

AUSTRALIA

**HUMAN RIGHTS IN REVIEW:
2011-2015**

*Amnesty International
Submission to the UN Universal
Periodic Review, November 2015*

**AMNESTY
INTERNATIONAL**



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EXECUTIVE SUMMARY

This report was originally prepared as a submission for the Universal Periodic Review (UPR) of Australia which takes place in November 2015. In it, Amnesty International evaluates the implementation of recommendations accepted by Australia in its previous UPR, assesses the national human rights framework and the situation of human rights on the ground, and makes a number of recommendations to Australia to strengthen human rights protection and address human rights challenges in the country.

Amnesty International is concerned that there is still no overarching federal human rights legislation in Australia and that the Australian Constitution retains discriminatory clauses which are inconsistent with international human rights law. The submission also highlights troubling developments regarding the government's treatment of the Australian Human Rights Commission.

Amnesty International is also concerned about continuing discrimination of Aboriginal and Torres Strait Islander Peoples, including in access to housing and health care, as well as their staggering over-representation in the criminal justice system. Indigenous young people are approximately 24 times more likely to be in detention in Australia compared to their non-Indigenous peers.

Amnesty International notes with regret that the rights of refugees and asylum-seekers continue to be eroded by successive Australian governments. Asylum-seekers and refugees who have sought Australia's protection continue to be held in inhumane conditions in off-shore immigration detention centres in Nauru and Manus Island in Papua New Guinea, in contravention of Australia's obligations under international law.

FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International is disappointed about the lack of progress in implementing the recommendations from Australia's previous UPR in 2011. Only a fraction of the recommendations Australia accepted have been implemented.¹ Australia's second UPR in 2015 is an opportunity for the government to renew its human rights commitments.

HUMAN RIGHTS TREATIES

The government has failed to implement a number of recommendations relating to international human rights treaties. This includes ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), despite Australia accepting UPR recommendations 86.1-

¹ Australian Council of Human Rights Authorities, *Australia's Universal Periodic Review Progress Report 2014*, <https://www.humanrights.gov.au/sites/default/files/document/publication/upr-progress-report-2014.pdf>, p. 3.

86.6.² Australia has received advice to ratify the OPCAT from a range of NGOs,³ the Parliamentary Joint Standing Committee on Treaties,⁴ the Australian Human Rights Commission (AHRC),⁵ the National Children's Commissioner,⁶ and the UN Committee against Torture.⁷ Amnesty International is concerned that Australia's continued delay in ratifying the OPCAT may be motivated by the government's desire to avoid scrutiny of places of detention, particularly immigration detention centres and youth detention centres.

The government has also not implemented recommendations to sign and ratify the Convention for the Protection of All Persons from Enforced Disappearance,⁸ and the ILO Indigenous and Tribal Peoples Convention.⁹ Australia has also failed to withdraw its reservations to Article 37(c) of the Convention on the Rights of the Child¹⁰ and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.¹¹

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, A/HRC/17/10, 24 March 2011, recommendations 86.1 (Republic of Moldova), 86.2 (Azerbaijan), 86.3 (Maldives), 86.4 (New Zealand), 86.5 (Mexico), 86.6 (Denmark), (A/HRC/17/10) and its addendum A/HRC/17/10/Add.1, 31 May 2011. See also the Attorney General's Department, Australia's *National Human Rights Action Plan 2012*, <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf>, p. 7.

³ Joint NGO Report to the United Nations Committee against Torture, *Torture and Cruel Treatment in Australia*, October 2014, <http://alhr.org.au/wp/wp-content/uploads/2014/11/141112-CAT-NGO-Report-Australia.pdf>, list of supporting NGOs, pp. 4-5.

⁴ JSCOT, *Report 125*, tabled on 21 June 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/28february2012/report/fullreport.pdf, recommendations 5 and 6, Chapter 6, pp. 37-52.

⁵ Australian Human Rights Commission, 29 March 2012, *Submission to the Joint Standing Committee on Treaties' Consideration of Australia's ratification of the Optional Protocol to the Convention against Torture*, https://www.humanrights.gov.au/sites/default/files/content/legal/submissions/2012/20120329_optionalProtocol.doc, p. 4.

⁶ Australian Human Rights Commission, *Children's Rights Report 2014*, *National Children's Commissioner*, https://www.humanrights.gov.au/sites/default/files/document/publication/Children%27s%20Rights%20Report%202014_2.pdf, p. 2.

⁷ UN Committee Against Torture, *Concluding Observations on the combined fourth and fifth periodic reports of Australia*, 23 December 2014, available online at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoQ6oVJgGLf6YX4ROs1VbzHbjPhQXE%2b0WwMlrYFRkrdSVDi646tTx7wQu2ScGTgf%2bJVP%2bu4P9Ry9gIOFCClCbVtr91RKEPhrAGEXJwJKqoJq>, p. 8.

⁸ A/HRC/17/10, recommendations 86.7 (Thailand), 86.8 (France) and 86.9 (Argentina).

⁹ A/HRC/17/10, recommendations 86.11 (Bolivia) and 86.12 (Norway).

¹⁰ A/HRC/17/10 recommendation 86.13 (Hungary), "Withdraw its reservations to CRC".

¹¹ A/HRC/17/10 recommendations 86.14 (Republic of Korea), 86.15 (South Africa) and 86.16, (Denmark).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

CONSTITUTION AND NATIONAL LAWS

The Australian Constitution retains discriminatory clauses which are inconsistent with international human rights law and standards.¹² It contains a provision which allows for the disqualification by states (within Australia) of “all persons of any race” from voting in federal elections.¹³ While in practice this provision is not used, its very existence is problematic. Section 51(xxvi) of the Constitution also enables discrimination on the basis of race, granting the Australian Parliament the power to make special laws for “the people of any race”.¹⁴

ABSENCE OF DOMESTIC HUMAN RIGHTS PROTECTION

Australia does not have overarching federal human rights legislation to reflect its international human rights obligations. In 2009, a national consultation took place on the need for a national human rights protection mechanism, and the consultation panel recommended a Human Rights Act.¹⁵ At its first UPR in 2011, the government rejected a recommendation to adopt a Human Rights Act¹⁶ because it considered that “...existing mechanisms, together with new requirements under Australia’s Human Rights Framework” were sufficient to provide human rights protection.¹⁷

The government announced a Human Rights Framework in April 2010 and the National Action Plan on Human Rights followed in 2012.¹⁸ Amnesty International welcomed these developments, however in the context of a change of government in 2013 and the failure to deliver most of the proposed agenda, Amnesty International

¹² For example, the race provisions in the Constitution are inconsistent with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

¹³ Section 25, Commonwealth of Australia Constitution Act.

¹⁴ The Australian Constitution, Part V, Powers of the Parliament, Section 51 (xxvi): “The people of any race, for whom it is deemed necessary to make special laws”. See Amnesty International Australia, *Submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*, 31 January 2015, http://www.amnesty.org.au/images/uploads/about/AIA_Constitutional_recognition_submission.pdf

¹⁵ National Human Rights Consultation Committee Report, 30 September 2009, <http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Pages/HumanRightsconsultationreport.aspx>, recommendation 18, p.34.

¹⁶ A/HRC/17/10, recommendation 86.22 (Canada, Ukraine, Russian Federation and Norway).

¹⁷ A/HRC/17/10/Add.1, recommendation 86.22, see also Attorney General’s Department, Australia’s formal response to the UPR Recommendations, <http://www.ag.gov.au/RightsAndProtections/HumanRights/UniversalPeriodicReview/Documents/AustraliasformalresponsetotheUPRrecommendations.pdf>, p. 2, recommendation 22.

¹⁸ Attorney-General’s Department, *Australia’s National Human Rights Action Plan 2012*, <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Action%20Plan.doc>.

considers both to be largely defunct.

THE AUSTRALIAN HUMAN RIGHTS COMMISSION

Amnesty International is concerned at the government's lack of support for the Australian Human Rights Commission (AHRC) and its current President.

In February 2015 the government rejected a report by the AHRC, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, which criticised the treatment of children in immigration detention centres by successive governments.¹⁹ To date, the government has failed to address the report's content and recommendations, showing alarming disregard for the role of the AHRC in conducting independent inquiries into human rights abuses.

Furthermore, senior government members have sought to publicly undermine the credibility of the AHRC President. Following the release of *The Forgotten Children* report, both the Prime Minister and Attorney-General publicly stated that they had "lost faith" in the statutorily-appointed President. On 13 February 2015 the Prime Minister commented that the report was, "...a blatantly partisan politicised exercise and the Human Rights Commission ought to be ashamed of itself".²⁰ On 24 February 2015, the Attorney-General told a Senate Estimates hearing that, "... by not later than the middle part of January I had lost confidence in Professor Triggs as President of the Human Rights Commission."²¹

Amnesty International also notes a 30 per cent funding cut to the AHRC announced in December 2014 which will significantly reduce its capacity to undertake its work.²²

¹⁹ Australian Human Rights Commission (AHRC), *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, available at https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

²⁰ The Australian, 13 February 2015, *MPs push to oust "partisan" Triggs*, <http://www.theaustralian.com.au/national-affairs/mps-push-to-oust-partisan-triggs/story-fn59niix-1227217891493>

²¹ Official Committee Hansard, Senate Legal and Constitutional Affairs Legislation Committee, Estimates Hearing, 24 February 2015, http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/7e38f3fc-ccf4-4f43-b2f4-c50ef331052d/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2015_02_24_3249_Official.pdf;fileType=application%2Fpdf#search=%22committee/estimate/7e38f3fc-ccf4-4f43-b2f4-c50ef331052d/0000%22, p. 44.

²² See Human Rights Law Centre, *'Slashing funding for human rights watchdog is dangerous for human rights and democracy'*, 15 December 2014, <http://hrlc.org.au/slashing-funding-for-human-rights-watchdog-is-dangerous-for-human-rights-and-for-democracy/>.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

THE RIGHTS OF INDIGENOUS PEOPLES

Aboriginal and Torres Strait Islander Peoples continue to face discrimination in areas such as access to housing and health care, and they are over-represented in the criminal justice system.

Indigenous justice

The over-representation of Indigenous Peoples in the criminal justice system in Australia is a national crisis – and the crisis is getting worse. In 2013-2014, Indigenous Peoples comprised 27.4 per cent of adults in prisons, despite accounting for just 2.3 per cent of adults in the general population.²³

Indigenous young people are even more over-represented in the criminal justice system. The most recent data, from 2013–14, shows that Indigenous young people are 24 times more likely to be in detention than non-Indigenous young people.²⁴ While Aboriginal and Torres Strait Islander young people make up around 6 per cent of the Australian population of 10–17 year-olds, they account for more than half (58 per cent) of those in detention.²⁵ Indigenous children also made up more than 60 per cent of all 10-year-olds and 11-year-olds in detention in Australia in 2012–13.²⁶ The situation is bleaker still in some states and territories, such as Western Australia, where Indigenous young people are approximately 53 times more likely than their non-Indigenous peers to be incarcerated.²⁷

Amnesty International has identified a range of children's rights issues across Australian states and territories contributing to this problem. Across Australia, children are held criminally responsible from the age of 10 years²⁸ despite the

²³ Australian Institute of Health and Welfare, 'Youth Detention Population Australia in Australia 2014', p.11 and Table s 10 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675>, (accessed 22 December 2014).

²⁴ Australian Institute of Health and Welfare, *Youth justice in Australia 2013-14*, April 2015, p. 8, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675>, (accessed 4 August 2015).

²⁵ Australian Institute of Health and Welfare, *Youth justice in Australia 2013-14*, April 2015, p. 7, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675>, (accessed 4 August 2015).

²⁶ Australian Institute of Health and Welfare, *Youth justice in Australia 2012–13*. Bulletin no. 120. Cat. no. AUS 179, Canberra, Table S76b: 'Young people in detention during the year by age, sex and Indigenous status, Australia (excluding WA and NT), 2012–13'. Data not yet available for 2013/14.

²⁷ Amnesty International Australia, June 2015, "*There is always a brighter future*": *Keeping Indigenous kids in the community and out of detention in Western Australia*, p. 5, http://www.amnesty.org.au/images/uploads/aus/CIE_WA-Report_low-res.pdf.

²⁸ Australian Institute of Criminology, 'The age of criminal responsibility', Crime facts info no. 106, ISSN 1445-7288 Canberra (2005),

conclusion by the Committee on the Rights of the Child that 12 is the lowest internationally acceptable minimum age of criminal responsibility.²⁹

Mandatory sentencing laws disproportionately affect young Indigenous people. In Western Australia, the *Criminal Code Act 1913* requires magistrates to impose mandatory minimum sentences on young offenders in a number of circumstances. This is in contravention of the Convention on the Rights of the Child which requires that children under the age of 18 years are detained only as a last resort, and that all sentences take into account the best interests of the child.³⁰ Amnesty International is particularly concerned about legislation currently before the Western Australia Parliament that expands the state's mandatory sentencing regime, including for 16-17 year olds, and if passed will likely result in a significant increase in youth detention rates.³¹

In 2014, the Queensland Government amended the *Youth Justice Act 1992*, to stipulate that "in sentencing a child for an offence, the court must not have regard to any principle that a detention order should be imposed only as a last resort".³² This is in contravention of Article 37(b) of the Convention on the Rights of the Child. All 17 year-olds on Queensland with six months or more left of their sentence are required under the *Youth Justice Act* to be transferred to adult jails, contrary to Article 37(c) of the Convention on the Rights of the Child.

Amnesty International is concerned that youth detention conditions in the Northern Territory do not comply with international human rights standards.³³ At the Alice Springs Youth Detention Centre, young people are only separated from adult prisoners by a fence. They are taken to the visiting block at the adult prison to speak with visitors and are handcuffed on their way to and from the visiting block. The youth detention facility at Berrima, in Darwin, is in a poor state of repair and is inappropriate for young people.³⁴

www.aic.gov.au/publications/current%20series/cfi/101-120/cfi106.html (accessed 19 January 2015).

²⁹ Committee on the Rights of the Child, General Comment No. 10 (2007) 'Children's rights in juvenile justice', [32] www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf (accessed 16 January 2015).

³⁰ Convention on the Rights of the Child, Article 37, Article 3.1, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed 1 August 2015).

³¹ Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014, Amnesty International, *WA Bill will lock up hundreds of people – but won't reduce home burglary*, 26 February 2015, <http://www.amnesty.org.au/news/comments/36664/>

³² *Youth Justice and Other Legislation Amendment Act 2014* (Qld) s 9, amending section 150(2)(e) of the *Youth Justice Act 1992* (Qld) and s 34 which inserts section 9A into the *Penalties and Sentences Act 1992* (Qld).

³³ Article 37(b) of the Convention on the Rights of the Child requires that "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age".

³⁴ Amnesty International, May 2015, *A Brighter Tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, p. 19, http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf.

Between June 2013 and June 2014, Indigenous young people were 23 times more likely than their non-Indigenous counterparts to be held in pre-trial detention.³⁵ International human rights standards require that detention for persons awaiting trial must be the exception rather than the rule.³⁶ However, Indigenous young people are often held in detention on remand simply due to a lack of suitable accommodation and support to comply with bail conditions.³⁷

Amnesty International's research also shows that between 2008-09 and 2012-13, Indigenous young people in Western Australia were diverted away from the courts by the police through cautions and Juvenile Justice Team referrals at a much lower rate than their non-Aboriginal peers: Aboriginal young people were diverted 35.1 per cent of the time, whereas non-Aboriginal young people were diverted 58.2 per cent of the time.³⁸ This is a clear indication that Indigenous young people are not being diverted away from the criminal justice system as frequently or effectively as non-Indigenous young people.

Access to justice for Aboriginal and Torres Strait Islander Peoples is further undermined by inadequate levels of funding for accessible community legal services.³⁹

The UN Committee on the Elimination of Racial Discrimination has recommended that Australia “dedicate sufficient resources to address the social and economic factors underpinning Indigenous contact with the criminal justice system” and encouraged Australia to adopt a “justice reinvestment strategy”.⁴⁰

³⁵ Australian Institute of Health and Wellbeing, Youth Detention Population in Australia 2014, Table s 20: 19.98 per 10,000 Indigenous young people compared to 0.86 per 10,000 non-Indigenous young people, cited in *A Brighter Tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, p. 19, http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf.

³⁶ Human Rights Committee, General Comment 35 and Article 9 of the ICCPR, [38], United Nations Rules for the Protection of Juveniles Deprived of their Liberty, [17].

³⁷ Amnesty International, May 2015, *A Brighter Tomorrow: Keeping Indigenous kids in the community and out of detention in Australia, National Summary*, p. 5.

³⁸ Amnesty International Australia, June 2015, “*There is always a brighter future*”: *Keeping Indigenous kids in the community and out of detention in Western Australia*, p. 13, http://www.amnesty.org.au/images/uploads/aus/CIE_WA-Report_low-res.pdf, citing Productivity Commission, *Overcoming Indigenous Disadvantage 2014 Report*, Table 11A.3.24 ‘WA, juvenile diversions as a proportion of offenders (aged 10–17 years), by Indigenous status, 2008-09 to 2012–13’.

³⁹ In 2014/15 Federal Budget the Australian Government cut \$13.41 million from Aboriginal and Torres Strait Islander Legal Services between 2013-14 and 2016-17 financial years, causing significant public outcry. On 26 March 2015 the Attorney-General announced the government would restore funding of \$11.5 million to Indigenous legal assistance over two years. While this is a welcome move, the community legal sector in Australia remains significantly underfunded. A 2014 Productivity Commission report recommended an additional \$200 million injection of funding for legal assistance services annually to meet the needs. See Productivity Commission, *Access to Justice Arrangements*, 3 December 2014, <http://www.pc.gov.au/inquiries/completed/access-justice/report>.

⁴⁰ Committee on the Elimination of Racial Discrimination, *Concluding Observations –*

Homelands

Many remote Indigenous communities across Australia are vulnerable to losing essential and municipal services following the Australian Federal Government's decision in 2014 to discontinue funding for these services.⁴¹ Earlier in the year the Western Australia Government announced it planned to close up to 150 remote Indigenous communities.⁴² While the Government has backed away from this announcement, many Indigenous communities are concerned they remain vulnerable to closure and forced eviction. Between September and December 2014, the Western Australia Government demolished the majority of buildings in the remote Indigenous community of Oombulgurri following a forced eviction in 2011.⁴³

Removing Indigenous Peoples from their traditional lands places them at risk of homelessness and has many other serious cultural and economic implications.⁴⁴ Amnesty International is concerned that the above measures threaten the rights of Indigenous communities to protect their culture and identity,⁴⁵ and do not conform to the principle of free, prior and informed consent.⁴⁶

THE RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

Amnesty International is deeply concerned that human rights protection for asylum-seekers and refugees has been systematically eroded by successive Australian governments.

Offshore processing

Currently, all asylum-seekers who arrive by boat are either sent back to their country of departure (including by boat "turnbacks" at sea) or are transferred to offshore immigration detention centres in Nauru or on Manus Island in Papua New Guinea.

An Amnesty International delegation visited the detention facilities in Nauru in

Australia, CERD/C/AUS/CO/15-17, [20].

⁴¹ See The Sydney Morning Herald, Dan Harrison, 'Remote Indigenous communities under threat', 14 November 2014, available online at <http://www.smh.com.au/federal-politics/political-news/remote-indigenous-communities-under-threat-20141114-11myb9.html>. See also Nicolas Perpetch, 'Aboriginal people will be consulted on remote community closures: WA Government', 8 May 2015, <http://www.abc.net.au/news/2015-05-07/aboriginal-people-to-be-consulted-on-community-closures-wa/6451866>.

⁴² ABC, 'Plan to close more than 100 remote communities would have severe consequences, says WA Premier', 12 November 2014,, <http://www.abc.net.au/news/2014-11-12/indigenous-communities-closures-will-have-severe-consequences/5886840>.

⁴³ The Guardian, 'The trauma of Oombulgurri's demolition will be repeated across Western Australia', 27 November 2014. <http://www.theguardian.com/commentisfree/2014/nov/27/the-trauma-of-oombulgurris-demolition-will-be-repeated-across-western-australia>.

⁴⁴ Amnesty International, 'The Land Holds Us'; Aboriginal Peoples' right to traditional homelands in the Northern Territory (Index: ASA 12/002/2011).

⁴⁵ United Nations Declaration on the Rights of Indigenous Peoples, articles 8 and 11.

⁴⁶ United Nations Declaration on the Rights of Indigenous Peoples articles 10 and 19, and International Labour Organization Convention No 169 on Indigenous and Tribal Peoples, art. 6.

December 2012 and found the conditions for detainees to be inhumane.⁴⁷ The organisation visited Manus Island detention centre in November 2013 and March 2014 and documented a host of human rights violations, including arbitrary and prolonged detention, harsh conditions and treatment that may cause mental illness.⁴⁸ As at 31 May 2015, 634 people were detained on Nauru (including 81 children) and 943 adult males on Manus Island.⁴⁹

In February 2014, largely peaceful protests by asylum-seekers in Manus Island were violently suppressed by the guards and other contractors at the centre, causing the death of one asylum-seeker and injuries to hundreds of others.⁵⁰ Two detention centre staff have been charged with murder and are awaiting trial. No one else has been held accountable for the violence, despite an Australian Senate Inquiry finding that the violence was eminently foreseeable.⁵¹

In 2014, the Australian government implemented legislative changes that removed parts of the Migration Act which ensured national implementation of the Convention relating to the Status of Refugees. Australia continues to breach its international obligations under this Convention, including the customary international law principle of *non-refoulement*.⁵²

Mandatory detention

Australia continues to subject asylum-seekers and refugees to mandatory indefinite detention, in contravention of Australia's obligations under international law.⁵³ Asylum-seekers are detained in immigration detention until their claims are

⁴⁷ Amnesty International, *Amnesty International Australia Nauru Offshore Processing Facility Review 2012*, 23 November 2012, <http://www.amnesty.org.au/images/uploads/news/NauruOffshoreProcessingFacilityReview2012.pdf>.

⁴⁸ Amnesty International, *This Is Breaking People, Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea* (Index: ASA 12/002/2013).

⁴⁹ Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary*, 31 May 2015, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-may2015.pdf>, p.3.

⁵⁰ Amnesty International, *This is still breaking people: update on human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea* (Index: ASA 12/002/2014)

⁵¹ Commonwealth of Australia, Senate Inquiry: *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, 11 December 2014, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report

⁵² UNHCR, *Legal position: Despite court ruling on Sri Lankans detained at sea, Australia bound by international obligations*, 4 February 2015, <http://www.unhcr.org/54d1e4ac9.html>.

⁵³ Article 9 of the *International Covenant on Civil and Political Rights* prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court; Articles 3 and 9 of the *Universal Declaration of Human Rights* establish the right to liberty and freedom from arbitrary detention; and Article 31(1) of the *Refugee Convention* provides that refugees should not be subjected to any form of punishment due to their illegal entry.

finalised, and there is no legislated maximum time limit on how long asylum-seekers and refugees may be detained. As at 31 May 2015, the average time spent in immigration detention in Australia was 394 days.⁵⁴

Further to this, as of 6 January 2015, there were 34 people in immigration detention who had been assessed as refugees, but who had received a non-reviewable, “negative” security assessment from the Australian Security Intelligence Organisation.⁵⁵ Based on this negative security assessment, they were denied a Protection Visa, and therefore remain in indefinite detention as they cannot be sent back to their country of origin.

On 20 March 2015, the government released an independent review, undertaken by former Integrity Commissioner Phillip Moss, which examines allegations of sexual and physical assaults on asylum-seekers in the Nauru Immigration Detention Centre. The review records reports of rape and other sexual assaults - including of children - and of guards trading commodities for sexual favours from female detainees, as well as cases of harassment and physical assault. The report concludes, among other things, that many asylum-seekers living in the detention centre are apprehensive about their personal safety and have privacy concerns.⁵⁶

On 1 July 2015, a new law, introduced as part of the *Border Force Act 2015*, came into place giving the government the power to prosecute doctors, nurses and child welfare professionals who speak out about human rights abuses in immigration detention.⁵⁷ The ambiguities in the legislation are likely to prevent information about abuses in offshore detention being made public.

Amnesty International also has serious concerns about proposed measures contained in the *Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015*. If passed into law, the Bill would allow designated Immigration Detention Services Provider employees to use force against “any person” present in an immigration detention facility in order to maintain the “good order, peace or security” of the facility. The concepts of “good order” and “peace” within an immigration detention facility are not adequately defined by the Bill. Furthermore, the lack of a clear definition of “reasonable force” in the Bill risks allowing authorised officers to employ force to the extent that grievous bodily harm could be inflicted upon a person. Amnesty International holds that the use of force occasioning grievous bodily harm in an immigration detention facility, in even the

⁵⁴ Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary*, 31 May 2015, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-may2015.pdf>, p. 10.

⁵⁵ The Guardian, 11 January 2015, *Refugees released from detention as negative ASIO assessments reversed*, <http://www.theguardian.com/world/2015/jan/11/refugees-released-detention-negative-assessments-reversed-australia>.

⁵⁶ *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru: Final report*, 6 February 2015, <http://www.immi.gov.au/about/dept-info/files/review-conditions-circumstances-nauru.pdf>.

⁵⁷ Amnesty International Australia, ‘Border Force Act: Latest secretive attempt to mask treatment of asylum seekers’, 6 July 2015, <http://www.amnesty.org.au/news/comments/37514/>.

most “exceptional and extreme circumstances,” would constitute a serious violation of human rights.⁵⁸

Children in detention

In its latest report, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, the AHRC found that “prolonged detention is having profoundly negative impacts on the mental and emotional health and development of children” and that “...the mandatory and prolonged detention of children breaches Australia’s obligation under article 24(1) of the Convention on the Rights of the Child”.⁵⁹

COUNTER-TERROR AND SECURITY

In 2014, national laws were introduced broadening intelligence agency powers, monitoring online activity and preventing the reporting of unlawful conduct by members of those agencies. New laws criminalise travel to areas abroad designated by the government as places where a listed terrorist organisation is engaged in “hostile activity”, while shifting the evidentiary burden on to the accused. The operation of controversial preventative detention and control orders have been extended and an ill-defined offence of “advocating terrorism” introduced.⁶⁰

In early 2015, the Australian Parliament passed new surveillance measures and a data retention regime compelling telecommunications and internet service providers to store metadata of all users for two years.⁶¹

More recently, the government introduced legislation to strip dual nationals of their Australian citizenship.⁶² The legislation applies to individuals suspected of engaging in certain terrorism-related activities. The power would apply automatically, and would not require a criminal conviction. Amnesty International opposes the legislation.⁶³ In addition, the government is actively considering whether to extend

⁵⁸ Amnesty International Australia, Submission to Senate Legal and Constitutional Affairs Legislation Committee Inquiry into Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015, 19 May 2015, http://www.amnesty.org.au/images/uploads/about/Submission98_Legal_and_Constitutional_Affairs_migration_good_order_bill.pdf.

⁵⁹ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

⁶⁰ Amnesty International Report 2014/15, *The State of the World’s Human Rights*, February 2015, p. 64, http://www.amnesty.org.au/images/uploads/about/Annual_Report_2015_The_State_of_the_Worlds_Human_Rights.pdf.

⁶¹ *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*, <https://www.comlaw.gov.au/Details/C2015A00039>

⁶² *Australian Citizenship (Allegiance to Australia) Amendment Bill 2015*, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5507

⁶³ See: <http://www.aph.gov.au/DocumentStore.ashx?id=52f18c97-8708-4881-8148-20a2e60fd10b&subId=355047>

any power to strip dual nationals of Australian citizenship to sole nationals.⁶⁴ Amnesty International strongly opposes any move to allow the government to render an individual stateless, which would be in contravention of Australia's obligations under the Convention on the Reduction of Statelessness.⁶⁵

Amnesty International acknowledges governments have a responsibility to protect national security, including the security of all individuals within the state's jurisdiction. At the same time, any counter-terrorism measure adopted by Australia must comply with its obligations under international law. Respect for and protection of human rights and the rule of law have been described in the UN Global Counter-Terrorism Strategy as the "fundamental basis of the fight against terrorism."⁶⁶

VIOLENCE AGAINST WOMEN

Violence against women is still widespread in Australia. The Australian Bureau of Statistics (ABS) estimates that 34 per cent of women have experienced physical violence since the age of 15 and 19 per cent have experienced sexual violence.⁶⁷ At the time of the survey, 5.3 per cent of women had experienced violence during the previous 12 months. These figures are higher for Aboriginal and Torres Strait Island women. Data shows that 25 per cent of Aboriginal and Torres Strait Islander women experienced violence during the 12 months prior to the most recent ABS survey in 2008.⁶⁸

Amnesty International welcomes the *National Plan to Reduce Violence Against Women and their Children 2010-2022*, and the *Second Action Plan 2013-2016*. However, the government's 2014-15 Budget includes significant funding cuts (totalling \$300 million) for family violence services, including homelessness and crisis accommodation services.⁶⁹ While it is difficult to quantify the full impact of

⁶⁴ *Australian Citizenship: Your Right, Your Responsibility*, Department of Immigration and Border Protection Discussion Paper, <http://www.border.gov.au/ReportsandPublications/Documents/discussion-papers/your-right-your-responsibility-citizenship.pdf>

⁶⁵ Convention on the Reduction on Statelessness 1961, Article 8.

⁶⁶ The United Nations Global Counter-Terrorism Strategy, accessed at <http://www.un.org/en/terrorism/strategy-counter-terrorism.shtml#poa4>

⁶⁷ Australian Bureau of Statistics, *2012 Personal Safety Survey*, Prevalence of violence since the age of 15, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter2002012>.

⁶⁸ Australian Bureau of Statistics, 2008 National Aboriginal and Torres Strait Islander Social Survey, Women's experiences of physical violence, <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4714.0Feature%20Article12008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=#WOMEN>.

⁶⁹ Naomi Woodley, Lisa Mosley and Anna Henderson, 'States and territories unite in fight against legal assistance funding cuts', ABC Online, 7 March 2015, www.abc.net.au/news/2015-03-07/states-territories-unite-in-fight-against-legal-aid-funding-cuts/6287604 (accessed 4 August 2015). See also Senate Finance and Public Administration References Committee inquiry into Domestic Violence in Australia, *Interim Report*, March 2015, p. 3, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/~/_media/Committees/fapa_ctte/Domestic_Violence/Interim%20Report/report.pdf.

these cuts, it is clear the victims of domestic violence rely on services facing significant cuts, which is at odds with the government's strategy objectives.

It is critical that the federal, state and territory governments ensure that their policy objectives are met by adequately funding programs and initiatives that reduce violence against women and essential community services that assist women.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Australia to:

International human rights standards

- Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Third Optional Protocol to the Convention on the Rights of the Child, without reservations, at the earliest practicable time;
- Withdraw reservations to Article 37(c) of the Convention on the Rights of the Child, and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

National human rights framework

- Facilitate a referendum to remove racially discriminatory provisions from the Australian Constitution;
- Expand the definition of “human rights” in the *Australian Human Rights Commission Act 1986* to include the provisions in the following UN human rights treaties and standards:
 - International Covenant on Economic, Social and Cultural Rights;
 - Convention on the Elimination of All Forms of Racial Discrimination;
 - Convention on the Elimination of All Forms of Discrimination against Women;
 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - UN Declaration on the Rights of Indigenous Peoples;
- Ensure the Australian Human Rights Commission has adequate funding and resources, in particular to investigate and report on human rights violations.

The rights of Indigenous Peoples

- Raise the age of criminal responsibility nation-wide to 12 years;
- Repeal mandatory sentencing laws in state and territory jurisdictions;
- Ensure state and territory laws are in harmony with international human rights instruments;
- Establish a national mechanism to investigate violations in youth detention centres;
- Improve the coordination and collection of relevant state and territory data to enable a justice reinvestment approach in Australia;
- Initiate a process for the Council of Australian Governments to establish national Indigenous justice targets and a justice reinvestment strategy to

reduce Indigenous incarceration rates and improve community safety, in partnership with Aboriginal and Torres Strait Islander communities;

- Remove all children from adult prison facilities and improve conditions in youth detention centres;
- Provide increased long-term funding to Aboriginal and Torres Strait Islander Legal Services commensurate with community legal assistance needs;
- Implement policies to invest in remote communities and support Indigenous Peoples who wish to remain on their homelands to access essential services.

The rights of asylum-seekers

- Remove all children and their families and other individuals at risk, including survivors of torture and trauma, from detention centres;
- End offshore processing of asylum-seekers and ensure all asylum claims are processed on the Australian mainland;
- Allow asylum-seekers to live in the Australian community while their claims are processed, following initial checks;
- End indefinite detention by legislating maximum limits to the time that asylum-seekers can be held in detention;
- Allow judicial review of negative security assessments and find long-term resettlement solutions for refugees given negative security assessments;
- Repeal the secrecy and disclosure provisions of the *Australian Border Force Bill 2015*;
- Amend the *Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015* to ensure the use of force is used as a measure of last resort and in a manner consistent with the principle of proportionality.

Counter-terrorism and security

- Repeal the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*;
- Ensure protection under Australian law to ensure citizenship is stripped only in exceptional circumstances, after a serious criminal conviction in a court of law.

Violence against women

- Ensure that initiatives to reduce violence against women are adequately funded by federal, state and territory governments.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁷⁰

Amnesty International Australia, *Submission to the Joint Parliamentary Committee on Intelligence and Security Inquiry into the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015*, 21 July 2015.

Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia* (Index: ASA 12/1642/2015).

Amnesty International Australia, *A brighter tomorrow: keeping Indigenous kids in the community and out of detention in Australia* (Index: ASA 12/1641/2015).

Amnesty International Australia, *Submission to Senate Legal and Constitutional Affairs Legislation Committee Inquiry into Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015*, 19 May 2015.

Amnesty International Australia, *Submission to the Senate Finance and Public Administration References Committee Inquiry into Access to legal assistance services*, 15 May 2015.

Amnesty International Australia, *Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, 28 April 2015.

Amnesty International Australia, *Submission on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution*, 31 January 2015.

Amnesty International Australia, *Submission to the Parliamentary Joint Committee on Intelligence and Security inquiry into the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014*, 19 January 2015.

Amnesty International Australia, *Submission to the UN Committee Against Torture*, (ASA 12/004/2014), November 2014.

Amnesty International Australia, *Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, (No. 22), 3 October 2014.

Amnesty International Australia, *This Is Breaking People, Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea* (Index: ASA 12/002/2013).

⁷⁰ All of these documents are available on Amnesty International's website:
www.amnesty.org.au