



# Australia's Third Universal Periodic Review

**SUBMISSION**

6 July 2020

## **About the Commission**

The Australian Human Rights Commission is established and operates under the *Australian Human Rights Commission Act 1986* (Cth) and exercises functions under the following legislation: *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth); *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 2004* (Cth); *Fair Work Act 2009* (Cth) and *Native Title Act 1993* (Cth).

The Commission is an 'A status' national human rights institution, operating in conformity with the 'Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights' in General Assembly Resolution 48/134, 1993.

Information about the Commission's activities can be found on our website: [www.humanrights.gov.au](http://www.humanrights.gov.au).

## 1 Introduction

1. This submission is made by the Australian Human Rights Commission (AHRC). Recommendations are in **bold**.
2. The Commission acknowledges the positive steps taken by the Australian Government since its 2<sup>nd</sup> UPR.<sup>1</sup>
3. Australia does not take a proactive approach to human rights. There are limited national targets and commitments to address known human rights challenges, and limited accountability for outcomes.
4. Throughout 2019–20 the AHRC conducted a national conversation on human rights to develop a national reform agenda to comprehensively respect, protect and fulfil rights.<sup>2</sup> This submission makes recommendations to implement this reform agenda, and to address the impact of the COVID-19 Pandemic in Australia.

## 2 Background and framework

### 2.1 Implementation of UPR recommendations

5. Of the 290 recommendations made to Australia in 2015, approximately 11% of those supported have been **fully** implemented over the past four years,<sup>3</sup> approximately 80% have been **partly** implemented and approximately 9% **not** implemented.<sup>4</sup>

### 2.2 Scope of international obligations

6. The Commission commends Australia's ratification of OPCAT and the withdrawal of its CEDAW reservation on women in combat roles. Reservations continue under ICERD, ICCPR, CEDAW and CRC, and interpretative declarations under the CRPD, despite calls for their removal.<sup>5</sup> The Migrant Workers Convention<sup>6</sup> and the communications optional protocols under ICESCR and the CRC have not been ratified. **Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification of the Migrant Workers Convention and Optional Protocols to ICESCR and CRC. Government remove existing reservations to human rights treaties and withdraw its interpretative declarations to the CRPD.**
7. Since ratifying OPCAT in 2017, implementation has been slow. Australia has delayed implementation of the National Preventive Mechanism (NPM) for 3 years, which concludes in late 2021. **Australian governments apply recommendations from *Implementing OPCAT in Australia* and commence operation of all NPM bodies without delay.**<sup>7</sup>

### 2.3 Constitutional and legislative framework

8. The Commission is concerned at the quality of 'Statements of Compatibility with Human Rights' that accompany bills, and limited consideration of the

views of the Parliamentary Joint Committee on Human Rights (PJCHR) prior to the passage of legislation.<sup>8</sup> **Government train public servants to ensure that Statements of Compatibility are of a consistently high standard and ensure that the views of the PJCHR are considered prior to enacting legislation.**

9. Many restrictions on movement and penalties were introduced to combat the COVID-19 pandemic without legislative oversight or review.<sup>9</sup> **All Australian Governments ensure that restrictions enacted to combat the COVID-19 pandemic are proportionate, the minimum necessary intrusion on rights at all times and are removed fully as soon as the public emergency is over.**
10. Australia has an inadequate legal framework for implementing its human rights obligations and providing remedies. **Government ensure that Australia's international human rights obligations are comprehensively incorporated into law.**
11. Australia's discrimination laws are complex, do not provide comprehensive protection and lack regulatory mechanisms to assist compliance and promote equality.<sup>10</sup> **Government reform federal discrimination laws to ensure comprehensive protection and improve effectiveness.<sup>11</sup>**
12. The Standing National Mechanism on Human Rights has improved governmental coordination.<sup>12</sup> Concerns remain about inadequate responses to treaty body recommendations and a lack of accountability for implementation. **Government commits to formally replying to all treaty body recommendations within 12 months with civil society engagement, targets and identifying responsible government agencies for implementation.**

(a) *Human rights education*

13. References to human rights in the national school curriculum are limited.<sup>13</sup> **Government expand human rights education in all areas of the public sector, particularly for those working with children and in the administration of justice and places of detention;<sup>14</sup> and incorporate human rights more fully in the national school curriculum.**

### **3 Promotion and protection of human rights on the ground**

#### **3.1 Aboriginal and Torres Strait Islander peoples**

14. There is no program to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia, nor consultation with indigenous peoples about priorities.<sup>15</sup> **Government develop a national program to implement UNDRIP and schedule it to the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).**
15. The Australian Constitution permits racial discrimination.<sup>16</sup> A referendum has not yet taken place to address this or recognise Aboriginal and Torres Strait Islander peoples<sup>17</sup> despite multiple processes since 2011.<sup>18</sup> Constitutional

reform, truth telling and agreement making are critical to addressing the concerns experienced by Aboriginal and Torres Strait Islander peoples. A Voice to Parliament as set out in the Uluru Statement is a vital component of the necessary reforms.<sup>19</sup> **Government support a national voice to Parliament for Indigenous peoples, and ensure the informed consent of Indigenous peoples in all decision making that affects them. Government sets timetable for achieving reform of the Constitution to remove capacity for racial discrimination.**

16. The Closing the Gap strategy aims to ‘close the gap’ between Indigenous and non-Indigenous Australians across a range of life outcomes.<sup>20</sup> In 2020, two of the seven targets—early childhood education and Year 12 attainment—are on track to be met by 2031.<sup>21</sup> Other areas such as employment and school attendance have not seen improvements,<sup>22</sup> and the life expectancy gap has persisted.<sup>23</sup> The Commission welcomes the Partnership Agreement in 2019 between the Coalition of Peaks and COAG—the peak intergovernmental forum in Australia.<sup>24</sup> **Government implements shared decision making and partnerships with Aboriginal and Torres Strait Islander peoples through the Closing the Gap strategy, and commit to funding and actions to achieve targets by 2031.**
17. The AHRC’s *Wiyi Yani U Thangani* project identifies actions to improve the human rights of Aboriginal and Torres Strait Islander women and girls. This includes an urgent focus on reducing over-representation of Indigenous people in care and protection systems,<sup>25</sup> criminal justice,<sup>26</sup> and as victims of family violence,<sup>27</sup> with a focus on trauma recovery. **Government implement the recommendations of the *Wiyi Yani U Thangani* report,<sup>28</sup> including by developing a National Action Plan for Aboriginal and Torres Strait Islander women and girls.**
18. Significant concerns have been expressed about the evidentiary requirements required under the *Native Title Act 1993* for proving Indigenous peoples’ connection to country. **The Government implement the recommendations of the ALRC’s *Connection to Country* report.<sup>29</sup>**

### 3.2 Gender equality

19. Australia’s national gender pay gap is currently 14%,<sup>30</sup> contributing to the significant gap in retirement savings for women.<sup>31</sup> **Government implement targeted strategies to close the gender pay gap and ensure women’s economic security later in life.<sup>32</sup>**
20. Women and girls face particular challenges during the COVID-19 pandemic, including economic impacts, increased violence at home and the compounding effects of intersectional disadvantage.<sup>33</sup> **Government implement evidence-based gender sensitive policies, including affordable access to childcare, equal investment in job creation efforts for men and women, and ensuring that women contribute to decisions affecting Australia’s COVID-19 recovery.**
21. The Commission’s *Rights@Work* report identifies drivers and impacts of workplace sexual harassment, the adequacy of the current legal framework and measures to address this.<sup>34</sup> **Government, in partnership with the**

**business and community sectors, implement the recommendations of the National Inquiry into Sexual Harassment in Australian Workplaces.**

22. The Commission welcomes the Fourth Action Plan of the National Plan to Reduce Violence Against Women and Their Children 2010–2022.<sup>35</sup> Domestic and Family violence (DFV) against women remains endemic.<sup>36</sup> The intersection of gender with other forms of inequality results in women with disability and from Indigenous, LGBTIQI, and culturally and linguistically diverse backgrounds experiencing higher rates of violence, and additional barriers to support.<sup>37</sup> **Government increase prevention and early intervention initiatives on DFV; tailored measures to address the needs of women experiencing intersectional discrimination; and commit to a further National Plan from 2022.**

### 3.3 *Older persons*

23. Older Australians continue to face challenges relating to stereotyping and various forms of abuse.<sup>38</sup> The Commission welcomes the launch of the National Plan to Respond to the Abuse of Older Australians (2019–2023).<sup>39</sup> Age discrimination is a major barrier to the participation of older Australians in the labour force, which is likely to be exacerbated during the COVID-19 pandemic and likely recession.<sup>40</sup> **Government reduce workplace discrimination against older Australians, and implement recommendations from the ALRC’s report *Elder Abuse—A National Legal Response*<sup>41</sup> and the AHRC’s *Willing to Work* report.<sup>42</sup>**
24. Older women were the fastest growing cohort of homeless Australians 2011-2016, increasing by 31%.<sup>43</sup> **Government develop solutions to reduce women’s risk of homelessness.<sup>44</sup>**

### 3.4 *People with disability*

25. The National Disability Strategy 2010–2020 remains underfunded, with key commitments not achieved. There has been limited progress in addressing the sterilisation of people with disability without consent,<sup>45</sup> and implementing a nationally consistent supported decision-making framework.<sup>46</sup> **Government address the UNCRPD Committee’s recommendations in the new National Disability Strategy; adopt uniform legislation prohibiting sterilisation of people with disability without their consent; and implement a nationally consistent supported decision-making framework.<sup>47</sup>**
26. Rates of labour force participation of people with disability have not improved.<sup>48</sup> **Government implement the *Willing to Work* report recommendations<sup>49</sup> and provide services to transition people with disability into open forms of employment.**
27. There remain high rates of violence against people with disability,<sup>50</sup> in particular women and girls.<sup>51</sup> The Commission is also concerned about the lack of a nationally consistent approach to eliminating the use of restrictive practices.<sup>52</sup> The Commission welcomes the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. **Government ensure that national policies to reduce violence against women and**

**children prioritise disability. Government implement the interim and final reports of the Royal Commission.<sup>53</sup> Governments develop a national framework towards eliminating the use of restrictive practices.**

28. Little progress has been made in addressing the indefinite detention of people with disability who are assessed as unfit to stand trial or not guilty by reason of mental impairment.<sup>54</sup> The Commission is also concerned about the imposition of compulsory treatment and involuntary hospitalisation.<sup>55</sup> **Government implement the recommendations of the *Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia*.<sup>56</sup> Governments adopt a human rights-based approach to mental health laws and ensure that mental health services do not violate the human rights of people with disability.**

### **3.5 *Lesbian, gay, bisexual, trans, gender diverse and intersex people***

29. The Commission welcomes marriage equality legislation<sup>57</sup> and legislation expunging historic criminal convictions for consensual homosexual sex.<sup>58</sup>
30. The Commission is concerned about involuntary surgery on people born with variations in sex characteristics, especially infants.<sup>59</sup> **Government ensure a nationally consistent human rights-based approach to medical interventions on people with variations in sex characteristics.**

### **3.6 *Rights of the child***

31. There are inadequate legal protections for children's rights in Australia, including remedies.<sup>60</sup> Significant gaps in the implementation of children's rights exist across all areas of data collection, policy, programs and service delivery. **Government fully incorporate the CRC into Australian law; develop a National Plan for Child Wellbeing and a national children's data framework; and create a Cabinet-level Minister for children's rights.**
32. Rates of children in out-of-home care have steadily increased,<sup>61</sup> with Indigenous children significantly over-represented.<sup>62</sup> **Governments urgently prioritise early intervention programs to prevent children entering child protection systems. Governments fully implement the Aboriginal and Torres Strait Islander Child Placement Principle.**<sup>63</sup>

### **3.7 *Refugees, asylum seekers and migrants***

33. Immigration detention remains mandatory for all unlawful non-citizens,<sup>64</sup> which can result in prolonged and/or indefinite detention that may be arbitrary and risks mental ill-health.<sup>65</sup> The average period of immigration detention is currently 545 days.<sup>66</sup> Immigration detention facilities are approaching capacity, making physical distancing for COVID-19 difficult.<sup>67</sup> **Government ensure immigration detention is justified, time limited, and subject to prompt and regular judicial oversight. Government reduces numbers of people held in immigration detention to maintain safety during COVID-19 pandemic. Government amends the *Migration Act 1958* (Cth) to prohibit placing children in immigration detention.**

34. The Commission is concerned about possible refoulement, arbitrary, prolonged and/or indefinite detention and separation from family resulting from decisions to cancel visas of non-citizens under sections 501 and 116 of the Migration Act.<sup>68</sup> **Government repeals mandatory visa cancellation provisions in sections 501(3A) and 501CA and removes a criminal charge as a prescribed ground for cancellation of a Bridging Visa E under section 116(1)(g) of the *Migration Act*.**
35. The Commission is concerned about human rights protections for refugees and asylum seekers in the ‘Legacy Caseload’<sup>69</sup>—especially inadequate safeguards against refoulement,<sup>70</sup> insufficient support to ensure an adequate standard of living,<sup>71</sup> and restrictions on family reunion that create a risk of constructive refoulement.<sup>72</sup> Asylum seekers arriving by boat may only apply for temporary protection visas, discrimination based on mode of arrival.<sup>73</sup> **Government repeal the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)*. Government conduct refugee status determination consistently with international obligations, and provide permanent protection for refugees and family sponsorship. Government provide sufficient support to asylum seekers to ensure an adequate standard of living.**
36. Australia’s current regime of third country processing in Papua New Guinea and Nauru for asylum seekers who arrive by sea is inconsistent with international human rights law.<sup>74</sup> **Government immediately cease the current regime of third country processing, and offer viable long-term protection for all refugees subject to third country processing, including those transferred to Australia, and confirm they will not be sent back to PNG or Nauru.**
37. The Commission is concerned that refugees and asylum seekers in regional processing countries are receiving inadequate physical or mental health care. The Commission considers the repeal of ‘Medevac legislation’,<sup>75</sup> which established a framework for transferring refugees and asylum seekers from regional processing countries to Australia for medical treatment, is retrogressive in ensuring the highest attainable standard of physical and mental health.<sup>76</sup> **Government ensure refugees and asylum seekers access timely and appropriate healthcare in Australia, unless there is a medical reason why another destination is more appropriate.**

### **3.8 People from culturally and linguistically diverse backgrounds**

38. Racial discrimination is present in Australian society, particularly for Aboriginal and Torres Strait Islander peoples.<sup>77</sup> The Commission is concerned about the increase in severe Islamophobic attacks,<sup>78</sup> far-right extremism,<sup>79</sup> increased racism experienced by people of Asian background during the COVID-19 pandemic<sup>80</sup> and cyber racism, and calls for renewed funding of national anti-racism efforts.<sup>81</sup> **Government support social cohesion, community harmony and national unity initiatives underpinned by accurate data. Government fund a new national anti-racism strategy.**
39. There is limited cultural diversity in leadership of Australian organisations.<sup>82</sup> **Government support pathways to improve the representation of cultural**

diversity within Australian leadership.<sup>83</sup>

## 4 Economic, social and cultural rights

### (a) *Right to social security*

40. The main income support payment for unemployed Australians, ‘JobSeeker Allowance’,<sup>84</sup> is inadequate.<sup>85</sup> This has been acknowledged by the Government which increased payments during the COVID-19 pandemic.<sup>86</sup> The Commission has expressed concerns at punitive welfare programs, notably the ‘ParentsNext’<sup>87</sup> ‘pre-employment’ program<sup>88</sup> and compulsory income management schemes that disproportionately affect Aboriginal and Torres Strait Islander peoples.<sup>89</sup> **Government ensure JobSeeker Allowance payments provide recipients with an adequate standard of living. Welfare support programs be reformed so they are not punitive, and current models of income management be discontinued or redesigned as voluntary, opt-in schemes that are used as a ‘last resort’.**

### (b) *Children: health and education*<sup>90</sup>

41. The Commission is concerned about the availability of mental health services for children.<sup>91</sup> **Government expands and funds the delivery of child targeted mental health and support services.**

42. Aboriginal and Torres Strait Islander children consistently identified the need for support for culture and language in primary and secondary education.<sup>92</sup> **Government fully implement the cross-curriculum priority on ‘Aboriginal and Torres Strait Islander histories and cultures’ and ensure availability of bilingual education.**

### (c) *Human rights and the environment*

43. Ongoing changes to Australia’s physical environment and increasing instances of natural disaster are impacting Australians’ rights to the enjoyment of the highest attainable standard of physical health and to safe and healthy working conditions. **Government take urgent steps to implement the Paris Agreement and integrate a human rights-based approach into all disaster recovery policies.**

## 5 Civil and political rights

### (a) *Business and Human Rights*

44. The Commission commends Australia for reforms to its OECD National Contact Point.<sup>93</sup> The Government consulted on a National Action Plan on Business and Human Rights in 2017 but did not proceed. **Government develop a National Action Plan on Business and Human Rights; and legislate for large Australian companies and those operating in high risk sectors, including extraterritorially, to conduct human rights and environmental due diligence.**



(b) *Slavery and Trafficking*

45. The Commission commends Australia for the *Modern Slavery Act 2018* (Cth), which includes the Government as a reporting entity. The Commission welcomes the 12 proposed goals for the development of the National Action Plan to Combat Modern Slavery 2020–2024.<sup>94</sup> **Government establish an Anti-Slavery Commissioner with oversight of modern slavery statements; introduce financial penalties for non-compliance with reporting requirements; and fully implement the National Action Plan.**

(c) *Counter-terrorism and national security laws*

46. Australia's counter-terrorism laws disproportionately and unnecessarily limit ICCPR rights, especially relating to: 'declared areas' offences,<sup>95</sup> presumptions against bail and parole,<sup>96</sup> control orders and preventive detention orders,<sup>97</sup> continuing detention orders,<sup>98</sup> 'stop, search and seize' powers,<sup>99</sup> revocation of citizenship,<sup>100</sup> restrictions on fair trial rights,<sup>101</sup> and measures limiting children's rights such as in the prosecution and sentencing of children for terrorism offences.<sup>102</sup> **Government amend existing counter-terrorism laws that unduly limit human rights.**

47. National security laws and law enforcement powers<sup>103</sup> on metadata retention<sup>104</sup> and encryption,<sup>105</sup> unjustifiably limit freedom of expression and privacy, especially for journalists and whistleblowers.<sup>106</sup> **Government amend national security laws so that they do not unduly limit human rights, particularly freedom of expression and the right to privacy.**

(d) *Technology*

48. The Commission is concerned at inadequate protections relating to decision making using artificial intelligence (AI).<sup>107</sup> **Government adopt a national strategy on new technologies, promoting the development and use of AI in compliance with human rights.**

(e) *Freedom of assembly*

49. Some state and territory laws unduly restrict the right of peaceful assembly.<sup>108</sup> **Governments ensure that all laws that regulate protest activity are consistent with the right of peaceful assembly.**

(f) *Freedom of religion and belief*

50. Protections from religious discrimination are not comprehensive. **Government introduce a religious discrimination law that protects all people in Australia consistently with international human rights law and other Commonwealth discrimination laws.**<sup>109</sup>

(g) *Criminal justice system*

51. Aboriginal and Torres Strait Islander people continue to be significantly overrepresented in prisons,<sup>110</sup> especially children<sup>111</sup> and those with intellectual or psychosocial disabilities.<sup>112</sup> Aboriginal and Torres Strait Islander women are the fastest growing prisoner population.<sup>113</sup> **Government ensure the availability of diversionary programs for Indigenous peoples and expand justice reinvestment trials. Government commit adequate, ongoing funding for Indigenous legal assistance programs.**
52. Mandatory sentencing laws<sup>114</sup> continue to exist in most Australian jurisdictions.<sup>115</sup> **Governments abolish mandatory sentencing laws and expand the use of non-custodial measures where appropriate.**
53. The minimum age of criminal responsibility in all Australian jurisdictions is 10 years of age.<sup>116</sup> **Governments raise the minimum age of criminal responsibility to at least 14 years.**
54. The Commission is concerned about conditions of detention for children, including excessive and punitive isolation practices.<sup>117</sup> **Governments prohibit the use of isolation and force as punishment in juvenile justice facilities.**

## Endnotes

<sup>1</sup> These are referred to during the submission and include ratification of OPCAT and marriage equality legislation.

<sup>2</sup> Australian Human Rights Commission, *Free and Equal: An Australian conversation on human rights* (February 2019) <<https://www.humanrights.gov.au/free-and-equal>>.

<sup>3</sup> A table listing the implementation status of the 290 recommendations made to Australia in the second UPR is included at Annex A. The table indicates which recommendations have been implemented, partly implemented, not implemented and not supported at the time of the UPR.

<sup>4</sup> The implementation matrix, with explanatory commentary on why the Commission has ranked each recommendation as either fully, partially or not implemented, is **ATTACHED** to this submission. Of the 290 recommendations made to Australia in 2015, approximately 16% of all recommendations (including those supported and noted) have been **fully** implemented over the past four years, approximately 50% have been **partly** implemented and approximately 34% **not** implemented.

<sup>5</sup> See for example: United Nations Committee on the Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018). At

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAUS%2fCO%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAUS%2fCO%2f8&Lang=en) (viewed 6 March 2020); Australian Human Rights Commission, *Report to the UN Committee on the Rights of the Child* (2018). At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>; Australian NGO Coalition, *Australia's Compliance with the International Covenant on Civil and Political Rights: Australian NGO Coalition Submission to the Human Rights Committee* (September 2017). At: <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59c364bb64b05fb1d2438e2f/1505977580713/18623-PUB+ICCP+Report+for+HRLC+2017+%28WEB%29.pdf> (viewed 6 March 2020).

<sup>6</sup> Recommendations 136.36–136.49.

<sup>7</sup> Australian Human Rights Commission, *Implementing OPCAT in Australia* (June 2020). At <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>.

<sup>8</sup> The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) establishes the Parliamentary Joint Committee on Human Rights and requires the preparation of Statements of Compatibility with Human Rights with all bills and most legislative instruments introduced to Parliament for consideration. The Act defines human rights as the rights and freedoms recognised or declared by the International Convention on the Elimination of all Forms of Racial Discrimination; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. See further: Parliament of Australia, *Parliamentary Joint Committee on Human Rights*, <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights)> (viewed 1 July 2020).

<sup>9</sup> Australia has implemented a number of restrictions in response to the COVID-19 pandemic including significant restrictions on freedom of assembly and freedom of movement, often accompanied by increased police enforcement powers. Many measures and restrictions have been introduced through delegated legislation which has not been subject to oversight of parliament. At the federal level, this has included changes to visa arrangements and restricting travel overseas. See, for example, *Migration (LIN 20/122: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020* (Cth) and *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (Cth). At a State and Territory level, delegated legislation has been used to implement measure including self-isolation orders, restrictions of visitors to aged care facilities and restrictions on the size and place of gatherings. See, for example, *Public Health (COVID-19 Gatherings) Order (No 3) 2020* (NSW) and *COVID-19 Emergency Response (Schedule 1) Regulations 2020* (SA). Other legislated restrictions have often been passed quickly with minimal parliamentary scrutiny and have included increased powers for police.

<sup>10</sup> Australian Human Rights Commission, *Discussion Paper: Priorities for federal discrimination law reform* (1 August 2019). At [https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_discrimination\\_law\\_reform\\_2019.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_discrimination_law_reform_2019.pdf).

<sup>11</sup> Australian Human Rights Commission, *Free and Equal: An Australian conversation on human rights* (February 2019). At <https://www.humanrights.gov.au/free-and-equal>.

<sup>12</sup> This was established following Australia's 2<sup>nd</sup> UPR.

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<sup>13</sup> Australian Human Rights Commission, Children’s Rights Report 2019—In Their Own Right:

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Children’s Rights in Australia (2019) 49. At <https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>.

<sup>14</sup> Recommendation 136.203, 136.150 and 136.234.

<sup>15</sup> United Nations General Assembly, *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, GA Res 69/2, UN Doc No A/69/L.1, [7]-[8]. At [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/69/L.1](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/L.1) (viewed 9 January 2020). Recommendations 136.75, 136.77, 136.84, 136.85.

<sup>16</sup> This occurs through the operation of s51(xxvi) and s25.

<sup>17</sup> Voluntary commitment by Australia: Human Rights Council, 31<sup>st</sup> session, Agenda Item 6. *Report of the Working Group on the Universal Periodic Review: Australia* (13 January 2016), UN Doc A/HRC/31/14. At <https://undocs.org/A/HRC/31/14> (viewed 9 January 2020).

<sup>18</sup> National Indigenous Australians Agency, *Indigenous Voice*, <<https://www.indigenous.gov.au/topics/indigenous-voice>> (viewed 10 January 2020). Processes since 2011 include the formation of the Expert Panel on Constitutional Recognition of Indigenous Australians, the Recognise Campaign established by Reconciliation Australia with funding from the Australian Government, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, the enactment of the Aboriginal and Torres Strait Islander Peoples Recognition Act and the convening of the Referendum Council Dialogues. See: Australian Human Rights Commission, *Submission to the Expert Mechanism on the Rights of Indigenous Peoples for its Study on Recognition, Reparations and Reconciliation* (29 February 2019). At [https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/StudyRRR/Australia\\_NHRI1.pdf](https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/StudyRRR/Australia_NHRI1.pdf).

<sup>19</sup> Australian Human Rights Commission, *Submission to the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples* (29 July 2018). At <https://www.aph.gov.au/DocumentStore.ashx?id=81afbee8-381f-40a4-a758-b1384881e633&subId=658933> (viewed on 10 January 2020).

<sup>20</sup> Recommendations 136.103, 136.98, 136.94, 136.107 and 136.108.

<sup>21</sup> National Indigenous Australians Agency, *Closing the Gap: Report 2020* (February 2020) 11. At <https://ctgreport.niaa.gov.au/>.

<sup>22</sup> National Indigenous Australians Agency, *Closing the Gap: Report 2020* (February 2020) 65, 33. At <https://ctgreport.niaa.gov.au/>.

<sup>23</sup> Close the Gap Campaign, *Close the Gap Report: Our Choices, Our Voices* (2019). At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/close-gap-report-our> (viewed 15 January 2019).

<sup>24</sup> National Aboriginal Community Controlled Health Organisation, *A new way of working Talking about what’s needed to close the gap in life outcomes between Aboriginal and Torres Strait Islander people and other Australians*. At <https://www.naccho.org.au/wp-content/uploads/FINAL-discussion-booklet-a-new-way-of-working-09.09.pdf>.

<sup>25</sup> SNAICC – National Voice for our Children, National Family Violence Prevention Legal Services Forum and National Aboriginal and Torres Strait Islander Legal Services, *Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families* (September 2017). At [https://www.nationalfvpls.org/images/files/SNAICC-NATSILS-NFVPLS\\_Strong\\_Families\\_Safe\\_Kids-Sep\\_2017.pdf](https://www.nationalfvpls.org/images/files/SNAICC-NATSILS-NFVPLS_Strong_Families_Safe_Kids-Sep_2017.pdf).

<sup>26</sup> Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report* (ALRC Report 133, March 2018). At <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

<sup>27</sup> SCRGSP (Steering Committee for the Review of Government Service Provision) 2016, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission (2016) 4.98 and table 4A.12.13. At <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>.

<sup>28</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani* (forthcoming).

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<sup>57</sup> *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth).

<sup>58</sup> Such laws have been passed in all states and territories: *Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014* (Vic); *Criminal Records Amendment (Historical Homosexual Offences) Act 2014* (NSW); *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017* (Qld); *Expungement of Historical Offences Act 2017* (Tas); *Historical Homosexual Convictions Expungement Act 2018* (WA); *Expungement of Historical Homosexual Offence Records Act 2018* (NT); *Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015* (ACT); and *Spent Convictions (Decriminalised Offences) Amendment Act 2013* (SA).

<sup>59</sup> Australian Human Rights Commission, *Consultation Paper: Protecting the Human Rights of People Born with Variations in Sex Characteristics in the context of Medical Interventions* (July 2018). At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_Consultation%20paper\\_2018\\_2.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_Consultation%20paper_2018_2.pdf) (viewed 3 January 2020).

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<sup>61</sup> Australian Institute of Health and Welfare, *Child protection Australia 2017–2018* (Child Welfare Series No. 70, 2019). At <https://www.aihw.gov.au/getmedia/e551a2bc-9149-4625-83c0-7bf1523c3793/aihw-cws-65.pdf.aspx?inline=true>. Rates have increased from 8.1 per 1000 children in 2014 to 8.2 per 1,000 in 2018 - a rise of 6%. However, note that this rate has fluctuated. For example in 2017 the rate was 8.7 per 1000 children.

<sup>62</sup> Australian Institute of Health and Welfare, *Child protection Australia 2017–2018* (2019). At <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2017-18/contents/table-of-contents>.

<sup>63</sup> SNAICC, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A Resource for Legislation, Policy, and Program Development* (June 2017). At [https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\\_applying\\_ATSICCP.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICCP.pdf).

<sup>64</sup> *Migration Act 1958* (Cth) ss 189, 196. Recommendations 136.259, 136.261, 136.258, 136.256, 136.257, 136.248 and 136.245. See also Australian Human Rights Commission, *In Their Own Right: Children's Rights in Australia* (2019) 278-295. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>.

<sup>65</sup> Australian Human Rights Commission, *Risk management in immigration detention* (2019) 66-68. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019> (8 January 2020).

<sup>66</sup> As at 31 March 2020. Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 March 2020) 11. At <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf>.

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<sup>68</sup> Australian Human Rights Commission, *Submission No. 11 to the Joint Standing Committee on Migration Review processes associated with visa cancellations made on criminal grounds* (27 April 2018); Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy caseload'* (2019). At <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>.

<sup>69</sup> The “Legacy Caseload” is the group of approximately 30,000 asylum seekers who arrived in Australia by boat prior to 1 January 2014.

<sup>70</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy caseload'* (2019) 35-37. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>. See also Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Fourteenth Report of the 44th Parliament* (28 October 2014) [1.412].

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<sup>71</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy caseload'* (2019) 56-57. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>.

<sup>72</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy caseload'* (2019) 92. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>.

<sup>73</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy caseload'* (2019) 68-70. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>.

<sup>74</sup> See: Australian Human Rights Commission, *Submission No 54 to Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Repairing Medical Transfers) Bill 2019 [Provisions]* (21 August 2019); *Ms BK, Ms CO and Mr DE on behalf of themselves and their families v Commonwealth of Australia* [2018] AusHRC 128; Australian Human Rights Commission, ‘Children on Nauru’ (Media Release, 23 October 2018); Elizabeth Elliott and Hasantha Gunasekera, *The Health and Well-Being of Children in Immigration Detention: Report to the Australian Human Rights Commission – Monitoring Visit to Wickham Point Detention Centre, Darwin, NT* (Report, 2016); Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (November 2014).

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<sup>79</sup> See: ASIO Director General, Mike Burgess, 'Annual Threat Assessment' (Statement, 24 February 2020), <https://www.asio.gov.au/director-generals-annual-threat-assessment.html> (viewed 9 March 2020).

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<sup>85</sup> Australian Human Rights Commission, *Submission to the Senate Community Affairs References Committee, Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia* (25 September 2019). At [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Newstartrelatedpayments/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Newstartrelatedpayments/Submissions).

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<sup>91</sup> Australian Human Rights Commission, *Submission to the Committee on the Rights of the Child: Information relating to Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography, and second report on the Optional Protocol on the involvement of children in armed conflict* (1 November 2018) 36-41. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018> (viewed 10 January 2020). The Commission notes that funding has been increased during the COVID-19 pandemic.

<sup>92</sup> Australian Lawyers for Human Rights, Submission No 100 to Australian Human Rights Commission, *Report under article 44, paragraph 1(b), on the Convention on the Rights of the Child* (30 May 2018); NSW Aboriginal Education Consultative Group, Submission No 102 to Australian Human Rights Commission, *Report under article 44, paragraph 1(b), on the Convention on the Rights of the Child* (30 May 2018). At <https://www.humanrights.gov.au/our-work/childrens-rights/projects/reporting-united-nations-childrens-rights>. Recommendations 136.211 and 136.109.

<sup>93</sup> Australian National Contact Point, *About*, <<https://ausncp.gov.au/about>> (viewed 31 January 2020).

<sup>94</sup> Set out in Australian Border Force, *National Action Plan to Combat Modern Slavery 2020-2024: Public Consultation Paper* (December 2019) 2-3. At <https://www.homeaffairs.gov.au/reports-and-pubs/files/combat-modern-slavery-2020-24-consultation-paper.pdf> (viewed 2 March 2020)

<sup>95</sup> Australian Human Rights Commission, *Submission and supplementary submission to the Parliamentary Joint Committee on Intelligence and Security, review of the 'declared area' provisions* (2017). At <https://www.aph.gov.au/DocumentStore.ashx?id=b7a13ba8-ccdf-4855-8591-4310fbd24fe1&subId=560683> and <https://www.aph.gov.au/DocumentStore.ashx?id=23470519-e723-4263-9e5b-fc0dda2eed66&subId=560683> (viewed 16 January 2020).

<sup>96</sup> Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019* (22 August 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=3dbcd3df-cdaa-470c-9f6c-a4c570ff1b41&subId=668924>; and Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment Bill 2019* (8 March 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=e1748951-b005-409c-ba6e-50d704e45c51&subId=667096>.

<sup>97</sup> Divisions 104 and 105 of Part 5.3 of the Criminal Code contain the control order and preventative detention order (PDO) regimes respectively. See for example: Australian Human Rights Commission, *Submission to the Acting Independent National Security Legislation Monitor* (15 May 2017). At [https://www.humanrights.gov.au/sites/default/files/20170515\\_AHRC\\_Submission\\_INSLM\\_Statutory\\_Deadline\\_Review.pdf](https://www.humanrights.gov.au/sites/default/files/20170515_AHRC_Submission_INSLM_Statutory_Deadline_Review.pdf); Australian Human Rights Commission, *Submission and supplementary submission to the Parliamentary Joint Committee on Intelligence and Security review of police stop,*

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<sup>98</sup> Australian Human Rights Commission, *Submission to the Acting Independent National Security Legislation Monitor* (15 May 2017). At [https://www.humanrights.gov.au/sites/default/files/20170515\\_AHRC\\_Submission\\_INSLM\\_Statutory\\_Deadline\\_Review.pdf](https://www.humanrights.gov.au/sites/default/files/20170515_AHRC_Submission_INSLM_Statutory_Deadline_Review.pdf); Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019* (22 August 2019). Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=3dbcd3df-cdaa-470c-9f6c-a4c570ff1b41&subId=668924>; and Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment Bill 2019* (8 March 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=e1748951-b005-409c-ba6e-50d704e45c51&subId=667096> (viewed 16 January 2020).

<sup>99</sup> Australian Human Rights Commission, *Submission to the Acting Independent National Security Legislation Monitor* (15 May 2017). At [https://www.humanrights.gov.au/sites/default/files/20170515\\_AHRC\\_Submission\\_INSLM\\_Statutory\\_Deadline\\_Review.pdf](https://www.humanrights.gov.au/sites/default/files/20170515_AHRC_Submission_INSLM_Statutory_Deadline_Review.pdf) (viewed 16 January 2020); Australian Human Rights Commission, *Submission and supplementary submission to the Parliamentary Joint Committee on Intelligence and Security review of police stop, search and seizure powers, the control order regime and the preventative detention order regime* (2017). At <https://www.aph.gov.au/DocumentStore.ashx?id=7ba218bc-14b2-468b-bed4-4c9fd3a9ac71&subId=516302> and <https://www.aph.gov.au/DocumentStore.ashx?id=766df2d3-b918-4b17-aadf-28ccca57bca5&subId=516302>.

<sup>100</sup> Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (14 October 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=3264b3cf-063d-48b1-8668-39d7611ec2a&subId=671324>. See also: Australian Human Rights Commission, Submission No 13 to Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* (16 July 2015). At <http://www.aph.gov.au/DocumentStore.ashx?id=8cfea01e-ec16-4074-8edf-dcc4d0625ee2&subId=354238> (viewed 16 January 2020).

<sup>101</sup> Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015* (9 December 2015). At <https://www.aph.gov.au/DocumentStore.ashx?id=080c06ef-59cb-4d40-9132-f1664588c82c&subId=407290> (viewed 27 February 2020); Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment Bill 2019* (8 March 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=e1748951-b005-409c-ba6e-50d704e45c51&subId=667096> (viewed 27 February 2020).

<sup>102</sup> Australian Human Rights Commission, *Submission to the INSLM Review of Prosecution and Sentencing of Children for Commonwealth Terrorist Offences* (15 June 2018). At [https://www.inslm.gov.au/sites/default/files/australian\\_human\\_rights\\_commission.pdf](https://www.inslm.gov.au/sites/default/files/australian_human_rights_commission.pdf) (viewed 16 January 2020); Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019* (22 August 2019). Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=3dbcd3df-cdaa-470c-9f6c-a4c570ff1b41&subId=668924>; and Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism Legislation Amendment Bill 2019* (8 March 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=e1748951-b005-409c-ba6e-50d704e45c51&subId=667096> (viewed 16 January 2020). See also: Australian Human Rights Commission, *Submission and supplementary submission to the Parliamentary Joint Committee on Intelligence and Security review of the Counter-Terrorism (Temporary Exclusion Orders) Bill 2019* (8 March 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=372fe9e7-3d94-4ba4-9bad->

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<sup>103</sup> These powers include: the secrecy provisions in Division 122 of the *Criminal Code* (Cth). See: Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* (24 January 2018). At <https://www.aph.gov.au/DocumentStore.ashx?id=1482dc19-ac10-430d-b02f-bae8d11ce99d&subId=562820> (16 January 2020); the espionage offences in Division 91 of the *Criminal Code*. See Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* (24 January 2018). At <https://www.aph.gov.au/DocumentStore.ashx?id=1482dc19-ac10-430d-b02f-bae8d11ce99d&subId=562820>; non-disclosure provisions linked to 'special intelligence operations' under the *Australian Security Intelligence Organisation Act 1979* (Cth). See, for example: Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment Bill (No. 1) 2014* (21 August 2014). At <https://www.humanrights.gov.au/submissions/submission-inquiry-national-security-legislation-amendment-bill-no-1-2014> (viewed 15 January 2020). See also: Human Rights Council, *Report of the special rapporteur on the situation of human rights defenders on his mission to Australia* (28 February 2018) UN Doc A/HRC/37/51/Add.3) 7; the mandatory data retention regime under the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth): *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014* (14 January 2015). At <https://www.humanrights.gov.au/our-work/legal/submission/inquiry-telecommunications-interception-and-access-amendment-data>.

<sup>104</sup> Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the mandatory data retention regime* (1 July 2019). At <https://www.aph.gov.au/DocumentStore.ashx?id=b0f852cb-7ce3-4b96-a26e-e6a3ac099836&subId=668050>.

<sup>105</sup> See especially the intrusive and covert powers introduced by the *Telecommunications and Other Legislation (Assistance and Access) Act 2018* (Cth). Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security review of the Telecommunication and Other Legislation Amendment (Assistance and Access) Bill 2018* (12 October 2018). At <https://www.aph.gov.au/DocumentStore.ashx?id=a7b9ff25-7c09-41e9-b97a-56dae1ac0e94&subId=661055>.

<sup>106</sup> Australian Human Rights Commission, 'Freedom of speech and Annika Smethurst' (Media Release, 15 November 2019). At <https://www.humanrights.gov.au/about/news/opinions/freedom-speech-and-annika-smethurst> (viewed 16 January 2020). The Commission is also concerned about restrictions on political speech by public servants: Australian Human Rights Commission, *Amicus Curiae: Comcare v. Banerji (C12/2018)* (12 December 2018). At [https://www.hcourt.gov.au/assets/cases/03-Canberra/c12-2018/Comcare-Banerji\\_HRC.pdf](https://www.hcourt.gov.au/assets/cases/03-Canberra/c12-2018/Comcare-Banerji_HRC.pdf).

<sup>107</sup> See Australian Human Rights Commission, *Human rights and technology: Discussion Paper* (December 2019). At [https://tech.humanrights.gov.au/sites/default/files/2019-12/TechRights\\_2019\\_DiscussionPaper.pdf](https://tech.humanrights.gov.au/sites/default/files/2019-12/TechRights_2019_DiscussionPaper.pdf).

<sup>108</sup> *Workplaces (Protection from Protesters) Act 2014* (Tas); *Summary Offences and Sentencing Amendment Act 2014* (Vic); *G20 (Safety and Security) Law 2013* (Qld); *Criminal Code Amendment (Prevention of lawful activity) Bill 2015* (WA); and *Summary Offences and Other Legislation Amendment Act 2019* (Qld). See also: Australian Human Rights Commission, *Submission to the UN Human Rights Committee: Information Concerning Australia's Compliance with the International Covenant on Civil and Political Rights* (18 September 2017) [121]. At [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT\\_CCPR\\_NHS\\_AUS\\_28980\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_NHS_AUS_28980_E.pdf) (viewed 14 January 2020); and Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;

and the Special Rapporteur on the situation of human rights defenders. *Communication to Australia* (3 December 2019). At

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5df088d34ba53f728440e587/1576044757116/Communication+to+Australia+03.12.2019.pdf> (viewed 14 January 2020).

<sup>109</sup> The Commission is concerned that the Australian Government's draft religious discrimination law contains provisions that are inconsistent with international human rights law. See Australian Human Rights Commission, *Submission to the Attorney General's Department: Religious Freedom Bills second exposure draft* (31 January 2020). At <https://www.humanrights.gov.au/our-work/legal/submission/religious-freedom-bills-second-exposure-draft>; and Australian Human Rights Commission, *Submission to the Attorney General's Department: Religious Freedom Bills* (27 September 2019). At <https://www.humanrights.gov.au/our-work/legal/submission/religious-freedom-bills> (viewed 3 February 2020).

<sup>110</sup> Australian Bureau of Statistics, *Prisoners in Australia, Aboriginal and Torres Strait Islander Prisoner Characteristics, 4517.0* (8 December 2016). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~5> (viewed 17 January 2020).

<sup>111</sup> Productivity Commission, *Report on Government Services 2020: youth justice services* (January 2020). At <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/youth-justice>; Australian Institute of Health and Welfare, *Youth Justice in Australia 2017–2018*. At <https://www.aihw.gov.au/reports/youth-justice/youth-justice-australia-2017-18/contents/table-of-contents>; and Legislative Assembly of the Northern Territory 13th Assembly Social Policy Scrutiny Committee, *Public Hearing Transcript: Youth Justice and Related Legislation Amendment Bill 2019* (30 May 2019). At [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0008/704969/85-2019-Corrected-Transcript-Public-Hearing-Thursday-30-May-2019.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0008/704969/85-2019-Corrected-Transcript-Public-Hearing-Thursday-30-May-2019.pdf) (viewed 17 January 2020).

<sup>112</sup> Australian Human Rights Commission, *Equal before the Law - Towards Disability Justice Strategies* (February 2014). At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>; Law Council of Australia, *The Justice Project Final Report* (August 2018). At <https://www.lawcouncil.asn.au/justice-project/final-report>; and Human Rights Watch, *"I Needed Help, Instead I Was Punished" - Abuse and Neglect of Prisoners with Disabilities in Australia* (6 February 2018). At <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>.

<sup>113</sup> Australian Human Rights Commission, *Imprisonment rates of Indigenous women a national shame* (News Story, 2 May 2018). At <https://www.humanrights.gov.au/about/news/imprisonment-rates-indigenous-women-national-shame> (viewed 17 January 2020).

<sup>114</sup> See, for example: *Criminal Law (Two Strike Child Sex Offenders) Amendment Act 2012* (Qld); *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Qld); *Criminal Code Act Compilation Act 1913* (WA) s 297, 318; *Crimes Amendment (Murder of Police Officers) Act 2011* (NSW); *Sentencing Amendment (Violent Offences) Act 2008* (NT); *Sentencing Amendment (Mandatory Minimum Sentence) Act 2013* (NT); *Criminal Code Amendment Act (No 2) 1996* (WA); *Criminal Code Amendment Act 2009* (WA); *Sentencing Legislation Amendment Act 2014 No. 6* (WA); *Criminal Organisations Control Act 2012* (WA); *Crimes Amendment (Gross Violence Offences) Act 2013* (VIC).

<sup>115</sup> These laws undermine rule of law principles, may lead to arbitrary detention, and disproportionality affect Aboriginal and Torres Strait Islander people. Australian Human Rights Commission, *Amicus Curiae: Magaming v The Queen [2013] HCA 40* (11 October 2013). At

<https://www.humanrights.gov.au/our-work/legal/submissions/submission-court-intervener-and-amicus-curiae> (viewed 17 January 2020); Law Council of Australia, *The Justice Project Final Report - Part 1 - People with Disability* (August 2018). At <https://www.lawcouncil.asn.au/justice-project/final-report>; and Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, March 2018). At <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>; See: *Sentencing Act* (NT) s 78DH; *Criminal Code 1913* (WA) ss 297, 318, 401 (4). See also: recommendations 136.174 and 136.176.

<sup>116</sup> Recommendations 136.178 and 136.179.

<sup>117</sup> Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* (2017). At <https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-findings-and-recommendations.pdf>; Western Australian Office of the Inspector of Custodial Services, *Behaviour management practices at Banksia Hill Detention Centre* (June 2017). At <https://www.oics.wa.gov.au/reports/behaviour-management-practices-at-banksia-hill-detention-centre/>

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