



United Nations Association of Australia

# HUMAN RIGHTS POSITION PAPER





## Australia & Human Rights: A Discussion 2019



*The United Nations Association of Australia recognises First Australians as the Traditional Owners of the Land and pay our respect to their Elders past, present and emerging. We acknowledge their continuing connection to the land and waters and celebrate their history and achievements as the world's oldest continuing culture.*

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## Foreword

Seventy years ago, the founding members of the United Nations (UN) signed the Universal Declaration of Human Rights (UDHR) into existence. This Declaration was a watershed in the early history of the UN. It is a Declaration forged out of the ashes of the horrors of World War II, and one which set the scene for the major progress made towards the achievement of universal human rights around the world. One can only be inspired by the courage, foresight and vision of those who drafted this foundation document at a time when the world was still beset with every possible form of discrimination. If one now considers the plethora of conventions, declarations, institutions and laws which further the Articles of the UDHR, we can only marvel at how we have progressed towards the goal of true equality globally.

At the same time, there is still an enormous amount of work to be done. The level of inequality across societies in both the Global North & the Global South, and amongst nations, means that poverty remains one of the biggest challenges in achieving universal human rights. It does not however, stop there. The 17 Sustainable Development Goals (SDG) demonstrate how far we are yet to move toward a truly sustainable world. The recognition of the rights of all people is key to achieving this sustainability.

Australia is both an ancient and youthful nation which has confronted significant discrimination and prejudice throughout its history; it is a work in progress. The values inherent in Australian society – its multicultural diversity and strong sense of justice – mean that it is well positioned to address the many human rights issues outstanding at home. Concurrently, we recognise the role Australia must play on the world stage in assisting others to join us on this journey towards global and domestic equality.

It is in this spirit that the United Nations Association of Australia (UNAA) has compiled this discussion document – not with the intent of providing answers, but rather with the intent of generating awareness, engagement and action to progress human rights in Australia and abroad.

As the lead for the National Human Rights Program of the UNAA, the Western Australian Division is proud to be able to make this contribution to the discourse on Human Rights.

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## 1 Executive Summary

Australia historically has been, and continues to be, a good international citizen. It actively participated in the formation of the UN and continues to uphold the values enshrined in the organisation, its structures, declarations and initiatives. As a democratic nation with respect for the rule of law, Australia's adherence to these values is codified in its constitution, legislation and common law, as well as through formal and informal human rights institutions at federal, state/territory, local and non-governmental levels. These institutions are complemented by a balanced separation of powers and a strong engagement with international civil society.

Australia must continue its commitment to good international citizenship by responding to domestic, regional and international developments in human rights, both current and future. Australia possesses the moral imperative, technical capacity, and democratic institutions to address these issues. However, to do so it must reform and enhance its domestic legislation, institutions and attitudes on several key issues. Australia must also encourage its neighbours to do the same by fostering good governance, participation in civil society, and human rights within other states in the Asia-Pacific. Australia must therefore lead not only by example, but by actively supporting other nations to follow suit.

To achieve this, there are several fundamental human rights issues proposed in this position paper which have been identified by the UNAA as areas where Australia can and should increase its efforts in the pursuit of human rights. These include (but are not limited to): the rights of minority groups; inclusive and participative institutions; rule of law and good governance; and issues of fundamental human rights. The necessary responses to these issues are identified holistically, and therefore vary between local, state/territory, and federal government responses; as well as civil society groups, non-governmental organisations, and national human rights institutions.

The goal of this paper is therefore to outline Australia's current position in the promotion of human rights at home and abroad, to identify areas for improvement, and to suggest how Australia can address these issues.

## 2 Overview

Due to the changing nature of the international arena, human rights issues have become intrinsically linked with peace and security concerns. Australia's presence on the UN Human Rights Council (HRC) and as a recent non-permanent member of the UN Security Council, is an opportunity to enhance the effectiveness of the UN's work on human rights by developing effective mechanisms for communication between these organs. Additionally, Australia can play a vital leadership role in increasing the observation of human rights, good governance and rule-of-law in the Indo-Pacific through bilateral and multilateral exchanges with its neighbouring countries which encourage them to increase their participation and cooperation with civil society.

Furthermore, it is important Australia maintains its adherence to international norms and laws by regularly reviewing and strengthening its responses to global, regional and domestic developments. Australia must maintain its commitment to human rights by combatting corruption, promoting transparency, strengthening public institutions, and reinforcing education, both domestically and with its neighbouring states.

Additionally, Australia must also respond to the impact that developments in information technology have on human rights, particularly in protecting freedom of expression in online user-generated content and its implications for the right to privacy. Australia therefore must develop legislation and institutions to explicitly recognise and protect these freedoms, play a stronger role in ensuring that domestic and international companies operating within Australia abide by these principles, and continue its pledges to advocate for the protection of journalists and human rights defenders.

Lastly, Australia must improve the protection of the human rights and freedoms of peoples based on race, religion, sexual orientation, disability, and age. As the migrant population of Australia has increased substantially since 2000, the demographic makeup of race and religion within Australian society has changed. Likewise, development around stigmas has led to greater representation of members of the LGBTIQ, youth and disabled communities in Australian society. It is vital for Australia to strictly refrain from maintaining institutions or attitudes which contribute to, or exacerbate, the unlawful discrimination against such groups or individuals. Australia must commit to grounding its human rights in cosmopolitan secularity and create inclusive spaces which promote inter-group dialogue and meaningful engagement.



### 3 Australia's Human Rights Environment

Australia has a long and proud history of fostering respect for human rights domestically, complemented by our active participation in the development of international human rights norms. Australia, as a founding member of the UN, was one of eight nations involved in drafting the UDHR. Australian leadership was evident through the contributions of Dr HV (Bert) Evatt, head of the Australian delegation to the UN, and president of the UN General Assembly when, in 1948, the UDHR was accepted. He was supported by Colonel WR Hodgson who helped define the basic human rights and responsibilities included in the UDHR. In addition, Ms J Street, the only woman on the Australian Delegation, achieved the recognition of equal rights for both men and women, leading to the change in the opening of the draft UDHR from 'All men and brothers...' to 'All human beings are born free and equal in dignity and rights'.<sup>1</sup> Since that time, Australia has ratified most international human rights conventions, covenants and instruments.

Australian human rights policy and legislation must be understood in the context of Federation. The policy and legislative framework consist of the following three key pillars: the Australian Constitution (Constitution); the common law; and Commonwealth, State and Territory legislation.

However, unlike many other liberal democracies, Australia does not have a national Bill of Rights that codifies human rights protections. The 2009 Report on the National Human Rights Consultation (2009 Report) recommended a federal Human Rights Act, but this recommendation was not adopted by government. During the drafting of the Constitution, there was significant debate about the inclusion of express human rights guarantees in our founding document with a concern that such rights may erode the legislative power of the States. The text eventually adopted reflects a conservative approach; it is predominantly based on the rights proposed in the preliminary draft prepared by then Tasmanian Attorney-General, Andrew Inglis Clark. These express rights include the right to vote, protection against acquisition of property on unjust terms, the right to a trial by jury, freedom of religion and the prohibition of discrimination on the basis of an individual's State of residency. These rights are constitutionally enshrined and therefore cannot be limited by legislation or policy.

The Australian common law derives from the courts in England and was inherited through federation into our modern legal system. The common law refers to the body of principles or rules made by judges in the adjudication of legal disputes. The common law recognises a range of human rights, including the rules of natural justice such as the right to be heard, the presumption of innocence, the privilege against self-incrimination and the right of access to the courts. However, these rights may be modified or extinguished by legislation made by the Parliament. In addition, common law presumptions inform the interpretation of legislation made by the Parliament. One particularly important presumption is the 'principle of legality', which provides that the Parliament does not intend to interfere with fundamental rights unless this intention is clear and unambiguous in the legislation.

The third pillar of Australia's human rights framework is legislation at a Commonwealth, State and Territory level. Legislation across jurisdictions implements, to varying degrees, the following seven major human rights treaties which Australia has signed or ratified:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)

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<sup>1</sup> <https://www.humanrights.gov.au/education/students/get-informed/international-human-rights-system>

- Convention against Torture (CAT)

Under Commonwealth law, there is a suite of legislation that protects Australians from discrimination and safeguards against the breach of certain human rights, including the Australian Human Rights Commission Act 1986 (Cth) (see further the discussion on the Human Rights Commission below), the Age Discrimination Act 1992 (Cth), the Disability Discrimination Act 1992 (Cth), the Racial Discrimination Act 1975 (Cth) and the Sex Discrimination Act 1984 (Cth). However, Australia has not yet domestically implemented many of the rights under the ICCPR and the ICESCR.

In addition, the Commonwealth Parliamentary Joint Committee on Human Rights scrutinises whether federal laws comply with international human rights and each new Bill introduced to the Commonwealth Parliament must be accompanied by a Statement of Compatibility with Australia's international human rights obligations. These measures were introduced as part of the Australian Human Rights Framework in response to the 2009 Report mentioned above.

The legislative framework for the protection of human rights is complemented by human rights institutions at a Commonwealth, State and Territory level. The key Commonwealth institution is the Australian Human Rights Commission (Commission), established as an independent statutory authority that leads the protection and promotion of human rights in Australia. The Commission engages in education, policy and legislative development, human rights compliance, and provides a mechanism for individuals to make discrimination and human rights complaints under Commonwealth legislation. State and Territory Ombudsman investigates complaints in relation to administrative actions taken by the State and Territory Governments, statutory authorities and officers of local councils.



## 4 Australia & the United Nations Human Rights Council

Membership of the HRC bestows both privileges and obligations on Member States. General Assembly resolution A/RES/60/251 requires that members of the Council uphold the highest standards in the promotion and protection of human rights. Membership of the Council for the 2018-2020 term presents Australia with an opportunity to reinvigorate its commitment to the promotion and protection of human rights, both in Australia and within our region. Australia's position on the HRC means that its human rights record will be subjected to increased international scrutiny. General Assembly resolution A/RES/60/251 encourages member countries to make voluntary pledges and commitments about their conduct as members of the HRC. Australia lodged these with the United Nations General Assembly on 24 July 2017<sup>2</sup>. The pledges are in line with Australia's five campaign pillars of:

- Gender equality
- Good governance
- Freedom of expression
- The rights of Indigenous peoples
- Strong national human rights institutions and capacity building

In addition, Australia stated an intention to achieve the following core objectives:

- The abolition of the death penalty
- Equal human rights for LGBTIQ people
- Freedom of religion and belief

In this submission, Australia also pledges to:

- Support the independence of the United Nations High Commissioner for Human Rights;
- Uphold its open invitation for visits by special procedures mandate holders as visible commitment to being open to scrutiny;
- Promote the participation of civil society and human rights defenders, and underscore the importance of protection against reprisals;
- Promote and support universal participation in the HRC;
- Support implementation of the 2030 Agenda for Sustainable Development nationally, regionally and globally;
- Provide a generous and non-discriminatory humanitarian resettlement programme in response to the global refugee crisis;
- Welcome people from every nation, celebrate diversity and remain committed to combating racism and xenophobia;
- Promote and enhance regional cooperation to combat trafficking in persons and slavery
- Embed key protections for persons with disabilities into national policies, laws and programmes; and
- Continue to support global efforts to promote the implementation of States' responsibility to protect.

In the Security Council and at the General Assembly, Australia has frequently underlined the importance of building effective measures to provide appropriate mechanisms on prevention and accountability. In this regard, Australia has in recent times been a leader in pushing for the strengthening of the human rights framework to be applied to Security Council and General Assembly resolutions. Australia can work to broker mechanisms for enhanced connections and reporting between the Security Council and the HRC. The integration of human rights on the Security Council's agenda, by empowering the HRC's purpose in protecting and promoting human rights around the globe, is key to enhancing the UN's effectiveness in its work on human rights. In particular, the Security Council can be a force for action in translating human rights principles into the laws of States. Notably, Australia's contributions on the Security Council in 2013 – 2014,

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<sup>2</sup> Note verbale dated 14 July 2017 from the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly.

together with its application to seek for election to the Council as a non-permanent member in 2029 – 2030, are testimony to Australia’s commitment to global cooperation to achieve results. Australia’s experience in the Security Council, combined with its membership of the HRC, provides an opportunity for it to facilitate a shift within the Security Council towards recognising the strong correlation between human rights violations and security issues. Australia’s election to the UN HRC confirms its commitment to affirming that the UN is the preeminent legitimate international organisation established to preserve the rules-based international order.

## 5 Proposed Australian Input to UN & International & Domestic Human Rights Issues

Based on the stated pillars of Australia's pledge related to human rights, this section suggests priorities for Australia's input to the HRC.

### 5.1 Gender Equality

The UNAA notes that:

Achieving gender equality and, by extension, empowering all women and girls is SDG#5 set by the UN. At the same time, the Preamble to Agenda 2030 highlights the fact that the SDGs "...seek to realise the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible...." As such, Goal 5 may be considered an essential pre-condition to achieving the remaining 16 SDGs and as a result, gender equity is a key enabler for the achievement of the Goals and targets included in Agenda 2030. In its assessment of the current status of the world the UN states the following:

*"While the world has achieved progress towards gender equality and women's empowerment under the Millennium Development Goals (including equal access to primary education between girls and boys), women and girls continue to suffer discrimination and violence in every part of the world. Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. Unfortunately, at the current time, 1 in 5 women and girls between the ages of 15-49 have reported experiencing physical or sexual violence by an intimate partner within a 12-month period and 49 countries currently have no laws protecting women from domestic violence. Progress is occurring regarding harmful practices such as child marriage and FGM (Female Genital Mutilation), which has declined by 30% in the past decade, but there is still much work to be done to completely eliminate such practices.*

*Providing women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes will fuel sustainable economies and benefit societies and humanity at large. Implementing new legal frameworks regarding female equality in the workplace and the eradication of harmful practices targeted at women is crucial to ending the gender-based discrimination prevalent in many countries around the world."<sup>3</sup>*

Australia contributes to this goal on an international level in many ways. In 2017, the Foreign Policy White Paper has elevated gender equality to be a top priority of the international aid program.<sup>4</sup> The UNAA takes a three-pronged approach to improving gender equality domestically and advocate for: ending violence against women and girls; women's economic empowerment; and enhancing women's voices in decision making, leadership and peace-building.

The Department of Foreign Affairs (DFAT) developed a strategy in 2016 that aims to promote Goal 5 known as the *Gender Equality and Women's Empowerment Strategy (the Strategy)*.<sup>5</sup> This policy framework contains a strategy that establishes specific and measurable priorities and also mandates 80% of funds invested are to be applied to addressing gender quality. The approach adopted by DFAT is a positive example of a strategy that contains an obligation to address gender inequality regardless of the policy objective. Despite this significant step forward, further analysis of the Strategy conducted by the International Women's Development Agency, CARE Australia and the Australian Council for International Development have shown there are important areas for improvement.<sup>6</sup>

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<sup>3</sup> <https://www.un.org/sustainabledevelopment/gender-equality/>

<sup>4</sup> Commonwealth of Australia, DFAT, Foreign Policy White Paper, 2017, p2, 93

<sup>5</sup> Commonwealth of Australia, DFAT, Gender equality and women's empowerment strategy, February 2016

<sup>6</sup> IWDA, CARE and ACFID, Gender equality, defence, development and the Australian Government Budget 2018-2019, May 2017

The UNAA recommends that:

- DFAT introduces specific expenditure targets for all international projects focused on gender equality and encourage other countries to do the same;
- Australia increases funding to organisations focused on women's rights internationally;
- Australian diplomatic posts provide annual reports on work conducted to promote the empowerment of women in their location;
- Transparency of aid budgets is improved – by sharing information in a clear and timely manner;
- Methodology used to calculate foreign aid spending across government agencies is unified;
- Increased accountability for those in senior leadership positions in DFAT to deliver on gender equality goals;
- Developing educational programs to improve the financial literacy of women and girls;
- Advocate national support for the Safe at Home program;
- Systemic targeting of the behaviour and social norms exhibited by men through targeted social programs;
- Analysis of the gender pay gap is conducted at federal and state levels, with workforce gender balance targets set - and if necessary, quotas - in all industries;
- Parental leave is supported by superannuation payments that are available to all parents regardless of gender;
- Design training programs for people in senior leadership positions in various industries to ensure there is an accurate understanding of actions that can be taken in the workplace to reduce gender inequity; and
- Investment in developing the leadership capabilities of Indigenous and culturally diverse women on a multi-tiered level; and
- Facilitate opportunities for women and girls to participate in positions of leadership at state, federal and international platforms.

In addressing the priorities identified by the UN relating to gender equality, it is further recommended that Australia support the following positions in its input to the HRC:

- All countries should be encouraged to establish and implement laws protecting women from domestic violence.
- All countries should be encouraged to establish and implement laws banning harmful practices such as child marriage and FGM (Female Genital Mutilation).
- All countries should be encouraged to provide women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes.
- All countries should be encouraged to assure female equality in the workplace and to eradicate harmful practices targeted at women.

## 5.2 Good Governance

The UNAA notes that:

While no single, exhaustive definition of 'good governance' exists, and its scope is not delimited and commands universal acceptance, it primarily demands the provision of due process and fair trial in administering justice.<sup>7</sup> Depending on the context, good governance is recognised as encompassing concepts such as full respect of human rights, the rule of law, effective participation, equity, transparent and accountable governance and an efficient and effective public sector.<sup>8</sup> At the same time, corruption in both public and private spheres exists across all countries and is the biggest threat to good governance and all human rights, with repercussions permeating

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<sup>7</sup> United Nations Human Rights Office of the High Commissioner, Good Governance and Human Rights, <https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

<sup>8</sup> Ibid.

international borders.<sup>9</sup> There is however, a significant degree of consensus that good governance relates to political and institutional processes and outcomes deemed necessary to achieve development goals.<sup>10</sup> Good governance involves public institutions managing public affairs and resources and guaranteeing the realisation of human rights; in a manner free of abuse and corruption, and with due regard for the rule of law.<sup>11</sup>

The UNAA believes that:

- Good governance is essential to the realisation of all human rights, allowing human rights principles to be sufficiently respected and protected;<sup>12</sup>
- Good governance should not be limited to respect for national law and should instead extend to law consistent with the international human rights framework, with strong channels to promote justice;<sup>13</sup>
- The achievement of good governance is satisfied by deliverances on promises of human rights, where government institutions effectively guarantee these rights to the public;<sup>14</sup>
- Good governance is strengthened by the presence of democratic institutions, successful service delivery, fidelity to the rule of law, and commitment to combating corruption;<sup>15</sup> and
- Good governance is a prerequisite to the success of democratic institutions. The failure of governance comes at an extremely high price, not only in the failure of the institutions but also in exposing vulnerable people to the full cost of human rights abuses.

The UNAA recommends that:

- Australia continues its pledge to support partner governments in the region in strengthening governance by building institutions and strengthening public services which increase stability;<sup>16</sup>
- Australia strengthens its commitment towards combating corruption in both the public and private sectors. In this regard companies and institutions should be encouraged to lend visible support to the 10 principles of the United Nations Global Compact;
- Emphasis on domestic and regional education and promotion of good governance principles is supported;
- Australia strengthen its involvement in the Pacific Islands Forum which has also repeatedly expressed a strong commitment to achieving regional co-operation on human rights and good governance.

### 5.3 Freedom of Expression

The UNAA notes that:

Freedom of expression is a fundamental cornerstone of human rights and as such needs to be a priority in the deliberations of the HRC. Today, one of the major issues in protecting the freedom of expression is regulating online user-generated content, as is the problem of politicisation of information through social networks – the so-called ‘post-truth’ media. Currently, corporate initiatives to protect user rights are lacking, and often not incentivised or supported by States.<sup>17</sup> Under an obligation to protect the exercise of freedom and to ensure environments enable this

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<sup>9</sup>United Nations Human Rights Office of the High Commissioner, Panel Discussion on the Negative Impact of Corruption on the Enjoyment of Human Rights, 2013, <https://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/ConceptNoteHRCPanelAntiCorruption.pdf>

<sup>10</sup> United Nations Human Rights Office of the High Commissioner, Good Governance.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Australian Human Rights Commission, Promoting Human Rights - Good Governance, the Rule of Law and Democracy, <https://www.humanrights.gov.au/news/speeches/promoting-human-rights-good-governance-rule-law-and-democracy>.

<sup>14</sup> United Nations Human Rights Office of the High Commissioner, Good Governance.

<sup>15</sup> Ibid.

<sup>16</sup> Australian Government Department of Foreign Affairs and Trade, Promoting good governance and stronger democratic institutions everywhere, <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/promoting-good-governance-and-stronger-democratic-institutions-everywhere.aspx>

<sup>17</sup> United Nations Human Rights Council, Thirty-eighth session, Agenda item 3, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/38/35, 2018, 1.

exercise,<sup>18</sup> States should - at a minimum - ensure that companies adhere to the framework of behaviour prescribed by the Guiding Principles on Business and Human Rights.<sup>19</sup> States must manage this freedom carefully, conscious of implications to multiple interdependent rights, such as the right to privacy, and freedom of religion or belief.<sup>20</sup> Neither the Australian High Court's establishment of an implied freedom of political communication,<sup>21</sup> nor its position as a democracy, exempts it from a violation of the right.<sup>22</sup>

The UNAA believes that:

- Freedom of expression should be sustained as a key item on the agenda of the HRC;
- Punitive regulatory frameworks only undermine this freedom, which is best protected through promoting media diversity and independence, and access to information.<sup>23</sup> At the same time, codes of media ethics need to receive greater prominence and support in the sector;
- While currently non-binding, companies that retain the personal data of billions have a strong civic responsibility to encourage the adoption and implementation of global standards of conduct established by the Guiding Principles on Business and Human Rights;<sup>24</sup>
- While legitimate State concerns - such as national security - ostensibly justify regulation, States should still avoid pressuring companies into overregulation, or demanding for quick automatic removals which risks undermining the freedom;<sup>25</sup>
- As automated moderation tools are limited in assessing and appreciating context and risk removing positive content, they should be supplemented by human review and disclosure about removal discussions;<sup>26</sup>
- As with all States, Australia cannot restrict the right to hold opinions without interference. Limitations on freedom of expression must satisfy the cumulative conditions of legality, necessity, and legitimacy, under article 19 of the ICCPR;<sup>27</sup> and
- The impact of regulation on users should be minimised through increasing transparency, with companies reporting on the number and nature of governmental requests received and executed, and their responses.<sup>28</sup>

The UNAA recommends that:

- Australia immediately review and reform relevant legislation. This should provide reasonably clear definitions of key terms to prevent an arbitrary exercise of power in the removal or criminalisation of content;<sup>29</sup>
- There is greater clarity in the definition of company prohibitions of content, shifting away from subjective and unstable bases for content moderation;<sup>30</sup>
- It is ensured that companies operating with Australia directly, incorporate relevant human rights principles into their terms of service and community standards;<sup>31</sup>
- Any extraterritorial removal of content is executed following a request in the relevant jurisdiction through legal and judicial process;<sup>32</sup>

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<sup>18</sup> Ibid, 2.

<sup>19</sup> Ibid, 5-6.

<sup>20</sup> Ibid, 1.

<sup>21</sup> <https://www.humanrights.gov.au/freedom-information-opinion-and-expression>

<sup>22</sup> United Nations Human Rights Council, Report of the Special Rapporteur, 7.

<sup>23</sup> Ibid 1.

<sup>24</sup> Ibid, 2.

<sup>25</sup> Ibid, 6.

<sup>26</sup> Ibid, 13.

<sup>27</sup> Ibid, 4-5.

<sup>28</sup> Ibid, 10.

<sup>29</sup> Ibid, 8.

<sup>30</sup> Ibid, 10.

<sup>31</sup> Ibid, 15.

<sup>32</sup> Ibid, 7.



- Australia avoid imposing disproportionate penalties on internet intermediaries regarding content regulation, or any requirement of proactive content monitoring and filtering;<sup>33</sup>
- There is continued delegating of the arbitration of lawful expression to the judiciary under regulatory frameworks, as opposed to governmental authorities or private bodies;<sup>34</sup>
- Australia spearhead the publication of detailed transparency reports on content-related requests to intermediaries; and
- Pledges to advocate for the protection of journalists and human rights defenders, and inter-state cooperation to protect the online enjoyment of the right, are upheld.<sup>35</sup>

## 5.4 Rights of Indigenous Peoples

The UNAA notes that:

The UN Permanent Forum provides certain criteria for recognising indigeneity, including: self-identification; historical continuity with pre-colonial societies; links to traditional land and environments; distinct social, economic and political systems; distinct language, culture and beliefs; existing as minority groups of society; as well as working to maintain and reproduce their cultural aspects<sup>36</sup>.

Over the last decade, the UN has released three large scale reports on the current state of Indigenous peoples in the areas of overall well-being, as well as more specifically in health, and education. By exploring the damning realities relating to individual Indigenous groups, the collective picture is an alarming one: poverty; suicide, violence and incarceration; culture; environment; human rights; health; and education<sup>37</sup>.

The disparities in well-being, health and education between Indigenous and non-Indigenous peoples are issues found not only within developing countries, but also within developed nations. Australia must work with other UN member states to strive towards remedying the current non-inclusive norms surrounding indigenous peoples' status in global society. The UDHR and The Declaration on the Rights of Indigenous Peoples should be realised and utilised as guiding principles to achieve the SDGs relevant to Indigenous peoples.

The UNAA recommends:

- All policy considerations regarding Indigenous people in the international sphere emphasise empowerment and self-determination<sup>38</sup>. This should incorporate the bringing together of Indigenous health leaders, academics and policymakers;
- A continued commitment to the DFAT Indigenous Peoples Strategy 2015-2019: A framework for action<sup>39</sup>;
- Continued active engagement in UN forums and processes, including the UN Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous peoples. Working closely with the Special Rapporteur on the Rights of Indigenous Peoples is urged, as is serious consideration of any resulting recommendations and actions. That Australia is the fifth largest contributor to the UN Voluntary Trust Fund for Indigenous Populations is commended and must be sustained;
- Consultation with international NGOs and civil society to advance the interest of Indigenous peoples;

<sup>33</sup> Ibid, 20.

<sup>34</sup> Ibid, 8, 20.

<sup>35</sup> <https://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/australia-will-promote-and-protect-freedom-of-expression.aspx>

<sup>36</sup> United Nations. (2009). State of the World's Indigenous Peoples (ST/ESA/328). Retrieved from United Nations, New York:

<https://www.un.org/development/desa/indigenouspeoples/publications/2009/09/state-of-the-worlds-indigenous-peoples-first-volume/>

<sup>37</sup> Ibid.

<sup>38</sup> United Nations Human Rights Council. (2017). Thirty-sixth session, Agenda item 3, Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia, A/HRC/36/46/Add.2

<sup>39</sup> Department of Foreign Affairs & Trade (DFAT) Indigenous Peoples Strategy 2015-2019: A framework for action. (2015). Retrieved from <https://dfat.gov.au/about-us/publications/Pages/dfat-indigenous-peoples-strategy-2015-2019.aspx>

- Greater emphasis be placed on 'Closing the Gap'. The Australian government must work towards rectifying the gap between Indigenous and non-Indigenous Australians by acting in accordance with the principles outlined in the UDHR and The Declaration on the Rights of Indigenous Peoples. According to the most recent Prime Minister's Report, only three of the seven targets are on track to be met. This is an improvement on the previous year's report, where only one target was on track; however, further work is required. The UNAA echoes the findings within the most recent Report of the UN Special Rapporteur on the rights of Indigenous peoples on her visit to Australia, and urges the Australian government to implement her recommendations; and
- A 'Makarrata Commission' be established to facilitate a process of agreement-making between governments and Aboriginal and Torres Strait Islander peoples, whereby a First Nations Voice is enshrined in the Constitution.

## 5.5 Strong National Human Rights Institutions & Capacity Building

The UNAA notes that:

National Human Rights Institutions (NHRIs) reflect the State's constitution, local laws and judicial and administrative system. They are the cornerstones of national human rights systems, and a main vehicle for promoting and protecting human rights<sup>40</sup>. NHRIs protect and promote human rights on a national level, and bridge civil society organisations and States on an international level.<sup>41</sup> NHRIs must comply with seven key minimum criteria under the Paris Principles to receive UN accreditation, allowing them to make government recommendations or proposals on human rights aspects of legislation, report on human rights violations; and receive, investigate and report on complaints from individuals.<sup>42</sup> Established and accredited NHRIs, while essential to capacity building, require capacity assessments to be undertaken by the State to ensure their effective functioning. Australia's NHRI, the Australian Human Rights Commission (AHRC), is one of the three present in the Pacific – alongside those in Fiji and New Zealand.

The UNAA believes that:

- NHRIs are not inconsistent, incompatible or made redundant by other national human rights mechanisms, which generally have more restricted mandates than NHRIs;
- NHRIs provide immense value to the judicial arms of the government, as they develop expertise in international human rights law, and have access to a wealth of research available to national courts;
- A substantial obstacle in the development of human rights in the Pacific is the lack of understanding of human rights principles and their relevance. This is already a problem facing the constitutionally enshrined rights in Pacific States;
- NHRIs possess an important role in upholding and reinforcing key principles essential to good governance and human rights protections. They must remain independent and effective to successfully perform this role;<sup>43</sup>
- A strong need exists for the UN and ECOSOC to grant greater recognition to the unique status of NHRIs and involve them more meaningfully in the human rights work undertaken by the UN;
- States should also support and encourage the development and strengthening of NHRI capacities through reviewing and identifying capacity issues to safeguard the independence of NHRIs;<sup>44</sup>
- Australia should put emphasis on freedom of expression both domestically and internationally, including promoting the safety of journalists, human rights defenders and

<sup>40</sup> Australian Human Rights Commission, Promoting Human Rights - Good Governance, the Rule of Law and Democracy, <https://www.humanrights.gov.au/news/speeches/promoting-human-rights-good-governance-rule-law-and-democracy>

<sup>41</sup> Ibid.

<sup>42</sup> Australian Human Rights Commission, Promoting Human Rights; United Nations Development Programme, Global Principles for the Capacity Assessment of National Human Rights Institutions, 2016, <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NHRIs-WEB.pdf>, 6.

<sup>43</sup> United Nations Development Programme, Global Principles, 6.

<sup>44</sup> Ibid, 7.

civil society institutions. Australia is one of few countries on the UN Human Rights Council that protects its fourth estate;

- The Australian Government should increase transparency by building stronger national human rights institutions that have an independent judiciary, prosecutors, and defence lawyers. Australia must encourage states to take steps in advancing stronger national institutions through developing constitutionalism. Convincing states to comply with the minimum criteria in the Paris Principles for National Human Rights Institutions would be a first step;
- Australia's human rights institutions must continue to protect the rights of minorities. In particular, Australia should play an active role in advancing the human rights of indigenous peoples. Australia should ratify the International Labour Organisation Indigenous and Tribal Peoples Convention of 1989 (No. 169) to strengthen its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples in 2009;
- Parliamentary institutions play an important role in human rights implementation and oversight. The adoption of the Human Rights (Parliamentary Scrutiny) Act 2011, requiring a statement of compatibility with human rights for all bills and disallowable legislative instruments, and establishing the Parliamentary Joint Committee on Human Rights, are positive measures adopted by Australia. Providing examination on the core human rights treaties to which Australia is a party and scrutiny of federal legislation for compatibility with human rights, are core functions that the government should reinforce. It is concerning that bills are sometimes passed into law before the conclusion of review by the Parliamentary Joint Committee. The legislative scrutiny processes should be strengthened through a meaningful and well-informed review, including quality reports on compatibility and careful consideration of the guidelines issued by the Attorney-General and the Parliamentary Joint Committee; and
- In 1994 Australia was the first nation in the world to provide a National Action Plan on Human Rights. This initiative should be strengthened through developing clarity on the status of Australia's Human Rights Action Plan in order to harmonise the work of the Australian Government and its institutions in advancing Australia's human rights commitments. The Action Plan must complement the Department of Foreign Affairs and Trade Human Rights manual for consistency across Australia's domestic and international human rights policies. The Australian Human Rights Commission, as special legislative machinery, must be empowered to improve both the promotion and protection of human rights in Australia, but also to systematically consider Australia's strengths and address Australia's shortcomings in human rights observance. The Action Plan and the work of the Commission can serve as points of collaborations amongst countries in the region.

The UNAA recommends:

- Australia support and develop greater initiatives aimed at strengthening the role of national institutions in UN human rights mechanisms by pushing for a treaty body reform;
- Australia support the execution of timely and frequent capacity assessments of the Council in its satisfaction of the Paris Principles;
- Continued and strengthened leadership in the Pacific through the Asia Pacific Forum of Human Rights Institutions (APFHRI), by developing and strengthening the capacity of other NHRIs. This may be achieved primarily by continuing to seek the AHRC's input and contributions to the development of its State reports to treaty bodies; and
- Australia further share its experience in developing skills and jurisprudence with new NHRIs in the region through the APFHRI, while encouraging the adoption of strong NHRIs – particularly to assist with governmental considerations of alleged breaches of human rights within domestic jurisdictions.

## 5.6 Abolition of the Death Penalty

The UNAA notes that:

Australia supports the universal abolition of the death penalty and is committed to pursuing this goal through all avenues open to it. As such it has developed a detailed strategy as follows: -

*“Every second year, a resolution at the UN General Assembly calls for a global moratorium on the death penalty. Australia co-sponsors this resolution. In 2016, we joined the Inter-Regional Taskforce on the resolution, which initiates and negotiates the text. Australia undertakes lobbying in support of the resolution, particularly in the Indo-Pacific region, to secure strong and clear text and increased support for each successive resolution.*

*In alternate years to the General Assembly resolution, the Human Rights Council considers a resolution on the question of the death penalty. Australia co-sponsors this resolution.”<sup>45</sup>*

The UNAA strongly supports the full implementation of this Strategy.

## 5.7 Freedom of Religion

The UNAA notes that:

The number of international migrants is ballooning, with an increase of 85m from 2000 to 2017<sup>46</sup>. This is likely to alter the demographic and religious makeup of societies, with multiple resultant challenges in guaranteeing the right to freedom of religion or belief. Although international human rights treaties are reticent on the relationship States should adopt with religion or belief, they obligate States to guarantee that all individuals and groups within their territory may enjoy the freedom of religion or belief. Today, the greatest challenge in a commitment to the protection of this right involves balancing the protection of this right with other potentially conflictual rights, namely the right to gender equality or sexual orientation and the attendant politicisation of the issue. Governments are therefore obligated to carefully analyse each individual conflict, to ensure reasonable accommodation ensuring the protection of all rights pursuant to article 18(3) of the ICCPR.

Australia is likely to also face such challenges, with net migration having risen by 32.6 million from 2013 to 2017, and 7.03 million migrants constituting 28.8% of the total population in 2017<sup>47</sup>.

The UNAA believes that:

- All governments risk applying an unlawful restriction or inappropriate interference with the manifestations of religion. As a secular state with an entrenched constitutional protection of the right to freedom of religion or belief, the Australian government still risks failure to provide substantive and formal equality when protecting the right to religion or belief, especially for members of religious minorities;
- An effective guarantee of this right cannot be achieved through a narrow governmental focus on individualistic dimensions of the freedom. It requires a broader, holistic approach to the breadth of group and societal aspects of religious life;
- Australia should build a societal respect for the freedom of religion by increasing the tolerance and respect for diversity and should promote such an approach in the Human Rights Council;
- An equal treatment of religious or belief groups is not synonymous with identical treatment. Australia should encourage states to undertake positive, long-term measures to ensure the permanent enjoyment for religious minorities of religious freedoms and right, equal to members of the majority religion; and

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<sup>45</sup> <https://dfat.gov.au/international-relations/themes/human-rights/Pages/australias-strategy-for-abolition-of-the-death-penalty.aspx>

<sup>46</sup> United Nations Department of Economic and Social Affairs, *International Migration Report 2017: Highlights* (New York, 2017).

<sup>47</sup> *Ibid.*

- Australia should adopt sensitivity to the potential for “difference-blind policies” to create a hierarchy of rights imposing burdens on religious groups.

The UNAA recommends:

- Australia immediately adopt policy measures addressing and removing both conditions and attitudes which contribute to or exacerbate all forms of religious discrimination;
- Australia strictly refrain from politicising privileged legal statuses for religious or belief groups under identity politics to avoid detrimental effects on minority communities;
- Australia extend protections to all refugees and migrants regardless of religious beliefs held;
- Establishment of policies clearly signalling societal inclusion of religious minorities, through public symbolic actions such as increased participation of political representatives in religious ceremonies held by minority groups;
- Continued and strengthened employment of ‘respectful distancing’ and grounding its secularity even deeper in human rights;
- Full respect of parents’ rights to provide religious education with their religious beliefs, in compliance with international standards and guides;
- Alignment of Australia’s legal framework more closely with international human rights law, which enshrine the guarantee of freedom of religion or belief as a universal human right. [ensure that commitments towards protection are not narrower than those specified in art 18]; and
- Reform of discriminatory legislation adversely affecting religious minorities in matters such as inheritance and custody.

## 5.8 Rights of LGBTIQ People

The UNAA notes:

Discrimination on grounds of sexual orientation and gender identity expose LGBTIQ individuals to major infringements of their human rights. In particular, 77 countries have discriminatory laws which criminalise private, consensual same-sex relationships with the death penalty being applied in at least four countries.<sup>48</sup> These matters have been raised repeatedly in the UN over the last few decades with mixed success in achieving the global recognition and implementation of the rights of LGBTIQ people. Despite repeated calls from the General Assembly for an end to the killings of persons because of their sexual orientation or gender identity through its resolutions on extrajudicial, summary or arbitrary executions, the practice still continues in many countries.

The UNAA believes that:

- The UDHR is very clear that all people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly;
- Australia’s track record in support of this position is well established with some notable success in the Mekong countries<sup>49</sup>; and
- Australia is well positioned to continue to urge progress in achieving universal human rights for all LGBTIQ people.

<sup>48</sup> <https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>

<sup>49</sup> <https://blog.dfat.gov.au/2017/05/17/lgbti-rights-are-human-rights-australias-support-in-the-mekong/>

## 5.9 Rights of People with Disabilities

The UNAA notes that:

While great strides have been made in recent decades to improve the living conditions of people living with a disability, 10% of the world's population, approximately 650 million people, live with a disability; constituting the world's largest minority group. Of these 650 million people, 80% live in developing countries. Of particular concern is the fact that persons with disabilities are more likely to be victims of violence or rape, and are less likely to obtain police intervention, legal protection or preventive care. This situation is especially valid for women and girls living with a disability. Approximately 30% of street present youth live with disability, while in developing countries 90% of children with disabilities do not attend school.

The UNAA believes that:

- To combat the inequalities that continue to persist for people living with disabilities both in Australia and globally, the Federal Government must pursue closer ties with both UN institutions and affiliated focus groups that seek to improve the quality of life for the disabled; and
- The Federal Government must take steps to ensure that Australian policy on the rights of people living with disabilities continue to mirror those laid out in the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

The UNAA recommends:

- Australia continue supporting the extensive network of government services that provide crucial care and opportunity for disabled persons; and
- Continued funding for organisations to collect and maintain appropriate data on people living with disabilities – such as the Australian Network on Disability – to ensure accountability and transparency.

## 5.10 Rights of Young People

The UNAA notes that:

The foundational international agreement for the recognition of the rights of children and young people is the Convention on the Rights of the Child (CRC). The CRC has been widely ratified with 196 parties including Australia, but its implementation by Member States varies significantly. The CRC remains the key articulation of the human rights of young people and provides a backdrop to the SDG. Youth play a crucial role in achieving the SDGs as both contributors and beneficiaries. This role is recognised in the preamble to the 2030 Agenda for Sustainable Development and the various references to youth throughout the targets for each of the SDGs.

Globally, there has already been progress in some areas of the SDG that particularly affect young people. The participation rate in early childhood and primary education has increased to 70% in 2016 from 63% in 2010<sup>50</sup>. There have also been improvements in the rate of birth registrations with 73% of children under the age of 5 years registered globally, although this figure is significantly lower for sub-Saharan Africa with only 46% of births registered. There are, however, concerning trends in relation to world hunger and poverty (Goal 2). In 2017, 151 million children under age five suffered from stunting (low height for their age), 51 million suffered from wasting (low weight for height), and 38 million were overweight<sup>51</sup>. This is despite a previous decline in global world hunger.

The UNAA recommends:

- Member States continue to create opportunities to meaningfully engage with youth, including through the development of policies and programs to achieve the SDGs. This

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<sup>50</sup> United Nations, Sustainable Development Goals Report 2018

<sup>51</sup> Ibid.



includes engaging with marginalised groups of young people. Consideration must also be given to formal methods of youth representation in business, government and international forums, including the United Nations; and

- Member States must mainstream consideration of youth issues across the SDG and invest adequate resources in developing evidence-based policies and programs that support young people to achieve their full potential. Further resources are required to combat youth unemployment and provide training opportunities for young people to develop the skills they require to join the workforce. Consideration could also be given to appointing Ministers or Commissioners for Youth to ensure a consistent whole-of-government approach to youth issues.

## 5.11 Rights of Refugees & Asylum Seekers

Note: This section is a reproduction of the UNAA Position Paper on Refugees and Asylum Seekers<sup>52</sup>.

The UNAA notes that:

The world is experiencing unprecedented numbers of refugees and internally displaced persons (IDPs) - an estimated 65.6m as at 30 June 2017 (around 22.5m refugees and 43.1m other IDPs). Resolving this global problem is a high priority. In addition to the very real humanitarian necessity to do so, mass displacement affects national and international security and erodes economic growth and prosperity. This significant challenge requires Australia to be both pragmatic and compassionate in its national planning and responses, and to contribute purposefully to regional and global solutions. The greatest burden of accommodating refugees and asylum seekers falls on developing countries that are compelled to provide sanctuary for those fleeing conflict and/or persecution. Very few displaced persons seek refuge in Australia. Traditionally, Australia has been generous in its acceptance of migrants, and has a proud history of their successful integration. Australia has also been generous in its acceptance of refugees and asylum seekers, most of whom have contributed positively to our nation's economic development and enriched our multicultural identity.

All governments have the right to determine who enters their country within the context of their national immigration framework. Australia needs to have effective border security policies and measures in place, and the Government needs to take all reasonable measures to prevent people smuggling and illegal trafficking of people. Australia needs to be alert to the threats of international terrorism and transnational crime, and the Government needs to minimise threats to national security or public order.

The UNAA believes that:

- Effective resolution of the challenges of refugees and asylum seekers will require global perspectives, regional solutions, and local Australian political action;
- Australia should contribute purposefully to the UN's Global Compact on Refugees. This Compact is required to transform the way the international community prevents and responds to refugee crises. As a major refugee re-settlement country, Australia can and should make a positive contribution to the Global Compact;
- Australia should take a leading role in developing regional solutions to displacement that are supportive of the rules-based international order and prevention of people trafficking. Current policies and measures to prevent refugees and asylum seekers from coming to Australia need to be reviewed. Australia's current policy only shifts the problem to other countries;
- Australia's reputation as a welcoming host country and as a responsible global citizen is diminished by our current treatment of asylum seekers and refugees arriving

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<sup>52</sup> <https://www.unaa.org.au/wp-content/uploads/2018/04/UNAA-Position-on-Refugees-and-Asylum-Seekers-April-2018.pdf>

spontaneously, as evidenced by arguments from within the Australian community and from the UNHCR;

- Australia's current detention of refugees and asylum seekers compromises Australia's ability to effectively pursue broader regional and global aims in stabilising and supporting people displaced by conflict and civil unrest;
- Processing arrivals offshore is not cost-effective. Between 2012 and 2016 the cost to Australia was an estimated \$9.6b. Though costs have reduced as arrivals have decreased, the estimated cost of offshore processing for 2017/18 was \$714m;
- Effective resolution of the challenges of refugees and asylum seekers requires the Australian Government to fully commit to the principle of international responsibility sharing, and fully abide by Australia's international legal responsibilities. This includes the proper care and protection of spontaneously arriving refugees and asylum seekers in Australia; and
- The UNHCR is currently inadequately resourced to deal with the massive caseloads of refugees and asylum seekers worldwide.

The UNAA recommends:

- Australia continue to play a positive role in seeking to address the current global crises regarding refugees and asylum seekers;
- Full consultation with the Australian community as it continues to develop its position on the Global Compact for Refugees, currently being developed by UN member states;
- In consultation with civil society and relevant UN agencies, Australia continue to forge a strategic dialogue with countries in our region through the Bali Process and initiatives such as the Asia Dialogue on Forced Migration in developing feasible regional responses to refugee and asylum seeker problems. These should address respective responsibilities for transit hosting, processing and accepting of refugees and asylum seekers who enter the region;
- Review the alignment of asylum seeker policies with other foreign policy objectives, and to continue Australia's commitment to a generous and expanded resettlement program for refugees and asylum seekers;
- Australia maintains robust immigration and border protection mechanisms to prevent the efforts of people traffickers but treat all refugees and asylum seekers equitably and in accordance with international refugee law and human rights law – thereby reinforcing Australia's steadfast commitment to strengthening the rules-based international order;
- Review the refugee protection legislative framework in Australia with a view to reinstating the 1951 Convention relating to the Status of Refugees as an important reference point for status determination arrangements, thereby ensuring that the Convention once again serves the purpose intended;
- Immediately close the offshore processing centres on Nauru and Manus Island, Papua New Guinea, ensuring at least temporary protection in Australia of those individuals who cannot yet be repatriated safely or resettled to another country. The UNAA believes this is possible without compromising Australia's strong border protection framework; and
- Facilitating and supporting the work of the UNHCR and promote research and educational projects in Australia on international refugee and statelessness issues.

## 5.12 Modern Slavery

The UNAA notes that:

Modern slavery is receiving increasing attention globally. Whilst there are various definitions available, the Australian parliament's joint standing committee on foreign affairs and trade has recommended the following:<sup>53</sup>

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<sup>53</sup>[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Final\\_report/section?id=committees%2Freportint%2F024102%2F25035](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report/section?id=committees%2Freportint%2F024102%2F25035)

“The Committee recommends that the Australian Government define modern slavery in the proposed Modern Slavery Act as a non-legal umbrella term, to include but not be limited to:

- modern slavery crimes outlined in Division 270 and 271 of the Criminal Code Act 1995 (including slavery, servitude, forced labour, trafficking in persons, forced marriage, child trafficking, debt bondage and other slavery-like practices);
- child labour and the worst forms of child labour, consistent with UNICEF’s definition of child labour and the International Labour Organisation’s Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182);
- child exploitation including in residential institutions and through orphanage trafficking; and
- other slavery-like practices.”

Whilst data is not readily available, the annually produced Global Slavery Index indicates<sup>54</sup> some 43 million people are in slavery today - 71% of them being women. Add to this estimates of child labour in excess of 150 million children and it is clear that modern slavery is a critical human rights issue which requires attention globally. The full extent of modern slavery is unclear in Australia and recommendations for the development of research and monitoring programs to better understand the prevalence of modern slavery in Australia have been voiced.

The UNAA recommends:

- Dedicated legislation to ensure the implementation of international standards is backed up with robust national action plans to achieve effective implementation that brings together the role of law enforcement agencies, prosecutors, the judiciary, as well as state services that can support rehabilitation, reintegration of victims and adequate reparations for their human rights violations;
- Australia highlight in the UNHRC the ways in which slavery, forced labour and trafficking all intersect in conflict, and the need for a coherent global, multi-faceted response with strong leadership within the UN to address this issue;
- Support for the strengthening of the normative framework for ending slavery, forced labour and human trafficking through promoting increased ratifications of international human rights norms and standards, including the ILO’s Forced Labour Protocol No. 29;
- Australia support the strengthening of humanitarian responses to modern day slavery and apply financial and economic measures to stem the transnational corruption and crime that fuels conflict and slavery; and
- Australia support the national and international criminal justice systems to bring criminals to account, including for enslavement that constitutes crimes against humanity and war crimes.

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<sup>54</sup> [https://downloads.globalslaveryindex.org/ephemeral/GSI-2018\\_FNL\\_180907\\_Digital-small-p-1543376484.pdf](https://downloads.globalslaveryindex.org/ephemeral/GSI-2018_FNL_180907_Digital-small-p-1543376484.pdf)

## 6 Australia & Its Commitments to Human Rights in the UN

In addition to recommendations made by the UNAA, the UNAA welcomes the opportunity to work with the Australian Government on an action plan to demonstrate and reaffirm Australia's respect for the processes and monitoring mechanisms of the UN by:

*Continuing to provide financial support to the Office of the High Commissioner for Human Rights:* Funding human rights activities of the OHCHR, UNICEF and other UN agencies is critical to Australia's commitment to strengthening human rights institutions. This would actively demonstrate Australia's partnership in encouraging the independence of the OHCHR and its standard-setting work to promote human rights and address crises. Supporting constructive efforts to improve the work of the UN HRC, including ensuring adequate opportunities for the participation of NHRIs and Civil Society: These efforts must lead to practical initiatives to promote human rights, through a dedicated Human Rights Fund, bilateral and regional activities, and dialogues and exchanges with individual countries in Australia's region.

*Committing to upholding the principles enshrined in the human rights treaties to which Australia is party:* The Australia Government, in close collaboration with Civil Society organisations and National Human Rights Institutions, must maintain relentless efforts and principled advocacy of landmark human rights treaties signed by Australia, through universal adherence and implementation. Responding constructively and in good faith to the concluding observations, recommendations and views of treaty monitoring bodies and the recommendations of special rapporteurs: The Australian Government should have processes in place for dissemination and follow up of recommendations. This must be realised with a view to raising awareness and implementation among the judicial, legislative and administrative authorities, civil society and non-governmental organisations and the general public. They serve as fundamental principles towards Australia's human rights commitment.

*Nominating independent experts for election to the human rights treaty bodies:* The Australian Government must take a leadership role to ensure the Human Rights Council Advisory Committee is equipped to its best abilities to assist with the work of the UN Human Rights Council, particularly in suggesting human rights issues to examine, and in undertaking studies on these issues. A commitment to transparency by making Australia's pledge public, for the information of Australian civil society and for the information of all Member States: The Australian Government must show exemplary behaviour as a nation that accepts, respects and celebrates its cultural and religious diversity through open dialogue on improving economic, social and cultural rights, on advancing the welfare of Indigenous communities at home and abroad, and on women's empowerment.

## 7 Conclusions & Recommendations

As a democratic nation with a strong rule of law and a firm belief in cosmopolitan values of human rights, Australia already has a proud history of respect for human rights which has been enshrined in our constitution, legislation, common law, institutions, and attitudes. Australia has also consistently participated in civil society as a good international citizen since the inception of the United Nations as a founding member, having assisted with the drafting of the Universal Convention on Human Rights, ratified several major international conventions, and having served on both the United Nations Security Council and the United Nations Human Rights Council.

It is clear from this report that Australia must continue to play a pivotal role in the pursuit of human rights and global peace by utilising its institutional knowledge and expertise on the matter. It is highlighted that Australia should play a more active role in the Indo-Pacific by encouraging neighbour states to cooperate more closely with international civil society and promote human rights, by both leading by example and by utilising bilateral/multilateral diplomacy. Additionally, as peace and security issues have become intrinsically linked with human security issues, Australia should further assist its neighbour states by ensuring they have strong institutions of good governance and rule of law, in order to protect the rights of their civilians and prevent the outbreak of conflict. Australia must make the most of its current seat on the United Nations Human Rights Council to achieve these ends and have a meaningful tenure on the esteemed body.

At the same time, in order to credibly support the capacity building of neighbour states and to underpin its contributions to the HRC, Australia must also continue its commitments to human rights domestically by reforming and enhancing institutions, attitudes and legislation in Australia. Changes in information technology, human migration trends, and societal attitudes over the past two decades have created a diverse range of new human rights developments within Australia's borders. In particular this report highlights the need for Australia to continue its support of human rights by continuing to collaborate closely with National Human Rights Institutions and civil society members.

Whilst this report contains numerous detailed recommendations, the following summary recommendations have been compiled with a view to maximise Australia's contributions to global human rights whilst addressing pressing domestic human rights challenges;

With respect to Gender Equality, the UNAA recommends that:

- Australia should encourage all countries to establish and implement laws protecting women from domestic violence, to provide women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes and to assure female equality in the workplace and to eradicate harmful practices targeted at women;
- Increased accountability must exist for those in senior leadership positions to deliver on gender equality goals, opportunities need to be created for women and girls to participate in positions of leadership at state, federal and international platforms, and the gender pay gap should be closed as a matter of urgency. If necessary, via regulations and quotas.

With respect to Governance, the UNAA recommends that:

- Australia must continue its pledge to support partner governments in the region in strengthening governance by building institutions and strengthening public services which increase stability and strengthen its commitment towards combating corruption in both the public and private sectors. In this regard companies and institutions should be encouraged to lend visible support to the 10 principles of the United Nations Global Compact.

With respect to Freedom of Expression, the UNAA recommends that:

- Australia continue its pledges to advocate for the protection of journalists and human rights defenders, as well as inter-state cooperation to protect the online enjoyment of the right.

With respect to Indigenous Peoples, the UNAA recommends that:

- Australia must approach international policy considerations regarding Indigenous Peoples with an emphasis on empowerment and self-determination, whilst consulting with international NGOs and civil society to advance the interests of Indigenous Peoples.
- Greater emphasis must be placed on 'Closing the Gap'. Notably, the focus must be on doing things with, rather than to, Indigenous People — in order to address the following issues: Constitutional modification, Truth Commission & Treaty; health & health services; education; employment & housing; incarceration and deaths in custody; removal of children; Land Rights & Native Title; and systemic/institutional racism.

With respect to Institutions and Capacity Building, the UNAA recommends that:

- Australia continue with, and strengthen, its leadership in the Pacific through the Asia Pacific Forum of Human Rights Institutions (APFHRI) by developing and strengthening the capacity of other NHRIs. This may be achieved primarily by continuing to seek the AHRC's input and contributions to the development of its State reports to treaty bodies.

With respect to Religion, the UNAA recommends that:

- governments adopt policy measures addressing and removing both conditions and attitudes which contribute to or exacerbate all forms of religious discrimination, including protection to all refugees and migrants regardless of religious beliefs held.
- Australia's legal framework be closer aligned with international human rights law, which enshrine the guarantee of freedom of religion or belief as a universal human right.

With respect to Disability, the UNAA recommends that:

- governments continue to support the extensive network of services that provide crucial care and opportunity for people living with a disability, and to continue funding for organisations to collect and maintain appropriate data on people living with disabilities – such as the Australian Network on Disability – to ensure accountability and transparency.

With respect to Young People, the UNAA recommends that:

- Consideration be given to formal methods of youth representation in business, government and international forums, including the United Nations.

With respect to Refugees and Asylum Seekers, the UNAA recommends that:

- Australia play a positive role in seeking to address the current global crises regarding refugees and asylum seekers.
- Australia review the alignment of domestic asylum seeker policies with other foreign policy objectives and continue with Australia's commitment to a generous and expanded resettlement program for refugees and asylum seekers. In addition, the refugee protection legislative framework in Australia should be reviewed with a view to reinstating the 1951 Convention relating to the Status of Refugees.

With respect to Modern Slavery, the UNAA recommends that:

- Australia highlight at the UNHRC the ways in which slavery, forced labour and trafficking all intersect in conflict, and the need for a coherent global, multi-faceted response with strong leadership within the UN to address this issue. In addition, support the strengthening of the normative framework for ending slavery, forced labour and human



trafficking through promoting increased ratifications of international human rights norms and standards, including the ILO's Forced Labour Protocol No. 29.

- Dedicated legislation to ensure the implementation of international standards is backed up with robust national action plans to achieve effective implementation that brings together the role of law enforcement agencies, prosecutors, the judiciary, as well as state services that can support rehabilitation, reintegration of victims and adequate reparations for their human rights violations.

The UNAA welcomes opportunities to work with the Australian Government in addressing these initiatives and exploring innovative new approaches towards strengthening human rights domestically, regionally and internationally.

## 8 Further Reading

Submission to the Australian Government's 2017 Foreign Policy Review  
United Nations Association of Australia

Position on Refugees & Asylum Seekers 2018  
United Nations Association of Australia

Senate Submission on the Sustainable Development Goals 2018  
United Nations Association of Australia

Strategic Plan 2018-2023  
United Nations Association of Australia

Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia 2017  
United Nations Human Rights Council

Concluding Observations on the 18<sup>th</sup> to 20<sup>th</sup> Periodic Reports of Australia 2017  
Committee on Elimination of Racial Discrimination

Freedom From Discrimination: Report on the 40<sup>th</sup> Anniversary of the Racial Discrimination Act 2015  
Australian Human Rights Commission

Promoting Human Rights: Good Governance, the Rule of Law & Democracy 2005  
Australian Human Rights Commission

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