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SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

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AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International welcomes the opportunity to submit this document to the United Nations (UN) Human Rights Committee (the Committee). This submission focuses on the key civil and political rights issues in Australia including the legal framework for human rights protection, the rights of Indigenous peoples and asylum seekers, freedom of expression, violence against women and the civil marriage law reform. It is not an exhaustive analysis of Australia's compliance with its obligations under the International Covenant on Civil and Political Rights (the Covenant).

2. LEGAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION

“The State party should: (a) enact comprehensive legislation giving de facto effect to all the Covenant provisions uniformly across all jurisdictions in the Federation; (b) establish a mechanism to consistently ensure the compatibility of domestic law with the Covenant; (c) provide effective judicial remedies for the protection of rights under the Covenant; and (d) organize training programmes for the Judiciary on the Covenant and the jurisprudence of the Committee.”

Concluding observations of the Human Rights Committee: Australia, CPR/C/AUS/CO/5 7 May 2009 at para 8.

In its concluding observations on Australia in 2009, the Committee expressed its concerns that the Covenant has not been incorporated into domestic law and that the State party has not yet adopted a comprehensive legal framework for the protection of the Covenant rights at the Federal level, despite the recommendations adopted by the Committee in 2000 and 2009. Accordingly, the Committee recommended that Australia take measures to give effect to all Covenant rights and to ensure that all persons whose rights have been violated have access to an effective remedy.¹ Despite these consistent recommendations Australia still has no comprehensive national framework for the protection of Human Rights.

In 2009 the National Human Rights Consultation recommended that a Human Rights Act be legislated to implement human rights principles into Australian federal law. This recommendation was rejected by Government in favour of developing a Human Rights Framework in April 2010 and a National Action Plan on Human Rights in 2012.

In 2012 in a positive development, the Parliamentary Joint Committee on Human Rights (PJCHR) was established under the Human Rights (Parliamentary Scrutiny) Act 2011 (Commonwealth). The PJCHR

¹ Concluding observations of the Human Rights Committee: Australia, UN Doc. A/55/40, 24 July 2000, paras.498-528, at paras. 514-15

provides regular, detailed analysis of new legislation that raises human rights concerns against the seven core UN human rights treaties to which Australia is a party, including the Covenant². Nevertheless, the Parliamentary reforms have proven ineffective to date in a number of areas. For example, the Government's Human Rights Compatibility statement for legislation on immigration regional processing claimed that the Bill did not "engage with the human rights and freedoms" because the "Government's view is that the Regional Processing Centres are managed and administered by the governments of the countries in which they are located, under the law of those countries".³ This analysis however is misconceived and is inconsistent with the views of the UN Special Rapporteur on the human rights of migrants in his end of visit statement who stated:

"All persons who are under the effective control of Australia, because inter alia they were transferred by Australia to [Refugee Processing Centres (RPC)] which are funded by Australia and with the involvement of private contractors of its choice, enjoy the same protection from torture and ill-treatment under the Convention against Torture. This is not only my own analysis but also that of the Australian Senate Inquiry of Nauru and a number of United Nations (UN) human rights mechanisms such as the U.N. Committee against Torture. If human rights violations occur in RPCs based in Nauru and PNG, the Australian government should be held accountable."⁴

Australia still does not have overarching federal human rights legislation to ensure coherence and compliance with its international human rights obligations, including protection of civil and political rights, across all state and territory jurisdictions. However, two jurisdictions within Australia have implemented their own human rights legislation: the Australian Capital Territory (ACT)'s *Human Rights Act* contains broad protections for civil and political rights; and Victoria's *Charter of Human Rights and Responsibilities Act*⁵ and defines "human rights" in the Act as "civil and political rights."⁶

2.1 THE JUDICIARY AND INDEPENDENT TRIBUNALS

In recent years, Ministers of the Government have been highly critical of Judges and independent Tribunals⁷ and the Amnesty International is concerned at the potential for a chilling effect on the independence of the Courts and Tribunals. Recently three Ministers of the Australian Government faced possible contempt charges until they unconditionally apologised to the Supreme Court of Victoria following public criticisms of that Court.⁸

2.2 HUMAN RIGHTS COMMISSION

Amnesty International is concerned about statements made by some senior members of the Australian Government which have sought to undermine the credibility of the Australian Human Rights Commission (AHRC) and its then President Gillian Triggs whose term ended in July 2017. For example, the Government

² Australia is a party to the seven core international human rights treaties, see further http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=AUS&Lang=EN

³ Migration Amendment (Regional Processing Arrangements) Bill 2015 Statement of Compatibility at Attachment A: [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5491_ems_69664dbc-a4f0-4331-9f52-590524956ff3/upload_pdf/502989.pdf;fileType=application%2Fpdf#search=%22Migration%20Amendment%20\(Regional%20Processing%20Arrangements\)%20Act%202015%20Attachment%20A%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5491_ems_69664dbc-a4f0-4331-9f52-590524956ff3/upload_pdf/502989.pdf;fileType=application%2Fpdf#search=%22Migration%20Amendment%20(Regional%20Processing%20Arrangements)%20Act%202015%20Attachment%20A%22)

⁴ Report on his official visit to Australia (1-18 November 2016) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20885&LangID=E>

⁵ *ACT Human Rights Act 2004*, available from: <http://www.legislation.act.gov.au/a/2004-5/current/pdf/2004-5.pdf>

⁶ *Charter of Human Rights and Responsibilities Act 2006*, 4, available from: [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/54D73763EF9DCA36CA2571B6002428B0/\\$FILE/06-043a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/54D73763EF9DCA36CA2571B6002428B0/$FILE/06-043a.pdf)

⁷ See for example, the Law Council of Australia press releases: 'Political attacks on the courts a very worrying trend', 13 June 2017'. The Attorney-General, Senator George Brandis QC was censured by the Australian Senate over his attacks on the president of the Australian Human Rights Commission. See 'Attorney-General George Brandis censured over Gillian Triggs affair', Sydney Morning Herald, 2 March 2015, <http://www.smh.com.au/federal-politics/political-news/attorneygeneral-george-brandis-censured-over-gillian-triggs-affair-20150302-13sm22.html>.

⁸ "Ministers escape contempt charges after 'unconditional apology' to Supreme Court" Sydney Morning Herald, 23 June 2017, <http://www.smh.com.au/federal-politics/political-news/ministers-make-unconditional-apology-for-criticism-of-victorias-supreme-court-20170623-gwx1zq.html>.

rejected a report by the AHRC that criticised the treatment of children in immigration detention centres by successive governments.⁹ Rather than engaging with the report's content, the then Prime Minister and other senior Government members criticised the timing of the report and questioned the motivations of the then President of the AHRC, showing a disturbing disregard for the role of the AHRC to conduct independent inquiries and report on human rights issues¹⁰.

2.3 RECOMMENDATIONS

Amnesty International recommends that the Australian authorities:

- Enact comprehensive legislation giving full legal effect to all the Covenant provisions uniformly across all jurisdictions in the federation;
- Respect the independence of the AHRC at all times, and
- Take action to comply with the Paris Principles¹¹ and ensure the resources and personnel necessary needed for the effective functioning of the AHRC.

3. THE RIGHTS OF INDIGENOUS PEOPLES

It has been 11 years since the Australian Government set 'Closing the Gap' targets to eliminate the stark disparity between Indigenous and non-Indigenous people in life expectancy, health, education and employment indicators.¹² While some important gains have been made in this time in areas of Indigenous health and education, Amnesty International maintains that successive governments have failed to effectively address the pre-existing inequalities, disadvantage and discrimination suffered by Indigenous peoples in Australia. The Special Rapporteur on the rights of indigenous peoples on her visit to Australia stated:

“It is woefully inadequate that, despite having enjoyed over two decades of economic growth, Australia has not been able to improve the social disadvantage of its indigenous population. The existing measures are clearly insufficient as evidenced by the lack of progress in achieving the “Close the Gap” targets¹³.

Aboriginal and Torres Strait Islander peoples still face discrimination in areas such as access to adequate legal assistance and over-representation in the criminal justice system.

⁹ Australian Human Rights Commission (AHRC), *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, 12 February 2015, <https://www.humanrights.gov.au/news/stories/locking-children-taints-us-all-says-commission-president>.

¹⁰ Following the release of *The Forgotten Children: National Inquiry into Children in Immigration Detention* report, the then Prime Minister said that it was “...a blatantly partisan politicised exercise and the Human Rights Commission ought to be ashamed of itself” and that “it would be a lot easier to respect the Human Rights Commission if it did not engage in what are transparent stitch-ups”. 12 February 2015 see <http://www.smh.com.au/federal-politics/political-news/human-rights-commission-should-congratulate-scott-morrison-tony-abbott-responds-to-report-on-children-in-immigration-detention-20150211-13ci2j.html>

¹¹ *Principles relating to the Status of National Institutions* (The Paris Principles) UNGA Res. 48/134 (20 December 1993).

¹² “Close the Gap”, Position paper on the Federal Budget 2016,

<https://www.humanrights.gov.au/sites/default/files/2016%20CTG%20Federal%20Budget%20position%20paper.pdf>.

¹³ “*Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, paragraph 47 UNGA A/HRC/36/46/Add.2 8 August 2017.

3.1 CONSTITUTIONAL REFORM

Since 2008 there have been a number of processes to work towards reforming the Australian Constitution to address racist elements and recognise Aboriginal and Torres Strait Islander people as traditional owners including the Expert Panel on Constitutional reform¹⁴ and a Joint Select Parliamentary Committee.¹⁵

In December 2015 Prime Minister Malcolm Turnbull and Leader of the Opposition Bill Shorten jointly appointed a Referendum Council tasked to advise the Government on progress and next steps towards a successful referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution.

In June 2016 Aboriginal and Torres Strait Islander representative organisations, peak bodies and groups came together, with the support of human rights and community groups, to issue a statement to the Australian Government, called the Redfern Statement.¹⁶ This statement called for Australia to adopt a new approach to working in partnership with Aboriginal and Torres Strait Islander Peoples and organisations to address these challenges.

On 30 June 2017, the Referendum Council handed down its report recommending a constitutionally entrenched "Voice to Parliament" in the form of a national Indigenous representative body.¹⁷ The report was met with varying responses from political leaders. The previous proposal to recognise Aboriginal and Torres Strait Islander people in the Constitution was rejected and the Recognise campaign, which has been operating for five years with millions of dollars invested, was abandoned. The previous recommendations to delete section 25 (a power which enables races to be excluded from voting) and insert a new section 116A (a prohibition on racial discrimination) did not feature as recommendations in this recent report. The Government is still considering the Referendum Council's recommendations and will either adopt, reject or suggest an alternative proposal.¹⁸

3.2 INDIGENOUS CHILDREN IN DETENTION

Indigenous children in Australia make up less than six per cent of young people aged 10 to 17 years, but make up 54 per cent of children detained,¹⁹ and are 25 times more likely to be in youth prison than non-Indigenous children.

In June 2015, Amnesty International released a National Report²⁰ and a report on Western Australia²¹ which both found that Australia was likely to be in breach of its obligations under international human rights conventions and made recommendations on law reform, supporting Indigenous led solutions and accountability.

¹⁴ See the final report of the Expert Panel, "Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution" available 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.

¹⁵ See the final report, "Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples" (June 2015) available at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Constitutional_Recognition/Final_Report.

¹⁶ The Redfern Statement Available from: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf.

¹⁷ The Referendum Council's "preferred option" emerged from their community consultations. The report also called for a separate declaration of recognition, outside of the constitution: "Containing inspiring and unifying words articulating Australia's shared history, heritage and aspirations". 30 June 2017 available from: <https://www.referendumcouncil.org.au/final-report>.

¹⁸ See Amnesty International, 'Update on Constitutional Reform', at <https://www.amnesty.org.au/constitutional-reform-august-2017/>.

¹⁹ Australian Institute of Health and Welfare 2017. Youth justice in Australia 2015–16. Bulletin 139. Cat. no. AUS 211. Canberra: AIHW: Indigenous children are now 25 times more likely to be locked up than non-Indigenous children. One of out every 35 Indigenous boys spent time in prison last year, compared to one out of every 650 non-Indigenous boys. See also, Commission for Children and Young People, 'The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian Youth Justice System', which finds that while Aboriginal children made up 15 per cent of all children at Malmesbury, they accounted for 30 per cent of this who were isolated, p. 56.

²⁰ Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* (2015).

²¹ Amnesty International, *There's always a brighter future: keeping Indigenous kids in the community an out of detention in Western Australia* (2015).

In the past 12 months, in addition to the overrepresentation of Indigenous children in prison, abuse and torture have been exposed. In July 2016 shocking footage was aired by Australian Broadcasting Commission's Four Corners²² exposing the horrific situation in the Northern Territory Don Dale Youth Detention Centre where children were subjected to prolonged abuse including isolation, restraint chairs, spit hoods and tear gas.

The Australian Government responded by convening a Royal Commission into the Protection and Detention of Children in the Northern Territory, which is due to report on 17 November 2017.

In September 2016, an Amnesty International report about Queensland²³ exposed abuse of children at the Cleveland Youth Detention Centre including issues of self-harm, the use of dogs to intimidate children, invasive search procedures and mechanical restraints, and made recommendations for reform, many of which are being addressed by the Queensland Government following an independent review.²⁴ More abuse has come to light including at Barwon in Victoria,²⁵ Reiby in New South Wales,²⁶ Bimber in the ACT,²⁷ and most recently the Banksia Hill Detention Centre in Western Australia.²⁸

In March 2017 the Special Rapporteur on the Rights of Indigenous Peoples, Ms Victoria Tauli-Corpus, conducted a country visit to Australia, identifying the detention of children policies as the most distressing part of her visit and a major human rights concern. In her report, she said:

"it is wholly inappropriate to detain children in punitive, rather than rehabilitative, conditions. Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime.²⁹...The focus urgently needs to move away from detention and punishment towards rehabilitation and reintegration."³⁰

The Australian Government has consistently said that criminal justice is a jurisdictional issue and have refused to intervene. However, the Australian Government cannot excuse itself of responsibility for implementing its human rights obligations and has the power to address these issues.³¹ It is responsible for ensuring all of Australia, including the jurisdictions, comply with international human rights law and to ensure that concrete and special measures are taken to redress systemic discrimination.³²

There have been inquiries into youth justice in every jurisdiction except South Australia.³³ Some of the key issues for law reform which have emerged are:

- Currently the age of criminal responsibility across Australia is 10 years old. Children as young as 10 and 11 have been detained by police for alleged crimes as petty as breaching bail by missing school and

²² See 'Australia's Shame' available at <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm>

²³ Amnesty International, 'Heads held high: Keeping Queensland kids out of detention, strong in culture and community' (2017).

²⁴ Independent review of youth detention centres in Queensland (2017).

²⁵ Amnesty International, 'Victorian Children report facing Don-Dale Abuse in Adult Prison' (3 April 2017) and also see Victorian Aboriginal Legal Service, Submission to the Inquiry into Youth Justice Centres (March 2017) and NATSILS, Submission to the Inquiry into Youth Justice Centres in Victoria (March 2017) as well as NATSILS, 'Media Release: A Government sanctioned 'shake-up' to Youth Justice' (7 February 2017).

²⁶ Amnesty International, 'NSW sexual abuse: Allegations of detention abuse pile up, Prime Minister must act' (5 July 2017)

²⁷ Amnesty International, 'Not just Don Dale: new Canberra child abuse allegations' (4 July 2017) and also see NATSILS, 'NATSILS calls for national action following reports from the Bimber youth justice centre (4 July 2017)'.

²⁸ Australian Broadcast Corporation News 'Banksia Hill: Damning report prompts call for specialised centres for young detainees' (18 July 2017).

²⁹ *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia* 8 August 2017, UNGA A/HRC/36/46/Add.2, para. 76.

³⁰ *Ibid*, para 82.

³¹ For example, see the Australian Constitution, section 51(xxix) gives the Australian Government the power to legislate for "external affairs"; and section 51 (xxvi) gives the Australian Government the power to legislate for "the people of any race, for whom it is necessary to make special laws." Regarding the race power however, note the concerns from many advocates and academics and the last CERD review of Australia in 2010 that the power itself raises issues of racial discrimination. UN doc. CERD/C/AUS/CO/15-17, 13 September 2010, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAUS%2fCO%2f15-17&Lang=en

³² See for example CERD General Comment 32: "The internal structure of States parties, whether unitary, federal or decentralized, does not affect their responsibility under the Convention, when resorting to special measures, to secure their application throughout the territory of the State. In federal or decentralized States, the federal authorities shall be internationally responsible for designing a framework for the consistent application of special measures in all parts of the State where such measures are necessary."

³³ These include the Royal Commission into Child Protection and Youth Detention in the Northern Territory, the Queensland Independent Review of Youth Detention Centres, Victorian Children's Commissioner Inquiry into the use of isolation, separation and lockdown at places of youth detention in Victoria, Western Australia's Office of the Inspector of Custodial Services' examination of "behaviour management" practices at Banksia Hill, New South Wales' Inspector of Custodial Services' inquiry into use of force against detainees in Juvenile Justice Centres in NSW. In Tasmania a police investigation resulted in charges of common assault being laid against a guard from Ashley Youth Detention Centre, the case is being heard in 2017. In the ACT, an incident at Bimber Youth Justice Centre on 6 May 2016 is according to the ACT Human Rights Commission: "subject to three separate external enquiries, including an investigation by the AFP."

arriving home moments after a bailed imposed curfew. The Committee on the Rights of the Child³⁴ and the National Children's Rights Commissioner³⁵ consider the age of criminal responsibility as unacceptably low. The low age of criminal responsibility impacts disproportionately on Indigenous children because of their over-representation in the criminal justice system.

- Mandatory sentencing remains an issue in Western Australia which has mandatory sentencing that are contrary to obligations under international human rights law. The Australian Law Reform Commission (ALRC) found that the Western Australian 'three strikes burglary' laws:

"... violate the principle of proportionality which requires the facts of the offence and the circumstances of the offender to be taken into account, in accordance with article 40 of [Convention on the Rights of the Child]. ... breach the requirement that in the case of children detention should be a last resort and for the shortest appropriate period, as required by article 37 of [the Convention on the Rights of the Child]. Mandatory detention violates a number of the provisions in the ICCPR including the prohibition on arbitrary detention in article 9. Both [the Convention on the Rights of the Child] and ICCPR require that sentences should be reviewable by a higher or appellate court. By definition, a mandatory sentence cannot be reviewed".³⁶

- The arrest and detention of children must be a measure of last resort, and the Convention on the Rights of the Child requires that pre-sentence detention is the exception, not the rule. On average, nearly 60 per cent of all Indigenous children detained in 2015/16 were unsentenced.³⁷ The consequences of this are severe and damaging and include separation from family and community; lack of access to therapeutic programmes; a greater likelihood of receiving a remand period following a future court appearance and receiving a sentence of imprisonment than young people who are released on bail,³⁸ and it increases the likelihood of repeated contact in the future.³⁹
- Currently across Australia children detained are at risk of abuse and torture, including solitary confinement and the inappropriate use of restraints. This must end immediately; these institutions must provide children with the best possible chance of reaching their potential, and respond to their needs, which vary based on culture, gender, age and disability. Growing evidence demonstrates the current youth prison model is ill-conceived, often exacerbates trauma, inhibits positive growth and fails to address community safety.⁴⁰ The current youth prison model should be replaced with a continuum of community-based programmes and, for the few youth who require secure confinement as a last resort, smaller homelike facilities that prioritise age-appropriate rehabilitation. The Government must fully resource independent inspectors and grant them unimpeded access to all forms of youth detention and immediately commence work to ensure that Australia's approach and inspection regimes are compliant with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.⁴¹
- The high overrepresentation of Indigenous children in prison must be addressed by strategies which confront the underlying causal factors which pushed them into the youth justice system in the first place.

³⁴ Committee on the Rights of the Child, Concluding Observations – Australia (20 October 2005) CRC/C/15/Add.268, [73].

³⁵ Australian Human Rights Commission: National Children's Commissioner, *Children's Rights Report 2016*, pages 189-191 and Recommendation 9.

³⁶ Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process* (Report 84), 19.63

www.alrc.gov.au/publications/19-sentencing/sentencing-options (accessed 2 January 2015). Since the ALRC made this recommendation the Western Australian Government has enacted two further mandatory sentencing provisions applicable to young people. The last publicly available data on the impact of three strikes burglary laws is the Western Australia Department of Justice's 2001 review of the legislation. The review found that 81 per cent of the 119 young people sentenced under the three strikes burglary laws were Indigenous. In 2001 the Aboriginal Justice Council described the three strikes burglary laws as "profoundly discriminatory in their impact on Aboriginal Youth."

³⁷ 270 out of 455 - Australian Institute of Health and Wellbeing, *Youth Detention Population in Australia 2017*, Tables s 2 and s 12. The proportion of non-Indigenous young people who were unsentenced rather than sentenced was slightly higher than for Indigenous young people (64 per cent) but the rate at which they are in unsentenced detention is 23 times lower.

³⁸ K Richards and L Renshaw, *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology (No 125), iii.

³⁹ Jesuit Social Services and Effective Change Pty Ltd 2013, *Thinking Outside: Alternatives to remand for children*, Summary Report, Jesuit Social Services, http://www.jss.org.au/files/Thinking_Outside_summary_report_FINAL.pdf.

⁴⁰ See The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1987-1991) which was the first national report in Australia examining the social, cultural, and legal issues behind the large numbers of Aboriginal Deaths in custody; and The Royal Commission into the Protection and Detention of Children in Northern Territory Interim Report (2017) which was triggered after Australian Broadcasting Corporation's Four Corners television programme aired shocking images of children and young people in prison in the Northern Territory.

⁴¹ Available at <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>. See Australian Human Rights Commission, "In safe hands? Protecting the rights of children and young people in youth justice centres - A summary of material contained in the National Children's Commissioner's Children's Rights Report 2016 and Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 'Guidelines on national preventive mechanisms', Note recommendations 5-15, and 24-29.

There is an urgent need for greater recognition of Indigenous culture as a positive support of children through Elders, law and justice groups, Indigenous communities and organizations. Indigenous designed and led prevention and diversion programmes for Indigenous children are the best chance for long-term, sustainable change. Many diversionary programmes across Australia have resulted in a reduction to the recidivism rates of participating offenders. In the Northern Territory, 76% of participants in a juvenile diversion scheme did not reoffend in the following 12 months after their participation in the programme.⁴²

- Data collection on youth justice in Australia is insufficient in all jurisdictions to inform a policy approach effectively. We need to be able to identify and consider better the needs of people with disabilities and children's experiences of child protection, family violence, homelessness and previous contact with the justice system. The Australian Government must establish or task a suitable national body to coordinate a national approach to data collection and policy development relating to Indigenous imprisonment and violence rates.
- The Australian Government plays a role in promoting national policy reforms which need coordinated action. The Australian Government currently works with jurisdictions through the Council of Australian Governments (COAG) to address Indigenous disadvantage, focussing on six 'Closing the Gap' targets, relating to Indigenous life expectancy, infant mortality, early childhood development, education and employment. Targets are a proven mechanism to achieve real progress and accountability for change, where they have national reporting obligations and measures of transparency.⁴³ The omission of targets to address on the overrepresentation of Indigenous people in the justice system and the disproportionate experience of Indigenous people as victims of violence in the Closing the Gap framework remains glaring. The Australian Government should immediately commit to setting justice targets within the Closing the Gap framework, in consultation with Indigenous people and organizations. The "*Special Rapporteur on the rights of indigenous peoples on her visit to Australia* recommended "Amend[ing] the "Closing the Gap" strategy to include specific targets to reduce of detention rates, child removal incidence and violence against women"⁴⁴.

3.3 LACK OF LEGAL AID SERVICES

Several reports have identified that the provision of adequate and accessible legal services for Aboriginal and Torres Strait Islander people in the areas of civil and family law will assist in reducing the level of over-representation in the justice system. Despite this, the Aboriginal and Torres Strait Islander Legal Services (ATSILS) and the Aboriginal Family Violence Prevention Legal Services (FVPLS), have faced cuts or declines in the real funding which only hampers their ability to assist Aboriginal and Torres Strait Islander communities.⁴⁵

The Australian Productivity Commission released a report confirming that there is significant unmet legal need among Indigenous people, the consequence being "further cementing" of their overrepresentation in the justice system. The Australian Government is failing to follow the recommendations of the Productivity Commission to address the unmet legal need that contributes to this over-representation. While funding cuts have been reversed, the unmet need remains serious.

There must be adequate funds for Indigenous legal services and five-year funding agreements with CPI increases for all Family Violence Prevention Legal Services (FVPLS) and the ATSILS.⁴⁶

⁴² See PricewaterhouseCoopers, Indigenous incarceration: Unlock the facts (2017) <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>.

⁴³ Amnesty International, A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia (2015), p 25.

⁴⁴ "*Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, paragraph 108(b) UNGA A/HRC/36/46/Add.2 8 August 2017

⁴⁵ NATSILS submission to Senate Inquiry on Access to Legal Assistance Services <http://www.natsils.org.au/portals/natsils/NATSILS%20Submission,%20Access%20to%20Legal%20Assistance%20Services.pdf>. When funding is aggregated across both providers real funding per person declined by about 20 per cent between 2000-01 and 2010-11.

⁴⁶ Productivity Commission, Access to Justice Arrangements, Inquiry report, Volume 2, p 761; Committee on the Elimination of Racial Discrimination, Concluding Observations – Australia CERD/C/AUS/CO/15-17 [19]; The Royal Commission into Aboriginal Deaths in Custody recommended that, to break the cycle of youth offending, Indigenous legal services should "be funded to such extent as will enable an

The consequences for Indigenous children extend to high rates of detention on remand, as advocacy when children come into contact with police and bail applications are required to avoid remand.

3.4 CRISIS IN OVER IMPRISONMENT OF INDIGENOUS WOMEN.

Women's imprisonment rates have risen much faster than men's in recent decades. Today, Aboriginal and Torres Strait Islander women's over imprisonment rates are nearly 2.5 times what they were at the time of the landmark 1991 report of the Royal Commission into Aboriginal Deaths in Custody.⁴⁷

The COAG Prison to Work Report 2016 recognised that:

"The drivers of Indigenous incarceration are particularly acute for female Aboriginal and/or Torres Strait Islander prisoners. They are more likely to have experienced previous victimisation, sexual abuse and family violence, poor mental health and serious mental illness, substance misuse, unemployment, and low educational attainment. Aboriginal and/or Torres Strait Islander women experience much higher rates of family and domestic violence generally and past studies have found that between 80 and 100 per cent of Aboriginal and/or Torres Strait Islander women in prison report having previously experienced physical or sexual abuse, including in early childhood. This is closely linked to their offending, particularly violent offending, whether directly in response to abuse or as a result of the trauma caused by these experiences."⁴⁸

Aboriginal and Torres Strait Islander women are overrepresented in Australia's prisons. In 2011, Aboriginal and Torres Strait Islander women made up 31 per cent of female prisoners in Australia, where female prisoners made up just one per cent of the prison population. Female Aboriginal and Torres Strait Islander prisoners are more likely to be imprisoned for violent offences than female non-Aboriginal and Torres Strait Islander prisoners⁴⁹.

RECOMMENDATIONS

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- Amnesty International recommends that the Australian authorities:
- Develop a national action plan to address Indigenous justice issues in an integrated manner, with leadership from the federal government and coordination across all jurisdictions.
- Act to ensure that mandatory sentencing laws are abolished in all jurisdictions.
- Raise the age of criminal responsibility to at least 12 and address laws that breach children's rights.
- End detention of children who have not been sentenced.
- Ensure treatment and conditions in youth detention centres provide children with the best chance to thrive and that they are treated fairly and humanely in compliance with the Convention Against Torture.
- Prioritize investment in prevention, early intervention and diversion to address the underlying causal factors of offending and ensure detention is a last resort.
- Federal, state and territory governments develop consistent data collection systems that track Aboriginal and Torres Strait Islander women's trajectory through criminal justice systems. Systems

adequate level of legal representation and advice to Aboriginal juveniles." [i]: E. Johnson (1991) Royal Commission into Aboriginal Deaths in Custody: National Report. Canberra: AGPS RCIADIC, Volume 5, Recommendation 234 (4: 177).

⁴⁷ Human Rights Law Centre and Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, available at https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf.

⁴⁸ Ibid p32.

⁴⁹ Australian Bureau of Statistics (ABS), Prisoners in Australia, 2016 (8 December 2016) (data tables); ABS, Estimates of Aboriginal and Torres Strait Islander Australians, June 2011 (August 2011); ABS, Corrective Services Australia, Australia, December Quarter 2016 (16 March 2017).

should ensure that data is disaggregated, including on the basis of race, sex, gender identity, intersex status, age, disability, socio-economic status and family responsibilities.

- Adequately fund Indigenous community-controlled legal services including unmet legal needs.
- Set targets to end the overrepresentation of Indigenous children in prison in partnership with Aboriginal and Torres Strait Islander peak organisations, through the Council of Australian Governments develop, in partnership with national justice targets.
- State and territory governments, in consultation with Aboriginal and Torres Strait Islander Legal Services, introduce custody notification laws that make it mandatory for the police to notify Aboriginal and Torres Strait Islander Legal Services of any Aboriginal and Torres Strait Islander person taken into custody.
- State and territory governments work with Aboriginal and Torres Strait Islander communities to monitor and evaluate the accessibility and appropriateness of existing Aboriginal and Torres Strait Islander sentencing processes for women.

4. THE RIGHTS OF REFUGEES AND ASYLUM SEEKERS

“The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 contains provisions which are in violation of Australia’s international human rights and humanitarian obligations. Australia must guarantee that all asylum claims are thoroughly examined through an individual assessment mechanism ... Push-backs and screening processes at High Sea do not meet these requirements. Australia must refrain from intercepting and pushing back boats – by any means necessary – in order to prevent them arriving on Australian territory.”

The UN Special Rapporteur on the human rights of migrants.⁵⁰

4.1 OPERATION SOVEREIGN BORDERS

4.1.1 A PUNITIVE APPROACH TO UNAUTHORISED MARITIME ARRIVALS

Operation Sovereign Borders is Australia’s military-led border control operation.⁵¹ In August 2012, Australia reintroduced an offshore detention regime for everyone arriving by boat to an external Australian territory (such as Christmas Island) and requiring them to be detained in a Refugee Processing Centre on Nauru or PNG. In mid-2013, Australia enacted further legislation that meant anyone who arrived by boat anywhere in

⁵⁰ *End of Mission Statement by the UN Special Rapporteur on the human rights of migrants on his official visit to Australia* (1-18 November 2016) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20885&LangID=E>

⁵¹ See Amnesty International’s report, *Australia, By Hook or by Crook: Australia’s Abuse of Asylum-Seekers at Sea* examined the legality and human rights impact of Operation Sovereign Border turnbacks, based on testimonies from people who had been on board boats that Australian officials intercepted between 2013 and 2015.

Australia – including the mainland – would be barred from seeking asylum in Australia and instead transferred to an offshore centre. This policy has been staunchly maintained by the current Australian government since 2013, under the banner of “Operation Sovereign Borders.”⁵²

The UN Special Rapporteur noted:

“The Australian authorities have put in place a very punitive approach to unauthorised maritime arrivals, with the explicit intention to deter other potential candidates. Unauthorised maritime arrivals are treated very differently from unauthorised air arrivals, especially when these arrivals result in protection claims. This distinction is unjustifiable in international refugee and human rights law and amounts to discrimination based on a criterion – mode of arrival – which has no connection with the protection claim. At all levels, unauthorised maritime arrivals face obstacles that other refugees do not face, including mandatory and prolonged detention periods, transfer to RPCs in foreign countries (Papua New Guinea and Nauru), indefinite separation from their family, restrictions in the social services and no-access to citizenship.”⁵³

Amnesty International is deeply concerned by the systematic erosion of human rights protection for asylum seekers and refugees that has occurred under successive Australian governments.⁵⁴ Use of mandatory indefinite detention of asylum seekers and the offshore detention of all asylum seekers who arrive by boat, continues to have a devastating effect on the physical and mental health of detainees. Many of these mental health and physical impacts have also been experienced by young children. The impact of being indefinitely detained in appalling conditions is further exacerbated by the subsequent denial of adequate physical and mental health care information, services and support.

Australia’s policy regarding all asylum seekers who endeavour to arrive by boat is to either: return them to Indonesia (by boat ‘turnbacks’ at sea); send them back to their country of departure (“takebacks”); or transfer them to offshore immigration detention centres in the Republic of Nauru or on Manus Island in Papua New Guinea (PNG). This is despite a 2016 PNG Supreme Court decision which found the Manus Island detention centre was illegal and unconstitutional and the Australian and PNG Governments agreeing that it will be closed by the end of October 2017.⁵⁵

An Amnesty International researcher visited Nauru in July 2016⁵⁶ and found that the refugees and asylum seekers on Nauru routinely face neglect by health workers and other service providers who have been hired by the Australian government, as well as frequent unpunished assaults by local Nauruans. They endure unnecessary delays and at times denial of medical care, even for life-threatening conditions⁵⁷. Many have dire mental health problems and suffer overwhelming despair.

Amnesty International visited Manus Island detention centre in November 2013 and March 2014 and documented a host of human rights violations there, including inhumane conditions, indefinite detention and inadequate treatment for high rates of mental illness.⁵⁸

As of 30 June 2017, there were 371 people living in the detention facilities on Nauru (including 42 children) and 803 adult males in detention on Manus Island.⁵⁹

There are approximately a further 820 refugees living on Nauru in the community, who also face serious security risks and have inadequate access to healthcare, educational and employment opportunity.⁶⁰

⁵² See Amnesty International, *Islands of Despair*, October 2016, <https://www.amnesty.org/en/documents/asa12/4934/2016/en/> at pp.9 and 10.

⁵³ *End of mission Statement by the UN Special Rapporteur on the human rights of migrants on his official visit to Australia* (1-18 November 2016) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20885&LangID=E>

⁵⁴ *End of mission Statement by the UN Special Rapporteur* (Ibid)

⁵⁵ Ben Doherty, Helen Davidson and Paul Karp, 'Papua New Guinea court rules detention of asylum seekers on Manus Island illegal', *The Guardian*, 26 April 2016, <https://www.theguardian.com/australia-news/2016/apr/26/papua-new-guinea-court-rules-detention-asylum-seekers-manus-unconstitutional>; Ben Doherty, 'Australia confirms Manus Island Detention Centre will close', *The Guardian*, 17 August 2016, https://www.theguardian.com/australia-news/2016/aug/17/manus-island-detention-centre-to-close-australia-and-papua-new-guinea-agree?CMP=Share_iOSApp_Other, recent statements by the PNG Attorney General cast some doubt on the timing however; <http://www.sbs.com.au/news/article/2017/08/25/new-png-attorney-general-roadblocks-manus-detention-centre-closure>

⁵⁶ Amnesty International, *Islands of Despair*, October 2016, <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>

⁵⁷ Amnesty International, *Islands of Despair*, October 2016, <https://www.amnesty.org/en/documents/asa12/4934/2016/en/> and <https://www.theguardian.com/australia-news/2017/aug/21/three-pregnant-refugees-and-nearly-50-others-denied-medical-transfers-from-nauru>

⁵⁸ Amnesty International, *This Is Breaking People*, November 2013,

http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf and *This is still breaking people*, May 2014, https://static.amnesty.org.au/wp-content/uploads/2016/09/This_is_still_breaking_people_update_from_Manus_Island.pdf

⁵⁹ <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-30-june-2017.pdf>

In November 2016 an agreement was reached between the Governments of Australia and the United States (US) for the US to accept an undisclosed number of asylum seekers⁶¹. The deal is understood to relate to up to 1,250 refugees held in Australia's offshore detention camps on Nauru and Manus Island.

4.2 CLOSURE OF MANUS ISLAND CENTRE

The Australian Government has announced that it is closing the Manus Regional Processing Centre at the end of October 2017. However, the new PNG Attorney-General has indicated that this may not have been agreed by his Government⁶². The proposed closure will likely cause even more suffering to those affected. There have been reports that Australian Federal Police have been assisting the Papua New Guinean police and other authorities in attempts to forcefully clear the RPC Foxtrot compound, one of the first of five compounds to be closed (Charlie compound has already been closed), by cutting off water and electricity.⁶³ Forcing refugees and asylum seekers out of the centre into the general community is not the answer, and risks making their already desperate situation even worse. Repeated attacks and threats from some members of the local community have left refugees terrified of leaving the compound. The refugees have – understandably – protested the attempts to drive them into an even worse situation on Manus, and there is now a serious risk that peaceful protests will be met with excessive force by the PNG police.

In the lead up to closing the centre, over the last six months on Manus Island, a number of serious incidents have occurred, including; the PNG military firing into the centre in April, injuring 9 people; the death in August of Hamed Shamshiripour, found hanging outside the transit accommodation (the autopsy report still has not been released); and in September, the Supreme Court of Victoria upholding the payment of \$70 million in damages by the Federal Government to those detained on Manus (Australia's largest ever human rights payout).

On 27 July 2017 the UN High Commissioner for Refugees, Filippo Grandi, noting the punishing conditions faced by over 2000 women, men on children on Manus and Nauru, stated that UNHCR had: “no other choice but to endorse the relocation of all refugees on Papua New Guinea and Nauru to the United States, even those with close family members in Australia.”⁶⁴ Making it clear the both PNG and Nauru are not suitable locations for settling refugees.

Given the serious safety issues on PNG and the fact that PNG is clearly not suitable to settle vulnerable refugees, Amnesty International believes that all asylum seekers and refugees should be brought to Australia immediately and ensure that all those granted refugee status have the right to settle in Australia or third countries.

4.3 MANDATORY DETENTION

Australia's *Migration Act 1958* requires all “unlawful non-citizens” (that is, people who are not Australian citizens and do not have a valid visa) to be detained, regardless of circumstances, until they are granted a visa or leave the country. This policy was introduced in 1992 and has been maintained by successive governments. Mandatory detention applies to many groups, including people who overstay their visas or

⁶⁰ Amnesty International, *Islands of Despair*, October 2016, <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>

⁶¹ Q&A: what is the Australian refugee deal and why has it angered Trump? *The Guardian*, available at <https://www.theguardian.com/australia-news/2017/feb/02/qa-what-is-the-australian-refugee-deal-and-why-has-it-angered-trump>

⁶² SBS report 'PNG Attorney-General roadblocks Manus detention centre closure' 26 August 2017 available at: <http://www.sbs.com.au/news/article/2017/08/25/new-png-attorney-general-roadblocks-manus-detention-centre-closure>

⁶³ ABC Journalist Eric Tlozek recently filed a report claiming, “Detainees said a large group of local police and centre guards were being directed by Australian Federal Police and Australian Border Force Officers as to how to close the compounds and move the men inside.” 4 August 2017.

See Australian Broadcasting Commission, <http://www.abc.net.au/news/2017-08-04/manus-detention-standoff-between-asylum-seekers-and-guards/8774524>

⁶⁴ UNHCR website: <http://www.unhcr.org/en-au/news/press/2017/7/597217484/unhcr-chief-filippo-grandi-calls-australia-end-harmful-pr>

breach their visa conditions. However, the policy disproportionately affects asylum seekers who arrive in Australia without authorisation.⁶⁵

As of 30 June 2017 there were 1400 people in immigration detention onshore (including Christmas Island). While 38.6% had been detained for under 90 days, over 22% had been detained for over 730 days – that is, more than two years.

The Australian Human Rights Commission March 2017 Snapshot Report “Asylum Seekers, Refugees and Human Rights”,⁶⁶ identifies a number of the key human rights articles where Australia’s mandatory detention policy breaches the Covenant. These include:

- Article 9(1) not to subject anyone to arbitrary detention
- Article 9(4) to uphold the right of people who are detained to challenge the legality of their detention in the court
- Article 10(4) to treat people in detention with humanity and respect
- Article 7 not to subject anyone to torture and cruel, inhuman or degrading treatment or punishment
- Article 9(4) to ensure that people who are arrested are informed of the reasons for their arrest and charges against them (*this is of particular concern for those who are retained on the basis of adverse security assessments*)⁶⁷.

4.4 CHILDREN IN DETENTION

Children should never be placed in immigration detention, because it is never in their best interests. Amnesty International supports the findings and all recommendations made by the AHRC in its report, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, which found that ‘prolonged detention is having profoundly negative impacts on the mental and emotional health and development of children’ and that ‘...the mandatory and prolonged detention of children breaches Australia’s obligation under article 24(1) of the Convention on the Rights of the Child’.⁶⁸

Amnesty International notes that the government has made some progress releasing children and families from onshore detention facilities, by moving them into so-called ‘community detention’ arrangements, or into the community with their families on bridging visas. Serious concerns remain, however, for those remaining on Nauru (families, women and children are not taken to Manus).

Concern also remains for families and children who have been returned from Nauru to Australia for medical treatment. A recent announcement from the Minister for Immigration is that these families will be removed from the housing they have been provided with (under Community Detention arrangements) and instead be allowed into the community on Bridging Visas (that include work rights but no access to welfare support). This includes young women who were raped on Nauru and have subsequently had a baby as a result. If they do not like this arrangement their only other choice is to return to detention on Nauru.

4.5 RECOMMENDATIONS

Amnesty International recommends that the Australian authorities:

- End mandatory detention;

⁶⁵ The Guardian, ‘Three pregnant refugees and nearly 50 others denied medical transfers from Nauru’ available at <https://www.refugeecouncil.org.au/getfacts/seekingsafety/asylum/detention/key-facts/>

⁶⁶ <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/asylum-seekers-refugees-and-human-rights-snapsho-0>

⁶⁷ This practice was again criticized by the UN in May 2016, see <http://www.smh.com.au/national/australia-slammed-for-locking-up-refugees-on-secret-asio-advice-20160515-govuwc.html>

⁶⁸ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

- Bring all asylum seekers and refugees on Nauru and Manus Island to Australia immediately and ensure that all those granted refugee status have the right to settle in Australia or third countries;
- Ensure that the families and children who have been transferred from Nauru to Australia for medical treatment when released into the community on bridging visas receive equal support to all other asylum seekers; and, if their claims for asylum have not been determined then this be done as a matter of urgency and, once completed those found to be refugees should be granted permanent residency here or resettled to another country (as part of the USA deal);
- Engage in genuine search and rescue operations, conducted with full respect for international human rights law, followed by safe disembarkation in Australia;
- End the prohibition on maritime arrivals claiming asylum; and
- End the practice of turnbacks at sea⁶⁹.

5. FREEDOM OF EXPRESSION

5.1 PRESSING THREATS TO FREEDOM OF EXPRESSION IN AUSTRALIA

In October 2016 the United Nations Special Rapporteur on the situation of Human Rights Defenders, Michel Forst, provided clear analysis of many of the challenges being faced in Australia to the right to freedom of expression.⁷⁰ The Special Rapporteur called on the Australian Government to urgently dispel civil society's growing concerns about the 'chilling effect' of its recent laws, policies and actions constraining the rights of human rights defenders. He was astonished by the mounting evidence of a range of cumulative measures that have levied enormous pressure on Australian civil society.

The Special Rapporteur's report also criticizes the Government's measures to curb whistleblowers, public servants or contractors, to share information in the public domain about serious human rights abuses in off-shore detention centres. Amnesty International acknowledges that that the recently introduced Australian Border Force Amendment (Protected Information) Bill 2017 may help address many of these concerns with the introduction of a much narrower definition of 'Immigration and Border Protection information'. However as the Bill itself reveals, the legislation has been introduced because of a legal challenge to the original act.

The ALRC's *Final Report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* identified a number of laws "as being of concern" from a freedom of expression perspective. These include, among other things, various terrorism-related secrecy offences in the *Criminal Code, Crimes Act 1914* (Cth)

⁶⁹ Amnesty International, "By Hook or by Crook Australia's Abuse of Asylum Seekers at Sea", 2015, p38 https://www.amnestyusa.org/files/australia-by_hook_or_by_crook.pdf

⁷⁰ He referred to a range of issues including:

- Australia's high concentration of media ownership compared to other Western countries. Ownership of national and the newspapers of each capital city are dominated by two corporations, which control the vast majority of media.
- new section 35P of the Australian Special Intelligence Operation Act,
- data-retention scheme to retain metadata for two years which will have serious implications for journalists and whistleblowers.
- the *Environment Protection and Biodiversity Conservation Act 1999* which 'tried to block environmental groups' access to the courts under the key federal environmental law'.

UN Website accessed 17 August 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=>

and *Australian Security Intelligence Organisation Act 1979* (Cth) (ASIO Act) and, in particular, those relating to 'special intelligence operations' (section 35P).⁷¹

Amnesty International agrees with the ALRC's recommendation that counter-terrorism and national security laws "should be subject to further review to ensure that the laws do not interfere unjustifiably with freedom of speech, or other rights and freedoms".⁷²

5.2 RECOMMENDATIONS

Amnesty International recommends that the Australian authorities:

- Review all counter-terrorism and national security laws to ensure that the laws do not interfere unjustifiably with freedom of speech, or other rights and freedoms.

6. GENDER-BASED VIOLENCE

"The scourge of violence against women takes on average the lives of 1 or 2 women every week throughout the country; one in three Australian women has experienced physical violence, and almost one in five Australian women have experienced sexual violence. One in four Australian women has experienced physical or sexual violence at the hands of a current or former male partner."

*Dubravka Šimonović, the United Nations Special Rapporteur on Violence against women, its causes and consequences*⁷³

6.1 NATIONAL ACTION PLAN

Public attention to the issue of violence against women in Australia has significantly increased over the past two decades, primarily due to campaigning by civil society organizations. Federal, State and Territory Governments in Australia have all stated that addressing violence against women is a high priority. The Council of Australian Governments (COAG) is currently implementing *the Third Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan), which was launched on Friday, 28 October 2016 by the Prime Minister⁷⁴ At the mid-point of the National Plan, there is evidence of some modest reduction in domestic violence. However, issues such as securing long-term investment have been raised in evaluations that need to be addressed in order to ensure its long-term success.

While the National Plan is positive, there remain concerns about a number of other issues that must be addressed. In particular, Amnesty International wishes to raise the continuing high rates of violence against

⁷¹ Ibid, p23[1.81].

⁷² Ibid, p.92[4.76]

⁷³ The statement is available at <http://un.org.au/2017/02/27/end-of-mission-statement-by-dubravka-simonovic-uk-2017-02-27>

⁷⁴ See *Press Release* available at <https://www.pm.gov.au/media/2016-10-28/government-strengthens-investment-reduce-violence-against-women-and-children>.

Indigenous women and girls, and the experiences of refugee and migrant women and girls. In addition, in her “End of Mission statement the United Nations Special Rapporteur on Violence against women, its causes and consequences”, Dubravka Šimonović, stated:

"The National Plan insufficiently addresses the need for adequate crisis services, shelters or refuges for women and to provide them with opportunities for empowerment. Specific National Action Plan on violence against women and gender equality should be elaborated to address the situation of indigenous women".⁷⁵

6.2 VIOLENCE AGAINST ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN AND GIRLS

Violence against Indigenous women and girls is disproportionately high in Australia. In 2015, Aboriginal and Torres Strait Islander women experienced physical assault at 4.9 (in New South Wales), 9.1 (in South Australia) and 11.4 (in Northern Territory) times the rates for non-Indigenous women according to police records⁷⁶.

Amnesty International is also concerned about conditions in detention for Indigenous women, including female prisoners who are pregnant or mothers. The COAG's *Prison to Work Report* raised the issue of prisoners' access to their children. "Pregnant female prisoners do not always know if they are going to be able to keep their babies with them in prison until just before the baby is due."⁷⁷

Evidence suggests many girls in youth detention across Australia, in particular Aboriginal and Torres Strait Islander girls, are victims of violence, abuse and disadvantage. In a recent report, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, the authors found that,

"The overwhelming majority of Aboriginal and Torres Strait Islander women in prison are survivors of physical and sexual violence. Many also struggle with housing insecurity, poverty, mental illness, disability and the effects of trauma. These factors intersect with, and compound the impact of, oppressive and discriminatory laws, policies and practices, both past and present. Too often, the impact of the justice system is to punish and entrench disadvantage, rather than promoting healing, support and rehabilitation."⁷⁸

Girls in youth detention in the Northern Territory and Queensland have reported sexual abuse and harassment by staff. Concerns have been raised in Western Australia and Victoria over attitudes of staff and other detainees towards girls in detention, with jokes about violence against women, threats of rape, and derogatory language directed towards women not uncommon.⁷⁹

Evidence from Queensland⁸⁰ and the Northern Territory⁸¹ shows girls being asked to undress and then cough and squat during searches. This not only goes against international human rights standards – which state intrusive searches should be undertaken only if 'absolutely necessary' – but can often re-traumatise girls who have experienced previous abuse.

By law, girls and boys should be held separately in detention. However, due to the smaller number of girls in detention and inadequate facilities, girls are often held in 'separation'⁸² (solitary confinement) and may be

⁷⁵ The statement is available at <http://un.org.au/2017/02/27/end-of-mission-statement-by-dubravka-simonovic-United-Nations-Special-Rapporteur-on-violence-against-women-its-causes-and-consequences/>

⁷⁶ Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Table 4A.12.6 available at <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>

⁷⁷ <https://www.coag.gov.au/sites/default/files/reports/prison-to-work-report.pdf>, p33

⁷⁸ Human Rights Law Centre and Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, p5. Available at https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf.

⁷⁹ Amnesty International, <https://www.amnesty.org.au/indigenous-girls-risk-detention/>

⁸⁰ Independent Review of Youth Detention, 'Review of youth detention centres' available at <http://www.youthdetentionreview.qld.gov.au/>

⁸¹ Royal Commission into the Protection and Detention of Children in the Northern Territory, available at <http://www.youthdetentionreview.qld.gov.au/>

⁸² Office of the Inspector of Custodial Services, *Behaviour management practices at Banksia Hill Detention Centre* <http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>. June 2017.

subject to 'overly restrictive regimes'.⁸³ Amnesty International is of the view that children must never be held in solitary confinement.

Dubravka Šimonović, the United Nations Special Rapporteur on Violence against women, its causes and consequences in her report on her visit to Australia recommended that "the Government develop, in close consultation with indigenous women, a specific national action plan on violence against Aboriginal and Torres Strait Islander women."⁸⁴

6.3 FEMALE ASYLUM SEEKERS AND MIGRANTS

Amnesty International has raised concerns about the safety of female asylum seekers and refugees detained on the island of Nauru. For women and children both inside and outside of the Refugee Processing Centre, sexual assault is a serious risk. Amnesty International received credible testimonies about numerous incidents of gender-based violence that are detailed in the recent report, *Islands of Despair*⁸⁵.

Female migrants and refugees are also at risk violence in Australia, in the community and in their homes. Of particular concern is the ability of migrant and refugee women who are experiencing violence to access available services and assistance. One of the key studies into violence against refugee and migrant women, undertaken by Australia's National Research Organisation for Women's Safety (ANROWS) ASPIRE Project,⁸⁶ found that a lack of English and knowledge of the Australian legal system were compounded by a number of other factors which contributed to making this group particularly vulnerable. The other significant factors identified included: first, their visa status, particularly when the visa sponsorship established a "dynamic of women's dependency on men, and when the conditions of temporary visas restricted women's access to employment, social security, housing, healthcare, childcare and education";⁸⁷ second, where social, religious and cultural practices contributed to a normalization of family violence, often compounded by threats of community ostracism and violence if those experiencing violence took action against their husband; third, where services are already under immense pressure to respond to family violence generally they are even further under resourced to deal with the specific needs of migrant and refugee women (with complex legal, immigration and protection matters compounded by the lack of appropriate interpreters); fourth, for women, particularly in regional areas, experiences of discrimination, racism and cultural isolation were also reported. While women in this group experienced the same types of violence as other women (including physical, sexual, emotional, psychological and financial violence) they also experienced immigration related violence, including threats of deportation (often without their children), visa cancellation, and withholding immigration documents, as methods to threaten, intimidate, isolate and control.⁸⁸

RECOMMENDATIONS

Amnesty International recommends that the Australian authorities:

- Increased funding and support for Aboriginal and Torres Islander community-led prevention and early intervention efforts to reduce violence against women and offending by women.
- State and territory governments review laws and policies to identify those which unreasonably and disproportionately criminalise Aboriginal and Torres Strait Islander women, and

⁸³ Armytage and Ogloff 'Meeting needs and reducing offending Youth justice review and strategy Part 2 July 2017 available at http://assets.justice.vic.gov.au/justice/resources/6720e36e-3c1d-405f-9731-efce33385481/report_meeting_needs_and_reducing_offending_part2_2017.pdf

⁸⁴ The United Nations Special Rapporteur on Violence against women, its causes and consequences, "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, paragraph 116

⁸⁵ Amnesty International, *Islands of Despair*, October 2016, <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>

⁸⁶ Australia's National Research Organisation for Women's Safety, "Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia." Research Report, Issue 07, December 2016 http://media.aomx.com/anrows.org.au/Aspire_Horizons_FINAL.pdf

⁸⁷ *Ibid*, P4

⁸⁸ *Ibid*, P5

- Develop, in close consultation with indigenous women, a specific national action plan on all forms of violence against Aboriginal and Torres Strait Islander women.
- Train and resource services that come into contact with immigrant and refugee women to understand and respond to the dynamics of family violence and facilitate referral pathways to specialist support.
- Create multi-language written and audio resources for broad dissemination in places that are central to daily life (such as health services, housing services, shopping and community centres) to provide information about family violence, contact information for crisis support and other family violence services, and what to expect from family violence services and justice responses.
- Provide ongoing training to all parts of the family violence system about the additional risk factors, immigration issues, and support needs of immigrant and refugee women and their children.
- Ensure timely processing of applications for complementary protection because of family violence.
- Remove barriers to Centrelink income support and Medicare-funded services for any victim of family violence.

7. CIVIL MARRIAGE LAWS

7.1 POSTAL PLEBISCITE

Amnesty International unequivocally opposes discrimination in civil marriage laws on the basis of sexual orientation, intersex status or gender identity. Love does not discriminate, and neither should our laws. Amnesty International notes that there have been several inquiries and bills introduced into the Parliament relating to marriage equality. Despite the obvious importance of removing discrimination from the *Marriage Act 1961* (Cth), and overwhelming public support for this move, the Australian Parliament has so far failed to act. There is now an urgent need for the Australian Parliament to legislate to remove discrimination from the Marriage Act. LGBTIQ Australians have waited too long to be treated as equals and for their relationships to be treated with respect. At the time of writing the Government has decided to conduct a postal plebiscite on the issue.

7.2 RECOMMENDATIONS

Amnesty International recommends that the Australian authorities:

- Replace the phrase “a union of a man and a woman” with “a union of two people” in section 5(1) of the Marriage Act noting that any legislative changes to the Marriage Act must ensure not to interfere with or change the status of existing marriages of people who identify as intersex or transsexual.

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FOR HUMAN RIGHTS.
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TO ONE PERSON, IT
MATTERS TO US ALL.**

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AUSTRALIA

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE,

121ST SESSION, 16 OCTOBER -10 NOVEMBER 2017

Amnesty International welcomes the opportunity to submit this document to the United Nations (UN) Human Rights Committee (the Committee). This submission focuses on the key civil and political rights issues in Australia including the legal framework for human rights protection, the rights of Indigenous peoples and asylum seekers, freedom of expression, violence against women and the civil marriage law reform. It is not an exhaustive analysis of Australia's compliance with its obligations under the International Covenant on Civil and Political Rights (the Covenant).