



**Law Council**  
OF AUSTRALIA

*Office of the President*

**8 July 2020**

Her Excellency Dr Michelle Bachelet AC  
High Commissioner for Human Rights  
Office of the United Nations High Commissioner for Human Rights  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

By email: [uprsubmissions@ohchr.org](mailto:uprsubmissions@ohchr.org)

Dear Dr Bachelet

**Stakeholder Submission – Universal Periodic Review of Australia (3<sup>rd</sup> Cycle)**

The Law Council of Australia (**Law Council**) is grateful for the opportunity to provide a stakeholder submission to the Office of the United Nations High Commissioner for Human Rights in relation to the third Universal Periodic Review (**UPR**) of Australia. Please see attached the Law Council's contribution.

The Law Council, as the national peak body for the legal profession, acts on behalf of more than 60,000 lawyers through its Constituent Bodies – the state and territory law societies and bar associations, and Law Firms Australia, representing a number of the largest global firms. The Law Council promotes the administration of justice, access to justice, and general improvement of the law – in Australia and abroad.

The Law Council is a non-governmental organisation which has consultative status with the Economic and Social Council.

Please contact Ms Leonie Campbell, Deputy Director of Policy, on (02) 6246 3711 or at [leonie.campbell@lawcouncil.asn.au](mailto:leonie.campbell@lawcouncil.asn.au) in the first instance, if you require further information or clarification.

Yours sincerely

**Pauline Wright**  
**President**

## A. Federal human rights act

1. Despite being a party to seven core international human rights treaties,<sup>i</sup> Australia has not fully incorporated the rights set out in these treaties into domestic law.
2. A federal human rights act would promote the implementation of Australia's international obligations. It could also contribute to a culture of respect for human rights through requiring the Executive to act in accordance with human rights in conducting its duties, and the courts to interpret legislation in a way that is compatible with the act.
3. As previously recommended, **Australia should adopt a federal human rights act.**<sup>ii</sup> **It should also carefully consider the forthcoming recommendations arising from the Australian Human Rights Commission's (AHRC's) 'National Conversation on Human Rights'**.<sup>iii</sup>

## B. Equality

### Equality and antidiscrimination

4. A patchwork of federal laws<sup>iv</sup> prohibit discrimination on the grounds of race;<sup>v</sup> sex;<sup>vi</sup> disability;<sup>vii</sup> age;<sup>viii</sup> sexual orientation, gender identity and intersex status.<sup>ix</sup> However, Australia's federal anti-discrimination regime is unnecessarily complex, not comprehensive in its protection, and often lacks an effective remedy.<sup>x</sup>
5. The Australian Government (**the Government**) has released the Religious Discrimination Bill 2019 (**the Bill**) which proposes to introduce a new protected attribute of religious belief or activity in this federal regime.
6. The Law Council recognises that there are opportunities to strengthen federal protections against religious-based discrimination. However, it is concerned that the Bill privileges the manifestation of religious belief over the broad suite of human rights found in the treaties to which Australia is a party, and dilutes existing protections.<sup>xi</sup> It also adds to existing complexity in this area.
7. In line with previous recommendations, **Australia should adopt comprehensive, consolidated federal anti-discrimination legislation which strengthens and maintains existing protections, and addresses gaps such as protections for religious-based discrimination.**<sup>xii</sup>

### First Nations peoples

8. Constitutional recognition of First Nations peoples continues to be unresolved. This has flow-on structural implications for First Nations peoples' right to self-determination. **Australia should respect the call in the Uluru Statement from the Heart for a constitutionally enshrined Voice to parliament.** This should be accompanied by sustained efforts to meaningfully implement the United Nations Declaration on the Rights of Indigenous Peoples<sup>xiii</sup> in Australia.
9. The disproportionate rate of imprisonment of First Nations peoples in Australia requires an urgent intergovernmental response. First Nations peoples comprise approximately 3% of the total population, but 29% of the prison population.<sup>xiv</sup> A particular concern is

the disparity in the number of incarcerated First Nations women,<sup>xv</sup> a high proportion of whom are mothers,<sup>xvi</sup> perpetuating cycles of disadvantage and intergenerational trauma. **Australia should take immediate measures to address the over incarceration of First Nations peoples, in line with the Australian Law Reform Commission's (ALRC) *Pathways to Justice* report recommendations.**<sup>xvii</sup> Despite its comprehensive and practical recommendations, no Government response has been received.

10. First Nations children are vastly over-represented in the criminal justice system and receive disproportionately harsh sentences.<sup>xviii</sup> In 2018, they were 21 times as likely as non-Indigenous young people to be in detention on an average night.<sup>xix</sup>
11. **Government must invest in diversionary options for First Nations peoples, including in regional and remote areas. Justice reinvestment programs (which are being trialled successfully) are worth pursuing, along with increased investment in family support, youth, education and health services and appropriate referral pathways.**
12. First Nations children are 10.2 times more likely to be in out-of-home care (OOHC) than non-Indigenous children.<sup>xx</sup> The number of these children in OOHC will more than double in the next decade.<sup>xxi</sup> In response, Governments should act on recommendations such as those in the recent *Family is Culture* report.<sup>xxii</sup> Evidence suggests a negative relationship between contact with the care and protection system, school disengagement or exclusion and contact with the criminal justice system.<sup>xxiii</sup> School suspension is key to the 'school-to-prison pipeline', which sees marginalised young people at an increased risk of juvenile and, eventually, adult incarceration.<sup>xxiv</sup>
13. The 12<sup>th</sup> Closing the Gap report shows that only 2 of 7 targets to improve life outcomes for First Nations peoples have been achieved or are on track.<sup>xxv</sup> While the Government's engagement with the Closing the Gap refresh process is positive, the new targets must reflect the urgency of the reform agenda. **The Law Council welcomes the inclusion of draft justice targets,<sup>xxvi</sup> but these should be ambitious and Commonwealth-led as well as state-led. Draft OOHC and family violence targets are essential but should not be framed as alternative targets.**<sup>xxvii</sup>
14. The expansion of the Cashless Debit Card (CDC) program demonstrates disregard for the disproportionate representation of First Nations participants in the income management program and CDC trials. The Parliamentary Joint Committee on Human Rights has been critical of the measures to address alcohol abuse and income management, which are not 'tailored to the needs and wishes of the local community' and limit the rights to equality and non-discrimination, social security, and privacy and family.<sup>xxviii</sup> **To be effective, participation by communities and individuals involved must be consensual, and the CDC must be part of a suite of adequate support services.**

## Older persons

15. Concerns regarding the neglect and abuse of persons in aged care have led to the establishment of the Royal Commission into Aged Care Quality and Safety.<sup>xxix</sup> In its interim report, the Royal Commission characterised Australia's aged care system as 'a shocking tale of neglect'.<sup>xxx</sup> **Australia should implement the Royal Commission's**

**final recommendations to protect the rights of older persons in aged care and act on outstanding ALRC elder abuse recommendations.**<sup>xxxix</sup>

## People with disability

16. Despite the *Disability Discrimination Act 1992* (Cth), **people with disabilities in Australia continue to face discrimination.**<sup>xxxix</sup> People with disability are twice as likely to be unemployed.<sup>xl</sup> First Nations peoples with disability are particularly disadvantaged including by reason of a lack of culturally appropriate services.<sup>xli</sup>
17. Australia is reportedly considering how people with disability can be better supported to make decisions.<sup>xlii</sup> However, the Law Council remains concerned by Australia's failure to **implement supported decision-making frameworks** in states and territories in line with the *Convention on the Rights of Persons with Disabilities (CRPD)*.<sup>xliii</sup>
18. There is also a **striking overrepresentation of people with disability, particularly cognitive and psychosocial disabilities, in the criminal justice and corrections systems.**<sup>xliiii</sup> People with disability comprise around 18% of the Australian population, but almost 50% of the adult prison population.<sup>xliiii</sup> Comprehensive disability justice strategies and targets are needed.

## Women

19. Family violence is endemic and a major health and welfare issue in Australian society. On average, one woman is killed by her current or former partner every week in Australia.<sup>xliiii</sup> Women experiencing intersectional disadvantage are particularly at risk, including First Nations women who experience violence at 3.1 times the rate of non-Indigenous women.<sup>xliiii</sup> There are chronic shortages in frontline legal assistance services available to help family violence victims, including First Nations victims.
20. The Law Council welcomes the progress in implementing the fourth national action plan on family violence.<sup>xliiii</sup> In particular, it strongly supports measures taken by the Government aimed at driving change in the structures, norms and practices that lead to gender inequality and violence against women.<sup>xliiii</sup> However, **Australia should prioritise national family violence action, including through sustainable additional funding for domestic and family violence frontline services, particularly legal assistance.**
21. There is a persistent gender pay gap in Australia. Men still out-earn women, on average by 21.3%.<sup>xliiii</sup> and superannuation savings between men and women remain substantially disparate.<sup>xliiii</sup> On present indications, Australia will not reach gender pay equity until 2060.<sup>xliiii</sup> Meanwhile, one in two mothers experience workplace discrimination as a result of pregnancy, parental leave or on return to work.<sup>xliiii</sup>
22. Economic inequality has consequences for women. Older women are the fastest growing group of people experiencing homelessness, with an increase of 30% in the period between 2011 and 2016.<sup>xliiii</sup>
23. **Australia should implement measures to bridge the gender pay gap, combat gender discrimination and address older women's homelessness.**<sup>xliiii</sup>
24. Despite sexual harassment being unlawful in key areas of public life, 'sexual harassment is endemic in Australian society', and the prevalence in the workplace is increasing.<sup>xliiii</sup>

Almost two in five women have experienced sexual harassment in the workplace in the past five years. **Australia must carefully consider the recommendations from the AHRC's *National Inquiry into Sexual Harassment in Australian Workplaces*.**<sup>i</sup> In particular, the Australian Government should amend the *Sex Discrimination Act 1984* (Cth) to close key gaps in its coverage.

25. In accordance with the CRPD,<sup>ii</sup> the Australian Government should move towards nationally-consistent, human rights-based prohibitions on the forced sterilisation of women and girls with a disability, who are unable to provide consent, except where there is a serious threat to life or otherwise in the child's best interests.

## C. Administration of justice

### Minimum age of criminal responsibility

26. Australia's minimum age of criminal responsibility (**MACR**) is 10 years across all jurisdictions, with 10 to 14-year-olds subject to the *doli incapax*<sup>iii</sup> presumption. This ignores the harmful effects of early contact with the criminal justice system and the social determinants that mean certain cohorts, such as children in OOHC and First Nations children, are disproportionately incarcerated.<sup>liii</sup> **Australia should raise the MACR to at least 14, without exception.**<sup>liv</sup> Children's anti-social behaviour should be addressed through targeted health and welfare-based therapeutic interventions proved to be in their best interests, with deprivation of liberty occurring only as a last resort and for the shortest appropriate period.<sup>lv</sup>

### Access to justice

27. Many people experience significant economic or social disadvantage in upholding their rights under Australian law, particularly the most vulnerable. The Australian Government's per capita share of government legal aid commission funding in real terms is at its lowest level in more than 20 years.<sup>lvi</sup> Around 14 per cent of Australians live below the poverty line, but just eight per cent of Australian households qualify for legal aid grants,<sup>lvii</sup> while community legal centres turn away more than 100,000 people seeking help annually.<sup>lviii</sup>
28. As the majority of Aboriginal and Torres Strait Islander Legal Services funding is directed to criminal law matters, these organisations are often unable to meet critical demands for civil matters such as homelessness, child protection and credit issues.<sup>lix</sup>
29. Law reform advocacy is central to the efficacy of legal assistance services.<sup>lx</sup> Advocacy by community organisations is a vital part of Australia's political communications and contributes to public welfare.<sup>lxi</sup> **Australia should restore adequate funding to legal and Indigenous peak bodies and recognise their important role in advocacy and strategic litigation.**<sup>lxii</sup> **Australia should also ensure sufficient funding and legal assistance to civil society organisations.**<sup>lxiii</sup>
30. Few asylum seekers in Australia have access to government-funded legal assistance following dramatic funding cuts in 2014.<sup>lxiv</sup> As previously recommended, **Australia should ensure that all people seeking asylum in Australia, and in offshore**

detention, have access to legal assistance throughout all stages of the determination process.<sup>lxv</sup>

## D. Asylum seekers and refugees

### Freedom from arbitrary detention

31. Australian law mandates that any 'unlawful non-citizen'<sup>lxvi</sup> in its migration zone must be detained.<sup>lxvii</sup> There is no time limit on that detention, which must continue until the person is removed, deported, transferred to offshore processing or granted a visa.<sup>lxviii</sup> In many cases, a person may be barred from making a valid visa application<sup>lxix</sup> save at the personal, non-compellable discretion of the Minister.<sup>lxx</sup> If Australia also has *non-refoulement* obligations regarding that person or they cannot for other reasons be removed, then mandatory and indefinite detention will result.<sup>lxxi</sup> Such detention is arbitrary and contrary to Australia's international human rights obligations.<sup>lxxii</sup>
32. Australia's offshore processing regime<sup>lxxiii</sup> for asylum seekers who arrive by boat without prior authorisation also arguably violates certain international human rights and refugee law norms.<sup>lxxiv</sup> It has resulted in the long term, indefinite detention of children and adults, as well as the separation of immediate family members, serious mental and physical health impacts,<sup>lxxv</sup> and the effective penalisation of certain asylum seekers due to their mode of arrival.<sup>lxxvi</sup>
33. The Law Council recognises recent Government efforts to remove children from offshore processing in Nauru and to reduce, overall, the numbers of asylum seekers and refugees remaining in offshore processing. It remains concerned, however, that many of those transferred back to Australia have been returned to mandatory and indefinite detention, subject to the discretion of the Minister to permit a valid visa application<sup>lxxvii</sup> or to grant permission to reside in the community.<sup>lxxviii</sup>
34. In accordance with previous recommendations, **Australia should ensure that international human rights and refugee law principles are fully observed, including ensuring that detention is used only as a last resort and for the minimum possible time. Australia must establish individual assessment of the need to detain asylum seekers and refugees, and enact legislated time limits and periodic reviews of immigration detention. As a first step it must urgently review the necessity of all current long-term cases of immigration detention. Australia must further establish long-term, durable solutions for all refugees, including those in offshore processing and those within its territory.**<sup>lxxix</sup>

### The principle of non-refoulement

35. Australian law expressly provides that *non-refoulement* obligations are irrelevant to the removal of unlawful non-citizens.<sup>lxxx</sup> This, combined with the use of mandatory and indefinite immigration detention, creates a significant risk that persons may either be returned, or opt to return in order to leave immigration detention, to a place where their life or fundamental rights may be endangered.
36. In accordance with previous recommendations, **Australia should enact legislative protections against *refoulement*.**<sup>lxxxi</sup>

## E. OPCAT implementation

37. The COVID-19 pandemic has reinforced the need in Australia for comprehensive, transparent and independent oversight of places in which people are deprived of their liberty.
38. On 21 December 2017, Australia ratified OPCAT.<sup>lxxxii</sup> Despite this positive development, there are concerns about its implementation, including that Australia does not intend to enshrine the National Preventative Mechanism (**NPM**) model in legislation and that resources provided to implement the NPM are insufficient.<sup>lxxxiii</sup>
39. There are also concerns that Australia intends to initially limit the scope of the NPM's work to 'primary places of detention'.<sup>lxxxiv</sup> For example, residential aged care facilities are not included,<sup>lxxxv</sup> or facilities where people are held for less than 24 hours.<sup>lxxxvi</sup> **Australia should act to implement OPCAT effectively, including through adopting an expansive interpretation of the definition of 'places of detention', fully enacting the NPM and ensuring adequate resourcing, including for the Commonwealth Ombudsman as the central NPM.**

## F. Human rights, technology and artificial intelligence

40. The 2017 Australian Digital Inclusion Index found that several groups are particularly digitally excluded: people in low income households, people aged 65 and over, people with a disability, people who did not complete secondary school, First Nations peoples, and people not in paid employment.<sup>lxxxvii</sup> With an increasing number of jobs, social services and communications tools requiring internet connectivity and digital literacy, this digital divide may contribute to already-marginalised groups missing out on new opportunities.
41. The continued rise of artificial intelligence (**AI**) has the potential for adverse human rights outcomes. To be compatible with human rights, the use of AI in decision making must be lawful, transparent and explainable. Such technology should be used responsibly, with clear parameters for liability and subject to appropriate human rights oversight and intervention. **Australia should consider a legal and regulatory framework for the development and deployment of automated means for decision-making.**

## G. Press Freedom

42. Australia should undertake a comprehensive review of the secrecy provisions that exist within Australia's national security framework.<sup>lxxxviii</sup> Australia should aim to strengthen the public interest considerations and current safeguards in the exercise of investigatory powers by law enforcement and intelligence agencies.<sup>lxxxix</sup>

## H. National business and human rights action plan

43. The *Modern Slavery Act 2018* (Cth) is an important development in Australia's corporate recognition of human rights. To build on this development, a National Action Plan on Business and Human Rights (**NAPBHR**) would address the broader human rights obligations articulated by the United Nations Guiding Principles on Business and Human

Rights, placing these in the language of business, rather than leaving it to individual businesses to interpret how international human rights instruments should apply in their day-to-day practices, which risks playing to the lowest common denominator.<sup>xc</sup> **As previously recommended by a multi-stakeholder advisory group, Australia should adopt a NAPBHR.**<sup>xcii</sup>

## I. Human rights and the environment

44. Climate change is increasingly recognised as having profound, adverse impacts on human rights, including the right to life;<sup>xcii</sup> the right to protection of the family as the fundamental unit of society;<sup>xciii</sup> the right to an adequate standard of living including adequate food, clothing and housing;<sup>xciv</sup> the right to the highest attainable standard of physical and mental health;<sup>xcv</sup> the rights of children, cultural rights and many other fundamental human rights. **Australia must ensure that its climate change response takes full account of its international obligations to respect, to protect and to fulfil human rights.** This includes its response as a signatory to the Paris Agreement,<sup>xcvi</sup> which obliges Australia to act to limit the global average temperature to 1.5 degrees centigrade above pre-industrial levels.
45. **The rights of Australians to take personal action in relation to climate change must also be protected, including the right to peaceful protest,<sup>xcvii</sup> which is an essential element of democracy.**

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<sup>i</sup> *Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969); *the International Covenant on Civil and Political Rights* opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (**ICCPR**); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (**ICESCR**); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987); *Convention on the Rights of the Child (CRC)* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 30 March 2008).

<sup>ii</sup> Human Rights Council (**HRC**), *Report of the Working Group on the Universal Periodic Review*, 23<sup>rd</sup> sess, A/HRC/31/14 (13 January 2016) [136.70] recommendation 70 (Indonesia); [136.71] recommendation 71 (Iceland); [136.72] recommendation 72 (Turkey) and [136.73] recommendation 73 (Canada).

<sup>iii</sup> See AHRC, *Free and Equal: An Australian conversation on human rights* (19 February 2019) <<https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-australian-conversation-human-rights-2019>> .

<sup>iv</sup> Michelle Bachelet, UN High Commissioner for Human Rights, 'Free and Equal: An Australian Conversation on Human Rights' (Speech to AHRC conference, Sydney, 8 October 2019).

<sup>v</sup> *The Racial Discrimination Act 1975* (Cth).

<sup>vi</sup> *Sex Discrimination Act 1984* (Cth).

<sup>vii</sup> *Disability Discrimination Act 1992* (Cth).

<sup>viii</sup> *Age Discrimination Act 2004* (Cth).

<sup>ix</sup> *Sex Discrimination Act 1984* (Cth). More limited protections against discrimination on other grounds are also provided under the *Australian Human Rights Commission Act 1986* (Cth). There are also State and Territory equivalents of anti-discrimination legislation.

<sup>x</sup> AHRC, *Discussion paper: Priorities for Federal Discrimination Law Reform* (2019) <[https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc\\_discrimination\\_law\\_reform\\_2019.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_discrimination_law_reform_2019.pdf)>.

<sup>xi</sup> See eg, the Religious Discrimination Bill 2019 clause 42.

<sup>xii</sup> HRC, *Report of the Working Group on the Universal Periodic Review*, 23<sup>rd</sup> sess, A/HRC/31/14 (13 January 2016) [136.117] recommendation 117 (South Africa) and [136.121] recommendation 121 (Uzbekistan).

- <sup>xiii</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007).
- <sup>xiv</sup> Australian Bureau of Statistics (ABS), *Corrective Services, Australia, December Quarter 2019* (4512.0, 12 March 2020) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/A42C1E2C0985A8E5CA25857C0018BC15?opendocument>>.
- <sup>xv</sup> Ibid (table 21). As of 2019, the imprisonment rate of First Nations women was 453.4 per 100,000 persons compared to 23.9 per 100,000 for non-indigenous women.
- <sup>xvi</sup> Human Rights Law Centre and Change the Record, 'Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment' (2017) citing Juanita Sherwood and Sacha Kendall, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison' (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.
- <sup>xvii</sup> ALRC, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 27 March 2018).
- <sup>xviii</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People' (Justice Project: Final Report, August 2018) 72, referencing Consultation, 13/09/2017, Bourke (Mission Australia) and Consultation, 15/09/2017, Bourke (Police Citizens Youth Club).
- <sup>xix</sup> Australian Institute of Health and Welfare, *Youth Detention Population in Australia 2019* (Bulletin 148, February 2020) 2.
- <sup>xx</sup> Secretariat of National Aboriginal and Islander Child Care, *Family Matters Report 2019* (Report, 2019).
- <sup>xxi</sup> Ibid 5.
- <sup>xxii</sup> Megan Davis, *Family Is Culture: Independent Review into Aboriginal Out-of-Home Care in New South Wales* (Final Report, October 2019).
- <sup>xxiii</sup> In one New South Wales study of 295 school age children and young people who had been in OOHC for three or more months in 2016, 43% or 128 children missed an average of 44% of the school year for reasons other than illness. One third of these 128 children were Aboriginal. See Lorena Allam, 'Indigenous and Welfare Groups Urge NSW to Take Urgent Action on Child Protection', *The Guardian* (online, 2 March 2020) <<https://www.theguardian.com/australia-news/2020/mar/02/indigenous-and-welfare-groups-urge-nsw-to-take-urgent-action-on-child-protection>>.
- <sup>xxiv</sup> See Australian Institute of Criminology, *Positive Associations Between School Suspension and Student Problem Behaviour: Recent Australian Findings* (2017).
- <sup>xxv</sup> Australian Government, *Closing the Gap Report 2020* (February 2020) <<https://ctgreport.niaa.gov.au/>>.
- <sup>xxvi</sup> COAG Statement on the Closing the Gap Refresh, 12 December 2018 <<https://www.coag.gov.au/sites/default/files/communique/coag-statement-closing-the-gap-refresh.pdf>>.
- <sup>xxvii</sup> Ibid.
- <sup>xxviii</sup> Commonwealth of Australia, Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Future Measures* (16 March 2016).
- <sup>xxix</sup> Commonwealth, *Royal Commission into Aged Care Quality and Safety* (2018).
- <sup>xxx</sup> Ibid (Interim Report, 31 October 2019).
- <sup>xxxi</sup> ALRC, *Elder Abuse—A National Legal Response* (ALRC Report 131), 2017.
- <sup>xxxii</sup> A 2018 report by the ABS found that 9.6% of persons with a disability reported experiencing discrimination or unfair treatment due to their disability, up from 8.6% in 2015. See ABS, *Disability, Ageing and Carers, Australia: Summary of Findings 2015* (4430.0, 24 October 2019).
- <sup>xxxiii</sup> Australian Institute of Health and Welfare, *People with disability in Australia 2019: in brief* (2019) 17.
- <sup>xxxiv</sup> See eg, Lorena Allam, 'Being Aboriginal with a disability a 'double whammy', royal commission told' *The Guardian* (Online, 24 February 2020) <<https://www.theguardian.com/australia-news/2020/feb/24/being-aboriginal-with-a-disability-a-double-whammy-royal-commission-told>>.
- <sup>xxxv</sup> See HRC, *Report of the Working Group on the Universal Periodic Review- Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 23<sup>rd</sup> sess, A/HRC/31/14/Add.1 (29 February 2016) Australia noted this recommendation and will consider recommendation 187 (Israel) and Attorney-General's Department, *Australia's UPR recommendations – August 2018*, response to recommendation 187 <<https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/upr-recommendations/Documents/upr-mid-term-review-recommendations.pdf>>.
- <sup>xxxvi</sup> Opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 12.
- <sup>xxxvii</sup> Human Rights Watch, "I Needed Help, Instead I Was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia (2018) 2.
- <sup>xxxviii</sup> Ibid.
- <sup>xxxix</sup> Australia's National Research Organisation for Women's Safety, *Fast Facts: Impacts of Family, Domestic and Sexual Violence* (2019).

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- <sup>xi</sup> Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia* (2018) <<https://www.aihw.gov.au/getmedia/d1a8d479-a39a-48c1-bbe2-4b27c7a321e0/aihw-fdv-02.pdf.aspx?inline=true>>.
- <sup>xii</sup> Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010 – 2022.
- <sup>xiii</sup> Eg, the Commonwealth has committed \$20.9 million funding for Our Watch, the national organisation established to drive nationwide change in the structures, norms and practices that lead to violence against women.
- <sup>xiii</sup> Australian Government Workplace Gender Equality Agency, *Australia's Gender Equality Scorecard: Key findings from the Workplace Gender Equality Agency's 2017-18 reporting data* (November 2018), 1.
- <sup>xiv</sup> Roy Morgan, Single Source Survey (2018) <<http://www.roymorgan.com/findings/7642-superannuation-of-female-intending-retirees-still-lags-201806290657>>.
- <sup>xiv</sup> Australian Government Workplace Gender Equality Agency, *Five years of Workplace Gender Equality Agency data: the key trends* (2018).
- <sup>xvi</sup> AHRC, *Face the facts: Gender Equality 2018* (2018) <<https://www.humanrights.gov.au/our-work/education/face-facts-gender-equality-2018>>.
- <sup>xvii</sup> AHRC, *Older Women's Risk of Homelessness* (Background paper, April 2019) <[https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc\\_ow\\_homelessness2019.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_ow_homelessness2019.pdf)>.
- <sup>xviii</sup> HRC, *Report of the Working Group on the Universal Periodic Review- Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 23<sup>rd</sup> sess, A/HRC/31/14/Add.1 (29 February 2016) Australia accepted recommendations 144 (India), 145 (Israel) and 146 (Serbia) concerning addressing the gender pay gap.
- <sup>xix</sup> AHRC, *Respect@Work: Sexual Harassment National Inquiry Report* (March 2020) <<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>. See in particular, section 3.2 'prevalence of sexual harassment in the workplace'.
- <sup>i</sup> *Ibid*
- <sup>ii</sup> Opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 17.
- <sup>iii</sup> The rebuttable presumption of *doli incapax* holds that children between the ages of 10 and 14 lack the capacity to know that an act is seriously wrong in the criminal or moral sense: *C v DPP* (1995) 2 All ER 43; *R v Gorrie* (1918) 83 JP 136; *R v ALH* (2003) 6 VR 276; *R v M* (1977) 16 SASR 589; *R v CRH* unreported NSWCA 1996)
- <sup>iii</sup> Law Council of Australia, Submission to the Council of Attorneys-General's Department, *Age of Criminal Responsibility Working Group Review* (2 March 2020) <<https://www.lawcouncil.asn.au/docs/75d8d90e-385c-ea11-9404-005056be13b5/3772%20-%20CAG%20Review%20of%20age%20of%20criminal%20responsibility.pdf>>.
- <sup>iv</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc. CRC/C/AUS/CO/5-6 (1 November 2019) [48].
- <sup>iv</sup> See Australia's commitment under the CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37(b).
- <sup>vi</sup> The Commonwealth's contribution to funding of LACs has reduced dramatically since 1997, from around \$11.79 per capita in 1996-1997 to around \$9.26 per capita in 2017-2018 (in real terms, adjusted for inflation and population increases): Advice from PricewaterhouseCoopers to the Law Council of Australia, June 2019..
- <sup>vii</sup> Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 2014), 719, 1020-2.
- <sup>viii</sup> Law Council, Submission to Treasury, *2020-21 Pre-Budget Submission* (20 December 2019) <<https://www.lawcouncil.asn.au/docs/cd726d84-2459-ea11-9403-005056be13b5/3727%20-%20Pre%20Budget%20submission%202020-21.pdf>> 17 [54].
- <sup>ix</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People' (Justice Project: Final Report, August 2018) 37.
- <sup>ix</sup> Productivity Commission of Australia, *Access to Justice Arrangements Inquiry* (2014) Final Report, Vol 2, 709.
- <sup>xi</sup> *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539, 556 [44].
- <sup>xii</sup> See Michael Forst, *Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Australia*, A/HRC/37/51/Add.3 (28 February 2018) [107].
- <sup>xiii</sup> *Ibid*.
- <sup>xiv</sup> 'The latest hurdles for people seeking asylum in Australia' *Kaldor Centre for International Refugee Law* (Web page, 22 March 2017) <<https://www.kaldorcentre.unsw.edu.au/news/latest-hurdles-people-seeking-asylum-australia>>.
- <sup>xv</sup> HRC, *Report of the Working Group on the Universal Periodic Review*, 23<sup>rd</sup> sess, A/HRC/31/14 (13 January 2016) [136.274] recommendation 274 (Uruguay).
- <sup>xvi</sup> *Migration Act 1958* (Cth) s 14.
- <sup>xvii</sup> *Ibid* s 189.
- <sup>xviii</sup> *Ibid* s 196.

- lxix For example, asylum seekers who arrive by boat without prior authorisation. See: *Migration Act 1958* (Cth) s 46A.
- lxx *Migration Act 1958* (Cth) s 195A.
- lxxi See *Al-Kateb v DIMA* (2004) 219 CLR 562.
- lxxii ICCPR art 9(1) and CRC art 37(b).
- lxxiii A State transferring asylum seekers and refugees to a third country pursuant to a bilateral or multi-lateral processing arrangement remains subject to the obligation of non-refoulement, as well as other obligations arising under international refugee and human rights law where the reception and/or processing in the receiving State is effectively under the control or direction of the transferring State: United Nations High Commissioner for Refugees, 'Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers', (May 2013), [4], <https://www.refworld.org/docid/51af82794.html>.
- lxxiv A compilation of United Nations observations on Australia's offshore processing arrangements is available here: <https://www.unhcr.org/en-au/5bb364987.pdf>.
- lxxv See, for example: United Nations High Commissioner for Refugees, 'UNHCR Appeals for Urgent Medical Intervention by Australia' (Press release, 29 November 2018), <https://www.unhcr.org/en-au/news/press/2018/11/5bff8f237/unhcr-appeals-for-urgent-medical-intervention-by-australia.html>; and United Nations High Commissioner for Human Rights, 'Australia: UN Experts urge immediate medical attention to migrants in its offshore facilities' (Press release, 18 June 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24709>.
- lxxvi Contrary to art 31(1) of the *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).
- lxxvii *Migration Act 1958* (Cth) s 46B.
- lxxviii *Ibid* s 197AB.
- lxxix HRC, *Report of the Working Group on the Universal Periodic Review*, 23<sup>rd</sup> sess, A/HRC/31/14 (13 January 2016) [136.239] – [136.290].
- lxxx *Migration Act 1958* (Cth) s 197C.
- lxxxi HRC, *Report of the Working Group on the Universal Periodic Review*, 23<sup>rd</sup> sess, A/HRC/31/14 (13 January 2016) [136.271], [136.277] and [136.281]-[136.283].
- lxxxii Optional Protocol to the Convention against Torture, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force 22 June 2006).
- lxxxiii Australia OPCAT Network, *Submission on the Implementation of OPCAT in Australia to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the United Nations Working Group on Arbitrary Detention (WGAD)* (January 2020).
- lxxxiv *Ibid* 19. 'Primary places of detention' include adult prisons, juvenile detention facilities (excluding residential secure facilities), police lock-up or police station cells (where people are held for equal to, or greater than, 24 hours), closed facilities where people are involuntarily detained by law for mental health assessment or treatment (where people are held for equal to, or greater than, 24 hours), closed forensic disability facilities or units where people may be involuntarily detained by law for care (where people are held for equal to, or greater than, 24 hours), immigration detention centres (but this does not include all places where non-citizens are deprived of their liberty in immigration contexts), and military detention facilities.
- lxxxv Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Supplementary Budget Estimates 2019-20*, OPCAT - National Preventive Mechanism (Attorney General's Department response to Senator Nick McKim).
- lxxxvi Australia OPCAT Network, *Submission on the Implementation of OPCAT in Australia to the SPT and the WGAD* (January 2020) 19.
- lxxxvii Julian Thomas et al, 'Measuring Australia's Digital Divide' *The Australian Digital Inclusion Index 2017* (RMIT University, 2017) 5.
- lxxxviii See eg, ALRC, *Secrecy Laws and Open Government in Australia* (Report 112, 11 March 2010).
- lxxxix See, eg, *Crimes Act 1914* (Cth) s 3E; *Telecommunications (Interception and Access) Act 1979* (Cth) s 180T.
- xc Law Council of Australia, Submission to the Australian Border Force, *National Action Plan to Combat Modern Slavery 2020-24: Public Consultation Paper* (21 February 2020) <<https://www.lawcouncil.asn.au/docs/4acffb3-1d59-ea11-9403-005056be13b5/3757%20-%20Public%20Consultation%20Paper%20on%20the%20National%20Action%20Plan%20to%20Combat%20Modern%20Slavery%202020-2024.pdf>>.
- xcii Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights, *Advice on the Prioritisation of Issues and Actions to Implement the UN Guiding Principles on Business and Human Rights* (Report, August 2017) <<https://www.dfat.gov.au/sites/default/files/final-msag-priorities-paper.pdf>>.
- xciii ICCPR art 6.
- xciiii ICESCR, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), art 10.
- xcv *Ibid* art 11.

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<sup>xcv</sup> Ibid art 12.

<sup>xcvi</sup> Paris Agreement adopted on 12 December 2015 at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris from 30 November to 13 December 2015.

<sup>xcvii</sup> ICCPR arts 21, 22.