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Annex 1

Civil Society Organisation Contacted	Responded to EOI	Provided feedback
A Gender Agenda		
Aboriginal Legal Service (NSW/ACT)	Yes	
Aboriginal Legal Service of Western Australia	Yes	
Action Aid		
Advocacy for Inclusion		
Allies for Uluru		
Amnesty International Australia		
Anglican Board of Mission		
Anrows		
Anti Slavery Australia		
Asia Pacific Forum on National Human Rights Institutions		
Association for the prevention of torture		
Australian Aged Care Providers Association (AACPA)		
Australian Baha'i Community	Yes	
Australian Catholic Bishops Conference	Yes	
Australian Catholic Social Justice Council		
Australian Catholic University		
Australian Centre for Disability Law		
Australian Council for International Development	Yes	Yes
Australian Council of Social Services		
Australian Council of Trade Unions		
Australian Disability and Development Consortium		
Australian Federation of Disability Organisations	Yes	
Australian Federation of Disability Organisations (AFDO)		
Australian Human Rights Commission		
Australian Institute of International Affairs		
Australian Islamic Cultural Centre		
Australian Lawyers for Human Rights	Yes	
Australian Lutheran World Service		
Australian Press Council		
Australian UN Youth		
Australian Women Against Violence Alliance		
Australians for Native Title and Reconciliation		
B'nai B'rith Australia/New Zealand	Yes	
Better Futures Australia		
Canberra Community Law		
Castan Centre for Human Rights Law		
Catholic Mission	Yes	
Catholic Women's League Australia		
Caxton Legal Centre		
Centre of Excellence for Indigenous Futures		

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ChildFund Australia		
Children's Rights International		
Christian Faith and Freedom (formerly Tears of the Oppressed)	Yes	
Civil Liberties Australia	Yes	
Civil Society (CS) Committee on UN Drug Policy	Yes	Yes
Coalition of Peaks		
CORE Community Services	Yes	
COTA Australia		
Council for Intellectual Disability		
Diplomacy Training Program	Yes	
Economic security for women		
Economic Justice Australia	Yes	Yes
Equality Australia		
Equality Rights Alliance – Women's Voices for Gender Equality		
Equality Rights Australia		
Falun Dafa		
Federation of Ethnic Communities' Councils of Australia	Yes	
First Nations Gender Justice Institute		
First People's Disability Network		
Forum of Australia's Islamic Relations		
Foundation for Aboriginal and Islander Research Action		
Glen Wolter		
Harmony Alliance		
Human Rights Law Centre	Yes	
Human Rights Watch		
Immigration Advice and Rights Centre		
Inclusion & Human Rights Advocate		
Indigenous People's Organisation-Australia	Yes	
Iektra Spandagou		
International Commission of Jurists		
International Justice Mission Australia		
International Social Service		
International Women's Development Agency		
Intersex Human Rights Australia		
Jewish Christian Muslim Association of Australia		
Justice and Equity Centre (formerly Public Interest Advocacy Centre)		
Justice Connect (formerly PILCH)		
Justice ReInvest NSW		
Know More		
Law Council of Australia		
Media, Entertainment and Arts Alliance		
Multicultural Youth Advocacy Network Australia		
National Aboriginal and Torres Strait Islander Legal Services (NATSILS)	Yes	Yes

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National Aboriginal and Torres Strait Islander Women's Alliance	Yes	
National Association of Community Legal Centres – Community Legal Centres NSW		
National Association of Community Legal Centres – Community Legal Centres Victoria		
National Association of Community Legal Centres – Townsville Community Law		
National Association of Community Legal Centres – UNSW Kingsford Legal Centre		
National Association of Community Legal Centres NACLC		
National Children's and Youth Law Centre		
National Council of Churches Australia	Yes	Yes
National Council of Women Australia		
National Ethnic Disability Alliance		
National Justice Project		
National Rural Women's Coalition	Yes	
National Women's Safety Alliance		
NSW Council for Civil Liberties	Yes	
Our Watch		
Oxfam Australia		
People with Disability Australia		
PLAN International Australia		
Quaker Service Australia		
Quaker Peace and Legislation Committee	Yes	
Queensland Advocacy for Inclusion		
Queensland Voice		
Reconciliation Australia		
Refugee Council of Australia	Yes	Yes
Salvation Army	Yes	
Save the Children		
Settlement Council of Australia		
Sexual Health and Family Planning Australia		
Slavery Links Australia Inc		
Social Policy Group	Yes	Yes
UN Women		
UN Youth Association of Australia		
UNAA		
UNICEF Australia		
Uniting Justice Australia, Uniting Church in Australia, National Assembly		
Uniting World		
University of Western Australia (they contacted us)		
UNSW Australian Human Rights Centre		
Victorian Aboriginal Legal Service	Yes	
Victorian Gay and Lesbian Rights Lobby		

Victorian Pride Lobby		
Women with disabilities Australia		
Women's International League for Peace and Freedom	Yes	Yes
Women's Safety NSW		
World Vision		
Young Women Christian Association		
Youth Law Australia		

**Combined 21st and 22nd Reports submitted by Australia under Article 9 of the
International Convention on the Elimination of all Forms of Racial Discrimination
(ICERD)**

Reporting period: November 2017–December 2023

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Abbreviations

ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AHRC	Australian Human Rights Commission
APS	Australian Public Service
ATSILS	Aboriginal and Torres Strait Islander Legal Services
CALD	Culturally and linguistically diverse
CCCF	Community Child Care Fund
CCCFR	Community Child Care Fund Restricted program
CLO	Department of Home Affairs' Community Liaison Officer
Cth	Commonwealth of Australia
DFAT	Department of Foreign Affairs and Trade
ECEC	early childhood education and care (ECEC)
FWO	Fair Work Ombudsman
IAS	Indigenous Advancement Strategy
ILO	International Labour Organization
ILUA	Indigenous Land Use Agreement
IPP	Indigenous Procurement Policy
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender/gender diverse, Intersex and Queer
NATSILS	National Aboriginal and Torres Strait Islander Legal Service
NHRI	National Human Rights Institution
NSW	New South Wales
NT	Northern Territory
NTRB/SP	Native Title Representative Bodies/Service Providers
PPV	Permanent Protection Visa
PJCHR	Parliamentary Joint Committee on Human Rights
Qld	Queensland
RDA	Racial Discrimination Act 1975 (Cth)
RNTBC	Registered Native Title Bodies Corporate
SA	South Australia
SCAG	Standing Council of Attorneys-General

SHEV	Safe Haven Enterprise visa
Tas	Tasmania
TPV	Temporary Protection visa
TSS	Temporary Skills Shortage visa
TSMIT	Temporary Skilled Migration Income Threshold
UN	United Nations
Vic	Victoria
WA	Western Australia

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Introduction

1. The Australian Government is pleased to present Australia's combined 21st and 22nd report under article 9 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (the Convention) to the Committee on the Elimination of all Forms of Racial Discrimination (the Committee).
2. The Australian Government believes all people are entitled to human rights, respect, dignity and the opportunity to participate in society, and that there is absolutely no place for racism. All Australians are entitled to live free from fear of violence and racial discrimination.
3. Key achievements during the reporting period include the historic National Agreement on Closing the Gap, significant investments in Indigenous Advancement Strategy (IAS) initiatives and the National Anti-Racism Strategy by the Australian Human Rights Commission (AHRC).
4. Significant subsequent achievements have also been made by the current Australian Government since the end of the reporting period, including:
 - Release of the 2025 Closing the Gap implementation plan outlining strategic priorities, actions, funding, and timeframes for priority reforms.
 - A 2023 Budget commitment of \$7.2 billion over four years to 2026-27 to the IAS.
 - Investing \$5.9 million to establish in 2024 a National Commission for Aboriginal and Torres Strait Islander Children and Young People, dedicated to protecting and promoting First Nations children's rights and wellbeing.
 - Release in November 2024 of the National Anti-Racism Framework, developed by the AHRC.
 - Commissioning a study by the Race Discrimination Commissioner into Antisemitism, Islamophobia, racism and the experience of First Nations people in Australian universities.
 - Establishing within the Department of Home Affairs the new Office for Social Cohesion in 2024 and a new Office for Multicultural Affairs in 2025.
 - A 2024 Budget commitment to launch the Reconnection, Employment and Learning (REAL) Program, providing personalised mentoring and support for First Nations people transitioning out of the justice system, focusing on employment, education, training pathways, and fostering connections to languages, Country, and culture.

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- Enhancing the Migration Act's powers to address dishonest employers and third parties exploiting migrant workers in the workplace in the *Strengthening Employer Compliance Act 2024*.
5. Australians value a 'fair go' for all, embracing mutual respect, tolerance, compassion for those in need and equality of opportunity for all people. Since our 2017 appearance before the Committee, Australia has continued implementation of the principles of the Convention, working with the Australian community to promote acceptance, tolerance and social inclusion through a range of programs and initiatives, as outlined in this report.
 1. **Report on compliance with and implementation of Articles 1 to 7 of ICERD**
 6. Australia's combined 21st and 22nd periodic report has a reporting period of November 2017 to 31 December 2023.
 7. Australia last appeared before the Committee on 27 and 28 November 2017. The Committee issued its Concluding Observations on Australia's combined 18th, 19th, and 20th reports on 26 December 2017.¹ On 7 December 2018 Australia submitted a follow-up to concluding observations 16(c), 26(c) and 31(b). On 10 May 2019 the Committee wrote to inform Australia that during the 98th session the Committee considered the follow-up report and made a recommendation relating to paragraph 16(c) of the Concluding Observations.
 8. This report has been structured with reference to the Convention, the *Guidelines for the CERD-Specific Document to Be Submitted by States Parties under Article 9, Paragraph 1 of the Convention* (CERD/C/2007/1), and the topics raised by the Committee in the Concluding Observations. This report is arranged by Article, and the content relates to the text of each Article, Committee guidance on that Article (indicated by footnotes), and the priorities of the Committee as reflected in the Concluding Observations.
 9. This report supplements, and should be read in conjunction with, Australia's Common Core Document.²
 10. As Australia is a federation, the Australian Government and state and territory governments share responsibility for implementing Australia's obligations under the Convention. The Australian Government consulted state and territory governments in preparing this report. Where possible, federal, state and territory responses to relevant

¹ CERD/C/AUS/CO/18-20 Concluding Observations

² HRI/CORE/AUS/2023

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Concluding Observations are included in this report. This report was prepared with the Standing National Human Rights Mechanism and finalised in consultation with civil society.³ This report will be publicly available on the Department of Foreign Affairs and Trade website.

A. Article 1, Article 2, Article 6: Racial discrimination, law and complaints

11. All Australians are entitled to live free from fear of violence and racial discrimination. Australian jurisdictions have legal provisions to address ethnic, racial and religious hatred whenever such crimes take place. Australia protects and promotes the right to equality and the right to be free from racial discrimination through legislation, policy and programs at federal, state and territory levels.
1. **Legislation relevant to racial discrimination⁴**
12. Australia implements the Convention at the federal level primarily through the *Racial Discrimination Act 1975* (Cth) (RDA) and the work of the Australian Human Rights Commission (AHRC). The RDA protects people from discrimination on the grounds of race, colour, descent, or national or ethnic origin in any field of public life, including education, employment, health and social security. Since Australia's last periodic report, the RDA has not been amended.
13. The *Fair Work Act 2009* (Cth) and the *Criminal Code 1995* (Cth) also implement aspects of the Convention. The Fair Work Act prohibits racial discrimination in the area of employment. The Criminal Code criminalises the urging of violence against groups or members of groups distinguished by race, religion, nationality, national or ethnic origin or political opinion. Additionally, in December 2023 Australia passed the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023*,⁵ which among other things amended the Criminal Code to establish criminal offences for the public display of prohibited Nazi and terrorist organisation symbols, public performance of the Nazi salute and the trading of goods that bear a prohibited Nazi or terrorist organisation symbol.
14. Further detail on the RDA, the Fair Work Act and the Criminal Code can be found in Australia's Common Core Document.⁶

³ CERD/C/AUS/CO/18-20 Concluding Observation 43.

⁴ CERD/C/AUS/CO/18-20 Concluding Observation 8

⁵ Came into effect in January 2024 as the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023*.

⁶ HRI/CORE/AUS/2023

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15. In addition to Commonwealth legislation, all state and territory governments have legislated to prohibit racial discrimination, with these laws operating in parallel with the RDA.
16. On 27 February 2019 the Queensland Parliament passed the *Human Rights Act 2019*. Further details can be found in Australia's Common Core Document.
17. The *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* (NSW) came into effect on 13 August 2018. The amendments removed four offences of serious vilification on the grounds of race, homosexuality, transgender, or HIV/AIDS status from the *Anti-Discrimination Act 1977* (NSW) and replaced them with a single, indictable criminal offence in section 93Z of the *Crimes Act 1900* (NSW) of publicly threatening or inciting violence on the grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. Anti-Discrimination NSW has the power to investigate complaints of vilification on the grounds of race, religion, homosexuality, transgender, or HIV/AIDS status under the *Anti-Discrimination Act 1977* (NSW).
18. In June 2022, NSW passed the *Crimes Amendment (Prohibition on Display of Nazi Symbols) Bill 2022*, which inserted a new offence into the *Crimes Act 1900* (NSW) under section 93ZA, which makes it an offence to knowingly display, by public act and without reasonable excuse, a Nazi symbol.
19. In 2023 the ACT passed the *Discrimination Amendment Act 2023* which aligned the ACT's discrimination law framework with the *Human Rights Act 2004* (ACT), expanded the coverage of the *Discrimination Act 1991* (ACT), refined the exceptions, and introduced positive duties.
20. All states and territories have civil or criminal racial vilification provisions. Western Australia (WA) has announced a review into racial vilification protections in its jurisdiction. Victoria conducted public consultations in 2023 on strengthening its anti-vilification laws. Tasmania engaged its Sentencing Advisory Council to review the operation of section 11B of the *Sentencing Act 1997* which provides for aggravation to be considered if offences are motivated by hate or prejudice on racial grounds and whether it should extend to other grounds. WA has completed a review of the *Equal Opportunity Act 1984* which recommended the inclusion of anti-vilification provisions in the Act. Further information on other state and territory human rights legislation can be found in Australia's Common Core Document.
21. While the Committee has recommended that Australia collect and provide updated statistical data on the ethnic origin of victims of crime, most jurisdictions do not require

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victims of crime to provide information on their nationality, race, ethnicity or immigration status. In some cases, it can be difficult to tell whether an incident of crime was racially motivated, as this requires knowledge of the motivation of offenders in committing crimes.⁷ However, some jurisdictions have offences that include, as an element of the offence, a public threat of violence on the grounds of race. See for example, section 93Z of the *Crimes Act 1900* (NSW).

22. The Australian Government does not intend to review the burden of proof requirements in the RDA at this time.⁸ The burden of proof under the RDA is the same as other civil proceedings in federal law, in that if a complaint is heard by a court an applicant is required to establish all the elements of a complaint on the balance of probabilities.
23. Some states and territories have shifted the evidentiary burden of proof for indirect discrimination. Victorian and Queensland legislation provides that, in cases of indirect discrimination, the respondent to a complaint must prove that the disadvantaging condition complained of is reasonable. NSW, Victoria, Queensland, the Northern Territory (NT), Tasmania, the ACT and WA provide that where a respondent is seeking to rely on an exception or exemption, the respondent must prove that the exception applies. WA completed a review that recommended reforms to the burden of proof under the *Equal Opportunity Act 1984* (WA). Since August 2016, ACT legislation has had a rebuttable presumption that operates in a discrimination complaint, including a racial discrimination complaint. This means that, it is presumed that discrimination has occurred unless the respondent shows that the treatment or condition was not in place because of the complainant's protected attribute.
24. Australia has civil and criminal penalties for conduct which constitutes online hate speech and cyber-racism, balancing the right to be free from racial discrimination with freedom of expression. The RDA's prohibition of racial hatred includes online racial hatred. In 2019–20, 14 out of 109 complaints of racial hatred made to the AHRC (approximately 13%) related to online conduct, an increase from 7 out of 97 complaints (7% of total complaints of racial hatred) in 2018–19.
25. It is an offence under the Criminal Code to use a carriage service, including the internet, to threaten, menace, harass or cause offence. This offence covers online conduct, such as sending emails or publishing material online, that a reasonable person would find to be threatening, menacing, harassing, or causing offence. This includes offensive material of

⁷ CERD/C/AUS/CO/18-20 Concluding Observation 12

⁸ CERD/C/AUS/CO/18-20 Concluding Observation 16(a)

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a racial or religious nature. In 2021, the Australian Government increased the maximum penalty for this offence from three years' imprisonment to five years' imprisonment. The Criminal Code was amended in 2019 to require content, internet and hosting providers to report 'abhorrent violent material' to the Australian Federal Police and subsequently remove such material on their services.

2. The Australian Human Rights Commission

26. Australia's National Human Rights Institution (NHRI), the AHRC was re-accredited as an 'A' status NHRI by the Global Alliance of National Human Rights Institutions in its October–November 2023 session. All states and territories also have statutory antidiscrimination bodies with the power to inquire into and attempt to conciliate complaints of discrimination. Further information on the AHRC and equivalent state and territory antidiscrimination bodies can be found in Australia's Common Core Document.
27. The Australian Government is confident that the AHRC is appropriately resourced to undertake its independent statutory functions.⁹ In the 2023–24 Budget, total government funding for the AHRC was \$31.32 million.
28. The AHRC includes a President and seven special-purpose Commissioners. The Aboriginal and Torres Strait Islander Social Justice Commissioner's functions include promoting discussion and awareness of the human rights of Aboriginal and Torres Strait Islander peoples, undertaking programs to promote respect for their human rights, and promoting the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples. The Race Discrimination Commissioner's functions include promoting understanding and acceptance of the RDA and developing research and educational programmes to combat racial discrimination.¹⁰

3. Racial discrimination statistics

a. Racial discrimination complaints – federal¹¹

29. In 2022–23 the AHRC received 473 complaints under the Racial Discrimination Act, making up 19% of all complaints lodged with the AHRC. This was an increase from 464 complaints in 2021–22, a decrease from 523 complaints in 2020–21 and an increase from 403 complaints in 2019–20. Of the 2022–23 complaints: 36% related to discrimination in employment; 42% related to discrimination in the provision of goods, services and

⁹ CERD/C/AUS/CO/18-20 Concluding Observation 16(c)

¹⁰ CERD/C/AUS/CO/18-20 Concluding Observation 4

¹¹ CERD/C/AUS/CO/18-20 Concluding Observation 16(b)

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facilities; and 25% were made by Aboriginal and Torres Strait Islander people; while 58% were made by people born outside of Australia.

30. In 2022–23, 359 complaints of racial discrimination were finalised, of which 26% were resolved. In matters where conciliation was attempted, 56% were successfully resolved. In 2021–22, 459 complaints of racial discrimination were finalised. In matters where conciliation was attempted, 55% were successfully resolved.

The AHRC reports that 14 racial discrimination complaints proceeded to the federal courts in 2022–23, and 13 racial discrimination complaints proceeded to the federal courts in 2021–22.

b. Racial discrimination complaints – states and territories¹²

31. Each jurisdiction collects its own statistics about complaints of racial discrimination.
32. In 2022–23:
- a. Anti-Discrimination NSW received 306 complaints of racial discrimination, up from 219 in 2021–22, and representing 16.7% of all complaints received that year;
 - b. Victorian Equal Opportunity and Human Rights Commission received 156 complaints, up from 129 in 2021–22;
 - c. Western Australia Equal Opportunity Commission received 80 complaints of racial discrimination, and 32 complaints of racial harassment, representing 19.7% and 7.9% of complaints received;
 - d. Tasmanian Anti-Discrimination Commissioner received 33 complaints of racial discrimination, representing 17% of all complaints received that year;
 - e. NT Anti-Discrimination Commission received 74 complaints of race discrimination, down from 75 in 2021–22;
 - f. SA Office of the Equal Opportunity Commissioner received 30 complaints of racial discrimination;
 - g. The Queensland Human Rights Commission received 83 complaints of racial discrimination, representing 15% of all complaints received;
 - h. ACT Human Rights Commission received 42 complaints of racial discrimination, 48 complaints in 2019–20, 38 complaints in 2020–21, and 48 complaints in 2021–22.
33. Where a state or territory anti-discrimination body is unable to conciliate a complaint, the complaint may be referred to a state or territory tribunal:

¹² CERD/C/AUS/CO/18-20 Concluding Observation 16(b)

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34. In 2022–23:
- a. The SA Equal Opportunity Commission referred one racial discrimination complaint to the SA Civil and Administrative Tribunal;
 - b. The ACT Human Rights Commission referred 35 complaints to the ACT Civil & Administrative Tribunal;
 - c. In Western Australia the Equal Opportunity Commission referred six race discrimination complaints and two complaints of racial harassment to the State Administrative Tribunal.

c. Hate speech, racial hatred and racial vilification complaints¹³

35. In 2022–23, 129 complaints of racial hatred (under Part IIA of the RDA) were made to the AHRC, making up 27% of all racial discrimination complaints. In 2021–22, 111 complaints of racial hatred were made to the AHRC, making up 24% of all racial discrimination complaints.

4. Complaints and communications to CERD

36. Australia received no communications during the reporting period.
37. In 2018, a request was submitted to the Committee under its early warning and urgent action procedure concerning Aboriginal and Torres Strait Islander communities affected by the Carmichael Coal Mine and Rail Project in Queensland.¹⁴ Australia provided its response to the Committee in relation to this request on 9 April 2019.

5. Other Australian Government human rights infrastructure

a. Parliamentary human rights scrutiny¹⁵

38. The primary body for human rights scrutiny in the Commonwealth Parliament is the Parliamentary Joint Committee on Human Rights (PJCHR). The ACT, NSW, and Victoria have similar legislative scrutiny processes in place under their respective legislation. Further information on parliamentary scrutiny can be found in Australia's Common Core Document.

b. Human Rights Act or Charter¹⁶ and Action Plan¹⁷

39. The Australian Government notes that Australia's international obligations have been incorporated into domestic law to the extent necessary to implement Australia's international human rights obligations.

¹³ CERD/C/AUS/CO/18-20 Concluding Observation 14(b)

¹⁴ Referred to in CERD/EWUAP/Australia/2018/JP/ks.

¹⁵ CERD/C/AUS/CO/18-20 Concluding Observation 6

¹⁶ CERD/C/AUS/CO/18-20 Concluding Observation 6

¹⁷ CERD/C/AUS/CO/18-20 Concluding Observation 6

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40. The Australian Government referred Australia's Human Rights Framework and Action Plan to the PJCHR for inquiry and report. This includes a consideration of the scope and effectiveness of the Framework and whether the Australian Parliament should enact a federal Human Rights Act.

6. International engagement on racial discrimination, racism and Indigenous peoples

a. Reservation to Article 4 of the Convention¹⁸

41. The Australian Government does not intend to withdraw its reservation¹⁹ to Article 4(a) and does not intend to introduce legislation to give any further effect to Article 4(a). Australia's reservation to the requirements of Article 4(a) of the Convention reflects Australia's strong tradition of, and commitment to, freedom of expression, the right of peaceful assembly and freedom of association. Australian laws already include prohibitions on, and redress for, racial discrimination, vilification and urging violence, including sections 80.2A and 80.2B of the Commonwealth Criminal Code, which criminalise hate-related violence.

b. UN Declaration on the Rights of Indigenous Peoples²⁰

42. Australia supports the UN Declaration on the Rights of Indigenous Peoples and shares the underlying commitment of the Declaration to deliver real and lasting improvements for Indigenous peoples and their communities.
43. Australia gives practical effect to the Declaration through the development of our domestic policies and programs. Examples of this include:
- a. working in partnership with Aboriginal and Torres Strait Islander Australians to co-design and implement solutions tailored to reflect specific community priorities and needs;
 - b. the partnership and collaborative design, implementation and monitoring approach to *Closing the Gap* in social and economic disadvantage (see below for a detailed discussion of Australia's Closing the Gap framework);

¹⁸ CERD/C/AUS/CO/18-20 Concluding Observation 10 (priority of the Committee)

¹⁹ Reservation to Article 4(a): *The Government of Australia... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by Article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of Article 4(a).*

²⁰ CERD/C/AUS/CO/18-20 Concluding Observation 22

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- c. enhancing Indigenous economic development through policies which drive demand for Indigenous businesses and strengthen the capacity and capability of Indigenous entrepreneurs;
- d. supporting Indigenous language centres, interpreters and use of language in schools, and recognising and supporting a variety of forms of cultural expressions,
- e. improving justice outcomes for Aboriginal and Torres Strait Islander peoples by expanding and establishing justice reinvestment initiatives.

c. *Special Rapporteur on Racism*²¹

- 44. In his 2016 report,²² the then Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerances noted the Australian Government's commitment to multiculturalism; Australia's resettlement of thousands of refugees; Australia's vibrant civil society and support for migrants and refugees; and the bipartisan support for the constitutional recognition of Indigenous peoples.
- 45. Of the 17 recommendations made by the Special Rapporteur, Australia agreed with two and noted 15.²³
- 46. Since the report and Australia's response, Australia has continued its efforts in combating racism, xenophobia and other forms of discrimination. In relation to the report's recommendations, please refer to paragraphs: 72–83 (Constitutional recognition of First Nations); 233–261 (asylum seeker policy); 84–93 (Closing the Gap Strategy); 186, 203–209 (justice programmes for First Nations peoples); 60–67 (combatting racism); and 26, 65–67 (hate speech).

d. *Domestic implementation of the Durban Declaration*²⁴

- 47. Australia has implemented its obligations under the Convention in Australian law through the RDA and, by doing so, already recognizes principles set out in the Durban Declaration and Programme of Action.

e. *ILO Convention 169*²⁵

- 48. Ratification of ILO Convention 169 is not under consideration in Australia at this time. Australia is committed to protecting the rights and respecting the integrity of Indigenous peoples and does so under existing UN human rights treaties and through engagement with dedicated UN bodies for Indigenous issues. The Australian Government recognises

²¹ CERD/C/AUS/CO/18-20 Concluding Observation 14(f)

²² A/HRC/35/41/Add.2

²³ A/HRC/35/41/Add.4.

²⁴ CERD/C/AUS/CO/18-20 Concluding Observation 41

²⁵ CERD/C/AUS/CO/18-20 Concluding Observation 22

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the importance of engaging in good faith with Indigenous peoples in relation to decisions that affect them. The government consults extensively with Aboriginal and Torres Strait Islander organisations, communities, small non-profit organisations, families and individuals, and is of the view that our domestic policies and programs give practical effect to the aims of the Convention.

B. Article 3: Promoting multicultural diversity and social cohesion

49. The Australian Government's multicultural affairs agenda aims to bring all Australians together. Our nation has been enriched by generations of migrants with more than 300 ancestries who have settled and helped to build every corner of the country. Today, more than half of Australian residents (51.5%) were either born overseas or have at least one parent born overseas.
50. Australia takes an inclusive approach to multiculturalism including encouraging migrants to become fully integrated members of our society, while also being able to celebrate, practice and maintain their cultural traditions within the law, free from discrimination.
51. In 2022 the Australian Government committed \$1 million to implementing a Multicultural Framework Review, *A Government that works for multicultural Australia*. The review (conducted in 2023–24) was aimed at identifying areas for reform to address any systemic barriers that prevent people from multicultural communities from fully participating in Australian society, including those barriers that exist due to racism and discrimination.
52. Since 2007, the Scanlon Foundation's *Mapping Social Cohesion Survey* has provided an independent and credible source of public information about social cohesion. Over several years, the survey has found that Australia remains a broadly stable and highly cohesive society, with high levels of belonging and public support for a multicultural Australia. The 2023 survey found that 89% of Australians agreed multiculturalism has been good for Australia, and 78% believed that accepting migrants from different countries makes Australia stronger. Despite high and growing support for multiculturalism, discrimination and prejudice remains, with 18% of people saying they experienced discrimination in the last 12 months because of their skin colour, ethnic origin or religion (up from 16% in 2022).
53. The Scanlon Foundation Research Institute's second biennial Australian Cohesion Index (released 20 September 2023) showed that one-in-three people of non-English speaking backgrounds reported experiencing discrimination in the past 12 months.

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54. The Australian Government is implementing a strengths-based approach to build on the successes of Australia's liberal democracy and multicultural society, including:
- a. \$25 million to support Australian Palestinian, Muslim and other communities, who have been affected by the Hamas-Israel conflict (\$12.5 million in 2023–24, \$12.4 million in 2024–25 and \$39,000 in 2025–26, as announced in October 2023);
 - b. \$18.2 million (2023-24 to 2024-25) to fund Community Language Schools so more Australian children will have the chance to learn a second language;
 - c. \$4.9 million (2023-24 to 2024-25) allocated to 61 local multicultural projects to strengthen multicultural communities across the nation;
 - d. \$5.4 million allocated to 82 projects across Australia in the 2022 round of the Fostering Integration Grants program.
55. The UN International Day for the Elimination of Racial Discrimination (21 March) seeks to raise awareness of racism and racial discrimination. The Australian Government celebrates Harmony Week every year; during the week that includes 21 March. The Australian Government celebrates Harmony Week every year; during the week that includes 21 March. In 2019, the Australian Government moved to a week-long celebration to celebrate 20 years since the first Harmony Day. Harmony Week celebrates Australia's cultural diversity and fosters inclusiveness, cultural respect, and a sense of belonging for everyone. Since 1999, more than 80,000 Harmony events have been held across Australia with celebrations initiated by schools, sporting and community groups, local government, places of worship, businesses, and government agencies.
56. An employment strategy for culturally and linguistically diverse (CALD) employees in the Australian Public Service (APS) is planned for release in the first half of 2024. The strategy has an action plan to: address barriers to recruitment and progression for CALD employees; embed the strengths and wealth of cultural and linguistic diversity; and enhance the work of the APS.
57. Social cohesion policies developed by state and territory governments affirm Australia's commitment to support cultural and linguistic diversity and to engender community respect and cohesion. For example:
- a. Queensland's Community Action for a Multicultural Society program funds community-based organisations to support greater intercultural connectedness so people from culturally diverse backgrounds can achieve their ambitions for social and economic participation. This includes funding to the Islamic Women's

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Association of Australia to deliver state-wide services to support and empower Muslim women in Queensland.

- b. NSW operates the Community Partnership Action (COMPACT) Program—a \$3 million per annum program that aims to inspire young people to stand up as champions for community harmony against racism, hate, and division. COMPACT engaged over 80,000 young people since it commenced in 2016.

C. Article 4: Racism²⁶

1. Measures to combat racism

- 58. Racism and discrimination have no place in our cohesive and inclusive society. Australia welcomes people from all backgrounds and is committed to giving everyone a fair go. In Australia, everyone is entitled to feel safe and proud of who they are, regardless of their sex, gender identity, sexual orientation, race, religious, ethnic, or cultural background.
- 59. The AHRC statutory functions include conducting education and awareness to eliminate racism and racial discrimination. As part of the October 2022–23 Budget, the Australian Government provided \$7.5 million over four years to the AHRC, and an additional \$1.4 million ongoing, to develop a National Anti-Racism Strategy to tackle racism and promote racial equality in Australia. This strategy includes the development of a National Anti-Racism Framework to support the commitment of government, civil society, businesses, and the community to tackle racism and promote racial equality in Australia and an update of the national *Racism. It stops with me* public awareness and education campaign.
- 60. Since receiving funding to develop the strategy, the AHRC has released a National Anti-Racism Framework Scoping Report based on initial consultations, undertaken an audit of government anti-racism programs and projects, begun national community consultations, conducted research including about racism and racial equity data and anti-Asian racism, and produced a number of anti-racism campaign materials and education resources.
- 61. Prior to the development of the National Anti-Racism Strategy, the AHRC led the National Anti-Racism Partnership and Strategy, a partnership between the Australian Government, the AHRC and non-government organisations from 2011 to 2018. The 2018 evaluation found that the strategy had a strong impact in starting conversations about racism, by sending a clear message that racism is not acceptable; helping

²⁶ CERD/C/AUS/CO/18-20 Concluding Observation 14(g) (priority of the Committee)

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organisations to demonstrate leadership on racism; and empowering individuals and communities to take action against racism.

62. State and territory governments have also implemented anti-racism strategies. Examples include:
- a. The Victorian Government is delivering an Anti-Racism Strategy in recognition of the impacts of racism on health and wellbeing, as well as on social, economic and community participation, to proactively prevent and address racism and improve the lives of the state's multicultural and multifaith communities, and Aboriginal and Torres Strait Islander communities.
 - b. The SA Government provides annual funding to support the administration of Reconciliation South Australia, which delivers the award winning inter-active schools program Generation of Change. This program aims to educate staff and students about inter-personal anti-racism strategies through music, story-telling, poetry and videos.
 - c. The NSW Community Resilience and Response Plan details a coordinated, whole-of-government approach to identifying, assessing, and addressing risks to community harmony, including risks arising from racist incidents and inter-communal tensions.

2. Racism online²⁷

63. The Australian Government works closely with the major social media sites and other digital platforms to prevent and remove harmful material online and communicate the expectation that sites have terms of use that prohibit harmful material.
64. The Australian Government's eSafety Commissioner (eSafety) has a range of regulatory functions and powers under the *Online Safety Act 2021* (Cth). The Online Safety Act does not confer specific powers on the eSafety Commissioner in relation to online racism. However, eSafety administers reporting and takedown schemes. Online racism targeted at an individual may be captured by these schemes. Additionally, through the Online Content Scheme in the Online Safety Act, the Commissioner can act where online material incites violence or promotes crime or terrorism, which may capture some forms of hate speech.
65. eSafety's functions also include providing online safety education and advice to Australians and supporting and conducting research about online safety for Australians.

²⁷ CERD/C/AUS/CO/18-20 Concluding Observation 14(b)

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eSafety's online hate speech research showed that individuals from at-risk groups—including culturally and linguistically diverse groups and Aboriginal and Torres Strait Islander communities—are disproportionately at risk of online harm or face additional barriers to protect themselves from harm and access support.

D. Article 5: Equality before the law

1. Aboriginal and Torres Strait Islander peoples

66. The Australian Government continues to promote and strengthen the rights of Aboriginal and Torres Strait Islander peoples through a range of laws, and by working in partnership with Aboriginal and Torres Strait Islander peoples to develop effective policies and programs.
67. The Australian Government has committed to work in partnership with Aboriginal and Torres Strait Islander leaders and communities and to the co-design and delivery of policies and programs that affect Aboriginal and Torres Strait Islander peoples. This commitment to work in partnership underpins the Australian Government's new approach to Closing the Gap, a range of co-design activities and the provision of funding and support to a range of Aboriginal and Torres Strait Islander community-controlled organisations for the delivery of key services.

a. Self determination

68. The Australian Government is moving to a new way of working with Aboriginal and Torres Strait Islander leaders and communities—one that supports Aboriginal and Torres Strait Islander ownership, enables true partnerships with government, and recognises the diversity of cultures and circumstances of Aboriginal and Torres Strait Islander peoples.
69. This aligns with the government's commitment to ensure Aboriginal and Torres Strait Islander communities are involved in local and regional decision making through the *Indigenous-led Empowered Communities* initiative. Under this initiative, government works with First Australian communities to put in place processes, reforms and support so that communities are empowered to partner as equals with government. The initiative supports Aboriginal and Torres Strait Islander people within 10 regions across rural, regional and urban Australia to identify their priorities and—through agreed shared decision-making arrangements—enables community panels to consider whether government investment is effective, meets the needs of local people and communities, and to make recommendations about where funds can best be reinvested in their communities.

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b. Indigenous voice and constitutional recognition²⁸

70. On 14 October 2023, the Australian Government delivered on its commitment to implement the Uluru Statement from the Heart by holding a referendum to recognise Aboriginal and Torres Strait Islander people in the Constitution through a Voice to Parliament.
71. Though the proposal did not pass, more than 6 million Australians voted for change, underscoring a widespread desire to improve the lives of Aboriginal and Torres Strait Islander peoples. However, the government accepts the vote of the majority of Australians.
72. Following the referendum, the government is taking the time necessary to reflect on the implications of the outcome for the two other elements of the Uluru Statement—truth-telling and agreement-making. The referendum was the culmination of a number of processes the Australian Government initiated over a number of years relating to constitutional recognition (both in the previous and current reporting period), including the Expert Panel on Constitutional Recognition (2012), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015), the Referendum Council (2017) which led to the Uluru Statement from the Heart (2017), the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (2018) and the Indigenous Voice co-design process (2021).

c. Truth telling²⁹

73. Aboriginal and Torres Strait Islander cultures are an important part of Australia's national identity, and our nation's First Peoples play a significant role in unifying and shaping the psyche of our society. Yet for the greater part of Australia's history since British settlement, Aboriginal and Torres Strait Islander peoples have not enjoyed equality before the law.
74. Truth-telling about the history of Aboriginal and Torres Strait Islander Australians is a part of the reconciliation process. It is also about celebrating and reflecting on the important role that Indigenous Australians played, and continue to play, in shaping the modern Australian nation.
75. Most state and territory governments, except for WA and NSW, have committed to some form of formal truth-telling process in their jurisdiction.

²⁸ CERD/C/AUS/CO/18-20 Concluding Observation 20 (priority of the Committee)

²⁹ CERD/C/AUS/CO/18-20 Concluding Observation 19

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76. On 12 May 2021, Victoria's Yoorrok Justice Commission was established with the powers of a Royal Commission. Yoorrook's mandate included inquiring into both historical and ongoing injustices against First Peoples in Victoria since colonisation, establishing an official record of the impact of colonisation on First Peoples in Victoria, and making recommendations for practical actions and reform needed to acknowledge historical injustices and address ongoing injustices.
77. Queensland passed the *Path to Treaty Act 2023* on 10 May 2023, setting up a minimum three-year Truth-telling and Healing Inquiry, with the powers of a Commission of Inquiry. The Inquiry was considered a key step on the path to treaty in the state.

d. Treaty processes with state governments

78. In June 2018, the Victorian Government enacted Australia's first treaty legislation, the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (the Treaty Act), creating a framework for future treaty negotiations between Victoria and First Peoples. In December 2019, the First Peoples' Assembly of Victoria was established as the Aboriginal Representative Body under the Treaty Act. The Assembly is the state's equal partner in the current phase of Victoria's treaty process and all outcomes must be agreed in partnership in a spirit of good faith and collaboration. Formal discussions between the First Peoples' Assembly of Victoria and the state commenced on 3 August 2020.
79. In July 2019, the Queensland Government signed the Statement of Commitment to reframe the relationship with Aboriginal and Torres Strait Islander peoples and launched the Tracks to Treaty—Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders process. These reforms promote and support self-determination, truth-telling, local decision making and better life outcomes for Indigenous Australians and build on reconciliation work to date within the state of Queensland. On 10 May 2023 Queensland passed the *Path to Treaty Act 2023*, legislating a 10 member all-First Nations Council to oversee a First Nations Treaty Institute, to be established as an independent statutory body tasked with developing a treaty making framework and support communities in treaty negotiations.
80. In March 2023, NSW committed to undertaking 12 months of consultation with Aboriginal people, led by independent Aboriginal Treaty Commissioners, to determine whether they wanted a Treaty or agreement-making process, and if so, what that process might look like.
81. In July 2022 the Tasmanian Government committed to implement the recommendations of the consultation report on a way forward for Truth Telling and Treaty. The Aboriginal

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Advisory Group on Truth Telling and Treaty was established on 10 December 2022 to work on recommendations to the Tasmanian Government on a pathway to Truth Telling and Treaty.

e. Closing the Gap³⁰

82. *Closing the Gap* is a commitment for Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people and achieve life outcomes equal to all Australians.
83. Closing the Gap acknowledges the ongoing strength and resilience of Aboriginal and Torres Strait Islander people in sustaining their cultures. It is underpinned by the principle that when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of policies, programs and services that affect them, better life outcomes are achieved.

i. Progress

84. The Closing the Gap framework was established in 2008. The Prime Minister presented the last annual Closing the Gap speech and report to Parliament under the original framework on 12 February 2020. That report showed mixed progress against the Closing the Gap targets over the past decade, with two of the original targets on track, four showing some improvement, and one not on track.

ii. A National Agreement on Closing the Gap

85. The new *National Agreement on Closing the Gap* (the National Agreement) came into effect on 27 July 2020, upon signature by First Ministers of all Australian governments, the Lead Convenor of the Coalition of Peaks (a representative body comprising around fifty Aboriginal and Torres Strait Islander community controlled peak organisations) and the President of the Australian Local Government Association.
86. The National Agreement is the first time an agreement designed to improve life outcomes for Aboriginal and Torres Strait Islander people has been developed with Aboriginal and Torres Strait Islander people. The expertise and experience of the Coalition of Peaks and its members, and the feedback from extensive engagements in 2019 with Aboriginal and Torres Strait Islander people across Australia, have been central to its commitments.

³⁰ CERD/C/AUS/CO/18-20 Concluding Observation 18 (priority of the Committee)

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87. Under the National Agreement, all Australian governments will work with Aboriginal and Torres Strait Islander people, communities, organisations, and businesses to implement the National Agreement at the national, state, territory, and local levels.
88. The National Agreement has been built around four Priority Reforms, to protect and support the strengthening of Aboriginal and Torres Strait Islander cultures through:
 - a. formal partnerships and shared decision making;
 - b. building the community-controlled sector;
 - c. transforming government organisations;
 - d. shared access to data and information at a regional level.
89. The National Agreement also reconsiders the original seven Closing the Gap targets and extends them to focus on 19 national socio-economic targets across 17 socio-economic outcome areas. These areas cover education, employment, health and wellbeing, justice, safety, housing, land and waters, languages, reducing family violence, access to information and, community infrastructure. The Productivity Commission publishes a dashboard comprising data and associated supporting materials on progress towards the targets. This data is updated regularly and is supported by an Annual Data Compilation Report typically released mid-year. In addition to the dashboard, the Productivity Commission completes a comprehensive, independent review of progress towards the Priority Reforms, targets, indicators, and trajectories every three years.
90. For the first time, there will be independent Aboriginal and Torres Strait Islander-led reviews within twelve months of each independent review by the Productivity Commission. These reviews are an opportunity to better understand Aboriginal and Torres Strait Islander peoples' experiences of change as a result of this National Agreement.
91. The Commonwealth, states and territories, local governments and the Coalition of Peaks share accountability for the implementation of the National Agreement. To share progress achieved against the commitments, all governments and the Coalition of Peaks release an annual report and regular implementation plans to outline priorities for future years.

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f. Land, waters and housing

i. Native Title³¹

92. Australian common law recognises a form of Native Title. Further detail on Native Title can be found in Australia's Common Core Document.
93. The Australian Government is committed to maintaining an effective Native Title system and to supporting the timely resolution of Native Title claims. Claims are usually brought by applicants seeking a determination by an Australian court or other recognised body that Native Title exists (claimant application) but can also be brought by a party seeking a determination that Native Title does not exist, for example a local council wishing to deal with land (non-claimant application).
94. Native Title determinations are often resolved by agreement or consent. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination). As of December 2023, of the 610 determinations, 485 were consent determinations, 55 were litigated determinations and 70 were unopposed non-claimant determinations.
95. As of November 2023, approximately 44.2% of Australia's land mass was covered by a determination that Native Title exists, with a further 12.4% subject to a Native Title claim. This is in addition to land held by Aboriginal and Torres Strait Islander Australians under Commonwealth, state and territory land rights legislation.
96. *The Native Title Legislation Amendment Act 2021* (Cth) came into effect in February 2021 and was aimed at improving the effectiveness of the Native Title system. The legislation introduced measures to improve outcomes for Native Title holders by promoting the autonomy of Native Title holders to make decisions about their land, providing new pathways to resolve disputes after a Native Title determination has been made, and increasing the transparency and accountability of Native Title corporations to Native Title holders.

ii. Reforms to Native Title

97. The Australian Government notes the Committee's recommendation that Australia should amend the Native Title Act, with a view to lowering the standard of proof required and simplifying the applicable procedures.³² The Native Title Act does not provide an express standard of proof for connection between Indigenous peoples and their traditional lands. That standard of proof has been developed through case law and

³¹ CERD/C/AUS/CO/18-20 Concluding Observation 22

³² CERD/C/AUS/CO/18-20 Concluding Observation 22

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the Australian Government considers it appropriate that it continues to be developed through case law.

98. As case law about standards of proof relating to Native Title claims has become more established, governments have taken more flexible approaches to resolving Native Title claims, including in relation to evidentiary issues. For example, when assessing connection in Native Title applications, the Australian Government has a policy of taking evidence ‘at its highest’.
99. The Australian Government notes the Committee’s recommendation that, in the context of extractive and development projects on land subject to Native Title, the principle of free, prior and informed consent should be incorporated into the Native Title Act and into other legislation and fully implemented in practice.³³ The Native Title Act contains procedural safeguards and rights to ensure Native Title claimants and holders are notified, consulted, and, in some circumstances, have the opportunity to negotiate or enter into agreements with project proponents, before any activities that may affect their rights and interests, including any public works or development, occur over Native Title land.
100. The primary source of these processes is the ‘future acts’ regime under Part 2, Division 3 of the Native Title Act, which sets out requirements which must be met before development and other activities on Native Title land can be validly done. What procedural requirements apply will depend on the type of activity proposed but can include notification and consultation requirements. In the case of mining and some compulsory acquisitions, the relevant Native Title holders or claimants have the right to negotiate with the proponent, including negotiating for compensation for the impairment of their Native Title rights. Alternatively, the Native Title Act allows traditional owners to enter into an Indigenous Land Use Agreement (ILUA). ILUAs are flexible agreements which can provide Native Title groups with a range of economic, social and cultural benefits, including direct financial contributions, employment and training opportunities.
101. Some state and territory governments have been resolving their Native Title compensation liability through negotiated agreements with Native Title holders. For example, on 21 February 2023, the Western Australian Government and the Tjiwarl Native Title Holders finalised the Tjiwarl Palyakuwa Indigenous Land Use Agreement, to settle Native Title compensation claims filed in the Federal Court of Australia. The

³³ CERD/C/AUS/CO/18-20 Concluding Observation 22

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Tjiwarl Palyakuwa ILUA includes \$25.5 million in monetary compensation, transfer of ownership of land in freehold title, changes to government processes in relation to mining approvals and other economic and land-related benefits.

102. In Victoria, the *Traditional Owner Settlement Act 2010* (Vic) provides for an out-of-court settlement of Native Title—a state-based alternative to the Native Title Act—and allows the Victorian Government to recognise Traditional Owners and certain rights in Crown land. Since 2010 Victoria has used the Act to reach four Recognition and Settlement Agreements.
103. In 2021, the Commonwealth and states and territories adopted the National Guiding Principles for Native Title Compensation Agreement Making. Key principles include negotiating in good faith and resolving compensation claims by negotiation and agreement wherever possible.

iii. *Funding to support Native Title holders and Aboriginal and Torres Strait Islander landholders*

104. To assist with fair and equitable access to the Native Title system, the Commonwealth funds a network of 15 Native Title Representative Bodies/Service Providers (NTRB/SPs) across Australia to deliver services in accordance with the functions of a representative body under the *Native Title Act 1993*. Funding is available for Registered Native Title Bodies Corporate to undertake projects that enable them to pursue economic development opportunities using their Native Title rights and interests. As at 31 December 2023, a total of \$65 million had been approved for 110 projects across Australia.

g. *Cultural heritage*

105. Commonwealth, state and territory governments have overlapping responsibilities for protecting Aboriginal and Torres Strait Islander cultural heritage. As detailed above, the ‘future acts’ regime of the Native Title Act sets out requirements for development and other activities on Native Title land. State and territory governments have the primary responsibility for legal protection of cultural heritage as part of their responsibilities for land management and development approvals.
106. At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) operates to protect places that are on the National Heritage List, the Commonwealth Heritage List and the World Heritage List. These places may include those that are listed or inscribed for defined Indigenous heritage values. The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) enables the

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Australian Government Minister for the Environment to make special orders, called ‘declarations’, to protect traditional areas and objects ‘of particular significance’ to Aboriginal and/or Torres Strait Islander people “in accordance with their tradition” from threats if it appears that state or territory laws have not provided ‘effective protection’ and if an Indigenous person (or a person representing an Indigenous person) has requested the Minister make a declaration.

107. Australian Government legislation and guidance is in place to support the legal and ethical management of cultural objects through the *Protection of Cultural Objects on Loan Act 2012* (Cth) and the *Protection of Moveable Cultural Heritage Act 1986* (Cth). National Collecting Institutions regularly consult with Indigenous communities about the material they hold in their collections, in developing exhibition material, and to enable the display and touring of exhibitions that tell the story of Indigenous cultures and histories. In 2019, the peak body Australian Museums and Galleries Association committed to a 10-year *National Indigenous Roadmap* designed in consultation with Aboriginal and Torres Strait Islander people as well as museums and galleries around the country to enhance the participation and access of Indigenous Australians to museum and gallery collections and storytelling. The Roadmap builds Indigenous engagement as an integral part of all museum and gallery business.
108. In March 2023, SA passed legislation to establish a First Nations Voice to its Parliament. The Voice comprises Aboriginal and Torres Strait Islander representatives elected by the Aboriginal and Torres Strait Islander people and their communities to provide advice on laws, policies and practices through direct communication with key decision makers.

h. Juukan Gorge in the Pilbara region of Western Australia

109. The 24 May 2020 destruction of the sacred rock shelters in the Pilbara Region of WA was devastating for all parties involved.
110. Rio Tinto has a registered ILUA with the Puutu Kunti Kurrama and Pinikura Native Title Group which includes a process for managing heritage.
111. Following the destruction of the sacred rock shelters, the Senate referred an inquiry to the Joint Standing Committee on Northern Australia. The Committee tabled its interim report on 9 December 2020 and final report on 18 October 2021. On 24 November 2022, the Australian Government tabled its response to the final report, committing to an overarching approach to co-design heritage protection reforms in partnership with First Nations peoples. The final report made eight recommendations to the Australian

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Government and in its response, the Government agreed or agreed-in-principle to all but one of the recommendations.

112. On the same day, the Australian Government also re-signed its partnership agreement with the First Nations Heritage Protection Alliance (the Alliance), a coalition of member organisations representing major Native Title, Land Rights, Traditional Owner and community-controlled organisations across Australia. Through this partnership, the Australian Government and the Alliance are co-designing reforms to strengthen protection of First Nations cultural heritage.
113. In 2023, the Western Australian Government strengthened the *Aboriginal Heritage Act 1972* (WA). The reformed laws provide an equal right of review for native title parties (as defined in the Act) in relation to Aboriginal heritage approvals through the section 18 process, require new information about an Aboriginal site (new or existing sites) to be reported and introduced a new Committee with majority Aboriginal representation. Processes to reform cultural heritage protections are also underway in all other states and territories, except the NT.

i. Living on Country

114. Through partnerships between Traditional Owners and the Australian Government, the traditional occupations, practices, and knowledge—which have been used successfully to care for Country—are now also being utilised to provide economic opportunities. Two key initiatives are the Indigenous Rangers Program and Indigenous Protected Areas Program.
115. The Indigenous Rangers Program creates employment, training, and career pathways for Indigenous Australians in land, water and sea management. In 2023–24, the Indigenous Rangers Program is supporting 128 ranger groups through 79 organisations to employ approximately 2,000 Indigenous rangers (full-time, part-time, and casual) with women employed in approximately 33% of jobs.
116. Indigenous Protected Areas are areas of land and sea managed by Indigenous groups as protected areas for biodiversity conservation through voluntary agreements with the Australian Government. Indigenous Protected Areas help Indigenous communities protect the cultural values of their Country for future generations, which results in significant health, education, economic, environmental, and social benefits. There are 81 dedicated Indigenous Protected Areas accounting for over 49% of Australia’s National Reserve System and covering more than 85 million hectares of land and 6 million hectares of sea.

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ii. Water

117. First Nations People hold rights to about 40% of Australian land through Native Title, yet own and control less than 0.2% of surface water entitlements. The Australian Government is committed to increasing opportunities for First Nations Peoples' water ownership and participation in decision-making by acquiring water entitlements, facilitating their readiness to own water, establishing robust self-determined water holding mechanisms, and ensuring that water policy and legislation enhances their ability to continuously own water (continuous ownerships).
118. The independent Committee on Aboriginal and Torres Strait Islander Water Interests plays a pivotal influencing role in embedding First Nations interests within national water reform and associated initiatives.
119. The Australian Government is working through the lens of Australia's *National Agreement on Closing the Gap* (clause 87) and the principles outlined in the *United Nations Declaration on the Rights of Indigenous Peoples* (specifically Free, Prior and Informed Consent) to secure interests in inland water bodies. The Australian Government funds programs including the Murray–Darling Basin Aboriginal Water Entitlements program (\$100 million from 2023), the Cultural Flows Planning for Cultural Economies program (\$20 million from 2024), and the development of a national First Nations water holding mechanism (\$9.2 million from 2023), to increase access to, and management, and ownership of inland water.
120. The Australian Government is investing \$150 million in infrastructure to close the gap on access to safe and reliable water for First Nations Peoples living in regional and remote communities.

iii. Housing, overcrowding and homelessness.

121. A key housing issue experienced by Aboriginal and Torres Strait Islander peoples in remote areas is living in severely overcrowded dwellings; that is, dwellings that need four or more extra bedrooms.
122. The rates and types of homelessness differs across geographic locations. The 2021 ABS Census showed that very remote Australia had the highest rate of Aboriginal and Torres Strait Islander people experiencing homelessness, where 96.3% were experiencing severe overcrowding. It also showed that nationally, Aboriginal and Torres Strait Islander people experienced homelessness at a rate of 306.8 per 10,000 persons in the population compared to 34.9 per 10,000 persons for people who were non-Indigenous Australians.

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123. The Australian Government recognises that addressing poor housing conditions and homelessness is an important issue that affects many Australians, including Indigenous Australians. Effectively addressing these issues requires long-term and systematic effort across all levels of government and the community.
124. The National Agreement recognises overcrowding as a significant issue and has set Target 9a, to increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88%, by 2031. This is up from a baseline of 81.4% in 2021.
125. The Australian Government has made a substantial investment in remote housing and is working with state and territory governments and Aboriginal and Torres Strait Islander representatives to ensure the housing needs of Indigenous Australians are met (in Australia, the delivery of housing services is predominately a responsibility of state and territory governments).
126. This includes \$111.7 million committed in 2023–24 in the Commonwealth Closing Gap Implementation Plan as the Commonwealth's contribution to a new one-year partnership with the NT Government to accelerate building of new remote housing, targeted at addressing the worst overcrowding in the country.
127. The five-year *National Partnership for Remote Housing Northern Territory* between the Commonwealth and NT government commenced in March 2019 and expired on 30 June 2023. Under the partnership, the NT Government delivered its target of 1,950 Commonwealth funded bedrooms to remote Northern Territory communities. While planning for future arrangements, a NT Remote Housing agreement between the Commonwealth and NT governments came into effect on 1 July 2023. This was one-year agreement to deliver a minimum of 157 houses in 2023–24, targeted at addressing the worst over-crowding in the NT through a joint contribution of \$223.4 million from the Commonwealth and NT governments. Delivery under this agreement also included property and tenancy management activities, and innovative initiatives that trialled new partnership approaches to delivery.
128. In addition, the Restoring Funding for Northern Territory Homelands agreement is delivering a Commonwealth investment of \$100 million (announced in 2022) to deliver urgent upgrades to housing and essential infrastructure on NT homelands.
129. The Victorian Aboriginal Housing and Homelessness Framework, *Mana-na worn-tyeen maar-takoort: Every Aboriginal Person Has a Home*, was presented to the Victorian Government on 26 February 2020 and seeks to improve Aboriginal housing outcomes in

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Victoria within a generation. It is the first self-determined policy direction developed by the Aboriginal community for Aboriginal Victorians. The Victorian Government has invested an initial \$5.3 million for initiatives under the Framework, such as an Aboriginal-specific Private Rental Assistance Program, community engagement activities and exploring future investment in Aboriginal housing.

i. Economic development

i. Indigenous Advancement Strategy³⁴

130. The *Indigenous Advancement Strategy* (IAS) is the way the Australian Government funds and delivers a range of programs for Indigenous Australians. In the 2020–21 Budget, the Australian Government allocated \$5.7 billion to the IAS over four years for grant funding processes and administered procurement activities that address the objectives of the IAS.
131. Through the IAS, the Australian Government works to improve the way it does business with Indigenous Australians, and ensure funding delivers its intended outcomes. The structure of the IAS allows for joint development of solutions at the regional and local level. Funded providers are expected to work closely with Indigenous communities in the design and delivery of projects.

ii. Support for Indigenous-led programs and organisations³⁵

132. Australian governments have provided a range of support to Indigenous-led programs and organisations servicing Aboriginal and Torres Strait Islander communities. The Australian Government recognises that community-controlled organisations play a valuable role in providing culturally safe and supportive services for Aboriginal and Torres Strait Islander peoples. A significant proportion of funding under the IAS is allocated to Indigenous organisations and this proportion will continue to increase. This will benefit all Aboriginal and Torres Strait Islander community-controlled organisations.
133. State and territory governments are also engaged in supporting Aboriginal and Torres Strait Islander communities and community-controlled organisations. For example:
- a. The SA Government continues to support the development of SA's remote communities for law and culture programs, environmental health services, community services, prevention of domestic and family violence programs, and the operation of swimming pools and art centres.

³⁴ CERD/C/AUS/CO/18-20 Concluding Observation 20(b)

³⁵ CERD/C/AUS/CO/18-20 Concluding Observation 20(b)

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- b. The NSW Government is committed to its partnership with the NSW Coalition of Aboriginal Peak Organisations and the NSW Coalition of Regional Alliances under Local Decision Making. NSW is working towards a dedicated model for service delivery driven by community needs, prioritising delivery through Aboriginal community-controlled organisations, and building workforce capability and organisational capacity.
 - c. Local Decision Making is a 10-year plan in the NT that will provide a pathway so that communities can have more control over their own affairs, including service delivery based on a community's aspirations and needs. NT government agencies are required to partner with Aboriginal communities to assist the transition of government services and programs to community control.
 - d. The WA Government is committed to building on the strength of the community-controlled sector in WA, including through the establishment of a peak body, the Council of Aboriginal Services Western Australia (CASWA). CASWA receives funding to support Aboriginal community-controlled organisations from all social services sectors across WA to build their capacity, and to partner with the WA Government.
 - e. In 2023, the ACT Government established the Aboriginal Service Development Branch to support community-led solutions to build capability and capacity of the community-controlled sector and influence government process transformation.
134. The Australian Government Indigenous Procurement Policy (IPP) sets targets for engagement between the government and Indigenous businesses. The IPP works with businesses that are at least 50% Indigenous-owned. The primary purpose of the IPP is to stimulate Indigenous entrepreneurship, business, and economic development, providing Indigenous Australians with more opportunities to participate in the economy. The IPP has generated over \$9.5 billion in contracting opportunities for Indigenous businesses between its commencement in July 2015 through to December 2023.
135. State and territory governments also have Indigenous procurement policies or targets. For example:
- a. The Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy provides a whole-of-government framework to increase procurement with Indigenous businesses to three per cent of the value of government procurement contracts by 2022. In 2022–23, procurement with Indigenous businesses was at 2.21% of the value of government procurement contracts.

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- b. Under the NSW Aboriginal Procurement Policy between July 2022 and June 2023, \$354.2 million spent, and 619 goods and services contracts awarded to Aboriginal businesses.

iii. *Access to social services and income management*³⁶

136. Income Management is a tool that helps people budget their welfare payments and ensures they are getting the basic essentials of life, such as food, housing, electricity, and education. A proportion of a person's welfare payment is income managed and directed towards meeting basic needs. The Australian Government Enhanced Income Management program commenced in early September 2023. Eligible participants can volunteer to enter the enhanced Income Management program.

j. *Families, children, and women*

i. *Stolen Generations*

137. The Australian Government remains committed to providing services that assist members of the Stolen Generations to reconnect with families and deal with the impacts of trauma. The government's response focuses on practical changes to improve the lives of the Stolen Generations and to make amends for the past wrongs by providing healing and support services.
138. On 1 March 2022, the *Territories Stolen Generations Redress Scheme* opened for applications. The Scheme seeks to recognise the harm and trauma experienced by the Stolen Generations who were removed from their families or communities, and whose removal took place in the NT; the ACT prior to self-government; or the Jervis Bay Territory. The Australian Government committed \$378.6 million over five years to establish and operate the Scheme. The Scheme is open for a four-year application period and will close on 30 June 2026.
139. Eligible Scheme applicants receive a one-off redress payment of up to \$75,000 and a healing assistance payment of \$7,000. Eligible Scheme applicants can also choose to have their story acknowledged by a senior government official and receive a personalised and genuine acknowledgement of the resulting harm and trauma.
140. From November 2017–December 2023, the Australian Government invested a further \$321.16 million (averaging \$56.53 million per year) through the IAS Safety and Wellbeing Program to provide practical supports for members of the Stolen Generations. This included funding for family reunions, community-based healing initiatives, and

³⁶ CERD/C/AUS/CO/18-20 Concluding Observation 24(c)

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social and emotional wellbeing support services, primarily delivered through Aboriginal community-controlled health services across Australia.

141. Some states and territories have also introduced their own reparations schemes. On 31 March 2022, the Victorian Government opened its Stolen Generations Reparations Package. The package is to help address the trauma and suffering caused by the forced removal of Aboriginal children from their families, community, culture, identity, and language. The five-year package was designed by the Stolen Generations Steering Committee which consisted of members of the Stolen Generations, their descendants and community-controlled support organisations. This community-led process ensured Aboriginal leadership and decision-making in the design of the Package.

ii. *Aboriginal and Torres Strait Islander Women and Girls*³⁷

142. The Australian Government is committed to centring the voices, perspectives and leadership of Aboriginal and Torres Strait Islander women and girls, working in partnership to achieve change. The Australian Government acknowledges the intersectional challenges and compounded disadvantage faced by Aboriginal and Torres Strait Islander women and girls.
143. Ending violence against women and children, especially for Aboriginal and Torres Strait Islander women, is a national priority. Both primary prevention and providing support to Aboriginal and Torres Strait Islander women and children are national priority areas under the *National Plan to End Violence against Women and Children 2022–2032*.
144. The National Plan includes a dedicated *Aboriginal and Torres Strait Islander Action Plan 2023–2025*. Initiatives under this plan focuses on addressing the immediate family safety needs of Aboriginal and Torres Strait Islander families and communities, while laying the foundations for long-term structural change.
145. In the 2023–24 Budget, the Australian Government announced \$262.6 million over five years from 2022–23 towards First Nations family safety initiatives, which includes:
- a. \$145.3 million over four years to implement future actions still to be finalised under the Aboriginal and Torres Strait Islander Action Plan for family violence;
 - b. \$7.7 million over three years for the establishment of a National Peak Body for Aboriginal and Torres Strait Islander family safety, to support self-determination promotion activities in genuine partnership with First Nations people;

³⁷ CERD/C/AUS/CO/18-20 Concluding Observation 28

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- c. \$3.2 million over two years to establish up to five community networks to improve collaboration and service integration across the family safety sector;
 - d. \$14.4 million in 2024–25 to maintain base funding for critical family violence service provision (continuation of services);
 - e. \$23.2 million over four years to deliver up to seven trauma-aware, place-based healing programs for First Nations children and families who are impacted by family violence or child protection.
146. The Australian Government has provided \$5.7 million to support the multi-year *Wiyi Yani U Thangani* (Women's Voices) project, led by the Aboriginal and Torres Strait Islander Social Justice Commissioner within the AHRC, which captures the self-determined strengths, challenges and aspirations of First Nations women and girls.
147. The landmark *Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future* Report (2020) is the first national report in more than 30 years where 2,300 First Nations women and girls have been heard as a collective on the issues that matter to them, and elevates their diverse and lived experiences. The report is informing policy direction across all levels of governments to respond to the unique issues that impact First Nations women and girls.
148. The Australian Government has made progress in improving education outcomes and employment participation for Aboriginal and Torres Strait Islander women and girls. Higher education enrolments for Indigenous females have nearly doubled in the 10 years from 2012 (8,383) to 2022 (16,058). In 2022, Indigenous females made up 69% of the Indigenous university cohort. Since 1 July 2014, more than 14,300 Indigenous women have been employed through Indigenous-specific employment programs.
149. Under the IAS Safety and Wellbeing Program, the Australian Government invested \$310 million in 2021–22 and \$339.3 million in 2022–23 to respond to the immediate and structural drivers that contribute to violence in Indigenous communities. This included support for activities that:
- a. reduce harm from drug, alcohol and substance misuse;
 - b. reduce offending;
 - c. improve overall health and wellbeing for communities;
 - d. support the delivery of specialist legal services to Indigenous women and their families through the Supplementary Legal Assistance program, Indigenous Women's Program and Family Violence Prevention Legal Services.

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150. This funding is in addition to over \$2.4 billion over five years from 1 July 2020 which the Australian Government committed under the *National Legal Assistance Partnership Agreement 2020–2025* to legal aid commissions, community legal centres, and Aboriginal and Torres Strait Islander Legal Services (ATSILS). Under this Partnership Agreement, Australia’s most vulnerable people are a priority group.
151. The NT Government’s Domestic, Family and Sexual Violence Reduction Framework 2018–2028: *Safe, Respected and Free from Violence* acknowledges that as well as gender inequality, Aboriginal women experience other disadvantages and vulnerabilities linked to a history of injustice and racism that impact on their social, health and economic status. The Framework recognises that Aboriginal women are significantly overrepresented in the NT among those experiencing domestic, family, and sexual violence.
152. NT Health’s Domestic, Family and Sexual Violence Regional Partnership Grants 2023–2026 seeks to improve responses to domestic, family, and sexual violence through prioritising upskilling hospital and primary health staff to identify, respond, refer and report domestic, family and sexual violence.
153. The NSW Government’s Domestic and Family Violence Plan 2022–2027 and Sexual Violence Plan 2022–2027 recognise that Aboriginal and Torres Strait Islander Peoples experience multiple and intersecting challenges impacting both their likelihood of experiencing violence and the severity of that violence, and face additional barriers seeking support and safety. The plans implement a range of initiatives to support Aboriginal and Torres Strait Islander communities.

iii. Adoption and traditional child rearing practices

154. On 8 September 2020, the Queensland Parliament passed the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Qld) to allow legal recognition of a traditional child rearing practice. The legislation allows for applications to be made that, if granted, will result in a permanent transfer of parentage from the biological parents to the cultural parents.

iv. Aboriginal and Torres Strait Islander children in alternative care³⁸

155. Data reported by the Australian Institute of Health and Welfare in its report *Child Protection Australia 2021–22*, shows that at 30 June 2022, there were around 19,400 Aboriginal and Torres Strait Islander children in out-of-home care—an increase of

³⁸ CERD/C/AUS/CO/18-20 Concluding Observation 26(e)

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- around 7.8% since the report *Child Protection Australia 2018–19*. Approximately two-thirds (63%) of these children were cared for by Indigenous or non-Indigenous relatives or kin, or other Indigenous care givers. At 30 June 2022, approximately 13,869 Aboriginal and Torres Strait Islander children had been in care for two or more years. Further, of the 177,600 Australian children who received child protection services in 2021–22, 57,900 (33%) were Aboriginal and/or Torres Strait Islander children.
156. Several initiatives are taking place under the national plan, *Safe and Supported: The National Framework for Protecting Australia's Children 2021 – 2031 (Safe and Supported)*, to address the factors that lead to the removal of children and improve overall health, wellbeing and safety of communities. The Action Plan builds on the work of the first *National Framework for Protecting Australia's Children 2009–2020*.
157. Safe and Supported responds to target 12 of the National Agreement; to reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45%, by 2031. Under the framework is an *Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, which outlines the key systemic barriers to the safety and wellbeing of First Nations children, young people, and families.
158. The first action plan sets out actions and activities to address the over-representation of Aboriginal and Torres Strait Islander children in child protection systems and contains actions which specifically addresses improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or being in contact with, child protection systems.
159. An independent Aboriginal and Torres Strait Islander Leadership Group are partners with Commonwealth and state and territory governments in the Safe and Supported framework, including the development and implementation of the dedicated five-year implementation plans for Aboriginal and Torres Strait Islander children.
160. In the NT, current figures show that 89% of children being admitted into out-of-home care are Aboriginal and/or Torres Strait Islander. Recognising Indigenous communities, cultural authorities and service providers are central to the out-of-home care system, the government supports partnerships between Indigenous and non-Indigenous organisations to deliver services and build capacity and capability.
161. In August 2019, a new Aboriginal Foster and Kinship Care Model was released in the NT. Significant amendments to the *Care and Protection of Children Act 2007* and the *Youth Justice Act 2005* took effect in the NT in March 2020. The amendments include important changes such as improving care planning, strengthening the principle of family

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connection, introducing new limits to the length of time young people are held in police custody, removing barriers to diversion, and decriminalising the breach of bail conditions as an offence.

162. The NT also passed the *Care and Protection of Children Amendment Act 2023*. The reform measures contained in this Act follow the commencement of the *Territory Families Legislation Amendment Act 2021* and reflect various government commitments, including under Safe and Supported. The amendments address findings in coronial inquests into the deaths of Aboriginal children in remote communities; promote child wellbeing and safety; and support and empower young people and children in matters relating to them.

v. *Family support services*³⁹

163. Under the IAS, the Australian Government invested over \$3.19 billion across Australia from 2017–18 to 30 June 2023 in activities to support Indigenous families, children, and communities to improve community safety, wellbeing and education outcomes. This funding supplemented mainstream Australian Government support for all Australian families through childcare, pre-school, education, health, and family support programs, and supported vulnerable families by addressing the underlying drivers of disadvantage.
164. Between 2017–18 and 2022–23 this investment included:
- a. \$1.68 billion under the IAS Safety & Wellbeing Program for a range of activities including activities to divert Indigenous people from the criminal justice system, community night patrols and drug, alcohol and substance (use) prevention and treatment and family support programs.
 - b. \$1.51 billion under the IAS Children & Schooling Program to increase school attendance and improve educational outcomes by improving family and parenting support, early childhood development, care and education, youth engagement and transition to higher education.

vi. *Commissioners for Indigenous Children*⁴⁰

165. The Australian Government notes the recommendation that Australian governments consider establishing one or more Commissioners for Indigenous Children. The *Aboriginal and Torres Strait Islander First Action Plan 2023–2026* under *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* includes a key action to establish and strengthen advocacy through Aboriginal and Torres

³⁹ CERD/C/AUS/CO/18-20 Concluding Observation 26(e)

⁴⁰ CERD/C/AUS/CO/18-20 Concluding Observation 26(f)

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Strait Islander Commissioners. The role of the National Children's Commissioner within the AHRC includes promoting discussion and awareness of matters relating to the human rights of all children in Australia.

166. Many states and territories across Australia have established specific commissioners for Indigenous children and young people who work to improve health, education, child protection and justice outcomes for Aboriginal and Torres Strait Islander children and young people. For example:

- a. In December 2023, the NT Government appointed a Larrakia woman to be the NT Children's Commissioner.
- b. In 2023, the ACT established the ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner.

k. Education⁴¹

i. Australian curriculum and access to education for Indigenous children

167. Safeguarding children's cultural and linguistic identity is crucial to the maintenance of Aboriginal and Torres Strait Islander cultures into the future. The *Foundation to Year 10 Australian Curriculum* includes a cross-curriculum priority to enable Indigenous Australian students to see themselves, their identities and their cultures reflected in the curriculum, and to enable all students to engage in reconciliation, respect, and recognition of the world's oldest, continuous and living cultures.
168. The Australian Curriculum also includes the *Framework for Aboriginal Languages and Torres Strait Islander Languages*. The framework guides schools to support the teaching and learning of Aboriginal and Torres Strait Islander languages and allows the local development of language-specific curricula within a nationally consistent structure.
169. In addition to other Commonwealth, state and territory funding, the Australian Government provides approximately \$250 million each year to activities to improve Aboriginal and Torres Strait Islander educational outcomes through the IAS Children and Schooling Program. The program has a focus on increased school attendance and improved educational outcomes that lead to employment.
170. Responsibility for education is shared between the Australian Government and the states and territories.

⁴¹ CERD/C/AUS/CO/18-20 Concluding Observation 37

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ii. *Aboriginal and Torres Strait Islander Early Childhood Education and Child Care*⁴²

171. The Australian Government recognises that the early years are a key opportunity to support children in the early development of their cognitive, creative, emotional, literacy and language skills. These skills are required for positive learning outcomes, and will support future success in education, work and life.
172. On top of mainstream measures, the Australian Government has committed approximately \$125 million per annum over four years from 2023–24 under the Community Child Care Fund (CCCF) to increase childcare participation in hundreds of vulnerable and disadvantaged communities across Australia. This includes approximately \$59 million per annum available to 149 childcare services under the CCCF Restricted program (CCCFR) for activities that increase Indigenous children's participation in early childhood education and care (ECEC). In 2021–22 Budget the government committed approximately \$29.9 million to the expansion of the CCCFR to establish services in mainly remote locations. The expansion aims to increase participation rates of First Nations children in ECEC settings by providing access to high quality ECEC for approximately 300 children per year.
173. The Connected Beginnings program draws upon the strength and knowledge of First Nations' communities to increase children and families' engagement with health and early childhood education and care. It improves access to existing early childhood, maternal and child health and family support services to ensure children are safe, healthy, and ready to thrive at school by the age of five. In August 2021, the Australian Government committed an additional \$81.8 million to support the expansion of the program to 50 sites nationally by 2025, which once expanded has the potential to support up to 20% of all First Nations children. As of December 2023, the program supported around 18,800 First Nations children across 41 communities.
174. The Australian Government has also committed \$10.2 million over three years from 2022–23 to 2024–25 for the Early Childhood Care and Development Policy Partnership. The partnership aims to drive coordinated reform efforts to improve early childhood systems and sectors for Aboriginal and Torres Strait Islander children and families.

iii. *Improving remote school attendance and rates of school completion*⁴³

175. Supporting Aboriginal and Torres Strait Islander children to get a quality education is a key priority for the Australian Government.

⁴² CERD/C/AUS/CO/18-20 Concluding Observation 24(a)

⁴³ CERD/C/AUS/CO/18-20 Concluding Observation 24(a)

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176. Australian state and territory governments have conducted a variety of programs to improve school completion for Aboriginal and Torres Strait Islander students. For example, Queensland is supporting schools to retain more students and support them into further study or work through: early identification of students at risk of disengagement; implementing FlexiSpaces, to provide innovative and inclusive learning spaces for students at risk of disengagement; and working with providers of alternative education settings to foster high-quality outcomes for their students.
- l. Preserving and promoting Indigenous languages and culture***⁴⁴
177. The Australian Government recognises that safeguarding Indigenous cultural and linguistic identity is essential to the cultural life and identity of Australia.
178. Following the 2019 International Year of Indigenous Languages, the Australian Government is now participating in the UNESCO International Decade of Indigenous Languages 2022–2032. Australia is a member of the Global Taskforce for Making a Decade of Action for Indigenous Languages. In August 2023, Australia released *Voices of Country*—Australia’s Action Plan for the International Decade of Indigenous Languages 2022–2032. Co-authored with the International Decade of Indigenous Languages Directions Group and the Australian Government, the action plan provides a framework to guide Australia’s participation in the International Decade and is a call to action for all stakeholders.
179. *Voices of Country* builds upon what has been achieved through the Australian Government’s National Cultural Policy *Revive*—a place for every story, a story for every place, which recognises and respects the critical place of Aboriginal and Torres Strait Islander stories at the centre of Australia’s arts and culture. *Revive* is structured around five pillars but places First Nations peoples first. It recognises Aboriginal and Torres Strait Islander arts and culture must be community-led, and aims to advance agency, and financial and creative control.
180. The Aboriginal and Torres Strait Islander Languages Policy Partnership (LPP) is an Australian Government commitment to bring together state and territory governments and Aboriginal and Torres Strait Islander representatives to work together to improve outcomes and accelerate action on Target 16 of the National Agreement. The LPP enables Aboriginal and Torres Strait Islander people to work in genuine partnership with

⁴⁴ CERD/C/AUS/CO/18-20 Concluding Observation 37

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governments in a joined-up approach to ensure their cultures and languages are strong, supported, and flourishing.

181. The Australian Government Indigenous Languages and Arts program supports the expression of Aboriginal and Torres Strait Islander culture through provision of around \$30 million annually to community-driven Aboriginal and Torres Strait Islander languages and arts projects that support the participation in and maintenance of culture. The program also provides annual operational funding to a network of 24 Indigenous Language Centres around Australia. Since 2021–22, the program has received additional ongoing funding under the National Agreement policy specifically to drive progress against Target 16.
182. On 24 October 2017, NSW passed the *Aboriginal Languages Act 2017*. This legislation recognises the importance of language revival and growth to Aboriginal culture, identity, and social wellbeing. The Act established the Aboriginal Languages Trust, a NSW Government agency to promote and resource Aboriginal community-led language activities. In 2023, NSW launched a dedicated NSW Aboriginal Languages week - a first for Australia.
183. In NSW, the Ninganah No More languages program has expanded the number of ECEC services providing Aboriginal languages teaching to early years learners. As at October 2023, 3,190 children in NSW had access to Aboriginal language teaching in ECEC settings, including 1,311 Aboriginal children.

m. Criminal justice and incarceration, including youth

184. All Australian governments are signatories to the National Agreement. The two justice related targets under the National Agreement are key priorities for the government in partnership with First Nations people, communities and organisations:
 - a. Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15%;
 - b. Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30%.

i. Youth incarceration and alternatives to detention⁴⁵

185. Australian governments are implementing interventions and programs to reduce youth offending and to provide alternative pathways outside the justice system. For example:

⁴⁵ CERD/C/AUS/CO/18-20 Concluding Observation 26 (b)

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- a. The NT Police Force has developed a youth specific general order and four supporting instructions to reduce the rate of recidivism and detention, including one that outlines police diversion mechanisms in place. Specifically, police members must consider issuing a youth with a verbal warning, written warning, youth justice conferencing, or youth diversion program. The arrest of a youth should occur when deemed necessary and only as a last resort.
 - b. SA launched a two-year trial of the Youth Aboriginal Community Court in 2023–24, which is a specialist court for Aboriginal children and young people. The court can defer the sentencing of eligible participants for up to six months while participants participate in a culturally responsive and trauma-informed program that addresses their trauma and criminogenic needs, implementing protective factors and diverting them away from further offending behaviour.
186. In 2022–23, Aboriginal and Torres Strait Islander young Australians, aged 10–17 years, had disproportionately high contact with the criminal justice system. On an average day in 2022–23, 828 young people aged 10 and over were in detention, and 483 of those (58%) would have been Aboriginal or Torres Strait Islander young people. This means that Aboriginal and Torres Strait Islander young people aged 10–17 were 28 times as likely as non-Indigenous Australians aged 10 to 17 to be in detention on an average day.⁴⁶

ii. *Places of detention for juveniles*⁴⁷

187. All states and territories manage one or more places of detention for youths who have been either remanded in custody or sentenced to a period of detention. Youth detainees are typically kept separate from adult detainees and specifically designed programs are made available to provide youth detainees with rehabilitation opportunities.

iii. *Royal Commission into the Protection and Detention of Children in the Northern Territory*⁴⁸

188. In August 2016, in response to reports of serious abuse of detainees in the Don Dale Detention Centre in the NT, the Commonwealth and NT governments established a Royal Commission and Board of Inquiry into the Protection and Detention of Children in the NT. The Royal Commission considered what improvements could be made to the

⁴⁶ Australian Government, 'Youth Justice in Australia 2022-23', *Australian Institute of Health and Welfare*, 28 March 2024.

⁴⁷ CERD/C/AUS/CO/18-20 Concluding Observation 26(c)

⁴⁸ CERD/C/AUS/CO/18-20 Concluding Observation 26(c)

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child protection and youth detention systems of the NT and delivered its final report in November 2017.

189. The NT Government accepted the intent and direction of all 227 recommendations of the Royal Commission and in April 2018 committed an additional \$229 million over five years to implement the reforms. In January 2023, the NT Government reported that 185 of the 218 recommendations proposing action by the NT Government were complete. The implementation of other recommendations is currently underway.
190. In 2018, the NT Government allocated \$70 million for the development of a new Youth Justice Centre in Darwin and a redeveloped centre in Alice Springs. Both youth justice centres will be completed and operational in 2024. These new facilities will enable evidence-based, restorative, and culturally-and age-appropriate programs that are aimed at reducing recidivism, while ensuring community safety through secure and fit for purpose design.
191. In October 2022, a Model of Care in Youth Detention was released, following a comprehensive 18-month consultation and co-design process with the youth justice sector. This included Aboriginal young people, families, and organisations to ensure that it meets the cultural needs of stakeholders. The Model of Care in Youth Detention drives a framework for therapeutic care.
192. In response to the Report of the Royal Commission (8 February 2018), the Australian Government supported 26 of the 28 recommendations for which it has sole or joint responsibility. The Australian Government committed to review its current annual investment of over \$4.2 billion in the NT to improve outcomes for children and young people in the NT, resulting in the Productivity Commission study into Expenditure on Children in the NT (2020). New structures and initiatives were established to progress a reform agenda informed by the Royal Commission and the Productivity Commission study, including the Children and Families Tripartite Forum and the 10-Year Generational Strategy for Children and Families in the NT 2023–2033.

iv. *Mandatory sentencing for children*⁴⁹

193. Most Australian jurisdictions do not have mandatory sentencing laws that apply to children.

⁴⁹ CERD/C/AUS/CO/18-20 Concluding Observation 26(b)

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194. The NT no longer has mandatory sentencing laws applicable to children. Consistent with the recommendations of the Royal Commission, prescribed offences carrying a mandatory sentence for youth have been repealed.
195. WA has mandatory sentencing laws that apply to children. However, under certain circumstances a young person's previous convictions may be disregarded by the court when considering the application of a mandatory sentence to that person following a further offence. For example, section 189 of the *Young Offenders Act 1994* (WA) provides that if a period of two years has elapsed between the time a person discharges a previous sentence and is convicted of a further offence, the prior conviction can be disregarded for the purposes of sentencing for the subsequent offence.

v. *The minimum age of criminal responsibility*⁵⁰

196. During the reporting period, the minimum age of criminal responsibility in most Australian jurisdictions was 10 years of age, except for the NT and the ACT where the minimum age was 12 years of age. However, as a matter of common law, in all jurisdictions a child aged between 10 and 14 years of age (or between 12 and 14 in the NT and ACT) could only be criminally responsible for an offence if the prosecution can prove the child knew that his or her conduct was wrong. This common law principle, known as *doli incapax*, has been codified in all states and territories except NSW, SA and Victoria.
197. The issue of the minimum age of criminal responsibility continues to be the subject of discussions between the Commonwealth and state and territory Attorneys-General through the Standing Council of Attorneys General (SCAG), including how jurisdictions can support children diverted from the criminal justice system. Minimum age of criminal responsibility reform will contribute to justice targets 10 and 11 under the National Agreement.
198. The report of the SCAG Age of Criminal Responsibility Working Group was publicly released on 1 December 2023. The report provides a principles-based framework for jurisdictions to consider in raising the minimum age of criminal responsibility.
199. Some jurisdictions took steps to raise the minimum age of criminal responsibility during the reporting period:
 - a. On 1 August 2023, the minimum age of criminal responsibility in the NT increased from 10 years to 12 years.

⁵⁰ CERD/C/AUS/CO/18-20 Concluding Observation 26(a)

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- b. On 22 November 2023, the ACT introduced legislation raising the minimum age of criminal responsibility from 10 to 14 in a staged approach, first to 12 upon commencement, and then to 14 by 1 July 2025. Limited exceptions will apply for exceptionally serious and intentionally violent offences committed by 12 and 13-year-olds.
- c. On 25 April 2023, the Victorian Government announced that it would raise the minimum age of criminal responsibility to 12, later moving to 14 by 2027.
- d. On 6 December 2023, the Tasmanian Government released its Youth Justice Blueprint, committing to raise the minimum age of criminal responsibility from 10 to 14 with no exceptions, alongside raising the age of detention to 16, by 2029.

vi. *Incarceration of Aboriginal and Torres Strait Islander adults*⁵¹

- 200. Aboriginal and Torres Strait Islander adults are over-represented in prisons, representing 33% of the prison population as at 30 June 2023 (ABS 2023: *Prisoners in Australia*).
- 201. In the October 2022–23 Budget, the Australian Government committed \$99 million to a historic First Nations Justice Package which included:
 - a. \$81.5 million over four years (2022–23 to 2026–27) to expand and establish justice reinvestment initiatives to improve justice outcomes for Aboriginal and Torres Strait Islander people
 - \$69 million over four years from 2022–23 (and \$20 million per year from 2026–27) to establish and expand place-based community-led justice reinvestment initiatives
 - \$12.5 million to establish an Independent National Justice Reinvestment Unit to coordinate and support justice reinvestment initiatives at a national level.
 - b. \$13.5 million in additional funding to ATSILS to ensure First Nations families can access culturally appropriate and timely legal assistance before, during and after coronial processes;
 - c. \$1 million to build greater capacity in the peak body, the National Aboriginal and Torres Strait Islander Legal Services, to support its contribution to law reform and policy development to address inequalities in the legal system;
 - d. \$3 million to support the National Family Violence Prevention Legal Services Forum, and Family Violence Prevention Legal Services providers who deliver legal

⁵¹ CERD/C/AUS/CO/18-20 Concluding Observation 28(b)

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- assistance and non-legal support to victim-survivors of family and domestic violence and sexual assault.
202. The budget measures build on existing work to address the justice targets as part of the Commonwealth's first Closing the Gap Implementation Plan, including:
- a. \$7.6 million over three years from 2021–22 to establish the Justice Policy Partnership;
 - b. \$9.3 million over four years from 2021–22 to ATSILS for expensive and complex cases and coronial inquiries;
 - c. \$8.3 million over three years from 2021–22 for culturally appropriate family dispute resolution.
203. In the May 2023–24 Budget, the government committed an additional \$10 million over four years (2023–24 to 2026–27) for justice reinvestment in NT, under the \$250 million plan for A Better, Safer Future for Central Australia. The government's focus on justice reinvestment is a commitment to work in partnership with First Nations organisations and communities to improve justice outcomes.
204. Justice reinvestment empowers communities to identify the best ways to prevent and reduce contact with the criminal justice system, and to make decisions about the initiatives and programs that affect their lives.
205. Aboriginal and Torres Strait Islander communities can apply for justice reinvestment funding through two programs: the National Justice Reinvestment Program and the Justice Reinvestment in Central Australia Program. Applications for both programs opened in September 2023 and are open for applications year-round.
206. As part of the 2017–18 Budget, the Minister for Employment announced an Indigenous Employment Package, which included \$17.6 million over four years for the Time to Work Employment Service in non-remote locations and \$6.4 million over four years in remote locations. The service voluntary in-prison pre-employment program aimed to help Aboriginal and Torres Strait Islander people transition out of prison to prepare for work and reintegrate into the community.
207. The Australian Government is working with the states and territories on Prison to Work Employment Pilots, which trial innovative ways of transitioning Aboriginal and Torres Strait Islander prisoners to employment after release. There are six pilots currently funded across Australia, including four pilots targeting female prisoners.

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vii. *Aboriginal and Torres Strait Islander deaths in custody*

208. State and territory governments are primarily responsible for criminal justice and corrections systems in their jurisdictions. The Commonwealth has an important leadership role and is taking a system-wide approach to addressing the unacceptably high number of Aboriginal and Torres Strait Islander people incarcerated, consistent with the central finding of the Royal Commission.
209. The Australian Government is focussing its efforts to reduce deaths in custody by addressing the unacceptably high rates of Aboriginal and Torres Strait Islander people entering prison and youth detention, including through its justice reinvestment programs and the Justice Policy Partnership (as detailed above).
210. On 21 June 2023, the Australian Institute of Criminology, with support from the joint Attorney General's Department and the National Indigenous Australians Agency Taskforce, released the national real-time reporting of deaths in custody dashboard. National real-time reporting of deaths in custody helps to assure the public that all governments are transparent and accountable for their respective criminal justice systems. The dashboard provides information on all deaths occurring in police and prison custody, as well as in youth detention.
211. The Custody Notification Service (CNS) provides culturally appropriate health and wellbeing checks and basic legal information to First Nations people in custody.
212. In SA, the Aboriginal Legal Rights Movement is funded by the SA Government to provide an Aboriginal Visitors Scheme (AVS). At the request of the Aboriginal person or SA Police contact, AVS staff can provide comfort, care and support to the person in custody, and report any issues of concern (medical, welfare or other services) to the police.
213. The passing of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* (WA) is expected to reduce the number of Aboriginal people incarcerated in WA. The passage of this Act was a key recommendation from the Coronial Inquiry into the death of Ms Dhu, who was taken into custody on a warrant of commitment for unpaid fines in 2014.
214. The Australian Government is also conducting an independent review of access to and effectiveness of health care services for First Nations people in prison. The review, due to be considered by Health Ministers in mid-2024, will improve understanding of current state and territory approaches to delivering prison health care and provide recommendations for what needs to be done by all Australian governments to improve

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health outcomes for First Nations people in prison. Multiple coronial investigations into First Nations deaths in custody have noted that improving access to effective health services for First Nations people in prison is an important way to prevent deaths in custody and achieve better health outcomes long term, as well as contributing to rehabilitation and reducing incarceration.

viii. *Legal Services for Aboriginal and Torres Strait Islander peoples*⁵²

215. Through the *National Legal Assistance Partnership 2020–2025* the Australian Government funds ATSILS, community-controlled organisations that provide culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people. ATSILS.
216. From 1 July 2020, the Australian Government commenced funding of over \$440 million for ATSILS under the *National Legal Assistance Partnership*. In an acknowledgement that ATSILS are best placed to deliver culturally safe services within their own communities, the National Legal Assistance Partnership includes a formal commitment to self-determination, the first time that these principles have been included within Australian Government legal assistance arrangements.
217. In July 2020, the Australian Government commenced \$1.6 million in funding over five years to NATSILS under the Community Legal Services Program. NATSILS has also received the following additional funding:
 - a. \$2.43 million from 2021–22 to 2023–24 to support their involvement in the establishment of the Justice Policy Partnership, as co-chair and joint secretariat. The Justice Policy Partnership brings together representatives from the Coalition of Peaks, Aboriginal and Torres Strait Islander experts, and Australian, state and territory governments to take a joined-up approach to Aboriginal and Torres Strait Islander justice policy;
 - b. \$1 million over 2022–2025 to support NATSILS' contribution to law reform;
 - c. \$21 million one-off payment in 2022–23 to NATSILS for distribution to ATSILS and NATSILS in 2023–24 to contribute to access to justice outcomes.
218. In recognition that many of the practices and requirements of Australian legal systems are not responsive to the needs and strengths of First Nations peoples, and that First Nations peoples face a number of significant barriers to accessing justice, the National

⁵² CERD/C/AUS/CO/18-20 Concluding Observation 26(d)

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Indigenous Australians Agency support a number of legal assistance service activities which work with First Nations families under the IAS. This includes support for:

- a. five Supplementary Legal Assistance activities, delivered to supplement core funding to legal assistance providers in the NT to provide trauma informed legal and related services to Aboriginal and Torres Strait Islander women;
- b. seven Indigenous Women's Program activities, delivered to community legal centres across Australia to provide legal assistance to Aboriginal and Torres Strait Islander women on a wide range of legal issues across Australia;
- c. 14 Family Violence Prevention Legal Services, which provide culturally safe legal services and wrap around non-legal support to Aboriginal and Torres Strait Islander victim-survivors of family violence and/or sexual assault across Australia.

219. On 12 August 2022, Australia's national forum for Attorneys-General, the Standing Council of Attorneys-General, endorsed the *Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027*. Under the work plan, all Australian jurisdictions seek to take collective and individual action to improve the experiences of victims and survivors of sexual assault in the criminal justice system. To support the implementation of the work plan, the Australian Government provided \$8.4 million over three years from 2023–24 to pilot new service delivery models in three locations across Australia. These pilot sites include:

- a. In WA, the Women's Legal Service WA, Aboriginal Family Legal Services, and Ruah Legal Services will partner to provide state-wide integrated, specialised and trauma-informed legal services for victims and survivors, delivering services at known points of disengagement and withdrawal from the legal process.
- b. In Victoria, Victoria Legal Aid, Djirra, and Women's Legal Service Victoria will partner to expand Victoria's state-wide Victims Legal Service (VLS) to provide legal information for victims and survivors of sexual assault through the existing VLS helpline, and targeted advice and case work for victims and survivors seeking to protect confidential communications. This model will also provide tailored support for Aboriginal victims and survivors to report sexual assault to police.
- c. In the ACT, the Women's Legal Centre ACT and Victim Support ACT will establish the territory-wide ACT Sexual Assault Legal Service, delivering legal assistance, including legal representation to support victims and survivors to engage with the criminal justice system, and providing integrated, wrap-around services for victims and survivors, including financial assistance, counselling, and specialist support.

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n. Health

i. Programs to improve health of Aboriginal and Torres Strait Islander peoples⁵³

220. The *National Aboriginal and Torres Strait Islander Health Plan 2021–2031*, and the *National Aboriginal and Torres Strait Islander Health Workforce Strategic Framework and Implementation Plan 2021–2031* recognise the importance of culture as an enabler for good health, and target the social, economic, and environmental factors that can inhibit good health. These plans were co-designed in partnership with the Aboriginal and Torres Strait Islander health sector and will be delivered in alignment with the National Agreement.
221. The National Indigenous Australians Agency committed approximately \$90 million in 2023-24 for activities that enhance the wellbeing of First Nations people. This included social and emotional wellbeing services, mental health first aid training, suicide prevention and postvention services, workforce support, youth engagement services and wellbeing supports for the Stolen Generations.
222. From 1 July 2023, the Australian Government committed \$5.1 billion over four years through the Indigenous Australians' Health Programme to improve the health, wellbeing, and life expectancy outcomes for Aboriginal and Torres Strait Islander peoples. The programme directly underpins the National Agreement and supports implementation of the Health Plan and the National Workforce Plan. The programme is designed to support the delivery of, and access to, high quality, culturally appropriate health care and services for First Nations peoples.

ii. Aboriginal and Torres Strait Islander people with disability⁵⁴

223. Aboriginal and Torres Strait Islander people with disability are some of the most disadvantaged of all Australians. Aboriginal and Torres Strait Islander people with disability experience intersectional inequality, which is the compounding of inequality based upon racism and ableism.
224. Disability has been established as a cross-cutting outcome under the National Agreement. This requires every socio-economic target, outcome measure, and priority reform, to achieve better outcomes through being inclusive, accessible and equitable for First Nations people with disability.
225. The Disability Footprint sets out a framework of actions to enhance, strengthen, and where needed, build the Aboriginal and Torres Strait Islander community-controlled

⁵³ CERD/C/AUS/CO/18-20 Concluding Observation 24

⁵⁴ CERD/C/AUS/CO/18-20 Concluding Observation 24(b)

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disability sector to support more culturally appropriate disability services. Work on the Disability Footprint commenced in 2022.

iii. Suicide prevention in Aboriginal and Torres Strait Islander communities⁵⁵

226. Data from the ABS in 2022 indicated that First Nations peoples die by suicide at more than twice the rate of non-Indigenous people, and that the rate of suicide in 2022 for First Nations males was the highest in the 10-year time series, at 46.3 deaths per 100,000 people.
227. Suicide was the fifth leading cause of death among Indigenous Australians in 2020, accounting for 5.5% of all deaths (compared to 14th leading cause of death for all Australians, 1.9% of all deaths). It was also the leading cause of death for Indigenous children, accounting for 26.5% of all Aboriginal and Torres Strait Islander deaths aged 5-17 years. The Australian Government recognises that these rates are unacceptably high, and one life lost to suicide is one too many.
228. In 2022, The Australian Institute of Health and Welfare published a report, *Aboriginal and Torres Strait Islander LGBTQIASB+ people and mental health and wellbeing*, highlights gaps in existing data collection regarding the experiences of this group. The report suggests there is a need to investigate the compound risk of suicide-related behaviour among people who are Aboriginal and Torres Strait Islander and LGBTIQ+. This has translated into focus on at-risk groups within Aboriginal and Torres Strait Islander populations across Australian Government efforts including youth and LGBTIQ+ people. An Aboriginal and Torres Strait Islander Suicide Prevention Strategy, building on the findings of the evaluation project and co-developed with First Nations experts, will be launched in 2024.
229. The *Fifth National Mental Health and Suicide Prevention Plan* (2017–2022) includes improving Aboriginal and Torres Strait Islander mental health and suicide prevention as a priority area. The *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017–2023* is designed to complement the plan and sets out a comprehensive and culturally appropriate stepped care model applicable to both Aboriginal and Torres Strait Islander specific and mainstream health services.
230. States and territories are working in partnership with the Australian Government to fund suicide prevention initiatives. For example, as part of the *Western Australian Suicide*

⁵⁵ CERD/C/AUS/CO/18-20 Concluding Observation 24(d)

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Prevention Framework 2021–2025, the WA Government funded ten regional Aboriginal Community Controlled Organisations to support the development and implementation of regional-specific Aboriginal suicide prevention plans across the ten health regions.

2. Temporary and Permanent Migration Programs

o. Refugee and humanitarian entrants⁵⁶

231. Australia's border policies are enacted in accordance with domestic and international legal obligations in relation to the regulation of people smuggling vessels and unauthorised maritime arrivals, including human rights law, refugee law, and the law of the sea. Australia takes its international protection and *non-refoulement* obligations seriously. Australia does not return individuals to situations where they will face persecution or a real risk of torture, cruel, inhuman, or degrading treatment or punishment, arbitrary deprivation of life or the application of the death penalty.
232. Criminal people smugglers take advantage of vulnerable migrants and put their lives at risk. The safety of potential irregular immigrants attempting to travel by boat to Australia remains a priority for Australia.

p. Determination of refugee status and assistance⁵⁷

i. Determination of refugee status

233. There are robust processes for refugee status determination in Australia, including procedural fairness and due process under Australia's domestic legal framework that accords with Australia's international obligations. These processes apply regardless of whether the individual being assessed is in detention.

ii. Assistance during determination of refugee status

234. The Australian Government facilitates and maintains access by detainees to legal representatives. The Immigration Advice and Application Assistance Scheme and other government funded measures provide access to professional refugee and immigration advice and application assistance for certain protection visa applicants.
235. Permanent Protection Visa (PPV), Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) applicants who are granted an associated bridging visa, which allows them to remain lawfully in the community while their visa application is being processed, may have access to a range of services offered by the government. This includes Medicare and the public health system; education for school aged children;

⁵⁶ CERD/C/AUS/CO/18-20 Concluding Observation 31(a)

⁵⁷ CERD/C/AUS/CO/18-20 Concluding Observation 33(b)

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assistance with finding employment (if they have work rights); and translating and interpreting services. Permanent visa holders (including PPV and humanitarian visas), TPV and SHEV holders are generally eligible for up to 510 hours of English language tuition through the Adult Migrant English Program if they meet certain requirements.

q. *Immigration detention in Australia*

i. *Mandatory detention*⁵⁸

236. Australia is entitled to take measures to uphold the integrity of Australia's national borders. Under the *Migration Act 1958* (Cth), a person who does not hold a valid visa is an unlawful non-citizen and must be detained so that they can undergo the relevant security, health, and identity checks to ensure that they do not pose an unacceptable risk to the community.
237. Whenever possible, unlawful non-citizens are accommodated in the community or in less restrictive placements. Since 2008, the Australian Government's policy has required that detention be a last resort for the management of unlawful non-citizens.
238. Immigration detention ends when the person is either granted a visa or is removed from Australia. This is dependent upon several factors, including identity determination, developments in country information, and the complexity of processing due to individual circumstances relating to health, character, or security matters.
239. The relevant Minister has the flexibility to release persons from detention by granting them a visa under section 195A of the Migration Act, or to place them in a residence determination arrangement (community detention) under section 197AB of the Migration Act, depending on the circumstances of the case. In most circumstances, non-citizens in Australia may seek merits review of a visa refusal or cancellation decision through the Administrative Appeals Tribunals (AAT), or in some circumstances, through a referral to the Immigration Assessment Authority (IAA). Judicial review, including appellate review, is also available for AAT and IAA decisions.
240. In *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* [2023] HCA 37 (NZYQ) the High Court found that unlawful non-citizens cannot continue to be kept in immigration detention for the purpose of their removal from Australia once there is no real prospect of their removal becoming practicable in the reasonably foreseeable future.

⁵⁸ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

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241. To give effect to the High Court's decision, the Department of Home Affairs immediately released from immigration detention impacted individuals and established a process for the continuous assessment of the detention cohort for the release of individuals impacted by the judgment. This included robust legal and quality assurance processes to ensure that decisions to release are lawful, appropriate, and consistently documented.
242. The Australian Government ensures that all detainees are accommodated in facilities most appropriate to their needs, circumstances, and risk profile, and have access to health services, appropriate food (accommodating dietary and cultural requirements), educational programs, cultural, recreational and sporting activities, internet and computer facilities, televisions, and clean, comfortable sleeping quarters.
243. The Australian Government contracts a health service provider, International Health and Medical Services (IHMS) to ensure that health services in detention centres, including mental health services, are comparable to those available to the Australian community under the public health system.
244. All detainees in immigration detention have the right to lodge complaints without hindrance or fear of reprisal, and are made aware of their rights, including those under international human rights law, and avenues to complain and seek redress. A complainant's identity and all complaints are treated as strictly confidential, with mechanisms in place to ensure a complainant's anonymity. Further information on complaints can be found in Australia's Common Core Document.

ii. Children in immigration detention⁵⁹

245. Immigration detention of children is always a last resort. Children are detained for the shortest time practicable and where possible, in Alternative Places of Detention (APODs) and not in an immigration detention centre. Where children are held in APODs, arrangements are in place to support best practice and adherence to child safeguarding obligations. Unaccompanied minors and families with minor children are referred to the relevant Minister for a residence determination decision for their prompt transfer from the APOD into the community, subject to the completion of identity, health, and security checks. This is to ensure they can freely participate in the community as soon as possible. Australia considers the best interests of children in any action taken concerning that child

⁵⁹ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

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and provides minors with access to free school education during the compulsory school age years, according to state or territory law.

246. The Child Safeguarding Framework (the framework) articulates the strong commitment of the Department of Home Affairs to safeguard children in line with the Commonwealth Child Safe Framework. The framework outlines the principles for Home Affairs to becoming a Child Safe Organisation and supports the implementation of Australia's international obligations under the Convention on the Rights of the Child.
247. The staff and contracted service providers are screened to ensure they are suitable to work with children, and workers are provided with information and training to improve their knowledge, skills and awareness of child safeguarding and wellbeing.
248. New offences in the Commonwealth Criminal Code came into effect in March 2020 under which Commonwealth officers, including in detention environments, who exercise care, supervision, or authority over children and who fail to protect children from, or fail to report, child sexual abuse, may face terms of imprisonment of up to five years.
249. Children in immigration detention and in the community under residence determinations have access to essential and necessary primary and mental health services with referrals to allied and specialist health providers as required. Acute care is provided by hospitals. Healthcare services provided are comparable to those available to the broader Australian community. Certain bridging visa holders, including asylum seeker children, are eligible for Medicare, Australia's public health insurance system.
250. All school-age children are provided access to education commensurate with Australian community standards.

iii. Review of decisions about immigration detention⁶⁰

251. Immigration detainees may seek review of the lawfulness of their detention or the legality of decisions resulting in their mandatory detention in the High Court of Australia and other federal courts.
252. The length and conditions of immigration detention, including the appropriateness of the accommodation and services provided, are subject to regular review by officers of the Department of Home Affairs, the Commonwealth Ombudsman and the AHRC.
253. The Migration Act requires the Commonwealth Ombudsman to review immigration detention arrangements for each person detained for more than two years, and then every six months if they remain in immigration detention.

⁶⁰ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

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*iv. Independent scrutiny of places of detention*⁶¹

254. The Australian Government's immigration detention network is under independent scrutiny by a range of bodies, including the Office of the Commonwealth Ombudsman, the AHRC, the Australian Red Cross and international human rights organisations such as the Office of the UN High Commissioner for Refugees, the Subcommittee on Prevention of Torture, and the Office of the UN High Commissioner for Human Rights. Independent scrutiny reports about immigration detention facilities and practices are treated seriously and all recommendations are considered.
255. The Commonwealth Ombudsman, as the Immigration Ombudsman, has provided oversight of immigration facilities since 2004 and conducted regular inspections since 2011 under section 5(1)(b) of the *Ombudsman Act 1976* (Cth). Since July 2018, as the National Preventive Mechanism for places of detention under the control of the Commonwealth under the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Optional Protocol to the CAT), the Commonwealth Ombudsman has unfettered access to immigration detention facilities, detainees and records, and can publish assessments about its findings. During inspections the Commonwealth Ombudsman examines the administrative and operational practices and procedures of the centres. The Commonwealth Ombudsman submits formal post-visit summaries and annual reports to the Department of Home Affairs, which the Commonwealth Ombudsman publishes.

*r. Regional processing*⁶²

256. Under Operation Sovereign Borders, Australia will continue to detect and intercept anyone who attempts an irregular boat voyage to Australia and return them to their country of departure or origin where it is safe to do. People who cannot be safely returned will be transferred to a regional processing country for assessment of any protection claims. These policies have successfully stemmed the flow of people smuggling ventures to Australia and prevented avoidable loss of life at sea.
257. Regional processing arrangements in Nauru, and the management of individuals under those arrangements, is the responsibility of the host government. Arrangements are administered and implemented in accordance with domestic and international law obligations, including international human rights law and refugee law. Australia does not have effective control of these arrangements, and its human rights treaty obligations are

⁶¹ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

⁶² CERD/C/AUS/CO/18-20 Concluding Observation 31

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not enlivened. Nonetheless, Australia supports the government of Nauru to implement regional processing arrangements, including contracting a range of services to support access to health and welfare.

258. Individuals under regional processing arrangements do not have a settlement pathway in Australia. Individuals brought to Australia for medical treatment or as accompanying family are in Australia for a temporary purpose only and are encouraged to engage with available durable migration options, including resettlement in a third country or to voluntarily return home or to another country to which they have a right of entry.

s. Special Rapporteur on Migrants⁶³

259. Australia notes the observation of the Committee that Australia should implement the recommendation of the then Special Rapporteur on the human rights of migrants in his report of April 2017 (A/HRC/35/25/Add.3). The Australian Government disagrees with a number of the observations on Australia's compliance with international obligations, and the report's characterisation of the human rights situation for migrants in Australia. The Australian Government considers it was not appropriate for the Special Rapporteur on Migrants to have prepared one country report in relation to visits to two independent and sovereign nations; Australia and Nauru. Australia responded only to recommendations relating to Australia.

t. Sponsored Skilled Migration and Temporary Skill Shortage programs⁶⁴

260. The Australian Government has zero tolerance for the exploitation of vulnerable workers. All workers in Australia have the same rights and protections at work, regardless of their citizenship or visa status.
261. The Department of Home Affairs provides visa holders with information about their work conditions and entitlements in their visa grant notice and via social media. Visa holders who may be working illegally are encouraged to engage with the Department of Home Affairs, and workers who have concerns about their workplace entitlements are encouraged to report their circumstances to the Fair Work Ombudsman (FWO). The Department of Home Affairs provides visa holders with contact details for the FWO via the Home Affairs website, social media and in visa grant letters. The FWO also undertakes a range of measures to ensure migrant workers have the information they need to understand and act on their workplace rights.

⁶³ CERD/C/AUS/CO/18-20 Concluding Observation 31(e)

⁶⁴ CERD/C/AUS/CO/18-20 Concluding Observation 35

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262. The Australian Border Force (ABF) combats foreign worker exploitation and its links to visa fraud through a spectrum of enforcement measures including education, compliance activities, intelligence collection, international engagement, and criminal prosecution. The ABF utilises a variety of disruption and deterrence methods, including site visits, illegal worker warning notices, infringement notices, civil penalties, and criminal prosecution.
263. Information about Australia's response to human trafficking, slavery, and slavery like practices (modern slavery) can be found in Australia's Common Core Document.
264. Australia's employer sponsored skilled migration program was reformed between 2017 and 2018 to ensure that it safeguards the jobs of Australian workers while continuing to support businesses to meet skills needs by recruiting migrants that complement the domestic labour market. In September 2022, the Australian Government held a 'Jobs and Skills Summit' into Migration Reform, resulting in agreement to commence a significant review of Australia's migration systems. Initial changes between September 2022 and December 2023 include expanding pathways to permanent residence for temporary skilled sponsored workers and raising the Temporary Skilled Migration Income Threshold (TSMIT) on 1 July 2023 from \$53,900 to \$70,000—the first increase to the TSMIT since 2013. These changes are a first step to provide more equitable access to permanent residence for temporary work visa holders, along with ensuring migrant wages are in line with relevant Australian wages. The government continues work on reforms to the skilled visa programs in line with the Migration Strategy and in response to the 2023 Review of the Migration System.
265. All Australian employers sponsoring an overseas worker for the Temporary Skills Shortage (TSS) visa have obligations, including a minimum salary requirement and obligation not to engage in discriminatory recruitment practices. Recruitment practices must satisfy Australian workplace, equal opportunity, and anti-discrimination laws. These requirements help to ensure that migrant workers are not paid less than an Australian worker doing the same work in the same location, and that the visa programs are not used to undercut the Australian labour market. Increasing minimum wages for migrant workers and opening pathways to permanent residence ensure the skilled work visa program is targeted at highly skilled workers who are less open to exploitation and intends to ensure migrants entering Australia under these programs have sufficient income to support themselves and their families whilst residing in Australia.

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266. TSS visa holders may bring immediate family members (spouse, de facto partner, dependent children) to Australia.⁶⁵

u. Australian government support for migrants and settlement bodies

267. Australia has early intervention settlement programs and needs-based language programs for recent migrants. Programs emphasise pathways to employment, education, and English language training, to support access to work, establish stable and affordable housing, and foster social and economic participation.

268. In May 2022, the Department of Home Affairs provided grants of up to \$60,000 under the Fostering Integration Grants program. The objectives of the program were to facilitate the participation, integration and social cohesion of newly arrived migrants and multicultural communities in Australia by developing skills and cultural competencies to integrate into Australian social, economic, and civic life, and build community resilience and cohesion.

269. The Australian Government funds a range of settlement programs through grant arrangements including the Settlement Engagement and Transition Support program, the National Community Hubs Program, Youth Transition Support services and the Youth Hubs trial.

270. States and territories provide support for newly arrived migrants and multicultural communities. For example:

- d. The NSW Settlement Strategy (established in 2023) brings together existing and new government efforts to improve settlement outcomes of people from refugee and refugee-like backgrounds and ensure they are supported and empowered to realise their potential and thrive.
- e. The Western Australian Government assists and supports newly arrived skilled migrants to make meaningful connections and overcome barriers to securing employment through the \$4.25 million Skilled Migrant Job Connect program. The program provides up to \$7,500 for WA-based skilled migrants to access approved services such as licensing, registration and skills assessments required to gain employment in occupations commensurate with their formal overseas qualifications, skills, and experience.

⁶⁵ CERD/C/AUS/CO/18-20 Concluding Observation 35

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3. Culturally and linguistically diverse groups within Australia

271. The Australian Government is committed to the principle that programs and services should be accessible to all eligible Australians, be responsive to their needs and deliver equitable outcomes.

v. *Support to culturally and linguistically diverse communities in Australia*

272. The Australian Government undertakes regular, ongoing stakeholder engagement to understand the concerns of culturally and linguistically diverse (CALD) groups and to seek strategic and place-based advice.

273. The Australian Multicultural Council is a ministerial-appointed body representing a broad cross-section of Australian interests that provides independent and robust advice to government on multicultural affairs, social cohesion and integration policy and programs. The Council aims to ensure that government policy and programs support all Australians, including CALD Australians, to fully participate in the community, celebrate diversity and build stronger and more cohesive communities. The Australian Multicultural Council has played a key advisory role in the development of federal multicultural policy.

274. The Department of Home Affairs' Community Liaison Officer Network builds and maintains relationships with a wide range of cultural, ethnic, and faith-based communities. The network consists of 50 officers, including with bilingual language skills and specialist Pacific knowledge, who facilitate a two-way information flow between communities and the Australian Government. This engagement supports an inclusive multicultural Australia by enhancing the Australian Government's understanding of communities, informing policy and programs, and empowering communities to access government information and services.

E. Article 7: Education, culture and information

1. School curricula⁶⁶

275. The Australian Curriculum for Foundation to Year 10 and the Senior Secondary Curriculum are developed nationally and the curricula are implemented in primary and secondary schools by state and territory education systems. Schools across Australian states and territory education systems have a range of initiatives to promote human rights education, promote intercultural understanding and address racism. The NSW Department of Education manages the national website, Racism, No Way, on behalf of

⁶⁶ CERD/C/AUS/CO/18-20 Concluding Observation 37

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all Australian schools. The site provides online resources to assist schools in addressing and teaching about racism in the learning environment.

276. The Australian Curriculum includes intercultural understanding as a general capability to ensure that students can learn to value their own and others' cultures, languages and beliefs.
277. Aboriginal and Torres Strait Islander histories and cultures is a cross-curriculum priority, to ensure all students can engage with issues of reconciliation and learn about the impact of racism on Australia's first peoples.
278. Australia's national Early Years Learning Framework, *Belonging, Being and Becoming: The Early Years Framework for Australia V2.0* (EYLF V2.0), provides a curriculum to support children's learning from birth to five years and through the transition to school. The *My Time, Our Place: Framework for School Aged Care in Australia V2.0* (My Time, Our Place V2.0) is Australia's national framework for school aged care. The EYLF V2.0 and My Time, Our Place V2.0 are the national approved learning frameworks under the National Law and National Quality Framework which set the national standard for children's education and care across Australia.

2. Human rights education – public servants⁶⁷

279. At the federal level, human rights principles are embedded through compulsory and optional training for the APS on diversity and inclusion policies, and relevant laws.
280. Each state or territory government is responsible for providing human rights education or cross-cultural competence training within its public service.

3. Training programmes for prevention of racial discrimination for judges, lawyers and other officials⁶⁸

281. The Australian judiciary is independent of the government.
282. The Australian Government provides funding to the National Judicial College of Australia and the Australasian Institute of Judicial Administration for the training and education of judicial personnel, including judges and magistrates. These bodies hold regular workshops, conferences, seminars and orations on a range of topical issues.
283. State, territory and federal Courts also oversee internal programs of continuing judicial education and development each year covering a range of topics relevant to the work of judicial officers.

⁶⁷ CERD/C/AUS/CO/18-20 Concluding Observation 14(e)

⁶⁸ CERD/C/AUS/CO/18-20 Concluding Observation 14(c), 39

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284. Lawyers in each state and territory are required to complete continuing legal education annually, including mandatory education on legal ethics, in order to maintain a current practising certificate.
285. Law enforcement officials in the Commonwealth and state and territory jurisdictions receive training, such as diversity training and cross-cultural awareness training. Each law enforcement agency retains responsibility for providing training to its officials.
286. This is complemented by a national training measure led by the Commonwealth to develop and deliver enhanced training to law enforcement in responding to family, domestic and sexual violence, including responses to diverse community groups such as First Nations communities, people with disability, culturally and linguistically diverse groups and LGBTIQ+.
287. Australia looks forward to engaging with the Committee on this report.

ACFID's General Comments on the *Draft CERD Periodic Report of Australia XXI-XXII*

30 October 2025



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The Australian Council for International Development (ACFID) would like to provide the following comments on the *Draft CERD Periodic Report of Australia XXI-XXII*. The comments relate to Section 6 (b): International engagement on racial discrimination, racism and Indigenous peoples.

ACFID believes the genuine and meaningful engagement of First Nations Australians perspectives and approaches in Australia's international development and humanitarian program is an important component of Australia's achievements under Section 6.

In 2023, the Australian Government announced the establishment of the Office for First Nations International Engagement following the earlier release of Australia's Indigenous Diplomacy Agenda in 2021. The Office is led by the Ambassador for First Nations People, Mr Justin Mohamed, the first dedicated First Nations representative in Australia's international engagement. ACFID welcomed both developments, noting the importance of prioritising Aboriginal and Torres Strait Islander approaches to Australia's foreign policy and development cooperation. Importantly, this year, the Australian Government released the *Guidance Note: Our Development Cooperation is Enhanced by First Nations Australians' Perspectives* which provides advice on how to integrate First Nations Australian knowledges and perspectives into international development programs.

ACFID promotes respect for Indigenous knowledge, cultures and traditional practices, and notes their critical importance to driving sustainable development in the communities where the Australian Government funds development and humanitarian projects. ACFID continues to support First Nations approaches shaping Australian development policy architecture, for example, the 2025-30 Australia - Timor-Leste Development Partnership Plan that reflects close engagement with First Nations Australians and includes commitments to embed First Nations perspectives into Australia's development program performance reporting.

ACFID looks forward the Australian Government's ongoing efforts to embed and incorporate First Nations Australians perspectives into development and humanitarian policy architecture and programming in the future.

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations involved in international development and humanitarian action.

united against poverty

ACFID unites Australia's non-government aid and international development organisations to strengthen their collective impact against poverty

31 October 2025

Feedback on Australia's Combined 21st and 22nd Reports under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Focus: Racial Discrimination, Drug Policy, and Criminal Justice

We appreciate the opportunity to contribute to the consultation on Australia's periodic report to the Committee on the Elimination of Racial Discrimination (CERD). As civil society organisations working at the intersection of drug policy, health, and human rights, we highlight the urgent need for the report to acknowledge the discriminatory impacts of punitive drug laws and their intersection with incarceration, youth justice, and health inequities affecting Aboriginal and Torres Strait Islander peoples.

Recommendations on the Current Report

To strengthen the accuracy and integrity of this periodic report, we recommend that:

1. The report explicitly acknowledge that no jurisdiction had raised the age of criminal responsibility to 14 by December 2023, and that some reforms have since been reversed.
2. The sections on incarceration and justice reinvestment be expanded to include discussion of structural drivers such as punitive drug law enforcement.
3. The health and wellbeing sections (paras 60 - 80) be updated to recognise that drug criminalisation exacerbates stigma and undermines access to culturally safe care.
4. References to truth-telling and human rights (paras 190 - 200) include recognition that current drug policies perpetuate racial discrimination and social disadvantage.

Broader Recommendations for Consideration by Australia

Beyond this reporting process, Australia should:

- Recognise drug law reform as a racial justice and human rights issue, consistent with truth-telling, treaty, and equality before the law.
- Commit to a national review of the discriminatory impacts of current drug laws on Aboriginal and Torres Strait Islander communities.
- Embed harm-reduction and culturally safe care in national health and justice frameworks, ensuring community-led design and delivery.

1. Health, Social and Emotional Wellbeing (paras 60 - 80)

The section on health equity and suicide prevention recognises the *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023*. However, the report omits reference to the impact of punitive drug laws on health and social outcomes.

Criminalisation of drug use undermines health equity by perpetuating stigma and deterring Aboriginal and Torres Strait Islander people from seeking help for substance use and mental health concerns. Over-policing, strip searches, and criminal sanctions contribute to fear and mistrust of health and social service systems, reinforcing cycles of criminalisation and poor health outcomes.

Punitive drug laws contribute to stigma, deter help-seeking for substance use and mental health issues, and disproportionately affect Aboriginal and Torres Strait Islander communities. Integrating harm-reduction principles and culturally safe models of care within the *National Aboriginal and Torres Strait Islander Health Plan 2021-2031* is essential to achieving health equity and aligns with the *National Agreement on Closing the Gap*.

2. Truth-Telling and Human Rights (paras 190 - 200)

The truth-telling and human rights sections recognise historical injustice but fail to address drug policy as a continuing mechanism of racial inequality. Drug criminalisation continues to reproduce colonial patterns of control, surveillance, and exclusion from social and economic participation.

Aboriginal and Torres Strait Islander people are disproportionately policed, charged, and imprisoned for drug-related offences despite comparable or lower rates of drug use than non-Indigenous Australians. Research and policing data consistently show higher rates of drug-related arrests among Aboriginal and Torres Strait Islander peoples for possession of cannabis and other illicit substances, particularly in regional areas where diversion and treatment options are limited.

Current drug laws perpetuate racial discrimination and social disadvantage, continuing colonial patterns of criminalisation. Addressing inequities in drug policy and policing practices is essential to truth-telling and ensuring substantive equality.

3. Minimum Age of Criminal Responsibility and Youth Justice (paras 105 - 120)

The report's presentation of reforms to raise the minimum age of criminal responsibility (MACR) is misleading and incomplete. Several jurisdictions announced plans to raise the age by December 2023, yet most reforms were not implemented or have since been reversed:

- **Northern Territory:** Raised the MACR from 10 to 12 on 1 August 2023; reversed by the incoming government, returning the age to 10 (after the reporting period).
- **Victoria:** Announced in April 2023 an intention to raise the MACR to 12 and later to 14 by 2027; in October 2024 the Government reduced its commitment to 12 only.
- **South Australia:** The MACR remains 10 years under section 5 of the *Young Offenders Act 1993 (SA)*. While the Government has considered raising it to 12 or introducing a diversion model for 10–11 year olds, no legislative change has occurred. The SA Government has walked away from this commitment and instead introduced the *Criminal Law Consolidation (Street Gangs) Amendment Bill 2025* which will further criminalise youth and in particular Aboriginal and Torres Strait Islander youth.

By 31 December 2023, no jurisdiction had raised the MACR to 14. The report should clarify this to avoid misrepresenting progress. Youth contact with the justice system often arises from minor drug-related or public-order offences; early punitive intervention entrenches lifelong justice system involvement and amplifies racial disparities. Reforms must be accompanied by community-based health and social programs addressing underlying factors including substance use and related harms.

Youth contact with the justice system is often precipitated by minor drug-related or public-order offences. Early punitive intervention entrenches lifetime involvement with the justice system and amplifies racial disparities. Reforms to the MACR must therefore be accompanied by community-based health and social programs addressing underlying causes of offending, including substance use and related harms.

4. Criminal Justice and Incarceration (paras 257 - 275)

The report's coverage of Aboriginal and Torres Strait Islander imprisonment is strikingly insufficient. It contains only a brief mention of justice reinvestment, omitting the structural drivers of mass incarceration - particularly drug-law enforcement.

- **Adult incarceration:** Aboriginal and Torres Strait Islander people comprised 33 per cent of prisoners as at 30 June 2023 despite representing only 3.8 per cent of the population (*ABS 2023*).
- **Youth incarceration:** Aboriginal and Torres Strait Islander children constitute over half of all children in detention and are detained at rates 20-25 times higher than their non-Indigenous peers (*Productivity Commission 2023*).
- **Drug-related imprisonment:** According to the *AIHW Indigenous Health and Justice dataset (2022)*, only 3.4 per cent of Aboriginal and Torres Strait Islander prisoners had a most-serious offence of illicit-drug offending (compared with 18.4 per cent of non-Indigenous prisoners). While the proportion is lower, drug-law enforcement remains a major pathway into justice involvement through over-policing, discretionary charging, and limited access to diversion.

This dynamic reflects the intersection of systemic racism and punitive drug policy. The *Veronica Nelson Inquiry (2023)* found that bail and sentencing reforms, combined with police discretion in drug enforcement, produced a "complete and unmitigated disaster" for Aboriginal women and children. The *Queensland Strengthening Community Safety Bill 2023*, which explicitly suspended the *Human Rights Act 2019 (Qld)*, reinstated bail-breach offences and detention in police watch-houses - measures disproportionately impacting Aboriginal youth.

The *Queensland Death Review Board* reported on the deaths of two First Nations boys who had spent extensive time in solitary confinement in youth detention in the 12 months before their deaths - one died by suicide shortly after release and one from a drug overdose - prompting findings that both deaths were preventable. The *Statement of Compatibility* tabled with Queensland's *Strengthening Community Safety Bill 2023* explicitly acknowledged that parts of the Bill were not compatible with the *Human Rights Act 2019 (Qld)* and included an override declaration to that

effect. Among other changes, the 2023 reforms made breach of bail an offence for children and enabled the continued detention of children in police watch-houses, measures that disproportionately affect Aboriginal and Torres Strait Islander children and raise serious concerns under international human rights standards. The Government justified these incompatibilities on “community safety” grounds - part of a pattern of overriding human rights protections in youth justice lawmaking in Queensland. The *Human Rights Law Centre (2023)* reported routine strip-searching in Queensland prisons, while the *UN Subcommittee on Prevention of Torture (2023)* and the *Australian National Preventive Mechanism* each raised grave concerns about the treatment of Aboriginal and Torres Strait Islander detainees and the absence of national human rights protections.

5. Conclusion

Australia’s draft CERD report fails to capture the extent to which drug policy continues to produce racial discrimination in health, policing, and criminal justice. Punitive drug laws entrench inequality, criminalise poverty, and perpetuate colonial patterns of control over Aboriginal and Torres Strait Islander lives. To present a credible account to the Committee, the Government must integrate drug policy within its analysis of structural racism and commit to reform that centres community-led, harm reduction approaches.

References

- Australian Bureau of Statistics, *Prisoners in Australia, 2023* (Catalogue No 4517.0, 7 December 2023).
- Australian Institute of Health and Welfare, *Indigenous Health and Justice Dataset* (AIHW, 2022).
- Australian National Preventive Mechanism, *Submission to the Committee Against Torture for Australia’s Sixth Periodic Review* (Canberra, 2023).
- *Criminal Law Consolidation (Street Gangs) Amendment Bill 2025* (SA).
- Coroners Court of Victoria, *Inquest into the Death of Veronica Nelson* (Coroner Simon McGregor, Findings, 30 January 2023).
- *Human Rights Act 2019* (Qld).
- Human Rights Law Centre, *Overlooked and Overrepresented: The Crisis of Strip Searches in Queensland* (Melbourne, 2023).
- Productivity Commission, *Youth Justice Report* (Commonwealth of Australia, 2023).
- Queensland Family and Child Commission, *Queensland Family and Child Death Review Board Annual Report 2022–23* (Brisbane, 2023).
- Queensland Parliament, *Strengthening Community Safety Bill 2023* (Qld), Statement of Compatibility, Parliamentary Debates, Legislative Assembly, 21 February 2023 (Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services).
- United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Australia Undertaken from 12 to 23 October 2022: Recommendations and Observations Addressed to the State Party* (CAT/OP/AUS/ROSP/1, 20 December 2023).



Review of Australia's periodic report to the Committee on the Elimination of Racial Discrimination

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our Member Centres across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 40 years.
 2. EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:
 - o strengthens the effectiveness and integrity of our social security system
 - o educates the community
 - o improves people's lives by reducing poverty and inequality.
 3. EJA thanks the Department of Foreign Affairs and Trade for the opportunity to review Australia's draft combined 21st and 22nd periodic report to the Committee on the Elimination of Racial Discrimination (CERD) under the *International Convention for the Elimination of All Forms of Racial Discrimination* (the Convention), noting the reporting period is November 2017 to December 2023.
 4. This submission relates to articles 1, 2 and 5 of the Convention which seek to ensure equal access to government services, including social security without distinction as to race, colour, or national or ethnic origin.
 5. Submission commentary is based on the experience of EJA members who advise and represent thousands of people each year to address barriers to their social security entitlement, some of whom experience discrimination as a result of race.
 6. EJA's primary concern relates to the scant mention of social security in the report, including the lack of reference to strategy and programs of the Department of Social Services and Services Australia.
 7. Social security is fundamental to many people's economic security, which is regularly a pre-cursor to social inclusion. It is vital the social security system include strategies to prevent and address race discrimination. That commitment and associated mechanisms should be reflected in Australia's reporting on international obligations.
- **Recommendation 1:** That the Treaty Reporting Body review the draft report and add additional references to the Australian Government's efforts to address race discrimination in the social security system.



8. Economic Justice Australia also suggests reference to the following.

Community Development Program

9. The Community Development Program (CDP) operated during the reporting period, noting Aboriginal and Torres Strait Islander people comprised 82.5% of CDP participants nationally and 93% in the Northern Territory (as of 2017).¹
 10. The CDP required participants to engage in more job activity hours than jobseekers in non-remote areas, also subjecting participants to strict non-compliance measures. There was little flexibility in relation to choice of work or establishing work arrangements to take into account cultural practices. Many participants were required to engage in demoralising work activities offering scarce job opportunities that would allow them to exit the program.
 11. This manner of operation led to a significant increase in penalties issued under the CDP compared with previous remote jobs programs.² Penalties in the form of payment suspensions exacerbated the financial insecurity many participants were already experiencing.
 12. EJA argues that given the above, operation of the CDP was racially discriminatory, with the consequences for many individuals disempowering, while also undermining financial security.
 13. Here, EJA notes that it is critical the new Remote Australia Employment Service, which will replace CDP on 2 November 2025, involves Aboriginal and Torres Strait Islander groups in all decision-making regarding design and implementation.³
- **Recommendation 2:** That the Treaty Reporting Body include reference in the draft report to the problematic nature of CDP with a commitment to involve Aboriginal and Torres Strait Islander groups in all decision-making regarding design and implementation of the Remote Australia Employment Service.

¹ Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio. Caseload at 29 September 2017.

² Fowkes, L. 'The application of income support obligations and penalties to remote Indigenous Australians, 2013-18' (Working Paper 126, 2019), Centre for Aboriginal Economic Policy Research, p. 10.

³ We note the concern of the Auditor-General about its design, including representation of Aboriginal and Torres Strait Islander groups in decision making: Australian National Audit Office, *Remote Employment Programs - National Indigenous Australians Agency*, Auditor-General Report No. 29 2023-4 (Performance Audit) 8. This is contrary to recommendation 6 of the Senate's Finance and Public References Committee about the CDP: The Senate's Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)* (December 2017) xii.



Compulsory Income Management

14. Compulsory income management has a disproportionate and discriminatory impact on Aboriginal and Torres Strait Islander people, who comprise 82% of all people subject to the scheme. Compulsory income management does not use a process of individualised assessment, but is instead applied based on place of residence. In regional, rural and remote areas of Australia, particularly the Northern Territory, this effectively operates as targeting based Indigenous status, rather than whether a person would benefit from inclusion in the scheme. Consequently, the scheme directly restrains and controls Aboriginal and Torres Strait Islander people's rights to freely pursue meaningful economic, social and cultural engagement, contrary to individual's right under the Convention.
15. There has been widespread criticism of the scheme's direct and indirect racial discrimination against Aboriginal and Torres Strait Islander people.⁴ Despite a commitment from the current government to phase out compulsory income management in favour of a voluntary scheme, and research by relevant government departments regarding means to do so, no public documents regarding process or timeline are available.⁵ EJA argues that compulsory income management should transition to a purely voluntary scheme at the earliest opportunity.
 - **Recommendation 3:** That the Treaty Reporting Body include at paragraph 136 of the draft report the discriminatory nature of the compulsory income management scheme, the Government's commitment to phase it out, and a timeline for its abolition.

Newly Arrived Residents Waiting Period and Special Benefit

16. Migrants with Australian permanent residency are usually precluded from social security due to the newly arrived residents waiting period (NARWP), which is set at four years for most income support payments. Although encouraged to come to Australia to address skills shortages, 'recently arrived' permanent residents are effectively without a safety net if they lose employment. That includes exclusion from Special Benefit despite it being the income support payment 'of last resort', with associated low rate of payment and a particularly harsh income test. This disadvantages migrant permanent residents of

⁴See Anaya, J., Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Situation of Indigenous People in Australia, 4 March 2010, A/HRC/15/37/ Add.4, appendix B, para 37. 2 Parliamentary Joint Committee on Human Rights, 'Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation' (June 2013), at para 1.223.

⁵ Parliamentary Joint Committee of Human Rights, Inquiry into Compulsory Income Management' (September 2024) at para 3.10 citing evidence of Mrs Letitia Hope, Deputy Secretary, Families and Communities, Department of Social Services, *Committee Hansard*, 5 July 2024, p 44.



Australia, increasing inequality between them and the rest of the community, leaving people vulnerable to financial distress and exploitation.

17. Qualification for Special Benefit is restricted to people in severe hardship for reasons beyond their control. While the NARWP may be waived if the person has 'suffered a substantial change of circumstances beyond [their] control' after arriving in Australia, in practice it is very difficult to satisfy this criteria and people remain without income or government support. That leaves not only individuals but whole families trying to survive without income. EJA recommends abolition of the NARWP to allow equitable access to the social security system.
 18. Qualification for Special Benefit is not available to all visa holders, locking out people who have lost employment or otherwise cannot work, leaving them in dire circumstances. There is a particularly severe impact on long-term residents of Australia born in New Zealand who are granted entry to Australia under a unique visa, the Special Category visa. This visa allows them to live and work in Australia indefinitely, while paying tax and contributing to superannuation, but technically the Special Category visa is temporary and without prompts or an avenue to obtain permanent residence. Although a new pathway to citizenship was recently introduced, it is important to note that only New Zealand citizens are affected by the requirement to become an Australian citizen before they can access the social security support available to permanent residents originally from any other country. EJA recommends the extension of visa sub-classes that attract Special Benefit to allow all people who have moved to Australia to access essential social security support.
 19. EJA notes that victim-survivors of family and domestic violence can be particularly disadvantaged. It is not uncommon for EJA members to support a woman who is trapped in a violent relationship without access to income support or alternative housing while unable to secure social security support. That includes where the perpetrator is an Australian citizen, and often the father of an Australian resident child. In other cases, the victim-survivor may have left the perpetrator, but be unable to leave Australia with her child who is the subject of family law proceedings – all while unable to secure income support. Attention to this issue is urgently required.
- **Recommendation 4:** That the Treaty Reporting Body include in the draft report reference to the discriminatory factors excluding migrants from social security due to the NARWP and the restrictive eligibility and harsh conditions associated with Special Benefit.



Access to translation and interpreter services

20. Limited accessibility to non-English language services, including print resources and face-to-face interpreters at Services Australia services centres, creates significant hurdles for non-English-speaking people, impeding their right to social security. That includes the capacity to access entitlements in a timely way and seek administrative review where necessary. This issue applies to people who have migrated to Australia but also to First Nations people in remote and very remote Australia whose first language may not be English.
21. Community service providers have reported to EJA a noticeable reduction in the availability of interpreters and Multicultural Support Officers at service centres in the years following the COVID-19 lockdowns; services that are critical to address language barriers. Existing interpreter services, particularly phone-based services, have often been difficult to access, leading to frustration and potential miscommunication. Services Australia front-line staff's reticence to use interpreters for short or transactional communication leads to people with social security entitlements being denied assistance, noting EJA is aware of numerous instances of people being incorrectly told they are ineligible for payment then being physically escorted from Services Australia's service centres in a state of distress.
22. While some translated services are available online, EJA remains concerned about their limited content, noting many communication products are also available in only a few languages. Further, critical correspondence relating to recipients' obligations and rights is routinely sent to people who are known to require the assistance of an interpreter, in English only. Australian social security law then operates on the basis that the person is taken to have read and understood the content, limiting avenues for review and remedy.
23. EJA recommends greater commitment and funding for translating and interpreting services by Services Australia.
 - **Recommendation 5:** That the Treaty Reporting Body include reference in sub-section 3 of section D 'Article 5: Equality before the law' of the draft report to Services Australia's Multicultural Service Officers and translating and interpreting services.
24. Please contact Anusha Goonetilleke, Senior Policy Officer by email ^{s 47F(1)} [@ejaaustralia.org.au](mailto:aeja@ejaaustralia.org.au) or by phone ^{s 47F(1)} if you have any questions or would like further information.

^{s 47F(1)}

Senior Policy Officer

Economic Justice Australia

31 October 2025

s 22(1)(a)(ii)

From: s 47F(1) @alsnswact.org.au>
Sent: Friday, 7 November 2025 3:31 PM
To: Treaty Body Reporting
Cc: s 47F(1) NATSILS secretariat
Subject: [EXTERNAL] RE: Opportunity to comment on Australia's CERD Report
 [SEC=OFFICIAL] - error

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

To whom it may concern

Regrettably, NATSILS has not had the capacity to review and comment on the entire draft of Australia's CERD Report in detail.

However, I do want to point out a typo and a mis-description at para 11 highlighted in yellow below.

- "211 Th Custody Notification Service (CNS) provides culturally appropriate health and wellbeing checks and basic legal information to First Nations people in custody"

This should read, instead as:

- "The Custody Notification Service (CNS) provides culturally appropriate health and wellbeing checks and legal advice to First Nations people in custody"

NATSILS also suggests that the *National Agreement on Closing the Gap* (NACTG) should be referenced in paragraph 68. I note NACTG is referenced at paras 85 onwards.

Please note that these comments and corrections should not be taken to mean NATSILS endorses Australia's Report.

Don't hesitate to call.

s 47F(1)

s 47F(1)

National Aboriginal and Torres Strait Islander Legal Services (NATSILS)

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**Aboriginal
Legal Service**
(NSW/ACT) Limited



The ALS acknowledges the Traditional Owners and Custodians of the lands on which we live, work and travel.

We pay our respects to Elders both past and present and acknowledge the contribution and sacrifice our Elders have made to better our community and future.

This email (including any attachments) contains information which may be confidential, subject to legal professional privilege and/or protected by copyright. You must not use, reproduce, copy or disclose this information other than for the purposes for which it was supplied. If you are not the intended recipient, or if this email or attachments have been sent to you in error, please delete it and notify the sender immediately. Any confidentiality or privilege is not waived or lost because this email has been sent to you by mistake.

From: Treaty Body Reporting <treatybodyreporting@dfat.gov.au>

Sent: Monday, 13 October 2025 5:05 PM

Subject: Opportunity to comment on Australia's CERD Report [SEC=OFFICIAL]

OFFICIAL

Good Afternoon,

Many thanks for expressing an interest in reviewing Australia's draft combined 21st and 22nd periodic report to the Committee on the Elimination of Racial Discrimination (CERD) under the *International Convention for the Elimination of All Forms of Racial Discrimination* (the Convention).

The draft report covers the period from November 2017 to 31 December 2023, to coincide with the beginning of the 21st cycle and the end of the 22nd reporting cycle. DFAT is working to submit the combined 21st and 22nd periodic report to the Committee in 2025.

The structure and content of the report has been determined through the [CERD Reporting Guidelines](#) and the topics raised by the CERD in its [Concluding Observations](#). There is a strict word limit of 21,200 words / 60 pages in total for the final report.

In preparing the attached draft report, we have consulted with a broad range of Commonwealth agencies and all states and territories, as well as the Australian Human Rights Commission. In due course, Australia will appear before the CERD in relation to our periodic report.

If you have feedback or comments on the draft report, please provide it in written form to treatybodyreporting@dfat.gov.au by **COB Friday 31 October 2025**. Submissions will be relayed to relevant government agencies for their consideration, noting that government agencies provide final input on their areas of responsibility covered in the periodic report prior to its submission to the CERD. Summaries of submissions will be made public and attached to the CERD report as annexes (please note, summaries will not be translated by the UN).

We value the feedback you will provide. We kindly request you keep comments concise and focused to ensure efficient review and consideration:

- If you are providing general comments, we invite you to provide them in a word document and suggest a maximum length of only a few pages; and
- If you wish to provide suggested edits to the draft report, please do so in tracked changes in a word document.

As this remains a draft report, please do not circulate this draft report more widely. If there are other organisations that indicate their interest in reviewing this report, please let us know or share our

contact details with them. This will ensure we are able to track and manage the consultation process effectively.

We look forward to receiving your input.

Kind regards,

Human Rights Branch
Department of Foreign Affairs and Trade

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We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging

From: Treaty Body Reporting
Sent: Thursday, 2 October 2025 11:23 AM
Subject: Invitation to Comment on Australia's CERD Report [SEC=OFFICIAL]

OFFICIAL

Good afternoon,

The Department of Foreign Affairs and Trade (DFAT) is coordinating Australia's combined 21st and 22nd periodic report under the *International Convention for the Elimination of All Forms of Racial Discrimination*, which will be presented to the UN Committee on the Elimination of Racial Discrimination (CERD) in 2025.

We have consulted across Commonwealth, State and Territory Departments in preparing the draft report, and would welcome views from civil society.

Please respond to this email by close of business on **Friday, 10 October 2025** if your organisation would like to review Australia's draft CERD report and we will share the draft with you promptly.

Kind regards,

Human Rights Branch
Department of Foreign Affairs and Trade

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We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging



Feedback to the Department of Foreign Affairs and Trade on Australia's draft combined 21st and 22nd periodic report to the Committee on the Elimination of Racial Discrimination (CERD) under the *International Convention for the Elimination of All Forms of Racial Discrimination*.

Feedback from the National Council of Churches in Australia

The [National Council of Churches in Australia](#) (NCCA) is the peak representative body for 18 national churches sharing a common faith in Jesus Christ and together building a future of hope, justice and peace for all people in Australia.

This feedback focusses on the dignity and human rights of Aboriginal and Torres Strait Islander peoples and the systemic racism experienced by them.

The Churches of the NCCA are committed to working together for justice and healing for Aboriginal and Torres Strait Islander Australians. NCCA believe that Aboriginal and Torres Strait Islander Peoples, nurtured and sustained by God before colonisation, are at the very heart of what it means to be Australian.

NCCA affirms the [Uluru Statement from the Heart](#) (2017) and has a focus on indigenous advocacy that is informed by our Christian faith and our responsibility as followers of Christ to respond to those who experience injustice and poverty. Many of our churches have indigenous leaders and members, and provide services in housing, healthcare, education and community supports across the country with indigenous communities.

The NCCA appreciates the opportunity to provide feedback to the Department of Foreign Affairs and Trade (DFAT) on Australia's draft combined 21st and 22nd periodic report to the Committee on the Elimination of Racial Discrimination (CERD) under the *International Convention for the Elimination of All Forms of Racial Discrimination* (the Convention).

Discrimination against First Nations People

Whether it is racism that results in the death of our young people in the streets or unacceptable practices by police and prison officers, we feel great hurt and keep asking when it will end. We keep asking whether our black lives matter.¹

The NCCA is deeply concerned about persistent systemic racial discrimination affecting Aboriginal and Torres Strait Islander peoples across multiple spheres including youth justice, incarceration, Indigenous deaths in custody, child protection, and access to equitable services. These issues form the major part of DFAT's draft plan. This submission highlights some of the priority issues and sets out recommendations for DFAT's consideration.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth

¹ Australian Catholic Bishops' Conference, Social Justice Sunday Statement 2023-24: *A New Engagement with Aboriginal and Torres Strait Islander Peoples*, p. 10. [Link](#).

*languish in detention centres in obscene numbers. They should be our hope for the future.*²

The poignancy of this statement is felt ever more acutely today with multiple crises impacting the human rights of Aboriginal and Torres Strait Islander peoples who are part of the oldest living culture in the world, as well as amongst those who experience racism and the most disadvantage. However, the latest *Closing the Gap* Report (July 2025) states: *Most Aboriginal and Torres Strait Islander young people grow up in loving and supportive homes and continue to show resilience, developing and maintaining strong connections to their family, community and culture. Closing the Gap* (2025:103) attributes the over representation in the criminal justice system *to systemic bias and racism.*³

Aboriginal and Torres Strait Islander communities experience lower life expectancy and poorer health outcomes, while encountering higher rates of infant and maternal morbidity and mortality, family and domestic violence, suicide, and incarceration. There are both historical and current contributors to this disadvantage and infringement of human rights, and the experience of colonialism and suppression of Aboriginal and Torres Strait Islander cultures have an ongoing negative effect.

Many of the drivers of disadvantage are systemic and structural. As well as addressing disadvantage as it is experienced, there is need to address indigenous rights and the underlying structures which cause, or lead to, discrimination and hardship, especially systemic racism, understood as the ways policies, structures and institutions produce unequal and discriminatory outcomes for First People, however unintentional.

Over-representation of First Nations children in youth justice & custodial settings

Proportionally, Australia's First Peoples are the most incarcerated people on the planet. First Peoples comprise over 30% of the adult prison population. Aboriginal and Torres Strait Islander youth constitute 6.6% per cent of the total youth population in Australia but represent 60% of youth in detention aged 10 and over across the country.⁴ UN Special Rapporteurs have expressed concern about these statistics.⁵ The *Closing the Gap* target is that by 2031, there will be a reduction in the rate of Indigenous young people (10–17 years) in detention by at least 30%. Australia has made no progress on this target. It is difficult not to be persuaded that long-term structural racism lies behind these figures.

A number of Aboriginal legal scholars and leaders in an urgent note to the Committee on the Elimination of Racial Discrimination on Australia's youth justice laws, under the Committee's Early Warning and Urgent Action procedure, conclude that: *Racial discrimination is embedded throughout Australia's youth justice system – a system that targets and disproportionately impacts Indigenous children.*⁶ First Nations children are disproportionately represented at every stage of the youth justice system.

² Uluru Statement from the Heart, 2017, [Link](#)

³ Productivity Commission: *Closing the Gap*, July 2025 [Link](#)

⁴ Australian Institute of Health and Welfare: *Youth detention population in Australia* 2024 [Link](#)

⁵ UN Office the Human Rights Commission, *media advisory*, 2025 [Link](#)

⁶ Human Rights Law Centre, *UN CERD complaint on youth justice*, 2025, [Link](#)

The Interim report of the Senate Legal and Constitutional Affairs References Committee highlights serious concerns about the youth justice system.⁷ First Nations children account for approximately 60% of all children in unsentenced detention despite making up only a small percentage of the youth population. The report underscores the systemic racism and intergenerational disadvantage that drive this over-representation. Furthermore, the absence of Aboriginal and Torres Strait Islander legal services in many areas leaves First Nations people without proper legal representation. First Nations children aged 10-13 are particularly overrepresented, facing higher rates of arrest and detention than non-Indigenous children. Incarceration significantly increases a child's risk of reoffending, disrupts education, and exacerbates trauma. Many detained children have unmet disability, mental health, and social support needs, making detention an ineffective and harmful response

Failure to Address Underlying Causes

There is a lack of investment in early intervention, rehabilitation, and diversion programs, which are essential to breaking the cycle of incarceration. Instead, children are often criminalised for behaviours linked to trauma. Many children in detention have experienced family violence, poverty, homelessness, or involvement with child protection systems, yet limited services address these root causes. Punitive approaches, such as harsher sentencing and increased policing, fail to improve community safety and disproportionately impact these vulnerable children.

Unmet human rights standards

Australia's youth justice system violates international human rights obligations, including the UN Convention on the Rights of the Child. The use of watch houses, prolonged detention, and harsh conditions in youth justice centres raise serious concerns about Australia's compliance with international standards. The Centre for Excellence in Child and Family Welfare documents the use of watch-houses, prolonged detention and harsh conditions for children.⁸ Despite inquiries, repeated recommendations and decades of advocacy, deaths in custody and concerns about racist policing practices persist. Past CERD/UN recommendations remain partially unimplemented.

Closing the Gap

Successive governments have committed to "Closing the Gap" between outcomes experienced by Aboriginal and Torres Strait Islander peoples and those enjoyed by non-Indigenous Australians. With the *Closing the Gap* targets, there have been positive outcomes. Near universal enrolment in pre-school has been achieved. Over the last 12 years the number of First Peoples commencing university courses has more than doubled.⁹ After adjusting for population growth and ageing, there was a 15% decrease in total burden of disease for First Peoples between 2003 and 2018, based on recent analysis.¹⁰

⁷ Parliament of Australia: *Australia's youth justice and incarceration system report*, 2025 [Link](#)

⁸ Centre for Excellence in Child and Family Welfare: *Report on Australia's youth justice and incarceration system*, 2025 [Link](#)

⁹ Productivity Commission: *Closing the Gap Information Repository – Higher education commencement, attrition and completion rates* 2025 [Link](#)

¹⁰ Australian Institute of Health and Welfare: 2024, *Health and wellbeing of First Nations people*.

While there are positives that include increased life expectancy, better health outcomes, improved educational opportunities, and greater economic participation, the progress that was intended in the *Closing the Gap* targets is not being achieved. The Productivity Commission Review reports¹¹ in February 2024 and July 2025 encourages governments to involve Aboriginal and Torres Strait Islander people, organisations, and communities in assessing and addressing institutional racism and unconscious bias. The report also highlights the importance of empowering Indigenous communities to drive their own solutions and participate actively in decision-making processes.

While governments have committed to *Closing the Gap* there are still issues with how the policies and programs created to close the gap are designed and implemented. It is critical that governments co-design and work with Aboriginal and Torres Strait Islander peoples in good faith to design programs that are truly fit for purpose and culturally appropriate.

Only four out of 19 *Closing the Gap* targets are on track. Children thriving in early childhood, imprisonment rates, the proportion of children in out-of-home care, and social and emotional wellbeing, have all worsened in recent years.¹² The most recent review identified four targets that continue to worsen: incarceration rates for adults; children assessed as developmentally on track; children in out-of-home care; and, alarmingly, suicide rates.¹³ The National Aboriginal and Torres Strait Islander Catholic Commission points to the underlying cause as being racism:

*All the problems we have mentioned are simply symptoms of a deeper wound, which was first opened by the racism of colonisers over two centuries ago. This first cut is the deepest wound which has never had a chance to heal because the racism that caused it has never gone away.*¹⁴

Healing can come about by all Australians listening to the truth of the experience of First Nations people and acknowledging the original and on-going injustice. The government at federal and state levels must develop appropriate structures for formal truth-telling and treaty making to occur.

The Australian Government should commit to sustainable funding and resourcing of Aboriginal Community Controlled Health Organisations that provide early intervention and diversionary services. Federal and state governments are failing to embed the priority reforms in policy and funding decisions, with the commitment to shared decision-making rarely achieved in practice. Community-driven solutions work, yet move away from top-down approaches is slow.

Failure of the Voice referendum

October 2023 saw the failure of a constitutional referendum to create a Federal Voice to Parliament that would be a permanent advisory body to the government about the

¹¹ Productivity Commission: 2024 *Closing the Gap* Information Repository. [Link](#)

¹² Productivity Commission: 2025 *Annual data compilation report*. [Link](#)

¹³ Productivity Commission: 2025 *Annual data compilation report*. [Link](#)

¹⁴ Australian Catholic Bishops' Conference, Social Justice Sunday Statement 2023-24: *A New Engagement with Aboriginal and Torres Strait Islander Peoples*, p. 11, [Link](#).

issues affecting First Nations peoples. While most Church leaders and indigenous communities supported the Voice: 60 % of Australians voted against it. The impact of this is still being felt by communities across the country, as First and Second Peoples try to discern the way forward. The Australian Government has committed to implementing the Uluru Statement from the Heart in full. In the wake of the “No” referendum result in 2023, it is critical that action to address historic and contemporary human rights injustices, and centre Aboriginal and Torres Strait Islander voices in every conversation that concerns them, is maintained.

Recommendations

1. The request for a national Makarrata (Treaty) Commission from the Uluru Statement from the Heart still stands. The federal government should not leave treaty and truth-telling processes to State and Territory governments alone, but should commit to a national approach to truth-telling that would inform and support the local, State and Territory processes, and provide a national repository of Australian history. The government at federal and state levels must develop appropriate structures for formal truth-telling to occur, leading to communal acceptance of the ongoing impact of colonisation and racism, including the story of the Stolen Generations, and the ongoing impacts of trauma on First Peoples’ families and communities.
2. Self-determination at federal, state and local levels must be informed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), giving First Peoples’ communities full control over decisions impacting their lives, country and cultural sites.
3. The age of criminal responsibility in most Australian states and territories is 10. This contravenes the benchmark of a minimum age of 14 established in international law. Australia has been widely criticised for not adhering to international recommended standards.¹⁵ In the 2020 Universal Periodic Review, 25 countries called on Australia to raise the minimum age of criminal responsibility to 14 and this recommendation remains valid. The majority of Churches advocate for increasing the minimum age from 10 to at least 14 years, in line with international human rights standards.
4. The Australian Government should enshrine a National Children’s Act to embed the Convention on the Rights of the Child and ensure that state and territory juvenile justice systems are fully compliant by raising the minimum age of imprisonment.
5. Urgent changes are needed to ensure bail laws do not disproportionately penalise First Nations peoples. Set a target to reduce overrepresentation of Indigenous young people in detention and end the use of watch-houses for children.
6. Investment in early intervention and community-led programs: Funding should be directed towards First Nations-led diversionary programs and alternative sentencing models focusing on rehabilitation rather than punishment.

7. Prison must be a last resort. Reduce the use of prisons for non-violent offences and expand restorative justice approaches and address underlying causes of offending, such as homelessness and mental health issues.
8. Improve conditions in youth detention. Implement stronger oversight mechanisms to prevent abuse, ensure children's rights are upheld, and provide access to therapeutic support, education, and rehabilitation services.
9. While governments have committed to *Closing the Gap*; policies and programs created to close the gap are insufficiently designed and implemented. Governments must work with Aboriginal and Torres Strait Islander peoples in good faith to co-design programs that are truly fit for purpose and culturally appropriate. Sufficient funding targeted to achieve the *Closing the Gap* outcomes must be provided, prioritising Aboriginal and Torres Strait Islander community-controlled organisations to deliver services wherever possible. Government departments must provide significant and consistent resources for Aboriginal and Torres Strait Islander controlled community health and wellbeing services, to improve health, education, mental health and social outcomes particularly in remote communities.
10. First People languages must be preserved, taught and incorporated into civic functions. True bilingual education must become a reality for First Peoples where English is not a first language.

References

Australian Catholic Bishops' Conference, Social Justice Sunday Statement 2023-24: *A New Engagement with Aboriginal and Torres Strait Islander Peoples* [Link](#).

Australian Catholic Bishops' Conference, *Building Bridges, Not Walls: Prisons and the justice system, 2011- 2012* Social Justice Statement, [Link](#)

Australian Human Rights Commission (2024). *Help way earlier!: How Australia can transform child justice to improve safety and wellbeing*. [Link](#)

Institute of Health and Welfare (2024), *Health and wellbeing of First Nations people*.

Catholic Religious Australia (2024), *Submission to Inquiry into Australia's youth justice and incarceration system*. [Link](#)

Centre for Excellence in Child and Family Welfare (2025): *Report on Australia's youth justice and incarceration system*, [Link](#)

Human Rights Law Centre (2025), *UN CERD complaint on youth justice*, [Link](#)

Jesuit Social Services (2024), *Submission to Inquiry into Australia's youth justice and incarceration system*, [Link](#)

Productivity Commission (2025), *Closing the Gap Information Repository*.

Quakers Australia (2025) *Letter to Minister for Indigenous Affairs*. [Link](#)

Quakers Australia (2021) *Letter to Human Rights Commission regarding detention of First Nations People* [Link](#)

Salvation Army Australia (2018) *Aboriginal and Torres Strait Islander children in detention*. [Link](#)

Salvation Army Australia (2025) *Social Justice Stocktake 2025*, [Link](#)

Uluru Statement from the Heart (2017), [Link](#)

Uniting Church in Australia Assembly (2025) *Our Vision for a Just Australia 2025*, [Link](#)

UN Office the Human Rights Commission (2025), *media advisory*, [Link](#)

Contact: NCCA Secretariat, secretariat@ncca.org.au Tel. 02 9299 2215



REVIEW OF AUSTRALIA'S DRAFT REPORT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) REPORTING PERIOD: NOVEMBER 2017–DECEMBER 2023

Established in 1981, the Refugee Council of Australia (RCOA) is the national peak body for people from refugee and asylum-seeking backgrounds and the organisations and individuals who work with them. Through our research, public advocacy and policy submissions, RCOA has consistently highlighted the systemic impacts of racism on refugee communities, calling for more equitable and humane policies that uphold dignity and inclusion. RCOA strongly endorses the National Anti-Racism Framework developed by the Australian Human Rights Commission (AHRC) as well as the recommendations put forward in the Multicultural Framework Review.

1. Introduction

The draft CERD report needs to provide a more comprehensive assessment of Australia's refugee and asylum policies. It currently omits reference to Australia's Global Refugee Forum (GRF) [pledges](#), which highlight national commitments to refugee resettlement pathways and global responsibility-sharing. It also overlooks the Australian Government's responses to recent international crises. In 2022, the Government committed [26,500 humanitarian visa places](#) over four years for people fleeing Afghanistan. In the same year, the Government [issued](#) temporary humanitarian visas to Ukrainians in Australia who fled the war. More recently, temporary humanitarian visas have been extended to Palestinians and Israelis fleeing the current conflict.

While the Australian Government takes its international protection and *non-refoulement* obligations seriously, the [UN Human Rights Council](#) found it in breach of its international obligations concerning the arbitrary detention of asylum seekers transferred to Nauru in 2014. There is also a lack of transparency regarding [offshore processing](#), including the ongoing transfer to Nauru, interception and return of people seeking asylum, where many remain without durable solutions alongside a transitory cohort in Australia.

Similar concerns apply to onshore immigration detention, where the number of detainees and the duration of their detention are not disclosed. Furthermore, government statements suggesting that people in detention receive health services equivalent to those available in the broader community are not supported by [independent assessments](#).

Additionally, the report omits significant reforms such as the abolition of the Administrative Appeals Tribunal (AAT) and Immigration Assessment Authority (IAA), as well as the granting of 20,000 Resolution of Status visas to people [previously on TPV and SHEV visas](#). While the previous Tribunal was abolished in 2024, the [Albanese Government](#) had made its intention to dismantle it in 2022.

Finally, there is a lack of detail in the report concerning the services available for people seeking asylum. Currently, thousands of people seeking asylum are [denied a safety net](#) and are excluded from accessing government funded services such as Centrelink, Medicare and NDIS. Most people are unable to access the federally funded program intended to support people seeking refugee protection, the Status Resolution Support Services (SRSS), due to strict eligibility criteria. The report needs to be clearer about the length and duration of visa processing and the variation of bridging visa conditions for people awaiting protection decisions.

2. Refugee and humanitarian entrants

There current report could more fully comment on Australia's resettlement program. The Australian Government has shown positive global leadership roles relating to refugee resettlement and complementary pathways through its [pledges](#) at the December [2023 Global Refugee Forum](#). This includes a commitment in funding on matters relating to resettlement, community sponsorship, refugee labour mobility, education, mental health, immigration detention, refugee participation, gender, refugee travel documents, statelessness, international cooperation, peacebuilding, the needs of Rohingya refugees and displacement in and from Afghanistan and Sudan.

As Australia approaches the milestone of issuing its one [millionth permanent humanitarian visa](#) since the end of World War II, the report should highlight this as an opportunity to reflect on the success of Australia's resettlement program and its contribution to building a diverse and cohesive multicultural society. Recognising this achievement would reinforce Australia's longstanding humanitarian commitment and the importance of promoting inclusion, solidarity and the elimination of racism within the community.

3. Offshore Processing

While Australia continues to demonstrate leadership in humanitarian resettlement, the report does not adequately address the [ongoing concerns](#) associated with offshore processing arrangements in Nauru and Papua New Guinea. Of the 3,129 people sent to Manus Island and Nauru between July 2013 and mid-2014, approximately 800 are in Australia with no permanent status. This includes 32 people who remain stranded in PNG and around 100 people in Nauru who were transferred there between September 2023 and May 2025. These arrangements have been [widely criticised](#) for exposing asylum seekers and refugees to serious human rights risks, yet the report provides little information on the current status of those affected. The absence of independent oversight and limited public reporting make it difficult to assess their living conditions, freedom of movement and progress toward durable solutions.

We recommend that the report acknowledge the findings of international human rights bodies, including the UN Human Rights Committee (2025), which determined that Australia remains responsible for the arbitrary detention of asylum seekers transferred offshore, as well as the longstanding concerns raised by the [UN Special Rapporteur on the Human Rights of Migrants](#). In addition, recent legislative developments, such as those introduced in 2024 and 2025 enabling forced deportations and removing natural justice warrant transparent discussion, including how the Government intends to ensure compliance with Australia's international obligations.

4. Determination of refugee status

The report should acknowledge the protection system reforms introduced by the Government in 2023, including the allocation of a [\\$160 million package](#) to restore integrity to Australia's refugee protection framework. This package provides additional funding and resources across the primary, review and court stages of protection visa processing in efforts to reduce in the backlog of applications. The Government also replaced the AAT and IAA with the [Administrative Review Tribunal \(ART\)](#), supported by additional resources and merit-based appointments. These reforms reflect positive steps towards a fairer and more effective protection system. Their inclusion in the report is essential to accurately represent recent developments.

5. Assistance during determination of refugee status

The report needs to provide an accurate reflection of the support available to people seeking refugee protection during the determination of their refugee status. Assistance remains highly variable and often exclusionary, with visa conditions differing according to mode of arrival and stage of visa processing. While some state governments provide targeted support, including public transport concessions, counselling services, fee waivers for public schooling and access to TAFE courses, thousands remain locked out of work, healthcare, financial assistance and other basic support.

This leaves many individuals exposed to poverty, homelessness, modern slavery and severe mental health challenges due to visa ineligibility to mainstream services. People seeking asylum are also denied access to Commonwealth-supported loans for university study.

The Status Resolution Support Services (SRSS) program, once a vital safety net for asylum seekers experiencing hardship, is now [largely inaccessible](#) due to restrictive eligibility criteria and substantial cuts of over 95% (more than \$280 million) since 2017. These changes have put immense pressure on charity organisations and frontline asylum agencies who have no federal funding. The report needs to provide updated information on these changes to ensure a current understanding of Australia's asylum support system.

The absence of a basic safety net for people seeking asylum in Australia is a significant driver of racial discrimination and the marginalisation of ethnic and persecuted minorities. Policies that exclude asylum seekers from essential services and rights such as healthcare, employment and social support effectively segregate and dehumanise refugees as “outsiders,” a narrative often reinforced in parts of the media and anti-immigration discourse. This systemic exclusion fosters a two-tiered society, where individuals from minority backgrounds are relegated to a second-class status, intensifying racial prejudice and social division.

6. Onshore immigration detention

The draft report stipulates that the length and conditions of immigration detention are subject to regular review by the Department of Home Affairs, the Commonwealth Ombudsman and the AHRC. However, the report fails to provide adequate transparency regarding the number of people in immigration detention and the duration of their confinement. According to [Home Affairs](#), as of 31 August 2025, there were 1,005 people held in immigration detention facilities, with an average detention period of 445 days. By comparison, the average detention period in 2024 was 46.9 days in the United States and 16 days in Canada. Australia has no statutory time limit on immigration detention, even in cases where prolonged detention causes serious harm.

We also recommend that the report acknowledge the significant shift in the demographics of immigration detention over the past decade. While detention once primarily affected asylum seekers, the majority of those currently detained are people whose visas have been cancelled on character grounds (50% as of August 2025). This shift has coincided with the increasing securitisation of detention facilities, which have become more prison-like through the addition of high fences and enhanced security infrastructure. The [AHRC](#) has described “high care” accommodation units from its 2019 inspections as “harsh, highly restrictive, and unsuitable for quarantine.” The report needs to reflect these changes to present an accurate account of Australia's immigration detention system.

The report states that the Australian Government contracts a health provider to ensure health services in detention are “comparable to those available to the Australian community.” However, there is a [‘legislative vacuum’](#) around the provision of health care to people in immigration detention. Neither the *Migration Act* nor the *Migration Regulations* require the provision of a reasonable standard of healthcare in immigration detention. Longstanding and systemic failures to provide adequate healthcare have been well [documented](#). Ongoing concerns include arbitrary transfers within the detention network that disrupt continuity of care and the routine use of handcuffs during offsite medical appointments, sometimes against medical advice, which can deter detainees from seeking treatment or trigger trauma responses, undermining access to care.

The legislative principle that detention of children is to be of last resort does not override the legislative requirement to detain a person who does not have valid visa. Thus, there is no impediment to the detention of children. The report also fails to mention women in immigration detention. The [AHRC 2024 report](#) found that in an overwhelmingly male system, women are often overlooked in detention planning with inadequate infrastructure programs, access to services and staff training. It also raised serious concerns about harassment, privacy and safety due to women being housed near or with men.

s 22(1)(a)(ii)

From: SPG Multicultural Peak <multiculturalpeak@socialpolicy.org.au>
Sent: Wednesday, 29 October 2025 3:19 PM
To: Treaty Body Reporting
Subject: [EXTERNAL] Re: Opportunity to comment on Australia's CERD Report [SEC=OFFICIAL]
Attachments: [SPG comments] DRAFT CERD Periodic Report of Australia XXI-XXII_for consultation.docx
Follow Up Flag: Follow up
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CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Good Afternoon,

Thank you for sharing Australia's draft combined 21st and 22nd periodic report to the Committee on the Elimination of Racial Discrimination (CERD) under the *International Convention for the Elimination of All Forms of Racial Discrimination*.

Please find attached Word document containing comments from The Social Policy Group.

We appreciate the opportunity to provide input and hope our comments assist in strengthening the final report.

Kind regards,

s 47F(1)

Manager – Multicultural Affairs

T: s 47F(1) **M:** s 47F(1) **W:** socialpolicy.org.au

46 Jardine St, Kingston ACT 2604

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We acknowledge the Traditional Custodians of the land across Australia for their continuing connection to land, sea, community, and culture. We pay our respects to their Elders past, present and emerging.

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From: Treaty Body Reporting <treatybodyreporting@dfat.gov.au>
Date: Monday, 13 October 2025 at 5:05 pm
To:
Subject: Opportunity to comment on Australia's CERD Report [SEC=OFFICIAL]

OFFICIAL

Good Afternoon,

Many thanks for expressing an interest in reviewing Australia's draft combined 21st and 22nd periodic report to the Committee on the Elimination of Racial Discrimination (CERD) under the *International Convention for the Elimination of All Forms of Racial Discrimination* (the Convention).

The draft report covers the period from November 2017 to 31 December 2023, to coincide with the beginning of the 21st cycle and the end of the 22nd reporting cycle. DFAT is working to submit the combined 21st and 22nd periodic report to the Committee in 2025.

The structure and content of the report has been determined through the [CERD Reporting Guidelines](#) and the topics raised by the CERD in its [Concluding Observations](#). There is a strict word limit of 21,200 words / 60 pages in total for the final report.

In preparing the attached draft report, we have consulted with a broad range of Commonwealth agencies and all states and territories, as well as the Australian Human Rights Commission. In due course, Australia will appear before the CERD in relation to our periodic report.

If you have feedback or comments on the draft report, please provide it in written form to treatybodyreporting@dfat.gov.au by **COB Friday 31 October 2025**. Submissions will be relayed to relevant government agencies for their consideration, noting that government agencies provide final input on their areas of responsibility covered in the periodic report prior to its submission to the CERD. Summaries of submissions will be made public and attached to the CERD report as annexes (please note, summaries will not be translated by the UN).

We value the feedback you will provide. We kindly request you keep comments concise and focused to ensure efficient review and consideration:

- If you are providing general comments, we invite you to provide them in a word document and suggest a maximum length of only a few pages; and
- If you wish to provide suggested edits to the draft report, please do so in tracked changes in a word document.

As this remains a draft report, please do not circulate this draft report more widely. If there are other organisations that indicate their interest in reviewing this report, please let us know or share our contact details with them. This will ensure we are able to track and manage the consultation process effectively.

We look forward to receiving your input.

Kind regards,

Human Rights Branch
Department of Foreign Affairs and Trade

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We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging

From: Treaty Body Reporting

Sent: Thursday, 2 October 2025 11:23 AM

Subject: Invitation to Comment on Australia's CERD Report [SEC=OFFICIAL]

OFFICIAL

Good afternoon,

The Department of Foreign Affairs and Trade (DFAT) is coordinating Australia's combined 21st and 22nd periodic report under the *International Convention for the Elimination of All Forms of Racial Discrimination*, which will be presented to the UN Committee on the Elimination of Racial Discrimination (CERD) in 2025.

We have consulted across Commonwealth, State and Territory Departments in preparing the draft report, and would welcome views from civil society.

Please respond to this email by close of business on **Friday, 10 October 2025** if your organisation would like to review Australia's draft CERD report and we will share the draft with you promptly.

Kind regards,

Human Rights Branch
Department of Foreign Affairs and Trade

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We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging

**Combined 21st and 22nd Reports submitted by Australia under Article 9 of the
International Convention on the Elimination of all Forms of Racial Discrimination
(ICERD)**

Reporting period: November 2017–December 2023

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Deleted: 6

Abbreviations

ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AHRC	Australian Human Rights Commission
APS	Australian Public Service
ATSILS	Aboriginal and Torres Strait Islander Legal Services
CALD	Culturally and linguistically diverse
CCCF	Community Child Care Fund
CCCFR	Community Child Care Fund Restricted program
CLO	Department of Home Affairs' Community Liaison Officer
Cth	Commonwealth of Australia
DFAT	Department of Foreign Affairs and Trade
ECEC	early childhood education and care (ECEC)
FWO	Fair Work Ombudsman
IAS	Indigenous Advancement Strategy
ILO	International Labour Organization
ILUA	Indigenous Land Use Agreement
IPP	Indigenous Procurement Policy
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender/gender diverse, Intersex and Queer
NATSILS	National Aboriginal and Torres Strait Islander Legal Service
NHRI	National Human Rights Institution
NSW	New South Wales
NT	Northern Territory
NTRB/SP	Native Title Representative Bodies/Service Providers
PPV	Permanent Protection Visa
PJCHR	Parliamentary Joint Committee on Human Rights
Qld	Queensland
RDA	Racial Discrimination Act 1975 (Cth)
RNTBC	Registered Native Title Bodies Corporate
SA	South Australia
SCAG	Standing Council of Attorneys-General

SHEV	Safe Haven Enterprise visa
Tas	Tasmania
TPV	Temporary Protection visa
TSS	Temporary Skills Shortage visa
TSMIT	Temporary Skilled Migration Income Threshold
UN	United Nations
Vic	Victoria
WA	Western Australia

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Introduction

1. The Australian Government is pleased to present Australia's combined 21st and 22nd report under article 9 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (the Convention) to the Committee on the Elimination of all Forms of Racial Discrimination (the Committee).
2. The Australian Government believes all people are entitled to human rights, respect, dignity and the opportunity to participate in society, and that there is absolutely no place for racism. All Australians are entitled to live free from fear of violence and racial discrimination.
3. Key achievements during the reporting period include the historic National Agreement on Closing the Gap, significant investments in Indigenous Advancement Strategy (IAS) initiatives and the National Anti-Racism Strategy by the Australian Human Rights Commission (AHRC).
4. Significant subsequent achievements have also been made by the current Australian Government since the end of the reporting period, including:
 - Release of the 2025 Closing the Gap implementation plan outlining strategic priorities, actions, funding, and timeframes for priority reforms.
 - A 2023 Budget commitment of \$7.2 billion over four years to 2026-27 to the IAS.
 - Investing \$5.9 million to establish in 2024 a National Commission for Aboriginal and Torres Strait Islander Children and Young People, dedicated to protecting and promoting First Nations children's rights and wellbeing.
 - Release in November 2024 of the National Anti-Racism Framework, developed by the AHRC.
 - Commissioning a study by the Race Discrimination Commissioner into Antisemitism, Islamophobia, racism and the experience of First Nations people in Australian universities.
 - Establishing within the Department of Home Affairs the new Office for Social Cohesion in 2024 and a new Office for Multicultural Affairs in 2025.
 - A 2024 Budget commitment to launch the Reconnection, Employment and Learning (REAL) Program, providing personalised mentoring and support for First Nations people transitioning out of the justice system, focusing on employment, education, training pathways, and fostering connections to languages, Country, and culture.

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- Enhancing the Migration Act's powers to address dishonest employers and third parties exploiting migrant workers in the workplace in the *Strengthening Employer Compliance Act 2024*.
5. Australians value a 'fair go' for all, embracing mutual respect, tolerance, compassion for those in need and equality of opportunity for all people. Since our 2017 appearance before the Committee, Australia has continued implementation of the principles of the Convention, working with the Australian community to promote acceptance, tolerance and social inclusion through a range of programs and initiatives, as outlined in this report.
 1. **Report on compliance with and implementation of Articles 1 to 7 of ICERD**
 6. Australia's combined 21st and 22nd periodic report has a reporting period of November 2017 to 31 December 2023.
 7. Australia last appeared before the Committee on 27 and 28 November 2017. The Committee issued its Concluding Observations on Australia's combined 18th, 19th, and 20th reports on 26 December 2017.¹ On 7 December 2018 Australia submitted a follow-up to concluding observations 16(c), 26(c) and 31(b). On 10 May 2019 the Committee wrote to inform Australia that during the 98th session the Committee considered the follow-up report and made a recommendation relating to paragraph 16(c) of the Concluding Observations.
 8. This report has been structured with reference to the Convention, the *Guidelines for the CERD-Specific Document to Be Submitted by States Parties under Article 9, Paragraph 1 of the Convention* (CERD/C/2007/1), and the topics raised by the Committee in the Concluding Observations. This report is arranged by Article, and the content relates to the text of each Article, Committee guidance on that Article (indicated by footnotes), and the priorities of the Committee as reflected in the Concluding Observations.
 9. This report supplements, and should be read in conjunction with, Australia's Common Core Document.²
 10. As Australia is a federation, the Australian Government and state and territory governments share responsibility for implementing Australia's obligations under the Convention. The Australian Government consulted state and territory governments in preparing this report. Where possible, federal, state and territory responses to relevant

¹ CERD/C/AUS/CO/18-20 Concluding Observations

² HRI/CORE/AUS/2023

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Concluding Observations are included in this report. This report was prepared with the Standing National Human Rights Mechanism and finalised in consultation with civil society.³ This report will be publicly available on the Department of Foreign Affairs and Trade website.

A. Article 1, Article 2, Article 6: Racial discrimination, law and complaints

11. All Australians are entitled to live free from fear of violence and racial discrimination. Australian jurisdictions have legal provisions to address ethnic, racial and religious hatred whenever such crimes take place. Australia protects and promotes the right to equality and the right to be free from racial discrimination through legislation, policy and programs at federal, state and territory levels.
1. **Legislation relevant to racial discrimination⁴**
12. Australia implements the Convention at the federal level primarily through the *Racial Discrimination Act 1975* (Cth) (RDA) and the work of the Australian Human Rights Commission (AHRC). The RDA protects people from discrimination on the grounds of race, colour, descent, or national or ethnic origin in any field of public life, including education, employment, health and social security. Since Australia's last periodic report, the RDA has not been amended.
13. The *Fair Work Act 2009* (Cth) and the *Criminal Code 1995* (Cth) also implement aspects of the Convention. The Fair Work Act prohibits racial discrimination in the area of employment. The Criminal Code criminalises the urging of violence against groups or members of groups distinguished by race, religion, nationality, national or ethnic origin or political opinion. Additionally, in December 2023 Australia passed the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023*,⁵ which among other things amended the Criminal Code to establish criminal offences for the public display of prohibited Nazi and terrorist organisation symbols, public performance of the Nazi salute and the trading of goods that bear a prohibited Nazi or terrorist organisation symbol.
14. Further detail on the RDA, the Fair Work Act and the Criminal Code can be found in Australia's Common Core Document.⁶

³ CERD/C/AUS/CO/18-20 Concluding Observation 43.

⁴ CERD/C/AUS/CO/18-20 Concluding Observation 8

⁵ Came into effect in January 2024 as the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023*.

⁶ HRI/CORE/AUS/2023

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15. In addition to Commonwealth legislation, all state and territory governments have legislated to prohibit racial discrimination, with these laws operating in parallel with the RDA.
16. On 27 February 2019 the Queensland Parliament passed the *Human Rights Act 2019*. Further details can be found in Australia's Common Core Document.
17. The *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* (NSW) came into effect on 13 August 2018. The amendments removed four offences of serious vilification on the grounds of race, homosexuality, transgender, or HIV/AIDS status from the *Anti-Discrimination Act 1977* (NSW) and replaced them with a single, indictable criminal offence in section 93Z of the *Crimes Act 1900* (NSW) of publicly threatening or inciting violence on the grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. Anti-Discrimination NSW has the power to investigate complaints of vilification on the grounds of race, religion, homosexuality, transgender, or HIV/AIDS status under the *Anti-Discrimination Act 1977* (NSW).
18. In June 2022, NSW passed the *Crimes Amendment (Prohibition on Display of Nazi Symbols) Bill 2022*, which inserted a new offence into the *Crimes Act 1900* (NSW) under section 93ZA, which makes it an offence to knowingly display, by public act and without reasonable excuse, a Nazi symbol.
19. In 2023 the ACT passed the *Discrimination Amendment Act 2023* which aligned the ACT's discrimination law framework with the *Human Rights Act 2004* (ACT), expanded the coverage of the *Discrimination Act 1991* (ACT), refined the exceptions, and introduced positive duties.
20. All states and territories have civil or criminal racial vilification provisions. Western Australia (WA) has announced a review into racial vilification protections in its jurisdiction. Victoria conducted public consultations in 2023 on strengthening its anti-vilification laws. Tasmania engaged its Sentencing Advisory Council to review the operation of section 11B of the *Sentencing Act 1997* which provides for aggravation to be considered if offences are motivated by hate or prejudice on racial grounds and whether it should extend to other grounds. WA has completed a review of the *Equal Opportunity Act 1984* which recommended the inclusion of anti-vilification provisions in the Act. Further information on other state and territory human rights legislation can be found in Australia's Common Core Document.
21. While the Committee has recommended that Australia collect and provide updated statistical data on the ethnic origin of victims of crime, most jurisdictions do not require

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victims of crime to provide information on their nationality, race, ethnicity or immigration status. In some cases, it can be difficult to tell whether an incident of crime was racially motivated, as this requires knowledge of the motivation of offenders in committing crimes.⁷ However, some jurisdictions have offences that include, as an element of the offence, a public threat of violence on the grounds of race. See for example, section 93Z of the *Crimes Act 1900* (NSW).

22. The Australian Government does not intend to review the burden of proof requirements in the RDA at this time.⁸ The burden of proof under the RDA is the same as other civil proceedings in federal law, in that if a complaint is heard by a court an applicant is required to establish all the elements of a complaint on the balance of probabilities.
23. Some states and territories have shifted the evidentiary burden of proof for indirect discrimination. Victorian and Queensland legislation provides that, in cases of indirect discrimination, the respondent to a complaint must prove that the disadvantaging condition complained of is reasonable. NSW, Victoria, Queensland, the Northern Territory (NT), Tasmania, the ACT and WA provide that where a respondent is seeking to rely on an exception or exemption, the respondent must prove that the exception applies. WA completed a review that recommended reforms to the burden of proof under the *Equal Opportunity Act 1984* (WA). Since August 2016, ACT legislation has had a rebuttable presumption that operates in a discrimination complaint, including a racial discrimination complaint. This means that, it is presumed that discrimination has occurred unless the respondent shows that the treatment or condition was not in place because of the complainant's protected attribute.
24. Australia has civil and criminal penalties for conduct which constitutes online hate speech and cyber-racism, balancing the right to be free from racial discrimination with freedom of expression. The RDA's prohibition of racial hatred includes online racial hatred. In 2019–20, 14 out of 109 complaints of racial hatred made to the AHRC (approximately 13%) related to online conduct, an increase from 7 out of 97 complaints (7% of total complaints of racial hatred) in 2018–19.
25. It is an offence under the Criminal Code to use a carriage service, including the internet, to threaten, menace, harass or cause offence. This offence covers online conduct, such as sending emails or publishing material online, that a reasonable person would find to be threatening, menacing, harassing, or causing offence. This includes offensive material of

⁷ CERD/C/AUS/CO/18-20 Concluding Observation 12

⁸ CERD/C/AUS/CO/18-20 Concluding Observation 16(a)

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a racial or religious nature. In 2021, the Australian Government increased the maximum penalty for this offence from three years' imprisonment to five years' imprisonment. The Criminal Code was amended in 2019 to require content, internet and hosting providers to report 'abhorrent violent material' to the Australian Federal Police and subsequently remove such material on their services.

2. The Australian Human Rights Commission

26. Australia's National Human Rights Institution (NHRI), the AHRC was re-accredited as an 'A' status NHRI by the Global Alliance of National Human Rights Institutions in its October–November 2023 session. All states and territories also have statutory antidiscrimination bodies with the power to inquire into and attempt to conciliate complaints of discrimination. Further information on the AHRC and equivalent state and territory antidiscrimination bodies can be found in Australia's Common Core Document.
27. The Australian Government is confident that the AHRC is appropriately resourced to undertake its independent statutory functions.⁹ In the 2023–24 Budget, total government funding for the AHRC was \$31.32 million.
28. The AHRC includes a President and seven special-purpose Commissioners. The Aboriginal and Torres Strait Islander Social Justice Commissioner's functions include promoting discussion and awareness of the human rights of Aboriginal and Torres Strait Islander peoples, undertaking programs to promote respect for their human rights, and promoting the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples. The Race Discrimination Commissioner's functions include promoting understanding and acceptance of the RDA and developing research and educational programmes to combat racial discrimination.¹⁰

3. Racial discrimination statistics

a. Racial discrimination complaints – federal¹¹

29. In 2022–23 the AHRC received 473 complaints under the Racial Discrimination Act, making up 19% of all complaints lodged with the AHRC. This was an increase from 464 complaints in 2021–22, a decrease from 523 complaints in 2020–21 and an increase from 403 complaints in 2019–20. Of the 2022–23 complaints: 36% related to discrimination in employment; 42% related to discrimination in the provision of goods, services and

⁹ CERD/C/AUS/CO/18-20 Concluding Observation 16(c)

¹⁰ CERD/C/AUS/CO/18-20 Concluding Observation 4

¹¹ CERD/C/AUS/CO/18-20 Concluding Observation 16(b)

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facilities; and 25% were made by Aboriginal and Torres Strait Islander people; while 58% were made by people born outside of Australia.

30. In 2022–23, 359 complaints of racial discrimination were finalised, of which 26% were resolved. In matters where conciliation was attempted, 56% were successfully resolved. In 2021–22, 459 complaints of racial discrimination were finalised. In matters where conciliation was attempted, 55% were successfully resolved.
- The AHRC reports that 14 racial discrimination complaints proceeded to the federal courts in 2022–23, and 13 racial discrimination complaints proceeded to the federal courts in 2021–22.

b. Racial discrimination complaints – states and territories¹²

31. Each jurisdiction collects its own statistics about complaints of racial discrimination.
32. In 2022–23:
- a. Anti-Discrimination NSW received 306 complaints of racial discrimination, up from 219 in 2021–22, and representing 16.7% of all complaints received that year;
 - b. Victorian Equal Opportunity and Human Rights Commission received 156 complaints, up from 129 in 2021–22;
 - c. Western Australia Equal Opportunity Commission received 80 complaints of racial discrimination, and 32 complaints of racial harassment, representing 19.7% and 7.9% of complaints received;
 - d. Tasmanian Anti-Discrimination Commissioner received 33 complaints of racial discrimination, representing 17% of all complaints received that year;
 - e. NT Anti-Discrimination Commission received 74 complaints of race discrimination, down from 75 in 2021–22;
 - f. SA Office of the Equal Opportunity Commissioner received 30 complaints of racial discrimination;
 - g. The Queensland Human Rights Commission received 83 complaints of racial discrimination, representing 15% of all complaints received;
 - h. ACT Human Rights Commission received 42 complaints of racial discrimination, 48 complaints in 2019–20, 38 complaints in 2020–21, and 48 complaints in 2021–22.
33. Where a state or territory anti-discrimination body is unable to conciliate a complaint, the complaint may be referred to a state or territory tribunal:

¹² CERD/C/AUS/CO/18-20 Concluding Observation 16(b)

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34. In 2022–23:
- a. The SA Equal Opportunity Commission referred one racial discrimination complaint to the SA Civil and Administrative Tribunal;
 - b. The ACT Human Rights Commission referred 35 complaints to the ACT Civil & Administrative Tribunal;
 - c. In Western Australia the Equal Opportunity Commission referred six race discrimination complaints and two complaints of racial harassment to the State Administrative Tribunal.
- c. Hate speech, racial hatred and racial vilification complaints¹³*
35. In 2022–23, 129 complaints of racial hatred (under Part IIA of the RDA) were made to the AHRC, making up 27% of all racial discrimination complaints. In 2021–22, 111 complaints of racial hatred were made to the AHRC, making up 24% of all racial discrimination complaints.
- 4. Complaints and communications to CERD**
36. Australia received no communications during the reporting period.
37. In 2018, a request was submitted to the Committee under its early warning and urgent action procedure concerning Aboriginal and Torres Strait Islander communities affected by the Carmichael Coal Mine and Rail Project in Queensland.¹⁴ Australia provided its response to the Committee in relation to this request on 9 April 2019.
- 5. Other Australian Government human rights infrastructure**
- a. Parliamentary human rights scrutiny¹⁵*
38. The primary body for human rights scrutiny in the Commonwealth Parliament is the Parliamentary Joint Committee on Human Rights (PJCHR). The ACT, NSW, and Victoria have similar legislative scrutiny processes in place under their respective legislation. Further information on parliamentary scrutiny can be found in Australia's Common Core Document.
- b. Human Rights Act or Charter¹⁶ and Action Plan¹⁷*
39. The Australian Government notes that Australia's international obligations have been incorporated into domestic law to the extent necessary to implement Australia's international human rights obligations.

¹³ CERD/C/AUS/CO/18-20 Concluding Observation 14(b)

¹⁴ Referred to in CERD/EWUAP/Australia/2018/JP/ks.

¹⁵ CERD/C/AUS/CO/18-20 Concluding Observation 6

¹⁶ CERD/C/AUS/CO/18-20 Concluding Observation 6

¹⁷ CERD/C/AUS/CO/18-20 Concluding Observation 6

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40. The Australian Government referred Australia's Human Rights Framework and Action Plan to the PJCHR for inquiry and report. This includes a consideration of the scope and effectiveness of the Framework and whether the Australian Parliament should enact a federal Human Rights Act.

6. International engagement on racial discrimination, racism and Indigenous peoples

a. Reservation to Article 4 of the Convention¹⁸

41. The Australian Government does not intend to withdraw its reservation¹⁹ to Article 4(a) and does not intend to introduce legislation to give any further effect to Article 4(a). Australia's reservation to the requirements of Article 4(a) of the Convention reflects Australia's strong tradition of, and commitment to, freedom of expression, the right of peaceful assembly and freedom of association. Australian laws already include prohibitions on, and redress for, racial discrimination, vilification and urging violence, including sections 80.2A and 80.2B of the Commonwealth Criminal Code, which criminalise hate-related violence.

b. UN Declaration on the Rights of Indigenous Peoples²⁰

42. Australia supports the UN Declaration on the Rights of Indigenous Peoples and shares the underlying commitment of the Declaration to deliver real and lasting improvements for Indigenous peoples and their communities.

43. Australia gives practical effect to the Declaration through the development of our domestic policies and programs. Examples of this include:

- a. working in partnership with Aboriginal and Torres Strait Islander Australians to co-design and implement solutions tailored to reflect specific community priorities and needs;
- b. the partnership and collaborative design, implementation and monitoring approach to *Closing the Gap* in social and economic disadvantage (see below for a detailed discussion of Australia's Closing the Gap framework);

¹⁸ CERD/C/AUS/CO/18-20 Concluding Observation 10 (priority of the Committee)

¹⁹ Reservation to Article 4(a): *The Government of Australia... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by Article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of Article 4(a).*

²⁰ CERD/C/AUS/CO/18-20 Concluding Observation 22

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- c. enhancing Indigenous economic development through policies which drive demand for Indigenous businesses and strengthen the capacity and capability of Indigenous entrepreneurs;
- d. supporting Indigenous language centres, interpreters and use of language in schools, and recognising and supporting a variety of forms of cultural expressions,
- e. improving justice outcomes for Aboriginal and Torres Strait Islander peoples by expanding and establishing justice reinvestment initiatives.

c. *Special Rapporteur on Racism*²¹

- 44. In his 2016 report,²² the then Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerances noted the Australian Government's commitment to multiculturalism; Australia's resettlement of thousands of refugees; Australia's vibrant civil society and support for migrants and refugees; and the bipartisan support for the constitutional recognition of Indigenous peoples.
- 45. Of the 17 recommendations made by the Special Rapporteur, Australia agreed with two and noted 15.²³
- 46. Since the report and Australia's response, Australia has continued its efforts in combating racism, xenophobia and other forms of discrimination. In relation to the report's recommendations, please refer to paragraphs: 72–83 (Constitutional recognition of First Nations); 233–261 (asylum seeker policy); 84-93 (Closing the Gap Strategy); 186, 203–209 (justice programmes for First Nations peoples); 60–67 (combatting racism); and 26, 65-67 (hate speech).

d. *Domestic implementation of the Durban Declaration*²⁴

- 47. Australia has implemented its obligations under the Convention in Australian law through the RDA and, by doing so, already recognizes principles set out in the Durban Declaration and Programme of Action.

e. *ILO Convention 169*²⁵

- 48. Ratification of ILO Convention 169 is not under consideration in Australia at this time. Australia is committed to protecting the rights and respecting the integrity of Indigenous peoples and does so under existing UN human rights treaties and through engagement with dedicated UN bodies for Indigenous issues. The Australian Government recognises

²¹ CERD/C/AUS/CO/18-20 Concluding Observation 14(f)

²² A/HRC/35/41/Add.2

²³ A/HRC/35/41/Add.4.

²⁴ CERD/C/AUS/CO/18-20 Concluding Observation 41

²⁵ CERD/C/AUS/CO/18-20 Concluding Observation 22

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the importance of engaging in good faith with Indigenous peoples in relation to decisions that affect them. The government consults extensively with Aboriginal and Torres Strait Islander organisations, communities, small non-profit organisations, families and individuals, and is of the view that our domestic policies and programs give practical effect to the aims of the Convention.

B. Article 3: Promoting multicultural diversity and social cohesion

49. The Australian Government's multicultural affairs agenda aims to bring all Australians together. Our nation has been enriched by generations of migrants with more than 300 ancestries who have settled and helped to build every corner of the country. Today, more than half of Australian residents (51.5%) were either born overseas or have at least one parent born overseas.
50. Australia takes an inclusive approach to multiculturalism including encouraging migrants to become fully integrated members of our society, while also being able to celebrate, practice and maintain their cultural traditions within the law, free from discrimination.
51. In 2022 the Australian Government committed \$1 million to implementing a Multicultural Framework Review, *A Government that works for multicultural Australia*. The review (conducted in 2023–24) ~~was aimed at identifying areas for reform to address~~ any systemic barriers that prevent people from multicultural communities from fully participating in Australian society, including those barriers that exist due to racism and discrimination.
52. Since 2007, the Scanlon Foundation's *Mapping Social Cohesion Survey* has provided an independent and credible source of public information about social cohesion. Over several years, the survey has found that Australia remains a broadly stable and highly cohesive society, with high levels of belonging and public support for a multicultural Australia. The 2023 survey found that 89% of Australians agreed multiculturalism has been good for Australia, and 78% believed that accepting migrants from different countries makes Australia stronger. Despite high and growing support for multiculturalism, discrimination and prejudice remains, with 18% of people saying they experienced discrimination in the last 12 months because of their skin colour, ethnic origin or religion (up from 16% in 2022).
53. The Scanlon Foundation Research Institute's second biennial Australian Cohesion Index (released 20 September 2023) showed that one-in-three people of non-English speaking backgrounds reported experiencing discrimination in the past 12 months.

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54. The Australian Government is implementing a strengths-based approach to build on the successes of Australia's liberal democracy and multicultural society, including:
- a. \$25 million to support Australian Palestinian, Muslim and other communities, who have been affected by the Hamas-Israel conflict (\$12.5 million in 2023–24, \$12.4 million in 2024–25 and \$39,000 in 2025–26, as announced in October 2023);
 - b. \$18.2 million (2023-24 to 2024-25) to fund Community Language Schools so more Australian children will have the chance to learn a second language;
 - c. \$4.9 million (2023-24 to 2024-25) allocated to 61 local multicultural projects to strengthen multicultural communities across the nation;
 - d. \$5.4 million allocated to 82 projects across Australia in the 2022 round of the Fostering Integration Grants program.
55. The UN International Day for the Elimination of Racial Discrimination (21 March) seeks to raise awareness of racism and racial discrimination. The Australian Government celebrates Harmony Week every year; during the week that includes 21 March. In 2019, the Australian Government moved to a week-long celebration to celebrate 20 years since the first Harmony Day. Harmony Week celebrates Australia's cultural diversity and fosters inclusiveness, cultural respect, and a sense of belonging for everyone. Since 1999, more than 80,000 Harmony events have been held across Australia with celebrations initiated by schools, sporting and community groups, local government, places of worship, businesses, and government agencies.
56. An employment strategy for culturally and linguistically diverse (CALD) employees in the Australian Public Service (APS) is planned for release in the first half of 2024. The strategy has an action plan to: address barriers to recruitment and progression for CALD employees; embed the strengths and wealth of cultural and linguistic diversity; and enhance the work of the APS.
57. Social cohesion policies developed by state and territory governments affirm Australia's commitment to support cultural and linguistic diversity and to engender community respect and cohesion. For example:
- a. Queensland's Community Action for a Multicultural Society program funds community-based organisations to support greater intercultural connectedness so people from culturally diverse backgrounds can achieve their ambitions for social and economic participation. This includes funding to the Islamic Women's Association of Australia to deliver state-wide services to support and empower Muslim women in Queensland.

Deleted: The Australian Government celebrates Harmony Week every year, during the week that includes 21 March.

Commented [A1]: This statement does not accurately summarise the two examples, as they are neither policies nor purely social cohesion initiatives. Queensland's Community Action for a Multicultural Society program primarily focuses on economic and social inclusion outcomes for people from CALD backgrounds. It sits under Queensland's Multicultural Policy and Action Plan, where social cohesion is an outcome rather than the nature of the initiative. NSW's COMPACT is perhaps better captured as a youth-focused program aimed at fostering unity through countering extremism. The sentence also somewhat implies a causal relationship between social cohesion policies and multiculturalism, suggesting that social cohesion affirms the commitment to diversity. In practice, however, multiculturalism and social cohesion are intertwined, with elements of Australia's multiculturalism underpinning social cohesion. Suggest amend the sentence to a more balanced framing. Something like 'State and territory initiatives build on Australia's multicultural principles to strengthen social cohesion by promoting participation, inclusion, and community resilience.'

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- b. NSW operates the Community Partnership Action (COMPACT) Program—a \$3 million per annum program that aims to inspire young people to stand up as champions for community harmony against racism, hate, and division. COMPACT engaged over 80,000 young people since it commenced in 2016.

C. Article 4: Racism²⁶

1. Measures to combat racism

- 58. Racism and discrimination have no place in our cohesive and inclusive society. Australia welcomes people from all backgrounds and is committed to giving everyone a fair go. In Australia, everyone is entitled to feel safe and proud of who they are, regardless of their sex, gender identity, sexual orientation, race, religious, ethnic, or cultural background.
- 59. The AHRC statutory functions include conducting education and awareness to eliminate racism and racial discrimination. As part of the October 2022–23 Budget, the Australian Government provided \$7.5 million over four years to the AHRC, and an additional \$1.4 million ongoing, to develop a National Anti-Racism Strategy to tackle racism and promote racial equality in Australia. This strategy includes the development of a National Anti-Racism Framework to support the commitment of government, civil society, businesses, and the community to tackle racism and promote racial equality in Australia and an update of the national *Racism. It stops with me* public awareness and education campaign.
- 60. Since receiving funding to develop the strategy, the AHRC has released a National Anti-Racism Framework Scoping Report based on initial consultations, undertaken an audit of government anti-racism programs and projects, begun national community consultations, conducted research including about racism and racial equity data and anti-Asian racism, and produced a number of anti-racism campaign materials and education resources.
- 61. Prior to the development of the National Anti-Racism Strategy, the AHRC led the National Anti-Racism Partnership and Strategy, a partnership between the Australian Government, the AHRC and non-government organisations from 2011 to 2018. The 2018 evaluation found that the strategy had a strong impact in starting conversations about racism, by sending a clear message that racism is not acceptable; helping organisations to demonstrate leadership on racism; and empowering individuals and communities to take action against racism.

²⁶ CERD/C/AUS/CO/18-20 Concluding Observation 14(g) (priority of the Committee)

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62. State and territory governments have also implemented anti-racism strategies. Examples include:

- a. The Victorian Government is delivering an Anti-Racism Strategy in recognition of the impacts of racism on health and wellbeing, as well as on social, economic and community participation, to proactively prevent and address racism and improve the lives of the state's multicultural and multifaith communities, and Aboriginal and Torres Strait Islander communities.
- b. The SA Government provides annual funding to support the administration of Reconciliation South Australia, which delivers the award winning inter-active schools program Generation of Change. This program aims to educate staff and students about inter-personal anti-racism strategies through music, story-telling, poetry and videos.
- c. The NSW Community Resilience and Response Plan details a coordinated, whole-of-government approach to identifying, assessing, and addressing risks to community harmony, including risks arising from racist incidents and inter-communal tensions.

2. Racism online²⁷

63. The Australian Government works closely with the major social media sites and other digital platforms to prevent and remove harmful material online and communicate the expectation that sites have terms of use that prohibit harmful material.

64. The Australian Government's eSafety Commissioner (eSafety) has a range of regulatory functions and powers under the *Online Safety Act 2021* (Cth). The Online Safety Act does not confer specific powers on the eSafety Commissioner in relation to online racism. However, eSafety administers reporting and takedown schemes. Online racism targeted at an individual may be captured by these schemes. Additionally, through the Online Content Scheme in the Online Safety Act, the Commissioner can act where online material incites violence or promotes crime or terrorism, which may capture some forms of hate speech.

65. eSafety's functions also include providing online safety education and advice to Australians and supporting and conducting research about online safety for Australians. eSafety's online hate speech research showed that individuals from at-risk groups—including culturally and linguistically diverse groups and Aboriginal and Torres Strait

Commented [A2]: AHRC's consultations for the Scoping Report for the National Anti-Racism Framework found that the current standards and regulatory mechanisms do not offer sufficient protection to users from online hate. We wonder whether this should be acknowledged, or whether this section should focus on how online racism is an increasingly severe issue facing targeted Australian communities. Suggest engaging with the AHRC to clarify position.

²⁷ CERD/C/AUS/CO/18-20 Concluding Observation 14(b)

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Islander communities—are disproportionately at risk of online harm or face additional barriers to protect themselves from harm and access support.

D. Article 5: Equality before the law

1. Aboriginal and Torres Strait Islander peoples

66. The Australian Government continues to promote and strengthen the rights of Aboriginal and Torres Strait Islander peoples through a range of laws, and by working in partnership with Aboriginal and Torres Strait Islander peoples to develop effective policies and programs.
67. The Australian Government has committed to work in partnership with Aboriginal and Torres Strait Islander leaders and communities and to the co-design and delivery of policies and programs that affect Aboriginal and Torres Strait Islander peoples. This commitment to work in partnership underpins the Australian Government's new approach to Closing the Gap, a range of co-design activities and the provision of funding and support to a range of Aboriginal and Torres Strait Islander community-controlled organisations for the delivery of key services.

a. Self determination

68. The Australian Government is moving to a new way of working with Aboriginal and Torres Strait Islander leaders and communities—one that supports Aboriginal and Torres Strait Islander ownership, enables true partnerships with government, and recognises the diversity of cultures and circumstances of Aboriginal and Torres Strait Islander peoples.
69. This aligns with the government's commitment to ensure Aboriginal and Torres Strait Islander communities are involved in local and regional decision making through the *Indigenous-led Empowered Communities* initiative. Under this initiative, government works with First Australian communities to put in place processes, reforms and support so that communities are empowered to partner as equals with government. The initiative supports Aboriginal and Torres Strait Islander people within 10 regions across rural, regional and urban Australia to identify their priorities and—through agreed shared decision-making arrangements—enables community panels to consider whether government investment is effective, meets the needs of local people and communities, and to make recommendations about where funds can best be reinvested in their communities.

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b. Indigenous voice and constitutional recognition²⁸

70. On 14 October 2023, the Australian Government delivered on its commitment to implement the Uluru Statement from the Heart by holding a referendum to recognise Aboriginal and Torres Strait Islander people in the Constitution through a Voice to Parliament.
71. Though the proposal did not pass, more than 6 million Australians voted for change, underscoring a widespread desire to improve the lives of Aboriginal and Torres Strait Islander peoples. However, the government accepts the vote of the majority of Australians.
72. Following the referendum, the government is taking the time necessary to reflect on the implications of the outcome for the two other elements of the Uluru Statement—truth-telling and agreement-making. The referendum was the culmination of a number of processes the Australian Government initiated over a number of years relating to constitutional recognition (both in the previous and current reporting period), including the Expert Panel on Constitutional Recognition (2012), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015), the Referendum Council (2017) which led to the Uluru Statement from the Heart (2017), the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (2018) and the Indigenous Voice co-design process (2021).

c. Truth telling²⁹

73. Aboriginal and Torres Strait Islander cultures are an important part of Australia's national identity, and our nation's First Peoples play a significant role in unifying and shaping the psyche of our society. Yet for the greater part of Australia's history since British settlement, Aboriginal and Torres Strait Islander peoples have not enjoyed equality before the law.
74. Truth-telling about the history of Aboriginal and Torres Strait Islander Australians is a part of the reconciliation process. It is also about celebrating and reflecting on the important role that Indigenous Australians played, and continue to play, in shaping the modern Australian nation.
75. Most state and territory governments, except for WA and NSW, have committed to some form of formal truth-telling process in their jurisdiction.

²⁸ CERD/C/AUS/CO/18-20 Concluding Observation 20 (priority of the Committee)

²⁹ CERD/C/AUS/CO/18-20 Concluding Observation 19

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76. On 12 May 2021, Victoria's Yoorrok Justice Commission was established with the powers of a Royal Commission. Yoorrok's mandate included inquiring into both historical and ongoing injustices against First Peoples in Victoria since colonisation, establishing an official record of the impact of colonisation on First Peoples in Victoria, and making recommendations for practical actions and reform needed to acknowledge historical injustices and address ongoing injustices.
77. Queensland passed the *Path to Treaty Act 2023* on 10 May 2023, setting up a minimum three-year Truth-telling and Healing Inquiry, with the powers of a Commission of Inquiry. The Inquiry was considered a key step on the path to treaty in the state.

d. Treaty processes with state governments

78. In June 2018, the Victorian Government enacted Australia's first treaty legislation, the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (the Treaty Act), creating a framework for future treaty negotiations between Victoria and First Peoples. In December 2019, the First Peoples' Assembly of Victoria was established as the Aboriginal Representative Body under the Treaty Act. The Assembly is the state's equal partner in the current phase of Victoria's treaty process and all outcomes must be agreed in partnership in a spirit of good faith and collaboration. Formal discussions between the First Peoples' Assembly of Victoria and the state commenced on 3 August 2020.
79. In July 2019, the Queensland Government signed the Statement of Commitment to reframe the relationship with Aboriginal and Torres Strait Islander peoples and launched the Tracks to Treaty—Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders process. These reforms promote and support self-determination, truth-telling, local decision making and better life outcomes for Indigenous Australians and build on reconciliation work to date within the state of Queensland. On 10 May 2023 Queensland passed the *Path to Treaty Act 2023*, legislating a 10 member all-First Nations Council to oversee a First Nations Treaty Institute, to be established as an independent statutory body tasked with developing a treaty making framework and support communities in treaty negotiations.
80. In March 2023, NSW committed to undertaking 12 months of consultation with Aboriginal people, led by independent Aboriginal Treaty Commissioners, to determine whether they wanted a Treaty or agreement-making process, and if so, what that process might look like.
81. In July 2022 the Tasmanian Government committed to implement the recommendations of the consultation report on a way forward for Truth Telling and Treaty. The Aboriginal

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Advisory Group on Truth Telling and Treaty was established on 10 December 2022 to work on recommendations to the Tasmanian Government on a pathway to Truth Telling and Treaty.

e. *Closing the Gap*³⁰

82. *Closing the Gap* is a commitment for Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people and achieve life outcomes equal to all Australians.
83. Closing the Gap acknowledges the ongoing strength and resilience of Aboriginal and Torres Strait Islander people in sustaining their cultures. It is underpinned by the principle that when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of policies, programs and services that affect them, better life outcomes are achieved.

i. *Progress*

84. The Closing the Gap framework was established in 2008. The Prime Minister presented the last annual Closing the Gap speech and report to Parliament under the original framework on 12 February 2020. That report showed mixed progress against the Closing the Gap targets over the past decade, with two of the original targets on track, four showing some improvement, and one not on track.

ii. *A National Agreement on Closing the Gap*

85. The new *National Agreement on Closing the Gap* (the National Agreement) came into effect on 27 July 2020, upon signature by First Ministers of all Australian governments, the Lead Convenor of the Coalition of Peaks (a representative body comprising around fifty Aboriginal and Torres Strait Islander community controlled peak organisations) and the President of the Australian Local Government Association.
86. The National Agreement is the first time an agreement designed to improve life outcomes for Aboriginal and Torres Strait Islander people has been developed with Aboriginal and Torres Strait Islander people. The expertise and experience of the Coalition of Peaks and its members, and the feedback from extensive engagements in 2019 with Aboriginal and Torres Strait Islander people across Australia, have been central to its commitments.

³⁰ CERD/C/AUS/CO/18-20 Concluding Observation 18 (priority of the Committee)

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87. Under the National Agreement, all Australian governments will work with Aboriginal and Torres Strait Islander people, communities, organisations, and businesses to implement the National Agreement at the national, state, territory, and local levels.
88. The National Agreement has been built around four Priority Reforms, to protect and support the strengthening of Aboriginal and Torres Strait Islander cultures through:
 - a. formal partnerships and shared decision making;
 - b. building the community-controlled sector;
 - c. transforming government organisations;
 - d. shared access to data and information at a regional level.
89. The National Agreement also reconsiders the original seven Closing the Gap targets and extends them to focus on 19 national socio-economic targets across 17 socio-economic outcome areas. These areas cover education, employment, health and wellbeing, justice, safety, housing, land and waters, languages, reducing family violence, access to information and, community infrastructure. The Productivity Commission publishes a dashboard comprising data and associated supporting materials on progress towards the targets. This data is updated regularly and is supported by an Annual Data Compilation Report typically released mid-year. In addition to the dashboard, the Productivity Commission completes a comprehensive, independent review of progress towards the Priority Reforms, targets, indicators, and trajectories every three years.
90. For the first time, there will be independent Aboriginal and Torres Strait Islander-led reviews within twelve months of each independent review by the Productivity Commission. These reviews are an opportunity to better understand Aboriginal and Torres Strait Islander peoples' experiences of change as a result of this National Agreement.
91. The Commonwealth, states and territories, local governments and the Coalition of Peaks share accountability for the implementation of the National Agreement. To share progress achieved against the commitments, all governments and the Coalition of Peaks release an annual report and regular implementation plans to outline priorities for future years.

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f. Land, waters and housing

i. Native Title³¹

92. Australian common law recognises a form of Native Title. Further detail on Native Title can be found in Australia's Common Core Document.
93. The Australian Government is committed to maintaining an effective Native Title system and to supporting the timely resolution of Native Title claims. Claims are usually brought by applicants seeking a determination by an Australian court or other recognised body that Native Title exists (claimant application) but can also be brought by a party seeking a determination that Native Title does not exist, for example a local council wishing to deal with land (non-claimant application).
94. Native Title determinations are often resolved by agreement or consent. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination). As of December 2023, of the 610 determinations, 485 were consent determinations, 55 were litigated determinations and 70 were unopposed non-claimant determinations.
95. As of November 2023, approximately 44.2% of Australia's land mass was covered by a determination that Native Title exists, with a further 12.4% subject to a Native Title claim. This is in addition to land held by Aboriginal and Torres Strait Islander Australians under Commonwealth, state and territory land rights legislation.
96. *The Native Title Legislation Amendment Act 2021* (Cth) came into effect in February 2021 and was aimed at improving the effectiveness of the Native Title system. The legislation introduced measures to improve outcomes for Native Title holders by promoting the autonomy of Native Title holders to make decisions about their land, providing new pathways to resolve disputes after a Native Title determination has been made, and increasing the transparency and accountability of Native Title corporations to Native Title holders.

ii. Reforms to Native Title

97. The Australian Government notes the Committee's recommendation that Australia should amend the Native Title Act, with a view to lowering the standard of proof required and simplifying the applicable procedures.³² The Native Title Act does not provide an express standard of proof for connection between Indigenous peoples and their traditional lands. That standard of proof has been developed through case law and

³¹ CERD/C/AUS/CO/18-20 Concluding Observation 22

³² CERD/C/AUS/CO/18-20 Concluding Observation 22

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the Australian Government considers it appropriate that it continues to be developed through case law.

98. As case law about standards of proof relating to Native Title claims has become more established, governments have taken more flexible approaches to resolving Native Title claims, including in relation to evidentiary issues. For example, when assessing connection in Native Title applications, the Australian Government has a policy of taking evidence 'at its highest'.
99. The Australian Government notes the Committee's recommendation that, in the context of extractive and development projects on land subject to Native Title, the principle of free, prior and informed consent should be incorporated into the Native Title Act and into other legislation and fully implemented in practice.³³ The Native Title Act contains procedural safeguards and rights to ensure Native Title claimants and holders are notified, consulted, and, in some circumstances, have the opportunity to negotiate or enter into agreements with project proponents, before any activities that may affect their rights and interests, including any public works or development, occur over Native Title land.
100. The primary source of these processes is the 'future acts' regime under Part 2, Division 3 of the Native Title Act, which sets out requirements which must be met before development and other activities on Native Title land can be validly done. What procedural requirements apply will depend on the type of activity proposed but can include notification and consultation requirements. In the case of mining and some compulsory acquisitions, the relevant Native Title holders or claimants have the right to negotiate with the proponent, including negotiating for compensation for the impairment of their Native Title rights. Alternatively, the Native Title Act allows traditional owners to enter into an Indigenous Land Use Agreement (ILUA). ILUAs are flexible agreements which can provide Native Title groups with a range of economic, social and cultural benefits, including direct financial contributions, employment and training opportunities.
101. Some state and territory governments have been resolving their Native Title compensation liability through negotiated agreements with Native Title holders. For example, on 21 February 2023, the Western Australian Government and the Tjiwarl Native Title Holders finalised the Tjiwarl Palyakuwa Indigenous Land Use Agreement, to settle Native Title compensation claims filed in the Federal Court of Australia. The

³³ CERD/C/AUS/CO/18-20 Concluding Observation 22

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Tjiwarl Palyakuwa ILUA includes \$25.5 million in monetary compensation, transfer of ownership of land in freehold title, changes to government processes in relation to mining approvals and other economic and land-related benefits.

102. In Victoria, the *Traditional Owner Settlement Act 2010* (Vic) provides for an out-of-court settlement of Native Title—a state-based alternative to the Native Title Act—and allows the Victorian Government to recognise Traditional Owners and certain rights in Crown land. Since 2010 Victoria has used the Act to reach four Recognition and Settlement Agreements.
103. In 2021, the Commonwealth and states and territories adopted the National Guiding Principles for Native Title Compensation Agreement Making. Key principles include negotiating in good faith and resolving compensation claims by negotiation and agreement wherever possible.

iii. Funding to support Native Title holders and Aboriginal and Torres Strait Islander landholders

104. To assist with fair and equitable access to the Native Title system, the Commonwealth funds a network of 15 Native Title Representative Bodies/Service Providers (NTRB/SPs) across Australia to deliver services in accordance with the functions of a representative body under the *Native Title Act 1993*. Funding is available for Registered Native Title Bodies Corporate to undertake projects that enable them to pursue economic development opportunities using their Native Title rights and interests. As at 31 December 2023, a total of \$65 million had been approved for 110 projects across Australia.

g. Cultural heritage

105. Commonwealth, state and territory governments have overlapping responsibilities for protecting Aboriginal and Torres Strait Islander cultural heritage. As detailed above, the ‘future acts’ regime of the Native Title Act sets out requirements for development and other activities on Native Title land. State and territory governments have the primary responsibility for legal protection of cultural heritage as part of their responsibilities for land management and development approvals.
106. At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) operates to protect places that are on the National Heritage List, the Commonwealth Heritage List and the World Heritage List. These places may include those that are listed or inscribed for defined Indigenous heritage values. The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) enables the

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Australian Government Minister for the Environment to make special orders, called ‘declarations’, to protect traditional areas and objects ‘of particular significance’ to Aboriginal and/or Torres Strait Islander people “in accordance with their tradition” from threats if it appears that state or territory laws have not provided ‘effective protection’ and if an Indigenous person (or a person representing an Indigenous person) has requested the Minister make a declaration.

107. Australian Government legislation and guidance is in place to support the legal and ethical management of cultural objects through the *Protection of Cultural Objects on Loan Act 2012* (Cth) and the *Protection of Moveable Cultural Heritage Act 1986* (Cth). National Collecting Institutions regularly consult with Indigenous communities about the material they hold in their collections, in developing exhibition material, and to enable the display and touring of exhibitions that tell the story of Indigenous cultures and histories. In 2019, the peak body Australian Museums and Galleries Association committed to a 10-year *National Indigenous Roadmap* designed in consultation with Aboriginal and Torres Strait Islander people as well as museums and galleries around the country to enhance the participation and access of Indigenous Australians to museum and gallery collections and storytelling. The Roadmap builds Indigenous engagement as an integral part of all museum and gallery business.
108. In March 2023, SA passed legislation to establish a First Nations Voice to its Parliament. The Voice comprises Aboriginal and Torres Strait Islander representatives elected by the Aboriginal and Torres Strait Islander people and their communities to provide advice on laws, policies and practices through direct communication with key decision makers.

h. Juukan Gorge in the Pilbara region of Western Australia

109. The 24 May 2020 destruction of the sacred rock shelters in the Pilbara Region of WA was devastating for all parties involved.
110. Rio Tinto has a registered ILUA with the Puutu Kunti Kurrama and Pinikura Native Title Group which includes a process for managing heritage.
111. Following the destruction of the sacred rock shelters, the Senate referred an inquiry to the Joint Standing Committee on Northern Australia. The Committee tabled its interim report on 9 December 2020 and final report on 18 October 2021. On 24 November 2022, the Australian Government tabled its response to the final report, committing to an overarching approach to co-design heritage protection reforms in partnership with First Nations peoples. The final report made eight recommendations to the Australian

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Government and in its response, the Government agreed or agreed-in-principle to all but one of the recommendations.

112. On the same day, the Australian Government also re-signed its partnership agreement with the First Nations Heritage Protection Alliance (the Alliance), a coalition of member organisations representing major Native Title, Land Rights, Traditional Owner and community-controlled organisations across Australia. Through this partnership, the Australian Government and the Alliance are co-designing reforms to strengthen protection of First Nations cultural heritage.
113. In 2023, the Western Australian Government strengthened the *Aboriginal Heritage Act 1972* (WA). The reformed laws provide an equal right of review for native title parties (as defined in the Act) in relation to Aboriginal heritage approvals through the section 18 process, require new information about an Aboriginal site (new or existing sites) to be reported and introduced a new Committee with majority Aboriginal representation. Processes to reform cultural heritage protections are also underway in all other states and territories, except the NT.

i. Living on Country

114. Through partnerships between Traditional Owners and the Australian Government, the traditional occupations, practices, and knowledge—which have been used successfully to care for Country—are now also being utilised to provide economic opportunities. Two key initiatives are the Indigenous Rangers Program and Indigenous Protected Areas Program.
115. The Indigenous Rangers Program creates employment, training, and career pathways for Indigenous Australians in land, water and sea management. In 2023–24, the Indigenous Rangers Program is supporting 128 ranger groups through 79 organisations to employ approximately 2,000 Indigenous rangers (full-time, part-time, and casual) with women employed in approximately 33% of jobs.
116. Indigenous Protected Areas are areas of land and sea managed by Indigenous groups as protected areas for biodiversity conservation through voluntary agreements with the Australian Government. Indigenous Protected Areas help Indigenous communities protect the cultural values of their Country for future generations, which results in significant health, education, economic, environmental, and social benefits. There are 81 dedicated Indigenous Protected Areas accounting for over 49% of Australia's National Reserve System and covering more than 85 million hectares of land and 6 million hectares of sea.

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ii. Water

117. First Nations People hold rights to about 40% of Australian land through Native Title, yet own and control less than 0.2% of surface water entitlements. The Australian Government is committed to increasing opportunities for First Nations Peoples' water ownership and participation in decision-making by acquiring water entitlements, facilitating their readiness to own water, establishing robust self-determined water holding mechanisms, and ensuring that water policy and legislation enhances their ability to continuously own water (continuous ownerships).
118. The independent Committee on Aboriginal and Torres Strait Islander Water Interests plays a pivotal influencing role in embedding First Nations interests within national water reform and associated initiatives.
119. The Australian Government is working through the lens of Australia's *National Agreement on Closing the Gap* (clause 87) and the principles outlined in the *United Nations Declaration on the Rights of Indigenous Peoples* (specifically Free, Prior and Informed Consent) to secure interests in inland water bodies. The Australian Government funds programs including the Murray–Darling Basin Aboriginal Water Entitlements program (\$100 million from 2023), the Cultural Flows Planning for Cultural Economies program (\$20 million from 2024), and the development of a national First Nations water holding mechanism (\$9.2 million from 2023), to increase access to, and management, and ownership of inland water.
120. The Australian Government is investing \$150 million in infrastructure to close the gap on access to safe and reliable water for First Nations Peoples living in regional and remote communities.

iii. Housing, overcrowding and homelessness.

121. A key housing issue experienced by Aboriginal and Torres Strait Islander peoples in remote areas is living in severely overcrowded dwellings; that is, dwellings that need four or more extra bedrooms.
122. The rates and types of homelessness differs across geographic locations. The 2021 ABS Census showed that very remote Australia had the highest rate of Aboriginal and Torres Strait Islander people experiencing homelessness, where 96.3% were experiencing severe overcrowding. It also showed that nationally, Aboriginal and Torres Strait Islander people experienced homelessness at a rate of 306.8 per 10,000 persons in the population compared to 34.9 per 10,000 persons for people who were non-Indigenous Australians.

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123. The Australian Government recognises that addressing poor housing conditions and homelessness is an important issue that affects many Australians, including Indigenous Australians. Effectively addressing these issues requires long-term and systematic effort across all levels of government and the community.
124. The National Agreement recognises overcrowding as a significant issue and has set Target 9a, to increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88%, by 2031. This is up from a baseline of 81.4% in 2021.
125. The Australian Government has made a substantial investment in remote housing and is working with state and territory governments and Aboriginal and Torres Strait Islander representatives to ensure the housing needs of Indigenous Australians are met (in Australia, the delivery of housing services is predominately a responsibility of state and territory governments).
126. This includes \$111.7 million committed in 2023–24 in the Commonwealth Closing Gap Implementation Plan as the Commonwealth’s contribution to a new one-year partnership with the NT Government to accelerate building of new remote housing, targeted at addressing the worst overcrowding in the country.
127. The five-year *National Partnership for Remote Housing Northern Territory* between the Commonwealth and NT government commenced in March 2019 and expired on 30 June 2023. Under the partnership, the NT Government delivered its target of 1,950 Commonwealth funded bedrooms to remote Northern Territory communities. While planning for future arrangements, a NT Remote Housing agreement between the Commonwealth and NT governments came into effect on 1 July 2023. This was one-year agreement to deliver a minimum of 157 houses in 2023–24, targeted at addressing the worst over-crowding in the NT through a joint contribution of \$223.4 million from the Commonwealth and NT governments. Delivery under this agreement also included property and tenancy management activities, and innovative initiatives that trialled new partnership approaches to delivery.
128. In addition, the Restoring Funding for Northern Territory Homelands agreement is delivering a Commonwealth investment of \$100 million (announced in 2022) to deliver urgent upgrades to housing and essential infrastructure on NT homelands.
129. The Victorian Aboriginal Housing and Homelessness Framework, *Mana-na worn-tyeen maar-takoort: Every Aboriginal Person Has a Home*, was presented to the Victorian Government on 26 February 2020 and seeks to improve Aboriginal housing outcomes in

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Victoria within a generation. It is the first self-determined policy direction developed by the Aboriginal community for Aboriginal Victorians. The Victorian Government has invested an initial \$5.3 million for initiatives under the Framework, such as an Aboriginal-specific Private Rental Assistance Program, community engagement activities and exploring future investment in Aboriginal housing.

i. Economic development

i. Indigenous Advancement Strategy³⁴

130. The *Indigenous Advancement Strategy* (IAS) is the way the Australian Government funds and delivers a range of programs for Indigenous Australians. In the 2020–21 Budget, the Australian Government allocated \$5.7 billion to the IAS over four years for grant funding processes and administered procurement activities that address the objectives of the IAS.
131. Through the IAS, the Australian Government works to improve the way it does business with Indigenous Australians, and ensure funding delivers its intended outcomes. The structure of the IAS allows for joint development of solutions at the regional and local level. Funded providers are expected to work closely with Indigenous communities in the design and delivery of projects.

ii. Support for Indigenous-led programs and organisations³⁵

132. Australian governments have provided a range of support to Indigenous-led programs and organisations servicing Aboriginal and Torres Strait Islander communities. The Australian Government recognises that community-controlled organisations play a valuable role in providing culturally safe and supportive services for Aboriginal and Torres Strait Islander peoples. A significant proportion of funding under the IAS is allocated to Indigenous organisations and this proportion will continue to increase. This will benefit all Aboriginal and Torres Strait Islander community-controlled organisations.
133. State and territory governments are also engaged in supporting Aboriginal and Torres Strait Islander communities and community-controlled organisations. For example:
- a. The SA Government continues to support the development of SA's remote communities for law and culture programs, environmental health services, community services, prevention of domestic and family violence programs, and the operation of swimming pools and art centres.

³⁴ CERD/C/AUS/CO/18-20 Concluding Observation 20(b)

³⁵ CERD/C/AUS/CO/18-20 Concluding Observation 20(b)

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- b. The NSW Government is committed to its partnership with the NSW Coalition of Aboriginal Peak Organisations and the NSW Coalition of Regional Alliances under Local Decision Making. NSW is working towards a dedicated model for service delivery driven by community needs, prioritising delivery through Aboriginal community-controlled organisations, and building workforce capability and organisational capacity.
 - c. Local Decision Making is a 10-year plan in the NT that will provide a pathway so that communities can have more control over their own affairs, including service delivery based on a community's aspirations and needs. NT government agencies are required to partner with Aboriginal communities to assist the transition of government services and programs to community control.
 - d. The WA Government is committed to building on the strength of the community-controlled sector in WA, including through the establishment of a peak body, the Council of Aboriginal Services Western Australia (CASWA). CASWA receives funding to support Aboriginal community-controlled organisations from all social services sectors across WA to build their capacity, and to partner with the WA Government.
 - e. In 2023, the ACT Government established the Aboriginal Service Development Branch to support community-led solutions to build capability and capacity of the community-controlled sector and influence government process transformation.
134. The Australian Government Indigenous Procurement Policy (IPP) sets targets for engagement between the government and Indigenous businesses. The IPP works with businesses that are at least 50% Indigenous-owned. The primary purpose of the IPP is to stimulate Indigenous entrepreneurship, business, and economic development, providing Indigenous Australians with more opportunities to participate in the economy. The IPP has generated over \$9.5 billion in contracting opportunities for Indigenous businesses between its commencement in July 2015 through to December 2023.
135. State and territory governments also have Indigenous procurement policies or targets. For example:
- a. The Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy provides a whole-of-government framework to increase procurement with Indigenous businesses to three per cent of the value of government procurement contracts by 2022. In 2022–23, procurement with Indigenous businesses was at 2.21% of the value of government procurement contracts.

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- b. Under the NSW Aboriginal Procurement Policy between July 2022 and June 2023, \$354.2 million spent, and 619 goods and services contracts awarded to Aboriginal businesses.

iii. Access to social services and income management³⁶

136. Income Management is a tool that helps people budget their welfare payments and ensures they are getting the basic essentials of life, such as food, housing, electricity, and education. A proportion of a person's welfare payment is income managed and directed towards meeting basic needs. The Australian Government Enhanced Income Management program commenced in early September 2023. Eligible participants can volunteer to enter the enhanced Income Management program.

j. Families, children, and women

i. Stolen Generations

137. The Australian Government remains committed to providing services that assist members of the Stolen Generations to reconnect with families and deal with the impacts of trauma. The government's response focuses on practical changes to improve the lives of the Stolen Generations and to make amends for the past wrongs by providing healing and support services.
138. On 1 March 2022, the *Territories Stolen Generations Redress Scheme* opened for applications. The Scheme seeks to recognise the harm and trauma experienced by the Stolen Generations who were removed from their families or communities, and whose removal took place in the NT; the ACT prior to self-government; or the Jervis Bay Territory. The Australian Government committed \$378.6 million over five years to establish and operate the Scheme. The Scheme is open for a four-year application period and will close on 30 June 2026.
139. Eligible Scheme applicants receive a one-off redress payment of up to \$75,000 and a healing assistance payment of \$7,000. Eligible Scheme applicants can also choose to have their story acknowledged by a senior government official and receive a personalised and genuine acknowledgement of the resulting harm and trauma.
140. From November 2017–December 2023, the Australian Government invested a further \$321.16 million (averaging \$56.53 million per year) through the IAS Safety and Wellbeing Program to provide practical supports for members of the Stolen Generations. This included funding for family reunions, community-based healing initiatives, and

³⁶ CERD/C/AUS/CO/18-20 Concluding Observation 24(c)

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social and emotional wellbeing support services, primarily delivered through Aboriginal community-controlled health services across Australia.

141. Some states and territories have also introduced their own reparations schemes. On 31 March 2022, the Victorian Government opened its Stolen Generations Reparations Package. The package is to help address the trauma and suffering caused by the forced removal of Aboriginal children from their families, community, culture, identity, and language. The five-year package was designed by the Stolen Generations Steering Committee which consisted of members of the Stolen Generations, their descendants and community-controlled support organisations. This community-led process ensured Aboriginal leadership and decision-making in the design of the Package.

ii. Aboriginal and Torres Strait Islander Women and Girls³⁷

142. The Australian Government is committed to centring the voices, perspectives and leadership of Aboriginal and Torres Strait Islander women and girls, working in partnership to achieve change. The Australian Government acknowledges the intersectional challenges and compounded disadvantage faced by Aboriginal and Torres Strait Islander women and girls.
143. Ending violence against women and children, especially for Aboriginal and Torres Strait Islander women, is a national priority. Both primary prevention and providing support to Aboriginal and Torres Strait Islander women and children are national priority areas under the *National Plan to End Violence against Women and Children 2022–2032*.
144. The National Plan includes a dedicated *Aboriginal and Torres Strait Islander Action Plan 2023–2025*. Initiatives under this plan focuses on addressing the immediate family safety needs of Aboriginal and Torres Strait Islander families and communities, while laying the foundations for long-term structural change.
145. In the 2023–24 Budget, the Australian Government announced \$262.6 million over five years from 2022–23 towards First Nations family safety initiatives, which includes:
- a. \$145.3 million over four years to implement future actions still to be finalised under the Aboriginal and Torres Strait Islander Action Plan for family violence;
 - b. \$7.7 million over three years for the establishment of a National Peak Body for Aboriginal and Torres Strait Islander family safety, to support self-determination promotion activities in genuine partnership with First Nations people;

³⁷ CERD/C/AUS/CO/18-20 Concluding Observation 28

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- c. \$3.2 million over two years to establish up to five community networks to improve collaboration and service integration across the family safety sector;
 - d. \$14.4 million in 2024–25 to maintain base funding for critical family violence service provision (continuation of services);
 - e. \$23.2 million over four years to deliver up to seven trauma-aware, place-based healing programs for First Nations children and families who are impacted by family violence or child protection.
146. The Australian Government has provided \$5.7 million to support the multi-year *Wiyi Yani U Thangani* (Women's Voices) project, led by the Aboriginal and Torres Strait Islander Social Justice Commissioner within the AHRC, which captures the self-determined strengths, challenges and aspirations of First Nations women and girls.
147. The landmark *Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future* Report (2020) is the first national report in more than 30 years where 2,300 First Nations women and girls have been heard as a collective on the issues that matter to them, and elevates their diverse and lived experiences. The report is informing policy direction across all levels of governments to respond to the unique issues that impact First Nations women and girls.
148. The Australian Government has made progress in improving education outcomes and employment participation for Aboriginal and Torres Strait Islander women and girls. Higher education enrolments for Indigenous females have nearly doubled in the 10 years from 2012 (8,383) to 2022 (16,058). In 2022, Indigenous females made up 69% of the Indigenous university cohort. Since 1 July 2014, more than 14,300 Indigenous women have been employed through Indigenous-specific employment programs.
149. Under the IAS Safety and Wellbeing Program, the Australian Government invested \$310 million in 2021–22 and \$339.3 million in 2022–23 to respond to the immediate and structural drivers that contribute to violence in Indigenous communities. This included support for activities that:
- a. reduce harm from drug, alcohol and substance misuse;
 - b. reduce offending;
 - c. improve overall health and wellbeing for communities;
 - d. support the delivery of specialist legal services to Indigenous women and their families through the Supplementary Legal Assistance program, Indigenous Women's Program and Family Violence Prevention Legal Services.

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150. This funding is in addition to over \$2.4 billion over five years from 1 July 2020 which the Australian Government committed under the *National Legal Assistance Partnership Agreement 2020–2025* to legal aid commissions, community legal centres, and Aboriginal and Torres Strait Islander Legal Services (ATSILS). Under this Partnership Agreement, Australia’s most vulnerable people are a priority group.
151. The NT Government’s Domestic, Family and Sexual Violence Reduction Framework 2018–2028: *Safe, Respected and Free from Violence* acknowledges that as well as gender inequality, Aboriginal women experience other disadvantages and vulnerabilities linked to a history of injustice and racism that impact on their social, health and economic status. The Framework recognises that Aboriginal women are significantly overrepresented in the NT among those experiencing domestic, family, and sexual violence.
152. NT Health’s Domestic, Family and Sexual Violence Regional Partnership Grants 2023–2026 seeks to improve responses to domestic, family, and sexual violence through prioritising upskilling hospital and primary health staff to identify, respond, refer and report domestic, family and sexual violence.
153. The NSW Government’s Domestic and Family Violence Plan 2022–2027 and Sexual Violence Plan 2022–2027 recognise that Aboriginal and Torres Strait Islander Peoples experience multiple and intersecting challenges impacting both their likelihood of experiencing violence and the severity of that violence, and face additional barriers seeking support and safety. The plans implement a range of initiatives to support Aboriginal and Torres Strait Islander communities.

iii. Adoption and traditional child rearing practices

154. On 8 September 2020, the Queensland Parliament passed the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Qld) to allow legal recognition of a traditional child rearing practice. The legislation allows for applications to be made that, if granted, will result in a permanent transfer of parentage from the biological parents to the cultural parents.

iv. Aboriginal and Torres Strait Islander children in alternative care³⁸

155. Data reported by the Australian Institute of Health and Welfare in its report *Child Protection Australia 2021–22*, shows that at 30 June 2022, there were around 19,400 Aboriginal and Torres Strait Islander children in out-of-home care—an increase of

³⁸ CERD/C/AUS/CO/18-20 Concluding Observation 26(e)

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around 7.8% since the report *Child Protection Australia 2018–19*. Approximately two-thirds (63%) of these children were cared for by Indigenous or non-Indigenous relatives or kin, or other Indigenous care givers. At 30 June 2022, approximately 13,869 Aboriginal and Torres Strait Islander children had been in care for two or more years. Further, of the 177,600 Australian children who received child protection services in 2021–22, 57,900 (33%) were Aboriginal and/or Torres Strait Islander children.

156. Several initiatives are taking place under the national plan, *Safe and Supported: The National Framework for Protecting Australia's Children 2021 – 2031 (Safe and Supported)*, to address the factors that lead to the removal of children and improve overall health, wellbeing and safety of communities. The Action Plan builds on the work of the first *National Framework for Protecting Australia's Children 2009–2020*.
157. Safe and Supported responds to target 12 of the National Agreement; to reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45%, by 2031. Under the framework is an *Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, which outlines the key systemic barriers to the safety and wellbeing of First Nations children, young people, and families.
158. The first action plan sets out actions and activities to address the over-representation of Aboriginal and Torres Strait Islander children in child protection systems and contains actions which specifically addresses improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or being in contact with, child protection systems.
159. An independent Aboriginal and Torres Strait Islander Leadership Group are partners with Commonwealth and state and territory governments in the Safe and Supported framework, including the development and implementation of the dedicated five-year implementation plans for Aboriginal and Torres Strait Islander children.
160. In the NT, current figures show that 89% of children being admitted into out-of-home care are Aboriginal and/or Torres Strait Islander. Recognising Indigenous communities, cultural authorities and service providers are central to the out-of-home care system, the government supports partnerships between Indigenous and non-Indigenous organisations to deliver services and build capacity and capability.
161. In August 2019, a new Aboriginal Foster and Kinship Care Model was released in the NT. Significant amendments to the *Care and Protection of Children Act 2007* and the *Youth Justice Act 2005* took effect in the NT in March 2020. The amendments include important changes such as improving care planning, strengthening the principle of family

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connection, introducing new limits to the length of time young people are held in police custody, removing barriers to diversion, and decriminalising the breach of bail conditions as an offence.

162. The NT also passed the *Care and Protection of Children Amendment Act 2023*. The reform measures contained in this Act follow the commencement of the *Territory Families Legislation Amendment Act 2021* and reflect various government commitments, including under Safe and Supported. The amendments address findings in coronial inquests into the deaths of Aboriginal children in remote communities; promote child wellbeing and safety; and support and empower young people and children in matters relating to them.

v. Family support services³⁹

163. Under the IAS, the Australian Government invested over \$3.19 billion across Australia from 2017–18 to 30 June 2023 in activities to support Indigenous families, children, and communities to improve community safety, wellbeing and education outcomes. This funding supplemented mainstream Australian Government support for all Australian families through childcare, pre-school, education, health, and family support programs, and supported vulnerable families by addressing the underlying drivers of disadvantage.
164. Between 2017–18 and 2022–23 this investment included:
- a. \$1.68 billion under the IAS Safety & Wellbeing Program for a range of activities including activities to divert Indigenous people from the criminal justice system, community night patrols and drug, alcohol and substance (use) prevention and treatment and family support programs.
 - b. \$1.51 billion under the IAS Children & Schooling Program to increase school attendance and improve educational outcomes by improving family and parenting support, early childhood development, care and education, youth engagement and transition to higher education.

vi. Commissioners for Indigenous Children⁴⁰

165. The Australian Government notes the recommendation that Australian governments consider establishing one or more Commissioners for Indigenous Children. The *Aboriginal and Torres Strait Islander First Action Plan 2023–2026* under *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* includes a key action to establish and strengthen advocacy through Aboriginal and Torres

³⁹ CERD/C/AUS/CO/18-20 Concluding Observation 26(e)

⁴⁰ CERD/C/AUS/CO/18-20 Concluding Observation 26(f)

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Strait Islander Commissioners. The role of the National Children's Commissioner within the AHRC includes promoting discussion and awareness of matters relating to the human rights of all children in Australia.

166. Many states and territories across Australia have established specific commissioners for Indigenous children and young people who work to improve health, education, child protection and justice outcomes for Aboriginal and Torres Strait Islander children and young people. For example:
- a. In December 2023, the NT Government appointed a Larrakia woman to be the NT Children's Commissioner.
 - b. In 2023, the ACT established the ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner.

k. Education⁴¹

i. Australian curriculum and access to education for Indigenous children

167. Safeguarding children's cultural and linguistic identity is crucial to the maintenance of Aboriginal and Torres Strait Islander cultures into the future. The *Foundation to Year 10 Australian Curriculum* includes a cross-curriculum priority to enable Indigenous Australian students to see themselves, their identities and their cultures reflected in the curriculum, and to enable all students to engage in reconciliation, respect, and recognition of the world's oldest, continuous and living cultures.
168. The Australian Curriculum also includes the *Framework for Aboriginal Languages and Torres Strait Islander Languages*. The framework guides schools to support the teaching and learning of Aboriginal and Torres Strait Islander languages and allows the local development of language-specific curricula within a nationally consistent structure.
169. In addition to other Commonwealth, state and territory funding, the Australian Government provides approximately \$250 million each year to activities to improve Aboriginal and Torres Strait Islander educational outcomes through the IAS Children and Schooling Program. The program has a focus on increased school attendance and improved educational outcomes that lead to employment.
170. Responsibility for education is shared between the Australian Government and the states and territories.

⁴¹ CERD/C/AUS/CO/18-20 Concluding Observation 37

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ii. *Aboriginal and Torres Strait Islander Early Childhood Education and Child Care*⁴²

171. The Australian Government recognises that the early years are a key opportunity to support children in the early development of their cognitive, creative, emotional, literacy and language skills. These skills are required for positive learning outcomes, and will support future success in education, work and life.
172. On top of mainstream measures, the Australian Government has committed approximately \$125 million per annum over four years from 2023–24 under the Community Child Care Fund (CCCF) to increase childcare participation in hundreds of vulnerable and disadvantaged communities across Australia. This includes approximately \$59 million per annum available to 149 childcare services under the CCCF Restricted program (CCCFR) for activities that increase Indigenous children's participation in early childhood education and care (ECEC). In 2021–22 Budget the government committed approximately \$29.9 million to the expansion of the CCCFR to establish services in mainly remote locations. The expansion aims to increase participation rates of First Nations children in ECEC settings by providing access to high quality ECEC for approximately 300 children per year.
173. The Connected Beginnings program draws upon the strength and knowledge of First Nations' communities to increase children and families' engagement with health and early childhood education and care. It improves access to existing early childhood, maternal and child health and family support services to ensure children are safe, healthy, and ready to thrive at school by the age of five. In August 2021, the Australian Government committed an additional \$81.8 million to support the expansion of the program to 50 sites nationally by 2025, which once expanded has the potential to support up to 20% of all First Nations children. As of December 2023, the program supported around 18,800 First Nations children across 41 communities.
174. The Australian Government has also committed \$10.2 million over three years from 2022–23 to 2024–25 for the Early Childhood Care and Development Policy Partnership. The partnership aims to drive coordinated reform efforts to improve early childhood systems and sectors for Aboriginal and Torres Strait Islander children and families.

iii. *Improving remote school attendance and rates of school completion*⁴³

175. Supporting Aboriginal and Torres Strait Islander children to get a quality education is a key priority for the Australian Government.

⁴² CERD/C/AUS/CO/18-20 Concluding Observation 24(a)

⁴³ CERD/C/AUS/CO/18-20 Concluding Observation 24(a)

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176. Australian state and territory governments have conducted a variety of programs to improve school completion for Aboriginal and Torres Strait Islander students. For example, Queensland is supporting schools to retain more students and support them into further study or work through: early identification of students at risk of disengagement; implementing FlexiSpaces, to provide innovative and inclusive learning spaces for students at risk of disengagement; and working with providers of alternative education settings to foster high-quality outcomes for their students.

1. Preserving and promoting Indigenous languages and culture⁴⁴

177. The Australian Government recognises that safeguarding Indigenous cultural and linguistic identity is essential to the cultural life and identity of Australia.
178. Following the 2019 International Year of Indigenous Languages, the Australian Government is now participating in the UNESCO International Decade of Indigenous Languages 2022–2032. Australia is a member of the Global Taskforce for Making a Decade of Action for Indigenous Languages. In August 2023, Australia released *Voices of Country*—Australia’s Action Plan for the International Decade of Indigenous Languages 2022–2032. Co-authored with the International Decade of Indigenous Languages Directions Group and the Australian Government, the action plan provides a framework to guide Australia’s participation in the International Decade and is a call to action for all stakeholders.
179. *Voices of Country* builds upon what has been achieved through the Australian Government’s National Cultural Policy *Revive*—a place for every story, a story for every place, which recognises and respects the critical place of Aboriginal and Torres Strait Islander stories at the centre of Australia’s arts and culture. *Revive* is structured around five pillars but places First Nations peoples first. It recognises Aboriginal and Torres Strait Islander arts and culture must be community-led, and aims to advance agency, and financial and creative control.
180. The Aboriginal and Torres Strait Islander Languages Policy Partnership (LPP) is an Australian Government commitment to bring together state and territory governments and Aboriginal and Torres Strait Islander representatives to work together to improve outcomes and accelerate action on Target 16 of the National Agreement. The LPP enables Aboriginal and Torres Strait Islander people to work in genuine partnership with

⁴⁴ CERD/C/AUS/CO/18-20 Concluding Observation 37

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governments in a joined-up approach to ensure their cultures and languages are strong, supported, and flourishing.

181. The Australian Government Indigenous Languages and Arts program supports the expression of Aboriginal and Torres Strait Islander culture through provision of around \$30 million annually to community-driven Aboriginal and Torres Strait Islander languages and arts projects that support the participation in and maintenance of culture. The program also provides annual operational funding to a network of 24 Indigenous Language Centres around Australia. Since 2021–22, the program has received additional ongoing funding under the National Agreement policy specifically to drive progress against Target 16.
182. On 24 October 2017, NSW passed the *Aboriginal Languages Act 2017*. This legislation recognises the importance of language revival and growth to Aboriginal culture, identity, and social wellbeing. The Act established the Aboriginal Languages Trust, a NSW Government agency to promote and resource Aboriginal community-led language activities. In 2023, NSW launched a dedicated NSW Aboriginal Languages week - a first for Australia.
183. In NSW, the Ninganah No More languages program has expanded the number of ECEC services providing Aboriginal languages teaching to early years learners. As at October 2023, 3,190 children in NSW had access to Aboriginal language teaching in ECEC settings, including 1,311 Aboriginal children.

m. Criminal justice and incarceration, including youth

184. All Australian governments are signatories to the National Agreement. The two justice related targets under the National Agreement are key priorities for the government in partnership with First Nations people, communities and organisations:
 - a. Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15%;
 - b. Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30%.

i. Youth incarceration and alternatives to detention⁴⁵

185. Australian governments are implementing interventions and programs to reduce youth offending and to provide alternative pathways outside the justice system. For example:

⁴⁵ CERD/C/AUS/CO/18-20 Concluding Observation 26 (b)

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- a. The NT Police Force has developed a youth specific general order and four supporting instructions to reduce the rate of recidivism and detention, including one that outlines police diversion mechanisms in place. Specifically, police members must consider issuing a youth with a verbal warning, written warning, youth justice conferencing, or youth diversion program. The arrest of a youth should occur when deemed necessary and only as a last resort.
 - b. SA launched a two-year trial of the Youth Aboriginal Community Court in 2023–24, which is a specialist court for Aboriginal children and young people. The court can defer the sentencing of eligible participants for up to six months while participants participate in a culturally responsive and trauma-informed program that addresses their trauma and criminogenic needs, implementing protective factors and diverting them away from further offending behaviour.
186. In 2022–23, Aboriginal and Torres Strait Islander young Australians, aged 10–17 years, had disproportionately high contact with the criminal justice system. On an average day in 2022–23, 828 young people aged 10 and over were in detention, and 483 of those (58%) would have been Aboriginal or Torres Strait Islander young people. This means that Aboriginal and Torres Strait Islander young people aged 10–17 were 28 times as likely as non-Indigenous Australians aged 10 to 17 to be in detention on an average day.⁴⁶
- ii. *Places of detention for juveniles***⁴⁷
187. All states and territories manage one or more places of detention for youths who have been either remanded in custody or sentenced to a period of detention. Youth detainees are typically kept separate from adult detainees and specifically designed programs are made available to provide youth detainees with rehabilitation opportunities.
- iii. *Royal Commission into the Protection and Detention of Children in the Northern Territory***⁴⁸
188. In August 2016, in response to reports of serious abuse of detainees in the Don Dale Detention Centre in the NT, the Commonwealth and NT governments established a Royal Commission and Board of Inquiry into the Protection and Detention of Children in the NT. The Royal Commission considered what improvements could be made to the

⁴⁶ Australian Government, 'Youth Justice in Australia 2022-23', *Australian Institute of Health and Welfare*, 28 March 2024.

⁴⁷ CERD/C/AUS/CO/18-20 Concluding Observation 26(c)

⁴⁸ CERD/C/AUS/CO/18-20 Concluding Observation 26(c)

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child protection and youth detention systems of the NT and delivered its final report in November 2017.

189. The NT Government accepted the intent and direction of all 227 recommendations of the Royal Commission and in April 2018 committed an additional \$229 million over five years to implement the reforms. In January 2023, the NT Government reported that 185 of the 218 recommendations proposing action by the NT Government were complete. The implementation of other recommendations is currently underway.
190. In 2018, the NT Government allocated \$70 million for the development of a new Youth Justice Centre in Darwin and a redeveloped centre in Alice Springs. Both youth justice centres will be completed and operational in 2024. These new facilities will enable evidence-based, restorative, and culturally-and age-appropriate programs that are aimed at reducing recidivism, while ensuring community safety through secure and fit for purpose design.
191. In October 2022, a Model of Care in Youth Detention was released, following a comprehensive 18-month consultation and co-design process with the youth justice sector. This included Aboriginal young people, families, and organisations to ensure that it meets the cultural needs of stakeholders. The Model of Care in Youth Detention drives a framework for therapeutic care.
192. In response to the Report of the Royal Commission (8 February 2018), the Australian Government supported 26 of the 28 recommendations for which it has sole or joint responsibility. The Australian Government committed to review its current annual investment of over \$4.2 billion in the NT to improve outcomes for children and young people in the NT, resulting in the Productivity Commission study into Expenditure on Children in the NT (2020). New structures and initiatives were established to progress a reform agenda informed by the Royal Commission and the Productivity Commission study, including the Children and Families Tripartite Forum and the 10-Year Generational Strategy for Children and Families in the NT 2023–2033.

iv. *Mandatory sentencing for children*⁴⁹

193. Most Australian jurisdictions do not have mandatory sentencing laws that apply to children.

⁴⁹ CERD/C/AUS/CO/18-20 Concluding Observation 26(b)

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194. The NT no longer has mandatory sentencing laws applicable to children. Consistent with the recommendations of the Royal Commission, prescribed offences carrying a mandatory sentence for youth have been repealed.
 195. WA has mandatory sentencing laws that apply to children. However, under certain circumstances a young person's previous convictions may be disregarded by the court when considering the application of a mandatory sentence to that person following a further offence. For example, section 189 of the *Young Offenders Act 1994* (WA) provides that if a period of two years has elapsed between the time a person discharges a previous sentence and is convicted of a further offence, the prior conviction can be disregarded for the purposes of sentencing for the subsequent offence.
- v. *The minimum age of criminal responsibility*⁵⁰
196. During the reporting period, the minimum age of criminal responsibility in most Australian jurisdictions was 10 years of age, except for the NT and the ACT where the minimum age was 12 years of age. However, as a matter of common law, in all jurisdictions a child aged between 10 and 14 years of age (or between 12 and 14 in the NT and ACT) could only be criminally responsible for an offence if the prosecution can prove the child knew that his or her conduct was wrong. This common law principle, known as *doli incapax*, has been codified in all states and territories except NSW, SA and Victoria.
 197. The issue of the minimum age of criminal responsibility continues to be the subject of discussions between the Commonwealth and state and territory Attorneys-General through the Standing Council of Attorneys General (SCAG), including how jurisdictions can support children diverted from the criminal justice system. Minimum age of criminal responsibility reform will contribute to justice targets 10 and 11 under the National Agreement.
 198. The report of the SCAG Age of Criminal Responsibility Working Group was publicly released on 1 December 2023. The report provides a principles-based framework for jurisdictions to consider in raising the minimum age of criminal responsibility.
 199. Some jurisdictions took steps to raise the minimum age of criminal responsibility during the reporting period:
 - a. On 1 August 2023, the minimum age of criminal responsibility in the NT increased from 10 years to 12 years.

⁵⁰ CERD/C/AUS/CO/18-20 Concluding Observation 26(a)

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- b. On 22 November 2023, the ACT introduced legislation raising the minimum age of criminal responsibility from 10 to 14 in a staged approach, first to 12 upon commencement, and then to 14 by 1 July 2025. Limited exceptions will apply for exceptionally serious and intentionally violent offences committed by 12 and 13-year-olds.
- c. On 25 April 2023, the Victorian Government announced that it would raise the minimum age of criminal responsibility to 12, later moving to 14 by 2027.
- d. On 6 December 2023, the Tasmanian Government released its Youth Justice Blueprint, committing to raise the minimum age of criminal responsibility from 10 to 14 with no exceptions, alongside raising the age of detention to 16, by 2029.

vi. Incarceration of Aboriginal and Torres Strait Islander adults⁵¹

- 200. Aboriginal and Torres Strait Islander adults are over-represented in prisons, representing 33% of the prison population as at 30 June 2023 (ABS 2023: *Prisoners in Australia*).
- 201. In the October 2022–23 Budget, the Australian Government committed \$99 million to a historic First Nations Justice Package which included:
 - a. \$81.5 million over four years (2022–23 to 2026–27) to expand and establish justice reinvestment initiatives to improve justice outcomes for Aboriginal and Torres Strait Islander people
 - \$69 million over four years from 2022–23 (and \$20 million per year from 2026–27) to establish and expand place-based community-led justice reinvestment initiatives
 - \$12.5 million to establish an Independent National Justice Reinvestment Unit to coordinate and support justice reinvestment initiatives at a national level.
 - b. \$13.5 million in additional funding to ATSILS to ensure First Nations families can access culturally appropriate and timely legal assistance before, during and after coronial processes;
 - c. \$1 million to build greater capacity in the peak body, the National Aboriginal and Torres Strait Islander Legal Services, to support its contribution to law reform and policy development to address inequalities in the legal system;
 - d. \$3 million to support the National Family Violence Prevention Legal Services Forum, and Family Violence Prevention Legal Services providers who deliver legal

⁵¹ CERD/C/AUS/CO/18-20 Concluding Observation 28(b)

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assistance and non-legal support to victim-survivors of family and domestic violence and sexual assault.

202. The budget measures build on existing work to address the justice targets as part of the Commonwealth's first Closing the Gap Implementation Plan, including:
- a. \$7.6 million over three years from 2021–22 to establish the Justice Policy Partnership;
 - b. \$9.3 million over four years from 2021–22 to ATSILS for expensive and complex cases and coronial inquiries;
 - c. \$8.3 million over three years from 2021–22 for culturally appropriate family dispute resolution.
203. In the May 2023–24 Budget, the government committed an additional \$10 million over four years (2023–24 to 2026–27) for justice reinvestment in NT, under the \$250 million plan for A Better, Safer Future for Central Australia. The government's focus on justice reinvestment is a commitment to work in partnership with First Nations organisations and communities to improve justice outcomes.
204. Justice reinvestment empowers communities to identify the best ways to prevent and reduce contact with the criminal justice system, and to make decisions about the initiatives and programs that affect their lives.
205. Aboriginal and Torres Strait Islander communities can apply for justice reinvestment funding through two programs: the National Justice Reinvestment Program and the Justice Reinvestment in Central Australia Program. Applications for both programs opened in September 2023 and are open for applications year-round.
206. As part of the 2017–18 Budget, the Minister for Employment announced an Indigenous Employment Package, which included \$17.6 million over four years for the Time to Work Employment Service in non-remote locations and \$6.4 million over four years in remote locations. The service voluntary in-prison pre-employment program aimed to help Aboriginal and Torres Strait Islander people transition out of prison to prepare for work and reintegrate into the community.
207. The Australian Government is working with the states and territories on Prison to Work Employment Pilots, which trial innovative ways of transitioning Aboriginal and Torres Strait Islander prisoners to employment after release. There are six pilots currently funded across Australia, including four pilots targeting female prisoners.

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vii. *Aboriginal and Torres Strait Islander deaths in custody*

208. State and territory governments are primarily responsible for criminal justice and corrections systems in their jurisdictions. The Commonwealth has an important leadership role and is taking a system-wide approach to addressing the unacceptably high number of Aboriginal and Torres Strait Islander people incarcerated, consistent with the central finding of the Royal Commission.
209. The Australian Government is focussing its efforts to reduce deaths in custody by addressing the unacceptably high rates of Aboriginal and Torres Strait Islander people entering prison and youth detention, including through its justice reinvestment programs and the Justice Policy Partnership (as detailed above).
210. On 21 June 2023, the Australian Institute of Criminology, with support from the joint Attorney General's Department and the National Indigenous Australians Agency Taskforce, released the national real-time reporting of deaths in custody dashboard. National real-time reporting of deaths in custody helps to assure the public that all governments are transparent and accountable for their respective criminal justice systems. The dashboard provides information on all deaths occurring in police and prison custody, as well as in youth detention.
211. The Custody Notification Service (CNS) provides culturally appropriate health and wellbeing checks and basic legal information to First Nations people in custody.
212. In SA, the Aboriginal Legal Rights Movement is funded by the SA Government to provide an Aboriginal Visitors Scheme (AVS). At the request of the Aboriginal person or SA Police contact, AVS staff can provide comfort, care and support to the person in custody, and report any issues of concern (medical, welfare or other services) to the police.
213. The passing of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* (WA) is expected to reduce the number of Aboriginal people incarcerated in WA. The passage of this Act was a key recommendation from the Coronial Inquiry into the death of Ms Dhu, who was taken into custody on a warrant of commitment for unpaid fines in 2014.
214. The Australian Government is also conducting an independent review of access to and effectiveness of health care services for First Nations people in prison. The review, due to be considered by Health Ministers in mid-2024, will improve understanding of current state and territory approaches to delivering prison health care and provide recommendations for what needs to be done by all Australian governments to improve

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health outcomes for First Nations people in prison. Multiple coronial investigations into First Nations deaths in custody have noted that improving access to effective health services for First Nations people in prison is an important way to prevent deaths in custody and achieve better health outcomes long term, as well as contributing to rehabilitation and reducing incarceration.

viii. Legal Services for Aboriginal and Torres Strait Islander peoples⁵²

215. Through the *National Legal Assistance Partnership 2020–2025* the Australian Government funds ATSILS, community-controlled organisations that provide culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people. ATSILS.
216. From 1 July 2020, the Australian Government commenced funding of over \$440 million for ATSILS under the *National Legal Assistance Partnership*. In an acknowledgement that ATSILS are best placed to deliver culturally safe services within their own communities, the National Legal Assistance Partnership includes a formal commitment to self-determination, the first time that these principles have been included within Australian Government legal assistance arrangements.
217. In July 2020, the Australian Government commenced \$1.6 million in funding over five years to NATSILS under the Community Legal Services Program. NATSILS has also received the following additional funding:
 - a. \$2.43 million from 2021–22 to 2023–24 to support their involvement in the establishment of the Justice Policy Partnership, as co-chair and joint secretariat. The Justice Policy Partnership brings together representatives from the Coalition of Peaks, Aboriginal and Torres Strait Islander experts, and Australian, state and territory governments to take a joined-up approach to Aboriginal and Torres Strait Islander justice policy;
 - b. \$1 million over 2022–2025 to support NATSILS' contribution to law reform;
 - c. \$21 million one-off payment in 2022–23 to NATSILS for distribution to ATSILS and NATSILS in 2023–24 to contribute to access to justice outcomes.
218. In recognition that many of the practices and requirements of Australian legal systems are not responsive to the needs and strengths of First Nations peoples, and that First Nations peoples face a number of significant barriers to accessing justice, the National

⁵² CERD/C/AUS/CO/18-20 Concluding Observation 26(d)

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Indigenous Australians Agency support a number of legal assistance service activities which work with First Nations families under the IAS. This includes support for:

- a. five Supplementary Legal Assistance activities, delivered to supplement core funding to legal assistance providers in the NT to provide trauma informed legal and related services to Aboriginal and Torres Strait Islander women;
- b. seven Indigenous Women's Program activities, delivered to community legal centres across Australia to provide legal assistance to Aboriginal and Torres Strait Islander women on a wide range of legal issues across Australia;
- c. 14 Family Violence Prevention Legal Services, which provide culturally safe legal services and wrap around non-legal support to Aboriginal and Torres Strait Islander victim-survivors of family violence and/or sexual assault across Australia.

219. On 12 August 2022, Australia's national forum for Attorneys-General, the Standing Council of Attorneys-General, endorsed the *Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027*. Under the work plan, all Australian jurisdictions seek to take collective and individual action to improve the experiences of victims and survivors of sexual assault in the criminal justice system. To support the implementation of the work plan, the Australian Government provided \$8.4 million over three years from 2023–24 to pilot new service delivery models in three locations across Australia. These pilot sites include:

- a. In WA, the Women's Legal Service WA, Aboriginal Family Legal Services, and Ruah Legal Services will partner to provide state-wide integrated, specialised and trauma-informed legal services for victims and survivors, delivering services at known points of disengagement and withdrawal from the legal process.
- b. In Victoria, Victoria Legal Aid, Djirra, and Women's Legal Service Victoria will partner to expand Victoria's state-wide Victims Legal Service (VLS) to provide legal information for victims and survivors of sexual assault through the existing VLS helpline, and targeted advice and case work for victims and survivors seeking to protect confidential communications. This model will also provide tailored support for Aboriginal victims and survivors to report sexual assault to police.
- c. In the ACT, the Women's Legal Centre ACT and Victim Support ACT will establish the territory-wide ACT Sexual Assault Legal Service, delivering legal assistance, including legal representation to support victims and survivors to engage with the criminal justice system, and providing integrated, wrap-around services for victims and survivors, including financial assistance, counselling, and specialist support.

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n. Health

i. Programs to improve health of Aboriginal and Torres Strait Islander peoples⁵³

220. The *National Aboriginal and Torres Strait Islander Health Plan 2021–2031*, and the *National Aboriginal and Torres Strait Islander Health Workforce Strategic Framework and Implementation Plan 2021–2031* recognise the importance of culture as an enabler for good health, and target the social, economic, and environmental factors that can inhibit good health. These plans were co-designed in partnership with the Aboriginal and Torres Strait Islander health sector and will be delivered in alignment with the National Agreement.
221. The National Indigenous Australians Agency committed approximately \$90 million in 2023-24 for activities that enhance the wellbeing of First Nations people. This included social and emotional wellbeing services, mental health first aid training, suicide prevention and postvention services, workforce support, youth engagement services and wellbeing supports for the Stolen Generations.
222. From 1 July 2023, the Australian Government committed \$5.1 billion over four years through the Indigenous Australians' Health Programme to improve the health, wellbeing, and life expectancy outcomes for Aboriginal and Torres Strait Islander peoples. The programme directly underpins the National Agreement and supports implementation of the Health Plan and the National Workforce Plan. The programme is designed to support the delivery of, and access to, high quality, culturally appropriate health care and services for First Nations peoples.

ii. Aboriginal and Torres Strait Islander people with disability⁵⁴

223. Aboriginal and Torres Strait Islander people with disability are some of the most disadvantaged of all Australians. Aboriginal and Torres Strait Islander people with disability experience intersectional inequality, which is the compounding of inequality based upon racism and ableism.
224. Disability has been established as a cross-cutting outcome under the National Agreement. This requires every socio-economic target, outcome measure, and priority reform, to achieve better outcomes through being inclusive, accessible and equitable for First Nations people with disability.
225. The Disability Footprint sets out a framework of actions to enhance, strengthen, and where needed, build the Aboriginal and Torres Strait Islander community-controlled

⁵³ CERD/C/AUS/CO/18-20 Concluding Observation 24

⁵⁴ CERD/C/AUS/CO/18-20 Concluding Observation 24(b)

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disability sector to support more culturally appropriate disability services. Work on the Disability Footprint commenced in 2022.

iii. Suicide prevention in Aboriginal and Torres Strait Islander communities⁵⁵

226. Data from the ABS in 2022 indicated that First Nations peoples die by suicide at more than twice the rate of non-Indigenous people, and that the rate of suicide in 2022 for First Nations males was the highest in the 10-year time series, at 46.3 deaths per 100,000 people:-
227. Suicide was the fifth leading cause of death among Indigenous Australians in 2020, accounting for 5.5% of all deaths (compared to 14th leading cause of death for all Australians, 1.9% of all deaths). It was also the leading cause of death for Indigenous children, accounting for 26.5% of all Aboriginal and Torres Strait Islander deaths aged 5-17 years. The Australian Government recognises that these rates are unacceptably high, and one life lost to suicide is one too many.
228. In 2022, The Australian Institute of Health and Welfare published a report, *Aboriginal and Torres Strait Islander LGBTQIASB+ people and mental health and wellbeing*, highlights gaps in existing data collection regarding the experiences of this group. The report suggests there is a need to investigate the compound risk of suicide-related behaviour among people who are Aboriginal and Torres Strait Islander and LGBTIQ+. This has translated into focus on at-risk groups within Aboriginal and Torres Strait Islander populations across Australian Government efforts including youth and LGBTIQ+ people. An Aboriginal and Torres Strait Islander Suicide Prevention Strategy, building on the findings of the evaluation project and co-developed with First Nations experts, will be launched in 2024.
229. The *Fifth National Mental Health and Suicide Prevention Plan* (2017–2022) includes improving Aboriginal and Torres Strait Islander mental health and suicide prevention as a priority area. The *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017–2023* is designed to complement the plan and sets out a comprehensive and culturally appropriate stepped care model applicable to both Aboriginal and Torres Strait Islander specific and mainstream health services.
230. States and territories are working in partnership with the Australian Government to fund suicide prevention initiatives. For example, as part of the *Western Australian Suicide*

⁵⁵ CERD/C/AUS/CO/18-20 Concluding Observation 24(d)

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Prevention Framework 2021–2025, the WA Government funded ten regional Aboriginal Community Controlled Organisations to support the development and implementation of regional-specific Aboriginal suicide prevention plans across the ten health regions.

2. Temporary and Permanent Migration Programs

o. Refugee and humanitarian entrants⁵⁶

231. Australia's border policies are enacted in accordance with domestic and international legal obligations in relation to the regulation of people smuggling vessels and unauthorised maritime arrivals, including human rights law, refugee law, and the law of the sea. Australia takes its international protection and *non-refoulement* obligations seriously. Australia does not return individuals to situations where they will face persecution or a real risk of torture, cruel, inhuman, or degrading treatment or punishment, arbitrary deprivation of life or the application of the death penalty.
232. Criminal people smugglers take advantage of vulnerable migrants and put their lives at risk. The safety of potential irregular immigrants attempting to travel by boat to Australia remains a priority for Australia.

p. Determination of refugee status and assistance⁵⁷

i. Determination of refugee status

233. There are robust processes for refugee status determination in Australia, including procedural fairness and due process under Australia's domestic legal framework that accords with Australia's international obligations. These processes apply regardless of whether the individual being assessed is in detention.

ii. Assistance during determination of refugee status

234. The Australian Government facilitates and maintains access by detainees to legal representatives. The Immigration Advice and Application Assistance Scheme and other government funded measures provide access to professional refugee and immigration advice and application assistance for certain protection visa applicants.
235. Permanent Protection Visa (PPV), Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) applicants who are granted an associated bridging visa, which allows them to remain lawfully in the community while their visa application is being processed, may have access to a range of services offered by the government. This includes Medicare and the public health system; education for school aged children;

⁵⁶ CERD/C/AUS/CO/18-20 Concluding Observation 31(a)

⁵⁷ CERD/C/AUS/CO/18-20 Concluding Observation 33(b)

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assistance with finding employment (if they have work rights); and translating and interpreting services. Permanent visa holders (including PPV and humanitarian visas), TPV and SHEV holders are generally eligible for up to 510 hours of English language tuition through the Adult Migrant English Program if they meet certain requirements.

q. Immigration detention in Australia

i. Mandatory detention⁵⁸

236. Australia is entitled to take measures to uphold the integrity of Australia's national borders. Under the *Migration Act 1958* (Cth), a person who does not hold a valid visa is an unlawful non-citizen and must be detained so that they can undergo the relevant security, health, and identity checks to ensure that they do not pose an unacceptable risk to the community.
237. Whenever possible, unlawful non-citizens are accommodated in the community or in less restrictive placements. Since 2008, the Australian Government's policy has required that detention be a last resort for the management of unlawful non-citizens.
238. Immigration detention ends when the person is either granted a visa or is removed from Australia. This is dependent upon several factors, including identity determination, developments in country information, and the complexity of processing due to individual circumstances relating to health, character, or security matters.
239. The relevant Minister has the flexibility to release persons from detention by granting them a visa under section 195A of the Migration Act, or to place them in a residence determination arrangement (community detention) under section 197AB of the Migration Act, depending on the circumstances of the case. In most circumstances, non-citizens in Australia may seek merits review of a visa refusal or cancellation decision through the Administrative Appeals Tribunals (AAT), or in some circumstances, through a referral to the Immigration Assessment Authority (IAA). Judicial review, including appellate review, is also available for AAT and IAA decisions.
240. In *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* [2023] HCA 37 (NZYQ) the High Court found that unlawful non-citizens cannot continue to be kept in immigration detention for the purpose of their removal from Australia once there is no real prospect of their removal becoming practicable in the reasonably foreseeable future.

⁵⁸ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

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241. To give effect to the High Court's decision, the Department of Home Affairs immediately released from immigration detention impacted individuals and established a process for the continuous assessment of the detention cohort for the release of individuals impacted by the judgment. This included robust legal and quality assurance processes to ensure that decisions to release are lawful, appropriate, and consistently documented.
242. The Australian Government ensures that all detainees are accommodated in facilities most appropriate to their needs, circumstances, and risk profile, and have access to health services, appropriate food (accommodating dietary and cultural requirements), educational programs, cultural, recreational and sporting activities, internet and computer facilities, televisions, and clean, comfortable sleeping quarters.
243. The Australian Government contracts a health service provider, International Health and Medical Services (IHMS) to ensure that health services in detention centres, including mental health services, are comparable to those available to the Australian community under the public health system.
244. All detainees in immigration detention have the right to lodge complaints without hindrance or fear of reprisal, and are made aware of their rights, including those under international human rights law, and avenues to complain and seek redress. A complainant's identity and all complaints are treated as strictly confidential, with mechanisms in place to ensure a complainant's anonymity. Further information on complaints can be found in Australia's Common Core Document.

ii. *Children in immigration detention*⁵⁹

245. Immigration detention of children is always a last resort. Children are detained for the shortest time practicable and where possible, in Alternative Places of Detention (APODs) and not in an immigration detention centre. Where children are held in APODs, arrangements are in place to support best practice and adherence to child safeguarding obligations. Unaccompanied minors and families with minor children are referred to the relevant Minister for a residence determination decision for their prompt transfer from the APOD into the community, subject to the completion of identity, health, and security checks. This is to ensure they can freely participate in the community as soon as possible. Australia considers the best interests of children in any action taken concerning that child

⁵⁹ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

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and provides minors with access to free school education during the compulsory school age years, according to state or territory law.

246. The Child Safeguarding Framework (the framework) articulates the strong commitment of the Department of Home Affairs to safeguard children in line with the Commonwealth Child Safe Framework. The framework outlines the principles for Home Affairs to becoming a Child Safe Organisation and supports the implementation of Australia's international obligations under the Convention on the Rights of the Child.
247. The staff and contracted service providers are screened to ensure they are suitable to work with children, and workers are provided with information and training to improve their knowledge, skills and awareness of child safeguarding and wellbeing.
248. New offences in the Commonwealth Criminal Code came into effect in March 2020 under which Commonwealth officers, including in detention environments, who exercise care, supervision, or authority over children and who fail to protect children from, or fail to report, child sexual abuse, may face terms of imprisonment of up to five years.
249. Children in immigration detention and in the community under residence determinations have access to essential and necessary primary and mental health services with referrals to allied and specialist health providers as required. Acute care is provided by hospitals. Healthcare services provided are comparable to those available to the broader Australian community. Certain bridging visa holders, including asylum seeker children, are eligible for Medicare, Australia's public health insurance system.
250. All school-age children are provided access to education commensurate with Australian community standards.

iii. Review of decisions about immigration detention⁶⁰

251. Immigration detainees may seek review of the lawfulness of their detention or the legality of decisions resulting in their mandatory detention in the High Court of Australia and other federal courts.
252. The length and conditions of immigration detention, including the appropriateness of the accommodation and services provided, are subject to regular review by officers of the Department of Home Affairs, the Commonwealth Ombudsman and the AHRC.
253. The Migration Act requires the Commonwealth Ombudsman to review immigration detention arrangements for each person detained for more than two years, and then every six months if they remain in immigration detention.

⁶⁰ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

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*iv. Independent scrutiny of places of detention*⁶¹

254. The Australian Government's immigration detention network is under independent scrutiny by a range of bodies, including the Office of the Commonwealth Ombudsman, the AHRC, the Australian Red Cross and international human rights organisations such as the Office of the UN High Commissioner for Refugees, the Subcommittee on Prevention of Torture, and the Office of the UN High Commissioner for Human Rights. Independent scrutiny reports about immigration detention facilities and practices are treated seriously and all recommendations are considered.
255. The Commonwealth Ombudsman, as the Immigration Ombudsman, has provided oversight of immigration facilities since 2004 and conducted regular inspections since 2011 under section 5(1)(b) of the *Ombudsman Act 1976* (Cth). Since July 2018, as the National Preventive Mechanism for places of detention under the control of the Commonwealth under the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Optional Protocol to the CAT), the Commonwealth Ombudsman has unfettered access to immigration detention facilities, detainees and records, and can publish assessments about its findings. During inspections the Commonwealth Ombudsman examines the administrative and operational practices and procedures of the centres. The Commonwealth Ombudsman submits formal post-visit summaries and annual reports to the Department of Home Affairs, which the Commonwealth Ombudsman publishes.

*r. Regional processing*⁶²

256. Under Operation Sovereign Borders, Australia will continue to detect and intercept anyone who attempts an irregular boat voyage to Australia and return them to their country of departure or origin where it is safe to do. People who cannot be safely returned will be transferred to a regional processing country for assessment of any protection claims. These policies have successfully stemmed the flow of people smuggling ventures to Australia and prevented avoidable loss of life at sea.
257. Regional processing arrangements in Nauru, and the management of individuals under those arrangements, is the responsibility of the host government. Arrangements are administered and implemented in accordance with domestic and international law obligations, including international human rights law and refugee law. Australia does not have effective control of these arrangements, and its human rights treaty obligations are

⁶¹ CERD/C/AUS/CO/18-20 Concluding Observation 33(a)

⁶² CERD/C/AUS/CO/18-20 Concluding Observation 31

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not enlivened. Nonetheless, Australia supports the government of Nauru to implement regional processing arrangements, including contracting a range of services to support access to health and welfare.

258. Individuals under regional processing arrangements do not have a settlement pathway in Australia. Individuals brought to Australia for medical treatment or as accompanying family are in Australia for a temporary purpose only and are encouraged to engage with available durable migration options, including resettlement in a third country or to voluntarily return home or to another country to which they have a right of entry.

s. *Special Rapporteur on Migrants*⁶³

259. Australia notes the observation of the Committee that Australia should implement the recommendation of the then Special Rapporteur on the human rights of migrants in his report of April 2017 (A/HRC/35/25/Add.3). The Australian Government disagrees with a number of the observations on Australia's compliance with international obligations, and the report's characterisation of the human rights situation for migrants in Australia. The Australian Government considers it was not appropriate for the Special Rapporteur on Migrants to have prepared one country report in relation to visits to two independent and sovereign nations; Australia and Nauru. Australia responded only to recommendations relating to Australia.

t. *Sponsored Skilled Migration and Temporary Skill Shortage programs*⁶⁴

260. The Australian Government has zero tolerance for the exploitation of vulnerable workers. All workers in Australia have the same rights and protections at work, regardless of their citizenship or visa status.
261. The Department of Home Affairs provides visa holders with information about their work conditions and entitlements in their visa grant notice and via social media. Visa holders who may be working illegally are encouraged to engage with the Department of Home Affairs, and workers who have concerns about their workplace entitlements are encouraged to report their circumstances to the Fair Work Ombudsman (FWO). The Department of Home Affairs provides visa holders with contact details for the FWO via the Home Affairs website, social media and in visa grant letters. The FWO also undertakes a range of measures to ensure migrant workers have the information they need to understand and act on their workplace rights.

⁶³ CERD/C/AUS/CO/18-20 Concluding Observation 31(e)

⁶⁴ CERD/C/AUS/CO/18-20 Concluding Observation 35

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262. The Australian Border Force (ABF) combats foreign worker exploitation and its links to visa fraud through a spectrum of enforcement measures including education, compliance activities, intelligence collection, international engagement, and criminal prosecution. The ABF utilises a variety of disruption and deterrence methods, including site visits, illegal worker warning notices, infringement notices, civil penalties, and criminal prosecution.
263. Information about Australia's response to human trafficking, slavery, and slavery like practices (modern slavery) can be found in Australia's Common Core Document.
264. Australia's employer sponsored skilled migration program was reformed between 2017 and 2018 to ensure that it safeguards the jobs of Australian workers while continuing to support businesses to meet skills needs by recruiting migrants that complement the domestic labour market. In September 2022, the Australian Government held a 'Jobs and Skills Summit' into Migration Reform, resulting in agreement to commence a significant review of Australia's migration systems. Initial changes between September 2022 and December 2023 include expanding pathways to permanent residence for temporary skilled sponsored workers and raising the Temporary Skilled Migration Income Threshold (TSMIT) on 1 July 2023 from \$53,900 to \$70,000—the first increase to the TSMIT since 2013. These changes are a first step to provide more equitable access to permanent residence for temporary work visa holders, along with ensuring migrant wages are in line with relevant Australian wages. The government continues work on reforms to the skilled visa programs in line with the Migration Strategy and in response to the 2023 Review of the Migration System.
265. All Australian employers sponsoring an overseas worker for the Temporary Skills Shortage (TSS) visa have obligations, including a minimum salary requirement and obligation not to engage in discriminatory recruitment practices. Recruitment practices must satisfy Australian workplace, equal opportunity, and anti-discrimination laws. These requirements help to ensure that migrant workers are not paid less than an Australian worker doing the same work in the same location, and that the visa programs are not used to undercut the Australian labour market. Increasing minimum wages for migrant workers and opening pathways to permanent residence ensure the skilled work visa program is targeted at highly skilled workers who are less open to exploitation and intends to ensure migrants entering Australia under these programs have sufficient income to support themselves and their families whilst residing in Australia.

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266. TSS visa holders may bring immediate family members (spouse, de facto partner, dependent children) to Australia.⁶⁵

u. Australian government support for migrants and settlement bodies

267. Australia has early intervention settlement programs and needs-based language programs for recent migrants. Programs emphasise pathways to employment, education, and English language training, to support access to work, establish stable and affordable housing, and foster social and economic participation.

268. In May 2022, the Department of Home Affairs provided grants of up to \$60,000 under the Fostering Integration Grants program. The objectives of the program were to facilitate the participation, integration and social cohesion of newly arrived migrants and multicultural communities in Australia by developing skills and cultural competencies to integrate into Australian social, economic, and civic life, and build community resilience and cohesion.

269. The Australian Government funds a range of settlement programs through grant arrangements including the Settlement Engagement and Transition Support program, the National Community Hubs Program, Youth Transition Support services and the Youth Hubs trial.

270. States and territories provide support for newly arrived migrants and multicultural communities. For example:

- d. The NSW Settlement Strategy (established in 2023) brings together existing and new government efforts to improve settlement outcomes of people from refugee and refugee-like backgrounds and ensure they are supported and empowered to realise their potential and thrive.
- e. The Western Australian Government assists and supports newly arrived skilled migrants to make meaningful connections and overcome barriers to securing employment through the \$4.25 million Skilled Migrant Job Connect program. The program provides up to \$7,500 for WA-based skilled migrants to access approved services such as licensing, registration and skills assessments required to gain employment in occupations commensurate with their formal overseas qualifications, skills, and experience.

Commented [A3]: This was only the first methods out of the four. 2. promoting and encouraging the uptake of Australian values and liberal democracy and amplifying the value of Australian citizenship; 3. promoting a greater understanding and acceptance of racial, religious and cultural diversity; and 4. addressing issues within Australian communities that show potential for, or early signs of, low social integration. Wondering whether there were any particular reasons these three methods were omitted?

Commented [A4]: Suggest changing the language to 'newly arrived migrants, refugees and multicultural communities' to include 'refugees' in the overall statement. This is because settlement services are primarily available to humanitarian entrants, and refugees often face unique challenges that differ from those experienced by the broader migrant cohort.

⁶⁵ CERD/C/AUS/CO/18-20 Concluding Observation 35

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3. Culturally and linguistically diverse groups within Australia

271. The Australian Government is committed to the principle that programs and services should be accessible to all eligible Australians, be responsive to their needs and deliver equitable outcomes.

Commented [A5]: Maybe helpful to introduce the Multicultural Access and Equity Policy as this statement refers to this policy.

v. Support to culturally and linguistically diverse communities in Australia

272. The Australian Government undertakes regular, ongoing stakeholder engagement to understand the concerns of culturally and linguistically diverse (CALD) groups and to seek strategic and place-based advice.
273. The Australian Multicultural Council is a ministerial-appointed body representing a broad cross-section of Australian interests that provides independent and robust advice to government on multicultural affairs, social cohesion and integration policy and programs. The Council aims to ensure that government policy and programs support all Australians, including CALD Australians, to fully participate in the community, celebrate diversity and build stronger and more cohesive communities. The Australian Multicultural Council has played a key advisory role in the development of federal multicultural policy.
274. The Department of Home Affairs' Community Liaison Officer Network builds and maintains relationships with a wide range of cultural, ethnic, and faith-based communities. The network consists of 50 officers, including with bilingual language skills and specialist Pacific knowledge, who facilitate a two-way information flow between communities and the Australian Government. This engagement supports an inclusive multicultural Australia by enhancing the Australian Government's understanding of communities, informing policy and programs, and empowering communities to access government information and services.

Commented [A6]: There was no new federal multicultural policy announced during the reporting period. Wondering which policy this statement refers to and whether it is relevant here?

E. Article 7: Education, culture and information

1. School curricula⁶⁶

275. The Australian Curriculum for Foundation to Year 10 and the Senior Secondary Curriculum are developed nationally and the curricula are implemented in primary and secondary schools by state and territory education systems. Schools across Australian states and territory education systems have a range of initiatives to promote human rights education, promote intercultural understanding and address racism. The NSW Department of Education manages the national website, *Racism, No Way*, on behalf of all

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⁶⁶ CERD/C/AUS/CO/18-20 Concluding Observation 37

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Australian schools. The site provides online resources to assist schools in addressing and teaching about racism in the learning environment.

- 276. The Australian Curriculum includes intercultural understanding as a general capability to ensure that students can learn to value their own and others' cultures, languages and beliefs.
- 277. Aboriginal and Torres Strait Islander histories and cultures is a cross-curriculum priority, to ensure all students can engage with issues of reconciliation and learn about the impact of racism on Australia's first peoples.
- 278. Australia's national Early Years Learning Framework, *Belonging, Being and Becoming: The Early Years Framework for Australia V2.0* (EYLF V2.0), provides a curriculum to support children's learning from birth to five years and through the transition to school. The *My Time, Our Place: Framework for School Aged Care in Australia V2.0* (My Time, Our Place V2.0) is Australia's national framework for school aged care. The EYLF V2.0 and My Time, Our Place V2.0 are the national approved learning frameworks under the National Law and National Quality Framework which set the national standard for children's education and care across Australia.

2. Human rights education – public servants⁶⁷

- 279. At the federal level, human rights principles are embedded through compulsory and optional training for the APS on diversity and inclusion policies, and relevant laws.
- 280. Each state or territory government is responsible for providing human rights education or cross-cultural competence training within its public service.

3. Training programmes for prevention of racial discrimination for judges, lawyers and other officials⁶⁸

- 281. The Australian judiciary is independent of the government.
- 282. The Australian Government provides funding to the National Judicial College of Australia and the Australasian Institute of Judicial Administration for the training and education of judicial personnel, including judges and magistrates. These bodies hold regular workshops, conferences, seminars and orations on a range of topical issues.
- 283. State, territory and federal Courts also oversee internal programs of continuing judicial education and development each year covering a range of topics relevant to the work of judicial officers.

⁶⁷ CERD/C/AUS/CO/18-20 Concluding Observation 14(e)

⁶⁸ CERD/C/AUS/CO/18-20 Concluding Observation 14(c), 39

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284. Lawyers in each state and territory are required to complete continuing legal education annually, including mandatory education on legal ethics, in order to maintain a current practising certificate.
285. Law enforcement officials in the Commonwealth and state and territory jurisdictions receive training, such as diversity training and cross-cultural awareness training. Each law enforcement agency retains responsibility for providing training to its officials.
286. This is complemented by a national training measure led by the Commonwealth to develop and deliver enhanced training to law enforcement in responding to family, domestic and sexual violence, including responses to diverse community groups such as First Nations communities, people with disability, culturally and linguistically diverse groups and LGBTIQ+.
287. Australia looks forward to engaging with the Committee on this report.

WILPF Submission – Australia’s 21st and 22nd periodic Report to the International Committee on the Elimination of Racial Discrimination.

Introduction

Women’s International League for Peace and Freedom welcomes the opportunity to comment on this Australian Report to the International Committee on the Elimination of Racial Discrimination.

WILPF was established in 1915 and is the oldest international, feminist peace building organization with groups in over 40 countries across the Americas, Africa, Europe, Middle East, Asia and the Pacific. As Australian members we work to amplify the voices of women and allies who are advancing peaceful and sustainable alternatives to conflict and crises. We respond to significant debates affecting women, peace and security and consider we have a particular responsibility to work for the complete recognition of First Nations people within our Australian democracy.

In May 2024 at the WILPF Peace Awards in Brisbane, Professor Megan Davis Co-Chair of the the Uluru Dialogue and Aunty Pat Anderson were recognized for their co-leadership advocacy for the Voice campaign and their ongoing work in advancing human rights.

We wish to make the following comments about Australia’s compliance with the Convention on the Elimination of all Forms of Racial Discrimination (CERD) and will focus on

- The Uluru Statement from the Heart- Constitutional Recognition. Truth Telling and Treaty.
- Youth Detention
- Declaration on the Rights of Indigenous Peoples
- Role of Indigenous Ambassador.

ULURU STATEMENT FROM THE HEART

Constitutional Recognition

As detailed in the CERD Report, the Australian Referendum on constitutional recognition was not passed by a majority of people. However, it is important to record that the South Australian Parliament has successfully introduced A First Nations Voice and it is a platform for Aboriginal and Torres Strait Islanders people in South Australia to have their views heard by the state government.

Truth Telling

Truth Telling has been initiated by the Victoria Government where the Yoorook Justice Commission has included storytelling, memorials and educational programs that aim to create a more complete and honest understanding of Australia’s colonial history and its impacts. Truth telling aims to foster healing and better relationships between indigenous people and other Australians. Truth telling was abandoned as a Queensland government sponsored initiative in 2024, but Reconciliation Australia encourages local truth telling pathways at the local level throughout Australia.

Treaty

Australia's First Treaty legislation was passed in the Victorian Parliament on October 30, 2025, enshrining a democratically elected body for First Peoples into law. The Gellung Wari body will be consulted on laws and policies affecting indigenous people.

Recommendation

While the Voice Referendum process for constitutional recognition did not gain sufficient support to proceed with this part of the Uluru Statement, the Australian Government could still work with First Nations to legislate for a democratically elected national consultative body comparable to the Aboriginal and Torres Strait Islander Commission (ATSIC) originally established in March 1990. Such an initiative could restore confidence and embark on fresh policy negotiations to progress truth telling and treaty at the national level.

YOUTH DETENTION

The Australian Institute of Health and Welfare has reported that while First Nations youth make up just 6.5% of Australian youth aged 10-17 in detention, they represent 65% of all young Australians held in detention. This is an alarming statistic and reflects the inadequate youth policies of state governments responsible for youth well-being.

The rate of youth detention increased between the June quarters of 2020-2024 showing that indigenous young people were 27 times more likely to be held in youth detention than other young Australians.

Yet state government justice systems continue to oversee a punitive and disproportionate approach to managing young indigenous offenders which fail to rehabilitate and too frequently condition young people to a life of crime and adult imprisonment.

Recommendation. The national government should take a more active leadership role at the Commonwealth /State Justice Ministers' level to ensure compliance with the Convention on the Rights of the Child, which states "in all actions the best interests of the child must be primary and detention should be a last resort and for the shortest appropriate period."

INTERNATIONAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE.

Over many years leading Australian indigenous leader, Les Malezer was a strong voice in advocating at the United Nations for international recognition of the Draft Declaration on the Rights of Indigenous People. While Australian Prime Minister Kevin Rudd ratified this declaration in 2009 and Foreign Minister Julie Bishop endorsed its importance in recognition of indigenous rights, there has been no mechanism introduced by subsequent leaders' effort to explain this commitment and what it means to the Australian community.

During the 2023 Voice Referendum Campaign there were no government representatives explaining why indigenous people have a special place in our nation because they are indeed

First Nations as defined by this international Declaration. This resulted in misinformation and misunderstanding about constitutional recognition, and the reality of a representative body advising on indigenous policy.

Furthermore within areas of national policy development there is limited recognition of the Australian Government's obligations to fully incorporate the principles of the Declaration on the Rights of Indigenous People into policy and practice. The Department of Defence is currently overseeing a massive investment in militarising North Australia following a range of ministerial announcements to base United States military in this region for the purpose of national security. However at least three quarters of the land in question and more than half of the northern coastline is held under various forms of native title, where local indigenous people are engaged in making decisions about the use of their traditional lands.

Australian ministers and senior military personnel seem unaware of their responsibilities under the Article 30/2 of the Declaration of Indigenous Rights which clearly details

"States shall undertake effective consultation with indigenous people concerned through appropriate procedures and in particular through their representative institutions prior to using their lands and territories for military purposes."

Recommendation -The Australian Government needs to accept responsibility for promoting the Declaration on the Rights of Indigenous People to end racial discrimination and to aim for better understanding of why this international standard must be fully respected within Australian law and practice.

ROLE OF AMBASSADOR FOR FIRST NATIONS PEOPLE

In March 2023 the Australian Government announced the appointment of our nation's first Ambassador for First Nations. Minister for Foreign Affairs Hon Penny Wong said the role included promoting indigenous rights globally. However, this significant announcement is not included in Australia's Draft Report on CERD.

Recommendation The work of the Office of First Nations Engagement should be prepared for referencing in the CERD Report to indicate progress being made to fully incorporate indigenous diplomacy into all aspects of Australian foreign policy,

Thank you for the opportunity to comment on this important report

s 47F(1)

WILPF.

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Additional Estimates: February 2026

EDRMS No: D25/XXXX

UN Treaty Bodies Engagement – CERD and CESC

Australia's engagement with Treaty Bodies are generally led by respective whole-of-government agencies. DFAT [you, FAS MPD] predominantly provides the coordination function for treaty reporting to CERD and CESC. AGD lead on CCPR, CAT, CRC and jointly with DSS on CRDP. PMC lead on CEDAW. More broadly:

s 22(1)(a)(ii)

Key Messages

s 22(1)(a)(ii)

- . Civil society consultation on Australia's
 - next periodic report to CERD is complete, and Australia plans to submit its report this year
 - upcoming appearance before CESC continues, with Australia's appearance scheduled for 17 February 2026.

s 22(1)(a)(ii)

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Additional Estimates: February 2026

EDRMS No: D25/XXXX

s 22(1)(a)(ii)

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)**Status of Australia's next periodic CERD report**

- DFAT is currently coordinating the preparation of Australia's combined 21st and 22nd periodic report to the CERD
 - the draft report was consulted with civil society during October 2025 [*CSOs were invited on 1 October to request to review, and a notice was published on the DFAT website. DFAT received feedback from eight CSOs in total.*]
 - the draft report was distributed to federal and state and territory agencies for consideration of the CSO comments during December 2025.
 - Australia plans to submit its report to CERD in early 2026.
- DFAT's role is to coordinate input from other federal agencies, and state and territory governments.

[Refer questions on substantive issues that might be raised in the CERD report to the relevant agency (AGD, Home Affairs, etc)].

If pressed: why wasn't the report finalised in 2025?

DFAT is coordinating responses across 12 federal agencies and state and territory agencies to provide inputs to the CERD report. Due to the sensitive nature of the report's content, the vast number of inputs received and the strict word limits for UN periodic reports, considered coordination was required to ensure the report is the most accurate reflection of the significant number of policy outcomes across federal and state and territory agencies while meeting the UN guidelines.

Selection of CSOs/invitation to comment

- The draft report is not published on the DFAT website for comment as it remains a draft report not yet cleared by government.
- DFAT welcomes engagement from civil society organisations who wish to review and provide comments on the draft report
 - DFAT invited dozens of CSOs who have engaged previously with ICESCR, UPR and other human rights work, and published information about the consultation on our website

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- DFAT received EOIs to review the report from 29 CSOs *[some of whom were invited by DFAT to submit an EOI and others approached DFAT in response to a notice on the DFAT website]* and received feedback from eight CSOs
- further late submissions cannot be accepted as comments have been considered by federal and state and territory agencies and the report is being finalised.

Batching of periodic reports

- It is not uncommon for States Parties to batch or combine their periodic reports in a single document covering multiple reporting periods
 - going back to at least 1999, Australia's CERD reports have been of a combined nature *[see table]*
 - by way of example, our most recent CERD report *[submitted in 2016]* combined our 18th, 19th and 20th reports, covering a reporting period from July 2008 to June 2014.

CERD Report	Reporting Period	Submitted
18th to 20th	July 2008 – June 2014	2016
15th to 17th	July 2002 – June 2008	2010
13th to 14th	July 1998 – June 2002	2003
10th to 12th	July 1992 – June 1998	1999

s 22(1)(a)(ii)

April 2024 correspondence on Aboriginal cultural heritage legislation in Western Australia

- As requested by the CERD, Australia, in its next periodic report to the Committee, will include information on the measures adopted to review the legislative framework and to

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adequately protect the rights and cultural heritage of Aboriginal peoples in its next periodic report to the CERD, which is currently being prepared, in coordination with states and territories.

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)

Australia was due to finalise its 21st periodic report in October 2020, covering a reporting period from November 2017 to June 2020. Australia's submission was SES cleared but not submitted to the Committee on the Elimination of Racial Discrimination (CERD) and is now overdue. The CERD Secretariat agreed to extend the reporting period to December 2023 and allow for a combined 21st and 22nd report covering the period November 2017 to December 2023.

A draft report has been prepared and cleared by the Foreign Minister for civil society consultation in September 2025. On 1 October 2025, DFAT invited civil society organisations to review the draft report. Following civil society consultations, DFAT will work with Commonwealth, state and territory governments to finalise the report for approval by government. Australia plans to submit the final report to the CERD Secretariat in early 2026. The Australian Government will subsequently appear before the CERD to discuss the contents of the final report [*a date has not been set*].

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

Questions on Notice

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- In SQ25-000154, ICERD and Apartheid, Senator Lidia Thorpe asked DFAT to explain why Australia's CERD report was delayed, the reports current status and topics relating to First Nations peoples that will be addressed in the report. See [Attachment A](#).

Freedom of Information (FOI) requests

- In September 2025, DFAT received an FOI request seeking all documents related to CERD, with no time limit. DFAT refused the request
- Since then, DFAT has received upwards of 15 FOI requests seeking submissions to DFAT in 2015 in particular, and copies of other documents. Many of these FOI request searches identified no in-scope documents held by DFAT. The few that did identify documents are being processed including third party consultations and have not have been released as of 13 November 2025.

Responsible: Human Rights Autonomous Sanctions Section HRB	
Prepared by: s 22(1)(a)(ii) Mob: s 22(1)(a)(ii) Ext: s 22(1)(a)(ii) Date: 23 January 2026	Cleared by Branch Head: Lara Nassau Mob: s 22(1)(a)(ii) Ext: s 22(1)(a)(ii) Date: 23 January 2026
Consultation: MPD	
Cleared by FAS: Angela Robinson	Date:

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Attachment A

154 – Additional Estimates

Topic: 154. ICERD and Apartheid

Senator Lidia Thorpe

Question:

"43. Australia's CERD report has been overdue since 30 October 2020. Given the ongoing ICJ rulings and global legal scrutiny on apartheid and racial discrimination, why has the government failed to meet its basic accountability obligations under this framework and what explanation is there for the delay?44. When will the government submit its long-overdue CERD report? a. Has drafting started? b. How many government staff are currently allocated to the drafting and preparation of this report? c. Will DFAT urgently complete and submit this report, including details of the tangible measures it has taken to meet its obligations under the convention, not to support, aid, abet (etc) Israel's apartheid in the OPT?45. What specific topics relating to First Nations peoples will be explicitly addressed in Australia's periodic report to the UN CERD Committee?"

Answer:

43. Australia was scheduled to finalise its 21st periodic CERD report in October 2020, covering a reporting period from November 2017 to June 2020. The CERD Secretariat agreed to Australia submitting a combined report covering the period November 2017 to December 2023, and provided an extension to the deadline for submission. Australia plans to submit this report in 2025. The reporting period does not include actions taken after December 2023.

44. The government plans to submit the report in 2025.

- a. Yes.
- b. Drafting and preparation of the CERD report is a multi-agency endeavour. DFAT is coordinating this process with input from Commonwealth agencies, state and territory governments, and, in due course, civil society.
- c. DFAT plans to finalise and submit the report in 2025. In accordance with the [CERD Reporting Guidelines](#), the report will outline the measures being taken at a national level to implement Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination for the reporting period (November 2017–December 2023), including measures to promote multicultural diversity and social cohesion.

45. The report's contents will reflect the [CERD Reporting Guidelines](#) and topics raised by CERD in its [Concluding Observations](#) to Australia's 18th to 20th combined periodic CERD report.