

Australia's 2015 UPR—NGO Coalition Fact Sheet 4

Administration of Justice

Introduction

There are a number of areas of significant concern with respect to the administration of justice in Australia, including in areas where recommendations were made as part of Australia's last UPR. Broadly, there is significant under-funding of the legal system and systematic barriers to accessing justice, particularly for vulnerable and disadvantaged people in Australia.

Many of the justice-related issues facing particular groups, including for example Aboriginal and Torres Strait Islander peoples, people with disability, asylum seekers and refugees and others are highlighted in specific fact sheets.

Legal Assistance Funding

There are four publicly funded legal assistance service providers in Australia: Legal Aid Commissions, Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS).

Since the last UPR and despite recommendations made,¹ legal assistance services, including individual services and peak bodies have faced further funding cuts and uncertainty. For example, the FVPLS were abolished as a stand-alone program and forced to competitively tender for funding, CLCs across Australia have faced ongoing funding cuts and there will be a 30% funding cut nationally to CLCs in 2017-2018.

There have also been funding cuts to policy and advocacy positions (particularly within ATSILS) and the imposition of restrictions on the use of Commonwealth Government funding for advocacy and law reform activities by legal assistance providers despite their importance.

Importantly, additional funding is required to adequately meet the legal needs of disadvantaged and vulnerable people. For example, in 2009 a Senate Inquiry into Access to Justice² recommended additional funding for legal assistance services. Similarly, in 2014 the

¹ See, eg, Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia*, 17th sess, UN Doc A/HRC/17/10 UPR 2010 (24 March 2011) [86.92].

² Parliament of Australia, Senate Legal and Constitutional Affairs References Committee, *Access to Justice* (2009).

Productivity Commission recommended \$200 mill per year for legal assistance services is required to adequately meet existing unmet legal need in Australia.³

Proposed Recommendation:

Australia should implement the recommendations of the Productivity Commission and the Senate Inquiry into Access to Justice and provide additional funding for legal assistance services, including for strategic advocacy and law reform activities.

Justice System

The gross over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system continues to be of significant concern.⁴ For example, Aboriginal and Torres Strait Islander people are 15 times more likely to be imprisoned, rates of imprisonment have increased since the last UPR, particularly for women⁵ and re-imprisonment rates are actually higher than school retention rates for Aboriginal and Torres Strait Islander peoples.⁶

In addition to over-representation in prison, other issues of concern include underreporting and increasing rates of violence against women, the disproportionate impact of mandatory sentencing laws and limited access to legal assistance and interpreter assistance for Aboriginal and Torres Strait Islander peoples.⁷

³ Productivity Commission, *Access to Justice Arrangements, Inquiry Report*, Report No 72 (September 2014), recs 21.4 and 21.5.

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia*, 17th sess, UN Doc A/HRC/17/10 UPR 2010 (March 2011) [86.93].

⁵ For example, the imprisonment rate increased by 73.7% for Aboriginal women and by 38.6% for Aboriginal men between 2000 and 2013: Steering Committee for the Review of Government Service Provision, Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), ch 4.12.

⁶ See, eg, Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 4.1; Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014).

⁷ See, eg, Productivity Commission, *Access to Justice Arrangements, Inquiry Report*, No 72, (September 2014), ch 22 and rec 22-3. See also Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia*, 17th sess, UN Doc A/HRC/17/10 UPR 2010 (24 March 2011) [86.92]; Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia* UN Doc

There are a range of measures that would assist in addressing the underlying causes of overrepresentation, including justice reinvestment strategies and justice targets.

Justice reinvestment is an approach that involves re-direction of funding of prisons to community-based initiatives that aim to address the underlying causes of crime. The rationale is that this will produce better value for money and long-term economic benefit.⁸

Justice targets would involve the Australian Government setting measurable goals to reduce Aboriginal and Torres Strait Islander imprisonment rates.⁹

Proposed Recommendation:

Australia should implement measures to address the underlying causes of overrepresentation of Aboriginal and Torres Strait Islander people in the justice system, including justice reinvestment strategies and justice targets.

Rule of Law

A range of Government decisions and policies continue to undermine key rule of law principles, including in relation to access to legal advice; freedom from arbitrary detention, judicial process;¹⁰ retrospective legislation, and the need for clear and unambiguous legislation. These decisions, policies and legislative approaches predominately relate to Australia's counter-terrorism response and treatment of people with disability and asylum seekers and refugees.

Australia should maintain and further strengthen the rule of law in Australia to promote and protect human rights.

In addition, a key example of measures that undermine the rule of law are the introduction of additional mandatory sentencing legislation in four jurisdictions¹¹ since the last UPR.

Such laws prevent courts from imposing appropriate penalties based on the circumstances of the case and disproportionately impact Aboriginal and Torres Strait Islander peoples. In 2014, the UN Committee against Torture recommended that Australia review mandatory sentencing laws with a view to abolishing them.¹²

Proposed Recommendation:

Australia should review all mandatory sentencing laws, with a view to abolishing such laws.

CAT/C/AUS/CO/4-5 (23 December 2014); Human Rights Committee, *Concluding observations on the fifth periodic report of Australia*, UN Doc CCPR/C/AUS/CO/5 (2 April 2009).

⁸ See, eg, Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (June 2013); Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 4.2.

⁹ Australia currently has six targets under the Council of Australian Governments (COAG) framework for the National Indigenous Reform Agreement (Closing the Gap) aimed at addressing Aboriginal and Torres Strait Islander disadvantage. A justice target could be added to these targets. See, eg, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (2014), 117-123.

¹⁰ See, eg, Australian Law Reform Commission, *Equality Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (November 2014), ch 7.

¹¹ New South Wales, Victoria, Queensland, Western Australia and the Northern Territory.

¹² See, eg, Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014).