#ausUPR

AUSTRALIA'S HUMAN RIGHTS SCORE CARD

AUSTRALIA'S 3RD UNIVERSAL PERIODIC REVIEW

Joint NGO Submission on behalf of the Australian NGO Coalition

APRIL 2020

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

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

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

This submission was finalised in April 2020, at a time when the COVID-19 pandemic was sweeping Australia and the world, resulting in delays in UN Universal Periodic Review processes. This submission was therefore submitted in July 2020 and an annexure included (Annexure C) that addresses COVID-19 and human rights developments in Australia between April and July 2020.

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Forward

In 2021 Australia will have its human rights record assessed at the United Nations Human Rights Council in a process known as the Universal Periodic Review (**UPR**). The UPR provides an opportunity for other nations to identify human rights problems in Australia and make recommendations about possible solutions.

To inform this process, leading Australian human rights experts, non-government organisations and community groups have compiled this report - Australia's Human Rights Scorecard: Australia's 2020 United Nations UPR NGO Coalition Report. The Report, endorsed by over 200 organisations, provides a comprehensive insight into the state of human rights in Australia in 2020.

The Report has been completed at a time of unprecedented challenges. Australia is still emerging from the bushfire crisis of summer 2019/20, which inflicted significant trauma, scarred First Nations peoples' lands and resulted in the loss of life and livelihoods. The climate crisis, an area of political debate for many years in Australia, showed itself more than ever to be an issue of life or death which will increasingly, devastatingly, impact on human rights.

On the back of that deep trauma and dislocation, Australia, like the rest of the world, now faces the ongoing COVID-19 pandemic. The widespread health, social and economic consequences of COVID-19, and Australia's response to the pandemic, bring into sharp focus the critical vulnerability of many people whose human rights are not properly protected in Australia, as highlighted throughout the Report.

Annexure C updates the Report, which was finalised in April 2020, to address recent developments arising from the COVID 19 pandemic. In a time of exceptional challenges, the Report and Annexure identify the people and communities whose human rights are most at risk as a result of the cascading and compounding impacts of the pandemic. It also outlines ways to address pre-existing inequalities and ensure the human rights of those most vulnerable are at the centre of decision-making.

The growing Black Lives and Aboriginal Lives Matter movements have drawn fresh attention to the long struggle of Aboriginal and Torres Strait Islander peoples to address systemic racism, police brutality, and deaths in custody. This Report outlines the urgent need to address the long-standing and widespread human rights violations endured by Aboriginal and Torres Strait Islander peoples in Australia, and makes a series of robust recommendations for enduring change.

The Report's 88 recommendations provide a thorough human rights roadmap for Australia's future with human rights principles at its centre. In these times, nothing could be more urgent than the realisation of human rights and principles of equality, dignity, respect and fairness.

Kind regards,

Bridget, Emma, Edwina and Adrianne
UPR NGO Coordinating Committee

Bridget Burton	Emma Golledge	Edwina MacDonald & Adrianne Walters
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Submission

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

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

CONSTITUTIONAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

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

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

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

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

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

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

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

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

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

Australia ratified OPCAT, following its 2016 UPR voluntary commitment. There is a lack of commitment to implementing a National Preventive Mechanism and concern this will result in a NPM lacking the essential powers, resources, independence, and uniformity necessary to fulfil its OPCAT obligations.[6]

Australia must prioritise developing and adequately funding a NPM that covers aged care and children's and disability specific facilities, and establish an advisory relationship with civil society including for designation and implementation stages.

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

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

Social and community services suffer deep ongoing funding cuts, funding instability and unjustified funding conditions.[7]

Australia must adequately fund social and community services to underpin the realisation of human rights.[8]

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

Australia has enacted a series of punitive and paternalistic policies that racially target Aboriginal and Torres Strait Islander communities.[9] In considering the 'Northern Territory Intervention',[10] Special Rapporteur Anaya found the quarantining of welfare payments,[11] compulsory leasing of Aboriginal lands, and removal of governance[12] to 'overtly discriminate against Aboriginal people',[13] infringe their right to self-determination[14] and conflict with the ICERD, ICCPR and the UN Declaration on the Rights of Indigenous Peoples.[15] Continued through the 'Stronger Futures' legislation',[16] funding has been cut to Aboriginal 'Homeland/Outstation' communities.[17]

The Cashless Debit Card racially discriminates with 81% of compulsory recipients being Aboriginal and Torres Strait Islander Peoples.[18] It quarantines 80% of cash welfare,[19] stigmatises, exacerbates financial hardship and entrenches disempowerment,[20] leading to increased violence and crime.[21] A lack of technology and power outages prevent access to funds and food in remote communities.[22] A Parliamentary Committee found it limited human rights and was disproportionate.[23] Despite costing $10,000 per participant, it is being extended.[24]

The Community Development Program racially targets, with 85% of 35,000 participants being Aboriginal and Torres Strait Islander Peoples.[25] It requires remote participants to work for welfare payments, with additional onerous obligations.[26] It has applied financial penalties disproportionately, giving 350,000 penalties over two years,[27] resulting in cuts to payments, causing hunger.[28]

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

Australian land management and legislative regimes do not uphold the rights of Aboriginal and Torres Strait Islander Peoples to manifest, practice and teach cultural traditions and customs on traditional lands, territories and waters. Climate change is having a detrimental and inequitable impact on Aboriginal and Torres Strait Islander communities, with unendurable temperatures in central Australia.[29] Aboriginal and Torres Strait Islander Peoples have not been included in water/land regulatory bodies.[30] The commercial sale of water has also left Aboriginal and Torres Strait Islander communities dry, with health impacts from sub-standard water.[31] Traditional Owners are concerned that hydraulic fracking will contaminate and deplete ground water.[32]

Australia must amend all policy and legislative regimes that impact Aboriginal and Torres Strait Islander rights to practice cultural traditions; facilitate Aboriginal and Torres Strait Islander decision making in regulatory water and land management bodies; and provide finances for Aboriginal and Torres Strait Islander communities to develop climate change mitigation strategies.[33]

The *Native Title Act 1993* is fundamentally flawed, favours mining interests, and is inconsistent with the principle of 'equality before the law'.[34]

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

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

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

REFUGEES AND ASYLUM SEEKERS

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

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

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

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

As of July 2020, around 370 refugees and asylum seekers forcibly sent to Nauru and Papua New Guinea in 2013 and 2014 remain there, many without access to durable solutions and some at risk of being arbitrarily detained (including stateless persons).[37] Healthcare remains inadequate and Australian legislation that granted doctors greater power over medical evacuation decision-making was repealed in December 2019.

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

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

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

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

Australia must introduce a statelessness determination procedure and visa category to protect stateless persons in Australia by 2024.[40]

CULTURALLY AND LINGUISTICALLY DIVERSE PEOPLE AND COMMUNITIES

Positive statements by the Prime Minister condemning racism and the Australian Government's multicultural statement[41] are undermined by policies which threaten social cohesion and prevent CALD people from fully participating in the Australian community.

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

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

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

Debate about population, national security and crime has seen a sharp rise in anti-immigration sentiment.[42] Muslim Australians continue to experience high levels of racism and bigotry,[43] and Australians of African heritage (particularly Sudanese Australians), have increasingly been the subject of sensationalist political and media attention, which has fuelled racism, profiling and discrimination.[44]

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

OLDER PEOPLE

Australia has not fulfilled its 2016 UPR commitment[45] to use existing human rights mechanisms to report on and protect the rights of older persons, nor to include an older people section in their UN reports. Australia is largely disengaged from the Open-Ended Working Group on Ageing (OEWGA).

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

Australia's Aged Care Royal Commission[46] labelled aged care a "shocking tale of neglect."[47] However, the Royal Commission has so far failed to make conclusions about human rights breaches of older persons in aged care. Over 110,000 older persons have waited between 7-32 months[48] to receive aged care services in their home,[49] and Australia lacks legislative protections against the use of chemical restraints,[50] demonstrating the need for stronger international protections.

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

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

Australia must fund the recommendations of the 2016 Willing to Work National Enquiry into employment discrimination.[51]

SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, AND SEX CHARACTERISTICS

Since 2016, Australia has recognised marriages between two people regardless of gender.[52] States have amended laws to make it easier for legal gender to be changed,[53] to allow adoption by couples regardless of gender,[54] and to expunge convictions for historical homosexual offences.[55] Some states may soon prevent so-called 'conversion' practices which seek to eliminate or suppress the affirmation of lesbian, gay, bisexual and transgender identities.[56]

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

Within 18 months, Australia must:

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

PEOPLE WITH DISABILITY

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

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

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

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

People with disability, particularly women,[71] experience significant[72] violence and abuse.

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

CHILDREN

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

The National Framework for Protecting Australia's Children 2009-2020 lacked sufficient focus on preventing violence against children, economic, social and cultural rights, non-discrimination, and participatory rights.

Australia must develop a National Plan for Children which comprehensively protects children's rights, and which is at least consistent with the National Plan to Reduce Violence against Women and Their Children, within 18 months.

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

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

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

Australia fails to adequately protect children's right to be heard about matters affecting them.[76]

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

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

Australia must develop a national Action Plan for Inclusive Education and urgently end restraint and seclusion of children with disability.[77]

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

WOMEN

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

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

Funding for women's specialist services is declining and community self-determination is not valued by funders.[80]

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

The family law system does not prioritise safety and risk in its practice and decision-making.[81]

Australia must implement the *Safety First in Family Law Plan.*[82]

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

Women on temporary visas experiencing violence face barriers to accessing protections, services and justice.[86]

The second National Plan must incorporate adequate funding, specific measures to address violence against women of diverse experiences, and a monitoring and evaluation system for all action plans.

Australia must address economic inequality, including addressing women's unpaid caring work and gendered gaps in wages and retirement savings.[87]

EQUALITY AND NON-DISCRIMINATION

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

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

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

Australia must not enact the proposed Religious Discrimination Bill.

DEMOCRATIC RIGHTS AND FREEDOMS

Queensland and New South Wales have passed anti-protest legislation that unfairly restricts peaceful assembly, and increases penalties for trespass and using lock-on devices during peaceful protests.[88]

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

Australian Federal Police have raided the homes and workplaces of journalists following public interest reporting on intelligence and defence agencies.[89] New federal laws have expanded the definition of "espionage" to include public interest reporting by journalists and human rights defenders[90] that could bring the country into disrepute internationally.

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

The Australian Government is prosecuting whistleblowers who disclose public interest matters, most notoriously Witness K and his lawyer, Bernard Collaery.[91]

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

The Australian Government has defunded NGO advocacy work and Aboriginal and Torres Strait Islander representative and advocacy bodies.[92] Charities are being investigated and deregistered for advocacy work in elections and for working with protesters.

Australia must recommit funding for and legal protection to the NGO sector and Aboriginal and Torres Strait Islander organisations for advocacy work.[93]

The Australian Government has implemented overbroad foreign interference legislation which exempts politicians, while potentially making NGO reporting to UN bodies a national security offence,[94] and restricts free speech on electoral matters.

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

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

Australia must restore funding to public broadcasters.

The Australian Government has passed extensive laws requiring telecommunication companies to retain metadata and facilitate access to encrypted messages.[95] It is considering a national database of photographs to enable law enforcement agencies to conduct facial recognition without adequate safeguards.[96]

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

The Australian Government continues to broaden laws stripping Australians of citizenship, without adequate procedural safeguards and sometimes retrospectively, placing them at an unacceptable risk of statelessness, family separation and indefinite detention.[97]

Australia must repeal citizenship deprivation laws.

ACCESS TO JUSTICE AND THE CRIMINAL JUSTICE SYSTEM

Legal assistance funding is inadequate. The separate Indigenous Legal Assistance Program is being wound up despite evaluation recommending retaining it.[98]

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

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

Australia must implement the recommendations of the Productivity Commission to inject $200 million the legal assistance sector.[99]

The criminal justice system is failing young people, Aboriginal and Torres Strait Islander Peoples, women, and people with disabilities. [100]

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

Children are too often detained, subject to isolation and force, and not separated from adults.[101]

Australia must mandate separate detention of children from adults, review its juvenile justice systems against the CRC and CRPD,[102] and implement all recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, within two years.

Australia's age of criminal responsibility is 10, contrasting with UN recommendations,[103] and medical evidence about children's development.[104] This disproportionately harms disadvantaged children.

Australia must raise its minimum age of criminal responsibility to at least 14 within one year.

Little progress[105] has been made towards Australia's 2016 voluntary UPR commitment to improve criminal justice system treatment of people with cognitive disability unfit to plead or found not guilty by reason of mental impairment.[106]

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

PRISONS

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

At least 437 Aboriginal and Torres Strait Islander Peoples have died in custody since the 1991 Royal Commission into Aboriginal Deaths in Custody.[110]

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

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

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

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

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

POLICE

It is critical that independent bodies[118] are resourced[119] to investigate potential human rights abuses by police.

Australia must ensure that all jurisdictions establish independent investigative bodies that meet international human rights standards.[120]

Racially discriminatory policing remains prevalent, impacting entire communities.[121] In particular, 'intelligence-led' or 'preventive' policing models[122] are having adverse and discriminatory impacts, especially on racially marginalised groups.[123]

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

Aboriginal and Torres Strait Islander Peoples continue to die in custody.[125]

Australia must urgently implement all recommendations from the Royal Commission into Aboriginal Deaths in Custody.[126]

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

Australia must address police duty failures and improve responses in order to enhance the safety of victims / survivors when requesting police assistance for family violence,[128] and to prevent the criminalisation of survivors[129] as a consequence of police responses.

POVERTY

3.2 million people, including 774,000 children live, below the poverty line in Australia.[130] Australia ranks 16th out of 26 OECD countries, despite high national and household wealth.[131] Poverty is most acute for people who are not in paid work and rely on social security.[132] Poverty among sole parent families is high, at 32% in 2015-16.[133]

Australia must permanently increase allowance payments so that people can afford the basics, and index to wage inflation.

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

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

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

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

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

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

HOUSING AND HOMELESSNESS

Since the last UPR, homelessness has further increased (particularly among Aboriginal and Torres Strait Islander Peoples[136] and older women[137]), housing affordability has not improved,[138] and social housing stock has continued to decline.[139] The previous national homelessness strategy[140] has not been replaced, and there is no national plan to reduce homelessness or housing stress. Funding for the National Rental Affordability Scheme will be discontinued. Government payments assisting renters on low incomes are inadequate, leaving nearly half of renters on low incomes in urban areas in rental stress.[141]

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

The national inter-governmental funding agreement on remote Aboriginal and Torres Strait Islander housing has expired, and federal funding for remote housing has been withdrawn in many states.

Australia must develop a new inter-governmental Aboriginal and Torres Strait Islander housing strategy, which includes remote homeland communities, and is included in the Closing the Gap[142] Targets.

HEALTH

Australians live approximately 13.2% of their lives in ill health.[143] Poor health outcomes are linked to low incomes,[144] gaps in Australia's healthcare system,[145] and low levels of investment in illness prevention.[146]

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

Climate change and public health are interlinked. Recently, smoke from bushfires has harmed the health of millions of Australians.[147]

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

Aboriginal and Torres Strait Islander Peoples carry a disproportionate health burden related to poverty and poor living conditions,[148] including high rates of gastroenteritis, encephalitis, hepatitis, heart disease, diabetes, kidney failure and trachoma. In 2018, suicide was the leading cause of death for Aboriginal and Torres Strait Islander children and people aged 15-44.[149] Traumatic experiences,[150] intergenerational trauma,[151] discrimination, grief and overcrowding[152] and a sense of disempowerment were attributable factors.[153]

The Australian Government must fund the Aboriginal and Torres Strait Islander controlled health, service and healing sector[154] to meet family, child, youth, health, aged, disability and rehabilitation needs nationally.

Almost a quarter of Australian children are affected by being overweight or obesity.[155]

Within two years, Australia must implement the WHO's *Ending Childhood Obesity Report* recommendations[156] and enact legislation to protect children from unhealthy food marketing.

Transgender and gender-diverse people experience major barriers to accessing culturally safe healthcare in Australia.[157]

Within two years, Australia must ensure free and timely access to culturally safe healthcare, including access to gender affirming multidisciplinary healthcare for children and adolescents.[158]

CLIMATE CHANGE

Australia is failing to prevent human rights harms caused by climate change.[159] Australia's emissions are increasing,[160] its 2030 emissions reduction target is inadequate,[161] and it spends more money supporting fossil fuels than climate action.[162]

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

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

Australia must develop a rights and equity based adaptation plan, establish a just transition authority with sensitivity to multiple and intersecting forms of discrimination,[163] and adequately resource both.[164]

Australia is failing to ensure equity in climate action and ensure meaningful participation in decision making.

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

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

Australia must increase its climate finance contribution to 2.4% of global flow, additional to existing ODA budget,[166] and ensure it captures the needs and priorities of vulnerable communities.

BUSINESS AND HUMAN RIGHTS

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

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

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

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

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

Australia must also require companies emitting greater than 25,000 tCO_2-e per annum to reduce their emissions consistent with the goals of the Paris Agreement, while respecting human rights in a swift, just transition to a net zero economy.

INTERNATIONAL ASSISTANCE

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

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

As Australia seeks to implement new aid modalities, including blended finance for infrastructure, vigorous safe guards will be needed to mitigate risks to human rights that have previously caused concerns for government-financed projects.[169]

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

Regulations introduced in 2018 require Australian charities with overseas activities to prevent harm, exploitation and abuse of vulnerable persons.[170] These address high-risk activities including volunteering

and residential care. The implementation of monitoring and enforcement is required to assist in meeting CRPD and CRC obligations.[171]

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

TRAFFICKING

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

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

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

SEX WORK

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

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

Australia must encourage a consistent approach to the decriminalisation of sex work and introduce measures to tackle discrimination against sex workers.

Annexure A: Background to Report Development

PROCESS

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

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

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

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

NGO COORDINATING COMMITTEE

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

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

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

ADVISORY GROUP COMMITTEE

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

Townsville Community Law Inc.
Women with Disabilities Australia
Youth Law Australia

LEAD AUTHORS

Australian Council of Social Service
Caxton Legal Centre
COTA Australia
Equality Australia
Equality Rights Alliance
Gay and Lesbian Counselling Service of NSW
Human Rights Council of Australia
Human Rights Law Centre
Immigration Advice and Rights Centre
Indigenous Peoples Organisation
International Women's Development Agency
Kingsford Legal Centre
National Aboriginal and Torres Strait Islander Legal Service
People with Disability Australia
Project Respect
Public Health Association of Australia
Refugee Council of Australia
Redfern Legal Centre
Save the Children
Scarlet Alliance
Townsville Community Law Inc.
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Australian Child Rights Taskforce
Australian Council of Social Service
Australian Lawyers Alliance
Australian Lawyers for Human Rights
Australian Muslim Women's Centre for Human Rights
Australian Older Women's Network
Australian Quaker Peace and Legislation Committee
Better Care Network
Caroline Collaborates
Caxton Legal Centre
Communication Rights Australia
COTA Australia
Disability Discrimination Legal Service
Equality Australia
Equality Rights Alliance
Flemington and Kensington Community Legal Centre
Gay and Lesbian Counselling Service of NSW

Harmony Alliance: Migrant and Refugee Women for Change
Human Rights Council of Australia
Human Rights Law Centre
Immigration Advice and Rights Centre
Indigenous Peoples Organisation
International Women's Development Agency
Kingsford Legal Centre
National Aboriginal and Torres Strait Islander Legal Service
National Older Women's Network
National Social Security Rights Network
New South Wales Aboriginal Land Council
Obesity Policy Coalition
People with Disability Australia
Peter McMullin Centre on Statelessness
Physical Disability Council of NSW
Project Respect
Public Health Association of Australia
Queensland Advocacy Incorporated
Redfern Legal Centre
Refugee Council of Australia
Refugee Legal
Save the Children
Scarlet Alliance
Soroptimist International Australia
Springvale Monash Legal Service
The Secretariat of National Aboriginal and Islander Child Care
Townsville Community Law Inc.
Twenty10
Women with Disabilities Australia
Youth Affairs Network of Queensland
Youth Law Australia
YWCA Australia
YWCA Canberra

Annexure B: List of Endorsing Organisations

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

Aboriginal Legal Rights Movement
Aboriginal Legal Service of Western Australia Limited
Aboriginal Rights Coalition
ACCIR
ACON
ACT Council of Social Service
ActionAid Australia
Advocacy for Inclusion
Advocare
Aged & Disability Advocacy Australia
Aleph Melbourne
Alevi Federation of Australia
Alliance for Gambling Reform
Amnesty International Australia
ANTaR
Anti-slavery Australia
Australian Association for Adolescent Health Ltd
Australian Association of Social Workers
Australian Baha'i Community - Office of Equality
Australian Centre for International Justice
Australian Council for International Development
Australian Council for International Development Gender Equity Working Group
Australian Centre for Leadership for Women
Australian Council of Social Service
Australasian Council of Women and Policing
Australian Federation of Medical Women
Australian Graduate Women
Australian Healthcare and Hospital Association
Australian Human Rights Institute, UNSW Sydney
Australian Injecting & Illicit Drug Users League
Australian Lawyers Alliance
Australian Lawyers for Human Rights
Australian Motherhood Initiative for Research and Community Involvement
Australian Muslim Women's Centre for Human Rights
Australian Quaker Peace and Legislation Committee
Australian Women Against Violence Alliance
Australian Women's Health Network
Be Slavery Free
Brigidine Asylum Seekers Project
Business & Human Rights Resource Centre
Canberra Community Law
CARE Australia
Carers Australia
Caxton Legal Centre
Centre for Asylum Seekers, Refugees and Detainees
Centre for Business and Human Rights, RMIT University
Child Rights Taskforce

Children and Young People with Disability Australia
Children by Choice
Civil Liberties Australia
Cohealth
Community Legal Centres Association of WA
Community Legal Centres Australia
Community Legal Centres Australia National Human Rights Network
Commonwealth Human Rights Initiative
Consumer Credit Legal Service (WA)
Consumers Health Forum of Australia
Council on the Ageing Australia
Disability Discrimination Legal Service
Down Syndrome Australia
Eastern Community Legal Centre
Economic Justice Australia
Edmund Rice Centre
End Child Detention Coalition
Environment Centre NT
Equality Australia
Equality Lawyers
Equality Rights Alliance
Federation of Ethnic Communities Councils of Australia
Feminist Legal Clinic
Fitted for Work
Flemington Kensington Community Legal Centre
Forget Me Not Australia Limited
Foundation for Aboriginal and Islander Research Action Aboriginal Corporation
GetUp!
Girl Guides Australia
Good Shepherd Australia New Zealand
Harmony Alliance: Migrant and Refugee Women for Change
Homebirth Australia
Hub Community Legal
Human Rights Council of Australia
Human Rights Law Centre
Immigrant Women's Speakout Association of NSW Inc.
Immigration Advice and Rights Centre
Indigenous Peoples Organisation
International Women's Development Agency
Intersex Human Rights Australia
Intersex Peer Support Australia
JERA International
Jessie Street National Women's Library
Jesuit Refugee Service Australia
Josephite Justice Network
Justice Connect
Kingsford Legal Centre
Legacy
Liberty Victoria
Liberty Victoria's Rights Advocacy Project
Marie Stopes Australia
Maternity Choices Australia
Melbourne Activist Legal Support
Migrant Women's Lobby Group of South Australia

Multicultural Youth Advocacy Network Australia
Music for Refugees
National Aboriginal and Torres Strait Islander Legal Services
National Aboriginal and Torres Strait Islander Women's Alliance
National Association of People with HIV Australia
National Association of Services Against Sexual Violence
National Council of Churches Gender Commission
National Council of Jewish Women of Australia
National Council of Single Mothers and their Children
National Council of Women of Australia
National Foundation for Australian Women
National LGBTI Health Alliance
National Older Women's Network
National Rural Women's Coalition Ltd
National Union of Students Women's Department
New South Wales Aboriginal Land Council
Northern Suburbs Community Legal Centre
NSW Council for Civil Liberties
NSW Council of Social Service
NSW Gay and Lesbian Rights Lobby
NQWLS
Obesity Policy Coalition
Older Persons Advocacy Network
Original Power
People with Disability Australia
Peter McMullin Centre on Statelessness
PFLAG Tasmania
Physical Disability Council of NSW
Plan International Australia
Project Respect
Public Health Association of Australia
Public Health Association of Australia - Women's Health Special Interest Group
Publish What You Pay Australia
Queensland Advocacy Incorporated
Rainbow Families
Redfern Legal Centre
Refugee Advice and Casework Service
Refugee Council of Australia
Reproductive Choice Australia
ReThink Orphanages Australia
Rights in Action Inc.
Rights Information and Advocacy Centre
Rural Australians for Refugees
Safe Motherhood for All
Save the Children Australia
Scales Community Legal Centre
Scarlet Alliance
Secretariat of National Aboriginal and Islander Child Care
Seniors Rights Service
Seniors Rights Victoria
Sisters Inside
Sisters of St Joseph
Soroptimist International Australia
South Australian Rainbow Advocacy Alliance

Springvale Monash Legal Service
St Francis Social Services
TASC National
The Centre for Excellence in Child and Family Welfare
The Youth Affairs Council of Western Australia
Thorne Harbour Health
Traditional Owner Leadership Group
TransFolk of WA
Townsville Community Law Inc.
Twenty10 incorporating the Gay and Lesbian Counselling Service NSW
UN Women National Committee Australia
Union of Australian Women
United Nations Association of Australia Status of Women Network
UQ Pro Bono Centre
Victorian Gay & Lesbian Rights Lobby
Victorian Immigrant and Refugee Women's Coalition
VIEW Clubs of Australia
Violence Prevention Australia
Welfare Rights Centre
Western Australian Council of Social Service
Western NSW Community Legal Centre Inc.
Whittlesea Community Connections
Wollotuka School of Aboriginal Studies, University of Newcastle
Women in Adult and Vocational Education
Women in Engineering Australia
Women on Boards
Women Sport Australia
Women with Disabilities Australia
Women's Electoral Lobby Australia
Women's Equity Think Tank
Women's Housing Ltd
Women's Information Referral Exchange
Women's International League for Peace and Freedom
Women's Legal Centre (ACT & Region) Inc.
Women's Legal Service NSW
Women's Legal Service, Tasmania
Women's Legal Service WA
Women's Legal Services Australia
Women's Property Initiatives
Working Against Sexual Harassment
World Wide Fund for Nature - Australia
Youth Affairs Network of Queensland
Youth Law Australia
Yorta Yorta Nation Aboriginal Corporation
YWCA Australia
YWCA Canberra
Zonta International Districts 22, 23 and 24

Annexure C: Human rights and COVID-19 developments following finalisation of the UPR NGO Coalition Report

The UPR NGO Coalition Report was finalised just as COVID-19 was taking hold in Australia.[174] As a result, it was not possible in the Report to contemplate the impact that COVID-19 would have on the attainment and protection of human rights in Australia. It is still not possible to make this assessment, but this Annexure identifies key areas of human rights concern for monitoring.

The NGO Coalition Report provides an important baseline for measuring and monitoring Australia's human rights response to COVID-19, and should be used to measure the impacts of COVID-19 on groups in Australia that were experiencing human rights violations prior to the pandemic.

By global comparison, Australia has been relatively successful so far in suppressing cases of COVID-19 and limiting deaths directly from the disease, although there has been a higher proportion of deaths among older people. The threat of further waves of the virus remains omnipresent, as highlighted by a recent upswing in cases in the state of Victoria. Australia must continue to effectively respond to the ongoing health threat of the virus.[175]

Preventing deaths is a key human rights outcome, but, we must consider the full range of human rights impacts of COVID-19.[176] These include the impacts of pandemic restrictions on people with pre-existing and emerging health issues[177], as well as other wide-ranging impacts caused by physical lockdown and economic shutdown measures, including the impact on mental health.[178] It is likely that the full impact of the virus will not become apparent for many years. It will be important to monitor the intergenerational impact of the COVID-19 into the future.

MONITORING THE IMPACTS OF AUSTRALIA'S RESPONSE - KEY AREAS OF CONCERN

Monitoring the human rights impacts of COVID-19 restrictions and the measures adopted to mitigate the economic impacts, is complicated by the multi-jurisdictional nature of Australia - measures have varied from state-to-state. A comprehensive human rights-based assessment will be required to consider these geographic and jurisdictional differences.

COVID-19 shutdowns occurred across Australia through new laws and regulations which were developed very rapidly.[179] Most Australian Parliaments did not sit for a number of months, and extraordinary legislative powers have been devolved to individual ministers and officials.[180] Social distancing was implemented and a range of activities and businesses were banned and closed.[181] Police were also given extensive emergency powers, including to issue fines where restrictions are violated.[182] Urgent measures were developed and adopted with little or no consultation with civil society. Civil society concerns about the impact of these extraordinary measures remain, particularly for groups subject to economic and social disadvantage in Australia, as outlined in our NGO Report.

INCURSIONS ON DEMOCRATIC INSTITUTIONS, PROCESSES AND RIGHTS

The speed and lack of consultation on the COVID-19 response measures have led to concerns about democratic decision making. This has been compounded by the temporary closure of Parliaments and creation of new bodies, such as the National COVID-19 Coordination Commission.[183] The Commission has been tasked with the critical role of advising Government on rebuilding jobs, business and livelihoods, however it has no governing legislation, opaque processes and is run by government-picked appointees, many of whom have connections to mining and resources industries. There is a lack of social service, human rights and Aboriginal and Torres Strait Islander representation on the Commission.[184]

Freedom of expression and assembly are being threatened in several jurisdictions by crackdowns on protest and heightened police powers, with over-policed groups, notably Aboriginal and Torres Strait Islander Peoples, most exposed.[185] This has been highlighted by Black Lives Matter and Aboriginal Lives Matter protests, which have occurred across Australia.[186] As the NGO Report highlights, Aboriginal and Torres Strait Islander Peoples in Australia are the most imprisoned people on earth and die at high rates in police custody.[187] Relatively limited data about the use of police emergency powers has been made public, but what has been released appears to indicate discrimination and significant overstep.[188] The use of COVID-19 powers to prevent protests is a growing area of human rights concern, particularly given community transmission in Australia is relatively low. The proportionality of these measures and the extent to which they curtail democratic freedoms needs to be monitored.

DISPROPORTIONATE IMPACTS OF COVID-19 MEASURES

Physical lockdown measures have had acute human rights implications for certain groups, in particular, people isolated in 'pressure cooker' environments, such as places of detention,[189] nursing homes, and in overcrowded, violent or unsafe homes. For example, people living in institutions are at far higher risk of infection, and at the same time, institutional living arrangements for people with disability and older people have exposed individuals to other forms of harm, including restrictive practices under the guise of public health measures.[190] In addition, Australia has not followed public health advice about releasing people in immigration detention, people imprisoned for low level offending, and people on remand, creating genuine fears for the safety and well-being of detained people.[191]

Of significant concern is that, without regular engagement in school, work and the community, domestic violence and abuse of women, children and older people has been hidden and seeking help has been difficult.[192] The Government must invest in specialist domestic and family violence services to respond to the increased need.[193]

COVID-19 has exacerbated existing inequalities in Australia - as outlined in the NGO Report. Inequalities experienced by Aboriginal and Torres Islander Peoples in areas such as health outcomes, severe and forced housing overcrowding, employment and income and the highest incarceration rate in the world - the result of colonisation and discrimination - significantly increase the threat of death and severe illness from COVID-19 to Aboriginal and Torres Strait Islander Peoples.[194] As recommended throughout the NGO report, these inequalities and injustices must be urgently addressed.

The gendered impact of the COVID-19 health and economic crises is also of significant concern. For example, jobs held by women have decreased by 8.1%, compared to a 6.2% decrease for men.[195]In addition to an expected increase in gender-based violence, physical lockdowns have reinforced and exacerbated the unequal gender distribution of unpaid care and restricted women's access to sexual and reproductive health services and products.[196]

In addition, there is concern that children with disabilities unable to engage in remote learning will be further behind their peers than they were before,[197] and that remote learning has further disadvantaged children from economically and socially disadvantaged households.[198] There is also concern about long term harm to educational, training and employment outcomes for young people.[199]

ECONOMIC IMPACT

There have been a range of positive, but temporary, policy measures including:

- measures to reduce or mitigate tenancy evictions - these have varied across jurisdictions[200];
- measures to provide a wage subsidy to keep people in work;
- measures to increase access to, and the amount of, social security payments, in particular for people on youth, unemployment and parenting payments; and

- measures to make childcare free.[201]

However, many of these economic measures exclude critical groups, such as migrant workers, asylum seekers, refugees and many casual workers, who are already economically vulnerable, and who may be pushed into destitution or unsafe situations, such as highly exploitative work practices.[202]

The impact of these economic measures needs to be closely monitored with most assistance due to end between July and September 2020. The end of assistance, with millions of people still unemployed or under-employed, will present significant human rights challenges for large numbers of people. Monitoring the human rights impact as these measures are withdrawn will be critical. The impact of the end of free childcare will need to be monitored carefully in relation to gender equality.

A HUMAN RIGHTS FRAMEWORK FOR RECOVERY

A human rights decision making framework must shape the Australian Government's legislative and policy approach to recovery from the COVID-19 pandemic.

This must involve creating transparent, accessible, and accountable institutional structures for civil society engagement in government decision making, and moving away from the undemocratic processes, such as the National COVID-19 Coordination Commission. As the immediate health emergency subsides, a key issue will be re-assessing the proportionality of measures that curtail human rights. For example, as governments lift restrictions, they should also be taking steps to facilitate safe and peaceful protests, such as the Black Lives Matter protests.[203] In addition, identifying and addressing pre-existing inequalities, and how COVID-19 has impacted on these, should be central to responses of Australian governments so as to prevent inequality deepening into the future. Further, the swelling of the Black Lives Matter movement in Australia should remind governments that they have a duty to ensure that COVID-19 does not delay urgent action on long-standing human rights issues, such as ending Aboriginal deaths in custody and over-imprisonment.

The NGO Report, particularly the recommendations, offers a human rights roadmap which, if accepted, could align economic stimulus measures with human rights principles. An opportunity exists to turn the calamity of the pandemic into a thoughtful rebuilding which addresses inequality and sets Australia on the road to addressing major human rights concerns. Economic stimulus could be directed in areas such as addressing overcrowding and homelessness through social and affordable housing, addressing gender inequality and strengthening Australia's response to climate change. The changes during the pandemic that have radically improved the lives of some people on social security should also be maintained post the emergency response.[204]

Other successes, such as the pivotal leadership role of Aboriginal and Torres Strait Islander communities and the community controlled health sector in so far preventing the devastation COVID-19 posed to First Nations communities,[205] highlight the critical importance of community-led recovery measures. These need to be built upon to address the critical human rights issues highlighted in the NGO Report.

The swift response to the health emergency by Australian Governments demonstrated an understanding of the sanctity of life and the human right to health. It is with the same commitment that we must address the well-documented human rights concerns in Australia, including those that have been exacerbated by the pandemic. The human rights breaches outlined in the NGO Report represent just as critical a threat to life and health as COVID-19. We must approach these concerns with the same urgency and sense of national responsibility. In these extraordinary times, human rights present us with a values-based roadmap to recovery that centres on human dignity, opportunity and equality. This would be a fitting long term response to the pandemic for future generations.

NGO Co-ordinating Committee

3 July 2020

[1] Sections 25 and 51(xxvi) allow Federal Parliament to make laws by reference to the concept of 'race' – in the case of section 25, State laws; and in the case of section 51(xxvi), Commonwealth laws. See Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Report, January 2012) 137.
[2] The Voice to Parliament and the Makarrata and Truth and Justice Commission are addressed in Referendum Council, *Final Report of the Referendum Council* (Report, 30 June 2017).
[3] Only three states in Australia have compensation schemes for members of the Stolen Generations: Tasmania (*Stolen Generations of Aboriginal Children Act 2006* (Tas)), South Australia ('Stolen Generations Reparations Scheme', *Government of South Australia: Department of Premier and Cabinet* (Web Page, 2019); and New South Wales ('Stolen Generations Reparations Scheme and Funeral Assistance Fund', *NSW Government: Aboriginal Affairs* (Web Page)).
[4] *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and their Families* (Report, 1997).
[5] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Art 37(c) protects the right of a child to be separated from adults in prison, unless it is not in the child's best interest to do so, and the right to maintain contact with family.
[6] Concerns include a lack of legislative basis, lack of funding and resources across jurisdictions, inconsistencies with existing inspection bodies, and failure to include aged care and disability-specific facilities. See the Australia Opcat Network, Submission to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the United Nations Working Group on Arbitrary Detention (WGAD), *The Implementation of Opcat in Australia* (January 2020).
[7] Michel Forst, *Report of the Special Rapporteur on the Situation of Human Rights Defenders on his Mission to Australia*, A/HRC/37/51/Add.3 (28 October 2018) 11 [53]-[55].
[8] Commonwealth funding for community services should be increased by $2 million per annum in order to reverse the cuts seen since the 2014 Budget. See Australian Council of Social Service, *Budget Priority Statement 2020-2021*, (January 2020) 27.
[9] Victoria Tauli-Corpus, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 11 [60]-[64].
[10] The NT Intervention sent 600 troops into 73 remote Aboriginal communities in 2007, removed cash welfare payments for Aboriginal and Torres Strait Islander Peoples, removed community governance and instilled the compulsory leasing of Aboriginal and Torres Strait Islander communal lands. It suspended the protections of the *Racial Discrimination Act 1975* (Cth) for Aboriginal and Torres Strait Islander Peoples.
[11] James Anaya, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Situation of Indigenous Peoples in Australia,* UN Doc A/HRC/15/37/Add.4 (1 June 2010) 29.
[12] Ibid 12–13.
[13] The NT Intervention suspended the protections of the *Racial Discrimination Act 1975* (Cth) for Aboriginal and Torres Strait Islander Peoples.
[14] *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,* UN Doc A/HRC/15/37/Add.4 (n 11) 28.
[15] Ibid 28–30.
[16] *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia*, (n 9) 11 [60]-[64].
[17] Funding to Homeland and Outstation communities was stopped to pressure Aboriginal and Torres Strait Islander Peoples to move to larger hub communities. See *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,* UN Doc A/HRC/15/37/Add.4 (n 11) 17–18 [68].
[18] Shelley Bielefeld, Submission No 55 to Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (29 September 2017) 17.
[19] Shelley Bielefeld, *Submission to United Nations Special Rapporteur on Extreme Poverty and Human Rights: Thematic Report to the United Nations General Assembly on Digital Technology, Social Protection and Human Rights* (17 May 2019) 2.
[20] Submission No 55 to Senate Standing Committee on Community Affairs, Parliament of Australia, (n 18) 5, 7, 9.
[21] Christopher Knaus, 'Family Violence Rates Rise in Kimberly Towns with Cashless Welfare', *The Guardian* (online, 12 January 2018); Elise Klein, **'**As Costs Mount, The Government Should Abandon the Cashless Debit Card', *The Conversation* (online, 12 December 2017).
[22] Rangi Hirini, 'Cashless Card Outrage Affects Hundreds across the Nation', *National Indigenous Television* (online, 21 January 2019).
[23] Submission No 55 to Senate Standing Committee on Community Affairs, Parliament of Australia (n 18) 13-14.
[24] Shelley Bielefeld, Submission No 55 to Senate Standing Committee on Community Affairs, Parliament of Australia (n 18) 18; Shelley Bielefeld, Submission No 68 to the Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018* (20 July 2018) 1, 12.
[25] Helen Davidson, 'Remote Work-For-The-Dole Scheme is Racist, ACTU Head Sally McManus Says', The Guardian (online, 6 August 2017).
[26] *Submission to United Nations Special Rapporteur on Extreme Poverty and Human Rights: Thematic Report to the United Nations General Assembly on Digital Technology, Social Protection and Human Rights* (n 19) 5.
[27] Dan Conifer, 'Indigenous Dole Scheme Participants Slapped with 350,000 Fines in Two Years', *Australian Broadcasting Corporation* (online, 6 January 2018).
[28] *Submission to United Nations Special Rapporteur on Extreme Poverty and Human Rights: Thematic Report to the United Nations General Assembly on Digital Technology, Social Protection and Human Rights* (n 19) 5.

[29] Lorena Allam and Nick Evershed, 'Too Hot for Humans? First Nations People Fear Becoming Australia's First Climate Refugees', *The Guardian* (online, 18 December 2019).
[30] Including the National Water Initiative (See Virginia Marshall, *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (AIATSIS, 2017) 120) and the Murray-Darling Basin Royal Commission's findings that Aboriginal and Torres Strait Islander Peoples' interests have been marginalized, and that the Water Act's governance fails to provide for the interests of Aboriginal and Torres Strait Islander Peoples (see South Australia, *Murray-Darling Basin Royal Commission Report* (Report, 29 January 2019) chs 11 and 17).
[31] Michael Gannon, 'Close the clean drinking water gap', *Australian Medical Association* (online, 14 November 2017).
[32] Jane Bardon, 'NT traditional owners' concerns about fracking dominate Origin Energy AGM', *ABC News* (online, 18 October 2018); Grace Dungey and Nick Rodway, 'Fracking threatens Aboriginal land rights in Western Australia', *Mongabay* (online, 21 November 2018); Ben Smee, 'Fracking fears grow for rivers in Queensland's channel country' (online, 10 October 2019); Tom Hatton et al, *Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in Western Australia: Final Report to the Western Australian Government* (Report, September 2018) 454-455, 518, 538; Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, *Hydraulic Fracturing ('Fraccing') Techniques, including Reporting Requirements and Governance Arrangements, Background Review*'(Report, June 2014) 51-52.
[33] National Climate Change Adaptation Research Facility, *National Climate Change Adaptation Research Plan: Indigenous Communities* (Report, 2012); Intergovernmental Panel on Climate Change, *Climate Change and Land: IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems* (Report, 7 August 2019) 381.
[34] The Act denies Aboriginal and Torres Strait Islander Peoples 'free prior and informed consent' in mine approvals affecting native title – without agreement, the tribunal can approve mining without awarding royalties; has a default decision making mechanism in land use agreements that is inconsistent with the right of self-determination; allows for compulsory acquisition of native title land for third party benefit; and provides for extinguishment of Native Title, and extinguishment prior to 1975 without compensation.
[35] Referendum Council, *Final Report of the Referendum Council* (Report, 30 June 2017) I.
[36] In addition, legislative changes in December 2014 resulted in more cancellation or refusal of visas for refugees and asylum seekers on character grounds. Those decisions do not give appropriate weight to non-refoulement obligations, resulting in protracted arbitrary detention for many.
[37] 2017 Senate Estimates indicate that 376 stateless persons were held in offshore detention, comprising 12% of all persons held in offshore detention: Legal and Constitutional Affairs Senate Estimates Committee, Question Taken on Notice, Additional Estimates Hearing (27 February 2017) Immigration and Border Protection Portfolio AE17/170. Neither Papua New Guinea nor Nauru are party to the 1954 *Convention Relating to the Status of Stateless Persons*, or the 1961 *Convention on the Reduction of Statelessness*.
[38] Available Australian Government statistics indicate that the number of stateless persons currently in Australia is, at a minimum, approximately 4,099 (See Australian Government, Department of Home Affairs, Australian Border Force, *Immigration Detention and Community Statistics Summary* (Report, 31 October 2019) 8; Australian Government, Department of Home Affairs, Australian Border Force, *Illegal Maritime Arrivals on Bridging E Visa* (Report, 30 September 2019); Australian Government, Department of Home Affairs, *IMA Legacy Caseload, Report on Processing Status Outcomes* (Report, October 2019); Australian Government, Department of Immigration and Border protection, *Onshore Humanitarian Program 2018-19*; Australian Government, Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2018-19* (Report, 2019); Australian Government, Department of Home Affairs, *Key Statistics as at 31 October 2019* (Factsheet). In contrast to these government statistics, however, until recently the Australian Government was reporting '0' stateless persons within Australian territory, and more recently 138 stateless persons (See: UNHCR, *Global Trends – Forced Displacement in 2018* (Report, 2019)).
[39] Australia also has no method of protecting stateless persons who do not qualify as refugees or for international protection. Statelessness is not a criterion for qualification for a protection visa. Australia's international obligations to protect the rights of stateless people are found in a variety of instruments: *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975); *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954); *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 15(1); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 24(3); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 9; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 7; *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 18; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) art 1(3), 5; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987). State based Stateless Determination Procedures are an implicit requirement of state parties meeting their obligations under the 1954 and 1961 Conventions (United Nations Secretary-General, *Guidance Note of the Secretary-General, The United Nations and Statelessness*, November 2018, 7; UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (2014) 6 [8].
[40] This is in line with the UNHCR #iBelong Campaign to end statelessness by 2024. Action 6 relates to establishing statelessness determination procedures. See United Nations, *Global Action Plan to End Statelessness: 2014-2024* (Report, 2014).
[41] Amy Remeikis, 'Scott Morrison Attacks 'Mindless Tribalism' After Christchurch Massacre', *The Guardian* (online, 18 March 2019); Australian Government, *Multicultural Australia: United, Strong, Successful* (Statement, March 2017).

[42] Lowy Institute, 'Immigration and Refugees', Lowy Institute Poll 2019 (Web Page) <https://lowyinstitutepoll.lowyinstitute.org/themes/immigration-and-refugees/#section-attitudes-to-immigration>.
[43] Kevin Dunn et al, *The resilience and ordinariness of Australian Muslims: Attitudes and experiences of Muslims Report*, (Report, November 2015) 27; Derya Iner (ed), *Islamophobia in Australia II (2016-2017)* (Report, 2019).
[44] Diversity Council Australia, 'The Facts on Victorian African Crime' (Position Statement, 3 September 2018); All Together Now, *Social commentary and racism in 2019* (Report, 2019) 19.
[45] See, Attorney-General's Department, *Australia's Universal Periodic Review* (Report, 15 September 2015).
[46] See, 'Terms of Reference', *Royal Commission into Aged Care Quality and Safety* (Web Page, 6 December 2018).
[47] See, Royal Commission into Aged Care Quality and Safety, *Interim Report* (Report, 31 October 2019).
[48] See, Australian Government Productivity Commission, *Report on Government Services 2020* (Report, 23 January 2020).
[49] Older Australians are assessed as having a functional decline in their abilities by the Australian Government prior to being placed on the waitlist. This may trigger incompatibilities with ICRPD articles 25 or 26.
[50] See, Human Rights Watch, *"Fading Away": How Aged Care Facilities in Australia Chemically Restrain Older People with Dementia* (Report, 25 October 2019).
[51] Susan Ryan, 'Commissioner's Foreword' in Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016). Australia must improve age-discrimination experienced by older workers in the area of recruitment. Almost one in three managers report that they would not employ someone over a certain age, with two thirds saying that age is 50, see, COTA for older Australians, 'MEDIA RELEASE: Survey shows ageism alive and well among Australian employers' (Media Release, 1 November 2018). Discrimination against older workers is also prevalent in insurance. Many insurance products such as workers compensation and workers compensation stop at age 65 despite notional retirement age moving to 67 by 2023.
[52] *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth).
[53] Requirements that a person must divorce their spouse prior to updating their legal gender on birth certificates have been removed in all states and territories: Australian Capital Territory ('ACT') (2006), South Australia ('SA') (2016), New South Wales ('NSW') (2018), Queensland ('Qld') (2018), Northern Territory ('NT') (2018), Victoria ('Vic') (2019), Tasmania ('Tas') (2019) and Western Australia ('WA') (2019). Requirements that a person must undergo sexual reassignment surgery or medical intervention prior to updating their legal gender have been removed in ACT (2014), SA (2016), NT (2018), Vic (2019), Tas (2019), and partially, in WA (2011).
[54] Vic (2016), Qld (2016), SA (2017) and NT (2018), which joined WA (2002), ACT (2004), NSW (2010) and Tas (2013).
[55] Tas (2017), Qld (2017), WA (2018) and NT (2018), which joined SA (2013), NSW (2014), Vic (2014) and ACT (2015).
[56] Vic (2016, with further reforms under consideration), ACT (proposed 2020) and Qld (proposed 2020).
[57] There is evidence that discrimination, harassment and violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) Australians was in fact exacerbated by the Australian Government's insistence in 2017 on conducting a non-binding and constitutionally unnecessary national postal survey on same-sex marriage, as a precondition for allowing a vote on legislation in parliament: see, Senate Finance and Public Administration References Committee, Parliament of Australia, *Arrangements for the postal survey* (Report, February 2018) 23–27 [4.3] – [4.15], 33–34[5.8] – [5.12], see also Dissenting Report by Government Senators 48 [1.56]; Stefano Verrelli et al, 'Minority stress, social support, and the mental health of lesbian, gay, and bisexual Australians during the Australian Marriage Law Postal Survey' (2017) 54(4) *Australian Psychologist* 336; Cristen Tilley and Nathan Hoad, 'Keeping Track of the Ugly Side of the Same-Sex Marriage Debate', *ABC News* (online, 26 October 2017).
[58] Ibid; Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights: National Consultation Report* (Report, 2015); William Leonard et al, *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians* (Report, Australian Research Centre in Sex, Health & Society, La Trobe University, 2012) 45; Intersex Human Rights Australia, Submission to the Australian Human Rights Commission, *Protecting the Human Rights of People Born with Variations in Sex Characteristics in the context of medical interventions* (30 September 2018) ('*IHRA Submission*').
[59] NSW, Qld and WA.
[60] Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Eighth Periodic Report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019); Office of the High Commissioner for Human Rights, *Background Note on Human Rights Violations against Intersex People* (2019); IHRA Submission (n 58); AIS Support Group Australia, Submission to the Australian Human Rights Commission, Protecting the Human Rights of People Born with Variations in Sex Characteristics (29 September 2018) . In this regard, the 2013 Australian Senate recommendations on ending forced and medical interventions on children with intersex variations remain unimplemented: see Senate Community Affairs References Committee, Parliament of Australia, *Involuntary or coerced sterilisation of intersex people in Australia* (Second Report, 25 October 2013).
[61] Ibid; See also Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) ('*CPRD Concluding Observations on Australia*').
[62] Recognising that the needs, characteristics and human rights situations of populations of diverse sexual orientations, gender identities, gender expressions and sex characteristics are distinct from each other, the data on each population must be collected and managed in a manner consistent with ethical, scientific and human rights standards and made available in a disaggregated form. See *Yogyakarta Principles Plus 10*, Principle 19, (l).
[63] Kerry Robinson et al., 'Growing up Queer: Issues facing Young Australians who are Gender Variant and Sexuality Diverse' (Report, Young and Well Co-operative Research Centre, February 2014).
[64] There are serious concerns with the implementation of the current National Disability Strategy (2010-2020), that were most recently raised by the Committee on the Rights of Persons with Disabilities (CRPD). See *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61). See also Australian Civil Society CPRD Shadow

Report Working Group, 'Disability Rights Now 2019', Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities, *UN CRPD Review 2019* (July 2019) ('*Australian Civil Society Shadow Report*').

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

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

[67] Despite recommendations from the Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Report No 124, 24 November 2014); Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/31/14 (13 January 2016) 23 and most recently *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61).

[68] See Ibid, and *Australian Civil Society Shadow Report* (n 64) 27, 29.

[69] A high number of people with disability, including children are administered psychotropic medication, physical restraint, and seclusion under the guide of 'behaviour management', including in schools, disability and mental health facilities, hospitals and aged care settings. Surgeries and other medical interventions are performed on infants and children with intersex variations without informed consent or evidence of necessity. See: Australian Cross Disability Alliance (ACDA), Submission No 147 to the Senate Community Affairs References Committee, *Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings* (August 2015).

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

[71] Disabled Peoples Organisations Australia and National Women's Alliances, *The Status of Women and Girls with Disability in Australia* (Position Paper, November 2019).

[72] 74% of incidents reported to Australia's Disability Royal Commission have occurred since 2010: *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (First Progress Report, December 2019) 13.

[73] In relation to child protection and out of home care, see SNAICC – National Voice for our Children et al., *The Family Matters Report 2019: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*, (Report, 2019). In relation to juvenile justice, see Australian Government Productivity Commission, *Report on government services 2020* (Report, 23 January 2020) Section 17, 'Youth justice services', 17.5.

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

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

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

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

[78] Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016* (Report, 2016).
See also Djirra, 'High Rates of Violence against Aboriginal and Torres Strait Islander women must be addressed', Oral Statement by Antoinette Braybrook to the Human Rights Council, 41st session, agenda item 3 (27 June 2019).

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

[80] Dubravka Šimonović, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her mission to Australia: note by the Secretariat*, UN Doc A/HRC/38/47/Add.1 (17 April 2018). See, eg Julia Holman, 'Federal Government Axes Funding to Peak Body Representing Indigenous Survivors of Domestic Violence', ABC News (online, 6 December 2019).

[81] Ibid.

[82] 'Safety First in Family Law', *Women's Legal Services Australia* (Web Page, 23 October 2019).

[83] Australian Women Against Violence Alliance, *Analysis of the Fourth Action Plan* (17 September 2019). .

[84] The Plan focuses on sexual assault and domestic and family violence in the context of intimate partner violence. It does not account for structural and institutional forms of gender-based violence related to law, state and culture women with disability experience and are more at risk of – i.e. reproductive rights violations and violence occurring in residential institutions. See, and *Australian Civil Society Shadow Report* (n 64).
[85] *Committee* on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Australia*, *UN Doc CEDAW/C/AUS/CO/8 (*25 July 2018) [52]; *Committee* on the Elimination of Racial Discrimination, *Concluding observations of the eighteenth to twentieth periodic reports of Australia*, Un Doc CERD/C/AUS/CO/18-20 (26 December 2017) [28]; and Dubravka Šimonović, End of Mission statement by United Nations Special Rapporteur on Violence against women, its causes and consequences, on her visit to Australia from 13 to 27 February 2017 (27 February 2017).
[86] National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas* (Report, 2019).
[87] Mercy Foundation et al, *Retiring into Poverty: A National Plan For Change: Increasing Housing Security for Older Women* (Report, August 2018).
[88] *Summary Offences and Other Legislation Amendment Bill 2019* (Qld); *Right to Farm Act 2019* (NSW). Tasmania will also likely introduce similar laws: see *Workplaces (Protection from Protesters) Amendment Bill 2019* (TAS).
[89] Lorna Knowles et al., 'ABC Raid: AFP Leave Ultimo Building with Files after Hours-Long Raid over Afghan Files Stories', *ABC News* (online, 6 June 2019).
[90] *Criminal Code Act 1995* (Cth), division 91.
[91] There have been secret prosecutions of former intelligence officer Witness K and his lawyer Bernard Collaery, who revealed that Australia bugged the offices of East Timorese negotiators during oil and gas negotiations. See James Massola, 'PM Dismisses Questions over Prosecution of 'Witness K' and Lawyer' *Sydney Morning Herald* (online, 30 August 2019). The prosecution of Collaery may be in breach of the UN Basic Principles on the Role of Lawyers. In addition, Australia has not applied diplomatic pressure on the UK to prevent the extradition of Julian Assange to the USA, despite the underlying allegations cited in support of the charges include acts of common journalistic practice.
[92] The National Congress of Australia's First Peoples, the national elected Aboriginal and Torres Strait Islander representative body, lost its federal government funding in 2014 and was wound up in 2019 as a result.
[93] Ibid, the Indigenous Peoples Organisation (IPO), which coordinates Indigenous advocacy at the United Nations, lost its annual $100,000 funding to support Indigenous participation at United Nations fora in 2014.
[94] *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (Cth).
[95] *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth); *Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018* (Cth).
[96] *Identity-matching Services Bill 2019 and Australian Passports Amendment (Identity-matching Services) Bill 2019* (Cth). At local and State level, governments and corporations have already rolled out facial recognition.
[97] See *Australian Citizenship Act 2007* (Cth) ss 32A-36A. The *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* is also currently before the Australian Parliament, which could render the Act inconsistent with Australia's international obligations and provide inadequate protections in ensuring the reduction and prevention of statelessness. See Peter McMullin Centre on Statelessness, Submission No 19 to the Parliamentary Joint Committee on Intelligence and Security*, Review of the Australian Citizenship Amendment (Citizen Cessation) Bill 2019* (16 October 2019).
[98] Cox Inall Ridgeway, *Review of the Indigenous Legal Assistance Program (ILAP) 2015-2020* (Final Report, February 2019).
[99] Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) vol 2, 738–9.
[100] See e.g., *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory*, 17 November 2017, Canberra; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [47]-[48]; Human Rights Watch *I needed help, instead I was punished' Abuse and Neglect of Prisoners with Disabilities in Australia* 2018 https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf; and the Prisons section of this Report.
[101] See, e.g., *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory*, (Final Report, 17 November 2017); Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [47]-[48].
[102] See The Office of the Public Guardian, Queensland *Annual Report 2018–19* (Report, 2019) 9; see also *Australian Civil Society Shadow Report* (n 64) and *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61).
[103] The Committee on the Rights of the Child has called on all States Parties to raise their minimum age to at least 14 and has specifically urged Australia to do so: Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [22]; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [48(a)]. Numerous other UN committees and entities have called on Australia to raise its minimum age of criminal responsibility in line with international standards: see, e.g., Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, UN Doc CERD/C/AUS/CO/18-20 (26 December 2017) [26(a)]; Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, UN Doc CCPR/C/AUS/CO/6 (1 December 2017) [44]; *Report of the Special Rapporteur on the Rights of Indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (n 9) [77] and [113(i)].
[104] Manfred Nowak, *Global study on children deprived of liberty*, UN Doc A/74/136 (11 July 2019).
[105] In 2016 Australian Governments tabled the Working Group on the Treatment of People Unfit to Plead or Found Not Guilty by reason of Mental Impairment, *Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment* . However, three years later, these Principles are yet to be consulted on, endorsed or implemented. In 2016 the Australian Senate also tabled the Community Affairs References Committee, *Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment*

(Report, November 2016). The Government is yet to respond to the Report. Most recently Australia was highly criticised by the Committee on the Rights of Persons with Disabilities for making no progress in this regard, see *CPRD Concluding Observations on Australia*, UN Doc CRPD/C/AUS/CO/2-3 (n 61) 7.

[106] See 'Australia's 2nd Universal Periodic Review: Voluntary Commitments', Human Rights Law Centre (Web Page). See also: 'Australia's International Human Rights Obligations', Law Council of Australia (Web Page).

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

[108] Human Rights Watch, *Interview: The Horror of Australia's Prisons. Prisoners with Disabilities Serving Time in Solitary, Face Physical, Sexual Abuse*, (Interview with Kriti Sharma, 6 February 2018).

[109] Human Rights Watch, *"I Needed Help, Instead I Was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia'* (Report, 6 February 2018).

[110] Lorena Allam, Calla Wahlquist, Nick Evershed, 'Aboriginal deaths in custody: Black Lives Matter protests referred to our count of 432 deaths. It's now 437', *The Guardian* (online, 9 June 2020).

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

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

[113] Mandy Wilson et.al., 'Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia' (2017) 7(1) *SAGE Open* 1; Rowena Lawrie, 'Speak Out Speak Strong: Rising Imprisonment Rates of Aboriginal Women' (2003) 8(2) *Australian Indigenous Law Reporter* 81.

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

[115] Legislative Council Standing Committee on Social Issues, Parliament of New South Wales, *Report into Children of Imprisoned Parents* (Report No 12, July 1997) 6.

[116] *Royal Commission into Child Protection and Youth Detention in the Northern Territory* (Final Report, 17 November 2017), *Queensland Independent Review of Youth Detention Centres* (Confidential Report, December 2016); Commission for Children and Young People, Victoria, *The same four walls: Inquiry into the use of isolation, separation and lockdown at places of youth detention in Victoria* (Report, 2017); Office of the Inspector of Custodial Services, Western Australia, *Behaviour Management Practices at Banksia Hill* (Report, June 2017); Inspector of Custodial Services, New South Wales, *Use of Force Against Detainees in NSW Juvenile Justice Centres* (Report, 2018); Legal and Social Issues Committee, Legislative Council, Parliament of Victoria, *Inquiry into Youth Justice Centres in Victoria* (Final Report, March 2018); Office of the Advocate for Children and Young People, New South Wales, *What children and young people in juvenile justice centres have to say* (Report, 2019); Australian Institute of Health and Welfare, *Youth Justice in Australia* (Report, 10 May 2019); Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision: 2013-2014* (Report, Data Linkage Series No 21, 2016); Susan Baidawi and Rosemary Sheehan, *Cross-over kids: Effective responses to children and young people in the youth justice and statutory Child Protection systems* (Report to the Institute of Criminology, December 2019) and Ombudsman SA, *Investigation concerning the use of spit hoods in the Adelaide Youth Training Centre* (Report, September 2019). In Tasmania a police investigation resulted in charges of common assault being laid against a guard from Ashley Youth Detention Centre. In the ACT an incident at Bimberi Youth Justice Centre on 6 May 2016 is, according to the ACT Human Rights Commission: "subject to three separate external enquiries, including an investigation by the AFP."

[117] Mark Willacy, 'The Watch House Files', *ABC News* (online, 13 May 2019).

[118] Garth den Heyer and Alan Beckley, 'Police independent oversight in Australia and New Zealand' (2013) 14(2) *Police Practice & Research* 130, 130, 139.

[119] The New South Wales example showing a 5% cut in budget over a four year period starting in 2018, despite having initiating 1,083 more assessments in the 2018/2019 period than previous oversight body in 2015/2016. Michael McGowan, 'NSW police watchdog fully investigated just 2% of 'firehose' of complaints: Law Enforcement and Conduct Commission says budget cuts mean it is being forced to 'do more with less'' *The Guardian* (online, 3 November 2019); Garth den Heyer and Alan Beckley, (n 118) 138.

[120] Louise Porter and Tim Prenzler, *Police Integrity and Management in Australia: Global Lessons for Combating Police Misconduct* (Routledge, 2012), 4, 233.

[121] Avital Mentovich et al., 'Policing alienated minorities in divided cities' (2018) *Regulation & Governance* 1, 2.

[122] Kristina Murphy, Adrian Cherney and Marcus Teston, 'Promoting Muslims' Willingness to Report Terror Threats to Police: Testing Competing Theories of Procedural Justice' (2018) 36(4) *Justice Quarterly* 594, 594-597; Kent Roach, 'The Eroding Distinction Between Intelligence and Evidence in Terrorism Investigations' in Nicola McGarrity, Andrew Lynch and George Williams (eds), *Counter-Terrorism and Beyond* (Routledge, 2010) 48, 49.

[123] Police notably struggle in the context of violence against minority communities, with training being inconsistent overall. Avital Mentovich et al. (n 121) 2; Toby Miles-Johnsona et al, 'Police Perceptions of Prejudice: how police awareness training influences the capacity of police to assess prejudiced motivated crime' (2016) 28(6) *Policing and Society* 730, 732.

[124] Tamar Hopkins, *Monitoring Racial Profiling - Introducing a scheme to prevent unlawful stops and searches by Victoria Police* (Report, Police Stop Data Working Group, Flemington & Kensington Legal Centre, August 2017).

[125] Two major reviews of the rates of the incarceration of Aboriginal and Torres Strait Islander Peoples have been conducted in the period since the Royal Commission without response from Federal Government. Lorena Allam, Calla Wahlquist and Nick Evershed, 'Indigenous Deaths in Custody worsen in the year of tracking by Deaths inside Project',

The Guardian (online, 23 August 2019); Lorena Allam, Calla Wahlquist, Nick Evershed, 'Aboriginal deaths in custody: Black Lives Matter protests referred to our count of 432 deaths. It's now 437', *The Guardian* (online, 9 June 2020).
[126] Notably, whilst the rate of deaths in custody has declined since the Royal Commission, the rate of incarceration has increased, resulting in increased numbers of deaths in custody, and disharmony between states on the implementation of the 339 recommendations made in 1991: Lorena Allam and Calla Wahlquist, 'Indigenous Deaths in Custody: key recommendations still not fully implemented - Deloitte review of deaths in custody reveals that only two-thirds of landmark royal commission's recommendations have been fully implemented', *The Guardian* (online, 25 October 2018).
[127] Heather Nancarrow, *Unintended Consequences of Domestic Violence: Gendered Aspirations and Racialised Realities* (Palgrave, 2019), 90, 113, 184.
[128] Nafiseh Ghafournia and Patricia Easteal, 'Help-Seeking Experiences of Immigrant Domestic Violence Survivors in Australia: A Snapshot of Muslim Survivors', (2019) July, *Journal of Interpersonal Violence* 1, 2-3.
[129] Heather Nancarrow, *Unintended Consequences of Domestic Violence: Gendered Aspirations and Racialised Realities* (Palgrave, 2019), 90, 113, 184.
[130] Peter Davidson et al., *Poverty in Australia 2020: Part one, Overview. ACOSSUNSW Poverty and Inequality Partnership Report No.3* (Report, 2020).
[131] Ibid.
[132] Ibid. The Newstart Allowance falls $117 a week below the poverty line, and youth payments are $168 a week below the line.
[133] Peter Davidson et al., *Poverty in Australia 2020: Part one, Overview. ACOSSUNSW Poverty and Inequality Partnership Report No.2* (Report, 2020).
[134] See, J. Rob Bray, 'Seven years of evaluating income management - what have we learnt? Placing the findings of the New Income Management in the Northern Territory evaluation in context' (2016) 51(4) *Australian Journal of Social Issues* 449.
[135] See Luke Henriques-Gomes, 'Robo Debt Could Target Pensioners and 'Sensitive' Groups, Leaked Documents Show', *The Guardian* (online, 23 August 2019).
[136] In 2014–15, 29% Aboriginal and Torres Strait Islander people 15 years and over had experienced homelessness: Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (Catalogue No 4714.0, 28 April 2016). A review of remote housing in 2017 found overcrowding in 49% of very remote and 27% in remote housing, with more than 20 people per house: Department of Prime Minister and Cabinet, Commonwealth of Australia, *The Remote Housing Review 2008-2018: A Review of the National Partnership Agreement on Remote Housing and the Remote Housing Strategy 2008-2018* (Report, 2018) 20. Overcrowding negatively impacts physical and mental health, children's school attendance and is a key contributing factor and is a key contributing factor for assault and sexual assault**.** Overcrowding also caused additional stresses on water supplies and sewage disposal systems, causing failures and sewage overflow, strained shared amenities resulting in a lack of washing of people, clothes and bedding (see Department of Prime Minister and Cabinet, Commonwealth of Australia, *The Remote Housing Review 2008-2018: A Review of the National Partnership Agreement on Remote Housing and the Remote Housing Strategy 2008-2018* (Report, 2018). This Housing review did not include Aboriginal Homelands, Outstations, or non-remote discrete communities.
[137] Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness, 2016* (Catalogue No 2049.0, 14 March 2018).
[138] Australian Bureau of Statistics, *Housing Occupancy and Costs, 2017-18* (Catalogue No 4130.0, 17 July 2019).
[139] At 4.4% in 2017, compared to nearly 20% for the UK: see 'Affordable Housing Database', *Organisation for Economic Co-operation and Development* (Web Page, 2019); Australian Institute of Health and Welfare, *Housing Assistance in Australia 2018* (Web Report, Catalogue no HOU 296, 28 June 2018).
[140] Homelessness Taskforce, Department of Families, Housing, Community Services and Indigenous Affairs, *The Road Home: A National Approach to Reducing Homelessness* (White Paper, 2008).
[141] See Australian Bureau of Statistics, *Housing Occupancy and Costs, 2017-18* (Catalogue No 4030.0, 17 July 2019).
[142] *Closing the Gap* aims to improve the lives of all Aboriginal and Torres Strait Islander Peoples. Australian governments have worked together to deliver better health, education and employment outcomes for Aboriginal and Torres Strait Islander Peoples, and to eliminate the difference between Aboriginal and Torres Strait Islander Peoples and other people across a number of areas like health, education, employment and life expectancy. In December 2018 the Council of Australian Governments (COAG) committed to forming a genuine formal partnership with Aboriginal and Torres Strait Islander Peoples to enable them to decide on the priorities and lead on the progress of Closing the Gap.
The Coalition of Peaks is a representative body comprised of Aboriginal and Torres Strait Islander community controlled peak-body organisations that have come together to partner with all Australian governments on designing, implementing and evaluating the closing the gap strategy, a policy aimed at improving the lives of Aboriginal and Torres Strait Islander Peoples. The Coalition of Peaks entered into a historic formal Partnership Agreement on Closing the Gap with the Council of Australian Governments (COAG) which sets out shared decision making on Closing the Gap. Together, it has been agreed to develop a new National Agreement on Closing the Gap, to be signed by COAG and the Coalition of Peaks, which will set out joint actions over the next ten years to help improve the lives of Aboriginal and Torres Strait Islander Peoples.
[143] This is one of the largest ratios of any OECD nation. See Productivity Commission, *Why a Better Health System Matters, Shifting the Dial: 5 year Productivity Review, Supporting Paper 4* (Report, 2017) 11.
[144] The 20% of Australians living in the lowest socioeconomic areas in 2014–15 were 1.6 times as likely as the highest 20% to have at least two chronic health conditions, such as heart disease and diabetes. Australians living in the lowest socioeconomic areas lived about 3 years less than those living in the highest areas in 2009–2011: Australian Institute of Health and Welfare, *Australia's health 2016* (Report, 13 September 2016), Chapter 4, 130.
[145] For example, Australia lacks a universal dental scheme. See Stephen Duckett, Matt Cowgill and Hal Swerissen, *Filing the Gap: A Universal Dental Scheme for Australia* (Report, Grattan Institute, March 2019).
[146] Public Health Association Australia, *Commonwealth Budget 2020-2021 Pre-Budget Submission* (31 January 2020) 6.

[147] The Australia Institute, *Polling – Bushfire Crisis and Concern about Climate Change* (Report, January 2020) 5.
[148] Poverty and poor living conditions contribute to high rates of cardiovascular disease for Aboriginal and Torres Strait Islander Peoples (18% for remote regions), with 94% of cases of Acute Rheumatic Fever, and 92% of cases of Rhematic Heart Disease involving Aboriginal and Torres Strait Islander Peoples. Kidney disease and renal failure in 2011-2015 for Aboriginal and Torres Strait Islander Peoples was 6.8 times the rate of other people, with 18.6 times the rate in the NT, and 12.7 times the rate in WA. Aboriginal and Torres Strait Islander Peoples also have 3 times the rate of blindness than other people, and trachoma, caused by poor living conditions and over-crowding, was at 4% in identified Aboriginal communities in 2017. Australia is the only developed country with trachoma. Diabetes impacts 13% of Aboriginal and Torres Strait Islander Peoples, with a death rate of 5.2 times that of other people. Cancer accounted for 9% of the disease burden for Aboriginal and Torres Strait Islander Peoples, and chronic respiratory disease is the third leading cause of death among Aboriginal and Torres Strait Islander Peoples, with Aboriginal and Torres Strait Islanders babies 4.5 times more likely to die than other babies. See, Australian Indigenous Health InfoNet, *Summary of Aboriginal and Torres Strait Islander health status 2017* (Report, 2018) 10-21.
[149] In 2016, an inquest was launched following 13 child deaths in the Kimberley in less than four years, including five children aged between ten and 13. The Coroner recommended a greater focus on self-determination, consultation, cultural education, increased and paid Aboriginal employment in service delivery, increased mental health services, recreational facilities and educational engagement, language learning, together with education on preventing, increased support for Foetal Alcohol Syndrome Disorder and the provision of alcohol rehabilitation with an emphasis on self-determination. See, State Coroner, *Record of Investigation into Death: Inquest into the deaths of thirteen children and young persons in the Kimberley Region of West Australia* (Report, 2017).
[150] Ibid 268.
[151] Ibid 334-336.
[152] Ibid 295-297.
[153] Ibid, 372. In a 2019 inquest into five deaths by suicide at Casuarina Prison, in which three of the deceased persons were Aboriginal or Torres Strait Islander Peoples, the Coroner made a series of recommendations on the need to improve mental health support and reduce the risk of suicide in the prison. See, State Coroner, *Record of Investigation into Death: deaths of five persons incarcerated at Casuarina Prison* (Report, 2019) 128–129 [666]. The Coroner also acknowledged that it is important that the cultural needs of Aboriginal and Torres Strait Islander prisoners are recognised, and that Aboriginal and Torres Strait Islander prisoners are supported by networks of Aboriginal and Torres Strait Islander Elders and support workers. See, State Coroner, *Record of Investigation into Death: deaths of five persons incarcerated at Casuarina Prison* (Report, 2019) 65-66 [317]-[322].
[154] State Coroner (n 149) 332.
[155] Australian Bureau of Statistics, *National Health Survey: First Results, 2017-18* (Catalogue No 4364.0.55.001, 12 December 2018).
[156] Commission on Ending Childhood Obesity, World Health Organisation, *Report of the Commission on Ending Childhood Obesity* (Report, 2016). Thank you to Professor Louise Baur for reviewing this section.
[157] See, Human Rights Council of Australia, Oral Statement by Cristyn Davies to United Nations Human Rights Council, 41st session, agenda item 8 (24 June 2019).
[158] Culturally safe healthcare refers to care that 1) respects human rights of self-determination and bodily autonomy 2) ensures health professionals are trained in culturally safe gender affirming care; 3) that therapeutic agents are subsidised and accessible; and 3) that provides a culturally safe informed consent model practiced across community-based services and in general practice. National frameworks and up-to-date guidelines for healthcare must be developed in partnership with community. In addition, Australia must (1) implement the Australian modification and implementation of the ICD-11 (ensuring that all diagnostic coding of 'Gender Incongruence' are within a newly established Sexual Health chapter and that all gender related coding is removed from the existing Mental Illness chapter), and (2) establish a review of the Medicare Benefits Schedule, which allows public funding to be directed towards particular healthcare services, to ensure the health system does not discriminate against people on the grounds of their gender identity and sex characteristics. See, Cristyn Davies et al, 'Australians of diverse sexual orientations and gender identities', (2020) *Culture, Diversity and Health in Australia: Towards Culturally Safe Health Care*; Michelle Telfer et al., *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* (Report version 1.1, Melbourne Royal Children's Hospital, 2018)*;* Editorial, 'Gender-affirming care needed for transgender children' (2018) 391 (10140) *The Lancet* 2576; E Coleman et al, 'Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7' (2012) 13(4) *International Journal of Transgenderism* 165-232; Cheung et al 'Position statement on the hormonal management of adult transgender and gender diverse individuals' (2019) 211(3) *Medical Journal of Australia* 127. Thank you to Associate Professor Michelle Telfer and Professor S. Rachel Skinner for reviewing this section.
[159] The Human Rights Commission states "climate change threatens the enjoyment of all human rights, including the rights to health, water, food, housing, self-determination, and life itself. Climate change is man-made. It is a result of policy choices that breach the affirmative obligations of States to respect, protect and fulfil human rights": 'Human Rights and Climate Change', *Office of the High Commissioner, United Nations Human Rights* (Fact Sheet, October 2018), *The Paris Agreement* preamble states "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity."
[160] Quarterly Updates of Australia's National Greenhouse Gas Inventory in 'Publications and Resources', *Department of Agriculture, Water and the Environment* (Web Page, September 2019).
[161] The Climate Action Tracker is an independent scientific analysis that tracks government climate action and measures it against the globally agreed Paris Agreement. Its December 2019 update has rated Australia's 2030 target as "insufficient" and is at the less stringent end of what would be a fair share of the global effort. See, 'Australia', *Climate Action Tracker* (Web Page, 2 December 2019).

[162] According to analysis by NGO Market Forces, national tax-based subsidies that encourage fossil fuel production and consumption add up to $12 billion every year, see 'How your tax dollars subsidise fossil fuels', *Market Forces* (Web Page). According to analysis by the Australian Conservation Foundation (ACF) after the 2019/2020 Federal budget release, the Australian federal Government spends $4.36 subsidising pollution for every dollar it spends on climate action, see, 'Morrison Government's Budget 2019-20: Devaluing Our Environment While Fuelling Global Warming', *Australian Conservation Foundation* (Media Release, 2 April 2019).
[163] Transition planning is an opportunity to ensure job creation, social justice, poverty eradication, and grassroots leadership and empowerment, including for people experience multiple forms of discrimination.
[164] A carbon price and ending fossil fuels subsidies are two ways to fund adaptation and just transition measures.
[165] Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [40].
[166] Australia has committed $1bn over 5 years 2015-2020 representing 0.3% of global flows. Academics and OFMA have estimated Australia's contribution should be 2.4% of global flows which is equivalent to at least $3.2billion. See, Australian Council for International Development (ACFID), 'Australian Development Cooperation in a Time of Contestation: AFCIF Submission to the 2019-20 Federal Budget' (Report, January 2019), 9. A carbon price and ending fossil fuels subsidies are two ways to fund adaptation and just transition measures.
[167] Australia's ODA reduced by over 30% between 2013 and 2018. See OECD Development Assistance Committee, 'Development Co-operation Peer Reviews: Australia 2018' (Report, 26 March 2018).
[168] Performance has fallen year-on-year against the 80% gender target, from a high of 78% in FY 2015-16 down to 75% in 2017-18. See, Commonwealth of Australia, DFAT, 'Performance of Australian Aid 2017-18' (Report, 2 April 2019).
[169] International Women's Development Agency, 'Making Infrastructure Work for Gender Equality' (Media release, 30 May 30 2019); see, HELP Resources Inc. et al, *Shadow report to the 70th Session of CEDAW: Review of Australia Extraterritorial Obligations* (June 2018).
[170] Australian Charities and Not-For-Profits Commission, 'External Conduct Standard Four: Protection of Vulnerable Individuals'.
[171] See, ACFID Child Rights Community of Practice and ReThink Orphanages Australia, *Working with Children in Residential Care: Implications of the ACNC External Conduct Standards for Australian Charities* (Report, 2019).
[172] Australian Government Department of Health, *Eighth National HIV Strategy 2018-2022* (Report, 2018).
[173] In November 2019, the Northern Territory passed a bill to fully decriminalise sex work in the NT, ensuring that sex workers can access workplace health and safety protections. This places NT as only the third jurisdiction in the world to decriminalise sex work, alongside NSW which was the first.
[174] The first domestic case of COVID-19 in Australia was confirmed on 25 January 2020. See the Hon. Greg Hunt MP, *First Confirmed Case of Novel Coronavirus in Australia* (Media Release, Department of Health, 25 January 2020). After this, cases significantly increased and major lockdown measures occurred in mid-March 2020. See Prime Minister Scott Morrison, *Update on Coronavirus Measures* (Media Statement, 18 March 2020).
[175] As at 3 July 2020, fewer than 9,000 people have fallen ill from COVID-19 and 104 people have died - far fewer than projected. See Australian Government, 'Coronavirus (COVID-19) Current Situation and Case Numbers' (3 July 2020) <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>.
[176] Michelle Bachelet, UN High Commissioner for Human Rights, *COVID-19 Pandemic - Informal Briefing to the Human Rights Council* (Statement, 9 April 2020).
[177] The Australian Medical Association, Submission No 86 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May 2020) 9.
[178] Ibid. The AMA's submission specifically notes the need for the Australian Government to renew and expand its focus on mental health to support the population as it emerges from the health and social effects of the pandemic.
[179] This occurred at both a Commonwealth, State and Territory level, making the response complex and varying across Australia.
[180] Human Rights Law Centre, Submission to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (3 June 2020) 6; Civil Liberties Australia, Submission No 76 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (27 May 2020) 2-3.
[181] Ibid.
[182] Ibid.
[183] The Commission was established to lead the "non-health" aspects of Australia's recovery. See the National COVID-19 Coordination Committee, Terms of Reference <https://www.pmc.gov.au/nccc/terms-reference>.
[184] Human Rights Law Centre, above n 180, 7.
[185] Ibid 14-16.
[186] National Aboriginal and Torres Strait Islander Legal Services, *NATSILS Supports Black Lives Matter Rallies Across Australia* (Media Release, 5 June 2020).
[187] See pages 12-13 of the NGO Report. There have been at least 437 deaths in custody since the 1991 Royal Commission into Deaths in Custody. See Lorena Allam, Calla Wahlquist and Nick Evershed, "Aboriginal deaths in custody: Black Lives Matter protests referred to our count of 432 deaths. It's now 437" *The Guardian* (online, 9 June 2020) <https://www.theguardian.com/australia-news/2020/jun/09/black-lives-matter-protesters-referred-to-our-count-of-432-aboriginal-deaths-in-custody-its-now-437>.
[188] National Aboriginal and Torres Strait Islander Legal Services, Submission No 141 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May 2020) 26.
[189] Human Rights Law Centre, Joint Submission No 79 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (27 May 2020) 6-7.
[190] Disability and Aged Care OPCAT Working Group, Submission to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (June 2020).

[191] National Aboriginal and Torres Strait Islander Legal Services, above n 186, 35.
[192] Equality Rights Alliance, Submission No 88 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May 2020) 4; Community Legal Centres Australia, Submission to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic*(12 June 2020) 6.
[193] Equality Rights Alliance, ibid, 6.
[194] National Aboriginal and Torres Strait Islander Legal Services, above n 186, 32; Aboriginal Medical Services Alliance (NT), Submission to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (1 June 2020) 5-6; National Aboriginal Community Controlled Health Organisation, Submission No 64 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May 2020) 7-8, 25. There is also deep concern about the virus being spread to Aboriginal and Torres Strait Islander Peoples in the Northern Territory and other remote regions by US military troops and mining operations, and with the imminent opening of NT borders. See Keira Jenkins, "'Shut it Down': Traditional Owners Call for a Stop to the NT's FIFO Mining Workers" *NTIV* (Online, 26 March 2020) <https://www.sbs.com.au/nitv/article/2020/03/26/shut-it-down-traditional-owners-call-stop-nts-fifo-mining-workers>;
[195] ABS (2020), *6160.0.55.001 - Weekly Payroll Jobs and Wages in Australia*, Week ending 18 April 2020, viewed 7 May 2020 <https://www.abs.gov.au/ausstats/abs@.nsf/mf/6160.0.55.001>.
[196] Equality Rights Alliance, above n 192, 3-4
[197] Children and Young People with Disability Australia, Submission to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May) 2-3.
[198]Westerly, Submission No 115 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May 2020) 4.
[199] Australian Youth Affairs Coalition, Young Australians and our Response to COVID-19 - Member Briefing (May 2020) 1-2.
[200] Claudia Farhart, 'How is Each State Enacting the Moratorium on Rental Evictions?' *SBS News* (Online, 13 April 2020) <https://www.sbs.com.au/news/how-is-each-state-enacting-the-moratorium-on-rental-evictions>.
[201] The Australian Government, *Economic Response to the Coronavirus* <https://treasury.gov.au/coronavirus>.
[202] Human Rights Law Centre, above n 180, 8-9; Refugee Advice and Casework Service, Submission No 68 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (28 May 2020) 1-4.
[203] Human Rights Law Centre, Australians' Right to Protest' (Joint Statement, 18 June 2020) <https://www.hrlc.org.au/news/2020/6/18/australians-right-to-protest>.
[204] Australian Council of Social Services, Submission No 130 to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (26 May 2020) 4.
[205] Aboriginal Peak Organisations Northern Territory, Submission to the Select Committee on COVID-19, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (4 June 2020) 2; National Aboriginal Community Controlled Health Organisation, above n 194, 7-8, 25; Aboriginal Medical Services Alliance (NT), above n 194, 5-6.