



Australian  
Human Rights  
Commission

# Information concerning Australia's compliance with the International Covenant on Economic, Social and Cultural Rights

**SUBMISSION BY THE AUSTRALIAN HUMAN RIGHTS  
COMMISSION TO THE UN COMMITTEE ON ECONOMIC  
SOCIAL AND CULTURAL RIGHTS**

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## **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 thanks the *International Convention on Economic, Social and Cultural Rights* (ICESCR) Committee for the opportunity to provide a written contribution prior to its consideration of Australia's 5<sup>th</sup> periodic report under ICESCR. We look forward to further engaging with the Committee.
3. The submission is based on work that has been undertaken by the Commission in accordance with our mandate and functions. The material provided here has been publicly reported in Australia and has been brought to the attention of the Australian government.
4. The proposed recommendations are contained in the body of the submission and compiled in **Attachment 1** of the submission.

## **2 General information**

### **2.1 *Scrutiny of human rights and the role of the Parliamentary Joint Committee on Human Rights (LOI 2; Concluding Observation 11)***

5. The Parliamentary Joint Committee on Human Rights (PJCHR) analyses bills and legislative instruments before the federal Parliament for compliance with human rights. The definition of human rights is the seven international instruments to which Australia is a party, including the ICESCR.
6. Since August 2012, the PJCHR has produced over 60 reports to Parliament assessing over 860 bills and the statement of compatibility with human rights accompanying each bill.<sup>1</sup> The PJCHR provides guidance to government departments on their expectations about the level of human rights analysis that statements of compatibility should contain.
7. The Commission remains concerned that the findings of the PJCHR are often not expressly taken into account by legislators when they are deliberating on proposed legislation. The Commission is also concerned that Parliament has on occasion, passed a bill, which is the subject of a PJCHR review, prior to the PJCHR completing its review.<sup>2</sup> A search of the Senate Hansard and the House of Representative Hansard since the opening of the Australian Parliament following the 2016 federal election, 30 September 2016, reveals that legislators infrequently consider the recommendations of the PJCHR during second reading debates.
8. The Commission welcomes the role of the PJCHR. However, we note that such scrutiny should not be a substitute for full incorporation of the obligations in ICESCR into domestic law, such as through a national human rights act or charter of rights.

9. **Recommendations: That the Government ensure that concerns about compliance with human rights obligations raised by the PJCHR are fully considered in the legislative process. That the Government incorporate ICESCR into Australian law.**

## **2.2 National Human Rights Institution (ICESCR Article 2(1); LOI 2; Concluding Observation 13)**

10. The Commission has a statutory power to promote and protect human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). Human rights are defined in the AHRC Act as the international instruments scheduled to or declared under the AHRC Act.
11. The Commission's legislation does not expressly include ICESCR within the definition of 'human rights.' Despite this, the Commission can exercise its functions in relation to economic, social and cultural rights that are included within other treaties scheduled to our legislation: *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW), *Convention on the Rights of Persons with Disability* (CRPD), *Convention on the Rights of the Child* (CRC), *Convention on the Elimination of Racial Discrimination* (CERD) and in relation to the functions of the Social Justice Commissioner<sup>3</sup> and the National Children's Commissioner.<sup>4</sup>
12. **Recommendation: That the Government include ICESCR within the definition of human rights in the AHRC Act.**

## **3 Treaty Ratification**

13. The Australian Government responded to the 2<sup>nd</sup> Cycle UPR recommendations to ratify the Optional Protocol to the ICESCR and the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW) by indicating that ratification of the two treaties would not be considered further at this time. The Commission considers that these instruments should be treated as priorities for ratification.
14. **Recommendation: That the Government commence a National Interest Analysis on the ratification of the Optional Protocol to the ICESCR and ICRMW.**

## **4 Aboriginal and Torres Strait Islander peoples**

15. Aboriginal and Torres Strait Islander peoples continue to experience an unacceptable level of disadvantage across most socio-economic indicators.<sup>5</sup> The Commission has expressed concern about two over-arching issues that impact on the enjoyment of human rights for indigenous peoples: a) a lack of meaningful consultation with Aboriginal and Torres Strait Islander peoples in programs and policies that affect them and b) a failure to implement the *UN Declaration on the Rights of Indigenous Peoples*.

#### **4.1 National Aboriginal and Torres Strait Islander representative body (ICESCR Article 2(2); LOI 8)**

16. The Australian Government has provided limited funding support for the National Congress of Australia's First Peoples, a national NGO voice for Aboriginal and Torres Strait Islander peoples. As noted by the United Nations 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.'<sup>6</sup>
17. **Recommendation: That the Australian Government provide adequate on-going funding of the National Congress of Australia's First Peoples as the national representative voice for Indigenous peoples.**

#### **4.2 Closing the gap (ICESCR Articles 2, 6 & 7; LOI 7)**

18. The Commission welcomes the commitment of Australian governments since 2009 to targets to close the gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians across a range of key health and wellbeing indicators. Meeting these targets is an inter-generational challenge, and progress is slow. Six of the seven closing the gap targets were either not on track or stalled this year.<sup>7</sup>
19. The Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023,<sup>8</sup> is a major commitment by the government developed in partnership with indigenous peak bodies. Future federal Budgets must adequately resource its application and operation to ensure that rights are progressively realised.
20. **Recommendation: That all Australian governments redouble their efforts to achieve the Closing the Gap targets, including by adequately funding the National Aboriginal and Torres Strait Islander Health Plan and targeting programs to address the social determinants of health.**

#### **4.3 Income management and poverty (ICESCR Articles 9 & 11)**

21. The Commission is concerned by the operation of income management schemes, such as the Australian Government's Healthy Welfare Card trials, that predominately target Aboriginal and Torres Strait Islander peoples. As designed, these programs are not opt-in schemes, are insufficiently tailored to individual circumstances and disproportionately impact upon Aboriginal and Torres Strait Islander peoples' human rights.<sup>9</sup> There is an insufficient evidence base to justify their effectiveness or continuance.
22. **Recommendation: That current models of income management schemes be discontinued or redesigned on a voluntary, opt in basis with appropriate oversight of decision making and monitoring.**

#### **4.4 Cultural Rights (native title) (ICESCR Article 15; Concluding Observations 32)**

23. The Commission welcomes recent initiatives to identify practical reform options relating to native title, including which address barriers to recognition of native title and challenges to enabling indigenous led economic development on the Indigenous Estate. Initiatives include the Commission undertaking an Indigenous-led Indigenous Property Rights Project; the Council of Australian Governments (COAG) recently finalised Investigation into Indigenous Land Administration and Use; and the Australian Law Reform Commission's Connection to Country Review of the *Native Title Act 1993* (Cth).<sup>10</sup>
24. The Australian Government has also 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, and serious concerns have been raised about the extent of engagement with these land holders. Without sustained and meaningful engagement based on respect for these rights and protection of heritage Aboriginal and Torres Strait Islander peoples are at risk of substantial losses of their rights and interests in land as a result of the Northern Australia Development Agenda.
25. **Recommendations: That the Australian Government support reforms to law, policy and practice that enable economic development undertaken by Indigenous peoples on their lands that are undertaken with their free, prior and informed consent.**

**That the Australian Government implement the recommendations of the Australian Law Reform Commission's Connection to Country Review of the Native Title Act 1993 (Cth) and the COAG Investigation into Indigenous Land Administration and Use in order to better recognise and protect Indigenous peoples' native title rights and interests.**

**That the Australian Government ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively impacted by the Northern Australia Development Agenda.**

## **5 People with Disabilities**

### **5.1 National Disability Strategy (NDS) (ICESCR Article 2(2); LOI 10)**

26. The NDS was formally endorsed by COAG on 13 February 2011. It sets out an ambitious framework for addressing the rights of persons with a disability across a range of ESC rights.
27. The Commission is concerned at the slow progress in implementing the NDS. Insufficient funding and dedicated programs have been developed to implement the actions identified in the NDS. Monitoring and evaluation of the strategy has also been limited.

28. The Commission is particularly concerned that the basic challenges that people with disability face in accessing the built and natural environment have not been adequately dealt with since Australia's ratification of the CRPD and the adoption of the NDS. This prevents people with disability from enjoying their ESC rights on an equal basis with others.
29. For example, in 2010 the National Dialogue on Universal Housing Design agreed to a voluntary target that all new housing construction by 2020 would meet the silver level of livable housing design standards.<sup>11</sup> A 2015 review on progress towards this target prepared by the Australian Network on Universal Housing Design and Rights and Inclusion Australia estimated that the uptake of livable housing design under the current voluntary approach is likely to be less than five per cent for new private dwellings by 2020.<sup>12</sup>
30. **Recommendation: That the Australian Government fully implement the NDS and prioritise efforts to ensure that targets for universal housing design are met by 2020.**

## **5.2 National Disability Insurance Scheme (NDIS) (ICESCR Articles 2(2) & 11)**

31. The Commission recognises that the introduction of the NDIS is a major social reform with the potential to significantly enhance the ESC rights of persons with a disability. This includes by ensuring that person-centered approaches are adopted for services for people with a disability. The full rollout of the NDIS is expected to be complete by July 2018. The Commission notes that Western Australia, in agreement with the Australian Government, has a state-run NDIS, which is consistent with the national NDIS.<sup>13</sup>
32. **Recommendation: That the Australian Government continue to fully support the roll out of the NDIS.**

## **5.3 Employment of people with disabilities (ICESCR Articles 2(2), 6 & 7; LOI 13)**

33. In 2015-16, the Australian Human Rights Commission conducted a National Inquiry into employment discrimination against older Australians and Australians with disability.<sup>14</sup> The inquiry developed recommendations identifying priority actions that could be taken by government, employers and businesses, as well as improvements to existing systems. There has been no formal response to the report and no government-led action plan to implement its recommendations.
34. **Recommendation: That the Australian Government implement the *Willing to Work* report recommendations and reduce employment discrimination against people with a disability and older Australians.**

#### **5.4 Prisoners and mental health (ICESCR Articles 12(1) & 12(2)(d); LOI 25)**

35. Data from the Australian Bureau of Statistics,<sup>15</sup> the Commission's *Equal Before the Law* report,<sup>16</sup> and other studies<sup>17</sup> show that people with disabilities have higher rates of interaction with the criminal justice system than other Australians. The Commission also noted with concern the high rate of disability among Aboriginal and Torres Strait Islander peoples and that they are over-represented in Australian prisons, particularly those with mental health disorders and cognitive disability.
36. Commission research has found that necessary supports and adjustments for people with disabilities were frequently not provided in the criminal justice system.<sup>18</sup>
37. **Recommendation: That Australian governments develop appropriate support for people with disabilities, particularly those with mental health disorders and cognitive disability including national guidelines on 'fitness to plead'.**

## **6 Women**

### **6.1 Women and Work (ICESCR Articles 3 & 10; LOI 11 & 14)**

38. There are a range of gender equality gaps in Australia that impact on women's right to work, right to just and favourable conditions of work and right to adequate standard of living for themselves and their family. The inequality of women in the Australian workforce is well-documented. There have been no significant changes since the Commission's August 2016 Submission to the ICESCR Committee List of Issues (paras 61-70).
39. **Recommendation: That the Australian Government further strengthen efforts to support women in paid work, unpaid caring roles and to reduce gender gaps in workforce participation, wages and retirement incomes and savings.**

### **6.2 Violence against women and children (ICESCR Article 10; LOI 19 & 20)**

40. Gender-based violence against women and children in Australia remains endemic and continues to negatively impact on the realisation of women's and children's economic social and cultural rights.
41. The Commission acknowledges the Government's *National Plan to Reduce Violence against Women and their Children 2010-22* (National Plan).<sup>19</sup> Concerns remain at the under-resourcing of accommodation and support services and the inadequate levels of support for women in rural and remote areas, women from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander women, women with disabilities, older women, and lesbian, trans and intersex women.<sup>20</sup>



42. The Commission acknowledges the \$5.1 million dedicated to the implementation of the Third Action Plan of the *National Framework for Protecting Australia's Children 2009-2020*, which will help support early intervention and child safe approaches.<sup>21</sup> 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.<sup>22</sup> Despite this re-affirmation, the Commission remains concerned that the \$5.1 million funding is inadequate to achieve the objectives of the Plan.
43. **Recommendation: That Australian governments redouble efforts to reduce violence against women, including by ensuring adequate accommodation and support services to reduce the risk of homelessness for women and their children.**

## **7 Sexual Orientation, Gender Identity and Intersex Issues (SOGII)**

### **7.1 Non-discrimination (ICESCR Articles 2(2))**

44. The Commission commends the Government for passing amendments to the *Sex Discrimination Act 1984* (Cth) in 2013 to include protections against discrimination on the basis of sexual orientation, gender identity and intersex status.<sup>23</sup>
45. The Commission is concerned that some state and territory laws remain inconsistent with the protections against discrimination on the basis of sexual orientation, gender identity and intersex status in the *Sex Discrimination Act 1984* (Cth). Exemptions for state and territory laws from the operation of these discrimination provisions remain in place, although are time limited.
46. The Commission is also concerned that, despite the legislative changes referred to above, lesbian, gay, bisexual, transgender and intersex (LGBTI) people experience discrimination at work on the basis of sexual orientation, gender identity and intersex status.<sup>24</sup>
47. **Recommendation: That all Australian governments ensure consistency of their 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).**

### **7.2 Intersex (ICESCR Article 12(1))**

48. The Commission remains concerned that children born with intersex variations are still subject to medically unnecessary normalising medical interventions before they are able to provide full and informed consent.<sup>25</sup> Such interventions can have significant and ongoing physical and psychological consequences.<sup>26</sup> The Commission remains concerned that many of the recommendations contained in the report of the 2013 Senate Community Affairs Committee

inquiry into the involuntary or coerced sterilisation of intersex people in Australia<sup>27</sup> have not been implemented; particularly at the state and territory level.

49. **Recommendation: That the recommendations of the 2013 Senate Community Affairs Committee inquiry into the involuntary or coerced sterilisation of intersex people be implemented.**

### **7.3 Gender identity**

50. The Commission remains concerned that in all Australian states and territories, with the exception of the Australian Capital Territory (ACT), people must undergo surgical or medical treatment to change the legal record of their sex. They must also be unmarried.<sup>28</sup> In the ACT people must provide a declaration from a psychologist or doctor that they have received 'appropriate clinical treatment for the alteration'.<sup>29</sup>
51. **Recommendation: That the Australian Government, through the COAG process, encourage state and territory governments to remove the surgery and marital status requirements in births, deaths and marriages registration legislation.**

## **8 Older persons**

### **8.1 Elder abuse (ICESCR Articles 2)**

52. Elder abuse is a fundamental human rights issue faced by many older people and is presenting a range of complex challenges for the Australian community.
53. At present, there is no national prevalence data on the issue, although there is growing community awareness of elder abuse and the need for coordinated action. In recent years elder abuse has been the subject of investigation by the Queensland,<sup>30</sup> and New South Wales<sup>31</sup> state parliaments and a Victorian Royal Commission into Family Violence.<sup>32</sup>
54. The Commission notes that in February 2016, the Australian Government, released an Australian Institute of Families Studies (AIFS) report on elder abuse, providing a valuable insight into the nature of abuse in Australia. Building on the AIFS study, the Attorney-General asked the Australian Law Reform Commission (ALRC) to conduct an inquiry into safeguards for older Australians, with the report due by May 2017.<sup>33</sup> The Commission is of the view that these initiatives are a first step towards a coordinated national strategy on elder abuse.
55. **Recommendation: That the Australian Government develop a national strategy on tackling elder abuse.**

## **8.2 Employment (ICESCR Articles 2, 6 & 7; LOI 13)**

56. See para 33 above regarding the Commission's *Willing to Work* national inquiry.
57. **Recommendation: That the Australian Government formally respond to the Willing to Work Inquiry recommendations concerning older Australians, including by developing national strategies to address age discrimination and stereotyping that impacts on employment status.**

## **9 Rights of the child (ICESCR Articles 2, 12)**

58. This submission has referred to the Commission's concerns regarding the ESC rights of children in the following sections: Aboriginal and Torres Strait Islander peoples, violence against women and children, SOGII issues and Refugees and Asylum Seekers. Also see para 42 above regarding the Commission's concerns that the \$5.1 million funding, dedicated to the implementation of the Third Action Plan of the *National Framework for Protecting Australia's Children 2009-2020*, is inadequate to achieve the objectives of the Plan.
59. The Commission welcomed the amendments to the *Family Law Act (1975)* (Cth) in 2012, which strengthen protection of the rights of the child, especially in violent situations,<sup>34</sup> and efforts by government and across the community to address cyber-bullying and online safety of children.<sup>35</sup>
60. The Commission is concerned that the rate of children in out-of-home care has increased, with Indigenous children over-represented. At 30 June 2016, 46,448 children were in out-of-home care nationally,<sup>36</sup> of which 16,846 were Aboriginal and Torres Strait Islander children.<sup>37</sup> Rates have increased from 6.8 to 8.6 per 1,000 between 2009 and 2016.<sup>38</sup>
61. **Recommendation: That the Australian Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection and out-of-home care.**

## **10 Refugees and Asylum Seekers**

### **10.1 Mandatory immigration detention, including of children (ICESCR articles 2(2), 11 & 12, LOI 9)**

62. Under the *Migration Act 1958* (Cth) (the Migration Act), indefinite immigration detention remains mandatory for all unlawful non-citizens.<sup>39</sup> Numerous studies have documented high rates of mental health problems amongst people in immigration detention in Australia,<sup>40</sup> with the negative impacts of detention tending to worsen as detention becomes more prolonged.<sup>41</sup>
63. Positive developments relating to immigration since 2009 include: the release of almost all children from closed facilities into alternative community arrangements,<sup>42</sup> the closure of several detention facilities<sup>43</sup> and the release of a

number of refugees who previously had been detained indefinitely due to their having received an adverse security assessment.

64. The Commission is concerned, however, that other recent developments, such as 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,<sup>44</sup> may lead to breaches of Australia's obligations under Article 12 of the ICESCR.
65. **Recommendation: That the Australian Government end the use of mandatory and prolonged detention of asylum seekers, especially children, and ensure that any detention 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.**

### **10.2 *Asylum seekers living in the community (ICESCR articles 11(1) & 12(1), LOI 9)***

66. The Commission welcomes the increased use of community-based alternatives to detention for asylum seekers and the reintroduction of work rights for asylum seekers living in the Australian community.
67. However, the Commission is concerned that the support available to asylum seekers living in the community is insufficient to ensure an adequate standard of living. Limited access to English language tuition and key services such as employment support hamper their ability to secure adequate housing and employment and to establish themselves in the community.<sup>45</sup>
68. Since 2012, there have been prolonged delays in the processing of asylum claims. Many people seeking asylum who arrived during 2012 and 2013 still have not had their claims processed.<sup>46</sup> The Australian Red Cross and UNHCR both identified uncertainty relating to the processing of claims as a key factor contributing to poor mental health outcomes.<sup>47</sup>
69. **Recommendation: That the Australian Government develop timelines for the processing of asylum claims and provide increased funding and targeted support to asylum seekers living in the Australian community.**

### **10.3 *Third country processing of asylum claims (ICESCR Articles 2(2), 11(1) & 12(1); LOI 9)***

70. The Commission is concerned that several aspects of current third country processing arrangements, such as shortcomings in living conditions,<sup>48</sup> engage Australia's obligations under the ICESCR.
71. The combination of delays in the processing of asylum claims, difficult living conditions, concerns about physical safety, and uncertainty about the future has reportedly had a profoundly negative impact on the mental health outcomes of people subject to third country processing.<sup>49</sup>

72. In December 2014, the Committee against Torture affirmed that ‘transfers to the regional processing centres in Papua New Guinea (Manus Island) and Nauru ... do not release the State party from its obligations under the Convention’.<sup>50</sup> The opinion of the United Nations High Commissioner for Refugees (UNHCR) is that ‘the primary responsibility to provide protection rests with the state where asylum is sought’.<sup>51</sup>
73. The Senate Legal and Constitutional Affairs Committee recently conducted an inquiry into *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre*.<sup>52</sup>
74. The Senate Committee rejected the Department of Immigration and Border Protection’s assertion that it does not bear ultimate responsibility for the operation of regional processing centres.<sup>53</sup>
75. The Senate Committee reflected on the findings of previous inquiries as well as evidence provided to this inquiry and found regional processing centres to be unsafe generally, and particularly for children.<sup>54</sup> The Committee made several recommendations directed at the Australian Government to address the factors contributing to abuse, self-harm and neglect, including working with the Government of the Republic of Nauru for the appointment of an independent children’s advocate who would have the jurisdiction and authority to advocate for the rights of children held in the Republic of Nauru.<sup>55</sup>
76. In a dissenting report, Government Senators rejected all of the inquiry recommendations.<sup>56</sup>
77. **Recommendation: That the Australian Government ensure that the human rights of people subject to third country processing are adequately protected.**

#### **10.4 Temporary protection and family reunion (ICESCR Articles 2(2), 10(1), 11, 12 & 13)**

78. Temporary visa arrangements for refugees who arrive in Australia without valid visas were reintroduced in 2014. Under the current arrangements, temporary visa holders face additional barriers to securing permanent residency, with the result that many are likely to face prolonged periods of uncertainty. The Commission is concerned that refugees who hold these visas will experience negative mental health and settlement outcomes, as was the case under previous arrangements.
79. Temporary visa holders are not eligible for a range of settlement services and face barriers to accessing tertiary education. In addition, they are not permitted to sponsor family members for resettlement in Australia and as a result face the prospect of prolonged and potentially permanent separation from relatives. Permanent visa holders who arrived in Australia as asylum seekers and/or by boat also face restrictions on family reunion opportunities.<sup>57</sup>

80. The Commission is concerned that refugees affected by these restrictions are likely to face significant challenges in maintaining an adequate standard of living and achieving positive mental health and settlement outcomes.
81. **Recommendation: That the Australian Government review the temporary protection arrangements with the view to ending this policy. In the alternative, end the policy that restricts access to services and entitlements on the basis of a person's mode of arrival in Australia.**

## **11 Trafficking (ICESCR Article 10; LOI 5)**

82. The Commission commends the Australian Government for criminalising trafficking and slavery offences, including forced labour and forced marriage and for developing a *National Action Plan to Combat Human Trafficking and Slavery 2015-2019*.
83. The Commission also welcomes other Australian Government initiatives such as the reforms to the Human Trafficking Visa Framework (2015),<sup>58</sup> and Australia's International Strategy to Combat Human Trafficking and Slavery (2016).
84. The Special Rapporteur on trafficking in persons recommended the Australian Government establish a federal level, comprehensive compensation scheme for survivors of trafficking.<sup>59</sup> The Commission encourages the Australian Government to develop such a scheme.<sup>60</sup>
85. There continues to be a lack of data and research on the prevalence of child trafficking and slavery in Australia. 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.<sup>61</sup>
86. The Commission notes that the Australian Government is undertaking a national consultation on the implementation of the UN Guiding Principles on Business and Human Rights (UNGP).<sup>62</sup> The Commission considers that the subsequent 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*. There should also be clear measures to address trafficking and slavery related human rights violations in supply chains.<sup>63</sup>
87. The Commission further notes the current inquiry into the Commonwealth procurement framework. The Commission has recommended that the Commonwealth Procurement Rules be assessed against and aligned with the UNGP requirements.
88. The Commission further notes the recent inquiry and report of the House of Representatives Standing Committee on Social Policy and Legal Affairs into the regulatory and legislative aspects of international and domestic surrogacy arrangements *Surrogacy Matters*.<sup>64</sup> The Commission submission considered that unregulated surrogacy arrangements raise real concerns about the potential for the trafficking of women and children.<sup>65</sup>

89. **Recommendation: That the Australian Government develop a federal compensation scheme for survivors of human trafficking and slavery, ensure regular collection of data on, and the provision of specialist support services to child survivors of trafficking and slavery, and ensure the National Action Plan on Business and Human Rights has clear links with the *National Action Plan to Combat Human Trafficking and Slavery 2015-2019*.**

## **12 Human Rights Education**

90. Ongoing human rights education across all areas of the public sector is required. In view of the Australian Government announcement that it will ratify the Optional Protocol to the Convention against Torture by December 2017, human rights education is particularly needed in the administration of justice and places of detention.
91. There remains limited explicit reference to human rights throughout the national school curriculum with the coverage of economic, social and cultural rights even more limited.
92. Australia's activities for the World Program for Human Rights Education are ad hoc and uncoordinated.
93. **Recommendation: 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, and incorporate human rights education (including ESC rights) in the national school curriculum.**

## Attachment 1: Compilation of Recommendations

- **Scrutiny of human rights and the role of the PJCHR**

That the Government ensure that concerns about compliance with human rights obligations raised by the PJCHR are fully considered in the legislative process.

That the Government incorporate ICESCR into Australian law.

- **National Human Rights Institution**

That the Government include ICESCR within the definition of human rights in the AHRC Act.

- **Ratification of the Optional Protocol to the ICESCR and other treaties**

That the Government commence a National Interest Analysis on the ratification of Optional Protocol to the ICESCR and ICRMW.

- **Aboriginal and Torres Strait Islander peoples**

*National Aboriginal and Torres Strait Islander representative body*

That the Australian Government provide adequate on-going funding of the National Congress of Australia's First Peoples as the national representative voice for Indigenous peoples.

*Close the gap*

That all Australian governments redouble their efforts to achieve the Closing the Gap targets, including by adequately funding the National Aboriginal and Torres Strait Islander Health Plan and targeting programs to address the social determinants of health.

*Income management and poverty*

That current models of income management schemes be discontinued or redesigned on a voluntary, opt in basis with appropriate oversight of decision making and monitoring.

*Cultural Rights (native title)*

That the Australian Government support reforms to law, policy and practice that enable economic development undertaken by Indigenous peoples on their lands that are undertaken with their free, prior and informed consent.

That the Australian Government implement the recommendations of the Australian Law Reform Commission's Connection to Country Review of the Native Title Act 1993 (Cth) and the COAG Investigation into



**Indigenous Land Administration and Use in order to better recognise and protect Indigenous peoples' native title rights and interests.**

**That the Australian Government ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively impacted by the Northern Australia Development Agenda.**

- **People with Disabilities**

***National Disability Strategy***

**That the Australian Government fully implement the NDS and prioritise efforts to ensure that targets for universal housing design are met by 2020.**

***National Disability Insurance Scheme***

**That the Australian Government continue to fully support the roll out of the NDIS.**

***Employment of people with disabilities***

**That the Australian Government implement the *Willing to Work* report recommendations and reduce employment discrimination against people with a disability and older Australians.**

***Prisoners and mental health***

**That Australian governments develop appropriate support for people with disabilities, particularly those with mental health disorders and cognitive disability including national guidelines on 'fitness to plead'.**

- **Women**

***Women and Work***

**That the Australian Government further strengthen efforts to support women in paid work, unpaid caring roles and to reduce gender gaps in workforce participation, wages and retirement incomes and savings.**

***Violence against women and children***

**That Australian governments redouble efforts to reduce violence against women, including by ensuring adequate accommodation and support services to reduce the risk of homelessness for women and their children.**

- **Sexual Orientation, Gender Identity and Intersex Issues (SOGII)**

***Non-discrimination***

**That all Australian governments ensure consistency of their 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).**

***Intersex***

**That the recommendations of the 2013 Senate Community Affairs Committee inquiry into the involuntary or coerced sterilisation of intersex people be implemented.**

***Gender identity***

**That the Australian Government, through the COAG process, encourage state and territory governments to remove the surgery and marital status requirements in births, deaths and marriages registration legislation.**

- **Older persons**

***Elder abuse***

**That the Australian Government develop a national strategy on tackling elder abuse.**

***Employment***

**That the Australian Government formally respond to the Willing to Work Inquiry recommendations concerning older Australians, including by developing national strategies to address age discrimination and stereotyping that impacts on employment status.**

- **Rights of the child**

**That the Australian Government strengthen early intervention programs that support vulnerable families and improve data collection relating to child protection and out-of-home care.**

- **Refugees and Asylum Seekers**

***Mandatory immigration detention, including of children***

**That the Australian Government end the use of mandatory and prolonged detention of asylum seekers, especially children, and ensure that any detention 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.**

***Asylum seekers living in the community***

**That the Australian Government develop timelines for the processing of asylum claims and provide increased funding and targeted support to asylum seekers living in the Australian community.**

***Third country processing of asylum claims***

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

***Temporary protection and family reunion***

**That the Australian Government review the temporary protection arrangements with the view to ending this policy. In the alternative, end the policy that restricts access to services and entitlements on the basis of a person's mode of arrival in Australia.**

- **Trafficking**

**That the Australian Government develop a federal compensation scheme for survivors of human trafficking and slavery, ensure regular collection of data on, and the provision of specialist support services to child survivors of trafficking and slavery, and ensure the National Action Plan on Business and Human Rights has clear links with the *National Action Plan to Combat Human Trafficking and Slavery 2015-2019*.**

- **Human Rights Education**

**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, and incorporate human rights education (including ESC rights) in the national school curriculum.**

## Endnotes

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<sup>54</sup> Senate Standing Committee on Legal and Constitutional Affairs, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre* (2017) p 165. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/NauruandManusRPCs/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report) (viewed 3 May 2017).

<sup>55</sup> Senate Standing Committee on Legal and Constitutional Affairs, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre* (2017) p 176. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/NauruandManusRPCs/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report) (viewed 3 May 2017).

<sup>56</sup> Senate Standing Committee on Legal and Constitutional Affairs, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre* (2017). At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/NauruandManusRPCs/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report) (viewed 3 May 2017). [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/NauruandManusRPCs/Report/d01](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report/d01) (viewed 3 May 2017).

<sup>57</sup> For example, family visa applications lodged by permanent visa holders who arrived in Australia by boat receive the lowest processing priority. See Department of Immigration and Border Protection, *Fact sheet – Processing priorities for family stream migration* (n.d.). At <https://www.border.gov.au/about/corporate/information/fact-sheets/37processing> (viewed 8 May 2017).

<sup>58</sup> This 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.

<sup>59</sup> 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 8 May 2017).

The Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee in its report on the Inquiry into Slavery, Slavery-like Conditions and People Trafficking, recommended the Australian Government further investigate the establishment of a federal compensation scheme for survivors of slavery and people trafficking; and review the current rates of compensation. 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=ifadt/slavery\\_people\\_trafficking/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ifadt/slavery_people_trafficking/report.htm) (viewed 8 May 2017).

<sup>60</sup> Australian Human Rights Commission, *Submission to Parliamentary Joint Committee on Law Enforcement Inquiry into Human Trafficking*, (2016). At <http://www.humanrights.gov.au/submissions/submission-inquiry-human-trafficking-2016> (viewed 8 May 2017).

<sup>61</sup> Australian Human Rights Commission, *Submission to Parliamentary Joint Committee on Law Enforcement Inquiry into Human Trafficking*, (2016). At <http://www.humanrights.gov.au/submissions/submission-inquiry-human-trafficking-2016> (viewed 8 May 2017).

<sup>62</sup> *Report of the Working Group on the Universal Periodic Review Australia*, HRC, 31<sup>st</sup> 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 8 May 2017).

<sup>63</sup> Australian Human Rights Commission, *Submission to Parliamentary Joint Committee on Law Enforcement Inquiry into Human Trafficking*, (2016). At <http://www.humanrights.gov.au/submissions/submission-inquiry-human-trafficking-2016> (viewed 7 May 2017).

<sup>64</sup> 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](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/inquiry_into_surrogacy/Report) (viewed 8 May 2017).

<sup>65</sup> 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. 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*, February 2016, [6]. At

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/inquiry\\_into\\_surrogacy/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/inquiry_into_surrogacy/Submissions) (viewed 8 May 2017).