

# Joint NGO Report on Australia's Human Rights Record

An update on Australia's progress towards implementing Universal Periodic Review recommendations for the United Nations Human Rights Council



2014

**Joint NGO Report on Australia's Human Rights Record: An update on Australia's progress towards Universal Periodic Review recommendations for the United Nations Human Rights Council**

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# Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Services
AFP	Australian Federal Police
CAT	Convention Against Torture and other Cruel Inhuman Degrading Treatment or Punishment
CED	International Convention for the protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COAG	Council of Australian Governments
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DRIP	United Nations Declaration on the Rights of Indigenous People
FVPLS	Family Violence Prevention Legal Services
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFHHRO	International Federation of Health and Human Rights Organisations
INSLM	Independent National Security Legislation Monitor
NARPS	National Anti-racism Partnership Strategy
NDS	National Disability Strategy
NGO	Non-government organisation
NHRAP	National Human Rights Action Plan
NPIP	National Plan Implementation Panel
OP-CAT	Optional Protocol to the Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
RSD	Refugee status determination
RSO	Regional Support Office
TPV	Temporary Protection Visa
UDHR	Universal Declaration of Human Rights
UNHCR	Office of the United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
WMA	World Medical Association

# 1. Executive summary

This joint NGO report provides an update on the Australian Government's progress towards achieving the 145 Universal Periodic Review recommendations made in its 2011 review. The UPR recommendations were made by other UN member states in a process overseen by the United Nations Human Rights Council. Australia accepted 110 recommendations, accepted-in-part 27 recommendations and rejected 8 recommendations. This report covers progress towards all recommendations.

There have been many positive developments in Australia since its last review, which have been addressed in the body of the report. The report also identifies the commitments the Government has made in the National Human Rights Action Plan. This Executive Summary focuses on the areas where NGOs believe that the current laws, policies or human-rights situation on the ground in Australia require strengthening or are under threat.

## **Aboriginal and Torres Strait Islander Peoples**

Little has been done to address the recommendations made by the United Nations Special Rapporteur on the rights of Indigenous people after his visit in 2009, and there has been limited incorporation of the Declaration on the Rights of Indigenous Peoples (DRIP) into public policy or legislation. There is a need for a formal commitment to the development of a national implementation strategy for the DRIP.

The Federal Government has set an over-arching target for 'Closing the Gap' in life expectancy within a generation. Funding for programs under the strategy is underpinned by a National Partnership Agreement between Federal and State Governments. The newly elected Government is yet to affirm the extent it will commit to ongoing funding. There has been either no progress or a widening of the gap in areas including, employment outcomes, literacy and numeracy rates, overall death rates and education.

Whilst the Government has taken some action to improve the operation of the native title system, including through efforts to improve agreement making, increase flexibility and promote claim resolution and sustainable outcomes, there has been little meaningful reform that addresses the key flaws inherent in the legislation that impedes the realisation of Aboriginal and Torres Strait Islander people's rights to their lands, territories and resources.

The Commonwealth Government has reinstated the *Racial Discrimination Act 1975* (Cth) (RDA) in the Northern Territory as part of the Stronger Futures legislation which superseded the *Northern Territory Emergency Response Act 2007*. While the Stronger Futures legislation is technically non-discriminatory under the RDA, the majority of people living in affected areas in which these regulations and laws will apply are Aboriginal people and concerns remain that there are provisions in the legislation which will disproportionately affect Aboriginal people.

The Australian Government has taken a number of steps towards constitutional recognition of Aboriginal and Torres Strait Islander people. There has not yet been a commitment from the newly elected Australian Government regarding whether it will support the full recommendations of the Expert Panel on Constitutional Recognition of Indigenous Australians.

The Government plans funding cuts to successful Aboriginal community controlled, culturally safe services. Over the next four years it will cut over \$17 million from the Indigenous Legal Assistance and Policy Reform Program and the National Aboriginal Family Violence Prevention and Legal Service program. Given that Aboriginal and Torres Strait Islander peoples are shockingly over-represented in Australia's justice systems and jails, and that Aboriginal and Torres Strait Islander women experience disproportionately high rates of family violence, cuts to vital services such as these are going to have a devastating impact on access to justice for Aboriginal and Torres Strait Islander peoples.

To facilitate the right of Aboriginal and Torres Strait Islander people to access legal advice, a national framework is needed to support and expand existing Aboriginal and Torres Strait Islander interpreter services to cover metropolitan, regional and remote areas.

Aboriginal and Torres Strait Islander women are thirty-five times more likely to be hospitalised as a result of family violence related assault than other Australian women. Aboriginal women have been poorly represented in national law and justice policy debates historically. There remains an urgent need to ensure access to services tailored to cultural needs and to improve opportunities for leadership development for Aboriginal women and communities.

### **Anti-Discrimination and Human Rights**

There was extreme disappointment amongst community organisations and human rights groups at the delay in Australia's commitment to consolidate anti-discrimination laws. The consolidation and modernisation of the five laws passed over the course of four decades, would simplify legislation schemes, address previous shortcomings and make anti-discrimination laws more effective, accessible and clear.

NGOs welcomed the National Human Rights Action Plan 2012, but stressed that the plan should be strengthened through a more effective plan for implementation, monitoring and evaluation, and expressed concern that some action items are inconsistent with human rights standards.

NGOs criticised Australia's failure to incorporate its international human rights obligations into domestic law and repeated calls for Australia to enact a comprehensive Human Rights Act, which protects the rights enshrined in the human rights instruments Australia has ratified.

Access to justice for vulnerable persons has been put at risk by funding cuts made by the Federal Government of \$43.1m over four years across the four legal assistance services. It is expected that the cuts will impact frontline services to vulnerable people and leave a significant number of people without access to legal help.

## **Asylum Seekers and Refugees**

The Australian Government accepted 11 out of 15 UPR recommendations concerning asylum seekers and refugees. At the time of writing, none of the 15 recommendations had been implemented. NGOs are deeply concerned by the Government's increasingly hardlined approach to asylum seekers arriving by boat. The Government introduced "Operation Sovereign Borders" – turning back asylum seeker boats, offshore processing and temporary rather than permanent protection visas.

Mandatory detention of unauthorised arrivals is still taking place, over 1000 children are in held detention currently (onshore and offshore) and policies like abridging the process for refugee status determination increase the risk of Australia refouling refugees to places where they have a well founded fear of serious harm.

Independent, free legal advice is under threat for asylum seekers who came by boat. Without this advice and assistance, vulnerable often illiterate asylum seekers will be left to navigate the complicated protection application process by themselves.

Recent changes to the *Migration Act 1958* and the possibility of future changes have increased the uncertainty for people who have arrived by boat seeking asylum.

## **Climate Change**

The submission expresses concern over the possible impacts of the Government's climate change policies which include the repeal of the Carbon Tax, abolition of Australia's Clean Energy Finance Corporation and funding cuts to the Australian Renewable Energy Agency.

## **Counter-Terrorism Measures**

The Independent *National Security Legislation Monitor Act 2010* (Cth) has established the office of the Independent National Security Legislation Monitor (INSLM) to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an ongoing basis. The Council of Australian Governments (COAG) is currently undertaking a review of key provisions of Commonwealth, State and Territory counter-terrorism legislation enacted after 2005.

## **Culturally and Linguistically Diverse Communities**

The National Anti Racism Strategy (2012-2015) was launched in July 2012. However, the Government is yet to implement a dedicated piece of legislation that would underpin the necessary support infrastructure for immigrants in Australia, including access and equity principles, language policy, translating and interpreting services, and cultural awareness in Government agencies and contracted organisations.

The new Government is yet to make clear its position on multiculturalism through a dedicated ministerial portfolio and to adopt a comprehensive social inclusion agenda towards full and equal social participation of culturally and linguistically diverse Australians.

As part of a series of broad-reaching cuts, the Government recently decided to cancel vital community funding programs offered to support culturally and linguistically diverse Australians through the Building Multicultural Communities Program (BMCP) and the Multicultural Communities Employment Fund (MCEF). Over 400 ethno-specific and multicultural groups and organisations across Australia were disadvantaged by the Government's withdrawal of the offer of funding through BMCP.

NGOs have expressed concern over the Government's proposal to amend section 18C of the *Racial Discrimination Act 1975* (Cth) that provides protection from racist hate speech.

### **Domestic and Family Violence**

NGOs welcomed the release of the National Plan to Reduce Violence against Women and their Children, but emphasised the need for greater consultation and collaboration in the implementation, monitoring and evaluation of implementation plans by the prevention of violence against women sector and those whose lives and rights will be affected. NGOs called for the Government to commit to adequate resourcing of the National Plan and continuing the implementation of an independent monitoring mechanism and the resourcing of civil society to participate in this.

Changes have been made to the *Family Law Act 1975* (Cth) to better recognise family violence, but further protections are required. NGOs stressed the need for domestic violence/family violence to be included as a protected attribute in anti-discrimination laws. The report also highlights the need to strengthen counselling, recovery and victims compensation programs.

### **Economic, Social and Cultural Rights**

The submission commends the many positive developments that have taken place in regards to health, housing, work and education, disability and poverty. However, as discussed in other sections of this report, there are many areas in which economic, social and cultural rights lack adequate protection in Australia. For instance, the Government has been criticised for providing inadequate unemployment and sole parenting social security payments, and despite the Government having committed to halving the rate of homelessness by 2020, the number of homeless people increased by 17 per cent between 2006 and 2011 and homeless services have reported that they are now turning away 16 per cent of people asking for help.

### **Foreign Policy and International Assistance**

The submission expresses concern over the \$4.5 billion cuts to foreign aid, which the Government has said will be introduced over four years. There is concern that the cuts will have a significant impact on developing countries and is expected to bring Australia further away from the commitment it made in 2000 to raise its national foreign aid budget to 0.7 per cent of gross national income by 2015. As part of this suite of changes AusAID was subsumed into the Department of Foreign Affairs and Trade, in a move that NGOs are concerned may represent the deprioritisation of the goal of poverty alleviation.



## International Human Rights Mechanisms

Although there has been some limited progress in the Commonwealth, States and Territories in terms of bringing legislation in line with Australia's international obligations, there remain substantial and material gaps in the protection of human rights in Australia.

The Government has not made progress towards ratifying Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ILO Convention No.169. Nor has the Government withdrawn its reservations to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, or the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

## Labour Rights

The right to strike is not protected by Australian law and is denied to workers in many situations. There is some concern about the scope of industrial action protected by the *Fair Work Act 2009* (Cth) and the onerous penalties that can be imposed on individuals for industrial action that is not protected. Despite the abolishment of the Australian Building and Construction Commission, by the previous government in accordance with UPR commitments, the new Government has stated that it will re-establish the Commission.

## Law Enforcement

In all Australian jurisdictions currently, police investigate themselves when there is a death in police custody; or there is a complaint of torture, degradation, abuse, ill-treatment, assault, racial abuse or excessive force by police. Police are rarely prosecuted or disciplined for human rights abuses.

There should be a consistent Australia-wide high threshold test for Taser use that prohibits use unless there is a real risk of serious injury or death where there are no other reasonable alternatives that can be used. To ensure and demonstrate compliance with this standard, each jurisdiction needs to ensure that there is adequate data collection and reporting on Taser use.

## People with Disability

Australia has failed to incorporate the UN Convention on the Rights of persons with Disabilities (CRPD) into domestic law, with existing legislation, such as the *Disability Discrimination Act 1992* (Cth), falling well short of obligations under the Convention.

NGOs welcome the introduction of the National Disability Strategy 2010-2020, but are concerned about the lack of a clear commitment by the Government to resource implementation of the strategy and the need for specific actions, a transparent reporting mechanism, and accountability measures within State and Territory implementation plans to ensure that strategic outcomes are achieved at both the state and federal level.

Forced/involuntary or coerced sterilisation of people with disability, particularly women and girls with disability is an ongoing practice in Australia. NGOs are concerned that if the recommendations of a 2012 Senate Inquiry into forced/involuntary sterilisation of people with disability are accepted, it will remain acceptable practice to sterilise children and adults with disabilities, provided that they 'lack capacity' and that the procedure is in their 'best interest', as determined by a third party.

## **Prisoners**

The submission supports examining possibilities to increase the use of non-custodial measures in the context of rapidly increasing prison rates in some states and the continuing overrepresentation of Aboriginal and Torres Strait Islander people and people with mental illness or cognitive impairment in detention.

Prisoners continue to experience conditions that infringe their human rights pre and post release. The submission highlights the link between prolonged psychiatric harm and social isolation in solitary confinement, Supermax prisons and Maximum Security Units. It also emphasises the need to address issues faced by women and young people in prison.

## **Sexual Orientation, Gender Identity and Intersex Status**

NGOs applaud the amendments to the *Sex Discrimination Act 1984* (Cth) to prohibit discrimination based on sexual orientation, gender identity and intersex status and extend the ground of "marital status" to protect same sex de facto couples. However, with the exception of Commonwealth funded age care, broad exemptions for religious organisations continue to permit discrimination against lesbian, gay, bisexual, transgender and intersex people in a range of areas.

NGOs remain disappointed that Australia rejected UPR recommendations on same-sex marriage. A bill to remove discrimination from the *Marriage Act 1961* (Cth) and recognise same-sex marriages performed overseas was defeated in June 2013. In late 2013 the Australian Capital Territory enacted the *Marriage Equality (Same Sex) Act 2013* (Cth), which was immediately challenged by the Commonwealth in the High Court. The High Court overturned the Act, but confirmed that Federal Parliament has the ability to legislate for marriage equality.

## **Trafficking**

The Government has maintained its commitment to the Bali Process and has established the Australia-Asia Program to Combat Trafficking in Persons expected to run for 5 years from 2013. NGOs called for the OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking to be further incorporated to place the human rights of the victim at the centre of the Australian Government Strategy to Combat Human Trafficking and Slavery.

## **Women and Children's Rights**

The Government has met its UPR commitment to establish a National Children's Commissioner. Despite the introduction of the National Framework for Protecting Australia's Children 2009-2020 and the establishment of a National Children's

Commissioner, greater effort is needed to reduce high levels of disadvantage, abuse and neglect, particularly amongst Aboriginal and Torres Strait Islander children, children with disability vulnerable groups of children and young people.

NGOs welcomed amendments to the *Fair Work Act 2009* (Cth) that have resulted in a right to request flexible work arrangements for victims of family violence and carers of such victims and called for an amendment to include an adverse action protection relating to being a victim/survivor of domestic and family violence.

The gender pay gap experienced by Australian women persists and sits at 17.5 per cent. Women continue to be underrepresented in senior executive ranks of the private sector, with the percentage of women at 9.7 per cent.

The submission noted that many of the recommendations from the 2008 Sex Discrimination Act inquiry are yet to be implemented and expressed disappointment at the failure to strengthen discrimination laws through the consolidation project. NGOs emphasise need for increase in funding and support for crisis response, refuges, housing, health, women's legal services and Aboriginal and Torres Strait Islander women's legal services, as demand is increasing rapidly.

## 2. Introduction

### 2.1 About this Report

This submission has been prepared with support from 64 non-governmental organisations (NGOs) across Australia.

This submission has been coordinated by the National Human Rights Network of the National Association of Community Legal Centres (NACLC). NACLC would like to thank the following organisations for their significant contributions to the report: Aboriginal Family Violence Prevention & Legal Service Victoria; Anti Slavery Australia, UTS; Australian Women Against Violence Alliance (AWAVA); Castan Centre for Human Rights Law; Deaths In Custody Watch Committee (WA) Inc; Federation of Ethnic Communities' Councils of Australia (FECCA); Human Rights Law Centre (HRLC); Kingsford Legal Centre; Marrickville Legal Centre; National Congress of Australia's First Peoples; NSW Council of Civil Liberties; People with Disability Australia; Prisoners' Legal Service Inc; Refugee Advice & Casework Service (RACS); SCALES Community Legal Centre (Southern Communities Advocacy Legal and Education Service Inc.); Women's Legal Services NSW; Women's Legal Services Australia; Women With Disabilities Australia (WWDA); YWCA Australia.

The report was prepared for Geneva-based NGO, UPR Info's Mid-term Implementation Assessment, which evaluates the human right situation in countries two years after the examination at the UPR.

### 2.2 List of Supporting Organisations

The following organisations endorse the report in whole or in part:

Aboriginal Family Violence Prevention & Legal Service Victoria  
Advocacy for Inclusion  
Anti-slavery Australia, UTS  
Armadale Domestic Violence Intervention Project Inc.  
Asylum Seekers Resource Centre  
Australian Education Union  
Australian Federation of AIDS Organisations (AFAO)  
Australian Federation of Graduate Women  
Australian Lawyers for Human Rights  
Australian Women Against Violence Alliance  
Berry Street  
Castan Centre for Human Rights Law  
Community Legal Centres Association (WA)  
Community Legal Centres NSW  
Darwin Community Legal Service  
Deaths In Custody Watch Committee (WA) Inc  
Disability Discrimination Legal Service

Domestic Violence Legal Workers Network (WA)  
Domestic Violence Victoria (DV Vic)  
Dr Liz Curran (Senior Lecturer, Australian National University)  
Eastern Community Legal Centre  
Equality Rights Alliance  
Ethnic Child Care Family and Community Services Cooperative Ltd  
Federation of Community Legal Centres Victoria  
Federation of Ethnic Communities' Councils of Australia (FECCA)  
Flat Out Inc  
Flemington & Kensington Community Legal Centre Inc.  
Homelessness Australia  
Human Rights Law Centre  
Human Rights Working Group, Federation of Community Legal Centres  
Justice Connect  
Kimberley Community Legal Services Inc.  
Kingsford Legal Centre  
Koorie Women Mean Business Incorporated  
Liberty Victoria  
Marrickville Legal Centre  
Multicultural Centre for Women's Health  
National Aboriginal and Torres Strait Islander Legal Services  
National Association of Community Legal Centres  
National Congress of Australia's First Peoples  
National Tertiary Education Union  
Network of Immigrant and Refugee Women of Australia Inc.  
New South Wales Council of Civil Liberties  
North Queensland Women's Legal Service  
Northern Rivers Community Legal Centre  
Peninsula Community Legal Centre  
People with Disability Australia Incorporated  
Prisoners' Legal Service  
Queensland Advocacy Inc  
Queensland Association of Independent Legal Services  
Refugee Advice & Casework Service  
SCALES Community Legal Centre (Southern Communities Advocacy Legal and Education Service Inc.)  
Sector Connect Inc.  
UnitingJustice Australia  
Victorian Mental Illness Awareness Council  
WEAVE Inc.  
Women in Prison Advocacy Network (WIPAN)  
Women With Disabilities Australia (WWDA)  
Women's Law Centre (WA)  
Women's Legal Centre (ACT & Region)  
Women's Legal Services Australia  
Women's Legal Services NSW  
Women's Legal Service Victoria  
YWCA Australia

## 3. The Universal Periodic Review

### 3.1 What is the UPR?

The human rights records of all 193 UN Member States are reviewed and assessed through a process called the Universal Periodic Review (UPR). The UPR was established in 2006 and is currently in its second cycle. Countries undergo a review every 4.5 years.

The UPR is a State-driven process, conducted by the United Nations Human Rights Council, in which States report on the human rights situations in their countries and actions they have taken to address human rights violations. The UPR provides a mechanism for a peer-review of the extent to which a State is complying with human rights obligations set out in the UN Charter, the Universal Declaration of Human Rights and other human rights treaties to which the country is a party.

Any UN Member State can contribute to the dialogue with the State under review. NGOs participate in the process by providing information or making statements which are considered during the review. A report is prepared with questions, comments and recommendations to the country under review. The country under review responds to each of the recommendations and commits to progress the recommendations it accepts by the date of its next review.

### 3.2 Australia's Commitment to the UPR

Australia underwent its first periodic review in 2011 and is due for its next review at the 23rd session of the UN Human Rights Council in 2015.

Australia has always been a strong supporter of the Universal Periodic Review Process. In 2011, the Australian Government delivered a formal response to its review, accepting over 90 per cent (110 recommendations) of the total 145 recommendations.<sup>1</sup>

In 2012 the Government launched Australia's National Human Rights Action Plan, which "articulates, in detail how the Australian Government will implement the commitments we made in 2011 during Australia's Universal Periodic Review at the United Nations." However, NGOs have expressed concern about the implementation and effectiveness of the plan. Only 9 per cent of action items contain performance indicators and only 35 per cent identify a timeframe for implementation. Some action items are also inconsistent with human rights standards.<sup>2</sup>

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<sup>1</sup> Attorney-General's Department, *Australia's Universal Periodic Review*, see:

[www.ag.gov.au/RightsAndProtections/HumanRights/UniversalPeriodicReview/Pages/default.aspx](http://www.ag.gov.au/RightsAndProtections/HumanRights/UniversalPeriodicReview/Pages/default.aspx)

<sup>2</sup> Human Rights Council, *Joint written statement submitted by the Human Rights Law Centre and the National Association of Community Legal Centres*, See: [daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/140/60/PDF/G1314060.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/140/60/PDF/G1314060.pdf?OpenElement)

In 2013, prior to the election, the Government delivered a [mid-term report](#) on its progress towards implementing UPR recommendations. It highlighted four developments, including the appointment of a National Children’s Commissioner in the Australian Human Rights Commission, the adoption of the Aboriginal and Torres Strait Islanders Peoples Recognition Act, as a step towards constitutional recognition, the amendment of the Sex Discrimination Act 1984 which provides protection against discrimination on the grounds of sexual orientation, gender identity and intersex status; and the establishment of DisabilityCare Australia. It restated its firm commitment to the UPR process as central to Australia’s approach to human rights.

There has been strong bi-partisan support for the UPR process. The Hon Julie Bishop MP, Deputy Prime Minister and Minister for Foreign Affairs, speaking as Deputy Leader of the Opposition at the time of Australia’s review in 2011 said, “The coalition has always been a strong supporter of human rights and the Universal Declaration of Human Rights, believing that those who live in freedom should defend and advance the human rights of those who do not live in freedom. The Universal Periodic Review is one of the important processes that come with membership of the United Nations, and I welcome this update on Australia’s participation in that process.”<sup>3</sup>

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<sup>3</sup> Ms Julie Bishop. *Ministerial Statements, United Nations Universal Periodic Review*. [See: [parliinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-03-02%2F0126%22](http://parliinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-03-02%2F0126%22)]

## 4. Australia's progress towards implementing UPR recommendations

### 4.1 Aboriginal and Torres Strait Islander Peoples

#### UPR Recommendation 23

Focus on nationwide enforcement of its existing anti-discrimination law, plan adequately for nationwide implementation, especially as it relates to discrimination against indigenous persons;

**Australia's response - ACCEPTED**

#### UPR Recommendation 24

Fully implement the Racial Discrimination Act and the revision of federal laws to be compatible with the United Nations Declaration on the Rights of Indigenous Peoples;

**Australia's response - ACCEPTED-IN-PART**

#### UPR Recommendation 25

Consider reinstating, without qualification, the Racial Discrimination Act into the arrangements under the Northern Territory Emergency Response and any subsequent arrangement;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

While the former Commonwealth Government made moves to strengthen Australia's anti-discrimination framework by consolidating all federal anti-discrimination laws into a single act (see *Recommendations 42-45*), the purpose of this reform was not overtly to ensure Australia's racial discrimination laws' compatibility with Declaration on the Rights of Indigenous People (DRIP).

Nevertheless, the government has made some progress on the protection of indigenous rights that may promote the object and purpose of DRIP. For example, in 2010 it appointed an Expert Panel on Constitutional Recognition of Indigenous Australians to advise on how best to recognise Aboriginal and Torres Strait Islander peoples in the Constitution, and the new Government has committed to putting forward a draft amendment for constitutional recognition within 12 months of taking office. In a law recognising Aboriginal and Torres Strait Islander peoples was passed as an interim measure.

The *Stronger Futures in the Northern Territory Act 2012* reinstated the *Racial Discrimination Act 1975* (Cth) in relation to the Northern Territory Emergency Response, and the former Government committed to strengthening native title arrangements by measures (including \$82 million in 2011-12) to support the ongoing capacity and operations of native title representative bodies.



Other measures to improve realisation of Indigenous rights include the Closing the Gap Strategy, Jawun's Empowered Communities initiative, the commitment (by the new Government) of up to \$45 million for GenerationOne's demand-driven training model and the establishment of the new Prime Minister's Indigenous Advisory Council.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD, FaHCSIA

**Action:** The *Racial Discrimination Act 1975* (Cth) was fully reinstated in relation to the Northern Territory Emergency Response as of 31 December 2010. The Stronger Futures in the Northern Territory legislation repealed the *Northern Territory Emergency Response Act 2007* and includes provisions that make it explicit that the Stronger Futures laws do not affect the operation of the *Racial Discrimination Act 1975* (Cth).

**Performance indicator/timeline:** All measures are consistent with the *Racial Discrimination Act 1975* (Cth).

No reference is made to the UN Declaration on the Rights of Indigenous Peoples in the Human Rights Action Plan.

### UPR Recommendation 26

Consult with Aboriginal and Torres Strait Islander people, and take into consideration the guidelines proposed by the Australian Human Rights Commission before considering suspension of the Racial Discrimination Act for any future intervention affecting the Aboriginal and Torres Strait Islander people;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

The Australian Human Rights Commission has issued draft guidelines to provide practical assistance to the Australian Parliament and the Government in designing and implementing income management measures that are designed to protect human rights and to ensure consistency with the *Racial Discrimination Act 1975* (Cth). At the time of writing, it is unclear as to whether the Australian Government has incorporated these guidelines into their processes.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 36

Consider implementing the recommendations of human rights treaty bodies and special procedures concerning indigenous people;

**Australia's response - ACCEPTED**

## NOT IMPLEMENTED

The Declaration on the Rights of Indigenous Peoples incorporates the substantive rights outlined in the below mentioned seven key treaties to which Australia is a signatory. Although the Declaration has been adopted in Australia, it is not considered a key human rights mechanism against which to measure progress, and efforts by the Australian Government to adequately implement the Declaration have been minimal.

1. Convention on the Rights of the Child (CRC)
2. Convention Against Torture and other Cruel Inhuman Degrading Treatment or Punishment (CAT)
3. International Covenant on Civil and Political Rights (ICCPR)
4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
5. International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD)
6. International Covenant on Economic, Social and Cultural Rights (ICESCR)
7. Universal Declaration of Human Rights (UDHR)

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 37

Implement the recommendations made by the United Nations Special Rapporteur on the rights of indigenous people after his visit in 2009;

**Australia's response - ACCEPTED-IN-PART**

## PARTIALLY IMPLEMENTED

Other than the acknowledgements already provided by the Special Rapporteur on existing policies, little has been done to address the recommendations made.

Developments to date include:

- the release of the National Indigenous Health Plan – 2013-2023 developed in consultation with relevant Indigenous health stakeholders
- the release of the Indigenous Economic Development Strategy 2011-2018
- an independent review of Taxation of Native Title and Traditional Owner Benefits and Governance; and a review of roles and functions of Native Title Organisations

The Commonwealth Government has reinstated the *Racial Discrimination Act 1975* (Cth) in the Northern Territory as part of the *Stronger Futures* legislation which superseded the *Northern Territory Emergency Response Act 2007*. However, while the *Stronger Futures* legislation is technically non-discriminatory under the *Racial Discrimination Act 1975* (Cth), the majority of people living in affected areas in which

these regulations and laws will apply are Aboriginal people. Accordingly, concerns remain that there are provisions in the legislation which will disproportionately affect Aboriginal people and therefore be discriminatory in nature.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 72**

Strengthen efforts to combat family violence against women and children with a particular focus on indigenous communities;

**Australia's response - ACCEPTED**

### **NOT IMPLEMENTED**

The [Foundation to Prevent Violence against Women and their Children](#) is a new national organisation launched on 26 July 2013 by the Australian and Victorian governments. Its establishment is a component of the National Plan to Reduce Violence against Women and their Children and is in addition to the [National Centre of Excellence](#) to Reduce Violence Against Women and Children.

While this initiative is welcome it remains to be seen to what extent the Foundation will engage with the Aboriginal community and work to address the still disproportionately high rates of family violence experienced by Aboriginal people.

Aboriginal and Torres Strait Islander women are thirty-five times more likely to be hospitalised as a result of family violence related assault than other Australian women. Efforts to focus particularly on Aboriginal communities and tailored cultural needs must be sustained, given the way that Aboriginal women have been poorly represented in national law and justice policy debates historically.

The recent move of the [National Family Violence Prevention Legal Services Program](#) and other Aboriginal services to Department of Prime Minister and Cabinet hopefully signals a new prioritisation of Aboriginal victims/survivors of violence and their access to justice. In addition, it is hoped that the next Australia-wide tender of the National FVPLS program will bring an expansion of the program to address the geographic and service delivery gaps.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, states and territories

**Action:** Governments will implement the National Plan to Reduce Violence Against Women and their Children (2010-22). And other initiatives under the chapter women: freedom from violence

**Performance indicator/timeline:** Implementation of national priorities is guided by three year action plans.

## UPR Recommendation 90

Implement specific steps to combat the high level of deaths of indigenous persons in places of detention;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

Prior to the federal election in September 2013, the Australian Government (both state and federal) had committed to the inclusion of Justice Targets within a fully-funded Safe Communities National Partnership Agreement as part of the Closing The Gap strategy. This commitment was to be incorporated into the National Indigenous Reform Agreement and supported by significant improvements to data collection regarding Aboriginal and Torres Strait Islander people within the justice system. The current Government is yet to make a similar commitment.

The Australian Government is also moving towards ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

See also, *Recommendation 92*.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will ensure that complaints about the Australian Federal Police are investigated thoroughly, within benchmark timeframes, oversights appropriately by the Commonwealth Ombudsman and with the Law Enforcement Integrity Commissioner.

**Performance indicator/timeline:** Ongoing

## UPR Recommendation 92

Increase the provision of legal advice to indigenous peoples with due translation services reaching especially indigenous women of the most remote communities;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

There is a need to establish a national network of Aboriginal and Torres Strait Islander interpreters that facilitates the right of Aboriginal and Torres Strait Islander people to access legal advice. A joint Aboriginal and Torres Strait Islander Legal Services [submission](#) to the Commonwealth Government explains that a national framework is needed to support and expand existing services to cover metropolitan, regional and remote areas. It also emphasises the importance of developments being undertaken in consultation and collaboration with existing services, relevant stakeholders such as the Aboriginal and Torres Strait Islander Legal Services, and Aboriginal and Torres Strait Islander communities.

See also, *Recommendation 91*.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD, FaHCSIA, NT Government

**Action:** The Australian Government will continue to provide funding for legal assistance services, including:

- Aboriginal and Torres Strait Islander Legal Services (ATSILS) whose priority clients are those detained or at risk of being detained in custody. This includes funding of \$199.1 million over three years commencing in 2011.
- Family Violence Prevention Legal Services (FVPLS) for victims/survivors of family violence with all services being provided in rural and remote locations. This includes funding of \$58.4 million over three years commencing in 2010.
- Indigenous women's projects which help meet the legal assistance needs of Indigenous women (through the Commonwealth Community Legal Services Program). This includes funding of \$4.5 million over four years commencing in 2010.

The Australian Government is continuing to provide funding to build the capacity of the Northern Territory Aboriginal Interpreter Service (NT AIS), as part of a 10 year funding commitment under the Stronger Futures in the Northern Territory National Partnership Agreement. The Australian Government is also continuing to provide funding to support free access to interpreters for Northern Territory law and justice and health agencies and AGD funded legal service providers. The Commonwealth and Northern Territory Governments are working together to encourage agencies to increase their use of Indigenous interpreters when needed, as an ongoing service delivery practice, in the rollout of service and programs in the Northern Territory.

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 93

Implement measures in order to address the factors leading to an overrepresentation of Aboriginal and Torres Strait Islander communities in the prison population;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

Prior to the federal election in September 2013, the government promised to include justice targets within the Closing The Gap framework, however a commitment to introduce justice targets has not been made by the current government. Many States and Territories still have harsh sentencing laws which disproportionately impact on Aboriginal and Torres Strait Islander Peoples.

Whilst the Australian Government has provided some support for initiatives of Justice Reinvestment as well as strategies of prevention, early intervention and diversion of Aboriginal and Torres Strait Islander Peoples in the criminal justice system, such strategies and initiatives are yet to be implemented.

Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services respond to the full range of legal needs experienced by Aboriginal and Torres Strait Islander Peoples. Over the next four years it will cut over \$17 million from the Indigenous Legal Assistance and Policy Reform Program and the National Aboriginal Family Violence Prevention and Legal Service program. This loss of funding will directly impact on the service provision to their Aboriginal and Torres

Strait Islander clients. Given that Aboriginal and Torres Strait Islander peoples are shockingly over-represented in Australia's justice systems and jails, and that Aboriginal and Torres Strait Islander women experience disproportionately high rates of family violence, cuts to vital services such as these are going to have a devastating impact on access to justice for Aboriginal and Torres Strait Islander peoples.

**UPR Recommendation 97**

Establish a National Compensation Tribunal, as recommended in the "Bringing Them Home" report, to provide compensation to Aboriginal and Torres Strait Islander people that are negatively affected by the assimilation policy, particularly as it applies

### UPR Recommendation 102

Reform the Native Title Act 1993, amending strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life;

**Australia's response - ACCEPTED-IN-PART**

#### NOT IMPLEMENTED

Whilst the Government has taken some action to improve the operation of the native title system, including through efforts to improve agreement making, increase flexibility and promote claim resolution and sustainable outcomes, the burden of proof under the *Native Title Act 1993* (Cth) continues to be upon Aboriginal and Torres Strait Islander peoples. The Act further promotes security for non-Indigenous interests, rather than providing appropriate redress for historical dispossession.

As per his Country Report on Australia, [Situation of indigenous people in Australia](#) the UN Special Rapporteur on the Rights of Indigenous Peoples, made various findings that the Native Title law in Australia is racially discriminatory and in breach of its obligations under international law.

Efforts to review the operation of the *Native Title Act 1993* (Cth) have been at best 'tinkering at the edges'. There has been little if any meaningful reform that addresses the key flaws inherent in the legislation that impedes the realisation of Aboriginal and Torres Strait Islander people's rights to their lands, territories and resources.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 103

Institute a formal reconciliation process leading to an agreement with Aboriginal and Torres Strait Islander people;

**Australia's response - ACCEPTED-IN-PART**

#### NOT IMPLEMENTED

The negotiation of a Treaty between Aboriginal and Torres Strait Islander peoples has been strongly advocated for many years including by the National Aboriginal Conference during the 1980s, and the former Aboriginal and Torres Strait Islander Commission. Agreement-making, based upon the free and informed consent of the First Peoples will be a major part in achieving good relations between the Government and the Australia's First Peoples.

As of late 2013, negotiations for a treaty between Aboriginal and Torres Strait Islander peoples the Australian Government are non-existent.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

#### **UPR Recommendation 104**

Continue in particular the process of constitutional reform in order to better recognize the rights of indigenous peoples;

**Australia's response - ACCEPTED**

#### **PARTIALLY IMPLEMENTED**

In November 2010, the Australian Prime Minister Julia Gillard announced the establishment of an Expert Panel to consult on a constitutional amendment on the recognition of Aboriginal and Torres Strait Islander Peoples, to be put to a referendum.

In January 2012 the Expert Panel made a number of recommendations for constitutional amendment. The Expert Panel recommendations include:

- recognising Aboriginal and Torres Strait Islander Peoples, culture and heritage
- removing the States power to ban voters based on race
- making good laws for Aboriginal and Torres Strait Islander Peoples and ruling out the power to make bad laws
- ruling out racism by governments
- respecting and protecting Aboriginal and Torres Strait Islander Peoples languages.

While federal elections in September 2013 resulted in a change of Government, the recently appointed Attorney General has publically confirmed that a proposed model for constitutional reform will be released by July 2014. The newly elected Australian Government has not yet stated whether it will support the full recommendations of the Expert Panel.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, AGD

**Action:** The Australian Government is working towards recognising Aboriginal and Torres Strait Islander peoples in the Constitution. In December 2010, the Australian Government appointed an Expert Panel on Constitutional Recognition of Indigenous Australians to consider, consult and advise on how best to recognise Aboriginal and Torres Strait Islander peoples in the Constitution. The Australian Government received the Expert Panel's report, Recognising Aboriginal and Torres Strait Islander Peoples in the Australian Constitution, on 19 January 2012, including recommendations for changes to the Constitution. On 15 February 2012, the Australian Government announced \$10 million to help build public awareness and community support for the recognition of the First Australians in our Constitution. This important work is being led by Reconciliation Australia, supported by a reference group of business and community leaders. The funding will support



community groups and activities and give Australians the opportunity to learn more about constitutional recognition. On 20 September 2012, the Australian Government announced it will be introducing a Bill into the Parliament by the end of 2012 to recognise Aboriginal and Torres Strait Islander peoples as a step towards a successful referendum

**Performance indicator/timeline:** Australian Government funding for the Reconciliation Australia led community awareness initiative covers a two year period, ending 30 June 2014. Bill to be introduced by end 2012.

### **UPR Recommendation 105**

Continue to implement its efforts to attain the constitutional recognition of indigenous peoples;

**Australia's response - ACCEPTED**

### **PARTIALLY IMPLEMENTED**

The Australian Government has taken a number of steps to attain constitutional reform that recognises Aboriginal and Torres Strait Islander Peoples including:

- November 2010 - the Australian Prime Minister Julia Gillard established an Expert Panel to conduct national consultations on the recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution. The Expert Panel provided their report and recommendations to the Government in January 2012.
- Federal funding was provided to Reconciliation Australia to conduct a national campaign on the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution.
- November 2012 - a Joint Select Committee on Constitutional Recognition was created by the Parliament to inquire into and report on steps required to progress a successful referendum on Constitutional recognition, and particularly to build community engagement and support. The Committee was tasked with considering the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 which had final carriage through Parliament in March 2013.
- September 2013 - federal elections resulted in a change of Government. The Attorney General has publically stated that a proposed model for constitutional reform will be released by July 2014.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, AGD

**Action:** The Australian Government is working towards recognising Aboriginal and Torres Strait Islander peoples in the Constitution. In December 2010, the Australian Government appointed an Expert Panel on Constitutional Recognition of Indigenous Australians to consider, consult and advise on how best to recognise Aboriginal and Torres Strait Islander peoples in the Constitution. The Australian Government received the Expert Panel's report, *Recognising Aboriginal and Torres Strait Islander Peoples in the Australian Constitution*, on 19 January 2012, including

recommendations for changes to the Constitution. On 15 February 2012, the Australian Government announced \$10 million to help build public awareness and community support for the recognition of the First Australians in our Constitution. This important work is being led by Reconciliation Australia, supported by a reference group of business and community leaders. The funding will support community groups and activities and give Australians the opportunity to learn more about constitutional recognition. On 20 September 2012, the Australian Government announced it will be introducing a Bill into the Parliament by the end of 2012 to recognise Aboriginal and Torres Strait Islander peoples as a step towards a successful referendum

**Performance indicator/timeline:** Australian Government funding for the Reconciliation Australia led community awareness initiative covers a two year period, ending 30 June 2014. Bill to be introduced by end 2012.

### UPR Recommendation 106 (i)

Revise its Constitution, legislation, public policies and programmes for the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples;

**Australia's response - ACCEPTED-IN-PART**

### NOT IMPLEMENTED

In 2009 the Australian Government formally endorsed the Declaration on the Rights of Indigenous Peoples (DRIP). Since 2009, there has been limited incorporation of the Declaration on the Rights of Indigenous Peoples into public policy or legislation targeted towards Aboriginal and Torres Strait Islander peoples. The [Australian Government](#) considers the DRIP to be “a statement of support for the rights of Indigenous Peoples and an aspirational rather than a legally binding document”.

With regards to legislation, the Parliamentary Joint Committee on Human Rights (established in March 2012) is only required to consider rights recognised or declared in the seven core human rights treaties to which Australia is a party.

While the current Constitutional reforms proposed by the Expert Panel have no specific reference to the United Nations Declaration on the Rights of Indigenous Peoples, the Expert Panel's recommendations are consistent with the Declaration. The newly elected Australian Government has not yet stated whether it will support the full recommendations of the Expert Panel.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 106 (ii)

Ensure effective implementation of the Declaration on the Rights of Indigenous People, including in the Northern Territory, and provide adequate support to the National Congress of Australia's First Peoples to enable it to address the needs of indigenous people;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In 2009 the Australian Government formally endorsed the Declaration on the Rights of Indigenous Peoples (the Declaration). Since 2009, there has been limited incorporation of the Declaration on the Rights of Indigenous Peoples into Australian government policy or legislation targeted towards Aboriginal and Torres Strait Islander peoples. The [Australian Government](#) considers the Declaration to be “*a statement of support for the rights of Indigenous Peoples and an aspirational rather than a legally binding document*”.

In mid-2013, the Australian Government entered into preliminary discussions with the Australian Human Rights Commission and the National Congress of Australia's First Peoples in relation to the Declaration on the Rights of Indigenous Peoples. It is intended that these discussions will lead to the development of common understandings of the key themes within the Declaration as well as a national implementation strategy for the Declaration. The implementation of a national strategy will ensure the rights of Indigenous peoples are promoted and protected. See: <https://www.humanrights.gov.au/news/speeches/implementation-declaration-rights-indigenous-peoples>

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 106 (iii)

Develop a detailed framework to implement and raise awareness about the Declaration in consultation with indigenous peoples; take further steps to ensure the implementation of the Declaration on the Rights of Indigenous Peoples;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In 2009 the Australian Government formally endorsed the Declaration on the Rights of Indigenous Peoples (the Declaration). The [Australian Government](#) considers the Declaration to be “*a statement of support for the rights of Indigenous Peoples and an aspirational rather than a legally binding document*”.

In mid-2013, the Australian Government entered into preliminary discussions with the Australian Human Rights Commission and the National Congress of Australia's First Peoples in relation to the Declaration on the Rights of Indigenous Peoples. It is

intended that these discussions will lead to the development of common understandings of the key themes within the Declaration as well as a national implementation strategy for the Declaration. The implementation of a national strategy will ensure the rights of Indigenous peoples are promoted and protected.

As of late 2013, the newly elected Australian Government has not formally committed to the development of a national implementation strategy for the Declaration on the Rights of Indigenous Peoples.

See: <https://www.humanrights.gov.au/news/speeches/implementation-declaration-rights-indigenous-peoples>

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 107**

Launch a constitutional reform process to better recognize and protect the rights of the Aboriginals and Torres Strait Islanders which would include a framework covering the principles and objectives of the United Nations Declaration on the Rights of Indigenous Peoples and would take into account the opinions and contributions of indigenous peoples;

**Australia's response - ACCEPTED**

### **PARTIALLY IMPLEMENTED**

See *Recommendation 106*.

While the current Constitutional reforms proposed by the Expert Panel has no specific reference to the United Nations Declaration on the Rights of Indigenous Peoples, the Expert Panel's recommendations are consistent with the Declaration. The newly elected Australian Government has not yet stated whether it will support the full recommendations of the Expert Panel.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 108**

Include in its national norms recognition and adequate protection of the culture, values and spiritual and religious practices of indigenous peoples;

**Australia's response - ACCEPTED**

### **NOT IMPLEMENTED**

The property rights of Indigenous Peoples within Australia are not adequately protected. The Australian Government has not reversed the onus of proof for native title claimants and cultural heritage laws across each State and Territory remain inconsistent. Such laws adversely impact the culture, values and spiritual and religious practices of Indigenous peoples.

Whilst Australia is a signatory to the Nagoya Protocol, the Protocol has not yet been ratified. Further, the Australian Government has not ratified *the International Labour Organisation Convention No. 169 on Indigenous and Tribal Peoples (ILO 169)*. In 2011, the Australian Government committed to 'formally considering' the ratification of ILO 169.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 109

Promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in any process or decision-making that may affect their interests;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

Aboriginal people must be engaged in determining and developing programs for their own communities that ensure that social, cultural and economic needs are being met. Positive interaction with government is often an integral force for bolstering self-determination principles and driving change in Aboriginal communities.

With little progress in levels of political representation for Aboriginal Australians at a national level, Australia continues to be out of step with other nations, including New Zealand. The previous federal government funded the establishment of the [National Congress of Australia's First Peoples](#) in 2010. However their capacity to influence change may be limited by resources.

There have been many recent examples of funding for Aboriginal programs being provided to mainstream organisations, rather than local Aboriginal community-controlled organisations. The incoming Coalition government also plans funding cuts to successful Aboriginal community controlled, culturally safe services. Over the next four years it will cut almost \$17 million from the Indigenous Legal Assistance and Policy Reform Program and the National Aboriginal Family Violence Prevention and Legal Service program. Included in these funding cuts is the defunding of the national body for the Aboriginal and Torres Strait Islander Legal Service.

Funding mainstream organisations instead of Aboriginal community controlled organisations disrupts continuity of service provision, erodes cultural safety, disregards self-determination principles and creates obstructive tensions between Aboriginal communities and funded organisations. Instead, efforts should be spent building the strength and capacity of Aboriginal community controlled organisations nation-wide.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA

**Action:** The Australian Government will continue work to embed its Indigenous Engagement Framework within Commonwealth agencies. The Stronger Futures legislation passed by the Australian Government in 2012 was informed by the successive consultations with Aboriginal peoples in remote Northern Territory communities since 2008 and provides for a sustainable, long-term approach to supporting Aboriginal people in the Northern Territory.

**Performance indicator/timeline:** Ongoing. Stronger Futures in the Northern Territory Act 2012 was passed by the Australian Parliament in June 2012.

### UPR Recommendation 110

Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people, including participation in decision-making bodies at all levels;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

The Australian Government provided funding for the establishment of the National Congress of Australia's First Peoples. The newly elected Australian Government has also established a National Indigenous Council that will provide advice to the government.

Local governance however is consistently challenged by over-regulation and policies that are not based on or promote self-determination.

The Australian Government has not ratified *the International Labour Organisation Convention No. 169 on Indigenous and Tribal Peoples (ILO 169)*. This Convention is based on the respect for Indigenous cultures and ways of life, rights to lands and resources and the right to self-development. Consultation and participation are fundamental to ILO 169. In 2011, the Australian Government committed to 'formally considering' the ratification of ILO 169.

How was this recommendation addressed in the National Human Rights Action Plan?

Various initiatives referred to in the chapter on Aboriginal and Torres Strait Islander people: self-determination and consultation.

### UPR Recommendation 111

Ensure that its legislation allows for processes of consultations in all actions affecting indigenous peoples;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

Whilst the provision of funding for the establishment of the National Congress of Australia's First Peoples was a positive measure by the Australian Government to increase the participation of Aboriginal and Torres Strait Islander peoples in decision that affect them, there is no consistent level of engagement and/ or consultation processes across all levels of Government. Additionally, the newly elected Government is yet to affirm its approach to Indigenous engagement in practical terms.

The Special Rapporteur on the Rights of Indigenous Peoples recommended that all legislation and policy in Australia be reviewed for consistency with the Declaration on the Rights of Indigenous Peoples. This recommendation has not been actioned.

The Australian Government has not ratified *the International Labour Organisation Convention No. 169 on Indigenous and Tribal Peoples (ILO 169)*. Consultation and participation are fundamental to ILO 169. In 2011, the Australian Government committed to 'formally considering' the ratification of ILO 169.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

**UPR Recommendation 112**

Continue to engage with the Aboriginal population and Torres Strait Islanders and ensure the equal protection of their fundamental rights;

**Australia's response - ACCEPTED**

**UPR Recommendation 113**

Increase the participation of the Aboriginal and Torres Strait Islander communities in the process of closing the gap in opportunities and life outcomes;

**Australia's response - ACCEPTED**

**UPR Recommendation 118**

Carry out, in consultation with the communities concerned, a comprehensive assessment of the effectiveness of actions and strategies aimed at improving socio-economic conditions of indigenous peoples and if necessary correct these actions;

**Australia's response - ACCEPTED**

**PARTIALLY IMPLEMENTED**

There are examples of positive engagement between Aboriginal and Torres Strait Islander Peoples, their representative organisations and Government. The National Aboriginal and Torres Strait Islander Health Plan involved a community consultation process, and has been developed in partnership with leading health peak bodies with direct reference to the UN Declaration on the Rights of Indigenous Peoples. An Indigenous Working Group was also established to advise the Government on disability targets under the Closing the Gap Framework. However, this degree of engagement is not consistent across all levels of Government and the newly elected

Government is yet to affirm its approach to Indigenous engagement in practical terms.

In October 2013, a set of principles aimed at empowering Aboriginal organisations was launched by an alliance of Aboriginal organisations and non-Aboriginal NGOs and communities in the NT to take control of their futures. It is expected that governments will respect, promote and act in accordance with these principles.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, DEEWR, COAG, DOHA, States and Territories

**Action:** Governments will continue to implement the Closing the Gap Strategy, including through the National Indigenous Reform Agreement, relevant mainstream National Agreements and National Partnership Agreements, and the Indigenous-specific National Partnership Agreements on Remote Service Delivery, Remote Indigenous Housing, Indigenous Health Outcomes, Stronger Futures in the Northern Territory, Indigenous Economic Participation and Indigenous Early Childhood Development

**Performance indicator/timeline:** Ongoing

#### UPR Recommendation 114

Continue the implementation of policies aimed at improving the living standards of indigenous peoples and take all the necessary measures to eradicate discrimination against them;

**Australia's response - ACCEPTED**

#### PARTIALLY IMPLEMENTED

Various studies have shown that Aboriginal and Torres Strait Islander People experience an intolerable incidence of racism (see for example: Lowitja Institute, [Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities](#), [National Congress Submission on the National Aboriginal and Torres Strait Islander Health Plan](#)).

The National Anti-racism Partnership Strategy (NARPS) includes strategies to address the vilification of Indigenous people on the basis of race. The National Aboriginal and Torres Strait Islander Health Plan acknowledged the impact of racism on the health and wellbeing of Indigenous people. Other sectors, such as justice and education, are yet to acknowledge the impact of racism on the quality of life experienced by Aboriginal and Torres Strait Islander Peoples.

The previous government submitted an exposure draft Bill to Parliament to consolidate federal anti-discrimination legislation which it later withdrew. It is unclear how the current government will act on this. The newly elected Government is yet to affirm continued support for the eradication of racism.



How was this recommendation addressed in the National Human Rights Action Plan?

Various initiatives in Aboriginal and Torres Strait Islander chapter.

### **UPR Recommendation 115**

Continue its efforts to narrow the gap in opportunities and life outcomes between indigenous and non-indigenous Australians;

**Australia's response - ACCEPTED**

### **PARTIALLY IMPLEMENTED**

The Federal Government has set an over-arching target for 'Closing the Gap' in life expectancy within a generation. Funding for programs under the strategy is underpinned by a National Partnership Agreement between Federal and State Governments. The newly elected Government is yet to affirm the extent it will commit to ongoing funding.

Of great concern is the escalating rate of suicide, particularly amongst young people, that is devastating Aboriginal and Torres Strait Islander families and communities.

Justice and its impact on opportunities and life outcomes has yet to be addressed by this framework or the previous government despite unacceptable incarceration rates. (See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4722.0.55.003/>)

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, DEEWR, COAG, DOHA, states and territories

**Action:** Governments will continue to implement the Closing the Gap Strategy, including through the National Indigenous Reform Agreement, relevant mainstream National Agreements and National Partnership Agreements, and the Indigenous-specific National Partnership Agreements on Remote Service Delivery, Remote Indigenous Housing, Indigenous Health Outcomes, Stronger Futures in the Northern Territory, Indigenous Economic Participation and Indigenous Early Childhood Development.

**Performance indicator/timeline:** Ongoing

### **UPR Recommendation 116**

Intensify its on-going efforts to close the gap in opportunities and life outcomes between Indigenous and non-Indigenous peoples, especially in the areas of housing, land title, health care, education and employment;

**Australia's response - ACCEPTED**

### **UPR Recommendation 117**

Continue addressing effectively the socio-economic inequalities faced by indigenous people;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

The Federal Government has set an over-arching target for 'Closing the Gap' in life expectancy within a generation. Funding for programs under the strategy is underpinned by a National Partnership Agreement between Federal and State Governments. The newly elected Government is yet to affirm the extent it will commit to ongoing funding.

There have been gains in closing the gap in:

- access to early childhood education, achieved principally through investment in infrastructure program
- child mortality rates
- high school completion rates.

There has been either no progress or a widening of the gap in:

- employment outcomes
- literacy and numeracy rates
- overall death rates
- education.

(See: COAG Reform Council (2013) *Indigenous Reform 2011-12: Comparing performance across Australia* -

<http://www.coagreformcouncil.gov.au/reports/indigenous-reform/indigenous-reform-2011-12-comparing-performance-across-australia>.)

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, DEEWR, COAG, DOHA, states and territories

**Action:** Governments will continue to implement the Closing the Gap Strategy, including through the National Indigenous Reform Agreement, relevant mainstream National Agreements and National Partnership Agreements, and the Indigenous-specific National Partnership Agreements on Remote Service Delivery, Remote Indigenous Housing, Indigenous Health Outcomes, Stronger Futures in the Northern Territory, Indigenous Economic Participation and Indigenous Early Childhood Development

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 119

Take immediate legal measures to remove restrictions against access of indigenous women and children to appropriate health and education services and employment opportunities;

**Australia's response - ACCEPTED**

This recommendation is unclear.

### UPR Recommendation 120

Continue efforts to increase the representation of indigenous women in decision-making posts;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

Aboriginal and Torres Strait Islander women face double discrimination and increased disadvantage as a result of racial and gender discrimination. The Government has supported a number of initiatives geared at increasing the representation of Aboriginal and Torres Strait Islander women in decision-making posts, including the Indigenous Leadership Activity program, Indigenous Women's Grants program, and the National Aboriginal and Torres Strait Islander Women's Alliance. Meaningful opportunities and committed funding to empower Aboriginal and Torres Strait Islander women and girls as leaders remains an important need and should be delivered through consultation with Aboriginal women's organisations and relevant stakeholders from the community.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA

**Action:** The Australian Government will continue to support specific initiatives to empower Indigenous women. To ensure effective gender representation, the structure of the National Congress of Australia's First Peoples includes two co-chairs, one of which must be female. Women are also provided with equal representation on the National Congress' Ethics Council, which oversees the body's ethical standards and membership appointments.

**Performance indicator/timeline:** Ongoing

## 4.2 Anti-Discrimination and Human Rights

### UPR Recommendation 42

Ensure that its efforts to harmonize and consolidate Commonwealth anti-discrimination laws address all prohibited grounds of discrimination and promote substantive equality;

**Australia's response - ACCEPTED**

### UPR Recommendation 43

Enact comprehensive equality legislation at the federal level; grant comprehensive protection to rights of equality and nondiscrimination in its federal law;

**Australia's response - ACCEPTED-IN-PART**

### UPR Recommendation 44

Enact comprehensive legislation which prohibits discrimination on all grounds to ensure the full enjoyment of all human rights by every member of society;

**Australia's response - ACCEPTED**

### UPR Recommendation 45

Continue its efforts to harmonize and consolidate its domestic legislation against all forms of discrimination on the basis of international standards;

**Australia's response - ACCEPTED**

#### NOT IMPLEMENTED

In March 2013 the Government announced that it would delay its consolidation of Australia's anti-discrimination laws. The decision was met with extreme disappointment amongst community organisations and human rights groups. The consolidation and modernisation of the five laws passed over the course of four decades, would simplify legislation schemes, address previous shortcomings and make anti-discrimination laws more effective, accessible and clear.

The exposure draft *Human Rights and Anti-Discrimination Bill 2012* was the product of a lengthy consultation process. The Senate Legal and Constitutional Affairs Legislation Committee had recommended that the Bill should be prioritised by the Government for introduction and passage through the parliament. Although the new Commonwealth Attorney-General, George Brandis, has recognised a need to streamline federal anti-discrimination laws, the new Commonwealth government has not committed to proceeding with the former government's plan to consolidate Australia's anti-discrimination legislation.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will develop legislation to consolidate Commonwealth anti discrimination laws to remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly. It will also consider the design of the compliance regime and complaints processes.

**Performance indicator/timeline:** Release exposure draft legislation for consultation in late 2012.

### UPR Recommendation 21

Strengthen its human rights framework by establishing a comprehensive legislative scheme for all human rights;

**Australia's response - ACCEPTED-IN-PART**

### UPR Recommendation 22

Consider a comprehensive human rights act as recommended by the National Human Rights Consultative Committee; incorporate its international human rights obligations into domestic law by elaborating a comprehensive, judicially enforceable Human Rights Act to ensure legislative protection of human rights; fully incorporate its international human rights obligations in domestic law through the adoption of a comprehensive justiciable law on human rights; implement a federal human rights act to maximize all Australian's legal human rights protection in accordance with Australia's international obligations;

**Australia's response - REJECTED**

## NOT IMPLEMENTED

Australia has failed to incorporate its international human rights obligations into domestic law by enacting a judicially enforceable Human Rights Act. Australia has ratified many international human rights instruments, but it has failed to adopt the rights in those treaties into domestic law to provide a comprehensive justiciable law on human rights.

Under [Article 2](#) of the *International Covenant on Civil and Political Rights* (ICCPR) Australia is required to implement the necessary legislative measures to give domestic effect to the treaty. Under Article 2 individuals should have the right to enforceable remedies and the right to seek these remedies in a competent judicial administrative legislative authority. However, in many cases there is no protection under Australian law for the human rights enshrined in the Covenant. Only non-justiciable avenues without enforceable remedies, such as complaints to the Australian Human Rights Commission or the UN Human Rights Committee (UNHRC) under the First Optional Protocol, are available.

Since Australia ratified the ICCPR 33 years ago, there have been over fifty complaints made to the UNHRC. Of those [complaints](#), the Australian federal government has been found to be in violation of its obligations under the ICCPR at least seventeen times. For example, in the case of [Bakhtiyari v Australia \(2003\)](#) Australia was found to be in breach of [Articles 9\(1\) and 9\(4\) of the ICCPR](#) for the arbitrary detention of asylum seekers. These articles require no person to be subject to arbitrary arrest or detention and in the event of that happening, the person is entitled to take proceedings before a court. The Bakhtiyari family was held in detention for 3 years before the High Court overturned the Federal Court decision and deported the family back to Pakistan. The Constitution, however, does not provide for protections regarding arbitrary detention, therefore the High Court of Australia lacks the jurisdiction to rule on these matters without legislation to comprehensively protect human rights. The Federal Government has still chosen to ignore most of the findings of the Human Rights Committee (see [Young v Australia \(2003\)](#) and [Baban v Australia \(2003\)](#)) and even deported some of the complainants (see [Bakhtiyari v Australia \(2003\)](#)).

Although Australia has not incorporated a comprehensive, judicially enforceable Human Rights Act, it has enacted positive legislative protections such as the *Race Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) in line with its obligations under the ICCPR. However, not all the rights in the ICCPR or the other human rights instruments Australia has ratified are protected by existing legislation. Furthermore, It is important to note that the Australian government has previously suspended the Race Discrimination Act in order to allow for the implementation of the Northern Territory Emergency Response. Currently, Australia has very few constitutional human rights protections and individuals and groups within Australia's jurisdiction with human rights complaints do not have access to a judicially enforceable Human Rights Act.

In September 2009 the Federal Government's consultative committee recommended that Australia consider a comprehensive Human Rights Act. In 2010, in response to the report, the Federal Government launched a Human Rights Framework, which did not include a Human Rights Act. The Australian Government indicated in its

[response to the UPR](#), that it will not be introducing a Human Rights Act because the Australian Government considers that existing mechanisms are sufficient.

As required by its treaty obligations Australia should implement a comprehensive Human Rights Act, which provides enforceable remedies for violations of human rights.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 27

Facilitate the provision of sufficient funding and staffing for the Human Rights Commission and different commissioners, including the recently appointed Commissioner against racial discrimination;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In its National Human Rights Action Plan 2012, the former government held that it would 'continue ensuring that the Australian Human Rights Commission was empowered and funded to resolve complaints of discrimination, including ensuring it is accessible and equitable to all.' No comprehensive funding scheme for the Australian Human Rights Commission has been released, but the Action Plan in 2012 committed funding to the Commission for specific projects, including \$6.6 million over four years to expand the Commission's community education role on human rights and provide information and support for human rights education programs, \$1.6 million for program management of Australia-Vietnam Human Rights Technical Cooperation Program, \$9.4 million over for years for Australia-China Human Rights Technical Cooperation Program. Recent debate over the appointment of the new Human Rights Commissioner has highlighted the need for transparent public processes to appoint future commissioners.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will develop legislation to consolidate Commonwealth anti-discrimination laws to remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly. It will also consider the design of the compliance regime and complaints processes.

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 30

Continue measures for the adoption of the new National Action Plan on Human Rights;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

The National Human Rights Action Plan (NHRAP) was released in December 2012. NGO's welcomed the NHRAP but have expressed concern with several key aspects. Only 9 per cent of action items contain performance indicators and only 35 per cent identify a timeframe for implementation. The NHRAP should be strengthened through a more effective plan for implementation, monitoring and evaluation. Some action items are also inconsistent with human rights standards. This limits the NHRAP's effectiveness and ability to improve the human rights situation on the ground in Australia.

### UPR Recommendation 58

Step up measures, such as human rights education in schools, so as to promote a more tolerant and inclusive society;

Australia's response - **ACCEPTED**

## PARTIALLY IMPLEMENTED

The Australian Curriculum, Assessment and Reporting Authority and the Australian Human Rights Commission are collaborating to draft a national school curriculum in which more comprehensive human rights content. The Commonwealth Government is also providing \$6.6 million over four years to the Australian Human Rights Commission to expand its community education role on human rights and to provide educational information and support education programs and has implemented an education grant program of \$2 million over four year to NGOs to develop and provide education and engagement programs to create a better understanding of human rights. The Government is also implementing a \$3.8 million education and training package for the Australian Government public sector, to include developing guidance materials for public sector policy development and implementation of government programs. It is not clear that new government will continue these programs. NGOs are concerned about the Government's decision to review national curriculum and the potential impact of this review on human rights education.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DEEWR

**Action:** The Australian Government will prioritise human rights education by: providing grants to NGOs to develop and deliver community education and engagement programs to promote a greater understanding of human rights investing \$3.8 million in an education and training package for the Australian Government public sector, including developing guidance materials for public sector policy development and implementation of government programs, providing \$6.6 million over four years to the Australian Human Rights Commission to expand its community education role on human rights and to provide information and support for human rights education programs, and enhancing support for human rights education in primary and secondary schools by continuing to work with states and territories and the Australian Curriculum, Assessment and Reporting Authority to include human rights and principles across the Australian curriculum, ensuring that human rights forms a part of student learning.

**Performance indicator/timeline:** Funding expended by 2013-14.

### UPR Recommendation 143

Continue the consultation with civil society in a follow-up to its universal periodic review;

**Australia's response - ACCEPTED**

NGOs are keen to work together with the Government in following-up Australia's Universal Periodic Review.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 46

Strengthen the federal legislation to combat discrimination and ensure an effective implementation with a view to a better protection of the rights of vulnerable persons, in particular children, persons in detention and persons with disabilities;

**Australia's response - ACCEPTED**

#### **PARTIALLY IMPLEMENTED.**

For a discussion of federal anti-discrimination legislation see *Recommendations 42-45*.

Legal assistance is a critical factor in ensuring that legislation is effectively implemented. Access to justice for vulnerable persons has been put at risk by funding cuts made by the Federal Government of \$43.1m over four years across the four legal assistance services, including the community legal sector, Aboriginal and Torres Strait Islander Legal Services, Aboriginal Family Violence Prevention Legal Services and Legal Aid Commission. It is expected that the cuts will impact frontline services to vulnerable people and leave a significant number of people without access to legal help.

**Children:** The former Government established a National Children's Commissioner (see *Recommendation 28 & 29*); passed legislation to prioritise the safety of children in family law proceedings; committed to a common screening and risk assessment tool to identify safety risks for clients across the family law system; funded the development of the AVERT family violence training package; trialled a supported family dispute resolution model for use in cases of family violence; committed to the expansion of mental health service headspace to 90 centres nationally by 2014-15; and continued to fund community legal centres that target young people through the Commonwealth Community Legal Services Program. Further, it is implementing The National Framework for Protecting Australia's Children 2009-2020. Regarding children's rights, see also *Recommendation 74 (ii)*.

**People in detention:** A number of recommendations of the Inspector-General of Intelligence and Security relation to the rights of persons in detention were implemented after the alleged torture of Australian citizen Mamdouh Habib (see



*Recommendation 136*). However, the government continues to detain vulnerable asylum seekers - including children and pregnant women - in unsuitably hot, overcrowded and uncomfortable conditions as part of its offshore processing system. Regarding asylum seekers, see also Section 4.2.

**Disability rights:** the former Commonwealth implemented the 10-year National Disability Strategy (NDS) to guide government activity across six key areas. In 2012, it also implemented the National Disability Insurance Scheme to provide people with disability with access to care and support services they need over the course of their lifetime, including funding of \$1 billion for the first stage. There are concerns about adequate funding for the scheme. Other measures include \$3 billion for access to Disability Employment Services; \$300,000 over three years to the Australian Human Rights Commission to help representatives of people with disability participate in key international forums on human rights; and increasing the number of people with disability employed in the Australian Public Service. Regarding people with disability, see also Section 4.12.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will develop legislation to consolidate Commonwealth anti-discrimination laws to remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly. It will also consider the design of the compliance regime and complaints processes.

**Performance indicator/timeline:** Release exposure draft legislation for consultation in late 2012.

The NHRAP covers Children and young people (p.42), People with disability (p.55), People in prisons (p.71), Refugees and asylum seekers (p.73)

## 4.3 Asylum Seekers and Refugees

### UPR Recommendation 38

Consider implementing the recommendations of UNHCR, human rights treaty bodies and special procedures with respect to asylum-seekers and irregular immigrants especially children;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

People should not be returned to a country where their life or freedom would be threatened.

- Asylum seekers from Sri Lanka are in danger of being refouled under the "enhanced screening" process. Unaccompanied minors from Sri Lanka have been sent back to the country they fled under this expedited removal process. People have been tortured by Sri Lankan authorities on return.

Children should only be detained as a measure of last resort, and for the shortest appropriate period of time.

- Children are currently being held in detention all over the Detention Network without prospect of an RSD process. This detention could be considered arbitrary.

Children who are unaccompanied and/or seeking asylum have a right to special protection and assistance.

- Children and Unaccompanied minors are being sent to Nauru to languish in tents, in 50 degree heat. It is unclear who the legal guardian for the unaccompanied minors is. The facilities are inadequate.
- Unaccompanied minors who come to Australia by boat have NO family reunion options.
- Family Reunion options for refugees who came by boat has been curtailed or stopped completely.

Asylum seekers should not be penalised for arriving in a country without authorization

- Asylum seekers who come by boat (without authorisation) are now either locked up in detention on Christmas Island or sent to offshore processing countries. They will never be settled in Australia. Asylum seekers who came by boat prior to July 19 2013 will never be granted a permanent protection visa.

Everyone has the right to work, and to an adequate standard of living

- Asylum seekers who came by boat between August 13 2012 and July 19 2013 do not have the right to work.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

## UPR Recommendation 121

Safeguard the rights of refugees and asylum-seekers;

**Australia's response – ACCEPTED**

### NOT IMPLEMENTED

The rights of asylum seekers have been severely curtailed in the past 18 months. Policies discriminate between mode of arrival for asylum seekers, with plane arrivals allowed to live and work in the community whilst their refugee status is assessed and boat arrivals being either placed on bridging visas with no work rights or shipped to a remote offshore detention centre to wait for their claims to be assessed.

Asylum seekers are seeking asylum in Australia not Nauru or PNG. Their claims to asylum should be assessed in Australia.

Sri Lankan asylum seekers are being returned to a country they fear without a full assessment of their protection claims. There is no due process in the enhanced screening process.

Punitive policies have been introduced that focus on asylum seekers who came by boat. They are retrospective. They affect all asylum seekers onshore who have not

been granted a visa, regardless of their date of arrival or when their application was lodged.

Independent, free legal advice is under threat for asylum seekers who came by boat. Without this advice and assistance, vulnerable often illiterate asylum seekers will be left to navigate the complicated protection application process by themselves.

On 19 December 2013 under Direction 62 for family visa prioritising, family stream visa applications in which the applicant's sponsor or proposed sponsor is a person who entered Australia as an "Illegal Maritime Arrival" were directed to be processed as lowest priority. Family reunion applications for permanent residents who came to Australia by boat are likely to take an incredibly lengthy time before a visa is granted.

The future for people who have arrived by boat seeking asylum is very uncertain. It is likely that new legislation or a new legislative instrument reintroducing temporary protection visas will be introduced.

After 1 July 2014, the composition of the Senate will change. The position of the new Senate on temporary protection visas is not yet clear.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 122**

Honour all obligations under articles 31 and 33 of the Convention relating to the Status of Refugees and ensure that the rights of all refugees and asylum-seekers are respected, providing them access to Australian refugee law;

**Australia's response - ACCEPTED**

### **NOT IMPLEMENTED**

Article 31 concerns the rights of refugees unlawfully in the country of refuge.

Since the draft report was released on 3 February 2011, there have been significant changes in the Australian Government's policies towards asylum seekers and refugees. The country's obsession with asylum seekers arriving by boat has continued, whilst asylum seekers arriving by plane are rarely mentioned by politicians or the media.

In March 2012, the Labor Government introduced complementary protection legislation and removed the separate refugee status determination (RSD) process for asylum seekers coming to Australia by boat. Later that year, RSD for the cohort of boat arrivals was moved from detention centres to the community, ending lengthy periods of detention for most asylum seekers.

However, a vocal Opposition and hostile media, resulted in the Government adopting an increasingly hardlined approach to asylum seekers arriving by boat. In August 2012, the "no advantage" principle was introduced. Whilst no one was very sure

about the real meaning of this principle, in practice it resulted in a re-instatement of the “Pacific Solution”, with asylum seekers being prevented from lodging a protection visa application in Australia, and instead being sent to the regional processing countries Nauru and Manus Island for their claims to be considered there. With limited space and minimal resettlement options on these remote islands, most asylum seekers remained in Australia, either in detention or in the community on Bridging Visas, with no rights to work, subsisting on a token living allowance. Some of these people have been allowed to apply for a protection visa but no actual processing of their claims has taken place.

There are real concerns regarding the process of “enhanced screening” which involves a person arriving by boat being initially interviewed by one or two officers of the Department of Immigration.

The concerns in relation to enhanced screening include that enhanced screening is being used to determine substantive claims for protection without legal advice and ultimately without making any formal application. Concerns exist about the procedural fairness of the enhanced screening process, and whether as a result of enhanced screening, people to whom Australia owes protection obligations are being returned to their home country.

July 19 2013, the Government announced that all asylum seekers coming by boat to Australia would never be resettled in Australia but would be assessed in PNG or Nauru.

The position of National Children’s Commissioner was established in 2013. Megan Mitchell is the new Commissioner and she has made some preliminary visits to detention centres that house children. This was a role recommended by the Delegation and is welcomed by the NGO sector in Australia. (*Recommendation 28*)

The Coalition of the Liberal and National parties came to power on September 7 introducing “Operation Sovereign Borders” – turning back asylum seeker boats, offshore processing and temporary rather than permanent protection visas.

Since the UPR’s report, the rights of refugees and asylum seekers in Australia have been under attack. Asylum seekers and refugees have become a military issue, with the Navy and a 3 star commander enlisted to protect our borders.

Article 33 concerns the prohibition of expulsion or return. Regarding refoulement, see *Recommendation 125-126*.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 123

Ensure the processing of asylum-seekers' claims in accordance with the United Nations Refugee Convention and that they are detained only when strictly necessary;

Australia's response - **ACCEPTED**

#### NOT IMPLEMENTED

Up until August 13 2012, all asylum seekers who arrived by boat were detained for health and security checks and then most were released into the community on Bridging Visas. Since August 13 2012, large numbers of asylum seekers have been sent to Manus Island detention centre in PNG, Nauru detention centre and several hundred are being detained in onshore detention centres.

Since the Coalition came to power, the weekly briefings have not shed any light on who is being held in which detention centres and why.

There are asylum seekers in Curtin who have been transferred from Nauru, where they had their refugee claims assessed but have had no decision made on their status. Their future is unknown.

Many asylum seekers in detention are under threat of removal and only the fortunate few who make contact with lawyers have their removal prevented. The danger of refoulement is ever present.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 124

Cease the practice of refoulement of refugees and asylum-seekers, which puts at risk their lives and their families' lives;

Australia's response - **ACCEPTED**

#### NOT IMPLEMENTED

Enhanced screening, removal of access to legal services, and abridging the current process for refugee status determination all increase the risk of Australia refouling refugees to places where they have a well founded fear of serious harm based on a convention reason.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

## UPR Recommendation 125

Ensure in its domestic law that the principle of non-refoulement is respected when proceeding with the return of asylum-seekers to countries;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

There do not seem to be safeguards in place to ensure that when people are returned under the enhanced screening process that they are not being refouled. We have anecdotal evidence of people being tortured on return to Sri Lanka. PNG has laws forbidding homosexuality. Some asylum seekers sent to Manus Island are homosexual.

The [\*Migration Amendment \(Regaining Control Over Australia's Protection Obligations\) Bill 2013\*](#) was introduced on 4 December 2013. The effect of the Bill would be to remove the criterion for a grant of a protection visa on complementary protection grounds.

Since 24 March 2012 the complementary protection framework has been available for those who are not refugees as defined in the Refugees Convention, but who cannot be returned to their home country because there is a real risk they would suffer significant types of harm that would engage Australia's international non-refoulement obligations under certain treaties. These include the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The changes, if passed, will apply to protection visa applications already in the pipeline where a decision about the application has not been made before the start of the proposed legislation and any future application made after the proposed legislation comes into effect. According to the Explanatory Memorandum to the Bill, where a matter has been reviewed by the Refugee Review Tribunal or judicially reviewed by Court and is remitted, it will not be considered against complementary protection after the start of the proposed legislation (if passed). In practice, the changes, if passed, could potentially affect anyone seeking protection on complementary protection grounds who had not been granted a protection visa as at 4 December 2013 (the date when the number of protection visas was capped for the 2013/2014 financial year). This could include those who are found to be owed protection under complementary protection by the Refugee Review Tribunal.

The Bill has been referred to the Senate's Legal and Constitutional Affairs Legislation Committee with a report due 3 March 2014.

The Senate's Legal and Constitutional Affairs Legislation Committee are currently also considering a number of proposed changes including:

- removing a person's right to lodge additional protection visa applications on complementary protection grounds where those grounds were not previously considered by the Department;

- requiring that a person not being of adverse security interest as part of the qualification criteria for a protection visa, and removing any right of review in relation to a person's security findings by ASIO;
- changing the point at which a decision becomes final to when the record of that decision is made by either the Department or the RRT, rather than once it is notified or communicated to the review applicant, visa applicant or former visa holder;
- reviewing the Minister's request for immunity to refuse to disclose information on boat arrivals in the public interest.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 126

Repeal the provisions of the Migration Act 1958 relating to the mandatory detention; revise the Migration Law of 1958 so that federal initiatives do not penalize foreign migrants in an irregular situation;

**Australia's response - REJECTED**

### NOT IMPLEMENTED

Mandatory detention of unauthorised arrivals is still taking place.

On 18 October 2013, the Minister for Immigration introduced temporary protection (subclass 785) visas under the *Migration Amendment (Temporary Protection Visas) Regulation 2013* which amends the *Migration Regulations 1994*. On 2 December 2013 this regulation was disallowed by the Senate. This means that it ceased to have effect on that day, but remained in effect between registration and disallowance. Because disallowance has occurred, a similar regulation cannot be made again within six months without approval of the Senate.

22 temporary protection visas were granted between 18 October 2013 and 2 December 2013 and those people continue to hold those temporary protection visas. Under the (now disallowed) regulations, temporary protection visas applied to this group of asylum seekers regardless of the date of their arrival. So it is only the date of grant of their visa (between 18 October 2013 and 2 December 2013) that determined their obtaining the 785 temporary protection visa.

On a temporary protection visa it is not possible to sponsor family members to come to Australia and there is no access to Australian citizenship. Temporary protection visas last up to 3 years, and the only further visa it is possible to obtain (with the Minister's personal approval) is another temporary protection visa.

Temporary protection visa holders have work rights, and can apply for both Special Benefit and a Health Care Card from Centrelink. Temporary protection visas must not

engage in criminal conduct and must report a change of address to the Department of Immigration within 14 days.

On 4 December 2013 under the [Migration Act 1958 – Determination of Protection Class XA Visas in 2013/2014 Financial Year IMMI 13/156](#) the maximum number of Class XA protection visas to be granted in the 2013/2014 financial year was capped at 1650, the number already granted as at that date. This meant that while currently temporary protection visas are no longer possible, no further grants of onshore protection visas would have been possible for any protection visa applicants, regardless of mode of arrival, until 1 July 2014. On 20 December 2013 [this instrument was revoked](#).

A further cap of class XA protection visas is possible after 1 July 2014 under the Migration Act if temporary protection visas are not made law. The Greens have introduced a [Bill](#) to make further caps “disallowable”.

On 14 December 2013 the [Migration Amendment \(Unauthorised Maritime Arrival\) Regulation 2013](#) changed the qualification for an 866 permanent protection visa to include a requirement that a person must have held a visa in effect on last entry into Australia, not be an unauthorised maritime arrival, and have been immigration cleared on last entry to Australia. A number of asylum seekers have lodged a [challenge](#) to this qualification rule with the High Court.

Currently a large number of asylum seekers who arrived by boat are barred under statute from making a valid application for a protection visa in Australia – a bar which only the Minister for Immigration may personally lift. The bar applies to both “unauthorised maritime arrivals” in Australia without a current visa in effect, and to any asylum seeker who was were released from immigration detention on a bridging visa and also granted a temporary safe haven visa. NGOs understand that most asylum seekers living in the Australian community on bridging visas who arrived by boat after 13 August 2012 are likely to have been granted a temporary safe haven visa. The bar applies to all visas, not just protection visas, which means the Minister for Immigration must personally approve the grant of new bridging visas. Immigration Minister Scott Morrison [recently announced](#) on 4 December 2013 that he has “no intention of lifting any bar so long as in this country the option of temporary protection visas is not available.”

On 14 December 2013 an [enforceable code of behaviour](#) came into effect for bridging visa E holders. To be eligible for a bridging visa E applicants are required to sign a code of behaviour. The condition (PIC 4022) applies for all applicants for BVEs who are over 18 and who hold or previously held a BVE granted by the Minister under s 195A. Anyone who has had a BVE cancelled due to criminal conduct or a breach of the code of behaviour are prevented from applying for a further BE.

It remains government policy that those who arrive by boat after 19 July 2013 will be transferred to Nauru or PNG and will not be settled in Australia unless exempted by the Minister for Immigration.

For people who arrived after 13 August 2012 but before 19 July 2013 the Migration Act provides that they can be transferred to a regional processing country (i.e. Nauru or PNG). However, in practice the majority of asylum seekers from this cohort have not been transferred to a regional processing country.



On 8 November 2013 Immigration Minister Scott Morrison [announced](#) that there will be “no exceptions to offshore processing for people who arrived after 19 July 2013”. This suggests that the Department of Immigration will continue to apply the policy of allowing those who arrived in Australia by boat prior to 19 July 2013 to have their claims assessed in Australia after a lengthy wait, but that arrivals post 19 July 2013 will be transferred to PNG or Nauru. The Minister for Immigration does have a non-compellable discretionary power to exempt people from transfer to a regional processing country where it is in the public interest to do so. Further, transfer can only occur where it is reasonably practicable.

The practice of not transferring those who arrived after 13 August 2012 and before 19 July 2013 is policy and not backed up within any legally enforceable rights. Asylum seekers who arrived after 13 August 2012 remain at risk of transfer to a regional processing centre under the Migration Act.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 127**

Review its mandatory detention regime of asylum-seekers, limiting detention to the shortest time reasonably necessary;

**Australia’s response - ACCEPTED**

### **NOT IMPLEMENTED**

Currently there are still many asylum seekers who have been in held detention for over a year. In July 2013 the UN Human Rights Committee found that Australia had committed 143 human rights violations by holding 46 refugees in indefinite detention. ASIO has deemed these people to be a security risk. Some have been in detention for over 3 years and have no hope of being released. They have been assessed as refugees but there is no right to appeal their adverse security assessment.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 128**

Address the issue of children in immigration detention in a comprehensive manner;

**Australia’s response - ACCEPTED**

### **NOT IMPLEMENTED**

Children should not be detained unlawfully or arbitrarily, and must only be detained as a measure of last resort and for the shortest appropriate period of time. Children should be treated with respect and humanity and in a manner that takes into account their age and developmental needs. This ought to include consideration of the developmental needs to be with their immediate family members.

Currently requests to be transferred to be with immediate family members are not being considered by the Minister. There is little assistance for family members in the Australian community to make such a request to the Departmental case officer. The default arrangement is to keep family members separated based purely on their date of arrival.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 129**

Ensure that no children are held in detention on the basis of their migratory status and that special protection and assistance is provided to unaccompanied children;

**Australia's response - ACCEPTED**

### **NOT IMPLEMENTED**

Over 1000 children are in held detention currently (onshore and offshore) with the Government announcing that there will be no exceptions to the rule that all boat arrivals will be sent to Offshore processing centres – regardless of age, disability or health issues.

Unaccompanied minors are in held detention in Christmas Island and Nauru.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 130**

Take efficient measures to improve the harsh conditions of custody centres in particular for minorities, migrants and asylum-seekers;

**Australia's response - ACCEPTED**

### **NOT IMPLEMENTED**

Nauru facilities were burnt down on July 19 when new policies were announced. Since then all asylum seekers having been living in tents.

The UNHCR recently visited Nauru and described conditions there as very harsh. 400 men share 8 toilets. Health issues include skin infections, gastro and other diseases associated with living in close quarters, in the heat and with little to hope for. Self harm is prevalent.

It is difficult for asylum seekers in detention to access legal advice as they are not given contact details.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 131**

Consider alternatives to the detention of irregular migrants and asylum- seekers, limit the length of detentions, ensure access to legal and health assistance and uphold its obligations under the Vienna Convention on Consular Relations;

**Australia's response - ACCEPTED-IN-PART**

### **NOT IMPLEMENTED**

Bridging visas are available to some asylum seekers but most asylum seekers on bridging visas do not have work rights.

The Coalition government has stopped referring asylum seekers in detention and asylum seekers who arrived by boat to the legal aid providers who have been contracted to provide such services. This is a cut of legal aid by stealth. Their policy is to replace expert legal advice with info kits provided by the Department of Immigration and Border Protection, the same department that makes RSD decisions.

Over 25000 people will not be able to receive free independent legal advice regarding their protection claims.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 132**

Do not detain migrants other than in exceptional cases, limit this detention to six months and bring detention conditions into line with international standards in the field of human rights;

**Australia's response - REJECTED**

## NOT IMPLEMENTED

Nauru and Manus Island detention centres rely on tent accommodation in 50 degree heat. Manus Island has malarial mosquitos. Neither island has enough drinking water. It must be shipped in.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 133

Ensure all irregular migrants have equal access to and protection under Australian law;

Australia's response - **REJECTED**

## NOT IMPLEMENTED

Access to justice is now restricted due to the non-referral of clients to the legal aid providers. People seeking asylum in Australia are now being shipped to PNG and Nauru and will have their claims assess under the laws of PNG and Nauru.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 134

Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner, bearing in mind international human rights and humanitarian principles;

Australia's response - **ACCEPTED**

## NOT IMPLEMENTED

Human rights and humanitarian principles have been far from the centre of the debate in Australia's dealings with other countries in the region, regarding asylum seekers. The government does not seem to be focussing on regional protection rather more on border control and regional deterrence.

There has been increasing tension between Australia and Indonesia regarding the government's asylum seeker policies.

Sri Lanka recently received two boats from Australia to assist with their endeavours to stop people smugglers.

See *Recommendation 83*.

## 4.4 Climate Change

### UPR Recommendation 31

Adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights;

**Australia's response - ACCEPTED-IN-PART**

#### **PARTIALLY IMPLEMENTED.**

The former Commonwealth Government announced it would work with Australian businesses and communities to prepare for the unavoidable impacts of climate change and provide overseas financial assistance to help vulnerable countries, particularly those in the Asia-Pacific region. In 2011, it implemented a carbon price and financial assistance for companies and individuals most affected by the price. The package of legislation includes the *Clean Energy Act 2011* (Cth), which implements the carbon pricing mechanism for Australia, as well as the *Clean Energy Regulator Act 2011* (Cth) and the *Climate Change Authority Act 2011* (Cth), which implement key elements of the governance arrangements for the carbon pricing mechanism. Following the introduction of this Plan, in December 2011 to December 2012 there was a carbon emission decline of 0.2 per cent, according to recent statistics of the [Australian National Greenhouse Accounts](#).

The newly elected Commonwealth Government has introduced bills into Parliament to repeal the Carbon Tax and abolish Australia's \$10 billion Clean Energy Finance Corporation. The Government will also cut funding to the Australian Renewable Energy Agency by \$435 million. Environmental groups are concerned about the impact of these changes on Australia's ability to meet its international obligations.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** Department of Climate Change and Energy Efficiency

**Action:** The Australian Government is assisting global efforts to mitigate and adapt to climate change by: (1) committing to reduce national carbon emissions by 5 to 15 per cent or 25 per cent, depending on international action, below 2000 levels by 2020; (2) implementing the Clean Energy Future Plan, including a carbon price and financial assistance for those who need help the most, particularly pensioners and low and middle-income households; (3) implementing the Carbon Farming Initiative, a national offsets scheme that reduces carbon pollution through land management and restoration projects – including the \$22 million Indigenous Carbon Farming Fund that encourages Indigenous Australian participation; (4) working with Australian businesses and communities to prepare for the unavoidable impacts of domestic climate change; while also providing financial assistance overseas to meet the high-

priority adaptation needs of vulnerable countries, particularly those in the Asia-Pacific region.

**Performance indicator/timeline:** Ongoing fixed carbon price scheme from 1 July 2012 moving to a flexible price from 1 July 2015. Financial assistance under the Clean Energy Future plan is being delivered since commencing from the middle of 2012. Ongoing Carbon Farming Initiative from 8 December 2011. Ongoing climate finance funding is being delivered to developing countries.

## 4.5 Counter-Terrorism Measures

### UPR Recommendation 136

Investigate allegations of torture in the context of counter-terrorism measures, give publicity to the findings, bring perpetrators to justice and provide reparation to the victims;

**Australia's response - ACCEPTED**

#### **PARTIALLY IMPLEMENTED.**

After the alleged torture of Australian citizen Mamdouh Habib (2001-05), the Commonwealth Government requested that the Inspector-General of Intelligence and Security conduct an inquiry into the involvement of intelligence and other agencies regarding the arrest and detention of Mr Habib. The findings were made public and a confidential settlement was reached with Mr Habib.

The [Inspector General's report](#) held that no Australian officials were criminally liable for Mr Habib's torture, but made six general recommendations to reduce the likelihood of a similar incident occurring in the future. The recommendations included:

- that the Department of Foreign Affairs and Trade should amend its 'Arrest and Detention checklist' for consular staff;
- that Australian Security Intelligence Organisation should amend its policies and procedures for cooperating in the interrogation of Australians overseas and its guidelines for communicating information to foreign authorities; and
- that the Australian Federal Police should develop a policy on what to do when officers become aware that a person has been, or may be, subject to torture or other similar treatment and review its guidelines on disclosure of information to foreign authorities.

The recommendations were [accepted by the Commonwealth government](#) in 2012, with the exception of a recommendation that an apology be made to Mr Habib's wife, and the government has already implemented many of these changes. In particular, the government has adopted 'whole-of-government coordination protocols' designed to 'ensure that the various actions taken by the Australian Government across multiple agencies and departments in response to events of (potential) torture or mistreatment of detainees overseas are consistent, appropriate, with security and safety maintained.'

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 137

Carry out a review of all 50 newly adopted laws since 2001 on combating terrorism, and of their application in practice so as to check their compliance with Australia's human rights obligations;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

The *Independent National Security Legislation Monitor Act 2010* (Cth) has established the office of the Independent National Security Legislation Monitor (INSLM). The INSLM's duty is to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an ongoing basis. While reviewing legislation the INSLM is also taking into account Australia's obligations under international law including international human rights law.

The INSLM produces an [annual report](#) with recommendation to the government. Further, the Prime Minister may refer national security and counter-terrorism matters to the INSLM, either on his own initiative or at the suggestion of the INSLM. Members of the public are also invited to make submission to the INSLM. With regards to the review of relevant legislation, the INSLM is currently reviewing the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) and the terrorism financing legislation as contained in Chapter 5 of the *Criminal Code Act 1995* (Cth) and Part 4 of the *Charter of the United Nations Act 1945* (Cth). As this review is still ongoing no results or the government's reaction thereto can be reported.

In addition to the INSLM, the Inspector General of Intelligence and Security (IGIS) and the Parliamentary Joint Committee on Intelligence and Security (PJCIS) will, according to the government, also provide additional oversight mechanisms complementing the work of the INSLM. Furthermore, the Council of Australian Governments (COAG) is undertaking a review of key provisions of Commonwealth, state and territory counter-terrorism legislation enacted after 2005. The [review](#) is scheduled for completion in 2014.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** PM&C (INSLM) AGD (COAG Review – Secretariat)

**Action:** The Australian Government will continue to ensure that the Independent National Security Legislation Monitor (INSLM) has the power to review the practical operation, effectiveness and implications of Australia's counterterrorism and national security legislation on an ongoing basis. The INSLM's first annual report was tabled in Parliament on 19 March 2012, in accordance with the Independent National Security Legislation Monitor Act 2010. The Inspector General of Intelligence and Security (IGIS) and the Parliamentary Joint Committee on Intelligence and Security (PJCIS) will also provide additional oversight mechanisms that complement the work

of the INSLM. In addition, the Council of Australian Governments (COAG) is undertaking a review of key provisions of Australia's counter-terrorism legislation which were enacted following the 2005 London bombings (this includes both Commonwealth and state and territory legislation).

**Performance indicator/timeline:** Ongoing (INSLM). 2013 (COAG Review).

### **UPR Recommendation 138**

Review the compatibility of its legislative framework to combat terrorism with its international obligations in the field of human rights and remedy any possible gaps;

**Australia's response - ACCEPTED**

### **UPR Recommendation 139**

Continue to ensure that its legislation and methods to combat terrorism are in accordance with the International Covenant on Civil and Political Rights;

**Australia's response - ACCEPTED**

### **UPR Recommendation 140**

Ensure, in particular through its Independent National Security Legislation Monitor, that its national legislation is in keeping with its international obligations in the field of human rights;

**Australia's response - ACCEPTED**

## **PARTIALLY IMPLEMENTED.**

Regarding the review of existing legislation by the INSLM, ICIS, PJCIS and COAG see *Recommendation 137*. Statement of compatibility for parliamentary scrutiny see *Recommendations 17-20*.

How was this recommendation addressed in the National Human Rights Action Plan?

### **Lead agency/ jurisdiction:**

**Action:** The Australian Parliament will continue to play a role in the implementation of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) (commenced on 4 January 2012) which: establishes a Parliamentary Joint Committee on Human Rights which will provide greater scrutiny of legislation for compliance with Australia's international human rights obligations under the seven core United Nations human rights treaties to which Australia is a party, and requires all new Bills and disallowable legislative instruments to be accompanied by a statement assessing its compatibility with the rights in the seven core United Nations human rights treaties to which Australia is a party.

**Performance indicator/timeline:** The Australian Government will consider the effectiveness of the new Committee's powers, the content and function of Statements of Compatibility and the definition of 'human rights' as part of the 2013-14 review of Australia's Human Rights Framework.



## 4.6 Culturally and Linguistically Diverse Communities

### UPR Recommendation 48

Put an end, in practice and in law, to systematic discrimination on the basis of race in particular against women of certain vulnerable groups;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

The [Racial Discrimination Act 1975 \(Cth\)](#) aims to ensure that people of all backgrounds are treated equally and have the same opportunities. The Act also makes discrimination against people on the basis of their race, colour, descent or national or ethnic origin unlawful. [Complaints](#) of race discrimination can be lodged with the Australian Human Rights Commission. The Act gives effect to Australia's obligations under the [International Convention on the Elimination of All Forms of Racial Discrimination](#), to which Australia is committed.

In March 2012, the Australian Human Rights Commission launched a wide-ranging consultation process to guide the development of the National Anti-Racism Strategy. In July 2012, the [National Anti Racism Strategy \(2012-2015\)](#) was launched. The strategy incorporated the principles of the United Nations Declaration on the Rights of Indigenous Peoples, with particular consideration of the right to self-determination.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 57

Further strengthen its efforts to promote equality, non-discrimination and tolerance through the monitoring of racially motivated violence and inclusion of human rights education in school and university curriculum;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

For a discussion of human rights education, see *Recommendation 58*.

In 2011, the Australian Institute of Criminology concluded a comprehensive student victimisation study, and detailed findings were presented in the [Crimes Against International Students in Australia: 2005-09](#) report. The report provided the best available estimation of the extent to which international students have been the victims of crime. However, due to the fact that policing databases do not consistently collect motivation data for all offences reported or investigated, the nature of the available data did not enable specific analysis of racial motivation factors that might affect the prevalence of crimes against overseas born students. The study concluded that determining the motivation for offending would best be achieved by

the development and implementation of a large-scale crime victimisation survey of international students and other Australian migrant populations more broadly.

The lack of relevant data was pointed out by the former Human Rights and Equal Opportunity Commission already in 1991 in its [Racist Violence: Report into the National Inquiry into Racist Violence in Australia](#). The report recommended, *inter alia*, that federal and state police record incidents and allegations of racist violence, intimidation and harassment on a uniform basis, and that such statistics be collected, collated and analysed nationally by the appropriate federal agency.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DEEWR

**Action:** The Australian Government will prioritise human rights education by: providing grants to NGOs to develop and deliver community education and engagement programs to promote a greater understanding of human rights investing \$3.8 million in an education and training package for the Australian Government public sector, including developing guidance materials for public sector policy development and implementation of government programs, providing \$6.6 million over four years to the Australian Human Rights Commission to expand its community education role on human rights and to provide information and support for human rights education programs, and enhancing support for human rights education in primary and secondary schools by continuing to work with states and territories and the Australian Curriculum, Assessment and Reporting Authority to include human rights and principles across the Australian curriculum, ensuring that human rights forms a part of student learning.

**Performance indicator/timeline:** Funding expended by 2013-14.

**UPR Recommendation 59**  
Strengthen further the measures to combat discrimination against minority communities, including Muslim communities in Australia;  
**Australia’s response - ACCEPTED**

**PARTIALLY IMPLEMENTED**

According to the Scanlon Foundation’s report [Mapping Social Cohesion 2012](#) which presents findings of national surveys conducted in 2007-2012, by far the highest proportion (31 per cent) who had experienced discrimination, were respondents of Islamic faith. Analysis by country of birth indicated highest experience of discrimination by respondents born in Africa and the Middle East (21 per cent) and Asia (20 per cent).

In its 2011 multicultural policy, *The People of Australia*, the Australian Government committed to develop and implement a [National Anti-Racism Strategy](#). The Strategy has been developed through the National Anti-Racism Partnership that includes both government and non-government partners (Federation of Ethnic Communities’ Councils of Australia, National Congress of Australia’s First Peoples, and Australian Multicultural Council) and is led by the Australian Human Rights Commission. The first step in implementing the Strategy is a public awareness campaign, *Racism. It stops with me*, that was launched on 24 August 2012, and will be implemented over

three years to 2015. Over the first year of the campaign, more than 160 organisations – from the business, sports, education, local government and community sectors – have signed on as supporters, and over 900 Australians have pledged their personal support.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will introduce new protections against discrimination and harassment based on sexual orientation and gender identity, as part of the project to consolidate Commonwealth anti-discrimination law into a single Act.

**Performance indicator/timeline:** Exposure draft legislation due in second half of 2012.

### **UPR Recommendation 60**

Take measures towards ensuring the equal and the full enjoyment of the basic rights of all its citizens including persons belonging to indigenous communities, and to effectively prevent and, if necessary, combat racial discrimination;

**Australia's response - ACCEPTED**

### **UPR Recommendation 64**

Continue their great efforts to put an end to all practices likely to interfere with the peaceful coexistence among the different groups of the multi-ethnic society of Australia;

**Australia's response - ACCEPTED**

### **UPR Recommendation 65**

Implement additional measures to combat discrimination, defamation and violence (including cyber racism) against the Arab population and Australian Muslims, against recently arrived migrants (primarily from Africa) and also foreign students (essentially coming from India);

**Australia's response - ACCEPTED**

## **PARTIALLY IMPLEMENTED**

The Australian Human Rights Commission has recently indicated a significant increase of 59 per cent in the number of complaints made by members of the Australian public about racial discrimination in the year 2012-13 compared to 2011-12. In addition, the national report, recently released by Scanlon Foundation, [Mapping Social Cohesion 2013](#), presented findings of national surveys conducted in 2007-2013, indicating, that there was a marked increase in reported experience of discrimination. The 2013 survey found the highest level recorded across the six surveys since 2007 (19 per cent), an increase of 7 per cent over 2012.

In the context of the above, the Government's promise to amend section 18C of the *Racial Discrimination Act 1975* (Cth) is particularly concerning. At the time of writing, the proposals for reform have not yet been released. See also *Recommendations 57 & 59*.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 61

Continue its efforts to promote multicultural and racial tolerance through initiatives such as the Australian Multicultural Advisory Council and the Diversity and Social Cohesion Programme;

**Australia's response - ACCEPTED**

### IMPLEMENTED

Australian Multicultural Advisory Council was established in 2008. Following its recommendations on cultural diversity policy presented to government in the 2010 statement *The People of Australia*, *The People of Australia – Australia's Multicultural Policy* was launched in 2011. Among its key initiatives was the establishment of the Australian Multicultural Council, National Anti-Racism Partnership and Strategy, strengthening Government access and equity framework, Multicultural Arts and Festivals Grants and Multicultural Youth Sports Partnership program.

The Diversity and Social Cohesion Program is an Australian Government initiative that evolved from the 'Living in Harmony' program which was established in 1998. The primary objective of the program is to help not-for-profit community organisations turn plans into reality. The Diversity and Social Cohesion Program grants provide funds of up to AUD\$50,000 for community groups and organisations to deliver projects that address local community relations issues.

Commencing in 2011–12, the Diversity and Social Cohesion Program also includes a new small grants program for multicultural arts and festivals. AUD\$125,000 per financial year has been allocated to MAFG over the four years to 2014–15.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DIAC

**Action:** The Australian Government will continue to engage with and monitor the effectiveness of the independent and non-partisan Australian Multicultural Council (AMC) which was established in 2011.

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 62

Take more effective measures to address discrimination and other problems related to racial and ethnic relations including by developing and implementing appropriate policy and programmes with a view to improving and strengthening relations between races and cultures;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

Australia's cultural diversity demands a consistent policy framework. With the current [The People of Australia – Australia's Multicultural Policy](#) launched in 2011 and the previous policy [Multicultural Australia: United in Diversity](#) operating from 2003 to 2006, the Government is yet to implement a dedicated piece of legislation that would underpin the necessary infrastructure that support immigrants in Australia, including access and equity principles, language policy, translating and interpreting services, and cultural awareness in Government agencies and contracted organisations.

In March 2013, the Parliamentary Joint Standing Committee on Migration released its [Inquiry into Migration and Multiculturalism in Australia](#) report presenting the argument that one of Australia's major strengths in the immigration context has been that its immigration policies have been founded on a strong evidence base developed largely through the now-defunct Bureau of Immigration, Multicultural and Population Research. However, since this body was dismantled in 1996, there has been a gradual reduction in the amount and breadth of the research. The Committee recommended the establishment of a government funded, independent collaborative institute for excellence in research into multicultural affairs with functions similar to those of the former research body, with an increased emphasis on qualitative data collection.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will undertake future work on community grants to promote social cohesion and combat violent extremism e.g. Building Community Resilience Youth Mentoring Grants Program. And other initiatives in chapter on refugees, asylum seekers, migrants and people from culturally and linguistically diverse backgrounds.

**Performance indicator/timeline:** Funding across four years was provided in the 2010-11 Budget terminating in 2013-14.

### UPR Recommendation 63

Strengthen its measures and continue its efforts in promoting multiculturalism and social inclusion;

**Australia's response - ACCEPTED**

## NOT IMPLEMENTED

Following the 7 September 2013 election, the incoming Government has removed multicultural affairs as a core ministerial portfolio, and has instead moved the portfolio to the charge of the newly created Department of Social Services. The Government also disbanded the Australian Social Inclusion Board established in May 2008 to act as the main advisory body to the Australian Government on ways to achieve better outcomes for the most disadvantaged in the community and to identify long-term strategies to end poverty. As part of a series of broad-reaching cuts, the Government recently decided to cancel vital community funding programs offered to support culturally and linguistically diverse Australians through the Building Multicultural Communities Program (BMCP) and the Multicultural Communities Employment Fund

(MCEF). Over 400 ethno-specific and multicultural groups and organisations across Australia were disadvantaged by the Government's withdrawal of the offer of funding through BMCP. In view of the estimated 35 per cent of job seekers from immigrant and refugee backgrounds (according to the Australian Bureau of Statistics), retaining MCEF is crucial for increasing the prospects of real jobs for disadvantaged communities. With 26 per cent of Australia's population made up of first generation immigrants and 20 per cent second generation immigrants, the Government is yet to make clear its position on multiculturalism through a dedicated ministerial portfolio and to adopt a comprehensive social inclusion agenda towards full and equal social participation of culturally and linguistically diverse Australians.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will undertake future work on community grants to promote social cohesion and combat violent extremism e.g. Building Community Resilience Youth Mentoring Grants Program. And other initiatives in chapter on refugees, asylum seekers, migrants and people from culturally and linguistically diverse backgrounds.

**Performance indicator/timeline:** Funding across four years was provided in the 2010-11 Budget terminating in 2013-14.

### UPR Recommendation 98

Take regular measures to prevent hate speech, including prompt legal action against those who incite discrimination or violence motivated by racial, ethnic or religious reasons;

**Australia's response - ACCEPTED**

### IMPLEMENTED

Laws prohibiting hate speech exist federally (*Racial Discrimination Act 1975* (Cth) s18C-18D) and in every state and territory except for the Northern Territory (*Racial and Religious Tolerance Act 2001* (Vic) ss7-12,25-25, *Anti-Discrimination Act 1977* (NSW) ss 20C-20D, *Anti-Discrimination Act 1998* (Tas) s19, *Racial Vilification Act 1996* (SA) ss3-6, *Criminal Code Act Compilation Act 1913* (WA) ss77-80H, *Anti-Discrimination Act 1991* (QLD) ss124A, 131A, *Discrimination Act 1991* (ACT) ss66-67).

The Government is considering amendments to section 18C of the *Racial Discrimination Act 1975* (Cth). At the time of writing, the proposals for reform have not yet been released.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** Tas Government

**Action:** The Tasmanian Government has implemented a process of anonymous reporting of incidents of racial vilification and or violence in the community to allow for monitoring of the incidences of such and to allow for targeting of programs to address incidences. This is in addition to formal complaint mechanisms to allow for a

nonthreatening process. The Tasmanian Government has allocated \$20,000 per annum to this initiative.

**Performance indicator/timeline:** Launched 2010.

### UPR Recommendation 101

Step up efforts to ensure that people living in the remote and rural areas, in particular the indigenous peoples, receive adequate support services relating to accommodation and all aspects of health and education;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In October 2013, the Australian Council of Social Service and the National Rural Health Alliance released their joint report, [A Snapshot of Poverty in Rural and Regional Australia](#), presenting findings that people living in rural and regional Australia, including a significant proportion of Aboriginal and Torres Strait Islander people, face particular social and economic challenges, such as generally lower incomes, reduced access education services and declining employment opportunities, distance, isolation and inadequate transportation services. The report provided evidence of lower access to health services and pharmaceuticals, including lower prevalence of nearly all types of health practitioners (in 2013, there were 242 medical practitioners employed in remote areas per 100,000 population, compared with 375 medical practitioners employed in major cities per 100,000 population). A working paper by the Productivity Commission, [Deep and Persistent Disadvantage in Australia](#), released in July 2013, provides evidence that residents of rural areas reported the highest rates of service exclusion, particularly in relation to medical and dental services, childcare and financial services. In addition, with 20 per cent of humanitarian entrants been settled in regional areas over the past several years, there is a growing culturally and linguistically diverse population that requires adequate and inclusive infrastructure, as well as job opportunities.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, state and NT governments

**Action:** The Australian Government will continue to address the significant level of housing needs in remote Indigenous communities through its \$5.5 billion investment in the National Partnership on Remote Indigenous Housing. The Social Housing Initiative provides \$5.238 billion for new construction over three and a half years, from 2008–09 to 2011–12. A further \$400 million was allocated over two years from 2008–09 to 2009–10 to undertake repair and maintenance work that benefited existing social housing dwellings. The National Partnership Agreement on Social Housing provided \$400 million to build around 1950 new dwellings. The increased supply of housing will contribute to reducing homelessness and improving outcomes for homeless and Indigenous Australians.

## 4.7 Domestic and Family Violence

### UPR Recommendation 73

Adopt special legislation to prevent and combat violence against women and girls and to prosecute and punish the perpetrators;

**Australia's response - ACCEPTED**

**PARTIALLY IMPLEMENTED**, some elements have been implemented, such as changes to the *Family Law Act 1975* (Cth) to better recognise family violence, though further protections are required.

The National Plan has 6 outcomes, including outcome 6, 'Perpetrators stop their violence and are held to account'. Research is currently being conducted (October 2013-) via national consultations on national perpetrator interventions outcome standards.

Including domestic violence/family violence as a protected attribute in anti-discrimination laws will be an important educative tool and help move this issue out of the private sphere into the public sphere. This will also highlight domestic and family violence as a community issue that requires a whole of community response as is consistent with the *National Plan* to reduce violence against women and their children.

Due diligence obligations include compensation for victims of violence. The NSW Victims Compensations scheme was recently abolished to be replaced with victims support. The new law does not provide adequate recognition of domestic violence and sexual assault. It also applies retrospectively. There needs to be a strengthening of victims' compensation.

Remove the presumption of equal shared parental responsibility in the *Family Law Act*. Protections are also required for vulnerable witnesses in family law proceedings so they cannot be directly cross-examined by a violent perpetrator.

Accreditation of family report writers in family law proceedings is required, including effective mechanism for complaints, standards and clinical experience in working with victims of family violence. Specialised legal assistance guidelines are required regarding family violence in family law and funding for specialised family violence reports. Training required for family law judiciary on impact of violence, inter-relationship between violence against women and violence against children; lethality indicators.

In Victoria, the *Family Violence Protection Act 2008* (Vic) was enacted in late 2008. The Act was developed after extensive consultation through the Victorian Law Reform Commission with sector agencies, government and the State-wide Steering Committee to Reduce Family Violence. Since it was enacted, it has been regarded as leading the nation in terms of protections offered and purpose, which is to prioritise the safety of victims, and hold perpetrators accountable for their use of violence.

See also *Recommendation 47 & 51*.



How was this recommendation addressed in the National Human Rights Action Plan?

No new legislation, only commitment to existing legislation.

### **UPR Recommendation 76**

Speed up the process for the adoption of the National Plan to Reduce Violence against Women and their Children;

**Australia's response - ACCEPTED**

### **PARTIALLY IMPLEMENTED**

In September 2012, the first 3-year implementation plan (first action plan) for the National Action Plan to Reduce Violence against Women and Children (June 2010-June 2013) was publicly released. While governments provided input there was little opportunity for NGOs to participate in this process. Consultation about the second implementation plan, which was due to start 1 July 2013, is yet to commence.

While acknowledging progress made, Australia needs to ensure:

- greater consultation, participation and collaboration in the development, implementation, monitoring and evaluation of implementation plans by the prevention of violence against women sector and those whose lives and rights will be affected.
- strategies to address the specific needs of all women experiencing violence in all locations, including Aboriginal and Torres Strait Islander women; culturally and linguistically diverse women, women with disability, women who identify as bi-sexual, lesbian, same-sex attracted, queer, transgender or intersex; younger women; older women; women in prison; women in regional, rural and remote areas.
- improved communication by government with civil society, transparency and accountability in implementing the National Plan. NGO representatives to the National Plan Implementation Panel (NPIP) were required to sign confidentiality agreements. While these NGO representatives have been told since that they are able to communicate NPIP work unless it is specifically declared confidential, the official communication from Governments out to the NGO sector is very slow. The Advisory Groups to the NPIP which could be richly constituted by experts from the NGO sector are yet to be set up, despite the plan to set them up in the first three years of the National Plan.
- more timely implementation of the National Plan in both content and release of implementation plans - the First Action Plan (2010-2013) was released in September 2012, with only 9 months remaining on the 3 year plan.
- adequate resourcing of the National Plan.
- an independent monitoring mechanism and the resourcing of civil society to participate in this.
- 

Source: [Australian NGO's Follow up Report to CEDAW Committee, 2012](#)

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, states and territories

**Action:** Governments will implement the National Plan to Reduce Violence Against Women and their Children (2010-22). And other initiatives under the chapter women: freedom from violence.

**Performance indicator/timeline:** Implementation of national priorities is guided by three year action plans.

### UPR Recommendation 77

Take steps, in partnership with State, Territory and Local governments, to further advance and accelerate implementation of the National Action Plan to Reduce Violence against Women and Their Children, so as to effectively address prevalence of violence against these vulnerable groups;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In 2013, the NSW Government released [\*It Stops Here: Standing together to end domestic and family violence\*](#)

The Queensland Government released its coordinated state strategy, [\*For Our Sons and Daughters - A Queensland Government strategy to reduce domestic and family violence 2009-2014\*](#) in January 2010.

The [\*Western Australian Family and Domestic Violence Strategic Plan 2009-2013\*](#) involves systemic reform of Western Australia's response to family and domestic violence.

In December, 2011 the South Australian Government launched [\*A Right to Safety – South Australia's Women's Safety Strategy 2011-2022\*](#). This builds on the reform agenda of the first SA Women's Safety Strategy in 2005.

On 9<sup>th</sup> March 2012, the NT Government announced [\*The Policy Framework for Northern Territory Women\*](#).

Australian Capital Territory initiatives are in accordance with the [\*ACT Women's Plan \(2010-2015\)\*](#), which includes the prevention of violence against women and their children and the need to instil an anti-violence culture in the community. In 2011, the ACT Government published [\*Our responsibility: Ending violence against women and children\*](#)

In June 2012, the Tasmanian Government released [\*Taking Action: Tasmania's Primary Prevention Strategy to Reduce Violence Against Women and Children 2012-2022\*](#)

[\*Victoria's Action Plan to Address Violence against Women & Children\*](#) (2012-2015), was released in October 2012.

On 18 November 2013, the Northern Territory Attorney-General announced that the Northern Territory is developing its first ever cross-government strategy to reduce domestic and family violence under the Government's 'Pillars of Justice Framework'. A community consultation process is currently underway and the protection of women and children is stated to be the core focus.

Negotiations between states and territories & the Commonwealth have been relatively slow on State and Territory Action Plans.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, states and territories.

**Action:** Governments will implement the National Plan to Reduce Violence Against Women and their Children (2010-22).

**Performance indicator/timeline:** Ongoing

### **UPR Recommendation 78**

Implement a national action plan to reduce violence against women and children;

**Australia's response - ACCEPTED**

### **UPR Recommendation 79**

Implement immediately the National Plan to Reduce Violence against Women and their Children;

**Australia's response - ACCEPTED**

### **UPR Recommendation 81**

Effectively implement the national policy to reduce violence against women;

**Australia's response - ACCEPTED**

## **PARTIALLY IMPLEMENTED**

In May 2008, the Australian Government established an 11 member National Council to Reduce Violence against Women and their Children. The Council's task was to provide advice on the development of an evidence-based national plan. The [National Plan](#) consists of four complementary three-year Action Plans:

- First Action Plan (2010–2013) – Building a Strong Foundation;
- Second Action Plan (2013–2016) – Moving Ahead;
- Third Action Plan (2016–2019) – Promising Results; and
- Fourth Action Plan (2019–2022) – Turning the Corner.

Progress on the *National Plan* will be made public through annual reports made to the Council of Australian Governments (COAG). The National Plan Implementation Panel (NPIP) was established to oversee and advise on the National Action Plan.

See also *Recommendations 76 & 77*.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, states and territories.

**Action:** Governments will implement the National Plan to Reduce Violence Against Women and their Children (2010-22).

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 80

Implement the National Action Plan to reduce violence against women and their children, including through an independent supervision mechanism that involves civil society organizations and take into account the specific situation of indigenous women and migrants;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

See *Recommendation 76*.

A tripartite National Plan Implementation Panel has been established to advise on the development and implementation key national priority projects identified in the Action Plans. The Implementation Panel was set up to provide advice to ministers on emerging issues for subsequent Action Plans. Working groups were scheduled to be established to sit under the Implementation Panel to progress the implementation of important national priorities. Working groups are yet to be established. Frequent calls for an independent monitoring and evaluation mechanism and the resourcing of civil society to participate in this has resulted in the National Implementation Plan for the *First Action Plan 2010 – 2013 Building a Strong Foundation* ([First Action Plan](#) released Sept 2012) referring to governments “and their community partners” agreeing to a framework for the evaluation over the 12 years of the National Plan “including agreement on the methodology, data and information requirements and timing” by mid-2012. The evaluation framework is yet to be finalised by the government. The government must commit to continuing the implementation of an independent monitoring and evaluation mechanism and the resourcing of civil society to participate in this. Also, an independent monitoring body should include the following elements:

- time specific and measurable indicators and targets
- an institutional multi-sectoral mechanism to monitor implementation;
- meaningful participation of civil society and other stakeholders;
- evaluation of practice and system;
- accountable reporting procedures.

Source: [UN Women, Good Practices in National Action Plans on Violence against Women, Report of the Expert Working Group, 2010](#) (at 72).

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, states and territories

**Action:** Governments will implement the National Plan to Reduce Violence Against Women and their Children (2010-22). And other initiatives under the chapter women:

freedom from violence.

**Performance indicator/timeline:** Implementation of national priorities is guided by three year action plans.

### UPR Recommendation 82

Ensure that all victims of violence have access to counselling and assistance with recovery;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

Under the National Plan, victims and survivors have access to *1800 RESPECT: Domestic and Sexual Violence National Counselling Service*.

Due diligence obligations include compensation for victims of violence: The NSW Victims Compensations scheme was recently abolished to be replaced with victims support. The new law does not provide adequate recognition of domestic violence and sexual assault. It also applies retrospectively. There needs to be a strengthening of victims' compensation.

In Victoria, the state funds counselling and recovery programs but not the extent that the community require them. Demand exceeds capacity – particularly in regards to therapeutic services for children.

Women in prison should also be able to access counselling while in prison should they wish to do so - there has been a pilot counselling project in some prisons in NSW. This should be rolled out across Australia.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FAHCSIA, state and territories.

**Action:** State and territory governments will continue to provide services to victims of violence including counselling. Victims of violence may be eligible, where appropriate, for financial assistance through state and territory based victims of crime compensation schemes. Anyone who has experienced, or is at risk of, domestic and family violence, and/or sexual assault can access 1800RESPECT, the Australian Government's national professional telephone and online counselling service on 1800 737 732 and [www.1800RESPECT.org.au](http://www.1800RESPECT.org.au).

**Performance indicator/timeline:** Ongoing

## 4.8 Economic, Social and Cultural Rights

### UPR Recommendation 32

Develop a comprehensive poverty reduction and social inclusion strategy, which would integrate economic, social and cultural rights;

**Australia's response - ACCEPTED-IN-PART**

### UPR Recommendation 33

In line with the Committee on Economic, Social and Cultural Rights recommendation, develop a comprehensive poverty reduction and social inclusion strategy, which should integrate economic, social and cultural rights;

**Australia's response - ACCEPTED-IN-PART**

#### **PARTIALLY IMPLEMENTED.**

The Commonwealth government's response to this recommendation prioritised Indigenous health, housing, work and education, disability and poverty.

Regarding poverty, the Government committed to halving the rate of homelessness by 2020 in ['The Road Home: A National Approach to Reducing Homelessness'](#) and the following year the National Partnership Agreement on Homelessness commenced. However, between 2006 and 2011, the number of homeless people increased by 17 per cent (Australian Government, ['Exposure draft -Homelessness Bill 2012'](#)). Homeless services have [reported](#) that they are now turning away 16 per cent of people asking for help. In 2011, the Government committed \$3 billion to its 'Building Australia's Future Workforce' package, which included new initiatives targeting jobless families, however unemployment has increased and the Government has been criticised for providing inadequate unemployment and sole parenting social security payments and shifting a number of sole parents to lower payments.

Regarding Indigenous health, housing, work and education, see Recommendations 36 and 37: However, note that since implementation of the closing the gap program, life expectancy and child mortality indicators have improved, but not low birth-weight rates (Oxfam Australia, ['Closing the gap shadow report'](#) (2013)).

Regarding disability, see other recommendations, particularly Recommendation 40. However, note that while the National Disability Insurance Scheme is being touted internationally, there are concerns that the scheme may fail due to inadequate funding and large workforce shortages.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA, PM&C, states and territories.

**Action:** The Social Inclusion Agenda has a specific focus on the following priority areas, which seeks to reduce social and economic disadvantage in Australia:

(1) targeting jobless families with children to increase work opportunities, improve parenting and build capacity; (2) improving the life chances of children at greatest risk of long term disadvantage; (3) reducing the incidence of homelessness; (4) improving outcomes for people living with disability or mental illness and their carers; (5) closing the gap for Indigenous Australians, and (6) breaking the cycle of entrenched and multiple disadvantage in particular neighbourhoods and communities.

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 49

Further ensure that everyone is entitled to equal respect and to a fair participation with full enjoyment of equal rights and opportunities in economic, political, social and cultural developments as incorporated in the laws and plans of action;

**Australia's response - ACCEPTED**

### UPR Recommendation 50

Take appropriate measures to reduce the development gap and social disparities so as to enhance the full enjoyment of all human rights for all Australian people, especially in the areas of economic, cultural and social rights;

**Australia's response – ACCEPTED**

### UPR Recommendation 142

Actively continue to implement the best practice and policy for the promotion and protection of the rights and living conditions, and to narrow the gap in living standards in favour of the vulnerable groups in the country;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

There have been a number of positive developments in ensuring that full enjoyment of equal rights and opportunities for all people in Australia including:

- The development of the National Human Rights Action Plan
- The passing of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth)
- The appointment of an Independent Reviewer of Adverse Security Assessments to review ASIO adverse security assessments given to the Department of Immigration and Citizenship in relation to people who remain in immigration detention.
- The development of a National Anti-Racism Strategy
- The establishment of a National Disability Insurance Scheme.
- The passing of the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth)
- The endorsement of the National Plan to Reduce Violence against Women and their Children by Federal, State and Territory Governments.
- The establishment of a National Children's Commissioner

However, this submission also highlights proposed policies which put would vulnerable groups at greater risk for instance, the funding cuts to the legal assistance sector and the abolition of the Independent Reviewer of Adverse Security Assessments.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

# 4.9 Foreign Policy and International Assistance

## UPR Recommendation 34

Implement the observations of the Human Rights Committee by adopting the necessary legislation to ensure that no one is extradited to a State where they would be in danger of the death penalty;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

According to section 22 of the *Extradition Act 1988* (Cth), a person must not be extradited if the death penalty will be imposed. However, the *Mutual Assistance in Criminal Matters Act 1987* (Cth) does not expressly prohibit Australia from providing mutual assistance to another country where there is a real risk of the death penalty being imposed.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will continue to adhere to the provisions in the Extradition Act 1988 (Cth) regarding surrender in cases where a person may be subjected to torture or where the offence for which extradition is sought is punishable by the death penalty.

**Performance indicator/timeline:** Ongoing

## UPR Recommendation 135

Protect Official Development Assistance from budgetary cuts in the context of the international crisis and make every effort to bring it to the internationally agreed target of 0.7 per cent of GDP;

**Australia's response - ACCEPTED**

## UPR Recommendation 141

Continue to share its experiences for the promotion of human rights in the region and the world;

**Australia's response - ACCEPTED**

## UPR Recommendation 144

Continue to promote and protect human rights internationally through bilateral and multilateral dialogue to enhance human right capacity regionally across the Asia-Pacific and globally through the AusAID programme;

**Australia's response - ACCEPTED**

## UPR Recommendation 145

Continue its efforts for the promotion and protection of human rights in the world and in their country.

**Australia's response - ACCEPTED**



## PARTIALLY IMPLEMENTED

The Minister for Foreign Affairs, Julie Bishop, reaffirmed Australia's commitment to the Millennium Development Goals and has stated that "Australia will continue to be an effective and principled humanitarian donor". Australia has made some commendable commitments to international assistance including over \$2 billion on spent on the Regional Assistance Mission to the Solomon Islands from 2003-2013 and a \$30 million package of humanitarian assistance in the aftermath of Typhoon Haiyan. However aid organisations are [concerned](#) that funding cuts introduced by the new Government, will cost lives and have a profound impact on developing countries, particularly in the Asia Pacific region.

In 2013, the government announced that it will cut \$4.5 billion of foreign aid over four years to fund domestic infrastructure (see p.6 [Fiscal Budget overview of the Liberal Party](#)). This move is expected to bring Australia further away from its target of 0.5 per cent of gross national income and the internationally agreed target of 0.7 per cent of gross domestic product.

Australia made a commitment under the Howard Government in 2000, that Australia would raise its national foreign aid budget to 0.7 per cent of gross national income by 2015. According to economist Stephen Howes of the Australian National University, the recent cut will see aid falling from 0.35 per cent of gross national income in 2012-13 to 0.31 per cent in 2017.

The new government also announced in 2013 that AusAID is to be subsumed into the Department of Foreign Affairs and Trade, a move that may represent the de-prioritisation of the goal of poverty alleviation.

In December 2012 the previous Government announced that \$375 million from the foreign aid budget will be used to pay for the expenses of asylum seekers on the Australian mainland. When in opposition the new government opposed this use of the foreign aid budget, it is not clear yet whether the practice will continue now that they are in office.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AusAID

**Action:** The Australian Government will continue implementing the first disability strategy for the aid program (2009-14) - Development For All, including:

- \* providing support for people with disability to advocate for rights and influence decision making through the Disability Rights Fund (DRF). Australian support has enabled the DRF to expand to include Indonesia and Pacific Island countries, contributing to advocacy efforts in Indonesia, which ratified the CRPD in November 2011, providing \$3.2 million since 2008
- \* in Cambodia, where Australia assisted the Government to develop disability rights legislation which now forms a solid legal basis to end discrimination, and
- \* in PNG, with support for accessible elections, including through involvement of disability organisations.

**Performance indicator/timeline:** 2009-14

# 4.10 International Human Rights Mechanisms

## UPR Recommendation 1

Ratify as soon as possible the Optional Protocol to the Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT);

**Australia's response - ACCEPTED**

## UPR Recommendation 2

Speed up the process of the ratification of the OP-CAT;

**Australia's response - ACCEPTED**

## UPR Recommendation 6

Ratify OP-CAT without further delay;

**Australia's response - ACCEPTED**

## NOT IMPLEMENTED

The Australian Government expressed a commitment to ratify the Optional Protocol to the Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) by 2013.

On 28 February 2012, OPCAT was tabled in the Commonwealth Parliament. The treaty was referred to the Joint Standing Committee on Treaties for consideration. On 21 June, the Committee tabled its report which supported OPCAT.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD, states and territories

**Action:** The Australian Government is currently working with the States and Territories, to move towards ratifying the OPCAT.

**Performance indicator/timeline:** Introduction and passage of model legislation in each jurisdiction will take place in between 2012-13. The Australian government expects full ratification of OPCAT to be completed by 2013.

## UPR Recommendation 3

Ratify OP-CAT and designate a National Preventive Mechanism for places of detention;

**Australia's response - ACCEPTED**

## UPR Recommendation 4

As a high priority, ratify OP-CAT and establish a National Preventative Mechanism;

**Australia's response - ACCEPTED**

## UPR Recommendation 5

Ensure the establishment of an independent supervision mechanism which would have access to all detention centres with a view to facilitating the prompt ratification of OP-CAT;

**NOT IMPLEMENTED**

Regarding ratification of OP-CAT, see *Recommendation 1*.

Regarding a National Preventive Mechanism, which is mandated by OP-CAT, the Joint Standing Committee on Treaties held in February 2012 that existing inspections systems in place in Australia do not fulfil the requirements of a National Preventive Mechanism under the OP-CAT. The Australian government therefore announced the establishment of a National Preventive Mechanism to be deferred for three years after ratification in order for the Commonwealth and states and territories to cooperate to establish an appropriate system. The Attorney General's Department announced that as of September 2012, all Australian governments are negotiating model legislation that will provide for a National Preventative Mechanism. (See: [http://www.apr.ch/en/opcat\\_pages/opcat-situation-3/?pdf=info\\_country](http://www.apr.ch/en/opcat_pages/opcat-situation-3/?pdf=info_country)) The Australian Capital Territory is leading the way by releasing a [Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Bill 13](#) on 21 March 2013. At the time of writing, the [bill had not progressed](#) further.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

**UPR Recommendation 7**

Encouraged to accede to the remaining core human rights instruments to which it is yet to become a party, especially CED;

**Australia's response - ACCEPTED-IN-PART**

**UPR Recommendation 8**

Sign and ratify CED;

**Australia's response - ACCEPTED-IN-PART**

**UPR Recommendation 9 (i)**

Study the possibility of signing and ratifying CED

**Australia's response - ACCEPTED-IN-PART**

**NOT IMPLEMENTED**

In its [response](#) to UPR recommendations the Australian government stated that it could not commit to becoming party to the International Convention for the protection of All Persons from Enforced Disappearance (CED), but that it would will formally consider becoming a party to the treaty. No progress has been made towards ratifying the CED prior to the election.

Despite calls made by NGOs for the Government to ratify Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, to date it has declined to ratify or sign the Optional Protocol.

Regarding the ICRMW see *Recommendation 10*.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will formally consider its position on the CED.

**Performance indicator/timeline:** Completion by end of 2013.

#### **UPR Recommendation 9 (ii)**

Study the possibility of signing and ratifying ICRMW;

**Australia's response - ACCEPTED-IN-PART**

#### **UPR Recommendation 10**

Consider acceding to ICRMW; ratify ICRMW; complete the ratification process of ICRMW; engage in consultations with civil society with a view to possible accession to ICRMW; ratify ICRMW;

**Australia's response - REJECTED**

#### **NOT IMPLEMENTED**

The Australian Government is not a party to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Government has stated that it considers existing domestic protections for migrant workers as adequate. NGOs, the Australian Human Rights Commission and a number of countries have urged Australia to consider ratification of the Migrant Workers Convention.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

#### **UPR Recommendation 11**

Ratify ILO Convention No. 169 and incorporate it into its national norms;

**Australia's response - ACCEPTED**

#### **UPR Recommendation 12**

Consider ratifying ILO Convention No. 169;

**Australia's response - ACCEPTED**

#### **NOT IMPLEMENTED**

In its [official response](#) to the UPR recommendations on 8 June 2011 the Australian government has announced that 'Australia cannot commit to becoming party to the ILO No.169, but will formally consider becoming a party to this treaty.' In the [National Human Rights Action plan](#) published 2012, the government reinforced its intention to review its position and to work in consultation with Aboriginal and Torres Strait Islander representatives and Australia's ILO social partners. Since then there has been no progress and the new Federal Government's official policies do not include any reference to the Convention. To our knowledge, party spokespeople have not made any recent pronouncements on the issue.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DEEWR, AGD, FaHCSIA, states and territories

**Action:** The Australian Government will review its position on ILO Convention 169.

**Performance indicator/timeline:** Australian, state and territory governments to commence consideration of Australia's convention in 2012, in consultation with Aboriginal and Torres Strait Islander representatives and Australia's ILO social partners.

### UPR Recommendation 13

Withdraw its reservations to CRC;

**Australia's response - ACCEPTED-IN-PART**

### NOT IMPLEMENTED

Australia continues to have a reservation to Article 37(c) of the Convention on the Rights of the Child. Children continue to be detained with adults both in the criminal justice system and in immigration detention. In the government's National Human Rights Action Plan 2012 and in its [response](#) to the list of issues raised by the UN Committee on the Rights of the Child in late 2012 the government emphasised that a review of the reservation is being made in consultation with the State and Territory governments, it stated that a timeline for a decision could not be provided at that stage and that an update would be included in its next report to the Committee in 2018. The National Human Rights Action Plan committed to considering Australia's position on the Third Optional Protocol to the Convention on the Rights of the Child which provides a redress mechanism for violations of rights under the CRC and its First and Second Optional Protocols. At the time of writing the Government has not yet ratified the Third Optional Protocol.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government is currently considering its position on the Third Optional Protocol to the CRC, which opened for signature on 28 February 2012.

**Performance indicator/timeline:** Mid 2013.

#### UPR Recommendation 14

Consider withdrawing its reservations to article 4 (a) of ICERD;

**Australia's response - ACCEPTED**

#### UPR Recommendation 15

Withdraw its reservation on article 4 (a) of ICERD, as this reservation undermines one of the key objectives of this Convention;

**Australia's response - ACCEPTED-IN-PART**

#### NOT IMPLEMENTED

In the government's [National Human Rights Action plan](#) 2012 it expressed its intention to review its reservation to Article 4 (a) of the CERD in consultation with state and territory government. This review, the government held, would be finalised by the end of 2012. At the time of writing, the reservation to Article 4 (a) was still in place.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will review its reservations under CERD: Article 4. The Australian Government will place this review on the agenda of the Standing Council of Treaties for consultation with state and territory governments.

**Performance indicator/timeline:** The Australian Government will consult with states and territories, relevant Australian Government agencies and civil society and finalise review by the end of 2012.

#### UPR Recommendation 16

Lift its reservations to the following international conventions: ICERD, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights and CRC;

**Australia's response - ACCEPTED-IN-PART**

#### NOT IMPLEMENTED

Regarding ICERD see *Recommendations 14-15*. Regarding CRC see *Recommendation 13*.

The Government continues to maintain the reservations that Australia has made in relation to the ICCPR, including in relation to Articles 10(2)(a) and (b), 10(3) (second sentence), 14(6) and 20. Australia continues to detain those on remand with those convicted of offences across all jurisdictions. Compensation for miscarriage of justice continues to be by administrative provisions in many Australian jurisdictions. See *Recommendation 98* for discussion of racial and religious vilification.

In 1983 Australia made two reservations to CEDAW that are no longer relevant. Article 11(2) concerns the provision of paid maternity leave. Maternity leave was introduced by the Australian Government in 2011. The scheme is set to be

expanded, by the Coalition Government to take effect in 2015. It would therefore be possible to lift the reservation Australia currently has on this issue, however there has been no announcement of an intention to do so. Similarly the reservation made by Australia women's participation in direct, armed combat is no longer relevant. The ban on women in combat roles in the military was lifted in January 2013.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will review its reservations under the following international conventions: (1) CERD, Article 4; (2) CEDAW, Articles 11.1 & 11.2; and (3) ICCPR, Articles 10.2, 10.3, 14.6 & 20. The Australian Government will place this review on the agenda of the Standing Council of Treaties for consultation with state and territory governments.

**Performance indicator/timeline:** The Australian Government will consult with states and territories, relevant Australian Government agencies and civil society and finalise review by the end of 2012.

#### **UPR Recommendation 17**

Bring its legislation and practices into line with international obligations;

**Australia's response - ACCEPTED**

#### **UPR Recommendation 18**

Take the necessary measures to fully incorporate into Australian legislation its international obligations in the field of human rights;

**Australia's response - ACCEPTED-IN-PART**

#### **UPR Recommendation 19**

Incorporate its international obligations under human rights instruments into domestic law;

**Australia's response - ACCEPTED-IN-PART**

#### **UPR Recommendation 20**

Continue its efforts in strengthening the mechanisms for the effective incorporation of international human rights obligations and standards into its domestic legislation;

**Australia's response - ACCEPTED**

### **PARTIALLY IMPLEMENTED**

Despite being a party to seven of the core human rights treaties, Australia has not incorporated these treaties into its domestic law and has failed to adopt a comprehensive legal framework for the protection of human rights. There are significant gaps in the protection of human rights in Australia and many individuals are unable to access effective remedies. Both major political parties in the Federal Parliament have a policy of not introducing a Human Rights Act or a Charter of Human Rights. See *Recommendations 21 & 22* for a discussion of Australia's failure to enact a judicially enforceable Human Rights Act.

A positive development in strengthening the mechanisms for the effective incorporation of international human rights obligations and standards into its domestic legislation is the establishment of the Parliamentary Joint Committee on Human Rights. Since early 2012, all new legislation must be accompanied by a statement of compatibility under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). It aims to improve [parliamentary scrutiny](#) for consistency with rights and freedoms contained in the seven core human rights treaties signed by Australia. Statements of compatibility are required for all bills and disallowed legislative instruments, regardless of whether they have an impact on human rights or not. The statement of compatibility is, however, merely an expression of opinion by the relevant minister or sponsor of the bill and is not binding on a court or tribunal.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Parliament will continue to play a role in the implementation of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) (commenced on 4 January 2012) which: establishes a Parliamentary Joint Committee on Human Rights which will provide greater scrutiny of legislation for compliance with Australia’s international human rights obligations under the seven core United Nations human rights treaties to which Australia is a party.

**Performance indicator/timeline:** The Australian Government will consider the effectiveness of the new Committee’s powers, the content and function of Statements of Compatibility and the definition of ‘human rights’ as part of the 2013-14 review of Australia’s Human Rights Framework.

**UPR Recommendation 35**  
Follow-up on the implementation of recommendations of human rights mechanisms;  
**Australia’s response - ACCEPTED**

**PARTIALLY IMPLEMENTED**

Australia regularly fails to implement recommendations of UN human rights mechanisms. Australia lacks effective institutional mechanisms to systemically implement and follow up on recommendations of human rights mechanisms.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.



## 4.11 Labour Rights

### UPR Recommendation 100

Remove, in law and in practice, restrictions on the rights of workers to strike, as recommended by the Committee on Economic, Social and Cultural Rights;

**Australia's response - ACCEPTED-IN-PART**

#### PARTIALLY IMPLEMENTED

The right to strike is not protected by Australian law and is denied to workers in many situations. The *Fair Work Act 2009* (Cth) only protects industrial action when they are negotiating on a proposed enterprise agreement. Significant penalties can be imposed for industrial action that is not protected industrial action, including fines of up to \$10,200 for an individual.

In their response to UPR recommendations Australia committed to abolishing the Australian Building and Construction Commission. The Commission was abolished in 2012, however the new Government has [stated](#) that it will re-establish the Commission to increase industry and to reduce days lost to strikes.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DEEWR

**Action:** The Australian Government will implement legislation to abolish the Australian Building and Construction Commission and remove a range of industry-specific regulations, including laws that provide broader circumstances under which industrial action attracts penalties.

## 4.12 Law Enforcement

### UPR Recommendation 88

Take effective legal measures to prohibit the use of excessive force and “tasers” by the police against various groups of peoples;

**Australia's response - ACCEPTED-IN-PART**

#### NOT IMPLEMENTED

Taser use may constitute torture especially if used in ‘drive stun’ mode to inflict pain. There are reports from Australia of misuse and abuse of Tasers by police. No new legal measures followed the release this year of a report by the NSW Ombudsman on the 2012 death of a tasered Brazilian student, who was chased by up to 11 police officers and repeatedly tasered shortly before his death. The critical report, which highlighted the importance of independent civilian oversight of critical incident investigations, followed an October 2012 report by the NSW Ombudsman highlighting that almost 30 per cent of Taser use is against Aboriginal and Torres

Strait Island peoples. There should be a consistent Australia-wide high threshold test for Taser use that prohibits use unless there is a real risk of serious injury or death where there are no other reasonable alternatives that can be used. To ensure and demonstrate compliance with this standard, each jurisdiction needs to ensure that there is adequate data collection and reporting on Taser use.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** ANZPAA, Victoria

**Action:** The Australia New Zealand Policing Advisory Agency is developing an overarching principle-based framework for use of force by police. The Victorian Government will make a range of changes to the oversight process, including designing an oversight/investigation framework and principles, to ensure continued accountability and best practice in deaths related to use of force by police members in the course of their duties.

**Performance indicator/timeline:** Commenced in 2011; Commenced in 2010.

### UPR Recommendation 89

Further improve the administration of justice and the rule of law including by setting up appropriate mechanisms in order to ensure adequate and independent investigation of police use of force, police misconduct and police-related deaths;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

No new legal measures have been taken at the federal level to explicitly prohibit the use of excessive force by the police. The overwhelming majority of complaints about police misconduct, excessive use of force by the public are sent back to the police for investigation or “performance management” procedures. In all Australian jurisdictions currently, police investigate themselves when there is a death in police custody; or there is a complaint of torture, degradation, abuse, ill-treatment, assault, racial abuse or excessive force by police. Police are rarely prosecuted or disciplined for human rights abuses.

Regarding other measures, the government stated in the National Human Rights Action Plan that it will ‘ensure that complaints about the Australian Federal Police are investigated thoroughly, within benchmark timeframes, oversighted appropriately by the Commonwealth Ombudsman and with the Law Enforcement Integrity Commissioner.’ It is unclear whether the government is meeting its targets within prescribed timeframes.

The state of Victoria has introduced state policies and legislation regarding the police use of force. In 2011 the Human Rights Law Centre launched the Police Use of Force Project, at the conclusion of which it published a report that outlined a number of recommendations relating to the use of force ([‘Upholding our Rights: Towards Best Practice in the Use of Force’](#)). Subsequently, the state passed the [Police Regulation Amendment Act 2012 \(Vic\)](#), providing for productivity benefits and improved accountability in cases of misconduct. Furthermore, in 2013 the Victorian Police released its [Blueprint 2012-15 report](#), which included a ten-page action plan outlining in its priorities ‘upholding human rights’ and ‘respecting victims’.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### **UPR Recommendation 95**

Enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and representatives of the law enforcement officials and enhance the training of those officials with respect to cultural specificities of the above communities;

**Australia's response - ACCEPTED**

### **UPR Recommendation 96**

Improve the human rights elements of its training for law enforcement personnel;

**Australia's response - ACCEPTED**

### **NOT IMPLEMENTED**

Police officers engage with members of the public differently on the basis of their race, ethnic background, national origin or religious beliefs, thus discriminating against them. Studies of young people's encounters with police have shown that racial profiling, over-policing and differential treatment are experienced widely by Aboriginal and Torres Strait Islander and African youth in Australia.

Stop and Search receipting, as a mechanism adopted in other countries to identify and reduce discriminatory police stops, should be introduced in Australia. Stop and Search Receipting would require police officers to complete a form and issue a receipt (an administrative form to be kept by both parties) every time they stop, or stop and search, someone.

The former Commonwealth Government committed \$3.8 million for education and training of public sector employees, including developing guidance materials for public sector policy development and implementation of government programs. In its official response to the recommendation made in the course of the UPR in May 2011 the Australian Government stated that the Australian Federal Police is part of the federal public sector and will therefore also benefit from this education and training package (see [Australia's formal response](#)).

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

## 4.13 People with Disability

### UPR Recommendation 39

Comply with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women concerning the sterilization of women and girls with disabilities; enact national legislation prohibiting the use of non-therapeutic sterilization of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent; repeal all legal provisions allowing sterilization of persons with disabilities without their consent and for non-therapeutic reasons; abolish non-therapeutic sterilization of women and girls with disabilities;

**Australia's response - ACCEPTED-IN-PART**

### NOT IMPLEMENTED

This recommendation is in keeping with United Nations *Committee on the Elimination of Discrimination Against Women* (2010), the *Committee on the Rights of the Child* (2005, 2012), the *Human Rights Council* (2011), along with the *International Federation of Gynecology and Obstetrics (FIGO) Guidelines on Female Contraceptive Sterilization* (2011), and recommendations of the *World Medical Association (WMA)* (2011) and the *International Federation of Health and Human Rights Organisations (IFHHRO)* (2011).

Forced/involuntary or coerced sterilisation of people with disability, particularly women and girls with disability is an ongoing practice in Australia. In September 2012 the Senate commenced an Inquiry into the involuntary or coerced sterilisation of people with disability in Australia, and released the [Inquiry Report](#) in July 2013. The Report recommends that national uniform legislation be developed to *regulate* sterilisation of children and adults with disability, rather than to *prohibit* the practice. The Report recommends that for an adult with disability who has the 'capacity' to consent, sterilisation should be banned unless undertaken with that consent. However, based on Australia's [Interpretive Declaration in respect of Article 12 of the UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#), the Report also recommends that where a person with disability does not have 'capacity' for consent, substitute decision-making laws and procedures may permit the sterilisation of persons with disability. If the Australian Government accepts the recommendations of the Senate Inquiry, it will mean that the Australian Government remains of the view that it is an acceptable practice to sterilise children and adults with disabilities, provided that they 'lack capacity' and that the procedure is in their 'best interest', as determined by a third party.

The forced sterilisation of women and girls with disabilities is an act of unnecessary and dehumanising violence, [a form of social control, and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment](#). By not abolishing this practice of forced and involuntary sterilisation the Australian Government, is denying women and girls with disabilities their rights of informed consent, their rights of being a mother; and it also sets many women up for long term physiological problems.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD, states and territories

**Action:** The Australian Government will work with states and territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability.

**Performance indicator/timeline:** Ongoing

#### UPR Recommendation 40

Continue its laudable measures to address the plight of persons with disabilities, in particular through pursuance of the draft National Disability Strategy, and share its experience in this regard;

**Australia's response - ACCEPTED**

#### IMPLEMENTED

The [National Disability Strategy \(NDS\) 2010-2020](#) sets out a national policy framework for guiding Australian State and Territory Governments to meet their obligations under the UN Convention on the Rights of persons with Disabilities (CRPD). This framework includes goals and objectives under six areas of mainstream and disability-specific public policy: inclusive and accessible communities, rights protection, justice and legislation, economic security, personal and community support, learning and skills, health and well-being and consequently the implementation of the NDS is critical to the disability reform agenda. However, the Australian Government has not made a clear commitment to resource the implementation of the strategy. Moreover, it lacks specific actions, a transparent reporting mechanism, and accountability measures within State and Territory implementation plans to ensure that strategic outcomes are achieved at both the state and federal level. The NDS relies heavily on data, primarily from the Australian Bureau of Statistics (ABS), for evaluating success and achieving outcomes. The lack of nationally consistent disaggregated data collected about people with disability raises concerns about the ability of Australia to evaluate the implementation of the National Disability Strategy.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA

**Action:** The Australian Government will continue to work on preparing a national action framework for implementing the National Disability Strategy (NDS). The draft indicators will be reviewed in the first year of the Strategy.

**Performance indicator/timeline:** A first year report will be presented to the Council of Australian Governments (COAG) in late-2012.

Every two years, a high level progress report will track achievements under the Strategy and provide a picture of how people with disability are faring. The first biennial report will be presented to COAG in February 2014.

### UPR Recommendation 41

Complete as soon as possible a general framework of measures to ensure equality of chances for people with disabilities;

**Australia's response - ACCEPTED**

#### NOT IMPLEMENTED

Australia has failed to incorporate the UN Convention on the Rights of persons with Disabilities (CRPD) into domestic law through comprehensive, judicially enforceable legislation. Existing legislation, such as the [Disability Discrimination Act 1992 \(Cth\)](#), falls well short of the obligations under the Convention. Various aspects of current anti-discrimination laws limit the ability of people with disability to complain about discrimination, obtain effective remedies for violations of their rights, and to achieve substantive equality. For example, there are no protections against vilification or hate crimes in current legislation, and the *Disability Discrimination Act 1992* provides a defence to discrimination where the avoidance of discrimination would cause an unjustifiable hardship. Moreover, the process for addressing discrimination claims involves independent conciliation by the Australian Human Rights Commission as a first step, with matters going to court if conciliation cannot be reached. In practice this means that it is possible for resolutions to breaches of human rights to be settled confidentially rather than resolved in open court. Consequently, this reduces the opportunity to address matters of systemic discrimination and create progressive human rights jurisprudence through the legal system. People who experience intersectional discrimination, for example Aboriginal or Torres Strait Islander people with disability, have no legal remedy for the interaction of both instances of discrimination.

How was this recommendation addressed in the National Human Rights Action Plan?

No reference to a general framework, see chapter on people with disability for disability-related initiatives.

## 4.14 Prisoners

### UPR Recommendation 71

Enact legislation to ensure the humane treatment of prisoners;

**Australia's response - ACCEPTED**

#### PARTIALLY IMPLEMENTED

In response to this recommendation the Government said that they consider the existing legislation and policies of States and Territories sufficient to ensure the humane treatment of prisoners. However prisoners, their families and communities continue to experience conditions that infringe their human rights pre and post release, for instance:

- Many people in prison experience solitary confinement, which can cause

severe, lasting psychiatric harm. People with a mental illness or cognitive impairment are the most likely to be placed in solitary confinement and are also at greatest risk of harm.

- For prisoners housed in Supermax prisons and Maximum Security Units, restrictions on environmental stimulation together with social isolation may result in prolonged psychiatric disability.
- Prisoners are precluded from accessing Australia's publicly funded health care system. This can lead to differences in care, including limiting access to Aboriginal Health checks, it can also hinder the exchange of information between prison and community health providers, which compounds the lack of continuity in both pre and post release support services.
- Women in prison are discriminated against on the basis of sex through the practice of strip searching and in poor access to low security beds, conditional and community release, education and training programs, work and health services, inadequate translation/interpretation services and a failure to meet religious needs for culturally and linguistically diverse women.
- Protocols and policies for arresting and incarcerating parents with dependent children are minimal and, where they do exist, are inconsistent and inadequate.
- Much more needs to be done to address the issue of young people in detention. For instance, 17 year olds continue to be treated as adults in the Queensland Criminal Justice System and a recent [report](#) into Western Australia's youth corrections system has identified systemic failures and regular mistreatment of young people in detention.
- There has been a continued failure to implement the Human Rights Committee decisions in *Tillman v Australia* and *Fardon v Australia* which held that post-sentence detention of two men convicted of sexual offences was incompatible with the prohibition against arbitrary detention under art 9(1) of the International Covenant on Civil and Political Rights.

Greater legislative protection is needed to guarantee humane conditions in Australian prisons.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD, states and territories

**Action:** No specific reference to

States and territories will continue to deliver corrective services in accordance with standard guidelines that comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 91

Introduce a requirement that all deaths in custody be reviewed and investigated by independent bodies tasked with considering prevention of deaths and implement the recommendations of Coronial and other investigations and enquiries;

**Australia's response - ACCEPTED**

**PARTIALLY IMPLEMENTED**

There has been a near total failure by successive State and Commonwealth Governments to ensure that the 339 recommendations of the 1991 Royal Inquiry into Aboriginal Deaths in Custody were implemented.

Additionally, widely reported in the mainstream media, have been actual occurrences of several totally avoidable deaths in custody across Australia (Mr Doomagee, Palm Island, Qld, 2004; Mr Ward, Laverton Region, WA, 2008; Mr Phillips, Kalgoorlie, WA, 2011; and Mr Briscoe, Alice Springs, NT, 2012). These deaths demonstrate the failure of the Australian Government to prevent avoidable deaths in custody.

Combined with deaths in custody that have their origin in extreme police and custodial services violence (the Mr Doomagee case), almost inconceivable substandard treatment of a human being (the Mr Ward case) and extremes of indifference to a person's medical condition (the Mr Phillips case), there have been several cases of near occurrences of deaths in custody due to the grossly inadequate provision of medical and general welfare services in Australian prisons.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** ANZPAA, Victoria

**Action:** The Australia New Zealand Policing Advisory Agency is developing an overarching principle-based framework for use of force by police. The Victorian Government will make a range of changes to the oversight process, including designing an oversight/investigation framework and principles, to ensure continued accountability and best practice in deaths related to use of force by police members in the course of their duties.

**Performance indicator/timeline:** Commenced in 2011; Commenced in 2010.

#### UPR Recommendation 94

Examine possibilities to increase the use of non-custodial measures;

**Australia's response - ACCEPTED**

#### PARTIALLY IMPLEMENTED

Although a range of alternatives to incarceration are available, incarceration rates for offenders from disadvantaged groups particularly Aboriginal and Torres Strait Islander people and people with mental illness or cognitive impairment continue to be disproportionate to their overall representation in society. Imprisonment rates have been rapidly increasing in some states with Victoria's prison population having increased by nearly [40 per cent over the last 10 years](#) and a [15 per cent increase](#) in the Queensland prison population since June 2012. According to a [report](#) by Castan Centre for Human Rights Law, of offences dealt with by the Magistrates'/Local Court more than 90 per cent result in non-custodial orders. For serious offences dealt with by higher courts, convictions lead to custodial sentences 85 per cent of the time. Overall, around 7 per cent of adult males and 3 per cent of adult females receive custodial sentences. Although these may seem like small proportions, they represented more than 32,500 individuals in 2009-10.

See *Recommendation 93* for a discussion of measures to address overrepresentation of Aboriginal and Torres Strait Islander people in prison.



How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

## 4.15 Sexual Orientation, Gender Identity and Intersex Status

### UPR Recommendation 66

Continue to implement the harmonization and consolidation of anti-discriminatory laws and to move forward with the promulgation of laws protecting persons against discrimination on the grounds of sexual orientation or gender;

**Australia's response - ACCEPTED**

### UPR Recommendation 67

Introduce a national legal provision prohibiting discrimination and harassment based on sexual orientation and gender;

**Australia's response - ACCEPTED**

### UPR Recommendation 68

As a high priority, introduce federal law which prohibits discrimination on the grounds of sexual orientation;

**Australia's response - ACCEPTED**

### IMPLEMENTED

See *Recommendations 42-45* regarding the consolidation of federal anti-discrimination laws.

In 2013, after announcing the delay of the consolidation project, the former Government amended the *Sex Discrimination Act 1984* (Cth) to prohibit discrimination based on sexual orientation, gender identity and intersex status and extend the ground of "marital status" to protect same sex de facto couples. If the consolidation plan proceeds this amendment will be replaced, with similar protections to be included in the consolidated Act. Despite an exception for Commonwealth funded age care broad exemptions for religious organisations continue to permit discrimination against lesbian, gay, bisexual, transgender and intersex people in a range of areas. In Australia, each state and territory also has its own anti-discrimination legislation, which operate concurrently with the Commonwealth regime.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will introduce new protections against

discrimination and harassment based on sexual orientation and gender identity, as part of the project to consolidate Commonwealth anti-discrimination law into a single Act.

**Performance indicator/timeline:** Exposure draft legislation due in second half of 2012.

### UPR Recommendation 69

Take measures to ensure consistency and equality across individual States in recognizing same-sex relationships;

**Australia's response - ACCEPTED**

### UPR Recommendation 70

Amend the Marriage Act to allow same-sex partners to marry and to recognize same-sex marriages from overseas;

**Australia's response - REJECTED**

## NOT IMPLEMENTED

Pursuant to the *Marriage Act 1961* (Cth), marriage is limited to a union of a man and a woman to the exclusion of all others. A [bill](#) to remove discrimination from the *Marriage Act 1961* (Cth) and recognise same-sex marriages performed overseas was defeated in June 2013.

In late 2013 the Australian Capital Territory enacted the [Marriage Equality \(Same Sex\) Act 2013 \(Cth\)](#), which was immediately challenged by the Commonwealth in the High Court. The High Court overturned the Act, but confirmed that Federal Parliament has the ability to legislate for marriage equality. Marriage equality legislation was defeated in South Australia in mid 2013 and narrowly failed to pass Tasmania's legislature in 2012. Similar legislation was introduced to the NSW Parliament in October 2013.

The Government is using the argument of national consistency in marriage laws to justify its efforts to invalidate the ACT's same-sex marriage laws in the High Court. It is imperative that consistency should not come at the cost of one state or territory leading the way towards greater equality. The spirit of the recommendation – to achieve equality in the recognition of same-sex relationships throughout the Australia – remains relevant.

Generally de facto relationships have the same recognition as marriages at both a Commonwealth and State level. A number of states and territories have regimes to register and recognise same-sex relationships, which fall short of marriage.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government supports a nationally consistent framework for recognition of same-sex relationships to be implemented by states and territories.

**Performance indicator/timeline:** Ongoing

# 4.16 Trafficking

## UPR Recommendation 83

Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner, bearing in mind international human rights and humanitarian principles;

**Australia’s response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In the period between 2011 and 2012 the Australian Government provided through AusAID over \$11million to address people trafficking, labour exploitation, and sexual exploitation of children in tourism, in East Asia. From 2003 to 2006 AusAID funded the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) which was followed from 2006 to 2011 by the Asia Regional Trafficking in Persons Project (ARTIP), and extended to 2013 during transition. The new project, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) is expected to run for 5 years from 2013.

The new AAPTIP Project has established 7 outcome objectives. Three of these objectives will operate at a regional level, and replicated at national levels, and four will operate on a national level. The objectives flow toward maintaining the ongoing regional goal of reducing the incentives and opportunities for trafficking of persons in the ASEAN region.

See *Recommendation 134*.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AusAid

**Action:** The Australian Government will continue to strengthen the criminal justice sector in the ASEAN (Association of South East Asian Nations) region with a focus on prosecution, judicial and law enforcement responses to people trafficking. A new program with a focus on the criminal justice sector is being designed to build on the successes of the Asia Regional Trafficking in Persons Program. The resources commitment is \$50 million over five years commencing in 2013.

**Performance indicator/timeline:** Ongoing

## UPR Recommendation 84

Strengthen further its commitment to the Bali process as the principal mechanism in the region which deals with people smuggling and trafficking;

**Australia’s response - ACCEPTED**

### IMPLEMENTED

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime includes 45 members, including the UNHCR, IOM, UNODC, as well as observer countries and international agencies. The Australian Government maintained its commitment to the Bali Process, co-chairing with counterpart Indonesian Government officials and departments the Senior Officials Meeting, Ad Hoc Group, and themed Workshops in 2011, 2012 and 2013.

A key outcome of the Bali Process in 2012 was the establishment of a Regional Support Office (RSO) to respond to trafficking in persons across the region and facilitate the Regional Cooperation Framework. The RSO was opened on 10 September 2012, and aims to support and strengthen practical cooperation on refugee protection and international migration, including human trafficking and smuggling in the region. The RSO arose out of the Bali Process Workshop on Trafficking in Persons in May 2012, co-chaired by the Australian Government Attorney General's Department with the Indonesian Ministry of Foreign Affairs.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DFAT, AGD, DIAC

**Action:** The Australian Government will continue its commitment to the Bali Process as the pre-eminent forum on people smuggling, trafficking in persons and transnational crime in the region. It will work with other members to: address and enhance the region's response to irregular migration, including trafficking in persons, under the auspices of the Regional Cooperation Framework, and implement the Bali Process Ministerial directives to build the capacity of regional States to combat people trafficking through technical experts meetings, seminars, workshops and/or specific research programs. The Australian Government provided \$5.2 million over four years (2011-12 to 2014-15) to fund the establishment and ongoing operation of the Bali Process Regional Support Office (RSO). The RSO will facilitate the implementation of the Regional Cooperation Framework and promote greater information sharing and practical cooperation, including on trafficking issues.

**Performance indicator/timeline:** Ongoing

### UPR Recommendation 85

Consider using the OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking as a guide in its antitrafficking measures;

**Australia's response - ACCEPTED**

### NOT IMPLEMENTED

The OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking contains at its core the primacy of human rights and the promotion and protection of human rights. The OHCHR Recommended Principles and Guidelines can be further incorporated to place the human rights of the victim at the centre of the Australian Government Strategy to Combat Human Trafficking and Slavery.

Currently, the link between the Trafficking Visa Framework and social security support to the criminal justice process undermines this human rights based approach. Initial support is available for 45 days, however the existing trafficking visa framework is dependent on ongoing participation in the criminal justice system. The

inflexibility of the scheme has caused harm to trafficked people. Particularly affecting those trafficked before the 2005 trafficking in persons offences, those unable to participate in a police investigation, those willing to assist police but where the investigation is hampered or in cases where the trafficker has left the jurisdiction or cannot be identified.

Further, while victim-witnesses holding a Criminal Justice Stay visa or who are granted a Witness Protection Trafficking Permanent Visa are eligible for Medicare and limited social security payments, the Witness Protection Trafficking Permanent Visa is subject to a two year waiting period for more favourable social security payments. In the case of holders of a Witness Protection Trafficking Permanent Visa in receipt of Special Benefit payments, any compensation they receive will be treated as income and the Special Benefit will cease during the time that the compensation award is exhausted through day to day living expenses.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** The Australian Government will implement the Australian Policing Strategy to Combat Trafficking in Persons 2011-13, including ensuring that Australia's anti-trafficking strategy remains relevant and responsive to emerging trends and issues. An implementation plan has been agreed to by all state and territory police services and AFP. It identifies a number of objectives and initiatives to be delivered jointly by the various policing jurisdictions during the term of the strategy.

**Performance indicator/timeline:** 2011-13.

### UPR Recommendation 86

Increase its efforts to fight human trafficking;

**Australia's response - ACCEPTED**

### PARTIALLY IMPLEMENTED

In March 2013 the Australian Government introduced new offences into the *Criminal Code Act 1995* (Cth) that criminalised forced marriage, forced labour, organ trafficking, expanded the scope of servitude and the definition of coercion. These changes to the existing legislation bring Australia into line with its obligations under the *Trafficking Protocol* Articles 3 and 5.

Community engagement and culturally appropriate, targeted and accessible materials introducing the new offences, individual rights and obligations is required.

Australia currently lacks a mechanism for the identification and support of child victims of trafficking, with no clear referral pathways for child victims. This is particularly significant given the criminalisation of forced marriage, which affects mostly young women and girls. There is also a lack of research and data available on the prevalence of child trafficking and exploitation in Australia.

International law recognises the right to an effective remedy for trafficked persons. The lack of a national compensation scheme in Australia for victims of the federal crimes of human trafficking, slavery and slavery-like practices creates a system in

which harms suffered receive significantly differing monetary compensation from state to state. The varying compensation schemes do not have specific categories for trafficked and exploited persons, and it remains unclear whether those who have experienced servitude and forced labour can access compensation payments as victims of crime within Australia's states and territories.

The next phase of the National Action Plan to Combat Human Trafficking and Slavery 2014 – 2018 is currently being drafted by the Attorney General's Department. The intention to draft the plan was announced by the previous government and work was initiated by the National Roundtable on Human Trafficking and Slavery, with contributions from key government agencies and non-governmental and community organisations.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AFP

**Action:** The Australian Government will monitor Australia's strategy to combat people trafficking to ensure it is in line with international best practice, including the Office of the High Commissioner for Human Rights (OHCHR) Principles and Guidelines.

**Performance indicator/timeline:** Ongoing

### **UPR Recommendation 87**

Increase efforts to criminally prosecute trafficking offenders, including employers and labour recruiters who subject migrant workers to debt bondage and involuntary servitude;

**Australia's response - ACCEPTED**

### **PARTIALLY IMPLEMENTED**

Between 2004 and September 2013, the Australian Federal Police have undertaken over 390 investigations or assessments of slavery and human trafficking related matters. As of 30 June 2013, there have been 17 convictions of trafficking related offences, and 7 trafficking related matters were before the courts, two of which are appeals against sentence.

The introduction of the new offences of forced labour and servitude into the *Criminal Code Act 1995* (Cth) in March 2013 is projected to increase the number of investigations and prosecutions of matters of extreme labour exploitation and servitude in a wide variety of industries, including in private homes. Debt bondage remains a criminal offence in Australia.

Community awareness raising is necessary to increase the identification of survivor/victims subject to these forms of exploitation. Targeted materials in accessible languages and formats must be delivered introducing the new laws, and individual rights and obligations.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** DIAC

**Action:** The Australian Government will undertake reforms to the employer sanctions framework to ensure that direct action can be taken against those who employ or refer for work non-citizens who do not have lawful permission to work or who work in breach of their visa conditions. The reforms will introduce new non-fault civil penalties and infringement notices and new powers to gather documentary evidence. They will also retain the current criminal penalties with aggravated offences available against those who would exploit migrant workers. The reforms, which are based on the recommendations of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007, will provide a more effective deterrent.

**Performance indicator/timeline:** The Migration Amendment (Reform of Employer Sanctions) Bill 2012 was introduced into Parliament on 19 September 2012.

## 4.17 Women and Children's Rights

### UPR Recommendation 28

Establish a National Children's Commissioner to monitor compliance with CRC;

**Australia's response - ACCEPTED-IN-PART**

### UPR Recommendation 29

Consider establishing an independent commissioner for child rights;

**Australia's response - ACCEPTED**

### IMPLEMENTED

The position of the National Children's Commissioner was established by the former Commonwealth Government on 25 February 2013 as part of the first three-year action plan of the National Framework for Protecting Australia's Children 2009-2020. Among the duties of the National Children's Commissioner are to promote public discussion and awareness of issues affecting children, to conduct research and education programs and to consult directly with children and representative organisations. Also included is a review of proposed and existing Commonwealth legislation to determine if they sufficiently recognise and protect children's rights.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** AGD

**Action:** Australia has established a National Children's Commissioner within the Australian Human Rights Commission. Legislation to create the role of Children's Commissioner was passed in June 2012 and the new Commissioner is expected to take office in early 2013.

**Performance indicator/timeline:** The Australian Human Rights Commission will develop the performance indicators for the Children's Commissioner.

### UPR Recommendation 47

Take firm measures to end discrimination and violence against women, children and people from vulnerable groups so as to enhance a better respect for their dignity and human rights;

Australia's response - **ACCEPTED**

### UPR Recommendation 51

Intensify its efforts to further combat gender discrimination;

Australia's response - **ACCEPTED**

## PARTIALLY IMPLEMENTED

During Australia's initial UPR review, NGOs called for the implementation of the [2008 Sex Discrimination Act inquiry recommendations](#). Many of these recommendations are yet to be implemented.

The simplifying and strengthening of anti-discrimination laws was expected to occur through the consolidation of discrimination laws project. The Senate Committee review of the draft legislation supported a unified definition of discrimination; the sharing of the burden of proof; each party paying their own costs; recognition of intersecting forms of discrimination; and recommended the inclusion of domestic violence as a protected attribute. This legislation is still to be enacted.

Amendments to the *Fair Work Act 2009* (Cth) have resulted in a right to request flexible work arrangements for victims of family violence and carers of such victims. However, the government rejected a proposed amendment to include an adverse action protection relating to being a victim/survivor of domestic and family violence in the *Fair Work Act*. While welcoming Fair Work Australia's 2012 decision for equal pay in the social and community services industry, it will be many years before its full benefits and impact are realised.

Women in Australia continue to face employment discrimination on the basis of housing, pregnancy and family responsibilities. Furthermore, according to 2013 ABS statistics, women receive on average [17.5 per cent less in weekly wages than men](#). On average women's superannuation is [56.5 per cent](#) less than of that of men.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA

**Action:** The Australian Government has released its National Action Plan on Women, Peace and Security 2012-18. This National Action Plan consolidates and builds on the broad program of work already underway in Australia to integrate a gender perspective into peace and security efforts, protect women and girls' human rights, particularly in relation to gender-based violence, and promote their participation in conflict prevention, management and resolution. The National Action Plan implements United Nations Security Council Resolution 1325 (UNSCR 1325) and related resolutions under the United Nations Women, Peace and Security agenda.

**Performance indicator/timeline:** 2012-2018



### UPR Recommendation 52

Strengthen the Sex Discrimination Act as indicated in the national report, and consider the adoption of temporary special measures, as recommended by the Committee on the Elimination of All Forms of Discrimination against Women;

**Australia's response - ACCEPTED**

### UPR Recommendation 53

Develop and implement policies to ensure gender equality throughout society and strengthen the promotion and protection of the rights of women, especially women from indigenous communities;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

In May 2011, legislation to strengthen the *Sex Discrimination Act* 1984 (Cth) to improve protections against sexual harassment, and discrimination on the basis of breastfeeding and family responsibilities was passed. Although welcome, further improvements are needed including those recommended in the [2008 Senate Committee Inquiry into the Sex Discrimination Act](#). The previous Australian Government did not proceed with the consolidation and harmonisation of anti-discrimination laws the balance of the 2008 Inquiry recommendations have not been implemented. The current Government has indicated it will not proceed with the consolidation project and it is unclear what will happen to the 2008 Inquiry recommendations. The *Sex Discrimination Act* 1984 (Cth) continues to provide limited protection against gender discrimination and does not fully implement obligations under CEDAW. In particular, the Act does not adequately address systemic discrimination or promote substantive equality. See *Recommendation 55* in relation to temporary special measures for public and private sector boards. Australia has not introduced temporary special measures to address the under-representation of certain vulnerable groups of women, including indigenous women, women with disabilities, migrant women, women from culturally and linguistically diverse backgrounds and women from remote or rural communities in leadership and decision-making positions in public and political life as well as their equal access to education, employment and health.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

### UPR Recommendation 54

Persist in its efforts in order to redress remaining gender inequalities, in particular with regard to the employment of women in the private sector;

**Australia's response - ACCEPTED**

## PARTIALLY IMPLEMENTED

In January 2011, Australia's first national [paid parental leave \(PPL\) scheme](#) commenced, providing 18 weeks leave paid at the minimum wage, while maintaining

an attachment to the workforce (without superannuation component). In January 2013, the scheme was expanded to include a two week payment for working fathers or partners. The current Government proposes to introduce [a new PPL scheme](#) where “mothers will be provided with 26 weeks of paid parental leave at their full replacement wage or the national minimum wage (whichever is greater) plus superannuation”. Note Australia is yet to remove its CEDAW reservation in relation to paid maternity leave. Australia’s Sex Discrimination Commissioner, on behalf of the Australian Human Rights Commission, is conducting a national review into the prevalence, nature and consequences of discrimination relating to pregnancy at work and return to work after parental leave, with recommendations due in mid-2014. In December 2012, the [Workplace Gender Equality Act 2012 \(Cth\)](#) replaced the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*, which aims to improve and promote equality for both women and men in the workplace. The Equal Opportunity for Women in the Workplace Agency, has been renamed the [Workplace Gender Equality Agency](#) reflecting the change in focus from equal opportunity. The [Workplace Gender Equality Act 2012 \(Cth\)](#) introduces a revised private sector reporting and compliance framework in relation to gender equality. The gender pay gap experienced by Australian women persists and sits at [17.5 per cent](#). See also *Recommendation 56* for further discussion of pay equity. The current Australian Government has announced a Productivity Commission inquiry into child care availability and accessibility. According to the [Australian Government Workplace Gender Equality Agency](#), women continue to be underrepresented in senior executive ranks of the private sector, with the percentage of women at 9.7 per cent (a negligible increase from 2010 to 2012).

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA

**Action:** The Australian Government has committed to achieving a minimum of 40 per cent representation of both women and men on Australian Government Boards and through the Equal Opportunity for Women in the Workplace Agency will continue to work with the private sector to achieve gender balance in private sector leadership ranks and forums.

**Performance indicator/timeline:** 2012-18

**UPR Recommendation 55**

Adopt targets of 40 per cent representation of women on public and private sector boards;

**Australia’s response - ACCEPTED-IN-PART**

**PARTIALLY IMPLEMENTED**

In 2010, the Australian Government introduced a new gender diversity target of 40 per cent representation for both women and men on Australian Government boards, to be achieved by 2015. The target was achieved two years early: as at 30 June 2013, women held 41.7 per cent of Australian Government board appointments. This is up from 38.4 per cent in 2012. While the Australian Government has met the target as a whole, the [Women, Gender Balance on Australian Government Boards Report 2012 – 2013](#) shows that not all Government portfolios have met the target individually. Although the Government has supported women’s representation on

private sector boards through some initiatives, Australia has not introduced targets for private sector boards. However, the ASX Corporate Governance Council requires publicly listed companies in Australia to set gender diversity targets. According to the [Australian Census of Women in Leadership](#), in 2012 women held 12.3 per cent of ASX 200 directorships, up from 8.4 per cent in 2010. Further temporary special measures are needed in relation to private sector boards, and to increase the participation of Aboriginal and Torres Strait Islander women, women with disabilities and women from culturally and linguistically diverse communities. The current Australian Government has indicated that, as a general principle, they do not support quotas.

How was this recommendation addressed in the National Human Rights Action Plan?

**Lead agency/ jurisdiction:** FaHCSIA

**Action:** The Australian Government has committed to achieving a minimum of 40 per cent representation of both women and men on Australian Government Boards and through the Equal Opportunity for Women in the Workplace Agency will continue to work with the private sector to achieve gender balance in private sector leadership ranks and forums.

**Performance indicator/timeline:** 2012-18.

#### **UPR Recommendation 56**

Remain steadfast in pursuing its policies towards gender equality, in particular through its Fair Work Act;

**Australia's response - ACCEPTED**

#### **UPR Recommendation 99**

Develop a national pay strategy to monitor pay gaps mechanisms and establish a comprehensive childcare policy, as recommended by the Committee on the Elimination of All Forms of Discrimination against Women;

**Australia's response - ACCEPTED-IN-PART**

### **IMPLEMENTED**

Gender equality developments generally and childcare are addressed under *Recommendation 66*.

There has been some progress towards improving pay equality for women recently with the SACS Equal Remuneration case. In February 2012 Fair Work Australia (now Fair Work Commission) [delivered pay increases](#), under the *Fair Work Act's* equal remuneration provisions, of 19 - 42 per cent to 150,000 workers in the social and community services sector. 80 per cent of workers in the sector are women and Fair Work Australia determined that gender was a factor in the low wages of the sector; the pay increases will be phased in over an 8-year period. Although this case is a big step forward, it has been argued that the case may not serve as a useful precedent for future equal remuneration cases. [Research](#) suggests that because the Fair Work Commission has minimal direct involvement in wage-setting in several of the industries in which gender-based undervaluation persists, there may be limits to the Commission's ability to achieve equal remuneration for the whole workforce.

The Fair Work Commission has established a specialist Pay Equity Unit, which commenced in 1 July 2013, to undertake pay equity related research and provide information to inform matters relating to pay equity under the *Fair Work Act 2009* (Cth). The Pay Equity Unit has commissioned a report on 'Equal remuneration under the *Fair Work Act 2009*', which is intended to assist parties in equal remuneration proceedings and provides good practice examples for the development of equal remuneration regulation. According to the [draft report](#), there is no impediment to the Commission developing a federal equal remuneration principle.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

#### UPR Recommendation 74 (i)

Adapt its legislation to ensure greater security for women and children;

**Australia's response - ACCEPTED**

**PARTIALLY IMPLEMENTED**, some elements have been implemented, such as amendments to the *Family Law Act 1975* (Cth) to better recognise family violence, but further amendments required.

Amendments to the *Fair Work Act 2009* (Cth) have resulted in a right to request flexible work arrangements for victims of family violence and carers of such victims. However, the government rejected a proposed amendment to include an adverse action protection relating to being a victim/survivor of domestic and family violence in the *Fair Work Act 2009* (Cth).

State, territory and commonwealth governments have agreed to a national register of apprehended violence orders. However, this is still to be implemented. Recommendations in the New South Wales and Australian Law Reform Commissions' *Family Violence - A National Legal Response Report* are still to be implemented.

There is a need for increase in funding and support for specialist programs, including crisis response, refuges, housing, health, specialist women's legal services, including Aboriginal and Torres Strait Islander women's legal services as well as the legal assistance system generally as demand is increasing rapidly due to increased reporting and better system responses, resulting in increased turn away of those most vulnerable. See also *Recommendation 73*.

How was this recommendation addressed in the National Human Rights Action Plan?

No new legislation, only commitment to existing legislation.

#### UPR Recommendation 74 (ii)

Adapt its legislation to ensure greater security for children;

**Australia's response - ACCEPTED**

Despite the introduction of the National Framework for Protecting Australia's Children 2009-2020 and the establishment of a National Children's Commissioner, greater effort is needed to reduce high levels of disadvantage, abuse and neglect, particularly amongst vulnerable groups of children and young people:

- Aboriginal and Torres Strait Islander children continue to experience abuse and family violence at unacceptably high levels and are significantly over-represented in the child protection system.
- The age of criminal responsibility in Australia is 10 years old. The Government has been urged to raise this to an internationally accepted standard, most recently by the Committee on the Rights of the Child.
- Aboriginal children and youth and children with disabilities continue to be overrepresented in the juvenile justice system.
- Children are detained in immigration detention for prolonged periods, with 1,428 children in closed detention facilities as of September 2013.
- There is a need for an effective and inclusive education system for the reported 63 per cent of children with a disability who experience difficulties at school.

Effort should also be made at all levels of government to include the views of children and young people on matters directly affecting them.

How was this recommendation addressed in the National Human Rights Action Plan?

No new legislation, only commitment to existing legislation.

### UPR Recommendation 75

Introduce a full prohibition of corporal punishment within the family in all states and territories;

**Australia's response - REJECTED**

### NOT IMPLEMENTED

Parental physical punishment of children (including hitting with stick, strap or other implement) is permitted in all States and Territories despite the warning given to Australia in 1997 by the Committee on the Rights of the Child that such practices breach Article 19 of *Convention on the Rights of the Child*. Corporal punishment in schools is not prohibited by law in any State or Territory (other than New South Wales) although it may breach education department policy in government schools in some States. A [study by the Royal Australasian College of Physicians](#) has linked the physical punishment of children with the risk of future mental health problems. The first [Children's Rights Report 2013](#) reiterates the concerns expressed by the Committee on the Rights of the Child regarding corporal punishment and highlights the need for education campaigns to promote alternative forms of discipline. Corporal punishment is illegal in 34 countries including New Zealand and Germany.

How was this recommendation addressed in the National Human Rights Action Plan?

No specific reference to this recommendation in the National Human Rights Action Plan.

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