



Australian
Human Rights
Commission

Information concerning Australia's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUBMISSION TO THE UN COMMITTEE ON THE
ELIMINATION OF RACIAL DISCRIMINATION**

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1 Introduction

1. This submission is made by the Australian Human Rights Commission. The Commission is an 'A status' national human rights institution established and operating in full compliance with the Paris Principles.
2. The Commission has a statutory power to promote and protect human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). The AHRC Act defines human rights as the international instruments scheduled to or declared under the AHRC Act, which includes the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD). The Commission's work relating in this area is led by Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner.
3. *The Racial Discrimination Act 1975* (Cth) (RDA) gives effect to Australia's international human rights commitments, including CERD, and promotes equality between people of different backgrounds. The RDA protects people across Australia from unfair treatment on the basis of their race, colour, descent, or national or ethnic origin in different areas of public life. It also makes racial vilification unlawful.
4. The Commission has the power under the AHRC Act to investigate and conciliate complaints made under the RDA by people who experience direct or indirect discrimination. Further information about the Commission can be found at www.humanrights.gov.au.
5. The Commission thanks the United Nations Committee on the Elimination of Racial Discrimination (the Committee) for the opportunity to provide a written contribution prior to its consideration of Australia's 18th to 20th periodic report under CERD. The Commission looks forward to further engaging with the Committee.
6. The Commission recognises the steps taken by the Australian Government to improve Australia's human rights situation following the Committee's concluding observations in respect of Australia's 15th to 17th periodic report. The primary purpose of this submission is to identify issues of concern to assist the Committee with its assessment of Australia's 18th to 20th periodic report at the Committee's 94th session in Geneva.
7. This submission provides information concerning racial discrimination experienced by key population groups in Australia and other thematic issues relating to racial discrimination. In relation to each section, the Commission has, where appropriate, referred to the relevant articles of CERD engaged and the relevant paragraph of the Committee's concluding observations of 13 September 2010 on Australia's 15th to 17th periodic report.
8. This submission is based on work that has been undertaken by the Commission in accordance with its mandate and functions, or otherwise on publicly available information. The Commission has brought the issues raised in this submission to the attention of the Australian Government.

9. The Commission's proposed recommendations are contained in the body of this submission and also compiled in **Attachment 1**.

2 Priority areas

10. The Commission considers all of the information and recommendations provided in this submission to be of importance to Australia's compliance with CERD. However, the Commission wishes to draw the Committee's attention to three areas of particular importance:
- The collection of comprehensive data in relation to racial discrimination, cultural diversity, racially motivated crimes and multiculturalism generally, as discussed in [section 4.5](#).
 - Consideration and implementation of relevant recommendations, once released, of the Royal Commission into the Protection and Detention of Children in the Northern Territory, as discussed in [section 5.4\(b\)](#).
 - Training of police in cultural competency and anti-racism; compliance of police practices with international human rights law (including those rights enshrined in CERD and given expression in the *Racial Discrimination Act 1975* (Cth)); and the response of the Queensland Government to *Wotton v State of Queensland (No 5)* [2016] FCA 1457, as discussed in [section 7](#).
11. **The Commission recommends that the Committee request an update from the Australian Government on progress in relation to the following priority areas in 12 months time under article 9(1) of CERD and rule 65 of the Rules of procedure:**
- i. The collection of comprehensive data in relation to racial discrimination, cultural diversity, racially motivated crimes and multiculturalism generally (see Recommendation 18).**
 - ii. Consideration and implementation of relevant recommendations, once released, of the Northern Territory Royal Commission into Children in Detention (see Recommendation 22).**
 - iii. Training of police in cultural competency and anti-racism; compliance of police practices with international human rights law (including those rights enshrined in CERD and given expression in the Racial Discrimination Act 1975 (Cth)); and the response of the Queensland Government to *Wotton v State of Queensland (No 5)* [2016] FCA 1457 (see Recommendation 37).¹**

3 Human rights framework

3.1 *Scrutiny of human rights and the Parliamentary Joint Committee on Human Rights (CERD article 2; CO 9 & 10)*

12. The Commission commends the Australian Government for establishing the Parliamentary Joint Committee on Human Rights (PJCHR) in 2011.
13. The PJCHR analyses bills and legislative instruments introduced into the federal Parliament for compliance with human rights. Since August 2012, the PJCHR has produced over 65 reports to Parliament assessing over 960 bills.²
14. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires each bill, regulation and ordinance introduced into Parliament to be accompanied by a statement of compatibility with human rights, defined as the seven core international human rights instruments to which Australia is a party.³
15. The Commission is concerned that the PJCHR's views and concerns do not always appear to be given consideration during the legislative process. It is also concerned that it is possible for a bill to pass into law prior to the PJCHR releasing its conclusions in relation to the human rights compliance of the bill.⁴
16. The Commission is concerned that there is variable quality in the drafting of statements of compatibility within and across Government departments.⁵ Some statements of compatibility devote cursory attention to assessing a draft law's identified impingement on human rights and some simply assert (without due explanation) that a draft law is compatible with human rights even where an impingement on rights has been acknowledged.⁶
17. The Commission notes that some other parliamentary committees also scrutinise legislation and consider compliance with human rights.⁷
18. The Commission notes that the Australian Law Reform Commission (ALRC) has made a number of suggestions to improve the mechanisms and processes for the scrutiny of laws for compatibility with rights and freedoms (including the PJCHR).⁸

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

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

3.2 Domestic incorporation (CERD article 2; CO 9, 10 & 17)

(a) Incorporation of CERD

19. Australia implements CERD primarily through the RDA and the work of the Commission.⁹ There are also anti-discrimination laws at state and territory level relating to racial discrimination.¹⁰
20. The Commission notes the following gaps that remain in Australia's domestic incorporation of CERD:
 - i. The federal Parliament may by express words, or by implication, amend any existing federal legislation through the making of subsequent legislation. The federal Parliament can therefore amend or repeal the RDA as it sees fit.¹¹ Accordingly, the RDA does not offer comprehensive protection against racially discriminatory laws passed by the federal Parliament. The most recent example of a federal law that overrode the RDA protections was the legislation that brought into effect the Northern Territory Emergency Response (also referred to as the 'Northern Territory Intervention').¹²
 - ii. Judicial interpretation of what constitutes 'special measures' under s 8 of the RDA does not fully comply with the Committee's *General Recommendation No 32*.¹³ For example, there is no requirement that affected groups be consulted and participate in the design and implementation of proposed special measures. There is also no requirement for the objective of special measures to alleviate present disparities in the enjoyment of human rights, protect groups and individuals from discrimination or prevent further imbalances.¹⁴ The Committee is aware of successive governments' reliance on special measures to implement racially discriminatory measures as part of the NT Intervention.¹⁵
 - iii. Australia made a reservation to CERD in relation to the criminalisation of racial hatred (article 4).¹⁶ The Government has recently maintained that it will not presently consider withdrawal of this reservation.¹⁷
21. The Commission notes that Australia's constitutional arrangements do not fully protect against racial discrimination. In particular:
 - i. Section 25 of the Australian Constitution contemplates the ability of Australian state governments to disqualify a group of people from voting based on race.
 - ii. Under Australia's Constitution, the federal Parliament is permitted to make laws under enumerated 'heads of power' in s 51. Under s 51(xxix), the 'external affairs power', the federal Parliament may pass legislation that implements international treaty obligations.¹⁸ However, under s 51(xxvi), the 'races power', the federal Parliament may pass laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'.¹⁹ Judicial interpretation of the 'races power' suggests that it is not limited to matters that are beneficial in

nature and could validly support the passage of adverse racially discriminatory laws.²⁰

22. There have been calls for the repeal of s 25 and the reform or repeal of the 'racess power' as a means of removing the potential for discrimination on the basis of race from the Constitution.²¹
23. Recently, the Australian Government appointed a Referendum Council to identify how best to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution. In that context, the Referendum Council recommended the monitoring of the use of the 'racess power'.²² It did not otherwise recommend the repeal or amendment of the 'racess power' or s 25, noting that it 'does not go far enough and would not be acceptable to Aboriginal and Torres Strait Islander peoples'.²³ The Commission directs attention to [section 5.3](#) below regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples.
24. To our knowledge, the Australian Government has not articulated a position on constitutional reform of s 25 and the 'racess power'. In relation to these constitutional issues, the Commission has previously suggested the:
 - i. removal of s 25, and
 - ii. insertion of a provision guaranteeing, for all Australians, equality before the law and freedom from discrimination, with such a protection drafted in a way that would guide the operation of the 'racess power' to ensure that 'special laws' for the people of a particular race could not be made if they were (adversely) discriminatory.²⁴
25. The scrutiny provided for by the PJCHR, while a welcome extension of existing parliamentary rights review mechanisms, is not a substitute for full incorporation of CERD into domestic law through mechanisms such as a national human rights Act. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on racial discrimination), the Special Rapporteur on rights of indigenous peoples and the Special Rapporteur on human rights of migrants have each recently recommended that Australia adopt some form of comprehensive federal human rights Act, such as a bill or charter of rights.²⁵
26. The Commission considers that full incorporation of CERD requires a comprehensive protection against any racially discriminatory federal laws.

Recommendation 3: That the Australian Government:

- **fully incorporate CERD into Australian law**
- **ensure that federal laws do not undermine the protections in the *Racial Discrimination Act 1975 (Cth)*, and**
- **explore options to remove any potential for racially discriminatory laws to be passed under the Australian Constitution. The Commission notes that this is a separate issue to developing with**

Aboriginal and Torres Strait Islander peoples a model for their recognition in the Australian Constitution and negotiating in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

(b) Implementation of Committee's Concluding Observations

27. The Commission notes that Australia's 18th to 20th periodic report was due on 30 October 2014, but only submitted to the Committee on 2 February 2016. The Commission commends the Australian Government's establishment of a Standing National Human Rights Mechanism to strengthen its engagement with human rights reporting. This is an opportunity to improve the timeliness of Australia's responses to UN treaty body communications.
28. The Commission also notes that there is no domestic mechanism in place to consider, coordinate or implement the recommendations or the concluding observations of the Committee.

Recommendation 4: That the Australian Government introduce formal mechanisms to consider and implement recommendations of treaty committees, including the concluding observations of the Committee in relation to Australia's 18th to 20th periodic report under CERD.

(c) Ratification of OPCAT

29. The Commission remains concerned by the gaps in independent monitoring of places of detention in Australia (including in respect of population groups which are prone to racial discrimination, particularly of Aboriginal and Torres Strait Islander peoples and refugees and asylum seekers).
30. On 9 February 2017, the Australian Government announced its intention to ratify the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT provides for ongoing independent monitoring of places of detention, to ensure adherence to minimum standards in conditions and treatment.
31. The Commission commends the Australian Government's commitment to ratify OPCAT by December 2017.²⁶

Recommendation 5: That the Australian Government fulfil its commitment to ratify the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) by December 2017 and commence its progressive implementation immediately thereafter.

(d) Other relevant instruments

32. The Commission notes that the Australian Government has not ratified the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW) and is not a party to *ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries*. The

Commission considers that ratification of these instruments would assist Australia's compliance with CERD.²⁷

33. As noted in [section 5.2](#) below, the Commission also considers that the Australian Government should give effect to the UN Declaration on the Rights of Indigenous Peoples.

Recommendation 6: That the Australian Government consider ratification of the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* and other international instruments relating to issues of racial discrimination.

3.3 Education (CERD article 7; CO 11, 21 & 27)

(a) *Human rights education in the national curriculum*

34. The Commission commends the inclusion of some references to human rights in the national school curriculum, but considers that this could be improved.
35. The Special Rapporteur on the rights of indigenous peoples noted that the mainstream education system contains inadequate components of Aboriginal and Torres Strait Islander history and the impact of colonisation.²⁸
36. The Special Rapporteur on racial discrimination noted that the teaching of Indigenous subjects, particularly of languages and cultures, remains non-existent or very rare.²⁹ The Commission welcomes the recent *Aboriginal Languages Act 2017 No 51* (NSW), which received assent on 24 October 2017. The Act establishes an 'Aboriginal Languages Trust' to bring together persons with relevant profession qualifications in languages and persons with knowledge of Aboriginal languages to perform various functions, including promotion of education in Aboriginal language activities.³⁰ The Commission considers it important that sufficient ongoing funding be provided to the Aboriginal Languages Trust so that it can successfully fulfil its functions. The Commission also considers it important for the NSW government to ensure that the legislation does not seek to impose ministerial controls or intervention in relation to Aboriginal languages.³¹

Recommendation 7: That the Australian Government incorporate more comprehensive human rights education (including in relation to racial discrimination and CERD) in the national school curriculum.

(b) *Multiculturalism education in the national curriculum*

37. While surveys consistently demonstrate strong public support for multiculturalism in Australia,³² public understanding about cultural diversity can be strengthened. In more general terms, Australians' civic knowledge, including their understanding of the political system, has been found to be low.³³ A more comprehensive civics education, including through the formal school curriculum, could encompass a clear articulation of multiculturalism and values of cultural diversity.

38. The Commission refers to the recent parliamentary inquiry into strengthening multiculturalism and the resulting report of the Select Committee on Strengthening Multiculturalism.³⁴ Noting the social and economic value of a multilingual Australia, and the role of interfaith and intercultural understanding in promoting social cohesion, the Select Committee has recommended the development of an intercultural and multicultural education curriculum including ‘compulsory language education’ and ‘comprehensive intercultural education’ for primary and secondary school students.³⁵

Recommendation 8: That the Australian Government strengthen public education about multiculturalism, including through the national school curriculum.

(c) *Human rights education in the public service*

39. The Commission considers that human rights education for public servants could be improved, especially for those officials in the administration of justice and with legislative responsibilities to develop statements of compatibility with human rights for newly proposed legislation.
40. The Commission also notes that Australia’s activities for the World Program for Human Rights Education are uncoordinated and not systematic.

Recommendation 9: That the Australian Government support human rights education for all areas of the public sector, particularly in the administration of justice and places of detention, including targeted initiatives for public officials.

(d) *National Anti-Racism Strategy*

41. Education initiatives such as the National Anti-Racism Partnership and Strategy (the Strategy), coordinated by the Commission, play a vital role in supporting the maintenance of racial tolerance. The aim of the Strategy is to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced.³⁶
42. The Commission conducted an evaluation of the Strategy in 2015 and concluded that it has been effective in raising awareness of racism and how best to respond to it.³⁷
43. A key component of the Strategy is a national anti-racism campaign, *Racism. It Stops with Me*.³⁸ The campaign now has more than 360 organisational supporters, from across local and state governments, business, education, sporting organisations, the arts and civil society.
44. The Commission commends the Australian Government’s commitment to support the Strategy and the *Racism. It Stops with Me* campaign.³⁹
45. The Commission notes that the Select Committee on Strengthening Multiculturalism has recommended that the Australian Government continue to provide ongoing support for the Strategy, through continuing to fund activities that raise public awareness and empower individuals and communities to

prevent and reduce the incidence of racism, and promoting the Strategy at relevant opportunities.⁴⁰

Recommendation 10: That the Australian Government continue to support the anti-racism and other educative work of the Commission, including the National Anti-Racism Partnership and Strategy.

4 Racial discrimination in Australia

4.1 *Multicultural Australia*

46. Australia has experienced successive waves of mass immigration since the end of the Second World War. An estimated 26% of the Australian population was born overseas and about 49% of the Australian population has at least one parent who was born overseas.⁴¹ The two largest source countries of permanent settlement are currently China and India.⁴²
47. Australia has been highly successful in the economic and civic integration of immigrants. In 2015 the 'foreign-born' unemployment rate was lower than the 'native-born' rate, and was the fifth lowest in the OECD.⁴³ The children of immigrants constitute a higher proportion of people in highly skilled occupations than the children of 'native-born' parents.⁴⁴
48. In the Scanlon Foundation's *Australians Today* survey, almost two-thirds of migrant respondents indicated a sense of belonging in Australia to a 'great' or 'moderate' extent, while only 9% of recent arrivals indicated no sense of belonging in Australia 'at all'.⁴⁵
49. The Commission further notes that migrants to Australia have a high uptake of citizenship.⁴⁶ The national Au@2015 survey found that 82% of those migrants who had been resident in Australia for between 15 and 24 years had become citizens. The highest take-up of citizenship for those who had been resident in Australia for between five and nine years was by migrants from South Sudan (91%), Iraq (89%), and the Philippines (83%).⁴⁷

4.2 *Racial discrimination generally*

50. Despite Australia's success as a multicultural nation, racial discrimination continues to be present in Australian society.
51. The Commission draws the Committee's attention to the Scanlon Foundation's 2016 'Mapping Social Cohesion' Survey report (2016 Scanlon Survey).⁴⁸ The 2016 Scanlon Survey brings together a series of detailed surveys on social cohesion, immigration and population issues in Australia.
52. According to the 2016 Scanlon Survey, those of non-English speaking backgrounds in the Australian population reported the highest experience of discrimination, 27% compared to 17% of those born in Australia and 19% of those born overseas in English speaking countries.⁴⁹

53. The 2016 Scanlon Survey also reveals an increase of 5% in the number of respondents indicating experience of discrimination based on skin colour, ethnicity or religion, from 15% to 20%. This is the highest level recorded in the history of the Scanlon Foundation Surveys.⁵⁰
54. In its national consultations in 2015, which focused on lived experiences of racism, the Commission found the persistence of the following forms of racial discrimination: discrimination in employment; racial vilification and bigotry; and social exclusion.⁵¹ It also found strong community support for existing legislative protections against racial discrimination and hatred.⁵² This is a finding supported by survey evidence.⁵³
55. In carrying out its conciliation function, the Commission records statistics relating to complaints of discrimination, harassment and vilification. In the 2016–17 reporting year, 21% of all complaints (409 complaints) received by the Commission were received under the *Racial Discrimination Act 1975* (Cth) (RDA). Of those complaints, 26% related to employment, 20% related to the provision of goods and services, and 34% related to racial hatred.⁵⁴

Recommendation 11: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination and hatred in setting a standard for public conduct in a multicultural society.

4.3 Strengthening multiculturalism

56. The Commission considers that strengthening multiculturalism is an important aspect of protecting persons from racial discrimination, improving cultural diversity in institutions and organisations and promoting CERD rights.
 - (a) *Multiculturalism policy (CERD article 2; CO 14)*
57. The Commission commends the Australian Government's 2017 multicultural policy statement, 'Multicultural Australia: United, Strong, Successful'. The statement rejects racism, affirms the value of mutual respect, and emphasises the safety and productivity of Australia.⁵⁵

Recommendation 12: That the Australian Government continue to support a policy of multiculturalism as a means of promoting social cohesion, cultural harmony and national unity.

- (b) *Multiculturalism legislation (CERD article 2; CO 14)*
58. The Commission considers that public recognition of Australian multiculturalism is important.
59. The Select Committee on Strengthening Multiculturalism recommended that the Australian Government consider developing and implementing a federal Multicultural Act to enshrine agreed principles of multiculturalism to support and frame multiculturalism in Australia.⁵⁶ Others have also advocated for the introduction of a federal Multicultural Act.⁵⁷

60. The Commission notes that Parliament may be well positioned to clarify the meaning of multiculturalism in Australia and that an annual parliamentary statement of multicultural principles may be an appropriate mechanism for a regular re-commitment to multicultural values and cultural diversity. In 2016 Parliament reiterated its ‘commitment to maintaining Australia as a culturally diverse, tolerant and open society, united by an overriding commitment to our nation, and its democratic institutions and values’,⁵⁸

Recommendation 13: That the Australian Parliament consider further public recognition of Australian multiculturalism, including periodic public statements affirming parliamentarians’ support of a multicultural Australia.

(c) *Policy machinery (CERD article 2; CO 14)*

61. The Commission considers that the Australian Government can strengthen the policy machinery for multiculturalism. An Office of Multicultural Affairs functioned in the 1980s and 1990s. Such an office would ensure coordinated leadership on multicultural affairs and, if established in an appropriate departmental home (such as the Department of Prime Minister and Cabinet), would send a strong message about multiculturalism being a policy priority.
62. The Commission also notes that the Select Committee on Strengthening Multiculturalism recommended that the Australian Government, in consultation with relevant government, non-government and community bodies, consider developing and implementing federal legislation to establish an ongoing Multicultural Commission that is sufficiently resourced to promote and protect multiculturalism throughout Australia, ensuring that all Australians recognise that multiculturalism is essential to the fabric of the Australian nation.⁵⁹

Recommendation 14: That the Australian Government strengthen the policy machinery of Australian multiculturalism, including through the re-establishment of an Office of Multicultural Affairs.

(d) *Citizenship requirements (CERD article 2; CO 14)*

63. The Commission is concerned about the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (Cth), which, if passed, will make it more difficult to obtain Australian citizenship by: imposing additional requirements on people seeking to obtain Australian citizenship by conferral;⁶⁰ centralising discretionary power in the hands of the Minister to make decisions about who should and who should not be an Australian citizen, with very limited rights of external review; and reducing the ability of particular groups of people to qualify for citizenship.⁶¹
64. A Senate Legal and Constitutional Affairs Committee inquiry into the Bill recommended that the Senate pass the Bill subject to numerous proposed amendments, including lowering the standard for English-level competency.⁶² The Senate Select Committee for Strengthening Multiculturalism, however, recommended that the Bill not be passed.⁶³

65. The Bill passed the Australian House of Representatives on 14 August 2017. However, the Bill was discharged from the Notice Paper in the Australian Senate on 18 October 2017 and is no longer under active consideration.⁶⁴
66. The Commission also notes the Australian Government's ongoing consultation regarding simplification of Australia's visa system.⁶⁵

Recommendation 15: That the Australian Parliament not pass the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 in its current form.

Recommendation 16: That the Australian Government ensure that any amendment to Australia's visa system comply with international human rights law (including rights enshrined in CERD).

4.4 Cultural diversity in Australian organisations and institutions (CERD article 5; CO 14)

(a) *Leadership*

67. There is currently a limited level of cultural diversity represented in the leadership of Australian organisations and institutions.⁶⁶
68. The Commission notes the 2016 Blueprint for cultural diversity and inclusive leadership, *Leading for Change*, a publication of the Working Group on Cultural Diversity and Inclusive Leadership, convened by the Race Discrimination Commissioner.⁶⁷ The Blueprint provides a snapshot of the cultural composition of senior leaders in Australian business, politics, government and civil society. The Blueprint found an 'under-representation' of cultural diversity in leadership positions in Australia. It notes that:
- of CEOs in ASX 200 companies, 76.62% had an 'Anglo-Celtic' background, 18.41% had a 'European' background, 4.98% had a 'non-European' background and none had an 'Indigenous' background
 - of federal parliamentarians, 78.76% had an 'Anglo-Celtic' background, 15.93% had a 'European' background, 3.54% had a 'non-European' background and 1.77% had an 'Indigenous' background
 - of federal Ministers and Assistant Ministers, 85.71% had an 'Anglo-Celtic' background, 11.90% had a 'European' background, 2.38% had an 'Indigenous' background and none had a 'non-European' background
 - of federal and state public service leaders (Secretaries and heads of departments), 82.26% had an 'Anglo-Celtic' background, 15.32% had a 'European' background, 1.61% had a 'non-European' background and 0.81% had an 'Indigenous' background

- of university Vice-Chancellors, 85% had an 'Anglo-Celtic' background, 15% had a 'European' background, and none had a 'non-European' or 'Indigenous' background.⁶⁸

(b) *Media*

69. A Screen Australia study on diversity in Australian TV drama in 2016 found an underrepresentation of culturally diverse, 'non-Anglo-Celtic' groups on Australian television. The study notes that people of 'non-European' backgrounds were particularly underrepresented.⁶⁹
70. The Commission refers to its 2010 review of human rights and social inclusion issues affecting African Australians (*In Our Own Words* report),⁷⁰ and notes that African Australians expressed concern about the negative coverage of their communities in the mainstream media, often triggered by comments from public figures, which influenced overall perceptions of their communities and undermined their relationships with the broader Australian community.⁷¹
71. The Select Committee on Strengthening Multiculturalism concluded that the evidence presented throughout its inquiry into multiculturalism demonstrated a lack of diversity in on-screen media content, which is in part due to systemic barriers to participation by, and representation of, culturally and linguistically diverse communities. The Select Committee recommended that all media broadcasters seek to improve pathways for culturally and linguistically diverse individuals and communities to participate in broadcast media.⁷²

(c) *Law enforcement*

72. The Special Rapporteur on racial discrimination, in the report of his recent country visit to Australia, has recommended that the Australian Government ensure that law enforcement agencies, in particular police forces, reflect the diversity of Australian society and the communities they serve and increase their intake of recruits from Indigenous and minority communities.⁷³

Recommendation 17: That the Australian Government consider the recommendations of the Select Committee on Strengthening Multiculturalism and investigate pathways to improve cultural diversity in Australian institutions and organisations.

4.5 Data collection (CERD article 2; CO 23)

73. The Commission refers to its own collection of data relating to complaints of discrimination, harassment and vilification.⁷⁴
74. The Commission is concerned that there is currently no comprehensive process in Australia for collecting data on crimes motivated by racial hatred or prejudice.⁷⁵ The Commission refers to and endorses the recommendation of the Select Committee on Strengthening Multiculturalism that the Australian Government consider developing options for collecting more comprehensive data on issues concerning multiculturalism and racially motivated crimes.⁷⁶

75. The Commission strongly considers that there is a need for the Australian Government to collect better data on cultural diversity in Australian organisations and institutions.
76. The Commission draws the Committee's attention to the UK Race Disparity Audit, a governmental audit into racial disparities performed across Britain to examine how people of different backgrounds are treated across areas including health, education, employment and the criminal justice system.⁷⁷ The Prime Minister of the United Kingdom, Theresa May, has said that the audit data may be 'uncomfortable', but will also be 'regarded as the central resource in the battle to defeat ethnic injustice'.⁷⁸ The Commission encourages the Australian Government to commission a comprehensive audit into racial disparity in Australia.

Recommendation 18: That the Australian Government collect more comprehensive data on racial discrimination, racially motivated crimes, cultural diversity and multiculturalism generally.

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

5 Aboriginal and Torres Strait Islander peoples

5.1 Experiences of racial discrimination

77. Aboriginal and Torres Strait Islander peoples are particularly affected by racial discrimination, including institutional racism. There are numerous studies into institutional racism and Aboriginal and Torres Strait Islander peoples.⁷⁹ Settings identified as being of special concern include employment, education, shops, public spaces and sport, health and justice.⁸⁰
78. The Commission noted in its 2016 Social Justice Report that most complaints to the Commission made by Aboriginal and Torres Strait Islander peoples were about racial discrimination.⁸¹ While the 2016 Australian Census found that Aboriginal and Torres Strait Islander people represented 2.8% of the Australian population, of all complaints made under the RDA in 2016–17, 25% were made by Aboriginal and Torres Strait Islander people.⁸²
79. The Special Rapporteur on the rights of indigenous peoples found the prevalence of racism against Aboriginal and Torres Strait Islander peoples to be 'deeply disturbing',⁸³ and that 'racism manifests itself in different ways, ranging from public stereotyped portrayals as violent criminals, welfare profiteers and poor parents, to discrimination in the administration of justice'.⁸⁴

5.2 UN Declaration on Indigenous Peoples (CERD article 2; CO 15)

80. The Commission considers that more robust consideration and implementation of the *UN Declaration on Indigenous Peoples* (Declaration)

would address a number of racial discrimination issues faced by Aboriginal and Torres Strait Islander peoples. The Commission supports the use of the Declaration as a guide for interpreting Australia's obligations under CERD as they relate to Indigenous peoples.⁸⁵

81. The Special Rapporteur on the rights of indigenous peoples has called for the Declaration to be specifically included in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.⁸⁶
82. Further, the Commission considers that the Declaration should be used to frame the Australian Government's engagement with Indigenous peoples. In particular, the Commission considers that the Australian Government should consult and cooperate with Aboriginal and Torres Strait Islander peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Recommendation 19: That the Australian Government, in partnership with Aboriginal and Torres Strait Islander peoples, develop a National Strategy to give effect to the *UN Declaration on the Rights of Indigenous Peoples*.

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

5.3 Constitutional recognition (CERD article 1, 2, 5, 6; CO 15)

83. The Commission notes the First Nations National Constitutional Convention to discuss constitutional recognition, held on 23–26 May 2017. The Uluru Statement from the Heart (Uluru Statement) was adopted at the Convention. The Uluru Statement calls for the establishment of a First Nations' Voice enshrined in the Constitution and of a Makarrata Commission to supervise a process of agreement making between governments and First Nations that includes truth telling about Aboriginal and Torres Strait Islander peoples' history. The Commission welcomes the Uluru Statement and supports the calls for a First Nations' Voice to Parliament.⁸⁷
84. The Commission is very concerned by the Australian Government's recent announcement that it rejects the proposal for the establishment of a constitutionally enshrined First Nations' Voice to Parliament.⁸⁸
85. The Australian Government has recently suggested that a parliamentary Joint Select Committee will consider the question of constitutional recognition of Aboriginal and Torres Strait Islander peoples.⁸⁹ This parliamentary Committee will give consideration to the recommendations of the existing bodies of work developed by the Expert Panel on Constitutional Recognition of Indigenous Australians (2012)⁹⁰, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015)⁹¹ and the Referendum Council (2017)^{92, 93}

86. The Special Rapporteur on the rights of indigenous peoples has encouraged the Australian Government to explore the possibility of a national ‘treaty’ with Aboriginal and Torres Strait Islander peoples.⁹⁴ The Commission notes that, while there are discussions about a Makarrata Commission at the national level, ‘treaty’ negotiations are more likely to take place at the state level. The Commission notes that ‘treaty’ discussions have commenced in Victoria and South Australia.⁹⁵
87. The Special Rapporteur on racial discrimination has recommended that the Australian Government finalise a constitutional amendment in order to recognise the inherent rights and culture of Aboriginal and Torres Strait Islander peoples and set up constitutionally protected institutions to protect their ancestral rights and promote their culture and identity.⁹⁶

Recommendation 20: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and negotiate in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

5.4 Incarceration of Aboriginal and Torres Strait Islander people (CERD article 5; Declaration articles 7 & 22; CO 19 & 20)

(a) *Disproportionate rates of incarceration*

88. The Commission is extremely concerned that Aboriginal and Torres Strait Islander people are significantly overrepresented in Australia’s prison population,⁹⁷ especially those with mental health disorders or cognitive disability⁹⁸ and children.⁹⁹
89. Rates of imprisonment of Indigenous women are extremely concerning. Aboriginal and Torres Strait Islander women account for 34% of the adult female prison population.¹⁰⁰ It is also important to note that 80% of Aboriginal and Torres Strait Islander women in prison are mothers.¹⁰¹
90. Despite currently being only 2% of the total Australian population aged over 18 years, Aboriginal and Torres Strait Islander prisoners represent over a quarter (27%) of all prisoners in Australia.¹⁰²
91. Laws and policies disproportionately affecting Aboriginal and Torres Strait Islander people have contributed to these incarceration rates. In particular, the Commission notes:
- Imprisonment from fine default — often caused by small overdue fines for criminal offences that, on their own, do not carry an imprisonment penalty — is contributing to high incarceration rates.¹⁰³
 - Bail laws and policies have become more restrictive in Australia and have led to a significant increase in the number of Aboriginal and Torres Strait Islander people held on remand.¹⁰⁴ Research indicates that the length of time individuals spend on remand affects the

likelihood of them receiving a custodial rather than non-custodial sentence.¹⁰⁵

- The Special Rapporteur on the rights of Indigenous peoples has said that mandatory sentencing laws need to be reviewed.¹⁰⁶
- The Commission has previously reported on several cases where Indigenous people are in prolonged detention due to being considered 'unfit to plead', resulting in them being detained for a period longer than the maximum sentence if they had been tried and found guilty.¹⁰⁷

92. The Commission notes that the current inquiry by the ALRC into the incarceration of Aboriginal and Torres Strait Islander peoples, reporting in December 2017, will assist in identifying laws requiring amendment to reduce Indigenous incarceration.¹⁰⁸

93. The Commission has advocated that justice targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples, as compared with non-Indigenous people.¹⁰⁹ The Senate Legal and Constitutional Affairs Committee, and successive Social Justice Commissioners, have recommended justice reinvestment strategies, which involve diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending.¹¹⁰

94. The Commission notes that the Australian Government recently expressed its support for states and territories to implement a justice reinvestment approach, but noted that it 'cannot effectively fund justice reinvestment projects because state and territory governments are solely responsible for managing corrections systems in Australia' and that 'the success of justice reinvestment ... ultimately rests with the states and territories'.¹¹¹

Recommendation 21: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles and that these targets be introduced into the Closing the Gap Strategy.

(b) *Northern Territory Royal Commission*

95. The Commission is extremely concerned about the conditions of detention for Aboriginal and Torres Strait Islander juveniles.

96. The Commission commends the Australian Government's establishment of a Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission).¹¹² The inquiry is considering the situation of all juveniles in detention and care and protection in the Northern Territory. However, statistics show that 94% of the children and young people in detention in the Northern Territory are Aboriginal.¹¹³ Furthermore, 89% of children and young people in out-of-home care in the Northern Territory are Aboriginal.¹¹⁴

97. The NT Royal Commission released its interim report on 31 March 2017. The interim findings noted that site visits to the current youth detention centres

have revealed fundamental problems with the structural design of the Northern Territory youth detention centres. The NT Royal Commission has heard concerns about the age and unhygienic conditions of the detention centres, their inappropriate design, the absence of privacy and the lack of windows for natural light and ventilation.¹¹⁵

98. The Royal Commission will deliver its final report on 17 November 2017.

Recommendation 22: That the Australian Government, with the Northern Territory Government, swiftly consider the implementation of its response to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory once its final report is delivered.

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

(c) *Deaths in police custody*

99. The issue of Aboriginal and Torres Strait Islander deaths in police custody and in prison has been cause for alarm for several decades. The 25 year anniversary of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was in 2016.¹¹⁶ The Commission is concerned that the issue of deaths in police custody remains a serious issue. Nationally in 2014–15, there were 11 deaths in police custody, of which five were Aboriginal and Torres Strait Islander deaths.¹¹⁷
100. The Commission notes the death of Cameron Doomadgee (known posthumously as Mulrunji) in police custody in 2004 on Palm Island and its aftermath and directs attention to issues of discriminatory police practices, as discussed in [section 7](#) below.
101. The Commission also refers to ‘paperless arrest’ laws in the Northern Territory, which provide police with the power to detain a person for up to four hours (or longer if the person is intoxicated) if they suspect the person has committed or is about to commit an ‘infringement notice offence’ (a minor offence).¹¹⁸ The Commission considers that ‘paperless arrest’ laws lead to the unnecessary locking up of Aboriginal and Torres Strait Islander people and are inconsistent with the recommendations of the Royal Commission into Aboriginal Deaths and Custody.¹¹⁹

5.5 Family/domestic violence (CERD article 5 & Declaration article 22)

102. Aboriginal and Torres Strait Islander women are particularly at risk of violence.¹²⁰ They are hospitalised for family violence-related assault at 30 times the rate of non-Indigenous women.¹²¹ Aboriginal and Torres Strait Islander children are overrepresented as child victims of physical assault and sexual assault in a residential location.¹²² The issue of violence against Aboriginal and Torres Strait Islander women and children remains a national

crisis. Indigenous women, men and children must be included in national discussions to appropriately identify and address violence.

103. The Commission notes that the *National Plan to Reduce Violence against Women and their Children 2010–2022*, which has been developed to support all women (including Indigenous women) and their children experiencing violence, builds on the Council of Australian Governments' (COAG's) commitment under the Close the Gap framework.¹²³
104. The Commission considers that action on violence against Aboriginal and Torres Strait Islander women and children should be developed in close consultation with Aboriginal and Torres Strait Islander women and children, and other relevant stakeholders.
105. Several of the recommendations made to Australia at the Universal Periodic Review in 2015 concerned violence against women and their children and in particular Aboriginal and Torres Strait Islander women and children.¹²⁴
106. Noting that a federal approach is needed to address imprisonment rates and the experience of violence, the Commission welcomes the Change the Record Coalition's *Blueprint for change*.¹²⁵

Recommendation 23: That all Australian governments:

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

5.6 Support to human rights defenders and related bodies (CERD article 2; CO 15 & 19)

107. The Australian Government has provided some funding support for Aboriginal and Torres Strait Islander peak organisations. However, it has provided limited funding support to the National Congress of Australia's First Peoples despite it being a newly established national representative body.¹²⁶
108. The Commission emphasises the importance of Indigenous legal aid services to assisting Aboriginal and Torres Strait Islander people with legal issues in relation to their interactions with the criminal and civil justice systems.
109. The Special Rapporteur on the situation of human rights defenders noted that:

'many indigenous human rights defenders still experience severe disadvantages compared with non-indigenous defenders. They are marginalised and unsupported by state and territory governments. This situation is compounded by the tendency of the central government to use the

federal system as limitation on its ability to exercise responsibility for supporting indigenous rights defenders'.¹²⁷

Recommendation 24: That the Australian Government provide adequate ongoing funding of the Aboriginal and Torres Strait Islander peak organisations and for Indigenous legal assistance.

5.7 Cultural rights (native title) (CERD articles 2, 5; Declaration articles 3, 10, 11, 20, 25, 26, 27, 28, 29, 32; CO 16 & 18)

110. The Commission welcomes recent initiatives to address barriers to the recognition of native title and challenges to enabling Indigenous-led development on the Indigenous Estate, such as COAG's Investigation into Indigenous Land Administration and Use¹²⁸ and the ALRC's review of the *Native Title Act 1993* (Cth).¹²⁹
111. The Australian Government has released a White Paper on the development of northern Australia. Significant tranches of land in northern Australia (Western Australia, Queensland and the Northern Territory) are held by Aboriginal and Torres Strait Islander peoples. Serious concerns have been raised about the extent of genuine engagement by governments with these land holders on issues that affect them and the effectiveness of laws for the protection and management of Indigenous heritage sites and knowledge.¹³⁰

Recommendation 25: That the Australian Government ensure that any reforms that affect Aboriginal and Torres Strait Islander peoples' lands are undertaken with their participation and free, prior and informed consent.

Recommendation 26: That the Australian Government implement the recommendations of the ALRC's Connection to Country Review of the *Native Title Act 1993* (Cth) and the Council of Australian Governments' Investigation into Indigenous Land Administration and Use in order to better recognise and protect Aboriginal and Torres Strait Islander peoples' native title rights and interests.

Recommendation 27: That the Australian Government ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively affected by the development of northern Australia.

5.8 Closing the Gap Strategy (CERD article 5; Declaration articles 3, 4, 13, 14, 19, 21, 23 & 24; CO 21 & 22)

112. The Commission welcomes the targets in the Australian Government's Closing the Gap strategy. These targets are:
- i. to halve the gap in child mortality by 2018
 - ii. to close the gap in life expectancy by 2031
 - iii. to have 85% of all Indigenous four-year-olds enrolled in early childhood education by 2025

- iv. to close the gap in school attendance by the end of 2018
 - v. to halve the gap in reading and numeracy for Indigenous students by 2018
 - vi. to have the gap in Year 12 attainment by 2020, and
 - vii. to halve the gap in employment by 2018.¹³¹
113. The Commission notes that only the target to halve the gap in year 12 attainment rates is on track; the other six targets were either not on track or stalled this year.¹³²
114. The Commission commends the Australian Government's commitment to the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013–2023,¹³³ a human rights-based approach to improving the health of Indigenous peoples developed in partnership with Indigenous peak bodies. Future federal Budgets must adequately resource its application and operation to ensure that rights are progressively realised.
115. The Special Rapporteur on racial discrimination expressed concern about the disparity in employment rates between Indigenous and non-Indigenous Australians, particularly that Indigenous Australians are three times more likely to be unemployed than non-Indigenous peoples.¹³⁴

Recommendation 28: That all Australian governments increase their efforts to achieve the Closing the Gap targets.

5.9 Compulsory income management schemes (CERD article 5; Declaration article 8; CO 16)

116. The Commission is concerned by the operation of income management schemes, such as the Australian Government's Healthy Welfare Card trials, and the disproportionate impact of these income management measures on Aboriginal and Torres Strait Islander people.¹³⁵
117. As at September 2016, 75% of trial participants in Ceduna and 82% of trial participants in the East Kimberley were Indigenous.¹³⁶ The Commission remains concerned that the measures will continue to disproportionately affect Aboriginal and Torres Strait Islander people. Although the measures may not directly target Aboriginal and Torres Strait Islander peoples, their practical effect will unduly affect them, as government pensions and allowances are a main source of income for approximately 46.9% of this group.¹³⁷
118. Most recently, the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 has been referred to the Senate Community Affairs Legislation Committee for inquiry. The Bill seeks to remove s 124PF of the *Social Security (Administration) Act 1999*, which currently provides for the trial of the cashless debit card in three discrete locations, to no more than 10,000 participants, expiring on 30 June 2018. The Bill proposes to amend these arrangements, allowing for the continuation of the trial in existing sites and enabling the expansion of the cashless debit card to further locations.

119. The Commission has made a submission in relation to this Bill, arguing that the measures are not proportionate to the benefits sought by the Bill because their purpose could be achieved through other, less restrictive means.¹³⁸ As designed, these programs are not opt-in schemes, are insufficiently tailored to individual circumstances and disproportionately impact upon Aboriginal and Torres Strait Islander peoples' human rights.¹³⁹

Recommendation 29: That the Australian Government ensure that current models of income management schemes be discontinued or redesigned on a voluntary, opt-in basis with appropriate oversight of decision making and monitoring.

6 Migrants, ethnic minorities and culturally and linguistically diverse (CALD) peoples

6.1 General

120. Racial discrimination continues to affect migrants and Australia-born people of many cultural backgrounds. Among migrants, higher levels of discrimination are reported by more recent arrivals, as well as by migrants from non-English speaking backgrounds.¹⁴⁰
121. In respect of young people, a Foundation of Young Australians report found that over 80% of 'non-Anglo Australian' background children indicated they had been subjected to some form of racism.¹⁴¹
122. Migrant communities report to the Commission the damaging social and civic effects of racism. In addition to the harm it can inflict on a person's wellbeing and sense of freedom, it can also undermine a sense of belonging to the community and feed social disillusionment.¹⁴²
123. Australia has a civil prohibition of racial hatred under the RDA.¹⁴³ It also criminalises the urging of violence against a person or group when the targeted group is 'distinguished by race, religion, nationality, national or ethnic origin or political opinion'.¹⁴⁴ States and territories also criminalise serious racial vilification, including the incitement of racial hatred.

6.2 Muslim Australians (CERD article 2; CO 23)

124. The Commission is concerned at the high prevalence of negative attitudes towards Muslim Australians, as reported in the Scanlon Survey. Of particular concern is the finding from the 2016 survey that strong negative views towards Muslims increased from 11% to 14%.¹⁴⁵ The Special Rapporteur on racial discrimination noted that anti-Muslim hate speech has been on the increase in recent years, especially on social media platforms.¹⁴⁶
125. A study commissioned by the Challenging Racism Project of Western Sydney University and the Islamic Sciences and Research Academy found 'high experiences' of racism by Muslims. A majority (57%) of respondents had

experienced racism 'at least sometimes' in at least one of the situations noted in the study (in the workplace, at school, etc).¹⁴⁷

126. There are also several recently established groups dedicated to reporting anti-Muslim or anti-Islam behaviour and sentiments. Islamophobia Register Australia and Islamophobia Watch Australia have begun to aggregate data and information, and allow those who witness Islamophobia to report it.¹⁴⁸
127. Arab and Muslim Australians have reported to the Commission that global concerns about terrorism and national security have produced a political environment hostile to them.¹⁴⁹ A Western Sydney University study found that 78% of surveyed Muslims considered that the Australian media's portrayal of Muslims is 'unfair'.¹⁵⁰
128. As with discrimination experienced by other groups, the hostile treatment towards Muslim Australians has had demonstrable negative effects, impinging upon the exercise of their freedoms.¹⁵¹
129. The Commission directs attention to [section 6.5](#) below.

6.3 African communities in Australia (CERD article 2; CO 23)

130. Migrants from African countries, including Ethiopia, Kenya, Zimbabwe and South Sudan, have reported particularly high levels of discrimination and racial profiling.¹⁵² Young people, particularly those of African descent, report concerns about encountering racism from public institutions, including police.¹⁵³
131. The Special Rapporteur on racial discrimination, during his recent country visit to Australia, was made aware of incidents of racial profiling of members of sub-Saharan African and Arab communities.¹⁵⁴
132. The *In Our Own Words* report included consultations with community members and other stakeholders and provided a number of specific suggestions for improvements in several areas, including training and employment, education, health, housing and the justice system.¹⁵⁵

Recommendation 30: That the Australian Government support measures to address discrimination faced by African people and communities, including by ensuring targeted settlement services.

6.4 International students (CERD article 2; CO 23)

133. Following a number of incidents of racist violence directed at international students, the Commission launched its publication, *Principles to promote and protect the human rights of International Students* (the Principles).¹⁵⁶
134. In 2014, the Commission reviewed the Principles by conducting a telephone survey of key stakeholders. The telephone survey revealed that the top three human rights issues facing international students identified by respondents

were employment,¹⁵⁷ accommodation,¹⁵⁸ and racism and racial discrimination.¹⁵⁹

135. The Commission conducted a national survey on sexual assault and sexual harassment in Australian universities and released a report in 2017 (*Change The Course* report). In the Commission's survey, 5.1% of international students reported being sexually assaulted in 2015 and/or 2016, and 1.4% reported experiencing this in a university setting.¹⁶⁰

Recommendation 31: That all Australian governments provide targeted services to protect international students from discrimination. Further, that the Australian Government ensure appropriate data is compiled on the experience of international students in Australia, particularly in relation to income and expenditure, housing experiences, employment discrimination and experiences of violence and sexual harassment.

6.5 Religious discrimination or vilification (CERD articles 4 & 5)

136. Attacks on places of worship and on people who are visibly religious are regularly reported in the news media. Attacks on and threats towards mosques and Islamic prayer rooms,¹⁶¹ synagogues,¹⁶² and churches¹⁶³ occur, as do instances of public abuse and physical attack on people perceived to belong to a particular religion, such as Muslims,¹⁶⁴ Jews¹⁶⁵ and Sikhs.¹⁶⁶
137. In the context of discrimination, the distinction between religion and race is not always clear. For example, many Muslim Australians have described anti-Muslim sentiment in terms of racism. Muslim Australians have altered their participation in public life and cancelled public events due to fears of being attacked or abused for their religion.¹⁶⁷ However, the RDA does not protect against discrimination based on religion rather than race.
138. For the period covering 1 October 2015 – 30 September 2016, the Executive Council of Australian Jewry reported that 210 anti-Semitic incidents were logged, including 12 physical attacks, 22 instances of property damage and vandalism, and dozens of instances of abuse, harassment, intimidation, and threats.¹⁶⁸ Anti-Semitic incidents occur regularly 'around synagogues on the Jewish Sabbath'.¹⁶⁹ The report notes that many instances go unreported.¹⁷⁰
139. The Federal Court of Australia has indicated that Jewish people constitute an ethnic group for the purposes of the RDA on account of their shared customs, beliefs, traditions and characteristics derived from a common history and identity.¹⁷¹ The Federal Court has not directly considered whether other religious groups — including Muslims — fall within the scope of the RDA.¹⁷²
140. The Commission notes that a parliamentary inquiry is underway relating to the status of the right to freedom of religion and belief in Australia.¹⁷³

Recommendation 32: That the Australian Government consider how Australian law could better reflect international human rights law relating to religious belief and observance.

6.6 Migrant settlement outcomes (CERD article 5; CO 24)

141. Attitudes within the existing population towards immigration continue to be broadly positive.¹⁷⁴ However, racial discrimination still occurs and can have a significant negative impact on settlement outcomes. Experiences of racial vilification can undermine a sense of belonging to the community, alienate victims from society and feed a sense of disillusion and disempowerment.¹⁷⁵
142. While many humanitarian migrants have significant 'background disadvantages' that impede a completely smooth settlement journey (such as a low level of English proficiency, disrupted education and experiences of torture or trauma), these migrants are reported to have high levels of English uptake and engagement in study and work upon settling in Australia.¹⁷⁶ Integration is a generational process, and while humanitarian migrants' disadvantages mean they may struggle with unemployment and workforce participation initially, labour force engagement rates converge towards those of Australia-born people over time, as residence in Australia continues.¹⁷⁷
143. The Commission notes the Joint Standing Committee inquiry into migrant settlement outcomes,¹⁷⁸ and the recommendations it has made in its submission to that inquiry.¹⁷⁹

Recommendation 33: That the Australian Government maintain a migration policy and program that does not discriminate against visa applicants on the basis of their race, colour, descent, religion or national or ethnic origin.

Recommendation 34: That the Australian Government continue to fund and support initiatives to address racism and racial discrimination as a complementary measure to settlement services.

6.7 Refugees and asylum seekers

144. Australia maintains a range of policies which discriminate against refugees and asylum seekers on the basis of their mode of arrival in Australia (specifically, whether they arrived by boat and whether they held a valid visa on arrival).¹⁸⁰ The main countries of origin for asylum seekers arriving by boat are Iran, Sri Lanka, Afghanistan, Pakistan, Iraq, Vietnam and Bangladesh.¹⁸¹ A significant number of these asylum seekers have refugee claims based on their race, ethnicity or religion. These include stateless Kurds from Iran and Iraq, Tamils from Sri Lanka, Hazaras from Afghanistan and Pakistan, and stateless Rohingya from Burma.
145. Asylum seekers who arrived in Australia by boat after August 2012 may be subject to third country processing in Nauru or Manus Island, Papua New Guinea. Those permitted to remain in Australia are subject to a 'fast track' assessment process, which does not provide for full merits review of negative decisions. Most asylum seekers who arrive without valid visas are not eligible for government-funded legal advice to assist them in preparing their claims.

146. Asylum seekers who arrive with valid visas and are subsequently found to be refugees are granted permanent visas. Those who arrive without valid visas are granted temporary visas, which last for three to five years and provide limited access to support services and entitlements.
147. Refugees on temporary visas are permitted to work; are eligible for Medicare, limited social security benefits and free primary and secondary education; and can receive free English language tuition. However, they have limited access to tertiary education; are not eligible to receive settlement services; are not permitted to sponsor relatives (including immediate family members) to join them in Australia; and cannot travel overseas without losing their visa unless there are 'compassionate or compelling circumstances' to justify their travel and they have received written approval.

Recommendation 35: That the Australian Government revise policies that discriminate against refugees and asylum seekers on the basis of their mode of arrival.

6.8 Visa refusals and cancellations on character grounds

148. Under s 501 of the Migration Act, the Minister for Immigration or their delegate can refuse or cancel a visa on the basis that the person does not pass the 'character test'. Legislation passed in 2014 significantly broadened the scope of s 501, resulting in an increase in visa refusals and cancellations on character grounds.
149. The Commission has previously raised concerns that decisions to refuse or cancel visas on character grounds under s 501 may lead to breaches of Australia's international human rights obligations.¹⁸²

Recommendation 36: That the Australian Government put in place transparent decision-making and external review processes to ensure the exercise of discretionary power in s 501 of the Migration Act complies with international human rights law (including CERD).

7 Police practices (CERD article 5)

150. The Commission is concerned about allegations of systemic racially-discriminatory policing practices and allegations of profiling, excessive force and harassment. The Commission notes the Flemington & Kensington Community Legal Centre's Police Accountability Project, which focuses on police accountability law and strategies and undertakes independent investigations of police misconduct.¹⁸³
151. The Special Rapporteur on the rights of indigenous peoples has noted several instances of police profiling of Indigenous peoples. She has recommended that efforts be made to recruit Aboriginal and Torres Strait Islander prison staff and that police and prison staff be trained in cultural sensitivity.¹⁸⁴

7.1 Palm Island

152. The Commission notes conduct of officers of the Queensland Police Service (QPS) following the death of 36-year-old Aboriginal man named Cameron Doomadgee (known posthumously as Mulrunji) in police custody on Palm Island.¹⁸⁵ The way QPS officers dealt with the aftermath of Mulrunji's death led to numerous coronial inquests and reviews, a number of court cases and, most relevantly, a representative proceeding brought to the Federal Court of Australia in 2016 by a group of people on Palm Island alleging unlawful racial discrimination by QPS officers during that time.
153. In *Wotton v State of Queensland (No 5)* [2016] FCA 1457 ('*Wotton (No 5)*'), the Federal Court was asked to decide whether, in the police investigation into Mulrunji's death, in the management of community concerns, tension and anger on Palm Island in the week after his death, and in the police responses to protests and fires that occurred in the aftermath (including a fire at the police station), officers of the QPS contravened s 9(1) of the RDA.
154. Section 9(1) of the RDA provides:
- 'It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.'
155. The Federal Court held that the State of Queensland, through the QPS officers, breached s 9 of the RDA.¹⁸⁶ The Federal Court found that:
- (a) The QPS officers with command and control of the investigation did not act impartially and independently.¹⁸⁷
 - (b) There were substantial failures by QPS officers on the island to communicate with the Palm Island community and defuse tensions.¹⁸⁸
 - (c) An emergency declaration was issued which triggered the evacuation of non-Aboriginal people from the island. Only local Palm Islanders could not travel to and from the Island.
 - (d) A special group of armed officers were used to arrest suspects and to conduct entries and searches of houses on Palm Island. They broke into houses with assault rifles raised and confronted unarmed men, women and children. The use of these officers to effect the arrests was unnecessary, disproportionate and undertaken as a show of force against local people who had protested about the conduct of police.
156. The Court found that QPS officers acted in these ways because they were dealing with an Aboriginal community. If the events took place in an isolated non-Aboriginal community in Queensland, the above conduct would not have occurred.¹⁸⁹

157. Importantly, the Court also noted that the conduct of the investigation, treatment of Aboriginal witnesses, failure to communicate with the community or defuse tensions, and various other aspects of police conduct violated the right to access services intended for the public under art 5(f) of CERD.¹⁹⁰
158. The State of Queensland has decided not to proceed with an appeal of the decision in *Wotton (No 5)*.¹⁹¹

7.2 Kalgoorlie

159. The Commission notes in passing that Indigenous communities in Western Australia are considering legal action under the RDA in relation to alleged racial discrimination in the community and in police handling of a riot following the death of a 14-year-old Indigenous boy, Elijah Doughty, in Kalgoorlie in 2016.¹⁹²
160. Elijah was killed after he was struck by a vehicle while riding a motorcycle. The motorcycle was allegedly stolen and was said to have belonged to the driver.¹⁹³ The driver was charged with manslaughter.¹⁹⁴
161. Violent riots were sparked by frustrations that the charge was not more serious than manslaughter. Race-based comments on social media pages were said to have contributed to an atmosphere of tension in the town and helped to spark the violence.¹⁹⁵
162. A relative of Elijah, Mr Yarran, was sentenced to one year in jail for yelling obscenities at police prior to the riots. On appeal, Mr Yarran's sentence was reduced to a suspended 12 month jail term and supervision order.¹⁹⁶ Mr Yarran's lawyer claims the initial punishment was excessive and racially discriminatory and that 'the harsh sentence and actions of the police and courts following Elijah's death revealed fractures within the WA justice system'.¹⁹⁷
163. The driver responsible for Elijah's death was eventually found not guilty of manslaughter but was convicted for dangerous driving causing death and sentenced to three years jail.¹⁹⁸

Recommendation 37: That:

- **all Australian governments ensure police are trained in cultural competency and anti-racism**
- **all Australian governments implement independent review mechanisms to monitor compliance of police practices with international human rights law (including CERD and the *Racial Discrimination Act 1975 (Cth)*), and**
- **the Queensland Government respond appropriately to the Federal Court of Australia's decision in *Wotton v State of Queensland (No 5)* [2016] FCA 1457.**

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

8 Counterterrorism (CERD article 5; CO 12)

164. The Commission recognises the vital importance of ensuring that intelligence and law enforcement agencies have appropriate powers to protect Australia's national security and to protect the community from terrorism.
165. The Commission also recognises that human rights law accepts, subject to certain conditions, that the exercise of those powers might impinge to some extent on individual rights and freedoms. However, any such limitation on human rights must be clearly expressed, unambiguous in its terms, and necessary and proportionate in how it responds to potential harm.
166. On 3 October 2017, Australia's Prime Minister announced an intention to introduce new counterterrorism laws.¹⁹⁹ A bill has not yet been introduced, but the media has so far relevantly reported the following new measures:
- adding driver licences to the Government's database of passport and immigration information to allow authorities to immediately identify people suspected of or involved in terrorist activities
 - biometric screening at airports and information sharing between States to better detect anyone posing a national security risk
 - laws to detain terror suspects indefinitely, including those radicalised in prison, after their sentences were complete
 - increasing the pre-charge detention periods from seven to 14 days
 - more scope for security agencies to question suspects while they are detained but before they have been charged
 - new crimes for terrorist hoaxes and the spread of 'instructional terrorist material'
 - changes to preventative detention orders to allow police to question suspects, while removing the need for a court order before a period of interim detention starts
 - amending laws to include a 'presumption against parole' for those with terror links, and
 - 'intervention orders' that would allow a magistrate to prevent someone contacting others — for instance, a young person who is at risk of being radicalised by suspected terror recruiters.²⁰⁰
167. The Commission is concerned by stereotypes of Muslim Australians with regard to terrorism and emphasises the importance of ongoing reviews of counterterrorism laws to ensure compliance with international human rights law, including rights enshrined in CERD. The Commission notes that governments should be vigilant in avoiding any risk of racial profiling in the exercise of counterterrorism measures.

168. The Commission notes the role of the Independent National Security Legislation Monitor (INSLM).²⁰¹ The INSLM reviews the operation, effectiveness and implications of Australia's counterterrorism and national security legislation on an ongoing basis. In performing that function, the INSLM has regard to Australia's international human rights obligations.²⁰²
169. The Commission is concerned that the Australian Government has passed counterterrorism measures despite concerns raised by a previous INSLM. This has occurred in relation to the control order²⁰³ and preventative detention order²⁰⁴ regimes. The current INSLM has concluded that each regime is consistent with Australia's human rights, counter-terrorism and international security obligations; proportionate to the current threats of terrorism and to national security; and necessary. He has recommended that, subject to implementation of suggested safeguards, each of these laws be renewed for a further period of five years.²⁰⁵ These laws and others are currently the subject of further review by a parliamentary joint committee.²⁰⁶

Recommendation 38: That the Australian Government ensures that counterterrorism measures do not unnecessarily limit human rights (including rights enshrined in CERD) and considers the concerns raised by the Independent National Security Legislation Monitor in that process.

9 Cyber-racism (CERD article 2)

170. The Commission notes that developing strategies to address contemporary forms and manifestations of racism (such as racist materials promoted through communication technologies) is outlined in paragraph 143 of the Durban Declaration.²⁰⁷
171. The Commission is concerned about complaints received in relation to web based racist content in recent years. In 2016/17, internet-based racial hatred represented 5% of the complaints of racial hatred received by the Commission.²⁰⁸
172. The Special Rapporteur on racial discrimination gave attention to cyber-racism on the internet and social media platforms in his recent report on his mission to Australia, and noted in particular that anti-Muslim hate speech has been on the increase in recent years, especially on social media platforms.²⁰⁹
173. The Australian Senate has referred an inquiry into cyberbullying to the Legal and Constitutional Affairs References Committee.²¹⁰ The inquiry is in relation to the capacity of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying.
174. The Commission commends the establishment of an eSafety Commissioner.²¹¹ The eSafety Commissioner's role has focused on cyberbullying of young people and cyber abuse (including cyber-racism).²¹²
175. The Commission notes that the Cyber Racism and Community Resilience research project, a joint project involving a number of Australian Universities with support from industry partners, seeks to examine the production of,

prevalence of, exposure to, and strategies for responding to and limiting the negative impact of cyber-racism.²¹³

Recommendation 39: That the Australian Government continue to support evidence-based strategies to address cyber-racism as part of a coordinated approach to address racism.

10 Freedom of expression

10.1 Racial vilification and discrimination in public discourse (CERD article 2, 4 & 7)

176. Racial vilification is consistently raised as a concern by communities that experience racism. It is encountered not only in public places, such as on streets or in public transport, but also in public debates.²¹⁴
177. The Commission considers that those who participate in public discussion have a responsibility to do so in a civil manner without resorting to prejudice or hatred. Parliamentarians and the news media, in particular, set a standard for public discussion of race and cultural diversity.
178. The Select Committee on Strengthening Multiculturalism has called for a Parliamentary Code of Multicultural Ethics to set an appropriate standard for public discourse, particularly when discussing issues relating to multicultural affairs, migration and citizenship, to guide respectful public debate.²¹⁵
179. The Australian Press Council's Statement of General Principles instructs publishers to 'avoid causing or contributing materially to substantial offence, distress or prejudice, or a substantial risk to health or safety, unless doing so is sufficiently in the public interest'.²¹⁶ The Select Committee on Strengthening Multiculturalism recommended that the Australian Press Council develop a broadcast media Code of Conduct, requiring commercial broadcasters to report in such a way that raises awareness of Australia's diversity and prohibits misrepresentation of culturally and linguistically diverse communities.²¹⁷
180. The Commission's considers that recognising a responsibility for civil discourse does not risk shutting down debate or rendering certain topics relating to race and ethnicity 'off limits'. One large-scale study on the impact of hate speech laws analysed 'letters to the editor' published in Australian newspapers over many years. It found that the public debate on matters of race and ethnicity had not abated over the 1990s and 2000s, though the manner in which issues were articulated became less prejudicial or discriminatory as time went on.²¹⁸

Recommendation 40: That the Australian Government recognise that Australian race relations and community harmony can be profoundly influenced by the tone of public debate about immigration, multiculturalism and national security.

10.2 Inquiries into freedom of expression (CERD article 2 & 7)

181. The Commission notes that a number of inquiries have been held into particular aspects of freedom of expression:
- the ALRC's report, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws*²¹⁹
 - the PJCHR's report in relation to whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) (RDA) imposes unreasonable restrictions upon freedom of speech,²²⁰ and
 - the current Senate inquiry into laws of contempt in Australia, which will consider how competing principles, including freedom of speech, are balanced in contempt laws.²²¹
182. The Commission refers to its submission to the PJCHR's inquiry, and the importance of both freedom of speech and freedom from racial vilification.²²²
183. The Commission considers the inquiries to date to be narrowly tailored to specific areas and that Australia would benefit from a broader inquiry into freedom of expression in Australia. Such an inquiry should cover criminal laws,²²³ secrecy laws,²²⁴ laws regarding participation in the democratic process,²²⁵ media, broadcasting and communications laws and freedom of information laws, while maintaining respect for the importance of multiculturalism in Australian society.

Recommendation 41: That the Australian Government commission an independent, broadly focused inquiry into freedom of expression in Australia.

11 Immigration detention (CO 24)

184. The Commission notes the Committee's interest in Australia's mandatory detention regime and treatment of refugees and asylum seekers, as expressed in paragraph 24 of its concluding observations of 2010. The Commission provides up-to-date information in this regard below.

11.1 Detainee numbers, nationalities and length of detention

185. At 31 August 2017, there were 1,259 people in immigration detention facilities, including 948 on mainland Australia and 311 on Christmas Island:
- 176 from New Zealand, 92 from Iran, 88 from Vietnam, 74 from Sri Lanka, 63 from Malaysia, 61 from China, 56 from India, 50 from the United Kingdom, 39 from Afghanistan and 560 of other nationalities.²²⁶
 - 1,180 adult men, 78 adult women and one child.²²⁷
 - 468 had been detained after having their visa cancelled on character grounds, 332 were asylum seekers who had arrived by boat, 265 had

overstayed their visas, 145 had been detained after having their visa cancelled on non-character grounds, 44 had been detained after being denied entry at an Australian airport and five were undocumented or inadequately documented seaport arrivals (such as stowaways).²²⁸

186. The average length of detention in immigration detention facilities has increased significantly in recent years. The average rose from 72 days in July 2013²²⁹ to almost 400 days by August 2014, and has remained at or above that level ever since.²³⁰ As at 31 August 2017, the average length of detention was 445 days. Over a third of people in detention (36%) had been detained for at least a year, and around a fifth (22%) had been detained for more than two years.²³¹
187. As at 31 August 2017, there were 369 people (including 43 children) residing in the Regional Processing Centre in Nauru and 773 adult men residing in the Regional Processing Centre in Manus Island, Papua New Guinea. In both countries, a significant number of people are also residing in the community after having been released from Regional Processing Centres.²³²

11.2 Legislative framework

188. Under the *Migration Act 1958* (Cth) (the Migration Act), immigration detention remains mandatory for all unlawful non-citizens.²³³ Australian courts do not have jurisdiction to remove a person from detention on the basis that their detention is arbitrary, and there is no legislative time limit on detention.
189. Positive developments relating to immigration detention in recent years include: the release of almost all children from closed facilities into alternative community arrangements;²³⁴ the closure of several detention facilities;²³⁵ increased use of community alternatives to detention; commitment to ratification of OPCAT; and the release of a number of refugees who previously had been detained indefinitely due to having received an adverse security assessment.
190. However, the Commission is concerned about an increase in long-term detention, an increase in the number of people detained due to visa cancellation, and a small number of refugees who continue to be indefinitely detained due to adverse security assessments.
191. The Commission has recommended that the Australian Government continue to expand the use of alternatives to closed detention and, where immigration detention is necessary, ensure that it is time limited, strictly necessary (such as for the purpose of public health and security checks) and subject to individualised decision-making and judicial oversight.
192. There are no minimum standards for conditions of detention codified in Australian law. Introducing these standards would help to ensure greater consistency in conditions across the detention network, prevent breaches of Australia's international obligations and facilitate access to appropriate remedies if breaches do occur. The Commission's publication *Human rights standards for immigration detention*, which sets out benchmarks for the

humane treatment of people held in immigration detention, could provide the basis for these minimum standards.²³⁶

193. Ratification of OPCAT will likely result in more systematic consideration of the adequacy and appropriateness of conditions of detention in the coming years.

12 Business and human rights (CO 13)

194. The Commission notes that, in paragraph 13 of its concluding observations, the Committee indicated its interest in legislative or administrative measures to prevent acts by Australian corporations infringing the rights of Indigenous peoples domestically and overseas and to regulate the extraterritorial activities of Australian corporations abroad. The Committee also encouraged Australia to fulfil its commitments under the international initiatives it supports to advance responsible corporate citizenship.

195. The Commission provides up-to-date information in this regard below.

12.1 National Action Plan

196. The Commission commends the Australian business community's support for the UN Guiding Principles on Business and Human Rights (UNGP) through the Global Compact Network Australia.²³⁷
197. The Commission notes that the Australian Government is undertaking a national consultation on the implementation of the UNGP,²³⁸ and established a Multi-Stakeholder Advisory Group on the Implementation of the UNGP.²³⁹ Members of the Advisory Group represent a broad range of perspectives and have been drawn from across business sectors and civil society.²⁴⁰
198. The Commission notes the advice of the Multi-Stakeholder Advisory Group that the Australian Government deliver a coordinated policy statement in the form of a National Action Plan, which sets out the concrete steps that it will take to implement the UNGPs.²⁴¹
199. The Commission is very concerned that Australia's Foreign Minister has advised the Multi-Stakeholder Advisory Group that the Australian Government is not proceeding with a National Action Plan at this time.²⁴²

Recommendation 42: That the Australian Government, in consultation with the business sector, take measures to implement Australia's international law obligations in the area of business and human rights and to enhance protections for those harmed by Australian business activities.

12.2 Modern slavery

200. The Commission welcomes the Australian Government's proposal for large corporations and other entities operating in Australia to publish annual statements outlining their actions to address modern slavery in their operations and supply chains.²⁴³ At this stage, it is not proposed that these

requirements will apply to Australian governments, despite them having supply chains of significant scale. The Commission notes that a national consultation process to refine the Australian Government's proposed model is underway.

201. The Commission welcomes the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into establishing a Modern Slavery Act in Australia. The Commission also notes the Joint Committee's recommendation that the Australian Government consider supporting in-principle the development of a Modern Slavery Act in Australia, including:
- supply chain reporting requirements for companies, businesses, organisations and governments in Australia, and
 - an Independent Anti-Slavery Commissioner, subject to reviewing the recommendations of the Committee's final report.²⁴⁴

Recommendation 43: That the Australian Government legislate a Modern Slavery Act in Australia.

12.3 Procurement

202. The Commonwealth Procurement Rules do not explicitly refer to human rights. The Commission notes that the Australian regulatory framework is insufficient to prevent human rights abuses from occurring in Commonwealth procurement.²⁴⁵
203. A parliamentary committee has recommended that the Australian Government develop a procurement policy requiring Commonwealth agencies to evaluate suppliers' compliance with human rights regulation.²⁴⁶ Another parliamentary committee has noted that consideration of modern slavery risks should be included in this procurement policy.²⁴⁷

Recommendation 44: That the Australian Government amend the Commonwealth Procurement Rules to align with the UN Guiding Principles on Business and Human Rights, including in regard to human rights due diligence in procurement.

Attachment 1: Compilation of Recommendations

Priority Areas

In addition to the recommendations below, the Commission recommends that the Committee request an update from the Australian Government on progress in relation to the following priority areas in 12 months time under article 9(1) of CERD and rule 65 of the Rules of procedure:

- i. The collection of comprehensive data in relation to racial discrimination, cultural diversity, racially motivated crimes and multiculturalism generally (see Recommendation 18).
- ii. Consideration and implementation of relevant recommendations, once released, of the Northern Territory Royal Commission into Children in Detention (see Recommendation 22).
- iii. Training of police in cultural competency and anti-racism; compliance of police practices with international human rights law (including those rights enshrined in CERD and given expression in the *Racial Discrimination Act 1975 (Cth)*); and the response of the Queensland Government to *Wotton v State of Queensland (No 5)* [2016] FCA 1457 (see Recommendation 37).

Human rights framework

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

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

Recommendation 3: That the Australian Government:

- fully incorporate CERD into Australian law
- ensure that federal laws do not undermine the protections in the *Racial Discrimination Act 1975 (Cth)*, and
- explore options to remove any potential for racially discriminatory laws to be passed under the Australian Constitution. The Commission notes that this is a separate issue to developing with Aboriginal and Torres Strait Islander peoples a model for their recognition in the Australian Constitution and negotiating in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

Recommendation 4: That the Australian Government introduce formal mechanisms to consider and implement recommendations of treaty

committees, including the concluding observations of the Committee in relation to Australia's 18th to 20th periodic report under CERD.

Recommendation 5: That the Australian Government fulfil its commitment to ratify *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) by December 2017 and commence its progressive implementation immediately thereafter.

Recommendation 6: That the Australian Government consider ratification of the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* and other international instruments relating to issues of racial discrimination.

Recommendation 7: That the Australian Government incorporate more comprehensive human rights education (including in relation to racial discrimination and CERD) in the national school curriculum.

Recommendation 8: That the Australian Government strengthen public education about multiculturalism, including through the national school curriculum.

Recommendation 9: That the Australian Government support human rights education for all areas of the public sector, particularly in the administration of justice and places of detention, including targeted initiatives for public officials.

Recommendation 10: That the Australian Government continue to support the anti-racism and other educative work of the Commission, including the National Anti-Racism Partnership and Strategy.

Racial discrimination in Australia

Recommendation 11: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination and hatred in setting a standard for public conduct in a multicultural society.

Recommendation 12: That the Australian Government continue to support a policy of multiculturalism as a means of promoting social cohesion, cultural harmony and national unity.

Recommendation 13: That the Australian Parliament consider further public recognition of Australian multiculturalism, including periodic public statements affirming parliamentarians' support of a multicultural Australia.

Recommendation 14: That the Australian Government strengthen the policy machinery of Australian multiculturalism, including through the re-establishment of an Office of Multicultural Affairs.

Recommendation 15: That the Australian Parliament not pass the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 in its current form.

Recommendation 16: That the Australian Government ensure that any amendment to Australia's visa system comply with international human rights law (including rights enshrined in CERD).

Recommendation 17: That the Australian Government consider the recommendations of the Select Committee on Strengthening Multiculturalism and investigate pathways to improve cultural diversity in Australian institutions and organisations.

Recommendation 18: That the Australian Government collect more comprehensive data on racial discrimination, racially motivated crimes, cultural diversity and multiculturalism generally. *The Commission considers this to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months.*

Aboriginal and Torres Strait Islander Peoples

Recommendation 19: That the Australian Government, in partnership with Aboriginal and Torres Strait Islander peoples, develop a National Strategy to give effect to the *UN Declaration on the Rights of Indigenous Peoples*. Further, that the Declaration be included in the definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to ensure that legislation is regularly assessed for conformity with the Declaration.

Recommendation 20: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and negotiate in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

Recommendation 21: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles and that these targets be introduced into the Closing the Gap Strategy.

Recommendation 22: That the Australian Government, with the Northern Territory Government, swiftly consider the implementation of its response to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory once its final report is delivered. *The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.*

Recommendation 23: That all Australian governments:

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

Recommendation 24: That the Australian Government provide adequate ongoing funding of the Aboriginal and Torres Strait Islander peak organisations and for Indigenous legal assistance.

Recommendation 25: That the Australian Government ensure that any reforms that affect Aboriginal and Torres Strait Islander peoples' lands are undertaken with their participation and free, prior and informed consent.

Recommendation 26: That the Australian Government implement the recommendations of the ALRC's Connection to Country Review of the *Native Title Act 1993* (Cth) and the Council of Australian Governments' Investigation into Indigenous Land Administration and Use in order to better recognise and protect Aboriginal and Torres Strait Islander peoples' native title rights and interests.

Recommendation 27: That the Australian Government ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively affected by the development of northern Australia.

Recommendation 28: That all Australian governments increase their efforts to achieve the Closing the Gap targets.

Recommendation 29: That the Australian Government ensure that current models of income management schemes be discontinued or redesigned on a voluntary, opt-in basis with appropriate oversight of decision making and monitoring.

Migrants, ethnic minorities and culturally and linguistically diverse (CALD) peoples

Recommendation 30: That the Australian Government support measures to address discrimination faced by African people and communities, including by ensuring targeted settlement services.

Recommendation 31: That all Australian governments provide targeted services to protect international students from discrimination. Further, that the Australian Government ensure appropriate data is compiled on the experience of international students in Australia, particularly in relation to income and expenditure, housing experiences, employment discrimination and experiences of violence and sexual harassment.

Recommendation 32: That the Australian Government consider how Australian law could better reflect international human rights law relating to religious belief and observance.

Recommendation 33: That the Australian Government maintain a migration policy and program that does not discriminate against visa applicants on the basis of their race, colour, descent, religion or national or ethnic origin.

Recommendation 34: That the Australian Government continue to fund and support initiatives to address racism and racial discrimination as a complementary measure to settlement services.

Recommendation 35: That the Australian Government revise policies that discriminate against refugees and asylum seekers on the basis of their mode of arrival.

Recommendation 36: That the Australian Government put in place transparent decision-making and external review processes to ensure the exercise of discretionary power in s 501 of the Migration Act complies with international human rights law (including CERD).

Police Practices

Recommendation 37: That:

- all Australian governments ensure police are trained in cultural competency and anti-racism
- all Australian governments implement independent review mechanisms to monitor compliance of police practices with international human rights law (including CERD and the *Racial Discrimination Act 1975 (Cth)*), and
- the Queensland Government respond appropriately to the Federal Court of Australia's decision in *Wotton v State of Queensland (No 5)* [2016] FCA 1457.

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

Counterterrorism

Recommendation 38: That the Australian Government ensures that counterterrorism measures do not unnecessarily limit human rights (including rights enshrined in CERD) and considers the concerns raised by the Independent National Security Legislation Monitor in that process.

Cyber-racism

Recommendation 39: That the Australian Government continue to support evidence-based strategies to address cyber-racism as part of a coordinated approach to address racism.

Freedom of expression

Recommendation 40: That the Australian Government recognise that Australian race relations and community harmony can be profoundly influenced by the tone of public debate about immigration, multiculturalism and national security.

Recommendation 41: That the Australian Government commission an independent, broadly focused inquiry into freedom of expression in Australia.

Business and human rights

Recommendation 42: That the Australian Government, in consultation with the business sector, take measures to implement Australia's international law obligations in the area of business and human rights and to enhance protections for those harmed by Australian business activities.

Recommendation 43: That the Australian Government legislate a Modern Slavery Act in Australia.

Recommendation 44: That the Australian Government amend the Commonwealth Procurement Rules to align with the UN Guiding Principles on Business and Human Rights, including in regard to human rights due diligence in procurement.

Endnotes

¹ United Nations Committee on the Elimination of Racial Discrimination, *Rules of procedure of the Committee on the Elimination of Racial Discrimination*, UN Doc CERD/C/35/Rev.3 (11 January 2012). At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f35%2fRev.3&Lang=en (viewed 11 October 2017); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), art 9(1).

² Since the beginning of 2016, the Parliamentary Joint Committee on Human Rights has reviewed over 74 other legislative instruments. Parliamentary Joint Committee on Human Rights, *Index of Bills and Legislative Instruments*. At

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Index_of_bills_and_instruments (viewed 11 September 2017).

³ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), ss 8, 9. At

<https://www.legislation.gov.au/Details/C2011A00186> (viewed 11 September 2017).

⁴ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 477, 506–7. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).

⁵ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 474–5. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).

⁶ Shawn Rajanayagam, 'Does Parliament Do Enough? Evaluating Statements of Compatibility under the *Human Rights (Parliamentary Scrutiny) Act*' (2015) 38(3) *University of New South Wales Law Journal* 1046, 1069–1070. At <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/journals/UNSWLJ/2015/37.pdf> (viewed 11 September 2017).

⁷ Parliamentary scrutiny processes include the Senate Standing Committee on Regulations and Ordinances, Senate Standing Committee for the Scrutiny of Bills, Parliamentary Joint Committee on Human Rights, Senate Standing Committee on Legal and Constitutional Affairs, Parliamentary Joint Committee on Intelligence and Security and Parliamentary Joint Committee on Law Enforcement. Other review mechanisms include the Australian Human Rights Commission, Independent National Security Legislation Monitor and Australian Law Reform Commission. See Australian Law Reform Commission, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws (Final Report)* (2016) Ch 3. At

https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017).

⁸ Australian Law Reform Commission, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws (Final Report)* (2016) 75–76 [3.95].

At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017). The ALRC's suggestions include additional guidance to policy makers during policy development and legislative drafting stages; improving quality of explanatory material and statements of compatibility; effective and appropriate streamlining of overlapping work across scrutiny committees; increasing time available to conduct scrutiny; and improving extent to which Parliament considers the scrutiny reports.

⁹ Australia's states and territories also have a variety of anti-discrimination and human rights legislation. For an overview of the Racial Discrimination Act and its history in Australia, see Tim Soutphommasane, *I'm Not Racist But ... 40 Years of the Racial Discrimination Act* (NewSouth, 2015).

¹⁰ See, eg, *Discrimination Act 1991* (ACT), *Anti-Discrimination Act 1996* (NT), *Anti-Discrimination Act 1977* (NSW), *Equal Opportunity Act 2010* (Vic), *Racial and Religious Tolerance Act 2001* (Vic), *Anti-Discrimination Act 1991* (Qld), *Equal Opportunity Act 1984* (SA), *Equal Opportunity Act 1984* (WA).

See Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 6. At

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017).

¹¹ George Williams and Daniel Reynolds, 'The Racial Discrimination Act and Inconsistency under the Australian Constitution' (2015) 36 *Adelaide Law Review* 241, 249–250. See also *New South Wales v Commonwealth* (2006) 229 CLR 1, 151 [307] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) ('*Work Choices Case*').

¹² *Northern Territory National Emergency Response Act 2007* (Cth), s 132(2) provided that: 'The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the *Racial Discrimination Act 1975*'. Another example was the *Native Title Amendment Act 1998* (Cth), which introduced a new s 7 into the *Native Title Act 1993* (Cth) (NTA), which provides that the NTA is intended to be read and construed subject to the provisions of the RDA only to the extent of any ambiguous terms in the NTA.

¹³ UN Committee on the Elimination of Racial Discrimination, *General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination*, 75th sess, (24 September 2009) UN Doc CERD/C/GC/32. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f32&Lang=en (viewed 23 October 2017).

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¹⁶ The reservation provides: 'The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4(a).'

¹⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 35th sess, Agenda item 6, UN Doc A/HRC/31/14/Add.1 (29 February 2016) [7].

¹⁸ *The Commonwealth v Tasmania* ('*The Tasmanian Dam Case*') (1983) 158 CLR 1.

¹⁹ *Australian Constitution*, s 51(xxvi).

²⁰ *Kartinyeri v Commonwealth* (1998) 152 ALR 540.

²¹ In 2012, the Expert Panel on Constitutional Recognition of Indigenous Australians relevantly recommended that ss 25 and 51(xxvi) be repealed and that provisions on the constitutional recognition of Aboriginal and Torres Strait Islander peoples and a prohibition of racial discrimination be introduced. See Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution — Report of the Expert Panel* (2012) xviii (Recommendations 3–5). At https://www.pmc.gov.au/sites/default/files/publications/Recognising-Aboriginal-and-Torres-Strait-Islander-Peoples-in-the-constitution-report-of-the-expert-panel_0.pdf (viewed 23 October 2017). In 2015, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples offered similar recommendations. See Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Final Report* (2015) xiii (Recommendations 3–5). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Constitutional_Recognition/Final_Report (viewed 23 October 2017).

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- ²⁴ Australian Human Rights Commission, *Constitutional reform: Creating a nation for all of us* (2011) 15. At <https://www.humanrights.gov.au/publications/constitutional-reform-creating-nation-all-us-2011> (viewed 23 October 2017). See also Australian Human Rights Commission, *Social Justice Report 2008* (2009) 62–76. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 23 October 2017).
- ²⁵ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 17 [71]. At http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017); Felipe González Morales, *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru*, UN Doc A/HRC/35/25/Add.3 (24 April 2017) 19. At http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.3 (viewed 10 October 2017); Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 17 [107]. At http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.2 (viewed 10 October 2017).
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- ²⁸ Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 7 [31]. At http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.2 (viewed 10 October 2017).
- ²⁹ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 13 [50]. At http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017).
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⁶¹ Groups include: children born in Australia to asylum seeker or refugee parents, even after those children have been lawfully in Australia for up to 10 years; children born in Australia to parents who had a valid visa but overstayed the visa before the child's 10th birthday; children who are found abandoned in Australia; children as young as 10 years old that the Minister considers are not of good character; people with mental illness or cognitive impairment who come into contact with the criminal justice system.

⁶² Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* (5 September 2017) 46 [3.122]–[3.125]. At

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https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5914 (viewed 20 October 2017).

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¹⁰⁷ In 2014, the Commission inquired into complaints by four Aboriginal men with intellectual and cognitive disabilities who had been incarcerated for a number of years despite being found unfit to stand trial or not guilty by reason of insanity. See *KA, KB, KC and KD v Commonwealth of Australia* [2014] AusHRC 80. At <https://www.humanrights.gov.au/our-work/legal/publications/ka-kb-kc-and-kd-v-commonwealth-australia> (viewed 11 September 2017). The Aboriginal Disability Justice Campaign advocates for progress in relation to the indefinite incarceration of Aboriginal people with intellectual and cognitive disabilities. People with Disability Australia, *Aboriginal Disability Justice Campaign* (2015). At <http://www.pwd.org.au/about-us/about-pwda.html> (viewed 11 September 2017).

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¹¹⁰ Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013), 124. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 11 September 2017). The Aboriginal and Torres Strait Islander Social Justice Commissioner has advocated for justice reinvestment over the past five years. The 2014 Social Justice and Native Title Report recommends that, 'the Australian Government take a leadership role on justice reinvestment and works with states, territories and Aboriginal and Torres Strait Islander communities to identify further trial sites.' Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 12. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0> (viewed 11 September 2017).

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Australia (October 2017) 3. At

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F2b5f4c0e-443f-496f-9c94-d162fc1d1dec%22> (viewed 24 October 2017). The Australian Government has indicated that it supports in-principle recommendations that the Commonwealth take a leading role in identifying the data required to implement a justice reinvestment approach and establish a national approach to the data collection of justice indicators (Recommendation 1); make a commitment to sharing relevant data held by Commonwealth line agencies with justice reinvestment initiatives in other jurisdictions (Recommendation 2); commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one remote Indigenous community be included as a site. Further, the committee recommends that any trial actively involve local communities in the process, is conducted on the basis of rigorous justice mapping over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process. (Recommendation 6); and provide funding for the trial of justice reinvestment in Australia (Recommendation 7). See Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs References Committee report: Value of a justice reinvestment approach to criminal justice in Australia* (October 2017) 4, 7. At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F2b5f4c0e-443f-496f-9c94-d162fc1d1dec%22> (viewed 24 October 2017).

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¹⁵⁴ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 14 [54]. At http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017).

¹⁵⁵ Australian Human Rights Commission, *In our own words — African Australians: A review of human rights and social inclusion issues* (2010). At <https://www.humanrights.gov.au/our-work/race-discrimination/projects/our-own-words-african-australians-review-human-rights-and> (viewed 10 October 2017).

¹⁵⁶ Australian Human Rights Commission, *Principles to promote and protect the human rights of international students* (2012). At <http://www.humanrights.gov.au/publications/book-principles-promote-and-protect-human-rights-international-students> (viewed 30 October 2017). The Principles were circulated widely to a broad range of stakeholders, including federal, state and territory education ministers, shadow federal education minister and federal, state and territory Departments of Education. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 7–11. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁵⁷ International students struggle to find employment. Sometimes this is because employers specifically state employment is for Australian citizens or permanent residents only. Some international students have problems getting past the screening process for a job, possibly due to foreign sounding names. As a result, some try to adopt Western sounding names to get a job interview. Exploitation in employment was also noted by respondents, as occurring in a number of ways including underpayment, no payment for trials, work hours, and pregnancy rights. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 10. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁵⁸ Issues relating to accommodation were lack of safety, affordability, overcrowding, lack of proper tenancy, living in accommodation where there are drugs in the property, and living in poor conditions such as not being able to cook, lock doors or use a 'proper toilet'. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 10. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁵⁹ Racism was not always the sole or dominant reason for complaints or incidents, but mostly played some part. The coverage in the mainstream press of international students taking local jobs and accommodation, and contributing to overcrowding in cities was identified as ostracising this group from the larger community and leading to social isolation. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 10. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁶⁰ Australian Human Rights Commission, *Change The Course: National Report on Sexual Assault and Sexual Harassment at Australia Universities* (2017) 67. At https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf (viewed 11 September 2017).

¹⁶¹ See Lucy Carter, "Burn in hell": Hate message taped to door of Newcastle mosque amidst reports of rise in Islamophobia since Paris attack' (ABC News, 18 November 2015) At <http://www.abc.net.au/news/2015-11-18/hate-message-taped-to-door-of-newcastle-mosque/6951428> (viewed 11 September 2017); AAP, 'Toowoomba mosque fire suspicious: police' (Brisbane Times, 24 January 2015). At <http://www.brisbanetimes.com.au/queensland/toowoomba-mosque-fire-suspicious-police-20150124-12xi6s.html> (viewed 11 September 2017).

¹⁶² See Laura Aubusson, 'Police investigate swastika graffiti on Jewish synagogue' (Daily Telegraph, 14 April 2016). At <http://www.dailytelegraph.com.au/newslocal/city-east/police-investigate-swastika-graffiti-on-jewish-synagogue/news-story/6b2fd822f1f7853699ced9fcd649dfdb> (viewed 11 September 2017); Henry Benjamin, 'Broken Hill synagogue defaced' (J-Wire, 1 December 2015). At <http://www.jwire.com.au/broken-hill/> (viewed 11 September 2017).

¹⁶³ ABC News, 'Graffiti vandals spray swastikas and hate messages on Ukrainian Catholic church in Lidcombe' (ABC News, 22 June 2014). At <http://www.abc.net.au/news/2014-06-21/swastikas-graffitied-on-side-of-ukranian-church-in-sydney/5540968> (viewed 11 September 2017); Tracey Prisk, 'Orange church attacked by vandals: police investigating arson and graffiti' (Central Western Daily, 23 November 2015) At <http://www.centralwesterndaily.com.au/story/3509341/orange-church-attacked-by-vandals-police-investigating-arson-and-graffiti/> (viewed 11 September 2017).

¹⁶⁴ See Beau Donnelly, 'Muslims on what it's like to live in Australia' (Sydney Morning Herald, 26 May 2016). At <http://www.smh.com.au/national/muslims-on-what-its-like-to-live-in-australia-20160429-go1953.html> (viewed 11 September 2017); Heath Aston, 'Dozens of anti-Muslim attacks as Islamic leaders warn of community fear' (Sydney Morning Herald, 9 October 2014). At <http://www.smh.com.au/national/dozens-of-antimuslim-attacks-as-islamic-leaders-warn-of-community-fear-20141009-113tmk.html> (viewed 11 September 2017).

¹⁶⁵ See Megan Levy, 'Teens arrested over racist attack on bus full of Jewish school students' (Sydney Morning Herald, 7 August 2014). At <http://www.smh.com.au/nsw/teens-arrested-over-racist-attack-on-bus-full-of-jewish-school-students-20140806-101995.html> (viewed 11 September 2017); Tom Cowie, "'Go back to Israel": racial attack outside Melbourne synagogue posted online' (Age, 27 November 2015). At <http://www.theage.com.au/victoria/go-back-to-israel-racial-attack-outside-melbourne-synagogue-posted-online-20151126-gl9gw5.html> (viewed 11 September 2017).

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- ¹⁷² Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act* (2015) 44. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 10 October 2017)
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¹⁸³ Police Accountability Project, *About the Project* (2017). At <http://www.policeaccountability.org.au/about/> (viewed 12 October 2017). See also Police Accountability Project, *Racial profiling* (2017). At <http://www.policeaccountability.org.au/issues-and-cases/racial-profiling/> (viewed 12 October 2017).

¹⁸⁴ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 14 [81]. At http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.2 (viewed 10 October 2017).

¹⁸⁵ Mulrunji was arrested by Senior Sergeant Christopher Hurley for yelling out alleged abuse towards the police. Mulrunji was affected by alcohol, protesting and struggling. He was brought into the Palm Island Police Station, where he had an altercation with Senior Sergeant Hurley. Mulrunji was then dragged limp and unresponsive into a cell. Within an hour, Mulrunji was dead.

¹⁸⁶ *Wotton v State of Queensland (No 5)* [2016] FCA 1457. At <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457> (viewed 12 October 2017). See also a summary of the reasons for judgment at <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457/summary/2016fca1457-summary> (viewed 12 October 2017).

¹⁸⁷ Contrary to what would have occurred in an impartial, independent and effective investigation, Senior Sergeant Hurley picked up the investigators from the airport when they arrived and had a meal with them at his house that evening. He was never treated as a suspect, nor promptly removed from the island. The police officers discounted and ignored accounts from Aboriginal witnesses implicating Senior Sergeant Hurley. Incorrect and stereotypical information about Mulrunji and the circumstances of his death was passed to the coroner, while relevant information from Aboriginal witnesses was not passed on.

¹⁸⁸ For example, by not proactively participating in community meetings and by not providing timely and accurate information about the cause of Mulrunji's death and the progress of the investigation, which the community was waiting to hear.

¹⁸⁹ *Wotton v State of Queensland (No 5)* [2016] FCA 1457. At <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457> (viewed 12 October 2017). See also a summary of the reasons for judgment at <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457/summary/2016fca1457-summary> (viewed 12 October 2017).

¹⁹⁰ *Wotton v State of Queensland (No 5)* [2016] FCA 1457 at [582]–[634].

¹⁹¹ Chris O'Brien, 'Palm Island riots racism court ruling appeal dropped, Queensland Government says', *ABC News* (online) 28 February 2017. At <http://www.abc.net.au/news/2017-02-28/appeal-dropped-palm-island-riots-court-ruling-qld-government/8310044> (viewed 12 October 2017).

¹⁹² Courtney Bembridge, 'Kalgoorlie protest: Community mourns as elders call for action against online racism', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/community-mourns-as-elders-call-for-justice-after-riot/7799942> (viewed 12 October 2017); ABC, 'Kalgoorlie protest: Arrests made, officers injured in violent riot over teen's death', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/protesters-arrested-in-kalgoorlie-riot-after-teens-death/7797804> (viewed 12 October 2017).

¹⁹³ Courtney Bembridge, 'Kalgoorlie protest: Community mourns as elders call for action against online racism', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/community-mourns-as-elders-call-for-justice-after-riot/7799942> (viewed 12 October 2017).

Courtney Bembridge, 'Kalgoorlie protest: Community mourns as elders call for action against online racism', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/community-mourns-as-elders-call-for-justice-after-riot/7799942> (viewed 12 October 2017); ABC, 'Kalgoorlie protest: Arrests made, officers injured in violent riot over teen's death', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/protesters-arrested-in-kalgoorlie-riot-after-teens-death/7797804> (viewed 12 October 2017).

¹⁹⁵ Courtney Bembridge, 'Kalgoorlie protest: Community mourns as elders call for action against online racism', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/community->

[mourns-as-elders-call-for-justice-after-riot/7799942](http://www.abc.net.au/news/2016-08-30/protesters-arrested-in-kalgoorlie-riot-after-teens-death/7797804) (viewed 12 October 2017); ABC, 'Kalgoorlie protest: Arrests made, officers injured in violent riot over teen's death', *ABC News* (online) 31 August 2016. At <http://www.abc.net.au/news/2016-08-30/protesters-arrested-in-kalgoorlie-riot-after-teens-death/7797804> (viewed 12 October 2017).

¹⁹⁶ Heather McNeill, 'Kalgoorlie riot accused walks free after winning appeal', *WA Today* (online) (6 October 2017). At <http://www.watoday.com.au/wa-news/kalgoorlie-riot-accused-walks-free-after-winning-appeal-20171005-gyv5n5.html> (viewed 12 October 2017).

¹⁹⁷ Heather McNeill, 'Kalgoorlie riot accused walks free after winning appeal', *WA Today* (online) (6 October 2017). At <http://www.watoday.com.au/wa-news/kalgoorlie-riot-accused-walks-free-after-winning-appeal-20171005-gyv5n5.html> (viewed 12 October 2017).

¹⁹⁸ Heather McNeill, 'Kalgoorlie riot accused walks free after winning appeal', *WA Today* (online) (6 October 2017). At <http://www.watoday.com.au/wa-news/kalgoorlie-riot-accused-walks-free-after-winning-appeal-20171005-gyv5n5.html> (viewed 12 October 2017).

¹⁹⁹ The Prime Minister, together with Premiers of Australian states and territories, have called for a national regime that imposes the same controls on suspects regardless of their location. David Crowe, 'Turnbull wants states to pass uniform terror laws', *The Weekend Australian*, (online), 3 October 2017. At <http://online.isentialink.com/theaustralian.com.au/2017/10/03/eec83e93-85bb-40c2-babc-10e61e335bf1.html> (viewed 8 October 2017).

²⁰⁰ See Sarah Martin, Dylan Caporn and AAP, 'Malcolm Turnbull will urge state leaders to adopt tough counter terrorism measures at special national security summit', *The West Australian* (online), 4 October 2017. At <https://thewest.com.au/news/wa/malcolm-turnbull-will-urge-state-leaders-to-adopt-tough-counter-terrorism-measures-at-special-national-security-summit-ng-b88618145z> (viewed 8 October 2017); David Crowe, 'Turnbull wants states to pass uniform terror laws', *The Weekend Australian*, (online), 3 October 2017. At <http://online.isentialink.com/theaustralian.com.au/2017/10/03/eec83e93-85bb-40c2-babc-10e61e335bf1.html> (viewed 8 October 2017).

²⁰¹ The Independent National Security Legislation Monitor's annual reports are available at Department of the Prime Minister and Cabinet, *Independent National Security Legislation Monitor*. At <http://www.inslm.gov.au/reviews-reports> (viewed 11 September 2017).

²⁰² *Independent National Security Legislation Monitor Act 2010* (Cth) s 8(a)(i).

²⁰³ The first INSLM, Bret Walker SC, concluded that 'control orders in their present form are not effective, not appropriate and not necessary'. The 2013 COAG Review of Counter-Terrorism Legislation concluded that the control order regime should be retained but with additional safeguards and protections included. The second INSLM, the Hon Roger Gyles AO QC, then recommended that a number of the COAG recommendations be implemented. Despite this, and the fact that the recommended reviews of the control order regime (including the present review) are ongoing, that regime has been extended. Independent National Security Legislation Monitor, *Declassified Annual Report* (2012), 40. At <https://www.inslm.gov.au/reviews-reports/annual-reports> (viewed 30 October 2017). *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013), 54 [215]. At <https://www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx> (viewed 11 September 2017).

²⁰⁴ The first INSLM, Bret Walker SC, recommended that the preventative detention regime be repealed because there is 'no demonstrated necessity for these extraordinary powers'. In 2013, the Council of Australian Governments (COAG) Review of Counter-Terrorism Legislation also recommended that the PDO regime be repealed, finding that the provisions were unlikely to be used, and that the purposes of the PDO regime could be achieved 'by traditional methods of arrest, interrogation and charge'. Despite these recommendations, in 2016, the threshold for applying for a PDO was reduced. See Independent National Security Legislation Monitor, *Declassified Annual Report* (2012), Chapter III, Recommendation III/4. At <https://www.inslm.gov.au/reviews-reports/annual-reports> (viewed 11 September 2017); *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013) 67, 69–71 [269]–[276]. At <https://www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx> (viewed 11 September 2017).

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²¹² Australian Government, 'Cyber abuse', *Office of the eSafety Commissioner*. At <https://www.esafety.gov.au/esafety-information/esafety-issues/cyber-abuse> (viewed 10 October 2017).

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