers (Islamic Republic of Iran)	Accepted	Not implemented
131	Consider alternatives to the detention of irregular migrants and asylum-seekers, limit the length of detentions, ensure access to legal and health assistance and uphold its obligations under the Vienna Convention on Consular Relations (Brazil)	Accepted-in-part	Partly implemented
132	Do not detain migrants other than in exceptional cases, limit this detention to six months and bring detention conditions into line with international standards in the field of human rights (Switzerland)	Rejected	
133	Ensure all irregular migrants have equal access to and protection under Australian law (Timor-Leste)	Rejected	
134	Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner, bearing in mind international human rights and humanitarian principles (Thailand)	Accepted	Partly implemented

<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
135	Protect Official Development Assistance from budgetary cuts in the context of the international crisis and make every effort to bring it to the internationally agreed target of 0.7 per cent of GDP (Algeria)	Accepted	Not implemented
136	Investigate allegations of torture in the context of counter-terrorism measures, give publicity to the findings, bring perpetrators to justice and provide reparation to the victims (Brazil)	Accepted	Implemented
137-140	Review the compatibility of its legislative framework to combat terrorism with its international obligations in the field of human rights and remedy any possible gaps (Russian Federation, Belgium, Republic of Moldova, Switzerland)	Accepted	Partly implemented
141	Continue to share its experiences for the promotion of human rights in the region and the world (Lao People's Democratic Republic)	Accepted	Implemented
142	Actively continue to implement the best practice and policy for the promotion and protection of the rights and living conditions, and to narrow the gap in living standards in favour of the vulnerable groups in the country (Lao People's Democratic Republic)	Accepted	Partly implemented
143	Continue the consultation with civil society in a follow-up to its universal periodic review (Poland)	Accepted	Implemented
144	Continue to promote and protect human rights internationally to enhance human rights capacity regionally across the Asia-Pacific and globally through the AusAID programme (Cambodia)	Accepted	Partly implemented



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<i>No</i>	<i>Recommendation</i>	<i>Response</i>	<i>Implementation</i>
145	Continue its efforts for the promotion and protection of human rights in the world and in their country (Chad)	Accepted	Partly implemented

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