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Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Australia

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

1. Australia welcomes the recommendations¹ made during its Universal Periodic Review on 27 January 2011. Australia commits to providing an interim report to the Human Rights Council prior to its next UPR.
2. Australia has a federal system of government. Recommendations relating to State and Territory responsibilities are expressly noted in the response. Otherwise, it should be assumed that laws and policies referred to are those of the Australian Government.
3. Australia accepts the following recommendations on the basis that they are reflected in existing laws or policies and that Australia will continue to take steps to achieve relevant outcomes: **12, 14, 20, 23, 29, 30, 35, 36, 38, 40, 41, 45, 46, 47, 49, 50, 51, 53, 54, 56, 58, 66, 67, 68, 83, 85, 86, 112, 113, 114, 115, 116, 117, 120, 121, 134, 141, 142, 143, 144, 145.**
4. Australia's position on the remaining recommendations follows:

Recommendations 1, 2, 3, 4, 5, 6

Accepted: The Australian Government is working with States and Territories to take the necessary steps towards ratifying the Optional Protocol.

Recommendations 7, 9

Accepted-in-part: Australia will consider becoming party to the CED, but views existing protections in place for migrant workers as adequate and does not intend to become a party to the ICRMW.

Recommendation 8, 11

Accepted-in-part: Australia cannot commit to becoming party to the CED or ILO 169, but will formally consider becoming a party to these treaties.

Recommendation 10

Rejected: See recommendations 7 and 9.

Recommendations 13, 15, 16

Accepted-in-part: Australia will systematically review its reservations to human rights treaties, having regard to whether reservations remain necessary.

Recommendation 17

Accepted: Australian Government practice is to satisfy itself that legislation and policies necessary to implement a treaty are in place before Australia becomes bound by it.

Recommendations 18, 19

Accepted-in-part: The Australian Government incorporates international obligations into domestic law to the extent considered necessary, noting that some obligations are reflected in policy.

¹ Recommendations referred to in this document correspond to recommendations made to Australia in the Draft Report of the Working Group, A/HRC/WG.6/10/L.8 (3 February 2011) at paragraph 86.

Recommendation 21

Accepted-in-part: Measures introduced under Australia's Human Rights Framework will require that a statement of compatibility with Australia's human rights obligations is provided for all new federal legislation.

Recommendation 22

Rejected: The Australian Government considers that existing mechanisms, together with new requirements under Australia's Human Rights Framework, provide for the protection and promotion of human rights. It does not intend to introduce a Human Rights Act.

Recommendation 24

Accepted-in-part: The *Racial Discrimination Act 1975* has been fully reinstated in relation to the Northern Territory Emergency Response as of 31 December 2010. The Australian Government supports promotion of and respect for the principles in the Declaration on the Rights of Indigenous Peoples, and considers that current federal laws are consistent with the spirit of the Declaration.

Recommendation 25

Accepted: The *Racial Discrimination Act 1975* has been fully reinstated in relation to the Northern Territory Emergency Response as of 31 December 2010.

Recommendation 26

Accepted: The Australian Government will continue to consult with Indigenous peoples regarding the application of the *Racial Discrimination Act 1975*.

Recommendation 27

Accepted: The Australian Government will continue to adequately fund the Australian Human Rights Commission. Australia recently announced funding for a standalone Race Discrimination Commissioner, in addition to the new position of an Age Discrimination Commissioner.

Recommendation 28

Accepted-in-part: The Australian Government is currently exploring a possible role for a national children's commissioner.

Recommendation 31

Accepted-in-part: Australia is committed to taking action to address climate change in accordance with its international commitments. This will positively impact on the continued ability to enjoy human rights. Human rights impacts will be considered as part of policy approaches to address all impacts of climate change.

Recommendations 32, 33

Accepted-in-part: The Australian Government's social inclusion agenda promotes economic, social and cultural rights, including by reducing disadvantage and increasing social, civic and economic participation.

Recommendation 34

Accepted: The Australian Government considers that provisions of the *Extradition Act 1988*, regarding surrender where the offence for which extradition is sought is punishable by the death penalty, are consistent with Australia's international obligations.

Recommendation 37

Accepted-in-part: The Australian Government has already implemented many recommendations of the Special Rapporteur, including fully reinstating the *Racial Discrimination Act 1975* in relation to the Northern Territory Emergency Response, and has provided a statement to the Human Rights Council.

Recommendation 39

Accepted-in-part: The Australian Government considers that the 'best interests' test as articulated and applied in Australia is consistent with Australia's international obligations. In response to concerns expressed internationally and domestically, the Attorney-General intends to initiate further discussions with State and Territory counterparts.

Recommendations 42, 44

Accepted: The consolidation of federal anti-discrimination law into a single streamlined Act will enhance the regime and give effect to the Government's commitment to prohibit discrimination on the grounds of sexual orientation and gender identity in addition to existing grounds of protection.

Recommendation 43

Accepted-in-part: See recommendations 42 and 44. At this stage, the Australian Government does not commit to enacting a substantive guarantee to equality.

Recommendation 48

Accepted: The Australian Government considers that its current laws, policies and programs do not discriminate on the basis of race.

Recommendation 52

Accepted: Legislation to strengthen the *Sex Discrimination Act 1984* was passed in May 2011.

Recommendation 55

Accepted-in-part: The Australian Government has committed to achieving 40% representation of women on public sector boards and will continue to work with the private sector to achieve gender balance in private sector leadership ranks and forums.

Recommendation 57

Accepted: The Australian Government will continue to take steps to monitor racial violence. Discussions with States and Territories regarding human rights education will inform the development of the Australian Curriculum.

Recommendations 59, 60, 61, 62, 63, 64, 65

Accepted: Australia's new multicultural policy includes a National Anti-Racism Partnership and Strategy, establishment of the Australian Multicultural Council, a 'multicultural ambassadors' program and a Multicultural Youth Sports Partnership Program.

Recommendation 69

Accepted: The Australian Government will continue to support a nationally consistent framework for relationship recognition that would need to be implemented by States and Territories.

Recommendation 70

Rejected: The Australian Government does not intend to amend the *Marriage Act 1961*. The Australian Government will continue to support a nationally consistent framework for relationship recognition that would need to be implemented by States and Territories.

Recommendation 71

Accepted: States and Territories are responsible for managing and operating prisons and consider that existing legislation and policies ensure humane treatment of prisoners. States and Territories will continue to deliver corrective services in accordance with standard guidelines which comply with the UN Standard Minimum Rules for the Treatment of Prisoners.

Recommendations 72, 76, 77, 78, 79, 80, 81

Accepted: The National Plan for Violence Against Women and their Children is a 12-year agreement between Australian, State and Territory governments, including an outcome that 'Indigenous Communities are Strengthened'.

Recommendations 73, 74

Accepted: States and Territories have in place legislation to criminalise violent conduct and sexual assault together with mechanisms to prosecute and punish perpetrators. The Australian Government has introduced legislation to prioritise the safety of children in family law proceedings and communicate that family violence and child abuse are unacceptable.

Recommendation 75

Rejected: While Australia has programs in place to protect children against family violence, and laws against assault, it remains lawful for parents in all States and Territories to use reasonable corporal punishment to discipline their children.

Recommendation 82

Accepted: The Australian, State and Territory governments will continue to provide services to victims of violence including counselling and, where appropriate, financial assistance through victims of crime compensation schemes.

Recommendation 84

Accepted: Australia is committed to the Bali Process as the principal forum on people smuggling and trafficking in the region.

Recommendation 87

Accepted: The Australian Government is reviewing its people trafficking and slavery offences to ensure that law enforcement has the best tools available to investigate and prosecute perpetrators.

Recommendation 88

Accepted-in-part: The Australian, State and Territory governments will continue to take effective legal measures to prohibit the use of excessive force by the police. Australia does not intend to prohibit the use of Tasers by Australian police, but notes that safeguards are in place to ensure appropriate use.

Recommendation 89

Accepted: A range of oversight mechanisms exists to ensure scrutiny of police use of force, misconduct or police-related deaths in Australia. This includes oversight by the federal Ombudsman. States and Territories have independent authorities that investigate claims made against police as well as any deaths in custody.

Recommendation 90

Accepted: The Australian Government will continue to address Indigenous incarceration and deaths in custody, including by funding prevention, diversion and rehabilitation programs. States and Territories will continue to implement programs aimed at preventing Indigenous deaths in custody.

Recommendation 91

Accepted: All deaths in custody are independently investigated by State and Territory Coroners courts and recommendations are considered by State and Territory governments. Australia has a National Deaths in Custody Program to monitor all deaths.

Recommendation 92

Accepted: The Australian Government has increased funding by 14.5% for Indigenous-specific legal services over 2010-14. It will continue to work with States and Territories to build the capacity of Indigenous language interpreter services.

Recommendation 93

Accepted: See recommendation 90. The Australian Government will continue to address over-representation of Indigenous people in prison, including by funding Indigenous-specific Legal Services (see recommendation 92) and diversion and recidivism programs. States and Territories have a range of programs in place to address this issue.

Recommendation 94

Accepted: Imprisonment will continue to be viewed as a sentence of last resort in Australian courts. A range of alternatives is available, including home-detention orders and other community-based orders.

Recommendations 95, 96

Accepted: The Australian Federal Police and State and Territory police have a range of cultural awareness and human rights training in place. Additional human rights

training will be delivered throughout the federal public sector including the AFP from 2011.

Recommendation 97

Rejected: In February 2008, the Australian Government offered the National Apology in recognition of the grief and suffering inflicted on Stolen Generations. The Australian Government will continue to work in partnership to address the immediate and practical needs of the Stolen Generations. Some States have introduced compensation schemes for children abused in state care or removed from their families.

Recommendation 98

Accepted: The Australian Government will continue to administer a strong framework for the prevention of hate speech and incitement to violence.

Recommendation 99

Accepted-in-part: The Australian Government will continue to progress policies to redress gender pay inequity and implement early childhood education and care reforms.

Recommendation 100

Accepted-in-part: The Australian Government is committed to reintroducing legislation to abolish the Australian Building and Construction Commission and remove a range of industry-specific regulations. The Government considers that provisions of the *Fair Work Act 2009* in relation to collective bargaining and industrial action are consistent with Australia's international obligations, and achieve the right balance between the interests of Australian employees, employers and their representatives.

Recommendation 101

Accepted: The Australian Government will continue to take measures to ensure adequate support services are delivered to people in remote and rural areas.

Recommendation 102

Accepted-in-part: The Australian Government continually reviews the operation of the native title system through practical, considered and targeted reforms. Legislation provides for Indigenous Australians to access, and to perform cultural activities on, their traditional lands through statutory regimes and cultural heritage laws.

Recommendation 103

Accepted-in-part: The Australian Government is committed to the process of reconciliation between Indigenous and other Australians, but does not intend to enter into a formal agreement. See recommendation 110.

Recommendations 104, 105, 107

Accepted: The Australian Government is committed to pursuing recognition of Indigenous peoples in the Australian Constitution and has appointed an Expert Panel

to develop options and lead a wide-ranging national public consultation and engagement program.

Recommendation 106

Accepted-in-part: The Australian Government supports promotion of and respect for the principles in the Declaration. The Australian Government has committed funding in support of the establishment and early operation of the National Congress of Australia's First Peoples.

Recommendation 108

Accepted: Where appropriate in law and in policy, the Australian Government will continue to recognise and protect the culture and heritage of Indigenous peoples.

Recommendation 109

Accepted: The Australian Government recognises the importance of engaging in good faith consultation with Indigenous peoples in relation to decisions that affect them. See recommendation 110.

Recommendation 110

Accepted: The National Congress of Australia's First Peoples will provide a central mechanism with which government, the corporate and community sectors can engage and partner on reform initiatives.

Recommendation 111

Accepted: The Australian Government recognises the importance of engaging in good faith consultation with Indigenous peoples in relation to decisions that affect them. No legislative barriers to consultation have been identified.

Recommendation 118

Accepted: The Council of Australian Governments Reform Council will provide a comprehensive report each year on progress against relevant targets.

Recommendation 119

Accepted: No legal impediments to access have been identified.

Recommendation 122

Accepted: The Australian Government is committed to providing protection to refugees consistent with its international obligations.

Recommendation 123

Accepted: Australian Government policy is that asylum seekers are only placed in immigration detention if they fall within the following groups: unauthorised arrivals (for health, identity and security checks); unlawful non-citizens presenting unacceptable risks to the community; and unlawful non-citizens repeatedly refusing to comply with visa conditions.

Recommendations 124, 125

Accepted: The Australian Government does not forcibly return persons where to do so would be in breach of *non-refoulement* obligations under the Refugees Convention or relevant international human rights treaties.

Recommendation 126, 132

Rejected: The Australian Government considers mandatory detention an essential component of strong border control, which manages risks to the community. Mandatory detention is based on unauthorised arrival and not on individuals seeking asylum. Immigration detention policy and the operation of detention facilities in Australia is subject to close scrutiny from both domestic and international bodies.

Recommendation 127

Accepted: Mandatory detention is based on unauthorised arrival and not on individuals seeking asylum. Indefinite or otherwise arbitrary detention is not acceptable and the length and conditions of detention are subject to regular review.

Recommendation 128

Accepted: See recommendation 129.

Recommendation 129

Accepted-in-part: Since October 2010, the Australian Government has relocated significant numbers of unaccompanied minors and vulnerable family groups from immigration detention facilities into community-based accommodation, while their immigration status is resolved. In limited circumstances, children may still be accommodated in low-security facilities within the immigration detention network. The Government aims to relocate half of all children in immigration detention facilities to community-based accommodation by the end of June 2011.

Recommendation 130

Accepted: Australian Government policy is that people in immigration detention are treated fairly and reasonably and that conditions of detention ensure their inherent dignity. Care is taken to ensure that people in immigration detention are not subjected to harsh conditions, are treated with respect and dignity and are provided with a safe and secure environment.

Recommendation 131

Accepted-in-part: See recommendations 126 and 132, 127 and 129. All persons in immigration detention have the right to request and receive consular access at any time without delay, and have access to appropriate health care commensurate with care available to the broader Australian community.

Recommendation 133

Rejected: There is some differentiation in the treatment of persons who arrive, or remain, in an irregular manner. Consistent with Australia's international obligations, all refugee determinations are assessed against the Refugees Convention through a process that provides procedural fairness and access to independent merits and judicial review.

Recommendation 135

Accepted: The Australian Government has committed to increasing aid to 0.5% of Gross National Income by 2015-16. As economic and fiscal conditions permit, the Government will then progressively increase Australia's official development assistance until it reaches 0.7% of GNI.

Recommendation 136

Accepted: The Australian Government recently strengthened its legislative prohibition on torture. Statutory victims of crime compensation schemes operate in all States and Territories. Australia's legal system provides for individuals to challenge actions and decisions of Government authorities. The Australian Government may also provide discretionary financial assistance.

Recommendations 137, 138, 139, 140

Accepted: The Australian Government has undertaken comprehensive reviews of national security and counter-terrorism legislation. In April 2011, the Government appointed a new Independent National Security Legislation Monitor to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation.
