

## WATCHING BRIEF 20-7: AUSTRALIA AND THE UN HUMAN RIGHTS COUNCIL

*As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.*

August 2020

*This Brief covers recent Australian participation as a member of the United Nations Human Rights Council (UNHRC), and the NGO Submission (endorsed by Quakers) to the Council in advance of the regular review of Australia's human rights record, to be held in early 2021.*

### Background

Australia became a member of the United Nations Human Rights Council (UNHRC) at the beginning of 2018, and is in its final year as a member. Owing to the impact of the COVID pandemic, its term has been extended until the first part of 2021. QPLC has issued previous reports on Australia's work on the Council (the latest one being WB 20-1). Below are some further details of Australia's role in the Council, especially in the session ending June-July 2020.

UNHRC: Responsible for the promotion and protection of all human rights around the globe. Made up for 47 Members of the UN based on equitable geographic distribution. Members serve for three-year terms.

UPR: UN process, led by member countries, that considers the human rights record of each UN member every four years. Australia's third and most recent review was in 2015.

The work of the Council includes the Universal Periodic Review (UPR). It is Australia's turn in early 2021, and a Coalition of Australian NGOs has put together a submission to go alongside the Government submission. On the recommendation of QPLC, Australian Quakers have joined in supporting the submission.

## Australia's Approach to Membership of the Council

When Australia stood for membership it indicated the following priorities for its contribution:

- Gender Equality – advancing the rights of women and girls.
- Good Governance – promoting stronger democratic institutions.
- Freedom of Expression – protecting and promoting this.
  
- The Rights of Indigenous Peoples around the world.
- Strong National Human Rights Institutions and Capacity Building.

Australia's approach has been active, practical advocacy, sensitivity and fairness, and a willingness to speak out against human rights violations and abuses.

Australia's core objectives for its UNHRC term: abolition of the death penalty, equal rights for LGBTI people, and freedom of religion and belief.

The Department of Foreign Affairs and Trade (DFAT) has a longstanding policy of consulting NGOs about issues that need to be considered when preparing for the government's participation in the United Nations Fora on human rights. It has been usual for an annual day-long DFAT-NGO human rights meeting to be held in Canberra for this purpose, supplemented by submissions from NGOs throughout the year. Quakers have attended most of these events over the years. Regrettably the June meeting has had to be postponed until at least December 2020.

*If there are specific human rights concerns you wish QPLC to raise with DFAT, please let us know.*

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## United Nations Human Rights Sessions 2020 (HRC43, HRC44, HRC45) UN General Assembly Third Committee meetings

### Human Rights Council 43

Following the suspension of HRC43 on 13 March due to the COVID-19 pandemic, the session resumed on 15 June and continued through to 23 June. Australia:

1. Raised concerns about human rights situations in: Bahrain, Burundi, Central African Republic, Cambodia, Cameroon, Chile, China, Democratic Republic of Congo, Democratic People's Republic of Korea (DPRK), Egypt, Eritrea, Hong Kong, Iran, Libya, Mali, Myanmar, Russia, Saudi Arabia, Sri Lanka, South Sudan, Syria, Ukraine, Venezuela, Yemen and Zimbabwe.

Third Committee works on issues relating to a variety of human rights questions including advancement of women, protection of children, indigenous issues, treatment of refugees, elimination of racism and racial discrimination and the right to self-determination. Among the social development topics are: youth, family, ageing, persons with disabilities, crime prevention, criminal justice and international drug control.

2. Expressed support for a two-state solution in which Israel and a future Palestinian state co-exist in peace and security within internationally recognised borders [part of a multi-country statement on 27 February 2020].

3. Led a Pacific joint statement on women and multilateralism, delivered by the Marshall Islands (RMI).

4. Co-sponsored 22 resolutions of 39, including on the human rights situations in DPRK, Georgia, Iran, Myanmar, Nicaragua, South Sudan and Syria, and on the 2030 Agenda for Sustainable Development, birth registration, persons with a disability, freedom of opinion and expression, freedom of religion or belief, combatting intolerance and violence against persons based on religion or belief, the prevention of genocide, human rights through sport, mental health, the mandate of the Special Rapporteur on the sale and sexual exploitation of children, the mandate of the Special Rapporteur on minorities, the mandate of the Special Rapporteur on torture, the mandate of the Special Rapporteur on human rights defenders, regional arrangements for the promotion and protection of human rights and the right to work.

5. Voted against China's resolution on mutually beneficial cooperation, and delivered an explanation of vote at action, outlining Australia's concern with terminology in the resolution that undermines long-established principles with regards to the promotion and protection of human rights.

6. During an urgent debate on racism on 16 June, Australia delivered a national statement during the debate, expressing support for addressing and eliminating racism globally. The HRC also adopted by consensus a related South African-led resolution on 'The promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers' on 19 June. Australia made a general comment at action, expressing our support for addressing racism and violence against Africans and people of African descent.

In response to race-related events in the USA, the UN African Group called on the Human Rights Council to organize an Urgent Debate on racism, systemic racism, police brutality against persons of African descent and violence against peaceful demonstrations to call for an end to be put to these injustices.

## **Human Rights Council 44**

HRC44 commenced on 30 June and ran through until 17 July.

Gender and women's human rights were a focus of this session. Australia advocated for equality, empowerment, and combatting violence and discrimination against women in a range of gender-focussed discussions and resolutions during the session.

The Foreign Minister and Minister for Women Marise Payne delivered a video statement for the panel discussion on COVID-19 and the Rights of Women and Girls [14 July]. The Ambassador for Gender Equality Julie-Ann Guivarra also delivered a video statement at the Interactive Dialogue with the Working Group on the Elimination of Discrimination against Women and Girls [7 July]. The videos and transcripts of these statements can be found at

<https://www.dfat.gov.au/international-relations/themes/gender-equality/Pages/gender-equality>

2. Australia led a new resolution on 'The contribution of respect for all human rights and fundamental freedoms to achieving the purposes of the Charter of the United Nations'. The text marked the 75th anniversary of the UN and its Charter and reaffirmed agreed concepts underpinning the international human rights system such as the universal, indivisible, interdependent, interrelated and mutually reinforcing nature of all human rights and fundamental freedoms. It was overwhelmingly endorsed by the HRC, with 41 votes in favour, 6 abstentions and no votes against.

3. Australia engaged on a range of country situations in this session, including the Philippines, Myanmar, Eritrea, and the situations in Xinjiang and Hong Kong. Australia delivered a statement strongly condemning the 27 June terrorist attack on the Afghanistan Independent Human Rights Commission.

4. Australia was on the core groups for three other resolutions this session, two relating to the independence of the judiciary and a resolution on the situation of human rights in Eritrea. We co-sponsored an additional 11 out of 23 resolutions, including on the human rights situation in Syria, discrimination against women, the rights of people with disabilities, business and human rights, and trafficking in persons, especially women and children.

### **Universal Periodic Review 36 and 37**

The UN Human Rights Council decided to postpone the 36<sup>th</sup> and 37<sup>th</sup> Sessions of the Universal Periodic Review (UPR36 and UPR37). UPR36, scheduled to take place from 4 to 15 May 2020, was postponed to 2 to 13 November 2020 and UPR37 will be postponed until 18 – 29 January 2021.

Australia's appearance at UPR37 has been confirmed for 25 January 2021.

The UPR is an opportunity for other nations to identify human rights problems in Australia and recommend possible solutions. Australian human rights experts, with NGOs and community groups, developed a 'scorecard' report endorsed by over 200 organisations (including Australian Quakers).

UPR Reviews are based on three reports: information provided by the country under review, information prepared by the UN Office of the High Commissioner for Human Rights based on official UN reports, and credible information provided by national human rights institutions and non-government organisations in the country under review. Australian Friends endorsed the Australian NGO report.

The report was prepared by the Human Rights Law Centre, the Kingsford Legal Centre, and the Castan Legal Centre. The full report can be obtained at <https://www.hrlc.org.au/news/2020/7/20/australias-human-rights-scorecard-australias-2020-united-nations-upr-ngo-coalition-report>

**Key points from the NGO report which provide a useful framework for follow-up action by Friends and others.**

## CONSTITUTIONAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

- Hold a referendum to revise the Constitution to recognise Aboriginal and Torres Strait Islander Peoples' rights, remove racist elements and include an anti-discrimination clause. Australia must establish an Aboriginal and Torres Strait Islander elected representative Voice to Parliament and establish a Makarrata and Truth and Justice Commission to develop a treaty with the First Peoples of Australia.
- Introduce a comprehensive, judicially enforceable national Charter of Human Rights and Freedoms that protects the whole community. Similar charters must be introduced in states and territories.
- Incorporate the UN Declaration on the Rights of Indigenous Peoples into domestic law, establish an independent body to oversee its implementation in consultation with Aboriginal and Torres Strait Islander Peoples, and include UNDRIP in the *Human Rights (Parliamentary Scrutiny) Act*.
- Urgently compensate all members of the Stolen Generations, as recommended by the Bringing Them Home Report.
- Within three years, ratify the Convention on Migrant Workers, along with key points of other international agreements.

## ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

- Amend all policy and legislative regimes that impact Aboriginal and Torres Strait Islander rights to practice cultural traditions; facilitate Aboriginal and Torres Strait Islander decision making in regulatory water and land management bodies; and provide finances for Aboriginal and Torres Strait Islander communities to develop climate change mitigation strategies.
- Amend the Native Title Act to include free, prior and informed consent; remove power to compulsorily acquire native title lands and extinguish native title rights; and include compensation regardless of date of extinguishment. Establish a Makarrata Commission to develop a treaty with Aboriginal and Torres Strait Islander Peoples within 3 years.

## REFUGEES AND ASYLUM SEEKERS

- Ensure its asylum processes and border management policies fully comply with its international obligations, including the principle of non-refoulement. Repeal mandatory detention and introduce legislative criteria to guide individual decisions to detain. Immigration detention must be subject to maximum timeframes and independent review. End offshore processing.

## CULTURALLY AND LINGUISTICALLY DIVERSE PEOPLE AND COMMUNITIES

- Ensure that CALD people – particularly in rural and regional areas – have equitable access to services, support and opportunity. Ensure a fair and non-discriminatory migration and citizenship policy which recognises the importance of family, and promotes full public participation.

## OLDER PEOPLE

- Strengthen its aged care system, ensuring it reflects Australia’s human rights obligations, including appropriate funding to remove waitlists. Fund the recommendations of the 2016 Willing to Work National Enquiry into employment discrimination.

## SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, AND SEX CHARACTERISTICS

- Advance reforms in remaining states which impose unjust hurdles (including requirements for surgery) on people seeking official identity documents reflecting their gender; implement recommendations on ending harmful practices (including forced and coercive medical interventions) to ensure the bodily integrity of children with intersex variations; ensure access to redress, independent affirmative peer support and psychosocial support for people with intersex variations and their families.

## PEOPLE WITH DISABILITY

- The new NDS must be properly resourced through a robust National Disability Agreement between all levels of Government. Transparent monitoring and evaluation of outcomes for people with disability must be linked to accountability measures across Governments, ensuring targets are met. Modify, repeal or nullify laws, policies and practices which deny or diminish equal recognition before the law. Australia must eliminate restrictive practices, involuntary treatment, forced sterilisation and medically unnecessary interventions of people with disability.

## CHILDREN

- Establish a national prevention, early intervention and reunification program to prevent child protection involvement, with significant Aboriginal and Torres Strait Islander community-controlled service provision, within two years. Establish a national commissioner for Aboriginal and Torres Strait Islander children and young people within one year. Develop a national Action Plan for Inclusive Education and urgently end restraint and seclusion of children with disability.

## WOMEN

- Implement gender responsive budgeting which considers the needs and impacts of expenditure on a diverse range of women, underpinned by intersectional data and research. Australia must implement the *Safety First in Family Law Plan*. Address economic inequality, including addressing women’s unpaid caring work and gendered gaps in wages and retirement savings.

## EQUALITY AND NON-DISCRIMINATION

- Enact a comprehensive Equality Act that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.

## DEMOCRATIC RIGHTS AND FREEDOMS

- Repeal laws criminalising peaceful protest and recommit to facilitating peaceful protests. Repeal laws criminalising public interest reporting and strengthen journalist warrant obligations. Strengthen existing protections for whistleblowers and enable public disclosure of serious wrongdoing within intelligence and defence agencies.

## ACCESS TO JUSTICE AND THE CRIMINAL JUSTICE SYSTEM

- Restore dedicated funding for Aboriginal and Torres Strait Islander Legal Services.
- Reform the criminal justice system to make prison a last resort, and provide greater rehabilitative and diversionary options for overrepresented groups.

## PRISONS and POLICE

- Fully implement the findings of the Royal Commission into Deaths in Custody and the NT Royal Commission, including closing Don Dale detention centre. End prison construction and expansion and instead resource preventative and diversionary programs to reduce imprisonment. Conduct a comprehensive audit into policing law.

## POVERTY

- Increase allowance payments so that people can afford the basics, and index to wage inflation. Replace compulsory cashless debit and income management schemes with voluntary models which are non-discriminatory in design and implementation. End all automated debt collection processes based on flawed debt calculation methods and refund anyone who has repaid a robodebt.

## HOUSING AND HOMELESSNESS

- Develop a national homelessness and affordable housing strategy, with goals and targets underpinned by substantial funding in services, stock and support. Increase investment in new social housing that meets diverse housing needs.

## HEALTH

- Establish an ongoing mechanism for assessing and funding illness prevention. Improve systems for implementing accurate, evidence-based and timely public health interventions to mitigate the health impact of climate change.

## CLIMATE CHANGE

- Increase its 2030 emissions reduction target to at least 45%, and set a target of net zero emissions before 2050. By 2021, put a price on carbon and use the revenue to support vulnerable groups; put in place a plan to phase out coal exports; shift to 100% renewable energy before 2035; and end fossil fuel subsidies by 2025.
- Develop a rights and equity based adaptation plan, establish a just transition authority with sensitivity to multiple and intersecting forms of discrimination, and adequately resource both.

## BUSINESS AND HUMAN RIGHTS

- Renew its efforts to develop a National Action Plan on Business and Human Rights and provide effective pathways to remedy for corporate human rights violations. Require companies emitting greater than 25,000 tCO<sub>2</sub>-e per annum to reduce their emissions consistent with the goals of the Paris Agreement, while respecting human rights in a swift, just transition to a net zero economy.

## INTERNATIONAL ASSISTANCE

- Increase its ODA budget to 0.7% of GNI to boost capacity to promote human rights. Invest in technical expertise and women's rights organisations to meet the aid program's gender target. Establish safeguards and monitoring mechanisms to uphold international human rights standards within ODA and blended-finance programs.

## TRAFFICKING

- Promote a human rights-based approach and ensure that the rights of victims, including to redress and economic and social support, are protected. Australia must also bring its trafficking laws into conformity with international obligations.

## SEX WORK

- Encourage a consistent approach to the decriminalisation of sex work and introduce measures to tackle discrimination against sex workers.

## EXTRACTS FROM 'A HUMAN RIGHTS FRAMEWORK FOR RECOVERY'

(NGO Report Annexure C: Human rights and COVID-19 developments following the finalization of the UPR NGO Coalition Report)

1. A human rights decision-making framework must shape the Australian Government's legislative and policy approach to recovery from the COVID-19 pandemic. This must involve creating transparent, accessible, and accountable institutional structures for civil society engagement in government decision making, and moving away from the undemocratic processes, such as the National COVID-19 Coordination Commission.

<p><u>Human Rights Framework for COVID-19 Recovery</u> – acknowledging the need for long-term planning for post-COVID-19 recovery, the NGO report calls for a human rights-based approach.</p>
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2. An opportunity exists to turn the calamity of the pandemic into a thoughtful rebuilding which addresses inequality and sets Australia on the road to addressing major human rights concerns. Economic stimulus could be directed in areas such as addressing overcrowding and homelessness through social and affordable housing, addressing gender inequality and strengthening Australia's response to climate change.

3. The swift response to the health emergency by Australian Governments demonstrated an understanding of the sanctity of life and the human right to health. It is with the same commitment that we must address the well-documented human rights concerns in Australia, including those that have been exacerbated by the pandemic. In these extraordinary times, human rights present us with a values-based roadmap to recovery that centres on human dignity, opportunity and equality. This would be a fitting long-term response to the pandemic for future generations.