



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### **List of issues prior to the submission of the sixth periodic report of Australia (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012)\***

##### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant**

1. Please provide detailed information on any significant developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have taken place since the previous periodic report, including any relevant case law. Please also provide information on measures adopted to disseminate the Covenant among judges, lawyers and prosecutors.
2. Please provide information on significant political and administrative measures taken since the previous report to promote and protect human rights under the Covenant, and the resources allocated thereto, their means, objectives and results.
3. Please provide any other information on new measures taken to disseminate and implement the Committee's previous recommendations (CCPR/C/AUS/CO/5), including any necessary statistical data.

##### **Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the Committee's previous recommendations**

##### **Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)**

4. In the light of the State party's decision not to incorporate the Covenant into domestic law, how is it ensured that the provisions of the Covenant are effectively

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\* The present list of issues was adopted according to the new optional procedure established by the Committee at its ninety-ninth session. This new procedure consists of the adoption of lists of issues by the Committee, which are transmitted to States parties prior to the submission of their periodic reports. The replies from States parties to these lists of issues will constitute their periodic reports under article 40 of the Covenant.

implemented at the domestic level and that victims have an effective remedy for violations of their rights under the Covenant? Please also indicate the measures taken to establish a mechanism to consistently ensure the compatibility of domestic law, at all levels of government, with the Covenant.

5. Please indicate whether the State party envisages withdrawing its reservations to the Covenant. If not, please explain why it does not intend to do so and how the reservation to article 20 is compatible with the object and purpose of the Covenant.

6. In the light of the Committee's previous concluding observations (CCPR/C/AUS/CO/5, para. 10), please indicate what measures and mechanisms are in place to implement and ensure compliance with the Committee's Views under the first Optional Protocol to the Covenant.

**Counterterrorism measures and respect for rights guaranteed in the Covenant (arts. 2, 7, 9, 14 and 26)**

7. In the light of the Committee's previous recommendations (CCPR/C/AUS/CO/5, para. 11), and the State party's follow-up responses (CCPR/C/AUS/CO/5/Add.1, Add.2 and Add.3), please provide information on the specific legislative measures taken to ensure that Australia's counter-terrorism legislation and practices are in full conformity with the provisions of the Covenant, especially articles 9 and 14. Please include updated information addressing the doubts expressed in the 2011 annual report of the Independent National Security Legislation Monitor concerning the need for the seven-day detention period, any relevant recommendations in his forthcoming 2012 report, and the outcome of the review by the Council of Australian Governments.

8. What are the safeguards preventing the use of evidence obtained under torture or other cruel, inhuman or degrading treatment? What are the mechanisms in place to investigate allegations of torture in the context of counter-terrorism measures, bring perpetrators to justice and provide reparation to the victims?

**Equality and non-discrimination (arts. 2 and 26)**

9. Please provide information on the measures taken to adopt federal legislation, covering all grounds of discrimination by all relevant actors as envisaged by the Covenant, and to provide comprehensive protection of the rights to equality and non-discrimination. Please explain the gaps that exist in current anti-discrimination law, and how the proposed federal legislation would address them. What recent efforts have been made to strengthen the mechanisms available to provide effective remedies against discrimination and to promote substantive equality?

**Violence against women (arts. 2, 3, 7 and 26)**

10. In the light of the Committee's previous recommendations (CCPR/C/AUS/CO/5, para. 17), and the State party's follow-up responses (CCPR/C/AUS/CO/5/Add.1, Add.2 and Add.3), please provide updated information on the legislative, administrative and other measures taken towards the elimination of all forms of violence against women, especially perpetrated against indigenous women and women with disabilities. Additionally, please provide updated information on the availability and adequacy of legal and social services for women victims of domestic violence and sexual assault, especially in rural and remote areas.

11. Please provide information on whether sterilization of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilizations.

**Right to life and prohibition of torture and of other cruel, inhuman or degrading treatment or punishment, rights of non-citizens (arts. 3, 6, 7, 9 and 13)**

12. In the light of the Committee's concluding observations (CCPR/C/AUS/CO/5, paras. 19 and 20), please provide information on the measures to ensure that individuals are not extradited or otherwise returned to a country where there are substantial grounds for believing that they are at risk of being arbitrarily deprived of life or being tortured or subjected to other cruel, inhuman or degrading treatment or punishment. What steps does the State party take to monitor the safety of individuals once they are extradited or returned on the basis of diplomatic assurances? Please also explain how the transferring of asylum seekers to third countries for the processing of their claims is consistent with the State party's obligations under the Covenant, most significantly non-refoulement obligations.

13. In the light of the Committee's concluding observations (CCPR/C/AUS/CO/5, para. 21), please inform the Committee on the steps taken by the State party to regulate use of force, including both lethal and non-lethal force, by law enforcement officials, particularly against groups such as indigenous people, racial minorities, persons with disabilities and young people. What are the mechanisms available to carry out independent investigations of complaints concerning excessive use of force by law enforcement officials and to provide access to effective remedies for police misconduct?

14. Please explain whether the State party plans to reform or abolish the system of mandatory detention without individualized determination of necessity in cases of illegal entry. Please also provide information concerning: (a) applicable time limits for detention of migrants; (b) whether the State party is considering amending the Migration Act 1958 to ensure that stateless persons and persons who cannot be deported or removed to their country of origin are not indefinitely detained; (c) the legal, administrative and procedural safeguards to ensure that no children are held, on the basis of their migratory status, in detention or detention-like facilities, including in "excised offshore" detention facilities, and that unaccompanied children are provided with special protection and assistance.

15. Please describe any steps taken: (a) to repeal the provisions of the Migration Act 1958 relating to "excised offshore places," and to close the Christmas Island detention centre; and (b) to ensure that all irregular migrants, including those held "offshore", have equal access to fair and judicially reviewable determinations of their applications for protection.

**Elimination of slavery and servitude (art. 8)**

16. Please provide updated information on measures taken: (a) to increase efforts to train officers to proactively identify and respond to trafficking in persons cases; (b) to assist and protect victims of trafficking regardless of their participation or otherwise in criminal proceedings against perpetrators (Permanent Witness Protection (Trafficking) visas); and (c) to provide reparation to victims. What are the measures taken by the State party to ensure that victims of trafficking, including children, are not arrested, subjected to lengthy jail terms and deported for breach of migration regulations?

**Treatment of persons deprived of their liberty, independence of the judiciary and fair trial (arts. 2, 9, 10 and 14)**

17. Please provide the Committee with information on measures taken to: (a) address the disproportionately high rate of incarceration of indigenous men and women and indigenous juveniles; (b) improve prison conditions; and (c) provide access to appropriate mental health care for prisoners experiencing mental illness. Please also provide information on the availability of independent external mechanisms for monitoring and inspecting prisons and places of detention, both federal and non-federal, and on the mechanisms in place to ensure that all deaths in custody are reviewed and investigated by independent bodies. Please include information on measures taken to adopt non-custodial

measures and diversion programmes and review of relevant criminal laws (particularly the use of mandatory sentencing).

18. What steps have been taken to review the system of preventive detention of convicted prisoners beyond the length of their sentences, on grounds of predicted dangerousness, in order to repeal it or to reform it in a manner consistent with the Covenant?

19. In the light of the Committee's concluding observations (CCPR/C/AUS/CO/5, para. 25), please provide information on measures taken: (a) to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people, especially those detained in remote locations; (b) to strengthen funding for Aboriginal and Torres Strait Islander legal aid; and (c) to improve access to culturally appropriate legal assistance services for all indigenous people, including interpretation and translation services.

#### **Protection of the rights of children (arts. 7 and 24)**

20. Please provide updated information on the State party's juvenile justice system and policies, concerning steps taken: (a) to increase the age of criminal responsibility from 10 years; (b) to ensure that children in conflict with the law are accommodated in child-appropriate facilities that are separated from adult detainees; (c) to abolish mandatory sentences for children; (d) to facilitate the re-integration of juvenile offenders; and (e) to establish an independent mechanism to monitor compliance of juvenile detention facilities with the rights enshrined in the Covenant. Additionally, please explain which measures have been taken to improve the situation of homeless children.

#### **Discrimination and incitement to discrimination, hostility or violence (arts. 20 and 26)**

21. In the light of the Committee's concluding observations (CCPR/C/AUS/CO/5, para. 26), and its general comment No. 34 (2011) on the freedoms of opinion and expression, please provide updated information on measures taken to combat cases of discrimination against persons because of their ethnic, racial, cultural, religious or linguistic background, which has reportedly been an increasing issue for Arab and Muslim Australians, newly arrived immigrants, especially from Africa, and also for international students, particularly from India. What are the remedies available against those who incite discrimination or violence on racial, ethnic or religious grounds? Are any additional measures envisaged against such incitement? Please provide information on relevant statistical data concerning reported discriminatory acts, disaggregated to the extent possible on the basis of gender, religion and country of origin of the victims or targets.

#### **Equality and non-discrimination, right to participate in public life and the protection of rights of persons belonging to ethnic minorities (arts. 2, 25, 26 and 27)**

22. Please explain: (a) any legislative provisions disqualifying persons from voting on the basis of disability, and how they are consistent with the Covenant; and (b) how the State party's legislation regarding compulsory voting operates in practice, and how it is consistent with the Covenant.

23. Please provide information on the measures taken to ensure effective consultation with indigenous peoples in decision-making in areas having an impact on their rights, including measures taken to develop the technical capacity of indigenous people to ensure their effective participation in decision-making processes. In particular, please provide information on measures taken to improve indigenous participation in decision-making relating to traditional sites and objects, including the management of their lands in the allocation of land for mining and for nuclear waste disposal.

24. Please respond to concerns expressed by, among others, the Australian Human Rights Commission, that the Stronger Futures in the Northern Territory Act 2012 was adopted without adequate consultation with the affected communities, and that it continues or strengthens restrictive features of the former Northern Territory Emergency Response that are discriminatory on their face or in effect, and that cannot be justified as temporary special measures. Please provide updated and disaggregated information on the implementation of these special restrictions in the Northern Territory.

25. In the light of the Committee's concluding observations (CCPR/C/AUS/CO/5, paras. 15 and 16) please provide information on the steps taken to review and reform, in consultation with Aboriginal and Torres Strait Islander peoples, the Native Title Act 1993 (Cth), particularly concerning provisions establishing the high standard of proof required to demonstrate ongoing connection with the land. Please also provide updated information on measures taken to ensure that adequate reparation is provided to victims of the stolen generations or stolen wages policies.

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