

Australian Catholic Social Justice Council
Individual UPR Submission – Australia – January 2011

1. The Australian Catholic Social Justice Council (ACSJC) was granted Special Consultative Status with the Economic and Social Council of the United Nations in 1997. The ACSJC was established by the Australian Catholic Bishops Conference in 1987 as the national justice, peace and human rights agency of the Catholic Church in Australia. The ACSJC is accountable to the ACBC through the Bishops Commission for Justice and Development.

2. The ACSJC welcomes this opportunity to lodge a submission in relation to the Universal Periodic Review of Australia and confines its comments to major areas of concern for particularly vulnerable groups vis-à-vis Australia's performance in the protection of human rights over the past four years.

The Rights of Aboriginal and Torres Strait Islander people

3. The protection of the human rights of Indigenous people in remote communities of the Northern Territory has been challenged under the Northern Territory Emergency Response (originally known as the "Northern Territory Intervention"), which was implemented in mid-2007. The Emergency Response has had a law-and-order focus and allowed for the suspension of provisions of the *Racial Discrimination Act 1975* so as to control patterns of consumption and the use of Government assistance in the communities concerned.

4. While there are anecdotal reports that restrictions on income support have had a positive impact for some families who have had more of their income available for food, clothing and health related needs, other reports are calling for more consistent evidence that such measures are adequately addressing child malnutrition. The ACSJC notes numerous instances, identified in reports and anecdotally, of discriminatory treatment or systemic malfunctions in the operation of income support restrictions, income quarantining and the BasicsCard system. There has been concern as much about instances of discrimination against individuals as about the imposition of bureaucratic restrictions on particular groups on the basis of race and without adequate consultation with the individuals and communities affected.

5. Article 1.4 of the Convention on the Elimination of all Forms of Racial Discrimination states that 'special measures' such as these 'shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.' Clearly, the income management measures have resulted in a system of restricted rights based on race.

6. In June 2010, the Government passed legislation that reinstates the *Racial Discrimination Act* but continues to apply income management by widening its application to non-Indigenous Australians in the Northern Territory. Technically, it may be claimed that the legislation satisfies the Racial Discrimination Act, but, since the majority of Northern Territorians receiving welfare are Indigenous, the policy may still have the effect of discriminating against Indigenous people as a group.

7. **Australia should review both the enabling legislation and the implementation of compulsory income management and other initiatives of its Northern Territory Emergency Response in accordance with Article 2.1(c) of the Convention on the Elimination of Racial Discrimination – noting the specific reference to ‘any laws or regulations which have the effect of creating or perpetuating racial discrimination.’** (emphasis added).

8. Since the commencement of the Northern Territory Intervention in mid-2007, the ACSJC and many other NGOs have urged an approach on the part of Government that is more consultative, oriented more towards community development, and respectful of the culture and dignity of Indigenous people. Having declared its support for the Declaration on the Rights of Indigenous Peoples in April 2009, the Australian Government should in this instance have regard for the intent of the Declaration, particularly regarding Art. 18 concerning participation in decision-making and Art. 19 concerning the State obtaining the free, prior and informed consent of Indigenous people before the adoption and implementation of legislative or administrative measures.

The Treatment of Asylum Seekers

9. The ACSJC has been concerned about Australia’s unreasonably harsh and often unacceptable treatment of asylum seekers over the past decade. Laws and regulations on the reception and processing of asylum seekers have contravened Australia’s obligations, particularly under: the Universal Declaration of Human Rights (Art. 14(1) ensuring freedom from persecution); the Convention relating to the Status of Refugees (Art. 31(1) concerning the exemption from punishment and Art. 33(1) concerning protection from refoulement); the International Covenant on Civil and Political Rights (Art. 7 ensuring freedom from inhumane treatment and Art. 9(1) and (4) against arbitrary detention); and the Convention on the Rights of the Child (Art. 3 concerning the pre-eminence of the interests of the child and Art 37(b) protecting children from the deprivation of liberty).

10. The ACSJC has welcomed the current Australian Government’s action in 2008 to discontinue the so-called ‘Pacific solution’ and introduce a policy under which detention is a last resort and lasts for as short a time as possible. Concerns remained, however, that Australia continues to rely on offshore processing and that the Christmas Island detention facility has been

expanded and is so remote as to impede access to support services and legal advice and review. The facility exists because of Australia's policy of 'excision' of certain territories, a policy designed to make it more difficult for would-be refugees to claim asylum in Australia under international law.

11. In April, the Government suspended the processing of claims for asylum from applicants from Afghanistan and Sri Lanka. The ACSJC believes that applications for asylum should be assessed on the basis of individual circumstances, not simply nationality. It is also mindful of the disastrous results on previous occasions when Australia returned asylum seekers to their countries of origin claiming that circumstances there had improved.

12. Also announced in April 2010 was the reopening of detention facilities in Curtin, a remote location which is low on resources and set in an inhospitable environment. Leonora, in the goldfields of Western Australia, is the site of another remote facility. Additionally, a detainee facility at Defence Base Darwin has been used to place up to 600 or more detainees and family groups have been housed in a motel in Darwin City.

13. On 6 July 2010, the Government announced further changes, including: the possible establishment of a 'regional processing centre' in Timor-Leste to receive boat arrivals before they arrive in Australia; lifting the suspension on the processing of claims by Sri Lankans with an indication that more would be returned given an improved security assessment of Sri Lanka by the United Nations High Commissioner for Refugees; and continuation of the suspension on processing the claims of Afghans. Concerns remain that Australia's treatment of asylum seekers continues to contravene the abovementioned international obligations.

14. Australia should immediately ensure its reception of asylum seekers and processing of their claims accord with its international obligations, particularly the abovementioned provisions of the Universal Declaration of Human Rights, the Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Australia's Anti-Terrorism legislation

15. A long-held concern of the ACSJC has been the way in which anti-terrorism measures could unnecessarily undermine civil and political rights in Australia. While terrorism is to be absolutely condemned and States and individuals have a right to defend themselves against terrorism, the right to defend needs to be balanced with the rights of others, and protections are required to ensure that the rights of others may be impinged only to the extent proportionally necessary.

16. The established powers for detecting and addressing potential terrorist attacks threaten to unnecessarily undermine fundamental rights outlined in the International Covenant on Civil and Political Rights, particularly Art. 9 and 17 (concerning the rights to liberty, security of person and freedom from arbitrary arrest or interference); Art. 9 and 14 (concerning the rights to be charged, afforded the presumption of innocence, given a fair trial and given access to judicial review if an offence has been committed); and Art. 2(1) and 26 (protecting minority groups from discrimination).

17. It is noted that the Australian Government has not, to the best of our knowledge, been in the position of having to invoke Art. 4 of the Covenant, which would allow it, at a ‘time of public emergency which threatens the life of the nation and the existence of which is publicly proclaimed’, to take measures derogating from its human rights obligations.

18. It is evident in many parts of the world that national security legislation can often be misused as a tool of oppression. While this is unlikely to be the case in Australia, perhaps in all but particular instances, Australia needs to ensure that its national security arrangements are not open to abuse now or in the future. The process of detention, interrogation and prosecution of Doctor Mohamed Haneef in July 2007 provides an emblematic case of what can go wrong when these rights are denied. The problems of this case were outlined by the 2008 Clarke Inquiry, established by Australia’s Attorney-General.

19. Adequate and independent mechanisms of review are required to ensure Australia’s right to defend against terrorism does not unnecessarily undermine its human rights obligations and the rule of law.

Australia’s Position on Capital Punishment

20. In accordance with Church teaching on the sanctity of life, the ACSJC holds that every person, whatever his or her citizenship, has a fundamental right to life and that capital punishment cannot be justified, even when a person is guilty of grave crimes. For this reason, the ACSJC opposes the death penalty for all persons and in all nations.

21. The ACSJC has sought to direct attention to Australia’s role in ending the use of the death penalty by countries in our region. In addition to opposing capital punishment in Australia and intervening on behalf of its citizens who are exposed to the penalty in other jurisdictions, the ACSJC has urged the Australian Government to work energetically with our neighbours for the abolition of the death penalty in our region. In this regard it acknowledges the significant work of the Government in supporting the United Nations General Assembly’s 2007 and 2008 resolutions for a moratorium on the use of the death penalty.

22. The ACSJC applauds the Australian Government for its introduction of Crimes Legislation that extends the prohibition of the death penalty to Australian states and territories in accordance with the Second Optional Protocol to the International Covenant on Civil and Political Rights.

23. The ACSJC is hopeful that this legislation will assist Australia's efforts in lobbying against the death penalty and lend weight to interventions on behalf of both Australians and non-Australians who are exposed to capital punishment in overseas jurisdictions.

Concluding Statement

24. The ACSJC is grateful for this opportunity to lodge a brief submission for the Universal Periodic Review of Australia and recognises the importance of this United Nations mechanism for the fulfillment of human rights obligations and commitments by Member States.

12 July 2010