AUSTRALIA’S 3RD UNIVERSAL PERIODIC REVIEW

Joint NGO Submission on behalf of the Australian NGO Coalition

APRIL 2020

This Joint NGO Submission is endorsed, in whole or in part, by 202 NGOs across Australia.

The submission was coordinated by the Human Rights Law Centre, the Kingsford Legal Centre and the Caxton Legal Centre, working with an Advisory Group comprised of 16 NGOs, which provided expert guidance on the content and focus of the submission.

The sections in the submission were developed by 21 expert and recognised NGOs, working with 36 other diverse NGOs. Particular attention was taken to ensure intersectionality across the sections, reflecting the compounding nature of discrimination and disadvantage in Australia, and the direct participation of Aboriginal and Torres Strait Islander Peoples and their organisations.

CONTACT

Edwina MacDonald
Human Rights Law Centre
edwina.macdonald@hrlc.org.au
Ph: + 61 2 8599 2184
Level 5, 175 Liverpool Street
Sydney NSW 2122
www.hrlc.org.au

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

Bridget Burton
Caxton Legal Centre
bridget@caxton.org.au
Ph: + 61 7 3214 6333
1 Manning Street,
South Brisbane QLD 4101
www.caxton.org.au
Foreword

The Universal Periodic Review NGO Coordinating Committee is proud to bring you Australia’s Human Rights Scorecard: Australia’s 2020 United Nations UPR NGO Coalition Report. This Report was written in collaboration with human rights experts across Australia, and has been endorsed, in whole or in part, by over 200 Australian NGOs. It represents the collective knowledge of Australia’s leading NGOs on the current state of human rights in Australia and will inform the four yearly review of Australia’s human rights record by the UN Human Rights Council.

This Report was finalised in March 2020 at a time of unprecedented challenges for Australia. Australia had just emerged from a bushfire crisis in the summer of 2019/2020, bringing with it significant human rights implications. Now Australia and the world are facing the impacts of the global COVID-19 pandemic, which is unfolding as this Report is finalised.

This Report lays bare Australia’s human rights landscape as we enter this global crisis. How Australia’s response to the COVID-19 crisis will impact human rights in Australia is uncertain. But we can be sure that this impact will not be felt equally, and that it is likely to exacerbate existing human rights problems. Many human rights challenges we are facing as we respond to COVID-19 are not new. They have existed for decades, in some cases centuries. They have appeared in countless NGO and United Nations reports and recommendations, and successive Australian governments have failed to step up and address them.

As we prepare to release this Report, much of Australia and the world is in lock-down and practising physical distancing measures to slow the pandemic’s impact. The schedule for Australia’s Universal Periodic Review has shifted as the United Nations grapples with how to promote and protect human rights in the face of restrictions on travel and gatherings. We release this Report now, ahead of the revised deadline, as it offers an important snapshot of Australia’s human rights challenges at the start of 2020.

The NGOs that have contributed to the Report remain committed to monitoring the evolving impact of COVID-19, especially in relation to the vulnerable communities our Report highlights. Over the coming months, we will prepare an update to this Report to address the human rights implications of Australia’s response to the COVID-19 crisis.

In particular, we are concerned about the impact that Australia’s response to the COVID-19 crisis will have immediately and into the future, on:

- Aboriginal and Torres Strait Islander Peoples;
- Refugees and Asylum Seekers;
- People with disabilities;
- Older people;
- People from culturally and linguistically diverse communities;
- Women, especially women victims of domestic and family violence;
- People in prison;
- People experiencing poverty; and
- People experiencing, and at risk of, homelessness.

We are most concerned about people experiencing multiple intersecting disadvantages, which we document throughout the Report. We hold significant concerns about the impact for Aboriginal and Torres Strait Islander Peoples who already experience structural health disadvantages and often live in overcrowded, precarious or unsuitable housing, as well as people with disabilities, especially those who are held in closed environments and prisons. We fear for women and children’s safety with increasing isolation from communities and schools.
In these uncertain times, the NGO sector is watching Australian Government responses carefully. We remain vigilant to protecting and promoting the human rights of people in our communities especially at this time. Emergency powers must be time bound and proportionate. They cannot undermine our democratic foundations or exacerbate inequality for years to come.

At this time of global crisis, where lives are at risk, the realisation of human rights and principles of equality, dignity, respect and fairness are more critical now than ever.

Kind regards,

Edwina, Bridget and Emma
UPR NGO Coordinating Committee

Edwina MacDonald          Bridget Burton          Emma Golledge
Human Rights Law Centre    Caxton Legal Centre    Kingsford Legal Centre
Submission

This joint submission has been prepared by, and in consultation with, a broad-based coalition of Australian non-government organisations (Annexure A). It has been endorsed, in whole or in part, by 202 NGOs (Annexure B).

Highlighted issues are often relevant to more than one population group, reflecting the intersectionality of inequality and compounding nature of discrimination and disadvantage. In particular, Aboriginal and Torres Strait Islander Peoples are significantly overrepresented across all low social indicators as a result of the continuing impact of colonisation, marginalisation and racism. These unique factors require specific Aboriginal and Torres Strait Islander controlled and targeted strategies that reflect the self-determination of Aboriginal and Torres Strait Islander Peoples.

1 CONSTITUTIONAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

Australia’s Constitution does not support the self-determination, or recognise the rights of Aboriginal and Torres Strait Islander Peoples, and enables Parliament to enact discriminatory, race-based legislation.¹

Australia must hold a referendum to revise the Constitution to recognise Aboriginal and Torres Strait Islander Peoples’ rights, remove racist elements and include an anti-discrimination clause. Australia must establish an Aboriginal and Torres Strait Islander elected representative Voice to Parliament and establish a Makarrata and Truth and Justice Commission to develop a treaty with the First Peoples of Australia.²

Australia continues to fail to fully incorporate its international human rights obligations into domestic law. An Australian Charter of Rights would help ensure decisions and actions of our governments meet their obligations and are guided by values like fairness, equality and dignity.

Australia must introduce a comprehensive, judicially enforceable national Charter of Human Rights and Freedoms that protects the whole community. Similar charters must be introduced in states and territories.

Australia must incorporate the UN Declaration on the Rights of Indigenous Peoples into domestic law, establish an independent body to oversee its implementation in consultation with Aboriginal and Torres Strait Islander Peoples, and include UNDRIP in the Human Rights (Parliamentary Scrutiny) Act.

Not all Australian jurisdictions have compensation schemes for members of the Stolen Generations.³

Australia must urgently compensate all members of the Stolen Generations, as recommended by the Bringing Them Home Report.⁴

Concern persists about Australia’s failure to ratify key international human rights instruments, reservations to existing ratifications, and the lack of implementation of previous UPR and UN recommendations.

Within three years, Australia must ratify the Convention on Migrant Workers, ILO 169 on Indigenous and Tribal Peoples, Convention against Enforced Disappearances, OP to ICESCR, Nagoya Protocol and Third OP to the CRC. Within two years, Australia must withdraw all treaty reservations, including to CRC Article 37(c) regarding children in detention.⁵ Australia must also immediately task its Joint Parliamentary Committee on Human Rights with monitoring domestic consideration and implementation of UN human rights recommendations.

Australia ratified OPCAT, following its 2016 UPR voluntary commitment. There is a lack of commitment to implementing a National Preventive Mechanism and concern this will result in a NPM lacking the essential powers, resources, independence, and uniformity necessary to fulfil its OPCAT obligations.⁶
Australia must prioritise developing and adequately funding a NPM that covers aged care and children’s and disability specific facilities, and establish an advisory relationship with civil society including for designation and implementation stages.

Australia lacks an institutional mechanism for investigating and prosecuting international crimes committed by and against Australians.

**Australia must develop an international crime mechanism resourced to provide effective access to justice for victims.**

Social and community services suffer deep ongoing funding cuts, funding instability and unjustified funding conditions.  

**Australia must adequately fund social and community services to underpin the realisation of human rights.**

## 2 ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

Australia has enacted a series of punitive and paternalistic policies that racially target Aboriginal and Torres Strait Islander communities. In considering the ‘Northern Territory Intervention’, Special Rapporteur Anaya found the quarantining of welfare payments, compulsory leasing of Aboriginal lands, and removal of governance to ‘overtly discriminate against Aboriginal people’, infringe their right to self-determination and conflict with the ICERD, ICCPR and the UN Declaration on the Rights of Indigenous Peoples. Continued through the ‘Stronger Futures’ legislation, funding has been cut to Aboriginal ‘Homeland/Outstation’ communities.  

The Cashless Debit Card racially discriminates with 81% of compulsory recipients being Aboriginal and Torres Strait Islander Peoples. It quarantines 80% of cash welfare, stigmatises financial hardship and entrenches financial hardship and entrenches disempowerment, leading to increased violence and crime. A lack of technology and power outages prevent access to funds and food in remote communities. A Parliamentary Committee found it limited human rights and was disproportionate. Despite costing $10,000 per participant, it is being extended.  

The Community Development Program racially targets, with 85% of 35,000 participants being Aboriginal and Torres Strait Islander Peoples. It requires remote participants to work for welfare payments, with additional onerous obligations. It has applied financial penalties disproportionately, giving 350,000 penalties over two years, resulting in cuts to payments, causing hunger.  

The Intervention/Stronger Futures and welfare reforms that impose cashless debit cards, additional burdens or penalties on Aboriginal and Torres Strait Islander Peoples must be abolished, and Homeland/Outstation communities must be refunded within 12 months.

Australian land management and legislative regimes do not uphold the rights of Aboriginal and Torres Strait Islander Peoples to manifest, practice and teach cultural traditions and customs on traditional lands, territories and waters. Climate change is having a detrimental and inequitable impact on Aboriginal and Torres Strait Islander communities, with unendurable temperatures in central Australia. Aboriginal and Torres Strait Islander Peoples have not been included in water/land regulatory bodies. The commercial sale of water has also left Aboriginal and Torres Strait Islander communities dry, with health impacts from sub-standard water. Traditional Owners are concerned that hydraulic fracking will contaminate and deplete ground water.  

Australia must amend all policy and legislative regimes that impact Aboriginal and Torres Strait Islander rights to practice cultural traditions; facilitate Aboriginal and Torres Strait Islander decision making in regulatory water and land management bodies; and provide finances for Aboriginal and Torres Strait Islander communities to develop climate change mitigation strategies.
The Native Title Act 1993 is fundamentally flawed, favours mining interests, and is inconsistent with the principle of ‘equality before the law’.\textsuperscript{34}

Australia must: amend the Native Title Act to include free, prior and informed consent; remove power to compulsorily acquire native title lands and extinguish native title rights; and include compensation regardless of date of extinguishment.

The 2017 Uluru Statement called for a Makarrata Commission or Treaty, Truth and Justice Commission.\textsuperscript{35} Australia remains the only former British colony without a treaty. A Treaty is crucial for addressing the social-economic disparity and political marginalization of Aboriginal communities by enacting self-determination, in line with the UNDRIP.

Australia must establish a Makarrata Commission to develop a treaty with Aboriginal and Torres Strait Islander Peoples within 3 years.

3 REFUGEES AND ASYLUM SEEKERS

Australia undermines the institution of asylum by intercepting asylum seekers at sea and implementing rapid returns, with rudimentary screening and without access to legal advice or fair process. Australia has returned people at airports without properly assessing their claims. Asylum seekers who arrived by boat after August 2012 (and not sent to Nauru or Papua New Guinea), are not eligible for permanent protection and have no pathway to citizenship.

Australia must ensure its asylum processes and border management policies fully comply with its international obligations, including the principle of non-refoulement.

Asylum seekers, including children and stateless persons, remain subject to mandatory, indefinite and non-reviewable detention. Some people have been held in immigration detention for over ten years. Since 2015, detention facilities have become more prison-like; use of force has become commonplace.\textsuperscript{36}

Australia must repeal mandatory detention and introduce legislative criteria to guide individual decisions to detain. Immigration detention must be subject to maximum timeframes and independent review.

As of January 2020, around 500 refugees and asylum seekers forcibly sent to Nauru and Papua New Guinea in 2013 and 2014 remain there, many without access to durable solutions and some at risk of being arbitrarily detained (including stateless persons).\textsuperscript{37} Healthcare remains inadequate and Australian legislation that granted doctors greater power over medical evacuation decision-making was repealed in December 2019.

Offshore processing must end and all those who are yet to access durable solutions must be brought to Australia.

Many asylum seekers, including those in the deficient ‘fast-track process’, wait years for asylum decisions. Thousands, including children and other vulnerable groups, have lost access to legal advice, healthcare, casework and financial support due to Government decisions. Recognised refugees who arrived by sea many years ago are affected by discriminatory policies that prevent immediate family members from joining them.

Australia must repeal the fast-track process and restore funding for legal assistance, income support and basic healthcare for asylum seekers, and repeal policies preventing family reunion for refugees.

Australia lacks a statelessness determination procedure to identify, monitor and protect the rights of stateless people\textsuperscript{38} in accordance with international law.\textsuperscript{39}

Australia must introduce a statelessness determination procedure and visa category to protect stateless persons in Australia by 2024.\textsuperscript{40}
4 CULTURALLY AND LINGUISTICALLY DIVERSE PEOPLE AND COMMUNITIES

Positive statements by the Prime Minister condemning racism and the Australian Government’s multicultural statement are undermined by policies which threaten social cohesion and prevent CALD people from fully participating in the Australian community.

**Australia must ensure that CALD people – particularly in rural and regional areas – have equitable access to services, support and opportunity.**

The extension of waiting periods for social support services, limitations on family visa pathways and delays in citizenship processing inflict unnecessary hardship. This hardship disproportionately affects women from CALD backgrounds, particularly those experiencing family violence.

**Australia must ensure a fair and non-discriminatory migration and citizenship policy which recognises the importance of family, and promotes full public participation.**

Debate about population, national security and crime has seen a sharp rise in anti-immigration sentiment. Muslim Australians continue to experience high levels of racism and bigotry, and Australians of African heritage (particularly Sudanese Australians), have increasingly been the subject of sensationalist political and media attention, which has fuelled racism, profiling and discrimination.

**Australia must strengthen measures to combat discrimination and violence on racial, ethnic or religious grounds, particularly through education and dialogue.**

5 OLDER PEOPLE

Australia has not fulfilled its 2016 UPR commitment to use existing human rights mechanisms to report on and protect the rights of older persons, nor to include an older people section in their UN reports. Australia is largely disengaged from the Open-Ended Working Group on Ageing (OEWGA).

**Australia must reengage as an active participant of the OEWGA and work towards developing improved international protections for older people.**

Australia’s Aged Care Royal Commission labelled aged care a “shocking tale of neglect.” However, the Royal Commission has so far failed to make conclusions about human rights breaches of older persons in aged care. Over 110,000 older persons have waited between 7-32 months to receive aged care services in their home, and Australia lacks legislative protections against the use of chemical restraints, demonstrating the need for stronger international protections.

**Australia must strengthen its aged care system, ensuring it reflects Australia’s human rights obligations, including appropriate funding to remove waitlists.**

Unlawful age discrimination continues to affect older people, particularly women, in the market and at work.

**Australia must fund the recommendations of the 2016 Willing to Work National Enquiry into employment discrimination.**

6 SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, AND SEX CHARACTERISTICS

Since 2016, Australia has recognised marriages between two people regardless of gender. States have amended laws to make it easier for legal gender to be changed, to allow adoption by couples regardless of gender, and to expunge convictions for historical homosexual offences. Some states may soon prevent
so-called ‘conversion’ practices which seek to eliminate or suppress the affirmation of lesbian, gay, bisexual and transgender identities.\textsuperscript{56}

Despite such reforms (and sometimes accompanying them\textsuperscript{57}), discrimination, harassment and violence on the grounds of sexual orientation, gender identity and expression, and bodily variations in sex characteristics, remain prevalent.\textsuperscript{58}

Within 18 months, Australia must:

- advance reforms in remaining states which impose unjust hurdles (including requirements for surgery) on people seeking official identity documents reflecting their gender;\textsuperscript{59}
- implement recommendations on ending harmful practices (including forced and coercive medical interventions) to ensure the bodily integrity of children with intersex variations;\textsuperscript{60}
- ensure access to redress, independent affirmative peer support and psychosocial support for people with intersex variations and their families;\textsuperscript{61}
- capture SOGIESC data\textsuperscript{62} in its 2021 national census and other significant collections to provide a robust evidence-base for future public policy and government interventions; and
- implement effective measures to reduce SOGIESC-based bullying, harassment and violence, particularly targeted at youth.\textsuperscript{63}

7  PEOPLE WITH DISABILITY

The National Disability Strategy (NDS) is Australia’s policy framework to implement the Convention on the Rights of Persons with Disabilities. In 2019, the CRPD Committee raised serious concerns about the lack of implementation, funding and oversight of the NDS.\textsuperscript{64}

The new NDS must be properly resourced through a robust National Disability Agreement between all levels of Government. Transparent monitoring and evaluation of outcomes for people with disability must be linked to accountability measures across Governments, ensuring targets are met. People with disability, and their representative organisations, must also be positioned at the centre of the NDS’s development, implementation and monitoring.

Legislation regulating legal capacity remains problematic.\textsuperscript{65} Australia’s Interpretative Declarations to CRPD Articles 12, 17 and 18 prevent reform and allow human rights violations.\textsuperscript{66} No progress has been made towards a national Supported Decision-Making Framework.\textsuperscript{67} Despite persistent UN recommendations,\textsuperscript{68} behaviour management, involuntary treatments and restrictive practices occur across a range of settings.\textsuperscript{69}

Australia must withdraw CRPD Interpretative Declarations before 2026\textsuperscript{70} and modify, repeal or nullify laws, policies and practices which deny or diminish equal recognition before the law. Australia must eliminate restrictive practices, involuntary treatment, forced sterilisation and medically unnecessary interventions of people with disability.

People with disability, particularly women,\textsuperscript{71} experience significant\textsuperscript{72} violence and abuse.

The Disability Royal Commission must address the systemic drivers of this violence and establish national mechanisms for redress, complaint and oversight.

8  CHILDREN

Australia must fully incorporate the CRC into domestic legislation and policy within three years.

The National Framework for Protecting Australia’s Children 2009-2020 lacked sufficient focus on preventing violence against children, economic, social and cultural rights, non-discrimination, and participatory rights.
Australia must develop a National Plan for Children which comprehensively protects children’s rights, and which is at least consistent with the National Plan to Reduce Violence against Women and Their Children, within 18 months.

Aboriginal and Torres Strait Islander children are over 10 times more likely to be removed from their families than other children and 23 times as likely to be in detention.\textsuperscript{73}

**Australia must establish a national prevention, early intervention and reunification program to prevent child protection involvement, with significant Aboriginal and Torres Strait Islander community-controlled service provision, within two years. Australia must establish a national commissioner for Aboriginal and Torres Strait Islander children and young people within one year.\textsuperscript{74}**

To comply with international legal obligations,\textsuperscript{75} **Australia must immediately legislate to prohibit detention of asylum-seeking, refugee and migrant children.**

Australia fails to adequately protect children’s right to be heard about matters affecting them.\textsuperscript{76}

**Australia must undertake legal reform to provide mechanisms for children to participate and be heard, and to provide all necessary funding to services that support direct advocacy for children within two years.**

Children with disability experience segregation and human rights violations in educational settings.

**Australia must develop a national Action Plan for Inclusive Education and urgently end restraint and seclusion of children with disability.\textsuperscript{77}**

**Australia must legislate to mandate consultation between the National Children’s Commissioner and children on matters affecting them, while ensuring the Commissioner has adequate resources, within one year.**

\section*{9 WOMEN}

Many women in Australia experience human rights violations due to an intersection of gender and other aspects of their lived experience.

Discrimination against Aboriginal and Torres Strait Islander women is structurally and institutionally entrenched. Colonisation, intergenerational trauma and a lack of culturally appropriate services fosters a disturbing pattern of violence against Aboriginal and Torres Strait Islander women, who are significantly more likely to die or be hospitalized due to violence than other women\textsuperscript{78} and are imprisoned at 21 times the rate of other women.\textsuperscript{79}

Funding for women’s specialist services is declining and community self-determination is not valued by funders.\textsuperscript{80}

**Australia must implement gender responsive budgeting which considers the needs and impacts of expenditure on a diverse range of women, underpinned by intersectional data and research.**

The family law system does not prioritise safety and risk in its practice and decision-making.\textsuperscript{81}

**Australia must implement the Safety First in Family Law Plan.\textsuperscript{82}**

The National Plan to Reduce Violence against Women and Their Children is inadequately resourced to meet demand,\textsuperscript{83} and is not inclusive of all forms of gender-based violence.\textsuperscript{84} UN experts have recommended a National Action Plan for Indigenous Women, but Australia has not implemented this.\textsuperscript{85}

Women on temporary visas experiencing violence face barriers to accessing protections, services and justice.\textsuperscript{86}
The second National Plan must incorporate adequate funding, specific measures to address violence against women of diverse experiences, and a monitoring and evaluation system for all action plans.

Australia must address economic inequality, including addressing women’s unpaid caring work and gendered gaps in wages and retirement savings.\(^{87}\)

10 EQUALITY AND NON-DISCRIMINATION

Australia protects against discrimination through multiple inconsistent and overly technical anti-discrimination legislation. Australia’s piecemeal approach does not provide remedies for intersectional discrimination, and creates significant exceptions and barriers to individuals bringing complaints.

**Australia must enact a comprehensive Equality Act that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.**

Religious discrimination is not currently addressed by standalone federal discrimination law. In 2019 the federal government released a draft Religious Discrimination Bill. The proposed Bill goes far beyond protecting against religious discrimination and provides people and faith-based institutions with a licence to discriminate on religious grounds, including when delivering healthcare. The Bill privileges religious views over patient health needs, and removes existing anti-discrimination protections, including for women, people with disabilities, SOGIESC, and people from minority faiths.

**Australia must not enact the proposed Religious Discrimination Bill.**

11 DEMOCRATIC RIGHTS AND FREEDOMS

Queensland and New South Wales have passed anti-protest legislation that unfairly restricts peaceful assembly, and increases penalties for trespass and using lock-on devices during peaceful protests.\(^{88}\)

**Australia must repeal laws criminalising peaceful protest and recommite to facilitating peaceful protests.**

Australian Federal Police have raided the homes and workplaces of journalists following public interest reporting on intelligence and defence agencies.\(^ {89}\) New federal laws have expanded the definition of “espionage” to include public interest reporting by journalists and human rights defenders\(^ {90}\) that could bring the country into disrepute internationally.

**Australia must repeal laws criminalising public interest reporting and strengthen journalist warrant obligations.**

The Australian Government is prosecuting whistleblowers who disclose public interest matters, most notoriously Witness K and his lawyer, Bernard Collaery.\(^ {91}\)

**Australia must strengthen existing protections for whistleblowers and enable public disclosure of serious wrongdoing within intelligence and defence agencies.**

The Australian Government has defunded NGO advocacy work and Aboriginal and Torres Strait Islander representative and advocacy bodies.\(^ {92}\) Charities are being investigated and deregistered for advocacy work in elections and for working with protesters.

**Australia must recommit funding for and legal protection to the NGO sector and Aboriginal and Torres Strait Islander organisations for advocacy work.\(^ {93}\)**
The Australian Government has implemented overbroad foreign interference legislation which exempts politicians, while potentially making NGO reporting to UN bodies a national security offence, and restricts free speech on electoral matters.

**Australia must amend the foreign interference laws to exclude NGO advocacy and include politicians.**

Government-funded independent broadcasters ABC and SBS have been attacked politically and experienced significant funding cuts.

**Australia must restore funding to public broadcasters.**

The Australian Government has passed extensive laws requiring telecommunication companies to retain metadata and facilitate access to encrypted messages. It is considering a national database of photographs to enable law enforcement agencies to conduct facial recognition without adequate safeguards.

**Australia must repeal the metadata and encryption laws and severely restrict the use of facial recognition technology.**

The Australian Government continues to broaden laws stripping Australians of citizenship, without adequate procedural safeguards and sometimes retrospectively, placing them at an unacceptable risk of statelessness, family separation and indefinite detention.

**Australia must repeal citizenship deprivation laws.**

### 12 ACCESS TO JUSTICE AND THE CRIMINAL JUSTICE SYSTEM

Legal assistance funding is inadequate. The separate Indigenous Legal Assistance Program is being wound up despite evaluation recommending retaining it.

**Australia must restore dedicated funding for Aboriginal and Torres Strait Islander Legal Services.**

The legal assistance sector remains critically underfunded, with insufficient access to legal services to meet demand and provide redress for human rights abuses.

**Australia must implement the recommendations of the Productivity Commission to inject $200 million the legal assistance sector.**

The criminal justice system is failing young people, Aboriginal and Torres Strait Islander Peoples, women, and people with disabilities.

**Australia must reform the criminal justice system to make prison a last resort, and provide greater rehabilitative and diversionary options for overrepresented groups. It must address the over-representation of Aboriginal and Torres Strait Islander Peoples, including by setting justice targets, funding a national Custody Notification Service, and ending mandatory sentences.**

Children are too often detained, subject to isolation and force, and not separated from adults.

**Australia must mandate separate detention of children from adults, review its juvenile justice systems against the CRC and CRPD, and implement all recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, within two years.**

Australia’s age of criminal responsibility is 10, contrasting with UN recommendations and medical evidence about children’s development. This disproportionately harms disadvantaged children.

**Australia must raise its minimum age of criminal responsibility to at least 14 within one year.**
Little progress\textsuperscript{105} has been made towards Australia’s 2016 voluntary UPR commitment to improve criminal justice system treatment of people with cognitive disability unfit to plead or found not guilty by reason of mental impairment.\textsuperscript{106}

**Australia must address the over-representation of people with disability, including eradicating imprisonment of unconvicted people with disability and enforcing safeguards against indefinite forensic detention.**

### 13 PRISONS

Due to historically entrenched and systematic factors, including racism, Aboriginal and Torres Strait Islander Peoples are the most imprisoned people in the world. Despite making up 2\% of the population, they constitute 28\% of all imprisoned people.\textsuperscript{107} Approximately 50\% of imprisoned people in Australia have a disability.\textsuperscript{108} and up to 73\% and 86\% of imprisoned Aboriginal and Torres Strait Islander men and women, respectively, report a psychosocial disability.\textsuperscript{109}

At least 424 Aboriginal and Torres Strait Islander Peoples have died in custody since the 1991 Royal Commission into Aboriginal Deaths in Custody.\textsuperscript{110}

**Australia must fully implement the findings of the Royal Commission into Deaths in Custody and the NT Royal Commission, including closing Don Dale detention centre.**

Women are the fastest growing imprisoned group. Aboriginal and Torres Strait Islander women made up a third of all imprisoned women in 2018.\textsuperscript{111} Most are imprisoned for low level offending.\textsuperscript{112} Domestic violence is both the cause and effect of women’s imprisonment.\textsuperscript{113}

**Australian governments must enter into a formal partnership with Aboriginal and Torres Strait Islander organisations to develop national justice and family violence targets to reduce imprisonment.**\textsuperscript{114} Additionally, prison must only be a last resort for primary carers.\textsuperscript{115}

Investigations of youth detention services, including one Royal Commission, have found repeated breaches of children’s human rights.\textsuperscript{116} The rights of children in police watch houses in Queensland are being seriously breached.\textsuperscript{117} Most jurisdictions have multi-billion dollar prison expansion or construction programs without commensurate investment in preventative or diversionary programs.

**Australia must end prison construction and expansion and instead resource preventative and diversionary programs to reduce imprisonment.**

### 14 POLICE

It is critical that independent bodies\textsuperscript{118} are resourced\textsuperscript{119} to investigate potential human rights abuses by police.

**Australia must ensure that all jurisdictions establish independent investigative bodies that meet international human rights standards.**\textsuperscript{120}

Racially discriminatory policing remains prevalent, impacting entire communities.\textsuperscript{121} In particular, ‘intelligence-led’ or ‘preventive’ policing models\textsuperscript{122} are having adverse and discriminatory impacts, especially on racially marginalised groups.\textsuperscript{123}

**Australia must conduct a comprehensive audit into policing law, policy and procedure to identify and eliminate discriminatory impacts, and immediately implement stop & search monitoring and receipting\textsuperscript{124} to address racial profiling.**

Aboriginal and Torres Strait Islander Peoples continue to die in custody.\textsuperscript{125}
Australia must urgently implement all recommendations from the Royal Commission into Aboriginal Deaths in Custody.126

Police responses to family violence need urgent reform. Survivors of family violence experience police duty failures, including misidentifying victims as perpetrators, privacy breaches and failing to provide effective protection.127

Australia must address police duty failures and improve responses in order to enhance the safety of victims / survivors when requesting police assistance for family violence,128 and to prevent the criminalisation of survivors129 as a consequence of police responses.

15 POVERTY

Three million people, including 774,000 children live below the poverty line in Australia.130 Australia ranks 16th out of 26 OECD countries, despite high national and household wealth.131 Poverty is most acute for people who are not in paid work and rely on social security.132 Poverty among sole parent families is high, at 32% in 2015-16.133

Australia must immediately increase allowance payments (with an initial $95 pw increase in 2020) and index to wage inflation.

Allowance payment rates and indexation methods are not currently benchmarked to adequacy.

Australia must also establish a Social Security Commission to advise Government on payment rates, including indexation.

Cashless debit and income management schemes have expanded in recent years despite their discriminatory impact on Aboriginal and Torres Strait Islander Peoples and single mothers, their restriction on individual decision making, and weak evidence of effectiveness.134

Australia must replace compulsory cashless debit and income management schemes with voluntary models which are non-discriminatory in design and implementation.

Australia’s unlawful automated debt collection process – robodebt - has undermined the right to social security and severely impacted the people on whom it has been imposed, especially women.135

Australia must end all automated debt collection processes based on flawed debt calculation methods and refund anyone who has repaid a robodebt.

16 HOUSING AND HOMELESSNESS

Since the last UPR, homelessness has further increased (particularly among Aboriginal and Torres Strait Islander Peoples136 and older women137), housing affordability has not improved,138 and social housing stock has continued to decline.139 The previous national homelessness strategy140 has not been replaced, and there is no national plan to reduce homelessness or housing stress. Funding for the National Rental Affordability Scheme will be discontinued. Government payments assisting renters on low incomes are inadequate, leaving nearly half of renters on low incomes in urban areas in rental stress.141

Australia must develop a national homelessness and affordable housing strategy, with goals and targets underpinned by substantial funding in services, stock and support. Australia must also increase investment in new social housing that meets diverse housing needs.

The national inter-governmental funding agreement on remote Aboriginal and Torres Strait Islander housing has expired, and federal funding for remote housing has been withdrawn in many states.
Australia must develop a new inter-governmental Aboriginal and Torres Strait Islander housing strategy, which includes remote homeland communities, and is included in the Closing the Gap Targets.

17 HEALTH

Australians live approximately 13.2% of their lives in ill health. Poor health outcomes are linked to low incomes, gaps in Australia’s healthcare system, and low levels of investment in illness prevention.

Australia must establish an ongoing mechanism for assessing and funding illness prevention.

Climate change and public health are interlinked. Recently, smoke from bushfires has harmed the health of millions of Australians.

Australia must improve systems for implementing accurate, evidence-based and timely public health interventions to mitigate the health impact of climate change.

Aboriginal and Torres Strait Islander Peoples carry a disproportionate health burden related to poverty and poor living conditions, including high rates of gastroenteritis, encephalitis, hepatitis, heart disease, diabetes, kidney failure and trachoma. In 2018, suicide was the leading cause of death for Aboriginal and Torres Strait Islander children and people aged 15-44. Traumatic experiences, intergenerational trauma, discrimination, grief and overcrowding and a sense of disempowerment were attributable factors.

The Australian Government must fund the Aboriginal and Torres Strait Islander controlled health, service and healing sector to meet family, child, youth, health, aged, disability and rehabilitation needs nationally.

Almost a quarter of Australian children are affected by being overweight or obesity.

Within two years, Australia must implement the WHO’s Ending Childhood Obesity Report recommendations and enact legislation to protect children from unhealthy food marketing.

Transgender and gender-diverse people experience major barriers to accessing culturally safe healthcare in Australia.

Within two years, Australia must ensure free and timely access to culturally safe healthcare, including access to gender affirming multidisciplinary healthcare for children and adolescents.

18 CLIMATE CHANGE

Australia is failing to prevent human rights harms caused by climate change. Australia’s emissions are increasing, its 2030 emissions reduction target is inadequate, and it spends more money supporting fossil fuels than climate action.

Australia must immediately increase its 2030 emissions reduction target to at least 45%, and set a target of net zero emissions before 2050. By 2021, Australia must put a price on carbon and use the revenue to support vulnerable groups; put in place a plan to phase out coal exports; shift to 100% renewable energy before 2035; and end fossil fuel subsidies by 2025.

Australia is failing to implement appropriate measures to ensure all persons have the capacity to adapt to climate change and provide a just transition for workers and communities.

Australia must develop a rights and equity based adaptation plan, establish a just transition authority with sensitivity to multiple and intersecting forms of discrimination, and adequately resource both.
Australia is failing to ensure equity in climate action and ensure meaningful participation in decision making.

**Australia must develop mitigation and adaption plans and policies that provide benefits for vulnerable groups and reduce inequality, and legally require consultation with diverse groups (including children, Aboriginal and Torres Strait Islander Peoples, elderly people, people with disabilities, people experiencing poverty, and women) and the publication of their views.**\(^{165}\)

Australia is failing to assist developing countries to mitigate and adapt to climate change.

**Australia must increase its climate finance contribution to 2.4% of global flow, additional to existing ODA budget,\(^{166}\) and ensure it captures the needs and priorities of vulnerable communities.**

### 19 BUSINESS AND HUMAN RIGHTS

Australian companies continue to have significant adverse human rights impacts within Australia and abroad. Of particular concern are corporate contributions to the climate crisis, attacks on civic space, human rights violations in corporate supply chains, impacts on public health and abuses associated with the extractives, financial and immigration detention sectors.

Despite its 2016 voluntary commitment, Australia has failed to develop a National Action Plan on Business and Human Rights.

**Australia must renew its efforts to develop a National Action Plan on Business and Human Rights and provide effective pathways to remedy for corporate human rights violations.**

While Australia’s new *Modern Slavery Act 2018* – requiring companies to report on their actions to address modern slavery – was a positive step, the legislation relies on voluntary reporting.

**Australia must introduce mandatory human rights and environmental due diligence obligations for companies to effectively combat forced labour and other human rights violations in corporate supply chains.**

**Australia must also require companies emitting greater than 25,000 tCO\(_2\)-e per annum to reduce their emissions consistent with the goals of the Paris Agreement, while respecting human rights in a swift, just transition to a net zero economy.**

### 20 INTERNATIONAL ASSISTANCE

Australia has cut the Official Development Assistance (ODA) budget, diminishing Australia’s capacity to support human rights internationally.\(^{167}\) Low investment has contributed to the failure of the aid program to meet the 80% target of projects effectively addressing gender equality.\(^{168}\)

**Australia must increase its ODA budget to 0.7% of GNI to boost capacity to promote human rights. Australia must also invest in technical expertise and women’s rights organisations to meet the aid program’s gender target.**

As Australia seeks to implement new aid modalities, including blended finance for infrastructure, vigorous safeguards will be needed to mitigate risks to human rights that have previously caused concerns for government-financed projects.\(^{169}\)

**To meet treaty and SDG commitments Australia must put human rights, rather than national interest, at the centre of its ODA program.**

Regulations introduced in 2018 require Australian charities with overseas activities to prevent harm, exploitation and abuse of vulnerable persons.\(^{170}\) These address high-risk activities including volunteering
and residential care. The implementation of monitoring and enforcement is required to assist in meeting CRPD and CRC obligations.¹⁷¹

**Australia must establish safeguards and monitoring mechanisms to uphold international human rights standards within ODA and blended-finance programs.**

### 21 TRAFFICKING

Since the last UPR, Australia has strengthened anti-trafficking strategies, including modern slavery legislation, joining UNODC’s Blue Heart Campaign, launching ASEAN-Australian Counter Trafficking Initiative, and delinking support for survivors of forced marriage from the criminal justice system for 200 days.

Access to government funded support for other survivors, however, remains contingent on participation in criminal justice processes, creating barriers to support. The National Action Plan to Combat Human Trafficking and Slavery is incomplete. Funding to NGOs has been reduced and there are significant delays in renewing funding. Orphanage trafficking, whilst recognised in modern slavery law, cannot be prosecuted under Australia’s trafficking laws.

**Australia must promote a human rights-based approach and ensure that the rights of victims, including to redress and economic and social support, are protected. Australia must also bring its trafficking laws into conformity with international obligations.**

### 22 SEX WORK

Australia’s response to sexually transmissible infections has involved effective strategies, including supporting sex worker community organising and peer education. This has supported sex workers to implement safer sex practices, resulting in the virtual elimination of HIV among sex workers.¹⁷²

However, sex workers still experience high levels of discrimination and stigma and are negatively impacted by the criminalisation of sex work, licensing, registration and mandatory testing in some jurisdictions. Additionally, criminal laws remain in relation to sex work and HIV in VIC and QLD, and there is a lack of consistent anti-discrimination protections for sex workers.¹⁷³

**Australia must encourage a consistent approach to the decriminalisation of sex work and introduce measures to tackle discrimination against sex workers.**
Annexure A: Background to Report Development

PROCESS

This joint NGO report was coordinated by the Human Rights Law Centre, Kingsford Legal Centre, and Caxton Legal Centre working with an NGO Advisory Group, which provided expert guidance based on their on the ground experience on the content and focus of the Report. Report sections were led by expert and recognised NGOs (‘lead authors’), consulting with a broad range of other NGOs who provided input to the Report’s content (‘authors’).

Expert NGO Advisory Group members, lead authors and authors were identified through consultation with the NGO human rights sector, by online surveys, the Australian Attorney-General’s Department 2019 NGO Forum, and wider NGO networks. These consultations were also used to inform the content of the Report. Particular attention was paid to ensuring diversity within the Group, strong human rights credentials, the direct participation of Aboriginal and Torres Strait Islander Peoples and their organisations, and an intersectional approach to human rights.

This Report is the culmination of the collaborative work of leading human rights organisations and activists within Australia. For more information, see https://www.hrlc.org.au/universal-periodic-review.

The Human Rights Law Centre received $50,000 from the Australian Attorney-General’s Department to coordinate this joint NGO report and acted as the Secretariat for the coalition.

NGO COORDINATING COMMITTEE

The Human Rights Law Centre is a national human rights organisation that uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. HRLC has NGO Consultative status with ECOSOC.

The Kingsford Legal Centre is a community legal centre based in UNSW Sydney, which provides free legal services to the community, specialising in discrimination law. Kingsford Legal Centre undertakes law reform and community legal education and teaches law students in a clinical education model.

The Caxton Legal Centre is a community legal centre in Queensland, which represents the interests of people who are disadvantaged or on a low income through strategically advocating to government, providing legal and social work services, publishing legal information and building community awareness.

ADVISORY GROUP COMMITTEE

Amnesty International
Australian Council of Social Service
Caxton Legal Centre
Community Legal Centres Australia
COTA Australia
Equality Rights Alliance
Human Rights Law Centre
Immigration Advice and Rights Centre
Indigenous Peoples Organisation
Kingsford Legal Centre
National Aboriginal and Torres Strait Islander Legal Service
People with Disability Australia
Refugee Council of Australia
Townsville Community Law Inc.
Women with Disabilities Australia
Youth Law Australia

LEAD AUTHORS

Australian Council of Social Service
Caxton Legal Centre
COTA Australia
Equality Australia
Equality Rights Alliance
Gay and Lesbian Counselling Service of NSW
Human Rights Council of Australia
Human Rights Law Centre
Immigration Advice and Rights Centre
Indigenous Peoples Organisation
International Women's Development Agency
Kingsford Legal Centre
National Aboriginal and Torres Strait Islander Legal Service
People with Disability Australia
Project Respect
Public Health Association of Australia
Refugee Council of Australia
Redfern Legal Centre
Save the Children
Scarlet Alliance
Townsville Community Law Inc.
Twenty10

AUTHORS

Advocacy for Inclusion
Aged & Disability Advocacy Australia
Amnesty International
Australian Association of Social Workers
Australian Centre for International Justice
Australian Child Rights Taskforce
Australian Council of Social Service
Australian Lawyers Alliance
Australian Lawyers for Human Rights
Australian Muslim Women’s Centre for Human Rights
Australian Older Women’s Network
Australian Quaker Peace and Legislation Committee
Better Care Network
Caroline Collaborates
Caxton Legal Centre
Communication Rights Australia
COTA Australia
Disability Discrimination Legal Service
Equality Australia
Equality Rights Alliance
Flemington and Kensington Community Legal Centre
Gay and Lesbian Counselling Service of NSW
Annexure B: List of Endorsing Organisations

This submission is endorsed, either in part or in whole, by the following organisations:

Aboriginal Legal Rights Movement
Aboriginal Legal Service of Western Australia Limited
Aboriginal Rights Coalition
ACCIR
ACON
ACT Council of Social Service
ActionAid Australia
Advocacy for Inclusion
Advocare
Aged & Disability Advocacy Australia
Aleph Melbourne
Alevi Federation of Australia
Alliance for Gambling Reform
Amnesty International Australia
ANTaR
Anti-slavery Australia
Australian Association for Adolescent Health Ltd
Australian Association of Social Workers
Australian Baha’i Community - Office of Equality
Australian Centre for International Justice
Australian Council for International Development
Australian Council for International Development Gender Equity Working Group
Australian Centre for Leadership for Women
Australian Council of Social Service
Australasian Council of Women and Policing
Australian Federation of Medical Women
Australian Graduate Women
Australian Healthcare and Hospital Association
Australian Human Rights Institute, UNSW Sydney
Australian Injecting & Illicit Drug Users League
Australian Lawyers Alliance
Australian Lawyers for Human Rights
Australian Motherhood Initiative for Research and Community Involvement
Australian Muslim Women’s Centre for Human Rights
Australian Quaker Peace and Legislation Committee
Australian Women Against Violence Alliance
Australian Women's Health Network
Be Slavery Free
Brigidine Asylum Seekers Project
Business & Human Rights Resource Centre
Canberra Community Law
CARE Australia
Carers Australia
Caxton Legal Centre
Centre for Asylum Seekers, Refugees and Detainees
Centre for Business and Human Rights, RMIT University
Child Rights Taskforce
Children and Young People with Disability Australia
Children by Choice
Civil Liberties Australia
Cohealth
Community Legal Centres Association of WA
Community Legal Centres Australia
Community Legal Centres Australia National Human Rights Network
Commonwealth Human Rights Initiative
Consumer Credit Legal Service (WA)
Consumers Health Forum of Australia
Council on the Ageing Australia
Disability Discrimination Legal Service
Down Syndrome Australia
Eastern Community Legal Centre
Economic Justice Australia
Edmund Rice Centre
End Child Detention Coalition
Environment Centre NT
Equality Australia
Equality Lawyers
Equality Rights Alliance
Federation of Ethnic Communities Councils of Australia
Feminist Legal Clinic
Fitted for Work
Flemington Kensington Community Legal Centre
Forget Me Not Australia Limited
Foundation for Aboriginal and Islander Research Action Aboriginal Corporation
GetUp!
Girl Guides Australia
Good Shepherd Australia New Zealand
Harmony Alliance: Migrant and Refugee Women for Change
Homebirth Australia
Hub Community Legal
Human Rights Council of Australia
Human Rights Law Centre
Immigrant Women's Speakout Association of NSW Inc.
Immigration Advice and Rights Centre
Indigenous Peoples Organisation
International Women's Development Agency
Intersex Human Rights Australia
Intersex Peer Support Australia
JERA International
Jessie Street National Women's Library
Jesuit Refugee Service Australia
Josephite Justice Network
Justice Connect
Kingsford Legal Centre
Legacy
Liberty Victoria
Liberty Victoria's Rights Advocacy Project
Marie Stopes Australia
Maternity Choices Australia
Melbourne Activist Legal Support
Migrant Women's Lobby Group of South Australia
Multicultural Youth Advocacy Network Australia
Music for Refugees
National Aboriginal and Torres Strait Islander Legal Services
National Aboriginal and Torres Strait Islander Women's Alliance
National Association of People with HIV Australia
National Association of Services Against Sexual Violence
National Council of Churches Gender Commission
National Council of Jewish Women of Australia
National Council of Single Mothers and their Children
National Council of Women of Australia
National Foundation for Australian Women
National LGBTI Health Alliance
National Older Women's Network
National Rural Women's Coalition Ltd
National Union of Students Women's Department
New South Wales Aboriginal Land Council
Northern Suburbs Community Legal Centre
NSW Council for Civil Liberties
NSW Council of Social Service
NSW Gay and Lesbian Rights Lobby
NQWLS
Obesity Policy Coalition
Older Persons Advocacy Network
Original Power
People with Disability Australia
Peter McMullin Centre on Statelessness
PFLAG Tasmania
Physical Disability Council of NSW
Plan International Australia
Project Respect
Public Health Association of Australia
Public Health Association of Australia - Women's Health Special Interest Group
Publish What You Pay Australia
Queensland Advocacy Incorporated
Rainbow Families
Redfern Legal Centre
Refugee Advice and Casework Service
Refugee Council of Australia
Reproductive Choice Australia
ReThink Orphanages Australia
Rights in Action Inc.
Rights Information and Advocacy Centre
Rural Australians for Refugees
Safe Motherhood for All
Save the Children Australia
Scales Community Legal Centre
Scarlet Alliance
Secretariat of National Aboriginal and Islander Child Care
Seniors Rights Service
Seniors Rights Victoria
Sisters Inside
Sisters of St Joseph
Soroptimist International Australia
South Australian Rainbow Advocacy Alliance
Springvale Monash Legal Service
St Francis Social Services
TASC National
The Centre for Excellence in Child and Family Welfare
The Youth Affairs Council of Western Australia
Thorne Harbour Health
Traditional Owner Leadership Group
TransFolk of WA
Townsville Community Law Inc.
Twenty10 incorporating the Gay and Lesbian Counselling Service NSW
UN Women National Committee Australia
Union of Australian Women
United Nations Association of Australia Status of Women Network
UQ Pro Bono Centre
Victorian Gay & Lesbian Rights Lobby
Victorian Immigrant and Refugee Women's Coalition
VIEW Clubs of Australia
Violence Prevention Australia
Welfare Rights Centre
Western Australian Council of Social Service
Western NSW Community Legal Centre Inc.
Whittlesea Community Connections
Wollotuka School of Aboriginal Studies, University of Newcastle
Women in Adult and Vocational Education
Women in Engineering Australia
Women on Boards
Women Sport Australia
Women with Disabilities Australia
Women's Electoral Lobby Australia
Women's Equity Think Tank
Women's Housing Ltd
Women's Information Referral Exchange
Women's International League for Peace and Freedom
Women's Legal Centre (ACT & Region) Inc.
Women's Legal Service NSW
Women's Legal Service, Tasmania
Women's Legal Service WA
Women's Legal Services Australia
Women's Property Initiatives
Working Against Sexual Harassment
World Wide Fund for Nature - Australia
Youth Affairs Network of Queensland
Youth Law Australia
Yorta Yorta Nation Aboriginal Corporation
YWCA Australia
YWCA Canberra
Zonta International Districts 22, 23 and 24


3 Only three states in Australia have compensation schemes for members of the Stolen Generations: Tasmania (Stolen Generations of Aboriginal Children Act 2006 (Tas)), South Australia (Stolen Generations Reparations Scheme, Government of South Australia: Department of Premier and Cabinet [Web Page, 2019]); and New South Wales (Stolen Generations Reparations Scheme and Funeral Assistance Fund, NSW Government: Aboriginal Affairs [Web Page]).


5 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Art 37(c) protects the right of a child to be separated from adults in prison, unless it is not in the child’s best interest to do so, and the right to maintain contact with family.

6 Concerns include a lack of legislative basis, lack of funding and resources across jurisdictions, inconsistencies with existing inspection bodies, and failure to include aged care and disability-specific facilities. See the Australia Opcat Network. Submission to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the United Nations Working Group on Arbitrary Detention (WGAD), The Implementation of Opcat in Australia (January 2020).


8 Commonwealth funding for community services should be increased by $2 million per annum in order to reverse the cuts seen since the 2014 Budget. See Australian Council of Social Service, Budget Priority Statement 2020-2021, (January 2020) 27.

9 Victoria Tauli-Corpuz, Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 11 [60]-[64].

10 The NT Intervention sent 600 troops into 73 remote Aboriginal communities in 2007, removed cash welfare payments for Aboriginal and Torres Strait Islander Peoples, removed community governance and instilled the compulsory leasing of Aboriginal and Torres Strait Islander communal lands. It suspended the protections of the Racial Discrimination Act 1975 (Cth) for Aboriginal and Torres Strait Islander Peoples.


13 The NT Intervention suspended the protections of the Racial Discrimination Act 1975 (Cth) for Aboriginal and Torres Strait Islander Peoples.


16 Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia, (n 9) 11 [60]-[64].

17 Funding to Homeland and Outstation communities was stopped to pressure Aboriginal and Torres Strait Islander Peoples to move to larger hub communities. See Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, UN Doc A/HRC/15/37/Add.4 (n 11) 17–18 [68].

18 Shelley Bielefeld, Submission No 55 to Senate Standing Committee on Community Affairs, Parliament of Australia, Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (29 September 2017) 17.


20 Submission No 55 to Senate Standing Committee on Community Affairs, Parliament of Australia, (n 18) 5, 7, 9.

Available Australian Government statistics indicate that the number of stateless persons currently in Australia is, at a minimum, approximately 4,099 (See Australian Government, Department of Home Affairs, Australian Border Force, Immigration Detention and Community Statistics Summary (Report, 31 October 2019) 8; Australian Government, Department of Home Affairs, Australian Border Force, Illegal Maritime Arrivals on Bridging E Visa (Report, 30 September 2019); Australian Government, Department of Home Affairs, IMA Legacy Caseload, Report on Processing Status Outcomes (Report, October 2019); Australian Government, Department of Immigration and Border protection, Onshore Humanitarian Program 2018-19; Australian Government, Department of Home Affairs, Australia’s Offshore Humanitarian

This is in line with the UNHCR #iBelong Campaign to end statelessness by 2024. Action 6 relates to establishing statelessness determination procedures. See United Nations, Global Action Plan to End Statelessness: 2014-2024 (Report, 2014).


See, Attorney-General’s Department, Australia’s Universal Periodic Review (Report, 15 September 2015).

See, Terms of Reference, Royal Commission into Aged Care Quality and Safety (Web Page, 6 December 2018).

See, Royal Commission into Aged Care Quality and Safety, Interim Report (Report, 31 October 2019).


Older Australians are assessed as having a functional decline in their abilities by the Australian Government prior to being placed on the waitlist. This may trigger incompatibilities with ICRPD articles 25 or 26.


Susan Ryan, ‘Commissioner’s Foreword’ in Australian Human Rights Commission, Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability (Report, 2016). Australia must improve age-discrimination experienced by older workers in the area of recruitment. Almost one in three managers report that they would not employ someone over a certain age, with two thirds saying that age is 50, see, COTA for older Australians, MEDIA RELEASE: Survey shows ageism alive and well among Australian employers (Media Release, 1 November 2018). Discrimination against older workers is also prevalent in insurance. Many insurance products such as workers compensation and workers compensation stop at age 65 despite notional retirement age moving to 67 by 2023.

Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth).

Requirements that a person must divorce their spouse prior to updating their legal gender on birth certificates have been removed in all states and territories: Australian Capital Territory (‘ACT’) (2006), South Australia (‘SA’) (2016), New South Wales (‘NSW’) (2018), Queensland (‘Qld’) (2018), Northern Territory (‘NT’) (2018), Victoria (‘Vic’) (2019), Tasmania (‘Tas’) (2019) and Western Australia (‘WA’) (2019). Requirements that a person must undergo sexual
reassignment surgery or medical intervention prior to updating their legal gender have been removed in ACT (2014), SA (2016), NT (2018), Vic (2019), Tas (2019), and partially, in WA (2011).


56 Vic (2016, with further reforms under consideration), ACT (proposed 2020) and Qld (proposed 2020).


59 NSW, Qld and WA.


61 Ibid; See also Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) (‘CPRD Concluding Observations on Australia’).

62 Recognising that the needs, characteristics and human rights situations of populations of diverse sexual orientations, gender identities, gender expressions and sex characteristics are distinct from each other, the data on each population must be collected and managed in a manner consistent with ethical, scientific and human rights standards and made available in a disaggregated form. See Yogyakarta Principles Plus 10, Principle 19, (l).

63 Kerry Robinson et al., ‘Growing up Queer: Issues facing Young Australians who are Gender Variant and Sexuality Diverse’ (Report, Young and Well Co-operative Research Centre, February 2014).

64 There are serious concerns with the implementation of the current National Disability Strategy (2010-2020), that were most recently raised by the Committee on the Rights of Persons with Disabilities (CRPD). See *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61). See also Australian Civil Society CRPD Shadow Report Working Group, *Disability Rights Now 2019*, Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities, *UN CRPD Review 2019* (July 2019) (‘Australian Civil Society Shadow Report’).

65 These include Guardianship, estate management and mental health laws.

66 See *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61). Australia’s interpretation of CRPD Articles 12 and 17 allows for the continuation of guardianship and mental health laws that deprive people of liberty on the basis of disability, and subject them to forced medical interventions. Whilst there have been some reviews and amendments to legislation, there has been no action to end involuntary detention on the basis of disability, or to end forced medical interventions. The Interpretative Declaration on Article 18 also preserves Australia’s current legislative and administrative approach to processing visa applications. The *Disability Discrimination Act 1992* (Cth) provides an exception for certain provisions within the *Migration Act 1958* (Cth), which means that Australia’s migration arrangements and treatment of disability are unable to satisfy the equal protection obligations under CRPD Article 5.
Aboriginal and Torres Strait Islander women must be addressed

Statement by Antoinette Braybrook to the Human Rights Council, 41st session, agenda item 3 (27 June 2019).

Australia is required to provide its combined fourth and fifth periodic reports to the UN Committee on the Rights of Persons with Disabilities by 17 August 2026.


74% of incidents reported to Australia’s Disability Royal Commission have occurred since 2010: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (First Progress Report, December 2019) 13.


The core components required for the establishment of such a commissioner are outlined in SNAICC – National Voice for our Children and Queensland Aboriginal and Torres Strait Islander Child Protection Peak (OATSIICPP) Position paper: Establishment of a national commissioner for Aboriginal and Torres Strait Islander children and young people (Position Paper, October 2019).

In relation to obligations under the Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) (‘CRMW’), see UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (‘CMW’), Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, UN Doc CMW/C/GC/3-CRC/C/GC/22 (16 November 2017) and CMW, Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN Doc CMW/C/GC/4-CRC/C/GC/23 (16 November 2017). Australia has not ratified CRMW.

Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [22].

The National Action Plan should include a legislative and policy framework that fully complies with Article 24 and General Comment 4; See CRPD Concluding Observations on Australia, UN Doc CRPD/C/AUS/CO/2-3 (n 61).


See also Djirra, ‘High Rates of Violence against Aboriginal and Torres Strait Islander women must be addressed’, Oral Statement by Antoinette Braybrook to the Human Rights Council, 41st session, agenda item 3 (27 June 2019).

Human Rights Law Centre and Change the Record, Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing imprisonment (Report, May 2017) 10. Djirra, ‘High Rates of Violence against Aboriginal and Torres Strait Islander women must be addressed’, Oral Statement by Antoinette Braybrook to the Human Rights Council, 41st session, agenda item 3 (27 June 2019)


Ibid.

‘Safety First in Family Law’, Women’s Legal Services Australia (Web Page, 23 October 2019).

The Plan focuses on sexual assault and domestic and family violence in the context of intimate partner violence. It does not account for structural and institutional forms of gender-based violence related to law, state and culture women with disability experience and are more at risk of – i.e. reproductive rights violations and violence occurring in residential institutions. See, and *Australian Civil Society Shadow Report* (n 64).


Summary Offences and Other Legislation Amendment Bill 2019 (Qld); *Right to Farm Act 2019* (NSW). Tasmania will also likely introduce similar laws: see *Workplaces (Protection from Protesters) Amendment Bill 2019* (TAS).


Criminal Code Act 1995 (Cth), division 91.

There have been secret prosecutions of former intelligence officer Witness K and his lawyer Bernard Collaery, who revealed that Australia bugged the offices of East Timorese negotiators during oil and gas negotiations. See James Massola, *‘PM Dismisses Questions over Prosecution of ‘Witness K’ and Lawyer’* Sydney Morning Herald (online, 30 August 2019). The prosecution of Collaery may be in breach of the UN Basic Principles on the Role of Lawyers. In addition, Australia has not applied diplomatic pressure on the UK to prevent the extradition of Julian Assange to the USA, despite the underlying allegations cited in support of the charges include acts of common journalistic practice.

The National Congress of Australia’s First Peoples, the national elected representative body, lost its federal government funding in 2014 and was wound up in 2019 as a result.

Ibid, the Indigenous Peoples Organisation (IPO), which coordinates Indigenous advocacy at the United Nations, lost its annual $100,000 funding to support Indigenous participation at United Nations fora in 2014.

National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 (Cth).

Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015 (Cth); *Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018* (Cth).

Identity-matching Services Bill 2019 and *Australian Passports Amendment (Identity-matching Services) Bill 2019* (Cth).

At local and State level, governments and corporations have already rolled out facial recognition.

See *Australian Citizenship Act 2007* (Cth) ss 32A–36A. The *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* is also currently before the Australian Parliament, which could render the Act inconsistent with Australia’s international obligations and provide inadequate protections in ensuring the reduction and prevention of statelessness. See Peter McMullin Centre on Statelessness, *Submission No 19 to the Parliamentary Joint Committee on Intelligence and Security, Review of the Australian Citizenship Amendment (Citizen Cessation) Bill 2019* (16 October 2019).


99 See e.g., *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory*, 17 November 2017, Canberra; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [47]-[48]; *Human Rights Watch I needed help, instead I was punished* Abuse and Neglect of Prisoners with Disabilities in Australia 2018 https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf; and the Prisons section of this Report.

100 See e.g., *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory*, (Final Report, 17 November 2017); Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [47]-[48].

101 See The Office of the Public Guardian, Queensland *Annual Report 2018–19* (Report, 2019) 9; see also *Australian Civil Society Shadow Report* (n 64) and *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61).
103 The Committee on the Rights of the Child has called on all States Parties to raise their minimum age to at least 14 and has specifically urged Australia to do so: Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) [22]; Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [48(a)]. Numerous other UN committees and entities have called on Australia to raise its minimum age of criminal responsibility in line with international standards: see, e.g., Committee on the Elimination of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Australia, UN Doc CERD/C/AUS/18-20 (26 December 2017) [26(a)]; Human Rights Committee, Concluding observations on the sixth periodic report of Australia, UN Doc CCPR/C/AUS/CO/6 (1 December 2017) [44]; Report of the Special Rapporteur on the Rights of Indigenous peoples on her visit to Australia, UN Doc A/HRC/36/46/Add.2 (n 9) [77] and [113(ii)].

104 Manfred Nowak, Global study on children deprived of liberty, UN Doc A/74/136 (11 July 2019).

105 In 2016 Australian Governments tabled the Working Group on the Treatment of People Unfit to Plead or Found Not Guilty by reason of Mental Impairment, Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment. However, three years later, these Principles are yet to be consulted on, endorsed or implemented. In 2016 the Australian Senate also tabled the Community Affairs References Committee, Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment (Report, November 2016). The Government is yet to respond to the Report. Most recently Australia was highly criticised by the Committee on the Rights of Persons with Disabilities for making no progress in this regard, see CRPD Concluding Observations on Australia, UN Doc CRPD/C/AUS/CO/2-3 (n 61) 7.


107 Australian Bureau of Statistics, Prisoners in Australia, 2019 (Catalogue 4517.0, 4 December 2019); Jane Andrew et.al. Prison Privatisation in Australia: The State of the Nation Accountability, Costs, Performance and Efficiency (Report, University of Sydney Business School, 2016; Hayley Gleeson and Julia Baird, Why are our prisons full of domestic violence victims? ABC News (online, 18 December 2019). In 2017 the Australian Law Reform Commission conducted an Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Australian Law Reform Commission, Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Summary Report No 133, December 2017). Recommendations from the Final Report have yet to be implemented.


111 Hayley Gleeson and Julia Baird, Why are our prisons full of domestic violence victims? ABC News (online, 18 December 2019).

112 Human Rights Law Centre and Change the Record, Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-incarceration (Report, May 2017).


114 These must also be consistent with the National Plan to Reduce Violence against Women and Their Children.


116 Royal Commission into Child Protection and Youth Detention in the Northern Territory (Final Report, 17 November 2017), Queensland Independent Review of Youth Detention Centres (Confidential Report, December 2016); Commission for Children and Young People, Victoria, The same four walls: Inquiry into the use of isolation, separation and lockdown at places of youth detention in Victoria (Report, 2017); Office of the Inspector of Custodial Services, Western Australia, Behaviour Management Practices at Banksia Hill (Report, June 2017); Inspector of Custodial Services, New South Wales, Use of Force Against Detainees in NSW Juvenile Justice Centres (Report, 2018); Legal and Social Issues Committee, Legislative Council, Parliament of Victoria, Inquiry into Youth Justice Centres in Victoria (Final Report, March 2018); Office of the Advocate for Children and Young People, New South Wales, What children and young people in juvenile justice centres have to say (Report, 2019); Australian Institute of Health and Welfare, Youth Justice in Australia (Report, 10 May 2019); Australian Institute of Health and Welfare, Young people in child protection and under youth justice supervision: 2013-2014 (Report, Data Linkage Series No 21, 2016); Susan Baidawi and Rosemary Sheehan,
what have we learnt? Placing the findings of the New Income Management in the Northern Territory evaluation in context’ (2016) 51(4) 135

Partnership Report No.3


landmark royal commission’s recommendations have been fully implemented

of the 339 recommendations made in 1991: Lorena Allam and Calla Wahlquist, ‘Increased, resulting in increased numbers of deaths in custody, and disharmony between states on the implementation

126 Notably, whilst the rate of deaths in custody has declined since the Royal Commission, the rate of incarceration has increased, resulting in increased numbers of deaths in custody, and disharmony between states on the implementation of the 339 recommendations made in 1991: Lorena Allam and Calla Wahlquist, ‘Indigenous Deaths in Custody: key recommendations still not fully implemented - Deloitte review of deaths in custody reveals that only two-thirds of landmark royal commission’s recommendations have been fully implemented’, The Guardian (online, 25 October 2018).

127 Heather Nancarrow, Unintended Consequences of Domestic Violence: Gendered Aspirations and Racialised Realities (Palgrave, 2019), 90, 113, 184.


129 Heather Nancarrow, Unintended Consequences of Domestic Violence: Gendered Aspirations and Racialised Realities (Palgrave, 2019), 90, 113, 184.


131 Ibid.

132 Ibid. The Newstart Allowance falls $117 a week below the poverty line, and youth payments are $168 a week below the line.


In 2014–15, 29% Aboriginal and Torres Strait Islander people 15 years and over had experienced homelessness: Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Social Survey, 2014-15 (Catalogue No 4714.0, 28 April 2016). A review of remote housing in 2017 found overcrowding in 49% of very remote and 27% in remote housing, with more than 20 people per house: Department of Prime Minister and Cabinet, Commonwealth of Australia. The Remote Housing Review 2008-2018: A Review of the National Partnership Agreement on Remote Housing and the Remote Housing Strategy 2008-2018 (Report, 2018) 20. Overcrowding negatively impacts physical and mental health, children’s school attendance and is a key contributing factor and is a key contributing factor for assault and sexual assault. Overcrowding also caused additional stresses on water supplies and sewage disposal systems, causing failures and sewage overflow, strained shared amenities resulting in a lack of washing of people, clothes and bedding (see Department of Prime Minister and Cabinet, Commonwealth of Australia, The Remote Housing Review 2008-2018: A Review of the National Partnership Agreement on Remote Housing and the Remote Housing Strategy 2008-2018 (Report, 2018). This Housing review did not include Aboriginal Homelands, Outstations, or non-remote discrete communities.


At 4.4% in 2017, compared to nearly 20% for the UK: see Affordable Housing Database, Organisation for Economic Co-operation and Development (Web Page, 2019); Australian Institute of Health and Welfare, Housing Assistance in Australia 2018 (Web Report, Catalogue no HOU 296, 28 June 2018).


Closing the Gap aims to improve the lives of all Aboriginal and Torres Strait Islander Peoples. Australian governments have worked together to deliver better health, education and employment outcomes for Aboriginal and Torres Strait Islander Peoples, and to eliminate the difference between Aboriginal and Torres Strait Islander Peoples and other people across a number of areas like health, education, employment and life expectancy. In December 2018 the Council of Australian Governments (COAG) committed to forming a genuine formal partnership with Aboriginal and Torres Strait Islander Peoples to enable them to decide on the priorities and lead on the progress of Closing the Gap.

The Coalition of Peaks is a representative body comprised of Aboriginal and Torres Strait Islander community controlled peak-body organisations that have come together to partner with all Australian governments on designing, implementing and evaluating the closing the gap strategy, a policy aimed at improving the lives of Aboriginal and Torres Strait Islander Peoples. The Coalition of Peaks entered into a historic formal Partnership Agreement on Closing the Gap with the Council of Australian Governments (COAG) which sets out shared decision making on Closing the Gap. Together, it has been agreed to develop a new National Agreement on Closing the Gap, to be signed by COAG and the Coalition of Peaks, which will set out joint actions over the next ten years to help improve the lives of Aboriginal and Torres Strait Islander Peoples.

This is one of the largest ratios of any OECD nation. See Productivity Commission, Why a Better Health System Matters, Shifting the Dial: 5 year Productivity Review, Supporting Paper 4 (Report, 2017) 11.

The 20% of Australians living in the lowest socioeconomic areas in 2014–15 were 1.6 times as likely as the highest 20% to have at least two chronic health conditions, such as heart disease and diabetes. Australians living in the lowest socioeconomic areas lived about 3 years less than those living in the highest areas in 2009–2011: Australian Institute of Health and Welfare, Australia’s health 2016 (Report, 13 September 2016), Chapter 4, 130.

For example, Australia lacks a universal dental scheme. See Stephen Duckett, Matt Cowgill and Hal Swerissen, Filing the Gap: A Universal Dental Scheme for Australia (Report, Grattan Institute, March 2019).


The Australia Institute, Polling – Bushfire Crisis and Concern about Climate Change (Report, January 2020) 5.

Poverty and poor living conditions contribute to high rates of cardiovascular disease for Aboriginal and Torres Strait Islander Peoples (18% for remote regions), with 94% of cases of Acute Rheumatic Fever, and 92% of cases of Rheumatic Heart Disease involving Aboriginal and Torres Strait Islander Peoples. Kidney disease and renal failure in 2011-2015 for Aboriginal and Torres Strait Islander Peoples was 6.8 times the rate of other people, with 18.6 times the rate in the NT, and 12.7 times the rate in WA. Aboriginal and Torres Strait Islander Peoples also have 3 times the rate of blindness than other people, and trachoma, caused by poor living conditions and overcrowding, was at 4% in identified Aboriginal communities in 2017. Australia is the only developed country with trachoma. Diabetes impacts 13% of Aboriginal and Torres Strait Islander Peoples, with a death rate of 5.2 times that of other people. Cancer accounted for 9% of the disease burden for Aboriginal and Torres Strait Islander Peoples, and chronic respiratory disease is the third leading cause of death among Aboriginal and Torres Strait Islander Peoples, with Aboriginal and Torres Strait Islanders babies...
4.5 times more likely to die than other babies. See, Australian Indigenous Health InfoNet, *Summary of Aboriginal and Torres Strait Islander health status 2017* (Report, 2018) 10-21.

149 In 2016, an inquest was launched following 13 child deaths in the Kimberley in less than four years, including five children aged between ten and 13. The Coroner recommended a greater focus on self-determination, consultation, cultural education, increased and paid Aboriginal employment in service delivery, increased mental health services, recreational facilities and educational engagement, language learning, together with education on preventing, increased support for Foetal Alcohol Syndrome Disorder and the provision of alcohol rehabilitation with an emphasis on self-determination. See, State Coroner, *Record of Investigation into Death: Inquest into the deaths of thirteen children and young persons in the Kimberley Region of West Australia* (Report, 2017).

150 Ibid 268.

151 Ibid 334-336.

152 Ibid 295-297.

153 Ibid, 372. In a 2019 inquest into five deaths by suicide at Casuarina Prison, in which three of the deceased persons were Aboriginal or Torres Strait Islander Peoples, the Coroner made a series of recommendations on the need to improve mental health support and reduce the risk of suicide in the prison. See, State Coroner, *Record of Investigation into Death: deaths of five persons incarcerated at Casuarina Prison* (Report, 2019) 128–129 [666]. The Coroner also acknowledged that it is important that the cultural needs of Aboriginal and Torres Strait Islander prisoners are recognised, and that Aboriginal and Torres Strait Islander prisoners are supported by networks of Aboriginal and Torres Strait Islander Elders and support workers. See, State Coroner, *Record of Investigation into Death: deaths of five persons incarcerated at Casuarina Prison* (Report, 2019) 65-66 [317] [322].

154 State Coroner (n 149) 332.


158 Culturally safe healthcare refers to care that 1) respects human rights of self-determination and bodily autonomy 2) ensures health professionals are trained in culturally safe gender affirming care; 3) that therapeutic agents are subsidised and accessible; and 3) that provides a culturally safe informed consent model practiced across community-based services and in general practice. National frameworks and up-to-date guidelines for healthcare must be developed in partnership with community. In addition, Australia must (1) implement the Australian modification and implementation of the ICD-11 (ensuring that all diagnostic coding of ‘Gender Incongruence’ are within a newly established Sexual Health chapter and that all gender related coding is removed from the existing Mental Illness chapter), and (2) establish a review of the Medicare Benefits Schedule, which allows public funding to be directed towards particular healthcare services, to ensure the health system does not discriminate against people on the grounds of their gender identity and sex characteristics. See, Cristyn Davies et al, ‘Australians of diverse sexual orientations and gender identities’, (2020) *Culture, Diversity and Health in Australia: Towards Culturally Safe Health Care; Michelle Telfer et al., Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* (Report version 1.1, Melbourne Royal Children’s Hospital, 2018); Editorial, ‘Gender-affirming care needed for transgender children’ (2018) 391 (10140) *The Lancet* 2576; E Coleman et al, ‘Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7’ (2012) 13(4) *International Journal of Transgenderism* 165-232; Cheung et al ‘Position statement on the hormonal management of adult transgender and gender diverse individuals’ (2019) 211(3) *Medical Journal of Australia* 127. Thank you to Associate Professor Michelle Telfer and Professor S. Rachel Skinner for reviewing this section.

159 The Human Rights Commission states “climate change threatens the enjoyment of all human rights, including the rights to health, water, food, housing, self-determination, and life itself. Climate change is man-made. It is a result of policy choices that breach the affirmative obligations of States to respect, protect and fulfil human rights”: *Human Rights and Climate Change*, Office of the High Commissioner, United Nations Human Rights (Fact Sheet, October 2018), *The Paris Agreement* preamble states “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”


161 The Climate Action Tracker is an independent scientific analysis that tracks government climate action and measures it against the globally agreed Paris Agreement. Its December 2019 update has rated Australia’s 2030 target as
“insufficient” and is at the less stringent end of what would be a fair share of the global effort. See, ‘Australia’, Climate Action Tracker (Web Page, 2 December 2019).

Accordin...Subsidies that encourage...an analysis by NGO Market Forces, national tax-based subsidies that encourage fossil fuel production and consumption add up to $12 billion every year, see ‘How your tax dollars subsidise fossil fuels’, Market Forces (Web Page). According to analysis by the Australian Conservation Foundation (ACF) after the 2019/2020 Federal budget release, the Australian federal Government spends $4.36 subsidising pollution for every dollar it spends on climate action, see, Morrison Government’s Budget 2019-20: Devaluing Our Environment While Fuelling Global Warming, Australian Conservation Foundation (Media Release, 2 April 2019).

Transition planning is an opportunity to ensure job creation, social justice, poverty eradication, and grassroots leadership and empowerment, including for people experience multiple forms of discrimination.

A carbon price and ending fossil fuels subsidies are two ways to fund adaptation and just transition measures.

Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [40].

Australia has committed $1bn over 5 years 2015-2020 representing 0.3% of global flows. Academics and OFMA have estimated Australia’s contribution should be 2.4% of global flows which is equivalent to at least $3.2billion. See, Australian Council for International Development (ACFID), ‘Australian Development Cooperation in a Time of Contestation: AFCIF Submission to the 2019-20 Federal Budget’ (Report, January 2019), 9. A carbon price and ending fossil fuels subsidies are two ways to fund adaptation and just transition measures.


Performance has fallen year-on-year against the 80% gender target, from a high of 78% in FY 2015-16 down to 75% in 2017-18. See, Commonwealth of Australia, DFAT, ‘Performance of Australian Aid 2017-18’ (Report, 2 April 2019).


Australian Charities and Not-For-Profits Commission, ‘External Conduct Standard Four: Protection of Vulnerable Individuals’.

See, ACFID Child Rights Community of Practice and ReThink Orphanages Australia, Working with Children in Residential Care: Implications of the ACNC External Conduct Standards for Australian Charities (Report, 2019).


In November 2019, the Northern Territory passed a bill to fully decriminalise sex work in the NT, ensuring that sex workers can access workplace health and safety protections. This places NT as only the third jurisdiction in the world to decriminalise sex work, alongside NSW which was the first.