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## **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\***

### **Australia**

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## Introduction

1. Australia is founded on the rule of law and has a strong tradition of respect for the rights and freedoms of every individual. Australia also has a long tradition of commitment to human rights and supporting human rights internationally.<sup>1</sup> This reflects Australia's national values and view that the protection and promotion of human rights is vital to global efforts to achieve lasting peace, security, freedom and dignity for all. Australia continues to make progress in protecting human rights, recognising that continued effort is required to maintain standards and to respond to existing challenges.

2. The Australian Government welcomes the opportunity to participate in the 2nd cycle of the Universal Periodic Review (UPR) and to review Australia's progress in protecting and promoting human rights.

3. Australia's national priorities are included in the chapter I of the report. The chapter II outlines methodology and consultation. The chapter III contains background information on Australia's normative and institutional framework, including details of any updates or amendments to these frameworks since Australia's first UPR in 2011. The chapter IV details the follow – up to the previous UPR, achievements and challenges.

### I. National priorities (Recommendations 49, 145)

4. The Australian Government is focussed on advancing civil and political rights. This includes advancing measures to protect freedom of speech, freedom of religion and other common law rights and liberties that have not been given sufficient focus domestically in recent years. This complements the priority the government places on ensuring the economic empowerment of all Australians, through policies which support economic growth and specific programmes to advance individual groups (or specific community groups).

5. As part of these efforts, Australia appointed a full-time Human Rights Commissioner in 2013 to ensure there is appropriate focus within the Australian Human Rights Commission (AHRC) on civil and political rights in addition to anti – discrimination work.

6. The Australian Government recognises that to enjoy these rights, people need to be able to do so free from discrimination, enabling people to enjoy their rights on an equal basis with others. The Australian Government recently asked the AHRC to conduct an inquiry into practices, attitudes and federal laws that affect the equal participation in employment of older Australians and those with a disability.

7. A key priority for Australia is the empowerment of persons with disabilities, including through the rollout of the National Disability Insurance Scheme and the above inquiry. It also remains a priority to close the gap between Indigenous and non-Indigenous Australians in health, education, and employment outcomes, as well as working towards recognition of Indigenous Australians as Australia's First Peoples in Australia's Constitution. The Government is also committed to improving gender equality and reducing violence against women.

8. Australia is active in contributing to human rights internationally and intends to pursue election for membership of the UN Human Rights Council in 2018–2020. Australia's priority and focus internationally is on freedom of expression, gender equality, good governance and capacity building in our region.

## **II. Methodology and consultation (Recommendation 143)**

9. Following Australia's first UPR, Australia accepted or accepted – in – part 137 recommendations. Australia has implemented (in part or in whole), or is progressing implementation of, its response to over 130 of these recommendations. These recommendations were used to inform the subheadings in this report.

10. As with Australia's response to its first review, this national report was developed following consultations across the Australian Government, and state and territory governments. The views of peak non-government organisations (NGOs) on a draft version of the report were sought at, and following, the Australian Government's annual NGO forum on human rights. The Australian Attorney-General, Senator the Hon George Brandis QC, also subsequently met with peak NGOs to discuss the report and has committed to engaging with the NGO sector throughout the process. Following Australia's second UPR the Government intends to once again engage with NGOs and the AHRC in relation to recommendations it receives.

## **III. Background**

11. Australia is a federal constitutional democracy operating under the rule of law, with strong human rights protections and a rich multicultural heritage. The estimated resident population is 23.6 million people. Of this population, over one quarter was born overseas. The proportion of Indigenous peoples is estimated at 3% of the population. The total number of children aged 0–14 years is approximately 4.37 million, or 19%. The proportion of the population aged 65 years and over is approximately 14%.

12. The Australian Government is operating in a resource constrained fiscal environment – with significant recent write-downs in revenue. This situation requires the Government to prioritise funding and to identify savings across the government.

### **A. Constitution – Recognising Indigenous Australians in the Constitution (Recommendations 103–105 and 107)**

13. The Australian Government is strongly committed to holding a referendum to recognise Indigenous Australians in the Constitution. This will recognise the place of Australia's First Peoples in the nation's founding document. The Prime Minister has indicated that he hopes the referendum might happen on or before 27 May 2017, the 50<sup>th</sup> anniversary of the 1967 referendum. At the 1967 referendum, Australians overwhelmingly voted in favour of enabling the Federal Government to enact laws for Indigenous Australians and removing the prohibition against counting Indigenous Australians in Australia's population count.

14. In March 2015 the Australian Parliament extended the sunset date of legislation recognising Indigenous Australians as the first inhabitants of Australia, and renewed its commitment to work toward a referendum. The Australian Government continues to provide funding for a campaign to build community awareness and support.

15. A Parliamentary Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples is building multi-party support on particular referendum proposals, and identifying steps to a successful referendum. The Parliamentary Committee delivered its Final Report to Parliament on 25 June 2015. The Government will consider the Report's recommendations.

## **B. Legal protections (Recommendations 17–21)**

16. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Australian Government and the six states and two internal self-governing territories. Human rights are protected across Australia through a range of means.

17. Under Australia's legal system, the recognition and protection of many rights and freedoms are enshrined in common law. Common law results in the creation of legal precedents on points or interpretation of law to be followed by courts and tribunals. The common law has developed principles of statutory interpretation that function to protect human rights. When interpreting legislation, courts will presume that the Parliament did not intend to interfere with fundamental human rights. Another principle applies in cases of ambiguity, where courts will presume that legislation is intended to be consistent with established rules of international law, including Australia's international human rights obligations.

18. Mechanisms exist at the federal, state and territory level which seek to ensure that governments act consistently with Australia's international obligations. There is a legislative requirement that federal legislation be accompanied by a Statement of Compatibility with Human Rights. This process encourages early and ongoing consideration of human rights in policy and legislative development.

19. Domestic legislation further protects human rights. For example, anti-discrimination laws across all jurisdictions implement rights to non-discrimination and equality, and the *Privacy Act 1988* gives effect to the right to freedom from arbitrary or unlawful interferences with privacy. Two jurisdictions in Australia have enacted human rights charters.

## **C. Fundamental rights and freedoms**

20. Australia recognises the need for vigilance to ensure fundamental freedoms, such as the freedom of expression, are not unjustifiably restricted by legislation. In December 2013, the Australian Government asked the Australian Law Reform Commission to critically examine federal laws to identify any that encroach upon rights, freedoms and privileges recognised in Australian common law and to consider whether any encroachments are appropriately justified. The review will inform consideration of whether future legislative amendments are necessary to enhance fundamental rights and freedoms in Australia. The final report of the review is due in December 2015.

## **D. Institutions**

### **1. Australian Human Rights Commission (and Australian Council of Human Rights Agencies) (Recommendation 27)**

21. The AHRC plays a central role in protecting and promoting human rights in Australia. The Australian Government is committed to the Paris Principles and to their application to the AHRC as a National Human Rights Institution. The AHRC meets the criteria for A-status human rights institutions.<sup>2</sup> Each Australian state and territory also has its own body dedicated to promoting human rights, anti-discrimination and equal opportunity. Together with the AHRC, these bodies constitute the Australian Council of Human Rights Agencies.

22. The AHRC has specific legislated functions for the protection and promotion of human rights under the *Australian Human Rights Commission Act 1986*. One of the most significant and innovative of the powers given to the AHRC is the power to conduct public inquiries into alleged breaches of human rights by the Australian Government. Reports produced following those inquiries are required by law to be tabled in Parliament. Such public inquiries place human rights in Australia on the public agenda. In addition to this inquiry power, the AHRC handles complaints under anti-discrimination legislation, and has the power to intervene in court proceedings that involve human rights matters.

23. The AHRC is a collegiate body made up of a President and special purpose Commissioners for Aboriginal and Torres Strait Islander Social Justice, Children, Human Rights, Sex Discrimination, Disability Discrimination, Age Discrimination and Race Discrimination.

## **2. The Parliamentary Joint Committee on Human Rights (Recommendation 17)**

24. Since 2012, all primary and most secondary legislation introduced into the Australian Parliament must be accompanied by a Statement of Compatibility (as mentioned in the ‘legal protections’ section above) setting out the consistency of the legislation with Australia’s obligations in the seven core international human rights treaties to which it is a party. This Statement is considered by the Parliamentary Joint Committee on Human Rights. The Committee’s reports are published online.

## **3. Ombudsman**

25. The Commonwealth Ombudsman investigates the administrative actions of Federal Government departments and agencies, both in response to complaints and on his or her own motion. The Ombudsman’s activities include oversight of Australia’s immigration detention network, use of police powers, and the public sector whistleblowing scheme. States and territories have also established Ombudsmen regimes.

## **4. Privacy Commissioner**

26. The Privacy Commissioner has responsibility for facilitating compliance with the *Privacy Act 1988* and other privacy – related legislation. Functions of the Commissioner include the handling of privacy complaints, undertaking investigations and other regulatory activities, as well as providing guidance and advice to individuals, organisations and agencies about privacy obligations.

## **E. Civil society**

27. A strong civil society, which includes a vibrant and innovative non-government sector, plays a central role across Australia, supporting and providing services to the most disadvantaged in the community.

28. Recognising the important role played by NGOs, the Australian Government has, for over 20 years, held an annual NGO Forum on Human Rights to provide a consultation mechanism for human rights issues.

29. Australia’s independent media also plays an important role in promoting and protecting human rights in Australia. Australian media enjoys a high degree of press freedom which allows it to report on human rights issues.

## **F. Human rights education (Recommendations 57 and 58)**

30. The 800th anniversary of Magna Carta on 15 June 2015 has provided a unique opportunity to reflect on the rights and freedoms associated with this historic document. A variety of celebratory events are being held across Australia that will educate Australians about the importance of these rights. On 15 June 2015, Australia's Human Rights Commissioner Tim Wilson launched new interactive educational resources to explain the importance of Magna Carta on its 800th anniversary. The AHRC also provides a range of other educational resources for teachers (*RightsED*) that are mapped to the national curriculum.

## **G. International obligations**

### **Review of reservations (Recommendations 13–16)**

31. Australia has a long tradition of supporting human rights and engaging in the human rights system. Australia was closely involved in the development of the international human rights system.

32. Australia periodically reviews its reservations to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child to determine whether they remain necessary. Australia notes that its reservations are consistent with the object and purpose of these treaties and consistent with the Vienna Convention on the Law of Treaties. There have been no objections made to these reservations by other State Parties.

## **IV. Follow up to previous review, achievements and challenges**

### **A. Equality and non-discrimination**

#### **1. Anti-discrimination law (Recommendations 23, 42, 43–46, 49, 59 and 66)**

33. In Australia equality and non-discrimination are protected and promoted through legislative, policy and programme measures. Australia has legislative anti-discrimination protections at the federal, state and territory levels.

#### **2. Multiculturalism (Recommendations 59 and 61–65)**

34. Australia is a highly cohesive multicultural society. Over one quarter of Australia's estimated resident population of 23.6 million was born overseas.<sup>3</sup> The Scanlon Foundation's 2014 Mapping Social Cohesion report found that 85% of the community reported that multiculturalism has been good for Australia.

35. *The People of Australia*, Australia's multicultural policy, is complemented by a range of programmes and initiatives to support Australia's diverse population. For example, the Multicultural Community Liaison Officer network works with a wide variety of ethnic and cultural community organisations to create collaborative relationships and community networks, and provide information to communities. Further, the Government continues to support and seek expert advice from advisory bodies such as the Australian Multicultural Council on matters of community cohesion and social harmony.

36. Australians are free to choose their religion. Australia is committed to protecting the right of all people to express and practise their religion without intimidation, interference or harassment, provided those practices are within the framework of Australian law.

*Race discrimination (Recommendations 24, 25, 48, 59, 60, 62, 65, 98 and 114)*

37. The *Racial Discrimination Act 1975* makes it unlawful to discriminate against a person on the grounds of race, colour, descent or national or ethnic origin. Under the Commonwealth *Criminal Code Act 1995* it is an offence to urge violence against a group that is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

38. Australia's National Anti-Racism Partnership seeks to combat racism within the Australian community. The AHRC delivers the '*Racism. It stops with me*' public awareness campaign, through education resources, good practice initiatives and community engagement to encourage Australians to take action that addresses racism and to empower individuals to counter racism within the community.

### 3. Indigenous Australians

*Self-determination and consultation (Recommendations 24, 26, 36, 37, 102, 106, 108–113 and 118)*

39. Australia continues to support the United Nations Declaration on the Rights of Indigenous Peoples as a set of important guiding principles for the Government's engagement with Indigenous Australians.

40. The Australian Government has a clear reform agenda for Indigenous Affairs which is focused on:

- ensuring children go to school;
- getting adults into work;
- making sure communities are safer to live in and that the rule of law is applied; and
- achieving constitutional recognition for Aboriginal and Torres Strait Islander peoples.

41. The Indigenous Advancement Strategy commenced on 1 July 2014 with funding of \$4.9 billion over four years. The Strategy streamlined more than 150 individual programmes into five broad-based programmes to address disadvantage and the need for strategic grant funding for local solutions. This Indigenous specific funding is in addition to universal programmes which provide assistance to Indigenous people in areas including education, health and employment services. On 4 March 2015 the Australian Government announced investment of more than \$860 million in grants, to some 964 organisations, for critical front line service delivery focussed on achieving the key priorities of getting children to school, adults into work and ensuring communities are safe.

42. The establishment of the Prime Minister's Indigenous Advisory Council affirms the high priority Australia gives to Indigenous Affairs. The Council provides policy advice to the Prime Minister on Indigenous Affairs, and focuses on practical changes to improve the lives of Aboriginal and Torres Strait Islander peoples. Indigenous and non-Indigenous Australians from a range of backgrounds and locations make up the 12 member Council.

43. The Australian Government is supporting the design phase of an Indigenous-led Empowered Communities proposal. The Empowered Communities concept proposes a new interface between Indigenous communities and government, with a view to increasing

individual responsibility and creating sustainable improvements in the lives of Indigenous people.

44. At the international level, Australia supported the World Conference on Indigenous Peoples and adoption of the World Conference Outcome Document in September 2014. Australia supports reviewing the mandate of the Expert Mechanism on the Rights of Indigenous Peoples consistent with the Outcome Document, including strengthening the effectiveness and efficiency of the Expert Mechanism, reducing duplication of work and increasing the sharing of best practice policy and programme ideas. The Australian Government endorsed the re-election of Dr Megan Davis as an independent expert to the UN Permanent Forum on Indigenous Issues.

45. The Australian Government funds a network of service providers throughout Australia to assist native title holders to pursue the recognition of their native title rights and to make agreements about the use of native title land. The Government also provides funding to support the operations of native title corporations which manage native title rights on behalf of native title holders.

46. The Australian Government is considering the findings of recent reviews which explore ways that native title corporations could be supported to maximise opportunities for Indigenous people to use their native title to achieve independence through sustainable economic and social development outcomes.

47. The National Congress of Australia's First Peoples is an independent company, owned and controlled by its membership and directors. As of 18 February 2015, the National Congress had 8,241 individual members and 181 member organisations.<sup>4</sup> Since 2009–10, the National Congress has received \$29.3 million from the Australian Government to support its establishment and operations.

48. The Australian Government engages with a range of Indigenous leaders, organisations and communities when designing policies, programmes and implementing services that affect Aboriginal and Torres Strait Islander peoples.

*Health, housing, work and education (Recommendations 49, 101, and 114–119)*

49. Getting children to school is the Australian Government's number one priority in Indigenous Affairs. It is critical to ensure that Aboriginal and Torres Strait Islander children are educated to provide them greater opportunities. On 2 May 2014 federal, state and territory governments agreed a new target on school attendance, with public reporting of results. The new target aims to close the gap between Indigenous and non-Indigenous school attendance within five years, by 2018.

50. The Australian Government has acted to address this target by implementing a Remote School Attendance Strategy, expanding the Improving School Enrolment and Attendance through Welfare Reform Measure and expanding scholarship opportunities for Indigenous students. The Australian Government's new Indigenous Advancement Strategy is also focusing on projects to lift school attendance and achievement.

51. A further priority is getting Aboriginal and Torres Strait Islander people into jobs. The Indigenous Advancement Strategy – Jobs, Land and Economy Programme, aims to help adults into work, foster viable Indigenous businesses and assist Indigenous people to generate economic and social benefits from native title rights.

52. Under the Programme, the Australian Government has also committed up to \$45 million to deliver Vocational, Training and Employment Centres across Australia to train up to 5,000 Indigenous job seekers and provide them with guaranteed jobs by December 2015.



53. Overall, the Australian Government is investing \$3.3 billion over four years through the Indigenous Australians' Health Programme, including expanding effective programmes, including programmes focussed on child and maternal health and chronic disease prevention and management.

54. The Australian Government is negotiating a new Remote Indigenous Housing Strategy with New South Wales, Western Australia, South Australia, Queensland and the Northern Territory to replace the National Partnership Agreement on Remote Indigenous Housing. The Government will commit \$1.13 billion over three years to remote housing. The Strategy aims to improve remote housing sustainability by focusing payments on outcomes in property and tenancy management, Indigenous employment in housing delivery, and home ownership and land tenure. It will also continue to address the issue of overcrowding in remote Indigenous communities by funding the construction of new houses and the refurbishment of existing houses in remote Indigenous communities.

*Community safety and the justice system (Recommendations 90, and 93–95)*

55. Australian state and territory governments have responsibility for Australia's criminal justice systems, including police, courts and corrections. The Australian Government funds projects targeted at the drivers of poor community safety, including school attendance and employment.

56. The Australian Government is focused on priorities which will have an immediate impact on community safety, including: delivering police infrastructure to support a permanent police presence in some remote Indigenous communities, continuing to support the Northern Territory Government through a funding contribution to Community Engagement Police Officers, and maintaining Australian Government support for the Northern Territory Child Abuse Taskforce.

57. The Government will continue to support tough alcohol regulations across the country, and the efforts of Indigenous communities to combat alcohol fuelled violence, so all community members, particularly women, children and the elderly, can live peacefully and safely.

58. Indigenous Australians are currently 15 times more likely to be imprisoned than non-Indigenous Australians. The Australian Government believes that by focusing on the long-term drivers of violence, in addition to funding early intervention and recidivism prevention projects for those most at risk of offending, reductions in incarceration rates for Indigenous people will follow.

#### **4. Gender**

*Gender equality (Recommendations 49, 51, 53–56, 99 and 120)*

59. The Australian Government Office for Women works across Government to progress the four policy priorities for women: women's economic empowerment, leadership, safety, and international engagement.

60. Improving gender equality in the workplace and increasing women's workforce participation supports women's economic empowerment and security over the life course. The Government is committed to improving gender equality in the workplace through agencies and legislation that promote equality such as the Workplace Gender Equality Agency, the AHRC, the *Sex Discrimination Act 1984*, the *Fair Work Act 2009* and the *Workplace Gender Equality Act 2012*.

61. Recognising the need to increase women's workforce participation, in May 2015, the Australian Government announced a \$4.4 billion Families Package to give parents more

choice and the opportunity to work, also to better support families and children in need. The new Child Care Subsidy will replace the confusing combination of former benefits schemes and programmes. The subsidy will target low-and-middle income earners, tapering from 85% for low-income families to 50% for families earning around \$170,000 or more, up to an hourly fee cap. A two-year Nannies trial will support families who struggle to access regular child care services.

62. The Australian Government led the commitment by G20 nations to reduce the gender gap in participation by 25% by 2025. For Australia this means a 3 percentage point reduction in the gender gap in participation and could mean an extra 200,000 women in the workforce after current employment predictions.

63. Women's entrepreneurship will benefit from the Australian Government commitment to a \$5.5 billion Jobs and Small Business Package to support the small business sector. A third of people operating businesses in Australia are women and more than 50% of new small businesses in Australia are started by women.

64. The Australian Government is continuing efforts to achieve a gender diversity target of 40% on Government boards, with 39.7% of Australian Government board positions currently held by women. The Australian Government supports the BoardLinks Programme, which identifies board-ready women for Australian Government board appointments.

65. The Australian Government is also engaging with stakeholders in the business and community sectors to support women's increased representation in leadership and decision-making roles. The Government partners with the Australian Institute of Company Directors to deliver the highly successful Board Diversity Scholarship Programme to expand the number of women on private and non-government boards.

66. The Australian Government invested \$150,000 in a project for the AHRC to develop employer resources on supporting working parents through pregnancy, parental leave, and on return to work. The Workplace Gender Equality Agency launched a national pay equity campaign in September 2014 to raise awareness of pay equity and support employers to investigate and monitor pay equity within their organisations. The Australian Bureau of Statistics provides data on pay equity every six months which is routinely published and analysed.

67. Australia's Ambassador for Women and Girls, Ms Natasha Stott Despoja, ensures that gender equality is a central focus of Australia's foreign policy and aid agenda. The Ambassador advocates internationally for women's equal participation in political, economic and social affairs. With a focus on the Indo Pacific region, Ms Stott Despoja works with governments, regional and multilateral fora, and development and civil society partners, to promote women in leadership and decision-making, women's economic empowerment and an end to violence against women and girls. Other priorities include the protection of women and girls in conflict settings and their role in conflict prevention, resolution and peace-building, ending trafficking of women and girls and improved educational and health outcomes.

68. The 'family violence' section below provides information on The National Plan to Reduce Violence against Women and their Children 2010-2022 and other measures to address this priority issue for Government.

*Sex discrimination (Recommendations 51 and 52)*

69. Federal, state and territory government anti-discrimination legislation and policies uphold Australia's commitment to equal rights for women. The *Sex Discrimination Act 1984* prohibits sexual harassment and makes it unlawful to discriminate on the basis of sex,

marital or relationship status, family responsibilities, breastfeeding and pregnancy or potential pregnancy in a number of areas of public life. The Act also provides for special measures designed to achieve substantive equality between men and women as well as the other grounds protected by the Act.

## 5. Sexual orientation, gender identity and intersex status

### *Freedom from discrimination (Recommendations 51, 66–68)*

70. The Australian Government believes all people are entitled to respect, dignity and legal protection regardless of their sexual orientation, gender identity or intersex status. In 2013, the *Sex Discrimination Act 1984* was amended to provide protection from discrimination on the grounds of sexual orientation, gender identity and intersex status. Australia is one of the first States to provide specific anti-discrimination protection to people who are intersex.

71. In 2013, the Australian Government launched the *Guidelines on the Recognition of Sex and Gender*. These Guidelines standardise the evidence required for a person to establish or change their sex or gender in personal records held by Australian Government departments and agencies. Sex reassignment surgery and/or hormone therapy are not pre-requisites for the recognition of a change of gender in Australian Government records.

72. In March 2014, the Australian Capital Territory legislated to remove the requirement for sex and gender diverse people to undergo sexual reassignment surgery before they can change their sex on their birth certificate. The passage of this legislation coincides with other changes in Australian Capital Territory Government policy including legal recognition of sex and gender diversity by allowing people to identify as a third category – indeterminate / intersex / unspecified – on their birth certificates.

### *Same sex relationships*

73. Since Australia's last review, New South Wales, Victoria and South Australia have legislated to expunge historic criminal convictions for consensual same-sex activity, and other jurisdictions are moving toward the same approach.

## 6. People with disability (Recommendations 40, 41, 46 and 49)

74. The Australian Government's disability reform agenda is delivering fundamental changes in our society to improve the lived experience of people with disability, their families and carers. The Australian Government is working closely with state and territory governments to achieve this through the National Disability Strategy and the National Disability Insurance Scheme. The *Disability Discrimination Act 1992* offers important protections from discrimination for people with disability at the federal level. All states and territories also have legislation providing remedies for disability discrimination.

75. The National Disability Strategy 2010-2020, agreed by Australian Governments in 2011, provides a national policy framework for improving the lives of Australians with disability. The Strategy seeks to drive a more inclusive approach to the design of policies, programmes and infrastructure so that people with disability can participate in all areas of Australian life. Improving access to buildings, transport, social events, education, health care services and employment will contribute to ensuring that people with disability have the opportunity to fulfil their potential as equal citizens. The first phase of implementation, 'Laying the Groundwork 2011-2014', was designed to bring about reform in the planning and delivery of both mainstream and disability specific services across key portfolios. In addition to progressing ongoing commitments, the second and third implementation plans will reflect future opportunities to improve service delivery and outcomes for people with

disability. Under the Strategy, reports will be submitted to the Council of Australian Governments every two years that track national progress against key outcome areas.

76. Australia's commitment to people with disability also continues with its signature reform, the National Disability Insurance Scheme (NDIS). The NDIS provides lifetime support to improve outcomes for people with disability and their carers.

77. The NDIS commenced in four trial sites across Australia from 1 July 2013. Three further trial sites commenced from 1 July 2014. By July 2019 the NDIS will be rolled out in all states and territories except Western Australia.<sup>5</sup>

78. Once fully rolled out, the NDIS will support more than 460,000 people who have a significant and permanent disability, enabling choice and control over the supports they need to achieve their goals, objectives and aspirations for social and economic participation.

79. In May 2015, the Australian Government announced delivery of \$25 million over four years to start to shape disability employment toward a new model in 2018. The package includes creating the JobAccess Gateway as a new digital and client relationship service centre for people with disability and employers, complemented by a range of in-work supports to help people with disability to develop appropriate skills and lead them to finding and keeping a job. As part of a broader Youth Employment Strategy, the Government will undertake two national trials of specialised models of employment support designed to help disadvantaged young people with mental illness get and keep a job.

#### *Engagement with the criminal justice system*

80. Under Australia's Constitution, state and territory governments are responsible for criminal detention and mental health facilities. Australian states and territories have measures in place to assist people with disability who have complex needs or heightened vulnerabilities to more effectively engage with the criminal justice system. This includes access to diversion, advice, counselling and support services for people with mental health issues, as well as training for investigators in interviewing vulnerable witnesses.

81. The issue of mental illness and cognitive disability in the criminal justice system is an area of ongoing review and reform. Several relevant reviews have been completed at the state and federal level, including the recent inquiry by the Australian Law Reform Commission into 'Equality, Capacity and Disability in Commonwealth Laws'.

#### *Sterilisation (Recommendation 39)*

82. In 2013, an Australian Senate Committee completed an inquiry into the involuntary or coerced sterilisation of people with disability and intersex people. The inquiry made a range of recommendations including on education, legal representation and assistance, uniform legislation, and medical treatment. The Senate Committee concluded an outright ban of non-therapeutic sterilisation procedures would potentially deny the rights of persons with disability to access all available medical support on an equal basis with persons without disability. The Australian Government's response to the Committee's report recognises that the majority of its recommendations relate to matters at the state and territory level, and the Government will work with states and territories on these matters as appropriate.

### **7. Children (recommendation 46)**

83. Australia is committed to improving the safety and wellbeing of children. Australia is implementing the first National Framework for Protecting Australia's Children 2009-

2020 through a series of three-year action plans. The National Framework is a comprehensive, long-term approach to protect children from abuse and neglect and improve their safety and well-being. It places a greater emphasis on prevention, early intervention and responding to families and children where abuse and neglect has already occurred. Some of the specific achievements of the First Action Plan include:

- the development of a National Plan to support Indigenous children, which prioritises Aboriginal and Torres Strait Islander children in all future national priority projects throughout the life of the National Framework, and
- the completion of the first national study on Australia's response to sexualised or sexually abusive behaviours in children and young people.

84. The Second Action Plan (2012–2015) outlines how governments, the non-government sector and the broader community will progress actions during the next three years of the National Framework.

85. The *Family Law Act 1975* ensures that the best interests of children are met by protecting children from physical or psychological harm caused by abuse, neglect or family violence. The court must have regard to the best interests of the child when making a particular parenting order. Amendments to the Family Law Act in 2012 placed children front and centre in family law matters and prioritised the safety of children.

86. In January 2013 the Australian Government announced the appointment of a Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission is investigating how institutions and governments can better protect children, achieve best practice in reporting and responding to incidents, and address the impact of child sexual abuse. The final report is due by December 2017. A number of support services for affected people are funded by the Australian Government.

87. In May 2015, the Australian Government announced a plan to provide disadvantaged and vulnerable children with better access to early childhood services through the Child Care Safety Net, recognising that children from disadvantaged backgrounds particularly benefit from quality early learning. The Child Care Safety Net includes extra fee assistance for children and families who are disadvantaged and a competitive grants programme for services to reduce barriers to accessing child care. Under the programme, child care centres will receive more funding for the equipment and staff they need to support children with disabilities and children from culturally or linguistically diverse backgrounds.

*National Children's Commissioner (Recommendations 28 and 29)*

88. Australia's first National Children's Commissioner, Ms Megan Mitchell, was appointed on 25 March 2013 for a period of five years. This appointment marked a significant step in the protection of children in Australia. Ms Mitchell is responsible for focusing on the rights and interests of children and the laws, policies and programmes that impact on them – particularly vulnerable children.

**8. Age discrimination (recommendation 43, 44, 49 and 142)**

89. The Australian Government is committed to promoting and protecting the rights of older persons and has engaged with the work of the United Nations Open-Ended Working Group on Ageing.

90. Australia's first statutory Age Discrimination Commissioner, the Hon Susan Ryan AO, was appointed on 30 July 2011 for a period of five years. Ms Ryan is responsible for raising awareness of age discrimination, and monitoring and advocating for the elimination of age discrimination across all areas of public life. Ms Ryan

will lead the afore-mentioned inquiry by the AHRC into practices, attitudes and federal laws that affect the equal participation in employment of older Australians and those with a disability, in her capacity as Age and Disability Discrimination Commissioner.

91. Australia's *Age Discrimination Act 2004* prohibits age discrimination in areas of public life, including accommodation, education and employment. Australia's states and territories also have their own anti-discrimination laws that prohibit discrimination on the basis of age. Other national legislation that adds to the framework of protection for older people includes:

- the *Social Security Act 1991*, which provides an income support safety net for people over pension age, and
- the *Aged Care Act 1997*, which facilitates access to aged care by those who need it, regardless of race, culture, language, gender, economic circumstance or geographic location.

## **B. Right to life, liberty and security of the person**

### **1. Prevention of torture**

#### *Use of force by police (Recommendations 88 and 89)*

92. Australia limits the use of force by police officers. The Commonwealth *Crimes Act 1914* specifies that Australian police must only use reasonable and necessary force when executing a warrant or making an arrest. Police train extensively and are provided with a high level of organisational support regarding the exercise of their powers. This ensures powers are used effectively and in a manner that does not endanger the officer or the public.

93. The underpinning principle in Australia is that the use of force is to be the last resort, proportionate to the level of risk involved, and the minimum level appropriate for the safe and effective performance of police duties.

94. Complaints about the Australian Federal Police are investigated thoroughly with appropriate oversight by the Commonwealth Ombudsman and the Law Enforcement Integrity Commissioner. Similar arrangements are in place in Australia's states and territories.

#### *Humane treatment of prisoners (Recommendations 71 and 91)*

95. Australian states and territories deliver corrective services in accordance with the *Standard Guidelines for Corrections in Australia*, which comprises uniform principles that are used by the states and territories in developing their own relevant legislative, policy and performance standards on correctional practice. The Guidelines are consistent with internationally accepted standards, including the UN Standard Minimum Rules for the Treatment of Prisoners. The Guidelines recognise and account for the unique community, cultural and linguistic circumstances of Indigenous prisoners.

96. All deaths that occur in custody in Australia must be referred to the Coroner for investigation. Australian states and territories have policies in place to ensure that the death of a person in custody is managed with integrity and respect for the deceased person and that all legal, religious, cultural and spiritual requirements are met. The Australian Institute of Criminology established the National Deaths in Custody Program in 1992 and the programme has been monitoring the extent and nature of all deaths that have occurred in prison, juvenile justice and police custody since this time. Data has also been collected retrospectively back to 1 January 1980. All reports under the programme are publically available.

*Extradition (Recommendation 34)*

97. Australia's extradition regime is governed by the requirements in the *Extradition Act 1988*. When deciding whether to surrender a person who has been found eligible for extradition, the Attorney-General must refuse to extradite a person where the offence is punishable by the death penalty, unless an undertaking is provided that the death penalty will not be imposed, or if imposed, not carried out. In cases where a person elects to waive extradition, the Attorney-General must be satisfied that on return to the requesting country there is no real risk that the death penalty will be carried out upon the person in relation to any offence.

*Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (Recommendations 1–6)*

98. The Australian Government is considering whether it will ratify the Optional Protocol to the Convention against Torture and therefore bring it into force in Australia. Australia's places of detention are currently under independent scrutiny by a range of bodies at the federal, state and territory levels – including by the Commonwealth Ombudsman, state and territory ombudsmen and the AHRC. If the Australian Government decides to pursue ratification it will consider the suitable bodies to undertake the domestic inspection role as a part of the National Preventative Mechanism.

**2. Family violence (Recommendations 47, 72–74, and 76–82)**

99. The Australian Government believes it is fundamental that women and their families are safe from violence in their homes and communities. All governments in Australia are currently implementing the National Plan to Reduce Violence against Women and their Children 2010–2022 (National Plan) and ensuring its programmes are properly resourced and effective. In collaboration with state and territory governments this 12-year plan aims to bring about a significant and sustained reduction in violence against women and their children through a whole-of-community effort.

100. The First Action Plan (2010–2013) built the foundation for the National Plan and saw the establishment of key national infrastructure. This included the establishment of Australia's 'National Research Organisation for Women's Safety to Reduce Violence against Women and their Children' and the primary prevention organisation 'Our Watch' which aims to change cultural attitudes toward violence and promote respectful relationships.

101. The Second Action Plan of the National Plan was launched in Sydney on 27 June 2014 by the Prime Minister and contains 26 practical actions that all Australian governments agree are critical to improving women's safety. The Australian Government has provided more than \$100 million to support the Second Action Plan. Further details on the National Plan, including the Second Action Plan, can be accessed at <http://www.dss.gov.au/nationalplan>.

102. A key priority of the Second Action Plan is to understand the diverse experiences of violence, particularly among high risk groups including Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, and women with disability.

103. The Australian Government is investing \$230 million to extend the National Partnership Agreement on Homelessness to 2017, with funding priority to frontline services for women and children experiencing domestic and family violence. In addition to that agreement, the Australian Government provides around \$1.3 billion to states each year for housing, which includes notionally around \$250 million for homelessness services.

104. 1800RESPECT provides online and telephone support services for those experiencing domestic violence. The Australian Government has announced a funding boost of \$4 million to support 1800RESPECT to meet increased demand. This brings total funding to 1800RESPECT to \$33.50 million over three and a half years to 30 June 2017.

105. The Prime Minister has clearly stated that reducing violence against women is a national priority, and has elevated the issue to the Council of Australian Governments. In April 2015 the Council of Australian Governments agreed to take urgent collective action to address violence against women. By the end of 2015:

- a national domestic violence order (DVO) scheme will be agreed, where DVOs will be automatically recognised and enforceable in any state or territory of Australia;
- progress will be reported on a national information system that will enable courts and police in different states and territories to share information on active DVOs;
- national standards will be considered to ensure perpetrators of violence against women are held to account at the same standard across Australia; and
- strategies will be considered to tackle the use of technology to facilitate abuse against women, and to ensure women have adequate legal protections against this.

106. The Council of Australian Governments has also established an Advisory Panel on Reducing Violence against Women to advise the Council on practical ways to address violence. The Advisory Panel is chaired by the former Victorian Police Chief Commissioner, Mr Ken Lay APM. Deputy Chairs of the Advisory Council are Ms Rosie Batty, 2015 Australian of the Year and family violence campaigner, and Ms Heather Nancarrow from Australia's National Research Organisation for Women's Safety.

107. The Australian Government will also deliver a jointly funded \$30 million national campaign on reducing violence against women, in collaboration with states and territories.

### **3. Human trafficking, slavery and slavery-like practices (Recommendations 83–87 and 134)**

108. The Australian Government continues to implement a strong program of initiatives to combat human trafficking. In December 2014, Australia released the National Action Plan to Combat Human Trafficking and Slavery 2015-19, which sets the strategic aims of Australia's whole-of-community response to human trafficking over the next five years.

109. Australia continues to work to combat emerging forms of human trafficking and related exploitation. In 2014, the Australian Government established a Supply Chains Working Group to examine strategies to address the use of labour exploitation in the supply chain of goods and services, including through human trafficking and slavery. The working group includes representatives from Government, business, industry, unions and civil society. In December 2014, the Australian Government launched a Forced Marriage Community Pack, which was developed in partnership with civil society to provide information and resources on forced marriage, including fact sheets and a template safety plan for people in, or at risk of, forced marriage. Australia also contributes to the UN Voluntary Trust Fund on Contemporary Forms of Slavery.

110. Australia amended its human trafficking legislation in 2013 to ensure that law enforcement authorities are well equipped to investigate and prosecute all forms of human trafficking including both sexual and labour exploitation, and to further its commitment to criminally prosecuting trafficking offenders.

111. The Australian Government remains committed to efforts which strengthen regional frameworks on irregular migration and human trafficking, including through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. In



2013–14 Australia, with Thailand, led the development of a Bali Process Policy Guide on Criminalising Trafficking in Persons. In 2014–15, Australia was a core member of a Bali Process drafting committee which prepared policy guides on identifying and protecting victims of human trafficking. Australia is also co-chairing the newly established Bali Process Working Group on Trafficking in Persons with Indonesia. Australia's \$50 million flagship programme, the Australia-Asia Program to Combat Trafficking in Persons 2013-18 builds on ten years of Australian Government effort to strengthen national and regional criminal justice responses to trafficking in South East Asia.

#### **4. Counter-terrorism measures (Recommendations 136–140)**

112. The Australian Government has undertaken comprehensive reviews of national security and counter-terrorism legislation, including a review conducted by Australian Governments into Australia's key counter-terrorism laws and four annual reports produced by the former Independent National Security Legislation Monitor. In response to these reviews, and to the emerging challenge of foreign fighters returning to Australia, Australia has enacted new counter-terrorism and national security legislation. This new legislation was subject, as is all federal legislation, to an assessment of compatibility with Australia's international human rights obligations by the Parliamentary Joint Committee on Human Rights. In addition, the legislation was comprehensively reviewed by the Parliamentary Joint Committee on Intelligence and Security. The Committee made several recommendations to improve the legislation, all of which were accepted by the Government prior to the legislation being passed.

### **C. Justice and rule of law (Recommendation 92)**

113. Australian governments fund a range of legal assistance services to help disadvantaged people with their legal problems, including legal aid commissions, community legal centres and Indigenous legal services. The Australian Government prioritises the funding of frontline legal services.

114. The Australian Government will invest \$1.3 billion over five years for the new National Partnership Agreement on Legal Assistance Services. The new Agreement will improve planning, coordination and delivery of services at the local level, to disadvantaged Australians in areas such as family law.

115. The Australian Government will continue to directly fund Indigenous legal assistance providers in line with the Government's Indigenous affairs priorities and ongoing commitment to improving law and justice outcomes for Indigenous Australians. The Government will invest \$358 million over five years in legal assistance services to Indigenous Australians.

### **D. Social security (Recommendations 32, 33, 50 and 142)**

116. Australia has developed a comprehensive system of social security to assist those in need. Social security payments and other benefits are currently made available under a range of federal legislation. Under this legislation the Australian Government provides a range of payments and services to Australians, including retirees, the unemployed, families, carers, parents, persons with disabilities, students, and Indigenous people.

## **E. Right to adequate housing**

117. The Australian Government currently spends about \$6.5 billion on housing assistance and homelessness services each year.

118. The National Affordable Housing Agreement provides the framework for the federal and state and territory governments to work together to improve housing affordability and homelessness outcomes for Australians. The Australian Government provides \$1.3 billion annually to state and territory governments for this purpose under the Agreement.

119. Commonwealth Rent Assistance improves rental housing affordability for around 1.3 million individuals and families with children. Commonwealth Rent Assistance plays a critical role in reducing the cost of private rental housing and the incidence of rental stress for people receiving income support and Family Tax Benefit (Part A) payments at an estimated cost to the Australian Government of around \$4.2 billion in 2014–15.

120. The National Rental Affordability Scheme promotes investment in affordable rental housing. The Scheme, which commenced in 2008, was intended to provide dwellings to low and moderate income households at a rate that is at least 20% below the market value rent. As at 30 April 2015 there were approximately 38,000 dwellings approved to be included in the Scheme, but only around 26,500 are already tenanted or available for rent.

121. Australian governments have continued their commitment to reducing homelessness through the National Partnership Agreement on Homelessness which supports more than 300 homelessness initiatives across Australia. The Australian Government has committed \$230 million to support the Agreement over the next two years from July 2015. State and territory governments are required to match the Australian Government's commitment with funding priority given to women and children experiencing domestic and family violence and homeless youth.

## **F. Refugees and asylum seekers (Recommendations 38, 121–125, and 127–131)**

122. Australia is one of the top three resettlement countries in the world, and has resettled more than 825,000 refugees and other humanitarian entrants since World War II through Australia's Humanitarian Programme. Under the offshore component of the Humanitarian Programme, Australia provides resettlement for refugees and others in humanitarian need overseas. Australia works with the United Nations High Commissioner for Refugees to resettle refugees, focusing on those in protracted situations, in urban environments and others in need.

123. The Australian Government is committed to ensuring our position as one of the top three resettlement countries continues. The Government has specified the size of the Humanitarian Programme in law, with a minimum of 16,250 humanitarian visa places in 2017–18 and 18,750 humanitarian visa places in 2018–19.

124. Australia continues to improve fairness, accountability and integrity in the Humanitarian Programme. The Women at Risk visa category is an example of one such improvement, with Australia remaining one of few countries with a dedicated resettlement programme designed to assist women at risk and their dependents. Australia also ensures the fairness of its Humanitarian Programme through the provision of assisted passage, medical and related services for refugee entrants and humanitarian applicants. Australia is committed to promoting the dignity and rights of migrants, including through its active engagement in the Migrants in Countries in Crisis Initiative, the Global Forum for

Migration and Development, and the Nansen Initiative for Disaster-Induced Cross-Border Displacement.

125. Australia is committed to meeting its international protection obligations under the *1951 Convention relating to the Status of Refugees*, and other relevant conventions, in relation to people claiming protection within Australia's jurisdiction. Australia recognises the valuable contribution that migrants have provided to Australian society, culture and prosperity.

126. Since Australia's last Universal Periodic Review in 2011, the Australian Government has implemented strong border management policies to stem the flow of illegal maritime arrivals<sup>6</sup>, eliminate the people smuggling trade and prevent further loss of life at sea. Offshore processing and settlement of refugees in countries other than Australia has deterred many people from taking the dangerous sea voyage to Australia.

127. The Australian Government signed the Regional Resettlement Arrangements with Papua New Guinea in July 2013 and Nauru on 3 August 2013<sup>7</sup>. Under Memoranda of Understanding, both countries agree to treat transferees<sup>8</sup> with dignity and respect in accordance with relevant human rights standards, including the principles of *non-refoulement*.

128. The Australian Government has assisted Nauru and Papua New Guinea to develop their robust refugee determination processes consistent with UNHCR guidelines, including the provision of training and mentoring of refugee determination staff. Australian Government support has also been provided to Nauru and Papua New Guinea to develop and implement their settlement support arrangements to meet the initial settlement needs of refugees.

129. In September 2014 a Memorandum of Understanding between Australia and Cambodia was signed for the voluntary and permanent resettlement of refugees from Nauru in Cambodia.

130. A fast track assessment process has been established for eligible unauthorised maritime arrivals, and the independent merits review process within the Refugee Review Tribunal has been enhanced and made more efficient.

131. The vast majority of asylum seekers have access to independent merits review by the Refugee Review Tribunal. Asylum seekers also have a constitutional right to seek judicial review of migration decisions. Where a person does not engage Australia's protection obligations and does not hold a visa, they have no legal right to remain in Australia, and are subject to removal from Australia.

132. Australia has processes in place to ensure that any removal is consistent with its *non-refoulement obligations*.

133. The Australian Government considers immigration detention an essential component of strong border control. People seeking to enter Australia without authority need to be assessed for any risks they may pose to the Australian community. The Government strives to reduce the number of people in detention and the length of time they are held in detention. The length and the conditions of immigration detention are subject to regular review to ensure detention continues to be lawful and appropriate.

134. Australia takes its obligations to those in detention seriously. People in immigration detention are accommodated in a range of facilities and are placed in the form of accommodation most appropriate to their circumstances. All people in immigration detention are provided with health care that is broadly commensurate with the standard available under Australia's public health system.

135. People in immigration detention may seek judicial review of the lawfulness of their detention, and request or refuse consular access or representation at any time.

136. Children who are illegal arrivals are initially accommodated in lower-security alternative places of detention, with the priority that unaccompanied minors, and where possible children and their families, will be moved into community detention subject to the completion of identity, health and security checks.

137. Australia's community detention programme allows unaccompanied minors, vulnerable family groups and vulnerable single adults in immigration detention to reside and move freely in the community.

138. Significant headway has been made to reduce the numbers of children held in detention since the passage of the temporary protection legislation in late 2014. All children who were detained on Christmas Island were transferred to the mainland with their families by December 2014.

139. Australia is committed to advancing Australia's interests regarding migration and refugee issues internationally through a programme of multilateral and bilateral activity, including capacity building with selected countries. This includes working closely with the UNHCR, the International Organization for Migration, other international agencies and partner countries to:

- promote managed migration;
- enhance the functioning of the international protection system to more equitably meet the protection needs of refugees;
- respond to increasing global needs for protection;
- make effective use of resettlement;
- reduce incentives for secondary movement; and
- provide greater support for countries of first asylum.

## **G. Foreign aid and development (Recommendation 135, 141 and 144)**

140. In 2015–16, Australia will provide an estimated \$4 billion in Official Development Assistance, focussed in the Indian Ocean-Asia Pacific region. The aid programme priorities are consistent with the framework outlined in the Government's development policy, *Australian aid: promoting prosperity, reducing poverty, enhancing stability*. Australia's aid programme will have a strong focus on private sector development, including aid for trade, recognising that the private sector is the primary driver of economic growth and poverty reduction. Australia will invest in education, health, humanitarian assistance, and empowering women and girls, reflecting the links between human development and economic growth. Australia seeks to build human rights capacity through targeted programmes in a number of countries, including China, Vietnam, Burma and Afghanistan.

### *Notes*

<sup>1</sup> Dr HV Evatt, Australia's former Minister for External Affairs, was president of the United Nations General Assembly and chaired the session at which the Universal Declaration of Human Rights was adopted on 10 December 1948.

<sup>2</sup> Principles relating to the Status of National Institutions (The Paris Principles). Adopted by General

Assembly resolution 48/134 of 20 December 1993.

- <sup>3</sup> As at 30 June 2013 persons born in the UK accounted for 5.3% of Australia's total population, persons born in New Zealand 2.6%, China 1.8%, India 1.6% and Vietnam 0.9%.
  - <sup>4</sup> Figures sourced directly from National Congress of Australia's First Peoples, 27 March 2015.
  - <sup>5</sup> The NDIS is being trialled in Western Australia alongside Western Australia's established scheme 'My Way' to determine the best scheme for Western Australians.
  - <sup>6</sup> An Illegal Maritime Arrival is as an individual who has arrived in Australia by sea without a valid visa.
  - <sup>7</sup> Settlement in Papua New Guinea is permanent, while settlement in Nauru is temporary pending resettlement in a third country.
  - <sup>8</sup> A transferee means a person transferred to Nauru or Papua New Guinea under the Memoranda.
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