United Nations Committee on Economic, Social and Cultural Rights

Review of Australia Fifth Periodic Report under the International Covenant on Economic, Social and Cultural Rights

Australian NGO Coalition Submission

May 2017

This submission has been prepared by the National Association of Community Legal Centres and Kingsford Legal Centre, with contributions from a number of NGOs across Australia and is endorsed, in whole or in part, by 46 peak and civil society organisations.

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Introduction

1. This submission is provided by a coalition of Australian non-government organisations. It was coordinated by the National Association of Community Legal Centres (NACLC) and Kingsford Legal Centre, with direct contributions from 25 NGOs and is endorsed by 46 peak and civil society organisations from across Australia.[1] It builds on the brief submission made by NACLC and Kingsford Legal Centre to inform the Committee's development of the List of Issues.

2. NACLC is the peak national body for around 200 community legal centres across Australia. Community legal centres are independently operating community-based organisations that provide free and accessible legal and related services to vulnerable and disadvantaged members of the community. NACLC has NGO consultative status with the United Nations Economic and Social Council.

3. The Kingsford Legal Centre is a community legal centre in Sydney that provides free advice and ongoing assistance to members of the community in relation to a number of areas of law, including discrimination law. Kingsford Legal Centre also undertakes law reform and community education work.

4. The following organisations contributed directly to the preparation of this submission:

- ActionAid
- Advocacy for Inclusion
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Centre for Disability Law
- Australian Lawyers for Human Rights
- Australian Child Rights Taskforce
- Council of the Ageing (COTA)
- Disabled People's Organisations Australia (DPOA)
- Equality Rights Alliance
- Federation of Ethnic Communities' Councils of Australia (FECCA)
- Human Rights Law Centre
- Justice Connect Homeless Law
- Kingsford Legal Centre
- Multicultural Youth Advocacy Network (MYAN)
- National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
- National Association of Community Legal Centres (NACLC)
- National Social Security Rights Network
- Organisation Intersex International Australia (OII Australia)
- People With Disability Australia
- Public Interest Advocacy Centre (PIAC)

[1] A list of these organisations is provided at the end of this submission.

- Save the Children Australia
- Sisters Inside
- SNAICC
- UNICEF Australia
- Victorian Gay and Lesbian Rights Lobby

5. This submission is provided to inform Australia's upcoming appearance before the Committee. It provides information in response to the List of Issues released by the Committee, as well as other information that NGOs in Australia suggest that the Committee should consider in respect of Australia's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Note

This submission is not intended to be an exhaustive examination of the issues facing or experiences of people in Australia relevant to ICESCR. It has been prepared by NGOs in Australia with limited resources and no direct Government funding or support. The submission should be supplemented by reference to key Australian NGO submissions to other UN processes and reviews, including for example the Australian NGO Coalition's Joint Submission coordinated by NACLC, Kingsford Legal Centre and the Human Rights Law Centre as part of Australia's 2015 Universal Periodic Review.[2]

The issues highlighted and proposed recommendations made in this submission are considered under the key ICESCR article of relevance. However, they are often relevant to more than one article and more than one particular group, reflecting the intersectionality of inequality and compounding nature of discrimination and disadvantage. We emphasise and acknowledge that individuals experience discrimination or disadvantage as a result of a combination of factors—such as race, ethnicity, gender, disability, age and sexual orientation—rather than just one factor.

General Comments on State Party Report

6. Australia's fifth periodic report covers the period from 1 July 2009 to 30 June 2014. We note with concern that Australia's fifth periodic report was due on 30 June 2014, but was not provided to the Committee until February 2016.

7. We are also concerned about the approach taken by Australia to preparing its Report. The Committee noted in its Concluding Observations with respect to Australia's last Report, that 'it regrets that the format

[2] Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf. Usefully, see also: Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review.

chosen in preparing the fourth periodic report of Australia did not provide the Committee with a substantive report on the measures adopted by the State party to give effect to the Covenant rights and on the progress made in achieving the observance of those rights'.[3] We consider that the format of the most recent Report, in particular its structure according to Concluding Observations, appears focused on responding to Concluding Observations rather than engaging constructively or providing a substantive report on measures and progress by Australia to give effect to Covenant rights.

8. In addition, despite specific requests by the Committee in its Concluding Observations and recommendations for additional data on a range of indicators, there is a lack of data in many areas of the Report.

9. The Report states that it supplements Australia's 2007 Common Core Document and should be read in conjunction with that document. However, the Common Core Document is now out of date in addition to being deficient in a number of key respects. NGOs in Australia continue to consider that it fails to include a number of significant human rights issues or adequately engage with Australia's domestic implementation of ICESCR and progress towards the realisation of economic, social and cultural rights. At the time it was developed NGOs expressed concern about a lack of transparency around its development or consultation with civil society.

10. Finally, despite the Committee's encouragement and paragraph 14 of Australia's Report which refers to engagement with Australian NGOs, NACLC and Kingsford Legal Centre note with concern the very limited opportunity for NGO engagement or consultation with the Australian Government in relation to its Report.

11. More broadly, Australian Government engagement with NGOs in relation to implementation of ICESCR and Australia's international human rights obligations is limited. While there are two main forums each year which bring together Australian Government representatives and NGOs, as well as a number of informal mechanisms, the new Standing Mechanism being developed by the Australian Government appears to refer to NGO engagement but we are yet to see such systemic engagement.

Australia: United Nations Reviews and Engagement

12. Since its last periodic review by the Committee in May 2009, Australia has been reviewed by a number of other United Nations human rights mechanisms, many of which are directly relevant to the Committee's review of Australia's obligations under ICESCR. These include:

[3] The committee issued its concluding observations on Australia's fourth report on 12 June 2009: Committee on Economic Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant*, 42nd sess, UN Doc E/C.12/AUS/CO/4 (22 May 2009).

- Human Rights Council, Australia's 2nd Universal Periodic Review, 2015[4]
- Committee against Torture, 2014[5]
- Committee on the Rights of Persons with Disabilities, 2013[6]
- Committee on the Rights of the Child, 2012[7]
- Human Rights Council, Australia's 1st Universal Periodic Review, 2011[8]
- Committee on the Elimination of Racial Discrimination, 2010[9]
- Committee on the Elimination of Discrimination against Women, 2010[10]

13. Australia has also been subject to country visits by a number of Special Procedures of the UN Human Rights Council, including:
    - UN Special Rapporteur on Indigenous Peoples, April 2017 and August 2009[11]
    - UN Special Rapporteur on Violence against Women, Its Causes and Consequences, April 2012 and February 2017[12]
    - UN Special Rapporteur on Human Rights Defenders[13]

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[4] Materials are available here: http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx

[5] Committee against Torture, *Concluding Observations on the initial report of Australia, adopted by the Committee at its tenth session, 2-13 September 2013,* 10th sess, UN Doc CRPD/C/AUS/CO/1 (24 October 2013).

[6] Committee on the Rights of Persons with Disabilities, *Concluding Observations on the combined fourth and fifth periodic reports of Australia, adopted by the Committee at its 1284th and 1285th meetings, 26 November 2014,* 53rd sess, UN Doc CAT/CO/AUS/4-5 (22 December 2014).

[7] Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention,* 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012).

[8] Material is available here: http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx

[9] Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention,* 77th sess, UN Doc CERD/C/AUS/CO/15-17 (13 September 2010).

[10] Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women,* 46th sess, UN Doc CEDAW/C/AUS/CO/7 (30 July 2010). Note, Australia's 8th Report was due on 1 July 2014, but has not yet been submitted.

[11] James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,* UN A/HRC/15/37/Add.4 (1 June 2010) and Victoria Tauli-Corpuz, *UN Special Rapporteur on Indigenous Peoples End of Mission Statement* (3 April 2017) http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&langid=E#sthash.c2fMnGC5.dpuf.

[12] See, eg, Australian Human Rights Commission, '*Australian Study Tour Report: Visit of the UN Special Rapporteur on Violence against Women*' Report (2012); National Association of Community Legal Centres, 'NACLC Welcomes Comments by UN Special Rapporteur on Violence Against Women' (Media Release, 11 February 2015). See also: Dubravka Šimonović, *UN Special Rapporteur on Violence Against Women, Its Causes and Consequences End of Mission Statement* (27 February 2017).

[13] Michel Forst, *UN Special Rapporteur on Human Rights Defenders End of Mission Statement* (18 October 2016) http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&langid=E

- UN Special Rapporteur on Trafficking in Persons, especially women and children, November 2011[14]
- UN Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations on Human Rights, February 2011[15]
- UN Special Rapporteur on the Right to Health, November/December 2009[16]

14. Many of the Special Rapporteurs have expressed significant concerns about Australia's compliance with its international human rights obligations.

15. Special Procedures of the UN Human Rights Council have also made comments in relation to Australia on a number of occasions since the Committee's last review, as has the UN High Commissioner for Human Rights.[17]

[14] Human Rights Council, *Report on the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum: Mission to Australia,* 20th sess, Agenda Item 3, UN Doc A/HRC/20/18/Add.1 (18 May 2012).
[15] Cephas Lumina, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural Rights : Addendum, Mission to Australia and to Solomon Islands*, A/HRC/17/37/Add.1 (25 May 2011).
[16] Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, A/HRC/14/20/Add.4 (3 June 2010).
[17] For example, Human Rights Council*, Report on the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez,* 28th sess, Agenda Item 3, UN Doc A/HRC/28/68/Add.1, paras 27-31.

Article 1 — Right of Self-Determination

16. Article 1 of ICESCR recognises that all peoples have the right to freely determine their political status and to freely pursue their economic, social and cultural developments.

17. Aboriginal and Torres Strait Islander peoples remain among the most disadvantaged people in Australia across all social indicators, including engagement with the justice system, health, education, housing, disability and employment. This disadvantage is compounded by a lack of recognition of and respect for the right of self-determination and for Aboriginal and Torres Strait Islander peoples nationally and locally to participate in decisions which affect their communities.

18. Despite many reports recommending the importance of Aboriginal and Torres Strait Islander communities shaping programs that affect them, there is an ongoing lack of genuine collaboration and meaningful engagement by Government with Aboriginal and Torres Strait Islander peoples and organisations.

19. In particular, there are significant concerns about the failure to engage with or fund the peak national representative body for Aboriginal and Torres Strait Islander people, the National Congress of Australia's First Peoples. In addition, other concerns with respect to self-determination in Australia include:
    - the need for a comprehensive national reparation system for the Stolen Generations;
    - the ongoing operation of discriminatory laws;
    - the need for Constitutional recognition of Aboriginal and Torres Strait Islander people; and
    - the impact of limited funding on Aboriginal and Torres Strait Islander Community controlled organisations.

20. We recommend that the Australian Government commit to engaging with Aboriginal and Torres Strait Islander peoples in the development of policy, and to genuine collaboration by developing and implementing a framework for self-determination, outlining consultation protocols, roles and responsibilities and strategies for increasing Aboriginal and Torres Strait Islander participation in all institutions of democratic governance.

21. This year marks the ten-year anniversary of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). As such, it is an important time for Government to reflect upon and commit to the implementation of UNDRIP in domestic law and policy. We therefore recommend that the Australian Government develop a framework, in partnership with

Aboriginal and Torres Strait Islander communities and organisations, to implement and raise awareness about the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Proposed Recommendations for Concluding Observations:

THAT Australia develop and implement a framework for self-determination, in partnership with Aboriginal and Torres Strait Islander communities and organisations, outlining consultation protocols, roles and responsibilities and strategies for increasing Aboriginal and Torres Strait Islander participation in all institutions of democratic governance.

THAT Australian develop a framework, in partnership with Aboriginal and Torres Strait Islander communities and organisations, to implement and raise awareness about the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

National Representative Body

List of Issues 2016, para 8

8. Please provide information on trends in budget allocations to Indigenous Affairs and to the National Congress of Australia's First Peoples since 2013.

22. The establishment of a representative and effective national Aboriginal and Torres Strait Islander body is essential for the realisation of Article 1 of ICESR for Aboriginal and Torres Strait Islander people and relevant to Article 2. This was recognised and recommended by the Committee in its 2009 Concluding Observations.

23. In 2010, following an extensive consultation process, the National Congress of Australia's First People (Congress) was established. However, there are serious concerns with respect to engagement with and support for Congress. For example, in 2015 Congress stated that the Australian Government 'now refuses to formally acknowledge the role and representative status of the National Congress of Australia's First Peoples' and that 'Congress rejects absolutely the proposition by the Australian Government that it has engaged with Congress, amongst others, when designing policies, programmes and implementing services that affect Aboriginal and Torres Strait Islander Peoples'.[18]

24. In addition, the Australian Government has significantly reduced funding to Congress, including in 2014 a cut of $15 million[19] and now effectively signalled it does not intend to fund Congress on an ongoing basis, only providing Congress with very limited funding (approximately $540,000) to assist it to explore non-Government funding opportunities.

[18] National Congress of Australia's First Peoples, *Australia's Second Universal Periodic Review*, Submission, 2015, http://nationalcongress.com.au/wp-content/uploads/2015/09/UPR-Australia-Congress-Shadow-Report-and-Factsheets-Final.pdf

[19] National Congress of Australia's First Peoples, *Congress 2014 Budget Response* (15 May 2014) http://nationalcongress.com.au/congress-2014-budget-response.

25. Aboriginal and Torres Strait Islander organisations, other NGOs and the Australian Human Rights Commission have consistently called for greater engagement, respect and funding for Congress.[20] In addition, Aboriginal and Torres Strait Islander organisations have also called for the establishment of a national body in several key Covenant areas including education, employment and housing.[21]

Proposed Recommendations for Concluding Observations:
THAT Australia provide ongoing and sufficient funding and support for the National Congress of Australia's First Peoples in a way that acknowledges and respects decision-making by Aboriginal and Torres Strait Islander Peoples, consistent with the Declaration on the Rights of Indigenous Peoples.

Funding for Aboriginal and Torres Strait Islander Services and Organisations

List of Issues 2016, para 8
8. Please provide information on trends in budget allocations to Indigenous Affairs and to the National Congress of Australia's First Peoples since 2013.

26. Funding for services to Aboriginal and Torres Strait Islander people and communities has been cut significantly. In addition, funding for community-controlled organisations is also under threat. For example, in the 2014 Federal Budget $534 million was cut from the Indigenous Affairs portfolio and there are significant concerns with Indigenous Advancement Strategy. For example, a recent Senate Finance and Public Administration Committee Report into the IAS tendering processes highlighted significant problems with the IAS programme from application and tendering to grant selection and rollout.
27. As outlined above, Aboriginal and Torres Strait Islander organisations have provided Government with a clear call to action and concrete recommendations for reform through the Redfern Statement.[22]

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[20] See, eg, The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf; Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf; Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review.
[21] See, eg, The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf.
[22] The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf.

Constitutional Recognition

28. The Australian Constitution does not enshrine the right to equality and permits discrimination on the basis of race. While some steps have been taken towards recognition of Aboriginal and Torres Strait Islander peoples in the Constitution,[23] no model for constitutional change has been finalised nor the timeframe for a referendum announced.

29. The First Nations regional dialogues held in 2016-17 in twelve regional locations was a deliberative, community led process discussing future change. A range of models may be proposed by Aboriginal and Torres Strait Islander peoples, including a treaty.

Proposed Recommendations for Concluding Observations:
THAT Australia ensure that non-discrimination and equality for Aboriginal and Torres Strait Islander peoples is duly acknowledged and respected in the Australian Constitution. The Australian Government should:

a. take concrete steps to ensure that Aboriginal and Torres Strait Islander communities can fully participate in the national conversation about recognition in the Australian Constitution; and
b. commit to a timeline for a referendum and a proposed model for Constitutional recognition.
c. ensure that recommendations to change the Constitution go beyond symbolism, be led by Aboriginal and Torres Strait Islander people and organisations, and involve practical and substantive change to the lives of Aboriginal and Torres Strait Islander peoples.

[23] For example, a Referendum Council has been appointed; recommendations have been made by an independent Expert Panel and the Joint Select Committee on Constitutional Recognition; the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed; and funding has been provided to Reconciliation Australia for the *Recognise* campaign to build community support.

Article 2 — Treaty Entrenchment and Non-Discrimination

In relation to Article 2, this submission addresses:

- implementation of ICESCR into domestic law
- Australia's Human Rights Framework, including the lack of a Federal Human Rights Act
- the role and work of the Australian Human Rights Commission; and
- information about Australia's anti-discrimination legislation.

Implementation of Covenant into Domestic Law and Australia's Human Rights Framework

> ***List of Issues 2016, paras 1-2***
> 1. Please indicate if and when the State party intends to introduce an overarching human rights act that includes the protection and justiciability of economic, social and cultural rights, across all state and territory jurisdictions.
> 2. Please provide examples of the work undertaken by the Parliamentary Joint Committee on Human Rights indicating whether its recommendations are regularly taken into account by legislators. Please provide updated information on the implementation and impact of the Human Rights Action Plan of 2012.

30. Despite the previous recommendations of the Committee, Australia has still not fully incorporated ICESCR into Australian domestic law, there is no comprehensive legal framework for the protection of human rights (nor any further consideration of a Federal Charter of Rights that may provide such protection) and Covenant rights are not justiciable or enforceable in Australian courts or tribunals.
31. While Australia's domestic law contains several pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they do not cover all rights provided for in ICESCR.
32. In April 2010, the Australian Government announced a *Human Rights Framework* in response to an independent national consultation on human rights conducted in 2009. The Framework did not include a federal Human Rights Act—the consultation's key recommendation, it did however include several positive developments such as the introduction of statements of compatibility to accompany new Bills introduced into Federal Parliament and the establishment of a Parliamentary Joint Committee on Human Rights (PJCHR) to provide greater scrutiny of legislation for compliance with Australia's international human rights obligations. However, many elements of the Framework have had limited effectiveness.
33. For example, and as reflected in the question from the Committee in the List of Issues, the recommendations and comments of the PJCHR are rarely appropriately responded to or considered. In addition, the timeframes within which the PJCHR are required to operate are insufficient to allow proper consideration of the compatibility of bills and

legislative instruments with Australia's international human rights obligations and Committee reports are increasingly partisan and split along party lines.

34. In addition, a National Human Rights Action Plan (NHRAP) was introduced in 2012. However, as the Australian Government has noted in its response to the List of Issues, it considers the NHRAP to be a "policy of the former Australian Government".

35. In the absence of any NHRAP or a federal charter of rights or human rights act, there are very significant gaps in the protection of human rights and existing mechanisms are insufficient to provide for the protection and promotion of human rights.

Proposed Recommendations for Concluding Observations:
THAT Australia fully incorporate its international human rights obligations into domestic law by introducing a comprehensive, judicially enforceable federal Human Rights Act that includes recognition and protection of economic, social and cultural rights.
THAT Australia extend the mandate of the Joint Parliamentary Committee on Human Rights to include the domestic consideration, follow up and oversight of implementation of recommendations and views of UN human rights mechanisms.

Ratification of Treaties

36. Since the last review, Australia has ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities and it entered into force for Australia on 19 September 2009.

37. In response to recommendations received during Australia's 2011 Universal Periodic Review, Australia also said it would formally consider becoming a party to ILO Convention No. 169, work towards ratification of a number of other instruments and systematically review its reservations to human rights treaties.

38. However, despite the Committee's recommendation during Australia's last review, Australia has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ILO Convention No. 169 or the Optional Protocol to ICESCR. Indeed, as part of Australia's 2015 UPR despite recommendations about ratification of both OP-ICESCR and ICRMW the Australian Government noted the recommendations and indicated that ratification would not be considered further at this time.

Proposed Recommendations for Concluding Observations:
THAT Australia ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ILO Convention No. 169 and the Optional Protocol to ICESCR.

Australian Human Rights Commission

> ***List of Issues 2016, para 3***
> 3. Please provide information on measures taken to reinforce the mandate of the Australian Human Rights Commission so that it covers all the rights enshrined in the International Covenant on Economic, Social and Cultural Rights and to increase the Commission's resources. Please indicate how the State party has acted upon recommendations put forward by the Commission.

39. Since the Committee's last review there have been some positive developments, including the establishment of a National Children's Commissioner and Age Discrimination Commissioner, as well as the appointment of a full-time Race Discrimination Commissioner and Human Rights Commissioner.

40. However, the mandate and powers of the Australian Human Rights Commission remain limited. Importantly, under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act), the definition of human rights does not include ICESCR and the Australian Government signalled in its response to the List of Issues that it "does not intend to expand the AHRC's legislative mandate to require consideration of ICESCR".

41. In addition, determinations of the AHRC are unenforceable and there is no requirement for the Australian Government to implement, or even respond to, the Commission's recommendations. The financial resources allocated to the AHRC also remain inadequate and indeed there has been a substantial reduction in funding.[24]

42. Since the last review, there have been a number of other concerning developments, including the appointment of a Commissioner without a transparent process; the reduction of the Disability Discrimination Commissioner and Age Discrimination Commissioner from full-time to part-time roles (though this has now been addressed); and attacks on the President of the AHRC and attempts to procure her resignation (though there appears to have been some improvement and recommitment to engaging with and supporting the independence of the AHRC in recent months).[25]

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[24] While formally outside the review period, the funding cuts to the AHRC announced on 15 December 2014 amount to $5 million over three years, or more than $1.6 million per year: see Australian Government, *Mid-Year Economic and Fiscal Outlook: Appendix A – Policy Decisions Taken since the 2014-2015 Budget: Expense Measures* (2014). See also: Australian Human Rights Commission 'Corporate Plan 2016-17' https://www.humanrights.gov.au/sites/default/files/document/publication/Corporate-Plan-2016-AHRC.pdf

[25] See, eg, Commonwealth, *Senate Estimates – Legal and Constitutional Affairs Legislation Committee*, Senate, 24 February 2015, 31 (Chris Moraitis); International Service for Human Rights,

Proposed Recommendations for Concluding Observations:
THAT Australia adequately fund and strengthen the mandate of the Australian Human Rights Commission, including coverage of ICESCR rights.

Anti-Discrimination Legislation

43. Australia has several federal laws to prevent discrimination, including the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), and the *Age Discrimination Act 2004* (Cth).

44. However, federal anti-discrimination laws remain inconsistent and fail to comprehensively protect the rights to equality and non-discrimination. The laws fail to actively promote equality, address systemic or intersectional discrimination and have exemptions and exceptions.

45. Despite initial moves to review and consolidate federal anti-discrimination law in 2010 and 2011 as one of the initiatives under the Human Rights Framework (consistent with the recommendations made by the Committee) this reform was deferred indefinitely in May 2013.

46. In addition, since the last review, Australia has enacted amendments to the *Sex Discrimination Act 1984* (Cth), including to introduce protections for the attributes of relationship status, sexual orientation, gender identity and intersex status. However, since 2014, the Australian Government has engaged in a sustained campaign to reduce protections against racial vilification in the *Racial Discrimination Act*, despite widespread community opposition.

Proposed Recommendations for Concluding Observations:
THAT Australia enact a comprehensive Equality Act that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.

Individual complaints

47. The discrimination legislative regime relies on an individual complaint system. This places the onus on the person who has experienced discrimination, which makes bringing a case very difficult. The complaint system focuses on confidential settlements through informal complaint resolution procedures. Confidential settlements result in reduced awareness of widespread discrimination in Australia. It also limits the elimination of systemic discrimination. In March 2017, the time limit to make complaints under federal laws was reduced to 6 months, making it more difficult for complainants.

'Australia: UN should act to end reprisals against Australian Human Rights Commission' (Media Release, 16 February 2015) < http://www.ishr.ch/news/australia-un-should-act-end-reprisals-against-australian-human-rights-commission>.

48. At the federal level, it is a costs jurisdiction at the court stage, causing many complainants to settle matters because of concern about a costs order. This is especially prevalent when the respondent does not have the same cost concerns (e.g. a large corporation). Creating a system that allows respondents with funds to settle matters or to drag out cases until the complainant cannot continue means that systemic, repeated discrimination is not eliminated.

Proposed Recommendations for Concluding Observations:
THAT Australia amend the *Australian Human Rights Commission Act 1986* (Cth) to reinstate the 12-month time limit to lodge a complaint of discrimination.
THAT Australia amend the *Australian Human Rights Commission Act 1986* (Cth) to make the Federal Court and Federal Circuit Court a no cost jurisdiction for discrimination complaints.

Scope of anti-discrimination laws

49. The scope of federal, state and territory anti-discrimination laws are also very restricted. Such laws typically operate only in relation to certain 'public' areas, such as work, education, the provision of goods, facilities and services, and the administration of government laws and programs. As a result, the right to non-discrimination is not fully protected.[26]

Disability Discrimination and National Disability Strategy

List of Issues 2016, para 10
10. Please provide information on the impact of the National Disability Strategy (2010-2020).

50. Australia's implementation of obligations under the Convention on the Rights of Persons with Disabilities (CRPD) is set out in a national policy framework, the National Disability Strategy 2010-2020 (NDS).[27]

51. A significant area of reform under the NDS has been the implementation of the National Disability Insurance Scheme (NDIS), a universal scheme that provides people with disability the right to choose and control the disability supports they need. However, the significant focus on the NDIS has resulted in less action on other human rights issues, particularly systemic violations of rights in health, employment, education, violence and forced medical treatments.

52. There is a considerable lack of investment, concerted actions and evaluation for the NDS to drive reform. The second NDS implementation

[26] Ibid, para 70.
[27] Department of Social Services, National Disability Strategy 2010-2022, 2011, Commonwealth of Australia, https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020

plan, *Driving Action 2015-2018*,[28] focuses on actions already underway, and NDS progress reports often only describe actions rather than evaluate outcomes for people with disability.[29] In relation to many issues, Australia continues to state that the responsibility for reform lies with State and Territory governments. However, the NDS is a framework agreed by all governments within Australia, and is a key mechanism through which Australia could take a leadership role to coordinate a national, uniform response to progress human rights for people with disability.

Proposed Recommendations for Concluding Observations:
THAT Australia recommit to coordinated investment and implementation of the National Disability Strategy in partnership with people with disability, and in particular by establishing measurable outcomes to address systemic violations of economic, social and cultural rights.

Discrimination against Particular Groups and Communities

List of Issues 2016, para 7-10

Non-discrimination (art. 2 (2))
7. Please provide information on progress made in achieving the Closing the Gap Strategy with a view to improving the life expectancy, health, education and employment indicators of indigenous peoples. Please provide additional information on the implementation of the Indigenous Advancement Strategy.
9. Please explain how the State party reconciles its obligations under the Covenant, notably articles, 2, 11 and 12, with its policy of indefinite mandatory detention of all migrants and asylum seekers, including families and unaccompanied children. Please provide information on measures taken to expedite asylum procedures and to introduce alternatives to detention. Please also provide information about measures being taken to address immigration detention conditions, also in the light of the recently published "Nauru files" and the inquiry report published in 2015 by the Australian Human Rights Commission on children in immigration detention.

53. There are a number of communities and groups that do not enjoy the rights contained in ICESCR on an equal basis in Australia, including particularly:

- Aboriginal and Torres Strait Islander peoples;
- women;

[28] Department of Social Services, Driving Action 2015-2018 - National Disability Strategy Second Implementation Plan, 2016, Commonwealth of Australia, https://www.dss.gov.au/sites/default/files/documents/10_2016/final_-_nds_second_implementation_plan_-_pdf_final_for_web.pdf
[29] Department of Social Services, Progress Report to the Council of Australian Governments 2014, Commonwealth of Australia, https://www.dss.gov.au/sites/default/files/documents/12_2015/nds_progress_report_2014.pdf

- people with disability;
- lesbian, gay, bisexual, trans and intersex (LGBTI) people;
- people from culturally and linguistically diverse backgrounds;
- people experiencing homelessness and financial disadvantage;
- refugees and asylum seekers;
- children and young people; and
- older people.

Aboriginal and Torres Strait Islander people

54. Aboriginal and Torres Strait Islander people continue to suffer significant discrimination and disadvantage in the enjoyment of their human rights in Australia. This discrimination is highlighted throughout this submission.

55. One issue of particular concern is the ongoing and gross overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and access to justice for Aboriginal and Torres Strait Islander people.

56. Since 2004 there has been a 95 per cent increase in the number of Aboriginal and Torres Strait Islander people in custody. As the Redfern Statement notes, "in addition to the estimated $3.4 billion that governments spend annually in keeping people in jail, there are also well-established downstream consequences of imprisonment, which effects future employment prospects, families and communities. These have inestimable social and economic costs for the broader community and act only to increase the risk of recidivism".

57. With respect to young people, despite an overall reduction in the number of children in prison and detention centres, in 2015-16, Aboriginal and Torres Strait Islander young people were 25 times as likely to be in youth prisons than their non-Indigenous peers.[30] Additionally, on average, Aboriginal and Torres Strait Islander young people come into contact with the youth justice system (and therefore youth prisons) at a younger age than non-Indigenous children.[31] Further Aboriginal and Torres Strait Islander young people were less likely to be diverted from the formal

[30] Australian Institute of Health and Welfare, 'Youth justice in Australia 2015-16' (Bulletin No 139, March 2017), 2.
[31] Ibid, 10.

youth justice system and were 'significantly more likely' to be referred to court than non-Aboriginal youth.[32]

58. In her recent country visit to Australia, the Special Rapporteur on the rights of Indigenous peoples condemned the extreme over-representation of Aboriginal and Torres Strait Islander young people in youth prisons and stated that detention is not being used as a last resort for Aboriginal and Torres Strait Islander children.[33]

59. Issues relating to the incarceration of Aboriginal and Torres Strait Islander women in particular are discussed throughout this submission.

Sexual orientation, gender identity and intersex status

60. Article 2 of ICESCR prohibits discrimination on the basis of sexual orientation, gender identity and intersex status.[34] However, people of diverse sexual orientations, sex and gender identities in Australia still experience discrimination and infringements of their human rights.

61. In 2013, the Australian Government legislated to prohibit discrimination on the basis of sexual orientation, gender identity and intersex status at a national level under the *Sex Discrimination Act.*

62. However, permanent exemptions allow lawful discrimination against LGBTI people in a range of areas including sport, marriage, charitable organisations. The law allows religious organisations to discriminate against LGBTI people in areas including employment and delivery of services, except for the delivery of aged care services. These exemptions have a significant impact on accessing publicly funded health and education services, with 34% of LGBTI people hiding their sexuality or gender when accessing services.[35]

Proposed Recommendations for Concluding Observations:

THAT Australia remove religious exemptions from federal, state and territory anti-discrimination law in the areas of employment and access to goods and services.

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[32] Parliament of Australia, House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, Doing Time- Time for Doing, Indigenous Youth in the Criminal Justice System, 204.
[33] United Nations Special Rapporteur on the rights of Indigenous peoples (Victoria Tauli-Corpuz), End of Mission Statement on visit to Australia (Canberra, 3 April 2017), 10.
[34] UN Committee on Economic, Social and Cultural Rights, *General Comment No 18: The Right to Work*, UN Doc E/C.12/GC/18 (24 November 2005). See also UN Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health*, UN Doc E/C.12/2000/4 (11 August 2000) [18].
[35] Australian Research Centre in Sex, Health and Society, La Trobe University, *Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians* (2012) 46.

THAT Australia, including at a State and Territory level, introduce protections against discrimination at law on the basis of gender identity and intersex status.

Sexual orientation

63. In 2009, the Australian Government amended 58 federal laws removing discrimination against same-sex de facto couples and their families relating to legal and financial entitlements under federal laws.

64. Relationship recognition, civil union or civil partnership schemes are available to same-sex couples in most states and territories. However, the *Marriage Act 1961* (Cth) only allows marriages in Australia and recognition of marriages overseas for unions of 'a man and a woman'.[36]

Proposed Recommendations for Concluding Observations:
THAT Australia legislate for same-sex marriage and recognition of overseas same-sex marriages.

Gender identity

65. The Committee has specifically stated that gender identity is recognised as a prohibited ground of discrimination.[37] All Australian state and territory governments have included protections against discrimination on the grounds of gender identity and expression, except for the Northern Territory. The 2013 federal discrimination reforms included a definition of gender identity that specifically does not rely on medical evidence; included gender identities that are neither or both male and female and included protections on the basis of gender expression.

66. In 2011, the Federal Government introduced a new passport policy which allow passports to be issued to 'sex and gender diverse applicants, identifying them as M (male), F (female) or X (indeterminate/intersex/unspecified)'.[38] However, only the Australian Capital Territory and South Australia have completely removed the requirement that a person is required to undergo 'sex reassignment surgery' to change a sex marker on a birth certificate document, and only

[36] *Marriage Act 1961* (Cth) ss 5(1), 88EA.
[37] UN Committee on Economic, Social and Cultural Rights, *General Comment No 20 – Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/20 (2 July 2009).
[38] Australian Passport Office, *Sex and gender diverse passport applications* https://www.passports.gov.au/passportsexplained/theapplicationprocess/eligibilityoverview/Pages/changeofsexdoborpob.aspx. However, this policy has been criticised by LGBTI NGOS – see Joint NGO Submission, *Submission re Commonwealth Attorney-General's Department Review of the Australian Government Guidelines on the Recognition of Sex and Gender* (13 October 2015) http://lgbtihealth.org.au/resources/submission-review-agd-guidelines/.

New South Wales and the Australian Capital Territory recognise sex/gender outside categories of male and female.

Proposed Recommendations for Concluding Observations:
THAT Australia work with State and Territory governments to allow sex and gender diverse applicants to change sex markers on birth certificates without a requirement for 'sex reassignment surgery', divorce and a diagnosis of gender dysphoria.

Intersex status and sex characteristics

67. Tasmania and the Australian Capital Territory have introduced explicit protections against discrimination on the grounds of intersex status. South Australia has also passed protections but these have not yet come into effect. The effectiveness of anti-discrimination measures is not certain as human rights violations are known to persist, including in institutional settings.

Discrimination against 'unauthorised maritime arrivals'

68. Australia has maintained its policy of mandatory detention and has re-established offshore processing for 'unauthorised maritime arrivals' (i.e. asylum seekers who arrived in Australia by boat after 19 July 2013).[39] Australia has also established a truncated process for the assessment of protection claims ('fast-track') for those who arrived by boat on or after 13 August 2012. Mandatory detention, temporary protection visas, 'fast-track' protection claims and offshore detention and processing discriminate against 'unauthorised maritime arrivals' in a manner that is inconsistent with ICESCR.

Ability to access permanent protection

69. Since August 2012, all unauthorised maritime arrivals who arrive in Australia are barred from applying for a visa in Australia, unless the Minister for Immigration and Border Protection exercises a non-compellable discretionary power to lift the prohibition.[40] Once the

[39] The definition of 'unauthorised maritime arrival' is set out in s 5AA of the *Migration Act 1958* (Cth). We note that the Australian Government uses the term 'illegal maritime arrivals' to describe those who arrived by boat between 13 August 2012 and 1 January 2014, despite the fact that this term' is not contained in the *Migration Act.*

[40] See s 46A *Migration Act 1958* (Cth). Those asylum seekers who did not have their protection visas finalised at as 18 September 2013 form part of what is referred to as the 'Legacy Caseload'. The other group which forms part of the Legacy Caseload are those who arrived by boat on or after 13 August 2012 and were not transferred to a regional processing country on or after 19 July 2013. See Department of Immigration and Border Protection (2016), *'IMA Legacy Caseload: Report'*< https://www.border.gov.au/ReportsandPublications/Documents/statistics/ima-legacy-caseload-sept-16.pdf>. At the time of writing, the prohibition on applying has been lifted for all asylum seekers in the Legacy Caseload.

prohibition is lifted, this cohort can only apply for one of two temporary visas.[41]

70. Since 19 July 2013, any person seeking asylum who has arrived in Australia by boat has been transferred to Manus Island in Papua New Guinea (Manus Island) or the Republic of Nauru for the processing of their asylum claims. It is Australian Government policy that none of these people will be resettled to Australia, if found to be refugees. Asylum seekers and refugees have been languishing on these islands for years as the government tries to find a durable solution.[42]

71. In contrast, those who arrive in Australia by plane on a valid visa can be granted a permanent protection visa.[43] Australia's regime discriminates against asylum seekers who arrive in Australia by boat, not having the means or ability to travel to Australia by plane.

Ability to access family reunification

72. Unauthorised maritime arrivals are also discriminated against when they try to reunify their families, both on the basis of having arrived by boat and depending on the date of their arrival. This is inconsistent with the protection and assistance accorded to the family in Article 10 of ICESCR.

Ability to access citizenship

73. Unauthorised maritime arrivals are also discriminated against when applying for Australian citizenship. In 2016, the Federal Court of Australia found that the Minister for Immigration and citizenship had unreasonably delayed when deciding the citizenship applications of two former refugees.[44] This followed a Refugee Council of Australia report that delays in granting citizenship are disproportionately affecting those who arrived in Australia by boat.[45]

Ability to access government-funded legal assistance

74. From 31 March 2014, the Australian Government restricted government-funded legal assistance to unauthorised maritime arrivals making an

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[41] Department of Immigration and Border Protection (2017), *Safe Haven Enterprise Visa* <https://www.border.gov.au/Trav/Visa-1/790->. Of these, only the SHEV offers a potential pathway to permanent residency. However, it requires visa holders to either work or study for a period of 3.5 out of 5 years in a designated regional area without receiving any social security benefits.

[42] Australia has entered into an agreement with Cambodia whereby Cambodia (with its highlight questionable record on human rights) has agreed to take asylum seekers from Manus and Nauru in exchange for aid monies from Australia. However, at time of writing fewer that ten refugees have been resettled in Cambodia (and the majority of them have subsequently nominated to return to their home countries). In late 2016 a resettlement arrangement with the United States was announced, but no refugees from Nauru or Manus Island have yet been resettled.

[43] Department of Immigration and Border Protection, *Protection visa (Subclass 866)* (2017) <https://www.border.gov.au/Trav/Visa-1/866->.

[44] *BMF16 v Minister for Immigration and Border Protection* [2016] FCA 1530.

[45] Refugee Council of Australia, *'Delays in citizenship for refugee permanent visa holders'* (2015).

application for protection.[46] This has caused delays and added significant pressure to community and pro bono legal services. It may also affect the quality of applications submitted and result in incorrect decisions being made. The need for legal assistance is especially significant because the government has recently brought forward application deadlines.[47]

Proposed Recommendations for Concluding Observations:

THAT Australia amend relevant policies and legislation, particularly the *Migration Act 1958* (Cth) to remove discrimination against asylum seekers and refugees based on mode of arrival, to ensure equity in processing, access to permanent protection, opportunities for family reunification, access to citizenship and government-funded legal assistance.

THAT Australia immediately close the Regional Processing Centres in the Republic of Nauru and Manus Island in Papua New Guinea, and bring all refugees and people seeking asylum in those centres to Australia.

Discrimination against migrants and refugees with a disability

75. Australia's migration system requires reform to ensure that it does not discriminate against migrants and refugees with a disability.

76. Permanent entry into Australia requires a visa holder and their family members to satisfy a 'health criterion'.[48] The health criterion requires that the visa applicant be free of a 'disease or condition' which would cost a significant amount, or prevent access to health care for Australian citizens.

77. While the health test does not, on its face, discriminate against persons with a disability, the provisions indirectly discriminate against people with a disability. For example, submissions to the Joint Standing Committee on Migration's 2010 Inquiry into the treatment of Migration Treatment of

[46] A person who arrives with a valid visa in Australia has access to government funded independent legal representation for the primary visa application stage (known as the Immigration Advice Application Assistance Scheme or 'IAAAS'). In contrast, unauthorised asylum seekers arriving by boat are excluded from the IAAAS. Although there is limited government funding (known as the Primary Application Information Service or 'PAIS') for persons forming part of the 'Legacy Caseload', this is available only to those assessed by the government as 'exceptionally vulnerable' and to unaccompanied minors. See Department of Immigration and Border Protection, *Support in applying for a protection visa* (2017), <http://www.border.gov.au/Trav/Refu/protection-application-information-and-guides-paig/support-in-applying-for-a-protection-visa>.

[47] Letters have been sent to asylum seekers who were invited to apply for protection at least twelve months earlier, giving them only 60 days to apply. A failure to respond in time may result in cuts to social security benefits and significantly affect the legal status of these people and their right to apply for asylum. Legal service providers have reported that the deadlines are causing high levels of stress among this cohort, with heightened risks of self-harm or suicide. See eg, Ben Doherty, This is breaking people': visa deadline stress strains asylum services (The Guardian, 9 March 2017) <https://www.theguardian.com/australia-news/2017/mar/09/this-is-breaking-people-visa-deadline-stress-strains-asylum-services>.

[48] The health criterion applies to all visas for permanent entry into Australia.

Disability (*Enabling Australia*) stated that the health criteria is discriminatory in that it sets 'standards of health requirement which the disabled do not or cannot meet'.[49]

Proposed Recommendations for Concluding Observations:
THAT Australia amend the health criteria in the *Migration Regulations 1994* (Cth) consistent with the recommendations of the Joint Standing Committee on Migration's 2010 report into migration and disability, *Enabling Australia*.

THAT Australia repeal the migration exemption in section 52 of the *Disability Discrimination Act 1992* (Cth) to ensure that discrimination on the basis of disability in migration law, policy and practice is unlawful.

Foreign Aid

78. With respect to foreign aid, in 2013 the Australian Government abolished the Australian Agency for International Development. Aid is now delivered through the Department of Foreign Affairs and Trade.

79. At the same time aid has been reduced to one of its lowest level ever in Australia's history (0.22% of GNI) and particularly to Africa where there is the greatest proportion of Least Development Countries. This is not only inconsistent with Australia's renewed commitments in the Sustainable Development Goals (0.7% GNI) but is also blind to the fact of Australia's very large carbon footprint which has one of the greatest impact on women and men living in poverty through increased frequency of emergencies and inability for them to access sustainable livelihoods.

Proposed Recommendations for Concluding Observations:
THAT Australia commit to reinstating a strong and transparent Australian Aid program by forecasting to increase Australia's overseas development assistance (ODA) to 0.7% of Gross National Income (GNI) by 2030 (or earlier) in line with Australia's commitment to the sustainable development goals. At least 0.2% of GNI should be directed to ODA for 'Least Developed Countries'.

[49] Australian House of Representatives, Joint Standing Committee on Migration (2010), *Enabling Australia: Inquiry into the Migration Treatment of Disability,* 177 noting the opinion of Professor Ben Saul. Other stakeholders expressed similar views that the application of the health test indirectly discriminates against persons with a disability.

Article 3 — Equal Rights of Men and Women

80. Despite Australia's efforts, women continue to experience disadvantage across key indicators including income, access to health, education, housing and political representation. This is particularly so for Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse and non-English speaking backgrounds, older women and women with disability.

81. While Article 3 refers explicitly to the equal rights of men and women, we confirm that references to sex and gender in this submission acknowledge the diversity of gender identity beyond the binary.

82. As highlighted by the UN Commissioner for Human Rights: "Unfortunately, the myth that all human beings belong to one of two distinct and separate sexes is deep-rooted, and it contributes to the stigma, and even taboo, attached to being intersex…All human beings are born equal in dignity and rights. Those foundational, bedrock principles of universality and equality mean that all of us, without exception, and regardless of our sex characteristics, are equally entitled to the protections of international human rights law".[50]

Mainstreaming Gender Policy and Substantive Equality

List of Issues 2016, para 11
Equal rights of men and women (art. 3)
11. Please provide an assessment of the measures taken to ensure a whole-of-Government approach to mainstreaming gender policy and of the remaining obstacles to achieving substantive equality between men and women.

83. There have been a range of positive developments in Australia's measures to ensure a whole-of-government approach to mainstreaming gender policy.

84. The Federal Government has developed the third action plan under its *National Plan to Reduce Violence Against Women and Their Children*, with an emphasis on the experiences of Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds and women with disability.

85. It has also established two Federal-level organisations to improve Australia's responses to violence against women: *Our Watch* and *Australia's National Research Organisation for Women's Safety* (ANROWS). Our Watch aims to drive nationwide change in the culture, behaviours

[50] United Nations High Commissioner for Human Rights. Opening remarks by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the Expert meeting on ending human rights violations against intersex persons [Internet]. 2015 [cited 2015 Sep 16]. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16431&LangID=E

and power imbalances that lead to violence against women and their children.[51] ANROWS aims to deliver relevant and translatable research evidence which drives policy and practice leading to a reduction in the levels of violence against women and their children.[52]A Federal paid parental leave scheme has been introduced and the Federal Government has announced that women's economic security, safety and leadership are policy priorities. The Workplace Gender Equality Agency is collecting data on women's leadership and the gendered wage gap in workplaces with more than 100 employees.

86. At a State level for example, the Victorian State Government has recently developed whole of government strategies for addressing Gender Equality[53] and violence against women[54], held a Royal Commission into family violence in 2014[55] and established a new Ministerial Council on Women's Equality.

87. However, there are significant areas for improvement.

Gender Responsive Budgeting

88. Gender responsive budgeting is government planning, programming and budgeting that contributes to the advancement of gender equality and the fulfilment of women's rights.[56] Gender budgeting analysis includes gender impact analysis of all fiscal and economic policies.[57] Understanding the gender impact of Australia's Federal Budget is important to ensure that tax, spending and social programs aimed at improving economic growth and our society work to improve gender equality in Australia.

89. Australia has a strong history of gender responsive budgeting and, indeed, has previously been a world leader in this area.[58] From 1983 to 2013, the Federal Government produced a Women's Budget Statement and State and Territory governments were among the first in the world to scrutinise annual budgets for their impact on women and girls. However,

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[51] https://www.ourwatch.org.au/Who-We-Are
[52] http://anrows.org.au/about/who-we-are
[53] *Safe and Strong: A Victorian Gender Equality Strategy* Victorian State Government http://www.vic.gov.au/women/gender-equality/a-victorian-gender-equality-strategy.html accessed 4/4/17
[54] *Ending Family Violence: Victoria's Plan for Change* www.vic.gov.au/system/user_files/Documents/fv/160803.10%2010%20Year%20Plan%20Booklet%20%28Online%29.pdf
[55] The Victorian Royal Commission Into Family Violence report can be found here: http://www.rcfv.com.au/Report-Recommendations
[56] UN Women, *Gender Responsive Budgeting,* http://www.gender-budgets.org/
[57] K Lahey, 'Tax/Transfer Policy and Sex Equality: What Australia, Canada, and UK should learn from experience.' *Gender Equality in Australia's Tax and Transfer System Workshop, Gender Institute and Tax Transfer Policy Institute, ANU,* 2015, retrieved 15 December 2016 https://taxpolicy.crawford.anu.edu.au/sites/default/files/events/attachments/2015-12/k_lahey_public_seminar_slides_4_nov_2015_klozttpolsxeqnv42015present.pdf
[58] R Sharp and R Broomhill, 'A Case Study of Gender Responsive Budgeting in Australia', *The Commonwealth,* 2013, http://apo.org.au/resource/case-study-gender-responsive-budgeting-australia

in recent years, the practice at Federal Government level has regressed. The Women's Budget Statement is no longer produced by the Federal Government and the cameos and data provided in the Budget papers are generally not gender disaggregated.

90. The lack of a comprehensive gender analysis leads to conflicting policies. For example, the Federal Government has a stated goal of improving women's economic security, but has also announced an intention to reduce penalty rates paid to workers for weekend work, which will have a disproportionate effect on the salaries of women, who are a majority of workers in the retail sector on low to medium incomes.

Proposed Recommendations for Concluding Observations:
THAT Australia produce a Women's Budget Statement and ensure that cameos and data provided in the Federal Budget papers are gender disaggregated.

Gendered Wage and Wealth Gap

91. Australia's gendered wage and wealth gaps have continued to pose significant barriers to gender equality. Australia has made steps towards improving women's economic security – a minimum wage paid parental leave scheme was established by the Federal Government in 2012 and the Workplace Gender Equality Agency has been enabled to collect data on women's economic participation in organisations with more than 100 employees.

92. However, Australia has a full-time gender pay gap of 17.3% averaged across all work sectors. The sector with the lowest gap is *public administration and safety*, which has a wage gap of 7.7%. The sector with the highest gap is the financial and insurance sector, which has a gender pay gap of 30%.[59]

93. The gendered wealth gap in Australia extends beyond the working life of women. Superannuation is a key pillar in the potential economic security of women in retirement in Australia. On average, women currently retire with $90,000 less than men. If no steps are taken to address this issue, by 2030 the retirement income gap is still expected to be 39% with average balances projected to be $262,000 for women and $432,000 for men[60].

94. In 2016, the Senate Economic References Committee inquired into women's economic security at retirement. The subsequent report found that men's superannuation balances at retirement are on average twice as large as women's, putting women, particularly single women, at greater

[59] Workplace Gender Equality Agency, *Gender Pay Gap Statistics,* March 2016, https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf accessed 30 March 2017.
[60] Australian Council of Trade Unions, *Gender Pay Gap - Over the Life Cycle,* 7 March 2016 http://www.actu.org.au/actu-media/media-releases/2016/women-are-still-losing-out-on-pay-at-every-stage-of-life-new-report-reveals.

risk of experiencing poverty, housing stress and homelessness in retirement.

95. The report noted that women in Australia are more likely than men to work in lower paid roles and lower paid fields, are more likely to work part-time or casually, and are more likely to take breaks from paid employment to provide unpaid care for others. Over their lifetimes, as a consequence, they earn significantly less than men.

96. The report found that Australia's retirement income system does not adequately accommodate the differences in male and female economic participation and remuneration, structurally favouring higher income earners who work full-time, without breaks, for the entirety of their working life.

97. The report made 19 recommendations, covering tax reform, amendments to discrimination and work place legislation, housing affordability, superannuation legislation, the age pension and paid parental leave. Most these recommendations have not been implemented.[61]

98. However, in the 2016 Federal Budget, the Australian Government did introduce a range of measures to encourage women to increase their superannuation contributions, including:

- The introduction of a Low-Income Superannuation Tax Offset (LISTO) to reduce tax on superannuation contributions for low income earners;
- Increasing the income threshold used to determine eligibility for the Spouse Contribution Tax Offset, which provides a benefit of up to $540 for those who make additional superannuation contributions on behalf of a low-income spouse; and
- Allowing those with superannuation balances of less than $500,000 to make catch-up concessional contributions (such as salary sacrifice or personal contributions claimed as a tax deduction) where they have not previously used their concessional contribution cap.

Proposed Recommendations for Concluding Observations:
THAT Australia address the gendered wage gap, including collecting a range of gender disaggregated data about the needs of diverse groups of women and preventing any reduction in workplace gender equality reporting.

[61] Parliament of Australia, Senate Economics References Committee, *A Husband is not a retirement plan: Achieving economic security for women in retirement,* 29 April 2016 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report.

Social Security and the Feminisation of Poverty

99. Between 2012 and the present the Australian Government has introduced a range of budget reform measures that will be detrimental to many economically vulnerable women by reducing social security entitlements to achieve 'budget repair'.[62]

100. These measures vary in scope, but generally focus on reducing individual entitlement to the Family Tax benefit, the Single Parenting Payment and various supplements. The *Social Security Legislation Amendment (Fair Incentives to Work) Bill* 2012 was considered by the Federal Parliament's own Joint Committee on Human Rights, which recommended the delay of the Bill pending a Senate Committee inquiry into the adequacy of Newstart and raised serious human rights concerns with the retrogressive nature of the measures.[63]

101. Despite the interim and final reports of the Parliamentary Committee on Human Rights, Parliament passed the legislation which came into effect on 1 January 2013. The 2013 legislation had a severe impact on more than 65,000 single parents and their families. Single parents on Newstart are between $80 and $140 per week worse off because of these changes.[64] More than 90% of single parents in Australia are women.

102. The *Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill* 2014 proposed to index Parenting Payment Single to CPI instead of wages (which would erode the value of the payments over time), and to restrict Family Tax Benefit Part B to families with children over 6 years of age and replace this with a smaller Sole Parent Supplement. The Parliamentary Committee on Human Rights found that these measures may be indirectly discriminatory as they have a disproportionate impact on women.[65] These measures were not passed, but variations on the cuts have been reintroduced in the 2015 and 2016 budgets in various forms and the Government has clearly articulated an agenda to reduce or remove access to these social security entitlements which will have a disproportionate effect on women.[66]

103. For example, older, single women are one of the fastest growing demographic groups vulnerable to poverty. This group already relies the

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[62] See for example the *Social Security Legislation Amendment (Fair Incentives to Work) Bill* 2012, the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill* 2014; the *Family Payments Structural Reform and Participation Measures) Bill 2016* and the *Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017.*

[63] Interim Report, 20 September 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2012/42012/index

[64] National Welfare Rights Network Media Release, 7 February 2014. The analysis is based on Senate estimates data.

[65] Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* Bills introduced 24 - 27 November 2014, Legislative Instruments received 24 - 30 October 2014, Seventeenth Report of the 44th Parliament, 2 December 2014,

[66] See for example

most heavily on the social safety net and their numbers (and population share) are predicted to increase significantly over coming years. The key factors that contribute to women's collective position being more precarious than men's in retirement incomes include:

- the gender pay gap;
- broken work (and therefore earning) patterns associated with child bearing, child care and other family caring responsibilities;
- an earnings-linked superannuation contribution system;
- women's greater longevity than men's; and
- the greater incidence of single person households amongst older women.

104. These factors lead to the greater incidence of women as recipients of and reliance upon the modest, means-tested, full Age Pension, reflecting their lower incomes and assets than men going into retirement as well as the increasing incidence of homelessness amongst older women in Australia.

Proposed Recommendations for Concluding Observations:
THAT Australia repeal amendments to social security legislation that leave women worse off.

Data and Women's Economic Empowerment

105. Obtaining data about the state of women's economic security in Australia is challenging, as there is significant pressure on the budget of the Australian Bureau of Statistics (ABS). The *Work, Life and Family Balance Survey* has not been conducted by the ABS since 2006, which means that we have limited data on the unpaid work conducted by women in Australia.

106. The 2006 survey found that mothers in couple families spent more time on child care activities than fathers. In couple families where both parents worked, mothers spent on average, around 19 hours a week caring for their children, while fathers spent around half that time (8 hours)[67]. Without the next iteration of the survey, it is difficult to know whether there has been any improvement in these statistics, but research conducted by private entities suggests that the situation has not improved.

107. A 2017 report by PriceWaterhouseCooper (PwC) found that unpaid child care can be viewed as Australia's largest industry, worth $345 billion. The report also found that women conduct 76% of childcare, 67% of domestic

[67] *Work, Life and Family Balance* Australian Bureau of Statistics in Australian Social Trends 24 September 2009, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features50Sep+2009#HAVEYOURSAY accessed 28/3/17

work, 69% of care of adults and 57% of volunteering. The percentage of unpaid work conducted by women was not affected by the average income, education or relative advantage of the location in which the work was occurring. The report concluded that regardless of personal circumstances, men are conducting less unpaid work than women in Australia and noted that this is consistent with Australian social norms, which assume childcare will be conducted by women.[68]

108. The scheduled 2013 *Work, Life and Family Balance Survey* was cancelled due to budget constraints. We understand that the ABS is proposing the inclusion of a Time Use Module in the new Australian Population Survey (APS) which may occur somewhere around 2019 -2020.

109. The 2006 and 2011 censuses included four questions asking respondents to estimate the time they had spent on domestic duties, disability care and organisational volunteering over various periods. This data is of limited use in determining the extent of women's unpaid work, as it required individual estimation over extended periods, only specified broad ranges of hours and relied on the respondent to define whether particular activities constituted domestic duties / caring etc. Consequently, the ABS used the data from these questions mainly to distinguish between those persons whose main activity was housework and those persons who did relatively little or no housework.[69]

Proposed Recommendations for Concluding Observations:
THAT Australia reinstate the *Work, Life and Family Balance Survey*.

Pregnancy and Parenting in the Workplace

110. Women in Australia are subjected to high levels of discrimination by employers when pregnant or on returning to work after parental leave. The Australian Human Rights Commission conducted its second national review of pregnancy and return to work in 2014. It found high levels of discrimination by employers against women who were pregnant or returning to work after parenting leave, with almost 1 in 2 women (49%) reporting discriminatory acts by employers. The report concluded that there had been no substantive improvement in this area since the previous review in 1999.[70]

[68] Jeremy, Tyson, Rob, Neilsen, Nicola, PwC, *Understanding the Unpaid Economy* Thorpe, March 2017, http://www.pwc.com.au/australia-in-transition/publications/understanding-the-unpaid-economy-mar17.pdf

[69] Australian Bureau of Statistics, *Measures of Unpaid Work,* 20 September 2016, http://www.abs.gov.au/websitedbs/censushome.nsf/home/factsheetsmuw?opendocument&navpos=450

[70] *Supporting Working Parents: Return to Work National Review* Australian Human Rights Commission June 2014 http://www.humanrights.gov.au/our-work/sex-discrimination/publications/supporting-working-parents-pregnancy-and-return-work.

111. Paid parental leave is an essential component of any attempt to address the gendered wealth gap, improve women's workforce engagement and ensure positive health outcomes for mothers and their children.

112. The current Federal paid parental leave scheme provides employees with an entitlement to 18 weeks of leave funded by the Government at the minimum wage, with the expectation that the employer will also contribute further leave entitlements. Workers earning more than $150,000 per annum are not entitled to the payment, which means that the scheme is aimed at those employees who are more likely to experience pressure to return to work following the birth (or adoption) of a child in the absence of financial support. Eligibility for paid parental leave is limited to employees who have worked for at least 10 of the 13 months before the birth or adoption of the child, and at least 330 hours in that 10-month period (just over 1 day a week), with no more than an 8-week gap between 2 consecutive working days.

113. Although the introduction of this scheme was a significant step forward, in the 2015/16 Budget the Federal Government described this system as 'double dipping' and announced plans to only allow full access to the government payment if a worker had no workplace entitlements to parental leave. The proposed amendments would operate to reduce the total leave available to women, which in turn will reduce women's choices about when to return to work, with significant ramifications for mother and baby health and child development. In addition, the proposed amendments break down the developing culture of employers and Government having shared responsibility for paid parental leave, which is needed to address the current high levels of discrimination against pregnant women and mothers in Australia's workplaces.

114. The measure lapsed during the 2016 election, but has been revived twice in the form of the *Fairer Parental Leave Scheme Bill 2016* and the *Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017*. The amendment was not passed in either bill, but it apparently remains Government policy to reduce the amount of paid parental leave currently available to Australian women who have access to some employee entitlements.

115. While the National Employment Standards include a right for parents to request flexible work arrangements, there is no enforcement mechanism.[71] The right is only available to parents of children school aged or younger, children with a disability, and only if the parent has 12 months service with the employer.

[71] *Fair Work Act 2009* (Cth) s 65.

Proposed Recommendations for Concluding Observations:
THAT Australia review and amend the *Fair Work Act 2009* (Cth) to:

- ensure penalty rates are not reduced and minimum wages are increased relative to average earnings over the medium term; and
- strengthen the right to request flexible work arrangements under section 65.

THAT Australia amend the *Sex Discrimination Act* to include indirect discrimination on the grounds of 'family responsibilities'; and include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.

THAT Australia improve the paid parental leave scheme to allow 26 weeks of Government-funded paid leave at the national minimum wage plus superannuation.

Violence Against Women

116. Violence against women is one of the most extreme manifestations of gender inequality in society and is a serious and pervasive human rights violation in Australia. Australia has recognised violence as a cause and consequence of gender inequality and discrimination, which is characterised by unequal gender relations, control and oppression at an individual, community and institutional level. It violates the rights to life, to equality, to liberty and security of person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.[72]

117. This inequality is also exacerbated by and intersects with other forms of marginalisation, discrimination and vulnerabilities and often has compounding impacts for, but not limited to, Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, women with disability, gender diverse, trans* and intersex people, women who work in the sex industry, younger and older women, children, women in regional, rural and remote areas, women asylum seekers, women in prison and women in institutional settings.[73]

118. On average one or two women a week in Australia is murdered by a current or former partner, one in four women (28%) have experienced physical and sexual violence and/or emotional abuse, one in four women (25%) have experienced emotional abuse and almost one in six

[72] CEDAW Committee General Comment No 19, para 7. See also: International Covenant on Civil and Political Rights (ICCPR) ratified by Australia on 13 August 1980, arts 2, 3, 7 and 26; ICESCR arts Articles 3 and 10.
[73] UN. 1979. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); United Nations General Assembly. 2007. Intensification of efforts to eliminate all forms of violence against women (61/143);

women (17%) have experienced physical or sexual violence.[74] More than half a million women report that their children have seen or heard partner violence.[75] The social, health and economic consequences of family, domestic and sexual violence are enormous, with costs to the Australian economy being estimated at $13.6 billion in 2009.[76] However, the true scale of the problem is likely much greater as violence continues to be severely under-reported.

119. Australian governments recognise violence against women as a cause and consequence of gender inequality and discrimination and have acknowledged that it continues to be a serious and pervasive human rights violation in Australia. All governments have stated that addressing violence against women is a high priority and continue to commit to efforts to prevent, respond and reduce this violence. However, critical gaps remain and more needs to be done to recognise and challenge the entrenched, ongoing, intersectional and socially systemic problem of gender inequality and violence against women.

Scope of government action on violence against women

120. While Australian Governments have expanded the diversity of women addressed in policies and programs that seek to advance gender equality and the elimination of violence, many forms of gender based violence continue to be excluded or marginalised from policy development processes.
121. For example, current actions to address violence currently exclude or marginalise violence against women in prison, women and children asylum seekers and refugees (within and outside of immigration and offshore detention systems), older women, women in the sex industry, gender diverse, trans and intersex people and women with disability in institutional settings and experiencing abuses such as forced sterilisation. In addition, sexual violence and intergenerational abuse has become less visible within the "violence against women agenda" and related developments in policy and practice. More needs to be done to ensure that policies recognise and address the different range and forms of gender-based violence that exist.

122. There is also particular concern that governments' response to violence against women and children who experience intersecting forms of discrimination, marginalisation and oppressions is not sufficient and require additional opportunities for people in these groups to contribute to policy development and, where appropriate, temporary special measures to accelerate their advancement.

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[74] Australian Bureau of Statistics (ABS), *Personal safety survey Australia 2012*, cat. no. 4906.0, ABS, Canberra, 2013, accessed 29 April 2014
[75] Australian Bureau of Statistics (ABS), *Personal safety survey Australia 2012*, cat. no. 4906.0, ABS, Canberra, 2013, accessed 29 April 2014
[76] KPMG (2009) *The Cost of Violence against Women and their Children,* prepared for the National Council to Reduce Violence Against Women and their Children https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf

123. For example, Aboriginal and Torres Strait Islander women and children are 34 times more likely to be hospitalised as a result of domestic/family violence and up to 3.7 times more likely than other women to be victims of sexual violence; women with disability experience more severe violence more often than other women, endure additional violence because of their disabilities [77] and encounter more barriers when they try to protect themselves and seek justice.[78]

Proposed Recommendations for Concluding Observations:
THAT Australia actively consider intersecting forms of discrimination and engage in consultation with affected groups when developing policy on violence against women.

Inadequate and insecure funding for specialist domestic, family and sexual violence services

124. As efforts continue to raise community awareness and condemnation of domestic and family violence and sexual violence, demand for support services has also continued to increase. Yet, despite increasing demand and the importance of specialist services a number of changes in government at Federal, State and Territory level have resulted in inadequate, unsustainable and precarious funding or a loss of funding and political support for specialist support services.

125. For example, homelessness service funding through the National Partnership of Affordable Housing (NPAH), which is a key source of funding for domestic and family violence services from the federal level, was due to end in June 2015 and again in June 2017. While this funding has now been renewed for another year, with the intention that it be reviewed during this time, the short-term and insecure nature of this funding has led to ongoing uncertainty for services. Funding has moved increasingly towards more mainstream or generalist services that often lack the understanding about the specialist nature of working with women and families impacted by violence and trauma. This has occurred in the context of increasing demand for specialist services.

126. Such changes have severely undermined the capacity of specialist support services, including women-specific and community controlled and led services to directly respond to women and children's experiences of violence and support and reaffirm their right to live a life free from violence. It also means services need to devote limited resources to advocacy about funding and has also greatly hindered advocates' ability to provide expert advice to legislation and policy

[77] Australian Institute of Health and Welfare, *Family Violence Among Aboriginal and Torres Strait Islander Peoples* (2006).
[78] Women with Disabilities Australia, Submission to the UN Analytical Study on Violence Against Women with Disabilities (2011).

reform processes and discussions that enable the environment in which gender equality can exist.

127. Governments should provide the necessary funding to match the current and future needs of women who are seeking support, advice and assistance to protect their lives in line with its human rights obligations. Particular attention should be given to appropriate funding for services that are able to appropriately support women who experience multiple and intersecting forms of violence. This funding should allow services long-term funding security and sustainability.

Proposed Recommendations for Concluding Observations:
THAT Australia provide adequate and secure funding for specialist domestic, family and sexual violence services.

Access to Justice

128. Significant steps have been undertaken to improve the legal system's responsiveness and establish stronger safeguards for women and children experiencing and at risk of experiencing violence. However, women and children experiencing violence often face additional barriers in accessing legal services, thereby restricting their ability to use the legal system to seek protection or to uphold their rights and re-establish their lives after having left a violent relationship.

129. Inadequate, precarious and insecure funding for legal assistance service providers, including Aboriginal and Torres Strait Islander Legal Services; Community Legal Centres, including specialist women's legal services; Family Violence Prevention Legal Services; and Legal Aid Commissions continue to undermine effective responses.

130. As recognition and reporting of domestic and family violence increases, the demand for integral legal help in relation to protection orders, family law, child protection and criminal matters, especially breaches of protection orders, is likely increase. People fleeing domestic and family violence also regularly seek legal services for housing, credit and debt challenges and access to social security.

131. There needs to be a greater focus on the safety of victims/survivors of domestic violence in family law matters. Australia should implement the Five Step Plan for Safety First in Family Law.[79]

[79] Women's Legal Services Australia and Rosie Batty's Five Step Plan for Safety First in Family Law accessed at: http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf

132. While welcoming the April 2017 announcement by the Federal Government of an additional $39 million for Community Legal Centres and $16.7 million for Aboriginal and Torres Strait Islander Legal Services, in the face of rising demand it is important that all legal assistance service providers are adequately funded, including Aboriginal and Torres Strait Islander Legal Services; Community Legal Centres, including specialist women's legal services; Family Violence Prevention Legal Services; and Legal Aid Commissions.

133. In the context of family law and family violence it is particularly important that Aboriginal and Torres Strait Islander community controlled organisations and specialist women's legal services and programs are adequately funded, including for example Family Violence and Prevention Legal Services.

134. In addition to reversing the funding cuts, the Commonwealth Government should also implement the 2014 recommendation of the Productivity Commission to immediately invest $200 million annually in legal assistance services for civil law services (with a Commonwealth contribution of 60% and State and Territory Governments 40%).

135. It is also important that all levels of Government in Australia develop a process for determining adequate and sustainable longer-term funding contributions to the legal assistance sector, in consultation with the sector and informed by robust data and evidence.

136. The precarious funding situation and constant uncertainty and insecurity facing the services that not only support and reaffirm women's and children's right to live a life free from violence, but also provide expert advice to legislation and policy reform processes and discussions that enable the environment in which gender equality can exist

Proposed Recommendations for Concluding Observations:
THAT Australia implement the 2014 recommendation of the Productivity Commission to immediately invest $200 million annually in legal assistance services for civil law services.
THAT Australia develop a process for determining adequate and sustainable longer-term funding for the legal assistance sector, in consultation with the sector and informed by robust data and evidence.

National Plan to Reduce Violence against Women and their Children

List of Issues 2016, para 20
10. Please provide information on the impact of the National Plan to Reduce Violence against Women and their Children (2010-2022)

137. Australia's commitment to working towards gender equality and ending violence against women has most recently been embodied by the

adoption of the National Plan to Reduce Violence Against Women and Their Children 2010-2022 (the National Plan), which acts as the primary national policy on reducing sexual, domestic and family violence. Despite many positive steps, the implementation of the National Plan continues to be hindered by gaps between intent and practical implementation. These inconsistencies undermine the governments' commitments to gender equality and efforts to end violence against women.

138. The design and implementation of the National Plan has been continuously hindered by the lack of effective communication between governments and civil society, including inadequate mechanisms for civil society participation.[80] This inhibits communication between government and civil society and the potential for meaningful 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, particularly women and children from diverse backgrounds.

139. Since the National Plan's conception, many implementation plans have passed and some key actions remain unimplemented, such as the establishment of a National Centre of Excellence. It is unclear whether the Plan will be adequately funded for effective implementation, and there are no independent mechanisms to monitor the plan's implementation and measure its effectiveness in terms of statistical benchmarks, systems of measurement, timelines, financial obligations or baseline to reference success. The government must commit to continuing the implementation of an independent monitoring and evaluation mechanism and to resourcing of civil society to participate in this process.

140. In addition, the National Plan insufficiently addresses the need for adequate crisis and support services, shelters and/or refuges, or legal services for women and to provide them with opportunities for empowerment and advance their human rights. Further, there is a need for the National Plan, or any new specific Plan, to properly address violence against Aboriginal and Torres Strait Islander women and children.

Proposed Recommendations for Concluding Observations:
THAT Australia adequately fund the National Plan to Reduce Violence against Women and their Children, including women-specific services, and establish an independent mechanism to evaluate the implementation of the National Plan.

[80] This is most notably highlighted, for example, in the dissolution of the National Plan Implementation Panel (NPIP) - which was designed as a key forum to advise Ministers of emerging issues and inform the evaluation of the National Plan and included government and NGO representatives - and a lack of any equivalent consultative and/or oversight body that includes civil society in the Third Action Plan.

THAT Australia implement processes for meaningful participation and collaboration with civil society in the development, implementation and monitoring of implementation plans.

Domestic Violence Leave

141. There has been increasing recognition of and focus on the interaction between and impact of family violence in the workplace and on the employment of people experiencing family violence in Australia.
142. There is strong support for examining regulatory and legislative mechanisms for the inclusion of access to domestic/family violence-related leave. In particular, there is broad support for the inclusion of family and domestic violence leave under the National Employment Standards in the *Fair Work Act 2009* (Cth) and in Modern Awards.[81]

Proposed Recommendations for Concluding Observations:
THAT Australia provide workplace support to employees experiencing family and domestic violence including:

- a minimum legislative standard of 10 days paid domestic violence leave
- inclusion of a minimum of 10 days paid domestic violence leave in Modern Awards; and
- Government funding and support for relevant workplace training.

Incarceration of Aboriginal and Torres Strait Islander Women

143. Aboriginal and Torres Strait Islander women are the fastest growing prison cohort in Australia. The Australian Bureau of Statistics conducts an annual prisoner census on 30 June each year. Based on the prisoner census data, the number of Aboriginal and Torres Strait Islander women in prison on the census night increased by around 345% between 2000 and 2016, from 308 to 1062 women.[82]

144. Overall the total number of women in prison has also increased more rapidly than for men. Between 2000 and 2016, the total number of women in prison increased by around 226% from 1,368 to 3,095 women.[83] In contrast, during the same period the number of men in prison increased by around 177%, from 20,188 to 35,724.[84]

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[81] See, eg, Australian Law Reform Commission, *Family Violence and Commonwealth Laws-Improving Legal Frameworks* (ALRC Report 117); Fair Work Commission 4-yearly review of Modern Awards, Family and Domestic Violence Clause: https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20151-family-and and Australian Council of Trade Unions, ACTU Paid Family Ciolence Leave Case Concludes in Fair Work Commission (2016) http://www.actu.org.au/actu-media/media-releases/2016/actu-paid-family-violence-leave-case-concludes-in-fair-work-commission

[82] Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators* (2016), table 14A.13.3 and Australian Bureau of Statistics, *4517.0 Prisoners in Australia* (2016), table 20.

[83] Ibid.

[84] Ibid.

145. Systemic failures such as poverty, homelessness and involvement in the child protection system bring women and girls into contact with the criminal law and entrench them in cycles of violence and criminalisation.

146. Compared with the general population, women in prison are more likely to have experienced sexual assault and domestic and family violence[85] and have high rates of mental illness and disability.[86] Women in prison are routinely re-traumatised by practices such as mandatory strip searches and isolation in response to self-harm.[87] These practices violate a range of human rights, including freedom from inhumane and degrading treatment, and are a form of violence against women.

147. For Aboriginal and Torres Strait Islander women and girls, who are the most marginalised but least acknowledged group in the criminal justice system,[88] high rates of social exclusion are directly linked to colonisation, and intergenerational trauma as a result of past and ongoing policies of child removals and dispossession.

148. Increasing numbers of women in prison suggest that Australia is not meeting its obligations under ICESCR, and especially in relation to article 3.

Proposed recommendations for concluding observations:
THAT Australia take immediate measures to reduce the number of women in prison, particularly Aboriginal and Torres Strait Islander women.

[85] See generally, Mary Stathopoulos et al, 'Addressing women's victimisation histories in custodial settings' (Issue No 13, Australian Centre for the Study of Sexual Assault, December 2012); Flat Out Inc, Submission to the Royal Commission into Family Violence (29 May 2015).
[86] See eg Eileen Baldry et al, 'A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system' (UNSW, October 2015); Ed Heffernan et al, 'The Family Business: Improving understanding and treatment of Post Traumatic Stress Disorder among incarcerated Aboriginal and Torres Strait Islander women' (Report, beyondblue, 2014).
[87] See generally, Anti-Discrimination Commission Queensland, *Women in Prison Report* (2006).
[88] See, eg Eileen Baldry et al, 'A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system' (UNSW, October 2015) and Julie Stubbs, 'Indigenous women in Australian criminal justice: Over-represented but rarely acknowledged' (2011) 15(1) *Australian Indigenous Law Review* 47.

Article 6 — Right to Work

List of Issues 2016, para 12-13
Right to work (art. 6)
12. Please provide statistical data on unemployment rates covering the years 2015 and 2016, disaggregated, to the extent possible, by age, sex, ethnic origin, disability and geographic location.
13. Please provide information on the impact of measures, including those initiated under the 2014-2015 and 2015-2016 budgets, the new 2015 employment services model and the Remote Jobs and Communities Programme, to address unemployment among groups and individuals who are more vulnerable to unemployment, notably youth, indigenous peoples, asylum seekers and persons with disabilities.

149. Article 6 of ICESCR requires Australia to recognise the right to work, which includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts, and to take appropriate steps to safeguard this right. However, the right to work is not enjoyed by many disadvantaged groups in Australia. Barriers to employment including discrimination, lack of access to employment opportunities and training programmes, unfair working conditions, and a lack of coverage under workplace laws contribute to breaches of this right.

Proposed Recommendations for Concluding Observations:
THAT Australia ensure that all participants in job seeker, training and prison work programs are covered by workplace laws, including work health and safety laws, workers' compensation laws, and superannuation.
THAT Australia ensure that training programs are client-centred, affordable, accredited, include career advice and lead to viable work.

Aboriginal and Torres Strait Islander People

150. Aboriginal and Torres Strait Islander people experience significant discrimination and disadvantage in employment.
151. The national unemployment rate for Indigenous people aged 15 years and over is 20.6% nationally, and 27.4% in remote areas.[89] This is almost four times the unemployment rate for all Australians, which was 5.8% in February 2017.[90] The Government's Community Development Programme (CDP is the program that regulates access to social security benefits in remote areas. The CDP requires programme participants aged 18-49 to participate in 25 hours of work per week, which is a significantly higher requirement than that imposed on participants in metropolitan work-for-the-dole programs. The CDP fails to provide

[89] Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15,* Cat. 4714.0 (28 April 2016) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4714.0>.
[90] Australian Bureau of Statistics, *Labour Force Australia, March 2017,* Cat. 6202.0 (13 April 2017) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>.

programme participants with basic industrial law protections, including work health and safety, worker's compensation, and superannuation. While a social security program, CDP is taking the place of paid employment in remote Aboriginal communities. People who are unable to comply with the requirements of the scheme face being cut off from social security payments.

See also comments under Article 9.

152. Australia has failed to implement a national reparation scheme for the 'Stolen Wages' of Indigenous peoples.[91] Australia should establish a scheme for people adversely affected by Stolen Wages policies.

Proposed Recommendations for Concluding Observations:
THAT special programs and measures be designed to address the significant barriers to workforce participation faced by vulnerable groups, including Aboriginal and Torres Strait Islander people, asylum seekers, older people, people with a disability, young people and people in prison.

THAT Australia increase its efforts to address barriers to employment faced by Aboriginal and Torres Strait Islander people, including abolishing the Community Development Programme and replacing it with a program, designed in partnership with Aboriginal and Torres Strait Islander communities, that makes a genuine effort to create opportunities for remote communities and build their local economies.

THAT Australia implement the recommendations contained in the *Unfinished Business: Indigenous Stolen Wages* report, including the establishment of a national compensation scheme for people adversely affected by Stolen Wages policies.

Asylum Seekers and Refugees

153. Asylum seekers living in the community on a bridging visa may be denied the right to work.[92] This work restriction may be waived if an asylum seeker satisfies the visa decision-maker that there is a 'compelling need

[91] 'Stolen wages' is a term used to refer to the wages of Indigenous workers whose paid labour was controlled by the Government – in many cases, Indigenous people did not receive any wages at all, or received insufficient wages. See, Parliament of Australia, Senate Legal and Constitutional Affairs Committee, *Unfinished Business: Indigenous Stolen Wages* (2006).
[92] See Schedule 8 of the *Migration Regulations 1994* (Cth) which permits visas to be issued with condition 8101 which precludes the visa holder from engaging in any work in Australia.

to work',[93] on the basis of 'financial hardship'.[94] Delays in being granted permission to work may force asylum seekers into working in the 'black market', where they risk exploitation. Government assistance is not provided to help asylum seekers find employment.[95]

Proposed Recommendations for Concluding Observations:
THAT Australia legislate to provide uniform access to work rights for all asylum seekers living in the Australian community and provide adequate assistance to help them obtain employment.

People with Disability

154. The workforce participation rate for people with disability in Australia is low, at 53.4%, compared to 83.2% for people without a disability.[96] Australia is ranked 21st out of 29 OECD countries for employment participation of people with disability.[97] Women with disability are less likely to be in the workforce compared to men with and without disability, and compared to women without disability.[98]

155. The Australian Human Rights Commission's *Willing to Work Inquiry Report* recognised numerous systemic barriers to employment for people with disability. These include lack of practical assistance for employers to support employment of people with disability; negative employer and community attitudes; poor transition to work initiatives for school leavers; negative outcomes from disability employment services which fail to respond to individual needs or deliver long term job retention; segregation of people with disability in 'sheltered workshops' (Australian Disability Enterprises), and financial disincentives of entering the workforce such as increased accessible transport costs. [99]

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[93] Department of Immigration and Border Protection, *I am an Illegal Maritime Arrival on a Bridging Visa E. Am I eligible for work rights?* (2017) <http://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/i-am-an-illegal-maritime-arrival-on-a-bridging-visa-e-am-i-eligible-for-work-rights>. The right to work is obtained by the grant of another bridging E visa with work rights that replaces a person's existing bridging visa.
[94] *Migration Regulations 1994* (Cth) reg 1.08, available at: <http://www.austlii.edu.au/au/legis/cth/consol_reg/mr1994227/>.
[95] In a recent report, the Refugee Council of Australia found that the JobActive system — the Australian government's job services provider — was not responsive to the needs of asylum seekers and refugees. See Refugee Council of Australia, *Job Active: Refugee and Community Service Provider Concerns* (2016).
[96] Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with a Disability* (AHRC *Willing to Work*) (2016) 35 < http://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>.
[97] Organisation for Economic Co-operation and Development (OECD), *Sickness, Disability and Work: Breaking the Barriers – A Synthesis of Findings across OECD Countries*, (2010) OECD Publishing, Paris.
[98] Department of Social Services, Progress Report to the Council of Australian Governments 2014, p55
[99] AHRC *Willing to Work* (2016).

156. While the Australian Government committed to developing a National Disability Employment Framework, limited action has been taken to finalise a Framework.

Proposed Recommendations for Concluding Observations:
THAT Australia implement the recommendations contained in the Australian Human Rights Commission's *Willing to Work* inquiry report.

THAT Australia develop a comprehensive National Employment Framework for people with disability that includes targets, performance indicators and timeframes for increasing workforce participation of people with disability, taking into account the gendered barriers to economic participation.

Older People

157. Australia has a comparatively low workforce participation rate of older Australians compared with other OECD countries. For example, people aged 55 years and over make up approximately a quarter of the population, but only 16% of the total workforce.[100] In November 2015, 73.8% of Australians aged 55–59 years were participating in the workforce, with 56.5% of 60–64 year olds and 12.7% of those 65 years and over in the workforce.[101]

158. The right to work for older Australians remains essential in the face of an ageing population, an increase in Age Pension eligibility age[102] and greater longevity. Yet the Australian Human Rights Commission's *Willing to Work Inquiry Report* confirmed widespread age discrimination in employment. The Report found that older people face longer periods of unemployment, averaging 68 weeks, 27% of people over the age of 50 reported experiencing age discrimination at work, and that a third of those who had experienced age discrimination gave up looking for work[103]. Mature age workers remain more vulnerable to under-employment and long periods of involuntary unemployment, making up about one third of long term Newstart Allowance recipients[104].

159. Barriers to greater mature age workforce participation in Australia are

[100] Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, Older People and the Labour Market,* Cat 4102.0 (2010) < http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010>.
[101] Australian Bureau of Statistics, *Labour Force, Detailed — Electronic Delivery, November 2015*, Cat. No. 6291.0.55.001 (23 March 2017) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6291.0.55.001>.
[102] The 2014-15 Australian Budget measure (still Government policy but not yet legislated) to extend the age pension eligibility age to 70 years increases the prospect of poverty in retirement.
[103] AHRC *Willing to Work*, Factsheet: Older Australians (2016)
[104] Department of Social Services, *Income support customers: a statistical overview 2013,* Statistical Paper No. 12, Canberra, 36-38.

embedded in culture and attitudes; laws and regulations; labour market structures and work practices; and retirement incomes and tax arrangements. While we welcome the introduction of the Government's Restart program, it does not go far enough to address the causes of unemployment for older workers. While two key inquiries have considered this issue[105], the Australian Government has failed to implement the majority of recommendations of these inquires.

Proposed Recommendations for Concluding Observations:
THAT Australia implement the recommendations contained in the Australian Human Rights Commission's *Willing to Work* inquiry report.

Young People

160. The youth unemployment rate in Australia is high, at 12.8% in 2016.[106] In 2014, the Australian Government axed the Youth Connections program, a successful program that helped vulnerable young people transition through education into work. The Government is seeking to push people aged between 22 and 24 off Newstart onto the lower youth allowance. This is a cut of around $48 a week—almost $2,500 a year. The Government is also supporting a pay cut of up to $77 a week to the penalty rates for retail and hospitality workers. Many of the people facing a cut to their penalty rates are young Australians who depend on their penalty rates to get by. (see comments under Article 3 for impact on girls and women)

161. The Government's Youth Jobs PaTH program (PaTH) is not an effective response to youth unemployment. There are currently at least five job seekers for every vacancy, and PaTH interns will be paid below minimum wage for their work. Additional concerns about the PaTH program include that interns will not be covered by workplace health and safety laws and that they may displace other young workers. Such standalone schemes have been shown to be ineffective to improve the future job prospects of young people.[107]

Proposed Recommendations for Concluding Observations:
THAT Australia address youth unemployment through developing new industries, reinvesting in vocational training and TAFE, and strengthening traineeship and apprenticeships opportunities to ensure they provide structured training and are tied to ongoing employment.

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[105] Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws,* Report 120 (2013); AHRC *Willing to Work* (2016).
[106] Australia, Written Replies, Reply to List of Issues of the Committee on Economic, Social and Cultural Rights, UN Doc E/C.12/AUS/Q/5/Add.1 (2017) 9.
[107] Goldie, G., Letter to Mr Martine Hehir, re: Youth Jobs PaTH program, *Department of Employment* (31 August 2016) < http://www.acoss.org.au/wp-content/uploads/2016/09/ACOSS-submission-into-Youth-PaTH-program_082016.pdf>.

LGBTIQ People

162. Transgender, gender diverse and intersex people face significantly higher levels of unemployment and underemployment than the general population:

- 39% of LGBTIQ people hide their sexuality or gender identity when at work;[108]
- transgender and gender diverse people report substantially higher rates of unemployment,[109] with estimates that the unemployment rate more than twice the national average;[110] and
- approximately 12% of intersex people surveyed in 2015 were unemployed and looking for work and 63% of participants earned an income under $41,000 per year.[111]

163. The Government should support the introduction of guidelines and training programs for workplaces on supporting employees during gender transition.[112]

Proposed Recommendations for Concluding Observations:
THAT Australia support the introduction of guidelines and training programs for workplaces on supporting employees during gender transition, preventing workplace bullying and discriminatory hiring practices.

THAT Australia collect data on unemployment, underemployment, and discrimination experienced by the LGBTI population.

Work and People in Prisons

164. Prison labour is remunerated at levels drastically lower than the minimum wage. Prison labour does not recognise or address the underlying barriers to employment, such as discrimination and lack of

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[108] Australian Research Centre in Sex, Health and Society, Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians, *La Trobe University* (2012) 45-46 <http://www.glhv.org.au/files/PrivateLives2Report.pdf>.
[109] School of Public Health, The First Australian National Trans Mental Health Study, *Curtin University* (2014).
[110] Human Rights Commissioner Graeme Innes AM, *Queer Rights at Work* (20 June 2008) <https://www.humanrights.gov.au/news/speeches/queer-rights-work>.
[111] OII Australia, *Intersex: Stories and Statistics from Australia* (2016) <https://oii.org.au/30313/intersex-stories-statistics-australia/>.
[112] See for example, Victorian Equal Opportunity & Human Rights Commission, *Guideline: Transgender people at work > Complying with the Equal Opportunity Act 2010 in employment* (17 May 2013). <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/eoa-practice-guidelines/item/632-guideline-transgender-people-at-work-complying-with-the-equal-opportunity-act-2010>; Anti-Discrimination Commission Queensland, *Trans* @ Work: A guide for trans* employees, their employers and colleagues* (2015<) https://www.adcq.qld.gov.au/__data/assets/pdf_file/0011/7688/Trans-@-Work-Resource-Final-18-May-2015.pdf>; The Gender Centre, *Employers Support* (2016) <https://gendercentre.org.au/resources/support-resources/employers-support>.

meaningful skills. The practice of prison labour for private industry creates tensions with unions and non-imprisoned workers. Prison advocates confirm that people in prison are not adequately remunerated for work and unequal remuneration between men and women for prison labour is likely to occur.[113] Further, people in prison have increasingly limited access to employment opportunities in the community due to the strict application of security classification policies and limited "release-to-work" programs. For example, in Queensland almost all low security prisons, and especially work camps, have available beds, while secure prisons are significantly overcrowded.[114]

Proposed Recommendations for Concluding Observations:

THAT Australia collate and publish data about employment in public and private prisons, including the number of people engaged in employment, rates of remuneration, and companies engaged in prison industries.

THAT Australia implement laws to ensure that prisoners are fairly remunerated for their work; provided with opportunities to acquire vocational skills to assist them to find post-release work and employment; provided with access to meaningful work that is connected to communities where they will return after prison; and identify how security classification policies affect the ability of people in prison to access low security.

[113] The Anti-Discrimination Commission Queensland identified two instances of possible unlawful discrimination in remuneration between men and women in prison in its 2006 report: Anti-Discrimination Commission Queensland, *Women in Prison Report* (2006), 86-87.
[114] Hannah Busch, 'Queensland prisons holding 1,600 inmates above capacity', *The Chronicle (online)*, 13 March 2017 <https://www.thechronicle.com.au/news/queensland-prisons-overcrowded/3153671/>.

Article 7 – Just and Favourable Conditions of Work

165. Article 7 requires Australia to recognise the right of everyone to the enjoyment of just and favourable conditions of work. Australia is obliged to ensure that workers are afforded:

(a) fair and equal remuneration and conditions without distinction of any kind and a decent living for themselves and their families;

(b) safe and healthy working conditions;

(c) rest, leisure, reasonable limitation of working hours and paid public holidays; and

(d) job security and protection from arbitrary dismissal.[115]

Gender Pay Gap, Pregnancy and Return to Work Discrimination, Parental Leave Scheme and Flexible Work Arrangements

See comments under Article 3.

Exploitation of Migrant Workers

166. The exploitation of migrant workers, particularly those on temporary visas, is widespread and current safeguards offer inadequate protection. The contingent nature of temporary work visas and heavy reliance on sponsors significantly reduces migrant workers' bargaining power and often leads to exploitation.[116] Having 60 days to secure new employment or otherwise leave the country[117] acts as a barrier to pursuing rights. This coupled with language and cultural barriers, and lack of employment law knowledge leads to exploitation. There is limited free legal assistance available. While migrant workers are a current area of focus for the Fair Work Ombudsman, we are concerned that the FWO is under-resourced and thus unable to fully perform its functions.

Proposed Recommendations for Concluding Observations:

THAT Australia develop a national labour hire licensing scheme, as recommended by the report *A National Disgrace: the exploitation of temporary visa holders*.

THAT Australia amend the *Fair Work Act 2009* (Cth) to ensure that the protections apply to temporary visa workers when a person has breached their visa conditions or has performed work in the absence of a visa.

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[115] The right to work in article 6 of ICESCR includes the right to job security and protection from unfair dismissal: Committee on Economic, Social, and Cultural Rights (CESCR), *General Comment No 18: The Right to Work*, UN Doc E/C.12/GC/18 (24 November 2005) [4]. Articles 6, 7 and 8 of ICESCR are interdependent: at [8].

[116] See further: Peter Mares, *Not Quite Australian: How Temporary Migration is Changing the Nation* (Text Publishing, 2016).

[117] Australian Government Department of Immigration and Border Protection, *Temporary Work (Skilled) visa (subclass 457)* <https://www.border.gov.au/Trav/Visa-1/457-#tab-content-2>.

THAT Australia extend the 60-day period for migrant workers to source alternative employment.

THAT Australia increase funding for the Fair Work Ombudsman to ensure they have sufficient funding and powers to address non-compliance and promote systemic reform.

THAT Australia provide adequate funding for advocacy and legal assistance services to assist employees subject to exploitative practices.

Protection from Arbitrary Dismissal

167. The unfair dismissal protections available in the Fair Work Act 2009 (Cth) fail to sufficiently protect the right to fair and favourable conditions at work. Employees are only eligible for unfair dismissal claims if they meet a minimum employment period, earn below the high-income threshold (currently $138,900), and lodge a complaint with the Fair Work Commission within 21 days of being dismissed.[118] These restrictions mean many employees who are arbitrarily dismissed but do not meet these criteria are unable to exercise their rights.

Proposed Recommendations for Concluding Observations:
THAT Australia provide equal protection to employees against unfair dismissal, regardless of the size of their employer, their length of service, their income, and that the time limit for lodging unfair dismissal claims be extended to 60 days.

Fair Wages and Equal Remuneration for Work

168. Despite the *Fair Work Act* prohibiting underpayment of wages, exploitation and slavery-type practices abound in Australia's employment system. Many temporary migrant workers are unable to exercise their right for equal remuneration and right to join a union due to threats of deportation.[119] The Australian Government has introduced a bill to increase fines for employers found guilty of exploitation,[120] but they have failed to ensure that workers threatened by deportation for breaching their visa or working without a visa are not deported.

169. Non-standard work arrangements, such as labour hire and sham contracting arrangements are increasingly being used to undermine the employment relationship, employee rights and entitlements, including rights to bring unfair dismissal claims, holiday and sick leave, and

[118] *Fair Work Act 2009* (Cth) ss 382, 383.
[119] Nick McKenzie and Nick Toscano, 'Seasonal Workers Program pickers told if they join a union they'll get no work', *The Sydney Morning Herald* (online) 12 March 2017 <http://www.smh.com.au/business/seasonal-workers-warned-if-they-join-a-union-theyll-get-no-work-20170309-guujgv.html>.
[120] House of Representatives, Parliament of Australia, *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5826>.

superannuation. Despite repeated calls for a national labour hire licensing scheme and a prohibition on sham contracting, the Government has failed to amend relevant provisions in the Fair Work Act.

Proposed Recommendations for Concluding Observations:
THAT Australia introduce a "reasonable person" test into the *Fair Work Act 2009* (Cth) in determining whether an employer has engaged in sham contracting.

Children and Young People

170. Children and young people legally engaged in the workforce continue to face direct discrimination in wages due to an exception in the *Age Discrimination Act 2004* which allows for people under 21 years of age to be paid a proportion of the adult minimum wage.[121] This amounts to a breach of the right to equal pay for equal work for children and young people in employment in Australia.

171. Payments to eligible young people through Newstart Allowance and Youth Allowance is below the poverty line, with 40% of students surveyed recently indicating they had to regularly go without food or other necessities.[122]Additionally, as young workers (aged 18-24 years) are often likely to work unsocial hours and receive penalty rates, significant concerns relate to a recent decision of the Fair Work Commission to reduce the penalty rates of pay applicable to industries that employ the largest numbers of young people.[123]

Proposed Recommendations for Concluding Observations:
THAT the Australian Government initiate a comprehensive inquiry into the barriers faced by children and young people to the enjoyment of just and favourable conditions of work (including junior wages, social security arrangements and the impact of changes to penalty rates on children and young people, amongst other things) and to propose reforms to help overcome these through measures which respect the rights of children and young people, including the right to non-discrimination.

[121] Section 25, *Age Discrimination Act 2004* (Cth).
[122] Australian Association of Social Workers, *Budget 2016: Now's the time to reform Newstart and Youth Allowance,* 16 February 2016 <https://www.aasw.asn.au/news-media/media-releases-2016/budget-2016-nows-the-time-to-reform-newstart-and-youth-allowance>
[123] Fair Work Commission, *4 yearly review of modern awards – Penalty Rates* (AM2014/305) [2017] FWCFB 1001 (23 February 2017) <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb1001.pdf>; See also Shirley Jackson, 'Cutting Sunday penalty rates will hurt young people the most' *The Conversation* (online) 23 February 2017 <https://theconversation.com/cutting-sunday-penalty-rates-will-hurt-young-people-the-most-73511>.

Article 8 - Freedom of Association and the Right to Strike

List of Issues 2016, para 15
15. Please provide information about the remaining legal barriers to the exercise of trade union rights by all workers. Please update the Committee on the status and contents of the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013, while indicating their bearing on trade union rights.

172. Freedom of association covers the rights of workers to join and be represented by trade unions, to organise and to collectively bargain. Rights are also extended to the organisations themselves to draw up rules and constitutions, vote for officers, and organise administrative functions without interference from public authorities. Article 8 of ICESCR also provides that Australia is to ensure the right to strike. The right to strike is also considered an integral part of freedom of association.

The Building and Construction Industry (Improving Productivity) Act 2016

173. The ITUC Global Rights Index ranks Australia in category number 3, which covers countries that regularly violate labour rights. The *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act)[124] establishes a new labour inspectorate for the construction industry, the Australian Building Construction Commission (ABCC). Civil penalties for unions have been increased to $180,000 and $36,000 for individuals. These penalties apply to unlawful industrial action, coercion and the new restriction on 'unlawful picketing', which includes any action that is industrially motivated and directly restricts persons from accessing or leaving a building site. This limits the right to freedom of peaceful assembly.

174. The BCIIP also provides the ABCC with coercive investigative powers. The ABCC can issue notices which compel a recipient to attend and answer questions relating to an investigation under oath and/or provide information or documents. The common law privilege against self-incrimination is expressly overridden. Failure to comply with these notices is a criminal offence.

The Code for the Tendering and Performance of Building Work 2016

175. The Code for the Tendering and Performance of Building Work 2016 (Code 2016) contains rules relating to the procurement of goods and services. [125] It sets out requirements that must be met by contractors to be eligible to tender for and be awarded construction work on Federal Government projects. Code 2016 restricts collective bargaining rights by limiting the ability to negotiate the terms of industrial agreements. This

[124] *Building and Construction Industry (Improving Productivity) Act 2016*, available at: <http://www.austlii.edu.au/au/legis/cth/num_act/bacipa2016672/>.
[125]Code for the Tendering and Performance of Building Work 2016, available at <https://www.legislation.gov.au/Details/F2017C00125>.

includes prohibiting clauses that impose or purport to impose limits on the right of an employer 'to manage its business or to improve productivity,' prohibiting RDOs and shift allowances, the right to be consulted on redundancies and labour hire, and the right to be consulted on union meeting areas and publicity. It also prohibits clauses that prevent unlimited ordinary hours worked per day, that guarantee the workers' ability to have a day off on Christmas Day and Easter Sunday, Public holidays and that include agreed stable and secure shift arrangements or rosters.

176. Code 2016 also limits the level at which collective bargaining can be undertaken by promoting individual contracts but preventing bargaining occurring on a collective basis at the level determined by the parties themselves. This is despite obligations under ILO Convention 98, Right to Organise and Collective Bargaining Convention, 1949, to promote voluntary bargaining with the objective of regulating employment conditions through collective agreements.

177. Code 2016 also includes provisions that inhibit freedom of association and which unduly interfere with the right of unions to organise and effectively represent the industrial interests of their members. Workers are not permitted to undertake or administer site induction processes if they are delegates or representatives of a trade union. Workers are restricted in their access to representation by their union since unions are unable to enter workplaces at the invitation of the employer. This is inconsistent with the right to freedom of association and the right to organise guaranteed by the ILO Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87).

Proposed Recommendations for Concluding Observations:
THAT Australia ensure that industrial relations laws and practices reflect the principle that the right to freedom of association and the right to strike encompass both the right to join a trade union and extend to the membership of a union.

Fair Work (Registered Organisations) Amendment Act

178. In addition to the ABCC legislation, the Government has introduced the *Fair Work (Registered Organisations) Amendment Act 2016* (Cth), which treats unions like corporations. The legislation introduces fines of up to $204,000 for individuals who fail to disclose their remuneration, "officer and related party disclosure statements", material personal interests or to comply with orders or directions. It also introduces new criminal offences for not cooperating with the expanded investigative powers. The new powers are expanded such that persons outside of the present or former union management and auditors can be subject to coercive powers, as a first level of investigation following an enquiry. They also provide for the power to issue notices to require examination on oath and to give assistance to an investigation; power to apply for search warrants in

respect of any premises and power to require a person to give information about the property and accounting of a property, in advance of an investigation notice being issued, amongst others. The privilege against self-incrimination or self-exposure to a penalty has very limited protection.

179. These and other measures substantially breach the intent of Article 8 by restricting union freedom, penalising workers and their organisations for taking industrial action, and discriminating against workers in the construction industry. The new laws also deny basic civil liberties.

Proposed Recommendations for Concluding Observations:
THAT Australia immediately repeal the *Building and Construction Industry (Improving Productivity) Act 2016,* Code for the Tendering and Performance of Building Work 2016 and the *Fair Work (Registered Organisations) Amendment Act.*

The Right to strike in the *Fair Work Act 2009* (Cth)

180. The right to strike remains severely constrained in Australia. Under the *Fair Work Act 2009* (Cth), strikes may be authorised only during collective bargaining negotiations, or in response to industrial action by an employer.[126] Unions are required to apply to the Fair Work Commission for 'protected action orders' to authorise industrial action. Orders will only be granted if the union demonstrates they have been genuinely trying to reach an agreement. A secret ballot will then be conducted, requiring at least 50% of workers to vote in favour of the action, which unduly restricts the right to strike. The FWC has the power to terminate protected industrial action if it may cause significant harm to the employer or employees. Industrial action in support of pattern bargaining remains unprotected. 'Political strikes' remain unlawful – workers are not permitted to strike against changes to workplace laws for example.

Proposed Recommendations for Concluding Observations:
THAT Australia fully protect and enshrine the right to strike in the *Fair Work Act 2009* (Cth).

[126] *Fair Work Act 2009* (Cth) part 3-3.

Article 9 — Right to Social Security

List of Issues 2016, para 16
Right to social security (art. 9)
16. Please provide information on the review of the welfare system carried out in 2013, indicating if and how it increased the protection of individuals and families with poor life outcomes.
17. Please provide more information about eligibility criteria for social security benefits, in particular for newly arrived migrants, asylum seekers and refugees. Please provide statistical data on the legal factors limiting access to social security by "non-compliant job seekers".

Adequacy of Benefits

181. The purpose of Australia's social security system is to provide income support for people unable to fully support themselves by reason of age, disability, caring or parenting responsibilities or unemployment. It aims to provide a social safety net by ensuring a basic living standard and supporting economic and social participation.

182. Payments are flat rate and indexed regularly. However, indexation arrangements vary between payments. Pensions such as the age or disability support pension were formally indexed to wages in 1997. However, allowances such as the unemployment benefits Newstart allowance, and youth allowance (which also provides income support to students from low income households) are indexed to prices only.

183. Allowances were also excluded from the one-off real increase in pension rates in 2009. As a result, allowances have fallen over time relative to pensions and community living standards.

184. Family tax benefit, an income support payment for low income households with children, was switched to a prices measure in 2009 and its adequacy is also declining over time. Over time this may contribute to an increase in poverty among low income households with children, especially single parent households.

185. The level of payment for the unemployed, and other allowees, in the Australian social security system does not provide access to a basic living standard or support economic and social participation.

186. Although setting the level of benefits in a social security system must take into account disincentives to take up or remain in paid work, unemployment benefits have fallen significantly relative to average and minimum wages over the last two decades. There is therefore scope to increase rates of payment without creating a significant disincentive effect on labour market participation.

187.

Proposed Recommendations for Concluding Observations:
THAT Australia ensure that income support payments provide an adequate standard of living.

Conditionality

188. The main form of conditionality in the Australian social security system are "mutual obligation" requirements which unemployed people in receipt of benefits must meet as a condition of eligibility for payments.

189. Mutual obligation requirements include the obligation to apply for a certain number of jobs per fortnight and the "work for the dole" program of structured activities. There is a system of penalties for failure to meet these requirements without reasonable excuse (the job seeker compliance framework). Penalties include suspension and financial penalties (generally 10% of the person's benefit). The harshest sanction is a "serious failure", a period of eight weeks without payment, although this may be waived in cases of severe hardship.

190. Since July 2013 there has been a separate labour market program for income support recipients in remote communities, originally called the Remote Jobs and Communities Program (RJCP). In July 2015, RJCP was replaced by the Community Development Program (CDP).

191. This program has about 37,000 participants, about 85% of them Indigenous Australians. These are among the poorest and most disadvantaged people and communities in Australia.

192. Under both RJCP and CDP, participations have more onerous mutual obligation requirements than other unemployed people receiving benefits, in particular work for the dole requirements. Currently, work for the dole requirements apply to unemployed people after 12 months in receipt of benefits and for only 6 months of the year, 15 hours per week. Under CDP, participants are required to participate in work for the dole from day one in the program, for 25 hours per week spread across 5 days, year-round.

193. Under both RJCP and CDP, penalties applied to remote job seekers have steadily escalated, especially since the CDP was introduced. Since the introduction of CDP in July 2015, more than 200,000 financial penalties have been applied to CDP participants. This is grossly disproportionate to the size of this cohort which make up only about 5% of all unemployed people in employment services programs nationally.[127]

[127] Statistical data about the job seeker compliance framework, including its application to participants in the RJCP/CDP is published regularly by the Australian Government (Department of Employment) at https://www.employment.gov.au/job-seeker-compliance-data. See also L Fowkes and W Sanders, *Financial Penalties under the Remote Jobs and Communities Program* (Working Paper No. 108/2016), Centre for Aboriginal Economic Policy Research, Australian National University, available at

194. One of the main factors driving this increase in penalties are the more onerous mutual obligation requirements under the RJCP/CDP program.[128] These penalties are reducing access to, and the level of, income support for these disadvantaged individuals and communities.

195. The CDP is discriminatory. The majority of CDP participants are Aboriginal. The mutual obligation requirements of the CDP mean they work more hours for the same amount of income, and are at greater risk of penalty than other 'work for the dole' participants.

Proposed Recommendations for Concluding Observations:
THAT Australia urgently review the application of conditionality and mutual obligation requirements, and associated penalties, with a particular focus on those imposed on Aboriginal and Torres Strait Islander people**.**

Residence and Universality

196. Generally, a person must be an Australian citizen or permanent resident residing in Australia to access support through the social security system.

197. A limited number of temporary visa holders have access to the special benefit payment, a discretionary payment capped at the applicable rate of Newstart Allowance or Youth Allowance but subject to a more stringent means test. Some temporary visa holders can also access family assistance payments for households with children.

198. Most income support payments have a two-year waiting period, the newly arrived resident's waiting period (NARWP). The age and disability support pensions have a 10-year qualifying residence period. There are limited exceptions to these waiting periods. There is no waiting period for family assistance payments.

199. Residence requirements impact on the universality and coverage of the Australian social security system for new migrants. For those migrants who fall into severe financial hardship during a waiting period, the main support is special benefit. This may not provide adequate support as it is subject to more stringent means testing arrangements and is capped at the rate of Newstart Allowance even for disabled or older migrants who cannot access the disability support or age pensions.

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http://caepr.anu.edu.au/sites/default/files/Publications/WP/CAEPRWorkingPaperNo108_2016.pdf.

[128] L Fowkes, *Impact on social security penalties of increased remote work for the dole requirements* (Working Paper No. 112/2016), Centre for Aboriginal Economic Policy Research, Australian National University, available at http://caepr.anu.edu.au/sites/default/files/Publications/WP/16-081-WP-WORKDOLE+D(22Jun16).pdf.

200. Asylum seekers assessed as refugees and granted permanent residence can access the same benefits as Australian residents and are exempt (along with immediate family) from residence-based waiting periods. [129]

201. However, unauthorised maritime arrivals on bridging visas are not eligible to access social security benefits on the same level as Australian citizens or protection visa holders. Instead, these people are eligible to access benefits under the Status Resolution Support Services (SRSS) Programme.[130] Under this program, asylum seekers who are found to be eligible are provided with limited financial benefits, health care, English language tuition, and housing services. The level of services and payments available depends on the person's particular circumstances within six bands prescribed under the programme. Access to the SRSS generally continues while a person's application is being reviewed until he/she receives a visa.[131]

202. However, the SRSS payment is inadequate to provide a basic standard of living (and is set at 89% of the equivalent social security payment. There is no reasonable justification for setting the rate of payment below the special benefit payment normally paid to temporary visa holders

203. In circumstances where individuals are in the community on bridging visas for long periods of time, it is essential that they receive adequate access to social security to allow them to maintain an adequate standard of living, as well as mental and physical health.[132]

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[129] While some visas have waiting periods for access to social security payments, refugees who enter as part of the Humanitarian Programme and those who are on temporary protection visas are exempted, or partially exempted, from waiting periods. See Australian Government Department of Human Services, *Newly arrived resident's waiting period* (2017), <https://www.humanservices.gov.au/customer/enablers/newly-arrived-residents-waiting-period#exemptvisas>.

[130] Department of Immigration and Border Protection, *Status of Resolution Support Services Programme* (2017) <https://www.border.gov.au/Trav/Refu/Illegal-maritime-arrivals/status-resolution-support-services-programme-srss>; Department of Human Services *Status of Resolution Support Services Payment* (2017)<https://www.humanservices.gov.au/customer/services/centrelink/status-resolution-support-services-payment>.

[131] Where a person gains employment, their SRSS income assistance payments may be reduced or entirely stopped. This becomes problematic if employment ends, which is not unusual given asylum seekers' unresolved immigration status and the short length of many bridging visas. For example, Band 6 eligibility criteria means a person must be assessed as experiencing financial hardship which encompasses and income and assets test. See Form 1455 application for Band 6 SRRS payments, available at <https://www.border.gov.au/Forms/Documents/1455.pdf>.

[132] Studies by the Australian Red Cross and UNHCR demonstrate that asylum seekers living in the community face destitution, social isolation and challenges in securing housing and employment. See Australian Red Cross, *Vulnerability Report: Inside the process of seeking asylum in Australia* (June 2013); United Nations High Commissioner for Refugees, *Asylum seekers on bridging visas in Australia: Protection Gaps* (2013).
See also a study by Jesuit Social Services (2015), *The Living Conditions of People Seeking Asylum in Australia*.

Proposed Recommendations for Concluding Observations:
THAT Australia ensure that all asylum seekers and refugees are given the same access to social security payments and services as Australian citizens for so long as they are in Australia.

Debt Recovery Processes

204. An automated debt recovery process known as the Online Compliance Intervention program has been implemented targeting past and current recipients of a social security payment. This program has generated large numbers of inaccurate debts resulting in extreme distress for past and present income support recipients and potentially large numbers of people repaying debts they do not owe or debts higher than what they owe.

205. Problems with this program include: a flawed data-matching process that fails to accurately detect and calculate debts, resulting in inaccurate debt notices being sent to people; the reversal of the onus of proof onto the people whereby they must prove their innocence; removal of human intervention in the detection and calculation of debts; and limited options for people to contact the relevant department.

Proposed Recommendations for Concluding Observations:
THAT Australia put in place a fair and humane approach to debt recovery of social security payments.

Income Management

206. Compulsory income management has been in operation in the Northern Territory and other smaller locations since 2007. Income management quarantines between 50% and 70% of social security payments to a card (a Basics Card) that cannot be used to purchase alcohol, gambling products, cigarettes or pornography or to withdraw cash.

207. The most recent evaluation of income management found that no evidence that it achieved its planned objectives or resulted in long-term behaviour change. The program is poorly targeted and expensive, and has resulted in making some people more dependent on income support.[133]

Cashless Debit Card

208. A Cashless Debit Card was legislated on a trial basis in 2015, and trials have recently been extended. This card works in a similar way as the Basics Card, by quarantining payments in a separate account, but up to 80% of social security payments are quarantined. The card is an EFTPOS card and accepted anywhere that accepts Visa card payments. All

[133] Bray, J. R., Gray, M., Hand, K., & Katz, I. (2014). Evaluating New Income Management in the Northern Territory: Final Evaluation Report (SPRC Report 25/2014). Sydney: Social Policy Research Centre, UNSW Australia., p.xxii

recipients of working age income support payments living in the trial locations are subjected to the cashless debit card trial.

209. The Cashless Debit Card is managed by an external company that shares spending information with the Department of Human Services. This has raised privacy issues due to the sharing of personal information.

210. Because only 20% of social security payments are made in cash to Cashless Debit Card holders, individuals are severely limited in shopping choice. Outlets that accept cash only, and which often offer goods at reduced prices, such as community markets, are not available to Cashless Debit Card holders. Fees for use of an EFTPOS card are charged by some retailers, and minimum spend charges may also be in place, making shopping using the Card more expensive than cash. People also cannot purchase anything using PayPal or from Gumtree (a second-hand items website).

211. Use of the Cashless Debit Card identifies the cardholder as a social security recipient, resulting in potential stigma and discrimination.

Proposed Recommendations for Concluding Observations:
THAT Australia abolish the compulsory quarantining of social security payments using income management and Cashless Debit Cards.

Waiting Periods

212. The Australian Government imposes waiting periods of ten years for people born overseas before they can access Age Pensions.[134] Further, people with disability who migrate to Australia are required to wait ten years to meet the residency and eligibility requirements of the Disability Support Pension (DSP). Being denied access to this basic financial support strips migrants with disabilities' rights to independence, forcing them to be economically reliant on their families and wider community leaving them at an increased risk of poverty, homelessness and other social disadvantage. Newly arrived CALD people with disability have little knowledge about policies and service systems in Australia.

213. Individuals on temporary visas are generally not eligible to access services through Centrelink. For some women, particularly those in rural and regional Australia, the evidentiary requirements can be prohibitively onerous.[135] Temporary migrants who do not have access to the family violence exception to change their visa status cannot access

[134] Australian Government Department of Social Services 'Social Security Payments - Residence Criteria' 17 June 2016 https://www.dss.gov.au/about-the-department/international/policy/social-security-payments-residence-criteria
[135] See, eg, Khanh Hoang "Distance Is No Hurdle: Reforming the Family Violence Exception to Better Protect Immigrant Women in Rural, Regional and Remote Communities" *International Journal of Rural Law and Policy (IJRLP)* 2015, 2, 4622

Centrelink and are left indefinitely without income and rely on charities or other charitable support to get by.

214. The proposed changes to the portability of benefits in relation to the Age Pension and a number of other payments are of great concern for pension recipients.[136] ACOSS and other observers estimate that somewhere in the vicinity of 190,000 Australians will be affected by the proposed pension portability amendments.[137] The proposed amendments in this bill will mean that after just six weeks overseas pensioners who have lived in Australia for less than 35 years of their working life will have their rate of pension reduced.

215. Many of these Australians maintain strong connections through family and other networks in their countries of origin. These networks are of value to Australia for both economic and social reasons. For many CALD Australians the chance for extended visits with children, siblings or other family and friends living in countries of origin represent the only opportunity to support and be supported by these networks, separated by vast distances. This is particularly egregious in the context of ageing Australians, severely disabled Australians and widowed Australians, all of whom are targeted by the provisions of this Bill in sections 1220A, 1220B and 1221 respectively.

Proposed Recommendations for Concluding Observations:
THAT Australia abolish excessive waiting periods for the Age Pension and Disability Support Pension.

THAT Australia abolish the waiting period for the family violence exception for people on temporary visas.

THAT Australia abandon the proposed changes to the portability of benefits for the Age Pension and a number of other payments.

[136] See FECCA submission on http://fecca.org.au/wp-content/uploads/2017/03/FECCA-submission-Social-Services-Legislation-Amendment-Omnibus-Savings-and-Child-Care-Reform-Bill-2017.pdf
[137] ACOSS 'Summary of new major MYEFO 2016-17 measures affecting low income households' http://www.acoss.org.au/wp-content/uploads/2016/12/161219-Summary-of-major-MYEFO-2016.pdf

Article 10 — Right to Family

216. Article 10 recognises 'family' as the fundamental unit of society, and requires the Australian Government to protect and assist all families, whatever form those families may take. Article 10(2) provides that mothers should be provided with paid maternity benefits for a reasonable period before and after childbirth. Article 10(3) requires special measures to be taken to ensure that children are not subject to discrimination by reason of their parentage or other conditions.

Children in Alternative Care

List of Issues 2016, para 18
18. Please provide data covering the period 2013-2016 on children placed in alternative care, indicating, among others, the ethnic origin and geographic location. Please provide information on the impact of the measures taken, including under the National Framework for Protecting Australia's Children (2009-2020) to reduce the overrepresentation of indigenous children in alternative care.

217. Australia is currently implementing the Third Three Year Action Plan of the National Framework for Protecting Australia's Children 2009-2020 (Third Action Plan). The number of children receiving child protection services is rising, with a growth in 20% recorded in the last 4 years.[138] However, there is decreasing proportional investment into early intervention as a fraction of overall spending on child protection services.[139] Preventative and early intervention spending in the form of family support services only represents 16.6 per cent of total child protection system expenditure.[140]

Proposed Recommendations for Concluding Observations:
THAT the Australian Government, working in collaboration with State and Territory Governments under the Third Action Plan, strengthen the legal and practical implementation of the National Standards for out of home care, increase resourcing for early intervention programs and further support children transitioning out of care.

Care and protection of Aboriginal and Torres Strait Islander children

218. Aboriginal and Torres Strait Islander children are significantly over-represented in child protection systems and in out-of-home care in Australia.

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[138] Australian Institute of Health and Welfare, *Child protection Australia 2015-16* (2017) 17 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129558819>.
[139] The Secretariat of National Aboriginal and Islander Child Care (SNAICC), *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal* (2016) 47.
[140] Productivity Commission, Steering Committee for the Review of Government Service Provision Table 16A.1 'Volume F: Community Services' in *Report on Government Services 2017* (2017).

219. In 2016, Indigenous children were 9.8 times more likely to be residing in out-of-home care than non-Indigenous children.[141] In 2016, only 52.1 per cent of Indigenous children were placed with their family, and only 66.7 per cent of Indigenous children were placed with their family, kin or other Indigenous carer.[142]

220. There are significant service availability and access gaps in early intervention and other family support services that would support families and prevent children being placed at risk and in out-of-home care in the first place.[143]

221. We are also concerned the trend towards legal permanency (that is, the expedited pursuit of court orders that permanently remove parent responsibility from parents) is often occurring without prioritising family reunification, and community and cultural connections, and may in fact undermine stability for Indigenous children.[144] There remains a failure to include Aboriginal and Torres Strait Islander people in child protection decision-making, and to properly implement the Aboriginal and Torres Strait Islander Child Placement Principle.[145]

222. In relation to the situation in the Northern Territory – a particular focus of previous reporting – recommendations of a 2010 review,[146] which outlined serious deficiencies of the Territory's child protection system, remain largely unimplemented. A current Royal Commission has noted a concerning link between the continuing over-representation of Northern Territory Indigenous children in the child protection system and in out-of-home care and intergenerational trauma.[147]

Proposed Recommendations for Concluding Observations:
THAT Australia work with all State and Territory Governments to establish and lead a Coalition of Australian Governments (COAG) target to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040.

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[141] Productivity Commission, Steering Committee for the Review of Government Service Provision. Table 16A.17 'Volume F: Community Services' in *Report on Government Services 2017* (2017).
[142] Productivity Commission, Steering Committee for the Review of Government Service Provision, Table 16A.23 'Volume F: Community Services' in *Report on Government Services 2017* (2017).
[143] SNAICC. *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal* (2016).
[144] SNAICC, Policy position statement: *Achieving stability for Aboriginal and Torres Strait Islander children*, (2016).
[145] SNAICC. *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal* (2016) 47.
[146] Bamblett, M., Bath, H. and Roseby, R., *Growing Them Strong, Together: Promoting the Safety and Wellbeing of the Northern Territory's Children* (2010), Northern Territory Government.
[147] Australian Government, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Interim Report* (2016) <https://childdetentionnt.royalcommission.gov.au/about-us/Pages/interim-report.aspx>.

THAT Australia, through COAG, lead a comprehensive and adequately resourced national strategy, developed in partnership with Indigenous people, to provide for:

- increased investment for early intervention family support services (30 % of all State and Territory annual child protection expenditure);

- Indigenous family and community participation in child protection decision making;

- development and resourcing of Indigenous community controlled services;

- reforms to permanency planning measures to strengthen families and protect children's rights to family, community and culture, and

- full and proper implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.

Links between out-of-home care and criminalisation of children

223. There is evidence linking young people who have lived in out of home care to future offending behavior and detention.[148] Research indicates that children in State care are more likely to be criminalised as a result of their experiences in out of home care. Studies have found that *any* child protection placement, not just unstable placements, increased girls' risk of coming into contact with the criminal justice system.[149] There are concerning indications that children placed in out of home care, are disproportionately facing criminal charges for minor offences.[150] Children in out of home care were 16 times as likely as the general population to be under youth justice supervision in 2014-15.[151] Some jurisdictions have initiated programs in an effort to address this.[152]

[148] House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, Doing Time- Time for Doing, Indigenous Youth in the Criminal Justice System, 78.

[149] Judy Cashmore, 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents' (2011) 89 *Family Matters: Australian Institute of Family Studies* 31, 35 (citing Widom's research in the USA). Katherine McFarlane, 'From care to custody: Young women in out-of-home care in the criminal justice system' (2010) 22(2) *Current issues in criminal justice* 345.

[150] Victoria Legal Aid, *Care not Custody – A new approach to keep kids in residential care out of the criminal justice system* (2016) 1 <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-care-not-custody-report.pdf>.

[151] Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision 2014-15* (2016) 11 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129557321>.

[152] For example, the NSW *Joint Protocol* agreed to by the Association of Children's Welfare Agencies, the Department of Family and Community Services, NSW Police and AbSec to help reduce the number of young people in residential out of home care from coming into contact with the criminal justice system for minor reasons. See <http://www.acwa.asn.au/acwa/news-media/news/new-protocol-aims-reduce-contact-youth-residential-care-police>.

Proposed Recommendations for Concluding Observations:
THAT Australia implement coordinated processes to ensure that children in out of home care are only ever subjected to criminal justice interventions in appropriate circumstances.

Removal of Children from Parents with Disability

224. Children of people with disability, particularly those of parents with intellectual and psychosocial disability, are significantly overrepresented in child removals. The removal of children from parents with disability is increasing.[153] Approximately one in six children in alternative or out of home care has a parent with disability.[154] Children are frequently removed despite there being no evidence of any neglect, abuse and/or parental incompetence.[155] There are few long-term and intensive parenting support programs for parents with disability, despite indications that these programs are very successful.[156]

225. Women with disability are particularly affected, as removal of children is often threatened during pregnancy and can occur at birth or a few days after. Women with disability who have had children removed experience significant trauma and life-long grief as a result.[157]

Proposed Recommendations for Concluding Observations:
THAT Australia conduct an urgent national inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disability.

THAT Australia, through the National Disability Strategy, collect appropriate, disaggregated statistical and research data on the number of parents with disability in contact with the child protection system and the number of children removed from parents with disability.

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[153] Standing Committee on Social Issues, Legislative Council, Parliament of New South Wales, *Care and Support — Final Report on Child Protection Services* (2002) 144; Standing Committee on Social Issues, Legislative Council, Parliament of New South Wales, *Making it Happen — Final Report on Disability Services* (2002) 126.
[154] Department of Human Services, *Care and Support: Final Report on Child Protection Services* (Research Paper No 408, Parliamentary Library, Parliament of NSW, 2002) 126.
[155] Non-Government Organisation Convention on the Rights of Persons with Disabilities (NGO CRPD) Shadow Report Project Group, *Disability Rights Now – Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities*, People with Disability Australia (2012) [408]-[411]; McConnell, D., & Llewellyn, D., 'Stereotypes, Parents with Intellectual Disability and Child Protection' (2002) 24 *Journal of Social Welfare and Family Law* 297.
[156] Jan Beckenridge and Dr. Sarit Huppert, 'Intensive Family Support Programs – Keeping Children with a Disability Safely in their Families' (2010) *Centre for Gender-Related Violence Studies, University of New South Wales* 57-59.
[157] NGO CRPD Shadow Report Project Group, *Disability Rights Now – Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities*, People with Disability Australia (2012).

THAT Australia, through the National Disability Strategy, establish comprehensive and intensive gender specific parenting and family support measures for parents with disability, to assist with maintaining children with their parents and within their own family homes. This should also include measures to raise awareness about the right to parent with people with disability, their families, the judiciary and agencies involved in child protection.

Children in Youth Detention

226. On an average day in 2015-16, there were 914 children in youth detention in Australia[158]. Indigenous over-representation is increasing, with Indigenous children being 17 times more likely than non-Indigenous children to be under youth justice supervision.[159] Youth justice detention systems in Australia fail to protect the rights of children or act in their best interests, with concerns about lack of access to education, medical and mental health services and serious breaches of the right to be free from cruel, inhuman and degrading treatment. [160]

227. Recognising the need for improved oversight and conditions in youth detention, the Australian Government should be commended for its commitment to ratify the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*[161] and for its leadership in establishing the Royal Commission into the Protection and Detention of Children in the Northern Territory.[162]

Proposed Recommendations for Concluding Observations:

[158] Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Bulletin 139 (2017) 5 <http://aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129559053>.
[159] Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Bulletin 139 (2017) 2 <http://aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129559053>.
[160] National Children's Commissioner, Megan Mitchel, *Children's Rights Report 2016*, Australian Human Rights Commission (2016) <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>; Victorian Ombudsman *Investigation into conditions at the Melbourne Youth Justice Precinct* (2010) <https://www.ombudsman.vic.gov.au/getattachment/47eb3c0d-36fb-4b5b-b7fb-d584c03ca46f> ; Office of the Children's Commissioner, Northern Territory, *Own initiative investigation report – Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre* (2015); Australian Child Rights Taskforce, *CRC25 Australian Child Rights Progress Report* (2016) <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>.
[161] Minister for Foreign Affairs, The Hon Julie Bishop MP and Attorney-General, Senator the Hon George Brandis QC, *Improving oversight and conditions in detention* (9 February 2017), Joint Media Release <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx>.
[162] Commonwealth of Australia, *Royal Commission into the Protection and Detention of Children in the Northern Territory* <https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>.

THAT Australia work collaboratively with state and territory governments to develop and implement strategies to address the disproportionate representation of children in residential out of home care from coming into contact with the youth justice system.

THAT Australia ensures that the Commonwealth Ombudsman, and relevant state and territory bodies, be required to develop standardised and effective safeguards to respect, protect and realise the rights of children in detention which are consistent with international standards including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (The Havana Rules) and OPCAT obligations.

THAT Australia work cooperatively with the Northern Territory Government to fully implement the recommendations to be made by the *Royal Commission into the Protection and Detention of Children in the Northern Territory*.

THAT Australia work with other state and territory governments to identify recommendations of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* to be implemented in each jurisdiction to address the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection and youth detention systems.

Unaccompanied Children Seeking Asylum

228. The Minister for Immigration and Border Protection is both the guardian of unaccompanied humanitarian children under the *Immigration (Guardianship of Children) Act* 1946 (Cth) while also exercising functions relating to immigration decision making under the *Migration Act 1958* (Cth), creating a serious conflict of interest concern. Unaccompanied children have different rights based on immigration status and their date of arrival, barriers to legal advice and representation, inadequate accountability of guardians (including delegated guardians) and custodians, and lack of consistency of qualifications and training requirements of guardians and custodians.[163]

Proposed Recommendations for Concluding Observations:
THAT Australia establish an independent statutory children's guardian with the necessary training and expertise and with the functions, powers and resources necessary to discharge functions of individual casework for all unaccompanied children seeking asylum and to protect their best interests.

THAT Australia expand the humanitarian intake of unaccompanied children seeking humanitarian protection and remove the current restrictions on specific groups of children from accessing protection in Australia.

[163] Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, Chapter 10 – Unaccompanied children in detention (2014) <https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014/10>.

THAT Australia remove barriers to family reunion across the humanitarian and migration program for children and young people, and review the definition of family used to assess and prioritize family reunion applications in accordance with the UNHCR Resettlement Handbook.

Children in immigration detention

See comments under Article 12.

Parental Imprisonment

229. The majority of women in prison in Australia have children. Most Indigenous women had caregiver responsibilities for children prior to their imprisonment.[164] Women in prison are likely to have contact with child protection authorities and family reunification is rare. Research confirms that parental imprisonment results in significant negative consequences for children. [165] Children whose mothers spend time in prison are more likely to have a disrupted education, poor health and unstable housing, all factors that heighten the risk of a young person entering the child protection or justice systems in the future.[166] The care of dependent children is not ordinarily considered a persuasive reason to impose non-prison sentences, unless imprisonment is deemed to have an "exceptional" impact upon children.[167] Additionally, routine strip-searching after contact visits with family members puts women in the position of making "an impossible choice" between maintaining contact with their children and limiting their exposure to trauma.[168]

Proposed Recommendations for Concluding Observations:
THAT Australia amend bail and sentencing laws to require police and courts to take into account the best interests of the child and prisoners' right to family in determining whether imprisonment (on remand or sentence) is appropriate, especially for women.
THAT Australia immediately end the practice of strip-searching in prisons, which is cruel, inhuman and degrading treatment and undermines women's ability to maintain connections with their children and other family members.

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[164] Department of Corrective Services Western Australia, *Profile of Women in Prison 2008*, Final Report (2009) 53; Juanita Sherwood and Sacha Kendall, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison' (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.
[165] Simon Quilty et al, 'Children of prisoners: a growing public health problem' (2004) 28(4) *Australian and New Zealand Journal of Public Health* 339; Vicky Saunders and Erin Barry, 'Children with parents in prison', Research to Practice Series No 4, *Institute of Child Protection Studies* (2013).
[166] Juanita Sherwood and Sacha Kendall, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison' (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85. Social Justice Commissioner report 2014. Check source for child protection reference.
[167] Tamara Walsh and Heather Douglas, 'Sentencing parents: The consideration of dependent children' (2016) 37 *Adelaide Law Review* 135.
[168] Anti-Discrimination Commission Queensland, *Women in Prison Report* (2006), 86-87.

Pregnant women in prison

230. During 2014, there were 179 pregnant women in prison across Australia (excluding New South Wales).[169] There is no public, national data on the number of women who give birth in prison each year. Policies to support breastfeeding are inconsistent across prison and child protection authorities. For women who give birth in prison, there is a very high likelihood that their children will be removed from their care by child protection authorities. Overcrowding limits the ability of women and their newborn/infant children to remain together in prison. Child removals from prison are more likely to affect Indigenous mothers and perpetuate multigenerational trauma in their families and communities.

Case study: Judith

Judith, an Aboriginal woman, recently gave birth to her fourth child in prison. Judith's other children are all in out-of-home care. Judith's son was born 10 days before her full-time release date from prison.

Judith was at a low security prison and applied to have her baby remain with her. Judith felt intimidated for making this application and ultimately withdrew it. About two weeks before the baby was born, Judith was transferred from the low security prison to a high security prison.

Once Judith's baby was born, it was immediately removed from her care to a foster carer. Judith planned to stay with the foster carer on her release, but the night before she was released from prison, child protection authorities applied for an urgent order to remove Judith's baby from the foster carer. Child protection authorities did not notify Judith, her support organisation or her lawyers that they were applying for this order.

Proposed Recommendations for Concluding Observations:

THAT Australia provide adequate and appropriate care to pregnant women in prison, taking into account the needs of Indigenous women, and end policies or practices which undermine continuity of care or place women in unsafe conditions.

THAT Australia implement measures to reduce the number of pregnant women in prison, including independent, supported bail programs or conditional release of women as a result of pregnancy and, if a woman cannot be released from prison, legislate to accommodate newborns with their mothers in prison for at least the first 6 months after the birth to support breastfeeding and attachment.

Violence against People with Disability

List of Issues 2016, para 19

[169] Australian Institute of Health and Welfare, 'The health of Australia's prisoners' (2015), Cat. No. PHE 207, 76.

19. Please provide information on measures taken to prevent, combat and investigate acts of violence and abuse against persons with disabilities in institutional and residential settings. Please indicate how the State party intends to react to the 2015 Senate report on that issue.

231. In 2015, an Australian Senate Committee tabled its report from its inquiry into violence, abuse and neglect against people with disability.[170] The Committee found that people with disability experience unconscionable levels of violence in institutional and residential settings including the disability and mental health service system, aged care, childcare, schools and educational settings, hospitals and prisons.[171] The Committee made 30 recommendations, including a headline recommendation calling for a Royal Commission[172] to fully investigate this issue. The Australian Government ruled out a Royal Commission, and predominantly 'noted' or stated 'agree in principle' to the recommendations, with most being deferred to the responsibility of States and Territories. [173]

232. The Government considers that the new National Disability Insurance Scheme (NDIS) Quality and Safeguarding (Q&S) Framework and a NDIS Code of Conduct are sufficient measures to address violence and abuse of people with disability.[174] However, the Framework is limited in scope, relevant for approximately 10% of people with disability who will receive services via an individualised NDIS plan. The Q&S Framework does not address the abuse and neglect of people with disability across the circumstances in which it occurs. In addition, the Q&S Framework does not address, nor hold people and systems to account for past injustices.

233. There have been numerous UN recommendations to Australia to address all forms of violence against people with disability, including violence in institutional settings, and in particular violence experienced by women and girls with disability.[175] However there has been limited action to address these recommendations.

Proposed Recommendations for Concluding Observations:

[170] Senate Community Affairs References Committee, 'Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and linguistically diverse people with disability' (November 2015), <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>.
[171] Ibid.
[172] A Royal Commission is an independent, judicial investigation with broad powers and functions.
[173] Australian Government, 'Australian Government response to the Senate Community Affairs References Committee report' (2 March 2017) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response>.
[174] List of issues in relation to the fifth periodic report of Australia Addendum: Replies of Australia to the list of issues E/C.12/AUS/Q/5/Add.1, [101]-[102].
[175]UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review, Australia', 31ST sess, UN Doc A/HRC/31/14 (13 January 2016).

THAT Australia should commission a Royal Commission into Violence and Abuse against People with Disability. The National Inquiry should have specific and broad powers to compel witnesses, undertake a comprehensive investigation of all forms of violence and refer matters to law enforcement agencies.

THAT Australia, through the National Disability Strategy should act on the recommendations from the 2015 Senate Committee to provide nationally consistent measures to address all forms of violence and abuse against people with disability in a broad range of settings.

Domestic and Family Violence

List of Issues 2016, para 20
20. Please provide updated statistical data on domestic violence against women and girls, disaggregated by, among other factors, sex, age, ethnic origin, disability and geographic location of the victims, covering the period 2013-2016. Please provide information on the impact of the National Plan to Reduce Violence against Women and Children (2010-2022).

Domestic violence and National Plan to Reduce Violence against Women and Children

See comments under Article 3.

Violence against Aboriginal and Torres Strait Islander women and children

234. Aboriginal and Torres Strait Islander people in Australia are significantly more likely to experience family violence than non-Indigenous people.[176] The greatest direct impact of family violence is on Aboriginal and Torres Strait Islander women.[177] Children are also especially vulnerable to the direct and indirect impacts of family violence – causing them deep and lasting harm and contributing significantly to their over-representation in Australia's child protection systems. At the heart of family violence lies both individual and communal grief, loss, disempowerment and trauma. Breaking the cycle of violence requires a range of approaches, including community driven trauma informed approaches to family violence that prioritise cultural healing and recognise culture as a protective factor.

Proposed Recommendations for Concluding Observations:
THAT Australia provide adequate and sustainable funding for family violence response and prevention, with a key focus on resourcing needs for Aboriginal and Torres Strait Islander community-controlled organisations.

[176] Gordon et al. 2002; Memmott et al. 2001; Mow 1992; Robertson 1999; Wild & Anderson 2007; Cripps and Adams 2014
[177] Memmott, P., Stacy, R., Chambers, C. & Keys, C. 2001 Violence in Indigenous Communities. Canberra: National Crime Prevention, Attorney-General's Department. FVPLS, 2015

Violence against children

235. There are weaknesses in the legal protection of children from violence due to the ongoing legality of corporal punishment used against children in Australia.[178] This is despite recommendations for reform issued by the UN Committee on the Rights of the Child.[179]

Proposed Recommendations for Concluding Observations:
THAT Australia work collaboratively with state and territory governments to reform laws which allow violence to discipline children (corporal punishment) and resource national education and positive parenting strategies as part of its commitment to protect children.

Violence against culturally and linguistically diverse people

236. Women from CALD backgrounds who experience family violence are often reluctant to disclose violence due to a range of factors including language barriers, mistrust of the justice system, stigma, lack of culturally competent services and immigration status. Visa dependence is one of the main barriers to migrant women accessing legal and justice support for family violence. [180] Many migrant victims of violence are unable to claim permanent residency under the family violence exception because the violence against them was perpetrated by a member of their extended family (e.g. parent or sibling in-law), even when their partner was aware of and facilitated the violence.[181]

Proposed Recommendations for Concluding Observations:
THAT Australia broaden the definition of family violence in the *Migration Regulations 1994* (Cth).

THAT Australia amend the evidentiary requirements for the family violence exception to make it easier for women to prove that they have been subjected to violence.

LGBTIQ people and their families

237. Same-sex couples are still unable to marry in Australia, and overseas marriages are not recognized under Australian law. Some jurisdictions prohibit same-sex couples from legally adopting children, including those already in their care.[182]

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[178] *Crimes Act 1900* (NSW) s 61, *Criminal Code Act* (NT) s 27, *Criminal Code Act 1899* (Qld) s 280, *Criminal Law Consolidation Act 1935* (S.A) s 20, *Criminal Code Act* 1924 (Tas) s 50, *Criminal Code Act Compilation Act 1913* (WA) s 257 and the relevant common law defences in Australian Capital Territory and Victoria.
[179] Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding Observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012), [43]-[45].
[180] inTouch Multicultural Centre Against Family Violence, *I lived in fear because I knew nothing: Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010), 25.
[181] Victorian Government, Royal Commission into Family Violence (March 2016), 111.
[182] Queensland and Northern Territory do not currently permit same-sex couples to adopt children in their care, however Queensland and Northern Territory have flagged proposed amendments.

238. There is anecdotal evidence that LGBTIQ children face disproportionate levels of family conflict and violence, which results in higher levels of youth homelessness and poorer mental health. However, there is little actual data about family violence experienced by LGBTIQ children. Without access to accurate, disaggregated data, it is difficult for the NGO sector to obtain sufficient evidence to request additional funding for awareness raising, cultural competency in service delivery and violence prevention specifically affecting the LGBTIQ communities.

Proposed Recommendations for Concluding Observations:
THAT Australia allow same-sex couples to marry and legally adopt children.
THAT Australia collect data on domestic and family violence in LGBTIQ families.

THAT Australia remove laws which discriminate against same-sex couples' ability to start a family, including adoption, access to assisted reproductive treatment and altruistic surrogacy.

Special Protection and Assistance for Children

Children in the workforce and protection from economic exploitation

239. Australia has yet to ratify *ILO Convention No. 138 concerning Minimum Age for Admission to Employment* (1973). Systems across Australian states and territories are "piecemeal and inconsistent".[183] There are reports of child labour existing in the supply chains of Australian businesses[184]. There have been numerous reports of businesses engaging in exploitative employment of young workers, including underpayment, particularly in the hospitality and retail sectors.[185] Inquiries conducted by the Fair Work Ombudsman also reveal serious issues of non-compliance in sectors with high youth employment rates.[186]

Proposed Recommendations for Concluding Observations:
THAT Australia ratify *ILO Convention No. 138 concerning Minimum Age for Admission to Employment* (1973) and work with state and territory governments to ensure an effective national system of protection against child labour.

[183] Andrew Stewart and Natalie van der Waarden 'Regulating Youth Work: Lessons from Australia and the United Kingdom' in Robin Price, Paula McDonald, Janis Bailey and Barbara Pini (eds) *Young people and work*, Ashgate (2011) 185, 187.
[184] This was raised as a concern by the Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia*, UN Doc. CRC/C/AUS/CO/4 (28 August 2012) [27]-[28].
[185] See, for example, Anna Patty, 'The great student swindle' *Sydney Morning Herald* (date unknown) <http://www.smh.com.au/interactive/2016/great-student-swindle/>.
[186] See Fair Work Ombudsman, *Inquiry Reports* <http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#trolley-collection-services-procurement-by-woolworths-limited>.

THAT Australia introduce legislation to protect against child labour in global supply chains.

Birth registration

240. Australia lacks adequate data on the number of children in Australia who do not have their births registered and/or who do not have a birth certificate. Available evidence shows that Indigenous children in particular face barriers to having their births registered and obtaining a birth registration. In 2005, one program indicated that 13% of children born to Indigenous mothers were not registered.[187] The reasons for this include, inability to pay for certificates and late registration fees, complexity of forms, proof of identity requirements to register or apply for a certificate, physical access to registry locations, lack of confidence when dealing with authorities, and marginalisation from mainstream services.[188]

Proposed Recommendations for Concluding Observations:
THAT Australia work with state and territory governments to ensure comprehensive and universal access to birth registration and birth certificates for all children across Australia.

Provision of child care

241. In March 2017, the Australian Government enacted long promised funding reforms for the provision of child care support. However, the reforms failed to meet an appropriate level of child rights compliance, particularly for a high-income economy such as Australia's.[189] The reforms improved access to support for 75% of families but at the expense of vulnerable children from poor and unemployed families. By applying a workforce activity test for families for eligibility for support, many of the most vulnerable children will miss out.[190]

Proposed Recommendations for Concluding Observations:
THAT Australia amend its child care funding reforms to:

- ensure universal access to baseline care of 15 hours a week;

[187] J. Orenstein, *Being Nobody – The Difficulties Faced by Aboriginal Victorians in Obtaining Identification*', Speech delivered at National Association of Community Legal Centres Conference (14-17 September 2009) <http://www.orenstein.com.au/NACLC%20conf%20paper.pdf>.
[188] Paula Gerber and Melissa Castan, *Proof of Birth – The right to universal birth registration in Australia* <http://www.futureleaders.com.au/book_chapters/Proof-of-Birth/chapter-one.php>.
[189] Australian Child Rights Taskforce, *CRC25 Australian Child Rights Progress Report* (May 2016), 26 <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>.
[190] Early Childhood Australia, "New child care scheme leaves vulnerable children behind" Media Release (24 March 2017) <http://www.earlychildhoodaustralia.org.au/wp-content/uploads/2017/03/Childcare-reforms-leave-vulnerable-children-behind.pdf>.

- provide subsidized care of 22.5 hours for Aboriginal and Torres Strait Islander children to ensure that they are (primary) school ready; and
- remove the work activity test for families.

Trafficking

242. The Australian Government should be commended for introducing the Slavery Act[191] and the Vulnerable Witness Act[192] in 2013 to enhance the legislative frameworks on human trafficking and slavery. The National Action Plan adopted by Australia in 2014 aims to combat all forms of human trafficking and slavery. In February 2017, Australia commenced an Inquiry into establishing a Modern Slavery Act in Australia.[193]
243. However, Australia fails to properly support victims of trafficking, only allowing them to remain in Australia contingent upon participation in the criminal justice investigatory or prosecutorial framework.[194] Victims of trafficking also have limited access to redress, economic and social support.

Proposed Recommendations for Concluding Observations:
THAT Australia appoint an independent Anti-Slavery Commissioner.

THAT Australia implement disclosure obligations for large businesses and supply chains.

THAT Australia create a publicly accessible repository for slavery statements.

THAT Australia properly support victims of trafficking by not making visas contingent on their participation in the criminal justice investigatory or prosecutorial framework.

THAT Australia ensure the rights of victims of trafficking are protected, including the right to redress and economic and social support for victims.

[191] *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth).
[192] *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Cth).
[193]Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into establishing a Modern Slavery Act in Australia <http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery>.
[194] See, UN Special Rapporteur to the Human Rights Council in the Country Report of the Special Rapporteur on trafficking in persons May 2012, UN Doc GEN/G12/135/48.

Article 11 — Right to an Adequate Standard of Living

List of Issues 2016, paras 21-23
Right to an adequate standard of living (art. 11)
21. Please provide statistical data on poverty rates in the State party, disaggregated by ethnic origin, sex, age, disability and geographic location. Please update the Committee on whether the State party intends to adopt and implement a comprehensive poverty reduction and social inclusion strategy that fully integrates economic, social and cultural rights.
22. Please explain the legal framework governing forced evictions and provide data on the prevalence of forced evictions in the State party, especially in Western Australia.
23. Please provide data, disaggregated by ethnic origin, sex, age, disability and geographic location, on the extent of homelessness in the State party and on the impact of measures taken to reduce homelessness, including the National Housing Strategy, the Specialist Homelessness Services collection and the National Partnership Agreement on Remote Indigenous Housing.

Poverty

244. Despite Australia being a comparatively wealthy country, poverty remains at unacceptable levels. 2.55 million people in Australia (13.9%) are living below the poverty line, after taking account of their housing costs including 603,000 children (17.7% of all children).[195] The proportion of people in poverty increased between 2010 and 2012 from 13 to 13.9%.

245. The majority of people living below the poverty line in Australia rely on social security payments as their main source of income (61%) and many payments fall below the poverty line or are inadequate.

246. Issues relating to social security payments are discussed in more detail in relation to Article 9.

Housing and Homelessness

247. Article 11 of ICESCR recognises that all people have the right to adequate housing, which includes a right to live somewhere in security, peace and dignity.[196]
248. Unfortunately, housing affordability remains a chronic problem in Australia. Affordable rental properties are increasingly unavailable for

[195] Australian Council of Social Service (ACOSS), *Poverty in Australia 2014,* 2014. This analysis is based on 2012 data using the 50% of median income poverty line, the most austere poverty line widely used in international research. Available at http://acoss.org.au/images/uploads/ACOSS_Poverty_in_Australia_2014.pdf.

[196] CESCR, *General Comment No 4: The Right to Adequate Housing (Article 11)*, UN Doc HRI/GEN/1/Rev.5 (2001) 22.

people on low incomes,[197] the number of people seeking assistance from homelessness services rises every year[198] and the national waiting lists for social housing remain at approximately 200,000.[199] Further, 897,000 of the households living in the private rental market satisfy income eligibility tests for public housing, pointing to an even greater latent demand.[200] In 2012, the National Housing Supply Council estimated that the national shortfall in housing supply would rise to 663,000 in 2031.[201]

Children and the right to adequate housing

249. At the date of Australia's last census, an estimated 46% of Australians experiencing homelessness were under 24 years of age and 27% were under 18 years of age.[202] At least one third of young people leaving out-of-home care are expected to experience homelessness.[203] Aboriginal and Torres Strait Islander children continue to be significantly overrepresented in Australia's homeless population.

250. Addressing youth homelessness requires a coordinated effort between all levels of Government in Australia to provide appropriate, ongoing and adequately funded support services, including in relation to public housing, family violence support, income support, education, disability, health and legal assistance.

Women and the right to adequate housing

251. Gendered experiences of economic insecurity, characterised by the gender pay, wealth and superannuation gaps further weakens access to affordable housing for women. Women who are homeless are more likely to experience other breaches of their human rights.

252. At the date of Australia's last census, it was estimated that of the 105,237 Australians experiencing homelessness, 45,813 or 44% were women.[204] 59% of people supported by specialist homelessness services are

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[197] Anglicare Australia, *Rental Affordability Snapshot 2016,* Canberra, 2016, retrieved 12 January 2017, http://www.anglicare.asn.au/docs/default-source/default-document-library/rental-affordability-snapshot-2016.pdf?sfvrsn=7

[198] Australian Institute of Health and Welfare, *More receiving homelessness support due to family violence* [media release], 15 December 2016, para. 2, accessed 13 January 2016, http://www.aihw.gov.au/media-release-detail/?id=60129557836

[199] Productivity Commission, *Reports on Governments Services*: *Volume G Housing and Homelessness,* Canberra, 2016

[200] G. Wood, 'Housing Needs and the Future of Housing Assistance', presentation to the AHURI national one-day conference, Adelaide Oval, 19 October 2016, accessed 18 November 2016, https://www.ahuri.edu.au/research/resources/video/the-future-of-housing-assistance-gavin-wood

[201] National Housing Supply Council, *Housing Supply and Affordability – Key Indicators, 2012,* Parkes, ACT, 2012, p. vi

[202] Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness,* 2011 (ABS Catalogue No 2049.0, 12 November 2012).

[203] Phil Crane, Jatinder Kaur and Judith Burton, *Homelessness and leaving care: The experiences of young adults in Queensland and Victoria, and implications for practice*, 2013, 11.

[204] Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness, 2011* (ABS Catalogue No 2049.0, 12 November 2012), p 5.

women.[205] Of the Aboriginal and Torres Strait Islander clients who seek assistance from homelessness services, around 62% are women.[206]

253. Women are the main beneficiaries of housing support systems. For example, women are the majority of public housing tenants,[207] Commonwealth Rent Assistance recipients[208] and specialist homelessness services clients.[209] As a result, the under-resourcing of housing safety nets disproportionately impacts women and undermines the Australian Government's gender equality objectives.[210]

254. Domestic and family violence has become the most common cause of homelessness in Australia.[211] Women and children affected by domestic and family violence have diverse socioeconomic and cultural backgrounds and require a range of individualised and ongoing support, including safe, accordable, accessible and secure accommodation options and appropriate exit points from crisis accommodation.

255. Significantly, single, older women are emerging as a "poignant symbol of housing insecurity in Australia."[212] Older people in Australia are increasingly facing more precarious housing futures, with growing numbers of retirees holding mortgage debt[213] or living in the private rental market,[214] In particular, single women are more likely than single men or couples to be renting or still paying off a mortgage in their

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[205] Australian Institute of Health and Welfare 2014: *Specialist homelessness services: 2013–2014*. Cat. no. HOU 276. Canberra: AIHW, 7.
[206] Ibid, 26.
[207] Australian Institute of Health and Welfare, *Housing Assistance in Australia 2016 Supplementary Data* Table 6: Number of tenants in social housing by age, sex and program, at 30 June 2015, Canberra, 2016
[208] Data on rent assistance income units by sex provided by Department of Social Services
[209] Australian Institute of Health and Welfare, *Specialist homelessness services 2015-16 supplementary data* National Table CLIENTS 1, 15 December 2016, Canberra
[210] CEDAW/C/AUS/8 Australia's eighth periodic report to the Committee on the Elimination of Discrimination against Women, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/CEDAW_C_AUS_8_5910_E.pdf
[211] Ibid, 39. See also, Flinders Institute for Housing, Urban and Regional Research, *Women, Domestic and Family Violence and Homelessness: A Synthesis Report prepared for the Office for Women Department of Families, Housing, Community Services and Indigenous Affairs,* 2008, retrieved 12 January 2017 https://www.dss.gov.au/sites/default/files/documents/05_2012/synthesis_report2008.pdf
[212] Mercy Foundation, *Older Women's Pathways out of Homelessness in Australia, Brisbane,* 2014, https://www.mercyfoundation.com.au/_uploads/_cknw/files/FINAL%20Feb%202014%20Petersen%20%20Parsell%20Older%20women's%20pathways%20out%20of%20homelessness.pdf
[213] E. Ryan. 'Older Aussies face rising mortgage debts,' *The Adviser,* 29 June 2016, accessed 13 January 2017, http://www.theadviser.com.au/breaking-news/34648-older-aussies-face-rising-mortgage-debts?utm_source=TheAdviser&utm_campaign=29_06_16&utm_medium=email&utm_content=3&mc_cid=331289e9b8&mc_eid=53abe53156
[214] A. Horin, 'The hidden housing problem: older and still renting,' *Coming of Age,* 16 November 2014, http://adelehorin.com.au/2014/11/16/the-hidden-housing-problem-older-and-still-renting/

retirement.[215] Data from the 2011 Census reveal 264 604 single women over the age of 45 on low-median incomes living in the private rental market.

A housing strategy for Australia

256. The realisation of the right to adequate housing in Australia requires consideration of factors including affordability, habitability, accessibility, location, cultural adequacy and availability of facilities essential for the realisation of other rights, including health, security and nutrition.[216]

257. Affordability requires that personal or household costs associated with housing should not be at a level that threatens or compromises the attainment or satisfaction of other basic needs.

258. Australia continues to experience serious housing affordability issues with over one million lower income households paying housing costs which exceed the 'housing stress' benchmark of 30% of household income. The cost of private rental increased by 75.8% for houses and 91.8% for other dwellings between 2002 and 2012, whereas average earnings increased by 57%.[217] There are currently significant waiting lists for public and community housing.[218]

259. The lack of a comprehensive legal framework and policy position to respond to homelessness prevents the progressive realisation of the right to adequate housing in Australia.

Aboriginal and Torres Strait Islander people and the right to adequate housing

260. In its concluding observations in 2009 the Committee noted with concern that poverty rates remained very high among indigenous peoples and that Australia had not yet adopted a comprehensive strategy to combat poverty and social exclusion amongst Aboriginal and Torres Strait Islander people. The Committee noted that the incidence of homelessness amongst Aboriginal and Torres Strait Islander people had increased over the previous decade.

261. To address significant overcrowding, homelessness, poor housing conditions and the severe housing shortage in remote Indigenous communities, the Australian Government committed $5.5 billion through the ten-year (2008-09 to 2017-18) National Partnership Agreement on Remote Indigenous Housing.

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[215] The Senate Economics References Committee, *A Husband is not a Retirement Plan –Achieving Economic Security for Women in Retirement,* Canberra, 2016, p. 119, retrieved 13 January 2017
[216] Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), para 8.
[217] National Housing Supply Council, 'Housing supply and affordability issues, 2012–13', 2013, 7.
[218] SCRGSP (Steering Committee for the Review of Government Service Provision) 2014, *Report on Government Services 2014*, Productivity Commission, Canberra.

262. However, the Australian Government has not committed any further funds beyond June 2018, and overcrowding and homelessness in remote communities remains severe, particularly in the Northern Territory. Aboriginal and Torres Strait Islander organisations have also called for the Federal Government to commit further funds towards remote housing. In addition, the Australian Government has failed to develop a comprehensive housing strategy for Aboriginal and Torres Strait Islander people across Australia, particularly in urban and regional areas.

Criminalisation of homelessness and poverty

263. All Australian states and territories have laws which have the effect of criminalising homelessness and poverty. In 2006, the UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, concluded that the enforcement of public space laws in Australia 'criminalizes the homeless and may violate civil rights, including the right to be free from inhuman or degrading treatment or punishment'.[219]

264. The Australian Government has failed to act on the Special Rapporteur's recommendations to amend laws that criminalise homelessness and poverty, including begging offences, public intoxication offences, 'move on' powers and Prohibitive Behaviour Orders. In 2009, the bi-partisan House of Representatives Standing Committee on Family, Community, Housing and Youth recommended that the Australian Government, in cooperation with state and territory governments, conduct an audit of laws and policies that impact disproportionately on people experiencing homelessness.[220] To date, this audit has not been conducted.

265. In March 2017, the UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha, issued a release regarding proposed laws in the City of Melbourne, which stated:

> *"The criminalization of homelessness is deeply concerning and violates international human rights law. It's bad enough that homeless people are being swept off the streets by city officials. The proposed law goes further and is discriminatory – stopping people from engaging in life sustaining activities, and penalizing them because they are poor and have no place to live…I encourage the city to focus on its human rights obligations."* [221]

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[219] Miloon Kothari, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living – Addendum: Mission to Australia (31 July to 15 August 2006), UN Doc A/HRC/4/18/Add.2 (11 May 2007) [47].
[220] House of Representatives Standing Committee on Family, Community, Housing and Youth, Parliament of Australia, *Housing the Homeless: Report on the inquiry into homelessness legislation* (2009), 81.
[221] Leilani Farha, *Proposed "Homeless Ban" in Australia cause for concern – UN Expert* (13 March 2017) (Media Release) http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21357&LangID=E)]

Intersection of homelessness and imprisonment

266. Homelessness, and related issues of social exclusion, are both a cause and consequence of imprisonment.

267. People who are sleeping rough are more likely to be repeatedly criminalised due to regular contact with police and the ongoing criminalisation of behaviour such as begging, public nuisance and sleeping, drinking or urinating in public across Australian jurisdictions.[222] Lack of an address, combined with high rates of mental illness, substance misuse and disability, and criminal history make it difficult for people experiencing homelessness to apply for bail, even though they are likely to be in custody for minor offences.[223]

268. Once people enter prison, they are likely to lose their tenancies due to rent arrears, damage to the property by family, friends or strangers,[224] or government policies that restrict the time a person can be away from public housing. Homelessness remains a significant issue for people leaving prison, particularly Aboriginal and Torres Strait Islander women.[225] Loss of public housing due to imprisonment impacts on an individual's ability to apply for public housing on release due to debt and long waiting lists. Release from prison to homelessness or unstable housing impact on family reunification and contribute to re-imprisonment for offences related to homelessness.

269. On an average day in 2015-16, 64% of 10-17 year olds in prison across Australia were unsentenced (either on remand or in pre-court custody with police).[226] Homelessness is the primary reason that children remain in prison on remand. Children in out-of-home care are more likely to remain in prison because the State is unable or unwilling to find a home for these children after they have been criminalised for behaviour in previous placements.[227]

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[222] See generally Tamara Walsh, 'The overruled underclass: The impact of the law on Queensland's homeless people' (2005) 28(1) University of New South Wales Law Journal 122.
[223] Suzie Forell et al, 'No Home, No Justice? The legal needs of homeless people in NSW' (Access to Justice and Legal Needs Vol 2, Law and Justice Foundation of New South Wales, July 2005) 238; Susan Ayres, Kyleigh Heggie and Abilio de Almeida Neto, 'Bail refusal and homelessness affecting remandees in New South Wales' (Research Publication No 50, Corrective Services NSW, July 2010), vii.
[224] Eileen Baldry et al, 'Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?' (AHURI Final Report No 46, August 2003), 20.
[225] Eileen Baldry and Ruth McCausland, 'Mother seeking safe home: Aboriginal women post-release' (2009) 21(2) *Current Issues in Criminal Justice* 288, 290. See also Australian Institute of Health and Welfare, 'The health of Australia's prisoners' (2015), Cat. No. PHE 207, 29-30.
[226] Australian Institute of Health and Welfare, 'Youth justice in Australia 2015-16' (Bulletin No 139, March 2017), 12.
[227] Katherine McFarlane, 'NSW bail laws mean well but are landing homeless kids in prison', The Conversation (online), 16 December 2016. Available at: https://theconversation.com/nsw-bail-laws-mean-well-but-are-landing-homeless-kids-in-prison-68490.

Proposed Recommendations for Concluding Observations:

THAT Australia develop a comprehensive and coordinated national housing strategy that gives proper consideration to the human rights of those most vulnerable to homelessness, including people experiencing or at risk of homelessness for reasons of age, gender, race, disability, sexuality, locality or cultural background.

THAT Australia develop and implement strategies to address the needs of people experiencing or at risk of homelessness, in particular children, Aboriginal and Torres Strait Islander people, and women and children experiencing family violence, with clear measurable outcomes.

THAT Australia commit further funds for remote housing for Aboriginal and Torres Strait Islander peoples.

THAT Australia engage with state and local governments to conduct an audit of laws and policies that impact disproportionately or discriminatorily on people experiencing homelessness and encourage amendment of those laws and policies at state and local levels.

THAT Australia ensure the availability of social and affordable housing suitable for people with diverse housing needs through increased investment in affordable housing programs, specialist homelessness and tenant advisory services.

THAT Australia fund and support bail programs and bail accommodation, especially for children, young people and Aboriginal and Torres Strait Islander women, to reduce the high rate of people in prison on remand as a result of homelessness.

Other Issues

Conditions in offshore detention centres

270. Notwithstanding the Committee's recommendation in its 2009 concluding observations that detention centres should be closed, Australia continues to enforce its policy of mandatory detention for many asylum seekers. Of Australia's detention centres, conditions at offshore facilities are the most deplorable.[228] As recently as May 2016, UNHCR called for the removal of asylum seekers from offshore detention centre locations to locations having humane conditions where they can receive adequate support and services.[229]

271. There has been systematic failure on behalf of the Australian government and its contractors to provide an adequate standard of living for those in offshore detention centres.

[228] See eg conditions described in Australian Human Rights Commission, *Pathways to Protection: A Human Rights Based Response to the Flight of Asylum Seekers by Sea* (2016), 31.
[229] United Nations High Commissioner for Refugees, '*UNHCR Calls for Immediate Movement of Refugees and Asylum-Seekers to Humane Conditions*', Media statement (2 May 2016).

Proposed Recommendations for Concluding Observations:
THAT Australia immediately close the offshore processing centres on Nauru and Manus Island and all refugees and people seeking asylum be immediately brought to Australia.

Prison overcrowding

272. Prison overcrowding is becoming a significant issue across Australia in adult and youth prisons. Nationally, in 2015-16 prison utilisation in adult prisons was 99.4% in open or low security prisons and 115.9% in secure prisons.[230] Prison utilisation was 70.5% nationally for youth prisons in 2015-16.[231] However, prisons in Queensland are severely overcrowded compared to the national average,[232] and Victoria has recently announced the construction of a new youth prison, at least partly in response to concerns about overcrowding[233].

273. Factors contributing to prison overcrowding for both adults and children include:

- high and rising remand rates and re-imprisonment due to breaches of parole;[234]
- lack of affordable and appropriate housing;
- lack of specialist courts and alternative models that aim to address the causal factors linked to offending behaviour;
- failure to invest in targeted community based solutions or justice reinvestment models;
- lack of appropriately funded legal assistance;
- over-policing of Aboriginal and Torres Strait Islander communities;[235] and
- delays in the finalisation of matters in court.

274. Overcrowding exacerbates the violence and harm inherent in prisons.[236] Overcrowding is linked with increases incidences of assaults, self-harm

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[230] Productivity Commission, Report on Government Services (2017), 8.15.
[231] Ibid, 17.19.
[232] See Sisters Inside, Submission to Independent Review of Youth Detention in Queensland (October 2016), 5 fn 21-22.
[233] Cameron Houston, Chris Vedelago and Josh Gordon, 'New youth detention centre for Victoria', The Age (online), 31 January 2017. Available at: http://www.theage.com.au/victoria/new-youth-detention-centre-for-victoria-20170131-gu2jgu.html.
[234] See generally, Australian Bureau of Statistics, *4517.0 Prisoners in Australia* (2016), Key findings. Available at: http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0; Debbie Kilroy, 'Women in prison in Australia' (Panel presentation delivered at Current Issues in Sentencing Conference, National Judicial College of Australia and the ANU College of Law, Canberra, 6-7 February 2016), 4.
[235] National Association of Community Legal Centres and Human Rights Law Resource Centre, Freedom, Respect, Equality, Dignity: Action: NGO Submission to the UN Committee on the Elimination of Racial Discrimination, Australia (June 2010), 57-60.
[236] See generally, Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009).

and attempted suicides.[237] Disturbingly, the Queensland Ombudsman found that the number of self-harm incidents increased by 5.6 times between 2012-13 and 2014-15 in Queensland's most overcrowded prison (a secure women's prison).[238]

275. In our view, the answer to prison overcrowding is not to build more prisons but to reduce the number of adults and children in prison unnecessarily. This will require additional funding for affordable and appropriate housing in the community.

Proposed Recommendations for Concluding Observations:

THAT Australia urgently fund and implement diversionary programs and measures focused on reducing incarceration throughout the criminal justice system to reduce the number of people, particularly Aboriginal and Torres Strait Islander people, entering the criminal justice system and to reduce prison overcrowding.

[237] Queensland Ombudsman, 'Overcrowding at Brisbane Women's Correctional Centre: An investigation into the action taken by Queensland Corrective Services in response to overcrowding at Brisbane Women's Correctional Centre' (Tabled Report, September 2016), 23-25.
[238] Ibid, 39.

Article 12 – Right to Physical and Mental Health

List of Issues 2016, paras 24-25
24. Please provide information on the implementation of, and the resources allocated to, the National Aboriginal and Torres Strait Islanders Health Strategy (2013-2023).

25. Please provide information on steps taken to introduce alternatives to the indefinite or prolonged detention in prisons or psychiatric facilities of persons with psychosocial disabilities who are deemed unfit to stand trial. Please update the Committee on measures taken to improve access to mental health services, including in prisons.

Aboriginal and Torres Strait Islander people

276. The access to right to health for Aboriginal and Torres Strait Islander people in Australia is severely limited. Closing the Gap in health equality between Aboriginal and Torres Strait Islander people and non-Indigenous Australians is an agreed national priority, but to date has been backed by little meaningful action.

277. The crisis in Aboriginal and Torres Strait Islander health in Australia is reflected in the life expectancy gap which remains at 10.6 years for men and 9.5 years for women. In 2010-12, life expectancy at birth was estimated to be 69.1 years for Aboriginal and Torres Strait Islander men (compared with 79.7 years) and 73.7 years for women (compared with 83.1 years for their non-Indigenous counterparts).[239]

278. Civil society organisations in Australia, including peak Aboriginal and Torres Strait Islander community organisations through the Redfern Statement,[240] have outlined the key elements of reform in this area including:

- Additional funding for Aboriginal health services is inequitable. Funding must be related to population or health need, indexed for growth in service demand or inflation, and needs to be put on a rational, equitable basis to support the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan (2013–2023).
- Funding for the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan (2013–2023)
- Make Aboriginal Community Controlled Services (ACCHS) the preferred providers for health services for Aboriginal and Torres Strait Islander people.

[239] See, for example, Australian Bureau of Statistics, *Life Tables for Aboriginal and Torres Strait Islander Australians, 2010-2012,* (ABS Cat No 3302.0.55.003).
[240] The Redfern Statement, released in June 2016, is a call to action for Government by peak Aboriginal and Torres Strait Islander community organisations in Australia: http://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-_Final.pdf

- Create guidelines for Primary Health Networks
- Resume indexation of the Medicare rebate, to relieve profound pressure on ACCHS
- Reform of the Indigenous Advancement Strategy, including restoration of funding
- Fund an Implementation Plan for the National Aboriginal and Torres Strait Islander Suicide Prevention Strategy
- Develop a long-term National Aboriginal and Torres Strait Islander Social Determinants of Health Strategy, in partnership with Aboriginal and Torres Strait Islander people through their peak organisations.

Proposed Recommendations for Concluding Observations:
THAT Australia implement key elements for Aboriginal and Torres Strait Islander health reform as outlined in the Redfern Statement.

People with Disability

Compulsory treatment of people with disability

279. The compulsory treatment of people with disability is authorised by mental health laws in all States and Territories in Australia. While these laws vary across States and Territories, they have failed to prevent, and in some cases actively condone unacceptable practices, including invasive and irreversible treatments, such as the authorisation of psychosurgery, ECT and sterilisation on involuntary patients, and harmful practices such as chemical, mechanical and physical restraint and seclusion.[241] As a result, many people with disability experience serious breaches of their right to health within the current legislative, policy and practice framework.

280. Australia made an Interpretative Declaration in respect of Article 17 upon ratifying the Convention on the Rights of Persons with Disabilities (CRPD)[242], which effectively means that Australia believes that compulsory treatment within the existing mental health framework complies with the CRPD. However, in 2013 the Committee on the Rights of Persons with Disabilities (CRPD) recommended that Australia:

> *"…repeal all legislation that authorises medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or*

[241] Bevan, N., and Sands, T., (2016) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia',* Australian Cross Disability Alliance (ACDA); Sydney, Australia, paras 21-26 and 37-44.
[242] Australia's Interpretative Declaration to Article 17 of the CRPD states: "Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of psychosocial disability, where such treatment is necessary, as a last resort and subject to safeguards".

imposition of compulsory treatment, either in institutions or in the community…"[243]

281. Instead of addressing mental health laws as an inherent breach of human rights, States and Territories have focused on reviewing and amending mental health legislation in an effort to increase compliance with human rights.

Proposed Recommendations for Concluding Observations:
THAT Australia conduct a comprehensive audit of laws, policies and administrative arrangements underpinning compulsory treatment to eliminate such laws and practices.

THAT Australia withdraw its Interpretative Declaration in relation to Article 17 of the Convention on the Rights of Persons with Disabilities (CRPD).

Criminal justice process

282. There is a lack of appropriate community based accommodation, therapeutic and disability support options available for people with disability who are deemed unfit to stand trial due to an intellectual, cognitive or psychosocial disability. Consequently, people with disability can be detained indefinitely without conviction in prisons and psychiatric facilities, and subject to punitive treatment and practices, such as chemical and mechanical restraints and solitary confinement.[244] This practice of indefinite and prolonged detention in prisons and psychiatric facilities is disproportionately experienced by Aboriginal and Torres Strait Islander people with disability.[245]

283. The Australian Government's voluntary commitment to improve the way the criminal justice system treats people with psychosocial and /or cognitive disability[246] is welcome, but there has been little public information on what tangible outcomes have been achieved from the cross-jurisdictional working group established to implement this commitment.[247]

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[243] Committee on the Rights of Persons with Disabilities, UN Doc CRPD/C/AUS/CO/1, Para 34
[244] Bevan, N., and Sands, T., (2016) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia',* Australian Cross Disability Alliance (ACDA); Sydney, Australia, paras 30-44. http://dpoa.org.au/submissions/acda-submission-to-senate-inquiry-into-indefinite-detention-of-people-with-cognitive-and-psychiatric-impairment-in-australia/
[245] First Peoples Disability Justice Consortium, *Aboriginal and Torres Strait Islander Perspectives on the Recurrent and Indefinite Detention of People with Cognitive and Psychiatric Impairment*, April 2016, First Peoples Disability Network. http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf
[246] Committee on Economic, Social and Cultural Rights, 'List of issues in relation to the fifth periodic report of Australia, Addendum, Replies of Australia to the list of issues, 61st sess, UN Doc E/C.12/AUS/Q/5/Add.1, 29 May-23 June2017, para 133.
[247] Ibid. para 134.

284. The Australian Government has also not responded to comprehensive, national inquiries and recommendations for law, policy and program reform to address this situation.[248]

285. Concerns remain about State and Territory responses that focus on detaining people found unfit to plead in highly restrictive 'community based treatment settings' that still operate as institutional places of detention, with features such as long term solitary living arrangements, locked windows and doors, video surveillance and limited opportunities for physical, recreational, therapeutic, rehabilitative or social activities.[249]

Proposed Recommendations for Concluding Observations:
THAT Australia develop and implement a range of gender and culture specific diversionary programs and mechanisms and community based sentencing options that are integrated with individualised disability support packages and social support programs to prevent people with disability coming into contact with the criminal justice system.

THAT Australia establish uniform national legislation, in line with international human rights law, to facilitate due legal process to end indefinite detention of people with disability without conviction. This should include measures for culturally relevant administrative and disability support frameworks that enable unconvicted people with disability to receive genuine community based treatment, rehabilitation and support in the community.

Forced Sterilisation of People with Disability and People with Intersex Variation

286. Forced and coerced sterilisation of people with disability, particularly women and girls with disability, and people with intersex variations, is an ongoing practice in Australia[250] without independent oversight and without transparent, human rights-based standards of care.

287. There are significant long-term, harmful physical and mental effects as a result of forced sterilisation, and this practice has been identified as an act of violence, a form of social control and a form of torture by the UN

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[248] Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws', ALRC Report 124, Commonwealth of Australia, 2014; Australian Human Rights Commission, 'Equal before the law – Towards Disability Justice Strategies', February 2014; Community Affairs References Committee, 'Indefinite Detention of people with cognitive and psychiatric impairment in Australia', Commonwealth of Australia, 2016.
[249] People with Disability Australia, 'Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture', (Submission, People with Disability Australia, October 2014) www.pwd.org.au/documents/pubs/SB14-UNCAT.doc
[250] People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Organisation Intersex International Australia, Submission No 23 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, 15 February 2013.

Special Rapporteur on Torture,[251] and as a form of violence by the UN Committee on the Rights of the Child (CRC).[252] UN human rights treaty bodies have also called for the guaranteeing of bodily integrity, autonomy and self-determination, and access to affirmative peer support and counselling.[253]

288. Since 2005, UN human rights treaty bodies, UN special procedures and international medical bodies have made recommendations to Australia to enact national legislation to prohibit forced sterilisation.[254] The Human Rights Council made similar recommendations as an outcome of the Universal Periodic Review (UPR) of Australia in 2015. [255]

289. In 2013, a Senate Community Inquiry into the involuntary or coerced sterilisation of people with disability and intersex people in Australia released two Inquiry Reports making a number of recommendations regarding reform to law and policy and the development of reproductive health support programs and educative information and programs for families and the medical profession.[256] The Inquiry found that 'normalising' 'sex-assignment surgery' still occurs routinely in infancy and childhood and that 'normalising appearance goes hand in hand with

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[251] Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48.

[252] Human Rights Committee, *General Comment No 13: The Right of the Child to Freedom from All Forms of Violence*, UN Doc CRC/C/GC/13 (18 April 2011) [16], [21].

[253] For example: United Nations, Committee on the Rights of Child. Concluding observations on the fifth periodic report of New Zealand [Internet]. Geneva: United Nations; 2016 Oct [cited 2016 Oct 7]. Report No.: CRC/C/NZL/CO/5. Available from: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_COC_NZL_25459_E.pdf. United Nations, Committee on the Rights of Child. Concluding observations on the fifth periodic report of France (advance unedited version) [Internet]. Geneva: United Nations; 2016 Feb [cited 2016 Feb 5]. Report No.: CRC/C/FRA/CO/5. Available from: http://stop.genitalmutilation.org/public/France_Concl-Obs_CRC_C_FRA_CO_5_22995_E.doc. United Nations, Committee against Torture. Concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region [Internet]. Geneva: United Nations; 2015 [cited 2015 Dec 28]. Report No.: CAT/C/CHN-HKG/CO/5 22478 E. Available from: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN-HKG%2fCO%2f5&Lang=en

[254] See UN Docs: CAT/C/AUS/CO/4-5; CRPD/C/AUS/CO/1; CRC/C/AUS/CO/4; A/HRC/WG.6/10/L; CEDAW/C/AUS/CO/7; CRC/C/15/Add.268; A/67/227; A/HRC/22/53. See also: FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization* <http://www.wwda.org.au/FIGOGuidelines2011.pdf>

[255] Human Rights Council, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) rec 136.180-184, p.22.

[256] Senate Standing Committees on Community Affairs, *Involuntary or coerced sterilisation of intersex people in Australia* (2013), op. cit; Senate Standing Committees on Community Affairs, *Involuntary or coerced sterilisation of people with disabilities in Australia* (2013) Commonwealth of Australia <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/first_report/index.htm>

the stigmatisation of difference'.[257] The Australian Senate Committee stressed that any decision-making around medical treatment of intersex children must take human rights considerations into account:[258]

> *There is frequent reference to 'psychosocial' reasons to conduct normalising surgery. To the extent that this refers to facilitating parental acceptance and bonding, the child's avoidance of harassment or teasing, and the child's body self-image, there is great danger of this being a circular argument that avoids the central issues. Those issues include reducing parental anxiety, and ensuring social awareness and acceptance of diversity such as intersex. Surgery is unlikely to be an appropriate response to these kinds of issues.*[259]

290. Australia's response to the Inquiry Reports[260] passes responsibility for action on forced sterilisation and 'sex normalising' practices to State and Territory jurisdictions; and retains the focus on better regulation and non-binding guidelines rather than prohibition of forced sterilisation.

291. In March 2017, a joint consensus Darlington Statement was made by Australian and Aotearoa/New Zealand intersex organisations and advocates setting our intersex human rights priorities across a range of areas.[261]

292. Other UN Committees are increasingly recognising that intersex people who have had unnecessary surgery or treatment are 'victims of abuses and mistreatment'.[262] Further, unnecessary surgery or treatment on intersex people has been described by a number of UN Treaty Bodies as a

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[257] See Morgan Carpenter, 'Intersex rights and freedoms' in *Court of Conscience, University of New South Wales Law Society Journal* 9 (2015) 27-33.
[258] Parliament of Australia, Senate Community Affairs References Committee, *Involuntary or Coerced Sterilisation of Intersex People in Australia*, October 2013, [3.45], [3.128], 49 and 74.
[259] Parliament of Australia, Senate Community Affairs References Committee, *Involuntary or Coerced Sterilisation of Intersex People in Australia*, October 2013, p. 74.
[260] Australian Government, Australian Government response to the Senate Community Affairs References Committee reports (May 2015) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Additional_Documents>
[261] *Darlington Statement: Joint consensus statement from the intersex community* (March 2017) https://oii.org.au/darlington-statement/
[262] Committee on the Elimination of Discrimination against Women, *Concluding observations on Costa Rica* (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40].

'harmful practice' [263] and causing 'physical and psychological suffering'.[264] Australia has not legislated against enforced medical correction of intersex variations. Evidence, including from a 2016 Family Court case,[265] shows that such medical practices persist in Australia, on the basis of inadequate medical evidence and without independent oversight.

Proposed Recommendations for Concluding Observations:

THAT Australia develop and enact national uniform legislation prohibiting the forced sterilisation of children with disability and adults with disability in the absence of their prior, fully informed and free consent.

THAT Australia, through the National Disability Strategy identify and implement measures relating to reproductive health support programs and education for families and the medical profession in line with the 2013 Senate Committee Reports.

THAT Australia develop and enact legislation prohibiting non-medically necessary sterilisation, genital normalising and hormonal interventions on people with intersex variations without their prior, fully informed and free consent.

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[263] Committee on the Elimination of Discrimination against Women, *Concluding observations on Germany* (CEDAW/C/DEU/CO/7-8), 3 March 2017, at [23] and [24]; Committee on the Elimination of Discrimination against Women, *Concluding observations on Germany* (CEDAW/DEU/CO/6), 10 February 2009, at [61] and [62]; Committee on the Elimination of Discrimination against Women, *Concluding observations on Ireland* (CEDAW/C/IRL/CO/6-7), 3 March 2017, at [24] and [25]; Committee on the Elimination of Discrimination against Women, *Concluding observations on France* (CEDAW/C/FRA/CO/7-8), 22 July 2016, at [17], [18]; Committee on the Elimination of Discrimination against Women, *Concluding observations on Switzerland* (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Elimination of Discrimination against Women, *Concluding observations on the Netherlands* (CEDAW/C/NLD/CO/6), 18 November 2016, at [21] and [22]; Committee on the Elimination of Discrimination against Women, *Concluding observations on Costa Rica* (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]; Committee on the Rights of the Child, *Concluding observations on Switzerland* (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]; Committee on the Rights of the Child, *Concluding observations on Chile* (CRC/C/CHL/CO/4-5), 30 October 2015, at [48]; Committee on the Rights of the Child, *Concluding observations on Ireland (CRC/C/IRL/CO/3-4),* 1 March 2016, at [39], [40]; Committee on the Rights of the Child, *Concluding observations on France (CRC/C/FRA/CO/5),* 29 January 2016, at [47] and [48]; Committee on the Rights of the Child, *Concluding observations on Great Britain and Northern Ireland (CRC/C/GBR/CO/5),* 3 June 2016, at [45], [46]; Committee on the Rights of the Child, *Concluding observations on New Zealand (CRC/C/NZL/CO/5),* 30 September 2016, at [24], [25]; Committee on the Rights of the Child, *Concluding observations on South Africa (CRC/C/ZAF/CO/2),* 30 September 2016, at [37], [38].

[264] Committee against Torture, *Concluding observations on France* (CAT/C/FRA /CO/7), 10 June 2016, at [34], [35]; Committee against Torture, *Concluding observations on Denmark* (CAT/C/DNK/CO/6-7), 4 February 2016, at [42]; Committee on the Elimination of Discrimination against Women, *Concluding observations on Switzerland* (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Rights of the Child, *Concluding observations on Switzerland* (CRC/C/CHE/CO/2-4), 26 February 2015, at [42].

[265] Re Carla (Medical procedure) [2016] FamCA 7. See also: Morgan Carpenter, The Family Court case Re: Carla (Medical procedure) [2016] FamCA 7, OII Australia, 2016, https://oii.org.au/31036/re-carla-family-court/

THAT Australia criminalise non-medically necessary deferrable medical interventions that alter the sex characteristics of infants and children without personal consent.

THAT Australia ensure any decision-making on medical treatment of intersex children be made under a human rights framework.

LGBTI People and Health

293. The general health of LGBTI people is lower than the national average, with trans men and women reporting the lowest levels of general health. See above for forced sterilisation of people with disability and people with intersex variations.

294. In particular, LGBTI Australians experience significantly poorer mental health outcomes than the general population, with discrimination, mistreatment and social exclusion being key causal factors for LGBTI mental ill-health and suicidality, including:

- Higher mental health disorder diagnosis rates: LGB people are twice as likely to have been diagnosed with a mental health disorder in the past 12 months, including LGBTI people over 16 being nearly 3 times more likely to be diagnosed with depression, and 2-3 times as likely to meet the criteria for an anxiety disorder.

- Higher rates of self-harm: LGB young people are nearly twice as likely to engage in self-injury, transgender people are over 6 times more likely and people over 16 with an intersex variation are three times more likely.

- Higher rates of suicidal ideation: LGB people over 16 are over 6 times more likely to have thoughts of suicide, transgender adults are nearly 18 times more likely and people over 16 with an intersex variation are nearly 5 times more likely.

- Higher rates of suicide attempts: LGBTI people are more likely to attempt suicide, with young people aged 16 to 27 being five times more likely, people over 16 with an intersex variation being six times more likely and transgender adults being nearly eleven times more likely to attempt suicide[266].

[266] (Source: National LGBTI Health Alliance, *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI people* (July 2016) http://lgbtihealth.org.au/wp-content/uploads/2016/07/SNAPSHOT-Mental-Health-and-Suicide-Prevention-Outcomes-for-LGBTI-people-and-communities.pdf

Proposed Recommendations for Concluding Observations:
THAT Australia ensure non-discriminatory access to health and mental health services for LGBTI people, including targeted health promotion and suicide prevention initiatives in collaboration with LGBTI specific service providers and community organisations.

Access to cross sex hormones

295. Australian law currently requires transgender young people to obtain Family Court approval to access cross sex hormones to develop male or female sex characteristics at around the age of 16.

We understand that Australia is the only jurisdiction in the world that requires transgender young people to go to court for this type of medical treatment. The court process delays access to vital medical treatment for transgender young people to affirm their identity and causes significant stress, uncertainty and financial stain for trans young people and their families. The delay and stress of court exacerbates symptoms of gender dysphoria, causing serious negative mental health outcomes for transgender teenagers.

Further, the majority of states and territories in Australia do not allow a person under 18 to change the sex marker on their birth certificate, which contributes to poorer mental health outcomes.

Proposed Recommendations for Concluding Observations:
THAT Australia remove unnecessary and harmful legal barriers to transgender young people accessing medical treatment, including access to cross sex hormones.

Mandatory Detention and Offshore Processing

296. Under this article, the Australia has a duty to ensure, without discrimination, the highest attainable standard of health for all persons within its jurisdiction. Australia's mandatory detention and offshore processing regime and the limited support provided to asylum seekers living in the community on bridging visas is having a seriously detrimental effect on the mental health of numerous asylum seekers.

Mandatory indefinite detention

297. In its report, Australia notes that its regime of mandatory detention of all 'unlawful' non-citizens in Australia is 'neither unlawful nor arbitrary', despite noting that 'detention is not limited by a set timeframe'. This position is inconsistent with previous findings by UN bodies that mandatory detention, including of maritime arrival asylum-seekers, in Australia is arbitrary and in breach of international law.[267] Research has

[267] See the views of the Human Rights Committee in the following cases: *Communication No 2094/2011*, 108th sess, UN Doc CCPR/C/108/D/2094/2011 (20 August 2013) ('*FKAG v Australia*'); *Communication No 2136/2012*, 108th sess, UN Doc CCPR/C/108/D/2136/2012 (20

also shown that detention causes psychological damage to those who are incarcerated.[268] At the time of writing, the average time a person was held in immigration detention was 493 days.[269]

298. Our view is that statutory provisions to limit time in detention are necessary to ensure against prolonged detention. Without statutory limits on detention, there is heightened risk that people will remain arbitrarily detained for prolonged periods with detrimental effect on their health and wellbeing.[270]

299. In relation to children in detention, we commend the Government for pursuing alternative detention arrangements on the Australian mainland. Detention statistics show that as at 31 January 2017, there were less than 5 children in onshore alternative detention arrangements, 234 in the community under a residence determination, and 3,925 in the community on bridging E visas.[271] However, at the time of writing, there were still 45 children held in the offshore regional processing centre on Nauru.[272] We refer the Committee to the Australian Human Rights Commission's 2015 report, *Forgotten Children: National Inquiry into Children in Immigration Detention,* which found that children in detention have significantly higher

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August 2013) ('*MMM v Australia'*); Communication No 1255, 1256, 1259, 1260, 1266, 1268, 1270, 1288/2004, 90th sess, UN Doc CCPR/C/90/D/1255,1256,1259,1260,1266,1268,1270&1288/2004 (11 September 2007) ('*Shams et al v Australia'*); Communication No 1324/2004, 88th sess, UN Doc CCPR/C/88/D/1324/2004 (13 November 2006) *('Shafiq v Australia'*); Communication No 1050/2002, 87th sess, UN Doc CCPR/C/87/D/1050/2002 (9 August 2006) ('*D and E v Australia'*); Communication No 1069/2002, 79th sess, UN Doc CCPR/C/79/D/1069/2002 (6 November 2003) ('*Bakhtiyari v Australia'*); Communication No 1014/2001, 78th sess, UN Doc CCPR/C/78/D/1014/2001 (18 September 2003) ('*Baban v Australia'*); Communication No 900/1999, 76th sess, UN Doc CCPR/C/76/D/900/1999 (28 October 2002) ('*C v Australia'*); Communication No 560/1993, 59th sess, UN Doc CCPR/C/59/D/560/1993 (30 April 1997) ('*A v Australia'*).

[268] Janette P Green and Kathy Eagar, 'The Health of People in Australian Immigration Detention Centres' (2010) 192 *Medical Journal of Australia* 65; G J Coffey, I Kaplan, R C Sampson and M M Tucci, 'The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum' (2010) 70 *Social Science & Medicine* 2070; Louise K Newman, Michael Dudley and Zachary Steel, 'Asylum, Detention, and Mental Health in Australia' (2008) 27 *Refugee Survey Quarterly* 110.

[269] Department of Immigration and Border Protection, *Immigration Detention Statistics* (2017) <https://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention>.

[270] For example, a report by the Commonwealth Ombudsman in December 2016 found that many who had their bridging visas cancelled were subjected to prolonged periods of detention while awaiting the Minister to exercise discretion to either release them into the community or allow them to apply for another visa. See eg, Commonwealth Ombudsman, *Department of Immigration and Border Protection: The administration of people who have had their bridging visa cancelled due to criminal charges or convictions and are held in immigration detention*' (December 2016), 16. The Ombudsman noted that prolonged detention in this manner was detrimental to a person's mental health.

[271] Department of Immigration and Border Protection, Immigration and Detention Community Statistics Summary (2017) <https://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention>.

[272] *Ibid*.

rates of mental health disorders than children in the Australian community.[273] It also evidenced numerous reported incidents of assault, sexual assault and self-harm involving children in detention.[274]

Proposed Recommendations for Concluding Observations:
THAT Australia enact legislation to place a statutory time limit on detention.

THAT Australia implement the recommendations contained Australian Human Rights Commission's' report, *Forgotten Children,* to ensure the physical and mental health of all asylum seekers, particularly child asylum seekers.

THAT Australia should appoint an independent child guardian to protect the rights and interests of unaccompanied asylum seeker children.

THAT no child should be held in immigration detention, either in Australia, or in regional processing centres in Nauru and Manus Island.

Offshore processing and detention

300. Australia has international obligations to asylum seekers on offshore detention centres.[275] This is because it has a requisite degree of 'effective control' over asylum seekers on Manus and Nauru.[276]

301. There is a wealth of evidence suggesting that health facilities and the level of medical treatment available in both processing centres are inadequate for anything beyond simple medical procedures.[277] Doctors have also

[273] Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* (2014), 61. The Commission noted that detention staff conducted mental health assessments of 234 children between the ages of 5-17 in detention centres on Australia and Christmas Island found that 34% had mental illnesses in seriousness to children referred to hospital-based child mental health out-patient services for psychiatric treatment. Only 2% of children in the Australian community have comparable levels of mental illness.
[274] Ibid, 62. For the period from January 2013 to March 2014 there were 233 assaults involving children; 33 incidences of sexual assault the majority of which involved children; and 128 incidences of self-harm.
[275] A principle of international law is that a State that is a party to a human rights treaty is bound to uphold the rights contained in that treaty for all persons within its 'jurisdiction'. It is generally understood that 'jurisdiction' can extend beyond a state's territorial limits where it has the requisite degree of 'effective control'. [275] For a robust discussion of these principles and case law, see Andrew and Renata Kaldor Centre for International Refugee Law, *'Factsheet: Offshore processing: Australia's responsibility for asylum seekers and refugees in Nauru and Papua New Guinea'* (2015).
[276] The facts relating to 'effective control' can be found in the High Court judgement in *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2015] 257 CLR 42. These facts include that Australia has removed persons to Nauru under the *Migration Act 1958* (Cth), and through contracted service providers, funded and retained a degree of control over how the detention centres operate. We therefore submit that Australia has obligations under international law to ensure and provide the highest attainable level of physical and mental health to all asylum seekers and refugees on Manus Island and Nauru.
[277] See eg, Rebecca De Boer, '*Background Note:*

criticised the lack of appropriate medical facilities in offshore centres. The lack of appropriate medical facilities is evidenced by the large number of 'transitory persons' who have been brought back to Australia for medical treatment that cannot be provided on Nauru and Manus Island.[278] We note with concern that such medical transfers have previously been denied to some asylum seekers and refugees or were not acted upon in an expedient manner. In the case of Hamid Kehazaei, a 30-hour delay meant that he was left critically ill on Manus Island and died by the time he arrived in Australia.[279]

302. In March 2017, the healthcare provider on Manus Island, International Health and Medical Services (IHMS), left the island as it was found to be practising medicine unlicensed. IHMS was replaced from midnight on 31 March by staff from Paradise, a Papua New Guinean company, which is only providing basic and emergency medical care.[280]

303. There have been numerous reported incidents of assault, sexual assault and self-harm involving children in detention,[281] and numerous reports of assault upon adults as well. The arrangements made by the Australian government for the operation of offshore processing and detention centres do not appear to provide sufficient safeguards to ensure the physical protection from assault of detainees.

Proposed Recommendations for Concluding Observations:
THAT Australia, as a matter of urgency, close down the offshore processing centres on Nauru and Manus Island. In the interim, the Australian Government must improve the quality of and access to appropriate medical facilities for asylum seekers and refugees on both Manus Island and Nauru and ensure their physical protection. The Australian Government must also improve procedures for the transfer to Australia of asylum seekers and refugees in need of medical treatment.

Health care for asylum seekers on Nauru and Manus Island', Parliament of Australia Department of Parliamentary Services (2013); Amnesty International, *Island of Despair: Australia's "Processing" of Refugees on Nauru* (2017), 25. This conclusion was based on testimonies of refugees and asylum seekers, along with medical records and audio recordings of medical appointments.

[278] As of 17 October 2016, there were 338 refugees in Australia on medical grounds who were subject to return to Nauru. Australian Senate, *Supplementary Budget Estimates 2016-2017 (October 2016): Immigration and Border Protection Portfolio,* Questions taken on notice (SE16/068) - Nauru medical transfers - Programme 1.5: IMA Offshore Management. <http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/legconctte/estimates/sup1617/DIBP/index>

[279] Ben Doherty, Hamid Kehazaei left critically ill on Manus because Australia delayed transfer, inquest told (The Guardian, 30 November 2016) < https://www.theguardian.com/australia-news/2016/nov/30/hamid-kehazaei-left-critically-ill-on-manus-because-australia-blocked-transfer>

[280] 'Manus healthcare provider forced to leave for practising unlicensed,' The Guardian Australia, 3 April 2017, https://www.theguardian.com/australia-news/2017/apr/03/manus-healthcare-provider-forced-to-leave-for-practising-unlicensed.

[281] Op cit, 62.

Fast-track process and bridging visa holders living the community

304. Asylum seekers who form part of the Legacy Caseload have been living in the community on bridging visas with minimal support over a number of years. Lack of support and uncertainty surrounding their migration status has caused considerable mental health issues within this cohort. According to the Australian Border Deaths database at Monash University, at least ten people have died in the community while on bridging visas since 2015.[282]

305. Being in a state of prolonged uncertainty coupled with a history of trauma and existing mental health problems results in lethal hopelessness.[283] The Australian government should provide access to permanent protection visas for all asylum seekers in Australia as well as those who have applied for, or been granted, TPVs or SHEVs. This would remove this state of uncertainty. In the interim, the government must take adequate steps to ensure that those living in the community on bridging visas and temporary visas have access to appropriate mental health services.

Proposed Recommendations for Concluding Observations:
THAT Australia take appropriate measures to ensure that asylum seekers living in the community on bridging visas are given access to mental health services.

Older People

Mental health

306. There has been systemic neglect of the mental health issues faced by older Australians, including depression and the high prevalence of suicide, particularly among older men. In 2013 men aged 85 and over had the highest age-specific suicide death rate of any age group in Australia.[284] Yet when older people receive appropriate support they can often return to healthy and productive lives.

307. Older people have less access to two important public mental health support arrangements in Australia than other age groups: the NDIS and the Medicare-funded *Better Access to Mental Health Care Program*.

308. The NDIS allows for significant systems of community support for people with a disability arising from a mental illness. However, people over the age of 65 acquiring a disability from mental illness will be excluded from these supports because of the restriction of the NDIS to those under the age of 65 years. As yet, equitable services are not delivered within the aged care or health systems for those ineligible for the NDIS because of their age.

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[282] Border Crossing Observatory, *Australian Border Deaths Database* (2016) <artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/>
[283] G Procter et al, Lethal hopelessness: Understanding and responding to asylum seeker distress and mental deterioration (2017), I*nternational Journal of Health and Nursing.*
[284] ABS. 3303.0 - Causes of Death, Australia, 2013

309. In addition, over 175,000 older Australians living in residential aged care are ineligible to access mental health services available to the rest of the community through the Medicare-funded *Better Access to Mental Health Care Program*. This represents a significant denial of citizen rights to a specific group of people, based on their age.

310. While Nursing Home residents can access some mental health services through their aged care provider, in practice access to these supports is very limited and not as well funded.

Proposed Recommendations for Concluding Observations:
THAT Australia allow older people access to the NDIS and Medicare-funded *Better Access to Mental Health Care Program*.

Elder abuse

311. Elder abuse is generally viewed as mistreatment of an older person that is committed by someone with whom the older person has a relationship of trust such as a partner, family member, friend or carer. It may be physical, social, financial, psychological or sexual and can include mistreatment and neglect. Elder abuse violates an older person's basic right to feel safe[285] and of course to be safe.

312. Awareness of elder abuse is limited within Australia. The Australian Institute of Family Studies' recent research report, *Elder abuse: Understanding issues, frameworks and responses* offered the following key findings:

- Although evidence about the prevalence of elder abuse in Australia is lacking it is likely that between 2% and 10% of older Australians experience elder abuse in any given year, and the prevalence of neglect is possibly higher.
- Most elder abuse is intra-familial and intergenerational
- Financial abuse appears to be the most common form of abuse experienced by older people
- The problem of elder abuse is of increasing concern in the face of an ageing population
- Our federal system of government means that responses to elder abuse are complicated as they are contained within multiple layers of legislative and policy frameworks across health, ageing and law at Commonwealth and state level.[286]

Proposed Recommendations for Concluding Observations:
THAT Australia introduce appropriate program, policy and legislative measures to raise awareness of and respond to Elder Abuse.

[285] Seniors Rights Victoria https://seniorsrights.org.au/your-rights/ April 2017
[286] Rae Kaspiew, Rachel Carson and Helen Rhoades, The Australian Institute of Family Studies. Elder abuse: Understanding issues, frameworks and responses. Research Report No. 35 — February 2016

Prisoner Health

313. Prison health services in Australia remain inadequate.

314. Despite the known prevalence of complex health needs and mental health disorders among people in prison, especially women,[287] Australian Institute of Health and Welfare data shows that only 22% of people entering prison in 2015 were referred to prison mental health services following their initial reception screening assessment[288].

315. Prison health services also remain disconnected from community-based services and people exiting prison continue to have poor health and social outcomes.[289] One study found that women exiting prison were 14.2 times more likely to die by suicide than the general population.[290]

316. Ultimately, prison is not a therapeutic environment, especially for people with complex health needs. [291] Australian Governments must establish and fund community-based services to prevent and divert people from entering the criminal justice system. There is also a need for the Australian Government to improve the accessibility of services and supports funded under the National Disability Insurance Scheme to people in and exiting prison.[292]

Proposed Recommendations for Concluding Observations:
THAT Australia improve access to health services for people in prison and implement measures to end the criminalisation and imprisonment of people affected by mental illness, disability and substance misuse.

THAT Australia implement arrangements to support continuity between prison-based health services and community-based services to reduce poor post-release

[287] See eg Eileen Baldry et al, 'A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system' (UNSW, October 2015); Ed Heffernan et al, 'The Family Business: Improving understanding and treatment of Post-Traumatic Stress Disorder among incarcerated Aboriginal and Torres Strait Islander women' (Report, beyondblue, 2014).
[288] Australian Institute of Health and Welfare, 'The health of Australia's prisoners' (2015), Cat. No. PHE 207, 29-30. This data does not include New South Wales.
[289] See Zoe Cutcher et al, 'Poor health and social outcomes for ex-prisoners with a history of mental disorder: a longitudinal study' (2014) 38(5) *Australian and New Zealand Journal of Public Health* 424; Kate van Dooren, 'Risk of death for young ex-prisoners in the year following release from adult prison' (2013) 37(4) *Australian and New Zealand Journal of Public Health* 377.
[290] Matthew J. Spittal et al, 'Suicide in adults released from prison in Queensland, Australia: a cohort study' (2014) 68(10) *Journal of Epidemiology and Community Health* 993.
[291] Eileen Baldry and Sophie Russell, 'The Booming Industry continued: Australian Prisons a 2017 update' (Article, January 2017), 12.
[292] Jesse Young and Stuart Kinner, 'Prisoners are excluded from the NDIS – Here's why it matters', The Conversation (online), 14 March 2017. Available at: https://theconversation.com/prisoners-are-excluded-from-the-ndis-heres-why-it-matters-73912. See also Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (November 2016), recommendation 25.

health and social outcomes, especially among women, young people and Aboriginal and Torres Strait Islander people.

THAT Australia adequately fund accessible community-based health services, including community mental health services, disability services and drug and alcohol rehabilitation services, to prevent people from entering prison as a result of undiagnosed or untreated medical issues.

THAT Australia, as a priority, implement measures to improve accessibility of services and supports under the National Disability Insurance Scheme for people in and exiting prison.

Articles 13 & 14 — Right to Education

317. Article 13 (1) recognises the right of everyone to education. Education should enable the effective participation of all in society and strengthen respect for human rights and fundamental freedoms. States Parties are required to provide free compulsory primary education, free and accessible secondary education and higher education which is equally accessible on the basis of capacity.

Education Equity

318. The Gonski Review (2011)[293] (the Review) reported that a performance gap between our highest and lowest performing students is growing in Australia. There is an unacceptable correlation between low levels of achievement and educational disadvantage, particularly among students from low socioeconomic backgrounds. The proportion of students living in poverty is growing, with the child poverty rate at 17.7%.[294]

319. The Review identified a series of concerning trends in education funding, including lack of consistency and transparency in school funding, increasing concentration of disadvantaged students in certain schools, inadequate provision for students with a disability and lack of robust and nationally comparable data on funding for the disadvantaged children. Expenditure on educational institutions as a percentage of GDP, for all education levels combined, is below the OECD average, with a higher share from private sources than the (OECD) average.[295]

320. Research has identified that school equity is declining, especially in metropolitan areas and among secondary schools; a child's background is having a greater impact on their ability to succeed at school; and that disadvantage is increasingly concentrated. [296]

Proposed Recommendations for Concluding Observations:

THAT Australia report on progress on the 41 recommendations set out in the Gonski Review (2011), with specific reference to how they have developed a more targeted, prudent and coordinated approach for needs based investment.

THAT Australia implement full funding of all 41 Gonski Review recommendations with the objective of improving the equity and effectiveness of the funding mix across all schools.

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[293] Australian Government, 2011. The Review of Funding for Schooling. View at: https://docs.education.gov.au/system/files/doc/other/review-of-funding-for-schooling-final-report-dec-2011.pdf Viewed on 18 April 2017.

[294] Australian Council of Social Services and the Social Policy Research Centre. 2016. *Poverty in Australia 2016. View at: http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf Viewed on 10 April 2017.*

[295] OECD. 2016. *Education Policy Outlook Snapshot.* View at: http://www.oecd.org/australia/highlightsaustralia.htm Viewed on 15 April 2017.

[296] Centre for Policy Development. 2015. *Uneven Playing Field: the State of Australia's Schools*. View at: https://docs.education.gov.au/system/files/doc/other/review-of-funding-for-schooling-final-report-dec-2011.pdf Viewed at 19 May 2017.

Access to Education for Aboriginal and Torres Strait Islander People

List of Issues 2016, para 26
26. Please provide information on the implementation and impact of the Remote School Attendance Strategy (2014) and the National Partnership Agreement on Universal Access to Early Childhood Education (2013-2015). Please also provide information on other measures taken to improve access to quality education, including early education, in remote areas.

Early childhood education and care (ECEC)

321. Currently Aboriginal and Torres Strait Islander children are twice as likely to be developmentally vulnerable in the early years, and only half as likely to access early education as non-Indigenous students.[297] The Productivity Commission has identified a gap of 15,000 places for Aboriginal and Torres Strait Islander children in ECEC. ECEC that is culturally safe is crucial for Aboriginal and Torres Strait Islander children's engagement with education and healthy development. It can also contribute to preventing the chronic over-representation of Aboriginal and Torres Strait Islander children in the child protection and out of home care system.

Proposed Recommendations for Concluding Observations:
THAT Australia provide cultural training for teachers, build relationships between education systems and the community, and focus on early childhood education.

THAT Australia increases investment in, and prioritises Aboriginal and Torres Strait Islander community controlled ECEC programs.

THAT Australia ensures at least two full days (22.5 hours) of subsidised quality early learning per week to all children to support their development.

Education outcomes

322. We welcome the renewal of the Prime Minister's Indigenous Advisory Group and the appointment of Indigenous education specialist, Professor Chris Sarra.

323. Aboriginal and Torres Strait Islander people face barriers in accessing education, including many Indigenous youth living in remote areas, a lack of cultural training for education staff, poor attitudes towards Indigenous students and false assumptions that poor attendance stems from a lack of

[297] Sustainable Development Solutions Network. 2016. *Target 4.2.* View at: http://indicators.report/targets/4-2/ Viewed at 18 May 2017.

parent and community involvement in education.[298] According to recent Close the Gap data on education, there has been no meaningful change in the national Indigenous school attendance rates from 2014 (83.5 per cent) to 2016 (83 per cent).[299] School attendance for Aboriginal and Torres Strait Islander students decreases significantly with remoteness. In 2016, Indigenous attendance rates ranged from approximately 87 per cent in inner regional areas to 66.5 per cent in very remote areas.[300]

Proposed Recommendations for Concluding Observations:
THAT Australia and state and territory governments improve investments in quality facilities and adequate resourcing of teachers and schools at a local level in remote communities.

THAT Australia and state and territory government's resource evaluations to develop an evidence-base on what is effective in schools' engagement of Indigenous parents.

Children with Disabilities and Inclusive Practices

324. Despite international practice where there is a clear departure from special education and a shift in favour of mainstreaming education, between 1999-2013, there was an increase in special schools of 17 per cent in Australia.[301]

325. All state and territory jurisdictions have well-developed policies that support inclusive practices.[302] However, there is no single nationally accepted definition of inclusive education which makes measuring inclusion highly challenging. Tracking the academic progress of students with disabilities, in particular those with intellectual or cognitive disabilities, is a significant gap in Australia. Many students have individual learning plans, which may be different between systems, sectors and individual schools. This creates an inconsistency, which makes it difficult to measure and compare the results of students with disabilities across Australian schools.

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[298] Bourke C J, Rigby, K & Burden J., *Better practice in school attendance: Improving the school attendance of Indigenous students*, Melbourne: Report prepared for the Commonwealth Department of Education Training and Youth Affairs by Monash University (2000) 3.
[299] Department of the Prime Minister and Cabinet. 2016. Chapter Three: Education. View at http://closingthegap.pmc.gov.au/education Viewed on 19 May 2017.
[300] Department of the Prime Minister and Cabinet. 2016. Chapter Three: Education. View at http://closingthegap.pmc.gov.au/education Viewed on 19 May 2017.
[301] Australian Bureau of Statistics. 2013. Schools Australia. View at: http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4221.02013 Viewed on 15 April 2017.
[302] Australian Research Alliance for Children and Youth. 2014. Inclusive Education for Students with Disability. View at: https://www.aracy.org.au/publications-resources/command/download_file/id/246/filename/Inclusive_education_for_students_with_disability_-_A_review_of_the_best_evidence_in_relation_to_theory_and_practice.pdf Viewed on 15 April 2017.

Proposed Recommendations for Concluding Observations:
THAT Australia and the COAG Education Council adopt a standard definition of inclusive education, and develop a system for consistently measuring and reporting academic progress and outcomes for students with special educational needs across jurisdictions.

Education and LGBTIQ people

326. High rates of discrimination, marginalisation, bullying and harassment of LGBTIQ people affects access to education, causes higher rates of mental health issues and suicide and leads to higher rates of unemployment and underemployment. 61% of same-sex attracted young people report experiencing verbal homophobic abuse, 18% report physical homophobic abuse and 9% report other types of homophobia, including cyberbullying, graffiti, social exclusion and humiliation.[303] 80% of this homophobic bullying occurs at school and has a profound impact on their well-being and education.[304] Transgender young people experience significantly higher rates of both non-physical and physical abuse.[305]

327. LGBTIQ young people at schools with protective policies are in place are more likely to feel safe compared with those in schools without similar policies (75% compared to 45%).[306] In addition, they are almost 50% less likely to be physically abused at school, less likely to suffer other forms of abuse, and less likely to attempt suicide.[307] Despite the demonstrated value and effectiveness of protective policies and appropriateness of resources in anti-bullying programs such as the Safe Schools program,[308]

[303] Australian Research Centre in Sex, Health and Society, La Trobe University, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people* (2010) 39.
[304] Australian Research Centre in Sex, Health and Society, La Trobe University, *Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians* (2012) 39.
[305] Australian Research Centre in Sex, Health and Society, La Trobe University, *Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians* (2012) 47.
[306] T Jones and Western Australian Equal Opportunity Commission, *A report about discrimination and bullying on the grounds of sexual orientation and gender identity in Western Australian education* (2012) 11.
[307] T Jones and Western Australian Equal Opportunity Commission, *A report about discrimination and bullying on the grounds of sexual orientation and gender identity in Western Australian education* (2012) 11.
[308] The Safe Schools program is a national anti-bullying program that aims to create safe and inclusive school environments for same sex attracted, intersex and gender diverse students, staff and families; William Louden, *Review of the Appropriateness and Efficacy of the Safe Schools Coalition Australia Program Resources* (11 March 2016) https://docs.education.gov.au/system/files/doc/other/review_of_appropriateness_and_efficacy_of_the_ssca_program_resources_0.pdf.

they have faced substantial criticism by politicians,[309] and the federal government has not renewed the funding of the program.[310]

Proposed Recommendations for Concluding Observations:
THAT Australia implement protective policies and resources for LGBTIQ people in education systems.

THAT Australia fund anti-bullying programs which prevent discrimination, bullying and harassment of LGBTIQ people, as well as appropriate guidelines and mental health supports for LGBTIQ people who experience discrimination, bullying and harassment in education.

THAT Australia and state and territory Departments of Education gather statistical data on cases of bullying by cause (e.g. race, gender, physical appearance, sexual orientation).

Asylum Seekers and Refugees' Access to Education

328. In Australia, asylum seekers (on bridging visas) and refugees on temporary visas do not have equal access to higher education compared to other Australians, and even as compared to refugees on permanent protection visas.[311]

329. People on bridging visas, TPVs and SHEVs are not eligible for financial assistance programs for tertiary study, including higher education loans schemes such as FEE-HELP, HECS-HELP and Commonwealth Supported Places (CSP). Many asylum seekers and refugees on temporary visas are also unable to access TAFE (vocational education) concession rates. Though some universities offer scholarships this does not meet demand. Limited access to income support also precludes refugees on temporary visas from undertaking and/or completing tertiary study.[312]

Proposed Recommendations for Concluding Observations:
THAT Australia take measures to enable asylum seekers and temporary visa holders in Australia to access Commonwealth Supported Places and higher education loan schemes.

THAT Australia allow TPV and SHEV holders to receive income support on the same basis as other Australian students.

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[309] See e.g. Jane Norman, 'George Christensen and Cory Bernardi push for 'full' inquiry into Safe Schools program, *ABC News* (16 March 2016) http://www.abc.net.au/news/2016-03-16/governments-safe-schools-review-labelled-joke-by-mps/7250974.
[310] Gay Alcorn, 'What is Safe Schools, what is changing and what are states doing?', *The Guardian* (14 December 2016) https://www.theguardian.com/australia-news/2016/dec/14/what-is-safe-schools-what-is-changing-and-what-are-states-doing.
[311] For a detailed analysis, see Refugee Council of Australia, *Barriers to Education for People Seeking Asylum on Temporary Visas* (2015).
[312] Ibid 5.

Access to education in Nauru

List of Issues 2016, paras 27
27. Please provide information on measures taken to ensure access to education by migrant, asylum-seeking and refugee children in the State party and in Nauru, as well as in other offshore immigration facilities.

330. Australia's jurisdiction extends to Nauru. The Australian Government has stated that '[a]ll refugee and asylum seeker children of school age (4 to 18 years) have transitioned to Nauruan Government schools.' Yet according to reports of reputable human rights organisations, the vast majority are not attending school.[313] Barriers faced by refugee children in accessing the local school system include bullying, racism and widespread tensions between the refugee and Nauruan communities.[314] The Australian Government has not taken steps to strengthen the education system or ensure that the curriculum is socially, culturally and linguistically relevant to refugee children.[315]

Proposed Recommendations for Concluding Observations:
THAT Australia take concrete measures to increase the school attendance of refugee children on Nauru, improve the education system for all children in Nauru, and ensure the safety of children attending school in Nauru.

[313] Though enrolment numbers are not available, staff working on Nauru have confirmed extremely low attendance rates. See Amnesty International, *Island of Despair: Australia's "processing' of refugees on Nauru'* (2016), 31; Save the Children and UNICEF, *At What Cost? The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives* (September 2016), 25.
[314] For example: Save the Children and UNICEF, *At What Cost? The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives* (September 2016), 25; Amnesty International, *Island of Despair: Australia's "processing' of refugees on Nauru'* (2016), 31.
[315] Save the Children and UNICEF, *At What Cost? The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives* (2016), 25.

Article 15 Cultural Rights

Native Title

331. The strict requirement of the *Native Title Act 1993* (Cth) of continuous connection to the land since colonisation is incompatible with the UN Declaration on the Rights of Indigenous Peoples.

332. This submission does not directly address issues relating to native title. However, NGOs draw the Committee's attention to submissions made to Australia's most recent UPR and other UN treaty bodies for information on this issue.[316]

Access to Online Government Services

333. The 2011 Census revealed that over 27 per cent of Australia's population was born overseas and a further 20 per cent had at least one parent born overseas. Three per cent of longer-standing migrants and a further three per cent of recently arrived migrants reported not speaking English at all.

334. The push to move government service delivery online and the speed of reforms means accessibility issues remain significant for CALD Australians, preventing access to government services and participation in economic and cultural life.[317]

335. The UN High Commissioner on Human Rights has stated the use of a minority language as a language of service results in more effective delivery of public services.[318] Catering for the language needs of all migrants is imperative to ensure equitable access and overall wellbeing.

Proposed Recommendations for Concluding Observations:

THAT Australia integrate digital platform-based government services with a face-to-face interaction option for consumers, for example Centrelink's Multicultural Service Officer program

THAT Australia utilise information and assistance shops in public areas, such as shopping centres, community centres and libraries, particularly in rural and regional areas.
THAT use simple and consistent symbols and icons to indicate translated materials and develop interactive technologies to improve the experience for non-English speakers.

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[316] See, for example: Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf.
[317] Digital Access and Equity for Multicultural Communities http://fecca.org.au/
[318] UN Office of High Commissioner on Human Rights, *Language Rights of Linguistic Minorities: A Practical Guide for Implementation* (Draft) (2015), 7.

List of Supporting Organisations

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

- Australian Council of Social Service
- ActionAid
- Australian Centre for Disability Law
- Australian Child Rights Taskforce
- Australian Council of Trade Unions
- Australian Women's Health Network
- Asylum Seeker Resource Centre
- Community Legal Centres Queensland
- COTA Australia
- CREATE Foundation
- Disabled People's Organisations Australia
- Ethnic Community Services Cooperative
- Equality Rights Alliance
- Federation of Ethnic Communities' Councils of Australia (FECCA)
- First Peoples Disability Network
- Human Rights Law Centre
- International Women's Development Agency
- International Social Service Australia
- Justice Connect
- Kingsford Legal Centre
- Migrant Women's Lobby Group of South Australia
- National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
- National Association of Community Legal Centres (NACLC)
- National Ethnic Disability Alliance
- National Mental Health Consumer and Carer Forum (NMHCCF)
- National Rural Women's Coalition
- National Social Security Rights Network
- New South Wales Council of Social Service
- North Queensland Women's Legal Service
- Organisation Intersex International Australia (OII Australia)
- People With Disability Australia
- Public Interest Advocacy Centre
- Professor Judith Bessant
- Project Respect
- Queensland Advocacy Incorporated
- Save the Children
- SCALES Community Legal Centre
- Sisters Inside
- SNAICC
- Townsville Community Legal Service Inc
- UNICEF Australia
- Victorian Gay and Lesbian Rights Lobby

- Women's Health Special Interest Group, Public Health Association of Australia
- Women's Legal Services Australia
- Women's Legal Service New South Wales
- Women With Disabilities Australia (WWDA)
- Zonta International District 24