

1 Introduction

1. The Australian Human Rights Commission is a national human rights institution operating in conformity with the 'Paris Principles'.¹ In preparing this submission, the Commission has consulted human rights agencies at the state / territory level,² NGOs and members of the public.³

2 Background and framework for promotion and protection of human rights

A. Scope of international obligations

2. Australia has a longstanding commitment to international human rights standards and their development, and is a party to seven of the core human rights treaties.⁴ To provide more comprehensive human rights protection, **the Commission recommends that the Government ratify the Optional Protocol to ICESCR; expedite ratification of the Optional Protocol to CAT and the establishment of a National Preventive Mechanism for places of detention; and consider ratifying ILO Convention 169 and the Convention on Migrant Workers.**

B. National framework

3. Australia has strong traditions of liberal democracy, an independent judiciary and a robust media. Our largely harmonious and prosperous society can mask systemic weaknesses and gaps in the protection of human rights that are compounded by our federated system of government. In 2009, the Government convened a national human rights consultation which concluded that there is a patchwork of protection in Australia with 'its inadequacies... felt most keenly by the marginalised and the vulnerable' and with the 'current legal and institutional framework fall(ing) short of th(e) commitment to respect, protect and fulfil human rights'.⁵

4. While Australia has a strong record of ratification of human rights treaties, there remains an 'implementation gap' domestically.⁶ The Australian Constitution and common law provides limited human rights protection.⁷ The absence of an entrenched guarantee of equality / non-discrimination in the Constitution is of particular concern due to current laws that discriminate against Indigenous peoples on the basis of race.⁸ While there are federal, state and territory discrimination laws, there are inconsistencies between them and their coverage varies and is not comprehensive.⁹ There is no other comprehensive human rights protection legislation and access to remedies for human rights breaches is accordingly limited.¹⁰ **The Commission recommends that the Government fully incorporate into Australian law its human rights obligations, including through the adoption of a federal Human Rights Act.** The Australian Human Rights Commission's resources have also not kept pace with demand for its services, with the six statutory offices which constitute the Commission currently filled by four individuals¹¹ and substantial increases in complaint handling loads having led to backlogs in complaint handling.¹² The Commission is particularly concerned that there is no national policy focus or monitoring of the rights of the child. **The Commission further recommends that a National Children's Commissioner be established to monitor compliance with the CRC.**

5. The Government released the Australian Human Rights Framework in 2010. It commits to human rights education for the community and public sector; developing a National Action Plan on Human Rights; establishing a federal parliamentary scrutiny committee on human rights¹³; requiring that all new federal legislation be accompanied by a statement of compatibility with Australia's human rights obligations; and developing a consolidated federal anti-discrimination law.¹⁴ These measures will contribute to improved protection of human rights in Australia and address some, but not all, of the weaknesses in Australia's human rights protection system.

2 Promotion and protection of human rights on the ground¹⁵

A. Equality before the law and non-discrimination

6. **Aboriginal and Torres Strait Islander peoples (or Indigenous peoples):** Indigenous peoples in Australia experience poorer outcomes in education, employment, income and home ownership compared to other Australians. They also experience higher rates of family violence and child abuse, and over-representation in prisons (with little improvement over decades).¹⁶ The Government is to be commended for the significant commitments and reforms that it has introduced to 'Close the Gap' between Indigenous and non-Indigenous peoples in life expectancy, health, education and employment.¹⁷ It has also supported the National Congress of Australia's First Peoples, which was established to provide a representative voice for Indigenous peoples. **The Commission recommends that the Government ensure the full participation of Indigenous peoples in decision making that affects them, including through developing measures to implement the Declaration on the Rights of Indigenous Peoples, and also commit to specific targets and timelines for reducing the disproportionate rates of Indigenous peoples in care and protection, juvenile detention and adult prisons, including through a greater focus on preventative measures (such as justice reinvestment strategies) and on supporting women and their families, and victims of violence and crime.**

7. Australia's legal system does not formally recognise Indigenous peoples as the first peoples of this country, has not provided redress for past policies of child removal¹⁸ and limits the protection of their traditional rights to land and culture. **The Commission recommends that the Government take steps to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution; remove the discriminatory section 25 of the Constitution and replace it with a clause guaranteeing equality before the law; reform the *Native Title Act* to address measures that have been found to be racially discriminatory;¹⁹ provide reparations to Indigenous communities for harm resulting from past child removal practices; and take measures to protect and promote Indigenous cultural and intellectual property, connection to traditional land through homelands and outstations, as well as the use of increasingly threatened languages, including through support for bilingual education programs.**

8. The Commission is particularly concerned at the operation of the Northern Territory Emergency Response (NTER) legislation since 2007. Recent amendments have gone some way to addressing existing concerns about resort to measures that are discriminatory and breach human rights, though some concerns remain.²⁰ **The Commission recommends that the Northern Territory Emergency Response (or intervention) be conducted in a manner that is fully consistent with Australia's human rights obligations and be rigorously monitored.**

9. **Equality of women and men:** Women in Australia continue to experience high level of sexual harassment²¹ and physical and sexual violence.²² Women also have lower levels of workforce participation, are under-represented in managerial roles in both the private and public sectors and are paid less for the same work than men (while also being more likely to be engaged in low paid, casual and part-time work). Women also do the majority of unpaid caring and domestic work.²³ This contributes to a major gap between men's and women's financial security. It also means that women face a greater risk of living in poverty in their later years.²⁴ **The Commission recommends that the Government implement measures to improve the balance between paid work and family and caring responsibilities; adopt measures to close the gender gap in pay, and explore options to recognise and reward unpaid caring work within superannuation and pension schemes to protect**

women's economic security; promote and strengthen the representation of women in leadership and management roles; and strengthen gender equality laws and monitoring processes, including relevant enforcement and investigation powers.

10. **Older persons.** Australia has a significantly ageing population and faces a range of human rights challenges relating to poverty, aged care and other issues.²⁵ Mature age workers are often in vulnerable forms of employment.²⁶ Older persons also experience discrimination because workplaces are insufficiently flexible for employees to meet their caring responsibilities. **The Commission recommends that the *Age Discrimination Act (ADA)* be strengthened to better protect older persons from age discrimination, including by narrowing the broad range of exemptions which currently exist.**

11. **People who are lesbian, gay or bisexual (LGB):** There is no federal law prohibiting discrimination on the ground of sexuality. LGB people experience significant levels of violence, harassment and bullying in the workplace and the community.²⁷ Same-sex couples do not enjoy equality of rights including under laws governing civil marriage.²⁸ **The Commission recommends that sexuality be included as a ground of discrimination federally and that the Government take all possible steps to enable equal recognition of same-sex marriage.**²⁹

12. **People who are intersex or sex and/or gender diverse:** There is no federal law prohibiting discrimination on the grounds of sex or gender identity.³⁰ People who are sex and/or gender diverse face difficulties obtaining official documents that accurately reflect their status.³¹ **The Commission recommends that sex or gender diversity be included as grounds of discrimination in federal laws, and that the *Sex Files* report be implemented.**

13. **People with disability:** People with disability and their families do not enjoy all human rights in Australia.³² There are particular concerns regarding adequacy of care for people with mental ill-health,³³ availability of supported accommodation for adults with disabilities, and support for disability carers. The Commission commends the development of a National Disability Strategy that aims to address obligations under the Convention on the Rights of Persons with Disabilities. **The Commission recommends that the National Disability Strategy be integrated with the National Action Plan on Human Rights, including with benchmarks, timelines and monitoring processes.**

B. Migrants, refugees and asylum seekers

14. **Mandatory immigration detention:** The Commission has welcomed reforms by the current government, including its 'New Directions in Detention' policy.³⁴ However, the legal architecture of mandatory immigration detention remains.³⁵ Many people spend prolonged periods in detention, with children detained in immigration detention facilities.³⁶ Most asylum seekers are detained in remote locations, restricting access to services and support networks and limiting the transparency of detention arrangements.³⁷ Asylum seekers who arrive in 'excised offshore places' are barred from the refugee status determination system under the Migration Act.³⁸ Further, in April 2010, the government suspended processing of refugee claims from Sri Lankan and Afghani asylum seekers.³⁹ **The Commission recommends that the Government lift the suspension of processing of Afghani and Sri Lankan asylum seekers; and amend the Migration Act so that detention occurs only when necessary; only for a minimal period; and where it is a reasonable and proportionate means of achieving a legitimate aim. Decisions to detain people should be subject to prompt review by a court. The Commission also recommends that the Government implement the outstanding recommendations of *A last resort?*, the report of the National Inquiry into Children in Immigration Detention;**⁴⁰

cease holding people in immigration detention on Christmas Island; and repeal the provisions of the Migration Act relating to 'excised offshore places'.

15. People from culturally and linguistically diverse backgrounds: Australia is a culturally diverse nation, with a longstanding commitment to multiculturalism. Despite this, some people experience discrimination, vilification or violence, increasingly through cyber-racism on the internet, because of their ethnic, racial, cultural, religious or linguistic background.⁴¹ In recent years, this has been an increasing issue for Arab and Muslim Australians, newly arrived immigrants especially from Africa, and also for international students, particularly from India, who have been subjected to violent attacks.⁴² The Government has recently received the Australian Multicultural Advisory Council's (AMAC) advice on actions to further multiculturalism.⁴³ **The Commission recommends that the Government renew its commitment to multiculturalism by implementing and funding the recommendations of the AMAC, and continue to support programs building resilience and social inclusion among culturally and linguistically diverse communities.**

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

16. Counter-terrorism laws: The Australian Government has introduced more than 50 new counter-terrorism laws since 2001, often without adequate consideration of their potential impacts on human rights.⁴⁴ Some aspects of these new laws have eroded common law protections of fundamental rights and freedoms.⁴⁵ For example, these laws have enabled: detention without charge for 12 days;⁴⁶ secret searching of Australian homes and planting of surveillance devices, restricting movement through control orders issued by courts; and special powers of detention for the Australian Security Intelligence Organisation.⁴⁷ **The Commission recommends that all counter-terrorism laws be rigorously monitored and amended to ensure they comply with Australia's human rights obligations.**⁴⁸

17. Violence: The Commission is concerned at the prevalence of violence, harassment and bullying in our society. The Commission notes the Government's commitment to develop a National Plan to reduce violence against women and children. **The Commission recommends that the Government ensure adequate and sustainable funding and independent monitoring of the national plan to reduce violence against women and children; and that there be increased attention to the prevalence of violence, bullying and harassment in our community, particularly in relation to children, the elderly, people with disability,⁴⁹ Indigenous peoples, people from culturally and linguistically diverse communities, people who are gay, lesbian or bisexual, and people who are intersex and sex and/or gender diverse.⁵⁰ The Commission also recommends improved access to legal services for women⁵¹ and further reform of family law to better protect the safety of women and children.⁵²**

18. Trafficking: The Commission remains concerned about cases of trafficking, as well as cases of forced labour and exploitation of migrant workers on business (long stay) visas subclass 457.⁵³ **The Commission recommends that laws on trafficking and related offences be reviewed and that the Government ensure access to effective remedies.**

19. Prisoners: The Commission is concerned at the lack of proportionality of sentencing in some states contributing to a burgeoning prison population,⁵⁴ as well as prison conditions such as overcrowding, inadequate physical and mental health services, including drug and alcohol rehabilitation and harm minimisation programs, and lack of access to education. Prisoners face limits on their right to vote⁵⁵ and in contact with family and the community (both physically and through publications). This affects their mental health and ability to

get support through their sentence, and reduces their chance for re-integration into society. Rates of female imprisonment have also significantly increased in the past decade.⁵⁶

D. Right to an adequate standard of living

20. Homelessness and forced eviction: The Commission is concerned at rates of homelessness in Australia,⁵⁷ and at the particular vulnerability of young people, people with mental ill-health, Indigenous peoples and women due to their high levels of disadvantage and experiences of violence.⁵⁸ **The Commission recommends that the Government provide comprehensive services to address the causes of homelessness, target strategies to address the growth in youth homelessness, ensure a right of access to crisis accommodation (and sufficient stock to enable this), ensure adequate legal protection from forced, unlawful or arbitrary evictions and ensure that the regulation of public spaces do not violate human rights.**

21. People in rural and remote communities: People living in some remote and rural areas in Australia face significant challenges in accessing services adequate to enjoy the rights to education and health.⁵⁹ For example, some communities have little access to essential support services relating to mental health, sexual assault⁶⁰, accommodation assistance, and alcohol and drug rehabilitation,⁶¹ and there are limited education facilities in remote areas. **The Commission recommends that governments take action to ensure equitable access to services in rural and remote communities, with a particular focus on health and education.**

3 Key national priorities, initiatives, and commitments

22. The Government has committed to the development of National Action Plan on Human Rights: **The Commission recommends that the Government agree to incorporate into the NAP all of the recommendations that it accepts through the Universal Periodic Review process; and ensure that the NAP on Human Rights is a forward looking document with clear indicators, benchmarks and timeframes and processes for monitoring.**

23. The Government has also committed to developing a National Action Plan on Social Inclusion: **The Commission recommends that the Government adopt a human rights based approach to addressing social exclusion and marginalisation, and explicitly recognises the importance of human rights in the NAP on Social Inclusion.**

24. The Commission notes the commitment of the Government, through the Australian Human Rights Framework, to a significantly enhanced focus on human rights education. **The Commission recommends that human rights be incorporated into the National Curriculum for secondary schools; the Government provide a comprehensive package of measures to address the Government's commitments under the World Programme for Human Rights Education⁶²; and the Government commit to a sustained focus on community education about human rights to improve understanding and awareness of rights across society.**

25. The Commission notes the positive contribution of Australia to human rights in the region through development assistance and cooperation. **The Commission recommends that the Government ensure that its foreign affairs, trade and development assistance policies incorporate and promote human rights based approaches, and that the Government expand its support for the promotion of human rights in the Asia-Pacific region. The Commission further recommends that Australia's extradition, mutual assistance and agency to agency assistance laws and policies be amended to ensure they are consistent with Australia's commitment to the abolition of the death penalty in Australia and abroad.**