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## 2019 ALHR Report Card - NSW

Score: D+

ALHR welcomes positive developments in NSW in advancing human rights, most notably, the removal of abortion as a crime from NSW statute books – the culmination of a long-fought battle by numerous human and women’s rights organisations in NSW.

There are, however, a number of other areas which require reform, in particular, bringing the *Modern Slavery Act 2018* (NSW) (**MS Act**) into force and providing clearer guidance in relation to the MS Act; changes to strip search laws and better training for police to ensure strip searches are only conducted in the most exceptional circumstances; and stronger action to fight climate change and to protect the right to protest.

ALHR continues to advocate for the introduction of a Human Rights Act in NSW, to bring the protection of human rights in NSW in line with other jurisdictions such as Victoria, the ACT and Queensland, and to better implement Australia’s international human rights obligations.

### Decriminalisation of abortion

Following the successful passage of the abortion reform law bill in Queensland in 2018, ALHR, along with numerous other domestic and international organisations called for the NSW Government to immediately introduce legislation to decriminalise abortion in NSW. ALHR asserted that the then laws were archaic and not reflective of community values or internationally recognised human rights principles.

On 2 October 2019, the *Abortion Law Reform Act 2019* (NSW) commenced and operates to amend the *Crimes Act 1900* (NSW) to abolish the common law offences relating to termination of pregnancy. ALHR commends the NSW Government for this important reform. ALHR President Kerry Weste said when the Bill was passed: *“We are extremely pleased that, after many, many years of advocacy the law in New South Wales will finally be updated to remove archaic provisions criminalising abortion.”*

While abortion decriminalisation represents a huge win for the fundamental human rights of women, ALHR urges the NSW Government to ensure the implementation and realisation of reproductive health rights in practice, through providing better public access to reproductive health services, particularly, in regional and rural NSW.

## **Modern Slavery Act 2018 (NSW)**

In 2018, ALHR commended the NSW Government for being the first jurisdiction in Australia to introduce modern slavery legislation.<sup>1</sup>

In 2019, ALHR made two submissions in respect of the MS Act, and the draft *Modern Slavery Regulation 2019 (NSW) (MS Regulation)*.<sup>2</sup> In its submissions, ALHR commended the NSW Government for seeking to be a leading jurisdiction in combating modern slavery practices both domestically and internationally. Acknowledging this, ALHR also called for the strengthening of the MS Act and MS Regulation in order to ensure that it would achieve its overarching purpose, particularly, the implementation of ALHR's key recommendation that the government's forthcoming guidance material should clarify the reporting requirements and penalties for commercial entities with employees in NSW and an annual turnover of \$50 million or more.

Disappointingly, the MS Act is yet to come into force. In 2019 the MS Act was referred to the Standing Committee on Social Issues for inquiry. The ALHR Business and Human Rights Co-Chairs gave evidence at the inquiry, in particular in respect of the issue of penalties, the lower reporting threshold, the Anti-Slavery Commissioner, and organ trafficking offences. Importantly, ALHR strongly advocated that s 32 of the *Human Tissue Act 1983 (NSW)* not be omitted from the MS Act as recommended in the NSW Government's submission.<sup>3</sup>

## **Strip searching of young people and Aboriginal and Torres Strait Islander people**

ALHR remains deeply concerned about the figures obtained by Redfern Legal Centre,<sup>4</sup> and The Guardian,<sup>5</sup> showing that 10% of the women and girls strip

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<sup>1</sup> See:

<https://alhr.org.au/alhr-calls-formal-consultation-nsw-modern-slavery-supply-chain-reporting-regulations/>

<sup>2</sup> See:

<https://alhr.org.au/submission-legislative-council-standing-committee-social-issues-inquiry-modern-slavery-act-2018-associated-matters/>;

<https://alhr.org.au/submission-draft-modern-slavery-regulation-2019-nsw-section-24-modern-slavery-act-2018-nsw/>

<sup>3</sup>See:

<https://www.parliament.nsw.gov.au/lcdocs/submissions/64692/0001%20%20NSW%20Government.pdf>

<sup>4</sup> Hocking, R, *'It's unacceptable': NSW police strip-searched 10-year-old Indigenous child*, SBS, 7 November 2018,

<<https://www.sbs.com.au/nitv/article/2019/11/07/its-unacceptable-nsw-police-strip-searched-10-year-old-indigenous-child>>

<sup>5</sup> McGown, M, *'NSW police strip-searched more than 340 school-aged boys in the past three years'* 9 December 2019, <

searched by NSW Police over the past three years were recorded as Indigenous. Further data shows that strip searches have been conducted on a 10-year-old Indigenous child and two 12-year-old girls. ALHR calls on the NSW Government to reform laws in respect to strip searching and better training of police to ensure that they understand the application of the law in practice.

On 4 June 2019, ALHR and 49 other organisations and individuals, wrote an open letter to the Minister for Police and Emergency Services, the Hon. David Elliott MP, setting out their concerns in respect of the laws. In particular, concern was voiced over the current application of the law, which sees children as young as 10 years of age being asked to take off their clothing in front of two adult police officers in an unfamiliar environment.<sup>6</sup>

ALHR supports the *Rethinking Strip Searches by NSW Police Report (Report)*, commissioned by Redfern Legal Centre, and prepared by UNSW Law academics Dr Michael Grewcock and Dr Vicki Sentas. The Report found an almost twenty-fold increase in strip searches in NSW in just under 12 years, with Aboriginal and Torres Strait Islander people accounting for 10% of all recorded strip searches in the field and 22% of all recorded strip searches in custody. The Report recommends that NSW laws should be changed to provide clearer guidance and definitions and to ensure that strip searches are conducted in accordance with child protection principles.

ALHR President, Ms Weste has stated: “*Strip-searches are highly invasive and can be humiliating, degrading and a significant breach of human rights to liberty, privacy and dignity.*” In the circumstances of young people and children being strip searched, this can lead to long-term emotional and psychological trauma.

### **Climate action: the right to a healthy environment and right to protest**

In light of the devastating bushfires across NSW in recent months, ALHR urges the NSW Government to take stronger action to tackle climate change, as a matter of urgency. The deepening ecological crisis we are facing has significant implications for all human rights, in particular, the rights to life, food, housing, and water. As Ms Weste has noted: “*A healthy, clean, sustainable environment is a pre-requisite for the enjoyment of human rights. There can be no doubt that climate change is a real and immediate threat to the human rights of all Australians.*”

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<https://www.theguardian.com/australia-news/2019/dec/09/nsw-police-strip-searched-more-than-340-school-aged-boys-in-the-past-three-years>>

<sup>6</sup> Redfern Legal Centre and ors, 4 June 2019, Open Letter to the Hon. David Elliott MP, [https://rlc.org.au/sites/default/files/attachments/Open%20Letter%20%28Police%20Minister%29-04-June-2019\\_0.pdf](https://rlc.org.au/sites/default/files/attachments/Open%20Letter%20%28Police%20Minister%29-04-June-2019_0.pdf).

ALHR NSW also echoes the concern of ALHR Queensland in relation to proposed anti-protest laws,<sup>7</sup> which have been tabled across both States this year. In NSW, the incremental encroachment on protest freedoms by the State government are a concerning attack on democracy and ALHR backs the Civil Liberties Australia call for a review on how existing laws affect civil liberties.<sup>8</sup>

## NSW Human Rights Act

NSW is lagging behind more progressive states like Victoria, the ACT and Queensland in protecting the most vulnerable members of our community, with the absence of a NSW Human Rights Act. ALHR is working with the NSW Council for Civil Liberties to co-convene Human Rights for NSW, an alliance of leading legal, civil society and community organisations who support the introduction of a Human Rights Act in NSW.

In NSW, there is limited protection of human rights provided by the Australian Constitution, common law, federal and NSW statutes (most notably anti-discrimination legislation).

In November 2019, ALHR together with 33 member organisations, endorsed the Human Rights for NSW's submission to the Australian Human Rights Commission's national conversation on human rights in Australia. In its submission, Human Rights for NSW stated that the "*...Human Rights Act for NSW will result in better decision-making by public servants and improve consideration of human rights in the law-making process. By creating and fostering the development of a culture of respect for human rights, a Human Rights Act will result in a fairer and more equal society in NSW, where everyone is treated with dignity and respect.*" Human Rights for NSW urged (and continues to urge) the NSW Government to hold a parliamentary inquiry into a Human Rights Act in NSW, and engage in extensive public consultation to determine the most effective model for this legislation.<sup>9</sup>

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<sup>7</sup> Ryan, E, 'ALHR slams government move to fast-track anti-protest laws', 13 October 2019, <<https://www.lawyersweekly.com.au/politics/26694-alhr-slams-govt-move-to-fast-track-anti-protest-laws>>

<sup>8</sup> Fitzsimmons, C, 'Calls to review 'excessive' protest laws in wake of Extinction Rebellion arrests', 13 October 2019 <<https://www.smh.com.au/national/nsw/calls-to-review-excessive-protest-laws-in-wake-of-extinction-rebellion-arrests-20191010-p52zhq.html>>

<sup>9</sup> Human Rights for NSW, 19 November 2019, 'Submission to the Australian Human Rights Commission's Free and Equal: An Australian Conversation on Human Rights Project' <<https://alhr.org.au/wp/wp-content/uploads/2019/11/HR4SWNCF.pdf>>.

## **2019 ALHR Report Card - Victoria**

**Score: C**

While the Victorian Government continues to address key social issues through its openly progressive social agenda (such as the Indigenous rights treaty and LGBTQ+ rights), the emphasis on law and order diminishes Victoria's overall score.

### **Indigenous treaty process**

The Victorian Government is working with Aboriginal Victorians to develop a treaty 'to recognise and celebrate the unique status, rights, cultures and histories of Aboriginal Victorians'. It presents an opportunity to acknowledge historical and present injustices and wrongs and to redefine the future relationship between Aboriginal and non-Aboriginal Victorians. The First Peoples' Assembly – the group overseeing the treaty development process – has recently begun work. Its priorities are to set up the Treaty Authority, establish a fund for Aboriginal clans and to discern which issues, rights and ideas will be discussed during the negotiations. The initiation of the treaty process is a welcomed development. It is the first time that an Australian parliament has passed legislation with the intent of establishing a formal treaty process. It recognises that Aboriginal Victorians never ceded sovereignty over their land and signals an important step towards a collaborative and harmonious future relationship between Aboriginal and non-Aboriginal Victorians.

### **LGBTQ+ rights**

In 2019, Victoria has continued its efforts to address historical injustices towards members of the LGBTQ+ community. Most notably, in August 2019, Victoria Police issued an official apology to members of the LGBTQ+ community for having caused 'unnecessary and unacceptable harm' to the community through the historical criminalisation of homosexuality. However, more work needs to be done to improve Victoria Police's relationship with the LGBTQ+ community, particularly in light of the concerning report released by the Victorian Human Rights and Equal Opportunity Commission in May 2019 which revealed that homophobic attitudes still persists within the organisation.

### **Law and order**

Despite the progressive social reforms being spearheaded by the Victorian Government, the state's emphasis on law and order raises several human rights concerns. Recently, concerns were expressed about the overzealous police

presence at the Extinction Rebellion protest and the impact on the right to protest and freedom of speech and expression. Legislation allowing police officers to use lethal force against negligent or reckless drivers has also been met with heavy scrutiny.

## **2019 ALHR Report Card - Queensland**

**Score: C+**

### **QLD Human Rights Act**

On 27 February 2019, the Queensland Human Rights Bill was passed by the Queensland parliament. ALHR applauds this landmark reform, and congratulates the Queensland Government for enacting legislation that will ensure that there are now legal protections in place for the human rights of Queenslanders.

ALHR also congratulates the Queensland government for enacting a Human Rights Act that protects a broad range of human rights, including fundamental civil and political rights, the economic, social and cultural rights to education and health services, and cultural rights of Aboriginal and Torres Strait Islander people. The Qld Human Rights Act 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. This is landmark law reform in Australia and ALHR anticipates that this will set a positive precedent for human rights law reform in other Australian jurisdictions.

ALHR looks forward to the Act commencing in its entirety on 1 January 2020, with the Queensland Human Rights Commission being enacted with the power to receive and conciliate human rights complaints from this date.

### **Queenslanders' right to protest**

In October 2019, the Queensland government fast tracked the passing of anti-protest laws, minimising public and stakeholder consultation. The *Summary Offences and Other Legislation Amendment Bill 2019* was passed on 30 October 2019, resulting in police being granted further search and seizure powers where they reasonably suspect people are carrying attachment devices that are designed to prevent or delay the removal of protesters from public spaces. The legislation also makes it an offence for protesters to use such attachment devices in public places, with protesters facing up to two years imprisonment.

ALHR strongly condemns the government's fast-tracked process in the passing of the Bill through parliament and expresses serious concern about how such a decision demonstrates the government's lack of regard for due and democratic process. This is particularly concerning where the legislation grants additional powers to the police and limits individuals' rights to peaceful protest.



While ALHR acknowledges that the Queensland government and police have a duty to maintain public safety, any decision to grant additional powers to police should be based on compelling and strong evidence that such powers are necessary and proportionate to the risks sought to be addressed. ALHR does not consider that such evidence has been demonstrated in these circumstances. Further, ALHR is very concerned that the passing of legislation minimises Queenslanders' rights to protest. ALHR urges the government to reconsider the necessity of the legislation as it has the effect of criminalising protestors conduct and limiting Queenslanders' rights to freely voice their opinions on political issues and to carry out peaceful protests in Queensland.

### **Youth Justice Issues**

On 22 August 2019, the *Youth Justice and Other Legislation Amendment Bill 2018* (Qld) was passed. ALHR congratulates the Queensland government for making progress on youth justice issues in Queensland, and considers that the amendments that the passing of the Bill has brought will encourage timely finalisation of legal proceedings involving young people and ensure more young people in Queensland are granted bail and fewer are remanded in custody. However, as set out in ALHR's 2019 submission to the QLD Legal Affairs and Community Safety Committee on the Bill, there are continuing deep systemic failures in Queensland's treatment of children and young people within criminal justice.

ALHR again urges the Queensland government to take immediate steps to legislate to increase the minimum age of criminal responsibility from 10 to 14 years of age, or at least 12 years of age, in line with international standards, and to ensure that where detention of children occurs, children should only be detained if 14 years of age or older and in purpose-built age appropriate facilities with non-prison like environments which are managed and staffed by specialists experienced and trained in dealing with children.

ALHR also remains seriously concerned about the very serious violations of the human rights of children detained in Queensland watch houses. The Queensland government must ensure that no children under 14 years of age will be housed in watch houses and that measures are implemented to urgently ensure greater transparency and discussion with relevant stakeholders. ALHR acknowledges the Government's commitment to address this issue and endorses in full the recommended actions outlined by the Youth Advocacy Centre in its Orange Paper 19 and by the Queensland Law Society in its letter to the Minister for Child Safety, Youth and Women and the Minister for the Prevention of Domestic and Family Violence, dated 31 May 2019.

## **Indigenous Rights**

ALHR remains concerned about human rights issues for Aboriginal and Torres Strait Islander people in Queensland, particularly in regards to the overrepresentation of Indigenous people in the justice system. According to sources, Indigenous youth remain up to 30 times more likely to be held in custody than their non-Indigenous peers. ALHR urges the Queensland Government to work with Indigenous communities to ensure that Indigenous people can be empowered to prevent and deal with crime in their communities and to help design effective culturally appropriate and community-led initiatives to address youth justice issues.

However, ALHR congratulates the Queensland government on its continuing work in relation to the path to treaty with the Aboriginal and Torres Strait Islander Queenslanders. Consultation with community members and stakeholders occurred during 2019, and an independent Eminent Panel and Treaty Working Group has been established to lead the statewide conversation featuring key stakeholders including Indigenous representatives and human rights experts. ALHR strongly supports the steps that have been taken in 2019 and looks forward to the Queensland government continuing to proceed with the consultation process required for Queensland to move towards a shared future where the rights of Aboriginal and Torres Strait Islander Queenslanders are valued and embraced.

## 2019 ALHR Report Card - Western Australia

Score: C+

### Indigenous Rights

#### Custody Notification Service

On 2 October 2019, the WA government introduced a Custody Notification Service, bringing WA in line with other states including NSW and the ACT. The Service requires police to contact the Aboriginal Legal Service every time an Aboriginal or Torres Strait Islander person is taken into custody, to ensure that the detained person can obtain legal advice.

#### Mandatory sentencing laws

Mandatory sentencing laws, including the “three-strikes” burglary law introduced in 2015 for adult offenders, continue to remain in force in WA. ALHR continues to hold grave concerns about these archaic laws, which disproportionately affect Aboriginal and Torres Strait Islander peoples and children. For example, in March 2019, the Supreme Court of WA quashed a decision of the Bunbury Children’s Court made pursuant to the mandatory sentencing laws. The Children’s Court had sentenced an 11-year-old Aboriginal boy (who had a learning impairment and came from a severely disadvantaged upbringing, and played a minor role in three home burglaries) to a mandatory 12 months’ jail term under the ‘three strikes’ home burglary law. The Supreme Court decision prompted WA Attorney General John Quigley to say that the boy’s case had raised concerns in the way children, particularly those with impairments, are dealt with by the courts under the laws and that [\*“The McGowan Government is working to address a number of these issues through legislative reform and other policy measures.”\*](#) However, the sentencing laws remain in force and the government has not made a formal commitment to law reform.

#### Use of lethal force

Aboriginal woman, Ms Joyce Clarke, was shot dead by a police officer in Geraldton on 17 September 2019. Police officers went to Ms Clarke’s home after receiving a report that she was brandishing a knife. WA Police are yet to release details of its Major Crime Squad investigation as to why the use of lethal force against Ms Clarke was necessary.

#### Fines enforcement law reform

The *Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019* (WA) was introduced into State Parliament. A suite of amendments to existing legislation will significantly change the way fines are enforced and recovered in WA. Imprisonment for fine default disproportionately impacts people who experience significant disadvantage, including Aboriginal and Torres Strait Islander people, and

particularly Aboriginal and Torres Strait Islander women. Proposed reforms will address the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system and should have a positive impact on the regions. One of the key changes proposed will see imprisonment for non-payment of fines restricted so as it can only be ordered by a Magistrate, and even then only as a sanction of last resort. This reform implements a recommendation from the Coronial Inquiry into the death of Ms Dhu, who was taken into custody on a warrant of commitment for unpaid fines in 2014. The Bill was introduced into the Upper House on 3 December 2019.

### **Rights of Children**

Despite renewed calls this year (in the wake of another damning report into WA's youth justice system) to raise the minimum age a child can be imprisoned, the age of criminal responsibility in WA is still 10 years old. A [2018 study found that 89% of children in detention in Western Australia](#) had a severe cognitive impairment and 36% had foetal alcohol spectrum disorder. In addition, the WA Productivity Commission's Report on Government Services, showed 28 Aboriginal school-aged children and four non-Indigenous youths did not receive an education while at Banksia Hill Detention Centre in 2017-18. The figure is unprecedented on a national level, with all other states achieving 100 percent school attendance rates (the Northern Territory was not included in the report's education statistics). In June 2019, [the WA Commissioner of Police publicly stated](#) that the "vast volume" of Aboriginal children charged with criminal offences in WA could have those offences addressed under community justice arrangements as an alternative to incarceration, such as the new model being trialled in the Kimberley community of Bidyadanga, 185km south of Broome. Unfortunately however, reform initiatives have not been formally announced.

### **Rights of Older Persons**

ALHR commends the WA government for introducing WA's first ever elder abuse strategy. The *WA Strategy to Respond to the Abuse of Older People*, a 10-year strategy released last month, details the government's priority areas and actions to effectively prevent and respond to the abuse of older persons.

### **Voluntary Assisted Dying**

After much public consultation and debate, WA has recently become the second Australian state to pass euthanasia laws. The new law empowers terminally-ill West Australians, who meet the relevant criteria, with autonomy to make informed decisions about their medical treatment and the timing and manner of their death, while also providing appropriate safeguards to protect vulnerable people from abuse.

### **Family violence**

In September 2019, the WA Government introduced the *Family Violence Legislation Reform Bill 2019* to tackle family and domestic violence in WA. If passed, the comprehensive reforms will amend nine separate pieces of legislation across six separate Ministerial portfolios and demonstrate a cross-government commitment to tackling family and domestic violence. The reform package includes two new offences under the Criminal Code (non-fatal strangulation and persistent family violence); new aggravated penalties for offences which commonly occur in circumstances of family violence; and a requirement for police to record every family violence incident.

## **Privacy rights**

### Privacy and Responsible Information Sharing

The WA Government announced its commitment to introducing Privacy and Responsible Information Sharing legislation to bring WA into line with other jurisdictions, and sought community feedback to come up with a model best attuned to the needs of Western Australians. WA is one of only two Australian jurisdictions without privacy legislation, putting individuals and the State at considerable disadvantage. Currently, a person who believes their information has been incorrectly handled or shared has no clear pathway for complaint and resolution. The consultation period ran until the end of October 2019 with written submissions closing on Friday November 1, 2019. ALHR's WA Committee prepared a submission on the Discussion Paper which is available at [wa.gov.au/privacyproject](http://wa.gov.au/privacyproject).

### Revenge porn legislation

WA Parliament also passed 'revenge porn' legislation in February 2019. The *Criminal Law Amendment (Intimate Images) Act 2019* made the non-consensual distribution of intimate images, or 'revenge porn', a crime which attracts jail time of either 18 months or three years and/or a fine of up to \$18,000. It also empowers courts to make a rectification order requiring a person charged with the new offence to remove or destroy the images in question, and ensures that existing threat offences apply to a threat to distribute an intimate image. In July 2019, Mitchell Brindley became the first to be convicted under the new laws after posting at least 10 intimate images of his ex-partner. Brindley avoided jail time but was handed a 12-month intensive supervision order, under which he may be required to undertake programs and counselling.

## 2019 ALHR Report Card - South Australia

Score: B

### **State Disability Inclusion Plan launched**

*Inclusive SA*, South Australia's first Disability Inclusion Plan was launched on 1 November 2019. The State Plan is created under the *Disability Inclusion Act 2018* (SA) and requires state authorities to provide access and inclusion in their business or services for people with disabilities. There are four key priority areas that will be addressed through the Plan:

- Inclusive communities for all
- Leadership and collaboration
- Accessible communities
- Learning and employment.

This is a great first step to proactively pursuing equality for South Australians with a disability.

### **Introduction to the Surrogacy Act**

South Australia continues to be a leader of social reform among states and territories with the introduction of the Surrogacy Act 2019. The Surrogacy Act expands the circumstances in which South Australians can use a surrogate. It is now an option for people who cannot use their own genetic material to conceive or people who would like to have a child as a single person. It continues to be the case that surrogates cannot be paid for their role, but under the new Act women can be compensated for loss of income as well as medical expenses continue to be covered.

### **SA Mental Health Services Plan 2020-2025**

The South Australian Government released the inaugural Mental Health Services Plan 2020-2025 in November this year. The Plan proposes to focus mental health services on community alternatives focussed on early intervention and improve service accessibility. The Government has also [appointed three part-time Mental Health Commissioners](#) to provide leadership and accountability in this space.

### **Unemployment rate**

South Australia [was reported in 2019 to have Australia's highest unemployment rate](#), alongside Queensland. In November 2019, South Australia had an unemployment rate of 6.3%. The impact of unemployment on individuals and the community is significant. People facing unemployment experience disadvantage and denial of their human rights in other areas including healthcare, housing and education.

### **SA Bushfires – climate change**

As this Report Card was being prepared, South Australia experienced the biggest bushfires since Ash Wednesday with fires burning out of control in the Adelaide Hills

and Kangaroo Island. Homes, lives and business have been lost. It is a reminder of the need to identify climate change as a human rights issue. The impact on those affected by catastrophic weather events which are becoming more frequent due to climate change,

### **De-criminalising sex work, failed**

In November 2019, the South Australian Parliament failed to pass the [Statutes Amendment \(De-criminalisation of sex work\) Bill 2018](#). The Bill had succeeded through the Legislative Council and while it had the support of the Premier and key Greens' members, the House of Assembly voted it down with many votes against from the Labour Party. South Australia is one of the only states in Australia to have not de-criminalised sex work. Sex workers continue to face significant financial penalties and even prison time if they are found to be living on the profits of sex work.

### **Land tax introduced with deals for vulnerable households**

A significant issue for the South Australian Parliament in 2019 was what became infamously known as the Land Tax Bill. The Land Tax Bill increase land taxes and had struggled to get support from major parties within the Parliament, including the Greens. However, on the fifth version of the Bill the Greens traded their support for some important promises for vulnerable households. This is where human rights issues come in. In trade for their support, [the Greens have secured \\$7 million a year for \\$7 million a year for maintenance and upgrades to existing public housing. \\$2 million a year for emergency accommodation and transitional housing for people in need and a five-year trial of land tax exemptions for private houses rented as affordable housing. They also have got the Government to promise to install solar panels on 75% of all existing public housing, and solar panels and batteries to be installed on at least 75 per cent of new public housing.](#)

## **2019 ALHR Report Card - Tasmania**

### **Score: F**

Tasmania has been awarded the lowest score of any Australian state for its human rights performance in 2019. This was a significant drop from its poor performance in 2018 - a score of D.

Tasmania received this score for its performance on the below issues:

- The Justice and Related Legislation (Marriage and Gender Amendments) Act 2019 passed in the Tasmanian House of Assembly 10 April 2019 and was made into law 8 May 2019 despite strong resistance from the Tasmanian government. The Act offers significant improvements for the transgender and gender diverse Tasmanians, who can now obtain identification documents which match their gender without the need for invasive surgery. Tasmanian parents can also choose whether or not to have the child's gender recorded on their birth certificate (a child's sex still has to be registered). However the Tasmanian Government was complicit in and, at times actively promoted, a fear campaign which caused significant harm to the Tasmanian transgender and gender diverse community, in circumstances where that community is already over represented in statistics pertaining to mental ill health.

- Protest laws - legislation introduced by Tasmanian Government in November. Passed in the House of Assembly yet to pass in Upper House.



## **2019 ALHR Report Card - ACT**

**Score: B-**

The ACT implemented or introduced several important positive human rights reforms this past year such as the introduction of a drug and alcohol sentencing diversion option; an intermediary program for child witnesses in criminal proceedings; the legalisation of the possession of small quantities of cannabis; and some limited but positive changes to residential tenancy laws.

ALHR congratulates the ACT government on finally introducing alternative sentencing arrangements to allow serious offenders with a drug addiction to be referred for a drug and alcohol treatment order as an alternative to incarceration, through the new Drug and Alcohol sentencing list in the Supreme Court of the ACT. ALHR also strongly supports the decriminalisation of personal drug possession and use, it being ALHR's position that recreational drug use and drug addiction should be approached as a health issue, not as a criminal one. ALHR therefore applauds the ACT in taking an important first step in leading the country towards a human rights compliant approach.

The ACT also took an important step in protecting children from trauma often experienced in giving evidence in court proceedings through the introduction of a witness intermediary scheme for children in sexual offence matters and child witnesses in homicide matters. Such a scheme was one of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Although ALHR recognises and applauds these positive developments, the ACT has not improved its human rights score from the previous year. This is because of its continued lack of concrete action to improve the situation for youth, and in particular indigenous youth, in the ACT criminal justice system and in the care and protection system.

We repeat our call from last year's report card to increase the age of criminal responsibility from 10 years old to 14 years old. The ACT continues to incarcerate children as young as 10 years old. ALHR calls once again on the ACT, which has a history of leadership in human rights, not to wait for nationwide agreement on this topic. The ACT is perfectly placed to pave the way and demonstrate its human rights credentials by raising the age of criminal responsibility to 14, including to implement appropriate alternative supports for the highly vulnerable children caught up in the legal system at such a young age.

We also repeat our call from last year's report card decrying the high rate of removal of Aboriginal and Torres Strait Islander children from their families. We call on the

ACT government to fully heed the recommendations of the recently released final report "*Our Booris, Our Way*" and note our disappointment that the earlier interim recommendations have not yet been implemented. We congratulate the ACT government on recognising the need to commission this report in response to the high proportion of Aboriginal and Torres Strait Islander children in the ACT child protection system. We now call on the ACT government to urgently and fully implement all the recommendations.

ALHR congratulates the ACT government on strengthening protections for certain tenants this year in relation to certain family violence situation and in making it easier for tenants to keep pets. However, ALHR remains disappointed that there has been no action taken to remove the ability for landlords to terminate tenancies for "no cause" – it is the view of ALHR that the existence of "no cause" or "no reason" clauses allowing termination of a residential tenancy undermines the human right of tenants to safety and security of a home.

Finally, it concerns ALHR that the ACT justice system has continued to be the host to concerning and secretive criminal proceedings – purportedly kept secret based on national security concerns - and which have been subject to widespread criticism for their undermining of rule of law and open justice principles. These include the unknown circumstances of "Witness J" whose entire trial may have remained a secret were it not for his bringing of proceedings in relation to his conditions of detention this past year. ALHR also remains concerned at the ongoing prosecution of Bernard Collaery in his legal representation of "Witness K" following revelations of Australian spying on East Timor's cabinet room.

## **2019 ALHR Report Card - Northern Territory**

**Score: F-**

The situation in the Northern Territory will not change without a committed effort by all governments. As it stands, the Federal and NT governments continue to fail to ensure the human rights of our First Peoples are recognised. There appears to be no meaningful commitment to reform. There have been enough inquiries. The governments know what the issues are and how they could be addressed. To date, they continue to display a callous disregard for the health and wellbeing of Aboriginal and Torres Strait Islander peoples.

### **The Royal Commission into the Protection and Detention of Children in the NT**

It's been just over two years since the Royal Commission's Final Report was released and the NT government has shown little real commitment to addressing the serious and repeated breaches of the fundamental human rights of children in youth detention and out of home care.

In March 2019, the NT government reversed amendments to the *Youth Justice Act*, which it had passed in response to the 4 Corners episode 'Australia's Shame'. The amendments, introduced in 2018, addressed the use of force, restraints and isolation of children. The 2019 backflip came without any notice or consultation and bypassed the normal democratic process of the NT Parliament. Worse still, the reversal was retrospective meaning that breaches of the laws over the preceding 12 months could not be pursued by lawyers on behalf of their child clients.

In August 2019, the government announced the Darwin Youth Justice Centre (a facility is to replace the controversial Don Dale Youth Detention Centre) would be built in Holtze, next to the Darwin Correctional Centre. This decision is concerning and appears to contradict the final report which said youth facilities "should not be located on, or in close proximity to, adult prison precincts". The site at Holtze is 30 kilometres from Darwin and without accessible public transport. This will likely prevent family from visiting their children (going against another of the royal commission's findings).

The government has failed to address the issue of raising the age of criminal responsibility. Seen as a cornerstone recommendation of the royal commission, it remains deeply concerned that children as young as 10 can be arrested, charged and locked up in a youth prison. Notwithstanding the fact that, as at April 2019, every single child in detention in the NT was Aboriginal, and the undeniably negative impact detention has on children, Territory Families, has said it still needs more time.

In short, the 'stain on the NT's reputation' continues.

## **Too many Aboriginal children remain in out of home care with non-Aboriginal carers away from family, culture and country**

As at November 2019, children in the NT are four times more likely than others to have contact with the child protection system and face high rates of socioeconomic disadvantage. More disturbingly, Aboriginal and Torres Strait Islander children in the NT are 11.5 times more likely to be removed from their families by child protection services than non-Indigenous children, and 10.2 times higher than the national average.

The Family Matters Report 2019 shows that the NT is, in comparison with other states and territories has the lowest rated of attendance in government approved child care and preschool and, excluding Tasmania, the lowest rate of placement with Aboriginal and Torres Strait Islander carers.

Despite more than \$500 million spent on child protection programs by the Federal and Territory governments, a Productivity Commission draft report has found that the number of children engaged with the child protection system remains “extremely high”. The report calls for a fundamental shift in government approach and blames a lack of coordination and decision making in isolation for fragmentation, inefficiencies and “significant” expenditure overlap.

This situation is appalling and represents a continued failure by the Federal and Territory governments to respect and address the fundamental human rights of Aboriginal and Torres Strait Islander children in the NT.

## **The incarceration rates in the NT remain disturbingly high**

This remains an area of significant concern, with extremely little being done to address the issue.

## **The housing crisis in remote communities in the NT continues**

The rate of homeless in the NT is 12 times the national average and, as at August 2019, Katherine remains in a housing crisis with more people sleeping rough, per capita, than anywhere else in the nation.

No effective strategy has been developed to address the issue. Despite some effort by the NT government, the situation remains dire. There is a chronic shortage of funding. Under the National Housing and Homelessness Agreement, the NT receives only 1.3 per cent, or \$19 million, of the Commonwealth’s \$1.4 billion

contribution to the States and Territories. Despite repeated requests, the Federal government has not stepped in to assist.

### **Water crisis**

Like many other areas across the country, the water crisis is playing out in remote communities in the NT. Unfortunately, there is no effective strategy in place to address what will likely become one of the biggest concerns of the 21<sup>st</sup> century.

## **2019 ALHR Report Card - Disability Rights**

**Score: F**

### **Royal Commission into Violence, Abuse, Neglect and Exploitation of people with disabilities**

In April 2019, the Federal Government announced the establishment of the Royal Commission into the Violence, Abuse and Neglect of people with disabilities. The Disability Royal Commission was a welcome implementation of the Senate Inquiry into violence, abuse and neglect against people with a disability in institutional and residential settings and response to long-term calls from advocates and people with lived experience. The Terms of Reference broadly cover all forms of violence, abuse, neglect and exploitation in all settings. There is a swell of hope that this will uncover the treatment of Australians with a disability and promise an inclusive and equal future.

However, the operation of the Disability Royal Commission has been subject to significant criticism. There has been a call for some Commissioners to resign due to conflicts of interest, concerns that legal and emotional supports were not properly set up before public hearings took place and that some people with lived experience were being excluded from the process. This has really undermined the process and integrity of the Disability Royal Commission. While it is early days and we hope those criticisms are resolved very soon, it does take away from what would have otherwise been an A+!

### **National Disability Insurance Scheme (cont.)**

The National Disability Insurance Scheme (NDIS) continued to roll out for Australians with disabilities in 2019. In July 2019, we saw the Joint Standing Committee on the National Disability Insurance Scheme appointed to undertake inquiries into specific aspects of the Scheme. Over the course of the year, there have been inquiries into Supported Independent Living, NDIS Planning and General issues around the implementation and performance of the NDIS. These have provided important avenues for those affected to put forward their experience and have that experience evidence systemic issues within the Scheme.

In November 2019, Minister Stuart Robert announced “the NDIS Plan” which will address the last “20%” of people who are to transition to the NDIS in the coming 12 months. The NDIS Plan promises “six core swim lanes”:

- Quicker access and quality decision making
- Increased engagement and collaboration
- Market innovation and improved technology
- A financially sustainable scheme

- Equitable and consistent decisions, and
- Improve long term outcomes

The shift in public policy and independent probe into the NDIS have been good improvements to the Government's commitment to the effectiveness and efficacy of the NDIS.

#### UNCRCPD Report

The UN Committee on the Rights of Persons with Disabilities conducted their period review of Australia's obligations under the UN Convention on the Rights of Persons with Disabilities in September 2019. The Concluding Observations of the period review identified some good and some really bad things that Australia is doing to promote and protect the rights of people with disabilities. The good parts included the new National Disability Employment Framework, the establishment of the National Disability and Carers Advisory Council and State and Territories' introduction of legislation and policies such as the Disability Inclusion Acts and Disability Justice Plans.

The areas where Australia is not doing well are pretty horrific, including (but not limited to):

- No effective legislative framework to protect people with disabilities from systemic, intersectional and multiple forms of discrimination, especially at the Commonwealth level.
- The lack of culturally suitable for Indigenous children with disabilities and their families.
- The significantly lower life expectancy of persons with disabilities, particular persons with intellectual disabilities and within Indigenous communities, than that of the general population.
- Lack of progress to abolish the guardianship system and substituted-decision making regime
- Ongoing practice of forced sterilization, forced abortion and forced contraception of persons with disabilities, particularly women and girls, without their free and informed consent, which remains legal.

The list goes on but suffice to say the UNCRCPD Committee is not happy, and neither are we! Australia is a developed, first-world country. The outcomes and protections available for people with disabilities and their families is evidently poor at best. It goes beyond room for improvement and requires immediate revolution now.

## 2019 ALHR Report Card - LGBTI Rights

**Score: F**

ALHR's LGBTI Subcommittee is increasingly 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 2019 would be an opportunity for the Australian Government to rebuild trust with the LGBTI community after a challenging two previous years.

In 2017, the LGBTI community and allies alike rallied against the government's non-binding postal survey, an experience which left those fighting for marriage equality feeling entirely betrayed by their elected leaders.

In 2018, the recommendations of the Ruddock Review left battle-weary LGBTI advocates and community members alike feeling apprehensive as to the future of human rights in Australia, where the Australian Government continued to promote ways in which the rights of LGBTI Australians might be subordinated to the rights of others, foremost on religious grounds. Recommendations from the Review included overriding state and territory laws to uniformly discriminate against LGBT children and students in schools

In August 2019 the first exposure draft of the *Religious Discrimination Bill 2019* was circulated for public comment, along with the *Religious Discrimination (Consequential Amendments) Bill 2019* and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*.

Despite their complexity and the potential consequences for the human rights of many Australians, only four weeks was allowed by the Attorney-General's Department between the release of the exposure drafts and the closing date for civil society submissions. This, of itself, was a direct challenge to the way in which Australians are consulted about significant legislation with real and lasting consequences.

The second draft of the *Religious Discrimination Bill 2019* was released on 10 December 2019 – on Human Rights Day, and on this occasion. this with a more generous six (6) week turnaround for submissions but over the Christmas and New Year break. The ALHR LGBTI Subcommittee cannot help but wonder if the Australian Government is counting on civil society being without time to engage with the next drafts over this period. In any event, despite some tinkering, things had not improved.



The ALHR LGBTI Subcommittee supports a Religious Discrimination Act which provides protections against religious discrimination in areas of public life including employment, education, membership of sporting clubs and other areas of public life. However, the Religious Discrimination Bills tabled by the Australian Government in 2019 are incongruent with Australia's international human rights obligations. For example, Article 26 of the *International Covenant on Civil and Political Rights* states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". Article 26 also states that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Yet the Religious Discrimination Bills prioritise religious "freedoms" over the rights of others to be free from discrimination.

The ALHR LGBTI Subcommittee is also cognisant of the concerns of states, for example Tasmania, whose hard-fought for anti-discrimination legislation is under attack from the Religious Discriminations Bills. In this regard, in 1998 the Tasmanian Parliament, informed by international human rights principles, passed laws offering the widest protection in the country against conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of a range of attributes set out in s 17(1) of the *Anti-Discrimination Act (Tas) 1998*. Included amongst the attributes protected are sexual orientation, gender, gender identity, disability, religious belief or affiliation and religious activity. Yet, under the Religious Discrimination Bills, s 17(1) is made redundant.

The Australian Government cannot adhere to its international human rights obligations under its proposed *Religious Discrimination Bill 1999* and the ALHR LGBTI Subcommittee calls on the Australian Government to recognise this.

Overall, 2019 has confirmed the position of the LGBTI Subcommittee, and the position of ALHR generally, 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.

## 2019 ALHR Report Card - Refugee Rights

Score: F-

Notwithstanding Australia's vote in favour for the Global Compact for Refugees in late 2018, 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 complies with Australia's international human rights obligations, respects family unity and protects the best interests of children.

### **Offshore processing limbo continues**

2019 saw a further decline in the situation of people subject to Australia's offshore processing policy. ALHR welcomed the end of children subject to offshore processing on Nauru,<sup>10</sup> as well as the number of people have been resettled in the United States via the US resettlement deal<sup>11</sup> and in Canada via expat Australians taking advantage of Canada's refugee resettlement community sponsorship program.<sup>12</sup> However, approximately 460 people who were transferred from Australia to Papua New Guinea and Nauru remain there after more than 6 years.<sup>13</sup> They face a worsening mental health crisis, with no foreseeable hope of finding safety and dignity. Those who remain face a worsening mental health crisis.

ALHR has repeatedly called on the Federal 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 Federal 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

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<sup>10</sup> 'Final four children held on Nauru to be resettled with their families in US', *The Guardian* (online, 3 February 2019)

<https://www.theguardian.com/australia-news/2019/feb/03/final-four-children-held-on-nauru-to-resettled-with-families-in-us>

<sup>11</sup> Alex Reilly, 'Explainer: the medevac repeal and what it means for asylum seekers on Manus Island and Nauru', *The Conversation* (Web Page, 4 December 2019)

<https://theconversation.com/explainer-the-medevac-repeal-and-what-it-means-for-asylum-seekers-on-manus-island-and-nauru-128118>

<sup>12</sup> Grant Wyeth, 'Australians in Canada Step Up to Help Refugees', *The Diplomat* (online, 12 November 2019) <https://thediplomat.com/2019/11/australians-in-canada-step-up-to-help-refugees/>

<sup>13</sup> Alex Reilly, 'Explainer: the medevac repeal and what it means for asylum seekers on Manus Island and Nauru', *The Conversation* (Web Page, 4 December 2019)

<https://theconversation.com/explainer-the-medevac-repeal-and-what-it-means-for-asylum-seekers-on-manus-island-and-nauru-128118>

separation of families, including taking up New Zealand's long-standing offer to resettle refugees from Nauru and Papua New Guinea.

### **Medevac introduction and subsequent repeal**

2019 also saw the introduction and subsequent repeal of the Medevac legislation.

ALHR celebrated the passage of the Medevac legislation earlier this year, which created a vital legal framework whereby the people best placed to assess medical treatment needs - medical professionals - did so in an orderly and timely manner and advise the Federal Government accordingly. The Medevac legislation was an essential part of ensuring Australia complies with its international obligations under international law including the *Refugee Convention* and the *United Nations Convention Against Torture*. Despite the fact that the Federal Government had the power to facilitate medical transfers before the legislation came into force, the Federal Government repeatedly failed to transfer people in serious need of medical treatment. As a result people in vital need of medical treatment were then forced to commence costly and protracted Federal Court proceedings and face significant, unnecessary delays in accessing the treatment they needed.

ALHR condemns the repeal of this vital legal framework, which occurred in December 2019.<sup>14</sup> It remains to be seen what the Federal Government's post-Medevac policies will look like in practice.

### **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 subject to a separate visa assessment process. Despite being called 'fast track' has seen significant processing delays,<sup>15</sup> and has contributed to the overall mental deterioration and despair of those subject to the process.<sup>16</sup> Even if they are assessed as engaging Australia's international protection obligations, they are only eligible for temporary visas. Further, the Government's removal of legal assistance for this group of people has significantly affected the integrity and fairness of the process.

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<sup>14</sup> ALHR Media Release <https://alhr.org.au/medevac-legislation-vital-repealed-2/>

<sup>15</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, 2019) 9

[https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc\\_lives\\_on\\_hold\\_2019.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_lives_on_hold_2019.pdf)

<sup>16</sup> Nicholas G Procter, Mary Anne Kenny, Heather Eaton and Carol Grech, 'Lethal hopelessness: Understanding and responding to asylum seeker distress and mental deterioration' (2018)27 *International Journal of Mental Health Nursing* 448, 448.

Those who are successful are faced with the uncertainty of only short-term protection and permanent separation from family members overseas. This uncertain visa status has been found to be linked to poorer mental health outcomes.<sup>17</sup> Those who are not successful at first instance are only entitled 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 Australia's international *non-refoulement* obligations.

### **Cuts to welfare and income support**

ALHR remains concerned about the Australian Government's decision to continue to remove vital income and casework support for thousands of people seeking asylum in Australia. The Status Resolution Support Service (**SRSS**) provides a basic living allowance and support services, including access to counselling for torture and trauma survivors. The decision to transition further cohorts of people out of SRSS 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 and instead will rely on the limited resources of charitable organisations. 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 legislative amendments**

Following the Federal election in May 2019, the newly-elected Federal Government re-introduced a number of bills which seek to undermine Australia's international human rights obligations in relation to refugees.

In addition to the above-mentioned Medevac repeal legislation, the Federal Government re-introduced the *Migration Amendment (Strengthening the Character Test) Bill 2019*, which seeks to further expand the powers of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs to refuse to grant visa or to cancel visas by expanding the cohort of non-citizens who are considered the visa refusal or cancellation. In doing so, it undermines the criminal law system's determinations about the risk a person poses to the community through sentences of imprisonment.

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<sup>17</sup> Yulisha Byrow, Angela Nickerson and Belinda Liddell, 'Refugees without secure visas have poorer mental health – but the news isn't all bad', *The Conversation* (Web Page, 16 December 2019) <https://theconversation.com/refugees-without-secure-visas-have-poorer-mental-health-but-the-news-isnt-all-bad-128456>

ALHR is of the view that the Federal Government has not provided sufficient evidence and justification as to why the proposed changes are necessary and proportionate. ALHR 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, while the Bill seeks to do the opposite.<sup>18</sup>

The Federal Government also re-introduced the *Migration Legislation Amendment (Regional Processing Cohort) Bill 2019*, which seeks to prevent ‘unauthorised maritime arrivals’ and ‘transitory persons’ who were taken to a regional processing country after 19 July 2013 and who were at least 18 years of age (the ‘designated regional processing cohort’) from making a valid application for an Australian visa. This lifetime ban would effectively prevent people who have ultimately obtained permanent protection elsewhere from entering AUstralia, even on a temporary basis. ALHR is again of the view that the Federal Government has not provided sufficient evidence and justification as to why the proposed changes are necessary and proportionate. It is not only incompatible with Australia’s obligations under international human rights and refugee law, but also undermines efforts to build genuine regional and international cooperation on refugee protection.<sup>19</sup>

### **Regional and international cooperation**

ALHR was disappointed by the Federal Government’s decision not to send a minister to attend the United Nations Global Refugee Forum, which aims to find practical solutions to the global refugee crisis.<sup>20</sup>

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

### **Turnbacks continue**

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<sup>18</sup> ALHR Submission <https://alhr.org.au/migration-amendment-strengthening-character-test-bill-2019/>

<sup>19</sup> ALHR Submission <https://alhr.org.au/inquiry-migration-legislation-amendment-regional-processing-cohort-bill-2019/>

<sup>20</sup> Rosemary Bolger, ‘Australian ministers snub largest-ever international refugee meeting’ *SBS News* (Web Page, 17 December 2019) <https://www.sbs.com.au/news/australian-ministers-snub-largest-ever-international-refugee-meeting>

Despite a lack of transparency has concealed the issue from public scrutiny, the Federal Government's policy of intercepting the vessels of people seeking asylum in Australia continues to undermine Australia's compliance with its international legal obligations. Additionally, there is a lack of oversight over people who seek protection at Australian airports after arriving by plane. The Department of Home Affairs does not keep records in relation to the number of people who seek asylum at airports.<sup>21</sup> However, media coverage of two Saudi women who were denied entry to Australia at Sydney Airport has led to concerns that Australian Border Force may deliberately target and turn back Saudi women at Australian airports who are suspected of intending to seek asylum.<sup>22</sup>

### **Barriers to citizenship**

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

### **High profile successes**

Notwithstanding the above, ALHR celebrated a number of high profile success stories in 2019.

Behrouz Boochani, a Kurdish-Iranian journalist, human rights advocate and refugee who attempted to seek asylum in Australia and was subject to Australia's offshore processing regime, wrote about his experiences of seeking asylum and his subsequent detention in a book via Whatsapp messages over a number of years via a Farsi translator. His book, *No Friend But the Mountains, Writings from Manus Prison*, has won a number of literary accolades, and Mr Boochani himself has received a number of awards and academic appointments in recognition of his writing and advocacy. In late 2019, he was granted a temporary visa to appear at a literary festival in Christchurch, New Zealand.<sup>23</sup>

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<sup>21</sup> Asher Hirsch, Daniel Ghezelbash and Regina Jefferies, 'We don't know how many asylum seekers are turned away at Australian airports' (Media Release, 12 February 2019) <https://newsroom.unsw.edu.au/news/social-affairs/we-dont-know-how-many-asylum-seekers-are-turned-away-australian-airports>

<sup>22</sup> Sophie McNeill, Sharon O'Neill and Mary Fallon, 'Australian Border Force accused of targeting women suspected of fleeing Saudi Arabia', *ABC News* (Web Page, 5 February 2019) <https://www.abc.net.au/news/2019-02-04/border-force-accused-of-targeting-saudi-women-traveling-alone/10768036>

<sup>23</sup> Ben Doherty, 'Behrouz Boochani, voice of Manus Island refugees, is free in New Zealand', *The Guardian* (online, 14 November 2019) <https://www.theguardian.com/australia-news/2019/nov/14/behrouz-boochani-free-voice-manus-island-refugees-new-zealand-australia>

Abdul Aziz Muhamat, a Sudanese human rights advocate and refugee who attempted to seek asylum in Australia and was subject to Australia's offshore processing regime, was named the named the 2019 Martin Ennals Award Laureate, a major human rights award.<sup>24</sup> He has since been granted permanent protection in Switzerland.<sup>25</sup>

Hakeem al-Araibi, a refugee from Bahrain who had been granted permanent protection in Australia, was detained in a Thai prison after omissions by the Department of Home Affairs meant that an INTERPOL Red Notice issued by Bahrain was still in effect when Mr al-Araibi left Australia and went to Thailand for his honeymoon.<sup>26</sup> His circumstances received significant media attention and he was eventually released from prison and allowed to return to Australia. He has since received Australian citizenship.<sup>27</sup>

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<sup>24</sup> Evan Young, 'Refugee flown from Manus Island to Switzerland to accept major human rights award', *SBS News* (Web Page, 14 February 2019)

<https://www.sbs.com.au/news/refugee-flown-from-manus-island-to-switzerland-to-accept-major-human-rights-award>

<sup>25</sup> Biwa Kwan, 'I never thought this day would come': Manus Island refugee granted asylum in Switzerland', *SBS News* (Web Page, 8 June 2019)

<https://www.sbs.com.au/news/i-never-thought-this-day-would-come-manus-island-refugee-granted-asylum-in-switzerland>

<sup>26</sup> Steve Cannane and Clare Blumer, 'Missed emails, bureaucratic bungles: How Home Affairs and the AFP contributed to Hakeem al-Araibi's time in a Thai jail', *ABC News* (Web Page, 4 December 2019)

<https://www.abc.net.au/news/2019-10-11/bungles-that-led-to-hakeem-al-araibi-being-locked-up-in-thailand/11583270>

<sup>27</sup> Freya Michie, 'Refugee footballer Hakeem al-Araibi becomes Australian citizen after being freed from Thai jail', *ABC News* (Web Page, 12 March 2019)

<https://www.abc.net.au/news/2019-03-12/refugee-footballer-hakeem-al-araibi-australian-citizen/10893136>

## 2019 ALHR Report Card - Business and Human Rights

Score: C

In 2019 the Australian Government took some positive steps in fulfilling its obligation under Pillar 1 of the United Nations Guiding Principles on Business and Human Rights (**UNGPs**)<sup>28</sup> to protect against business-related human rights abuses. Notably, in September 2019 the Modern Slavery Business Engagement Unit, Department of Home Affairs, published the *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities (Guidance)*. A further positive step is the reform undertaken by the Australian National Contact Point (**AusNCP**) which aims to modernise the way the AusNCP operates and to enhance transparency, accountability and the independence of the complaint handling process.

The Australian Government has also recently announced new initiatives to strengthen its response to modern slavery including a Modern Slavery Expert Advisory Group to help implement the *Modern Slavery Act 2018 (Cth) (Act)*; the establishment of a Modern Slavery Recognition Scheme “to acknowledge those who demonstrate excellence in innovation or collaboration to improve supply chain transparency to combat modern slavery”;<sup>29</sup> and a public consultation paper to inform the development of Australia’s strategic framework titled “National Action Plan to Combat Modern Slavery 2020-24”.<sup>30</sup> ALHR notes that the Government’s proposed National Action Plan to Combat Modern Slavery 2020-24 is a strategic framework document and does not replace the National Action Plan on Business and Human Rights which Australia is yet to develop.<sup>31</sup>

Whilst ALHR welcomes these developments and initiatives, more work is needed to ensure that modern slavery offences are not committed or facilitated by Australian businesses, both when operating within Australia and overseas. Further, the Australian Government should require businesses to conduct due diligence to determine the human rights impacts of their environmental practices. For example, the Australian Government should require companies to assess their use of water,

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<sup>28</sup> United Nations (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, UN Doc HR/PUB/11/04, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>29</sup> Joint media release with the Hon Marise Payne MP, Hon Christian Porter MP and the Hon Anne Ruston - New initiatives to combat modern slavery ( 2019), available at <https://minister.homeaffairs.gov.au/jasonwood/Pages/new-initiatives-combat-modern-slavery.aspx>.

<sup>30</sup> See the call for submissions here:

<https://minister.homeaffairs.gov.au/jasonwood/Pages/new-initiatives-combat-modern-slavery.aspx>.

<sup>31</sup> See: *Towards an Australian National Action Plan on Business & Human Rights: Business Roundtables*,

<http://www.unglobalcompact.org.au/new/wp-content/uploads/2016/08/Summary-Towards-Aust-NAP-on-BHR-FINAL.pdf>



pollution control and waste disposal which may impact upon the right to life, right to health and the right to water.

### **Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities**

The aim of the Guidance is to provide businesses with information about their reporting requirement obligations to ensure compliance under the Act.<sup>32</sup> This is a positive development following the Act coming into force on 1 January 2019, however ALHR is of the view that the Guidance fails to provide businesses with sufficient information and guidance about the modern slavery offences defined in the Act. Further, the Guidance falls short on highlighting the penalties associated with committing modern slavery offences which would act as a deterrence for businesses.

In May 2019, prior to the Guidance being published, ALHR made submissions regarding the *Modern Slavery Act 2018 Draft Guidance for Reporting Entities*.<sup>33</sup> ALHR specifically recommended that the Guidance make reference to the modern slavery offences as defined in s 4 of the Act. This recommendation was not taken up by the Australian Government.

The Guidance defines “modern slavery” as “including eight types of serious exploitation”.<sup>34</sup> In defining modern slavery in this way, the Guidance omits a number of modern slavery offences including the offence of trafficking in children, the removal of organs offence, and organ trafficking offences. The Guidance fails to refer to the *Criminal Code Act 1995* (Cth) (**Criminal Code**) and makes no mention of the term “modern slavery offences”. Rather, the Guidance uses the term “types of exploitation” in defining modern slavery, which, respectfully, is not reflective of how it is defined under the Act, and can be potentially confusing to businesses.

Further, ALHR is of the view that it is important businesses are provided with Guidance about the law and penalties pertaining to modern slavery offences, which includes information about the offences in Division 270 and 271 of the Criminal Code. This will enable businesses to be educated about the law and understand the serious consequences of committing modern slavery offences.

For the reasons above, ALHR is of the view that the Guidance should be amended to correctly define modern slavery in accordance with the Act and provide further information to businesses about penalties for committing modern slavery offences pursuant to the Criminal Code.

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<sup>32</sup> *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities*, available at <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>

<sup>33</sup> See: ALHR submission on the *Modern Slavery Act 2018 Draft Guidance for Reporting Entities*, available at <https://alhr.org.au/submission-modern-slavery-act-2018-draft-guidance-reporting-entities/>

<sup>34</sup> *Ibid*, p8.

## Reforms to the Australian National Contact Point

ALHR notes positive developments in relation to the operation of the AusNCP. The role of the AusNCP is to facilitate the adoption and implementation of the OECD Guidelines for Multinational Enterprises (**Guidelines**) by businesses, and it offers a platform to resolve complaints made against businesses for failing to comply with the Guidelines.

Following lobbying by civil society and the findings of the 2017 Independent Review of the AusNCP, in particular the findings of AusNCP's limited independence, transparency and visibility amongst its stakeholders,<sup>35</sup> the Australian Government introduced major reforms to the AusNCP.<sup>36</sup>

The reforms include the appointment of an Independent Examiner; the creation of a multi-stakeholder Governance and Advisory Board, comprising of civil society, trade unions, businesses and government, to consider specific cases and offer advice to the Independent Examiner; and revised procedural guidance.

These reforms mark an important step forward in fulfilling Australia's obligation under Pillar 3 of the UNGPs regarding effective state-based non-judicial grievance mechanism as a remedy for corporate human rights abuses.<sup>37</sup> To further strengthen the Government's transparency, independence and visibility of the AusNCP, ALHR continues to call for sufficient staffing and financial resourcing of the AusNCP,<sup>38</sup> as well as providing clear information on the budget designated to its process.

## National Action Plan on Business and Human Rights

As a priority for 2020 ALHR urges the Australian Government to introduce a National Action Plan on Business and Human Rights (**NAP**) to ensure the effective implementation of the UNGPs. In light of Australia's forthcoming United Nations Universal Periodic Review (**UPR**), and recalling the recommendations of the 2016 UPR to adopt an Australian NAP,<sup>39</sup> as well as the advice given by the Government's

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<sup>35</sup> Independent Review (2017) *Australian National Contact Point under the OECD Guidelines for Multinational Enterprises*, available at

<https://ausncp.gov.au/sites/default/files/inline-files/Final-Report.pdf>.

<sup>36</sup> The Australian Treasury response to the Independent Review, available at

<https://ausncp.gov.au/sites/default/files/inline-files/Tsy-Response-AusNCP-2017-Review-336095.pdf>

<sup>37</sup> n1, Principle 27, UNGPs.

<sup>38</sup> See: ALHR submission to the consultation on Australia's OECD's National Contact Point (2017), available at

<https://alhr.org.au/wp/wp-content/uploads/2017/09/ALHR-NCP-Submission-FINAL210717-signed.pdf>.

<sup>39</sup> General Assembly (2016) Report of the Working Group on the Universal Periodic Review: Australia, UN Doc A/HRC/31/14, available at <https://undocs.org/A/HRC/31/14>

own Multi-Stakeholder Advisory Group on the Implementation of the UNGPs<sup>40</sup> and the call by civil society,<sup>41</sup> it is of critical importance that Australia introduce a NAP without further delay to foster best practice and promote a culture of human rights.

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<sup>40</sup> Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights (2017) *Advice on the prioritisation of issues and actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs)*, available at <https://dfat.gov.au/international-relations/themes/human-rights/business/Documents/final-msag-priorities-paper.pdf>.

<sup>41</sup> For ALHR's position on an Australian NAP see ALHR (2016) *Policy Paper on an Australian National Action Plan (NAP) to implement the UN Guiding Principles on Business and Human Rights (UNGPs)*, available at <http://alhr.org.au/wp/wp-content/uploads/2016/02/NAP-Policy-Paper-16.2.pdf>

## **2019 ALHR Report Card - Economic, Social and Cultural Rights**

**Score: F**

### **Centrelink - Robodebt**

The train wreck that is the Federal Government's automated debt-recovery system has, thankfully, suffered a crushing blow in late 2019. No credit can be given to the Federal Government. Rather, legal challenges have exposed part of the scheme as unlawful. In a Victorian case, the Federal Court of Australia held that Centrelink could not have been satisfied the debt was correct. Since its inception, solid criticism has been levelled at the use of income averaging as a means of calculating debt and the Federal Court outcome is a significant win. Just prior to the judgement, the Morrison government announced it would no longer rely solely on averaged income data from the tax office to raise debts. This decision was based on legal advice that the method of calculating debts by averaging was unlawful. The backflip by the Federal government doesn't warrant any accolades. Like most of their policy backflips, this did not come with an apology or recognition of the devastating impact the debts have had on some of the most vulnerable members of the community. It is reasonable to consider the Federal government will likely owe a considerable sum of money to those people whose debt was unlawfully calculated. A class action with some 4,000 plaintiffs has been filed in the Victorian Registry of the Federal Court. It remains to be seen whether continued negative exposure will result in a comprehensive overview of the failed system.

### **Centrelink – Raise the Rate**

The Federal government has, yet again, failed to address the appalling situation for recipients of Newstart Allowance, Youth Allowance and other like payments. Despite a nationwide campaign aimed at reducing poverty and inequality in Australia, the Federal government has shown no interest in raising the rate and tying increases to wages. In real terms, Newstart Allowance has not increased for 25 years. Australia has the lowest rate of unemployment payment in the OECD, not something to be proud of. The Business Council of Australia and KPMG have stated that the rate of Newstart is so low it is acting as a barrier to work. In a country where unemployment is a grim reality for many, the complete failure of successive governments to address this inequality is both disturbing and unsurprising. A current Senate inquiry is likely to deliver predictable findings, but it is equally predictable the Morrison government will do nothing about the issue.

### **Water/environment**

Australia is the Earth's driest inhabited continent. There are concerns about a global water crisis and Australia appears to already be in the midst of one. For those living in rural areas, drought and water shortages are not new. 2019 has, however, seen an increase in the number of semi-rural and urban areas affected by water restrictions. There are towns that are now without water.

In addition, issues with the Murray-Darling Basin have come to the fore. Water designated for environmental use was instead taken by irrigators and used for the farming of crops, including water-intensive cotton farms. A royal commission found that the Murray-Darling Basin Authority acted unlawfully when it completely ignored climate change projections for the determination of water allocations.

As the country faces the impacts of climate change (including lengthy droughts and extended bushfire seasons), the Federal government has no viable plan or strategy. In fact, for the most part, the Federal government is still struggling to accept the science.

## **Worker rights**

Wage theft has become increasingly common in Australia. There is an ever-growing list of businesses and organisations that have failed to pay workers their correct entitlements. Whilst Scott Morrison publicly committed to criminalise wage theft, there has been limited action to date (particularly considering the 7-11 scandal was uncovered some 4 years ago). The Morrison government has attracted criticism for suggesting amnesties for organisations that underpaid superannuation and not imposing penalties on organisations that made "genuine mistakes". The difficulty is that these "genuine mistakes" appear to be rampant and rarely result in workers being overpaid. State, Territory and Federal Liberal governments have never been seen as a beacon of shining light when it comes to worker rights, with preference generally being given to big business. The lacklustre approach to genuine reform of a system that exploits workers is yet another example.

## 2019 ALHR Report Card - Human Rights Act

### Federal Protection of Human Rights (could add pages 5 – 7 of Free and Equal Submission)

Australia continues to lack a Federal framework to protect human rights. We are the only developed Western democracy without a Federal Human Rights Act or Bill of Rights. Australia is bound by the seven core international human rights conventions and has been elected to the UN Human Rights Council but our citizens and residents continue to live without the human rights protections enjoyed by others in comparable countries across the Western world. In the absence of a federal framework to protect human rights, Australia cannot affect appropriate and proportionate balancing between, for example, “national security” and freedom of expression or between religious rights and other rights.<sup>42</sup>

ALHR continues to be involved in campaigning for a National Charter of Rights in Australia, led by the Human Rights Law Centre (HRLC).

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<sup>42</sup> Kerry Weste, ‘We need an Australian Charter of Rights’ *Lawyers Weekly Op-ed*, 17 June 2019 <https://www.lawyersweekly.com.au/politics/25851-we-need-an-australian-charter-of-rights>; Human Rights for NSW, 19 November 2019, ‘*Submission to the Australian Human Rights Commission’s Free and Equal: An Australian Conversation on Human Rights Project*’ <<https://alhr.org.au/wp/wp-content/uploads/2019/11/HR4SWNCF.pdf>>.