

## Joint NGO Submission to the Universal Periodic Review of Australia — July 2010

This joint submission has been prepared in consultation with a number of key Australian NGOs.<sup>1</sup> It has been endorsed, in whole or part, by the 68 organisations listed in Attachment A.

### A. Constitutional and legislative framework

1. Despite being a party to seven of the core human rights treaties,<sup>2</sup> Australia has not incorporated these treaties into its domestic law and has failed to adopt a comprehensive legal framework for the protection of human rights. There are significant gaps in the protection of human rights by and in Australia and many individuals are unable to access effective remedies.

2. In 2008, the Federal Government appointed an independent committee to conduct a National Human Rights Consultation on the protection and promotion of human rights in Australia. The Committee found that: (a) Australia's democratic and legal institutions do not provide adequate protection of human rights; (b) human rights are not enjoyed fully or equally by all Australians, both in fact and in law; and (c) there is strong public support for enhanced legal and institutional protection of rights.<sup>3</sup>

3. In May 2010, the Federal Government announced a "Human Rights Framework" in response to the Committee's report.<sup>4</sup> The Framework does not include a federal Human Rights Act – the Committee's key recommendation. Instead, the Framework focuses on enhanced human rights education and parliamentary engagement with human rights.<sup>5</sup> **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. Further, Australia should include and resource education about human rights in primary and secondary school curricula.**

4. Despite being an independent national human rights institution in accord with the "Paris Principles", the mandate and powers of the Australian Human Rights Commission are limited. The Commission cannot make enforceable determinations and there is no requirement for the Australian Government to implement, or even respond to, the Commission's recommendations. **Australia should ensure that the determinations and recommendations of its NHRI are enforceable and that the Commission is sufficiently funded to independently and effectively fulfil its mandate.**

5. **Australia should ratify the Convention on Migrant Workers, Optional Protocol on ICESCR, Optional Protocol Convention against Torture and ILO Convention No. 169 on Indigenous and Tribal Peoples, and the Convention against Enforced Disappearances.**

### B. Cooperation with human rights mechanisms

6. In 2008, Australia issued a standing invitation to the Special Procedures of the Human Rights Council. Despite this welcome development, Australia regularly fails to implement recommendations of UN human rights bodies and has not established institutional mechanisms to follow up on recommendations.<sup>6</sup> **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.**

### C. Promotion and protection of human rights on the ground

#### 1. Equality and non-discrimination

7. Australia has enacted federal laws to prevent discrimination on the basis of race, sex, age and disability. However, there remain significant gaps in Australia's discrimination laws and there are a number of groups within Australian society who remain particularly disadvantaged in the equal enjoyment of their human rights. The Australian Constitution does not enshrine the right to equality and permits discrimination on the ground of race.<sup>7</sup>

8. Among the initiatives included in the new "Human Rights Framework" is the development of a comprehensive Equality Act.<sup>8</sup> However, there are concerns that the focus of the reform on streamlining existing legislation and reducing the regulatory burden on business will lead to the weakening of an already deficient legislative framework. **Australia should enact comprehensive**

**legislation that addresses all prohibited grounds of discrimination, promotes substantive equality, and provides effective remedies against systemic and intersectional discrimination.**

9. **Women:** Recent positive developments in Australia include the ratification of the Optional Protocol to CEDAW, proposed amendments to the *Sex Discrimination Act 1984*<sup>9</sup> and the introduction of a paid maternity leave scheme.<sup>10</sup> Despite these welcome changes, there remains inadequate protection from discrimination against women in the workforce, with women continuing to experience employment discrimination on the basis of pregnancy and family responsibilities. Women are also under-represented in Board and managerial levels and experience pay levels of approximately 84% of men's income.<sup>11</sup> **Australia should immediately further reform the *Sex Discrimination Act 1984* to implement all recommendations of the Senate Committee Inquiry.<sup>12</sup> Australia should consider targets of 30% representation of women on public and private sector boards, with a view to adopting quotas if targets are not met after three years. Australian should devote greater resources to the education of employers about discrimination on the basis of pregnancy and family responsibilities.**

10. **People with Disability:** Despite Australia's ratification of the *Convention on the Rights of Persons with Disabilities*, Australia fails to ensure that people with disability enjoy their rights on an equal basis with others. **Australia should conduct a thorough, critical review of domestic laws and policies to ensure their compatibility with the CRPD. Australia should systematically improve voting procedures to ensure that all people with disability are able to exercise their right to vote freely and independently. Australia should close all residential care institutions that congregate, segregate and isolate people with disability.**

11. Non-therapeutic sterilisation of people with disability remains an ongoing practice in Australia and impacts most significantly on the rights of women and girls with disability. **Australia should enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability,<sup>13</sup> and of adults with disability in the absence of their fully informed and free consent.**

12. **Children:** Australia does not have a comprehensive, national policy framework for children. There is a lack of integration of children's rights in Australian law and no mechanism to ensure compliance in all jurisdictions. Disadvantage and abuse is not consistently monitored or addressed - for example, Aboriginal children<sup>14</sup> and children with disability continue to experience high levels of abuse, neglect and exploitation.<sup>15</sup> **Australia should develop a national policy framework, appoint an independent national Child Commissioner,<sup>16</sup> and enact stronger legislative protections for groups such as children with disability.**

13. **GLBTI Communities:** Recent amendments to federal laws gave equal financial and workplace benefits to unmarried same-sex couples.<sup>17</sup> However, GLBTI Australians continue to experience higher levels of discrimination and assault.<sup>18</sup> **Australia should extend equality in marriage and parenting laws<sup>19</sup> to same-sex couples, and recognise sex and gender identity in all official documents.<sup>20</sup> Federal law should prohibit discrimination on the grounds of sexual orientation, gender identity, Intersex and relationship status.<sup>21</sup>**

## **2. Indigenous peoples**

14. Positive developments for Australia's Aboriginal and Torres Strait Islander peoples ('Aboriginal peoples')<sup>22</sup> include the Apology to the "Stolen Generations", the endorsement of the UN Declaration on the Rights of Indigenous Peoples and the establishment of the National Congress of Australia's First Peoples. The commitment to "Close the Gap" in health standards and life expectancy between Aboriginal peoples and other Australians by 2030 is also welcome. However, Aboriginal peoples continue to suffer significant disadvantage in the enjoyment of human rights, as evidenced by the recommendations contained in the report of the Special Rapporteur on Indigenous Rights following his country visit in September 2009.<sup>23</sup> **Australia should review and implement each of the Special Rapporteur's recommendations in real partnership with Aboriginal peoples. Consultation must meet the standards contained in the DRIP requiring genuine respect for cultural integrity and self determination.**

15. **Northern Territory Intervention:** The “Northern Territory Emergency Response” intervention<sup>24</sup> into Aboriginal communities (NTER) suspends the operation of Australia’s race discrimination legislation and involves a range of draconian measures targeted directly at Aboriginal communities.<sup>25</sup> Recent legislative amendments<sup>26</sup> do not repeal the racially discriminatory aspects of the NTER and continue to raise significant human rights concerns. **Australia should amend the NTER to remove its discriminatory elements and ensure compliance with international human rights. The recommendations in the *Little Children are Sacred* report<sup>27</sup> should also be fully implemented.**

16. **Criminal Justice System:** The interaction of Aboriginal peoples with the criminal justice system continues to be a major concern, in particular the disproportionate impact of certain criminal laws,<sup>28</sup> the over-representation of Aboriginal peoples in prison<sup>29</sup> and limited access to legal and interpretive services.<sup>30</sup> **Australia should 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.<sup>31</sup>**

17. **Native title:** **Australia should reform the onerous standards and burdens of recognition for native title which deny Aboriginal peoples the right to access and control their traditional lands and take part in cultural life.<sup>32</sup>**

18. **Stolen Generations and Stolen Wages:** Australia has failed to implement a national reparation scheme, including compensation, for members of the “Stolen Generations”<sup>33</sup> or for the “Stolen Wages” of many Aboriginal peoples.<sup>34</sup> **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. Australia should also establish a national compensation scheme for people affected by Stolen Wages.**

19. **ESC rights:** Aboriginal children, particularly those living in remote communities, suffer from severe disadvantage, especially in relation to living standards, health and education.<sup>35</sup> Efforts at improvement are impeded by a lack of culturally appropriate services.<sup>36</sup> Access to appropriate education is hampered by threats to bilingual education programs.<sup>37</sup> **Australia should ensure that economic, social and cultural rights for Aboriginal peoples are protected and promoted in culturally appropriate ways.**

### 3. Migrants, refugees and asylum seekers

20. Positive reforms of the immigration system include ending the “Pacific Solution”, removing the system of temporary protection visas for asylum seekers and seeking to ensure that immigration detention is only for the shortest possible period of time. Despite these developments, mandatory detention and off-shore processing of asylum seekers continues to operate.<sup>38</sup> Asylum seekers are detained in remote “prison-like” detention facilities, including on the remote Christmas Island and the recently re-opened Curtin detention facility.<sup>39</sup> Inadequate judicial oversight means that detention is often arbitrary, and has deleterious impacts on mental health and on families and children. **Australia should end its policy of mandatory immigration detention, close the Christmas Island and Curtin detention centres and ensure that all asylum seekers can access health care and work rights. All asylum seekers should be processed on-shore and be entitled to adequate judicial oversight. Australia should legislate to provide complementary protection in accordance with human rights and refugee law.**

21. In April 2010, Australia suspended the processing of visa applications from Sri Lankan and Afghan refugees,<sup>40</sup> which contravenes its obligations under the 1951 Refugee Convention and CERD. **Australia should immediately reinstate the processing of asylum applications in accordance with its international legal obligations.** Australia’s migration laws also permit discrimination on the basis of disability by providing for strict health criteria to be met to be granted a visa.<sup>41</sup> **Australia should amend the Migration Act to ensure the application of the Disability Discrimination Act and withdraw its interpretative declaration in relation to articles 12 and 18 of the CRPD.**

#### 4. Right to life, liberty and security of person

22. **Violence against women:** Violence against women remains a major issue, particularly for Aboriginal women and women with disabilities.<sup>42</sup> Aboriginal legal services provide services primarily to men and there is no national network of Aboriginal women’s legal services. There is a lack of adequate access to sexual assault services for rural and remote women and a lack of access to crisis accommodation services, particularly for Aboriginal women and women with disabilities.<sup>43</sup> Three major government-commissioned reports have found that the family law system does not respond effectively to issues of family violence.<sup>44</sup> **Australia should immediately implement the National Plan to Reduce Violence Against Women with proper funding and independent monitoring by civil society. Australia should fund Aboriginal women’s legal services across Australia and a peak body to ensure coordinated law reform and policy development, and improve health services in rural and remote areas to assist victims of violence. Australia should amend the *Family Law Act* to better protect the safety of women and children.**

23. **Prisons:** Inadequate access to health care, particularly mental health care, remains a significant issue for prisoners in Australia.<sup>45</sup> Conditions in prison, including transport between prisons and in “supermaximum” prisons, also raises serious concerns.<sup>46</sup> **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 programs and support, including in the areas of health care, housing and education.**

24. **Police:** In many Australian jurisdictions, there is 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 is evidence of police targeting and harassment of Aboriginal peoples<sup>47</sup> and newly arrived migrants, particularly Africans.<sup>48</sup> **Australia should establish independent, effective police oversight mechanisms, legislate to regulate the use of force in a human rights-compliant manner, and mandate human rights and anti-racism training for police.**<sup>49</sup>

#### 5. Administration of Justice

25. There is inadequate funding for legal aid commissions, community legal centres and Aboriginal legal services. Civil law funding is limited, even where human rights are at stake. From 1997 to 2007, there was an 18% reduction in real funding to community legal centres.<sup>50</sup> **Australia should implement the recommendations of the 2009 *Senate Inquiry into Access to Justice*<sup>51</sup> and the Concluding Observations of the Human Rights Committee.**

26. In Western Australia and Northern Territory, mandatory sentencing for certain criminal offences has a disproportionate affect on particular groups, including young people and Aboriginal peoples. **Australia should implement CERD’s recommendation that mandatory sentencing provisions be repealed.**<sup>52</sup>

27. Several Australian states have passed laws enabling the continued detention of sex offenders beyond their term of imprisonment.<sup>53</sup> **Australia should ensure that any laws providing for extended detention or supervision of offenders be compatible with human rights standards and be subject to periodic merits and judicial review.**

28. People with disability are significantly over-represented in the criminal and juvenile justice systems, particularly people with intellectual disability, psycho-social disability and acquired brain injury.<sup>54</sup> **Australia should develop a comprehensive national framework to address the over-representation of children and adults with disability in the criminal justice system.**

#### 6. Right to social security and to an adequate standard of living

29. **Poverty:** Despite Australia’s economic prosperity, 12% of the Australian population lives in poverty.<sup>55</sup> Poverty rates are particularly high among Aboriginal peoples, asylum seekers, migrants and persons with disabilities. **Australia should develop and implement a comprehensive national poverty reduction strategy, with concrete targets and impact indicators.**<sup>56</sup>

30. **Homelessness:** Despite increased efforts, homelessness remains a significant issue in Australia, with over 100,000 people experiencing homelessness on any given night.<sup>57</sup> This issue is exacerbated by a severe lack of available and affordable housing.<sup>58</sup> **Australia should implement the recommendations of the Special Rapporteur on the Right to Adequate Housing,<sup>59</sup> the Human Rights Committee and CESCR. Australia should ensure that social, economic and other conditions do not deprive homeless persons of the full enjoyment of their rights.<sup>60</sup> Australia should also amend discrimination laws to include “homelessness” or “social status” as prohibited attributes.**

31. **Social Security:** Compulsory quarantining of welfare payments applies to particular “disadvantaged” or “vulnerable” groups across the country. **Australia should repeal compulsory income quarantining and introduce a non-discriminatory, voluntary scheme that is compatible with human rights standards.**

32. **Mental Health Care:** Mental health services are significantly under-resourced in Australia and there are widespread problems with access to care, quality of care and adequate accommodation for people requiring mental health services.<sup>61</sup> **Australia should allocate adequate resources for mental health services and other support measures for persons with mental health problems in line with human rights principles and standards.<sup>62</sup> Australia should also implement the recommendations of the Special Rapporteur on the Right to Health.**

## 7. Human rights and counter-terrorism

33. Since 2001, Australia has passed over 40 pieces of counter-terrorism legislation, including giving increased powers to police and intelligence agencies and creating new terrorism offences. Many of these laws infringe upon fundamental human rights by reversing the onus of proof and presumption of bail, authorising the potentially indefinite detention of terrorist suspects, criminalising association with certain groups, and expanding powers to detain people without access to lawyers.<sup>63</sup> The lack of fundamental protection of human rights in Australia means that these laws are not assessed against a human rights framework.<sup>64</sup> The impact of these laws has been felt disproportionately by the Muslim, Kurdish, Tamil and Somali communities in Australia.<sup>65</sup> **Australia should review and amend its counter-terrorism laws and practices to ensure that they are consistent with Australia’s international human rights obligations.<sup>66</sup>**

## 8. Business and human rights

34. Some Australian companies, particularly mining companies, have a severe impact on the human rights of people in many parts of the world.<sup>67</sup> However, there is no comprehensive legal framework that imposes human rights obligations on Australian corporations when they are operating overseas, especially in areas of relaxed or no regulation. **Australia should enact domestic legislation with extra-territorial application to ensure that Australian corporations respect human rights within the Special Representative’s framework.<sup>68</sup>**

## 9. International Assistance

35. Australia’s international development assistance in 2009/10 was only 0.29% of Gross National Income (GNI).<sup>69</sup> While all major political parties have recently committed to increase Australia’s assistance to 0.5% of GNI by 2015-16,<sup>70</sup> this remains far below the international target of 0.7%.<sup>71</sup> **Australia should announce a timetable for increasing its official development assistance to 0.7 per cent of GNI. Australia should also adopt a human rights-based approach to aid and development to enhance the effectiveness of this assistance.<sup>72</sup> Australia should also take a human rights-based approach to foreign policy, including in the areas of trade, investment, business, labour, migration, defence, military cooperation, security and the environment.<sup>73</sup>**

## Attachment A – List of Supporting Organisations

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

Aboriginal Legal Rights Movement Inc.	Human Rights Council of Australia Inc
Advocacy for Inclusion	Human Rights Law Resource Centre
Association of Childrens Welfare Agencies	Human Rights Watch
Australian Bahá'í Community	Initiative for Health and Human Rights, University of New South Wales
Australian Centre for Human Rights Education	Institute of Legal Studies, Australian Catholic University
Australian Council for International Development	International Commission of Jurists – Victoria
Australian Council of Trade Unions	Justice Action
Australian Federation of Disability Organisations	Kimberley Community Legal Service
Australian Lawyers for Human Rights Inc	Kingsford Legal Centre
Australian Marriage Equality	Labor for Refugees (NSW)
Australian National Committee for UNIFEM	Labor for Refugees (Vic)
Australians for Native Title and Reconciliation	Larrakia Nation Aboriginal Corporation
Child Rights Coalition	Liberty Victoria
Civil Liberties Australia	Melaleuca Refugee Centre
Communication Rights Australia	Mental Health Legal Centre (Vic) Inc
Community Justice Coalition NSW	Migrant and Refugee Rights Project, University of New South Wales
Council of Social Service NSW	Moreland Community Legal Centre Inc
Criminal Justice Coalition (Australia)	Multicultural Women's Advocacy Inc
Darebin Community Legal Centre Inc	Muslims Australia
Darwin Community Legal Service Inc	National Aboriginal Community Controlled Health Organisation
Disability Discrimination Legal Service	National Association of Community Legal Centres Inc
Federation of Community Legal Centres (Victoria) Inc	National Children's and Youth Law Centre
Federation of Ethnic Communities' Councils of Australia	National Ethnic Disability Alliance

National Welfare Rights Network Inc	Tenants Advice Service Western Australia
NSW Disability Discrimination Legal Centre	Tenants Union of Victoria
NSW Young Lawyers Human Rights Committee	Top End Women's Legal Service
Organisation Intersex International Australia Ltd	Victorian Alcohol & Drug Association
People with Disability Australia	Women in Prison Advocacy Network
Prisoners' Legal Service	Women's Electoral Lobby Australia
Public Interest Advocacy Centre Ltd	Women's Legal Service NSW
Public Interest Law Clearing House (Vic) Inc	Women's Legal Services Australia
Save the Children Australia	Youth Affairs Council of Victoria
St. Kilda Legal Service Co-Op Ltd	Youthlaw
Tasmanian Gay and Lesbian Rights Group	YWCA Australia

## Endnotes:

<sup>1</sup> This submission to the Universal Periodic Review of Australia has been prepared by a coalition of non-government organisations (NGOs) from across Australia. The principal authors of this submission are the Human Rights Law Resource Centre, Kingsford Legal Centre and the National Association of Community Legal Centres Inc. The submission was prepared with substantial input and guidance from a high-level NGO Working Group, comprising: Aboriginal Legal Service WA, Australian Bahá'í Community, Australian Lawyers for Human Rights, Castan Centre for Human Rights at Monash University, Federation of Ethnic Communities' Councils of Australia, International Commission of Jurists – Victoria, National Children's and Youth Law Centre, People with Disability Australia, Save the Children Australia, Women with Disability Australia, Women in Prison Advocacy Network, Women's Legal Service NSW and YWCA.

The submission is endorsed, in whole or in part, by the NGOs set out in **Attachment A** of this submission.

<sup>2</sup> Australia is a party to the International Covenant on Civil and Political Rights (**ICCPR**), International Covenant on Economic, Social and Cultural Rights (**ICESCR**), International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**), Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), Convention on the Rights of the Child (**CRC**), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) and Convention on the Rights of Persons with Disabilities (**CRPD**).

<sup>3</sup> The National Human Rights Consultation Committee received a record 35,000 submissions and ultimately recommended that Australia adopt a Human Rights Act, a key recommendation supported by over 87% of submissions that addressed the issue: <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>.

<sup>4</sup> Human Rights Framework is available at [www.ag.gov.au/humanrightsframework](http://www.ag.gov.au/humanrightsframework).

<sup>5</sup> Ibid.

<sup>6</sup> See Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* (March 2009), UN Doc CCPR/C/AUS/CO/5, [10].

<sup>7</sup> The 'race power' in the Australian Constitution has been held by the High Court of Australia to permit the Australian Government to pass both beneficial *and* detrimental legislation in relation to persons of a particular race. See: *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

<sup>8</sup> Human Rights Framework, above n 5.

<sup>9</sup> The recommendations of the Inquiry into the effectiveness of the *Sex Discrimination Act 1984* by the Senate Committee on Legal and Constitutional Affairs should be implemented in entirety.

<sup>10</sup> Australian Government, Family Assistance Office, 'Paid Parental Leave Scheme', 2009, <http://www.familyassist.gov.au/news-and-updates/paid-parental-leave-scheme.html>> at 29 June 2010.

<sup>11</sup> See Australian Bureau of Statistics, *Yearbook Australia 2008*, 1310.0 Earnings (2008), <<http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/0796FAC7CDEEA671CA2573D20010F2DD?opendocument>> at 29 June 2010.

<sup>12</sup> ESCR Concluding Observations recommends initiatives aimed implementing the principle of equal pay for work of equal value and the recommendations of the Senate Inquiry into the *Sex Discrimination Act 1984*. See Committee on Economic, Cultural and Social Rights, *Concluding Observations on the Committee on Economic, Social and Cultural Rights: Australia* (May 2009), UN Doc E/C.12/AUS/CO/4.

<sup>13</sup> See, United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia*, Fortieth Session (20 October 2005), CRC/C/15/Add.268, paras 45-46(e).

<sup>14</sup> See below, n 23,25,27,28,29,33,36 and 37.

<sup>15</sup> See, Dr Lesley Chenoweth, *Children with Disabilities: What evidence do we have for better practice?*, September 2002, <[http://www.acwa.asn.au/Conf2002/Conf\\_proceedings/04%20Lesley%20CHENOWETH.doc](http://www.acwa.asn.au/Conf2002/Conf_proceedings/04%20Lesley%20CHENOWETH.doc)> at 29 June 2010. Many children, including those with disability, continue to experience severe disadvantage due to lack of supports and services.

<sup>16</sup> The Position's mandate should include monitoring implementation of the CRC and CRPD and be in complement with an increase in supports and services, particularly to children with disability and Aboriginal children.

<sup>17</sup> See, Attorney-General's Department, *Same Sex Reforms*, 2 September 2009, <<http://www.ag.gov.au/samesexreform>> at 24 June 2010. See also, Department of Immigration and Citizenship, *Key Changes to Same-Sex Relationships*, <<http://www.immi.gov.au/legislation/key-changes/2009/same-sex-relationships.htm>> at 29 June 2010.

<sup>18</sup> For example, see Berman A and S Robinson, 'Speaking Out, Stopping Homophobic and Transphobic Abuse in Queensland', *Australian Academic Press*, Brisbane, 2010.

<sup>19</sup> Legislative Council Standing Committee on Law and Justice, *Inquiry into Adoption by Same-Sex Couples*, Parliament of New South Wales, 2009 and Victorian Law Reform Commission, *Assisted Reproductive Technology and Adoption: Final Report*, 2007 and Tasmanian Law Reform Institute, *Adoption by Same Sex Couples*, Final Report No. 2 (2003).

<sup>20</sup> Recommended by Australian Human Rights Commission, *Sex Files: the Legal Recognition of Sex in Documents and Government Records*, March 2009.

<sup>21</sup> Recommended in Australian Senate Legal and Constitutional Affairs Committee, *Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, 2008.

<sup>22</sup> Throughout this report, Aboriginal and Torres Strait Islander peoples are referred to as 'Aboriginal peoples'.

The authors acknowledge the diversity in culture, language, kinship structures and ways of life within Aboriginal and Torres Strait Islander peoples, and recognise that Aboriginal peoples and Torres Strait Islander peoples retain their distinct cultures irrespective of whether they live in urban, regional or remote parts of the country. The use of the word 'peoples' also acknowledges that Aboriginal peoples and Torres Strait Islander peoples have a 'collective, rather than purely individual dimension to their livelihood' (Australian Human Rights Commission, *Social Justice Report 2009* (2009), p. 6).

<sup>23</sup> James Anaya, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010). See also, National Human Rights Consultation Committee, *National Human Rights Consultation Report*, 2009, Recommendation 16.

<sup>24</sup> However, note that there are mixed views about the Northern Territory Intervention measures among Aboriginal and Torres Strait Islander women: for discussion, see *Australian Aboriginal and Torres Strait Islander Women's Parallel NGO Report: The Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), 2010, p. 25

<sup>25</sup> The Special Rapporteur on Indigenous Rights, Special Rapporteur on Indigenous Peoples, CERD Committee, UN Human Rights Committee and CESCR Committee have all expressed serious concerns in relation to the discriminatory operation of the NTER and its impact on rights including self determination, property, social security, adequate standard of living, health and education, work, child rights and remedies.

<sup>26</sup> Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill 2009.

<sup>27</sup> Patricia Anderson and Rex Wild QC (Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse), *Little Children are Sacred: Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007).

<sup>28</sup> Laws include mandatory sentencing provisions and discretionary powers of police to stop and search. See *Report of the Special Rapporteur on the Right to Adequate Housing on Mission to Australia* (11 May 2007), UN Doc A/HRC/4/18/Add.2.

<sup>29</sup> Aboriginal peoples in Australia are among the most highly incarcerated peoples in the world and were 13 times more likely as other Australians to be imprisoned in 2008, the imprisonment rate increased by 46% for Aboriginal women and by 27% for Aboriginal men between 2000 and 2008.

<sup>30</sup> Australian Government funding to the Legal Aid Indigenous Australians program decreased 6% in the decade to 2008 and by 40% (in real terms) to Aboriginal and Torres Strait Islander legal services (see, Parliament of Australia, Senate Legal and Constitutional Affairs Committee, *Access to Justice Inquiry Report*, 2009, [8.5]). A May 2010 increase in funding to specialist services by the Attorney-General's Department has been welcomed but the increase is not enough to address the systemic crisis in resourcing of, and access to, specialist services for Aboriginal peoples (see Aboriginal Legal Rights Movement, 'ALRM welcomes Rudd Government's Legal Aid Funding' (Press Release, 14 May 2010) <<http://www.alrm.org.au/mediareleases.php>> at 6 June 2010).

<sup>31</sup> Parliament of Australia, *Senate Legal and Constitutional Affairs Committee's Access to Justice Report* (2009). Chapter 6 of the Report recommended that the Australian Government address ways in which individuals can access justice using means other than legal representation and/or the judicial system, including Indigenous specific approaches, early intervention and prevention, alternative dispute resolution, restorative justice, justice reinvestment and clinical legal education.

<sup>32</sup> The strict requirement of the *Native Title Act 1993* (Cth) of continuous connection since colonisation is incompatible with the UN Declaration on the Rights of Indigenous Peoples.

<sup>33</sup> Stolen Generations refers to Aboriginal children who were forcibly removed from their families under official government policies between 1909 and 1969 to promote assimilation. The UN Human Rights Committee, the Special Rapporteur on Indigenous People and the Australian Human Rights Commission has all called on the government to provide compensation to the Stolen Generations. See, James Anaya, *Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), above n 220, para [19]; Australian Human Rights Commission, *Social Justice Report 2008*, Chapter 4. Human Rights Committee, *Concluding Observations: Australia* (3 April 2009), UN Doc CCPR/C/AUS/CO/5, [15].

<sup>34</sup> Stolen wages is a term used to refer to the wages of ‘Indigenous workers whose paid labour was controlled by the Government’ – in many cases, Aboriginal and Torres Strait Islander people did not receive any wages at all, or received insufficient wages. See, Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Unfinished Business: Indigenous Stolen Wages* (2006)).

<sup>35</sup> See Select Committee on Regional and Remote Indigenous Committees, First Report 2008, <[http://www.aph.gov.au/senate/committee/indig\\_ctte/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/index.htm)> at 24 June 2010. See also, James Anaya, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version) (4 March 2010), UN Doc A/HRC/15.

<sup>36</sup> Aboriginal children are more likely to be stillborn or die within the first month of life, eleven times more likely to die from respiratory causes and nearly 30 times more likely to suffer from nutritional anaemia and malnutrition up to four years of age (Australian Medical Association, *AMA Report Card Series 2008 – Indigenous and Torres Strait Islander Health, Ending the Cycle of Vulnerability: The Health of Indigenous Children* (2008), 1).

<sup>37</sup> See, Northern Territory Government, ‘Education Restructure Includes Greater Emphasis on English’ (Media Release, 14 October 2008), <<http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=4599&d=5>> at 28 June 2010. Note that the UN Committee on Economic, Social and Cultural Rights has recommended that the Australian Government preserve and promote bilingual education at schools: Committee on Economic, Social and Cultural Rights, Considering the Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, 42nd session, Geneva, 4-22 May 2009, [33].

<sup>38</sup> Asylum seekers who arrive in parts of Australia that are excised from the ‘migration’ zone are subject to mandatory detention offshore, predominantly on Christmas Island, and do not have full rights to apply for refugee status or to have any decisions reviewed as applicants for protection on the mainland.

<sup>39</sup> AHRC, Immigration Detention and offshore processing on Christmas Island, <[http://hreoc.gov.au/human\\_rights/immigration/idc2009\\_xmas\\_island.html#s2](http://hreoc.gov.au/human_rights/immigration/idc2009_xmas_island.html#s2)> (2009).

<sup>40</sup> On 9 April 2010, the Australian Government announced a policy to suspend processing of protection visa applications from Sri Lankans for three months, and from Afghans for six months (Chris Evans MP, Stephen Smith MP and Brendan O’Connor MP, *Changes to Australia’s Immigration Processing System*, 2010), <<http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm>> as at 29 June 2010.

<sup>41</sup> Health criteria are found in the *Migration Regulations 1994* (Cth) sch 4, cl 40.

<sup>42</sup> Violence against women has been the subject of numerous treaty body recommendations, including: *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*, the UN released *Concluding Observations (2009 ICCPR – Concluding Observations)* and *(2009 ESCR – Concluding Observations)* which state that Australia should take further steps to address ongoing issues of violence against women, including the prompt implementation of the National Plan, of Action to Reduce Violence against Women and their Children. *International Covenant on the Elimination of All Forms of Discrimination against Women*, 2006 *Concluding Observations*, 19. Indigenous women are 35.1 times more likely than non-Indigenous women to be hospitalised for family violence (<<http://www.aph.gov.au/library/intguide/sp/ViolenceAgainstWomen.htm>> as at 29 June 2010). See: Women With Disabilities Australia (WWDA) (2009) Submission to the National Human Rights Consultation. WWDA, Tasmania, <<http://www.wwda.org.au/subs2006.htm>> at 28 June 2010. See also: Commonwealth of Australia (2009) *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children*, 2009-2021 [p9].

<sup>43</sup> See: Women With Disabilities Australia (WWDA) (2009) Submission to the National Human Rights Consultation. WWDA, Tasmania <<http://www.wwda.org.au/subs2006.htm>> at 28 June 2010. See also: Commonwealth of Australia (2009) *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children*, 2009-2021, [p9].

<sup>44</sup> There have been three major government-commissioned reports into family law in the last 12 months: Family Law Council, 'Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues' (2010) [http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2010\\_FirstQuarter\\_28January2010-ReleaseofFamilyLawReviews](http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_FirstQuarter_28January2010-ReleaseofFamilyLawReviews) at 28 June 2010; Australian Institute of Family Studies, 'Evaluation of the 2006 Family Law Reforms' (2009) <<http://www.aifs.gov.au/familylawevaluation/>> at 28 June 2010; Attorney-General's Department, 'Family Courts Violence Review: A Report by Professor Richard Chisholm' (2009) [http://www.ag.gov.au/www/agd/agd.nsf/Page/Families\\_FamilyCourtsViolenceReview](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyCourtsViolenceReview) at 28 June 2010.

<sup>45</sup> Anand Grover, United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Addendum: Mission to Australia*, UN Doc A/HRC/14/20/ADD.4 (3 June 2010) para [64].16-18.

<sup>46</sup> Prison conditions vary between states; however overcrowding and substandard health care is a real problem in many Australian prisons. The Committee against Torture has recommended that the Australian Government take urgent action to reduce overcrowding. Additionally, reports have emerged from the Northern Territory about the increase in intellectually disabled and mentally ill people who remain incarcerated due to lack of appropriate care facilities.

<sup>47</sup> See, e.g. Vic Health, *Building on Our Strengths: A Framework to Reduce Race-based Discrimination and Support Diversity in Victoria* (December 2009) page 31, <<http://www.vichealth.vic.gov.au/Resource-Centre/Publications-and-Resources.aspx>> at 28 June 2010; Ethical Standards Department, Victoria Police and Indigenous Issues Unit, Department of Justice, *Koorie Complaints Project – 2006-2008 – Final Report* (2008), pages 7, 18 and 19.

<sup>48</sup> Victorian Equal Opportunity & Human Rights Commission, *Rights of Passage: The Experiences of Australia-Sudanese Young People* (2008) <[http://www.humanrightscommission.vic.gov.au/pdf/rights\\_of\\_passage.pdf](http://www.humanrightscommission.vic.gov.au/pdf/rights_of_passage.pdf)> at 28 June 2010, at pages 30-38. Bec Smith and Shane Reside, Fitzroy Legal Service, *Boys, You Wanna Give Me Some Action?: Interventions into Policing of Racialised Communities in Melbourne: Report of the 2009/10 Racism Project* (2010).

<sup>49</sup> See, UN Code of Conduct for Law Enforcement Officials and Basic Principles for the Use of Force and Firearms by Law Enforcement Officials.

<sup>50</sup> The Legal Aid and Access to Justice 2009-10 Federal Budget is available at [http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file\\_uuid=212CC6C1-1E4F-17FA-D2A6-BB3D7124DA2F&siteName=lca](http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=212CC6C1-1E4F-17FA-D2A6-BB3D7124DA2F&siteName=lca).

<sup>51</sup> The Senate Access to Justice Report is available at [http://www.aph.gov.au/senate/committee/legcon\\_ctte/access\\_to\\_justice/report/report.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/report/report.pdf).

<sup>52</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia* (14 April 2005), CERD/C/AUS/CO/14.

<sup>53</sup> New South Wales, Victoria, Queensland and Western Australia, The *Serious Sex Offenders Act* 2006 permits the court to impose a fresh sentence on a person convicted of a serious sex offence regardless of the years already served, if there is a high probability that the offender is likely to commit a future serious sex offence.

<sup>54</sup> Susan Hayes, 'People with intellectual disabilities in the criminal justice system – when is disability a crime?', *Lock 'Them' Up?: Disability and Mental Illness Aren't Crimes Conference*, Sisters Inside, Brisbane, Australia, 17-19 May 2006, [www.sistersinside.com.au/media/PaperSusanHayes.doc](http://www.sistersinside.com.au/media/PaperSusanHayes.doc) at 28 June 2010.

<sup>55</sup> Australian Association of Social Workers, *Human Rights Protection in Australia: AASW Submission to the National Human Rights Consultation* (2009) < <http://www.aasw.asn.au/document/item/151> > at 28 June 2010.

<sup>56</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights, 2009*.

<sup>57</sup> Over 100,000 people experience homelessness on any given night. *Freedom, Respect, Equality, Dignity: Action – NGO Submission to the Human Rights Committee* (September 2008), < <http://www.hrlrc.org.au/content/topics/civil-and-political-rights/un-human-rights-committee-review-of-australia-march-2009/> > at 28 June 2010. See also, *Freedom, Respect, Equality, Dignity, Action: NGO Submission to the Committee on Economic, Social and Cultural Rights* (2008) < <http://www.hrlrc.org.au/content/topics/esc-rights/icescr-ngo-report-australia-un-committee-on-economic-social-and-cultural-rights/> > at 28 June 2010.

<sup>58</sup> Women With Disabilities Australia, *Shut Out, Hung Out, Left Out, Missing Out: WWDA Submission in Response to the Australian Government's Green Paper on Homelessness*, 2008) <<http://www.wwda.org.au/homesubjune08.htm>>, at 28 June 2010 at 4.1

<sup>59</sup> M Kothari, Special Rapporteur on the Right to Adequate Housing, *Report of the Special Rapporteur on the Right to Adequate Housing on Mission to Australia*, UN Doc A/HRC/4/18/Add.2, (11 May 2007).

- <sup>60</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee: Australia, UN Doc CCPR/C/AUS/CO/5 (March 2009), [18].
- <sup>61</sup> Senate Select Committee on Mental Health, *A National Approach to Mental Health: From Crisis to Community (First Report)*, (2006), [3.18].
- <sup>62</sup> *Concluding Observations on the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (May 2009), [30].
- <sup>63</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee: Australia, UN Doc CCPR/C/AUS/CO/5 (March 2009).
- <sup>64</sup> While legislation establishing an Independent Monitor of National Security law was passed and assented to in April 2010, a monitor is yet to be appointed. Furthermore while the Federal Government has introduced reforms to national security legislation, key provisions giving rise to human rights concerns remain unchanged, National Security Legislation Amendment Bill 2010.
- <sup>65</sup> All prosecutions to date under the counter terror laws have been against Muslim people and Tamils, while all but one of the 18 organisations that have been listed as terrorist organisations are self-identified Islamic organisations. See: Australian Government, Australian National Security, *What Governments are Doing – Listing of Terrorist Organisations*, 15 September 2009.
- <sup>66</sup> See, e.g., ICCPR, arts 9 and 14. See generally, reports to the UN General Assembly of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
- <sup>67</sup> Australian Human Rights Commission, *The Australian Mining and Resource Sector and Human Rights*, <[http://www.hreoc.gov.au/human\\_rights/corporate\\_social\\_responsibility/factsheet3.html](http://www.hreoc.gov.au/human_rights/corporate_social_responsibility/factsheet3.html)> as at 29 June 2010.
- <sup>68</sup> Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc A/HRC/8/5, 7 April 2008.
- <sup>69</sup> According to the OECD, the Australian Government's 2009 commitment was ranked 16th on the OECD list of countries.
- <sup>70</sup> Australian Government Budget 2010-11, Australia's Development Assistance Program, <[http://www.budget.gov.au/2010-11/content/ministerial\\_statements/ausaid/html/ms\\_ausaid-01.htm](http://www.budget.gov.au/2010-11/content/ministerial_statements/ausaid/html/ms_ausaid-01.htm)> as at 29 June 2010.
- <sup>71</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, 2009, para 12.
- <sup>72</sup> Australian Parliament, *Human Rights in the Asia-Pacific: Challenges and opportunities, 2010* <[http://aph.gov.au/house/committee/jfadt/asia\\_pacific\\_hr/report.htm](http://aph.gov.au/house/committee/jfadt/asia_pacific_hr/report.htm)> at 28 June 2010.
- <sup>73</sup> In March 2010, the Joint Standing Committee on Treaties called for the inclusion of human rights safeguards in Australia's extradition arrangements with other countries. Similarly, in its 2009 report on *Australia's Relationship with ASEAN*, the Joint Committee on Foreign Affairs, Defence and Trade recommended that "human rights, core labour standards, and the environment be pursued in future free trade agreements" and the review of existing free trade agreements: 159 [Recommendation 8].