AUSTRALIAN LAWYERS FOR HUMAN RIGHTS™

2018 Human Rights Report

Australian Lawyers for Human Rights
December 2018

ALHR 2018 HUMAN RIGHTS REPORT

The 2018 Human Rights Report for ALHR was completed on December 29, 2018.

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MEDIA RELEASE

The 2018 Human Rights Report Card from Australian Lawyers for Human Rights (**ALHR**) has found Australia continues to significantly lag in key areas such as Indigenous rights, children's rights, disability rights, freedoms and LGBTI rights. Further, many states and territories continued to perform poorly in their approach to human rights.

ALHR President, Kerry Weste said, "As a nation, we can't seem to move favourably in ensuring basic human rights are established and protected for all Australians equally. Considering Australia has sat on the United Nations Human Rights Council for a year now, our human rights situation is something we must address swiftly and comprehensively."

"Australia was a founding member of the United Nations and one of eight nations involved in drafting the *Universal Declaration of Human Rights*, which this year celebrated its 70th anniversary. Our current human rights record betrays the part we played as a nation in the creation of this milestone document which should inspire our political leaders to work to ensure all people can live with freedom, equality and dignity,".

Ms Weste continued, "While the federal government can be awarded a gold star for introducing a Modern Slavery Act, Australia continues to be criticised by multiple United Nations bodies for its abject failure to protect basic rights on multiple fronts - often impacting most profoundly on vulnerable Australians. The sad fact is that Australia's record on protecting universal rights has not improved much over the past four decades when Australia began appearing before these UN bodies to defend its record on rights."

"Australia remains the only Western democracy without a bill of rights or federal Human Rights Act. The immediate creation and implementation of one is the surest way to assist in creating a better platform to help all Australians receive and be guaranteed of their basic rights. The Australian government owes it to all Australians to legally protect our rights."

Read on below for the full 2017 ALHR Human Rights Report Card. The key findings identified Australian states and territories receiving the following grades (see next page):

ALHR Human Rights Report Card 2017 v 2018 results

Government	2017 Score	2018 Score
NSW	E+	D
Victoria	C	C
Queensland	C-	B+
Western Australia	B	C
South Australia	D	D
Tasmania	D	D
Australian Capital Territory	B	B-
Northern Territory	E	*

*Still being assessed.

Key areas monitored by ALHR for human rights transgressions, reforms and performance in Australia scored the following grades:

Key Human Rights Performance Areas 2017 v 2018 Results

Performance Area	2017 Score	2018 Score
Indigenous Rights	F-	F-
Business and Human Rights	C	C+
Refugees and People Seeking Asylum	F	F
LGBTI	D-	D
Freedoms	F	F
Disability Rights	D	D
Women and Girls' Rights	F	C
Children's Rights		D**

**First year this performance areas has been specifically tracked through a new sub-committee

NEW SOUTH WALES - OVERALL GRADE D

The NSW Government has taken some important steps towards the advancement of human rights, including being the first jurisdiction in Australia to enact a Modern Slavery Act. However, in many respects, has not gone far enough in recognising and protecting the human rights of its constituents.

While ALHR commends the NSW Government for enacting the *Public Health Amendment (Safe Access to Reproductive Health Clinics) Act 2018*, creating safe access zones of 150 metres around abortion clinics, most disappointingly, NSW remains the only jurisdiction in Australia where abortion remains a crime**.**

ALHR congratulates the NSW government on amendments to the *Residential Tenancies Act 2010* which allow tenants to terminate their tenancy immediately after providing a domestic violence termination notice. However, ALHR remains concerned that no-grounds evictions remain, allowing landlords to evict tenants without providing a reason. ALHR is concerned that no-grounds evictions may lead to tenants being evicted for retaliatory or discriminatory reasons. ALHR also calls on the NSW government to address the significant increase in homelessness rates in NSW.

ALHR is deeply troubled by amendments to the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* rushed through by the NSW Parliament, which will, among other things, fast-track children in the care system into permanent placements. While ALHR recognises the importance of stability for children in out-of-home care, we are concerned that the NSW Government has failed to consider the disproportionate affects the amendments may have on Aboriginal and Torres Strait Islander children, and the risk it carries in creating another stolen generation.

ALHR also remains deeply concerned about anti-protest provisions in the *Crown Land Management Regulation 2018* which directly attack the fundamental rights of implied freedom of

political communication, the right to freedom of expression and the right of peaceful assembly and association.

Finally, ALHR continues to call on the NSW Government to address increasing incarceration rates in NSW prisons. ALHR is particularly concerned by recent reports of an overuse of lengthy isolations and strip searching of children in juvenile detention centres in NSW, which contravenes the human rights of detained children.

Modern Slavery Act 2018

ALHR commends NSW for being the first jurisdiction in Australia to introduce a Modern Slavery Act.

The *Modern Slavery Act 2018* was passed on 21 June 2018 and is awaiting proclamation and regulation before commencement. The Act requires all commercial entities (that supply goods and services) with employees in NSW and a total annual turnover of $50 million to prepare an annual public modern slavery statement for each financial year. Penalties of up to $1.1 million will apply for non-compliance and /or false or misleading statements. The Act also establishes the role of Anti-Slavery Commissioner that will be responsible for that will be responsible for maintaining a public register of Modern Slavery statements, interacting with agencies, reporting to parliament, monitoring the effectiveness of the Act and raising awareness.

Adoption reforms

Amendments to the *Children and Young Persons (Care and Protection) Act 1998* and the *Adoption Act 2000* were recently tabled in NSW. This was despite inadequate public engagement and stakeholder consultation including with Aboriginal community bodies and community legal advocates. Although there were welcome changes, there are grave concerns about some measures. This includes amendments to ensure children in the foster care system are placed in permanent homes within two years and a lack of protections for Aboriginal and Torres Strait Islander children despite the *Bringing Them Home* report and the *National Apology*

to the Stolen Generations. This system of fast and forced adoption risks creating another stolen generation in NSW.

The amendments are inconsistent with the *Convention on the Rights of the Child* (**CRC**) and the *United Nations Declaration on the Rights of Indigenous Peoples*. The NSW Government has also failed to respond to an open letter signed by hundreds of Indigenous and community organisations and more than 1,600 individuals. This is concerning given Australia will be appearing before the United Nations next year to report on its compliance with the CRC.

Rental reforms are welcome but urgent action needed to address growing homelessness and to ensure greater security for tenants

ALHR commends the NSW Parliament for re-affirming housing as a human right and recognising the government's role in ensuring all people in NSW have access to safe, secure, habitable and affordable housing. A commitment to housing as a basic right requires the NSW Government to take urgent action to address the growing crisis in homelessness and housing affordability in NSW. Data from the Australian Bureau of Statistics shows that between 2011 and 2016 NSW recorded an increase of 37% in homelessness, with a particularly worrying rise in the number of older women and young people experiencing homelessness.

ALHR also welcomes important rental reforms introduced by the NSW Parliament, including increased flexibility and options for survivors of domestic and family violence. These measures will enable tenants to terminate their tenancy immediately after providing a domestic violence termination notice, reduce their liability for damage to property by perpetrators, and prevent them from being blacklisted on tenancy databases.

These reforms, however, have missed the opportunity to protect other tenants in NSW by removing no-grounds evictions from NSW statute books. The current laws in NSW allow landlords to evict tenants without providing a reason meaning that tenants can be evicted for retaliatory or discriminatory reasons. This creates great insecurity for tenants and can have a particularly significant impact on renters with low incomes or complex needs. At a time when

over 2 million people rent their homes in NSW, the removal of no-grounds evictions would better protect the human rights of all those who rent in NSW.

Safe access zones a human rights win; decriminalisation of abortion must come next

The passing of the *Public Health Amendment (Safe Access to Reproductive Health Clinics) Act 2018* in June 2018 was a huge win for the protection of reproductive rights in NSW. The Act created safe access zones of 150 metres around abortion clinics to protect women and staff from harassment and abuse when they enter clinics at which abortions are performed. This harassment and abuse infringes on pregnant people's right to privacy and dignity when accessing health services. Safe access zones around abortion clinics are an essential element in the protection of the rights of pregnant persons and the staff who care for them.

While ALHR congratulates the NSW Government on protecting pregnant persons from harassment, it remains concerned that abortion remains a criminal offence in NSW punishable by up to 10 years imprisonment under the NSW Crimes Act.

ALHR renews its calls for the NSW Government to immediately introduce or support legislation to decriminalise abortion in NSW. The current NSW laws are archaic and not reflective of community values or of internationally recognised human rights principles.

New Crown Land Management Regulation part of growing trend towards curtailing protest rights

ALHR expresses concern about anti-protest provisions in the *Crown Land Management Regulation 2018*. The new Regulation gives public officials sweeping powers to "direct a person" to stop "taking part in any gathering, meeting or assembly" or to affix a conspicuous sign prohibiting any gathering, meeting or assembly, on Crown land, which amounts to about half of all land in NSW. Penalties that may be imposed under the new Regulation have also increased, with individuals facing fines of up to $1100 for failing to comply with a direction. ALHR is concerned these powers could be exercised in a way which would infringe upon the implied

freedom of political communication protected by the Australian Constitution and the right to freedom of expression and the right of peaceful assembly and association, as recognised by the *International Covenant on Civil and Political Rights*.

The NSW Government must take positive steps to promote protest rights and respond to protests in a way that protects these fundamental freedoms and strikes the right balance with public order and safety.

ALHR concerned by prison overpopulation and human rights abuses on detained children in NSW

ALHR is deeply concerned by the growing prison population in NSW and particularly concerned by recent data released by the Australian Bureau of Statistics revealing that the number of women in prison is growing at a much faster rate than the male prison population. Aboriginal and Torres Strait Islander persons are also grossly overrepresented in NSW prisons.

A recent report by the NSW Inspector of Custodial Services revealed an overuse of lengthy isolations and strip searching of children in juvenile detention centres in NSW. The report also revealed increasing rates of self-harm, use of force and assaults in NSW juvenile detention centres. This is a significant violation of the rights of children in NSW, which are enshrined in the *Convention on the Rights of the Child* and the *Convention Against Torture*.

VICTORIA - OVERALL GRADE C

Treaty Advancement Commission

Victoria is the first State/Territory to enter into formal treaty negotiations with Indigenous Australians. The Victorian Government passed the *Advancing the Treaty Process with Aboriginal Victorians Bill 2018* earlier this year, a culmination of the work of more than 7,500 Aboriginal community members who have been engaged to work to further the treaty process in Victoria. Treaty will benefit all Victorians by promoting reconciliation, fostering shared pride in Aboriginal culture and helping to heal the wounds of the past. ALHR is proud to recognise and celebrate the unique status, rights, cultures and histories of Aboriginal Victorians. The treaty legislation provides for an independent Aboriginal Representative Body, the Treaty Advancement Commission, with whom the Victorian Government will work to facilitate treaty negotiations.

Gender Equality Bill

The Victorian Government commenced community consultation in respect of proposed gender equality legislation. The Gender Equality Bill aims to promote and improve gender equality across the Government and public sector organisations. It does this by creating obligations upon Victorian Government departments, public sector entities with over 100 full-time employees, local councils and certain universities. ALHR welcomes the introduction of legislation to advance gender equality and is hopeful that the obligations found in the legislation will be effective in this project.

Charter of Human Rights: Protecting Aboriginal Cultural Rights

In C*emino v Cannan and Ors* [2018] VSC 535, the Victorian Supreme Court confirmed that courts must consider the distinct cultural rights of Aboriginal people under Victoria's Charter of

Human Rights and Responsibilities when making decisions in relation to an Aboriginal person's request to be heard in the Koori Court.

ALHR applauds this decision, which has significant implications for Aboriginal people across Victoria and for decisions in the Courts about whether an Aboriginal person has access to the Koori Court.

Protecting Rights of People with Disability

The Supreme Court of Victoria has handed down a decision that owners corporations must undertake modification works to apartment buildings for owners and occupiers with a disability. The decision has been hailed as a significant win for people with a disability: *Owners Corporation OC1-POS539033E v Black* [2018] VSC 337.

Racist Treatment of African Australians

ALHR is concerned by the Victorian Government's lack of leadership in the midst of racist treatment of the African Australian community. The Government's continued emphasis on 'law and order' concerns the ALHR.

In July 2018, Victoria's equal opportunity and human rights commissioner reported that a resurgence in the number of reports of racially motivated incidents in the state is linked to sensationalist media coverage of an "African gangs crisis". The commission said the recent rise in formal complaints was largest (129%) in the first half of 2018, compared with the same period in 2017. It came at the same time as an increase in "inflammatory race-related political statements and reporting in January", the commission noted, referring to what some media have labelled the "African gangs crisis".

Mandatory Sentencing

The Justice Legislation Miscellaneous Amendment Bill 2018 was introduced into Parliament in June 2018, which made injuring an emergency worker – including police, paramedics, doctors

and nurses delivering or supporting emergency care, firefighters and prison officers – a Category 1 offence under the Sentencing Act 1991. This means that Victorians found guilty of assaulting emergency service workers could face up to five years jail under revamped mandatory sentencing laws. The sentence cannot be served in the community and the Government has slashed the number of exemptions of 'special reasons' that a Magistrate can cite to spare an offender from prison. ALHR does not support the introduction of mandatory sentencing and considers this approach is misguided and a concerning example of the Government's over-emphasis on 'law and order' at the expense of due process in 2018.

Treatment of Children in the Law and Aboriginal Cultural Rights in Youth Detention

In July 2018, the Victorian Equal Opportunity and Human Rights Commission, and Commission for Children and Young People published their report on Aboriginal cultural rights in youth justice centres. They had conducted a series of interviews with youth justice stakeholders and Aboriginal cultural knowledge holders about how young people in Victoria's youth justice centres could be better supported to maintain and develop their connections to culture and community. The report's recommendations highlight that Victoria has a long way to go to address the over-representation of Aboriginal young people in detention, and the problems with the antiquated and punitive approach that governs the interactions of Victorian children with the law.

QUEENSLAND -OVERALL GRADE B+

Women's Rights

On 17 October 2018, the *Termination of Pregnancy Bill 2018* (Qld) was passed, removing abortion from the Queensland criminal code and establishing safe access zones around termination clinics. ALHR congratulates the Queensland Government for its decision to bring Queensland into line with other Australian states and to ensure that Queensland laws are now consistent with Australia's international legal obligations, community standards and current practice.

On 22 August 2018, the *Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018* (Qld) was introduced into Parliament by the Queensland Attorney-General. If passed, the Act will create a new offence related to non-consensual sharing of intimate images which would apply to sending, or threatening to send, intimate material without consent. The passing of such legislation will bring Queensland into line with other States such as NSW, Victoria and ACT where distributing intimate images without a person's consent can amount to an offence. The passing of such laws in Queensland will assist to increase awareness regarding the issue, its impacts on victims, which are predominantly women, and hopefully assist in future prevention.

QLD Human Rights Act

On 31 October 2018, the Queensland Human Rights Bill was introduced. ALHR applauds this landmark reform, and congratulates the Queensland Government for showing their support for the protection of the human rights of Queenslanders. The Bill builds on the Victorian Charter and ACT Act by including an accessible complaints mechanism which allows people who consider that their human rights have been violated by a public entity to lodge a complaint with the Queensland Human Rights Commission. The Bill also provides for protection of the economic, social and cultural rights to education and health services without discrimination, and reinforces the cultural rights of Aboriginal and Torres Strait Islander people. Despite the Bill providing a strong framework for a Human Rights Act, ALHR urges the Queensland

Government to consider ensuring that the legislation passed permits access to remedies for complainants as well as the right for people to commence proceedings in a court or tribunal.

ALHR anticipates that the passing of the Bill will set a positive precedent for human rights law reform in other Australian jurisdictions and congratulates the Queensland Government for showing initiative in this regard.

Youth Justice Issues

ALHR strongly supports the Queensland Government's commitment to ensuring that all 17-year-olds are removed from adult prisons in 2018. However, ALHR remains concerned about youth justice issues in Queensland. ALHR urges the Government to consider the recommendations of the 2018 *Atkinson Report on Youth Justice* including encouraging the Government to take further action to keep children out of court, reduce reoffending and to increase the minimum age of criminal responsibility from 10 years of age. Youth do not belong in detention centres, and taking further action may also assist to reduce the number of Aboriginal and Torres Strait Islander children facing imprisonment. Further, ALHR remains concerned that the Queensland Human Rights Bill does not explicitly provide protections to ensure that convicted children are segregated from convicted adults.

Indigenous Rights

ALHR remains concerned about human rights issues for Aboriginal and Torres Strait Islander people, particularly the overrepresentation of Indigenous people in the justice system. According to sources, Indigenous youth are 31 times more likely to be held in custody than their non-Indigenous peers, and Indigenous youth make up 70% of youth detained on remand and 78% of those serving a sentence. ALHR urges the Queensland Government to work with Indigenous communities to ensure Indigenous people can be empowered to prevent and deal with crime in their communities and to help design effective community-led initiatives to address youth justice issues.

The Queensland Government continues to make progress in relation to its election commitment to legally recognise traditional Torres Strait Islander child-rearing practices. ALHR congratulates

the Queensland government in taking this important step which will place value on cultural decision-making and assist to reduce issues faced by Torres Strait Islander people due to the absence of legal recognition of these practices including issues obtaining legal identification, accessing government payments and entitlements, and accessing inheritance.

A private member's Bill, *Working with Children Legislation (Indigenous Communities) Amendment Bill* 2018, was introduced into parliament in late 2018. The Bill aims to provide a new framework that empowers Indigenous communities to make decisions which best serve their interests in relation to child protection and employment of community members. ALHR encourages the Queensland government to ensure that the draft legislation is consistent with Indigenous community views and addresses any relevant community concerns.

Counterterrorism Legislation

In March 2018, the Crime and Corruption Commission (CCC) invited written submissions to its review of the *Terrorism (Preventative) Detention Act 2005* (Qld). ALHR made a submission for the review, encouraging the government to repeal the legislation, or at a minimum ensure that the legislation is amended to provide more adequate safeguards of individual rights and freedoms. The Report on the review released in September unfortunately did not recommend the repeal of the Act however it did recommend greater scope for confidential communications between people detained under a preventative detention order and their lawyers, as well as recommending that persons detained be given as much information as possible to be able to effectively challenge their detention, and for safeguards for children detained under PDOs to be increased.

LGBTIQ

On 30 June 2018 the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017* (Qld) came into effect allowing men with old criminal records for homosexual sex to have those convictions expunged, clearing the conviction from their criminal record. ALHR applauds the government's actions in this regards as well as Premier Annastacia Palasczuk's formal apology to the LGBTI community for the historical discriminatory laws.

ALHR also commends the Queensland Government's introduction of amendments to the *Births, Deaths and Marriages Registrations Act 2003* (Qld) in June 2018 which removed the discriminatory legal restriction which forced Queenslanders who have undergone sexual reassignment surgery to divorce their partner before they are able to have the reassignment of their sex on the birth register.

Wage Theft

The Education, Employment and Small Business Committee conducted a parliamentary inquiry into wage theft in Queensland. ALHR made a submission to the inquiry expressing its concern regarding the current extent and impact of wage theft in Queensland which is often aggravated for vulnerable people. The parliamentary inquiry made 17 recommendations to the federal and Queensland governments aimed at reducing the incidence of wage theft and providing better protection for workers. ALHR supports recommendations to conduct a public education campaign to assist in the fight against wage theft, as well as recommendations to investigate the inclusion of the Queensland Industrial Relations Commission or Industrial Court as an eligible state court under the *Fair Work Act 2009* (Cth), and for the Queensland Government to legislate to make wage theft a criminal offence where the conduct is proven to be deliberate or reckless.

WESTERN AUSTRALIA - OVERALL GRADE C

Rights of children

In 2018, the WA State government implemented the National Redress Scheme[1] for people who have experienced child sexual abuse. It was the last State to join the Scheme. Premier Mark McGowan also issued a formal apology in State Parliament to all WA survivors of historic child abuse. Attorney General John Quigley also announced that the State Government's *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* (WA), which removes the limitation periods for civil actions by victims of child sexual abuse, was proclaimed on July 1, 2018.

The first such case was determined on an expedited basis and in August 2018 the plaintiff, Mr Bradshaw (who only had 6 months to live), was awarded a record $1 million compensation plus costs payout from the State government for abuse suffered at the hands of the Christian Brothers. It was the highest single payment awarded in Australia as a result of legal action against the Christian Brothers.

Of the 409 recommendations put forward by the Royal Commission, over the last year 289 were accepted or accepted in principle, 21 subject to further consideration, and 99 noted as not being applicable to the State Government. All of the recommendations have been accepted by the McGowan Government. According to the December 2018 Progress Report, of the 202 recommendations that are yet to be completed, work is underway on 186 with 16 yet to be commenced. Given that it has been less than six months from the release of the State Government's response to recommendations, ALHR considers the State Government's

[1] The Scheme was established in response to recommendations from the Royal Commission into Institutional Child Sexual Abuse and provides access to counselling, a redress payment and a direct personal response (e.g. an apology). The Scheme was designed based on the recommendations by the Royal Commission as an alternative to civil litigation and is administrative in nature, as such, victims do not need to consult with a lawyer to apply for the scheme. It also provides access to free legal services at any time when they are considering applying for redress, applying for redress or considering an offer of redress.

response to be timely and positive. We do note, however, that there is currently no data on the number of claims and the rate at which claims are currently being processed.

Strengthening the tenancy rights of family violence victims

With the passing of the *Residential Tenancies Legislation Amendment (Family Violence) Bill* last month, a tenant now has the right to terminate their tenancy agreement on the grounds that they are experiencing family violence. These amendments, bringing WA in line with tenancy law in all other jurisdictions, are critical given that family violence is one of the leading causes of homelessness in Australia.

Criminal justice reform

The Attorney General has taken steps to abolish custodial sentencing for unpaid traffic fines, a law that disproportionately affects Indigenous West Australians. In WA, hundreds of people go to prison each year for unpaid fines. In 2016, when Yamatji woman, Ms Dhu, died in custody while serving a sentence for defaulting on her fines, this archaic practice was cast into the national spotlight. This year, Attorney General Quigley commenced negotiations with the Commonwealth in an effort to find alternatives to sending a person to prison for unpaid fines. Options being explored include deducting the fined amount from the defaulter's welfare payments over time.

A Custody Notification Service (CNS), requiring officers to notify solicitors at the Aboriginal Legal Service each time an Aboriginal or Torres Strait Islander person is taken into custody in WA, was established. Notified solicitors will then have the opportunity to conduct welfare assessments and provide immediate legal advice. The CNS is modelled off the service that has operated in NSW since 2000.

WA's first methamphetamine rehabilitation prison for women opened. The facility adopts a community led approach that delivers treatment programs incorporating peer support, counselling and art therapy to address causes underlying methamphetamine addiction. 24 women are currently completing treatment programs.

Review of laws recognising a person's change of sex or intersex status

In January, the Attorney General announced that the Law Reform Commission of Western Australia would be reviewing gender identity and same sex marriage legislation, in an effort to modernise WA's laws in this area. The Commission examined whether legislative reform is required to improve processes pursuant to which the law recognises a person's change of sex or intersex status. In its final report, the Commission made multiple recommendations, including that the *Equal Opportunity Act 1984* (WA) be amended to include protections from discrimination on the basis of gender identity or intersex status.

Review of the *Aboriginal Heritage Act*

The State government's announcement that it would review the *Aboriginal Heritage Act 1972* (WA) (AHA) through three stages of public consultation was welcomed. The AHA has not been amended since its enactment over 45 years ago and gives broad decision-making powers to the Minister for Aboriginal Affairs, such as the power to consent to the destruction of an Aboriginal heritage site. It is hoped that any reform to the AHA will be centred around empowering Indigenous West Australians to make decisions about protecting and preserving their cultural heritage, as contemplated by the *Declaration on the Right of Indigenous Peoples*.

Rights of older persons

In September, the Select Committee on Elder Abuse tabled its final report in parliament, finding many shortcomings in WA's treatment of older persons that result in widespread elder abuse. To date, the McGowan government has failed to respond to the report's 32 recommendations, despite the stipulated two-month response time. One of the report's key recommendations is to develop a comprehensive plan that uses a human rights based approach to address and prevent the abuse of older persons.

Indigenous youth

Banksia Hill Detention Centre, the State's only youth detention facility, remains open despite the release of further damning findings about the Centre in 2018. The vast majority of Banksia Hill detainees identify as Aboriginal or Torres Strait Islander. In February, researchers found that

90% of detainees suffer from mental impairment as a result of brain injury or damage, which, for many detainees, had not been previously recognised by the justice system. In August, the Office of the Inspector of Custodial Services conducted an independent investigation, concluding that two teenagers had been held in solitary confinement for a 10-day period in violation of the Convention Against Torture.

SOUTH AUSTRALIA - OVERALL GRADE D

South Australia receives an overall grade of D. Areas of concern include a lack of adequate investment in the South Australian justice system, Indigenous rights, criminal laws that threaten Australia's international obligations regarding children and the fact that abortion remains criminalised in South Australia. Despite this lack of progress in many important areas, there have been some positive human rights developments in South Australia over the past twelve months, including in the disability, LGBTI and domestic violence spheres.

Access to Justice

Australian Lawyers for Human Rights (**ALHR**) remains concerned by inadequate investment in the justice system in South Australia. ALHR believes all South Australians must have access to a properly funded justice system that is reflective of international human rights law obligations and invests in evidence-based best practice. ALHR is supporting calls by the Law Society of South Australia for increased funding for legal aid and legal assistance services, rehabilitation and support programs aimed at reducing youth offending, programs for prisoners designed to reduce recidivism, legal representation funding for those appearing before South Australian Civil and Administrative Tribunal in guardianship matters and ongoing funding for a five-year justice reinvestment action plan.

Indigenous Rights

There has been little improvement in the human rights situation of Aboriginal and Torres Strait Islander peoples in South Australia who remain overrepresented in the criminal justice and child protection systems. The tragic death in custody of Wiradjuri man Wayne Fella Morrison, which is currently before the coroner, was identified by ALHR as cause for significant concern. . Mr Morrison turned blue and unresponsive during a three-minute journey in a prison transport van with seven prison officers, after being placed face down on the floor of the van while handcuffed and spit-hooded with his legs tied together.

ALHR is deeply disappointed by the incoming Government's decision to abandon a treaty process and calls on it to reverse this decision and prioritise the empowerment of Indigenous voices and Indigenous-led initiatives.

Criminal Law & Juvenile Justice

The *Statutes Amendment (Recidivist and Repeat Offenders) Bill 2017*, has been singled out as inconsistent with Australia's international human rights law obligations as well as fundamental rule of law principles and the separation of powers. These measures effectively enable courts to be directed to detain offenders, including minors, beyond their prison sentence. The *UN Convention on the Rights of the Child (CRC)* requires South Australia to recognise that children are not adults and that in all actions the government is obliged to ensure the best interests of the child are the primary consideration. ALHR believes detaining children indefinitely, rather than focusing on opportunities to rehabilitate them, is a flagrant and highly concerning breach of the CRC.

ALHR also notes its disappointment in the lack of progression relating to the repeal of the common law model of provocation as a partial defence to murder in SA. SA is the only jurisdiction in Australia that enables a non-violent sexual advance to invoke the defence to downgrade a murder charge to manslaughter.

ALHR supports the recent public push to amend SA law in respect of abortion which remains criminalised in certain circumstances in SA due to existing statutory exceptions which stipulate that in order to access a legal abortion two medical professionals must examine the patient and deem there to be a risk to the health of the pregnant person or the child. Additionally, the pregnant person must have lived in SA for at least two months and undertake the abortion at a 'prescribed' hospital, resulting in a risk of discrimination in access. NSW is the only other Australian state where termination of pregnancy remains a criminal offence. ALHR calls on the SA Government to reform abortion law in SA to remove abortion as a criminal offence, and bring SA laws into line with other Australian states to provide for safe, legal and accessible abortion services. The United Nations Committee on the Elimination of Discrimination Against Women,

the Special Rapporteur on the Right to Health, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have all declared that States are obliged to provide access to safe and legal abortion services.

ALHR has, however, congratulated the SA Government on the strengthening of penalties for domestic and family violence perpetrators in 2018.

Disability Rights

With disability rights, the NDIS went to full scheme and although there have been some delays, SA is one of the leading states in the roll out. The introduction of the *Disability Inclusion Act 2018 (S*A) is a significant win for greater access and inclusion for people with disabilities in SA. The Act requires state authorities and local councils to have disability access and inclusion plans, and requires the state government to have a State Disability Plan. The right to play is an often neglected right for children living with disabilities and ALHR strongly welcomes the opening of an inclusive playspace in Park Holme. The almost $1 million playground offers specialist equipment and sensory areas for children with mobility needs, vision and hearing impairments and autism.

LGBTI Rights

ALHR also welcomes the improved human rights protections for the LGBTI community in SA offered by the provision of legal equity to same-sex couples in respect of adoption and assisted reproductive technology rights, as well as legal reforms which enable same-sex couples to enter into registered relationships irrespective of their gender identity, and which expand the definition of 'domestic partner' to include a person who is registered in a relationship. The *Statutes Amendment (Gender Identity and Equity Act) 2016* introduced inclusive terminology and the introduction of intersex status as a protected ground against discrimination. However, ALHR maintains its concern regarding exceptions to discrimination on the grounds of sex, gender identity, sexual orientation or intersex status provided for in the SA *Equal Opportunity Act 1984.*

Human Rights Act

Finally, ALHR has noted that South Australia does not have a statutory human rights framework to provide much needed protection given Australia is the only Western democracy without a federal bill of rights. ALHR calls on the SA Government to follow the lead of Victoria, the ACT and Queensland and introduce a Human Rights Act to reflect and protect the some of the fundamental human rights of all South Australians.

TASMANIA - OVERALL GRADE D

They key reasons for this are that there has not been a lot of change or progress in any areas except LGBTI n rights:

After years of talk there is still no Human Rights Act proposed for Tasmania notwithstanding that the Tasmanian Liberal Party website identifies many of the basic human rights as central beliefs. A majority of the Tasmanian Labor Party policies also find their basis in fundamental human rights and Labor has stated it will introduce and support a Charter of Human Rights. The Tasmanian Greens also has a policy to legislate a Charter of Rights and Responsibilities and to counter the erosion of civil and human rights.

Tasmania's homeless rate has increased and there has been little change in the realistion of Indigenous or disability rights.

A tougher approach has been proposed on law and order with the *Police Offences Amendment (Prohibited Insignia) Bill 2018* will prohibit the display of insignia (also known as gang colours) of Outlaw Motorcycle Gangs (OMCGs).

http://www.premier.tas.gov.au/releases/parliament_to_focus_on_law_and_order_to_stop_tasmania_becoming_a_safe_haven_for_organised_crime

AUSTRALIAN CAPITAL TERRITORY - OVERALL GRADE B -

In many respects, the ACT continues to lead the way in human rights compliance in Australia. The ACT was the first jurisdiction to adopt a human rights act in Australia and the territory continues to set an example. Having said this, there is still plenty of work to do. In 2018 the ACT has slipped backwards in its score mostly because of the ACT's failure to continue to progress human rights reforms, some of which have been committed to in principle without any indication of action.

For example, while important changes were introduced in 2017 in response to the 2015 Law Reform Advisory Committee's review of the *Discrimination Act 1991,* there remains a second tranche of recommendations yet to be implemented to ensure better alignment with the *Human Rights Act,* and we are unaware of any steps towards making this happen three years after the review. And, while important legislative amendments were introduced to the *Residential Tenancies Act* following 2017 amendments to allow for better protections for victims of family violence, little progress has been made in other important areas to ensure compliance with the right to housing. The most concerning of these is inaction in relation to the removing "no cause" evictions.

Another concerning example of inaction has been the lack of response to calls from the ACT Human Rights Commissioner to raise the age of criminal responsibility from 10 to at a minimum of at least 12 years old, in line with human rights obligations.

Human Rights Act

ALHR strongly endorses the continued calls by the ACT Human Rights Commissioner to introduce a more efficient and accessible mechanism for complaints about human rights breaches. Currently those who allege human rights breaches must bring action in the Supreme Court, which has inhibited the use and implementation of the human rights principles and limits access to justice.

ALHR is also concerned with the current inability to make submissions to the ACT Assembly's Standing Committee on Justice and Community Safety, which performs a scrutiny role to review human rights compliance of all legislation passed in the ACT. ALHR hopes that in the future we, as well as other civic and community organisations, can contribute to the process of ensuring the human rights compliance of bills and subordinate legislation.

Indigenous rights

We congratulate the ACT on the appointment of its first Aboriginal magistrate and Director of Public Prosecutions and we applaud the ACT for becoming the first state or territory to celebrate Reconciliation Day as a public holiday in 2018. There is, however, a very long way to go in relation to Indigenous rights in the ACT. The ACT continues to have a serious overrepresentation of Aboriginal and Torres Strait Islander children and young people in care proceedings. Most alarmingly the 2018 Productivity Report notes the ACT as having the highest proportional levels of child care and protection reports in the nation, and the second highest level of removal rates. ALHR welcomes the ACT government's establishment of the "Our Booris, Our Way" review into the ACT child protection system, and we look forward to the report being published in late 2019 with a view to a speedy and human rights-focused approach to changing outcomes. ALHR also remains concerned with the over-representation of Aboriginal and Torres Strait Islander persons in custody in the ACT.

LGBTIQ rights

We congratulate the ACT government on the *Discrimination Amendment Act 2018* which repeals most exceptions that previously allowed for religious educational institutions to discriminate against students and employees or contractors in relation to any protected attribute, including sexuality or gender identity.

Children's rights

ALHR notes with concern the comments of the ACT Children and Young People Commissioner that the ACT lacks adequate facilities to respond appropriately to children and young people with complex high-needs. ALHR is concerned that a small number of young people have been

inappropriately detained in youth justice facilities solely due to lack of adequate mental health facilities.

Disability rights

We congratulate the ACT government on the amendments to the *Juries AcCt 1967*, which mean people with disabilities are no longer automatically exempt from jury duty. The court can make a a direction that appropriate support such as an assistance animal, Auslan interpreter, disability aid or support person be given. In addition, a court can also direct that an interpreter be provided for jurors who do not have a sufficient understanding of the English language.

Freedoms

This year the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act* 2018 was introduced, which establishes the necessary legislative arrangements for the subcommittee to inspect places of detention in the ACT. ALHR congratulates the ACT for this important amendment.

The *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* was introduced. This bill amends the *Drugs of Dependence Act 1989* in relation to personal possession of cannabis and consequential amendments to the *Criminal Code (ACT) 2002*. The Bill will amend criminal laws to allow for the personal use and carry of cannabis up to a limit of 50g and to allow individuals to cultivate up to four cannabis plants (excluding artificial cultivation).

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The *Births, Deaths and Marriages Registration Amendment Bill 2018* was also introduced. The Bill proposes to amend the Births, Deaths and Marriages Registration Act 1997 to give parents greater choice about whether to register as a stillborn child a fetus who showed no sign of a heartbeat in-utero before 20 weeks' gestation but was born during or after 20 weeks' gestation. This Bill will also give parents greater choice about whether to include such a stillborn child as part of a multiple birth or on registrations of siblings who are born at the same time or later.

Indigenous Rights – Overall Grade F-

Yet another year passes where Aboriginal and Torres Strait Islander peoples continue to experience disadvantageous treatment in their daily lives. There has been no progress towards reconciliation, civil, political, economic, social or cultural rights.

The year was punctuated with a myriad of failures to redress the rights of Indigenous Australians, underscored by the decision to allocate almost $50m in funding to commemorate 250 years of colonisation in blithe disregard to the ongoing consequences and subjugation that Aboriginal and Torres Strait Islander peoples continue to experience.

There was no mention in the 2018-19 Federal Budget of important areas such as justice, family violence, Closing the Gap and child protection, but there were major cuts to remote housing. There was no meaningful progress toward Constitutional Recognition and a voice to parliament. All of these issues are interlinked and the nation has reached a crisis point. So what do we see to date?

Health

While the Federal Government found $550 million for rural health, Indigenous health in remote Australia got almost no attention. The plan to address Indigenous health appears to be merely lip service rather than real, evidence-based, adequately funded government policy. The Federal Government has shown a lack of vision with little or no insight or desire to close the gap to help Aboriginal and Torres Strait Islander peoples prosper.

Housing

A staggering $1.5 billion dollars over four years was slashed from remote housing, with Western Australia, South Australia and Queensland receiving no funding at all for remote housing. Housing is vitally important to closing the gap and such savage cuts will have a devastating impact on remote communities where overcrowding and homelessness are at breaking point, creating further social, health and economic stress for the communities. The right to adequate

housing and shelter is a fundamental human right which is essential for human survival with dignity. When it comes to Indigenous communities, the Federal Government is failing to live up to its international legal obligations. Without a right to housing Indigenous disadvantage is further entrenched, many other basic human rights are compromised including the right to family life and privacy, the right to health and the right to development.

Closing the Gap

No needs-based measures were allocated to the Closing the Gap strategy which, at one stage, was a national priority. The Government's failure to allocate funding to the Closing the Gap Refresh shows a total disregard for basic human rights to equality and quality of education, housing, employment, and health. The Federal Government has also failed to fund the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 and the National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023.

Throughout 2018, the Closing the Gap Strategy has been left to languish under the current Government. ALHR therefore welcomes the very recently announced COAG agreement to work in genuine partnership with Aboriginal and Torres Strait Islander peoples on the Refreshed Closing the Gap Strategy and to establish a new formal partnership with Aboriginal and Torres Strait Islander peoples by the end of February 2019, with new draft targets to be finalised by mid 2019. ALHR calls on the Government to back this essential collaboration and formal partnership up with adequate Closing the Gap funding.

Community Development Program

ALHR is alarmed by recent data regarding the Federal Government's work-for-the-dole Community Development Program (CDP), which mainly involves regional and remote unemployed Indigenous People. Participants in remote areas are expected to engage in 25 hours of employment or training a week. However, there is often no employment available in remote rural areas, the place of training can be a long distance from their homes, and many of

the participants suffer severe mental health problems that make them unsuitable to participate in the program. Currently failure to participate carries a financial penalty of up to $50 a day, an amount that cannot be afforded on minimal welfare entitlements.

Region-by-region penalty statistics reveal that places with higher levels of Indigenous participants were issued with more penalties whereas most participants in the federal Government's mainstream work-for-the-dole scheme, Jobactive, were not slapped with penalties last financial year. Instead of addressing this systemic racism there are now proposed changes to social security legislation which threaten far heavier penalties for non-participation which cannot be waived.

ALHR calls on the Federal Government to end this punitive and systemically racist program which serves only to entrench poverty and ensure that Indigenous Peoples in our society remain marginalised.

Incarceration

The Federal Government has also done little to rectify the shameful over-incarceration and suicide rates of Aboriginal and Torres Strait islander peoples by not providing funding to implement recommendations from the Northern Territory Royal Commission, or the Australian Law Reform Commission's 'Pathways to Justice' report. This is a human rights abrogation and shows a callous disregard for equal justice for First Nations People.

First Nations Children

The wellbeing of Aboriginal and Torres Strait Islander children should continue to be a concern and a source of shame for all Australians. Child mortality, driven by high rates of Indigenous infant and child deaths, has increased with no adequately funded policy initiatives to address this. Australia continues to fail to live up to its international legal obligations toward Indigenous children in contact with the criminal justice system. Aboriginal and Torres Strait Islander children, make up almost 70 per cent of the population of juvenile detention facilities in Australia

and Indigenous children between ten and 17 years of age are 24 times more likely than non-Indigenous youth to be in police custody or detention.

The findings of the NT Royal Commission make it clear that deep systemic failures exist in Australia's treatment of Aboriginal and Torres Strait children within the criminal justice system. Thus far the Australian Government has failed to adequately address this by shifting responsibility for compliance with Australia's obligations under the Convention on the Rights of the Child to the States and Territories and failing to either offer adequate funding, or take responsibility for the implementation of the recommendations of the NT Royal Commission.
The experiences of First Nations or Aboriginal children and their families with the care and protection systems in Australia continues to be characterised by fear, mistrust and disempowerment, with the experience of the Stolen Generation and its transgenerational impact insufficiently addressed by Australian authorities. The number of First Nations children in out-of-home-care has doubled in the last decade. Nearly 18,000 of the 48,000 young people in out-of-home care are Indigenous – 10 times the non-Indigenous rate.

The NSW Government recently rushed through laws which expand the powers of family and community services to permanently remove children from their families and allow for forced adoptions. These new measures contain no specific protections for Aboriginal and Torres Strait Islander children and their families and were passed with inadequate consultation or transparency with Aboriginal and Torres Strait community bodies. At the Federal level, in March 2018, then Assistant Minister for Children and Families, David Gillespie, made a widely criticised public call to open up adoptions of Indigenous children in out-of-home care. In late November a House of Representatives Standing Committee on Social Policy and Legal Affairs report on adoption, '*Breaking barriers: a national adoption framework for Australian children'* recommended uniform federal laws to open up adoption to children in out-of-home care. ALHR is deeply concerned that such a a policy would have a detrimental and disproportionate impact on First Nations children and communities.

These moves risk creating another stolen generation. This is shocking given the lessons governments across Australia should have learnt from the *Bringing Them Home* report and the *National Apology to the Stolen Generations*."

Family Violence

The Federal Government continues to disappoint in measures to address family violence against Aboriginal and Torres Strait Islander peoples. When compared to the non-Indigenous population, Indigenous women are 32 times more likely and Indigenous men are 23 times more likely to be hospitalised due to family violence. An Australian Institute of Health and Welfare report found that many of the increased risk factors for family violence relate to systemic failures in the protection of Aboriginal and Torres Strait Islander peoples economic, social and cultural rights such as poor housing and overcrowding, financial difficulties and unemployment. Understanding family violence in Aboriginal and Torres Strait Islander communities requires recognition of the intergenerational trauma that continues in Indigenous communities today.

ALHR calls on the Federal Government to urgently implement the six recommendations made by SNAICC – National Voice for our Children, the National Family Violence Prevention Legal Services Forum (NFVPLS) and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) in '*Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families*'. If the Government is serious about addressing family violence it must commit to a sustained increase in investment for family violence response and prevention, with a key focus on resourcing needs for Aboriginal and Torres Strait Islander community-controlled organisations.

Constitutional Recognition

ALHR was dismayed by the Australian Government's announcement this year of the need for yet another inquiry into Constitutional Recognition — a matter on which a historic number of Aboriginal and Torres Strait Islander Peoples have already spoken. The majority view presented after the substantial and unprecedented consultation undertaken in 2017 was that a referendum be put to the Australian people proposing an amendment to the Constitution. A First Nations Voice to Parliament was the only proposal made at the Regional Dialogues for the recognition of

Aboriginal and Torres Strait Islander peoples in the Constitution. Accordingly it was the Referendum Council's single recommendation for Constitutional amendment. The Joint Select Committee (JSC) on Constitutional Recognition's final report released in November, follows the fourth round of inquiries or reporting mechanisms since 2012 on this issue, risks further delaying progress.

ALHR acknowledges the frustration, anger and disappointment that many Aboriginal and Torres Strait Islander peoples have felt in achieving any real progress following the Australian Government's rejection of the recommendation for a constitutionally enshrined Voice to Parliament in its immediate response to the Uluru Statement from the Heart last year. The Federal Government should be pursuing amendment to the Constitution to enshrine a First Nations the Voice to Parliament as a matter of immediate priority.

Overall Conclusion

ALHR has called on Federal Government to stop ignoring the many human rights violations experienced by Aboriginal and Torres Strait Islander peoples on a daily basis. Until this is done, we appear to be going in circles, paying lip service to fix a problem that requires fiscal outlay and a commitment from all parties to fix the problem.

BUSINESS AND HUMAN RIGHTS - OVERALL GRADE C+

In 2018 the Australian Government took some concrete steps towards improving Australia's approach to dealing with corporate human rights abuses, including the introduction of landmark modern slavery legislation. However, much work remains for Australia to implement the 2011 *UN Guiding Principles on Business and Human Rights* (**UNGPs**), which outlines states' obligations to protect against human rights abuses within their territory or jurisdiction, from their parties including businesses.

The Federal Inquiry into Human Organ Trafficking and Organ Transplant Tourism, concluded its public hearings in 2018, and on 3 December 2018 the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (**Committee**) published its report, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism*. The report makes 12 important recommendations which are yet to be implemented.**[1]**

1. Introduction of Modern Slavery legislation

ALHR was pleased to welcome the passing of the *Modern Slavery Act 2018* (Cth) (**the Act**) in November 2018, which requires large companies operating in Australia to provide the Government with an annual statement on the steps they are taking to identify and address modern slavery in their operations, including their supply chains throughout the world. The introduction of the Act follows a Federal Government Inquiry in 2017,**[2]** which recommended the introduction of a Modern Slavery Act similar to the United Kingdom's *Modern Slavery Act 2015.* The new Commonwealth legislation improves on the UK legislation in a number of ways. It establishes a public, government-run online repository for companies' annual statements and provides that certain Government entities must also comply with the reporting requirements. However, a major omission in the Act is the failure to establish the recommended Independent Anti-Slavery Commissioner, like the one found in the UK, to coordinate Australia's response to domestic modern slavery issues**.** In addition, the new Act does not provide for penalties for companies that fail to comply with the reporting requirement, though the Government will be

able to follow up with companies that fail to report.

2. Commitment to reform of the Australian OECD National Contact Point

In November 2018 the Government committed to reforms to Australia's primary complaints body for dealing with corporate human rights abuses, the Australian OECD National Contact Point (**AusNCP**).**[3]** This announcement followed the 2017 Independent Review of the AusNCP, which recommended major reforms to the AusNCP to increase its independence, transparency and effectiveness and bring it in line with best practices of other OECD National Contact Points.**[4]**

The Government responded to the Independent Review by committing to restructuring the AusNCP to make it more independent, transparent and to increase its visibility amongst stakeholders.**[4]** In July 2018 the AusNCP also released updated Procedures, which addressed some of the concerns raised by civil society around the effectiveness of the AusNCP's complaints handling process. The Government has committed to further updates to the Procedures to reflect additional upcoming reforms to the AusNCP.

These reforms, which are yet to be implemented, are a step in the right direction towards improving the AusNCP's very poor track record as an effective complaints handling body. They also go some way to helping ensure that, in accordance with the UNGPs, Australia has effective state-based non-judicial grievance mechanisms, which provide victims of corporate human rights abuses with access to effective remedies.

3. Human Organ Trafficking and Organ Transplant Tourism Recommendations

ALHR urges the Government to implement all the recommendations in the *Compassion, Not Commerce* report. In particular, ALHR urges the Government to implement the recommendation to amend Commonwealth criminal laws to make trafficking in human organs or soliciting a commercial organ transplant overseas an offence. Other important recommendations include meeting international best practice standards through the establishment of a comprehensive

organ donation data collection repository; a multi-lingual public health education programme to address legal, ethical and medical risks associated with participation in organ transplant tourism; and a mandatory reporting scheme placing an obligation on medical professionals to report knowledge or reasonable suspicion that a person under their care has received a commercial transplant or one sourced from a non-consenting donor either in Australia or overseas.

The report made a specific recommendation regarding the importation of human tissue into Australia for commercial purposes, requiring any person or body corporate importing human tissue into Australia to produce verifiable documentation of the consent of the donor person or their next-of-kin. This could include appropriate legislative changes at the Commonwealth or State and Territory level where required. This recommendation is in response to Real Bodies: The Exhibition, and all exhibitions of this kind.

ALHR also commends the recommendation that the Australian Government pursue through the United Nations the establishment of a Commission of inquiry to thoroughly investigate organ trafficking in countries where it is alleged to occur on a large scale, and that Australia engage internationally by signing and ratifying the Council of Europe Convention against Trafficking in Human Organs.

More work to be done

The Australian Government's decision in October 2017 not to proceed with the creation of a National Action Plan on Business and Human Rights (**NAP**) remains a major concern. NAPs are an important tool for the Government to articulate how it intends to support the implementation of the UNGPs and to provide a coherent policy framework to guide business and Government departments on business and human rights issues. At least 34 countries currently have or are preparing a NAP.**[6]** The decision not to create an NAP is out of step with Australia's peers such as the United Kingdom, United States and Indonesia, which all have NAPs and goes against the unanimous advice of the Government's own expert Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights.**[7]** ALHR calls on

the Government to recommit to the creation of a National Action Plan on Business and Human Rights.

ALHR also urges the Australian Government to act fast in implementing the recommendations in the *Compassion, Not Commerce* report, especially laws to ensure that Australians are not engaging in organ transplant whereby the organ has been sourced from executed prisoners or executed prisoners of conscience. Further, the Australian Government should implement all necessary laws to ensure the current plastinated bodies exhibitions which are currently showing in Australia produce the documentation required to verify the consent and identity of the human tissue and organs used in these exhibitions.

[1] Commonwealth of Australia, Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (December 2018) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Tabled_Reports
[2] Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report/section?id=committees%2freportjnt%2f024102%2f25514
[3] http://ausncp.gov.au
[4] Alex Newton, *Independent Review: Australian National Contact Point under the OECD Guidelines for Multinational Enterprises* (December 2017), http://www.ausncp.gov.au/content/Content.aspx?doc=2017_review.htm
[5] http://ausncp.gov.au/contactpoint/2017-review/2017-review-response/
[6] Danish Institute for Human Rights, *National Action Plans on Business and Human Rights,* https://globalnaps.org/country/
[7] Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights, *Advice on the prioritisation of issues and actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs)*, (August 2017), http://dfat.gov.au/international-relations/themes/human-rights/business/Documents/final-msag-priorities-paper.pdf

REFUGEE RIGHTS - OVERALL GRADE F

Australian Lawyers for Human Rights (ALHR) remains deeply concerned about Australia's approach to refugees and people seeking asylum and calls for significant and urgent reform across a number of areas. In particular, much more must be done to ensure a fair, efficient and transparent assessment process for all people seeking asylum — irrespective of their mode of arrival to Australia — which meets Australia's international human rights obligations, respects the principles of family unity and ensures the best interests of children are protected.

Worsening crisis in offshore processing

2018 saw a further decline in the situation of people subject to Australia's offshore processing policy. After 5 years of waiting, some 1200 people who were transferred from Australia to Papua New Guinea and Nauru remain on there with no foreseeable hope of finding safety and dignity.While a small number of people have been resettled in the United States and the majority children have been transferred to Australia, those who remain face a worsening mental health crisis and there were large numbers of court-ordered transfers to Australia to enable people to access medical treatment.

ALHR was disappointed by the Parliamentary delays in considering the *Migration Amendment (Urgent Medical Treatment) Bill 2018,* which would ensure that people who are assessed as requiring medical treatment by two or more doctors are transferred to Australia, so they can access the treatment they need. The Bill would also bring all refugee and asylum seeker children from Nauru, accompanied by their family members, for medical or psychiatric assessment. While the Australian Government has the power to bring people to safety without new legislation, the Bill is necessary because the Government has repeatedly failed to take the action that the medical evidence demands.

ALHR has repeatedly called on the Australian Government to bring every person transferred to Manus Island and Nauru to safety, and we do so again, noting the inhumane and dangerous conditions created by offshore processing. Despite the Australian Government's insistence

otherwise, it remains legally responsible at international law to ensure the protection of people it transfers to Nauru and Papua New Guinea. The Government must ensure humane and realistic solutions for everyone subject to offshore processing as soon as possible and without the separation of families, including taking up New Zealand's long-standing offer to resettle refugees from Nauru and Papua New Guinea.

Unfair and protracted 'Fast Track Process'

ALHR remains concerned about the process for assessing the status of people seeking asylum and who arrived in Australia by boat between August 2012 and January 2014. This group of people are only eligible for temporary visas and are subject to a separate visa assessment process. Further, the Government's removal of legal assistance for this group of people has significantly affected the integrity and fairness of the process.

Those who are successful are faced with the uncertainty of only short-term protection and permanent separation from family members overseas. Those who are not successful at first instance are subjected to a restricted merits review process via the Immigration Assessment Authority, which limits how people can present information about their protection claims. As a result, there is a substantial risk that people who are in need of protection are not recognised as such, leading to violations of the international prohibition on *refoulement*.

Cuts to welfare and income support

ALHR remains concerned about the Australian Government's decision to remove vital income and casework support for thousands of people seeking asylum in Australia. Changes to the Status Resolution Support Service which provides a basic living allowance and support services, including access to counselling for torture and trauma survivors, have forced people into destitution and homelessness. Many of the people affected by these changes, including elderly people, pregnant women and families with school-age children, will not be able to meet their basic needs. ALHR considers that cutting off government support for this group of people would likely breach Australia's obligations under the *International Covenant and Economic,*

Social and Cultural Rights and, where children are involved, the *Convention on the Rights of the Child*.

Proposed character cancellation amendments

ALHR considers the *Migration Amendment (Strengthening the Character Test) Bill 2018*, which seeks to further expand the powers of the Minister for Immigration, Citizenship and Multicultural Affairs to refuse to grant visas or to cancel visas by expanding the cohort of non-citizens who are considered for visa refusal or cancellation, lowers the threshold for visa refusal and cancellation in an unjustifiable manner. The Bill undermines the criminal justice system's determinations about the risk a person poses to the community through sentences of imprisonment. The practical consequence of this Bill is that people who have been convicted of an offence, but have not received a sentence of imprisonment, will nevertheless be taken into detention and be subjected to a further decision-making process as to whether they pose a risk to the community, with weaker safeguards.

ALHR also continues to have concerns because the current decision-making framework lacks the procedural safeguards necessary to ensure that Australia complies with its international human rights obligations. Given this lack of safeguards, ALHR advocates for a restriction of the number of people exposed to a risk of human rights violations including those relating to the risks of arbitrary detention and *refoulement*, while the Bill seeks to do the opposite.

Regional cooperation

While ALHR welcomes the Australian Government's adoption of the Global Compact on Refugees, ALHR is disappointed by the Australian Government's decision not to adopt the Global Compact for Safe, Orderly and Regular Migration. Both Compacts reiterate existing international human rights obligations and present an important opportunity to foster international cooperation in relation to refugees and migration.

Regional cooperation is vital to addressing refugee protection in a sustainable way at regional and global levels. ALHR urges the Australian Government to work with other countries in the Asia Pacific to establish a cooperative and transparent approach for managing asylum and refugee flows within the region that increases protection capacity and resettlement opportunities and also meets our human rights obligations.

Boat turnbacks continue

Although a lack of transparency has concealed the issue from public scrutiny, the Australian Government's policy of intercepting the vessels of people seeking asylum in Australia continues to undermine Australia's compliance with its international legal obligations. Where people have successfully reached Australian territory to claim refugee status, they have been returned without access to Australia's formal refugee status determination procedures in circumstances plainly inconsistent with international standards.

Citizenship delays

Refugees who meet the eligibility requirements for Australian citizenship are experiencing protracted delays in the application process. ALHR calls on the Australian Government to ensure that all citizenship applications are processed in a timely matter.

LGBTI RIGHTS - OVERALL GRADE D

ALHR's LGBTI Subcommittee remains concerned about the Australian Government's approach to the human rights of LGBTI citizens and non-citizens under its care and control.
The LGBTI Subcommittee was hopeful that 2018 would be an opportunity for the Australian Government to rebuild trust with the LGBTI Community after having exposed them to the breaches of their human rights through insisting on a non-binding postal prior to enacting marriage equality legislation. However that opportunity has been flouted.

In September 2018, Prime Minister Scott Morrison said of counsellors working with teachers to support transgender children in schools "we do not need "gender whisperers in our schools. Let kids be kids". In a radio interview the same week, he expressed comment that programs in schools that aim to prevent family violence which acknowledge the existence, for example, of lesbian girls, made his "skin crawl".

LGBTI youth remain amongst the most vulnerable to abuse, harassment and violence. They no longer have the benefit of the National Safe Schools Program, for which funding ceased in 2017. For the Australian Government, through the Prime Minister, to promote abuse, harassment and violence against LGBTI youth by way of his comments is in direct conflict with Australia's international human rights obligations pursuant to the Convention on the Rights of the Child, whereby children have a right to an education that provides life skills, the capacity to enjoy the full range of human rights and which promotes a culture infused by appropriate human rights such as inclusivity.

The amendments to the Marriage Act 1954 only seemed to light the fire for the debate that continued through 2018 with respect to the advancement of religious freedoms over LGBTI rights. The Ruddock Review, available to the Australian Government since May 2018 but not released for public comment,…. The delay in of itself was harmful to the LGBTI community in Australia, and teachers, parents and students had to rely on leaked portions of the report and the commentary in relation to the same when considering how they might be treated by their schools in the future.

The LGBTI Subcommittee stands by the position of ALHR generally in that LGBTI rights will only be adequately protected with the enactment of a Federal Human Rights Act, codifying those rights in line with international human rights standards.

FREEDOMS - OVERALL GRADE F

Encouragement of religious discrimination

Following on from the passing of marriage equality legislation at the end of 2017, the present Federal Government has promoted legal protection of the right to discriminate on the part of religious organisations such as schools in relation to sexuality of both pupils and staff, echoing the Ruddock Report on Religious Freedom. That not only adults but vulnerable children are targeted for discrimination on the grounds of religion is particularly abhorrent and demonstrates a complete misunderstanding of the concept of religious freedom. The Supreme Court of Canada, in contrast, recently held that protecting LGBTI students from discrimination trumped 'religious freedom'.

The prosecution of Witness K and Bernard Collaery

The ASIS whistleblower known as Witness K and his lawyer, former ACT Attorney-General Bernard Collaery, continue to be pursued by the Federal Government for disclosing the arguably-illegal bugging of the Timor-Leste cabinet, with Witness K having his passport taken away in 2013 and both being prosecuted in closed court three years after the relevant information was given to the Director of Public Prosecutions, and possibly without their legal representatives having access to all relevant information.

Increases in surveillance /invasions of privacy/overbroad national security legislation

The Federal Government and Opposition outdid themselves this year in passing legislation which requires Australian IT corporations to create 'back doors' into their encryption programs, on request from the Attorney-General, and also allows the Director-General of Security or the chief officer of an interception agency to compel a provider (telco/ISP) to do an unlimited range of acts or things, which could mean anything from removing security measures to deleting messages or collecting extra data, while concealing action taken covertly by law enforcement (*Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*).

Recent Australian national security legislation has continued the trend of being generally overbroad, substantially encouraging the increased surveillance of innocent Australians not

suspected of any crime, and severely compromising their personal privacy and digital rights (see generally, State of Digital Rights Report, Digital Rights Watch, 2018).

Effectively, Australia has:

- moved from largely relying on Australia's criminal law (with its tested procedural safeguards) in promoting national security, to relying on a system that uses special provisions to target classes of people that may include innocent bystanders;
- moved from allowing judges to authorise the interception of communications to and from a telecommunications service in specific circumstances –where there were reasonable grounds for suspecting that a particular person was likely to use the service, and the information obtained was likely to assist the investigation of an offence in which the person involved - to a system that allows elected officials to issue such warrants on the ASIO Director-General's application;
- expanded the scope of communications that the Government could monitor for the purposes of national security protection; and
- included non-suspects within the class of persons numerous government and semi-government bodies could monitor.

The substantive legislation which penalises national security offences is often deliberately vague, lacking crucial core definitions, has demonstrated an increasing tendency to redefine commonly used terms to give them a completely different meaning, and is often complex, all of which make it very difficult for people to understand whether they might be committing an offence or not. ALHR endorses the concerns of the Law Council that individuals "just will not know where the boundaries are in terms of whether or not they're actually committing criminal offences".[2] This situation is inconsistent with the rule of law which requires that the law is capable of being known to everyone, so that everyone can comply.

Complex legislation with few defences poses a significant problem in the light of the excessive penalties which apply for breach of national security legislation, often irrespective of whether or not any harm has been caused, and often contrary to the Commonwealth's own Guidelines in relation to the imposition of penalties. There appears to be an emerging trend whereby the

[2] President of the Law Council of Australia, Hansard, Parliamentary Joint Committee on Intelligence and Security, 16 March 2018, p 10.

Federal Government legislates to impose disproportionately severe penalties (described by one commentator as 'horrific over-reach'), without allowing any 'public benefit,' public domain or 'whistleblower' defences, for a wide range of matters, but then states publicly that the government is unlikely to encourage prosecutions under the legislation against certain classes of person.

The 'foreign interference' package of legislation comprising the *Foreign Influence Transparency Scheme Act 2018 (FITS)*, *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* and the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* is a good recent example of confusing and overbroad legislation which makes it hard for Australians to know whether or not they are complying with the law and which, in ALHR's view, is therefore inconsistent with fundamental rule of law principles.

For example, under the FITS Act as originally drafted, it appeared likely that:

- Australian academics working in consultation with overseas universities or lecturing abroad would be forced to register as 'foreign agents' (with associated reporting and notification obligations) purely because of their academic collaboration with a foreign organisation;
- Calling your mother in New Zealand to say that you were going on a demonstration in Melbourne in support of refugees could also have required registration – whether or not you actually went to the demonstration.

While it was said by members of the Federal Government and the Attorney-General's Department that the legislation was not intended to have these effects, the legislation was certainly drafted so broadly that such outcomes were possible. The final wording of the Act is somewhat more narrow, but anomalies remain.

Without concerted advocacy by civil society in Australia, problems such as those above may not have been addressed at all prior to the legislation's passage. The parliamentary committee process, (which provides a very important mechanism for detailed scrutiny of legislation), is increasingly offering shorter and shorter time frames - sometimes as little as five working days - for receipt of submissions from civil society, experts, stakeholders and interested members of the community. This, coupled with national security legislation that includes overreach or is

poorly drafted or overbroad, constitutes a significant threat to human rights, the rule of law and democracy in Australia.

The above issues also pose a significant problem in the context of the current dysfunctionality of the Administrative Appeals Tribunal, as reported in *The Saturday Paper*.

Demonising foreigners and the United Nations

The *National Security Legislation Amendment (Espionage and Foreign Interference) Act* 2018 potentially makes reporting of human rights abuses in Australia to United Nations bodies a national security offence.

The 'foreign interference' package of legislation reflects unexamined assumptions about the existence and effect of foreign influence on Australian politics and fails to adopt a risk-based approach. While the FITS Act was purportedly to make foreign influence in Australian politics more transparent, in its final version the legislation exempted all politicians, while at the same time implementing a 'name and shame' public register of foreign persons who have self-registered or who are regarded as exerting political influence.

These laws express disregard for the impact on the rule of law, individual human rights, freedom of political discourse and hence disregard for the negative legislative impact on Australia's democracy. They do not achieve their purported aims and indeed are arguably counterproductive.

Undermining of democracy/ the rule of law

As a result of the merging of several ministries in the 'Dutton mega-Ministry' and the movement of some functions away from other ministries and into the mega-Ministry, appropriate checks and balances between different ministries have been reduced, and existing failings have been entrenched rather than reduced (see generally the Audit Report in relation to the Integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service.)

In addition, political, board and managerial attacks on the ABC and particular journalists, and the defunding of the ABC and SBS, make it harder for Australians to obtain factual information on which to base their political views and voting decisions.

Positive progress

- The Ruddock Report recommendation to abolish blasphemy laws.
- Senator Patrick's proposed amendments in the *Intelligence Services Amendment (Enhanced Parliamentary Oversight of Intelligence Agencies) Bill 2018*. ALHR agrees with Senator Patrick in his Second Reading Speech that 'While Australia's intelligence community has grown rapidly over the past two decades, the mechanisms of accountability and review overseeing those agencies have received much less attention, resources and authority' and that existing restrictions upon PJCIS oversight should generally be removed.
- Last-minute amendments to the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* to improve the position of charities and other civil society organisations.

DISABILITY RIGHTS - OVERALL GRADE D F

Lack of Implementation of the UNCRPD

Australia ratified the UN Convention on the Rights of Persons with Disabilities (**UNCRPD**) in 2008. By doing so, Australia agreed to give effect to the Convention by adopting all legislative, administrative and other measures for the implementation of the rights recognised in the Convention. Specifically, through ratification, Australia has the obligation to refrain from engaging in acts or practices which are inconsistent with the Convention and must modify or abolish existing laws and practices which discriminate against persons with disabilities. Largely, Australia has failed to fulfil the obligations by failing to abolish laws which are inconsistent with the Convention and to legislate to fulfil all of its obligations under the Convention. This is concerning because the Convention is not enforceable in Australia's domestic legal system unless enacted into legislation.

Positive progress:

There has been some legislative recognition of Convention principles in new legislation introduced in states and territories, including the *Disability Inclusion Act 2018* (SA).

The mental health legislation of the State and Territory jurisdictions of Australia has been amended for greater consistency with the requirements of the UNCRPD. While it is a positive that mental health legislation has been amended to better align with the UNCRPD, in general, the amendments made reflect an inadequate understanding of the human rights model of disability and may violate the UNCRPD. For instance, a determination of impaired mental capacity leads to a loss of the right to exercise legal capacity and because the amended legislation maintains substitute decision-making, which is contrary to the human rights model of disability .

Guardianship legislation and policy is under review in some jurisdictions. For example, the Office of the Public Advocate has been consulting on how supported decision-making principles may be incorporated into guardianship.

Roll out of the National Disability Insurance Scheme continues

2018 saw the National Disability Insurance Scheme (NDIS) continue to roll out, with some states

and territories reaching full scheme for participants. The NDIS is offering people with a disability choice and control over their services. For some people, there is a real improvement to their social and economic participation as a result of the scheme. However, there have been some significant concerns raised this year including:

- The application of the scheme to people with mental illness, including the end to block funding for community mental health services. Without alternative and accessible avenues in place, there will be nowhere for people with mental health to receive services.
- Inadequate? transport funding continues to be a point of contention for participants and the agency.
- Wait times for reviews of decisions are too long and are leading to poor outcomes for people with disabilities and their families.

Phasing out of Funding for community mental health services due to the Roll-Out of the NDIS

As part of the transition to the NDIS, state and territory governments are phasing out block funding for community mental health services. Block funding is the process whereby governments purchase a block of services from a provider and which are to be delivered to clients who meet certain criteria or are referred to those providers as part of an individualised plan. Block funding was the predominant community mental health service delivery method prior to the NDIS, and as the roll-out of the NDIS progresses, block funding from the Federal Government for State and Territory-run community mental health services is being phased out. As a result, community mental health services are facing closure or merger with other services as their funding is cut. Many persons with mental illness will fail to qualify for NDIS funding. It is projected that of the estimated 690,000 individuals in Australia living with severe mental illness, only 64,000 will qualify for the NDIS. This leaves an alarming and significant gap of persons with severe mental illness who will not receive NDIS funding and who will lose access to much-needed community mental health services as services' funding is phased-out. Of particular concern is access to mental health services by Indigenous persons. In 2016-17, Indigenous persons with mental illness received community mental health services at approximately three times the rate of non-Indigenous persons with mental illness

(51.2 compared to 15.7 per 1,000 population), highlighting the importance of the continuation of these vital services for Indigenous persons with mental illness.

Young Persons in Aged Care Facilities

A staggering 6,000 young persons with disabilities still live permanently in aged care facilities. Young persons with disabilities living long-term in aged care facilities experience declining emotional, physical and mental health and extreme social isolation. Aged care facilities provide basic shelter and care to young persons with disabilities but do not provide the much-needed social interaction with other young persons or the specialised disability support that a young person with disabilities may need. Once in aged care, State and Territory governments have little incentive to provide pathways out of aged care and to fund the complex, ongoing support needs of young persons with disabilities given the Federal Government funds aged care facilities. Young persons with disabilities must be immediately moved out of aged care facilities and into specialist disability accommodation where they can live in the community and be provided with disability supports and societal interaction.

The recently announced Royal Commission into Aged Care Quality and Safety has included people with disabilities living in aged care, such as nursing homes, which will be an opportunity for the Inquiry to consider any concerns in the care delivered to this cohort.

Plastic straw ban places people with disabilities at risk of further isolation

In 2018 there has been a push to ban the plastic straw on environmental grounds, which has raised alarm for people with disabilities. Some people with disabilities rely on the use of plastic straws to drink and take medication. Alternatives to plastic straws such as bamboo and metal straws have been rejected by advocates as inappropriate for use by people with disabilities who need straws because they are not as flexible, or may present a risk of injury to the person. It is important that we remember that people participate in our communities in many different ways, and before everyday items are removed from the shelves, we must ensure that people have appropriate alternatives at the ready.

Disability employment gap continues

The Federal Government introduced the Disability Employment Services reform on 1 July 2018. However, the reforms have been dubbed by advocates as a missed opportunity to create the best employment support system for people with disabilities. There were some positive aspects of the reforms, such as the continued funding of workplace adjustments and an increased focus on sustainable jobs. However, concerns were clear that the reforms failed to ensure people with disability can make informed choices and decisions about their employment support or to provide individual assistance with their particular disability.

The NDIS

The NDIS is both a positive and a negative. It is a positive in a sense that it is bringing support to many persons with disabilities. However, there have been significant implementation issues rendering the NDIS largely a negative. Many persons receive inadequate funding packages, many Aboriginal and Torres Strait Islander people are not engaging with the NDIS or not activating their plans because they are unable to connect to Indigenous-provided services; persons with severe mental illness are failing to qualify because the application requirements do not align well with the symptomatology of mental illness and payments from the National Disability Insurance Agency to support providers have been delayed, leading them to have to consider merger with other support providers.[1]

Sensory hours at major grocery stores

Coles led the charge in 2018 to provide weekly “sensory hours” at over 70 selected stores to offer people with autism or sensory processing disorders the opportunity to do their grocery shopping in greater comfort. Dimming the lights, turning of the music and lowering the scanner noises has allowed people to enjoy their weekly grocery shopping in an accessible environment. It would be great to see this roll out in major supermarkets across Australia in 2019!

Australia celebrated 25 years of the Disability Discrimination Act 1992

The flagship legislation to protect the rights of people with disabilities in Australia celebrated its 25th birthday this year. The celebrations held by Disability Discrimination Commissioner, Alastair McEwin reflected on the achievements of the DDA but emphasised the need to continue the conversation and ensure the voices and experiences of people with disabilities are heard.

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[1] Martina Simos, Merging to survive 2-year NDIS delays, The Sunday Mail, 11 November 2018, p 27.

WOMEN AND GIRLS RIGHTS - OVERALL GRADE C

Reproductive Rights

This year saw a big focus on reproductive rights at a state level. Most notably, the Queensland Parliament voted to decriminalise abortion, 50-41. The Queensland reforms were strongly supported by ALHR and other human rights organisations. It was also promising to see NSW establish safe access zones around abortion clinics, and NSW Labor commit to referring the issue of abortion law reform to the NSW Law Reform Commission if elected in March 2019. Importantly, both the reforms in NSW and Qld received bipartisan support. South Australia now remains the only Australian state to criminalise abortion in limited circumstances. At its recent convention in December 2018, the Australian Labor Party committed to a platform of safe, legal, accessible abortion.

Violence against Women

This year saw some progress in terms of reforms to family law in protecting victims of domestic violence . The Federal Government introduced the *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018* to prohibit direct cross-examination of victims by their former abusers in the Family Court following a 2016 COAG meeting and significant community support.

Disappointingly, the former Education Minister Birmingham had been set to announce a government-backed taskforce to address sexual violence on university campuses, however, the federal leadership spill meant this plan has been put aside for now by the new Education Minister, Dan Tehan. Labor has announced that, if elected at the next federal election, it will take action to ensure student safety and wellbeing on campus.

Economic Equality

According to the Global Gender Gap annual report published by the World Economic Forum, it will take 202 years to bridge the gender pay gap. In that study, Australia ranked No. 39 for

gender equality, and recorded a 'slight widening' of its gender pay gap on legislators, senior officials and managers, as well as going backwards in terms of progress on wage equality.

It was promising to see a first step taken in terms of domestic violence leave. From August 2018 workers are now able to access unpaid domestic violence leave. Under the new entitlement, eligible employees may take leave to deal with the impact of family and domestic violence. While some advocates were disappointed to see victims will only be able to access *unpaid* leave, the move was widely supported as a significant first step.

Going into the next federal election in 2019, Labor has identified recovering unpaid superannuation and bridging the gender pay gap as two key pillars of their plan on reforming workplace laws.

General Comment

This year has seen some promising movement in terms of women's rights, particularly at a state level. Women's rights have been at the forefront of the agenda for state governments across Australian in 2018. However, at a federal level, the commitment to women's rights is somewhat lacking.

This was reflected in the review delivered by the UN Committee on the Elimination of Discrimination Against Women in July 2018. The Committee urged the Australian Government to take immediate action in improving protections for women, including decriminalising abortion, adopting a Charter of Human Rights and ending offshore detention. The Committee emphasised the impacts for transgender women and Indigenous women, particularly those who are in custody.

In 2018 the Federal Government seems to have been more concerned with their own controversies involving women, rather than taking action to improve the lives of women in Australia.

CHILDREN'S RIGHTS - OVERALL GRADE D

In 2016, the Australian Child Rights Taskforce recommended the Commonwealth::

> "Develop a National Plan for all children in Australia. Develop and implement a comprehensive strategy, in consultation with children and civil society, for the overall realisation of the principles and provisions of the [Convention on the Rights of the Child] and which can provide a framework for states and territories to adopt similar plans or strategies".[3]

However, a cohesive, long-term agenda for the protection of children's right in Australia is still lacking and urgently needed.[4] Certain groups of children consistently face barriers to enjoying their rights including Aboriginal and Torres Strait Islander children, children seeking asylum, or who have refugee status; children and young people from culturally and linguistically diverse backgrounds, children with disability, and LGBTI children.[5]

There remains no Commonwealth legislation to comprehensively address children's rights at a national level. Australia should implement national child rights legislation to encourage uniformity across the legal system. Australia remains the only Western democracy bereft of a Federal Bill of Rights or Human Rights Act a deficiency which impacts upon children as well as adults. The UN Committee on the Rights of the Child recommended the Federal Government establish a technical body for advising upon the policies and strategies of its entities, with corresponding human, technical and financial resources, however, this has not happened.[6]

Children in Out-of-Home Care

[3] Australian Child Rights Taskforce, *CRC25 Australian Child Rights Progress Report* (Report, 2016), 11.
[4] Ibid 10.
[5] Ibid 10.
[6] Paragraphs 14 and 18, United Nations Committee on the Rights of the Child Concluding Observations, Sixtieth session29 May–15 June 2012 CRC/C/AUS/CO/4 available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/4&Lang=en

The experiences of Aboriginal and Torres Strait Islander children and their families within the care and protection systems in Australia continue to be characterised by fear, mistrust and disempowerment, with the experience of the Stolen Generation and its transgenerational impact insufficiently addressed by Australian authorities.[7] Aboriginal and Torres Strait Islander children and young people are significantly over-represented in out-of-home care settings.[8] While Aboriginal and Torres Strait Islander children make up only 5.5 per cent of all Australian children, they comprise 35 per cent of the care population.[9] There is a lack of early intervention measures to strengthen and support families, and there has been a failure to provide genuine space for self-determination, cultural practice, or participation in child protection decision-making.[10]

The *Aboriginal and Torres Strait Islander Child Placement Principle* has been a laudable development in aiming to ensure the culturally appropriate placement of children removed from family care. However, these principles are now very seriously threatened by recent Federal government calls to open up adoptions of Indigenous children in out-of-home care and reforms already passed in NSW which expand the powers of family and community services to permanently remove children from their families and allow for forced adoptions. ALHR is troubled by this apparent push for the permanent removal of children from their families and culture. It is clear following *The Bringing Them Home Report*[11] that such removal of Indigenous children and separation from culture has devastating impacts and is generally not in the best interests of the child.

The Department for Families, Community Services and Indigenous Affairs does not appear to have been provided with specific mandate, capabilities and resources to ensure a coordinated

[7] Adelaide Titterton, 'Indigenous Access to Family Law in Australia and Caring for Indigenous Children' (2017) 40 *University of New South Wales Law Journal* 146
[8] Ibid 13.
[9] Australian Institute of Health and Welfare, *Australia's Welfare 2015* (Report, 2015), 51.
[10] Secretariat of National Aboriginal and Islander Child Care, Submission to Senate Standing Committee on Community Affairs, *Inquiry into Out of Home Care* (November 2014).
[11] Bringing them Home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families April 1997

response for the rights of children. Nor, has there been an effort to establish a National Deputy Commissioner for Aboriginal and Torres Strait Islander children.

Despite policy reform and evolving practice over the last 25 years, the overall number of children and young people in out-of-home care has increased and "Australia does not have a system that is uniformly caring, safe, or stable".[12] Expenditure on early intervention and intensive family support is 17 percent of the $3.44 billion national child and family welfare investment.[13] Emotional abuse has been identified as the most common driver for removal.[14] Other drivers include increased poverty and social inequality, and failure to respond to underlying causes of child neglect and abuse.[15]

While a positive step has been taken towards the protection of children's rights through the development of a Charter of Rights for Children and Young People in Out-of-Home Care in all jurisdictions, core requirements of the Charter have not been met.[16] For example, a legislative requirement in all jurisdictions is that children in out-of-home care must be aware of their 'care plan', yet according to McDowall, less than one third of children in out-of-home care in 2013 were familiar with their plan and only one-third who knew about it were actually involved in its preparation.[17]

Australian governments have worked cooperatively in a number of key areas, by creating the National Plan to Reduce Violence against Women and their Children, the National Framework for Protecting Australian Children 2009-2020, and the National Early Childhood Development Strategy. Under the Framework, National Standards for Out-of-Home Care were developed to deliver consistency and improvements in quality of care. However, a recent evaluation of the standards did not reveal significant improvements.[18]

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[12] Australian Child Rights Taskforce, above n 1, 14.
[13] Productivity Commission, 'Chapter 15: Child protection services', in *Report on Government Services 2015* (Report, 2015), 15.13.
[14] Australian Institute of Health and Welfare, above n 5.
[15] Australian Child Rights Taskforce, above n 1, 14.
[16] Ibid 15.
[17] Joseph McDowall, *Experiencing Out-of-Home Care in Australia: The View of Children and Young People* (CREATE Report Card, 2013), xix.
[18] Australian Child Rights Taskforce, above n 1, 15.

Child protection issues cannot be addressed in isolation from the other issues faced by children and families. Governments must focus on a holistic service system. Suggesting that the solution is simply to allow for the open adoption of children in care completely ignores the complex nature of intergenerational trauma, drug addiction, mental health, family violence, poverty and the need for investment in long term solutions that will stop the cycle of trauma.

Violence, Abuse and Neglect

Article 19 of the United Nations Convention on the Rights of the Child provides that governments should ensure children are properly cared for and protected from violence, abuse and neglect. Violence against children constitutes a fundamental breach of their human rights.

Familial Neglect, Abuse and Violence

Family and domestic violence is defined in Article 19 as "all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".

The National Framework for Protecting Australia's Children 2009-2020 is based on a model of public health that aims to invest in universal support for families, target early intervention for high risk families and provide statutory crisis care.[19] The *Third Three-Year Action Plan 2015-2018* of the Framework is focused on redistributing intervention from crisis care toward early intervention and the provision of universal support.[20] However, "progress has been limited by the dramatic reform required to reconsider the role of primary and secondary interventions",[21] and the significant funding required to address causal factors of family violence and support vulnerable families.

[19] Child Rights Taskforce, *2011 Child Rights NGO Report Australia* (Report, May 2011).
[20] Department of Social Services, Commonwealth of Australia, *National Framework for Protecting Australia's Children: Third Three-Year Action Plan 2015-2018* (2015), 8.
[21] Australian Child Rights Taskforce, above n 1, 33.

Particular groups of children are at greater risk of experiencing violence, as well as significant barriers to reporting or seeking support. For example, dispossession and discrimination against Aboriginal and Torres Strait Islander peoples have resulted in higher rates of poverty and substance abuse, which expose children to unsafe environments.[22] Due to intergenerational trauma from the Stolen Generation, a mistrust of authorities and disruption of family connections has resulted, making individuals less likely to seek formal support. [23] Children and young people with disability are also more likely to experience violence and sexual abuse than those without,[24] and children from culturally and linguistically diverse backgrounds, those who live in rural or remote areas, and those who identify as LGBTI are less likely to seek support from support or law enforcement services. [25]

Poverty and Homelessness

Article 27 of the United Nations Convention on the Rights of the Child provides that all children have the right to an adequate standard of living.[26] However, many children still live in poverty. Australia still has no defined poverty line, despite recommendations from the UN Committee on the Rights of the Child in 2005 and 2012. Researchers commonly use the Organisation of Economic Cooperation and Development's measure whereby households earning less than 50 per cent of the median household income are defined as living in poverty, and by this measure around 603,000 Australian children were living below the poverty line in 2012.[27]

The Australian Child Rights Taskforce has recommended that social security payments be increased to a level above the Organisation of Economic Cooperation and Development definition of poverty.[28]

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[22] Ibid 34.
[23] Secretariat of National Aboriginal and Islander Child Care, above n 6, 6.
[24] Lynne Coulson Barr, 'Learning from Complaints: Occasional Paper No 1' (Disability Services Commission, 2012), 9.
[25] Victorian Police, Submission No 92 to Senate Finance and Public Administration References Committee, *Inquiry into Domestic Violence in Australia*, 2014, 5.
[26] *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 27.
[27] Australian Council of Social Service, *Poverty in Australia 2014* (Report, 2014).
[28] Australian Child Rights Taskforce, above n 1, 13.

In 2011, Aboriginal and Torres Strait Islander people accounted for 25 per cent of the homeless population in Australia despite making up only 2.5 per cent of the general population.[29]

Teenagers at risk of homelessness continue to fall into a significant gap in service delivery.[30] A 2011 study conducted by the Australian Institute of Health and Welfare found that over half of applicants who had a valid unmet request for immediate accommodation were under 20 years of age.[31] Children aged between 12 and 15 are often considered too old for appropriate foster care placements, yet many specialist homelessness providers refuse to accommodate children under the age of 16.[32]

Children with Disability

Barriers to receiving adequate disability-related services and support continue to infringe upon children's rights in Australia.[33] The National Disability Insurance Scheme may help to address some gaps in services available to children with disability, however more is required to reduce the risk of violence and abuse faced by children with a disability living in out-of-home care, and the risk of removal.

According to Children with Disability Australia, 14 percent of children in out-of-home care in 2015 had a disability,[34] despite that children with disability make up only 7.3 per cent of the population.[35] Further, according to McConnell and Llewellyn, children with disability are often

[29] Australian Bureau of Statistics, *2049.0 – Census of Population and Housing: Estimating Homelessness* (2012) <http://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/2049.0>
[30] Australian Child Rights Taskforce, above n 1, 17.
[31] Australian Institute of Health and Welfare, *People Turned Away from Government-Funded Specialist Homelessness Accommodation 2010-11* (Report, 2011), 6.
[32] Australian Child Rights Taskforce, above n 1, 17.
[33] Ibid 18.
[34] Children with Disability Australia, Submission to the Senate Standing Committee on Community Affairs, *Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings*, July 2015, 22-23.
[35] Australian Bureau of Statistics, above n 24.

removed from home preemptively, despite a lack of evidence of neglect, abuse or parental incompetence.[36]

Children, especially Aboriginal and Torres Strait Islander children, with disability who are removed from home are more often placed in inappropriate, successive out-of-home care arrangements or remain in respite care or hospital facilities for extensive periods of time.[37] This in turn places them at risk of harm of violence and abuse.[38] According to Disabled People's Organisations Australia, girls with disability are at greater risk of sexual and other violence compared to their peers.[39] Moreover, Robinson and McGovern suggest children and young people with disability experience violence and abuse at three times the rate of children without disability.[40]

Recommendations have been made to Australia to address all forms of violence against people with disability, such as by the United Nations Committee Against Torture 2014, United Nations Committee on the Elimination of Discrimination against Women 2010, United Nations Committee on the Rights of the Child 2012, United Nations Human Rights Council 2012 and the United Nations General Assembly 2012. However, limited action has yet been taken to implement these recommendations.[41]

ALHR is alarmed by the latest findings reported by Australia's National Research Organisation for Women and Girls' Safety (ANROWS) in its *Women and girls, disability and violence: Barriers to accessing justice report.*[42] The types of violence and abuse reported by ANROWS violate international human rights laws, including the right to liberty and security of person, the right to

[36] D McConnell and G Llewellyn, 'Stereotypes, Parents with Intellectual Disability and Child Protection' (2002) 24(4) *Journal of Social Welfare and Family Law*.
[37] Australian Child Rights Taskforce, above n 1, 18.
[38] National Cross-Disability Disabled People's Organisations, Submission 142 to Senate Finance and Public Administration References Committee, *Inquiry into Domestic Violence in Australia*, 2014.
[39] Disabled People's Organisations Australia, *Fact Sheet: Violence against People with Disabilities in Institutions and Residential Settings* (2015) <http://dpoa.org.au/factsheet-violence/>
[40] Sally Robinson and Dominique McGovern, *Safe at School? Exploring Safety and Harm of Students with Cognitive Disability in and around School* (Report, 2014), 7.
[41] Australian Child Rights Taskforce, above n 1, 19.
[42] Women, disability and violence: Barriers to accessing justice: Final Report *Friday, 27th April 2018*

freedom from torture or cruel, inhuman or degrading treatment or punishment, and the right to freedom from exploitation, violence and abuse. Australia is obliged to act to prevent such human rights abuses and should do so as a matter of urgency. It is apparent that despite numerous reports and inquiries, there has been no meaningful action on existing recommendations to ensure everyday security and safety for girls and girls with disabilities.

In its July 2018 report on Australia the Committee on the Elimination of Discrimination against Women noted its concern that women and girls with disabilities in Australia have been subjected to forced sterilisation, the non-consensual administration of contraceptives and abortions. Involuntary or coerced sterilisation is a practice that disproportionately impacts on girls with intellectual disabilities and is in violation of their rights under the CRC, the *Convention on the Elimination of Discrimination against Women* (CEDAW), and the *Convention on the Rights of Persons with Disabilities* (CRPD).

Sterilisation of a child in Australia can occur with an order from the Family Court or a guardianship tribunal, having consideration to the best interests of the child. This pervasive form of violence, control and abuse is a violation of the fundamental human rights of girls with disabilities and denies them the ability to retain their fertility on an equal basis with others and to form a family – a fundamental freedom enjoyed by persons without disabilities. This has the effect of devaluing of the lives and status of women and girls with disabilities in our society. This In signing up to these international laws Australia has accepted as fundamental human rights the right to bodily integrity, the right of women and girls to make their own reproductive health decisions, and the right to found and maintain families.

Discrimination against LGBTI Children

According to the Australian Human Rights Commission, 11 in 100 Australians are of diverse sexual orientation, sex or gender identity.[43] Further, it is estimated that 1.7 per cent of children in

[43] Australian Human Rights Commission, *Face the Facts: Lesbian, Gay, Bisexual, Trans and Intersex People* (Report, 2014).

Australia are intersex, that is, a person whose sex is not exclusively male or female.[44] According to the Australian Child Rights Taskforce, 80 percent of same sex and gender questioning young people report discrimination or abuse taking place in schools, which leads to absence from classes, reduced concentration, a drop in marks and/or dropping out of school altogether.[45] Indeed, Hillier et al found homophobia and transphobia take place predominantly in school.[46] The Australian Human Rights Commission has also found that LGBTI people are three times more likely to experience depression, compared to the general population.[47]

In 2013, the *Sex Discrimination Act 1984* (Cth) was amended to make discrimination against a person on the basis of sexual orientation, gender identity or intersex status unlawful.[48] Despite this important development, discrimination, harassment and hostility are still experienced by LGBTQI people in Australia in public, at school or at work.[49] The Safe Schools Coalition attempts to provide education to students and teachers about gender diversity, but such bodies require greater support.

Further, there exist religious exemptions to anti-discrimination laws at the federal level, and in most states and territories. For example, religious private schools are permitted to discriminate against LGBTQI students on the basis of religious beliefs by expelling gay students,[50] although recent debate surrounding discrimination law amendments to remove such a right suggest a movement towards greater protection of rights of LGBTQI students.[51]

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[44] Australian Child Rights Taskforce, above n 1, 58.
[45] Ibid.
[46] Lynne Hillier, Tiffany Jones, Marisa Monagle, Naomi Overton, Luke Gahan, Jennifer Blackman and Anne Mitchell, *Writing Themselves In: The Third National Study on the Sexual Health and Wellbeing of Same Sex Attracted and Gender Questioning Young People* (Report, 2010), 45.
[47] Australian Human Rights Commission, above n 38.
[48] *The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth).
[49] Carolyn Evans and Beth Gaze, 'Discrimination by Religious Schools: Views from the Coal Face' (2010) 34 *Melbourne University Law Review* 392, 394.
[50] Josephine Tovey, 'Schools Defend Right to Expel Gays', *The Sydney Morning Herald* (online), 7 July 2013 <https://www.smh.com.au/national/nsw/schools-defend-right-to-expel-gays-20130706-2pirh.html>.
[51] Paul Karp, 'Scott Morrison Will Change the Law to Ban Religious Schools Expelling Gay Students', *The Guardian Australia* (Online), 13 October 2018 <https://www.theguardian.com/australia-news/2018/oct/13/morrison-caves-to-labor-on-gay-students-in-discrimination-law-reform-push>

Children and the Criminal Justice System

While there has been an overall decrease in the number of young people held in detention, Aboriginal and Torres Strait Islander young people are over-represented in juvenile detention.[52] Aboriginal and Torres Strait Islander children, make up almost 70 per cent of the population of juvenile detention facilities in Australia and Indigenous children between ten and 17 years of age are 24 times more likely than non-Indigenous youth to be in police custody or detention.

Thus far the Australian Government has failed to adequately address the findings and recommendations of the NT Royal Commission by shifting responsibility for compliance with Australia's obligations under the Convention on the Rights of the Child to the States and Territories. The Federal Government bears responsibility for protecting, respecting, promoting and fulfilling human rights in Australia. That responsibility includes ensuring that human rights obligations are met by other levels of government, by non-state actors such as corporations, and by individuals. According to Article 27 of the Vienna Convention on the Law of Treaties of 1969, a state cannot use the provisions of its own law or deficiencies in that law to answer a claim against it for breaching its obligations under international law.

The use of practices such as strip searches and solitary confinement continue to be used against children in Australia. Such practised are inherently dangerous, cause irreversible psychological trauma and are completely inconsistent with Australia's international human rights obligations. Solitary confinement of juveniles occurs in the majority of States and Territories, spit-hoods are legally able to be used against children in the Northern Territory, South Australia, and Queensland and Western Australia has just finished trialling them with a view to use across their police force.

It is unfathomable that a democratic developed nation such as Australia could allow a level of abuse against juveniles that includes the use of strip searches, tear gas, cable ties, mechanical restraints, restraint chairs and spit hoods, and extended periods of solitary confinement. All of these abusive measures have been used on Australian children.

[52] Australian Institute of Health and Welfare, above n 5, 1.

Australian children continue to be detained in adult prisons, a practise which is entirely inconsistent with the *Convention on the Rights of the Child (CRC)*, the *International Covenant of Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Australia maintains its reservation to Article 37(c) of the CRC which establishes that any child detained must be separated from adults unless it is in the best interests of the child not to do so. Whilst not endorsing such treatment, the Federal Government has abandoned a 2012 commitment[53] to review this reservation thus lending legitimacy to State and Territory governments seeking to detain children in adult prisons in circumstances where their human rights are likely to be infringed and where the core principles of the CRC are not prioritised.

ALHR notes with disappointment and concern that Australia's recent joint fifth and sixth report to the UN Committee on the Rights of the Child states that Australia is not considering changing the minimum age of criminal responsibility from 10 years of age to 12 years of age - which is the lowest internationally accepted age criminal responsibility.[54] The NT Royal Commission made an unequivocal recommendation that the age of criminal responsibility be raised from 10 to 12 years and that children under the age of 14 years not be sentenced to detention except in the most serious cases. Australia should bring its law and practice into line with other like countries and raise the age of criminal responsibility to 14 years. This reform would be particularly significant for Aboriginal and Torres Strait Islander children, who make up almost 70 per cent of the population of juvenile detention facilities.

[53] See Attorney-General's Department, Australian Government, 'Australia's response to the List of Issues-Convention on the Rights of the Child and Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict submitted on 15 January 2018 available here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/AUS/5-6&Lang=en

[54] Ibid.

Children deprived of citizenship

December 2015 amendments to the *Australian Citizenship Act 2007* (Cth) allow young children who engage in or are convicted of certain foreign fighting or terrorism related conduct to potentially to be stripped of their Australian citizenship where they are dual nationals. Two of the mechanisms apply to children as young as 14 years of age and the third mechanism has the potential to apply to a child of any age. The Australian Human Rights Commission has raised significant concerns with these measures being in conflict with Australia's obligations under the ICCPR, Article 8(1) of the CRC and the guiding principle of the best interests of the child under Article 3 of the CRC.[55]

Children and the business sector

Australia does not appear to have strengthened domestic laws to address beaches of child rights by State companies or their subsidiaries operating abroad. Child rights impact assessments are not being conducted as a requisite part of trade negotiations. While Australia can be commended on the introduction of legislation in 2018 to deal with modern slavery in supply chains, disappointingly the Australian government announced in October 2017 that it will not proceed in developing a National Action Plan on business and human rights.3 Australia has also not implemented any of the recommendations of the Committee on the Rights of the Child set out in its 2012 concluding observations with respect to child rights and the business sector.[56]

Female Genital Mutilation (FGM)

A survey of Australian paediatricians found 10% had treated at least one child with Female Genital Mutilation (FGM).[57] Most children affected had parents born in Africa (99%).[58] In line with

[55] AHRC Submission to the Parliamentary Joint Committee on Intelligence and Security 16 July 2015 https://www.humanrights.gov.au/sites/default/files/2015-07-16_AHRC_Submission.pdf
[56] Paragraphs 27 and 28 Concluding Observations 2012
[57] Varol et al, 'Evidence-based policy responses to strengthen health, community and legislative systems that care for women in Australia with female genital mutilation/cutting' (2017) 14 Reproductive Health 63, 67
[58] Zurynski et al, 'Female genital mutilation in children presenting to Australian paediatricians' (2017) 102 Archives of Disease in Childhood 509, 509

its obligations under Article 24[59], conducting FGM in Australia or overseas on a child, usually resident in Australia, is a criminal offence in all Australian States and Territories. Despite this, successful prosecutions are rare[60], the first prosecution taking place in 2016.[61] Awareness and training programs are available in most jurisdictions and a national education toolkit was developed for medical practitioners in 2014.[62] However, there has been a significantly increased demand for female genital cosmetic procedures since FGM criminalisation,[63] due to the lack of delineation, and arguably artificial distinction, between the procedures.

Areas of progress in Children's Rights in Australia

The Australian Human Rights Commission considers that, overall, most children and young people in Australia grow up in a safe, healthy and positive environment.[64] There are a number of areas in which there have been significant advances. Most notably, there have been significant advances in community understanding of children's rights and Australia's obligations to ensure they are respected and upheld.[65] This has been reflected in the adoption and development of a number of plans that specifically or in part address children's rights.

[59] Attorney General's Department, 'Review of Australia's Female Genital Mutilation legal framework: Final Report' (March 2013) p. 3
[60] Ibid

[61]
https://www.theguardian.com/society/2016/mar/18/three-sentenced-to-15-months-in-landmark-female-genital-mutilation-trial
[62] Australian Medical Association, Female Genital Mutilation (23 March 2017) <https://ama.com.au/position-statement/female-genital-mutilation-2017>
[63] Ibid
[64] Australian Human Rights Commission, *About Children's Rights*, Human rights <https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>; see also Australian Human Rights Commission, *Submission to the Committee on the Rights of the Child* (1 November 2018) [3] < https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>
[65]Megan Mitchell, 'Overview' in Megan Mitchell, Meagan Lee, Clare Patterson, Lisa Townshend, Hwei-See Kay and Eleanor Holden, *Children's Rights Report 2017: National Children's Commissioner* (Australian Human Rights Commission, 2017) 9.

For example, there has been an increased national focus on addressing suicide and self-harm among children and young people, and improved responses to the needs of children affected by family and domestic violence.[66]

***Raising awareness and redirecting national focus*:**

A source of obvious progress has been through the publishing of the Final report of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. Following private sessions, public hearings and policy research, the report revealed extensive shortcomings with respect to children's rights. However, through the data collected and recommendations made, it provides an important framework for policy development and a significant source for developing public awareness.

a. In addition, the Commissioner supports the establishment of a new National Office for Child Safety but notes the importance of the independence of such an office.[67]

b. Since the Commission, legislative amendments have been made prohibiting the use of restraints and limiting the use of force, isolation and strip searches for children in detention.[68]

c. Following the Royal Commission, the Australian Government created the role of Assistant Minister for Children and Families for its Department of Social Services in

[66] Megan Mitchell, 'Overview' in Megan Mitchell, Meagan Lee, Clare Patterson, Lisa Townshend, Hwei-See Kay and Eleanor Holden, *Children's Rights Report 2017: National Children's Commissioner* (Australian Human Rights Commission, 2017) 9.
[67] Australian Human rights Commission, *We must act on lessons of Royal Commission*, Human Rights (15 December 2017) < https://www.humanrights.gov.au/news/stories/we-must-act-lessons-royal-commission>
[68] Australian Human Rights Commission, *Measuring success, one year since the Northern Territory Royal Commission*, Human Rights (11 December 2018) <https://www.humanrights.gov.au/news/stories/measuring-success-one-year-northern-territory-royal-commission>

2018.[69] However, the role is young and it remains to be seen what The Hon Michelle Landry MP will achieve during her time in that position.

Another improvement is the Australian Government's announcement in April 2016 that it intended to ratify the *Optional Protocol to the Convention against Torture* (OPCAT) by December 2017.[70] Mitchell et al argued that this would provide for a system of independent inspections and oversight of all places of detention across Australia.[71] The OPCAT requires parties to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments as well as agree to international inspections.[72]

d. In February 2017, the Commonwealth Attorney-General asked the Australian Human Rights Commissioner to conduct a consultation with civil society as to how OPCAT could adequately be implemented in Australia.[73] This was undertaken in two phases, of which the first was completed in 2017 and the second was launched

[69] Australian Human Rights Commission, *Submission to the Committee on the Rights of the Child* (1 November 2018) [28] < https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>
[70] Megan Mitchell, 'Overview' in Megan Mitchell, Meagan Lee, Clare Patterson, Lisa Townshend, Hwei-See Kay and Eleanor Holden, *Children's Rights Report 2017: National Children's Commissioner* (Australian Human Rights Commission, 2017) 9.
[71] *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force 22 June 2006), cited in Megan Mitchell, Meagan Lee, Clare Patterson, Lisa Townshend, Hwei-See Kay and Eleanor Holden, *Children's Rights Report 2017: National Children's Commissioner* (Australian Human Rights Commission, 2017) 25
[72] Australian Human Rights Commission, *OPCAT: Optional Protocol to the Convention against Torture,* Human Rights (19 June 2018) <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>
[73] Australian Human Rights Commission, *OPCAT: Optional Protocol to the Convention against Torture,* Human Rights (19 June 2018) <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

on 19 June 2018.[74] The latter phase involved feedback and proposals from organisations.[75]

e. The AHRC sees this as critical to ensure a child-specific focus is included in monitoring processes.[76]

[77]The *National Plan to Reduce Violence against Women and their Children* was introduced in 2016 and included into the National Curriculum.[78] It identifies school-based Respectful Relationships Education as an initiative for instilling generational change.[79] The AHRC welcomed the inclusion of this in the national curriculum. In an evaluation of respectful relationships projects conducted in July 2014 it was found that, overall, those projects have a positive effects on students across all age groups.[80]

Localised success with national outlooks

[74] Australian Human Rights Commission, *OPCAT: Optional Protocol to the Convention against Torture,* Human Rights (19 June 2018) <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

[75] Australian Human Rights Commission, *OPCAT: Optional Protocol to the Convention against Torture,* Human Rights (19 June 2018) <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

[76] Australian Human Rights Commission, *Submission to the Committee on the Rights of the Child* (1 November 2018) [33] < https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>

[77] Department of Social Services, *Third Action Plan,* Australian Government <https://www.dss.gov.au/women/programsservices/reducing-violence/third-action-plan> cited in Megan Mitchell, Meagan Lee, Clare Patterson, Lisa Townshend, Hwei-See Kay and Eleanor Holden, *Children's Rights Report 2017: National Children's Commissioner* (Australian Human Rights Commission, 2017) 27

[78] Australian Government, *Third Action Plan 2016–2019 of the National Action Plan to Reduce Violence Against Women and their Children* (2016), National Priority Area 1: Prevention and early intervention

[79] Australian Government, *Third Action Plan 2016–2019 of the National Action Plan to Reduce Violence Against Women and their Children* (2016), National Priority Area 1: Prevention and early intervention

[80] Australian Human Rights Commission, *Submission to the Committee on the Rights of the Child* (1 November 2018) [159] < https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>

There have been a number of recent and localised but **successful projects and policy implementations** that will undoubtedly contribute to raising awareness but also provide practical evidence of improvements in children's rights.

Justice Reinvestment – One such success has been the Maranguka Justice Reinvestment project. The word 'Maranguka' means "caring for others" which echoes the kinship practices that have long existed in Aboriginal and Torres Strait Islander groups.[81] The objective of this project was to build trust between the community and service providers and foster community and grassroots initiatives via redirecting of funds from crisis response, adult prison and youth detention. A KPMG report published in November 2018 showed that the Maranguka project was the key driver in reducing incarceration rates for Aboriginal young people. Specifically, the report found a 31% increase in year 12 student retention rates and a 38% reduction in charges across the top five juvenile offence categories.[82]

Whilst limited to the Bourke region of New South Wales, as the first major justice reinvestment project in Australia, it will undoubtedly lead other areas of Australia to follow suite.[83]

Children's Champions – Introduced under the *Child Sexual Offence Evidence Pilot) Act 2015* (NSW), 'children's champions' are officers of the court. Their advice is impartial and their aim is to facilitate communication between the police and the child when s/he is interviewed and later, if the matter goes to trial, to facilitate communication in court if s/he is called as a witness.[84] The pilot program was made permanent following a highly evaluation in 2018.[85]

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[81] Alistair Ferguson, Executive Director Maranguka <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>

[82] KPMG, *Maranguka Justice Reinvestment Project: Impact Assessment* (27 November 2018) 22 <http://justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>

[83] Just Reinvest NSW, New report says JR in Bourke ticks boxes <http://www.justreinvest.org.au/new-report-says-jr-inbourke-ticks-boxes/>

[84] Mahashini Krishna, 'Introduction' in *Victims Services, Children's Champion (Witness Intermediary): Procedural Guidance Manual* (New South Wales Department of Justice, November 2016) 4 <https://www.victimsservices.justice.nsw.gov.au/Documents/child-champ_manual.pdf>

[85] New South Wales Government, *Children's Champions future secured,* NSW Government (18 November 2018) <https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/childrens-champions-future-secured/>; see

http://unsworks.unsw.edu.au/fapi/datastream/unsworks:47324/bine3142a02-4797-46a0-a21a-1abadc867a92?view=true for the August 2018 UNSW report.