



Australian
Human Rights
Commission

Information concerning Australia's compliance with the International Covenant on Civil and Political Rights

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE**

18 September 2017

ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

Table of Contents

	Australian Human Rights Commission Submission to the UN Human Rights Committee.....	1
1	Introduction.....	5
2	Priority areas.....	5
3	General information.....	6
3.1	Scrutiny of human rights and the Parliamentary Joint Committee on Human Rights (ICCPR article 2; LOI 2 & 4)	6
3.2	Domestic incorporation (ICCPR article 2; LOI 4).....	7
3.3	Human rights education (ICCPR article 2; LOI 2)	7
4	Prevention of torture (ICCPR articles 7 & 10; LOI 17)	8
5	Aboriginal and Torres Strait Islander peoples.....	8
5.1	UN Declaration on the Rights of Indigenous Peoples (ICCPR article 2; LOI 2).....	8
5.2	Justice system (ICCPR articles 2, 7, 9, 10 & 13; LOI 13, 17 & 18).....	8
5.3	Native title and land rights (ICCPR article 27; LOI 25)	10
5.4	Aboriginal and Torres Strait Islander women (ICCPR articles 2, 3, 7 & 26; LOI 10).....	10
5.5	Democratic participation (ICCPR articles 1, 2, 25, 26 & 27; LOI 23).....	11
	(a) Funding to representative bodies.....	11
	(b) Constitutional recognition	11
5.6	Aboriginal and Torres Strait Islander people with disability (ICCPR articles 2, 7 & 9).....	12
6	Older persons	12
6.1	Elder abuse (ICCPR articles 2, 7 & 9)	12
6.2	Access to work (ICCPR articles 2 & 25(c))	13
7	People with disability	13
7.1	Prisoners and mental health (ICCPR articles 2, 9 & 10; LOI 17).....	13
7.2	Freedom from exploitation, violence and abuse (ICCPR articles 7 & 9; LOI 13).....	14
7.3	Access and democratic participation (ICCPR articles 2, 25 & 26; LOI 22).....	14
7.4	Women and girls with disability (ICCPR articles 2, 3, 7 & 26; LOI 10 & 11).....	15
8	Lesbian, gay, bisexual, transgender and intersex people	15
8.1	Access to stage 2 hormone treatment (ICCPR articles 17 & 26).....	15
8.2	Access to surrogacy (ICCPR articles 2 & 26).....	16
8.3	Anti-discrimination laws (ICCPR articles 2 & 26; LOI 9)	16
8.4	Births, deaths and marriages registration (ICCPR articles 2, 17 & 26)	16
8.5	Involuntary medical interventions (ICCPR articles 7 & 26).....	17
8.6	Marriage equality (ICCPR articles 2 & 26)	17
9	Women.....	18
9.1	Violence against women (ICCPR articles 2, 3, 7 & 26; LOI 10)	18

9.2	Sexual assault and sexual harassment in the workplace and in university settings (ICCPR articles 2, 3, 7 & 26; LOI 10)	18
9.3	Women in defence (ICCPR articles 2, 3 & 26)	19
10	Immigration and citizenship	19
10.1	Refugees and asylum seekers (ICCPR articles 6, 7, 9, 10, 13 & 23; LOI 12, 14 & 15)	19
	(a) Third country processing	19
	(b) Mandatory immigration detention.....	20
	(c) Refoulement	20
10.2	Visa refusals and cancellations on character grounds (ICCPR articles 2, 12 & 13)	21
10.3	Strengthening citizenship requirements (ICCPR articles 2, 12 & 13) ..	22
11	Children and young people	22
11.1	Child protection (ICCPR article 24; LOI 20)	22
11.2	Violence against children and young people (ICCPR articles 7, 9 & 24)	23
11.3	Self-harm (ICCPR articles 7, 9 & 24; LOI 20)	24
11.4	Juvenile justice (ICCPR articles 7, 9 & 24; LOI 20)	24
	(a) Detention	24
	(b) Mandatory sentencing	25
	(c) Minimum age of criminal responsibility	25
12	Rights and freedoms	25
12.1	Freedom of religion (ICCPR articles 18 & 27; LOI 21)	25
12.2	Freedom of expression (ICCPR article 19)	26
	(a) Secrecy laws	26
	(b) Anti-protest laws	26
	(c) Freedom to advocate.....	27
	(d) Inquiries.....	27
13	Racial discrimination (ICCPR articles 20 & 26; LOI 21)	27
14	Counter-terrorism	28
14.1	Independent National Security Legislation Monitor (ICCPR article 2; LOI 7)	28
14.2	Recent measures (ICCPR articles 7, 9, 12, 14, 17 & 26; LOI 7)	29
	(a) Control Orders and Preventative Detention Order regimes	29
	(b) Post-sentence detention.....	29
	(c) 'Stop, search and seize' powers	29
	(d) 'Declared areas' offences	29
	(e) Revocation of citizenship.....	30
	(f) Other measures.....	30
15	Human trafficking and slavery (ICCPR article 7 & 8; LOI 16)	30
16	Business and human rights	31
16.1	National Action Plan on Business and Human Rights (ICCPR article 2)	31
16.2	Modern slavery (ICCPR articles 2 & 8; LOI 2, 4 & 16)	32
	(a) Modern Slavery Reporting Requirement.....	32
	(b) Modern Slavery Act	32

16.3 Procurement (ICCPR articles 2 & 8; LOI 2, 4 & 16).....	32
Attachment 1: Compilation of Recommendations	33
Endnotes.....	40

1 Introduction

1. This submission is made by the Australian Human Rights Commission. The Commission is an 'A status' national human rights institution established and operating in full compliance with the Paris Principles.
2. The Commission has a statutory power to promote and protect human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). The AHRC Act defines human rights as the international instruments scheduled to or declared under the AHRC Act, which includes the *International Covenant on Civil and Political Rights* (ICCPR). Further information about the Commission can be found at www.humanrights.gov.au.
3. The Commission thanks the United Nations Human Rights Committee (the Committee) for the opportunity to provide a written contribution prior to its consideration of Australia's sixth periodic report under the ICCPR. The Commission looks forward to further engaging with the Committee.
4. The Commission congratulates the Australian Government on the steps it has taken to improve Australia's human rights situation following the Committee's concluding observations in respect of Australia's fifth periodic report. However, the primary purpose of this submission is to identify issues of human rights concern.
5. This submission is based on work that has been undertaken by the Commission in accordance with its mandate and functions, or otherwise on publicly available information. The Commission has brought the issues raised in this submission to the attention of the Australian Government.
6. This submission provides information concerning the civil and political rights of key population groups in Australia and other thematic issues engaging civil and political rights. In relation to each section, the Commission has referred to the relevant articles of the ICCPR engaged and (where appropriate) the relevant paragraph of the Committee's list of issues prior to reporting dated 9 November 2012.
7. The Commission's proposed recommendations are contained in the body of this submission and also compiled in **Attachment 1**.

2 Priority areas

8. The Commission considers all of the information and recommendations provided in this submission to be of importance to Australia's compliance with the ICCPR. However, the Commission wishes to draw the Committee's attention to five priority areas of particular importance:
 - The Australian Government's ratification of the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) by December 2017 and progressive implementation immediately thereafter, as discussed in [section 4](#).

- The Australian Government's commitment to adopt national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles, and to resource a national strategy to achieve this, as discussed in [section 5.2](#).
 - The Australian Government's immigration policy (especially as it relates to refugees and asylum seekers), as discussed in [section 10.1](#).
 - All Australian governments' compliance with, and implementation of, the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, as discussed in [section 11.2](#).
 - The Australian Government's review of counter-terrorism laws to ensure any limitation on human rights is clearly expressed, necessary for the pursuit of a legitimate purpose, reasonable and proportionate, as discussed in [section 14](#).
9. The Committee should request an update from the Australian Government on its progress in relation to these five priority areas in 12 months time under rule 72 of the Rules of procedure.¹

3 General information

3.1 *Scrutiny of human rights and the Parliamentary Joint Committee on Human Rights (ICCPR article 2; LOI 2 & 4)*

10. The Commission commends the Government for establishing the Parliamentary Joint Committee on Human Rights (PJCHR).
11. The PJCHR analyses bills and legislative instruments introduced into the federal Parliament for compliance with human rights. Some other parliamentary committees also scrutinise legislation taking into account compliance with human rights.² Since August 2012, the PJCHR has produced over 65 reports to Parliament assessing over 960 bills.³
12. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires each bill, regulation and ordinance introduced into Parliament to be accompanied by a statement of compatibility with human rights, defined as the seven core international human rights instruments to which Australia is a party.⁴
13. The Commission is concerned that legislators do not always have an opportunity to consider the PJCHR's views during the legislative process with bills sometimes passed into law before the PJCHR has released its conclusions.⁵
14. The Commission is concerned that there is varying quality in the drafting of statements of compatibility within and across Government departments.⁶ Some statements of compatibility devote cursory attention to assessing a draft law's identified impingement on human rights and some simply assert (without due explanation) that a draft law is compatible with human rights even where an impingement on rights has been acknowledged.⁷

Recommendation 1: That the Australian Government ensure that concerns raised by the Parliamentary Joint Committee on Human Rights are fully considered in the legislative process.

Recommendation 2: That the Australian Government ensure that all statements of compatibility are consistently of a high standard and are supported by evidence and analysis.

3.2 Domestic incorporation (ICCPR article 2; LOI 4)

15. Australia has passed legislation in areas such as discrimination, privacy and freedom of information, which incorporate some important elements of the ICCPR into domestic law. However, there remain many rights in the ICCPR that have not been domestically incorporated in accordance with article 2(2).
16. The Commission notes that the Australian Law Reform Commission (ALRC) has made a number of suggestions to improve the mechanisms and processes for the scrutiny of laws for compatibility with rights and freedoms (including the PJCHR).⁸
17. The scrutiny provided for by the PJCHR, while a welcome extension of existing parliamentary rights review mechanisms, is not a substitute for full incorporation of the ICCPR into domestic law through mechanisms such as a national human rights Act.
18. The Commission notes that Victoria and the Australian Capital Territory each have a general human rights statute,⁹ and other states are also considering similar legislation.¹⁰ The Commission is concerned that, absent comprehensive human rights law, there are gaps and inconsistencies in the protection of human rights in Australia.
19. The Commission commends the Government's establishment of a Standing National Human Rights Mechanism to strengthen its engagement with human rights reporting. This is an opportunity to improve the timeliness of Australia's responses to UN treaty body communications.

Recommendation 3: That the Australian Government further incorporate the ICCPR into Australian legislation.

3.3 Human rights education (ICCPR article 2; LOI 2)

20. The Commission commends the inclusion of some references to human rights in the national school curriculum, although considers that this remains too limited. Human rights education for public servants remains limited, especially for those officials in the administration of justice and with legislative responsibilities to develop statements of compatibility with human rights for new legislation.
21. The Commission also notes that Australia's activities for the World Program for Human Rights Education are ad hoc and uncoordinated.

Recommendation 4: That the Australian Government support human rights education for all areas of the public sector, particularly in the administration of justice and places of detention, including targeted initiatives for public officials; and incorporate more comprehensive human rights education (including ICCPR rights) in the national school curriculum.

4 Prevention of torture (ICCPR articles 7 & 10; LOI 17)

22. The Commission remains concerned by the gaps in independent monitoring of places of detention in Australia. We commend the Government's commitment to ratify OPCAT by December 2017.¹¹

Recommendation 5: That the Australian Government fulfil its commitment to ratify OPCAT by December 2017, in accordance with its timetable, and commence its progressive implementation immediately thereafter. The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

5 Aboriginal and Torres Strait Islander peoples

5.1 UN Declaration on the Rights of Indigenous Peoples (ICCPR article 2; LOI 2)

23. The Commission considers that more robust consideration and implementation of the Declaration would enhance the ability of Aboriginal and Torres Strait Islander peoples to realise their civil and political rights.
24. The Special Rapporteur on the rights of indigenous peoples has called for the Declaration to be specifically included in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).¹²

Recommendation 6: That the Australian Government, in partnership with Aboriginal and Torres Strait Islander peoples, develop a National Strategy to give effect to the UN Declaration on the Rights of Indigenous Peoples.

Further, that the Declaration be included in the definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to ensure that new legislation is regularly assessed for conformity with the Declaration.

5.2 Justice system (ICCPR articles 2, 7, 9, 10 & 13; LOI 13, 17 & 18)

25. The Commission is extremely concerned that Aboriginal and Torres Strait Islander people are significantly overrepresented in Australia's prison population,¹³ especially those with mental health disorders or cognitive

disability¹⁴ and children.¹⁵ Rates of imprisonment of Indigenous women have risen substantially in the past decade.

26. The issue of Aboriginal and Torres Strait Islander deaths in police custody and in prison has been cause for alarm for several decades. Nationally in 2014–15, there were 11 deaths in police custody, of which five were Aboriginal and Torres Strait Islander deaths.¹⁶
27. Laws and policies disproportionately affecting Aboriginal and Torres Strait Islander people have contributed to these incarceration rates. In particular, the Commission notes:
 - ‘Paperless arrest’ laws in the Northern Territory provide police with the power to detain a person for up to four hours (or longer if the person is intoxicated) if they suspect the person has committed or is about to commit an ‘infringement notice offence’ (a minor offence).¹⁷
 - Bail laws and policies have become more restrictive in Australia and have led to a significant increase in the number of Aboriginal and Torres Strait Islander people held on remand.¹⁸
 - The Special Rapporteur on the rights of Indigenous peoples has said that mandatory sentencing laws need to be reviewed.¹⁹
 - The Commission has previously reported on several cases where indigenous people are in prolonged detention due to being considered ‘unfit to plead’ resulting in them being detained for a period longer than the maximum sentence if they had been tried and found guilty.²⁰
 - Imprisonment from fine default — often caused by small overdue fines for criminal offences that, on their own, do not carry an imprisonment penalty — is contributing to high incarceration rates.²¹
28. The Commission notes that the current inquiry by the ALRC into the incarceration of Aboriginal and Torres Strait Islander peoples will assist in identifying laws requiring amendment to reduce Indigenous incarceration.²²
29. The Commission has advocated that justice targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples, as compared with non-Indigenous people.²³ The Senate Legal and Constitutional Affairs Committee and successive Social Justice Commissioners have recommended justice reinvestment strategies.²⁴
30. Noting that a federal approach is needed to address imprisonment rates and the experience of violence of Aboriginal and Torres Strait Islander peoples, the Commission welcomes the Change the Record Coalition’s *Blueprint for change*.²⁵
31. The Special Rapporteur on the rights of indigenous peoples has recommended that efforts be made to recruit Aboriginal and Torres Strait Islander prison staff and that police and prison staff be trained in cultural sensitivity.²⁶

Recommendation 7: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles, and resource a national strategy to achieve this. The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

5.3 Native title and land rights (ICCPR article 27; LOI 25)

32. The Commission welcomes recent initiatives to address barriers to the recognition of native title and challenges to enabling Indigenous-led development on the Indigenous Estate, such as the Council of Australian Governments' (COAG's) Investigation into Indigenous Land Administration and Use²⁷ and the ALRC's review of the *Native Title Act 1993* (Cth).²⁸
33. The Government has released a White Paper on the development of northern Australia. Significant tranches of land in northern Australia (Western Australia, Queensland and the Northern Territory) are held by Aboriginal and Torres Strait Islander peoples. Serious concerns have been raised about the extent of genuine engagement by governments with these land holders on issues that affect them and the effectiveness of laws for the protection and management of Indigenous heritage sites and knowledge.²⁹

Recommendation 8: That the Australian Government:

- **ensure that any reforms that affect Aboriginal and Torres Strait Islander peoples' lands are undertaken with their free, prior and informed consent.**
- **implement the recommendations of the ALRC's Connection to Country Review of the *Native Title Act 1993* (Cth) and the Council of Australian Governments' Investigation into Indigenous Land Administration and Use in order to better recognise and protect Aboriginal and Torres Strait Islander peoples' native title rights and interests.**
- **ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively affected by the development of northern Australia.**

5.4 Aboriginal and Torres Strait Islander women (ICCPR articles 2, 3, 7 & 26; LOI 10)

34. Aboriginal and Torres Strait Islander women are particularly at risk of violence.³⁰ They are hospitalised for family violence-related assault at 30 times the rate of non-Indigenous women.³¹
35. The Commission notes that the *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, which has been developed to support all women (including Indigenous women) and their children experiencing violence, builds on COAG's commitment under the Close the Gap

framework.³² The Commission notes that action on violence against Aboriginal and Torres Strait Islander women should be developed in close consultation with Aboriginal and Torres Strait Islander women and other relevant stakeholders.

36. Aboriginal and Torres Strait Islander women account for 34% of the adult female prison population.³³ It is also important to note that 80% of Aboriginal and Torres Strait Islander women in prison are mothers.³⁴

Recommendation 9: That the Australian Government:

- **commit to cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040 (with priority strategies for women and children);**
- **prioritise early intervention and prevention initiatives that provide comprehensive support and protection from violence to vulnerable Indigenous populations including women, children and the elderly.**

5.5 Democratic participation (ICCPR articles 1, 2, 25, 26 & 27; LOI 23)

(a) Funding to representative bodies

37. The Commission notes that reform of the justice system must be undertaken in partnership with the Aboriginal and Torres Strait Islander peak legal and representative bodies. The Government has provided limited funding support for the National Congress of Australia's First Peoples, a national representative voice for Aboriginal and Torres Strait Islander peoples. As noted by the Special Rapporteur on the rights of indigenous peoples, 'explicit defunding since 2014 ... runs counter to the Government's stated commitment to work with [I]ndigenous peoples.'³⁵

Recommendation 10: That the Australian Government provide adequate ongoing funding of the National Congress of Australia's First Peoples and to Indigenous legal assistance programs.

(b) Constitutional recognition

38. The Commission commends the Government for supporting the ongoing consultation process with Indigenous representatives regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples.
39. The Commission notes the First Nations National Constitutional Convention to discuss constitutional recognition (Uluru Convention), held on 23–26 May 2017, at which the Uluru Statement of the Heart (Uluru Statement) was adopted. The Uluru Statement calls for the establishment of a First Nations' Voice enshrined in the Constitution and of a Makarrata Commission to supervise a process of agreement making between governments and First Nations that includes truth-telling about Aboriginal and Torres Strait

Islander peoples' history. The Commission welcomes the Uluru Statement and supports the calls for a First Nations' voice to Parliament.³⁶

40. The Special Rapporteur on the rights of indigenous peoples has encouraged the Australian Government to explore the possibility of a national treaty with Aboriginal and Torres Strait Islander peoples.³⁷

Recommendation 11: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and for a First Nations' voice to Parliament.

5.6 Aboriginal and Torres Strait Islander people with disability (ICCPR articles 2, 7 & 9)

41. Aboriginal and Torres Strait Islander people with disabilities face institutional and endemic discrimination because of their disability and Indigenous status.³⁸
42. The Commission notes the Government's commitment in the *National Disability Strategy Second Implementation Plan: Driving Action 2015–18* to develop an *Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability*.³⁹

Recommendation 12: That the Australian Government develop the *Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability*.

6 Older persons

6.1 Elder abuse (ICCPR articles 2, 7 & 9)

43. Elder abuse is a fundamental human rights issue faced by many older people. Commonly recognised forms of elder abuse include psychological/emotional abuse; physical abuse; sexual abuse; financial abuse; and neglect.⁴⁰ Some Australians have heightened vulnerability to elder abuse, such as older people in culturally and linguistically diverse communities, older people in rural and remote areas, older people with cognitive impairments and/or other disabilities, older Indigenous people, and older women.⁴¹
44. The Commission welcomes the ALRC's report *Elder Abuse—A National Legal Response*⁴² and other relevant independent and government-funded studies.⁴³
45. The Commission welcomes the Government's commitment to developing a national plan to better protect the rights of older Australians, including a prevalence study into elder abuse, pilot training programmes for frontline staff and an awareness and education campaign.⁴⁴
46. The Commission also welcomes the Government's commitment of \$50 million to improve seniors' digital literacy, which will include the development of an online safety strategy for senior Australians.⁴⁵

47. The Commission commends the establishment of an eSafety Commissioner.⁴⁶ The eSafety Commissioner's role initially focused on cyberbullying of young people, but has since expanded to include improving the digital confidence and skills of senior Australians, and establishing a national online complaints mechanism.⁴⁷ The Government has also committed to undertaking a prevalence study. A scoping study has already been undertaken and a tender has been issued.

Recommendation 13: That the Australian Government implement recommendations from the ALRC's report *Elder Abuse—A National Legal Response* and continue to work towards the development of a national plan to tackle elder abuse.

6.2 Access to work (ICCPR articles 2 & 25(c))

48. In the *Willing to Work National Inquiry into Employment Discrimination against Older Australians and Australians with Disability (Willing to Work Report)*,⁴⁸ the Commission reported:

- In 2015, 27% of people over the age of 50 had recently experienced discrimination in the workplace.⁴⁹
- In 2015, 53.4% of people with disability were participating in the labour force, compared to 83.2% of people without disability.⁵⁰

49. There has been no formal Government response to the *Willing to Work Report* and no Government-led action plan to implement its recommendations.

Recommendation 14: That the Australian Government implement the recommendations in the *Willing to Work Report* to reduce employment discrimination against older Australians and Australians with disability.

7 People with disability

7.1 Prisoners and mental health (ICCPR articles 2, 9 & 10; LOI 17)

50. People with disability have disproportionately high rates of interaction with the criminal justice system and are significantly overrepresented in Australia's prison population.⁵¹ Necessary supports and adjustments for people with disability are frequently not provided in the criminal justice system.⁵²
51. The Commission commends the Government on its commitment to improve the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty due to mental impairment,⁵³ and to analyse existing data and develop best practice resources in Australia.
52. The Commission notes that implementation of OPCAT will provide for improved monitoring of conditions of detention for people with disability.

Recommendation 15: That the Australian Government, through the Council of Australian Governments, develop appropriate support for people with disability, particularly those with mental health disorders and cognitive impairment, including national guidelines on ‘fitness to plead’.

7.2 Freedom from exploitation, violence and abuse (ICCPR articles 7 & 9; LOI 13)

53. The Commission welcomes the Government’s commitment to establishing the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission to oversee the NDIS Quality and Safeguards Framework,⁵⁴ but is concerned that it only applies to NDIS participants (approximately 10% of the Australian disability population).
54. The Commission notes the recommendations of the Senate Community Affairs References Committee *Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*.⁵⁵

Recommendation 16: That the Australian Government adopt a national approach to address violence against people with disability.

7.3 Access and democratic participation (ICCPR articles 2, 25 & 26; LOI 22)

55. People with disability face barriers to accessing the built environment, including schools, shops, workplaces, services and entertainment facilities.⁵⁶ They are also unable to access communication and information systems, including media, on an equal basis with others.⁵⁷
56. The Commission is concerned that inaccessible premises can limit participation of people with disability in voting and other political processes,⁵⁸ as can inability to access communication and information systems.
57. The Commission is also concerned about electoral laws that provide that persons of ‘unsound mind’ are not entitled to have their names on the electoral roll or to vote in elections, and may be removed from the electoral roll following objection.⁵⁹ The ALRC has recommended the repeal of these provisions.⁶⁰

Recommendation 17: That the Australian Government encourage monitoring, compliance and implementation of the *Disability (Access to Premises – Buildings) Standards 2010* and *Disability Standards for Accessible Public Transport 2002*, and ensure that people with disability have the requisite access to fully participate in the democratic process.

7.4 Women and girls with disability (ICCPR articles 2, 3, 7 & 26; LOI 10 & 11)

58. Women with disability experience intersectional inequality and violence at higher rates than the general population.⁶¹
59. The Commission welcomes the *Third Action Plan (2016-19)* under the *National Plan to Reduce Violence Against Women and their Children* to “improve support to women with disability who experience or are at risk of violence by working with them, the disability sector, specialist family and domestic violence services and mainstream services” (Third Action Plan).⁶²
60. The Commission notes the *Stop the Violence Project*, which provides an evidence base to support future reform in service provision to better respond to the needs of women and girls with disability experiencing violence.⁶³
61. The Commission is concerned that the Third Action Plan focuses on domestic/family violence and sexual assault in the context of intimate partner relationships only and fails to address other forms of violence perpetrated against women and girls with disability.⁶⁴ In particular, the Commission remains concerned that sterilisation of women and girls with disability, without consent, continues to occur in Australia.⁶⁵
62. The Commission is also concerned about the under-resourcing of accommodation and support services.⁶⁶

Recommendation 18: That the Australian Government ensure that subsequent Action Plans to the *National Plan to Reduce Violence Against Women and their Children* continue to address and prevent gendered disability violence, including implementation of relevant recommendations from the *Stop the Violence Project* to improve the provision of support and services for people experiencing gendered disability violence.

Recommendation 19: That the Australian Government introduce legal protections to prevent sterilisation of women and girls with disability without consent.

Recommendation 20: That the Australian Government properly resource accommodation and support services for women and girls with disability.

8 Lesbian, gay, bisexual, transgender and intersex people

8.1 Access to stage 2 hormone treatment (ICCPR articles 17 & 26)

63. The Commission is concerned by the blanket requirement of authorisation by the Family Court of Australia for ‘stage 2’ hormone treatment of young people diagnosed with gender dysphoria.

64. The Commission refers to the current state of medical knowledge regarding the purpose for which stage 2 hormone treatment is provided, the nature of the treatment, and the risks involved in undergoing, withholding or delaying treatment.⁶⁷ In the absence of disagreement among the child, the child's medical team and the child's parents or guardians, the Commission considers the requirement for court authorisation has a deleterious impact on the human rights of affected young people.

Recommendation 21: That the Australian Government ensure that Australian law enables young people diagnosed with gender dysphoria to access stage 2 hormone treatment without court authorisation with the approval of their parents or guardians and medical team and in accordance with the relevant medical standards of care and treatment guidelines.

8.2 Access to surrogacy (ICCPR articles 2 & 26)

65. The Commission is concerned that, in one state, some same-sex couples are subject to prohibitions on being intended parents of domestic surrogacy.⁶⁸

Recommendation 22: That the Australian Government encourage Western Australia to provide access to surrogacy arrangements for all same-sex couples as is provided to heterosexual couples.

8.3 Anti-discrimination laws (ICCPR articles 2 & 26; LOI 9)

66. The Commission commends the Government for passing amendments to the *Sex Discrimination Act 1984* (Cth) (SDA) in 2013 prohibiting discrimination on the basis of sexual orientation, gender identity and intersex (SOGII) status,⁶⁹ subject to exceptions.⁷⁰

67. The Commission also commends the Government on its removal of exemptions for Australian state and territory laws from the operation of Australia's national anti-discrimination laws.⁷¹ However, the Commission is concerned that some state and territory laws remain inconsistent with the protections against discrimination on the basis of SOGII status in the SDA.⁷²

Recommendation 23: That the Australian Government, through the Council of Australian Governments, ensure consistency of all policies and laws with the protections against discrimination on the basis of sexual orientation, gender identity and intersex status in the *Sex Discrimination Act 1984* (Cth).

8.4 Births, deaths and marriages registration (ICCPR articles 2, 17 & 26)

68. The Commission is concerned that in all parts of Australia except the Australian Capital Territory and South Australia,⁷³ a person must undergo surgical or medical treatment and also be unmarried to change the legal record of their sex.⁷⁴

69. The Commission notes the Committee's recent decision, *G v Australia*, in which it found that Australia, by refusing to allow a transgender married person to have a birth certificate consistent with their sex unless they get a divorce, violated articles 17 and 26 of the ICCPR.⁷⁵

Recommendation 24: That the Australian Government, through the Council of Australian Governments, encourage the removal of surgery and marital status requirements in births, deaths and marriages registration legislation.

8.5 *Involuntary medical interventions (ICCPR articles 7 & 26)*

70. The Commission is concerned that children born with intersex variations remain subject to medically unnecessary medical interventions in circumstances where they are unable to provide full and informed consent.⁷⁶
71. The Commission notes the recommendations of the 2013 Senate Community Affairs Committee inquiry into the involuntary or coerced sterilisation of intersex people.⁷⁷

Recommendation 25: That the Australian Government implement the recommendations of the 2013 Senate Community Affairs Committee inquiry into the involuntary or coerced sterilisation of intersex people.

8.6 *Marriage equality (ICCPR articles 2 & 26)*

72. The *Marriage Act 1961* (Cth) (the Marriage Act) defines marriage as the union of a man and a woman to the exclusion of all others.⁷⁸ The Commission considers that civil marriage should be available, without discrimination, to all couples, regardless of sex or SOGII status, on the basis of the fundamental human rights principles of equality and non-discrimination.⁷⁹
73. The Marriage Act currently allows ministers of religion to refuse to solemnise a marriage.⁸⁰ The Commission considers that if the Marriage Act is amended to permit two people to marry, ministers of religion should be able refuse to solemnise a marriage in accordance with the doctrines, tenets and beliefs of their religious organisation.⁸¹
74. Human rights reform should take place in accordance with ordinary legislative processes. The Commission considers that the Government's voluntary, non-binding postal survey on the issue of marriage equality,⁸² is not an appropriate mechanism to resolve an issue of fundamental human rights.⁸³
75. The Commission notes the Committee's recent decision, *C v Australia*, in which it found that Australia's denial of access to divorce proceedings to a same-sex couple who married overseas violated article 26 of the ICCPR.⁸⁴

Recommendation 26: That the Australian Government legislate to enable two people to marry, irrespective of sex, sexual orientation, gender identity or intersex status, while enabling a minister of religion to refuse

to solemnise a marriage in accordance with the doctrines, tenets and beliefs of the minister's religious body or organisation.

9 Women

9.1 Violence against women (ICCPR articles 2, 3, 7 & 26; LOI 10)

76. Violence against women in Australia remains endemic and continues to have a negative impact on the realisation of women's civil and political rights.
77. The Commission commends efforts made to address violence against women under the *National Plan to Reduce Violence against Women and their Children 2010–22* (the National Plan).⁸⁵ The Commission also commends the Government's additional funding committed in 2015 to both prevention and response measures and services.⁸⁶
78. The Commission is concerned about the lack of Australia-wide data on domestic and family violence deaths. The Commission has highlighted the importance of the domestic and family violence death review process and proposed measures to ensure national coherence and collection of data on domestic and family violence deaths.⁸⁷
79. Gender inequality often intersects with other forms of inequality to affect the nature and prevalence of family and domestic violence. Women with disability, Aboriginal and Torres Strait Islander women, lesbian, bisexual, trans and intersex women, and women from culturally and linguistically diverse backgrounds, often experience higher rates of family and domestic violence and face additional barriers to seeking help and support.⁸⁸

Recommendation 27: That the Australian Government undertake further work to understand the nature and prevalence of family and domestic violence, and sexual assault and sexual harassment for women experiencing intersectional discrimination.

Recommendation 28: That all Australian Governments commit to strengthening national family and domestic violence data collection and reporting mechanisms.

9.2 Sexual assault and sexual harassment in the workplace and in university settings (ICCPR articles 2, 3, 7 & 26; LOI 10)

80. In 2012, the Commission reported in its *Working without fear: Results of the Sexual Harassment National Telephone Survey* report (*Working without fear* report) that 21% of people in Australia had been sexually harassed since the age of 15, with the majority (68%) experiencing this harassment in the workplace.⁸⁹ The survey also found that sexual harassment affects more women than men. One-third of women (33%) had been sexually harassed since the age of 15, compared to 9% of men.⁹⁰
81. The Commission commends the Government for funding the Commission's 2017 survey, which is underway.

82. The Commission conducted a national survey on sexual assault and sexual harassment in Australian universities and released a report in 2017 (*Change The Course* report). The Commission found that 51% of all university students were sexually harassed on at least one occasion in 2016, and 6.9% of students were sexually assaulted on at least one occasion in 2015 or 2016.⁹¹

Recommendation 29: That the Australian Government encourage universities to implement the *Change The Course* report recommendations to reduce the prevalence of sexual assault and sexual harassment in Australian universities.

Recommendation 30: That the Australian Government continue to ensure there are adequate protections in place to address sexual harassment in the workplace, with consideration of the identified strategies in the *Working without fear* report and the forthcoming outcomes of the Commission's 2017 survey.

9.3 Women in defence (ICCPR articles 2, 3 & 26)

83. Since 2014, the Commission has been working in a collaborative relationship with the Australian Defence Force (ADF) to encourage cultural reform and enhance the participation of women. This builds on cultural reform initiatives in *Pathway to Change*, an implementation strategy for cultural change across the ADF.⁹² The Government has also commenced removing a reservation to CEDAW on women in defence combat roles.

Recommendation 31: That the Australian Government continue to encourage cultural reform and enhance the participation of women in the Australian Defence Force, consistent with the initiatives in *Pathway to Change*.

10 Immigration and citizenship

10.1 Refugees and asylum seekers (ICCPR articles 6, 7, 9, 10, 13 & 23; LOI 12, 14 & 15)

(a) Third country processing

84. Numerous reports and inquiries have repeatedly documented serious human rights concerns for people seeking asylum in Australia whose applications are processed in Nauru and Papua New Guinea (third country processing).⁹³ Available evidence suggests that there has been limited improvement over time in the conditions under which these people are held.⁹⁴ Significant safety concerns have also been identified, including allegations of assault, harassment and exploitation.⁹⁵
85. The combination of delays in processing asylum claims, harsh living conditions, concerns about physical safety, and uncertainty about the future has had a profoundly negative impact on the mental health outcomes of people subject to third country processing.⁹⁶ These factors may also impel

some asylum seekers to consider returning to their country of origin, even if they have a well-founded fear of persecution.⁹⁷

86. The Commission has ongoing concerns regarding the quality of refugee status determination under third country arrangements.⁹⁸ The Commission is also aware of several cases in which same-sex attracted people have been sent to Nauru and Papua New Guinea, despite the fact that both countries criminalised same-sex sexual activity at the time.⁹⁹

Recommendation 32: That the Australian Government ensure that the human rights of people subject to third country processing are adequately protected.

(b) *Mandatory immigration detention*

87. Under the *Migration Act 1958* (Cth) (the Migration Act), immigration detention remains mandatory for all unlawful non-citizens.¹⁰⁰ Australian courts do not have jurisdiction to remove a person from detention on the basis that their detention is arbitrary, and there is no legislative time limit on detention.
88. Numerous studies have documented high rates of mental health problems among people in immigration detention in Australia,¹⁰¹ with the negative impacts tending to worsen as detention becomes more prolonged.¹⁰²
89. Positive developments relating to immigration detention since 2009 include: the release of almost all children from closed facilities into alternative community arrangements;¹⁰³ the closure of several detention facilities;¹⁰⁴ increased use of community alternatives to detention; commitment to ratification of OPCAT; and the release of a number of refugees who previously had been detained indefinitely due to having received an adverse security assessment.
90. However, the Commission is concerned about an increase in long-term detention, an increase in the number of people detained due to visa cancellation, and a small number of refugees who continue to be indefinitely detained due to adverse security assessments.¹⁰⁵

Recommendation 33: That the Australian Government continue to expand the use of alternatives to closed detention and, where immigration detention is necessary, ensure that it is time limited, strictly necessary (such as for the purpose of public health and security checks) and subject to individualised decision-making and judicial oversight.

(c) *Refoulement*

91. Since December 2013, boats carrying asylum seekers which seek to enter Australia have been intercepted and returned to their point of departure. In some cases, people have been returned directly to their countries of origin after undergoing a screening process at sea.
92. The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) introduced a number of changes to

Australia's onshore refugee status determination process, including the removal of almost all references to the Refugee Convention from the Migration Act and the introduction of a truncated merits review process. In addition, most asylum seekers currently in Australia no longer have access to free government-funded legal advice to assist them in presenting their asylum claims.

93. The Commission is concerned these measures may increase the risk of *refoulement* for some asylum seekers.

Recommendation 34: That the Australian Government ensure that its refugee status determination process is consistent with international human rights law and discontinue any practices obstructing a full and proper status determination process (such as the current practice of intercepting and turning back boats carrying asylum seekers).

Recommendation 35: That the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)* be repealed.

Recommendation 36: That the Australian Government reinstate access to free legal advice for asylum seekers who are disadvantaged, regardless of their mode of arrival.

The Commission considers the issues raised in this section to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

10.2 Visa refusals and cancellations on character grounds (ICCPR articles 2, 12 & 13)

94. Under section 501 of the Migration Act, the Minister for Immigration or their delegate can refuse or cancel a visa on the basis that the person does not pass the 'character test'. Legislation passed in 2014 significantly broadened the scope of section 501, resulting in an increase in visa refusals and cancellations on character grounds.
95. The Commission has previously raised concerns that decisions to refuse or cancel visas on character grounds under section 501 may lead to breaches of Australia's international human rights obligations, including:
- the risk of *refoulement* if refugees subject to visa cancellation are subsequently deported;
 - mandatory detention of people whose visas are cancelled under section 501, at times for prolonged periods;
 - the deportation of long-term Australian residents who have little or no connection to their country of citizenship; and
 - the separation of families resulting from such deportations.¹⁰⁶

Recommendation 37: That the Australian Government put in place transparent decision-making and external review processes to ensure the exercise of discretionary power in s 501 of the Migration Act complies with international human rights law.

10.3 Strengthening citizenship requirements (ICCPR articles 2, 12 & 13)

96. The Commission is concerned about the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (Cth), which, if passed, will make it more difficult to obtain Australian citizenship by imposing additional requirements on people seeking to obtain Australian citizenship by conferral;¹⁰⁷ centralising discretionary power in the hands of the Minister to make decisions about who should and who should not be an Australian citizen, with very limited rights of external review; and reducing the ability of particular groups of people to qualify for citizenship.¹⁰⁸ The bill is currently before the Australian Senate having passed the Australian House of Representatives.

Recommendation 38: That the Australian Parliament not pass the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 in its current form.

11 Children and young people

11.1 Child protection (ICCPR article 24; LOI 20)

97. The Commission is concerned that the rate of children in out-of-home care has increased,¹⁰⁹ with Aboriginal and Torres Strait Islander children¹¹⁰ and children with disability¹¹¹ overrepresented.
98. The Commission commends the allocation of \$5.1 million for the implementation of the Third Action Plan of the *National Framework for Protecting Australia's Children 2009–2020* (National Framework), which will help support early intervention and child safe approaches.¹¹² However, the Commission is concerned that this funding is inadequate to achieve its objectives.
99. The Commission submits that work should be undertaken under the National Framework to develop specific principles and practice standards regarding children with disability in the care and protection system.

Recommendation 39: That the Australian Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection, out-of-home care, and the prevalence and nature of child abuse and neglect.

11.2 Violence against children and young people (ICCPR articles 7, 9 & 24)

100. Children are witnesses, bystanders and direct victims of violence in the home. Experiences of family and domestic violence have long-term, detrimental effects on children.¹¹³ Children living with family and domestic violence are at an increased risk of experiencing emotional, physical and sexual abuse.¹¹⁴ There are also clear links between child suicide and self-harm and domestic violence.¹¹⁵
101. The impact of family and domestic violence on some groups of children is further compounded by experiences of discrimination and marginalisation, particularly Aboriginal and Torres Strait Islander children, children with disability, children from culturally and linguistically diverse backgrounds and children who are lesbian, gay, bisexual, transgender or intersex.¹¹⁶
102. In 2015, the National Children's Commissioner investigated the impact of family and domestic violence on children across Australia. Data sourced for the investigation indicated that one in every 12 people first experienced physical abuse as a child before the age of 15 years perpetrated by a family member, and one in every 28 people first experienced sexual abuse as a child before the age of 15 years perpetrated by family member.¹¹⁷ The Commission notes the findings and recommendations made by the National Children's Commissioner in Chapter 4 of the *Children's Rights Report 2015*.¹¹⁸
103. The Commission welcomed the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse in 2012 to investigate the sexual abuse of children within private, public and non-government institutions. The Commission stresses the need for an enhanced evidence base through improved data collection on institutional abuse.¹¹⁹ The Commission notes that the Royal Commission is due to deliver its final report by 15 December 2017.
104. The Commission welcomes the amendments to the *Family Law Act 1975* (Cth) in 2012, which strengthen protection of the rights of the child, especially in violent situations,¹²⁰ and efforts by government and across the community to address cyber-bullying and online safety of children.¹²¹

Recommendation 40: That the Australian Government implement the National Children's Commissioner's recommendations in the *Children's Rights Report 2015* (Chapter 4).

Recommendation 41: That the Australian Government maintain a public register that monitors all Australian governments' compliance with, and implementation of, the recommendations of the Royal Commission into Institutional Abuse of Children once released, and that remedies be provided to victims. The Commission considers this inquiry to be of such importance that the Committee should request an update from the Australian Government on progress of implementation in 12 months time.

11.3 Self-harm (ICCPR articles 7, 9 & 24; LOI 20)

105. In 2014, the National Children's Commissioner conducted an investigation into intentional self-harm by children, reporting that intentional self-harm is the leading cause of death among children and young people aged 15 to 24 years in Australia.¹²² The Commission notes the findings and recommendations made by the National Children's Commissioner in Chapter 3 of the *Children's Rights Report 2014*.¹²³

Recommendation 42: That the Australian Government implement the National Children's Commissioner's recommendations in the *Children's Rights Report 2014* (Chapter 3).

11.4 Juvenile justice (ICCPR articles 7, 9 & 24; LOI 20)

(a) Detention

106. The Commission is concerned by the treatment of children in, and the conditions of, juvenile justice detention across Australia, including the disproportionate use of force, isolation and restraints against children in juvenile detention facilities, and the lack of monitoring, reporting and accountability in relation to these practices.
107. The Commission continues to express concern about the number of children being detained on remand in juvenile justice centres. The Commission is also concerned that child offenders are sometimes held in the same correctional centres as adults.¹²⁴
108. In 2016, the National Children's Commissioner examined the oversight of youth justice in Australia, and the readiness of youth justice processes for the implementation of OPCAT. The Commission draws the Committee's attention to the findings and recommendations made by the National Children's Commissioner in Chapter 3 of the *Children's Rights Report 2016*.¹²⁵
109. Noting that the Northern Territory has the highest rate of children and young people in detention in Australia,¹²⁶ the Commission welcomes the establishment of the Royal Commission into the Protection and Detention of Children in the Northern Territory.¹²⁷ The Commission notes that the Royal Commission will deliver its final report on 17 November 2017.
110. The Commission notes that several jurisdictions have commenced reviews into their juvenile justice systems, and some jurisdictions have progressed the use of non-custodial measures and strengthened diversionary programs.¹²⁸

Recommendation 43: That the Australian Government implement the National Children's Commissioner's recommendations in the *Children's Rights Report 2016* (Chapter 3).

Recommendation 44: That all Australian Governments develop alternative behaviour management techniques to reduce the use of

force, isolation and restraints against children in juvenile detention facilities.

Recommendation 45: That all Australian Governments cease detention of children in adult facilities.

Recommendation 46: That all Australian Governments expand the use of diversionary programs for children and young people.

(b) *Mandatory sentencing*

111. In the *Children's Rights Report 2016*, it was reported that Western Australia's mandatory minimum sentencing laws arguably contribute to the comparatively high rates of detention and the overrepresentation of young Aboriginal people in Banksia Hill Detention Centre.¹²⁹

Recommendation 47: That mandatory sentencing for children and young people should be discontinued in all jurisdictions.

(c) *Minimum age of criminal responsibility*

112. The Commission continues to express concern about the lack of action on raising the minimum age of criminal responsibility to an internationally-accepted level.¹³⁰

Recommendation 48: That the age of criminal responsibility should be raised from 10 years to 12 years in the first instance, with preservation of the common law presumption of *doli incapax*.

12 Rights and freedoms

12.1 Freedom of religion (ICCPR articles 18 & 27; LOI 21)

113. The Commission notes that people in Australia generally can manifest their religion or belief without significant obstacles or impediments. However, discrimination on the basis of religion may occur through public harassment, prejudice, violence, and myriad forms of unequal treatment.
114. Fear of discrimination and prejudice may restrict people from practising their religion, disclosing to others their religious belief or affiliation, or presenting themselves as visibly religious (such as through their clothing). Some Muslim Australians, for instance, have altered their participation in public life and cancelled public events due to fears of being attacked or abused for their religion.¹³¹
115. Attacks on places of worship and on people who are visibly religious are regularly reported in the news media. Attacks on and threats towards mosques and Islamic prayer rooms,¹³² synagogues,¹³³ and churches¹³⁴ occur, as do instances of public abuse and physical attack on people perceived to belong to a particular religion, such as Muslims,¹³⁵ Jews¹³⁶ and Sikhs.¹³⁷

116. The Commission notes that freedom of religion or belief is not directly protected under federal anti-discrimination law. The Commission considers that consideration should be given to how federal law could further incorporate international human rights law relating to religion, so as better to protect people from discrimination and other breaches of human rights on the basis of their religious belief and observance.
117. The Commission notes that a parliamentary inquiry is underway relating to the status of the right to freedom of religion in Australia.¹³⁸

Recommendation 49: That the Australian Government consider how Australian law could further incorporate international human rights law relating to religious belief and observance.

12.2 Freedom of expression (ICCPR article 19)

(a) Secrecy laws

118. The Commission notes the ALRC's 2009 report, *Secrecy Laws and Open Government*.¹³⁹
119. The Commission is concerned about provisions in the *Australian Border Force Act 2015* (Cth) that prohibit disclosure of any information obtained by a person in their official capacity (subject to some exceptions), including those working in immigration detention centres. The Commission welcomes the Australian Border Force Amendment (Protected Information) Bill 2017 (Cth), which would reduce the scope of these criminal secrecy provisions. The Commission has recommended that the Government pass this bill with certain amendments.¹⁴⁰

Recommendation 50: That the Australian Parliament pass the Australian Border Force Amendment (Protected Information) Bill 2017 (Cth) with certain amendments, as previously recommended by the Commission.

Recommendation 51: That the Australian Government amend other secrecy laws in accordance with the recommendations of the ALRC in its *Secrecy Laws and Open Government* report.

(b) Anti-protest laws

120. The Commission notes that Tasmania has introduced anti-protest laws in order to protect business interests,¹⁴¹ and that Queensland passed anti-protest laws in connection with the G20 Summit.¹⁴² The Commission is concerned that these laws impinge disproportionately on democratic rights and freedoms including the freedoms of expression, association and peaceful assembly.

Recommendation 52: That Australian parliaments ensure that all laws that regulate protest activity do not impinge disproportionately on freedom of expression, freedom of association and freedom of peaceful assembly.

(c) *Freedom to advocate*

121. The Commission is concerned that the Government's *National Partnership Agreement on Legal Assistance Services* could have the effect of prohibiting or deterring advocacy by community organisations.¹⁴³ The Commission is also concerned by proposals that could reduce the capacity of civil society organisations to engage in debate on important issues of public interest, including at the time of elections.¹⁴⁴

Recommendation 53: That the Australian Government ensure that funding agreements, laws and policies do not unreasonably and disproportionately restrict civil society organisations from engaging in law reform, policy or advocacy work on issues of public interest.

(d) *Inquiries*

122. The Commission notes:
- the ALRC's report, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws*.¹⁴⁵
 - the PJCHR's report in relation to whether the operation of Part IIA of the *Racial Discrimination Act 1975 (Cth) (RDA)* imposes unreasonable restrictions upon freedom of speech.¹⁴⁶
 - the current Senate inquiry into laws of contempt in Australia, which will consider how competing principles, including freedom of speech, are balanced in contempt laws.¹⁴⁷
123. The Commission considers that a broad inquiry into the protection of freedom of expression in Australia is warranted, covering criminal laws,¹⁴⁸ secrecy laws,¹⁴⁹ laws regarding participation in the democratic process,¹⁵⁰ media, broadcasting and communications laws and freedom of information laws.

Recommendation 54: That the Australian Government commission an independent, broadly focused inquiry into freedom of expression in Australia.

13 Racial discrimination (ICCPR articles 20 & 26; LOI 21)

124. The Commission is concerned that racial discrimination continues to affect migrants and Australia-born people of many cultural backgrounds.
125. The Special Rapporteur on the rights of indigenous peoples has described the prevalence of racism against Aboriginal and Torres Strait Islander people as 'deeply disturbing'.¹⁵¹
126. Among migrants, those from African countries, including Ethiopia, Kenya, Zimbabwe and South Sudan, have reported particularly high levels of discrimination and racial profiling.¹⁵² A national survey found strong negative

attitudes towards immigrants from Middle Eastern countries compared to immigrants from elsewhere.¹⁵³

127. A Foundation of Young Australians report found that over 80% of non-Anglo Australian background children indicated they had been subjected to some form of racism.¹⁵⁴ Young people from such backgrounds, particularly those of African descent, report concerns about encountering racism from public institutions, including police.¹⁵⁵
128. The Commission refers to the recommendations made in its submission to the PJCHR inquiry into Part IIA of the RDA.¹⁵⁶ The Commission also refers to its National Anti-Racism Strategy, which incorporates the *Racism. It Stops with Me* campaign.¹⁵⁷

Recommendation 55: That the Australian Government continue to fund and support initiatives to address racism and racial discrimination.

Recommendation 56: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination in setting a standard for public conduct in a multicultural society.

14 Counter-terrorism

129. The Commission recognises the vital importance of ensuring that intelligence and law enforcement agencies have appropriate powers to protect Australia's national security and to protect the community from terrorism. Indeed, such steps are consistent with Australia's obligation to protect the right to life of persons within Australia's jurisdiction, enshrined in article 6 of the ICCPR.
130. The Commission also recognises that human rights law accepts, subject to certain conditions, that the exercise of those powers might impinge to some extent on individual rights and freedoms. However, any such limitation on human rights must be clearly expressed, unambiguous in its terms, and necessary and proportionate in how it responds to potential harm.

14.1 Independent National Security Legislation Monitor (ICCPR article 2; LOI 7)

131. The Commission notes the role of the Independent National Security Legislation Monitor (INSLM).¹⁵⁸ The INSLM reviews the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an ongoing basis. In performing that function, the INSLM has regard to Australia's international human rights obligations.¹⁵⁹
132. The Commission is concerned that the Government has passed counter-terrorism measures despite concerns raised by the INSLM. This has occurred in relation to the control order¹⁶⁰ and preventative detention order¹⁶¹ regimes. These provisions are currently the subject of further review by the INSLM and a parliamentary joint committee.¹⁶²

Recommendation 57: That the Australian Government consider the concerns raised by the Independent National Security Legislation Monitor in ensuring that counter-terrorism measures do not unnecessarily limit human rights.

14.2 Recent measures (ICCPR articles 7, 9, 12, 14, 17 & 26; LOI 7)

133. The Commission considers that the following counter-terrorism laws may disproportionately restrict rights under the ICCPR.¹⁶³
- (a) *Control Orders and Preventative Detention Order regimes*¹⁶⁴
134. These regimes may allow for the arbitrary detention of individuals; may result in arbitrary interference with the right to privacy and the freedoms of movement, expression and association; and do not provide effective review procedures.¹⁶⁵
135. The Commission has recommended that, absent compelling evidence that the provisions are necessary and proportionate to achieving a legitimate objective, the preventative detention order regime should be repealed,¹⁶⁶ and the control orders regime should be amended to comply with international human rights law, or, failing that, should also be repealed.¹⁶⁷
- (b) *Post-sentence detention*¹⁶⁸
136. This measure permits the continued detention of people convicted of a range of terrorism-related offences after the expiration of their sentences in circumstances where they are assessed as posing an unacceptable risk to community safety and that risk cannot be managed in a less restrictive way.¹⁶⁹ The Commission has recommended that these provisions be amended so as to achieve their legitimate purpose without impinging disproportionately on the human rights of those affected.
137. The Commission notes that the Committee has considered post-sentence preventative detention schemes in Australia outside of the counter-terrorism context, in relation to two people convicted of sex offences. The Committee found these laws violated article 9 of the ICCPR.¹⁷⁰
- (c) *'Stop, search and seize' powers*¹⁷¹
138. These powers involve restrictions on the freedom of movement and the right to privacy. The Commission is concerned that the breadth of these powers is not proportionate to the legitimate need to protect public safety.¹⁷²
- (d) *'Declared areas' offences*¹⁷³
139. These offences, aimed at 'foreign fighters', criminalise entry into and remaining in 'declared areas', unless solely for a 'legitimate' purpose. The Commission has expressed concern that, by potentially capturing a wide range of innocent conduct, and making that conduct subject to severe criminal

penalty, in the absence of a demonstrated compelling need, the ‘declared area’ provisions may unjustifiably limit freedom of movement and the right to family life.¹⁷⁴

(e) *Revocation of citizenship*¹⁷⁵

140. Recent amendments provide for the revocation of a dual national’s Australian citizenship:

- automatically, if they engage in certain kinds of conduct (mostly terrorism-related); and
- by Ministerial determination, if they are convicted of certain offences (mostly terrorism-related).

141. The Commission has expressed concern that these measures arbitrarily impair the right of Australians to enter or remain in their own country, and interfere with their family and family life.

142. The Commission has also expressed concern that these amendments: apply to children aged 10–14 years; are retrospective; do not entitle the person to make submissions on the revocation of their citizenship; and lack a requirement for a criminal conviction prior to revocation of citizenship for some offences.¹⁷⁶

(f) *Other measures*

143. The Commission has also expressed concern in relation to reforms seeking to: limit journalists’ ability to report on terrorist-related issues; expand the powers of security agencies to obtain information without warrant; introduce a mandatory data retention scheme; expand monitoring powers; and increase secrecy in certain terrorism-related court proceedings.¹⁷⁷

Recommendation 58: That the Australian Government ensure that where counter-terrorism laws limit human rights, the limitation is clearly expressed, necessary for the pursuit of a legitimate purpose, reasonable and proportionate. The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

15 Human trafficking and slavery (ICCPR article 7 & 8; LOI 16)

144. The Commission commends the Government’s development of a *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*¹⁷⁸ and supporting initiatives.¹⁷⁹ The Commission notes that adequate funding is needed for the full implementation of the National Action Plan.

145. The Commission welcomes the Interdepartmental Committee on Human Trafficking and Slavery.¹⁸⁰

146. The Commission commends legislative amendments that strengthen Australia's response to human trafficking, including by recognising various slavery-like practices as offences¹⁸¹ and extending witness protections to victims of trafficking.¹⁸²
147. The Special Rapporteur on trafficking in persons recommended the Government establish a federal, comprehensive compensation scheme for survivors of trafficking.¹⁸³ The Commission encourages the Government to develop such a scheme.¹⁸⁴
148. The Commission is concerned by a lack of data and research on the prevalence of child trafficking and slavery in Australia.
149. The Commission considers that specific policy guidelines and support services need to be developed to protect the rights of child survivors of trafficking and slavery.¹⁸⁵
150. The Commission notes that unregulated international surrogacy arrangements raise concerns about the potential for the trafficking of women and children.¹⁸⁶ The Commission acknowledges the recent parliamentary inquiry and report into the regulatory and legislative aspects of international and domestic surrogacy arrangements, *Surrogacy Matters*.¹⁸⁷

Recommendation 59: That the Australian Government fully implement the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*; develop a federal compensation scheme for survivors of human trafficking and slavery; ensure regular collection of data on the prevalence of child trafficking and slavery in Australia and the provision of specialist support services to child survivors; and develop a regulatory regime addressing international surrogacy arrangements.

16 Business and human rights

16.1 *National Action Plan on Business and Human Rights (ICCPR article 2)*

151. The Commission commends the Australian business community's support for the UN Guiding Principles on Business and Human Rights (UNGPs) through the Global Compact Network Australia.¹⁸⁸ The Commission notes that the Government is undertaking a national consultation on the implementation of the UNGPs.¹⁸⁹
152. The Commission considers that the National Action Plan on Business and Human Rights should have clear links with the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*.

Recommendation 60: That the Australian Government formulate a National Action Plan on Business and Human Rights, in consultation with the business sector, and that it have clear links with the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*.

16.2 Modern slavery (ICCPR articles 2 & 8; LOI 2, 4 & 16)

(a) Modern Slavery Reporting Requirement

153. The Commission welcomes the Government's proposal for large corporations and other entities operating in Australia to publish annual statements outlining their actions to address modern slavery in their operations and supply chains.¹⁹⁰ At this stage, it is not proposed that these requirements will apply to Australian governments, despite them having supply chains of significant scale.
154. The Commission notes that the Government's national consultation process to refine the Government's proposed model is underway.

(b) Modern Slavery Act

155. The Commission welcomes the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into establishing a Modern Slavery Act in Australia. The Commission also notes the Joint Committee's recommendation that the Government consider supporting in-principle the development of a Modern Slavery Act in Australia, including:
- supply-chain reporting requirements for companies, businesses, organisations and governments in Australia; and
 - an Independent Anti-Slavery Commissioner, subject to reviewing the recommendations of the Committee's final report.¹⁹¹

Recommendation 61: That the Australian Government develop a Modern Slavery Act in Australia.

16.3 Procurement (ICCPR articles 2 & 8; LOI 2, 4 & 16)

156. The Commonwealth Procurement Rules do not explicitly refer to human rights. The Commission notes that the Australian regulatory framework is insufficient to prevent human rights abuses from occurring in Commonwealth procurement.¹⁹²
157. A parliamentary committee has recommended that the Government develop a procurement policy requiring Commonwealth agencies to evaluate suppliers' compliance with human rights regulation.¹⁹³ Another parliamentary committee has noted that consideration of modern slavery risks should be included in this procurement policy.¹⁹⁴

Recommendation 62: That the Australian Government amend the Commonwealth Procurement Rules to align with the UN Guiding Principles on Business and Human Rights, including in regard to human rights due diligence in procurement.

Attachment 1: Compilation of Recommendations

General

Recommendation 1: That the Australian Government ensure that concerns raised by the Parliamentary Joint Committee on Human Rights are fully considered in the legislative process.

Recommendation 2: That the Australian Government ensure that all statements of compatibility are consistently of a high standard and are supported by evidence and analysis.

Recommendation 3: That the Australian Government further incorporate the ICCPR into Australian legislation.

Recommendation 4: That the Australian Government support human rights education for all areas of the public sector, particularly in the administration of justice and places of detention, including targeted initiatives for public officials; and incorporate more comprehensive human rights education (including ICCPR rights) in the national school curriculum.

Prevention of torture

Recommendation 5: That the Australian Government fulfil its commitment to ratify OPCAT by December 2017, in accordance with its timetable, and commence its progressive implementation immediately thereafter. The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

Aboriginal and Torres Strait Islander Peoples

Recommendation 6: That the Australian Government, in partnership with Aboriginal and Torres Strait Islander peoples, develop a National Strategy to give effect to the *UN Declaration on the Rights of Indigenous Peoples*.

Further, that the Declaration be included in the definition of ‘human rights’ in the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)* to ensure that new legislation is regularly assessed for conformity with the Declaration.

Recommendation 7: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles, and resource a national strategy to achieve this. The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

Recommendation 8: That the Australian Government:

- ensure that any reforms that affect Aboriginal and Torres Strait Islander peoples' lands are undertaken with their free, prior and informed consent.
- implement the recommendations of the ALRC's Connection to Country Review of the *Native Title Act 1993 (Cth)* and the Council of Australian Governments' Investigation into Indigenous Land Administration and Use in order to better recognise and protect Aboriginal and Torres Strait Islander peoples' native title rights and interests.
- ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively affected by the development of northern Australia.

Recommendation 9: That the Australian Government:

- commit to cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040 (with priority strategies for women and children);
- prioritise early intervention and prevention initiatives that provide comprehensive support and protection from violence to vulnerable Indigenous populations including women, children and the elderly.

Recommendation 10: That the Australian Government provide adequate ongoing funding of the National Congress of Australia's First Peoples and to Indigenous legal assistance programs.

Recommendation 11: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and for a First Nations' voice to Parliament.

Recommendation 12: That the Australian Government develop the *Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability*.

Older persons

Recommendation 13: That the Australian Government implement recommendations from the ALRC's report *Elder Abuse—A National Legal Response* and continue to work towards the development of a national plan to tackle elder abuse.

Recommendation 14: That the Australian Government implement the recommendations in the *Willing to Work* Report to reduce employment discrimination against older Australians and Australians with disability.

People with disability

Recommendation 15: That the Australian Government, through the Council of Australian Governments, develop appropriate support for people with disability, particularly those with mental health disorders and cognitive impairment, including national guidelines on ‘fitness to plead’.

Recommendation 16: That the Australian Government adopt a national approach to address violence against people with disability.

Recommendation 17: That the Australian Government encourage monitoring, compliance and implementation of the *Disability (Access to Premises – Buildings) Standards 2010* and *Disability Standards for Accessible Public Transport 2002*, and ensure that people with disability have the requisite access to fully participate in the democratic process.

Recommendation 18: That the Australian Government ensure that subsequent Action Plans to the *National Plan to Reduce Violence Against Women and their Children* continue to address and prevent gendered disability violence, including implementation of relevant recommendations from the *Stop the Violence Project* to improve the provision of support and services for people experiencing gendered disability violence.

Recommendation 19: That the Australian Government introduce legal protections to prevent sterilisation of women and girls with disability without consent.

Recommendation 20: That the Australian Government properly resource accommodation and support services for women and girls with disability.

Lesbian, gay, bisexual, transgender and intersex people

Recommendation 21: That the Australian Government ensure that Australian law enables young people diagnosed with gender dysphoria to access stage 2 hormone treatment without court authorisation with the approval of their parents or guardians and medical team and in accordance with the relevant medical standards of care and treatment guidelines.

Recommendation 22: That the Australian Government encourage Western Australia to provide access to surrogacy arrangements for all same-sex couples as is provided to heterosexual couples.

Recommendation 23: That the Australian Government, through the Council of Australian Governments, ensure consistency of all policies and laws with the protections against discrimination on the basis of sexual orientation, gender identity and intersex status in the *Sex Discrimination Act 1984 (Cth)*.

Recommendation 24: That the Australian Government, through the Council of Australian Governments, encourage the removal of surgery and marital status requirements in births, deaths and marriages registration legislation.

Recommendation 25: That the Australian Government implement the recommendations of the 2013 Senate Community Affairs Committee inquiry into the involuntary or coerced sterilisation of intersex people.

Recommendation 26: That the Australian Government legislate to enable two people to marry, irrespective of sex, sexual orientation, gender identity or intersex status, while enabling a minister of religion to refuse to solemnise a marriage in accordance with the doctrines, tenets and beliefs of the minister's religious body or organisation.

Women

Recommendation 27: That the Australian Government undertake further work to understand the nature and prevalence of family and domestic violence, and sexual assault and sexual harassment for women experiencing intersectional discrimination.

Recommendation 28: That all Australian Governments commit to strengthening national family and domestic violence data collection and reporting mechanisms.

Recommendation 29: That the Australian Government encourage universities to implement the *Change The Course* report recommendations to reduce the prevalence of sexual assault and sexual harassment in Australian universities.

Recommendation 30: That the Australian Government continue to ensure there are adequate protections in place to address sexual harassment in the workplace, with consideration of the identified strategies in the *Working without fear* report and the forthcoming outcomes of the Commission's 2017 survey.

Recommendation 31: That the Australian Government continue to encourage cultural reform and enhance the participation of women in the Australian Defence Force, consistent with the initiatives in *Pathway to Change*.

Immigration and citizenship

Recommendation 32: That the Australian Government ensure that the human rights of people subject to third country processing are adequately protected.

Recommendation 33: That the Australian Government continue to expand the use of alternatives to closed detention and, where immigration detention is necessary, ensure that it is time limited, strictly

necessary (such as for the purpose of public health and security checks) and subject to individualised decision-making and judicial oversight.

Recommendation 34: That the Australian Government ensure that its refugee status determination process is consistent with international human rights law and discontinue any practices obstructing a full and proper status determination process (such as the current practice of intercepting and turning back boats carrying asylum seekers).

Recommendation 35: That the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) be repealed.

Recommendation 36: That the Australian Government reinstate access to free legal advice for asylum seekers who are disadvantaged, regardless of their mode of arrival.

The Commission considers the issues raised in this section to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

Recommendation 37: That the Australian Government put in place transparent decision-making and external review processes to ensure the exercise of discretionary power in s 501 of the Migration Act complies with international human rights law.

Recommendation 38: That the Australian Parliament not pass the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 in its current form.

Children and young people

Recommendation 39: That the Australian Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection, out-of-home care, and the prevalence and nature of child abuse and neglect.

Recommendation 40: That the Australian Government implement the National Children's Commissioner's recommendations in the *Children's Rights Report 2015* (Chapter 4).

Recommendation 41: That the Australian Government maintain a public register that monitors all Australian governments' compliance with, and implementation of, the recommendations of the Royal Commission into Institutional Abuse of Children once released, and that remedies be provided to victims. The Commission considers this inquiry to be of such importance that the Committee should request an update from the Australian Government on progress of implementation in 12 months time.

Recommendation 42: That the Australian Government implement the National Children's Commissioner's recommendations in the *Children's Rights Report 2014* (Chapter 3).

Recommendation 43: That the Australian Government implement the National Children's Commissioner's recommendations in the *Children's Rights Report 2016* (Chapter 3).

Recommendation 44: That all Australian Governments develop alternative behaviour management techniques to reduce the use of force, isolation and restraints against children in juvenile detention facilities.

Recommendation 45: That all Australian Governments cease detention of children in adult facilities.

Recommendation 46: That all Australian Governments expand the use of diversionary programs for children and young people.

Recommendation 47: That mandatory sentencing for children and young people should be discontinued in all jurisdictions.

Recommendation 48: That the age of criminal responsibility should be raised from 10 years to 12 years in the first instance, with preservation of the common law presumption of *doli incapax*.

Rights and freedoms

Recommendation 49: That the Australian Government consider how Australian law could further incorporate international human rights law relating to religious belief and observance.

Recommendation 50: That the Australian Parliament pass the Australian Border Force Amendment (Protected Information) Bill 2017 (Cth) with certain amendments, as previously recommended by the Commission.

Recommendation 51: That the Australian Government amend other secrecy laws in accordance with the recommendations of the ALRC in its *Secrecy Laws and Open Government* report.

Recommendation 52: That Australian parliaments ensure that all laws that regulate protest activity do not impinge disproportionately on freedom of expression, freedom of association and freedom of peaceful assembly.

Recommendation 53: That the Australian Government ensure that funding agreements, laws and policies do not unreasonably and disproportionately restrict civil society organisations from engaging in law reform, policy or advocacy work on issues of public interest.

Recommendation 54: That the Australian Government commission an independent, broadly focused inquiry into freedom of expression in Australia.

Racial discrimination

Recommendation 55: That the Australian Government continue to fund and support initiatives to address racism and racial discrimination.

Recommendation 56: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination in setting a standard for public conduct in a multicultural society.

Counter-terrorism

Recommendation 57: That the Australian Government consider the concerns raised by the Independent National Security Legislation Monitor in ensuring that counter-terrorism measures do not unnecessarily limit human rights.

Recommendation 58: That the Australian Government ensure that where counter-terrorism laws limit human rights, the limitation is clearly expressed, necessary for the pursuit of a legitimate purpose, reasonable and proportionate. The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

Human trafficking and slavery

Recommendation 59: That the Australian Government fully implement the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*; develop a federal compensation scheme for survivors of human trafficking and slavery; ensure regular collection of data on the prevalence of child trafficking and slavery in Australia and the provision of specialist support services to child survivors; and develop a regulatory regime addressing international surrogacy arrangements.

Business and human rights

Recommendation 60: That the Australian Government formulate a National Action Plan on Business and Human Rights, in consultation with the business sector, and that it have clear links with the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*.

Recommendation 61: That the Australian Government develop a Modern Slavery Act in Australia.

Recommendation 62: That the Australian Government amend the Commonwealth Procurement Rules to align with the UN Guiding Principles on Business and Human Rights, including in regard to human rights due diligence in procurement.

Endnotes

- ¹ United Nations Human Rights Committee, *Rules of procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.10 (11 January 2012). At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f3%2fREV.10&Lang=en (viewed 14 September 2017).
- ² Parliamentary scrutiny processes include the Senate Standing Committee on Regulations and Ordinances, Senate Standing Committee for the Scrutiny of Bills, Parliamentary Joint Committee on Human Rights, Senate Standing Committee on Legal and Constitutional Affairs, Parliamentary Joint Committee on Intelligence and Security and Parliamentary Joint Committee on Law Enforcement. Other review mechanisms include the Australian Human Rights Commission, Independent National Security Legislation Monitor and Australian Law Reform Commission. See Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Final Report)* (2016) Ch 3. At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017).
- ³ Since the beginning of 2016, the Parliamentary Joint Committee on Human Rights has reviewed 74 other legislative instruments. Parliamentary Joint Committee on Human Rights, *Index of Bills and Legislative Instruments*. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Index_of_bills_and_instruments (viewed 11 September 2017).
- ⁴ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), ss 8, 9. At <https://www.legislation.gov.au/Details/C2011A00186> (viewed 11 September 2017).
- ⁵ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 477, 506-7. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).
- ⁶ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 474-5. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).
- ⁷ Shawn Rajanayagam, 'Does Parliament Do Enough? Evaluating Statements of Compatibility under the *Human Rights (Parliamentary Scrutiny) Act*' (2015) 38(3) *University of New South Wales Law Journal* 1046, 1069-1070. At <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/journals/UNSWLJ/2015/37.pdf> (viewed 11 September 2017).
- ⁸ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Final Report)* (2016) 75-76 [3.95]. At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017). The ALRC's suggestions include additional guidance to policy makers during policy development and legislative drafting stages; improving quality of explanatory material and statements of compatibility; effective and appropriate streamlining of overlapping work across scrutiny committees; increasing time available to conduct scrutiny; and improving extent to which Parliament considers the scrutiny reports.
- ⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic). At <https://www.humanrightscommission.vic.gov.au/human-rights/the-charter> (viewed 11 September 2017); *Human Rights Act 2004* (ACT). At http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/act/consol_act/hra2004148/ (viewed 11 September 2017).
- ¹⁰ Legal Affairs and Community Safety Committee, Parliament of Queensland, *Inquiry into a possible Human Rights Act for Queensland* (Report No 30) Recommendation 1, xx. At <http://www.parliament.qld.gov.au/docs/find.aspx?id=5516T405> (viewed 11 September 2017). Earlier this year, a petition was launched calling for a Tasmanian human rights Act (10 years after the Tasmanian Law Reform Institute recommended the establishment of a state human rights Act). See Blair Richards, 'Campaign begins to put a human rights Act back on agenda', *The Mercury* (online), 22 January 2017. At <http://www.themercury.com.au/news/politics/campaign-begins-to-put-a-human-rights-act-back-on-agenda/news-story/d70cf11696eed0de5c42cf2be381335f> (viewed 11 September 2017).
- ¹¹ Minister for Foreign Affairs and Attorney General, 'Improving oversight and conditions in detention' (Media Release, 9 February 2017). At <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx> (viewed 11 September 2017).

¹² Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

¹³ Despite being only 3% of the total Australian population, Aboriginal and Torres Strait Islander adults account for over a quarter (27%) of the total Australian prison population. See Australian Bureau of Statistics (2016) Prisoners in Australia, Aboriginal and Torres Strait Islander Prisoner Characteristics, 4517.0 (8 December 2016). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~5> (viewed 11 September 2017). Between 2000 and 2013 the imprisonment rate for Aboriginal Torres Strait Islander adults increased by 57%. Most recent statistics show Aboriginal and Torres Strait Islander adults are imprisoned at 13 times the rate of non-Indigenous adults. Aboriginal children are imprisoned at 24 times the rate of non-Indigenous young people. Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2014* (2014), 4. At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014#report> (viewed 11 September 2017). On an average day, Indigenous children aged 10–17 were 17 times as likely to be under community-based supervision as non-Indigenous young people and 25 times as likely to be in juvenile detention: Australian Institute of Health and Welfare, *Youth Justice in Australia 2015–16* (March 2017), 2. At <https://www.aihw.gov.au/getmedia/b85be60c-9fef-436d-85df-82d8e5c5f566/20705.pdf.aspx?inline=true> (viewed 11 September 2017).

¹⁴ Australian Bureau of Statistics, *Profiles of Disability, Australia, 2009*, Comparison of Disability Prevalence between Aboriginal and Torres Strait Islander Peoples and Non-Indigenous Peoples (2013). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4429.0~2009~Main%20Features~Comparison%20of%20disability%20prevalence%20between%20Aboriginal%20and%20Torres%20Strait%20Islander%20peoples%20and%20non-Indigenous%20peoples~10029> (viewed 11 September 2017). Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies* (2014) 12-13. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 11 September 2017). E Baldry, R McCausland, L Dowse, E McEntyre, *A predictable and preventable path: IAMHDCD Report* (UNSW, October 2015). At <https://www.mhdcd.unsw.edu.au/a-predictable-and-preventable-path-iamhdcd-report.html> (viewed 11 September 2017).

¹⁵ Aboriginal and Torres Strait Islander youth aged between 10-17 years make up more than half (55%) of all children in juvenile detention. See Australian Institute of Health and Welfare, *Youth detention population in Australia* (2016). At <http://www.aihw.gov.au/publication-detail/?id=60129557387&tab=2> (viewed 11 September 2017). In her country visit to Australia in 2017, the Special Rapporteur for the rights of indigenous peoples found that in Cleveland Youth Detention Centre in Townsville, Queensland, Aboriginal and Torres Strait Islander children constitute 95% of the children detained there. See Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

¹⁶ Productivity Commission, *Report on Government Services 2017*, Vol C: Justice, Steering Committee for the Review of Government Service Provision (2017) 6.13; First Peoples Disability Justice Consortium, Submission 39 to the Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia*.

¹⁷ *Police Administration Act* (NT), Div 4AA.

¹⁸ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

¹⁹ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

- ²⁰ In 2014, the Commission inquired into complaints by four Aboriginal men with intellectual and cognitive disabilities who had been incarcerated for a number of years despite being found unfit to stand trial or not guilty by reason of insanity. See *KA, KB, KC and KD v Commonwealth of Australia* [2014] AusHRC 80. At <https://www.humanrights.gov.au/our-work/legal/publications/ka-kb-kc-and-kd-v-commonwealth-australia> (viewed 11 September 2017). The Aboriginal Disability Justice Campaign advocates for progress in relation to the indefinite incarceration of Aboriginal people with intellectual and cognitive disabilities. People with Disability Australia, *Aboriginal Disability Justice Campaign* (2015). At <http://www.pwd.org.au/about-us/about-pwda.html> (viewed 11 September 2017).
- ²¹ Australian Human Rights Commission, *Social Justice and Native Title Report 2016* (2016), 42-45. At http://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_SJNTR_2016.pdf (viewed 11 September 2017).
- ²² Australian Law Reform Commission, *Incarceration rates of Aboriginal and Torres Strait Islander peoples*. At <https://www.alrc.gov.au/inquiries/indigenous-incarceration> (viewed 11 September 2017).
- ²³ Justice targets refer to targets to address the overrepresentation of Aboriginal and Torres Strait Islander peoples as both offenders and victims in the criminal justice system. It has been recommended by the National Congress of Australia's First Peoples that targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples. Proposed justice targets could be included in the existing Close the Gap framework. The Australian Government has stated that it rejects the adoption of justice-related targets. See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (2014), 117-123. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 11 September 2017).
- ²⁴ Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013), 124. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 11 September 2017). Justice reinvestment involves diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending. The Aboriginal and Torres Strait Islander Social Justice Commissioner has advocated for justice reinvestment over the past five years. The 2014 Social Justice and Native Title Report recommends that, 'the Australian Government take a leadership role on justice reinvestment and works with states, territories and Aboriginal and Torres Strait Islander communities to identify further trial sites.' Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 12. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0> (viewed 11 September 2017).
- ²⁵ Change the Record Coalition, *Blueprint for Change*, Change the Record Steering Committee (2015).
- ²⁶ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).
- ²⁷ Council of Australian Governments, *Investigation into Indigenous Land Administration and Use Final Report*, December 2015. At https://www.dpmc.gov.au/sites/default/files/files/COAG_Investigation_into_Indigenous_Land_Administration_and_Use.pdf (viewed 11 September 2017).
- ²⁸ Australian Law Reform Commission, *Connection to Country Review of the Native Title Act 1993* (Cth), Report No 126 (2015). At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_126_final_report.pdf (viewed 11 September 2017).
- ²⁹ Australian Human Rights Commission, *Communiqué, Indigenous Leader's Roundtable on economic development and property rights – Broome, 19-20 May 2015* (2015) 1. At http://www.humanrights.gov.au/sites/default/files/IndigenousLeadersRoundtable_communique_2015_AHRC.pdf (viewed 14 September 2017). Australian Human Rights Commission, *Indigenous Property Rights Project – GARMA Roundtable Background Paper* (29 July – 1 August 2016) 9. At http://www.humanrights.gov.au/sites/default/files/Garma%20discussion%20paper%2011%20August%202016_1.pdf (viewed 14 September 2017). See generally Australian Human Rights Commission, *Indigenous Property Rights*. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/indigenous-property-rights> (viewed 14 September 2017).
- ³⁰ The Commission has reported to the UN on violence against Aboriginal and Torres Strait Islander women and to Commonwealth Inquiries. See Australian Human Rights Commission, *Australia's*

Universal Periodic Review on human rights – Annual Progress Reports. At <https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights> (viewed 11 September 2017). Australian Human Rights Commission, Submission No 57 to Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings*, 11 February 2015, 3. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect (viewed 11 September 2017); Australian Human Rights Commission, Submission No 41 to the Senate Finance and Public Administration Reference Committee, *Inquiry into Domestic Violence and Gender Inequality*, 4 April 2016. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/DV_and_Gender_Inequality (viewed 11 September 2017).

³¹ Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Prime Minister's Report 2017* (2017) 95. At <http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf> (viewed 11 September 2017).

³² Council of Australian Governments, *National Plan to reduce violence against women and their children* (2011) 7. At <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> (viewed 11 September 2017). See also Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Prime Minister's Report 2017* (2017) 95-96. At <http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf> (viewed 11 September 2017).

³³ Australian Bureau of Statistics, *Prisoners in Australia, 2016* (data tables) in Human Rights Law Centre and Change the Record Coalition, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017), 10. At https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf (viewed 11 September 2017).

³⁴ Human Rights Law Centre and Change the Record Coalition, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017), 5. At https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf (viewed 11 September 2017).

³⁵ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

³⁶ First Nations National Constitutional Convention, 'Uluru Statement From The Heart' (Group statement, 26 May 2017). At https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF (viewed 11 September 2017).

³⁷ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

³⁸ Australian Bureau of Statistics, *Social and Economic Wellbeing of Aboriginal and Torres Strait Islander People with Disability*. At [http://www.abs.gov.au/ausstats/abs@.nsl/Lookup/by%20Subject/4714.0~2014-15~Feature%20Article~Social%20and%20economic%20wellbeing%20of%20Aboriginal%20and%20Torres%20Strait%20Islander%20people%20with%20disability%20\(Feature%20Article\)~10000](http://www.abs.gov.au/ausstats/abs@.nsl/Lookup/by%20Subject/4714.0~2014-15~Feature%20Article~Social%20and%20economic%20wellbeing%20of%20Aboriginal%20and%20Torres%20Strait%20Islander%20people%20with%20disability%20(Feature%20Article)~10000) (viewed 11 September 2017).

³⁹ Australian Government Department of Social Services, *National Disability Strategy* (2016). At <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/Government-international/national-disability-strategy> (viewed 11 September 2017).

⁴⁰ Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 17 [1.13]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 11 September 2017).

⁴¹ Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 22 [1.36], 30 [1.73], 128 [7.6]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 11 September 2017); Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-whatelder-abuse> (viewed 11 September 2017).

⁴² The report also provided recommendations in a number of specific areas including aged care, enduring documents, family agreements, superannuation, wills, banking, tribunal appointed guardians₃

and administrators, social security, health and criminal justice responses. See Australian Law Reform Commission, *Elder Abuse – A National Legal Response (Final Report)*, Report No 131 (31 May 2017). At

https://www.alrc.gov.au/sites/default/files/pdfs/publications/elder_abuse_131_final_report_31_may_2017.pdf (viewed 11 September 2017).

⁴³ See Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-whatelder-abuse> (viewed 11 September 2017); Queensland 55th Parliament, 'Inquiry into the adequacy of existing protections for Queensland's seniors', Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No. 2. August 2015. At

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T876.pdf> (viewed 11 September 2017); NSW Legislative Council, General Purpose Standing Committee No 2, *Inquiry into elder abuse in New South Wales*, Report 44 (2016). At

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387#tabreports> (viewed 11 September 2017); Victorian Government, *Royal Commission into Family Violence*, Report (2016). At <http://www.rcfv.com.au/Report-Recommendations> (viewed 11 September 2017).

⁴⁴ As announced in the Liberal Party of Australia, *The Coalition's Policy to Protect the Rights of Older Australians* (2016). At www.liberal.org.au/coalitions-policy-protect-rights-older-australians (viewed 11 September 2017).

⁴⁵ As announced in the Liberal Party of Australia, *Improving the digital confidence and skills of senior Australians* (2016). At <https://www.liberal.org.au/latest-news/2016/06/26/improving-digital-confidence-and-skills-senior-australians> (viewed 11 September 2017).

⁴⁶ Australian Government, 'About the office', *Office of the eSafety Commissioner*. At <https://www.esafety.gov.au/about-the-office> (viewed 11 September 2017). See also *Enhancing Online Safety for Children Act 2015* (Cth).

⁴⁷ The Hon Mitch Fifield, Minister for Communications, and The Hon Michaelia Cash, Minister for Women, *eSafety Commissioner to enhance online safety for all Australians*, Ministers for the Department of Communications and the Arts, Australian Government (20 June 2017). At http://www.minister.communications.gov.au/mitch_fifield/news/esafety_commissioner_to_enhance_online_safety_for_all_australians#.WbXnsk1dY8Q (viewed 11 September 2017).

⁴⁸ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2 May 2016). At <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination> (viewed 11 September 2017).

⁴⁹ Australian Human Rights Commission, *Willing to Work National Inquiry into Employment Discrimination against Older Australians and Australians with Disability*, 2 May 2016. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiryemployment-discrimination> (viewed 11 September 2017).

⁵⁰ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: First Results, 2015* (Cat. No. 4430.0.10.001). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0.10.001> (viewed 11 September 2017).

⁵¹ The Commission's report, *Equal Before The Law*, concluded that people with disability have higher rates of interaction with the criminal justice system than other Australians, citing 2012 statistics that indicate 38% of prison entrants reported that they have been told by a doctor, psychiatrist, psychologist or nurse that they have a mental health disorder and 46% of prison discharges reported that they have been told they have a health condition – mental health, including drug and alcohol abuse. Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies* (2014) 12. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 11 September 2017).

⁵² Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies* (2014) 12. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 11 September 2017).

⁵³ *Report of the Working Group on the Universal Periodic Review Australia*, HRC, 31st sess, Agenda Item 6, UN Doc A/HRC/31/14 (31 January 2016) [141]. At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx> (viewed 11 September 2017). See also Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) 200–201 (Recommendation 7–1), 206 (Recommendation 7-2); Senate Standing Committee on Community Affairs, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (2016) 173 [9.11] (Recommendation 1). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report (viewed 14 September 2017).

⁵⁴ Australian Government Department of Social Services, *Australian Government response to the Senate Community Affairs References Committee report: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (2017). At <https://www.dss.gov.au/disability-and-carers/publications-articles/general/australian-government-response-violence-abuse-neglect-against-people-with-disability> (viewed 11 September 2017).

⁵⁵ Senate Standing Committees on Community Affairs, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings*, At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect (viewed 11 September 2017).

⁵⁶ Australian Human Rights Commission, *Shaping our future: discussions on disability rights* (2017). At <http://www.humanrights.gov.au/our-work/disability-rights/projects/shaping-our-future-discussions-disability-rights> (viewed 11 September 2017).

⁵⁷ The Commission notes that the Australian Communications and Media Authority's report on the outcomes of its statutory review of the television captioning requirements in the *Broadcasting Services Act 1992* by 30 June 2017. At https://www.acma.gov.au/-/media/Content-Projects-and-Policy/Information/pdf/ACMA-captioning-report_April2017-pdf.pdf?la=en (viewed 11 September 2017). The Commission also welcomes the recently announced audio description working group that will look at ways to facilitate greater access to information and new for people who are blind and people with low vision. See Australian Government Department of Communications and the Arts, *Accessible Television* (2017). At https://www.communications.gov.au/what-we-do/television/accessible_television (viewed 11 September 2017).

⁵⁸ In the 2016 Federal Election, a man who was a wheelchair user was unable to enter the only pre-polling place in Wollongong to vote, and instead had to vote outside under the supervision of an Australian Electoral Commission official. See Ben Langford, *Wollongong man in wheelchair forced to vote in the street as polling place not accessible* (2016). At <http://www.illawarramercury.com.au/story/3999846/vote-access-a-step-too-far/> (viewed 11 September 2017).

⁵⁹ *Commonwealth Electoral Act 1918* (Cth), s 93(8)(a), 118(4). See also *Parliamentary Electorates and Elections Act 1912* (NSW) s 25(a); *Electoral Act 1907* (WA) s 18(1)(a); *Electoral Act 1985* (SA) s 29(1)(iv).

⁶⁰ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (2014). At <https://www.alrc.gov.au/publications/equality-capacity-disability-report-124> (viewed 11 September 2017).

⁶¹ Australian Human Rights Commission, *Shaping our future: discussions on disability rights* (2017). At <http://www.humanrights.gov.au/our-work/disability-rights/projects/shaping-our-future-discussions-disability-rights> (viewed 11 September 2017); Australian Human Rights Commission, *A Conversation in Gender Equality* (2017). At <http://www.humanrights.gov.au/our-work/sex-discrimination/publications/conversation-gender-equality-2017> (viewed 11 September 2017).

⁶² Australian Government Department of Social Services, *Third Action Plan 2016-19 of the National Plan to Reduce Violence Against Women and their Children 2010-2022* (2016). At <https://www.dss.gov.au/women/programs-services/reducing-violence/third-action-plan> (viewed 11 September 2017).

⁶³ Stop the Violence Project, *Stop the Violence: Addressing Violence against Women and Girls with Disabilities in Australia: Discussion Paper* (2013). All STVP reports are available at: <http://www.stvp.org.au/National-Symposium.htm> (viewed 14 September 2017). The outcomes and recommendations of the Stop the Violence Project are outlined in Stop the Violence Project, *Report of the Proceedings and Outcomes: National Symposium on Violence against Women and Girls with Disabilities* (2013), 22-30. At http://wwda.org.au/wp-content/uploads/2013/12/STV_Outcomes_Paper.pdf (viewed 14 September 2017). See also Stop the Violence Project, *Resource Compendium: Key Principles for Good Practice in Service Delivery and Key principles for good practice in policy development and service modelling*. At <http://www.stvp.org.au/Resource-Compendium.html> (viewed 14 September 2017).

⁶⁴ Such as violence in institutions and residential settings, sexual and reproductive rights violations, including forced sterilisation and forced abortion, restrictive practices, seclusion and restraint. See Carolyn Frohmader, *Violence Against Women with Disabilities* (2014). At https://www.pwd.org.au/documents/temp/FS_Violence_WWD's.pdf (viewed 11 September 2017).

- ⁶⁵ Senate Standing Committee on Community Affairs, Parliament of Australia, *Involuntary or coerced sterilisation of people with disability in Australia* (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/~/_media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/first_report/report_ashx (viewed 11 September 2017); Australian Human Rights Commission, Submission No 5 to Senate Standing Committee on Community Affairs, *Involuntary or coerced sterilisation of people with disability in Australia* (20 November 2012). At <http://www.aph.gov.au/DocumentStore.ashx?id=3d3c9b64-7a59-4e30-bd96-e38d52fe85c8&subId=16108> (viewed 11 September 2017).
- ⁶⁶ Carolyn Frohmader, *Violence Against Women with Disabilities* (2014). At https://www.pwd.org.au/documents/temp/FS_Violence_WWD's.pdf (viewed 11 September 2017).
- ⁶⁷ Michelle Telfer, Michelle Tollit and Debi Feldman, 'Transformation of health-care and legal systems for the transgender population: The need for change in Australia' (2015) 51 *Journal of Paediatrics and Child Health* 1051.
- ⁶⁸ See Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights* (2015), 29-31. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual> (viewed 11 September 2017).
- ⁶⁹ *Sex Discrimination Act 1984* (Cth) ss 5A – 5C.
- ⁷⁰ These amendments include exceptions that allow some clubs and religious service providers to discriminate against LGBTI people in service provision, employment, education and sports.
- ⁷¹ *Sex Discrimination Regulations 1984* (Cth) reg 5(2). This amendment was an implementation of UPR Recommendation 221 (Ensure that states' legislation is consistent with the amended *Sex Discrimination Act 1984* (Cth) (Israel)).
- ⁷² See, for example, *Human Reproductive Technology Act 1991* (WA) s 19(2).
- ⁷³ *Births, Deaths and Marriages Registration Act 1997* (ACT) s 24(1)(c)(i); *Births, Deaths and Marriages Registration (Gender Identity) Amendment Act 2016* (SA) s 29K(a)(ii)(B).
- ⁷⁴ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights* 2015, 50. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual> (viewed 11 September 2017).
- ⁷⁵ Human Rights Committee, *Views: Communication No 2172/2012*, 119th sess, UN Doc CCPR/C/119/D/2172/2012 (17 March 2017) ('*G v Australia*'). At http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_119_D_2172_2012_25976_E.pdf (viewed 11 September 2017).
- ⁷⁶ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights* 2015, 57. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual> (viewed 11 September 2017).
- ⁷⁷ Senate Standing Committee on Community Affairs, *Involuntary or coerced sterilisation of intersex people in Australia* (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index (viewed 11 September 2017).
- ⁷⁸ *Marriage Act 1961* (Cth) s 5(1).
- ⁷⁹ Australian Human Rights Commission, *Marriage Equality in a Changing World: Position Paper on Marriage Equality* (2012) 1. At <http://www.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-0> (viewed 11 September 2017).
- ⁸⁰ *Marriage Act 1961* (Cth) s 47.
- ⁸¹ Australian Human Rights Commission, *Marriage Equality in a Changing World: Position Paper on Marriage Equality* (2012) 4. At <http://www.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-0> (viewed 11 September 2017). The right to freedom of religion is discussed in section 12.1 of this submission.
- ⁸² Mathias Cormann, 'Commitment to a National Plebiscite on Same Sex Marriage' (Media Release, MC 46/17, 8 August 2017). At <http://www.financeminister.gov.au/media-release/2017/08/08/commitment-national-plebiscite-same-sex-marriage> (viewed 11 September 2017).
- ⁸³ Australian Human Rights Commission, Submission No 26 to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into a Popular Vote in the Form of a Plebiscite or Referendum, on Marriage in Australia*, 4 September 2015, 3. At <https://www.humanrights.gov.au/submissions/senate-inquiry-matter-popular-vote-form-plebiscite-or-referendum-matter-marriage> (viewed 11 September 2017).
- ⁸⁴ Human Rights Committee, *Views: Communication No 2216/2012*, 119th sess, UN Doc CCPR/C/119/D/2216/2012 (3 August 2017) ('*C v Australia*').
- ⁸⁵ The National Plan is a twelve-year plan which aims to coordinate actions across Australian jurisdictions to reduce levels of violence against women and children. See Council of Australian

Governments, *The National Plan to Reduce Violence against Women and their Children 2010–2022* (2011). At https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan_accessible.pdf (viewed 11 September 2017).

⁸⁶ Council of Australian Governments, *Communique*, April 2015. At <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-17-april-2015> (viewed 22 February 2016); Malcolm Turnbull, Media Release: *Women's Safety Package to #StoptheViolence*, (24 September 2015). At <http://www.malcolmturnbull.com.au/media/release-womens-safety-package-to-stoptheviolence> (viewed 11 September 2017).

⁸⁷ Australian Human Rights Commission, *A National System for Domestic and Family Violence Death Review* (2017) 12. At https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2016_12_19_Expanding_DV_Death_Review.pdf (viewed 11 September 2017). The Special Rapporteur on violence against women, its causes and consequences has also encouraged the Australian Government to further improve collection of comparable data on gender-related killings. See Dubravka Šimonović, United Nations Special Rapporteur violence against women, its causes and consequences, *End of Mission Statement Dubravka Šimonović, United Nations Special Rapporteur on Violence against women, its causes and consequences on her visit to Australia* (27 February 2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E> (viewed 14 September 2017).

⁸⁸ VicHealth, *Preventing Violence against Women in Australia: Research Summary*, Victorian Health Promotion Foundation (2011). At <https://www.vichealth.vic.gov.au/media-and-resources/publications/violence-against-women-in-australia-research-summary> (viewed 11 September 2017). The Special Rapporteur on violence against women, its causes and consequences paid special attention to the situation of women who encounter multiple and intersecting forms of discrimination and violence during the visit to Australia in February 2017. See Dubravka Šimonović, United Nations Special Rapporteur violence against women, its causes and consequences, *End of Mission Statement Dubravka Šimonović, United Nations Special Rapporteur on Violence against women, its causes and consequences on her visit to Australia* (27 February 2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E> (viewed 14 September 2017).

⁸⁹ Australian Human Rights Commission, *Working without fear: Results of the Sexual Harassment National Telephone Survey* (2012) 12. At <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/working-without-fear-results-sexual-harassment-national> (viewed 11 September 2017).

⁹⁰ Australian Human Rights Commission, *Working without fear: Results of the Sexual Harassment National Telephone Survey* (2012) 12. At <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/working-without-fear-results-sexual-harassment-national> (viewed 11 September 2017).

⁹¹ Australian Human Rights Commission, *Change The Course: National Report on Sexual Assault and Sexual Harassment at Australia Universities* (2017) 3. At https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf (viewed 11 September 2017).

⁹² Department of Defence, *Pathway to Change: Evolving Defence Culture* (2012). At <http://www.defence.gov.au/PathwayToChange/Docs/120410%20Pathway%20to%20Change%20-%20Evolving%20Defence%20Culture%20-%20web%20version.pdf> (viewed 11 September 2017).

⁹³ See United Nations High Commissioner for Refugees, *UNHCR Mission to the Republic of Nauru, 3-5 December 2012* (2012). At <http://reliefweb.int/sites/reliefweb.int/files/resources/2012-12-14%2Bnauru%2Bmonitoring%2Breport%2Bfinal.pdf> (viewed 11 September 2017); United Nations High Commissioner for Refugees, *UNHCR Mission to Manus Island, Papua New Guinea, 15-17 January 2013* (2013). At <http://www.refworld.org/docid/5139ab872.html> (viewed 11 September 2017); United Nations High Commissioner for Refugees, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11-13 June 2013* (2013). At <http://www.refworld.org/docid/51f61ed54.html> (viewed 11 September 2017); Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of the Migration (Regional Processing) package of legislation* (19 June 2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/migration/index (viewed 11 September 2017); United Nations High Commissioner for Refugees, *UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013* (2013). At <http://www.unhcr.org/en-au/publications/legal/58117b931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html> (viewed 11 September 2017); United Nations High Commissioner for Refugees, *UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* (2013). <http://www.unhcr.org/en-au/publications/legal/58117aff7/unhcr-monitoring-visit-to-manus->

[island-papua-new-guinea-23-to-25-october.html](#) (viewed 11 September 2017); Robert Cornall, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre* (Department of Immigration and Border Protection, 23 May 2014). At <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-robert-cornall.pdf> (viewed 11 September 2017); United Nations Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014), 6. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/AUS/CO/4-5&Lang=En (viewed 11 September 2017); Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (Department of Immigration and Border Protection, 6 February 2015). At <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf> (viewed 11 September 2017); Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received*, United Nations Human Rights Council, 28th sess, Agenda Item 3, UN Doc A/HRC/28/68/Add.1 (5 March 2015). At http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_Add.1_en.doc (viewed 11 September 2017); Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (December 2014) 37–54. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/~media/Committees/Senate/committee/legcon_ctte/Manus_Island/Report/report.pdf (viewed 11 September 2017); Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, Parliament of Australia, *Taking responsibility: Conditions and circumstances at Australia's Regional Processing Centre in Nauru* (August 2015) 59–86. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~media/Committees/nauru_ctte/Final_Report/report.pdf (viewed 11 September 2017); Elizabeth Elliott and Hasantha Gunasekera, *The health and well-being of children in immigration detention: Report to the Australian Human Rights Commission – Monitoring Visit to Wickham Point Detention Centre, Darwin, NT* (Australian Human Rights Commission, 2016) 12. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/health-and-well-being-children-immigration> (viewed 11 September 2017).

⁹⁴ As indicated by a comparison of the issues raised in the documents referred to above.

⁹⁵ See, for example, Robert Cornall, *Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre* (Department of Immigration and Border Protection, 23 May 2014). At <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-robert-cornall.pdf> (viewed 11 September 2017); Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (Department of Immigration and Border Protection, 6 February 2015) 23–51. At <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf> (viewed 11 September 2017); Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, Parliament of Australia, *Taking responsibility: Conditions and circumstances at Australia's Regional Processing Centre in Nauru* (August 2015). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~media/Committees/nauru_ctte/Final_Report/report.pdf (viewed 11 September 2017).

⁹⁶ For example, interviews and assessments conducted by the Commission in November 2015 with children and families who had been subject to third country processing in Nauru revealed high levels of trauma and developmental risk amongst these children. See Elizabeth Elliott and Hasantha Gunasekera, *The health and well-being of children in immigration detention: Report to the Australian Human Rights Commission – Monitoring Visit to Wickham Point Detention Centre, Darwin, NT* (Australian Human Rights Commission, 2016). At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/health-and-well-being-children-immigration> (viewed 11 September 2017).

⁹⁷ United Nations High Commissioner for Refugees, *UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* (2013) 24. At <http://www.unhcr.org/en-au/publications/legal/58117aff7/unhcr-monitoring-visit-to-manus-island-papua-new-guinea-23-to-25-october.html> (viewed 11 September 2017); United Nations High Commissioner for Refugees, *UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013* (2013) 25. At <http://www.unhcr.org/en-48>

[au/publications/legal/58117b931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html](http://www.humanrights.gov.au/publications/legal/58117b931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html) (viewed 11 September 2017).

⁹⁸ See, for example, United Nations High Commissioner for Refugees, *UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* (2013) 7–12. At <http://www.unhcr.org/en-au/publications/legal/58117aff7/unhcr-monitoring-visit-to-manus-island-papua-new-guinea-23-to-25-october.html> (viewed 11 September 2017).

⁹⁹ While Nauru has recently decriminalised same-sex sexual activity, it remained a criminal offence at the time that the transfers took place in these cases. See Australian Human Rights Commission, *Asylum seekers, refugees and human rights: Snapshot Report (2nd edition)* (2017) 33. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/asylum-seekers-refugees-and-human-rights-snapsho-0> (viewed 11 September 2017).

¹⁰⁰ *Migration Act 1958* (Cth) ss 189, 196

¹⁰¹ See, for example, Janette P Green and Kathy Eagar, 'The health of people in Australian immigration detention centres' (2010) 192 *2 Medical Journal of Australia* 65; Louise K Newman, Nicholas G Procter and Michael J Dudley, 'Suicide and self-harm in immigration detention' (2011) 195 *6 Medical Journal of Australia* 310; Melissa Bull et al, 'Sickness in the system of long-term immigration detention' (2012) 26 *1 Journal of Refugee Studies* 47; Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013). At <http://www.ombudsman.gov.au/news-and-media/media-releases/media-release-documents/commonwealth-ombudsman/2013?a=26154> (viewed 11 September 2017); Ilan Katz et al, *The experiences of Irregular Maritime Arrivals detained in immigration detention facilities: Final report* (2013). At http://www.unsworks.unsw.edu.au/primo_library/libweb/action/diDisplay.do?vid=UNSWORKS&docId=unsworks_modsunsworks_39307 (viewed 11 September 2017).

¹⁰² For example, a 2004 study of asylum seeker families in immigration detention found that this incidence of psychiatric disorders amongst both adults and children in detention increased over time. See Zachary Steel et al, 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' (2004) 282 *Australian and New Zealand Journal of Public Health* 23.

¹⁰³ The Department of Immigration and Border Protection's monthly immigration detention statistics summaries show that by the end February 2017 there were less than 5 children in detention. The summaries are available at <http://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention> (viewed 11 September 2017).

¹⁰⁴ Scott Morrison, Minister for Immigration and Border Protection, 'Government success stopping illegal boats to save \$2.5 billion' (Media Release, 13 May 2014). At

http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/3165273/upload_binary/3165273.pdf (viewed 11 September 2017).

Scott Morrison, Minister for Immigration and Border Protection, 'Government closes Labor's Inverbrackie detention centre' (Media Release, 12 December 2014). At

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F3575101%22> (viewed 11 September 2017); Peter Dutton, Minister for Immigration and Border Protection, 'Government closes Darwin's Bladin detention facility' (Media Release, 21 February 2015).

At <http://www.minister.border.gov.au/peterdutton/2015/Pages/government-closes-bladin-detention-facility.aspx> (viewed 11 September 2017); Commonwealth of Australia, *Budget Paper No. 2 2016-17* (3 May 2016) 123. At

http://budget.gov.au/2016-17/content/bp2/download/BP2_consolidated.pdf (viewed 11 September 2017); Commonwealth of Australia, *Budget Paper No. 2 2016-17* (3 May 2016) 123. At

http://budget.gov.au/2016-17/content/bp2/download/BP2_consolidated.pdf (viewed 11 September 2017).

¹⁰⁵ As at June 2016, 667 people had been held in closed detention for more than one year (including 362 people who had been held for more than two years). The overall average length of detention in closed facilities has remained in excess of one year since August 2014. See the Department of Immigration and Border Protection's immigration detention statistics summaries from 31 August 2014 to 28 February 2017. At <http://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention> (viewed 11 September 2017).

¹⁰⁶ See *NK v Commonwealth of Australia (Department of Immigration and Citizenship)* [2011] AusHRC 43. At <https://www.humanrights.gov.au/publications/report-no-43-mr-nk-v-commonwealth-australia-department-immigration-and-citizenship-2011> (viewed 11 September 2017); *Toro-Martinez v Commonwealth of Australia* (Department of Immigration and Citizenship) [2011] AusHRC 44. At

<https://www.humanrights.gov.au/publications/aushrc-44-mr-toro-martinez-v-commonwealth-australia-department-immigration-and> (viewed 11 September 2017); *Al Jenabi v Commonwealth of Australia* (Department of Immigration and Citizenship) [2011] AusHRC 45. At

<https://www.humanrights.gov.au/publications/aushrc-45-mr-al-jenabi-v-commonwealth-australia>

[department-immigration-and-citizenship](#) (viewed 11 September 2017); *Heyward v Commonwealth of Australia (Department of Immigration and Citizenship)* [2011] AusHRC 47. At <https://www.humanrights.gov.au/publications/aushrc-47-mr-heyward-v-commonwealth-australia-department-immigration-and-citizenship> (viewed 11 September 2017); *Brown v Commonwealth of Australia (Department of Immigration & Citizenship)* [2012] AusHRC 51. At <https://www.humanrights.gov.au/publications/aushrc-51-brown-v-commonwealth-australia-department-immigration-citizenship> (viewed 11 September 2017); Australian Human Rights Commission, *Background paper: Human rights issues raised by visa refusal or cancellation under section 501 of the Migration Act* (June 2013). At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/background-paper-human-rights-issues-raised-visa> (viewed 11 September 2017); Australian Human Rights Commission, Submission No 8 to the Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014*, 24 October 2014. At <https://www.humanrights.gov.au/sites/default/files/2014.10.28%20Submission%20-%20Final.pdf> (viewed 11 September 2017).

¹⁰⁷ The proposed additional requirements include increasing residency requirements to four years permanent residency; increasing the language requirements of the English language from 'basic knowledge' to 'competent English'; a new requirement that a person 'has integrated into the Australian community', amongst others.

¹⁰⁸ Groups include children born in Australia to asylum seeker or refugee parents, even after those children have been lawfully in Australia for up to 10 years; children born in Australia to parents who had a valid visa but overstayed the visa before the child's 10th birthday; children who are found abandoned in Australia; children as young as 10 years old that the Minister considers are not of good character; people with mental illness or cognitive impairment who come into contact with the criminal justice system.

¹⁰⁹ Productivity Commission, *Report on Government Services* (2015), Table 15A.18, Column N. As at 30 June 2014, there were 43,009 children in out-of-home care in Australia: Productivity Commission, *Report on Government Services* (2015), Table 15A.18, Column N, Row 9. Rates have increased from 6.8 to 8.1 per 1,000 between 2009 and 2014. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/data/rogs-2015-volume-f-chapter15-attachment.xlsx> (viewed 11 September 2017).

¹¹⁰ The national rate of Indigenous children in out-of-home care was 9.1 times the rate for non-Indigenous children. In all jurisdictions, the rate of Indigenous children in out-of-home care was higher than for non-Indigenous children, with rate ratios ranging from 6.1 in Victoria to 14.3 in the Northern Territory: Productivity Commission, *Report on Government Services* (2015), Table 15A.18, Columns F-M, Rows 11-12. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/data/rogs-2015-volume-f-chapter15-attachment.xlsx> (viewed 11 September 2017).

¹¹¹ Australian Government Department of Social Services, *An outline of National Standards for out-of-home care* (2011). At <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/an-outline-of-national-standards-for-out-of-home-care-2011> (viewed 11 September 2017).

¹¹² Australian Government, *Budget 2016-17. Budget Paper No. 2. Part 2: Expense Measures*. At http://www.budget.gov.au/2016-17/content/bp2/html/bp2_expense-21.htm (viewed 11 September 2017). In August 2016, the Minister for Social Services and Multicultural Affairs re-affirmed the Commonwealth Government's strong support for the *National Framework for Protecting Australia's Children 2009-2020*, especially the Third Action Plan with its emphasis on the First Thousand Days for a Child. See Families Australia, 5th National Coalition Meeting, 17 August 2016. At <http://us1.campaign-archive1.com/?u=61efdf9e3c03ed2d6188fdb1&id=f87a7e71111&e=f3a9e06879> (viewed 11 September 2017).

¹¹³ Council of Australian Governments (COAG) Advisory Panel on Reducing Violence against Women and their Children, Final Report, 1 April 2016, 62. At <https://www.pmc.gov.au/office-women/womens-safety/coag-advisory-panel-reducing-violence-against-women-and-their-children> (viewed 11 September 2017).

¹¹⁴ S Holt, H Buckley and S Whelan, 'The impact of exposure to domestic violence on children and young people: a review of the literature' (2008) 32 *Child Abuse and Neglect* 797, 810. At http://www.researchgate.net/publication/23219462_The_impact_of_exposure_to_domestic_violence_on_children_and_young_people_A_review_of_the_literature (viewed 11 September 2017).

¹¹⁵ Australian Human Rights Commission, *Children's Rights Report 2015* (2015) 95. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 September 2017).

¹¹⁶ Australian Human Rights Commission, *Children's Rights Report 2015* (2015) 132. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 September 2017).

¹¹⁷ Australian Human Rights Commission, *Children's Rights Report 2015* (2015). At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 September 2017).

¹¹⁸ Australian Human Rights Commission, *All I want is a life free from violence* (2015). At https://www.humanrights.gov.au/sites/default/files/AHRC_Summary_Childrens_Rights_Report_2015.pdf (viewed 11 September 2017); Australian Human Rights Commission, *Children's Rights Report 2015* (2015), chapter 4. At https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf (viewed 11 September 2017).

¹¹⁹ Productivity Commission, *Report on Government Services 2015* (2015) 15.28–15.30. At <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection> (viewed 11 September 2017).

¹²⁰ The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) introduced changes to the *Family Law Act 1975* (Cth) that better ensure the safety of children by expanding the definition of 'family violence' to include socially and financially controlling behaviour and exposing a child to family violence and making it easier for victims to report violence.

¹²¹ Australian Human Rights Commission, *Children's Rights Report 2014* (2014), 16-18. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014> (viewed 11 September 2017). The Federal Parliament also passed the *Enhancing Online Safety for Children Act (2015)* Cth, which will establish a Children's e-Safety Commissioner.

¹²² Australian Bureau of Statistics, *3303.0 – Causes of Death, Australia, 2012* (2014), Table 1.3, Line 40. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3303.0Explanatory%20Notes12012?OpenDocument> (viewed 11 September 2017).

¹²³ Australian Human Rights Commission, *All I want is a life free from violence* (2015). At https://www.humanrights.gov.au/sites/default/files/AHRC_Summary_Childrens_Rights_Report_2015.pdf (viewed 11 September 2017); Australian Human Rights Commission, *Children's Rights Report 2015* (2015), chapter 4. At https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf (viewed 11 September 2017).

¹²⁴ In particular, children have been held in adult detention facilities in Western Australia and Victoria. These transfers have been examined through litigation in which the Commission intervened, *Wilson v Joseph Michael Francis, Minister for Corrective Services for the State of Western Australia* [2013] WASC 157 (3 May 2013), and a Victorian Ombudsman investigation, *Investigation into Children Transferred from the Youth Justice System to the Adult Prison System* (2013). At <https://www.ombudsman.vic.gov.au/getattachment/6a579e49-212e-42b0-9d3c-791e2d60e102//reports-publications/parliamentary-reports/investigation-into-children-transferred-from-the-y.aspx> (viewed 11 September 2017). The National Children Commissioner raised this concern in her inaugural report. Australian Human Rights Commission, *Children's Rights Report 2013* (2013), 33. At <https://www.humanrights.gov.au/publications/childrens-rights-report-2013> (viewed 11 September 2017). The Commission notes recent amendments to the *Youth Justice Act 1992* (Qld) that will stop the transfer to 17-year-olds with six months remaining of their sentence from a youth justice centre to an adult facility in Queensland (see *Youth Justice and Other Legislation Amendment Bill 2016* (Qld) cl 30 amending *Youth Justice Act 1992* (Qld) s 276B). However, the Commission remains concerned that young people aged 17 years continue to be treated as adults by the Queensland criminal justice system and may still serve a sentence of imprisonment in an adult facility (see *Youth Justice Act 1992* (Qld) sch 4 definition of 'child').

¹²⁵ Australian Human Rights Commission, *Children's Rights Report 2016* (2016) Ch 3. At https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf (viewed 11 September 2017).

¹²⁶ In 2015-16 the nightly average of children and young people being held in detention was 49 – 11 in the Alice Springs Youth Detention Centre and 38 in the Don Dale Youth Detention Centre in Darwin. 94% of the children and young people in detention in the Northern Territory are Aboriginal and Torres Strait Islander children. Royal Commission into the Protection and Detention of Children in the Northern Territory, Interim Report (31 March 2017) 9. At <https://childdetentionnt.royalcommission.gov.au/about-us/Documents/RCNT-Interim-report.pdf> (viewed 11 September 2017).

¹²⁷ The Hon Malcolm Turnbull MP, Prime Minister, and the Hon Sen George Brandis QC, 'Royal Commission into the Child Protection and youth detention systems of the Northern Territory', (Media release, 28 July 2016). At <https://www.pm.gov.au/media/2016-07-28/royal-commission-child-protection-and-youth-detention-systems-northern-territory> (viewed 11 September 2017).

¹²⁸ The Australian Human Rights Commission's consultations in the lead up to the UPR identified successful diversionary initiatives in Victoria, the ACT and Tasmania.

¹²⁹ Australian Human Rights Commission, *Children's Rights Report 2016* (2016) 200. At https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf (viewed 11 September 2017).

¹³⁰ Australian Human Rights Commission, 'Submission to the UN Committee Against Torture under the *Convention Against Torture*, 17 October 2014, [70]-[77]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fAUS%2f18690&Lang=en (viewed 11 September 2017).

¹³¹ Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act* (2015) 60. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 11 September 2017).

¹³² See Lucy Carter, "'Burn in hell": Hate message taped to door of Newcastle mosque amidst reports of rise in Islamophobia since Paris attack' (ABC News, 18 November 2015) At <http://www.abc.net.au/news/2015-11-18/hate-message-taped-to-door-of-newcastle-mosque/6951428> (viewed 11 September 2017); AAP, "Toowoomba mosque fire suspicious: police" (Brisbane Times, 24 January 2015). At <http://www.brisbanetimes.com.au/queensland/toowoomba-mosque-fire-suspicious-police-20150124-12xi6s.html> (viewed 11 September 2017).

¹³³ See Laura Aubusson, 'Police investigate swastika graffiti on Jewish synagogue' (Daily Telegraph, 14 April 2016). At <http://www.dailytelegraph.com.au/newslocal/city-east/police-investigate-swastika-graffiti-on-jewish-synagogue/news-story/6b2fd822f1f7853699ced9fcd649dfdb> (viewed 11 September 2017); Henry Benjamin, 'Broken Hill synagogue defaced' (J-Wire, 1 December 2015). At <http://www.jwire.com.au/broken-hill/> (viewed 11 September 2017).

¹³⁴ ABC News, 'Graffiti vandals spray swastikas and hate messages on Ukrainian Catholic church in Lidcombe' (ABC News, 22 June 2014). At <http://www.abc.net.au/news/2014-06-21/swastikas-graffitied-on-side-of-ukranian-church-in-sydney/5540968> (viewed 11 September 2017); Tracey Prisk, 'Orange church attacked by vandals: police investigating arson and graffiti' (Central Western Daily, 23 November 2015) At <http://www.centralwesterndaily.com.au/story/3509341/orange-church-attacked-by-vandals-police-investigating-arson-and-graffiti/> (viewed 11 September 2017).

¹³⁵ See Beau Donnelly, 'Muslims on what it's like to live in Australia' (Sydney Morning Herald, 26 May 2016). At <http://www.smh.com.au/national/muslims-on-what-its-like-to-live-in-australia-20160429-goi953.html> (viewed 11 September 2017); Heath Aston, 'Dozens of anti-Muslim attacks as Islamic leaders warn of community fear' (Sydney Morning Herald, 9 October 2014). At <http://www.smh.com.au/national/dozens-of-antimuslim-attacks-as-islamic-leaders-warn-of-community-fear-20141009-113tmk.html> (viewed 11 September 2017).

¹³⁶ See Megan Levy, 'Teens arrested over racist attack on bus full of Jewish school students' (Sydney Morning Herald, 7 August 2014) At <http://www.smh.com.au/nsw/teens-arrested-over-racist-attack-on-bus-full-of-jewish-school-students-20140806-101995.html> (viewed 11 September 2017); Tom Cowie, "'Go back to Israel": racial attack outside Melbourne synagogue posted online' (Age, 27 November 2015). At <http://www.theage.com.au/victoria/go-back-to-israel-racial-attack-outside-melbourne-synagogue-posted-online-20151126-gl9gw5.html> (viewed 11 September 2017).

¹³⁷ See Camille Bianchi, 'Sikh teen shaken after alleged turban attack on bus' (SBS News, 4 March 2016). At <http://www.sbs.com.au/news/article/2016/03/03/sikh-teen-shaken-after-alleged-turban-attack-bus> (viewed 11 September 2017).

¹³⁸ The Commission has made a submission to the parliamentary inquiry. See Australian Human Rights Commission, Submission No 12 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into the status of the human right to freedom of religion or belief*, 28 February 2017. At <http://www.aph.gov.au/DocumentStore.ashx?id=23c02ad6-1904-478a-adf0-2da8495c28b4&subId=464627> (viewed 11 September 2017).

¹³⁹ Australian Law Reform Commission, *Secrecy Laws and Open Government in Australia*. Report No 112 (2010). At <http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC112.pdf> (viewed 11 September 2017).

¹⁴⁰ Australian Human Rights Commission, Submission No 13 to the Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Australian Border Force Amendment (Protected Information) Bill 2017 (Cth)*, 1 September 2017, 4-5. At

<http://www.aph.gov.au/DocumentStore.ashx?id=5e83eea9-a66e-4020-8b07-ddb15086fdf0&subId=515858> (viewed 11 September 2017).

¹⁴¹ *Workplaces (Protection from Protesters) Act 2014* (Tas). The Commission notes that the constitutional validity of aspects of this Act are currently being considered by the High Court of Australia in *Brown & Anor v. The State of Tasmania* (Case H3/2016). In Western Australia, the Criminal Code Amendment (Prevention of lawful activity) Bill 2015 (WA) was introduced into Parliament but has not yet passed into law.

¹⁴² *G20 (Safety and Security) Act 2013* (Qld). This Act created a special security area over Brisbane and covered many homes and businesses. Police were permitted to stop and search any person within the security area for any reason without the requirement of reasonable suspicion before a search. See Human Rights Law Centre, *Safeguarding Democracy* (February 2016) 22. At http://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/5812996f1dd4540186f54894/581299ee1dd4540186f55760/1477614062728/HRLC_Report_SafeguardingDemocracy_online.pdf?format=original (viewed 11 September 2017).

¹⁴³ The National Partnership Agreement governs CLC funding and expressly prohibits Government funding from being used to undertake law reform, policy or advocacy work including lobbying governments or engaging in public campaigns, with limited exceptions. See Council of Australian Governments, National Partnership Agreement on Legal Services (2015), General Principle B7. At <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/NationalPartnershipAgreementOnLegalServices.pdf> (viewed 11 September 2017). See Human Rights Law Centre, *Defending Democracy: Safeguarding independent community voices* (June 2017) 4. At https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5936933d579fb38a23dc2eda/1496748893178/DefendingDemocracy_online_June2017.pdf (viewed 11 September 2017).

¹⁴⁴ See, for example, Joint Standing Committee on Electoral Matters, Parliament of Australia, *Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations* (2017), recommendation 4, 40 [3.76]. At http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024053/toc_pdf/Secondinterimreportontheinquiryintotheconductofthe2016federaelectionForeignDonations.pdf;fileType=application%2Fpdf (viewed 11 September 2017); See Human Rights Law Centre, *Defending Democracy: Safeguarding independent community voices* (June 2017) 7. At https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5936933d579fb38a23dc2eda/1496748893178/DefendingDemocracy_online_June2017.pdf (viewed 11 September 2017).

¹⁴⁵ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Final Report)* (2016). At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017).

¹⁴⁶ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Freedom of speech in Australia: Inquiry into the operation of Part IIA of the Racial Discrimination Act 195 (Cth) and related procedures under the Australian Human Rights Commission Act 1986 (Cth)* (2017). At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/FreedomspeechAustralia/Report (viewed 11 September 2017).

¹⁴⁷ Senate Legal and Constitutional Affairs Committee, *Inquiry into Law of Contempt* (2017), Parliament of Australia. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/LawofContempt (viewed 11 September 2017).

¹⁴⁸ This includes offences relating to advocating terrorism; prescribed terrorist organisations; using a postal service to menace, harass or cause offence; and incitement and conspiracy laws

¹⁴⁹ This includes laws that impose criminal sanctions for breaches of secrecy or confidentiality obligations such as Part 6 of the *Australian Border Force Act 2015* (Cth) and section 35P of the *Australian Security Intelligence Organisation Act 1979* (Cth).

¹⁵⁰ This includes laws against secondary boycotts and laws preventing charities from promoting or opposing a political party or a candidate for political office.

¹⁵¹ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017). At <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> (viewed 11 September 2017).

¹⁵² Andrew Markus, *Australians Today: The Australia @2015 Scanlon Foundation Survey* (2016) Scanlon Foundation, Australian Multicultural Foundation and Monash University, 62. At <http://scanlonfoundation.org.au/wp-content/uploads/2016/08/Australians-Today.pdf> (viewed 11 September 2017).

¹⁵³ Andrew Markus, *Australians Today: The Australia @2015 Scanlon Foundation Survey* (2016) Scanlon Foundation, Australian Multicultural Foundation and Monash University, 78. At <http://scanlonfoundation.org.au/wp-content/uploads/2016/08/Australians-Today.pdf> (viewed 11 September 2017).

¹⁵⁴ Fethi Mansouri, *The impact of racism upon the health and wellbeing of young Australians* (2009) Foundation for Young Australians and the Institute for Citizenship and Globalisation (Deakin University) 4. At https://www.fya.org.au/app/theme/default/design/assets/publications/Impact_of_Racism_FYA_report.pdf (viewed 11 September 2017).

¹⁵⁵ See, for example, Arnold Bloch Leibler, 'Racial discrimination action settles' (Media Release, 18 February 2013). At http://www.smartjustice.org.au/cb_pages/files/Media%20Release%20-%20FKCLC%20%26%20ABL%20Feb%202013.pdf (viewed 11 September 2017); Sarah Farnsworth, 'Young South Sudanese "constantly stopped" by police, as community grapples with Apex stigma', *ABC News* (4 December 2016). At <http://www.abc.net.au/news/2016-12-04/young-south-sudanese-constantly-stopped-by-police/8078642> (viewed 11 September 2017).

¹⁵⁶ Australian Human Rights Commission, Submission No 13 to Parliamentary Joint Committee on Human Rights, *Inquiry into freedom of speech*, 9 December 2016. At <http://www.aph.gov.au/DocumentStore.ashx?id=d42f430a-869c-4706-9414-bf0cba934162&subId=461226> (viewed 11 September 2017).

¹⁵⁷ Australian Human Rights Commission, 'National Anti-Racism Strategy and Racism. It Stops with Me Campaign' (2015). At <https://www.humanrights.gov.au/our-work/race-discrimination/projects/national-anti-racism-strategy-and-racism-it-stops-me-campaign> (viewed 11 September 2017).

¹⁵⁸ The Independent National Security Legislation Monitor's annual reports are available at Department of the Prime Minister and Cabinet, *Independent National Security Legislation Monitor*. At <http://www.inslm.gov.au/reviews-reports> (viewed 11 September 2017).

¹⁵⁹ *Independent National Security Legislation Monitor Act 2010* (Cth) s 8(a)(i).

¹⁶⁰ The INSLM concluded that 'control orders in their present form are not effective, not appropriate and not necessary'. The 2013 COAG Review of Counter-Terrorism Legislation concluded that the control order regime should be retained but with additional safeguards and protections included. The INSLM then recommended that a number of the COAG recommendations be implemented. Despite this, and the fact that the recommended reviews of the control order regime (including the present review) are ongoing, that regime has been extended. Independent National Security Legislation Monitor, *Declassified Annual Report* (2012), 40. At <https://www.inslm.gov.au/reviews-reports/annual-reports> (viewed 28 April 2017). *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013), 54 [215]. At <https://www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx> (viewed 11 September 2017).

¹⁶¹ The INSLM recommended that the preventative detention regime be repealed because there is "no demonstrated necessity for these extraordinary powers". In 2013, the Council of Australian Governments (COAG) Review of Counter-Terrorism Legislation also recommended that the PDO regime be repealed, finding that the provisions were unlikely to be used, and that the purposes of the PDO regime could be achieved 'by traditional methods of arrest, interrogation and charge.' Despite these recommendations, in 2016, the threshold for applying for a PDO was reduced. See Independent National Security Legislation Monitor, *Declassified Annual Report* (2012), Chapter III, Recommendation III/4. At <https://www.inslm.gov.au/reviews-reports/annual-reports> (viewed 11 September 2017); *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013) 67, 69-71 [269]-[276]. At <https://www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx> (viewed 11 September 2017).

¹⁶² *Independent National Security Legislation Monitor Act 2010* (Cth), s 6(1B); *Intelligence Services Act 2001* (Cth), s 29(1)(bb). See also, Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Review of police stop, search and seizure powers, the control order regime and the preventative detention order regime*. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/AFPowersreview (viewed 11 September 2017).

¹⁶³ Australian Human Rights Commission, 'Submission to the UN Committee Against Torture under the *Convention Against Torture*, 17 October 2014, [93]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fAUS%2f18690&Lang=en (viewed 11 September 2017). Australian Human Rights Commission, 'Submission to the UN Committee Against Torture under the *Convention Against Torture*, 27 June 2016, [62]-[66]. At https://www.humanrights.gov.au/sites/default/files/AHRC_CAT_LOIPR_2016.pdf (viewed 11 September 2017); and Australian Human Rights Commission, 'Submission to the

Universal Periodic Review, 15 April 2015, [37]-[38]. At <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review> (viewed 11 September 2017).

¹⁶⁴ Divisions 104 and 105 of Part 5.3 of the Criminal Code contain the control order and preventative detention order (PDO) regimes respectively.

¹⁶⁵ See for example: Human Rights and Equal Opportunity Commission (as the Commission was then known), Submission No 158, 158A and 158B to Senate Legal and Constitutional Legislation Committee, *Inquiry into the Anti-Terrorism Bill (No 2) 2005*, 11 November 2005. At <http://www.humanrights.gov.au/submission-anti-terrorism-bill-no-2-2005> (viewed 11 September 2017); Australian Human Rights Commission, *A Human Rights Guide to Australia's Counter-Terrorism Laws* (2008). At <https://www.humanrights.gov.au/human-rights-guide-australias-counter-terrorism-laws> (viewed 11 September 2017).

¹⁶⁶ Australian Human Rights Commission, Submission No 11 to Independent National Security Legislation Monitor, Australian Government, *Statutory Deadline Review*, 15 May 2017, 4-5 [10]. At <https://www.inslm.gov.au/sites/default/files/submissions/11-australian-human-rights-commission.pdf> (viewed 11 September 2017).

¹⁶⁷ Australian Human Rights Commission, Submission No 11 to Independent National Security Legislation Monitor, Australian Government, *Statutory Deadline Review*, 15 May 2017, 4-5 [10]. At <https://www.inslm.gov.au/sites/default/files/submissions/11-australian-human-rights-commission.pdf> (viewed 11 September 2017).

¹⁶⁸ Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016.

¹⁶⁹ Australian Human Rights Commission, Submission No 8 to Parliamentary Joint Committee on Intelligence and Security, *Inquiry into Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016*, 12 October 2016, 11 [34]. At <http://www.aph.gov.au/DocumentStore.ashx?id=32397a66-a179-4a07-a5fb-ab60b776676f&subId=414693> (viewed 11 September 2017).

¹⁷⁰ Human Rights Committee, *Views: Communication No. 1629/2007*, 98th sess, UN Doc CCPR/C/98/D/1629/2007 (10 May 2010) ('*Fardon v Australia*'). At <http://juris.ohchr.org/Search/Details/1574> (viewed 11 September 2017); Human Rights Committee, *Views: Communication No. 1635/2007*, 98th sess, Doc CCPR/C/98/D/1635/2007 (10 May 2010) ('*Tillman v Australia*'). At <http://juris.ohchr.org/Search/Details/1576> (viewed 11 September 2017).

¹⁷¹ Division 3A of Part IAA of the *Crimes Act 1914* (Cth).

¹⁷² See Australian Human Rights Commission, Submission No 11 to Independent National Security Legislation Monitor, *Statutory Deadline Reviews* (15 May 2017) 9-10. At <https://www.inslm.gov.au/sites/default/files/submissions/11-australian-human-rights-commission.pdf> (viewed 11 September 2017).

¹⁷³ Division 119 of Part 5.5 of the *Criminal Code* (Cth).

¹⁷⁴ To date, two areas have been declared under s 119.3 of the Criminal Code, namely Al Raqqa Province in Syria and Mosul District in Iraq. See *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2014—Al-Raqqa Province, Syria* (4 December 2014); *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq* (2 March 2015). See Australian Human Rights Commission, Submission No 11 to Independent National Security Legislation Monitor, Australian Government, *Statutory Deadline Review*, 15 May 2017, 10-13 [33]-[45]. At <https://www.inslm.gov.au/sites/default/files/submissions/11-australian-human-rights-commission.pdf> (viewed 11 September 2017).

¹⁷⁵ The Australian Citizenship Amendment (Allegiance to Australia) Bill 2015.

¹⁷⁶ Australian Human Rights Commission, Submission No 13 to Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* (16 July 2015). At <http://www.aph.gov.au/DocumentStore.ashx?id=8cfea01e-ec16-4074-8edf-dcc4d0625ee2&subId=354238> (viewed 11 September 2017).

¹⁷⁷ *National Security Legislation Amendment Act (No. 1) 2014* (Cth), *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth) and *Counter-Terrorism Legislation Amendment Act (No. 1) 2014* (Cth). The Commission's concerns about this legislation are detailed in its submissions on the proposed legislation. See *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment Bill (No. 1) 2014* (21 August 2014). At <https://www.humanrights.gov.au/submissions/submission-inquiry-national-security-legislation-amendment-bill-no-1-2014> (viewed 11 September 2017); Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (2 October 2014). At <https://www.humanrights.gov.au/submissions/inquiry-counter-terrorism-legislation-amendment-foreign-fighters-bill-2014> (viewed 11 September 2017) and Australian Human Rights Commission, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism*⁵⁵

Legislation Amendment Bill (No. 1) 2014 (11 November 2014). At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Amendment_Bill/Submissions (viewed 11 September 2017); *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2014* (Cth); Australian Human Rights Commission, Submission No 5 to Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the Counter-Terrorism Legislation Amendment Bill (No 1) 2015*, 9 December 2015. At <http://www.aph.gov.au/DocumentStore.ashx?id=080c06ef-59cb-4d40-9132-f1664588c82c&subId=407290> (viewed 11 September 2017).

¹⁷⁸ Attorney-General's Department, *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* (2014). At

<http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australiasresponsetohumantrafficking.aspx> (viewed 11 September 2017).

¹⁷⁹ Such as the reforms to the Human Trafficking Visa Framework (2015) and Australia's International Strategy to Combat Human Trafficking and Slavery (2016). This Human Trafficking Visa Framework reforms included: making it available for survivors of slavery and slavery-like practices; enabling recipients to maintain their lawful status; waiving the Newly Arrived Resident's Waiting Period, which enables recipients to access English classes, social security payments and other services.

¹⁸⁰ The Interdepartmental Committee comprises of eleven government agencies that provide oversight of Australia's response to human trafficking, including the Attorney-General's Department, Australian Criminal Intelligence Commission, Australian Federal Police, Australian Institute of Criminology, Commonwealth Director of Public Prosecutions, Department of Employment, Department of Foreign Affairs and Trade, Department of Immigration and Border Protection, Department of Social Services, Department of Prime Minister and Cabinet and Fair Work Ombudsman. See Attorney-General's Department, Australian Government, *Australia's response to human trafficking*. At <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx> (viewed 11 September 2017).

¹⁸¹ New offences were created through the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth), passed in 2012. The Act amends the *Criminal Code Act 1995* (Cth) to introduce offences of servitude (s 270.5), forced labour (s 270.6A), deceptive recruiting for labour or services (s 270.7), forced marriage (s 270.7B), organ trafficking (s 271.7A – 271.7E), and harbouring a victim (s 271.7F).

¹⁸² The *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Cth), extends existing vulnerable witness protections to adult victims of slavery, slavery-like and human trafficking offences, and includes specific protections for witnesses who may be vulnerable due to a particular characteristic such as a disability or their cultural background. The Act also places the burden of proving the defendant was aged 18 or over on the prosecution.

¹⁸³ Joy Ngozi Ezeilo, United Nations Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, (2012), UN Doc A/HRC/20/18/Add.1, para 82 (g). At <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 11 September 2017); Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking* (2013). At http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ifad/slavery_people_trafficking/report.htm (viewed 11 September 2017).

¹⁸⁴ Australian Human Rights Commission, Submission No 23 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into Human Trafficking* (4 March 2016). At <http://www.humanrights.gov.au/submissions/submission-inquiry-human-trafficking-2016> (viewed 11 September 2017).

¹⁸⁵ Australian Human Rights Commission, Submission No 23 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into Human Trafficking* (4 March 2016). At <http://www.humanrights.gov.au/submissions/submission-inquiry-human-trafficking-2016> (viewed 11 September 2017).

¹⁸⁶ Unregulated surrogacy arrangements can interfere with a surrogate mother's right to bodily integrity and to be free from subjection to cruel, inhuman or degrading treatment or to medical or scientific experimentation without consent. Australian Human Rights Commission, Submission No. 67 to the House of Representatives Standing Committee on Social Policy and Legal Affairs *Inquiry into the Regulatory and Legislative Aspects of International and Domestic Surrogacy Arrangements*, 17 February 2016, 8 [25]-[27]. At <http://www.aph.gov.au/DocumentStore.ashx?id=dedb38e1-e23a-44fb-99be-9f4bea82f9ba&subId=409138> (viewed 11 September 2017).

¹⁸⁷ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Surrogacy Matters* (2016). At

http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/inquiry_into_surrogacy/Report (viewed 11 September 2017). The Committee's 10 recommendations concern improving access to well-regulated and lawful domestic surrogacy arrangements so that there is less need for Australians to travel overseas to engage in surrogacy (Recommendations 1-6), and to promote better protection of the human rights of birth mothers and the children they carry on behalf of Australian citizens involved in international surrogacy arrangements (Recommendations 7-10). If the recommendations are adopted, it will be a step towards more uniform domestic laws that provide increased access to well-regulated surrogacy arrangements in Australia, and increased scrutiny of the practices in other countries which should lead to better human rights outcomes.

¹⁸⁸ The Global Compact Network Australia is comprised on business stakeholders ranging from multi-nationals and top 200 companies down to smaller enterprises.

¹⁸⁹ *Report of the Working Group on the Universal Periodic Review Australia*, HRC, 31st sess, Agenda Item 6, Addendum 1, UN Doc A/HRC/31/14 (31 January 2016) [63]. At

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUIndex.aspx> (viewed 11 September 2017).

¹⁹⁰ Attorney-General's Department, Australian Government, *Modern Slavery in Supply Chains Reporting Requirement (Public Consultation Paper and Regulation Impact Statement)* (2017) 5. At <https://www.ag.gov.au/Consultations/Pages/modern-slavery-in-supply-chains-reporting-requirement-public-consultation.aspx> (viewed 11 September 2017); The Hon Michael Keenan MP, Minister for Justice, 'Proposed new laws to help end modern slavery' (Media release, 16 August 2017). At <https://www.ministerjustice.gov.au/Media/Pages/Proposed-new-laws-to-help-end-modern-slavery-16-August-2017.aspx/> (viewed 11 September 2017).

¹⁹¹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Modern slavery and global supply chains: Interim report of the Joint Standing Committee on Foreign Affairs, defence and Trade's inquiry into establishing a Modern Slavery Act in Australia* (August 2017) Joint Committee's report on Modern Slavery, Recommendation 1, [4.55]. At

http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024092/toc_pdf/Modernslaveryandglobalupplychains.pdf;fileType=application%2Fpdf (viewed 11 September 2017).

¹⁹² Australian Human Rights Commission, Submission No 33 to Joint Select Committee on Government Procurement, *Inquiry into the Commonwealth Procurement Framework* (5 April 2017) 2. At <http://www.aph.gov.au/DocumentStore.ashx?id=b8cec9b3-343e-47b4-87f9-fa21808c875f&subId=510109> (viewed 11 September 2017).

¹⁹³ Joint Select Committee on Government Procurement, *Buying into our Future* (June 2017) Recommendation 2, [9.16]. At

http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024068/toc_pdf/BuyingintoourFuture.pdf;fileType=application%2Fpdf (viewed 11 September 2017).

¹⁹⁴ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Modern slavery and global supply chains: Interim report of the Joint Standing Committee on Foreign Affairs, defence and Trade's inquiry into establishing a Modern Slavery Act in Australia* (August 2017) Recommendation 1, [4.43]. At

http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024092/toc_pdf/Modernslaveryandglobalupplychains.pdf;fileType=application%2Fpdf (viewed 11 September 2017).