

# Universal Periodic Review (UPR) of Australia

## 37th Session, Nov 2020

Submitted by:



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**Edmund Rice International** <http://www.edmundriceinternational.org/> is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two Congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

**Edmund Rice Centre, Sydney, Australia** <https://www.erc.org.au/> works to promote human rights, social justice and eco-justice through research, community education, advocacy and networking. Our priority areas are Indigenous People, Refugees/ Asylum Seekers and Pacific Island people affected by climate change.

**Dominicans for Justice and Peace (Order of Preachers) (DJP)** <https://un.op.org/> is a faith-based NGO established in 1998 and granted consultative status with ECOSOC in 2002. It works with UN mechanisms to support the work of Dominicans around the world to protect and defend human rights and the environment.

**Franciscans International** <https://franciscansinternational.org/home/> is a non-profit, international non-governmental human rights organisation established in 1989. Its staff consists of professionals of diverse backgrounds working to translate grassroots voices in human rights advocacy action at the United Nations level. Franciscans International seeks to promote and protect human rights and environmental justice.

**International Presentation Association** <http://internationalpresentationassociation.org/> is a network of Catholic religious congregations of Sisters of the Presentation of the Blessed Virgin Mary, friends, and associates who work for personal and systemic change for People and Earth. It is accredited with the United Nation's Department of Public Information and with the Economic and Social Council (ECOSOC).

**Marist Foundation for International Solidarity (FMSI)** <https://fmsi.ngo/?lang=en> is an international organization promoted by the Marist Brothers, present in 80 countries. FMSI has more than 10 years of experience working in the field of international solidarity, advocating for children's rights especially in

the field of education. It works at the international level, participating in the UN human right's mechanisms in collaboration with other organizations with similar interests. It has been accredited by ECOSOC since 2011.

### **Brisbane Catholic Aboriginal Ministry**

<https://brisbanecatholic.org.au/support/centacare/murri-ministry-woolloongabba/> is an agency of the Brisbane Catholic Church that provides pastoral ministry and spiritual assistance, consistent with Aboriginal culture, tradition and insights, within Brisbane and the wider community.

### **The Congregation of Our Lady of Charity of the Good Shepherd**

<http://rgs.gssweb.org/en/jp> is an international non-governmental organisation with Special Consultative Status with ECOSOC since 1996. The NGO is providing services in 72 countries and is advocating for women and children, especially those who are trafficked, forced to migrate or in poverty

### **ACRATH (Australian Catholic Religious Against Trafficking in Humans)**

<https://acrath.org.au/> is committed to working together towards the elimination of human trafficking in Australia, the Asia Pacific region, and globally.

**Parade College Advocacy Team** <https://www.parade.vic.edu.au/> a group of teachers and students involved with human rights advocacy from Parade College, a Catholic secondary boys college in Melbourne, Australia

**St James College** <http://www.stjamescollege.qld.edu.au/> a Catholic secondary co-educational college in Brisbane, Australia.

## Introduction

1. The submitting organizations respect the progress made by the Australian Government in promoting and safe-guarding human rights and the commitments made in relation to previous UPR cycles but believe there are areas requiring further attention.
2. The issues raised in the submission come from people and groups who have regular involvement with the people affected. There is deep concern for the rights and welfare of the people involved. Comments, analyses and recommendations presented are based on data provided by official agencies.
3. There are five areas of human rights of concern: Young People; Indigenous Peoples; Refugees and people who are Asylum Seekers; the Impacts of Climate Change on human rights and Victims of Human Trafficking.

### Section 1 - Rights of the Child: Minimum Age of Criminal Responsibility (MACR)

4. In the 2<sup>nd</sup> Cycle of UPR, Australia received two recommendations to raise the age of criminal responsibility in accordance with the Convention of the Rights of Child (CRC).<sup>1</sup> There has been no further action on this from Australia. Currently, Australia's MACR (Minimum Age of Criminal Responsibility) is 10 years in all states and territories.
5. Almost 9,000 children aged 10 to 14 fronted the criminal justice system in 2016-17. Young people aged 10-17 accounted for 13% of the total offender population. The youth offender rate in 2016-17 was 2,330 offenders per 100,000 persons aged 10-17. In comparison, the offender rate for the general offender population was 1949 offenders per 100,000 persons.<sup>2</sup> The majority of all youth offences in 2017-18 were theft related (36 per cent). The second most prevalent offence were acts intended to cause injury (16%), followed by illicit drug offences (11%). Current data shows 74% of children/ young people with proven offences are charged with another offence within 12 months<sup>3</sup>
6. The 2017 Royal Commission into Northern Territory Youth Detentions recommended the MACR be set at 14 years. The Law Council of Australia is also calling for the MACR to be raised to 14 years. "Doli incapax" refers to a legal presumption that a child is "incapable of crime" under legislation or common law. However, this presumption can be rebutted in court. In November 2017, doctors, lawyers and health experts in Australia called for the MACR to be raised to 14 years saying that children lack the mental capacity to understand what they are doing for it to be a crime. Research based evidence on brain development supports a higher age as children are not sufficiently able to reflect before acting or comprehending consequences.
7. *We recommend that the Australian Government work with state and territory governments to:*
  - *Enact laws that raise the Minimum Age of Criminal Responsibility to 14 years.*

### Section 2 - Rights of the Child: Children in Remand and Detention Centres

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<sup>1</sup> See recommendation 136.178 and 179

<sup>2</sup> Australian Bureau of Statistics 2017-18 (Table 18 and Australian Demographic Statistics cat. no. 310)

<sup>3</sup> Queensland Government. 2018. "Atkinson Report on Youth" Justice p6

8. In the 2<sup>nd</sup>UPR Cycle Australia was criticized for its treatment of children in remand and detention centres. It accepted recommendations 170, 173 and 175 but not 172.<sup>4</sup> In February 2018, the Australian Government released its response to the 2017 Royal Commission into the Northern Territory Youth Detentions and has been working with the Northern Territory and state governments to progress these recommendations. Despite this, new evidence has come to light about the treatment of young people in watch houses.

9. In the state of Queensland, a TV documentary “Inside the Watch House”<sup>5</sup> in conjunction with Amnesty International revealed 2,655 breaches of children’s human rights. These included 397 breaches of misconduct, 366 breaches of legal support, and 548 breaches of solitary confinement.<sup>6</sup>

*On 14 November 2018, Jake (not his real name) had been held in the watch house for 20 days. During his stay, he was not given fresh clothing...had very little fresh air in his cell. Jake was yet to access any education services...despite not being due in court until 9 December 2018, he did not know when he would be released or transferred to the Brisbane Youth Detention Centre.*

10. Children as young as 10 years of age were being detained in watch-houses for long periods and often under harsh conditions. In some cases, children with aggressive behaviour or at-risk behaviour were forced to wear a “suicide smock” and placed in isolation cells. In other cases, children with mental issues were held for long periods in adult watch-houses. Article 37(c) of the Convention of the Rights of the Child CRC requires authorities to separate children from adults in detention. The Australian Government still has a reservation to this article.

11. In December 2014, all young people in detention in Darwin were transferred to a former facility that was in a poor state of repair and with an “inappropriate and outdated design.”

12. In October 2011, the UN Special Rapporteur on Torture recommended that the practice of isolating children “can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment.” He called for an “absolute prohibition in the case of juveniles and people with mental disabilities.”<sup>7</sup>

*13. We recommend the Australian Government to:*

- *Withdraw its reservation of the Article 37(c) of the CRC.*
- *Ensure that children are not kept in remand longer than four hours.*
- *Improve the conditions of detention including by providing appropriate accommodation for children under the age of 15 detained in police watch-houses or detention centres.*
- *Establish a national mechanism to investigate treatment of children in police watch-houses and detention centres.*

### **Section 3 – Rights of the Child- Health Assessment of Young People Facing Criminal Charges**

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<sup>4</sup> See recommendations 136.172; 136.173, 136.175

<sup>5</sup> ABC TV <https://www.abc.net.au/news/2019-05-13/inside-the-watch-house/11108448>

<sup>6</sup> Amnesty International 2019 “Kids in Watch Houses- Exposing the Truth” Report <https://www.amnesty.org.au/watch-houses>

<sup>7</sup> United Nations, Office High Commission into Human Rights, Special Rapporteur on Torture No 1 <https://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf>

14. Studies across Australia revealed that there is a high prevalence of mental health issues for young people in the criminal justice system and, “children who have mental health concerns are more likely to enter the youth justice system and ultimately adult prison.”<sup>8</sup>

15. Often young people have undiagnosed or untreated health issues: between 40% and 70% of young people in the justice system are affected by mental health compared to 13% and 20% of the general community; approximately 64% have drug/alcohol disorders compared to 5.1% in wider Australian community.

16. Young people before the criminal justice system often come from traumatic family backgrounds, and many have issues that affect their behaviours and decisions. 58% had a mental health or behavioural disorder diagnosed or suspected; more than half used two or more substances; 52% were totally disengaged from education, employment and training. Almost 1 in 5 were homeless or had unsuitable accommodation. 33% of young people in detention have used Ice or other methamphetamines and 17% of young people had a suspected disability.<sup>9</sup>

17. In recent years Foetal Alcohol Spectrum Disorder (FASD) has been identified as a condition that occurs as a result of pre-natal alcohol exposure. It seriously affects cognitive processes such as memory, language, learning, and attention. The result is the diminishment of the ability to establish a link between cause and effect and therefore how to learn from mistakes. Although limited research exists, the Australian Reform Commission found that children with FASD are 19 times more likely to be incarcerated.<sup>10</sup> Almost 40 per cent of youth in detention have signs of FASD and almost 90 per cent have a neurological impairment.<sup>11</sup>

18. It is imperative that a magistrate have critical information regarding the mental capacities and general state of health before sentencing a young person. In most Australian states and territories health assessments are not mandated.

*19. We recommend the Australian Government to:*

- *Mandate a coordinated system of physical and psychological health assessment of each child facing charges that is presented to the judge before sentencing.*
- *Perform health assessments by independent health professionals trained to recognize trauma and FASD, to be undertaken before the court proceedings and take into account school systems, public health agencies and specialised child health service.*

## **Section 4 - Rights of Indigenous People: Indigenous Young People & Incarceration Rates**

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<sup>8</sup> Australian Government. 2018. "Youth Justice in Australia Report 2017-18" p39

<sup>9</sup> Queensland Government 2018 "Working Together Changing the Story Youth Justice Strategy 2019-23" p6

<sup>10</sup> *Ibid* p3

<sup>11</sup> Bower, C., Watkins, R., Mutch, R., et al. 2018. "Foetal Alcohol Spectrum Disorder and Youth Justice: A prevalence study among young people sentenced to detention in Western Australia" p2 <http://bmjopen.bmj.com/content/8/2/e019605#block-system-main>

20. Recommendations 136.112 and 136.113 accepted in the 2015 Second Cycle Review encouraged Australia to address the on-going issue of the high number of Indigenous young people in the criminal justice system.

Aboriginal and Torres Strait Islander children aged 10 to 17 are 22 times more likely than their non-Indigenous counterparts to be in detention and 15 times more likely to be under community-based supervision.<sup>12</sup>

21. Although only comprising 5% of people aged 10-17, Indigenous make up 56% of all children aged 10-17 held in detention.<sup>13</sup> On average, Indigenous young people enter the criminal justice system at a younger age than non-Indigenous young people. 39% of Indigenous young people in the criminal justice system in 2017-18 had entered the system aged 10-13, compared with 15% of non-Indigenous young people.<sup>14</sup>

22. Three years after the 2016 Royal Commission into the Treatment of Aboriginal Youth, the Northern Territory government found that there were 24 children held in detention all of whom were Aboriginal.<sup>15</sup> Locking away children and separating them from their families and communities is traumatizing and can cause life-long harm. It should be the last resort for children who are minors.

23. Research between 2013 and 2017 showed that police in New South Wales were four times more likely to issue cautions to non-Indigenous people for possession of cannabis despite the specific cautioning scheme introduced to keep minor drug offences out of the courts. During the five year period, 82.55% of all Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.29% for the non-Indigenous population.<sup>16</sup>

24. The report goes on to show the over-representation of Indigenous persons among cautions, Indigenous persons were over-represented to a much greater extent in charges laid. 92.85% of Indigenous Australians taken to court for the cannabis possession charge were either found guilty by a judge or magistrate or pleaded guilty. While non-Indigenous people had a similar conviction rate, evidence suggests Indigenous people receive harsher sentences.<sup>17</sup>

25. In 2012 the UN Committee on the Rights of the Child found that “the juvenile justice system [Australia] still requires substantial reforms for it to conform to international standards.”<sup>15</sup> Again in 2015, the UN Human Rights Commissioner urged Australia to address the overrepresentation of Indigenous people in prisons, in particular its underlying causes, review mandatory sentencing laws with a view to abolishing them, giving judges the discretion necessary to determine relevant individual circumstances, and guarantee legal and interpretation services were provided from the outset of deprivation of liberty.<sup>16</sup>

26. Of particular concern is the alarming number of deaths in custody of Indigenous young people. In 2017 the Coroners Court of West Australia investigated the deaths of thirteen Indigenous young people in the Kimberley Region and concluded that twelve of the deaths

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<sup>12</sup> Australian Government “Youth Justice in Australia Report 2017-18” p33 <https://www.aihw.gov.au/getmedia/f80cfcb3-c058-4c1c-bda5-e37ba51fa66b/aihw-juv-129.pdf.aspx?inline=true>

<sup>13</sup> *Ibid* p1

<sup>14</sup> Amnesty International. *A Brighter Tomorrow Report National Summary* p4 [https://www.amnesty.org.au/wp-content/uploads/2016/09/A\\_brighter\\_future\\_national\\_summary.pdf](https://www.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_national_summary.pdf)

<sup>15</sup> *The Guardian Newspaper* <https://www.theguardian.com/australia-news/2019/may/31/system-is-broken-all-children-in-nt-detention-are-aboriginal-officials-say>

<sup>16</sup> *Cannabis Cautioning Scheme: An Implementation and Outcome of Evaluation* NSW Bureau of Crime Statistics and Research (BOCSAR) p15 <https://www.bocsar.nsw.gov.au/Publications/General-Series/r54.pdf>

<sup>17</sup> *Ibid* p16

were as a result of suicide.<sup>18</sup>

27. *We recommend the Australian Government to:*

- *Work with all state/territory governments to use justice re-investment alternatives to the criminal justice system for minor offenses.*
- *Introduce place-based diversionary programs to address the causes of crime.*
- *Improve access to community-based sentencing options for Aboriginal and Torres Strait Islander offenders that are culturally appropriate*

## **Section 5 - Rights of Indigenous People: Right to Life, Liberty and Security of Person**

28. Although Aboriginal and Torres Strait Islander are 3% of the total population in Australia, they account for a shocking 29% of the total adult prisoner population.<sup>19</sup> In 2016, 20 in every 1000 Aboriginal and Torres Strait Islander people were incarcerated.

29. Aboriginal and Torres Strait Islander incarceration rates increased 41% between 2006 and 2016 and the gap between Aboriginal and Torres Strait Islander and non-Indigenous imprisonment rates over that decade widened. Deaths of Indigenous people are related to the high rate of Indigenous being incarcerated.

30. Since the Royal Commission into Deaths in Custody in 1997 437 Indigenous people have died in police or prison custody.<sup>20</sup> The Commission showed that the government had failed to provide appropriate medical care to Indigenous people in custody. Indigenous people in custody had died from treatable medical conditions but were less likely than non-Indigenous people to receive appropriate care. In 34% of cases, police watch-houses, prisons and hospitals failed to follow their own procedures leading to Indigenous deaths, compared with 21% of cases for non-Indigenous people.

31. Mental health or cognitive impairment was also a significant factor in 41% of all deaths in custody. Indigenous people who had a diagnosed mental health condition or cognitive impairment, such as a brain injury or foetal alcohol syndrome disorder, received the appropriate care in only 53% of cases.

32. Many laws are ineffective, leading to Indigenous people being imprisoned at much higher rates. One of these is the law regarding public drunkenness. The National Congress of Australia's First Peoples has described criminalization of drunken behaviour as a "failed strategy, merely adding to a cycle of escalating rates of incarceration"<sup>21</sup>  
*In jurisdictions where drunkenness has not been decriminalized, governments should legislate to abolish the offence of public drunkenness. Recommendation No 79 (3:28)*

33. The First People's Congress further argued that alcohol offences should not be criminalized but should be treated as part of public health responses. Secondly, laws that impact specifically on Indigenous people need repealing. Under Northern Territory law, police are given powers to enter private houses without a warrant.

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<sup>18</sup> Coroners Court of West Australia

<https://www.coronerscourt.wa.gov.au/1/inquest-into-the-13-deaths-of-children-and-young-persons-in-the-kimberley-region.aspx>

<sup>19</sup> The Guardian Newspaper 16 Jun 2020

[www.theguardian.com/commentisfree/2020/jun/16/what-will-it-take-for-governments-to-recognise-australias-justice-gap-is-a-national-tragedy](http://www.theguardian.com/commentisfree/2020/jun/16/what-will-it-take-for-governments-to-recognise-australias-justice-gap-is-a-national-tragedy)

<sup>21</sup> The Guardian Newspaper 14 June 2020 [www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody](http://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody)

*The Northern Territory Police Force may, without warrant, arrest a person, the member may enter, by force if necessary, and with such assistance as he/she thinks necessary, a place at any time of the day or night for the purpose of arresting the person (Section 119 and 119AA of the Police Administration Act)*

34. In November 2019, Northern Territory police raided the house of Kumunjayi Walker on suspicion of offences, without a warrant. Police allege he threatened them with a knife and was subsequently shot dead. Under the Northern Territory “paperless arrest laws” police are allowed to detain someone for an offence for which the maximum penalty is a fine rather than jail. This results in large numbers of Indigenous people being taken into protective custody. A report found that Aboriginal people taken into protective custody are often people with the highest physical and mental health needs.<sup>22</sup> This means Indigenous people are more at risk of harm or death while in police custody.

35. In response to the 1997 Royal Commission into Deaths in Custody, New South Wales government developed the Custody Notification Scheme (CNS) which provides fundamental legal advice and a welfare check to all Aboriginal people taken into custody. Under this system, it is mandatory for police to contact Aboriginal Legal Services (ALS) when an Indigenous person is taken into custody. The ALS lawyer is trained in identifying suicidal ideation, and detecting the early signs of self-harm and suicide in detained people. Since the Custody Notification Scheme was implemented in New South Wales in 2000, there has only been one death of an Indigenous person in a police watch-house in that state until 19 July 2016. Police had not complied with the Custody Notification Scheme and failed to contact the Aboriginal Legal Services .

**36. We recommend that the Australian Government to:**

- *Adopt nationwide the Custody Notification Scheme where police are mandated to contact Aboriginal Legal Services for well-being checks and legal assistance.*
- *Introduce national criminal justice targets to reduce incarceration of and violence against, Indigenous Australians.*
- *Pass legislation to decriminalize drunkenness and adopt health and rehabilitation, approaches to alcohol-related behaviour*
- *Abolish imprisonment resulting from unpaid traffic fines*
- *Introduce review of police complaints handling policies and practices*
- *Address systemic and cultural factors affecting Indigenous Australians in bail and sentencing decisions*

## **Section 6- Asylum Seekers and Refugees: Right to Seek Asylum**

37. Since Australia’s last Periodic Review in 2015, it is pleasing to note Australia’s decision to move most children asylum seekers off Manus Island Detention Centre in Papua New Guinea. Currently Nauru has 2 detainees in its detention centre while Manus Island is closed and most off-shore detainees moved into community detention and only small numbers are in Bomana Detention Centre. A Tamil family of 4 were detained in February 2020 are the only refugees in Christmas Island Detention Centre. The Australian government re-opened detention centres in 2012 as a deterrent to asylum seekers. Off-shore detention is designed to be so harsh that asylum seekers in desperation ask to return to their home country. Many asylum seekers are detained for months and years, and are experiencing serious physical and mental issues.

36. To date in Australia, twelve asylum seekers have died on either Nauru or Manus Island. In August of 2019, a 30 year old Pakistani refugee set himself on fire in the detention centre on

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<sup>22</sup> National Congress of Australia’s First People, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2014) p2 [www.alrc.gov.au/publications/alcohol-and-offending-0#\\_ftn16](http://www.alrc.gov.au/publications/alcohol-and-offending-0#_ftn16)



Manus Island. The incident was one of over seventy attempts at suicide or self-harm by asylum seekers on Manus Island. These attempts are symptomatic of the mental stress and trauma affecting people held in detention for long periods often under very harsh conditions.

37. The situation with off-shore processing numbers of refugees changes constantly. Although the numbers in detention centres are small, off-shore processing is still part of the government's border protection to deter people seeking asylum in Australia by boat whereas in fact more people come illegally into Australia by plane

38. The physical and psychological conditions of asylum seekers living in offshore detention are of grave concern. In April 2019 UN human rights experts urged Australia to immediately provide appropriate health care to all asylum seekers and other migrants held in the country's offshore facilities for the past five years without durable solutions.<sup>23</sup> They also called on the Australian Government to transfer those identified as requiring urgent medical attention to Australia.

**39. We recommend the Australian Government to:**

- *Process people with temporary or bridging visas in a reasonable time frame*
- *Close all offshore centres for the detaining and processing of asylum seekers and process all current and future asylum-seekers on the Australian mainland.*
- *Retain Medevac legislation that provides fair and independent process to allow seriously ill women and men detained offshore to access critical medical care.*

## **Section 7- Asylum Seekers and Refugees: Right to Work, Education and Standard of Living Adequate to the Health and Well-being of Self and Family.**

40. On 21 December 2017, the Australian Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Despite this the rights of refugees who are admitted into the country are severely violated.

41. The LCAS (Legacy Caseload Asylum Seeker) is a group of roughly 30000 asylum seekers<sup>24</sup> who arrived in Australia by boat between August 2012 and January 2014. To process the "legacy caseload" a "fast-track" process was introduced whereby each asylum seeker is invited by the minister to apply for asylum, before making a written application and attending an interview. In 2014, the government abolished publicly-funded legal assistance to asylum seekers without a valid visa. Until the application process, people on LCAS cannot apply for permanent visa, but must apply for three-year Temporary protection visas or 5-year safe haven enterprise visas, which must be renewed periodically.

If the Department of Immigration rejects the claim, people may be referred to the Immigration Assessment Authority (IAA) for a 'Merits Review.'

42. In October 2017, the Australian Government announced that all asylum seekers had to apply for protection or be deported from Australia immediately. The application form was lengthy and complex and completed in English detailing the asylum seeker's experience of trauma or harm. The process included no access to funded legal assistance and limited access to English translation services. All income support was removed from those who did not meet

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<sup>23</sup> ABC TV <https://www.abc.net.au/news/2019-08-20/paperless-arrests-left-out-of-custody-notification-scheme/11399310>

<sup>24</sup> UN Experts: *Special Rapporteur on the Human Rights of Migrants*

the new threshold of vulnerability – bringing the original \$35AUD per day to \$0 for those determined not to be in a state of extreme vulnerability.

43. Even if recognition of refugee status is granted, the person on LCAS is required to re-apply every few years, denying them the right to be reunited with their families, travel outside of Australia and be subject to other restrictions in their daily lives.

44. Additionally, there is concern about legal protection for those on LCAS who lose special status if they “age out” by turning 18 years. This places them in a position of adult responsibility and administrative determination when in a clear state of relative vulnerability, and a potential threat to their right to life under the Universal Declaration of Human Rights (UDHR) if they are a persecuted minority in their country of origin (COI), if the department of immigration decides to return them to their COI.

45. As of March 2019, there were still 9,315 people waiting for department’s determination of their asylum application. 70% of LCAS applicants had been granted either a temporary protection visa or a safe haven enterprise visa, which means that they are temporarily allowed to remain within Australia.<sup>25</sup>

46. This prolonged period waiting for a determination of legal status causes great anguish and financial burden to asylum seekers who have already experienced trauma in their countries of origin and from their time in detention.

47. More than 1300 asylum seekers and refugees held in Australian immigration centres in cramped and overcrowded conditions where physical distancing is impossible, are at particular risk during the current COVID-19 pandemic. The Australasian Society for Infectious Diseases, along with other medical professionals have consistently advised the government that immigration detention centres are high-risk environments for COVID-19.<sup>26</sup> Others living in the community on temporary visas or without a visa are struggling to make ends meet. Many have lost their jobs and only income due to COVID-19, however there is no safety net as they are denied access to the JobSeeker (government payment to those unemployed and seeking work) or JobKeeper (government wage subsidy paid to employers to enable them to keep workers in employment) schemes.

**48. We recommend the Australian Government to:**

- *Introduce legal protection for members of the “legacy caseload” to safeguard those who have arrived by boat from the ‘ageing-out’ process.*
- *Introduce process of procedural fairness to the merits review to allow for new and compelling evidence in the assessment of individual’s claim.*
- *Resolve conflict of interest arising through the vesting of both guardianship and arbitration of claim powers in the Minister for Home Affairs through the separation of these two powers to a separate authority.*
- *Allow asylum seekers settled in Australia to access paid work, all levels of education provided by the government and to social service support services*
- *Release the women and men in immigration detention into safer accommodation, provide universal access to medical treatment and Medicare and Apply the COVID-19 financial safety net, regardless of visa status.*

## **Section 8 – Impacts of Climate Change: Rights to Life, Health, Culture and the link to Sustainable Development**

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<sup>25</sup> University of NSW, “The Legacy Caseload” (Factsheet, April 2019) Andrew and Renata Kaldor Centre for International Refugee Law

<sup>26</sup> Legacy Caseload Fact sheet

49. In 2007, Australia ratified the Kyoto Protocol of the UN Framework Convention on Climate Change (UNFCCC). It also accepted the Doha amendment to the Protocol in 2016; ratified the UNFCCC Paris Agreement on Climate Change in 2016.

50. While Australia claims it is meeting its Paris target reduction of 26- 28 % of carbon emissions below 2005 levels by 2030 and is expecting to surpass the Kyoto target reduction of 5% below 2000 levels by 2020, greenhouse gases emissions have actually increased by around 1% per year on average since 2014. At current rates it will drastically fall short of its 2030 target. Experts say it is expected to fall even further behind because unlike comparable countries, it has no plans to introduce an effective national emissions reduction policy.<sup>27</sup> In addition, in December, 2018, Australia cancelled its annual \$187m contribution to the UN Green Climate Fund.

51. Australia has been ranked 56<sup>th</sup> out of 61 countries by the Climate Change Performance Index 2020 for its low performance in preventing climate change's impacts on its territory and population.<sup>28</sup> In particular, Australia was ranked last in climate policy as "the newly elected government has continued to worsen performance at both national and international levels."<sup>29</sup> Australia is responsible for about 1.3% of global pollution while only 0.3% of the global population. This pollution is a result of Australia being one of the top 20 emitting nations and the third biggest exporter of fossil fuels.<sup>30</sup>

52. As regards the impacts of climate change affecting the right to health, the finding of a study conducted in 2018<sup>31</sup> showed that the heatwaves experienced by the cities of Melbourne, Sydney and Brisbane between 2000 and 2017 were an important risk factor for mortality. For the period 2007 to 2016, there is a correlation between mean annual maximum temperatures and suicide rates and suggests hot days have damaging effects on the mental health of the whole population. The study also concluded that climate change threatens to exacerbate existing food insecurity and malnutrition in Australia.

53. Australia is one of the most carbon-intensive OECD countries, but is not taking steps to mitigate the use of carbon. The Australian energy industry, in particular coal-fired power plants and coal mines, have impacted on the enjoyment of human rights, not only within its borders but also outside Australian territories. Individual state governments continue to approve construction of coal mines:<sup>32</sup>

54. In Queensland the Galilee Basin coal mines were approved for 2018/19, while New South Wales government is considering 14 projects, half of them in sensitive areas like Hunter Valley, Sydney and the Central Coast's drinking water catchment.<sup>33</sup>

55. In July 2019, the Pacific Islands Development Forum issued the "Nadi Bay Declaration"<sup>34</sup> on the Climate Change crisis in the Pacific, affirming that climate change poses the single greatest threat to the human rights and security of present and future generations of Pacific Island peoples. The Forum called on all coal producers to put "an immediate global ban on

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<sup>27</sup> See <https://www.asid.net.au/documents/item/1868>

<sup>30</sup> *Climate Analytics* <https://climateanalytics.org/briefings/evaluating-australias-climate-policy-action/>

<sup>27</sup> Jan Burck, Ursula Hagen, Niklas Höhne, Leonardo Nascimento, Christoph Bals, *Climate Change Performance Index 2020*, 2019. [https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020- Results\\_Web\\_Version.pdf](https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020- Results_Web_Version.pdf)

<sup>33</sup> *Ibid* p16-17 [https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020- Results\\_Web\\_Version.pdf](https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020- Results_Web_Version.pdf)

<sup>34</sup> *The Guardian* 19 Aug 2019 <https://www.theguardian.com/environment/2019/aug/19/australia-is-thirdlargest-exporter>

the construction of new coal-fired power plants and coal-mines”<sup>35</sup> and develop a strategy for a decadal phase-out and closure of all existing coal production. Australia refused to sign the ban.

56. The rights of Australia’s Indigenous People of the Torres Strait Islands to the north of the continent are severely impacted by climate change. They have lodged a formal complaint with the UN Human Rights Committee claiming that the Australian Government’s policy of encouraging the fossil fuel industry has led to more carbon emissions resulting in rising sea levels that are washing away their homelands.<sup>36</sup> Their rights to home and to culture are seriously threatened.

57. The effects of climate change were felt most strongly the during 10-16 November 2019, when bushfires first started, and was considered “the most dangerous bushfire week this nation has even seen.” Australia had just experienced weather that was catastrophic and unprecedented in its recorded history. An established long-term trend driven by a warming, drying climate; reductions in long-term rainfall; low humidity; high temperatures; wind velocities; fire spread and ferocity; instances of pyro-convective fires (fire storms making their own weather); early starts and late finishes to bushfire seasons. Bushfires were burning in places and at intensities never before experienced right across the continent.

58. The lack of compliance of Australia with its international commitments has led to criticism and actions from States, the private sector and the United Nations. Twenty-three former emergency services chiefs from every state and territory penned a letter to the federal government in April 2019 warning that climate change-fueled catastrophic weather events were putting lives at risk. They called on all levels of governments to enable better fuel reduction, focus on climate change adaption and mitigation programs, and to reduce emissions. In November 2019 Sweden’s Central Bank sold off its bonds from Australia – Western Australia and Queensland – because it considered Australia’s greenhouse gas emissions to be too high.<sup>37</sup>

59. During its last UPR session the delegation from Australia affirmed its commitment to advancing the 2030 Agenda for Sustainable Development. The 1998 Kyoto Protocol Article 2.1 provides that State Parties must implement national policies and cooperate with other State Parties to achieve “its quantified emission limitation and reduction commitment” in order to “promote sustainable development.

60. Finally there is grave concern about the lack of appropriate actions by the Australian Government regarding international instruments ratified by Australia, including the International Covenant on Economic, Social and Cultural Rights. The Committee recommended, in 2017, that Australia take measures to reverse the trend of increasing emissions of greenhouse gases, and to review its position in support of coal mines and coal exports which have been ignored.<sup>38</sup>

**61. We recommend the Australian Government to:**

- *Ban the restoration, building and use of coal –fired power stations.*
- *Raise its ambition to make explicit references on human rights in the reviewed National Determined Contribution (NDCs) to the UNFCCC.*
- *Ensure adequate health services for all population, especially during the extreme climate events such as heatwaves.*

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<sup>35</sup> The MJA Lancet Countdown on health and climate change: Australian policy inaction threatens lives (2019), see [https://www.mja.com.au/system/files/issues/209\\_11/10.5694mja18.00789.pdf](https://www.mja.com.au/system/files/issues/209_11/10.5694mja18.00789.pdf)

<sup>36</sup> Climate Action Tracker <https://climateactiontracker.org/countries/australia/>

<sup>37</sup> Lock the Gate [https://www.lockthegate.org.au/update\\_14\\_nsw\\_coal\\_projects](https://www.lockthegate.org.au/update_14_nsw_coal_projects)

<sup>38</sup> See Nadi Bay Declaration <https://cop23.com.fj/nadi-bay-declaration-on-the-climate-change-crisis-in-the-pacific/>

- *Ensure public participation and access to information in climate-related decision making and implementation*
- *Ensure that the energy policies include the phase out from the fossil fuel and developing climate friendly renewable energy*

## **Section 9 – Introduction of a Charter of Human Rights**

62. At the previous UPR, Recommendations 136.70, 136.71, 136.72 and 136.73 asked Australia to pass a federal Human Rights Act. Australia is the only western democracy without a Charter of Rights or an equivalent law protecting human rights. There is an Australian Constitution which outlines the role of parliament and the powers of state and commonwealth governments. But the Constitution is not a Charter of Human Rights and it relies on the inferred notion that governments would respect human rights laid out in the UDHR.

63. The introduction of a Charter of Rights becomes an important means of protecting and safe-guarding the human rights of all people in the country. With a national Charter, the Federal Parliament is required to take the relevant human rights into account when passing laws. It would also provide an opportunity to guarantee the rights of Aboriginal and Torres Strait Islander Peoples that currently are not recognized in the Australian Constitution. Many of the worst violations of human rights could have been prevented or minimised if there had been a clear statement of basic rights which the government and public bodies were required to respect and uphold.

64. The state governments of Queensland, the Australian Capital Territory (ACT) and Victoria have all passed legislation introducing a Charter of Rights. At the federal level, the Australian Government has an obligation, under international law to respect, protect and fulfil human rights. A National Charter of Human Rights would safeguard these basic human rights.

**65. We call on the Australian Government to:**

- *Pass legislation to introduce a National Charter of Human Rights to guarantee the rights of all its citizens and to fulfil all its legal obligations signed under international law.*

## **Section 10 – Trafficking in persons**

66. The Australian government accepted recommendations 230, 231, 232, 233 and 252 made in the 2015 UPR.<sup>39</sup> The Australian government adopted the National Action Plan to Combat Human Trafficking and Slavery 2015 – 2019,<sup>40</sup> and currently is developing the plan for 2020-2024.<sup>41</sup>

67. According to the Global Slavery Index, on any given day in 2016, there were 15.000 persons living in conditions of modern slavery in Australia, a prevalence of 0.6 victims of

<sup>39</sup> The Guardian 14 Aug 2019 <https://www.theguardian.com/world/2019/aug/14/australia-coal-pacific-tension-scott-morrison-forum>

<sup>40</sup> The Guardian 13 May 2019 <https://www.theguardian.com/australia-news/2019/may/13/torres-strait-islanders-take-climate-change-complaint-to-the-united-nations>

<sup>41</sup> The Guardian 14 November 2019. <https://www.theguardian.com/environment/2019/nov/15/swedens-central-bank-dumps-australian-bondsover-high-emission>

modern slavery for every thousand people.<sup>42</sup> Human trafficking for labour exploitation have been found in a variety of employment sectors in Australia, including on agriculture, construction, hospitality, manufacturing, nursing sectors, as well as domestic work.<sup>43</sup>

68. There have been cases of reported exploitation in the fruit picking industry, where victims, often recruited by unscrupulous employers and labour hire companies, have reported excessive work hours, deliberate underpayment of wages, falsification of records and unauthorized deductions from wages.<sup>44</sup> One of the cases was the exploitation of Vanuatu seasonal workers a farm west of Shepparton, who were underpaid and exploited.<sup>45</sup> They came under the Australian Government's Seasonal Worker Programme.

69. In response to the revelation of significant wage underpayment in some industry sectors, in 2016, the Australian Government established the Migrant Workers' Taskforce. The Taskforce was mandated to undertake a whole of government review of the problem. In March 2019, it issued a report with 22 recommendations.<sup>46</sup>

*70. We recommend the Australian government to*

- *Expand the federal government funded support services to all victims of human trafficking rather than only to those who are able and willing to testify against their trafficker*
- *Take concrete measures to eradicate labour trafficking and exploitation and implement a National Compensation Scheme for victims of human trafficking and slavery.*
- *Appoint an independent Anti-Slavery Commissioner to advise and encourage businesses to implement ethical business practices to eradicate human trafficking and slavery.*
- *Ensure the implementation and monitoring of the Migrant Worker's Taskforce*

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<sup>42</sup> UN Committee on Economic, Social and Cultural Rights. *Concluding Observations on the fifth periodic report of Australia*, 11 July 2017, para.12

<sup>43</sup> Australia. Attorney General's Department 2018. *Universal Periodic Review monitoring*.  
<https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/upr-recommendations/Pages/default.aspx>

<sup>44</sup> See <https://www.homeaffairs.gov.au/criminal-justice/files/trafficking-national-action-plan-combat-human-trafficking-slavery-2015-19.pdf>

<sup>45</sup> See <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/combat-modern-slavery-2020-24>

<sup>46</sup> <https://www.globallslaveryindex.org/2018/findings/country-studies/australia/>