AUSTRALIAN LAWYERS FOR HUMAN RIGHTS

2016 Grades for human rights performance

FEDERAL GOVERNMENT – OVERALL GRADE: F

Summary

Outstanding International Obligations & A Human Rights Act

The Federal Government's ongoing failure to properly implement its outstanding human rights obligations to the international community and to its own citizens was again put on show in Geneva in March 2016 during the Australian Government's response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council. Australia's second Universal Periodic Review (UPR) was held in November 2015. 110 countries spoke at the review and provided 291 recommendations, many concerned with indigenous rights, asylum seeker rights, women and children's rights and the rights of the homeless and mentally ill. The Australian Government accepted 150 of those recommendations, 50 were noted to consider further and 90 were noted. However, as at April 2015, 90% of the accepted recommendations from Australia's first UPR in January 2011 still remained outstanding or only partially implemented. The most efficient way to resolve Australia's recalcitrance at international law would be for the Federal Government to introduce a federal Human Rights Act.

The protection of human rights is at a low point in Australia. The Federal Government has all too often failed to respond to policy challenges in a manner consistent with respect for human rights. Indeed, this year we have seen serious human rights violations in respect of the treatment of people seeking asylum, unprecedented national security measures, an ongoing crisis in protecting the rights of Indigenous Australians, a failure to realise marriage equality for LGBTI Australians and an increasing normalisation of hate speech. These issues will be addressed thematically in a separate document.

NT – OVERALL GRADE: E

Breakdown

We have assigned the NT government an E grade. The new Labor Gunner Government has been in power for less than four (4) months, so this grade is based on the NT's performance for the whole year. ALHR notes the new Government's public commitments regarding future actions to address existing human rights related concerns in the NT and is hopeful 2017 will see these commitments realised.

Incarceration Issues

The Northern Territory continues to have substantial issues with incarceration including the significant over-representation of Indigenous people in the criminal justice system.

The NT is also grappling with a number of problems with the newly constructed Darwin Correctional Centre.

The new Gunner Government initially refused to release the report titled "*A Safer Northern Territory through Correctional Interventions*", otherwise known as the Hamburger Report, which provides a scathing assessment of the NT criminal justice system and recommends closing Don Dale.

The Government then issued a redacted version of the report after it was leaked to the media. The Northern Territory Government has not committed to implementing all 172 recommendations contained within the Hamburger report.

Youth Detention

The Royal Commission into the Protection and Detention of Children in the Northern Territory is in progress. The six-month deadline initially set for the Commission was heavily criticised for being too rushed, and the Commission has now received a four (4) month deadline extension. There have been various delays and issues with the Commission, including the NT Government's solicitor attempting to stop young witnesses giving evidence.

The NT has said it is committed to closing Don Dale and building a new juvenile detention facility, but that this would wait until after the conclusion of the Royal Commission. Meanwhile juvenile detainees continue to be held at Don Dale.

Lack of a Charter of Rights

The Northern Territory still does not have a Charter of Rights. ALHR supports the introduction of a Charter of Rights, similar to the model operating in Victoria. A Human Rights Act or Charter improves how government operates, it improves efficiency in bureaucratic decision-making, it injects humanity into the governance process and can provide the community with recourse when their rights are violated.

Diversity in Parliament and Cabinet

The Northern Territory Parliament is now more diverse than ever before, with a near equal split between men and women. Representatives include an openly gay Aboriginal man Chansey Paech and Yolngu elder Yingiya Mark Guyula. The NT Cabinet is also diverse with five (5) women and three (3) men serving as ministers. There is however no Indigenous representation in the NT Cabinet, despite approximately 30% of the NT population being Indigenous, and despite the existence of a number of Aboriginal MLAs.

TASMANIA – OVERALL GRADE: E

Breakdown

Grade F – removing legal protections against hate speech

By introducing a Bill which would allow hate speech for religious reasons, the Tasmanian Government in 2016 has led the charge in bad policy. The *Anti-Discrimination Amendment Bill 2016* seeks to remove legal redress for people who are victims of hate speech if the speech is for "religious purposes". Hate speech is public comment that would reasonably be expected to incite hatred, serious contempt or serious ridicule, or would humiliate, offend or ridicule. The Bill does not discriminate, allowing 'religious' hate speech to be used against people on the basis of race, gender, sexual preference, gender identity, disability, marital status, pregnancy or age.

The timing of the Bill was intended to allow religious groups to be free from legal redress in relation to any comments that might amount to hate speech in the lead up to the proposed marriage equality plebiscite, showing the contempt of the Government for Tasmania's LGBTI community.

Grade E – permanent repeal of anti-discrimination law

The Liberal Party conference passed a motion to repeal altogether the "humiliate, offend or ridicule" test in the Anti-Discrimination Act. This will permanently remove legal redress for discriminatory speech and is contrary to the right to human dignity and respect.

No amendment has been introduced – this is a pre-emptive grade for 2017.

Grade A – legal recognition of Tasmania's first peoples

The Tasmanian Parliament has taken positive steps in indigenous reconciliation, in unanimously passing the *Constitutional Amendment (Constitutional Recognition of Aboriginal People) Bill 2016.* This was an initiative led by the Tasmanian Premier, Will Hodgman who said that "it is a very important step in reconciliation"… and a key step in his government's commitment to "re-set our relationship with Tasmanian Aboriginal people".

The Tasmanian Constitution now reads:

> *And whereas the Parliament, on behalf of all the people of Tasmania, acknowledges the Aboriginal people as Tasmania's First People and the traditional and original owners of Tasmanian lands and waters; recognises the enduring spiritual, social, cultural and economic importance of traditional lands and waters to Tasmanian Aboriginal people; and recognises the unique and lasting contributions that Tasmanian Aboriginal people have made and continue to make to Tasmania.*

Lack of a Charter of Rights

Tasmania still does not have a Charter of Rights. ALHR supports the introduction of a Charter of Rights, similar to the model operating in Victoria. A Human Rights Act or Charter improves how government operates, it improves efficiency in bureaucratic decision-making, it injects humanity into the governance process and can provide the community with recourse when their rights are violated.

WA – OVERALL GRADE: D -

Breakdown

Native Title and Legal Recognition of Western Australia's First Peoples

The Western Australian parliament has taken positive steps in relation to Native Title and legal recognition of Western Australia's First Peoples. Through an Act of the WA Parliament entitled *Noongar (Koorah, Nitja, Boordahwan)(Past, Present, Future) Recognition Act,* the Noongar people are now formally recognised as the Traditional Owners of the south-west region of Western Australia. The Act fulfils a central pre-condition to the future commencement of the South West Native Title Settlement. The *Aboriginal Heritage Amendment Bill*, introduced in 2014, is still being debated in Parliament and there is still work to do on this bill to ensure that the Act does not erode the legal protection of sites of importance to Indigenous Western Australians.

Closure of Remote Communities

The WA Government wants to close remote Aboriginal communities. Former PM Tony Abbott said living in these communities is a 'lifestyle choice'. In September 2014 the Federal Government announced that it would no longer fund essential municipal services including supply of power, water, and management of infrastructure in remote Aboriginal communities in Queensland, Victoria, NSW, Western Australia, and Tasmania, despite having done so for decades. the Western Australian government signed an agreement with the Federal Government for funding of $90 million which would fund services until June 2016. The WA government announced that it would not pick up the bill beyond that time and would instead close between 100 and 150 of the 274 remote Aboriginal communities in the state. The decisions by both the Federal and the State Governments occurred without any consultation with Aboriginal people in the affected communities.

Family Violence Laws

In November 2016, the WA Parliament passed the *Restraining Orders and Related Legislation Amendment (Family Violence) Act* which toughened the state's laws in relation to domestic violence. Key features of the legislation include: the introduction of the Family Violence Restraining Order (FVRO) which a court must issue unless it is inappropriate to do so; introducing a contemporary definition of "family violence" to include not only physical injury, but also behaviour which coerces, controls or causes fear" such as causing a child to be exposed to family violence; and making the service of FVROs more efficacious by, if appropriate, allowing FVROs to be served by telephone.

Fine defaulting and imprisonment

ALHR is concerned by the rise in imprisonment rates in Western Australia (14% from 2015), particularly the massive overrepresentation of Indigenous Australians in the prison population. Aboriginal people tonight will comprise about 40% of the adult prison population of Western Australia even though they only comprise about 3.5% of the general population. The rate of imprisonment of Aboriginal women is rising faster than the rate pertaining to Aboriginal men, and Aboriginal women now comprise more than 50% of the female prison population in this State. The statistics relating to Aboriginal children are even more depressing. The disproportion of Aboriginal children in detention is 58 times greater than non-Aboriginal children per head of population. Aboriginal children comprise about 75% to 80% of the population at Banksia Hill. According to the Australian Bureau of Statistics, in Western Australia as at 30 June 2016:

- Aboriginal and Torres Strait Islanders comprised 38% (2,403 prisoners) of the adult prisoner population. …
- The Aboriginal and Torres Strait Islander age standardised imprisonment rate was 16 times the non-Indigenous age standardised imprisonment rate (3,383 prisoners per

100,000 Aboriginal and Torres Strait Islander adult population compared to 206 prisoners per 100,000 adult non-Indigenous population) ….[1]

In Western Australia, people who are unable or who refuse to pay fines issued by the courts can have additional penalties applied in order to "pay out the balance" of their fine, including a term of imprisonment. In the event an individual is unable to "pay out the balance" of their fine in one of the other ways provided, a warrant may be issued for their arrest and imprisonment and fines may be "cut out" at a notional rate of $250 per day in custody.[2] According to the "Fine Defaulters Report" issued by the WA Inspector of Custodial Services in April 2016, of the 7,025 people imprisoned for fine defaulting from July 2006 to June 2015:

- 64% of female fine defaulters in custody were Aboriginal women; and
- 38% of male fine defaulters in custody were Aboriginal men.

The disproportionate affect of Fine Defaulting provisions on the Indigenous community is incredibly concerning and the WA Parliament needs to address this issue as a matter of urgency in 2017.

ALHR urges the WA Government to immediately abandon its fine default system..

ALHR earlier in the year welcomed the *Sentencing Legislation Amendment Bill 2016* which proposes to give Western Australian criminal courts wider discretion in sentencing low-level offences. In particular it aims to divert first-time offenders away from incarceration by offering them the opportunity to undertake community work in lieu of payment of a fine.

ALHR Vice President, Kerry Weste said, "*ALHR welcomes these needed measures as a positive step in reducing the globally unprecedented overrepresentation of Indigenous people in Western Australia's prison population."*

Aboriginal Deaths in Custody

Australian and State governments must commit now to legislate for a national custody notification system that finally achieves key recommendation 224 of the Royal Commission into Aboriginal Deaths in Custody. Such a system enables swift enquiries to be made as to the health and welfare of every Indigenous person taken into custody.

The tragic case of Ms Dhu, who was incarcerated as a fine defaulter and whose death in custody was the subject of a coronial inquest this year, highlights the need for incarceration to be a matter of last resort.

ALHR is deeply concerned by the shocking Coroner's findings, regarding the death in custody of a 22 year old Yamatji woman in August 2014. Ms Dhu had been detained in the South Hedland lockup for unpaid fines.

ALHR strongly supports WA State Coroner Ros Fogliani's key recommendations and calls on the Western Australian Government to prioritise its promised reforms aimed ending the practice of 'imprisoning people for unpaid fines' and urgently implementing a mandatory custody notification service.

According to Dr Amy Maguire, Co-Chair of ALHR's Indigenous Rights Subcommittee, "*The appalling treatment received by a vulnerable and gravely ill woman is a complete failure of appropriate medical and custodial care. There must be an end to the continuing tragedy of Indigenous deaths in custody".*

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[1] http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Western%20Australia~22

[2] Australian Human Rights Commission, *Social Justice and Native Title Report 2016*, <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_SJNTR_2016.pdf>, pp.42-45.

The human rights and safety of Indigenous people must be protected now. 25 years on from the Royal Commission into Aboriginal Deaths in Custody, Ms Dhu's death is an indictment on the Australian legal system. Particularly significant is the Coroner's finding that the inadequate care extended to Ms Dhu was influenced by preconceived notions about Aboriginal people.

Although the Coroner's findings are important, they do not seek to apportion individual responsibility to the police or hospital staff who subjected Ms Dhu to "unprofessional and inhumane" treatment. ALHR extends its solidarity to the family and friends of Ms Dhu, who are entitled to see those responsible for her ill-treatment held accountable.

Lack of a Charter of Rights

WA still does not have a Charter of Rights. ALHR supports the introduction of a Charter of Rights, similar to the model operating in Victoria. A Human Rights Act or Charter improves how government operates, it improves efficiency in bureaucratic decision-making, it injects humanity into the governance process and can provide the community with recourse when their rights are violated.

LGBTI Rights

As of November, both the Labor and Liberal Party have expressed an intention to introduce legislation to expunge historical criminal convictions for homosexuality in 2017. The Law Society of Western Australia lobbied the Western Australian Attorney-General Michael Mischin in April 2016, and many other state legislatures have enacted such legislation this year. While ALHR applauds the bipartisan support for this legislation, it is discouraged that there has been undue delay in bringing the law to parliament. This legislation should be a priority of the 40th Parliament of Western Australia.

NSW – OVERALL GRADE: D

Breakdown

In-closed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016

Australian Lawyers for Human Rights has previously publicly endorsed the concerns of the NSW Law Society, Bar Association and other legal organisations concerning the NSW government's new restrictions on public protests. The legislation, which commenced on 1 June 2016, substantially limits the freedoms of NSW residents to engage in public demonstrations and protests close to mine sites or even exploration sites.

The legislation potentially limits the ability of individuals to engage in legitimate political communication, which is one of the few human rights protected under the Australian constitution. The legislation also expands police powers without the safeguard of warrants, based on the assessment of an individual police officer that interference is necessary on 'reasonable grounds' to deal with a 'serious risk' to safety. The 'watering down' of s 200 of the *Law Enforcement (Powers and Responsibilities) Act*, which limits police powers in relation to genuine protests and organised assemblies is also a matter of concern.

ALHR considers this legislation to be inconsistent with Australia's obligations under the *International Covenant on Civil and Political Rights* which guarantees the right to freedom of expression and freedom of assembly. These rights are fundamental to a healthy democracy.

Crimes (Serious Crime Prevention Orders) Act 2016* and *Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016

The Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016 introduced Public Safety Orders, which are issued by police to prohibit a person from being present at a public event or premises if their presence poses a serious risk to public safety or security. The Crimes (Serious Crime Prevention Orders) Act 2016 introduced a Serious Crime Prevention Order (SCPO) regime into NSW. SCPOs are control orders that could be made by the NSW Supreme and District courts against certain individuals or organisations in order to prevent, restrict or disrupt their involvement in serious crime-related activities and terrorism offences.

At the time of introduction, the NSW Bar Association noted that the introduction of the Serious Crime Prevention Orders is an extraordinary and unprecedented piece of legislation with grave implications for the rule of law and individual freedoms in NSW. The introduction of SCPOs is contrary to the administration of criminal justice by a process of trial.

The Bar Association highlighted a number of concerns with the legislation, including that the scheme creates a real danger of arbitrary and excessive interference with the liberty of many thousands of NSW citizens. The powers have the potential to interfere in the liberty and privacy of persons, and in freedoms of movement, expression and communication and assembly. They are extraordinarily broad and unprecedented, and are not subject to any substantial legal constraints or appropriate judicial oversight. As such, their introduction interferes with fundamental human rights and freedoms, which is contrary to Australia's international obligations.

Terrorism (Police Powers) Amendment (Investigative Detention) Act 2016

The legislation allows police to detain and question terrorism suspects, including children as young as 14, without charge for up to two weeks.

The Law Society of NSW has previously expressed concerns that this investigative detention framework operates outside the normal criminal justice process, as it allows for extended detention of a person who has not yet been charged with a criminal offence.

This may be contrary to article 9(1) of the *International Covenant on Civil and Political Rights*, to which Australia is a signatory, which states that no one shall be subjected to arbitrary arrest or detention. Under the ICCPR, the guarantee against arbitrary detention is a fundamental right that governments cannot suspend, unless it is reasonable and necessary under the circumstances. The NSW Government has not demonstrated the need for these significant reforms, nor does the legislation provide adequate safeguards for those detained under the scheme.

NSW Government's investment of $3.8 billion over four year to house the rising NSW prison population

Rather than continuing to increase funding for the prison system, the NSW Government should instead increase resources for the criminal justice system to reduce the delays in hearing criminal matters and therefore the time spent on remand, and to increase accessibility to diversionary options in appropriate circumstances as well as invest in long term crime prevention strategies such as justice reinvestment.

Also of great concern is the continuing increase in the rate of incarceration of Indigenous people. BOCSAR reported that between 2001 and 2015, the number of Indigenous Australians in NSW prisons more than doubled, as well as the number of Indigenous children in 'out of home' care in NSW.

Lack of a Charter of Rights

NSW still does not have a Charter of Rights. ALHR supports the introduction of a Charter of Rights, similar to the model operating in Victoria. A Human Rights Act or Charter improves how government operates, it improves efficiency in bureaucratic decision-making, it injects humanity into the governance process and can provide the community with recourse when their rights are violated.

Abortion remains in the *Crimes Act 1900*

NSW remains one of two Australian jurisdictions that has not decriminalised abortion in some form. In NSW, abortion is an offence contained in sections 82, 83 and 84 of the *Crimes Act 1900*, with penalties of up to 10 years imprisonment for women, doctors and anyone who unlawfully performs or assists in the procedure. The uncertainty governing abortion in NSW concerns the term "unlawful", which is not defined in the legislation. Rather, similar to other jurisdictions, the definition of "unlawful" has been clarified instead by case law in NSW.

There have also been reports that, where abortion and reproductive services are available, women and staff are often subjected to intimidating and abusive behaviour of anti-abortion protestors outside abortion clinics. As NSW is one of the last remaining jurisdictions where abortion remains a criminal offence, it's time NSW removed these offences from the *Crimes Act* and left the regulation of this basic health service to the relevant health legislation, with appropriate safeguards. Access to reproductive health services should remain a decision between a woman and her doctor – not her lawyer – and regulating this just like any other health service will preserve a woman's right to privacy, autonomy and freedom from discrimination. ALHR also encourages NSW to introduce safe access zones around abortion clinics, similar to those in Victoria, to ensure that women can safely access these services.

Positive reforms for 2016

- Australian Lawyers for Human Rights welcomed the commencement of the NSW *Limitation Amendment (Child Abuse) Act 2016*, which removes previous restrictive limitation periods on actions for damages related to child abuse.
- The NSW Government was the first jurisdiction to pass legislation to nationally recognise domestic violence orders (the legislation is yet to commence, as it's a national scheme reliant on technology being developed by Commonwealth agencies).

- The NSW Government is currently trialling the use of witness intermediaries and pre-recording of evidence for child sexual assault complainants.
- The NSW Government issued a formal apology to the ‘78ers’ over the discrimination they suffered at Sydney's first Mardi Gras in 1978.

SOUTH AUSTRALIA – OVERALL GRADE: D

Breakdown

LGBTI Rights

ALHR SA welcomes the recent passage of bills for the recognition of same-sex relationships and improved access to birth certificates for intersex and transgender people through the Legislative Council. We are, however, concerned by the inclusion of a provision permitting the refusal of medical service to LGBTI couples and single parents seeking reproductive treatment if the doctor 'conscientiously objects'. We are of the view that, if the bill is passed by the House of Assembly, and enacted into law, it would violate the *Sex Discrimination Act 1984* (Cth). However, we recognise that the increased debate and attention on the issue represent steps in the right direction.

Disability Rights

ALHR SA is concerned with reports of the treatment of prisoners with mental health ailments in South Australian facilities, including reports confirmed by the state Ombudsman of a young man spending five days with his hands and legs shackled to a bed and being denied access to a shower or toilet. We note that this was not an isolated incident and similar reports had emerged prior to the incident. We are concerned that authorities failed to intervene in a timely manner and take action to ensure such incidents did not reoccur. We consider the denial of access to bathroom and toilet facilities for an extended period to be a flagrant denial of human rights.

Indigenous Rights

ALHR SA is concerned with the continued maltreatment of Indigenous persons in South Australian prisons, particularly with the death of an Aboriginal prisoner after an altercation involving prison guards in September. We are disappointed by that recommendations made in the report produced by the Royal Commission into Aboriginal Deaths in Custody are still yet to be fully implemented in South Australian prisons and consider that immediate action should be taken to put those recommendations into practice.

Lack of a Charter of Rights

SA still does not have a Charter of Rights. ALHR supports the introduction of a Charter of Rights, similar to the model operating in Victoria. A Human Rights Act or Charter improves how government operates, it improves efficiency in bureaucratic decision-making, it injects humanity into the governance process and can provide the community with recourse when their rights are violated.

QUEENSLAND – OVERALL GRADE: C+

Breakdown

Juvenile detention

In the context of its longstanding poor human rights record on juvenile detention, the Queensland government's moves this year have been welcome, however, there is much more to be done. The long overdue decision to increase the age at which a child could be incarcerated in an adult prison from 17 years to 18 years under the youth justice legislation was a positive step. The government's decision to hold an Independent Review into the youth justice system in August was also a step in the right direction. However, there are significant concerns that the terms of reference of this review are too narrow and may not give scope to address the systemic issues that plague juvenile detention in Queensland. Other reforms are vital including: adopting practices where detention is limited to exceptional cases; the building and use of purpose-built age-appropriate facilities with non-prison like environments staffed by individuals trained in dealing with children; the appointment of an Independent Custodial Inspector; the repeal of legislative provisions which enable the use of chemical weapons, solitary confinement, mechanical chairs, cable ties, weight belts, shackles and spit hoods on children in detention; appropriately funded, evidence-based diversionary and education programs; and increasing the minimum age of criminal responsibility from 10 years to 12 years.

LGBTI Rights

2016 has seen some positive reforms regarding LGBTI rights in Queensland. In November 2016, the homosexual advance defence, also known as the 'gay panic' defence, was finally repealed from the Queensland Criminal Code. This defence enabled people accused of murder to claim that they were provoked due to an unwanted sexual advance. This has been a welcome and very overdue reform. In September this year, the legal age for consensual anal sex was brought in line with all other lawful sexual acts being 16 years of age. Prior to this reform, anal sex was illegal until the age of 18 with Queensland being the only state in Australia that had different ages of consent for different consensual sexual acts. The Queensland government passed the *Adoption and Other Legislation Amendment Bill* which grants the right to same sex couples to adopt and has recently released a draft bill that would finally allow historical homosexual convictions to be struck off the public record. While consensual homosexual acts by adults were decriminalised in 1991, many convicted of these offences still have those offences on their criminal record. The scheme is also said to allow those convicted or charged with 'certain historical public morality offences', when those offences were based on consensual homosexual actions, to be cleared. These are all moves in the right direction, however, with the news just this month of a year 7 boy from a north Brisbane school taking his own life after facing years of bullying in his school on the basis of his sexuality, it is clear that there is more work to be done in preserving the rights of our LGBTI community. Recognition of same-sex marriage would be a fundamental development that we want to see adopted on a federal basis.

Human Rights Act

In December 2015, after 10 months of community pressure co-led by ALHR, the Palaszczuk Government established a Parliamentary Inquiry regarding legislating a Queensland Human Rights Act. After a relatively short consultation period of 6 months, the Parliamentary Committee's report was handed down on 30 June 2016. However, while the report recommended the passage of a Queensland Human Rights Act, it absurdly recommended that the judiciary have no place in its enforcement. The model proposed in the June report falls short of the one that was recommended by Australian Lawyers for Human Rights and other bodies in their formal submissions to the Parliamentary Inquiry. The Parliamentary Committee's model lacks enforceability and, in particular, a standalone cause of action for

individuals to use the courts to seek redress where they consider that their human rights have been breached.

In October 2016, Premier Anastasia Palaszczuk announced at the ALP State Conference that a Human Rights Act would be introduced in Queensland and the form of the Act would be based on Victoria's *Charter of Human Rights and Responsibilities Act 2006*. Whilst this is a momentous move by the Queensland government, we now cautiously await a Bill to be introduced to see what the final model will look like.

Abortion Law Reform

In Queensland, abortion is still a crime, except in cases where the mother's health is deemed to be critically at risk. In August this year, Rob Pyne MP introduced a bill into parliament which sought decriminalise abortion and regulate conscientious objection, gestational limits and exclusion zones around abortion clinics to protect women from being harassed by anti-choice protestors. However, unfortunately this bill has failed to gain support.

VICTORIA – OVERALL GRADE: C+

Breakdown

Preservation of the Victorian Charter of Human Rights and Responsibilities

Despite ongoing criticisms from various quarters, it is a positive step that the Andrews Government has not taken any steps to 'water down' or otherwise remove Victoria's Human Rights Charter, introduced by a former Labour Government progressively between 2005 and 2008.

Thus whilst ALHR recognise that awarding the Government a 'C' grade for essentially doing nothing may seem obscure, we also note that, as the only State to have a Charter (the Australian Capital Territory has a Human Rights Act), Victoria should be applauded for maintaining its Charter and continuing to constructively review it (as occurred in 2015). ALHR does however have concerns that the Andrews Government needs to act in a manner that is consistent with the Charter, particularly in relation to its own criminal justice policies.

Family Violence

Although it was initiated in 2015, the Royal Commission into Family Violence delivered its final report to the Victorian Government on 29 March 2016.

The final report contained 227 recommendations – all of which the Victorian Government has committed to implement; 65 of which are tied to a $572m funding pledge over the next 2 years to combat family violence.

Although there is significant progress and commitment at the Cabinet level, concerns remain regarding the implementation, intergovernmental cooperation and efficacy of this commitment. We hope that, in the 2017 report card, Victoria will see actual, tangible progress in this area.

Assisted dying

In June 2016, a parliamentary committee made recommendations to give some terminally ill patients the right to choose death. The Liberal-chaired committee proposed that this choice should only be given to adults at the end of their lives, who have decision-making capacity and who suffer from a serious, terminal condition.

As of early December 2016, the Victorian Government accepted the parliamentary committee's proposals and now plans to hold a conscience vote on the Bill in 2017. The Bill is opposed by the State Liberal opposition.

The Victorian Government's decision to put the committee's proposals to parliament is welcome, however the Andrews Government does have an absolute majority in the lower house and could have brought this issue before Parliament in 2016; as it stands, there is no assisted dying in Victoria.

Juvenile detention

ALHR has been deeply concerned by the Victorian Government's recent treatment of children held in detention in Victoria, particularly its decision to transfer children to adult prisons in breach of the Victorian Charter and Australia's obligations under the *UN Convention on the Rights of the Child*. Following the revelations at Don Dale in the NT and the positive moves by the Queensland State Government to remove 17 year-olds from adult prisons,these regressive moves have been disappointing. ALHR is heartened by signs that the Victorian Charter is doing its job with the recent success of litigation by Victorian Aboriginal Legal Services preventing the transfer of Indigenous children to adult jails and more recently successful litigation brought by the Human Rights Legal Centre and the Fitzroy Legal Service. .

On 21 December 2016, the Supreme Court of Victoria upheld an injunction. Justice Garde declared that children were being held illegally at the maximum security facility, and their human rights breached. *"All persons deprived of liberty must be treated with humanity,"* he said.

Until the recent detention of young people in an adult prison, the Victorian Government was performing serviceably in juvenile detention, obtaining a C/C+ assessment. However, the housing of children with adult inmates as well as the use of prolonged periods of solitary confinement is in violation of Victoria's obligations under the United Nations *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights*. This immediately demotes the Government's performance on juvenile justice to a C- which will further drop unless the Government rectifies the issue.

Homelessness

Although the Victorian Government's significant funding boost for family violence will improve homelessness in Victoria, there has been a 74% increase of rough sleepers in Melbourne in the last 2 years.

The Victorian Government must also work with the inner city Councils to improve the way in which homelessness is viewed. In a recent article in *The Age*, the Lord Mayor of Melbourne said:

"We should be supportive of people that are vulnerable, but we shouldn't romanticise the situation…[t]here are challenging, illegal behaviours that we shouldn't put up with, whether people are homeless or not."

More direct action is required, including by offering additional shelters for those sleeping rough and better connectivity with various service providers.

Police brutality

Although Victoria Police have refused to release recent statistics on complaints about police brutality, several community legal centres and human rights groups have noted an increase in 2016, particularly involving youth; specifically, aboriginal youth.

In October 2016, *The Age* reported that Government authorities have confirmed a spike in the number of young offenders who have raised allegations of excessive force over the past few months – including a disproportionate number of complaints from Indigenous youths.

Again, this issue is also likely related to family violence, juvenile detention and, perhaps, homelessness, but the Victorian Government must take steps to ensure Victoria Police deals with these complaints efficiently and with greater transparency, if appropriate. The uptick in complaints about youth policy brutality follows the shocking footage from the Ballarat Police Station in which an on-leave police officer was stripped, stomped and kicked whilst being held for 16 hours without charge. The officers who allegedly assaulted her did not know they were dealing with a fellow police officer. The victim told ABC news:

"If that's not why they were nasty to me, then they were just … nasty to a member of the public, which is worse,"

ACT – OVERALL GRADE: B

Breakdown

Human Rights Act

- The ACT is governed by the *Human Rights Act 2006.* All legislation in the ACT has to comply with the Human Rights Act 2006.
- However, there are areas of improvement. For example, the Act does not currently include any provisions for adequate housing, despite pressures to do so in 2014 and again in 2016. A situation exists where education is provided for but not housing.
- Another area of improvement is the non-binding nature of the declaration of incompatibility. The ACT Legislative Assembly makes the final decision on whether to amend any inconsistent law, or leave it unchanged. For example, the ACT Supreme Court handed down the first and only "Declaration of Incompatibility" under the Human Rights Act in 2010. This decision found presumptions against bail for certain offences in the ACT *Bail Act* incompatible with the right to liberty. Despite the declaration, the laws were not changed at that point in time.

Freedoms

- New legislation implementing a public sector gag order has been proposed. This would see public sector workers who harm the government's reputation outside the workplace face misconduct proceedings. Such a move would have negative implications on the right to free speech.
- New legislation has also been proposed such that prosecutors, if they believe that exceptional circumstances exist to keep the offender behind bars, can apply to a court for a review of a decision granting bail. The offender can then be held for 48 business hours or until the matter comes before the ACT Supreme Court for review. The NSW laws (on which the proposal is based) only apply to people charged with murder, sexual offences, or any other offence punishable by life imprisonment. The ACT proposal would apply to most offences punishable by more than 10 years jail and all domestic violence offences.
- Changes to the Discrimination Act in 2016 mean that vilification on the grounds of religion is now illegal and in serious cases could result in a criminal conviction. Disability was also added to the list, so it is now illegal to vilify someone because of disability, religion, race, sexuality, gender identity, and HIV/AIDS status. Vilification can include social media posts, actions in a workplace and wearing clothes, signs or flags that would incite hatred, contempt, ridicule or revulsion.

Women and Girls' Rights

Positive steps include the following:

- The Health Act 1993 extended the 'protest free' buffer zone.
- Under new legislation the first conviction was passed using a video statement from a victim, captured at the time of the alleged offence. Legislation was originally passed in 2015, but police have now been trained to collect video statement evidence from family violence victims for use in court proceedings. However, victims still have to give evidence when an offender pleads not guilty under cross-examination.
- The definition of 'abuse' in domestic violence laws has been widened to include emotional, psychological and financial abuse.
- There are also proposals to amend the grounds for making a final protection order and after-hours orders as well as provisions permitting complainants pre-recorded evidence to be tendered.