



AUSTRALIA: HUMAN RIGHTS IN REVIEW 2016 - 2020

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 37TH SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2021

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

© Amnesty International 2020

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2020

AUSTRALIA: HUMAN RIGHTS IN REVIEW 2016 – 2020

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: ASA 12/2838/2020
July 2020

Original language: English

amnesty.org

**AMNESTY
INTERNATIONAL** 

CONTENTS

INTRODUCTION	4
FOLLOW UP TO THE PREVIOUS REVIEW	4
FEDERAL GOVERNMENT STILL FAILING INDIGENOUS PEOPLES	5
SEVEN YEARS ON AND REFUGEES ARE STILL STUCK OFFSHORE	5
THE NATIONAL HUMAN RIGHTS FRAMEWORK	5
DOMESTIC LAW	5
HUMAN RIGHTS SITUATION ON THE GROUND	6
RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW	12
ANNEX	13

INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Australia in January-February 2021. In it, Amnesty International evaluates the implementation of recommendations made to Australia in its previous UPR, including in relation to the rights of Indigenous Peoples, the rights of asylum seekers, ensuring religious freedom is upheld and maintaining protection from all forms of religious discrimination.

It also assesses the national human rights framework with regards to ongoing resistance by the Federal Government to introduce a Human Rights Act, which would ensure all such rights to freedom of religion, freedom of speech, right to protest and other fundamental rights would be protected and aligned across local, State and Federal Government .

With regard to the human rights situation on the ground, Amnesty International raises concern about the ongoing racial discrimination against Indigenous Peoples, with health, life expectancy, education and employment indicators all falling well below the national average. The number of Aboriginal deaths in custody continues to rise and the minimum age of criminal responsibility is still 10 years – well below the media age of 14 internationally – with many children transported for five hours or more in police cages in the Northern Territory.

Approximately 370 refugees remain stranded offshore – seven years since Operation Sovereign Borders was launched to stop refugees arriving by boat. Amnesty International is deeply concerned about the level of human rights violations under the Australian Government's policies of deterrence and detention - both onshore and offshore – which punish people fleeing persecution and seeking safety in Australia.

FOLLOW UP TO THE PREVIOUS REVIEW

SERIOUS LACK OF PROGRESS SINCE LAST UNIVERSAL PERIODIC REVIEW

Amnesty International is deeply concerned about the lack of progress by the Australian Government with regard to protecting human rights on the ground. Of the 290 recommendations in the 2015 Universal Periodic Review, Australia accepted 150 and noted 50.¹ We welcome the ratification in 2017² of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as recommended by 29 states³ in the

¹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, 13 January 2015, A/HRC/31/14, available at: <https://www.refworld.org/docid/56c2e3e74.html>

² Australian Human Rights Commission, *Australia ratifies major anti-torture treaty of OPCAT*, Press Release, 15 December 2017, at <https://www.humanrights.gov.au/about/news/media-releases/australia-ratifies-major-anti-torture-treaty-opcat>

³ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, 13 January 2015, A/HRC/31/14, p.13-14

previous Review and the amendments to the Marriage Act 1961 to recognise same-sex marriage⁴ under Australian law.

FEDERAL GOVERNMENT STILL FAILING INDIGENOUS PEOPLES

However, there were 80 recommendations⁵ in the previous UPR to improve the rights and welfare of Indigenous Peoples. Australia claimed it was on-track to meet three of its 'Closing the Gap' targets for Indigenous Australians⁶. However, according to the most recent 2019 Closing the Gap Report (see below) just two of those targets are on track 12 years after they were first set.

SEVEN YEARS ON AND REFUGEES ARE STILL STUCK OFFSHORE

Despite 25 states⁷ asking Australia to do more to protect the rights of refugees, more than 370 people are still being held offshore on Papua New Guinea (PNG) and Nauru as part of an agreement that all refugees arriving in Australia by boat be detained in PNG and Nauru in return for Australian Government funding. In the last review, Australia accepted many of the recommendations pertaining to refugee rights both onshore and offshore and yet seven years later, many of these men and women still suffer terrible conditions, as systematically documented by Amnesty International⁸.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

DOMESTIC LAW

A number of key rights and freedoms have been subject to debate in Australia recently including religious freedom, freedom of the press, freedom from discrimination, the rights of asylum seekers, the rights of children and Indigenous Peoples. Details are set out below. Australia is a party to those international treaties that protect these rights and freedoms. However domestic laws do not adequately implement these protections in Australia.

⁴ Marriage Amendment Act 2017 (Commonwealth of Australia), at <https://www.legislation.gov.au/Details/C2017A00129>

⁵ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : Australia*, 13 January 2015, A/HRC/31/14, p.16-18

⁶ Australian Government, Attorney-General's Department, Oral Statement to Human Rights Council – 39th Session, September 18th, 2018, p.2 <https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Documents/upr-mid-term-review-statement.pdf>

⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : Australia*, 13 January 2015, A/HRC/31/14, p.26-29

⁸ *Punishment not protection: Australia's treatment of refugees and asylum seekers in Papua New Guinea*, Report, 1 February 2018, ASA 34/7781/2018 at <https://www.amnesty.org/en/documents/ASA34/7781/2018/en/>; *Treasure Island: How companies are profiting from Australia's abuse of refugees on Nauru*, Report, 5 April 2017, ASA 12/5942/2017, at <https://www.amnesty.org/en/documents/asa12/5942/2017/en/>; *Island of despair: Australia's 'processing' of refugees on Nauru*, Report, 17 October 2016, ASA 12/4934/2016, at <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>; *Health care cuts: Australia's reduced health care support for refugees and asylum seekers in Papua New Guinea*, Report, 17 May 2018, ASA 34/8354/2018 at <https://www.amnesty.org/en/documents/document/?indexNumber=asa34%2f8354%2f2018&language=en>; *Australia: A Better Plan: Human Rights-based Policies on Refugees and People Seeking Asylum*, Advocacy Briefing, June 2018, at <https://www.amnesty.org.au/wp-content/uploads/2018/06/Amnesty-A-Better-Plan-refugees-May2018.pdf>; "Until When? The forgotten men of Manus Island", November 2018, Joint briefing by Amnesty International Australia and Refugee Council of Australia, at https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Until_When_AIA_ROCA_FINAL.pdf

The Federal Government continues to resist pressure to introduce a **Human Rights Act** for Australia, which could ensure the rights to freedom of religion, freedom of speech, right to protest and other fundamental rights are appropriately balanced and aligned across local, State and Federal government.

Rights protections are found in individual pieces of Commonwealth⁹, State and Territory legislation (aside from protections introduced in Queensland, Victoria and the ACT). As a result, jurisprudence to inform how best to balance human rights when they are in competition is equally piecemeal or underdeveloped. The certainty and level of clarity provided by one overarching law - and the jurisprudence that would flow from its interpretation - would greatly assist individuals, entities, governments and their agencies to respect, protect and fulfil every person's human rights.

Australia's existing **Human Rights (Parliamentary Scrutiny) Act 2011** does not stipulate what must be included in statements of compatibility, including a detailed and evidence-based assessment of proposed provisions that interfere with rights. Part 3 of the Act with respect to who, or what agency, has responsibility for drafting statements of compatibility, is not clear, leading to a lack of transparency and accountability.

HUMAN RIGHTS SITUATION ON THE GROUND

RACIAL DISCRIMINATION AND INDIGENOUS PEOPLES

It has been 12 years since the Australian Government published the first 'Closing the Gap' Annual Report, which was designed to eliminate the significant disparity between Indigenous and non-Indigenous people in Australia in life expectancy, health, education and employment indicators.

While some gains have been made in this time in areas of Indigenous health and education, Amnesty International maintains that successive governments have failed to effectively ameliorate past discrimination, or address existing inequalities, disadvantage and discrimination suffered by Aboriginal and Torres Strait Islander Peoples.

In the most recent 'Closing the Gap' Report¹⁰, the Prime Minister Scott Morrison acknowledged that only two of the seven targets - early childhood education and Year 12 attainment - are on track to be met.

Racism towards Indigenous people remains firmly embedded across Australia, with many facing discrimination when seeking access to adequate housing, education, health care and in the criminal justice system.

⁹ The Government of Australia is the government of the Commonwealth of Australia, a federal parliamentary constitutional monarchy.

¹⁰ Australian Government, *Closing the Gap*, Report, February 2020, at <https://ctgreport.niaa.gov.au/content/closing-gap-2020>

The failure of successive Australian governments to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody¹¹ in 1987 and the ‘Bringing Them Home’ Report¹² in 1997 is an indictment in itself. These recommendations if implemented would have addressed many of the Closing the Gap targets as well as some of the issues Aboriginal families face today with youth justice.

INDIGENOUS PEOPLES’ RIGHTS - RAISING THE AGE OF CRIMINAL RESPONSIBILITY

Amnesty International is concerned that the current minimum age of criminal responsibility in Australia of 10 years undermines the “best interests of the child” under Article 3 of Convention on the Rights of the Child (CRC).

The median age of criminal responsibility in the international community is 14 years. Australia is clearly lagging behind in protecting the rights of children and has been repeatedly criticised by UN expert bodies, including long-standing criticism from the United Nations Committee on the Rights of the Child¹³.

The international framework of standards relating to children in contact with the justice system is informed by an evidence base on the neurobiological impacts of early childhood trauma and knowledge from developmental psychology for child wellbeing¹⁴.

Children arrested before the age of 14 are three times more likely to commit offences as adults than children arrested after 14. Many children entering the criminal justice system become trapped and are less likely to complete their education and find employment. They are more likely to be stuck in a cycle of poverty and disadvantage¹⁵.

OVER-REPRESENTATION OF INDIGENOUS CHILDREN IN THE JUSTICE SYSTEM

Aboriginal and Torres Strait Islander children are hit hardest by these regressive laws – an Amnesty International report found that Indigenous children make up 64% of the children in prison aged 10-13 years and 50% of the children in prison aged 14 to 17 years. Disproportionate numbers of Aboriginal and Torres Strait Islander children are also held on remand, comprising almost 50%¹⁶.

¹¹ Indigenous Law Resources, *Royal Commission into Aboriginal Deaths in Custody*, 29 April 1998, at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

¹² Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997, at <https://www.humanrights.gov.au/our-work/bringing-them-home-report-1997>

¹³ UN Committee on the Rights of the Child, *Concluding Observations on the combined fifth and sixth periodic reports of Australia*, 1 November 2019, CRC/C/AUS/CO/5-6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En

¹⁴ Youth Justice, *The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders’ Views and the Need for Principled Reform*, 1 August 2017, Vol.17, No.2, pp.135

¹⁵ *The Sky Is the Limit: Keeping young children out of prison by raising the age of criminal responsibility*, Report, September 2018, at <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

¹⁶ Case study: On 10 May 2019, there were 89 children in the Brisbane City Watch House, a facility designed to hold adults. At least half of these children are Indigenous and at least three were just ten years of age. One of the boys had been there for 43 days, despite Queensland law dictating no child may stay even one night in the Brisbane watch house. Four young girls were being held in isolation to protect them from other inmates. The cells of the Brisbane City Watch House are very small. There is no direct sunlight. All a child has inside their cell is a wafer-thin mattress, and often no pillow. Each cell is designed for one person, but overcrowding means that kids are often locked up with another person, sometimes much older than them. Of the children in Queensland prisons, approximately 86 per cent are currently ‘on remand’. This means they are locked up even though they have not been found guilty or sentenced. The situation is worse for Indigenous kids. They spend an average of 71 days in detention on remand, compared with 50 days for non-Indigenous children. An investigation by Amnesty International uncovered 2,655 breaches of domestic and international law, including keeping children in watch houses for illegal durations; failing to provide children with adequate clean clothes, underwear and personal hygiene products; the institutional use of violence; the use of isolation as a form of punishment; failure to provide adequate health and

YOUTH JUSTICE - POLICE 'CAGES'

Amnesty International is concerned about young people being transported in 'police cages'.¹⁷ The cages have no seat belt or restraints. No light. No air conditioning or heating. These are horrific conditions to be holding children in. Rule 73,2 of the United Nations Standard Minimum Rules for the Treatment of Prisoners¹⁸ prohibits any mode of transport that subjects a detainee to physical hardship. It is Amnesty's position that these conditions definitely constitute physical hardship.

REFUGEES - RIGHT TO SEEK ASYLUM AND NOT BE ARBITRARILY DETAINED

Amnesty International is deeply concerned that refugees and people seeking asylum in Australia continue to suffer many human rights violations. The Australian Government's policies of deterrence and detention, particularly those targeting people arriving by boat, punish people forced to flee persecution and who seek safety in Australia.

Under the Migration Act 1958 (Cth), asylum seekers who arrive in Australia without a valid visa must be held in immigration detention until they are granted a visa or removed from Australia. There are no limitations in statute or common law on the length of time for which a person may be detained.

Responding to recommendations made at the last review to improve its policy on migration, the Australian Government said it was "committed to a managed and equitable system of migration, consistent with our international obligations and respectful of the human rights of migrants, refugees and asylum seekers. Australia respects and complies with its non-refoulement obligations."¹⁹

Amnesty International believes the Government is utterly failing in this regard²⁰, instead subjecting such individuals to arbitrary detention as they are unable to challenge the lawfulness of their detention in court²¹. The United Nations Human Rights Committee regularly criticises Australia's mandatory detention policies, calling in 2017 for "all asylum-seekers regardless of their mode of arrival" to have access to "fair and efficient refugee status determination procedures and non-refoulement determinations."²²

OFFSHORE DETENTION

In relation to Australia's treatment of refugees held offshore, there is no question that serious human rights violations have occurred²³. The Federal Government's "Operation Sovereign Borders" was launched in 2013 to stop refugees arriving by boat from being settled in Australia.

mental health care; and failure to provide access to adequate education. The Queensland Government has subsequently sought to redress this situation, which has been welcomed by Amnesty International as a significant and positive step to recognising the unique rights of children in the criminal justice system.

¹⁷ <https://www.amnesty.org.au/northern-territory-police-must-stop-transporting-kids-in-cages/>

¹⁸ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

¹⁹ Human Rights Council, Report, A/HRC/31/14/Add.1, February 29, 2016, p.7

²⁰ Australian Human Rights Commission, Lives on Hold: Refugees and asylum seekers in the 'Legacy caseload', July 17, 2019, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>

²¹ Supreme Court of Canada ruled that immigration detainees have habeas corpus rights: Canada (Public Safety and Emergency Preparedness) v. China, 2019 SCC 29 (CanLII), at <http://canlii.ca/t/j075t>

²² UN Human Rights Committee, Concluding Observations, CCPR/C/AUS/CO/6, 1 December 2017, p.6

²³ International Criminal Court, Letter, OTP-CR-322/14/001, February 6, 2020, p.2 <https://andrewwilkie.org/wp-content/uploads/2020/02/200213-Andrew-Wilkie-Response-from-International-Criminal-Court-Australian-Government-treatment-of-asylum-seekers.pdf>

More than 4,000²⁴ men, women and children have been detained in offshore detention centres since 2012. Today, more than 370 men and women still remain in Papua New Guinea and Nauru - seven years later.

In response to recommendations at the last UPR, Australia said it had “no plans to cease its existing policies of mandatory immigration detention, safely turning back boats or transferring people who arrive illegally by boat to other countries for processing and resettlement” and that it would continue to “promote the safety of migrants and refugees and maintain high standards of health care and other services.”²⁵

The abysmal conditions and abusive treatment of refugees held in Nauru and PNG have been well documented, including 4 reports by Amnesty International since the last review.²⁶ There have been 12 deaths of refugees and asylum-seekers on Nauru and PNG - some from suicide - and legislation was passed in early 2019 to ensure those detained who needed medical assistance were transferred to Australia and given access to adequate healthcare services. At the end of 2019, that legislation was repealed by the newly elected Federal Government. With this option now unavailable, concern is growing for the mental and physical well-being of the men still stranded offshore for the past seven years.²⁷

The men who were transferred to Australia before Medevac was repealed are now in detention in Immigration Detention Centres (IDC) and hotels²⁸ (which have been designated Alternative Places of Detention (APODs)) across Australia, which they are unable to leave unless they request a visit to an IDC to access the gym there for a short period of time. Concerns for their health and mental well-being are mounting²⁹. Under Covid-19, there have been numerous accounts of social distancing not being adhered to within the detention centres and hotels and required hygiene practices and protective equipment not being used³⁰.

RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF SPEECH

In Australia the rise of climate protests in 2019 saw several state Governments take steps to suppress these protests. The Queensland government passed *Summary Offences and Other Legislation Amendment Act* in 2019.

The Act criminalises the use of a “dangerous attachment device” to “unreasonably interfere” with the ordinary operation of transport infrastructure, stop a person from entering or leaving a place of business, or cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person, unless the person has a “reasonable excuse.”³¹ All these terms are prone to misapplication, and can be used to disrupt actions within the scope of the legitimate exercise of the right to freedom of peaceful assembly.³²

²⁴ Refugee Council of Australia, Statistics, October 27, 2019, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>

²⁵ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : Australia*, 13 January 2015, A/HRC/31/14/add.1, p.7.

²⁶ See references to Amnesty reports below

²⁷ Hospital Healthcare, *Medevac repeal could have long term health consequences*, Press Release, 11 December 2019 <https://www.hospitalhealth.com.au/content/clinical-services/news/medevac-repeal-could-have-long-term-health-consequences-640841862#axzz6Cr42diBW>

²⁸ Buzzfeed, *From an Island Prison to a City Hotel*, 7 February 2020, at <https://www.buzzfeed.com/hannahryan/brisbane-australia-motel-refugees-locked-up>; ABC, *Refugees and asylum seekers in Australia under medevac laws detained in Melbourne hotel for months*, 19 December 2019, at: <https://www.abc.net.au/news/2019-12-19/medevac-refugees-locked-in-melbourne-hotel/11813008>

²⁹ ABC, *Iranian-Kurdish metal musician among 80 refugees holed up in Brisbane hotel*, 11 February 2020, <https://www.abc.net.au/news/2020-02-11/refugees-in-brisbane-kangaroo-point-hotel-metal-music-among-them/11949086>

³⁰ ABC, *Not enough being done to protect asylum seekers from coronavirus*, 2 August 2020, at <https://www.abc.net.au/news/2020-08-02/not-enough-being-done-to-protect-asylum-seekers-from-coronavirus/12503618>

³¹ Queensland State Government, *Summary Offences and Other Legislation Amendment Act 2019*, at <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2019-035>

³² Tasmania State Government, *Workplaces (Protection From Protesters) Amendment Bill 2019*, [Bill 54]-XI, http://www.parliament.tas.gov.au/bills/pdf/54_of_2019.pdf

This legislation³³, alongside proposed amendments to existing legislation in Tasmania, illustrate the erosion of Australians' right to freedom of peaceful assembly by Australia's lawmakers.

In recent years, various statutes have heavily limited the freedom of the press in Australia. The Australian Law Reform Commission's *Final Report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* identified a number of laws "as being of concern" from a freedom of speech perspective.³⁴ These include various terrorism-related secrecy offences in the *Criminal Code, Crimes Act 1914 (Cth)* and *Australian Security Intelligence Organisation Act 1979 (Cth) (ASIO Act)* and, in particular, those relating to 'special intelligence operations' (section 35P). When these laws interfere unjustifiably with press freedom, there is no guidance as to how these various rights and freedoms may be balanced. Consequently, press freedom may be limited beyond what is necessary, proportionate and justifiable.

Australia's defamation laws also limit freedom of the press while secrecy laws in Australia provide that anyone who breaches them, including journalists, be imprisoned for up to five years for publishing classified information obtained from a federal public servant. Raids on the media (ABC and News Ltd) occurred in 2019, as did intimidation of journalists reporting on plans to expand government surveillance³⁵. Whistle-blowers³⁶ are also being targeted when they expose government wrongdoing and are being prosecuted under the *Intelligence Services Act*.

RELIGIOUS DISCRIMINATION AND FREEDOM

Amnesty International is deeply concerned that, under the Religious Discrimination Bill currently before the parliament, people who hold religious beliefs will be able to discriminate against Australians who do not, or whose characteristics fall outside that particular religious belief (particularly the LGBTQIA+ community and women). Amnesty International holds the position that this Bill contravenes Australia's obligations under international law on the rights of equality and non-discrimination, including the ICESCR and ICCPR³⁷.

Section 10 of the Religious Discrimination Bill provides that a religious body does not discriminate if they engage 'in good faith, in conduct that may reasonably be regarded as being in accordance with' religious doctrine, tenets, beliefs or teachings.

Amnesty International is of the position that this clause is a license for religious organisations to discriminate. Religious schools, for example, will be able to disadvantage or expel students according to their religious beliefs, or lack of them.

An obvious example of those who may be at risk are LGBTQIA+ students. Amnesty International holds the strong position that religious organisations or educational institutions in receipt of public funding or providing services on behalf of the government should not discriminate in the provision of those services in ways that would otherwise be unlawful.

³³ Queensland State Government, Summary Offences and Other Legislation Amendment Act 2019, <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2019-035>; Tasmania State Government, Workplaces (Protection From Protesters) Amendment Bill 2019, [Bill 54]-XI, http://www.parliament.tas.gov.au/bills/pdf/54_of_2019.pdf

³⁴ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, August 2019, at https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_129_final_report_.pdf, p.7 [4.6].

³⁵ Sydney Morning Herald, *Australian Federal Police raid ABC headquarters at Sydney's Ultimo*, June 5, 2019, <https://www.smh.com.au/national/australian-federal-police-raid-abc-headquarters-at-sydney-s-ultimo-20190605-p51uof.html>

³⁶ Case Study: Michaela Banerji argued she had been unlawfully fired in 2013, from what was then the Department of Immigration and Border Protection, for tweets under a different name that were critical of the Australian Government's immigration policy and treatment of detainees. Ms Banerji took her case to the Administrative Appeals Tribunal, which found her implied right to freedom of political communication had been impeded. However, the High Court then unanimously ruled against the finding.

³⁷ Amnesty International, *Submission to the Religious Discrimination Bills, Second Exposure Draft*, 31 January 2020, at <https://www.amnesty.org.au/wp-content/uploads/2020/02/Amnesty-International-Australia-Submission-to-the-RELIGIOUS-DISCRIMINATION-BILLS-.pdf>

Balancing this need to ensure such groups are protected from discrimination, is the freedom of religion³⁸ as recognised in the Australian Constitution.³⁹

Amnesty International strongly recommends the establishment of a national Human Rights Act or a Charter of Human Rights and Freedoms in order to better protect the rights of people of faith, whilst ensuring people of faith are not lawfully permitted to discriminate against others is. An Act or Charter would protect the rights of all Australians within a framework that ensures that all people's rights are universal and indivisible. In the situation where one person's accessing of their human rights impacts on another person's ability to access their rights, an Act or Charter would fairly balance these rights.

³⁸ There is a clear distinction between the absolute right to hold a religion or belief (including a non-religious belief or a rejection of religious belief) and the right to manifest such a belief. While the right to freedom of thought and belief is absolute, in international law the freedom to manifest one's religion or beliefs may be subject to legitimate limitations where they are "prescribed by law", and necessary to protect "the fundamental rights and freedoms of others."

³⁹ Commonwealth of Australia Constitution Act 1900.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF AUSTRALIA TO:

HUMAN RIGHTS ACT

- Legislate to ensure that Australia's international human rights obligations are reflected in domestic legislation. This must, at a minimum, include the right to recognition and equality before the law, freedom from discrimination, right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, right to peaceful assembly and freedom of association and expression, cultural rights (right to enjoy culture, declare and practise religion and use their language), rights to education and the rights of children in the criminal process, and their access to healthcare. One way of delivering this objective would be through a Human Rights Act.

INDIGENOUS PEOPLES' RIGHTS

- Develop, in consultation with Aboriginal and Torres Strait Islander Peak organisations, a national action plan to implement the Declaration on the Rights of Indigenous Peoples;
- Table the report of the Special Rapporteur on the Rights of Indigenous Peoples on the situation of Australia in Federal Parliament; provide an official response to the report of the Special Rapporteur on the Rights of Indigenous Peoples; and refer the report of the Special Rapporteur on the Rights of Indigenous Peoples to the Parliamentary Joint Committee on Human Rights for further investigation;

REFUGEES

- End offshore processing and detention for refugees and people seeking asylum who arrive by boat;
- End mandatory detention for refugees and asylum seekers in Australia;
- Improve standards of care for all those detained.

RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF SPEECH

- Ensure the right to freedom of peaceful assembly is respected, including through repealing legislation that violates international human rights laws and standards;
- Uphold press freedom including by ending all police investigations against journalists at the ABC;
- Ensure freedom of expression, press freedom, the rights of whistle-blowers and the right to peaceful assembly are protected under legislation both at national and state government levels.

RELIGIOUS FREEDOM AND DISCRIMINATION

- End unlawful discrimination on the grounds of sexual orientation, gender identity and intersex status and amend the Religious Discrimination Bill which would give religious bodies a license to discriminate against LGBTIQ+ individuals.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁴⁰

Punishment not protection: Australia's treatment of refugees and asylum seekers in Papua New Guinea, Report, 1 February 2018, ASA 34/7781/2018 at <https://www.amnesty.org/en/documents/ASA34/7781/2018/en/>

Treasure Island: How companies are profiting from Australia's abuse of refugees on Nauru, Report, 5 April 2017, ASA 12/5942/2017, at <https://www.amnesty.org/en/documents/asa12/5942/2017/en/>

Island of despair: Australia's 'processing' of refugees on Nauru, Report, 17 October 2016, ASA 12/4934/2016, at <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>

Health care cuts: Australia's reduced health care support for refugees and asylum seekers in Papua New Guinea, Report, 17 May 2018, ASA 34/8354/2018 at <https://www.amnesty.org/en/documents/document/?indexNumber=asa34%2f8354%2f2018&language=en>

Australia: A Better Plan: Human Rights-based Policies on Refugees and People Seeking Asylum, Advocacy Briefing, June 2018, at <https://www.amnesty.org.au/wp-content/uploads/2018/06/Amnesty-A-Better-Plan-refugees-May2018.pdf>;

"Until When? The forgotten men of Manus Island", November 2018, Joint briefing by Amnesty International Australia and Refugee Council of Australia, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Until_When_AIA_RCOA_FINAL.pdf

Raise the Age: Kids belong in the community, May 2020, Report, at <https://www.amnesty.org.au/wp-content/uploads/2020/05/Raise-the-Age-Kids-Belong-in-Community-2020.pdf>

The Sky Is the Limit: Keeping young children out of prison by raising the age of criminal responsibility, Report, September 2018, at <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

Submission: A Review of Age of Criminal Responsibility, 22 February 2020 https://www.amnesty.org.au/wp-content/uploads/2020/02/Submission_Age-of-Criminal-Responsibility.pdf

Submission: Inquiry into Pathways and Participation for Indigenous Australian, 11 March 2020 <https://www.amnesty.org.au/submission-inquiry-into-pathways-and-participation-for-indigenous-australians/>

Submission to the Religious Discrimination Bills, Second Exposure Draft, 31 January 2020, <https://www.amnesty.org.au/wp-content/uploads/2020/02/Amnesty-International-Australia-Submission-to-the-RELIGIOUS-DISCRIMINATION-BILLS-.pdf>

Submission: Free & Equal – An Australian Conversation on Human Rights, 11 November 2019
<https://www.amnesty.org.au/submission-free-equal-an-australian-conversation-on-human-rights/>

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@AmnestyOnline](https://twitter.com/AmnestyOnline)