



# General Assembly

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## Human Rights Council

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Agenda item 6

Universal Periodic Review

### **Written statement\* submitted by the National Association of Community Legal Centres, Inc., a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **NGO coalition statement on the Universal Periodic Review of Australia<sup>\*\*</sup>**

The draft report of the Working Group on the Universal Periodic Review of Australia contains 145 recommendations. Together, these recommendations constitute a comprehensive and practical framework to improve the promotion and protection of human rights in Australia.

The recommendations address and respond to a range of significant human rights issues, including in relation to the rights of Aboriginal and Torres Strait Islander peoples, Australian immigration policy and the practice of mandatory immigration detention, the lack of adequate legal protection of human rights, gender equality and the empowerment of women, prison conditions and oversight, police training and use of force, discrimination against minority groups, and disability rights, among others.

The recommendations reflect the constructive and positive engagement of the Australian Government with the UPR, the research, advocacy and scrutiny of NGOs and the Australian Human Rights Commission, and the active and informed engagement of the UN Human Rights Council and States.

The NGO Coalition considers that the recommendations contained in the Draft Report represent, in large part, a constructive, detailed and accurate assessment of current human rights issues and challenges in Australia. We encourage the Australian Government to give appropriate and adequate attention to all of the issues the subject of the UPR recommendations, including particularly those recommendations that are inconsistent with current government policy.

In particular, the NGO Coalition considers that Australia should commit to the following major systemic and institutional reforms.

1. Australia should fully incorporate its international human rights obligations into domestic law (with the aim of eventual Constitutional entrenchment) by introducing a comprehensive, judicially enforceable federal Human Rights Act.

2. Australia should enact comprehensive legislation that addresses all prohibited grounds of discrimination, promotes substantive equality, and provides mechanisms to prevent and effective remedies to redress systemic and intersectional discrimination.

3. The Government should engage in further consultation with Aboriginal and Torres Strait Islander peoples as to implementation of the United Nations Declaration on the Rights of Indigenous Peoples and the recommendations of the Report on Australia by the Special Rapporteur on the Rights of Indigenous Peoples (A/HRC/15/47.Add.4).

4. Consistent with Australia's stated commitment to the universality and interdependence of human rights, together with accountability for breaches, the Government should expedite ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture, the International Convention on the Protection of the Rights of All Migrant Workers and ILO Convention 169 on Indigenous and Tribal Peoples.

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<sup>\*\*</sup> The Human Rights Law Centre, Kingsford Legal Centre, the Australian Lawyers for Human Rights, NGOs without consultative status, also share the views expressed in this statement.

5. Australia should establish effective institutional mechanisms to systematically and transparently follow up on and implement the recommendations and views of UN human rights bodies.

While, overall, Australia's engagement with the UPR, including the Government's engagement with civil society, has been very constructive, the NGO Coalition records its concern that statements made by the Australian delegation during the interactive dialogue do not reflect Australian law, policy or practice on immigration detention. The actual facts on immigration detention in Australia are as follows:

1. Australian law provides for mandatory immigration detention of "unlawful non-citizens" and does not allow for judicial consideration of the need for detention in individual cases. Immigration detention is not, as the Australian Government asserted, a measure of last resort. Asylum seekers who arrive in Australia informally are detained as a matter of course before other options have been exhausted. Further, the law does not impose time limits on immigration detention and the Government may and does detain people in immigration detention indefinitely.

2. Detention is not only used as a last resort or for the shortest practicable time. As of 15 April 2011 there were 6872 people in immigration detention across Australia (Department of Immigration and Citizenship (Community and Detention Services Division), "Immigration Detention Statistics Summary", April 2011). More than 4200 of those people had been detained for longer than six months, and 1222 people had been detained for longer than 12 months. As at May 2011, around 900 asylum seekers accepted as refugees by the Immigration Department were being detained while awaiting the completion of security checks.

3. The Australian Government's statement to the Human Rights Council that children and their families would not be detained in "immigration detention centres" refers to a policy that children will not be detained in particular high-security facilities. However, as at 15 April 2011, there were 1048 children detained in other secure facilities within the immigration detention network where they are kept under guard and have no freedom of movement. Since the Australian Government's announcement in October 2010 that it would move unaccompanied minors and vulnerable family groups out of immigration detention facilities and into community-based accommodation, the number of children in detention has increased by more than 300.

In light of these facts, the NGO Coalition calls on Australia to take immediate steps to:

- (a) repeal the provisions of the Migration Act 1958 relating to mandatory detention;
- (b) enact legislation to ensure that asylum seekers are detained only where strictly necessary and as a last resort;
- (c) enact legislation to ensure that no children are held in immigration detention;
- (d) provide for regular, periodic, judicial review of a person's detention;
- (e) codify in law time limitations on immigration detention; and
- (f) ensure that all detainees have adequate access to legal counsel, interpreters, communication facilities, education, physical and mental health services and social, cultural and religious support networks.

Australia is a democratic, stable and wealthy country and the Australian Government has stated that it is committed to improving the "protection and promotion of human rights at home, within our region and around the world" (Australia's Human Rights Framework, p 7). Despite this, there are significant gaps in Australia's legal and institutional protection of

human rights and the practical realisation of human rights on the ground. With the primary purpose of the Universal Periodic Review in Geneva being to improve the promotion, protection and realisation of human rights in the State under review, the challenge and opportunity for Australia is to effectively implement the 145 recommendations on the ground. This will require principled leadership and commitment from the Australian Government, and ongoing coordination and dialogue between the federal, state and territory governments, the Australian Human Rights Commission, NGOs and civil society.

Australia's immediate follow up to the UPR should include the development of concrete plans for implementation, clear identification of responsible actors, and the setting of clear timeframes, targets and benchmarks. Member states also have an important role to play, including by encouraging Australia to make a mid-term report to the Council on the implementation of UPR recommendations and by pursuing those recommendations in their bilateral relations and dialogues with Australia.

The NGO Coalition looks forward to working with the Australian Government, the Australian Human Rights Commission, the UN Human Rights Council, States and other civil society actors to ensure that UPR recommendations are accepted and implemented and make a real difference to the promotion, protection and fulfilment of human rights on the ground.

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