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Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1*

Australia

The present report is a summary of 14 stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to United Nations translation services.

I. Background and framework

A. Scope of international obligations

1. The Australian Human Rights Commission (AHRC)² recommended that the Government ratify OP-ICESCR,³ expedite ratification of OP-CAT⁴ and the establishment of a National Preventive Mechanism for places of detention,⁵ and consider ratifying ILO Convention No. 169⁶ and the ICRMW.⁷ Joint Submission 1 (JS1) added that CED should be ratified.⁸

2. JS3 recommended that Australia withdraw its reservations to article 4(a) of the CERD, articles 10(2), 10(3), and 20 of the ICCPR, article 37(c) of the CRC.⁹ JS1 recommended that Australia withdraw its interpretive declaration in relation to articles 12 and 18 of CRPD.¹⁰

B. Constitutional and legislative framework

3. JS1 noted that despite being a party to seven of the core human rights treaties, Australia had not incorporated these treaties into domestic law and had failed to adopt a comprehensive legal framework for the protection of human rights.¹¹ Amnesty International (AI) noted that the Australian Constitution and common law provided limited human rights protection.¹² JS1 further stated that many individuals were unable to access effective remedies.¹³ It recommended that Australia should fully incorporate international human rights obligations into domestic law (with the aim of eventual Constitutional entrenchment) by introducing a comprehensive, judicially enforceable federal Human Rights Act.¹⁴

4. JS1 noted that further to the appointment in 2008, by the Federal Government, of an independent Committee to conduct a National Human Rights Consultation¹⁵ and in response to the Committee's report, the Federal Government announced a "Human Rights Framework" which did not include a federal Human Rights Act – the Committee's key recommendation.¹⁶ Among the initiatives included in the Framework was the development of a comprehensive Equality Act.¹⁷

5. AHRC noted that the absence of an entrenched guarantee of equality/non-discrimination in the Constitution was of particular concern due to current laws that discriminated against Indigenous peoples on the basis of race. AHRC further noted that while there were federal, state and territory anti-discrimination laws, there were inconsistencies between them and their coverage varied and was not comprehensive. There was no other comprehensive human rights protection legislation and access to remedies for human rights breaches was accordingly limited.¹⁸ JS1 recommended that Australia should enact comprehensive legislation that addressed all prohibited grounds of discrimination, promoted substantive equality, and provided effective remedies against systemic and intersectional discrimination.¹⁹

6. AI noted that the Constitution still contained a provision which contemplated the disqualification by States within Australia of "all persons of any race" from voting in a federal election. Section 51(xxvi) of the Constitution also enabled discrimination on the basis of race, granting the Australian Commonwealth the power to make special laws for people of any race, which, according to AI, had facilitated the suspension of the Racial Discrimination Act in 2007 in relation to the Northern Territory Emergency Response (NTER) legislation which had introduced measures such as income quarantining and acquisition of Indigenous land.²⁰

7. JS1 noted that there was a lack of integration of children's rights in Australian law and recommended the enactment of stronger legislative protections for groups such as disabled children.²¹

8. JS1 recommended amending anti-discrimination laws to include "homelessness" or "social status" as prohibited attributes.²² AHRC recommended that sexuality be included as a ground of discrimination federally;²³ that sex or gender diversity be included as grounds of discrimination in federal laws; and that the *Sex Files* report be implemented.²⁴

9. JS4 recommended that Australia develop a legislative framework by 2012 to ensure the mitigation of the effects of the emission of greenhouse gases from Australian sources, with a view to protecting fundamental rights of the citizens of countries affected by human-induced climate change.²⁵

10. According to JS1, some Australian companies, particularly mining companies, had a severe impact on human rights in many parts of the world.²⁶ Australian Corporate Accountability Network's (ACAN), while commending the Australian Government for introducing the Division 268 offences into the Criminal Code, and applying them to Australian corporate conduct overseas,²⁷ strongly urged the Australian Government to remove s.268.121 (1) from the Criminal Code Act 1995 (Cth) indicating that this action would rightfully remove undue political interference from future decisions of the Federal Public Prosecutor to pursue criminal charges of grave human rights abuses committed by Australian companies overseas.²⁸

C. Institutional and human rights infrastructure

11. JS1 recommended that Australia ensure that the determinations and recommendations of its NHRI were enforceable and that the Commission was sufficiently funded to independently and effectively fulfil its mandate.²⁹ Expressing particular concern that there was no national policy focus or monitoring of the rights of the child, AHRC recommended that a National Children's Commissioner be established to monitor compliance with the CRC.³⁰

D. Policy measures

12. JS1 recommended that Australia develop a national policy framework for children.³¹

13. AHRC recommended that the Government agree to incorporate into the National Action Plan (NAP) on Human Rights all of the recommendations that it would accept through the Universal Periodic Review process; and ensure that the NAP was a forward looking document with clear indicators, benchmarks, timeframes and processes for monitoring.³² It recommended that the National Disability Strategy be integrated with the NAP on Human Rights, and include benchmarks, timelines and monitoring processes.³³

14. AHRC recommended that: human rights be incorporated into the National Curriculum for secondary schools; the Government provide a comprehensive package of measures to address its commitments under the World Programme for Human Rights Education; and the Government commit to a sustained focus on community education about human rights to improve understanding and awareness of rights across society.³⁴ JS1 recommended that Australia include and fund human rights education in primary school.³⁵

15. JS1 recommended that Australia announce a timetable for increasing its official ODA to 0.7 per cent of GNI.³⁶ AHRC recommended that the Government ensure that its foreign affairs, trade and development assistance policies incorporate and promote human

rights based approaches, and that the Government expand its support for the promotion of human rights in the Asia-Pacific region.³⁷

II. Promotion and protection of human rights on the ground

A. Cooperation with human rights mechanisms

16. While welcoming the issuance of a standing invitation by Australia to the Special Procedures, JS1 recommended that Australia should extend the mandate of the proposed Joint Parliamentary Committee on Human Rights to include the consideration, follow up and oversight of implementation of recommendations and views of UN human rights mechanisms.³⁸

B. Implementation of international human rights obligations

1. Equality and non-discrimination

17. AHRC commended the Government for the significant commitments and reforms introduced to 'Close the Gap' between Indigenous and non-Indigenous peoples,³⁹ while noting that indigenous peoples in Australia experienced poorer outcomes in education, employment, income and home ownership compared to other Australians; and also experienced higher rates of family violence and child abuse, and over-representation in prisons with little improvement over decades.⁴⁰

18. AI reported on the Northern Territory National Emergency Response Act 2007 and on 2010 legislation amending the NTER arrangements and Government proposals to designate some practices, such as the land access permit system and compulsory acquisition of leases, as "special measures".⁴¹ Australian Catholic Social Justice Council (ACSJC) noted that, while June 2010 legislation widened the application of income management to non-Indigenous Australians in the Northern Territory, since the majority of Northern Territorians receiving welfare were indigenous the policy may have the same effect of discriminating against indigenous peoples.⁴² ACSJC recommended that Australia review both the enabling legislation and the implementation of compulsory income management and other initiatives of its NTER in accordance with ICERD.⁴³ AHRC recommended that the NTER (or intervention) be conducted in a manner that was fully consistent with Australia's human rights obligations and be rigorously monitored.⁴⁴

19. JS1 welcomed the ratification of OP-CEDAW, and proposed amendments to the Sex Discrimination Act and the introduction of a paid maternity leave scheme.⁴⁵ However, JS1 and AI noted that discrimination affected many women's ability to participate in the workforce and to balance work and family commitments, to secure adequate retirement income, and to achieve equality and security in relationships with a partner.⁴⁶ AHRC recommended that the Government implement measures to improve the balance between paid work and family and caring responsibilities; adopt measures to close the gender gap in pay, and explore options to recognise and reward unpaid caring work within superannuation and pension schemes to protect women's economic security; promote and strengthen the representation of women in leadership and management roles.⁴⁷ Similarly, JS1 recommended that Australia should immediately further reform the *Sex Discrimination Act 1984* to implement all the recommendations of the Senate Committee Inquiry. Australia should consider targets of 30% representation of women on public and private sector boards, with a view to adopting quotas if targets were not met after three years. Australia should devote greater resources to the education of employers about discrimination on the basis of pregnancy and family responsibilities.⁴⁸

20. AHRC stated that some people experienced discrimination, vilification or violence, increasingly through cyber-racism, because of their ethnic, racial, cultural, religious or linguistic background. This had been an increasing issue for Arab and Muslim Australians, newly arrived immigrants - especially from Africa - and international students, particularly from India, who had been subjected to violent attacks. AHRC recommended that the Government renew its commitment to multiculturalism by implementing and funding the recommendations of the Australian Multicultural Advisory Council, and continue to support programmes building resilience and social inclusion among culturally and linguistically diverse communities.⁴⁹

21. AHRC noted that people with disability and their families did not enjoy all human rights in Australia. There were particular concerns regarding adequacy of care for people with mental health, availability of supported accommodation for adults with disabilities and support for disability carers.⁵⁰ JS1 recommended that Australia should close all residential care institutions that congregate, segregate and isolate people with disability.⁵¹

22. AHRC recommended that the *Age Discrimination Act* be strengthened to better protect older persons from age discrimination, including by narrowing the broad range of exemptions which currently exist.⁵²

2. Right to life, liberty and security of the person

23. AHRC recommended that Australia's extradition, mutual assistance and agency to agency assistance laws and policies be amended to ensure their consistency with Australia's commitment to the abolition of the death penalty in Australia and abroad.⁵³

24. According to International Presentation Association (IPA) more than 300 Indigenous prisoners had died in custody since 1991,⁵⁴ and JS1 recommended that Australia update and implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody, the National Indigenous Law and Justice Framework and the Australian Senate's Access to Justice inquiry report.⁵⁵ JS3 recommended that the Government, inter alia, ensure adequate medical care, during the transportation of detained persons.⁵⁶

25. JS1 stated that in many Australian jurisdictions, there was a lack of regulation regarding police use of force, including lethal force, inadequate mechanisms for independent investigation and oversight of police, and a lack of access to effective remedies for police misconduct. There was evidence of police targeting and harassment of Aboriginal peoples and newly arrived migrants, particularly Africans.⁵⁷

26. According to JS3, the substantial over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system⁵⁸ was caused by complex factors including, systemic racism, intergenerational poverty, over-policing and tough-on-crime policies.⁵⁹ JS1 stated that in Western Australia and Northern Territory, mandatory sentencing for certain criminal offences had a disproportionate affect on particular groups, including young people and aboriginals.⁶⁰

27. AHRC was concerned at the lack of proportionality of sentencing in some states contributing to a burgeoning prison population, as well as prison conditions such as overcrowding, inadequate physical and mental health services, including drug and alcohol rehabilitation and harm minimisation programmes, and lack of access to education. Prisoners faced limits on their right to vote and on contact with family and the community.⁶¹ JS1 recommended that Australia should provide adequate resources for mental health diagnosis and treatment within prisons, in particular for the provision of services to specific groups of prison populations. Australia should also place greater emphasis on access to education and rehabilitative services in prison and on post-release programmes and support, including with regard to health care, housing and education.⁶²

28. AHRC stated that women in Australia continued to experience high levels of sexual harassment and physical and sexual violence.⁶³ JS1 noted that violence against women remained a major issue, particularly for Aboriginal women and women with disabilities.⁶⁴ AI noted that the Government was drafting a National Plan of Action to Reduce Violence against Women and their Children and believed the plan should address violence against women as a societal problem rooted ultimately in gender-based discrimination.⁶⁵ JS1 and AHRC recommended that the Government ensure adequate and sustainable funding and independent monitoring of the national plan; and improved access to legal services for women, as well as further reform of family law to better protect the safety of women and children.⁶⁶

29. JS1 stated that disadvantage and abuse was not consistently monitored or addressed. For example, Aboriginal children and children with disability continued to experience high levels of abuse, neglect and exploitation.⁶⁷ JS3 recommended that the Government implement a holistic approach to child protection incorporating a public health and prevention model to reduce the over-representation of Aboriginal and Torres Islander children in the system and address the underlying causes of child abuse and neglect; and adhere to the Indigenous Child Placement Principles at all levels of government and provide clarification of the definitions for compliance.⁶⁸

30. AHRC called for increased attention to the prevalence of violence, bullying and harassment, particularly in relation to children, the elderly, people with disability, Indigenous peoples, people from culturally and linguistically diverse communities, people who were gay, lesbian or bisexual, and people who were intersex and sex and/or gender diverse.⁶⁹

31. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment in the home was lawful throughout Australia under the right of “reasonable chastisement” and similar provisions.⁷⁰ GIEACPC noted that corporal punishment in schools was regulated at state level and was not prohibited in Queensland, the Northern Territory or South Australia. According to GIEACPC, it was prohibited in Western Australia, but the use of force “by way of correction” was lawful for schoolteachers under s257 of the Criminal Code Act and provisions for caning of boys in the Country High School Hostels Authority Act Regulations 1962 had yet to be repealed.⁷¹ In the penal system, corporal punishment was prohibited as a sentence for crime in all states and territories but was not explicitly prohibited as a disciplinary measure in penal institutions in Australian Capital Territory and Western Australia.⁷² With regard to alternative care settings, GIEACPC stated that corporal punishment was lawful in childcare centres in the Northern Territory and Tasmania, in residential centres in the Northern Territory, Tasmania, Victoria, Western Australia and Australian Capital Territory, and in foster care in the Northern Territory, Tasmania, Western Australia and Victoria.⁷³

32. AHRC remained concerned about cases of trafficking, as well as cases of forced labour and exploitation of migrant workers on business (long stay) visas subclass 457.⁷⁴ World Vision Australia (WVA) called for a review of the current domestic legislation, including Criminal Code Act 1995;⁷⁵ and to resource and increase the capacity of the domestic investigatory response to ensure that the nature and extent of trafficking was revealed, and all perpetrators brought to justice.⁷⁶

3. Administration of justice and the rule of law

33. JS1 recommended that Australia establish independent and effective police oversight mechanisms, legislate to regulate the use of force in a human rights-compliant manner, and institute mandatory human rights and anti-racism training for police.⁷⁷

34. JS1 recommended the development of a comprehensive national framework to address the over-representation of children and adults with disability in the criminal justice system.⁷⁸

35. AHRC recommended that the Government commit to specific targets and timelines for reducing the disproportionate rates of indigenous peoples in care and protection, juvenile detention and adult prisons, including through a greater focus on preventive measures and supporting women and their families, and victims of violence and crime,⁷⁹ with JS4 specifically referring to the example of Queensland's set targets, under Project 10 per cent.⁸⁰ JS3 recommended that the Government, inter alia, incorporate such targets in the Closing the Gap agenda; implement Justice Reinvestment strategies, and increase the use of restorative justice processes that promote community empowerment and the role of Aboriginal and Torres Strait Islander Elders in the criminal justice system; increase the use of non-custodial sentencing options; abolish mandatory sentencing policies.⁸¹

36. JS3 expressed concern that indigenous peoples can have great difficulty communicating with police, giving evidence, consulting with and giving instructions to their lawyer, and understanding court proceedings due to lack of access to interpreter services.⁸² JS3 noted increasing demand for the legal services of the Aboriginal and Torres Strait Islander Legal Services (ATSILS) and that Aboriginal and Torres Strait Islander women and children remained chronically disadvantaged in terms of access to justice especially in regards to situations of domestic violence. According to JS3, the Family Violence Prevention Legal Services (FVPLS) were often the only culturally appropriate legal advice option available to indigenous women.⁸³ JS3 recommended that the Government, inter alia, ensure the funding of ATSILS and FVPLS was proportionately increased to equal that of mainstream legal aid services and departments of public prosecutions; and provide the ATSILS and FVPLS with long term funding agreements. JS3 recommended that the Government implement initiatives, in conjunction with Aboriginal and Torres Strait Islander communities, to reduce the incidence of family violence; and provide adequate resources for the establishment and on-going delivery of a national Aboriginal and Torres Strait Islander interpreter service.⁸⁴

37. JS1 recommended that Australia ensure that any laws providing for extended detention or supervision of offenders be compatible with human rights standards.⁸⁵

4. Right to privacy, marriage and family life

38. According to AI, Australian women faced criminal penalties if they attempted to terminate a pregnancy outside the strict conditions placed on accessing termination services. Those conditions were inconsistent between the Australian states and territories as criminal law was the subject of state jurisdiction.⁸⁶

39. JS1 recommended that Australia enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability in the absence of their fully informed and free consent.⁸⁷

40. JS2 and AI indicated that same-sex couples cannot legally marry in Australia; same-sex marriages which take place overseas are not recognised domestically; and same-sex couples cannot become adoptive parents, except in ACT, Western Australia and Tasmania.⁸⁸ JS2 recommended removing discriminatory language in the *Marriage Act 1961 (Cth)*, including the ban on the recognition of overseas marriage under s 88EA, to allow all couples, regardless of sexual orientation or gender identity, the right to marry.⁸⁹ Additionally, The Gender Centre Inc. (GCI) recommended that the implementation of necessary legislation to allow transgender people to amend their official identity documentation without the requirement for sex reassignment surgery or that they be unmarried.⁹⁰

5. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

41. JS1 recommended that Australia should systematically improve voting procedures to ensure that all people with disability were able to exercise their right to vote freely and independently.⁹¹

42. JS3 recommended that the Government, inter alia, develop a national action plan to target systemic racism, including in the media and online.⁹²

6. Right to work and to just and favourable conditions of work

43. AI noted that women did not fully enjoy economic, social and cultural rights on an equal basis with men in areas including superannuation and job opportunities.⁹³

7. Right to social security and to an adequate standard of living

44. JS1 recommended the development and implementation of a comprehensive national poverty reduction strategy, with concrete targets and impact indicators.⁹⁴ AHRC recommended the adoption of a human rights-based approach to addressing social exclusion and marginalisation, and explicit recognition of the importance of human rights in the NAP on Social Inclusion.⁹⁵

45. According to JS1, homelessness was exacerbated by a severe lack of available and affordable housing and Australia should implement the recommendations of the Special Rapporteur on adequate housing, HR Committee and CESCR.⁹⁶ AHRC recommended that the Government provide comprehensive services to address the causes of homelessness, target strategies to address the growth in youth homelessness. They recommended that Australia ensure: a right of access to crisis accommodation and sufficient stock to that end; adequate legal protection from forced, unlawful or arbitrary evictions; and that the regulation of public spaces did not violate human rights.⁹⁷

46. JS1 recommended that Australia allocate adequate resources for mental health services and other support measures for persons with mental health problems, and implement the recommendations of the Special Rapporteur on the right to health.⁹⁸

47. AHRC noted that people living in some remote and rural areas faced significant challenges: little access to essential support services relating to mental health, sexual assault, accommodation assistance, and alcohol and drug rehabilitation, limited education facilities. AHRC recommended that the Government take action to ensure equitable access to services in rural and remote communities, with a particular focus on health and education.⁹⁹

48. GCI recommended that the Government ensure that any necessary medical treatment be accessible to all transgender people who required it and was covered by the public health system.¹⁰⁰

8. Right to education and to participate in the cultural life of the community

49. JS4 recommended that Australia continue allocating substantial capital funds to remote Indigenous schools until their facilities and resources reached acceptable Australian standards, and promote programmes geared towards rallying community support and participation in their local school at all levels.¹⁰¹ AHRC recommended the use of increasingly threatened languages, including through support for bilingual education programmes.¹⁰²

9. Minorities and indigenous peoples

50. JS3 recommended that the Government initiate a process of Constitutional reform to recognize and better protect the rights of Aboriginal and Torres Strait Islander peoples.¹⁰³

51. AHRC noted, inter alia, that Australia's legal system limited the protection of indigenous peoples traditional rights to land and culture, and recommended the reform of the *Native Title Act*, as well as measures to protect and promote Indigenous cultural and intellectual property and connection to traditional land through homelands and outstations.¹⁰⁴

52. JS1 recommended that Australia should establish a national reparation scheme, including compensation, for members of the "Stolen Generations" and implement all the recommendations contained in the *Bringing Them Home* report. It recommended the establishment of a national compensation scheme for people affected by Stolen Wages.¹⁰⁵

53. JS4 recommended that Australia institute a formal reconciliation process leading to an agreement with the Aboriginal and Torres Strait Islander peoples.¹⁰⁶

54. JS4 welcomed the establishment of the National Congress of Australia's First Peoples (NCAFP) and recommended ongoing support to NCAFP to ensure its sustainability.¹⁰⁷

55. JS3 recommended that the Government develop a framework to implement and raise awareness about the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in consultation with Aboriginal and Torres Strait Islander peoples.¹⁰⁸ OceaniaHR recommended that Australia should immediately create and coordinate a national implementation strategy plan to achieve the human rights of Aboriginal and Torres Strait Islanders recognized in the UNDRIP.¹⁰⁹

56. JS3 recommended that the Government commit to obtaining the free, prior and informed consent of Aboriginal and Torres Strait Islander peoples in the development of policy that directly affect their communities, and to genuine collaboration through the development and implementation of a framework for self-determination, outlining consultation protocols, roles and responsibilities and strategies for increasing Aboriginal and Torres Strait Islander participation in all institutions of democratic governance.¹¹⁰ WVA recommended that the federal and state governments implement policies, practices and programmes that work with indigenous communities as equal partners in development and strengthen community resilience, capacity and self-reliance.¹¹¹

57. According to JS1, aboriginal children, particularly those living in remote communities, suffered from severe disadvantage, and efforts at improvement were impeded by a lack of culturally appropriate services.¹¹² In that regard, WVA particularly referred to early childhood care and development programmes.¹¹³ It recommended that indigenous women in remote communities deserved maternal health commensurate with that enjoyed by other women in Australia.¹¹⁴

58. According to IPA, there was a lack of respect for the land rights of traditional owners and their management of their lands in the allocation of land for mining and nuclear waste disposal. The Federal Government draft legislation, the National Radioactive Waste Management Bill, nominated a pastoral holding in Northern Territory as a site for radioactive waste storage and disposal. Consent had been obtained from only one of the seven clans associated with that land. IPA noted that in addition to environmental concerns, action undermined Indigenous owners' sovereignty over and control of their lands. According to IPA, the Federal Government's support for the huge increase in extractive industries in rural Australia had irreparable and irreversible effect on the sacred sites of the Indigenous peoples. It indicated that as mining towns developed, State governments were increasingly relying upon the extractive companies to provide the services they failed to

deliver and that high wages to miners caused the cost of living to escalate. As their participation in the mining industry was minimal, Indigenous people, along with other non-mining residents, experienced financial and social difficulties in these towns.¹¹⁵

59. JS1 recommended that Australia should review and implement each recommendation of the Special Rapporteur on Indigenous peoples' 2009 report, in partnership with Aboriginal peoples.¹¹⁶

10. Migrants, refugees and asylum-seekers

60. AI stated that Australia's migration laws permitted discrimination on the basis of disability by providing for strict health criteria in order to meet the visa requirements.¹¹⁷ JS1 recommended that Australia amend the Migration Act to ensure the application of the *Disability Discrimination Act*.¹¹⁸

61. Refugee Council of Australia (RCOA) acknowledged the many positive reforms to Australia's refugee and asylum seeker policies in recent years, including the closing of the Nauru offshore processing facility, the abolition of Temporary Protection Visas, the development of community alternatives to immigration detention and the abolition of detention debt.¹¹⁹ WVA stated that since 2008, reforms had brought about improvements in the treatment of asylum seekers, but noted that the *best interests of children* were not being promoted by current arrangements.¹²⁰ AI remained concerned that the policy changes to immigration detention were yet to be legislated and that they did not change the fundamental basis of the policy, i.e. the mandatory detention of asylum-seekers.¹²¹ AI had serious concerns over the ongoing policies of excising islands to enable the offshore processing of asylum seekers.¹²² JS1 noted that the offshore processing of asylum seekers continued to operate, with asylum seekers detained in remote "prison-like" facilities, including on Christmas Island. JS1 stressed that inadequate judicial oversight meant that detention was often arbitrary and had a deleterious impact on mental health and on families and children.¹²³ ACSJC reported on the reopening of detention facilities in Curtin, a remote location; and referred to Leonora, Western Australia, as the site of another remote facility.¹²⁴ ACSJC reported that on 6 July 2010 the Government announced further changes, including: the possible establishment of a 'regional processing centre' in a neighbouring country to receive boats before they reached Australia; lifting the suspension on the processing of claims of Sri Lankans; and continuation of the suspension on processing the claims of Afghans.¹²⁵

62. JS1 recommended that all asylum seekers should be processed on-shore and entitled to adequate judicial oversight.¹²⁶ WVA urged the Government to repeal provisions of the Migration Act that barred offshore entrants from accessing certain legal procedures and to ensure Australia did not return genuine refugees who faced the risk of persecution upon return.¹²⁷ IPA recommended that Christmas Island detention centre be closed and all asylum seekers be housed on mainland Australia close to services.¹²⁸ WVA recommended that the Government implement a community based detention model for all detainees.¹²⁹ AHRC recommended that the Government lift the suspension of processing of Afghani and Sri Lankan asylum seekers; and amend the Migration Act so that detention occurs only when necessary, for a minimal period, and where it is a reasonable and proportionate means of achieving a legitimate aim. AHRC recommended that decisions to detain people should be subject to prompt review by a court and that the Government implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention; cease holding people in immigration detention on Christmas Island; and repeal the provisions of the Migration Act relating to 'excised offshore places'.¹³⁰

63. JS4 recommended that Australia cease the practice of *refoulement* of refugees and asylum-seekers whereby their lives and their families' lives are put at risk.¹³¹

64. RCOA recommended that the AHRC, state and territory anti-discrimination bodies and Ombudsman services participate in post-arrival settlement education processes of refugees, including in regional and rural areas where access to advice on discrimination matters may be limited.¹³²

65. RCOA recommended that the proposed scheme of income management be reviewed to protect recipients of social security benefits, including newly-arrived refugees from unwarranted and arbitrary interference with their financial affairs.¹³³

11. Human rights and counter-terrorism

66. AHRC noted that the Government had introduced more than 50 new counter-terrorism laws since 2001, often without adequate consideration of their potential impact on human rights.¹³⁴ JS1 stated that the impact of these laws had been felt disproportionately by the Muslim, Kurdish, Tamil and Somali communities in Australia.¹³⁵ AHRC further noted that those laws had enabled: detention without charge for 12 days; secret searching of homes and planting of surveillance devices, restricting movement through control orders issued by courts; and special powers of detention for the Australian Security Intelligence Organisation. AHRC recommended that all counter-terrorism laws be rigorously monitored and amended to ensure they complied with Australia's human rights obligations.¹³⁶

III. Achievements, best practices, challenges and constraints

67. ACSJC applauded the Government for its introduction of Crimes Legislation that extend the prohibition of the death penalty to Australian states and territories in accordance with the ICCPR-OP 2.¹³⁷

68. AHRC commended the development of a National Disability Strategy.¹³⁸

69. AHRC stated that Australia had strong traditions of liberal democracy, an independent judiciary and a robust media and that its largely harmonious and prosperous society can mask weaknesses and gaps in the protection of human rights that are compounded by the federated system of Government.¹³⁹

IV. Key national priorities, initiatives and commitments

70. AHRC noted that the Government released the Australian Human Rights Framework in 2010. The Framework commits to human rights education for the community and public sector; developing a National Action Plan on Human Rights; establishing a federal parliamentary scrutiny committee on human rights; requiring that all new federal legislation be accompanied by a statement of compatibility with Australia's human rights obligations; and developing a consolidated federal anti-discrimination law. AHRC stated that these measures will contribute to improved protection of human rights in Australia and address some, but not all, of the weaknesses in Australia's human rights protection system.¹⁴⁰

71. AHRC noted the Government's commitment to develop a National Plan to reduce violence against women and children.

V. Capacity-building and technical assistance

N/A

Notes

- ¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

Civil society

ACAN	Australian Corporate Accountability Network, Australia
ACSJC	The Australian Catholic Social Justice Council*, New South Wales (Australia)
AI	Amnesty International*, London (UK)
GCI	The Gender Centre Inc., Petersham, New South Wales (Australia)
GIECPC	Global Initiative to End All Corporal Punishment of Children, London (United Kingdom)
IPA	International Presentation Association*, New York (U.S.A.)
JS1	Joint Submission submitted by: Aboriginal Legal Rights Movement Inc., Adelaide (Australia); Advocacy for Inclusion, Association of Children's Welfare Agencies; Australian Bahá'í Community; Australian Centre for Human Rights Education; Australian Council for International Development*, Deakin (Australia); Australian Council of Trade Unions, New South Wales (Australia); Australian Federation of Disability Organisations, Melbourne (Australia); Australian Lawyers for Human Rights Inc; Australian Marriage Equality; Australian National Committee for UNIFEM, Australians for Native Title and Reconciliation; Child Rights Coalition; Civil Liberties Australia; Communication Rights Australia; Community Justice Coalition NSW; Council of Social Service NSW; Criminal Justice Coalition (Australia); Darebin Community Legal Centre Inc.; Darwin Community Legal Service Inc.; Disability Discrimination Legal Service; Federation of Community Legal Centres (Victoria) Inc.; Federation of Ethnic Communities' Councils of Australia; Human Rights Council of Australia Inc.; Human Rights Law Resource Centre, Melbourne (Australia) ; Human Rights Watch*, New York (USA); Initiative for Health and Human Rights, University of New South Wales; Institute of Legal Studies, Australian Catholic University; International Commission of Jurists – Victoria; Justice Action; Kimberley Community Legal Service; Kingsford Legal Centre; Labor for Refugees (NSW); Labor for Refugees (Vic); Larrakia Nation Aboriginal Corporation; Liberty Victoria; Melaleuca Refugee Centre; Mental Health Legal Centre (Vic) Inc.; Migrant and Refugee Rights Project, University of New South Wales; Moreland Community Legal Centre Inc.; Multicultural Women's Advocacy Inc.; Muslims Australia; National Aboriginal Community Controlled Health Organisation; National Association of Community Legal Centres Inc.; National Children's and Youth Law Centre; National Ethnic Disability Alliance; National Welfare Rights Network Inc.; NSW Disability Discrimination Legal Centre; NSW Young Lawyers Human Rights Committee; Organisation Intersex International Australia Ltd.; People with Disability Australia; Prisoners' Legal Service; Public Interest Advocacy Centre Ltd.; Public Interest Law Clearing House (Vic) Inc.; Save the Children Australia; St. Kilda Legal Service Co-Op Ltd.; Tasmanian Gay and Lesbian Rights Group; Tenants Advice Service Western Australia; Tenants Union of Victoria; Top End Women's Legal Service; Victorian Alcohol & Drug Association; Women in Prison Advocacy Network; Women's Electoral Lobby Australia; Women's Legal Service NSW; Women's Legal Services Australia; Youth Affairs Council of Victoria; Youthlaw; and YWCA Australia.
JS2	Joint Submission submitted by: NSW Gay & Lesbian Rights Lobby (Australia); and Sexual Rights Initiative*
JS3	Joint Submission submitted by the Aboriginal and Torres Strait Islander Legal Services of Australia (ATSILS) composed of: Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd; Aboriginal Legal Rights Movement Inc; Aboriginal Legal Service (NSW/ACT); Aboriginal Legal Service of Western Australia (Inc.), Perth (Australia); Central Australian Aboriginal Legal Aid Service; North Australian

- Aboriginal Justice Agency; and Victorian Aboriginal Legal Service Co-operative Limited, Fitzroy, Victoria (Australia).
- JS4 Joint Submission submitted by: Franciscans International (FI)*, New York (USA), Edmund Rice International (ERI), and Foundation for Marist Solidarity International (FMSI)
- OceaniaHR OceaniaHR
- RCOA Refugee Council of Australia*, Surry Hills, New South Wales (Australia)
- WVA World Vision Australia, Victoria (Australia)
- National Human Rights Institution*
- AHRC The Australian Human Rights Commission, Sydney, Australia
- ² AHRC, p. 1, para. 2.
- ³ See also JS3, para. 3 (d).
- ⁴ See also JS1, para. 5 and OceaniaHR, p. 1.
- ⁵ See also JS3, para. 7 (c).
- ⁶ See also JS1, para. 5 and OceaniaHR, p. 1.
- ⁷ AHRC, para. 2. See also JS1, para. 5.
- ⁸ JS1, para. 5.
- ⁹ JS3, paras. 3(c) and 7(d).
- ¹⁰ JS1, para. 21, p. 3.
- ¹¹ JS1, para. 1.
- ¹² AI, p. 1, part B, para. 1.
- ¹³ JS1, para. 1.
- ¹⁴ JS1, para. 3.
- ¹⁵ JS1, para. 2.
- ¹⁶ JS1, para. 3.
- ¹⁷ JS1, para. 8.
- ¹⁸ AHRC, p. 1, para. 4.
- ¹⁹ JS1, pp. 1–2, para. 8.
- ²⁰ AI, p. 1, part B, para. 1. See also JS1, para. 7.
- ²¹ JS1, p. 2, para. 12.
- ²² JS1, p. 5, para. 30.
- ²³ AHRC, p. 3, para. 11.
- ²⁴ AHRC, p. 3, para. 12. See also JS1, para. 13, and JS2, para. 17.
- ²⁵ JS4, p. 10, para. 51.
- ²⁶ JS1, para. 34, p. 5. See also ACAN, para. 2.1.
- ²⁷ ACAN, p. 5, para. 4.1.
- ²⁸ ACAN, p. 5, para. 4.3.
- ²⁹ JS1, p.1, para. 4. See also AHRC, para. 4.
- ³⁰ AHRC, p. 1, para. 4 and JS1, p. 2, para. 12.
- ³¹ JS1, p. 2, para. 12.
- ³² AHRC, p. 5, para. 22.
- ³³ AHRC, p. 3, para. 13.
- ³⁴ AHRC, p. 5, para. 24.
- ³⁵ JS1, p. 1, para. 3.
- ³⁶ JS1, p. 5, para. 35.
- ³⁷ AHRC, p. 5, para. 25.
- ³⁸ JS1, p. 1, para. 6.
- ³⁹ AHRC, p. 2, para. 6. See also AI, pp. 1–2, part C, para. 1, JS1, p. 2, para. 14.
- ⁴⁰ AHRC, p. 2, para. 6. See also AI, p. 2, JS1, p. 2, para. 14.
- ⁴¹ AI, p. 2. See also IPA, p. 4, para. 7.2; JS1, p. 3, para. 15; JS3, p. 4, paras. 19–20; and JS4, p.2, paras. 3–4.
- ⁴² ACSJC, p. 2, para. 6.
- ⁴³ ACSJC, para. 7.
- ⁴⁴ AHRC, para. 8. See also AI, p. 1.
- ⁴⁵ JS1, p. 2, para. 9.
- ⁴⁶ AI, p. 4, part 4.1 and JS1, p. 2, para. 9.

- 47 AHRC, pp. 2–3, para. 9.
48 JS1, p. 2, para. 9.
49 AHRC, p. 4, para. 15.
50 AHRC, p. 3, para. 13.
51 JS1, p. 2, para. 10.
52 AHRC, p. 3, para. 10.
53 AHRC, p. 5, para. 25.
54 IPA, p. 4, part 7.2.
55 JS1, p. 3, para. 16.
56 JS3, p. 2, para. 7 (b).
57 JS1, p. 4, para. 24.
58 See also, JS4, p. 4, para. 17.
59 JS3, para. 4. See also AI, pp.1–2, part C, para. 1.
60 JS1, p. 4, para. 26.
61 AHRC, pp. 4–5, para. 19.
62 JS1, p. 4, para. 23.
63 AHRC, p. 2, para. 9.
64 JS1, para. 22.
65 AI, p. 5. See also JS1, para. 22.
66 AHRC, p. 4, para. 17 and JS1, p.4, para. 22.
67 JS1, p. 2, para. 12.
68 JS3, p. 5, paras. 21–22.
69 AHRC, p. 4, para. 17.
70 GIEACPC, para. 1.1.
71 GIEACPC, para. 1.2.
72 GIEACPC, para. 1.3.
73 GIEACPC, para. 1.4.
74 AHRC, p. 4, para. 18. See also RCOA, p. 4.
75 WVA, p. 5. See also JS4, paras. 42–43 and 49.
76 WVA, p. 5.
77 JS1, p. 4, para. 24.
78 JS1, para. 28.
79 AHRC, p. 2, para. 6.
80 JS4, p. 5, paras. 18 and 20.
81 JS3, p. 1, para. 5.
82 JS3, p. 3, para. 13.
83 JS3, paras. 9–10.
84 JS3, p. 3, para. 12 (a)–(c) and para. 14.
85 JS1, p. 4, para. 27.
86 AI, p. 5, para. 4.3.
87 JS1, p. 2, para. 11.
88 AI, p. 5. See also JS2, paras 1, 6–7 and 9.
89 JS2, p. 5, para. 29. See also AHRC, para. 11.
90 GCI, p. 5, recommendations 1 and 2.
91 JS1, p. 2, para. 10.
92 JS3, p. 4, para. 20 (b).
93 AI, p. 4, part 4.1.
94 JS1, p. 4, para. 29.
95 AHRC, p. 5, para. 23.
96 JS1, p. 5, para. 30.
97 AHRC, p. 5, para. 20.
98 JS1, p. 5, para. 32.
99 AHRC, p. 5, para. 21.
100 GCI, p. 5, recommendation 3.
101 JS4, p. 7, paras. 30–33.
102 AHRC, p. 2, para. 7. See also IPA, p. 5, recommendation 8 (v) and JS1, paras. 17 and 19.

- ¹⁰³ JS3, para. 3 (b).
¹⁰⁴ AHRC, p. 2, para. 7. See also JS1, para. 19.
¹⁰⁵ JS1, p. 3, para. 18. See also JS3, paras. 15–17, JS4, paras. 9–11 and 15 and AHRC, para. 7.
¹⁰⁶ JS4, para. 16.
¹⁰⁷ JS4, paras. 5–6 and 8.
¹⁰⁸ JS3, para. 3 (a).
¹⁰⁹ OceaniaHR, p. 2, recommendation 2.
¹¹⁰ JS3, p. 5, para. 24.
¹¹¹ WVA, p. 2, recommendation 3.
¹¹² JS1, p. 3, para. 19.
¹¹³ WVA, p. 2.
¹¹⁴ WVA, p. 1.
¹¹⁵ IPA, p. 4, para. 7.2.
¹¹⁶ JS1, p. 2, para. 14.
¹¹⁷ AI, p. 3, part 2.1.
¹¹⁸ JS1, p. 3, para. 21.
¹¹⁹ RCOA, p. 1, part 1.
¹²⁰ WVA, p. 3.
¹²¹ AI, p. 3 (para. 1). See also RCOA, p. 1.
¹²² AI, p. 3 (para. 2).
¹²³ JS1, p. 3, para. 20.
¹²⁴ ACSJC, para. 12.
¹²⁵ ACSJC, para. 13.
¹²⁶ JS1, p. 3, para. 20.
¹²⁷ WVA, pp. 3–4, recommendation 6.
¹²⁸ IPA, p. 2, recommendation 5(i).
¹²⁹ WVA, p. 3, recommendation 5.
¹³⁰ AHRC, pp. 3–4, para. 14.
¹³¹ JS4, p. 9, para. 44.
¹³² RCOA, p. 5, recommendation 7 a).
¹³³ RCOA, p. 5, recommendation 6.
¹³⁴ AHRC, p. 4, para. 16. See also AI, pp. 3–4, part 3.
¹³⁵ JS1, p. 5, para. 33.
¹³⁶ AHRC, p. 4, para. 16. See also AI, pp. 3–4, part 3 and JS1, para. 33.
¹³⁷ ACSJC, p. 5, para. 22.
¹³⁸ AHRC, p. 3, para. 13.
¹³⁹ AHRC, p. 1, para. 3.
¹⁴⁰ AHRC, p. 1, para. 5.
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