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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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## I. Introduction

1. Australia's enduring commitment to protecting and promoting human rights is reflected in our strong domestic laws, policies and institutions and in our active international engagement and advocacy. Australia is proud of its contribution to the founding of the United Nations (UN) and the international human rights framework. Australia's inaugural membership of the UN Human Rights Council (HRC) in 2018–20 reflects its continued commitment to this framework. Australia's laws and institutions function to protect human rights and support robust public debate of human rights issues.
2. Since our second cycle Universal Periodic Review (UPR) in 2015, Australia has made significant achievements in the realisation of human rights. These include significant investments addressing family and domestic violence, human trafficking and modern slavery and the legalisation of same-sex marriage.
3. COVID-19 is presenting new challenges in the protection of human rights across Australia. However, our strong democratic institutions have ensured that our response carefully balances the right of everyone to the enjoyment of the highest attainable standard of physical and mental health with other rights, such as liberty of movement, which may need to be temporarily curtailed. Particular regard has been paid to the rights of people with unique vulnerabilities.
4. Australia welcomes the opportunity to participate in the third cycle of the UPR and to discuss achievements and opportunities for improvement in protecting and promoting human rights.

## II. Methodology and consultation

5. This report was prepared by the Australian Government in collaboration with the governments of Australia's states and territories.
6. The report outlines developments in Australia's human rights frameworks (Part III) followed by measures taken to implement accepted recommendations from Australia's second cycle UPR in 2015 (Part IV). As the report focuses on the 2015–2020 period, COVID-19 related matters are addressed under New and Emerging Issues (Part V). The report is accompanied by three annexes which should be read in conjunction with the report. **Annex 1** outlines the status of implementation of all second cycle UPR recommendations. **Annexes 2 and 3** outline the status of implementation of the voluntary pledges Australia made as part of its second cycle UPR and HRC membership.
7. The Australian Government consulted the Australian Human Rights Commission (AHRC) and non-government organisations (NGOs) on the draft report. An early draft was discussed at the Attorney-General's Department annual NGO forum on human rights in 2019 and a draft was made publicly available for comment in July 2020. The Australian Government received 22 written submissions and held meetings with a further 16 NGOs. An NGO Coalition received funding from the Australian Government to prepare a joint NGO submission for Australia's third cycle UPR.
8. The Australian Government engaged the AHRC and civil society in developing the Government response to its second cycle UPR recommendations and will continue this collaborative approach to progressing recommendations received in the third cycle UPR.<sup>1</sup>

## III. Australia's human rights frameworks

### A. Domestic frameworks

9. Australia is a constitutional democracy operating under the rule of law with well entrenched human rights protections. Human rights are protected and advanced through the Australian Constitution, legislation and institutions, as well as the common law. The

Australian Constitution and the common law are the bedrock protections of Australians' fundamental rights, though neither attempts a codified enumeration of those rights.<sup>2</sup>

10. Australia's Constitution establishes a democratic system of representative and responsible government. Our federal system protects rights by dividing power between the Australian Government and the governments of the six states and two internal self-governing territories, each of which has a responsibility to protect and promote human rights and fundamental freedoms.<sup>3</sup> A wide range of institutions and safeguards – most particularly democratic elections, the strict separation of powers between the three branches of government at the federal level, and an independent judiciary – protect against the arbitrary use of government power and promote robust public debate of issues of relevance to human rights.

11. Elections are free and fair, with compulsory voting, such that members of the Parliament are accountable to the people, for human rights and other public policy outcomes, through the electoral cycle. Robust parliamentary debate and scrutiny during the passage of legislation ensures that the human rights impacts of proposed laws are thoroughly scrutinised.

12. All jurisdictions in Australia have comprehensive anti-discrimination legislation to implement rights to non-discrimination and equality and to prohibit adverse action being taken against individuals on the basis of particular attributes.<sup>4</sup> The Government's Religious Discrimination Bill (discussed below) demonstrates the Government's ongoing commitment to improve upon existing protections in the Commonwealth anti-discrimination framework. In addition to the constitutional and parliamentary protections for human rights set out above, each Australian jurisdiction has a body dedicated to promoting human rights and equal opportunity. The AHRC is an independent statutory body accredited as Australia's 'A' status National Human Rights Institution in accordance with the Paris Principles.

13. The Standing National Human Rights Mechanism was established in 2016 to improve coordination across federal, state and territory governments in reporting and engaging with the UN on human rights.<sup>5</sup> The Mechanism also includes: a process for consultation with the AHRC; an annual NGO forum on human rights led by the Attorney-General's Department;<sup>6</sup> and publicly available material on Australia's UN reporting, including a website monitoring Australia's progress in implementing UPR recommendations.<sup>7</sup>

## **B. International frameworks**

14. Australia has long been an active, collaborative and practical advocate of human rights on the international stage. Australian domestic law reflects its obligations under the seven core treaties to which it is a party consistent with Australia's Constitution and the federated system of government. This ensures that obligations are most effectively implemented in a way that meets the needs of people throughout the geographical reach of Australia, by the Australian government most able to effectively implement relevant obligations for the people. Australian governments deliver a wide range of programs and services that give effect to Australia's international human rights obligations, including a number of national plans and strategies to protect the rights of all Australians and respond to particular challenges.

15. In 2017, the Australian Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),<sup>8</sup> reflecting Australia's continued commitment to preventing torture and mistreatment.

16. Australia periodically reviews its reservations to international instruments. In 2018, Australia withdrew its reservation to the Convention on the Elimination of All Forms of Discrimination against Women relating to the exclusion of women from combat duties.<sup>9</sup>

17. Since Australia's second cycle UPR, Australia has submitted reports to seven UN treaty body committees and appeared before six.<sup>10</sup> Australia has hosted visits from five UN

Special Procedure Mandate Holders,<sup>11</sup> and will facilitate further visits when these are able to proceed. Australia maintains a standing invitation for all UN Special Procedures Mandate Holders to visit Australia and gives careful consideration to their recommendations.<sup>12</sup> The Australian Government is committed to responding, in good faith, to all communications received.<sup>13</sup>

## **IV. Implementation of recommendations and voluntary commitments**

### **A. Civil and political rights**

#### **Freedom of expression and freedom of religion or belief**

18. The Australian Government is focussed on protecting civil and political rights for all persons within Australia. The High Court has interpreted Australia's Constitution to include a fundamental protection for the freedom of political communication. Other fundamental rights and freedoms, such as freedom of expression more generally, are protected by the general common law presumption that in the absence of clear and unambiguous legislation to the contrary (which would be subject to the human rights scrutiny processes described above), parliaments do not intend to interfere with fundamental rights and freedoms. All Australians are free to express their views within the framework of Australian law, including controversial and challenging ideas and opinions.

19. Australia is home to a diversity of faiths. All Australians are free to choose their religion or belief, to not hold a religion or belief, and to express and practise their religion or belief without intimidation and interference as long as those practices are within the framework of Australian law.<sup>14</sup> In order to examine whether Australian law adequately protects the right to freedom of religion, the Australian Government appointed an Expert Panel, which reported in May 2018. The review found that Australians enjoy a high degree of religious freedom but identified some opportunities to strengthen protections. The Australian Government has consulted widely on a package of legislation on religious freedom, which includes a Religious Discrimination Bill.<sup>15</sup>

20. Australia has advocated internationally for the protection of journalists, human rights defenders and freedom of expression.<sup>16</sup> Domestically, the Australian Government recognises that press freedom is a fundamental pillar of Australia's democracy. The freedom to publish has always been subject to some limitations under Australian law including contempt of court, privacy and defamation as well as national security and criminal justice. Striking the appropriate balance between these factors has recently been the subject of public debate in Australia. In August 2020, the Parliamentary Joint Committee on Intelligence and Security released its report into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press. The Australian Government is currently considering the recommendations.

21. Importantly, the Commonwealth Director of Public Prosecutions (CDPP) (Australia's Commonwealth prosecution service) and the Australian Federal Police operate independently of government. Consistent with the Prosecution Policy of the Commonwealth, a decision by the CDPP to prosecute any offence must be in the public interest and must not be influenced by any political advantage or disadvantage to the government.

22. Under recent changes, the consent of the Attorney-General is required before a journalist can be prosecuted for a range of offences. The consent does not give the Attorney-General the ability to instruct the CDPP to commence a prosecution. The requirement for the Attorney-General's consent would only be engaged if the CDPP independently considers that a prosecution should occur. At that point, the Attorney-General's consent would be required as an additional safeguard.

23. The requirement for the Attorney-General to consent to certain categories of prosecutions is a longstanding feature of the Australian system, and applied to a range of different circumstances.

#### **Multiculturalism, diversity and inclusion<sup>17</sup>**

24. Australia is a successful and proud multicultural society and Australian governments recognise the enormous benefits multiculturalism has delivered to our country. The 2016 Australian Census reported that Australians come from nearly 200 countries, speak more than 300 languages and practise more than 100 religions. Nearly half (49%) of Australians were born overseas or had at least one parent born overseas.

25. Australia's Multicultural Statement (2017), *Multicultural Australia: United, Strong, Successful*, renews and reaffirms the Australian Government's commitment to a multicultural Australia, recognising cultural diversity as one of our greatest strengths. It also reaffirms that racism and discrimination have no place in Australia.

26. Australia celebrates Harmony Week every year in March, which coincides with the International Day for the Elimination of Racial Discrimination. These celebrations foster inclusiveness, respect of cultural diversity and a sense of belonging for everyone.

27. In March 2019, the Australian Government announced a \$71 million package of social cohesion initiatives to invest in programs that embrace Australia's multicultural diversity and help all communities become actively part of, and benefit from, Australia's economic and social development.

28. The success of Australia's multicultural society is linked to Australia's realisation of the rights of equality before the law, non-discrimination, and the rights of minorities to enjoy their own culture, practise their own religion and use their own language. All Australian jurisdictions have laws that make discrimination on a range of grounds relating to race, colour, national and ethnic origin unlawful, and it is an offence under federal law and certain state and territory laws to urge violence against a group on these grounds.

#### **Family, domestic and sexual violence<sup>18</sup>**

29. Despite national efforts to address family, domestic and sexual violence (FDSV), the Australian Government continues to consider that rates remain unacceptably high. According to one survey, approximately one in four women and one in 12 men experienced physical and/or sexual violence by an intimate partner since the age of 15.<sup>19</sup> One in six women and one in nine men experienced physical and/or sexual violence and abuse before the age of 15, indicating the significant impact on children.

30. Some groups are more vulnerable to FDSV and may experience greater impacts or have reduced options for support. In 2016–17, Indigenous females aged 15 and over were 34 times as likely to be hospitalised for family violence as non-Indigenous females.<sup>20</sup> When compared with people without disability, people with disability were 1.8 times as likely to have experienced physical and/or sexual violence from a partner in the previous year.<sup>21</sup> Lesbian and bisexual women also experience more physical, sexual and emotional abuse than exclusively heterosexual women.<sup>22</sup>

31. Australia's *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan) sets out a framework for action by all Australian governments to reduce FDSV. Successive governments have made significant investments under the National Plan. This includes funding for frontline services, prevention, behaviour change programs, safe accommodation, the 1800RESPECT national free telephone and online counselling service for FDSV support, and data collection.<sup>23</sup>

32. The Fourth Action Plan 2019-2022 of the National Plan recognises that in order to stop the cycle of violence, primary prevention is key. It also recognises that FDSV affects particular groups of women and children disproportionately and acknowledges the need to tailor initiatives to diverse lived experiences.

33. To support Aboriginal and Torres Strait Islander women and children, the Australian Government is providing funding for: Family Violence Prevention Legal Services;

activities that encourage men to be positive role models; community-led prevention activities; and holistic, intensive family case management, support and counselling.

34. In March 2020, the Council of Australian Governments (COAG) established the Women's Safety Council to coordinate work across jurisdictions on implementation of the Fourth Action Plan and begin development of the next National Plan. A new Women's Safety Taskforce will continue this work when COAG ceases as part of recent reforms. The next National Plan will respond to the changing environment associated with COVID-19, the findings of a parliamentary inquiry into FDSV, and evaluations and research funded under the Fourth Action Plan.

35. In 2017, all Australian state and territory jurisdictions legislated to create a national approach to recognising and sharing information about domestic and family violence protection orders under the National Domestic Violence Order Scheme. The Scheme helps to ensure that the law protects people at risk of violence regardless of where they are in Australia.

36. The Australian Government has entered into a new National Legal Assistance Partnership arrangement with states and territories, which commenced in July 2020. More than \$2 billion over five years will be provided to legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services. This includes \$145.97 million over 5 years specifically directed to frontline legal assistance services for family law and/or family violence.

37. In March 2020, the Australian Government announced a \$150 million domestic violence support package to ensure that women and their children can continue to access supports during the COVID-19 pandemic.

38. In 2015, the Australian Government established the world's first government agency dedicated to online safety, the eSafety Commissioner. In 2016, eSafetyWomen was launched, which aims to empower women to manage technology risks and abuse and provides training for the FDSV sector. Through a process of co-design, the eSafety Commissioner has developed resources with at-risk communities, including initiatives focusing on Aboriginal and Torres Strait Islander women, women with a disability, women from culturally and linguistically diverse backgrounds.

39. In June 2018, in the context of increasing global recognition of the prevalence and harm caused by sexual harassment in workplaces, the then Minister for Women and the AHRC announced the world-first *National Inquiry into Sexual Harassment in Australian Workplaces*. The report was tabled in the Parliament on 5 March 2020. It considers the nature, prevalence and drivers of sexual harassment in Australian workplaces, and the measures required to improve prevention and responses. The Government is considering the report and recommendations.

#### **Implementation of OPCAT and National Preventive Mechanism (NPM)<sup>24</sup>**

40. Upon ratifying OPCAT in 2017, Australia made a declaration to postpone NPM obligations for up to three years. The NPM will consist of a cooperative network of federal, state and territory oversight bodies facilitated by an NPM Coordinator, the Office of the Commonwealth Ombudsman.

41. In 2019, the Office of the Commonwealth Ombudsman reported on Australia's readiness to implement OPCAT. Information was collated from 55 existing oversight bodies that self-assessed against the key features of NPM bodies to provide a summary of existing capacity, potential gaps or overlaps, and areas for improvement. In June 2020, the Human Rights Commissioner published his final report, *Implementing OPCAT in Australia*. The report makes 17 recommendations about how OPCAT should be implemented in Australia following civil society consultations.

42. As at August 2020, the federal government and Western Australia have nominated their NPM inspecting bodies.

43. Due to the spread of COVID-19, the UN Subcommittee on Prevention of Torture (SPT) postponed its visit to Australia. Australia will facilitate a visit from the SPT once it is able to proceed.

#### **Counter terrorism<sup>25</sup>**

44. Protecting Australia's people and interests from threats of terrorism and violent extremism is a core function of government and protects fundamental human rights including the right to life. The Government's countering violent extremism strategy and programs address the drivers of all forms of violent extremism and apply irrespective of religious, ideological or political motive.

45. The Australian Parliament has passed 19 tranches of national security legislation since 2014. Australia's legislative framework contains thresholds and safeguards to ensure powers are proportionate and targeted, including through independent reviews.

46. Oversight bodies also review the activities of agencies. For example, the Inspector General of Intelligence and Security (IGIS) oversees Australia's intelligence agencies, ensuring they act legally, with propriety and respect for human rights.

47. Where appropriate, the Australian Government commissions independent reviews of the National Intelligence Community (NIC), which comprises intelligence agencies and functions across the Australian Government. From 2018-2019, the Comprehensive Review of the Legal Framework of the NIC considered a range of matters including accountability and oversight of NIC agencies. The review presented a classified report to the Australian Government in December 2019, and will provide an unclassified version in the near future.

#### **Human trafficking, slavery and slavery-like practices<sup>26</sup>**

48. Australia has a comprehensive legislative framework that criminalises human trafficking, slavery and slavery-like practices including servitude, forced labour, and deceptive recruiting for labour or services in any industry, and exploitation within intimate relationships. Australia's domestic response to modern slavery reflects its obligations under international instruments to which it is a party and international labour standards. The Australian Government is currently progressing ratification of the *Protocol of 2014 to the Forced Labour Convention, 1930*.

49. The *Modern Slavery Act 2018* established the national Modern Slavery Reporting Requirement, which requires entities in the Australian market with an annual consolidated revenue of over \$100 million to report annually on their actions to address modern slavery risks in their global supply chains and operations. In a world first, the Australian Government is also required to publish annual statements and is preparing the statement for 1 July 2019 to 30 June 2020 detailing its efforts to combat modern slavery risks in government procurement and investments.

50. Under *Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19*, the Australian Government: maintained specialist Australian Federal Police teams to investigate human trafficking and slavery; provided funding to anti-slavery organisations; delivered training to frontline officers; progressed legislative amendments to forced marriage offences; and strengthened vulnerable witness protections. An extensive public consultation process has been undertaken to inform the development of Australia's next five-year *National Action Plan to Combat Modern Slavery 2021-25*.

51. Over 500 victims of human trafficking and slavery have been referred to the Support for Trafficked People Program (STPP) since it commenced in 2004. The STPP includes specialist case management support, accommodation, medical treatment and counselling, social support and referrals to legal and migration advice. In February 2018 the Australian Government announced additional support for victims of forced marriage.

52. Australia is taking a global leadership role and works collaboratively with other countries in our region and beyond to combat human trafficking and slavery. Australia co-chairs with Indonesia the *Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime* and launched the ASEAN-Australia Counter-Trafficking

initiative on 1 August 2019.<sup>27</sup> Australia also co-convened the Financial Sector Commission on Modern Slavery and Human Trafficking from 2018 to 2019.

53. In 2016, the Australian Government established the Migrant Workers' Taskforce which identified proposals to more effectively address migrant worker exploitation. The Final Report was released in March 2019. The Australian Government has accepted in-principle all 22 recommendations and established a Migrant Workers Interagency Group to oversee whole-of-government implementation. Significant progress continues to be made including a commitment by the Australian Government to introduce criminal sanctions for the most serious forms of workplace exploitation, and boosting education and information initiatives for migrant workers and international students.

## **B. Rights of Aboriginal and Torres Strait Islander peoples<sup>28</sup>**

54. Australia is proud to be home to the oldest continuous culture on Earth and supports the UN Declaration on the Rights of Indigenous Peoples, sharing the underlying commitment to work in partnership with Indigenous Australians to deliver real and lasting improvements for Indigenous peoples and their communities.<sup>29</sup> Since 2015 there have been improvements in health, education, birth registration, cultural heritage rights and progress on Indigenous involvement in Indigenous issues. However, challenges remain in achieving equality in health, life expectancy and educational attainment; and reducing contact with the justice system and removal of children.

### **Indigenous voice, constitutional recognition, treaty processes and truth telling<sup>30</sup>**

55. Like all other adult Australians, Indigenous Australians are able to participate fully in Australia's democratic processes (and hence in the protection of Australians' human rights) by voting in elections and standing as candidates for elected office. Australia's Minister for Indigenous Australians (a Cabinet post) is the Hon Ken Wyatt MP, an Indigenous Australian. In 2010, he was the first Indigenous Australian to be elected to Australia's House of Representatives.

56. A stronger voice in legislation and decision-making was identified as a priority during a series of First Nations dialogues with over 1200 Aboriginal and Torres Strait Islander delegates on constitutional recognition held by the Referendum Council in 2017. These dialogues culminated in the Uluru Statement from the Heart, developed by 250 Indigenous representatives from across Australia, which also identified government treaties with Indigenous Australians and truth-telling about the past as key priorities. The Australian Government is committed to a co-design process to articulate the details of an Indigenous 'voice', and stage one of this process is underway with co-design groups focused on developing local/regional and national elements of a 'voice'.<sup>31</sup>

57. The work of the Referendum Council is part of a significant body of work undertaken to frame proposals for constitutional recognition since the Australian Government initiated the Expert Panel on Constitutional Recognition (2012) and the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015). The Australian Government remains committed to recognising Indigenous Australians in the Constitution and will hold a referendum should consensus be reached and it have a strong chance of succeeding.

### **Closing the Gap<sup>32</sup>**

58. Since 2007, the Closing the Gap framework and targets have guided and coordinated national efforts to reduce the disparity in economic, health and education outcomes between Indigenous and non-Indigenous Australians. The latest Closing the Gap report (2020) indicated Australia is on track to meet only two of the seven targets set in 2008.

59. In 2018, 86.4% of Aboriginal and Torres Strait Islander four year olds were enrolled in early childhood education, on course to meet the target of 95% by 2025. The target to halve the gap between Indigenous and non-Indigenous Australians in Year 12 attainment or equivalent by 2020 is also on track. Targets to close the gap in school attendance and halve



the gap in reading, numeracy and employment by 2018 were not met, although the gap narrowed across all year levels and there has been improvement in reading and numeracy. The target to halve the gap in child mortality rates by 2018 has progressed, but not sufficiently to meet the target. The national Indigenous employment rate has remained stable against the target to halve the gap by 2018. The target to close the gap in life expectancy by 2031 is not on track.

60. The Australian Government has acknowledged the need to do better. In 2018, Australian governments committed to a formal partnership with Aboriginal and Torres Strait Islander people to refresh the Closing the Gap framework.

61. In March 2019, the historic partnership on Closing the Gap 2019-2029 between all Australian governments, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks) and the Australian Local Government Association came into effect. The partnership includes a Joint Council on Closing the Gap comprising 12 Aboriginal and Torres Strait Islander representatives nominated by the Coalition of Peaks, alongside ministerial-level representatives of Australian governments. The partnership recognises that shared decision making with Aboriginal and Torres Strait Islander peoples, through their representative organisations, in the design, implementation, monitoring and evaluation of the National Agreement on Closing the Gap is essential to improving life outcomes for Aboriginal and Torres Strait Islander peoples.<sup>33</sup>

62. The new National Agreement came into effect on 27 July 2020. It is underpinned by four priority reforms to change the way Australian governments work with Indigenous Australians and is supported by 16 socio-economic targets to improve outcomes in education, employment, health and wellbeing, justice, safety, housing, land and waters, and languages. The priority reforms will protect, and support the strengthening of, Aboriginal and Torres Strait Islander cultures through: formal partnerships and shared decision making; building the Community-Controlled Sector to deliver services to close the gap; systemic and structural transformation of mainstream government organisations to improve accountability and respond to need; and shared access to data and information at a regional level. Four additional targets – on family violence, access to information, community infrastructure and inland waters – will be developed over the next year.

#### **Improving education and health outcomes for Indigenous Australians<sup>34</sup>**

63. Several measures have been introduced to improve education outcomes for Indigenous Australians. In 2014, the Australian Government introduced needs-based school funding which includes a loading for schools with Aboriginal and Torres Strait Islander students. Targeted funding is also provided through the Indigenous Advancement Strategy Children and Schooling Program to improve attendance and outcomes from early childhood to tertiary education.<sup>35</sup> In 2020, the new Indigenous Youth Education Package will fund secondary scholarships, mentoring projects and boarding and residential facilities for over 20,000 students. The Australian Government's Connected Beginnings program also integrates early childhood, maternal and child health, and family support services with schools in selected Aboriginal and Torres Strait Islander communities to better prepare children for school.<sup>36</sup>

64. The Implementation Plan of the *National Aboriginal and Torres Strait Islander Health Plan 2013-23*, which guides policies and programs to improve health, includes goals to be achieved by 2023 for 20 indicators. An update in July 2019 shows 12 are on track, 6 are not on track, and 2 are not currently possible to assess. The goals regarding antenatal care, smoking and immunisation for children aged one and 5 years are on track. While the proportion of the Aboriginal and Torres Strait Islander population receiving an annual health assessment keeps increasing, the goals for some age groups are falling short of the trajectory required to meet the goals. A suite of communication materials has been developed to increase awareness of the available health checks.<sup>37</sup>

65. The Australian Government funds a national network of approximately 140 Aboriginal Community Controlled Health Services and around 40 other providers to deliver free, comprehensive, culturally appropriate primary health care for Aboriginal and Torres Strait Islander people.

66. For people living in rural and remote areas, the Australian Government is expanding access to appointments with doctors and specialists via video-conference or telephone. Further telehealth services have been made available during COVID-19. States and territories also provide assistance to isolated patients for the cost of travel and accommodation to see a medical specialist.<sup>38</sup>

67. Preventing mental health issues and suicide is a national priority, particularly for Indigenous Australians for whom the rates of suicide are almost twice as high as non-Indigenous Australians. Suicide is a leading cause of death for both Indigenous and non-Indigenous children and young people. The *Fifth National Mental Health and Suicide Prevention Plan (2017-2022)* includes Indigenous Australians as a key priority. The Australian Government has Indigenous-specific mental health strategies and funds suicide prevention programs, including:

(a) the Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention, which receives advice from an Indigenous Australian advisory group;

(b) Gayaa Dhuwi (Proud Spirit) Australia to develop a revised *National Aboriginal and Torres Strait Islander Suicide Prevention Strategy* for culturally appropriate care;

(c) 12 national Suicide Prevention Trial sites, with two of these sites (Darwin and the Kimberley) targeted at Aboriginal and Torres Strait Islander people; and

(d) The establishment of an Indigenous Mental Health and Suicide Prevention Clearinghouse to improve the evidence base.

#### **Reducing incarceration of Aboriginal and Torres Strait Islander peoples<sup>39</sup>**

68. Aboriginal and Torres Strait Islander peoples account for 28% of the prisoner population in Australia, while accounting for 3.3% of the general population.<sup>40</sup> Indigenous women represent 33% of the total female prisoner population.<sup>41</sup> Recent inquiries have sought to identify strategies to address this overrepresentation.

69. State and territory governments, which hold responsibility for justice systems, are taking steps to reduce Indigenous incarceration. For example, expanding on work from previous partnerships, the Australian Capital Territory entered into a formal agreement (2019-28) with the Territory's Aboriginal and Torres Strait Islander community to reduce the incarceration rate by adopting a focus on connection to community, life-long learning, economic participation, health and wellbeing, and housing.

70. The Northern Territory is developing its first Aboriginal Justice Agreement in partnership with Aboriginal Territorians informed by data, research and extensive consultations, including with Aboriginal children, young people and their families. The Territory has committed funding to trial alternative to custody models at two on-country, community-operated residential facilities offering tailored rehabilitation services.

71. Western Australia has introduced several initiatives to reduce Aboriginal imprisonment rates including improved access to bail and rehabilitation, increasing flexibility for non-custodial sentences, diverting low level offenders, strengthening post-release supervision and support, and improving police training and accountability.

#### **Aboriginal deaths in custody**

72. In October 2018, the Australian Government commissioned an independent review into the implementation status of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1991). The review found 78% of 339 recommendations have been fully or mostly implemented, 16% partially implemented and 6% have not been implemented. Many aspects of the recommendations partially or not implemented have been superseded by subsequent government actions and policies. Areas where the recommendations have not been implemented in full relate to the intensity of reporting on progress of implementation and reporting on data on deaths in police custody.

73. A key recommendation was establishing Custody Notification Services (CNS) which place a duty on police to contact the Aboriginal Legal Service, or equivalent,

immediately on detaining an Aboriginal or Torres Strait Islander person. In 2016, the Australian Government offered to fund legislated CNS in each state and territory for three years. To date, federal-funded CNS are operational in New South Wales, Australian Capital Territory, Northern Territory and Western Australia, with CNS soon to be established in Victoria and South Australia.

#### **Support for people living on country<sup>42</sup>**

74. Aboriginal and Torres Strait Islander peoples have been caring for the land and water for thousands of years. The *Native Title Act 1993* protects and establishes processes for the recognition of pre-existing native title rights. Under this Commonwealth law, native title has been determined to exist over 39.9% of all land in Australia, including 13.6% subject to exclusive native title.<sup>43</sup> 51.5% of all land in Australia now has a recognised Indigenous interest under Commonwealth and state and territory regimes. Traditional owners are looking for ways to use their native title interests for social, cultural or economic benefit. In October 2019, the Australian Government introduced the Native Title Legislation Amendment Bill 2019 into the Australian Parliament. If enacted, this bill would amend the *Native Title Act 1993* to better support native title agreement-making, the sustainable management of native title land post-determination, and make practical improvements to ensure the ongoing effectiveness of the native title system.

75. The Australian Government invests in remote communities and supporting people to live on country through the Indigenous Advancement Strategy (IAS) and programs that improve participation in education, training and the market economy; reduce dependence on welfare; promote social engagement; and recognise Indigenous Australians' cultural connections to their land. Following a performance audit of the IAS in 2017, the Australian Government released the IAS Evaluation Framework to ensure high-quality, ethical, and inclusive evaluations to inform effective policy and decision making.

76. Other key initiatives include the Indigenous Rangers Program (IRP) and Indigenous Protected Areas (IPAs). The IRP began in 2007 as an arrangement between the Australian Government and Aboriginal and Torres Strait Islander peoples to work on country. Today it creates employment, training and career pathways for Indigenous Australians in land and sea management. Over 2,900 full-time, part-time and casual positions are funded for Indigenous Australians to work on land and sea country.

77. IPAs are areas of land and sea managed by Indigenous groups through voluntary agreements with the Australian Government. There are 75 dedicated IPAs across approximately 67 million hectares, equating to more than 44% of formally recognised parks, reserves and protected areas across Australia. There are 18 new IPAs under development.

78. The Australian Government recognises that challenges remain in the provision of housing for Indigenous Australians living in remote and very remote areas. Severe overcrowding, a form of homelessness, is greatest in remote regions. The Australian Government has made a substantial investment in remote housing over the last 12 years and is working with state and territory governments to ensure the housing needs of Indigenous Australians are met.

#### **Birth registration<sup>44</sup>**

79. Recognising barriers to registration exist for some Aboriginal and Torres Strait Islander people, states and territories, who hold responsibility for birth registration, are taking steps to assist Indigenous Australian families to register children at birth.

80. For example, the Northern Territory provides birth registration without parents having completed birth registration statements, resulting in a relatively low number of unregistered births. The Australian Government supported the Indigenous-led Pathfinders National Aboriginal Birth Certificate Program which funded 7500 free birth certificates between 2015 and 2017 in Queensland, New South Wales and Victoria.

81. Several states have recorded an increase in the percentage of Aboriginal and Torres Strait Islander births that are registered in recent years, including New South Wales where a 53% increase was recorded from 2017–2018.

#### **Aboriginal and Torres Strait Islander women<sup>45</sup>**

82. The Australian Government is working in partnership with the Aboriginal and Torres Strait Islander Social Justice Commissioner to deliver the Wiyi Yani U Thangani (Women's Voices) project. The Commissioner has consulted extensively with Aboriginal and Torres Strait Islander women and girls to explore their needs, challenges and aspirations and to hear their solutions to issues such as racism and trauma. The report is forthcoming.

#### **Cultural heritage<sup>46</sup>**

83. All Australian states and territories have legislative protection for Aboriginal and Torres Strait Islander cultural heritage and archaeology. Victoria amended its Aboriginal cultural heritage law in 2016 to recognise protection for Aboriginal intangible heritage, including language, traditional knowledge and arts, consistent with both the Declaration on the Rights of Indigenous Peoples and the Convention for the Safeguarding of the Intangible Heritage. Western Australia is introducing new legislation to replace the current Aboriginal Heritage Act 1972 to empower Aboriginal voices, expand the definition, improve protection, and deliver better decisions for the management and protection of Aboriginal cultural heritage in the state.

#### **Removal of children<sup>47</sup>**

84. Australian governments are committed to eliminating the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care when safe to do so. Between 2015 and 2019, the rate of Aboriginal and Torres Strait Islander children in out-of-home care rose from 48.1 to 54.2 per 1,000 children, nearly 11 times the rate of non-Indigenous children.<sup>48</sup>

85. The first priority under the Fourth Action Plan 2018-2020 of the *National Framework for Protecting Australia's Children 2009-2020* (see Section C below) is to improve outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or in contact with, child protection systems. The Fourth Action Plan aims to improve Indigenous Australian participation in decision-making and support the expansion and development of Aboriginal Community Controlled Organisations to deliver family support and child protection services. The Australian Government provides funding for the Aboriginal and Torres Strait Islander Working Group, which provides feedback, advice and expertise on issues relating to the Fourth Action Plan.

86. A key achievement is improved implementation of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (prevention, partnership, placement, participation and connection) which aims to keep children connected to their families, communities, cultures and country while ensuring Aboriginal and Torres Strait Islander people participate in decisions about their children's care and protection.

87. The *National Plan to Reduce Violence against Women and their Children* and the IAS also include initiatives to address factors that lead to the removal of children and improve overall health, wellbeing and safety of communities.

### **C. Rights of children<sup>49</sup>**

88. State and territory governments are responsible for delivering many of the programs and services that give effect to Australia's obligations under the Convention on the Rights of the Child, including education, health, youth justice and child protection. Each jurisdiction within Australia has a Children's Commissioner or advocate, who is able to independently monitor, promote and protect children's rights. Australia has had a National Children's Commissioner since 2013, with a new Commissioner appointed in 2020.

89. The Australian Government recognises that challenges remain with respect to protecting children from violence, abuse and neglect and reducing the rates of children in out-of-home care, particularly for Aboriginal and Torres Strait Islander children. Governments are undertaking significant work to address these issues.

#### **Child safety<sup>50</sup>**

90. The Australian Government is working alongside state and territory governments and the community sector to implement the *National Framework for Protecting Australia's Children 2009-20* to reduce child abuse and neglect. Key achievements since 2015 under the Third (2015-18) and Fourth (2018-20) Action Plans include:

- (a) The Aboriginal and Torres Strait Islander Child Placement Principle (as above);
- (b) The National Principles for Child Safe Organisations which drive a nationally consistent approach to child safety and wellbeing across all sectors; and
- (c) The National Child Protection Information Sharing solution which improves cross-jurisdictional information sharing.

91. Despite government efforts, the number of children in out of home care has remained consistent over the last five years. The Australian Government is working with stakeholders, including the National Children's Commissioner, to design a new strategy to replace the National Framework which ends in June 2021. This will provide an opportunity to reflect on Australia's appearance before the Committee on the Rights of the Child in 2019 and consider how children's voices are heard in decisions that affect them. The 2020 evaluation of the National Framework will also inform the new Framework.

92. The Royal Commission into Institutional Responses to Child Sexual Abuse, established by the Australian Government in 2013, delivered its final report in December 2017 including 409 recommendations on how to prevent and better respond to child sexual abuse in institutions. Australian governments have made significant progress in implementing the recommendations. Annual progress reports are published online.

93. In response to the Royal Commission's recommendations, the Australian Government established the National Office for Child Safety in 2018 to provide national leadership on the development and implementation of initiatives to enhance child safety, with a focus on preventing child sexual abuse. The Office reports to the Prime Minister. Key initiatives include the National Principles for Child Safe Organisations, Commonwealth Child Safe Framework and development of a National Strategy to Prevent Child Sexual Abuse.

94. The Australian Government also committed funding to establish the National Centre for the Prevention of Child Sexual Abuse and worked with state and territory governments to establish nationally consistent parameters for screening persons who propose to engage in child-related work through the National Standards for Working with Children Checks.

95. Since 2015, the Australian Government has passed several laws that strengthen the federal framework of offences relating to overseas child sexual abuse, forced marriage, online child sexual abuse and new trends in child sexual abuse material and activity.<sup>51</sup> The eSafety Commissioner's programs include a cyberbullying scheme for Australian children under 18; an image-based abuse scheme for Australians of all ages; and Cyber Report, which investigates illegal and harmful content and prioritises investigations into child sexual abuse material. In 2018, the Australian Government also established the Australian Centre to Counter Child Exploitation (ACCCE) to drive a collaborative national response to child exploitation and abuse in Australia.

#### **Juvenile justice and youth detention<sup>52</sup>**

96. State and territory governments recognise the importance of maintaining separate places of detention for children and adults, ensuring this separation in the vast majority of circumstances.

97. Australian governments are working to improve the protection of children within juvenile justice systems and youth detention facilities. For example, in response to reports of serious abuse of detainees in a Northern Territory detention centre, the Australian and Northern Territory governments established a Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, which delivered its final report and 227 recommendations in November 2017. At 20 July 2020, of the 218 recommendations that were the responsibility of the Northern Territory, 152 were complete, 63 were underway, and 3 were not yet started (these require the completion of other actions before they can be addressed). The Australian Government supported the majority of the 28 recommendations for which it has sole or joint responsibility: eight are complete or require no further action; 13 are on track; five have been directed to, or are dependent on, the Northern Territory Government. The Australian Government will continue to work with relevant stakeholders to implement the recommendations.

#### **Age of criminal responsibility<sup>53</sup>**

98. In all Australian jurisdictions, the minimum age of criminal responsibility is currently 10 years. There is a rebuttable presumption that a child aged between 10 and 14 is not criminally responsible, meaning the prosecution must prove beyond reasonable doubt that the child knew their conduct was wrong (called *doli incapax*). Noting that each jurisdiction is responsible for its own legislated minimum age of criminal responsibility, the Council of Attorneys-General established a cross-jurisdictional working group in November 2018 to consider whether the age should be raised. On 27 July 2020, the Council of Attorneys-General noted the need for further work before a decision on any change to the age is made, including provision of adequate processes and services for children who exhibit offending behaviour. The Northern Territory has separately committed to raising the age of criminal responsibility to 12 years.

## **D. Rights of women**

#### **Gender equality, pay equity and women's economic security<sup>54</sup>**

99. The Australian Government has released a 2020 Women's Economic Security Statement (WESS). The 2020 Statement refreshes the 2018 WESS, which provided \$119 million over four years (2018–19 to 2022–23) for 17 initiatives including: increasing the flexibility of paid parental leave; supporting women to continue their careers after caring-related breaks; reinstating the Time Use Survey to assist in measuring women's economic security; and improving Workplace Gender Equality Agency (WGEA) data collection.

100. The WGEA promotes gender equality in Australian workplaces, providing advice and assistance to employers and assessing workplace gender data. Six-year longitudinal data shows a strong increase in employer action on gender equality, resulting in improvement of gender equality outcomes. There has also been growth in the number of women moving into management roles and increased employer commitment to promoting flexible work.

101. Prior to COVID-19, the gender pay gap in Australia was heading in the right direction. In November 2019 it had fallen to a record low of 13.9%.<sup>55</sup> By May 2020 it had widened to 14.0%. The Australian Government is taking a holistic approach to address the complex drivers of the gender pay gap. This includes measures to support women to access industries where they are currently underrepresented, such as STEM-based sectors, and increase their participation in paid work.

102. An independent Retirement Income Review considered the current state of the system and how it will perform in the future, including for women. The Review was handed to Government in July 2020.

103. The Australian Government is closely monitoring and responding to the gender-specific effects of the COVID-19 pandemic. As Australia's economy reopens, there will be opportunities to address gender inequalities and barriers to women's full participation in Australian society and the economy.

## E. Rights of persons with disabilities<sup>56</sup>

104. The *National Disability Strategy 2010-2020* (NDS) is Australia's overarching policy framework and key mechanism for driving inclusive policy and program design across all levels of government in line with the Convention on the Rights of Persons with Disabilities (CRPD).<sup>57</sup> Federal, state and territory governments collectively provided around \$47 billion in 2019–20 to support the six NDS outcome areas: inclusive and accessible communities; rights protection, justice and legislation; economic security; personal and community support; learning and skills; and health and wellbeing.

105. All levels of government are working to develop a new NDS planned for release in mid-2021. The new NDS will build on the achievements of the current Strategy and have a focus on implementation and improved measurement of outcomes. Previous reviews of the NDS and the 2019 concluding observations from the Committee on the Rights of Persons with Disabilities will inform this work. A second stage of public consultation in 2020 will ensure that people with disability are at the centre of design of the new strategy.

106. Australia has been progressively implementing the National Disability Insurance Scheme (NDIS) to improve support for Australians with significant and permanent disability, their families and carers. Based on an insurance rather than a welfare methodology, the NDIS represents a critical departure from previous approaches where governments funded service providers directly. The NDIS aims to give people with permanent and significant disability choice and control by providing funding directly to individuals to purchase services and supports that are reasonable and necessary to achieve their goals and aspirations.

107. As at June 2020, there were more than 390,000 people supported by the NDIS, with almost 175,000 of those participants receiving disability supports for the first time. The National Disability Insurance Agency (NDIA), the agency established to implement the NDIS, is developing methods to involve people with disability in decision-making, including a bi-monthly forum between disability peak and advocacy organisations and the NDIA.

108. The NDIS Quality and Safeguards Commission was established in 2018 to improve the quality and safety of NDIS supports and services, respond to complaints and incidents, regulate service providers and monitor compliance against conduct and practice standards.

### Workforce participation<sup>58</sup>

109. The Australian Government is committed to changing negative attitudes and removing barriers preventing Australians with disabilities and older persons from participating fully in the labour market. In 2016, the former Age and Disability Discrimination Commissioner released the *Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability* report which contained 56 recommendations for employers and government. To implement the recommendations, the Australian Government has reformed the Disability Employment Services (DES) program to improve accountability and outcomes, and provide user-friendly information about the program to people with disability. DES provides specialist employment assistance to over 272,000 participants in Australia. Over 46% of participants are women.

110. JobAccess provides a national information hub for people with disability, employers and service providers and connects people with free government disability employment supports. The NDIS Participant Employment Taskforce was also established to connect NDIS participants to supports to seek and maintain employment.

### Violence against people with disabilities<sup>59</sup>

111. In 2015, the Senate Community Affairs References Committee released its report into violence, abuse and neglect against people with disabilities in institutional and residential settings. The report informed the development of the NDIS Quality and Safeguarding Framework (2017), which provides a nationally consistent approach to

responding to complaints and reportable incidents, worker screening and the use of restrictive practices.

112. In recognition of serious concerns raised regarding violence against people with disabilities, the Australian Government established the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* in April 2019.<sup>60</sup> The Royal Commission is inquiring into all forms of violence against, and abuse, neglect and exploitation of people with disability in all settings and contexts. The Terms of Reference expressly refer to Australia's international obligations under the CRPD. The Royal Commission commenced public hearings in September 2019. An interim report is due by 30 October 2020, and a final report by 29 April 2022.

113. The Australian Government recognises that women with disability are at a heightened risk of gender based violence when compared with other women, and that the abuse may be more severe and persistent. The Terms of Reference for the Royal Commission direct Commissioners to have regard to how specific experiences are influenced by sex, gender, gender identity, sexual orientation, intersex status, age, ethnic origin and race, and the particular situation of Aboriginal and Torres Strait Islander and culturally and linguistically diverse people.

#### **Detention of persons with disabilities<sup>61</sup>**

114. All Australian governments recognise that effective access to justice for persons with disabilities is crucial in ensuring that their rights are respected. Australia is committed to ensuring that no one in Australia is deprived of their liberty on the sole basis of their disability. However, the Australian Government recognises there are particular challenges in relation to the treatment of people with cognitive disability and mental health impairments in the criminal justice context. This is an area of ongoing review and reform.

115. In 2015, a cross-jurisdictional working group developed the National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles).<sup>62</sup> The National Principles recognise the rights of persons with cognitive or mental health impairment, and seek to identify safeguards throughout legal processes and when a person is subject to orders. Several principles address the risk of indefinite detention for persons with disabilities. The National Principles have been endorsed by all states and territories except South Australia.

116. States and territories have a number of supports available for people with disabilities who are at risk of entering the criminal justice system and provide support to those charged with an offence, including considering alternatives to incarceration. For example, in 2019, New South Wales introduced the Justice Advisory Service which provides a support person to adults and young people with cognitive impairment in contact with the criminal justice system.

## **F. Asylum-seekers and refugees**

117. Australia's Humanitarian Program is set at a ceiling of 13,750 places in 2020–21. The Government is committed to ensuring the best possible settlement support for new and recent humanitarian entrants during the COVID-19 economic downturn. Australia remains one of the most generous humanitarian resettlement countries in the world, maintaining our long-term commitment to humanitarian resettlement. Australia continues to offer one of the largest resettlement programs on both an absolute and per capita basis. The grant of offshore humanitarian visas was largely de-prioritised in March 2020 as part of the Government's efforts to limit the entry and spread of COVID-19.

118. The Australian Government's 2015 UPR commitment to make an additional 12,000 Humanitarian Program places available in response to the conflicts in Syria and Iraq has been fully delivered.<sup>63</sup> Australia also provided humanitarian assistance to almost 240,000 Syrian internally displaced persons, refugees and neighbouring country host communities. Longer-term resilience support for Jordan and Lebanon was also provided, focused on improving education and livelihood opportunities for refugees and their host communities.



119. Australia strongly focuses on providing resettlement for vulnerable women and children. For 2019–20, the Australian Government has set a target of 20% of humanitarian visas granted outside of Australia for this group, up from 15% in 2018-19, including a small number of places for unaccompanied minors. In 2018–19, almost 40% of humanitarian visas were granted to people aged 0 to 17 years old. This age group has been granted the greatest proportion of humanitarian visas in each year from 2013–14 to 2018–19.<sup>64</sup>

120. Australia has, for many years, resettled LGBTIQ+ refugees at heightened risk of harm. In the 2019-20 Humanitarian Program, a target of at least 100 places was introduced.

121. The Department of Home Affairs Child Safeguarding Framework, revised in 2019, outlines how the Department will protect children in the delivery of immigration programs. The Framework aligns with the Commonwealth Child Safe Framework which references the Convention on the Rights of the Child.<sup>65</sup> The Department screens suitable staff and contracted service providers, and provides relevant Government workers with information and training on child safeguarding and wellbeing.<sup>66</sup>

122. Australia takes seriously its human rights obligations, including the rights of personal liberty and freedom from arbitrary detention. The Australian Government also takes seriously its responsibility to the Australian people to administer an orderly migration system, which is an essential facet of national sovereignty. A non-citizen who does not hold a valid visa is an unlawful non-citizen and must be detained under the *Migration Act 1958* (Cth). Whether the person is placed in an immigration detention facility is determined using a risk-based approach. Since 2008, Australian Government policy has required that held detention (in an immigration detention centre) be a last resort for the management of unlawful non-citizens.

123. Under the Migration Act, detention is not limited by a set timeframe; rather, it ends when the person is either granted a visa or is removed from Australia. Assessments are completed as expeditiously as possible to minimise timeframes for immigration detention.<sup>67</sup> The Australian Government facilitates and maintains detainees' access to legal representatives to enable individuals to progress resolution of their immigration status efficiently. Australia does not return individuals to situations where doing so would be inconsistent with our international protection and non-refoulement obligations.<sup>68</sup>

124. Immigration detention of children is always a last resort and children are detained for the shortest practicable time.<sup>69</sup> It is the Australian Government's policy that children are not held in immigration detention centres. In the event that a child is detained, they are accommodated in alternative places of detention such as immigration residential housing precincts designed for families, or in the community under a residence determination. In some circumstances, including airport turnarounds or where there are criminal or security issues, children may transit through held immigration detention.

125. The Australian Government's immigration detention network is subject to independent scrutiny by a range of bodies,<sup>70</sup> with reports treated seriously and all recommendations considered.<sup>71</sup> The Commonwealth Ombudsman has been visiting immigration detention facilities since 2004, and has been regularly inspecting them since 2010. The Commonwealth Ombudsman, as the NPM coordinator and Commonwealth inspecting body under Australia's OPCAT obligations, has a broad mandate which includes review of immigration detention facilities.

126. Regional processing arrangements and individuals under those arrangements are the responsibility of the Governments of Nauru and Papua New Guinea (PNG). Australia continues to support the Governments of Nauru and PNG to implement regional processing arrangements, including through contracting specialist providers to deliver services. No transferees under regional processing arrangements in Nauru and PNG are in detention. Regional processing arrangements in Manus Province, PNG have ended and transferees now reside in the PNG community in Port Moresby.

#### **Access to health care and education for asylum seeker and refugee children<sup>72</sup>**

127. Children residing in the community on bridging visas have access to health services, including by general practitioners and the public hospital system. For certain bridging visa

holders, including asylum seeker children, this includes eligibility for Medicare. Healthcare services for children under a residence determination are comparable to those available to the Australian community. In situations where children are placed under a residence determination, service providers are contracted to provide age-appropriate health, education, recreational, and cultural services. Children both in immigration detention and in the community have access to necessary health services. All states and territories in Australia have publicly advised that they will waive out-of-pocket expenses for patients with various visa statuses, including children on bridging visas, for COVID-19 related diagnosis and treatment.

128. All school-age children, regardless of their immigration status, disability or learning needs, are provided access to education consistent with Australian community standards and legislation while their immigration status is being resolved.

## **G. Sexual orientation, gender identity and intersex status**

129. In December 2017, the Australian Parliament passed legislation to amend the *Marriage Act 1961* (Cth) to allow for same-sex marriage. This took place as a result of a democratic plebiscite in which every adult Australian was given the opportunity either to support or to oppose the proposed change to the law. Over 12 million Australians (almost 80% of the eligible voting population) participated in the plebiscite, with over 60% voting in favour of the change to the law. Foreign same-sex marriages are also legally recognised in Australia.<sup>73</sup>

130. Separately, work had been undertaken to protect people from discrimination on the basis of sexual orientation, gender identity and intersex status through amendments to the *Sex Discrimination Act 1984* in 2013. At the time, states and territories were granted temporary exemptions from complying with these protections to facilitate amendment of their laws. These exemptions ceased between July 2016 and July 2017.<sup>74</sup>

131. There has been legislation in some states and territories to prohibit vilification on the grounds of sexual orientation, gender identity or intersex status.

## **H. Rights of older Australians<sup>75</sup>**

132. Australia is committed to promoting and protecting the rights of older people internationally and at home. Australia has been engaged with the work of the UN Open Ended Working Group on Ageing and the Independent Expert on the enjoyment of human rights by older persons.

133. In recent years, a number of reviews of aged care have revealed system issues leading to failures of care and regulation across the sector. This led to the establishment of the Aged Care Quality and Safety Commission as the national regulator and point of contact for consumers wishing to raise concerns with their aged care service; the introduction of new aged care quality standards; a single Charter of Aged Care Rights; the development of a Serious Incident Response Scheme; and the consideration of reforms to enduring power of attorney laws.

134. In 2018, the Australian Government also established the Royal Commission into Aged Care Quality and Safety, which is inquiring into the full extent of issues in residential and in-home aged care. The Commissioners delivered an interim report in October 2019, which does not make specific recommendations, but highlights the need for urgent action to reduce waiting times for Home Care Packages, address the overuse of chemical restraint in aged care and stop the flow of younger people with disability into residential aged care. In November 2019, the Government announced \$537 million funding to respond to the interim report and its identified priority areas. The final report is due by 26 February 2021.

135. In response to recommendations made in an Australian Law Reform Commission Report, the Australian Government launched the *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*. Funding has been allocated to trial and evaluate specialist elder abuse units, health-justice partnerships, case management, and

mediation, and to conduct Australia's first prevalence study on elder abuse. The Australian Government also established an Elder Abuse Phone Line and information resources to help the community identify elder abuse and protect older Australians.

136. Under the More Choices for a Longer Life package, the Australian Government is increasing funding for senior Australians by \$7 billion over five years. The package contains 42 measures including measures to improve: workforce participation; early planning relating to health, work, finances and social connectedness; and access to health, mental health and aged care services.

137. In response to the COVID-19 pandemic, the Australian Government has announced a substantive package of measures that directly support Australia's seniors, including those in aged care.

## V. New and emerging issues

### Australian government response to COVID-19

138. The Australian Government acknowledges the ongoing impact of the COVID-19 pandemic on human rights. Australia remains concerned by the pandemic's disproportionate effect on vulnerable groups and continues to closely monitor and respond to issues as they arise in a manner that is proportionate to the level of risk and consistent with human rights.

139. Australia's response to COVID-19 is led by the National Cabinet, which includes the Prime Minister and First Ministers from each state and territory. The National Cabinet is supported with expert medical advice from the Chief Health Officers from each state and territory, the Australian Chief Medical Officer and representatives from government departments.

140. An Aboriginal and Torres Strait Islander Advisory Group on COVID-19 was established to develop and deliver a Management Plan for Aboriginal and Torres Strait Islander Populations, and to implement the Australian Health Sector Emergency Response Plan.

141. The Australian response includes a range of measures to mitigate the health, social and economic impacts of COVID-19, including a boost to telehealth and mental health services, domestic violence support, and social security.

142. The Australian Government has implemented a \$305 billion COVID-19 economic support package, which represents the largest fiscal response in Australian history. Central to the response was the JobKeeper Payment to keep Australians employed and an Early Childhood Education and Care Relief Package to support child care services to remain open and to provide free child care for those families who need it. The Australian Government has also been working to connect the significant number of new job seekers to appropriate support.

143. A \$200 million Community Support Package is providing funding to charities and community organisations delivering emergency relief, food relief, financial counselling and no interest loans. This includes \$13 million to support temporary visa holders to access emergency relief services to December 2020.

144. Information and factsheets relating to health and economic measures and business resources were quickly translated into 63 languages other than English and widely distributed through to multicultural community organisations. The Australian Government also launched a Strengthening Social Cohesion information campaign to support the multicultural communities most affected by COVID-19 related racism.

145. To support people with disability, the Australian Government is implementing a range of measures including establishing a dedicated Disability Information Helpline; producing accessible advice about COVID-19; and offering advance payments to Disability Employment Services providers. The Australian Government implemented a range of

measures to ensure continuity of support to NDIS participants, including flexible use of funds to purchase low cost assistive technology, priority supermarket delivery and proactive outreach calls to more than 73,000 vulnerable participants to ensure they had the supports they needed. The Government also made more than \$666 million in advance payments to NDIS providers and implemented increased price limits to ensure the viability of NDIS providers and continuity of services to NDIS participants.

146. The Australian Government is committed to the health and safety of detainees and has put in place measures to prevent COVID-19 entering and spreading in immigration detention facilities across Australia.

147. Restrictions to travel, deemed necessary to protect the right to health, are reviewed constantly.

## Notes

- <sup>1</sup> Recommendation 66.
- <sup>2</sup> For further information on Australia's constitutional framework, please refer to Australia's first and second cycle UPR reports.
- <sup>3</sup> The states are New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. The two internal territories are the Australian Capital Territory and the Northern Territory.
- <sup>4</sup> Protected attributes at the federal level include age, disability, sex, race and sexual orientation, gender identity and intersex status. States and Territories have laws preventing discrimination on the basis of these attributes as well as others. Recommendations 117–121, 124 and 126.
- <sup>5</sup> Recommendation 64.
- <sup>6</sup> Voluntary Pledge 5.4 – HRC membership.
- <sup>7</sup> Voluntary Commitment 9 - Second cycle UPR. The website was updated as part of Australia's mid-term UPR review in 2018.
- <sup>8</sup> Recommendations 3–29.
- <sup>9</sup> Voluntary commitment 11 – second cycle UPR.
- <sup>10</sup> Recommendation 60. Australia has submitted reports to and appeared before the Human Rights Committee and the Committees on the Elimination of Racial Discrimination; Economic, Social and Cultural Rights; Elimination of Discrimination against Women; Rights of the Child; and Rights of Persons with Disabilities.
- <sup>11</sup> Special Rapporteur on the situation of human rights defenders (4–18 October 2016); Special Rapporteur on the human rights of migrants (1–18 November 2016); Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (28 November–5 December 2016); Special Rapporteur on violence against women, its causes and consequences (13–27 February 2017); Special Rapporteur on the rights of Indigenous peoples (20 March–3 April 2017).
- <sup>12</sup> Recommendations 61–62.
- <sup>13</sup> Recommendation 63.
- <sup>14</sup> Voluntary Pledge 3.4 – HRC membership.
- <sup>15</sup> Recommendations 130, 132, 133, 135 and 137–140.
- <sup>16</sup> Recommendation 63 and Voluntary Pledge 3.1 – HRC membership.
- <sup>17</sup> Recommendations 125, 128–135, 137–139. Voluntary Pledge 6.7 – HRC membership.
- <sup>18</sup> Recommendations 153–164.
- <sup>19</sup> 2016 Personal Safety Survey.
- <sup>20</sup> Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia 2019*.
- <sup>21</sup> 2016 Personal Safety Survey.
- <sup>22</sup> Australian Institute of Health and Welfare compendium *Family, domestic and sexual violence in Australia: continuing the national story 2019*.
- <sup>23</sup> Voluntary commitment 3 – Second cycle UPR.
- <sup>24</sup> Recommendations 21–27, 200 and 267–268.
- <sup>25</sup> Recommendations 226–227 and 229.
- <sup>26</sup> Recommendations 230–233.
- <sup>27</sup> Recommendation 232; Voluntary Pledge 6.8 – HRC membership. See Annex 3 for further information.
- <sup>28</sup> Recommendations 78–80.
- <sup>29</sup> Recommendations 84–86.
- <sup>30</sup> Recommendations 74–76, 85 and 116. Voluntary Pledges 4.5 and 4.6 – HRC membership.
- <sup>31</sup> Recommendations 88–90.

- 32 Recommendations 93–98.
- 33 Recommendations 88–90.
- 34 Recommendation 167.
- 35 Recommendation 97.
- 36 Recommendations 107–112 and 211.
- 37 Australian Institute of Health and Welfare 2019. Tracking progress against the Implementation Plan goals for the Aboriginal and Torres Strait Islander Health Plan 2013-2023.
- 38 Recommendation 210.
- 39 Recommendations 112, 113 and 203–205.
- 40 As at 30 June 2018.
- 41 Australian Bureau of Statistics, Prisoners in Australia (2019); in 2019 there were 1,158 Indigenous female prisoners nationally.
- 42 Recommendations 76, 92, 93, 99, 100, 103, 105, 107–110, 112, 127 and 136.
- 43 As at July 2020.
- 44 Recommendations 101–102 and 171.
- 45 Recommendations 88–90.
- 46 Recommendations 114–115.
- 47 Recommendations 113 and 122.
- 48 Australian Institute of Health and Welfare in 2020, Child protection Australia 2018-19.
- 49 Recommendations 166 and 169–170.
- 50 Recommendation 168.
- 51 These include the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020*, the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019*, the *Passports Legislation Amendments (Overseas Travel by Child Sex Offenders) Act 2017*, and the *Criminal Code Amendment (Protecting Minors Online) Act 2017*.
- 52 Recommendations 172–173 and 175.
- 53 Recommendations 178–179.
- 54 Recommendations 141–149; 151–152.
- 55 There are multiple gender pay gap measures. This measure is the average weekly ordinary time earnings gender pay gap for full-time adult employees. Data available from: Average Weekly Earnings, Australia, Nov 2019.
- 56 Recommendations 185 and 188. Voluntary Pledge 6.9 – HRC membership.
- 57 Recommendation 186.
- 58 Recommendation 190.
- 59 Recommendations 188, 191.
- 60 Recommendations 197–198.
- 61 Recommendations 192–194 and 196.
- 62 Voluntary commitment 4 – second cycle UPR.
- 63 Voluntary commitment 2 – second cycle UPR.
- 64 Voluntary Pledge 6.6 – HRC membership.
- 65 Recommendation 266.
- 66 Recommendation 234.
- 67 Recommendations 269–272.
- 68 Recommendations 277 and 281–283.
- 69 Recommendations 255–259 and 261.
- 70 These include the Office of the Commonwealth Ombudsman, the Australian Human Rights Commission, the Australian Red Cross and international human rights organisations including the Office of the United Nations High Commissioner for Refugees, Office of the United Nations High Commissioner for Human Rights, and International Committee of the Red Cross.
- 71 Recommendations 254 and 267.
- 72 Recommendation 235.
- 73 Recommendations 220, 222 and 223–224.
- 74 Recommendation 221. Voluntary commitment 7 – Second cycle UPR.
- 75 Voluntary commitment 6 – second cycle UPR.