



Australian
Human Rights
Commission

Information for List of Issues – Australia

**SUBMISSION BY THE AUSTRALIAN HUMAN RIGHTS
COMMISSION**

29 August 2016

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

1	Introduction.....	3
2	Scrutiny of human rights and the role of the Parliamentary Joint Committee on Human Rights	4
3	National Human Rights Institution	4
4	Ratification of the Optional Protocol to the ICESCR and other treaties	5
5	Protection against discrimination	6
6	Aboriginal and Torres Strait Islander peoples.....	6
6.1	<i>National Aboriginal and Torres Strait Islander representative body and ILO Convention 169.....</i>	6
6.2	<i>Close the gap.....</i>	7
6.3	<i>Income management and poverty</i>	8
6.4	<i>Cultural Rights (native title).....</i>	8
7	People with Disabilities	9
7.1	<i>National Disability Strategy.....</i>	9
7.2	<i>National Disability Insurance Scheme (NDIS).....</i>	10
7.3	<i>Employment of people with disabilities</i>	10
7.4	<i>Prisoners and mental health</i>	11
8	Women.....	11
8.1	<i>Women and Work.....</i>	11
8.2	<i>Violence against women and children</i>	13
9	Sexual Orientation, Gender Identity and Intersex Issues (SOGII)	15
9.1	<i>Intersex</i>	15
9.2	<i>Gender identity.....</i>	15
9.3	<i>Employment.....</i>	16
9.4	<i>Education.....</i>	16
10	Older persons	16
10.1	<i>Elder abuse.....</i>	16
10.2	<i>Employment.....</i>	17
11	Refugees and Asylum Seekers.....	18
11.1	<i>Health requirement.....</i>	18
11.2	<i>Mandatory immigration detention, including of children</i>	18
11.3	<i>Asylum seekers living in the community</i>	19
11.4	<i>Third country processing of asylum claims</i>	20
11.5	<i>Temporary protection and family reunion.....</i>	20
12	Trafficking	21
13	Human Rights Education	22
	Attachment 1: Compilation of issues for consideration in the LOI.....	24
	Endnotes.....	29

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. Information about the Commission can be found at: www.humanrights.gov.au.
2. The submission provides information to the Committee on Economic, Social and Cultural Rights (the Committee) that is relevant to Australia’s implementation of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).¹
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. In particular, the submission draws upon material contained in the following documents:
 - Commission submission to the Committee on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* prior to its development of the List of Issues Prior to Reporting (June 2016 Submission)²
 - Commission submission to Australia’s 2nd cycle Universal Periodic Review (UPR) (UPR Submission)³
 - Commission UPR Fact Sheets⁴
 - Report of the Working Group on the UPR, Australia (UPR Working Group Report)⁵
 - Addendum 1 to the UPR Working Group Report.⁶
5. The Commission thanks the ICESCR Committee for the opportunity to provide a written contribution prior to its adoption of the List of Issues (LOI) on Australia.
6. The submission has been presented according to the thematic issues identified in the Committee’s *Concluding observations of the Committee on Economic, Social and Cultural Rights - Australia* (UN Doc: E/C.12/AUS/CO/4). The Commission has also included information considered relevant to the development of the LOI.
7. The recommended issues for consideration in the LOI are compiled in **Attachment 1** of this submission.

2 Scrutiny of human rights and the role of the Parliamentary Joint Committee on Human Rights

Concluding Observation para 11

8. 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.
9. Since its establishment, the PJCHR has produced 56 reports to Parliament assessing over 850 bills and the statement of compatibility with human rights accompanying each bill.⁷ Through these reports (and also through the provision of two Practice Notes),⁸ the PJCHR provides guidance to government departments on their expectations about the level of human rights analysis that statements of compatibility should contain.
10. As a matter of practice, ministers and government departments respond to concerns raised by the PJCHR regarding proposed legislation.⁹ The PJCHR raises concerns when it considers proposed legislation places an unjustifiable limitation on human rights. Legislators are under no obligation to amend bills to reflect these concerns. There have been cases where bills have passed into law before the PJCHR has reported on the relevant bill.¹⁰
11. The Commission notes that the findings of the PJCHR are often not expressly taken into account by legislators when they are deliberating on proposed legislation.
12. The processes of the PJCHR stand in isolation as compared with other jurisdictions that incorporate the obligations in the ICESCR into domestic law via a national human rights act or charter of rights.
13. **Issue for consideration in the LOIPR: Incorporation of human rights into Australian law including procedures for considering the concerns raised by the PJCHR.**

3 National Human Rights Institution

Concluding Observation para 13; ICESCR Article 2(1)

14. The Commission has a statutory power to promote and protect human rights under the *Australian Human Rights Commission Act 1986* (Cth) Act (AHRC Act). Human rights are defined as the international instruments scheduled to or declared under the AHRC Act. The Commission's legislation does not include the ICESCR within the definition of 'human rights' (with the exception of the Social Justice Commissioner and Children Commissioner's functions – as below).
15. The definition of human rights in the AHRC Act is not consistent with that of the PJCHR under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). This Act defines human rights as the seven instruments to which Australia is a party, including the ICESCR.

16. The functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner, as set out in section 46C of the AHRC Act, require the Commissioner to report annually to the federal Parliament on the status and enjoyment of human rights of Indigenous peoples; to promote awareness and discussion of Indigenous human rights; examine enactments and proposed enactments for compliance with Indigenous human rights; and conduct educational activities. In exercising those functions, the Commissioner is specifically required to have regard to ICESCR. The Commissioner is also empowered to obtain information from state and territory government agencies.
17. The functions of the National Children’s Commissioner, as set out in section 46MB of the AHRC Act, require the Commissioner to report annually to the federal Parliament on the enjoyment and exercise of human rights by children in Australia; to promote discussion and awareness of matters relating to the human rights of children in Australia; to undertake research, or educational and other programs, for the purpose of promoting respect for the human rights of children in Australia; to examine existing and proposed federal enactments for recognition and protection of the human rights of children in Australia. In exercising these functions, the Commissioner is specifically required to have regard to the ICESCR and the Convention on the Rights of the Child (CRC), other human rights treaties and declarations, and other human rights instruments the Commissioner considers relevant.
18. **Issue for consideration in the LOI: Ensuring that the Commission is guided by a comprehensive definition of human rights, including by the ICESCR being a scheduled instrument.**

4 Ratification of the Optional Protocol to the ICESCR and other treaties

19. Four UPR recommendations concerned ratification of the *Optional Protocol to the ICESCR* (OP-ICESCR).
20. The Australian Government noted these recommendations and indicated that ratification of the OP-ICESCR will not be considered further at this time.
21. **Issue for consideration in the LOI: Information on when consideration will be given to the ratification of the OP-ICESCR.**
22. Eleven UPR recommendations concerned ratification on the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW)
23. The Australian Government noted these recommendations and indicated that ratification of the ICRMW will not be considered further at this time.
24. **Issue for consideration in the LOI: Information on when consideration will be given to the ratification of the ICRMW.**

5 Protection against discrimination

Concluding Observation para 14; ICESCR Article 2(2)

25. In 2013 the *Sex Discrimination Act 1984* (Cth) was amended to include protections against discrimination on the basis of sexual orientation, gender identity and intersex status.¹¹
26. During the 2015 UPR process the Australian Government made a voluntary commitment to removing exemptions for Australian state and territory laws from the operation of Australia's national anti-discrimination laws. This commitment took effect from 31 July 2016, as prescribed by the *Sex Discrimination Regulations 1984* (Cth) reg 5(2).
27. 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).
28. **Issue for consideration in the LOI: Information on progress made by state and territory governments to make legislation consistent with federal protections against discrimination on the basis of sexual orientation, gender identity and intersex status in the *Sex Discrimination Act 1984* (Cth).**

6 Aboriginal and Torres Strait Islander peoples

29. A recurring theme during Australia's second cycle UPR was the unacceptable level of disadvantage experienced by Aboriginal and Torres Strait Islander peoples. Countries called upon Australia to ensure the full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples*, ensure Constitutional recognition, address disparities in health, education and employment, and address access to justice.¹² Recommendations also concerned meaningful consultation with Aboriginal and Torres Strait Islander peoples in programs and policies that affect them.¹³
30. The Commission notes that the bulk of the recommendations were accepted on the basis of existing law, policy and action. The Commission is concerned that given the acceptance of many of the UPR recommendations on the basis of existing law, policy and action, the lack of improvement in employment and school attendance indicators will continue.

6.1 **National Aboriginal and Torres Strait Islander representative body and ILO Convention 169**

Concluding Observation para 15 (b), (c) & (d); ICESCR Article 2(2)

31. The Australian Government has wound back funding support for the National Congress of Australia's First Peoples, a national NGO voice for Aboriginal and Torres Strait Islander peoples. Funding for Congress ends mid-2017.¹⁴

32. **Issue for consideration in the LOI: Information on the future funding of the National Congress of Australia’s First Peoples as the national representative voice for Indigenous peoples.**
33. The ILO Convention 169 on Indigenous and Tribal Peoples (ILO Convention 169) is based on respect for the cultures and ways of life of Indigenous and Tribal peoples and aims at overcoming discriminatory practices and enabling participation in decision-making that affects their lives.¹⁵
34. The Australian Government noted the UPR recommendations to ratify ILO Convention 169 but indicated it will not consider ratification at this time.
35. **Issue for consideration in the LOI:**
 - **Information on when consideration will be given to the ratification of ILO Convention 169 on Indigenous and Tribal Peoples.**

6.2 Close the gap

Concluding Observation para 18; ICESCR: Articles 2, 6 & 7

36. The Commission welcomes the commitment of Australian governments 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. The Commission notes that since 2011, there have been improvements in infant mortality, maternal health, life expectancy rates and pre-school attendance. Other areas, such as employment and school attendance, have not seen the same level of improvement.¹⁶
37. The Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023,¹⁷ is a major commitment by the government. Future Budgets must adequately resource its application and operation to ensure that rights are progressively realised. As such, the government should:
 - Ensure the oversight committee is resourced to monitor results of the Implementation Plan activities in order to continuously improve the quality, effectiveness and efficiency of the health services and accountable to both COAG and the National Health Leadership Forum.
 - Fund the process required to develop the core services model and the associated workforce, infrastructure, information management and funding strategies based on the core services model.
 - Ensure Aboriginal and Torres Strait Islander health funding is maintained at least at current levels until the core services, workforce and funding work is finalised, with provision of a more considered view of funding requirements and issues.
 - Identify areas with both high levels of preventable illnesses and deaths and inadequate services, and develop a capacity building plan for Aboriginal Community Controlled Services (ACCHS) in those areas.¹⁸

38. **Issue for consideration in the LOI: Information on the resourcing of the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 to ensure the activities contained therein are prioritised and coordinated, and capable of progressively realising improvements in the enjoyment of ESC rights by Indigenous peoples.**

6.3 Income management and poverty

Concluding Observations paras 20 & 24; ICESCR Articles 9 & 11

39. The Commission is concerned that the Australian Government's Healthy Welfare Card trials and Community Development Program are not opt-in income management schemes and have disproportionate effects upon Aboriginal and Torres Strait Islander peoples.¹⁹
40. **Issues for consideration in the LOI:**
- **Information on the impact of the Community Development Program on Aboriginal and Torres Strait Islander peoples.**
 - **Information on the impact of the Healthy Welfare Card trials on Aboriginal and Torres Strait Islander peoples.**

6.4 Cultural Rights (native title)

Concluding Observations para 32; ICESCR Article 15

41. Aboriginal and Torres Strait Islander peoples face challenges in having their traditional connection to land recognised through the native title system, and in conducting subsequent economic activities on this land (the Indigenous Estate).
42. The Commission welcomes the Australian Government's commitment and support for a national dialogue with Aboriginal and Torres Strait Islander peoples and the finance sector to identify practical reform options which address challenges to economic development on the Indigenous Estate. These challenges include the barriers arising from the communally held and inalienable nature of the rights and the types of commercial opportunities in urban, regional and remote areas.²⁰ The Commission is currently undertaking an Indigenous led consultation, industry engagement and development of practical options to address these issues through the Indigenous Property Rights Project.²¹
43. The Commission notes that some of the issues in relation to the realisation of the right to land of Indigenous peoples are also being explored in the Council of Australian Government's Investigation into Indigenous Land Administration and Use²² and the Australian Law Reform Commission Connection to Country Review of the *Native Title Act 1993* (Cth).²³
44. 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.

45. **Issues for consideration in the LOI:**

- **Information on steps that the Australian Government will take to support economic development undertaken by Indigenous peoples on their lands and undertaken with their free, prior and informed consent.**
- **Information on steps to be taken by the Australian Government to better recognise and protect Indigenous peoples' native title rights and interests, including on the status of implementation of the recommendations of the Australian Law Reform Commission's Connection to Country Review of the Native Title Act 1993 (Cth) and the Council of Australian Government's Investigation into Indigenous Land Administration and Use.**
- **Information on steps that the Australian Government will take to ensure that Aboriginal and Torres Strait Islander peoples participate in decision-making, and give their free, prior and informed consent to activities within the Northern Australia Development Agenda.**

7 People with Disabilities

7.1 National Disability Strategy

Concluding Observations paras 16 & 18; ICESCR Article 2(2)

46. The National Disability Strategy was formally endorsed by the Council of Australian Governments on 13 February 2011.
47. The strategy includes a plan for a high level progress report every two years to track achievements, using national trend indicator data based on the six outcome areas. The first of these progress reports was presented to COAG in December 2015.
48. The report provides an overview of the range of actions and activities undertaken across all levels of government that have advanced the objectives of the Strategy. The report also includes early analysis of draft trend indicator data but does not contain any evaluation of the impact of such strategies. Given the long-term aims of the strategy the Commission considers that monitoring and evaluation of the impact of the strategy will be vital to its success.

49. **Issue for consideration in the LOI: Information on the outcomes achieved through the National Disability Strategy and on the process for evaluation and monitoring of impact.**

7.2 National Disability Insurance Scheme (NDIS)

Concluding Observation para 24; ICESCR Articles 2(2) & 11

50. The Commission notes that full roll-out of the NDIS will commence by July 2017. This is a major reform in the approach to government support for people with disability. While it is too early to assess or draw conclusions on any progress, given the size and breadth of the reform, it is inevitable that its execution will be imperfect and that there will much to learn during the implementation process. The Commission is of the view that the rollout of the NDIS therefore demands careful evaluation and monitoring both by the government agencies responsible for its implementation and by independent agencies working constructively with the implementing bodies.
51. **Issue for consideration in the LOI: Information on the monitoring and evaluation incorporated into the national rollout of the NDIS.**

7.3 Employment of people with disabilities

Concluding Observation para 18; ICESCR Articles 2(2), 6 & 7

52. In 2015-16, the Australian Human Rights Commission conducted a National Inquiry into employment discrimination against older Australians and Australians with disability.²⁴
53. Data from the Inquiry revealed that overall employment rates for people with disability remain low, with labour force participation at 53.4% for people with disability compared with 83.2% of people without disability.²⁵ It is noteworthy that such figures have recorded negligible change in the past 20 years. Australians with disability are more likely to be unemployed (10.0% compared with 5.3% for those without disability)²⁶ and face longer periods of unemployment than people without disability.²⁷
54. In 2015, almost one in 12 Australians with disability (8.6%) reported that they had experienced discrimination or unfair treatment because of their disability in the past year. In 2014–15 the Australian Human Rights Commission received 3,529 enquiries and 742 complaints about disability discrimination. More than a third of enquiries (35.4%) and complaints (41.0%) were in the area of employment.
55. The Inquiry Report contains 56 recommendations, 72 examples of good practice from a range of employers, and 44 case studies outlining individual experiences. The recommendations were groups into three key themes:
- Priority government commitments
 - Improving existing systems
 - What can be done by employers and business.

56. The report was completed and released immediately prior to the announcement of the recent election. While the report has been delivered to the government and publicly released, due to the intervening election, it has yet to be tabled in parliament. This is due to occur no later than early October. To date, there has not been a formal government response to the report.
57. **Issues for consideration in the LOI: Information on the Australian Government response to the Willing to Work Inquiry recommendations concerning people with disabilities.**

7.4 Prisoners and mental health

Concluding Observation para; ICESCR Articles 12(1) & 12(2)(d)

58. In light of Australian Bureau of Statistics data,²⁸ the Commission's *Equal Before the Law* report²⁹ concluded 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.
59. The Australian Institute of Health and Welfare reported³⁰ that 38% of prison entrants reported they have ever 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 ever been told they have a health condition – mental health, including drug and alcohol abuse. Commission research has found that necessary supports and adjustments for people with disabilities were frequently not provided in the criminal justice system.³¹
60. **Issues for consideration in the LOI:**
- **Information about Government responses to issues affecting prisoners with a disability or mental health issue**
 - **Information on strategies to address the rate of people with a disability in the criminal justice system**
 - **Information about the availability of appropriate treatment and services for prisoners with mental health issues, including drug and alcohol abuse.**

8 Women

8.1 Women and Work

Concluding Observations paras 17 & 21; ICESCR Articles 3 & 10

61. There are a range of gender equality gaps in Australia that impact on women's right to work, right to just favourable conditions of work and right to adequate standard of living for themselves and their family.

62. The national gender pay gap is currently at 16.2% (based on average weekly full-time earnings). Women are over-represented in lower-paid industries and occupations.³²
63. Australian women continue to be under-represented in the workforce, with 78% of Australian men aged 20-74 years participating in or looking for work in 2013-14, compared with 65% of women.³³ This gap widens with the arrival of children, with 57.5% of mothers whose youngest child is aged 0-5 years participating in the labour force, compared with 94% of fathers.³⁴
64. Where employed, women are more likely to work in part-time or casual roles than men.³⁵ Casual work is insecure work and casual employees with inconsistent patterns of work are not able to access entitlements to paid parental leave and flexible work.
65. The average superannuation balances for women at retirement are 46.6% less than those for men.³⁶ This gap puts many women at risk of being homeless and living in poverty in their retirement.³⁷
66. The percentage of women on ASX 200 boards was 21.9 per cent, as of 31 January 2016.³⁸ As of 2012, in the ASX 200 women held 9.7 per cent of executive key management personnel positions.³⁹ In the public sector, as of 2015, women held 39.3 per cent of Government board positions,⁴⁰ and while constituting 58.7% of the Australian Public Service, were only 41.8% of the Senior Executive Service.⁴¹
67. In Australia in 2006, female parents spent over 8 hours per day caring for children aged under 15 years, compared to under 4 hours for male parents.⁴² Women comprise 92% of primary carers for children with disabilities, 70% of primary carers for parents.⁴³ The disproportionate unpaid caring done by women, is a driver of the gender gaps in workforce participation and in retirement incomes and savings.⁴⁴ The Commission has identified reform options for recognising and valuing unpaid caring work, and for redistributing unpaid caring work between women and men.⁴⁵ If implemented they would contribute to reducing these gender gaps.
68. One in two (49%) mothers reported experiencing discrimination at some point during pregnancy, parental leave or on return to work.⁴⁶ These experiences contribute to women's under-participation or withdrawal from the workforce and lower retirement savings.⁴⁷ Over a quarter (27%) of father/partner survey respondents also reported experiencing discrimination upon requesting or after taking parental leave.⁴⁸ This inhibits the redistribution of caring work between women and men. The Commission recommended introducing legislative reform to strengthen anti-discrimination provisions and employment laws and introduce measures to remove harmful gender stereotypes.⁴⁹
69. The Commission has called for strengthening the *Paid Parental Leave* scheme⁵⁰ by: increasing it to up to 26 weeks at full replacement wages; including a superannuation component, and extending the father/partner pay scheme.⁵¹ The Commission notes the retrogressive measures proposed in the Fairer Paid Parental Leave Amendment Bill 2015 including: removing the ability for individuals to receive employer-provided primary carer leave

payments in addition to the PPL; and removal of the requirement for the PPL payment to be made through employers.⁵²

70. Research shows that approximately 37% of women surveyed were unavailable to start a or extend work because of 'caring for children'.⁵³ The Commission recommended developing accessible, affordable, flexible, quality early childhood education and care services, including out-of-school-hours care services, which each child has an entitlement to attend. These should be delivered equitably to all children, including children in regional and remote areas, Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse communities and children with disability.⁵⁴
71. **Issue for consideration in the LOI:**
- **Information on measures to strengthen efforts to support women in paid work and unpaid caring work and reduce gender gaps in workforce participation, wages and retirement incomes and savings.**
 - **Information on measures to recognise and value unpaid caring work through legislation, superannuation and taxation systems,**
 - **Information on government funding to conduct the 2018 Time Use Survey.**

8.2 Violence against women and children

Concluding Observation para 22; ICESCR Article 10

72. Gender-based violence against women and children is endemic in Australia and impacts on the realisation of women's and children's economic social and cultural rights.
73. Violence is a leading cause of ill-health and death among women aged between 15 and 44 years.⁵⁵ 41% of women aged 18 and over have experienced violence in their lifetime.⁵⁶ 19% of women have experienced sexual violence since the age of 15.⁵⁷ Aboriginal and Torres Strait Islander women are 45 times more likely to be victims of domestic and family violence.⁵⁸ Women with disability, women of culturally and linguistically diverse backgrounds, and women who are of diverse sexual orientation, gender identity or intersex are also particularly susceptible to gender-based violence.
74. One quarter of women (25%) and one in six men (16%) aged 15 years and older have experienced sexual harassment in the workplace between 2007 and 2012.⁵⁹ High levels of sexual harassment have also been reported in other sectors such as universities, the military and the police.⁶⁰ Reporting levels of sexual harassment are very low, with only one in five (20%) respondents who were sexually harassed having made a formal report or complaint.⁶¹
75. Domestic and family violence is also a workplace issue. In 2005, two out of three Australian women who reported violence by a current partner were in paid employment⁶² and survey respondents have reported the impact of

domestic violence on their work.⁶³ Leave and other entitlements have been made available through agreements or award conditions for over one million Australians (as at 2013).⁶⁴ Existing federal, state and territory legislative frameworks provide limited protection for women experiencing domestic and family violence from further discrimination.

76. Women and girls with disability face significant issues in relation to violence, particularly violence and abuse in institutional settings, violence in care settings and other forms of gendered disability violence including forced sterilisation and forced treatment.⁶⁵
77. An estimated 935,600 adult women first experienced physical abuse, and an estimated 1,092,200 first experienced sexual abuse, as a child aged between 0 to 14 years.⁶⁶ It is also estimated that family and domestic violence is present in 55% of physical abuses and 40% of sexual abuses against children.⁶⁷
78. The Commission commends the Government's *National Plan to Reduce Violence against Women and their Children 2010-22* (National Plan).⁶⁸ The Commission remains concerned 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.⁶⁹ Cuts to community legal centres and Aboriginal legal services can impact on access to legal services for women affected by violence.
79. The Commission also 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.⁷⁰ However, the Commission is concerned that this funding is inadequate to achieve the objectives of the Plan. 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.⁷¹
80. Australia lacks a coherent national system of death reviews to ensure accurate monitoring to address systemic issues from deaths associated with domestic violence. The Commission is conducting an inquiry into *Enhancing domestic and family violence death review processes*.
81. The Commission notes that the Australian and New Zealand Child Death Review and Prevention Group (ANZCDR&PG) has continued its valuable work to establish a national child death and injury data base as per the recommendation of the National Children's Commissioner in her 2014 Children's Rights Report.⁷²
82. **Issues for consideration in the LOI:**

- **Information on how the National Plan addresses gender inequality, focuses on prevention measures, and ensures robust, independent monitoring and evaluation.**
- **Information on funding for the National Plan, including funding for specialist support services such as: women-specific services, community legal centres, Family Violence Prevention Legal Services, and crisis and transitional accommodation services.**
- **Information on the introduction of workplace entitlements for domestic and family violence leave; including in federal public service agreements.**
- **Information on how the National Plan recognises and addresses violence against women and girls with disability.**
- **Information on how the National Plan addresses the specific needs and rights of children and young people. The Commission refers the Committee to the National Children’s Commissioner’s *Children’s Rights Report 2015*.⁷³**

9 Sexual Orientation, Gender Identity and Intersex Issues (SOGII)

9.1 *Intersex*

Concluding Observation n/a; ICESCR Article 12(1)

83. 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.⁷⁴ Such interventions can have significant and ongoing physical and psychological consequences.⁷⁵ The Commission notes that the Senate Community Affairs Committee conducted an inquiry into the involuntary or coerced sterilisation of intersex people in Australia in 2013.⁷⁶ The Government responded to the recommendations of that inquiry in 2015.⁷⁷ The Commission remains concerned that many of the recommendations have not been implemented; particularly at the state and territory level.
84. **Issues for consideration in the LOI:**
- **Information on the implementation of the recommendations of the Senate Inquiry Report Community Affairs Committee’s 2013 *Report on the Involuntary or Coerced Sterilisation of Intersex People in Australia* by federal, state and territory governments.**

9.2 *Gender identity*

85. The Commission also 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.⁷⁸ In the ACT people must provide a declaration from a psychologist or doctor that they have received ‘appropriate clinical treatment for the alteration’.⁷⁹

86. Issues for consideration in the LOI:

- **Information on steps taken by state and territory governments to remove the surgery and marital status requirements in births, deaths and marriages registration legislation.**

9.3 Employment

Concluding Observation n/a; ICESCR Articles 2(2) & 6

87. The Commission remains concerned that Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) people experience discrimination at work on the basis of sexual orientation, gender identity and intersex status. This issue was raised as a significant factor affecting employment and a barrier to equal participation in the Commission’s 2015 report, *Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights*.⁸⁰
88. **Issue for consideration in the LOI: Information on steps taken to reduce discrimination on the basis of sexual orientation, gender identity and intersex status in employment.**

9.4 Education

Concluding Observation n/a; ICESCR Articles 2(2) & 13

89. The Commission remains concerned that LGBTI children and young people experience disproportionately high rates of discrimination, harassment and abuse at school.⁸¹ The Commission notes that funding for the first national program to create safe and supportive school environments for LGBTI people will expire in 2017.⁸²
90. **Information for consideration in the LOI: Information on steps taken to create safe and supportive school environments for LGBTI people after the expiration of funding for the Safe Schools Coalition Australia.**

10 Older persons

10.1 Elder abuse

Concluding Observation para 22; ICESCR Articles 2 & 16

91. The Commission notes that the Australian Government UPR voluntary commitment to include a dedicated section on the rights of older Australians in all relevant human rights treaty reports and UPR reports.⁸³

92. The Commission is of the view that all Australians have the basic human right to feel safe, respected and free from violence in their relationships, families and in their homes. Elder abuse, in many various forms, is a fundamental human rights issue faced by many older people and is presenting a range of complex challenges for the Australian community.
93. At present the evidence about the prevalence of elder abuse in Australia is limited. There is no national prevalence data, but it is almost certain that elder abuse will increase as Australia's population lives longer, and older people form a greater proportion of the population. 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,⁸⁴ and New South Wales⁸⁵ state parliaments and a Victorian Royal Commission into Family Violence.⁸⁶
94. 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 to conduct an inquiry into safeguards for older Australians, with the report due by May 2017.⁸⁷ The Commission is of the view that these initiatives are a first step towards a coordinated national strategy on elder abuse.
95. **Issue for consideration in the LOI: Information on the prevalence of elder abuse and strategies to combat this abuse.**

10.2 Employment

Concluding Observations paras 18, 20 & 24; ICESCR Articles 2, 6 & 7

96. In 2015-16, the Australian Human Rights Commission conducted a National Inquiry into employment discrimination against older Australians and Australians with disability.⁸⁸
97. The data included in the *Willing to Work* Report highlights the widespread nature of discrimination against older people in employment:
- People aged 55 years and over make up roughly a quarter of the population,⁸⁹ but only 16% of the total workforce.⁹⁰ We know from the 2015 Intergenerational Report that this age cohort is the fastest growing in Australia, and will remain so for the foreseeable future.
 - Labour force participation declines with age. In November 2015, 73.8% of Australians aged 55–59 years were participating in the labour force, with 56.5% of 60–64 year olds and 12.7% of those aged 65 years and over in the labour force.⁹¹
 - Older people face longer periods of unemployment. In November 2015, the average duration of unemployment for mature age people was

68 weeks, compared with 30 weeks for 15–24 year olds and 49 weeks for 25–54 year olds.⁹²

- In the Australian Human Rights Commission’s 2015 National prevalence survey of age discrimination in the workplace, 27% of people over the age of 50 reported experiencing age discrimination at work. A third of those who had experienced age discrimination gave up looking for work.⁹³
- In 2014-15, 70.9% of complaints made by people over the age of 45 about age discrimination to the Australian Human Rights Commission were in the area of employment.

98. The *Willing to Work* Report contains 56 recommendations, 72 examples of good practice from a range of employers, and 44 case studies outlining individual experiences. The recommendations are grouped into three key themes:

- Priority Government commitments
- Improving existing systems
- What can be done by employers and business.

99. **Issue for consideration in the LOIPR: information on the Australian Government response to the *Willing to Work* Inquiry recommendations concerning older Australians.**

11 Refugees and Asylum Seekers

11.1 Health requirement

Concluding Observation para 16; ICESCR articles 2(2) & 6

100. The Commission welcomes the changes to the health requirement for refugees resettled in Australia from overseas. The changes have provided greater access to resettlement opportunities for people with disabilities and health conditions, and their families.

11.2 Mandatory immigration detention, including of children

Concluding Observation para 25; ICESCR articles 2(2), 11 & 12

101. Under the *Migration Act 1958* (Cth) (the Migration Act), indefinite immigration detention remains mandatory for all unlawful non-citizens.⁹⁴ There is no regular judicial review of decisions to detain. There are no minimum standards for conditions of detention codified in Australian law. Numerous studies have documented high rates of mental health problems amongst people in immigration detention in Australia,⁹⁵ with the negative impacts of detention tending to worsen as detention becomes more prolonged.⁹⁶

102. There have been a number of positive developments relating to immigration since 2009. These include the release of all children from closed facilities into alternative community arrangements,⁹⁷ the closure of a several detention facilities⁹⁸ and the release of a number of refugees who had been detained indefinitely due to having received an adverse security assessment.
103. The Commission is concerned, however, that other recent developments may lead to breaches of Australia's obligations under the ICESCR to ensure the highest attainable standard of physical and mental health. In particular, there has been a significant increase in long-term detention, and in the number of people detained due to having a visa refused or cancelled on character grounds. In addition, a small number of refugees continue to be indefinitely detained due to having received an adverse security assessment.⁹⁹
104. **Issues for consideration in the LOI:**
- **The use of mandatory and prolonged detention in light of the impacts that long-term indefinite detention has on the mental health of those detained.**
 - **The availability of regular judicial oversight of detention and the minimum standards for conditions of detention.**

11.3 Asylum seekers living in the community

Concluding Observation para 24; ICESCR articles 11(1) & 12(1)

105. The Commission welcomes the increased use of community-based alternatives to detention for asylum seekers. In order for these alternatives to support positive health and wellbeing outcomes, however, it is critical that asylum claims be processed in a timely fashion and that adequate support be provided to asylum seekers to ensure that fundamental rights are respected and basic needs are met.
106. The Commission is concerned that the support available to asylum seekers living in the community is insufficient to ensure an adequate standard of living. Studies by the Australian Red Cross and UNHCR have found that asylum seekers living in the community face destitution, social isolation and challenges in securing adequate housing and employment.¹⁰⁰ Limited access to English language tuition and other key services (such as employment support services) also hamper their ability to establish themselves in the community.¹⁰¹
107. 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 or even been invited to apply for protection.¹⁰² 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.¹⁰³ Since the beginning of 2014, at least five asylum seekers have committed suicide while living in the community.¹⁰⁴

108. The Commission welcomes the reintroduction of work rights for asylum seekers living in the Australian community as an important step towards ensuring their economic wellbeing. The Commission remains concerned, however, that additional support is needed to ensure asylum seekers in the community can enjoy an adequate standard of living and the highest attainable standard of health.

109. **Issues for consideration in the LOI:**

- **Support provided to asylum seekers living in the Australian community in light of its impact on mental health and the enjoyment of an adequate standard of living.**
- **Timelines for the processing of asylum claims and their impact on the mental health of asylum seekers.**

11.4 Third country processing of asylum claims

Concluding Observation n/a; ICESCR Articles 2(2), 11(1) & 12(1)

110. Third country processing of asylum claims was re-established by Australia in Nauru and Papua New Guinea's Manus Island in 2012. The Commission is concerned that several aspects of current third country processing arrangements engage Australia's obligations under the ICESCR.

111. The Commission welcomes the transition from indefinite detention to 'open centre' arrangements for asylum seekers in both countries. However, numerous reports and inquiries as well as the Commission's own research have repeatedly documented serious shortcomings in living conditions for people subject to third country processing.¹⁰⁵ Available evidence suggests that there has been limited improvement in these conditions over time.¹⁰⁶

112. The combination of (until recently) prolonged indefinite detention, 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.¹⁰⁷

113. **Issues for consideration in the LOI: The continuation of third country processing of asylum claims in Nauru and Papua New Guinea and steps being taken to ensure that the human rights of people subject to third country processing are adequately protected.**

11.5 Temporary protection and family reunion

Concluding Observation n/a; ICESCR Articles 2(2), 10(1), 11, 12 & 13

114. Temporary protection arrangements for refugees who arrived in Australia without valid visas were formerly in place between 1999 and 2007. During this period, numerous studies found that the granting of protection to refugees on a temporary basis had a detrimental impact on their mental health, hampered

their capacity to recover from past trauma and resulted in poorer settlement outcomes as compared to permanent Protection Visa holders.¹⁰⁸

115. 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.
116. Temporary visa holders do not have access to the same services and entitlements as permanent visa holders. They 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.¹⁰⁹
117. 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.
118. **Issue for consideration in the LOI: Restrictions on access to services and entitlements that are based on a person's mode of arrival in Australia.**

12 Trafficking

Concluding Observation para 23; ICESCR Article 10

119. 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*. The National Action Plan adopts a human rights-based approach, includes measures to standardise data collection on human trafficking and slavery, and includes measures to raise community awareness among vulnerable groups.¹¹⁰ The Commission also welcomes:
 - the reforms to the Human Trafficking Visa Framework (2015)¹¹¹
 - the production of culturally appropriate, rights based materials for affected people and communities and authorities on the human trafficking and forced marriage offences
 - Australia's International Strategy to Combat Human Trafficking and Slavery (2016)
 - the appointment of Australia's Ambassador for People Smuggling and Human Trafficking.

120. The Commission also notes in 2015, legislation was enacted that increases the protection of children from forced marriage along with other persons who do not have the capacity to provide free and full consent to marriage.¹¹²
121. The Commission notes that adequate funding is needed for the full implementation of the National Action Plan.¹¹³
122. Given the insufficient coverage for these crimes under existing compensation schemes, the right to a remedy for survivors of trafficking and slavery is not fulfilled. The Special Rapporteur on trafficking in persons recommended the Australian Government establish a federal level, comprehensive compensation scheme for survivors of trafficking.¹¹⁴ The Commission notes the urgent need to develop a federal compensation scheme for survivors of trafficking, slavery and slavery-like conditions.¹¹⁵
123. There continues to be a lack of data and research on the prevalence of child trafficking and slavery in Australia. There is a need for specific policy guidelines and specific support services to be developed to protect the rights of child survivors of trafficking and slavery.¹¹⁶
124. 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.¹¹⁷ 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.¹¹⁸
125. 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*.¹¹⁹ The Commission submission considered that unregulated surrogacy arrangements raise real concerns about the potential for the trafficking of women and children.¹²⁰
126. **Issues for consideration in the LOI:**
 - **Information on developing a federal compensation scheme for survivors of human trafficking and slavery.**¹²¹
 - **Information on data collection and specialist support services for child survivors of trafficking and slavery.**
 - **Information on how a National Action Plan on Business and Human Rights will incorporate the approach to people trafficking and slavery.**

13 Human Rights Education

Concluding Observation para 34

127. There remains a need for ongoing human rights education across all areas of the public sector particularly as funding for these initiatives has ceased. Further education is also needed in the administration of justice and places of detention, within the tertiary and vocational education sector, across the community and in schools.
128. There remains limited explicit reference to human rights throughout the national school curriculum. While there are references to civil rights and women's rights movements together with reference to respectful relationships, bullying and harassment, these are scattered and are at times not articulated as human rights issues. The coverage of economic, social and cultural rights as human rights is even more limited.
129. The Commission notes that Australia's activities for the World Program for Human Rights Education have been ad hoc and uncoordinated.
130. **Issues for consideration in the LOI:**
- **Information on the provision of human rights education in the national school curriculum, in particular, with regard to economic, social and cultural rights.**
 - **Details of the extent of human rights training that is provided to all professions and sectors having a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, migration officers, the police and the military.**
 - **Information on government support for human rights education initiatives, including the World Program for Human Rights Education and targeted initiatives for public officials and schools.**

Attachment 1: Compilation of issues for consideration in the LOI

- **Scrutiny of human rights and role of the Parliamentary Joint Committee on Human Rights**

Information on the incorporation of human rights into Australian law including procedures for considering the concerns raised by the PJCHR.

- **National Human Rights Institution**

Ensuring that the Commission is guided by a comprehensive definition of human rights, including by the ICESCR being a scheduled instrument.

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

Information on when consideration will be given to the ratification of the OP-ICESCR.

Information on when consideration will be given to the ratification of the ICRMW.

- **Protection against discrimination**

Information on progress made by state and territory governments to make legislation consistent with federal protections against discrimination on the basis of sexual orientation, gender identity and intersex status in the Sex Discrimination Act 1984 (Cth).

- **Aboriginal and Torres Strait Islander peoples**

National Aboriginal and Torres Strait Islander representative body and ILO Convention 169

Information on the future funding of the National Congress of Australia's First Peoples as the national representative voice for Indigenous peoples.

Information on when consideration will be given to the ratification of ILO Convention 169 on Indigenous and Tribal Peoples.

Close the gap

Information on the resourcing of the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 to ensure the activities contained therein are prioritised and coordinated, and capable of progressively realising improvements in the enjoyment of ESC rights by Indigenous peoples.

Income management and poverty

Information on the impact of the Community Development Program on Aboriginal and Torres Strait Islander peoples.

Information on the impact of the Healthy Welfare Card trials on Aboriginal and Torres Strait Islander peoples.

Cultural Rights (native title)

Information on steps that the Australian Government will take to support economic development undertaken by Indigenous peoples on their lands and undertaken with their free, prior and informed consent.

Information on steps to be taken by the Australian Government to better recognise and protect Indigenous peoples' native title rights and interests, including on the status of implementation of the recommendations of the Australian Law Reform Commission's Connection to Country Review of the Native Title Act 1993 (Cth) and the Council of Australian Government's Investigation into Indigenous Land Administration and Use.

Information on steps that the Australian Government will take to ensure that Aboriginal and Torres Strait Islander peoples participate in decision-making, and give their free, prior and informed consent to activities within the Northern Australia Development Agenda.

- **People with Disabilities**

National Disability Strategy

Information on the outcomes achieved through the National Disability Strategy and on the process for evaluation and monitoring of impact.

National Disability Insurance Scheme

Information on the monitoring and evaluation incorporated into the national rollout of the NDIS.

Employment of people with disabilities

Information on the Australian Government response to the Willing to Work Inquiry recommendations concerning people with disabilities.

Prisoners and mental health

Information about Government responses to issues affecting prisoners with a disability or mental health issue.

Information on strategies to address the rate of people with a disability in the criminal justice system.

Information about the availability of appropriate treatment and services for prisoners with mental health issues, including drug and alcohol abuse.

- **Women**

- Women and Work**

- Information on measures to strengthen efforts to support women in paid work and unpaid caring work and reduce gender gaps in workforce participation, wages and retirement incomes and savings.

- Information on measures to recognise and value unpaid caring work through legislation, superannuation and taxation systems,

- Information on government funding to conduct the 2018 Time Use Survey.

- Violence against women and children**

- Information on how the National Plan addresses gender inequality, focuses on prevention measures, and ensures robust, independent monitoring and evaluation.

- Information on funding for the National Plan, including funding for specialist support services such as: women-specific services, community legal centres, Family Violence Prevention Legal Services, and crisis and transitional accommodation services.

- Information on the introduction of workplace entitlements for domestic and family violence leave; including in federal public service agreements.

- Information on how the National Plan recognises and addresses violence against women and girls with disability.

- Information on how the National Plan addresses the specific needs and rights of children and young people. The Commission refers the Committee to the National Children's Commissioner's Children's Rights Report 2015.

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

- Intersex**

- Information on the implementation of the recommendations of the Senate Inquiry Report Community Affairs Committee's 2013 Report on the Involuntary or Coerced Sterilisation of Intersex People in Australia by federal, state and territory governments.

- Gender identity**

- Information on steps taken by state and territory governments to remove the surgery and marital status requirements in births, deaths and marriages registration legislation.

Employment

Information on steps taken to reduce discrimination on the basis of sexual orientation, gender identity and intersex status in employment.

Education

Information on steps taken to create safe and supportive school environments for LGBTI people after the expiration of funding for the Safe Schools Coalition Australia.

- **Older persons**

Elder abuse

Information on the prevalence of elder abuse and strategies to combat this abuse.

Employment

Information on the Australian Government response to the Willing to Work Inquiry recommendations concerning older Australians.

- **Refugees and Asylum Seekers**

Mandatory immigration detention, including of children

The use of mandatory and prolonged detention in light of the impacts that long-term indefinite detention has on the mental health of those detained.

The availability of regular judicial oversight of detention and the minimum standards for conditions of detention.

Asylum seekers living in the community

Support provided to asylum seekers living in the Australian community in light of its impact on mental health and the enjoyment of an adequate standard of living.

Timelines for the processing of asylum claims and their impact on the mental health of asylum seekers.

Third country processing of asylum claims

The continuation of third country processing of asylum claims in Nauru and Papua New Guinea and steps being taken to ensure that the human rights of people subject to third country processing are adequately protected.

Temporary protection and family reunion

Restrictions on access to services and entitlements that are based on a person's mode of arrival in Australia.

- **Trafficking**

Information on developing a federal compensation scheme for survivors of human trafficking and slavery.

Information on data collection and specialist support services for child survivors of trafficking and slavery.

Information on how a National Action Plan on Business and Human Rights will incorporate the approach to people trafficking and slavery.

- **Human Rights Education**

Information on the provision of human rights education in the national school curriculum, in particular, with regard to economic, social and cultural rights.

Details of the extent of human rights training that is provided to all professions and sectors having a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, migration officers, the police and the military.

Information on government support for human rights education initiatives, including the World Program for Human Rights Education and targeted initiatives for public officials and schools.

Endnotes

- ¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
- ² Australian Human Rights Commission, *Submission – Information for List of Issues Prior to Reporting – Australia* (June 2016). At <https://www.humanrights.gov.au/submissions/information-list-issues-prior-reporting-australia-submission-committee-against-torture> (viewed 16 August 2016).
- ³ Australian Human Rights Commission, 'Submission by the Australian Human Rights Commission under the *Universal Periodic Review Process*, April 2015, [26]. At <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review> (viewed 16 August 2016).
- ⁴ Australian Human Rights Commission, *Australia's Universal Periodic Review on Human Rights – Commission Fact Sheets*. At <https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights> (viewed 16 August 2016).
- ⁵ *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). At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx> (viewed 16 August 2016).
- ⁶ *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). At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx> (viewed 16 August 2016).
- ⁷ 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 16 August 2016).
- ⁸ Parliamentary Joint Committee on Human Rights, *Guidance Notes and Resources*. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources (viewed 16 August 2016).
- ⁹ See Parliamentary Joint Committee on Human Rights - Human Rights Scrutiny Reports. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries (viewed 16 August 2016).
- ¹⁰ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2016) 41 2 *Monash University Law Review* 469, 475.
- ¹¹ *Sex Discrimination Act 1984* (Cth) ss 5A – 5C.
- ¹² See UPR Recs: 73-87, 92-100, 103-104, 106-107, 109-115, 122, 125-127, 137, 142, 153, 162, 166, 203-205, 211.
- ¹³ UPR Recs: 88, 89, 91.
- ¹⁴ New Matilda, *Peak Aboriginal body left in crisis mode by 2016 budget*, Max Chalmers, 9 May 2016. At <https://newmatilda.com/2016/05/09/peak-aboriginal-body-left-in-crisis-mode-by-2016-budget/> (viewed 29 August 2016).
- ¹⁵ International Labor Organisation, *Indigenous and Tribal Peoples*, ILO Convention 169, 1989, Arts 20, 24 and 25. At http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 (viewed 29 August 2016).
- ¹⁶ Department of Prime Minister and Cabinet, *Closing the Gap: Prime Ministers Report 2016*. At <http://closingthegap.dpmc.gov.au/> (viewed 29 August 2016).
- ¹⁷ Department of Health, *Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023*. At [http://www.health.gov.au/internet/main/publishing.nsf/Content/AC51639D3C8CD4ECCA257E8B0007AC5/\\$File/DOH_ImplementationPlan_v3.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/AC51639D3C8CD4ECCA257E8B0007AC5/$File/DOH_ImplementationPlan_v3.pdf) (viewed 29 August 2016); Australian Human Rights Commission, *Close the Gap Federal Budget Position Paper 2016*. At <http://www.humanrights.gov.au/sites/default/files/2016%20CTG%20Federal%20Budget%20position%20paper.pdf> (viewed 29 August 2016); Australian Human Rights Commission, *Close the Gap Progress and priorities report 2016*. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/close-gap-progress> (viewed 29 August 2016).
- ¹⁸ National Congress of Australia's First Peoples, *Election 2016: Aboriginal and Torres Strait Islander Peak Organisations Unite, The Redfern Statement*, 6 June 2016. At http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf (viewed 29 August 2016).

- ¹⁹ Australian Human Rights Commission, *Social Justice and Native Title Report 2015*, p 48-61. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/social-justice-and-native> (viewed 29 August 2016).
- ²⁰ 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 29 August 2016).
- ²¹ 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 29 August 2016).
- ²² Council of Australian Government, *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 29 August 2016).
- ²³ Australian Law Reform Commission, *Connection to Country Review of the Native Title Act 1993* (Cth), April 2015. At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_126_final_report.pdf (viewed 29 August 2016).
- ²⁴ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2016). At <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination> (viewed 29 August 2016).
- ²⁵ 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 29 August 2016).
- ²⁶ 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 29 August 2016).
- ²⁷ People with disability were significantly more likely to still be looking for a job 13 weeks or longer after they first started (65.5%) compared with those without disability (56.1%), Australian Bureau of Statistics, *Disability and Labour Force Participation, 2012* (2015). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4433.0.55.006> (viewed 29 August 2016).
- ²⁸ 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 29 August 2016).
- ²⁹ Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies* (2014) p 12-13. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 24 August 2016).
- ³⁰ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2012* (2013) p 35. At <http://www.aihw.gov.au/publication-detail/?id=60129543948> (viewed 24 August 2016); Australian Bureau of Statistics, *Prisoners in Australia, 2013*, Aboriginal and Torres Strait Islander Prisoners (2013). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0main+features62013> (viewed 24 August 2016);.
- ³¹ Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies* (2014) p 12. At <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (viewed 24 August 2016).
- ³² Workplace Gender Equality Agency, *Behind the Gender Pay Gap*. At https://www.wgea.gov.au/sites/default/files/behind_the_gender_pay_gap_branded.pdf (viewed 29 August 2016). Workplace Gender Equality Agency, *What is the Gender Pay Gap*. At <https://www.wgea.gov.au/addressing-pay-equity/what-gender-pay-gap> (viewed 29 August 2016).
- ³³ Australian Bureau of Statistics, *Gender Indicators, Australia, August 2014* (2014). At [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~August%202014~Media%20Release~Women's%20participation%20in%20paid%20work%20lower%20than%20men's%20\(Media%20Release\)~10008](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~August%202014~Media%20Release~Women's%20participation%20in%20paid%20work%20lower%20than%20men's%20(Media%20Release)~10008) (viewed 29 August 2016).
- ³⁴ Australian Bureau of Statistics, *Gender Indicators, Australia, August 2014* (2014). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~August%202014~Media%20Release~Women's%20participation%20in%20paid>

[percent20work percent20lower percent20than percent20men's percent20\(Media percent20Release\)~10008](#) (viewed 29 August 2016).

³⁵ Within Australia's Workplace Gender Equality Agency's dataset, women comprise only 20.3 percent of full-time employees. Workplace Gender Equality Agency, *Australia's Gender Equality Scorecard: Key Results from the Workplace Gender Equality Agency's 2014-15 Reporting Data* (2015), 4. At <https://www.wgea.gov.au/> (viewed 29 August 2016).

³⁶ R Clare, *Superannuation and high account balances, April 2015*, (2015).

³⁷ In 2011, women comprised 56.5% of the 2.23 million recipients of the age pension Australian Government, *Statistical Paper No.9, Income Support for Customers: A Statistical Overview 2011* (2012), p 5. At

http://www.fahcsia.gov.au/sites/default/files/documents/07_2012/stps10.pdf (viewed 29 August 2016).

³⁸ Australian Institute of Company Directors, Board Diversity Statistics,

<http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/board-diversity/statistics> (viewed 29 August 2016).

³⁹ Workplace Gender Equality Agency, *2012 Australian Census of Women in Leadership* (2012). At https://www.wgea.gov.au/sites/default/files/2012_census_summary_tag.pdf (viewed 29 August 2016).

⁴⁰ Australian Government, *Gender Balance on Australian Government Boards Report 2014-2015* (2015). At <https://www.dpmc.gov.au/resource-centre/office-women/gender-balance-australian-government-boards-report-2014-15> (viewed 23 August 2016).

⁴¹ Australian Government, *Balancing the Future: The Australian Public Service Gender Equality Strategy* (2016). At: <http://www.apsc.gov.au/publications-and-media/current-publications/gender-equality-strategy> (viewed 22 August 2016).

⁴² Australian Bureau of Statistics, 'Caring for Children' *Gender Indicators, Australia*, Catalogue, no. 4125.0 (Jan 2012). At

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by+Subject/4125.0~Jan+2012~Main+Features~Caring+for+children~4120> (viewed 29 August 2016).

⁴³ Australian Bureau of Statistics, *Caring in the Community* (2009).

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4436.0Main%20Features22009?open=document&tabname=Summary&prodno=4436.0&issue=2009&num=&view=> (viewed 29 August 2016).

⁴⁴ Australian Human Rights Commission, *Accumulating Poverty? Women's experiences of inequality over the lifecycle* (2009). At <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/accumulating-poverty-women-s-experiences-inequality-over> (viewed 23 August 2016); Australian Human Rights Commission, *Investing in care: Recognising and valuing those who care* (2013). At <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/investing-care-recognising-and-valuing-those-who-care> (viewed 23 August 2016).

⁴⁵ The proposed reforms include: strengthening discrimination legislation; expanding and strengthening leave provisions and support services for unpaid carers; and reforms to the superannuation systems, taxation and age pension. Australian Human Rights Commission, *Investing in care: Recognising and valuing those who care* (2013). At <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/investing-care-recognising-and-valuing-those-who-care> (viewed 23 August 2016).

⁴⁶ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review Report* (2014), p23. At https://www.humanrights.gov.au/sites/default/files/document/publication/SWP_Report_2014.pdf (viewed 23 August 2016).

⁴⁷ 32% of mothers who were discriminated against at some point resigned, or went to look for another job Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review Report* (2014), p23. At

https://www.humanrights.gov.au/sites/default/files/document/publication/SWP_Report_2014.pdf (viewed 23 August 2016).

⁴⁸ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review Report* (2014), p23. At

https://www.humanrights.gov.au/sites/default/files/document/publication/SWP_Report_2014.pdf (viewed 23 August 2016).

⁴⁹ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review Report* (2014), p23. At

https://www.humanrights.gov.au/sites/default/files/document/publication/SWP_Report_2014.pdf (viewed 23 August 2016).

⁵⁰ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review Report* (2014). At

https://www.humanrights.gov.au/sites/default/files/document/publication/SWP_Report_2014.pdf (viewed 23 August 2016).

⁵⁰ Under the *Paid Parental Leave Act 2010* (Cth), individuals are able to access 18 weeks of paid parental leave from the Government at the national minimum wage, in addition to any employer-

provided leave entitlements. The Dad and Partner Pay provides up to two weeks government funded pay at the national minimum wage, to dads or partners caring for a newborn or recently adopted child, on a use it or lose it basis. The evaluation of the PPL scheme found improvements in mothers' health and in rates of women returning to work after parental leave. University of Queensland, *Paid Parental Leave Evaluation: Final Report* (2014), 8. At

https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase4_report_6_march_2015_0.pdf (viewed 29 August 2016).

⁵¹ Australian Human Rights Commission, Submission No 26 to the Senate Standing Committee on Community Affairs *Inquiry into the Fairer Paid Parental Leave Amendment Bill 2015*, 28 July 2015. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Fairer_Parental_Leave/Submissions (viewed 29 August 2016).

⁵² Australian Human Rights Commission, Submission No 26 to the Senate Standing Committee on Community Affairs *Inquiry into the Fairer Paid Parental Leave Amendment Bill 2015*, 28 July 2015. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Fairer_Parental_Leave/Submissions (viewed 29 August 2016).

⁵³ Australian Bureau of Statistics, *Barriers and Incentives to Labour Force Participation, Australia, July 2012 to June 2013* (2013). At

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6239.0Main%20Features3July%202012%20to%20June%202013?opendocument&tabname=Summary&prodno=6239.0&issue=July%202012%20to%20June%202013&num=&view=> (viewed 29 August 2016).

⁵⁴ Australian Human Rights Commission, *Submission to Productivity Commission inquiry into Childcare and Early Childhood Learning*, (2014). At

<https://www.humanrights.gov.au/submissions/inquiry-childcare-and-early-childhood-learning#Heading92> (viewed 23 August 2016).

⁵⁵ VicHealth, Preventing Violence Against Women, Website. At <https://www.vichealth.vic.gov.au/our-work/preventing-violence-against-women> (viewed 29 August 2016).

⁵⁶ Australian Bureau of Statistics, *Personal Safety Survey 2012* (2013). At: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4906.0Main%20Features12012?opendocument&tabname=Summary&prodno=4906.0&issue=2012&num=&view=> (viewed 29 August 2016).

⁵⁷ Australian Bureau of Statistics, *Personal Safety Survey 2012* (2013). At: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4906.0Main%20Features12012?opendocument&tabname=Summary&prodno=4906.0&issue=2012&num=&view=> (viewed 29 August 2016).

⁵⁸ C Cunneen, 'Preventing Violence against Indigenous Women through Programs which Target Men', *University of New South Wales Law Journal*, (2005), p242.

⁵⁹ Australian Human Rights Commission, *Working without fear: Results of the 2012 sexual harassment national telephone survey* (2012). At <https://www.humanrights.gov.au/working-without-fear-results-sexual-harassment-national-telephone-survey-2012> (viewed 16 June 2016).

⁶⁰ Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force Phase 2 Report* (2012). At <https://defencereview.humanrights.gov.au/report-review-treatment-women-australian-defence-force> (viewed 23 August 2016); National Union of Students, *Safe Universities Blueprint: Talk About it Survey – Results and Recommendations* (2015). At

<https://d3n8a8pro7vhmx.cloudfront.net/nus/pages/33/attachments/original/1435818157/talk-about-it-survey-results-and-recommendations.pdf?1435818157> (viewed 23 August 2016); Elizabeth Broderick & Co., *Cultural Change: Gender Diversity and Inclusion in the Australian Federal Police* (2016). At <https://www.afp.gov.au/sites/default/files/PDF/Reports/Broderick-Report-2016-1.pdf> (viewed 23 August 2016); Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police - Phase One Report*, (2015). At <http://www.humanrightscommission.vic.gov.au/our-resources-and-publications/reports/item/1336-independent-review-into-sex-discrimination-and-sexual-harassment-including-predatory-behaviour-in-victoria-police-phase-one-report-2015> (viewed 23 August 2016).

⁶¹ Australian Human Rights Commission, *Working without fear: Results of the 2012 sexual harassment national telephone survey* (2012). At <https://www.humanrights.gov.au/working-without-fear-results-sexual-harassment-national-telephone-survey-2012> (viewed 29 August 2016).

⁶² Australian Bureau of Statistics, *Personal Safety Survey 2005* (Reissue), Canberra. At: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12005%20(Reissue)?OpenDocument) (viewed 29 August 2016).

⁶³ Results of the National Domestic Violence and the Workplace Survey reported in Australian Human Rights Commission, *Fact sheet: Domestic and family violence - a workplace issue, a discrimination issue* (2014). At <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/publications/fact-sheet-domestic-and-family-violence-workplace> (viewed 23 August 2016).

⁶⁴ Ludo McFerran, Safe at Home, Safe At Work Project, Australian Domestic and Family Violence Clearing House, UNSW, 'When domestic violence becomes a workplace problem', ABC The Drum

Opinion 13 February 2013. At <http://www.abc.net.au/unleashed/4516492.html> (viewed 22 February 2016). The *Fair Work Act 2009* (Cth) was also amended to grant employees who are experiencing domestic violence the right to request flexible working arrangements. Australian Human Rights Commission, *Fair work changes recognise carers and domestic violence* (2013). At <https://www.humanrights.gov.au/news/stories/fair-work-changes-recognise-carers-and-domestic-violence-0> (viewed 29 August 2016).

⁶⁵ Stop the Violence Project, *Stop the Violence: Addressing violence against women and girls with disabilities in Australia: Discussion Paper* (2013). At <http://www.stvp.org.au/> (viewed 23 August 2016).

⁶⁶ Australian Bureau of Statistics Personal Safety Survey cited in Australian Human Rights Commission, *Children's Rights Report 2015* (2015) Appendix 9. At https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf (viewed 29 August 2016).

⁶⁷ K Richards, 'Children's exposure to domestic violence in Australia' (Research Paper No 419, Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, 2011) 2. At <http://aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html> (viewed 24 June 2016).

⁶⁸ In 2016, the Australian Government allocated a further \$100 million over three years to fund the implementation of the Third Action Plan of the National Plan. Australian Government, *Budget 2016-17 – Budget Paper No 2* (2016) p 141. At http://www.budget.gov.au/2016-17/content/bp2/download/BP2_consolidated.pdf (viewed 8 June 2016).

⁶⁹ Australian Human Rights Commission, *Submission - Australia's Second Universal Periodic Review* (2015) para 20. At <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review> (viewed 8 June 2016)

⁷⁰ 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 26 June 2016) (viewed 29 August 2016).

⁷¹ Families Australia, 5th National Coalition Meeting, 17 August 2016. At <http://us1.campaign-archive1.com/?u=61efdf9e3c03ed2d6188fdb1&id=f87a7e7111&e=f3a9e06879> (viewed 19 August 2016)

⁷² Australian Human Rights Commission, *Children's Rights Report 2014*, Recommendation 2c, p 10; Australian Human Rights Commission, *Children's Rights Report 2015* (2015), p 29. At https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf (viewed 26 June 2016)

⁷³ 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 26 June 2016); 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 26 June 2016).

⁷⁴ 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 17 August 2016).

⁷⁵ Tiffany Jones et al, *Intersex: Stories and Statistics from Australia* (OpenBook Publishers, 2016) 109-113.

⁷⁶ 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 17 August 2016).

⁷⁷ Commonwealth, *Parliamentary Debates*, Senate, 17 June 2015, 3755-3769 (Senator Fifield). At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2Fb72114df-d068-4aeb-8fd0-833d5a01f955%2F0164%22;src1=sm1> (viewed 17 August 2016).

⁷⁸ 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 23 August 2016).

⁷⁹ *Births, Deaths and Marriages Registration Act 1997* (ACT) s 24(1)(c)(i).

⁸⁰ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights 2015*, 19. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual> (viewed 23 August 2016).

⁸¹ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights 2015*, 41-42. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual> (viewed 23 August 2016).

-
- ⁸² Simon Birmingham, 'Press Conference on Safe Schools Resources' (Press Conference, 18 March 2016) < <http://www.senatorbirmingham.com.au/Latest-News/ID/3000/Press-Conference-on-Safe-Schools-resources> > (viewed 23 August 2016).
- ⁸³ *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) [143]. At <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx> (viewed 9 June 2016).
- ⁸⁴ 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 18 August 2016).
- ⁸⁵ NSW Legislative Council, 'Inquiry into Elder Abuse', General Purpose Standing Committee No. 2, Report forthcoming. At <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387> (viewed 18 August 2016).
- ⁸⁶ Victorian Royal Commission into Family Violence, 30 March 2016. At <http://www.rcfv.com.au/> (viewed 18 August 2016).
- ⁸⁷ Australian Law Reform Commission, 'Inquiry into Protecting the Rights of Older Australians from Abuse'. 2016 Inquiry ongoing. At <https://www.alrc.gov.au/inquiries/elder-abuse/terms-reference> (viewed 29 August 2016).
- ⁸⁸ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2016). At <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination#factsheets> (viewed 17 August 2016).
- ⁸⁹ In 2009-10, there were around 5.5 million Australians aged 55 years and over, making up one quarter of the population. Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 — Older People and the Labour Market* (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 29 August 2016).
- ⁹⁰ In 2009-10, people aged 55 years and over made up 16% of the total labour force, up from around 10% three decades earlier. Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 — Older People and the Labour Market* (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 29 August 2016).
- ⁹¹ Australian Bureau of Statistics, *Labour Force, Detailed — Electronic Delivery, November 2015* (Cat. No. 6291.0.55.001).
- ⁹² Australian Bureau of Statistics, *Labour Force, Detailed – Electronic Delivery, November 2015* (Cat. No. 6291.0.55.001).
- ⁹³ Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 33. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 29 August 2016).
- ⁹⁴ *Migration Act 1958* (Cth) s 189, 196
- ⁹⁵ 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/_data/assets/pdf_file/0022/30298/December-2013-Suicide-and-self-harm-in-the-Immigration-Detention-Network.pdf (viewed 29 August 2016); 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 29 August 2016).
- ⁹⁶ 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) 28 2 *Australian and New Zealand Journal of Public Health* 23.
- ⁹⁷ In April 2016, the Minister for Immigration and Border Protection announced that no children were being held in closed detention facilities in Australia. See Peter Dutton, Minister for Immigration and

Border Protection, 'Doorstop interview' (Brisbane, 3 April 2016). At <http://www.minister.border.gov.au/peterdutton/2016/Pages/doorstop-interview-03042016.aspx> (viewed 29 August 2016). The Department of Immigration and Border Protection's monthly immigration detention statistics summaries show that no children have been held in detention since that time. See The summaries are available at <http://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention> (viewed 18 August 2016).

⁹⁸ 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 29 August 2016).

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=ld%3A%22media%2Fpressrel%2F3575101%22 (viewed 29 August 2016); 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 29 August 2016); 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 29 August 2016); 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 29 August 2016).

⁹⁹ 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 30 June 2016, available at <http://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/immigration-detention> (viewed 19 August 2016).

¹⁰⁰ Australian Red Cross, *Vulnerability Report: Inside the process of seeking asylum in Australia* (June 2013). At http://www.redcross.org.au/files/ARC_VulnerabilityReport_LR.PDF (viewed 29 August 2016); United Nations High Commissioner for Refugees, *Asylum seekers on bridging visas in Australia: Protection Gaps* (2013). At <http://unhcr.org.au/wp-content/uploads/2015/05/2013-12-16-Asylum-seekers-on-bridging-visas-in-Australia-1.pdf> (viewed 29 August 2016).

¹⁰¹ See Australian Red Cross, *Vulnerability Report: Inside the process of seeking asylum in Australia* (June 2013) 17. At http://www.redcross.org.au/files/ARC_VulnerabilityReport_LR.PDF (viewed 29 August 2016); John van Kooy, 'Work remains a mirage for skilled but stymied asylum seekers', *The Conversation* (online) 26 October 2015. At <https://theconversation.com/work-remains-a-mirage-for-skilled-but-stymied-asylum-seekers-49134> (viewed 29 August 2016).

¹⁰² Department of Immigration and Border Protection, *Illegal maritime arrivals: When will my claims for asylum be considered?* (n.d.). At <http://www.ima.border.gov.au/en/Waiting-in-the-community/When-will-my-claims-for-asylum-be-considered#> (viewed 29 August 2016).

¹⁰³ Australian Red Cross, *Vulnerability Report: Inside the process of seeking asylum in Australia* (June 2013) 12. At http://www.redcross.org.au/files/ARC_VulnerabilityReport_LR.PDF (viewed 29 August 2016); United Nations High Commissioner for Refugees, *Asylum seekers on bridging visas in Australia: Protection Gaps* (2013) 8. At <http://unhcr.org.au/wp-content/uploads/2015/05/2013-12-16-Asylum-seekers-on-bridging-visas-in-Australia-1.pdf> (viewed 29 August 2016).

¹⁰⁴ Border Crossing Observatory, *Australian Border Deaths Database* (April 2016) Monash University. At <http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database> (viewed 29 August 2016).

¹⁰⁵ See United Nations High Commissioner for Refugees, *UNHCR Mission to the Republic of Nauru, 3-5 December 2012* (2012). At <http://reliefweb.int/report/nauru/unhcr-mission-republic-nauru-3-5-december-2012> (viewed 29 August 2016); United Nations High Commissioner for Refugees, *UNHCR Mission to Manus Island, Papua New Guinea, 15-17 January 2013* (2013). At http://unhcr.org.au/wp-content/uploads/2015/05/15Jan2013_ManusMission.pdf (viewed 29 August 2016); United Nations High Commissioner for Refugees, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11-13 June 2013* (2013). At http://unhcr.org.au/wp-content/uploads/2015/05/11June2013_ManusMonitoringVisit.pdf (viewed 29 August 2016); Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of the Migration (Regional Processing) package of legislation* (19 June 2013); United Nations High Commissioner for Refugees, *UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013* (2013). At <http://unhcr.org.au/wp-content/uploads/2015/05/2013-12-06-Report-of-UNHCR-Visit-to-Nauru-of-7-9-October-2013.pdf> (viewed 29 August 2016); United Nations High Commissioner for Refugees, *UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*

(2013). At http://unhcr.org.au/wp-content/uploads/2015/05/23Oct2013_ManusMonitoringVisit.pdf (viewed 29 August 2016); 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 29 August 2016); 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 29 August 2016); 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 29 August 2016); 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 29 August 2016); 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_cte/Manus_Island/Report/report.pdf (viewed 29 August 2016); 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 29 August 2016); 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 29 August 2016).

¹⁰⁶ As indicated by a comparison of the issues raised in the documents referred to above.

¹⁰⁷ 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 29 August 2016).

¹⁰⁸ See Fethi Mansouri and Stephanie Cauch, 'The psychological impact of extended temporary protection' (2006) 23 (2) *Refuge: Canada's Journal on Refugees* 81; Shakeh Momartin et al, 'A comparison of the mental health of refugees with temporary versus permanent protection visas' (2006) 185 (7) *Medical Journal of Australia* 357; Zachary Steel et al, 'Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies' (2011) 72 *Social Science and Medicine* 1149.

¹⁰⁹ 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 29 August 2016).

¹¹⁰ Australian Government, *National Action Plan to Combat Human Trafficking and Slavery 2015-2019* (Attorney-General's Department, 2015). At <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx> (viewed 29 August 2016).

¹¹¹ 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.

¹¹² *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015* (Cth) sch 4

¹¹³ 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 23 August 2016).

¹¹⁴ 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 29 August 2016).

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 (viewed 29 August 2016).

¹¹⁵ 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 23 August 2016).

¹¹⁶ 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 23 August 2016).

¹¹⁷ *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/AUSession23.aspx> (viewed 9 June 2016).

¹¹⁸ 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 23 August 2016).

¹¹⁹ 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 26 June 2016).

¹²⁰ 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 (viewed 26 June 2016).

¹²¹ Australian Human Rights Commission, UPR Factsheet – Extradition mutual assistance and trafficking (2015). At https://www.humanrights.gov.au/sites/default/files/14.%20Extradition%20mutual%20assistance%20and%20trafficking%20Final_1.docx (viewed 7 June 2016).