



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of Australia and welcome the constructive engagement of your Government during the 37th session of the UPR Working Group in January 2021.

As the final outcome report on the review of Australia was recently adopted by the Human Rights Council at its 47th session, I would like to take this opportunity to follow up on a number of areas raised in the two reports that my Office had prepared for the review of Australia – the Compilation of United Nations information and the Summary of Stakeholders' submissions – which I consider in need of particular attention over the next four and a half years, until the next cycle of the UPR. In identifying those areas, I have considered the statements and/or recommendations made by 122 delegations and the presentation made and responses provided by the delegation of Australia. I have also considered the actions taken by the Government of Australia to implement the 150 recommendations supported and voluntary pledges made during the second cycle of the UPR. The aforementioned areas cover a range of issues, which appear in the annex to this letter.

I welcome the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2017 despite noted recommendations from the second UPR calling for the ratification of the Optional Protocol. In this respect, I encourage Australia to effectively implement the Optional Protocol and commence the operation of national preventative mechanism bodies without delay. I also welcome the 2017 amendments to the Marriage Act 1961, guaranteeing the right to marry for all couples, regardless of sex or gender in line with accepted recommendations from the second review.

I note a new National Agreement on Closing the Gap that came into effect in July 2020 to address significant disparities in several life outcomes for Indigenous Australians, including education, employment, housing and land, and justice. I encourage Australia to implement effective measures to meet 17 targets of the Closing the Gap Agreement and strengthen the protection of the rights of indigenous peoples, in close consultation with indigenous representative bodies and civil society. In this context, I call for Australia's continuing efforts to address the overrepresentation of indigenous peoples in the criminal justice system and reduce their high rates of incarceration.

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Her Excellency
Senator the Honorable Marise PAYNE
Minister for Foreign Affairs, Minister for Women
Australia

While noting Australia's commitment expressed during its second and third reviews to a managed and equitable system of migration, consistent with its international obligations, I urge Australia to implement a human rights-based approach to migration and border management to ensure the protection of the human rights of migrants, refugees and asylum seekers.

I encourage Australia to develop a comprehensive national human rights action plan in order to achieve concrete results in the areas highlighted in the annex to this letter and to facilitate preparations for the fourth cycle of the UPR. My advice to all Member States is to develop and implement national action plans in close consultation and cooperation with all stakeholders, in particular the national human rights institution and all civil society organizations and, where necessary, with the support of international organizations, including my Office for the Pacific.

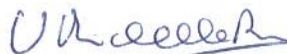
I also encourage Australia to continue to strengthen the Standing National Human Rights Mechanism for comprehensive reporting and follow-up in relation to recommendations received from all international and regional human rights mechanisms and to treaty obligations, while linking these to the Sustainable Development Goals. To this end, I strongly recommend the use of the OHCHR practical guide on this topic, which is available at:
http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

Please note that I am sharing my advice with all Member States as they go through the third cycle of the UPR with a view to assisting them with the implementation of the recommendations, following the review. One important measure that can positively contribute to follow-up action is voluntary mid-term reporting. Therefore, I strongly encourage all Member States to submit a voluntary mid-term report two years after the adoption of the UPR outcome report. In this regard, I welcome the practice of Australia of submitting a mid-term report and encourage the Government to continue with this practice on follow-up to the forth cycle of the UPR, by 2023.

As stated by the Secretary-General in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *"The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals."*

I look forward to discussing with you ways in which my Office may assist Australia in relation to the areas identified in this letter and its annex.

Please accept, Excellency, the assurances of my highest consideration.



Michelle Bachelet
High Commissioner for Human Rights

cc: Her Excellency
Mr. Andrew WALTER
First Assistant Secretary, Integrity and Security Division, Attorney-General's Department
Australia

Ms. Heike ALEFSEN
Regional Representative for the Pacific
OHCHR Pacific Regional Office / Suva, Fiji Islands

Annex

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- Ratifying the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Committee on the Rights of the Child on a communications procedure.
- Ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) of the International Labour Organisation.
- Withdrawing reservations to articles 10 (2), 14 (6) and 20 of the International Covenant on Civil and Political Rights, article 37 (c) of the Convention on the Rights of the Child, article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 11 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, and the interpretative declarations on articles 12, 17 and 18 of the Convention on the Rights of Persons with Disabilities.

National human rights framework

- Adopting a constitutional guarantee of human rights in a form of a bill of rights or a human rights act with a clause of precedence over all other legislation.
- Ensuring that international human rights obligations of Australia are fully incorporated into domestic legislation.
- Strengthening the support provided to the Australian Human Rights Commission with a view to enabling it to fulfil its functions effectively, including by ensuring adequate funding for the Commission and by initiating an inquiry into attempts by public officials to intimidate and undermine the Commission.

Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

Equality and non-discrimination

- Ensuring effective protection against all forms of discrimination on all the prohibited grounds in law and in practice as well as access to effective remedies for all victims of discrimination.
- Combating discrimination or violence based on racial, ethnic or religious grounds, as well as hate speech and xenophobic discourse in the public sphere, in political debates and in the media.

Development, the environment, and business and human rights

- Tackling climate change and its negative impacts on the realisation of human rights.
- Implementing the goals of the Paris Agreement and reducing emissions.



- Ensuring that environmental impact assessments are prepared in full transparency and with the meaningful participation of affected communities.
- Making sure that activities of companies do not negatively affect the enjoyment of human rights and ensuring the legal liability of companies based in or managed from Australia regarding violations of human rights by their activities abroad or resulting from activities of their subsidiaries or business partners.
- Developing a national action plan on business and human rights.

Human rights and counter-terrorism

- Reviewing counter-terrorism laws, policies and practices to bring them in line with international human rights obligations of Australia and, in particular, ensuring that any limitations of human rights for national security purposes are necessary, proportionate and are subject to appropriate safeguards.

B. Civil and political rights

Administration of justice, including impunity, and the rule of law

- Eliminating overcrowding in places of detention, including by increasing the use of non-custodial alternative measures.
- Raising the minimum age of criminal responsibility from 10 years to an internationally accepted level and to at least 14 years.
- Prohibiting the use of isolation and force as punishment in juvenile justice facilities, promoting non-judicial measures for children accused of criminal offences and, wherever possible, the use of non-custodial sentences and in cases where detention is unavoidable, and ensuring that children are detained in separate facilities and, for pre-trial detention, that detention is regularly and judicially reviewed.
- Ensuring separation of minors from adult detainees and prisoners and prohibiting the practice of solitary confinement of children and ending abuse of children in detention.

Fundamental freedoms and the right to participate in public and political life

- Ensuring effective protection of freedom of expression, religion and of peaceful assembly and that any limitations on those freedoms are necessary and proportionate for the pursuit of a legitimate aim.
- Guaranteeing the meaningful participation of defenders and civil society in government decision making, including by removing the “gagging clauses” from all federal and state funding partnerships and funding agreements.

Prohibition of all forms of slavery

- Continuing efforts to combat trafficking in human beings and to ensure adequate assistance and support to all victims of trafficking, irrespective of their cooperation in criminal proceedings.

C. Economic, social and cultural rights

Right to work and to just and favourable conditions of work

- Addressing existing barriers to women's equal participation in the workforce, implementing the principle of equal pay for work of equal value and closing the gender wage gap.

Right to social security

- Reviewing existing conditions for eligibility to social assistance and unemployment benefits and penalties for non-compliance, so that all beneficiaries receive adequate benefits, without discrimination.
- Continuing to implement measures to mitigate health and the economic impacts of the COVID-19 pandemic for most vulnerable groups.

Right to health

- Addressing the disparities in the health status of indigenous children, children with disabilities, children living in remote or rural areas and children in alternative care as well as allocating sufficient funding to the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 and to the health-care services in remote areas.

Right to education

- Ensuring the inclusion of components on indigenous people's history in the mainstream education curricula.

D. Rights of specific persons or groups

Women

- Advancing gender equality and empowerment of women, including by adopting targeted measures to accelerate the participation of women in political and public life.
- Combating all forms of violence against women and, in particular, implementing preventive measures, establishing an effective mechanism to report cases of domestic violence and providing victims with assistance and safe shelters.

Children

- Prohibiting explicitly corporal punishment in law in all settings.
- Avoiding the removal of children from their families, including children of Indigenous Australians, and limiting removal when it is deemed necessary and to the shortest time possible, and ensuring child and family support community-based services.

Persons with disabilities

- Eliminating discrimination against persons with disabilities and ensuring full enjoyment of their human rights as well as preventing, investigating and punishing acts of violence or abuse against persons with disabilities placed in institutions and residences, and against children with disabilities in educational institutions.

- Ensuring that all children with disabilities have access to inclusive education in mainstream schools and are provided with the support they need.
- Abolishing the practice of the non-consensual administration of contraceptives to, the performance of abortions on and the sterilization of women and girls with disabilities, and developing and enforcing strict guidelines on the sexual and reproductive health rights of women and girls with disabilities who are unable to consent.
- Increasing the affordability and accessibility of public and social housing for persons with disabilities and protecting their right to live independently.

Indigenous peoples

- Pursuing a referendum to recognize Aboriginal and Torres Strait Islander peoples under the Constitution.
- Implementing effectively well-resourced policies and programs to address the underlying causes of socioeconomic disadvantage of Aboriginal and Torres Strait Islanders across all quality of life indicators and improve their socioeconomic situation.
- Ensuring the housing needs of Indigenous Australians are adequately met, including by addressing the precarious housing conditions of indigenous peoples in remote areas.
- Implementing effective policies and programs to reduce violence against Aboriginal and Torres Strait Islander women and meet a set target under the Closing the Gap Framework.
- Ensuring the informed consent of Indigenous peoples in all decision-making that affects them.
- Increasing support, including financial support, to indigenous-led programmes and organizations that provide services to indigenous peoples.
- Preserving and promoting indigenous culture, history and languages and ensuring that indigenous languages are systematically taught in schools with a significant presence of indigenous children.
- Implementing the United Nations Declaration on the Rights of Indigenous Peoples through its national policies and programs in consultation and partnership with Aboriginal and Torres Strait Islander peoples and their representative bodies.

Migrants, refugees and asylum seekers

- Improving the working conditions of migrant workers and increasing labour inspections to detect labour rights violations.
- Ensuring that the non-refoulement principle is secured in law and adhered to in practice, and that all asylum seekers, regardless of their mode of arrival, have access to efficient refugee status determination procedures and non-refoulement determinations.
- Halting its policy of offshore processing of asylum claims and repatriating all concerned persons to Australia and processing their asylum claims with all procedural safeguards.
- Changing laws and policies related to mandatory administrative detention of migrants in an irregular situation and asylum seekers, so that detention is decided on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation, under which detention



is a measure of last resort and is limited to the shortest time possible, and ensuring that non-custodial measures are always considered first as alternatives to detention.

- Facilitating family reunification for all asylum seekers irrespective of the type of visa held or mode of arrival.
- Ensuring that all refugees and asylum seekers' children within Australian territory or under its jurisdiction enjoy the right to education.
- Ensuring that refugees and asylum seekers are able to exercise their right to the highest attainable standard of health.