



## ***UNSW Law & Justice Research Series***

# **International human rights law monitoring, reporting and individual complaints procedures**

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# Research Paper 7: International human rights law monitoring, reporting and individual complaints procedures

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## 1. Introduction

*[I]t is through individual complaints that human rights are given concrete meaning. In the adjudication of individual cases, international norms that may otherwise seem general and abstract are put into practical effect. When applied to a person's real-life situation, the standards contained in international human rights treaties find their most direct application. The resulting body of decisions may guide States, non-governmental organizations (NGOs) and individuals in interpreting the contemporary meaning of the texts concerned.<sup>1</sup>*

In research paper 8 we discuss international, as well as domestic, avenues under civil law for holding Australian corporations to account for human rights abuses in foreign jurisdictions. Here, we focus on international mechanisms for bringing the Australian Government to account for its implementation of Australia's human rights obligations under international law, and for violations of the rights of individuals or groups.

Through ratifying international human rights treaties, Australia accepts UN human rights treaty body monitoring of its compliance with its treaty obligations through periodic reporting procedures. Periodic reporting does not provide a mechanism for redress for human rights violations. However, it is a channel by which human rights bodies<sup>2</sup> can draw attention to systemic failures in Australia's human rights implementation and generate domestic and international pressure to rectify them.

Australia also accepts the competence of some UN treaty bodies to consider communications (i.e., complaints) from individuals or - in the case of some treaties - groups of individuals claiming to be victims of human rights violations by Australia. If the Committee considers a violation is made out, the Committee issues views on Australia's obligations to remedy the violation and how any systemic issues in its treaty compliance should be addressed.

In this paper, we discuss the procedures for individual communications under a number of UN Committees, the rules of admissibility that govern Committees' competence to consider complaints and some general principles on merits decision-making.<sup>3</sup> There are also mechanisms under the relevant international human rights treaties for other states to bring complaints against Australia for non-compliance with its treaty obligations. However, we do not address these here as our focus is on how individuals and civil society organisations can hold the Australian Government to account for human rights violations.

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<sup>1</sup> See United Nations Human Rights Office of the High Commissioner, *Human Rights Treaty Bodies – Individual communications*, <<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregeneral>>.

<sup>2</sup> This includes NGOs and the Australian Human Rights Commission, Australia's national human rights institution (NHRI) and accredited as an 'A' status NHRI.

<sup>3</sup> Committee views on a number of communications against Australia are discussed. We do not discuss the scope and content of the human rights considered in those decisions in any detail.

Australia has also accepted the competence of the Committee Against Torture, the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Discrimination Against Women procedures into allegations of the systemic practice of torture (under the *CAT*) or grave and systemic violations of human rights (under *OP-CRPD* and *OP-CEDAW*). However, so far, no inquiries in respect of Australia have been published.<sup>4</sup>

We also address the early warning and urgent action procedures of the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of Persons with Disabilities. The former Committee has taken action in response to alleged serious violations of the *CERD* by Australia on four occasions to date.<sup>5</sup>

In addition to its universal periodic reporting function, the UN Human Rights Council has complaints and special procedure mechanisms. The latter include processes by which special procedure mandate-holders, such as Special Rapporteurs, can issue communications to states addressing allegations of individual or systemic human rights violations, including on an urgent appeal basis. Various Human Rights Council special procedures have resulted in communications to Australia through these processes.

The International Labour Organization ('ILO'), of which Australia is a member, has a representations procedure and a complaint process for violations of the principles of freedom of association. We also briefly discuss the availability of the UN Economic Social and Cultural Organisation's ('UNESCO') complaints mechanisms for human rights violations relevant to its competence in the fields of education, science, culture and communication.

International crimes such as genocide can be understood as violations of both international criminal law and international human rights law. Our focus here is on remedies available under international human rights law for violations of the rights of individuals and groups by authorities, rather than avenues by which to hold individuals accountable for international crimes under international criminal law. However, while we do not discuss the International Criminal Court ('ICC'), it is important to observe that Australia is a party to the *Rome Statute of the International Criminal Court*, which grants the ICC jurisdiction to prosecute individuals for war crimes, crimes against humanity, genocide and the crime of aggression if Australia is unwilling or unable to carry out investigations and prosecutions through its legal system.<sup>6</sup>

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<sup>4</sup> The confidentiality of inquiries is maintained until such time as the Committee determines to make them public, or on their conclusion. It is possible that inquiries may have been conducted but kept confidential.

<sup>5</sup> See part 10.1 of this paper.

<sup>6</sup> Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) ('*Rome Statute*') arts 5, 17 (crimes against the administration of the justice of the ICC are also criminalised under the treaty). If an individual is convicted, the ICC may make an order against them that they make appropriate reparations to their victims, including compensation, restitution and rehabilitation, or may order that reparations be paid out of a specially established Trust Fund of the ICC: *Rome Statute*, art 75(2). In order to facilitate compliance with the Rome Statute by incorporating crimes recognised by the ICC into Australian municipal law, the Commonwealth Government enacted the *International Criminal Court Act 2002* and the *International Criminal Court (Consequential Amendments) Act 2002* (Cth). Since its enactment, the capacity for private individuals to

## 2. UN human rights treaty bodies and monitoring of Australia's treaty obligations

Ten UN treaty bodies, or Committees, monitor the implementation by state parties of their obligations under the core international human rights treaties. Each Committee's composition, mandate and rules of procedure, or the mechanisms for establishing them, are defined in the treaty that it oversees or in an optional protocol to it.<sup>7</sup> The Committees are comprised of experts with high standing in the relevant area of human rights.<sup>8</sup> State parties to the treaties elect Committee members. However, they serve in their personal capacity.

Broadly, subject to the mandate of each Committee, the functions of UN human rights treaty bodies may include:

- *Periodic reporting.* State parties to the relevant treaty report to the Committee on how they are complying with their treaty obligations. The Committee considers the report, along with information from NGOs and other sources, and issues observations on the State's performance and recommendations on how it may better fulfill the human rights recognised in the relevant treaty.
- *Complaints procedures.* Individuals, or groups of individuals depending upon the Committee, can submit communications seeking redress for alleged violations by a state party of their rights under the relevant treaty.
- *Inquiries.* Certain Committees can initiate inquiries into alleged grave and systemic violations of human rights by a state party.

We discuss these functions below, as relevant to Australia. Table 1 sets out the UN human rights treaty bodies that monitor Australia's compliance with its treaty obligations, as well as the status

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bring prosecution for such crimes under Division 268 of the *Criminal Code*, pursuant to s 268.121 was significantly curtailed by the unfettered discretion of the Commonwealth Attorney-General to refuse consent to a prosecution per s 268.121(1). See, e.g., Anna Hood and Monique Cormier, 'Prosecuting international crimes in Australia: the case of the Sri Lankan President' (2012) 13 *Melbourne Journal of International Law* 1. Even this improbable avenue for individuals to pursue accountability for human rights violations was blocked. In *Taylor v Attorney-General (Cth)* (2019) 372 ALR 581, the High Court held that private individuals cannot bring prosecutions for offences under Division 268 of the *Criminal Code*.<sup>7</sup> Except in the case of the Committee on Economic, Social and Cultural Rights monitoring the implementation of the ICESCR. The Committee was initially established in 1987 from a Working Group of the UN Economic and Social Council ('ECOSOC') to oversee ECOSOC's mandate under the ICESCR to oversee its implementation. ECOSOC is a principal organ of the UN established under its Charter: *Charter of the United Nations* art 61.

<sup>8</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 11 (the Human Rights Committee has 18 members); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 11 (the Committee Against Torture has 10 members); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 11 (the Committee on the Elimination of Racial Discrimination has 18 members); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, *CEDAW* art 17 (the Committee on the Elimination of Discrimination Against Women has 23 members); *CRPD* art 34 (the Committee on the Rights of Persons with Disabilities has 18 members).

of Australia’s acceptance of treaty body communications and inquiry procedures under the relevant treaty or optional protocol, where applicable.<sup>9</sup>

Treaty bodies are also mandated to issue material on the interpretation of treaty provisions and guidance on thematic issues arising under the treaty and issues relating to their procedures. Treaty body interpretative materials on issues such as the scope and content of human rights may be used by Australian courts to develop the common law and in statutory interpretation in certain circumstances (see research paper 2). There is also a statutory basis for considering international law in interpreting the rights recognised in the *Human Rights Act 2004* (ACT), the *Charter of Human Rights and Responsibilities 2006* (Vic) and the *Human Rights Act 2019* (Qld).<sup>10</sup>

**Table 1: UN treaty bodies to which Australia reports and the status of Australia’s acceptance of individual complaints and inquiry procedures**

Core treaty	Related treaty body	Individual complaints procedure to which Australia is party	Inquiry procedure accepted by Australia
CERD	Committee on the Elimination of Racial Discrimination	Yes, Article 14 CERD	-
ICCPR	Human Rights Committee	Yes, First Optional Protocol to ICCPR	-
ICESCR	Committee on Economic, Social and Cultural Rights <sup>11</sup>	No, Australia is not party to the Optional Protocol to the ICESCR, which establishes an individual complaints procedure in relation to violations of the ICESCR	-
CEDAW	Committee on the Elimination of Discrimination against Women	Yes, Optional Protocol to CEDAW	Yes - Articles 8-9 Optional Protocol to CEDAW
CAT	Committee against Torture	Yes, Article 22 CAT	Yes - Article 20 CAT
OP-CAT	Subcommittee on Prevention of Torture	Not applicable. The Subcommittee on the Prevention of Torture	-

<sup>9</sup> Australia is not party to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990*, the *International Convention for the Protection of All Persons from Enforced Disappearance 2006* or their optional protocols, so there is no UN treaty body oversight of Australia under those Conventions.

<sup>10</sup> *Human Rights Act 2004* (ACT) s31(1); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s32(2); *Human Rights Act 2019* (Qld) s48; see also s 12.

<sup>11</sup> The Committee on Economic, Social and Cultural Rights was established in 1987, from a Working Group of the UN Economic and Social Council (‘ECOSOC’), established to oversee ECOSOC’s mandate to oversee the implementation of the ICESCR. ECOSOC is a principal organ of the UN established under its Charter.

Core treaty	Related treaty body	Individual complaints procedure to which Australia is party	Inquiry procedure accepted by Australia
		established by OP-CAT is mandated to conduct country visits to places of detention but has no authority to receive individual complaints	
CRC	Committee on the Rights of the Child	No, Australia is not party to the Optional Protocol to the Convention, which establishes an individual complaints procedure in relation to violations of the CRC	-
CRC-OPSC	Committee on the Rights of the Child	No, Australia is not party to the Optional Protocol to the Convention, which establishes an individual complaints procedure in relation to violations of the CRC-OPSC	-
CRC-OPAC	Committee on the Rights of the Child	No, Australia is not party to the Optional Protocol to the Convention, which establishes an individual complaints procedure in relation to violations of the CRC-OPAC	-
CRPD	Committee on the Rights of Persons with Disabilities	Yes - Optional Protocol to CRPD ('OP-CRPD')	Yes - Arts 6-7 Optional Protocol to CRPD

## 2.1 UN treaty body monitoring and reporting mechanisms

The international human rights treaties to which Australia is a party commit state parties to report to the relevant Committee on their treaty implementation.<sup>12</sup> Internationally, the reporting

<sup>12</sup> Of the core international human rights treaties to which Australia is a party, *OP-CAT* (which establishes the Subcommittee on Prevention of Torture which is mandated to conduct visits to places of detention within the territories of all state parties) also has no periodic reporting mechanism. Since the ratification of *OP-CAT* in December 2017, there has been limited progress in its implementation. In particular, Australia been slow to establish its National Protective Mechanism (NPM) framework to monitor compliance, with suggestions this will be completed by early 2022. See Australian Human Rights Commission, *Implementing OPCAT in Australia* (2020) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>>. The Commission noted the slow implementation of OPCAT and made a number of recommendations on its implementation, including resources, support, and independence safeguards for NPMs and additional support for the Commonwealth Ombudsman's role as NPM coordinator; methods for ensuring transparency; recommendations for the development of national principles to provide guidance on inspections; and

process is intended by the UN General Assembly to create the basis for ‘constructive dialogue between States and the treaty bodies’ to foster effective implementation of international human rights instruments at the state level.<sup>13</sup>

At the national level, it is also intended as an opportunity for state parties to ‘take stock of the state of human rights protections within their jurisdiction for the purpose of policy planning and implementation’, as well as ‘to encourage and facilitate the scrutiny of government policies’ and government engagement with civil society to advance the rights protected by the Conventions.<sup>14</sup>

While UN treaty body reporting does not provide an avenue for redress for individuals who allege violations of their rights, it provides a procedure to highlight and make recommendations on addressing systemic failings in human rights compliance by Australia.

### 2.1.1 *Timing of reports*

State parties to the core international human rights treaties must provide a comprehensive report to the relevant treaty body on the status of their compliance on entry and periodically afterwards, at regular intervals specified by the treaty. Table 2 sets out the periodic reporting requirements for each UN treaty body with oversight of Australia.<sup>15</sup> Three Australian Government departments share responsibility for treaty body reporting and details are provided by the Attorney-General’s Department.<sup>16</sup>

A common feature of the UN treaty body system is non-reporting by states, and long delays in the submission of state reports.<sup>17</sup> Australia has not always complied with the time prescribed for submitting its reporting obligations. Information on Australia’s current reporting status is available on the website of the Office of the High Commissioner for Human Rights.<sup>18</sup>

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recommendations for the continuing consultation and engagement with stakeholders including civil society groups and those who have experienced detention in Australia. Harding suggests that the delay in ratification reflected both political ‘ambivalence’ and legitimate concerns about the implications of OPCAT within Australia’s federal system: Richard Harding, ‘Australia’s circuitous path towards the ratification of OPCAT, 2002–2017: the challenges of implementation’ (2019) 25(1) *Australian Journal of Human Rights* 4, 19-20. On the implementation of OP-CAT by various states with a federal structure, see Ben Buckland and Audrey Olivier-Muralt ‘OPCAT in federal states: towards a better understanding of NPM models and challenges’ (2019) 25(1) *Australian Journal of Human Rights* 23.

<sup>13</sup> Report of the Secretary-General, *Compilation of Guidelines on the form and content of reports to be submitted by state parties to the international human rights treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [11].

<sup>14</sup> Report of the Secretary-General, *Compilation of Guidelines on the form and content of reports to be submitted by state parties to the international human rights treaties*, HRI/GEN/2/Rev.6 (3 June 2009) [10].

<sup>15</sup> For information on Australia’s reporting obligations, see: United Nations Office of the Human Rights Commissioner, *Reporting Status for Australia* <[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=EN)>

<sup>16</sup> <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/united-nations-human-rights-reporting/treaty-body-reporting>.

<sup>17</sup> International Service for Human Rights, *A Simple Guide to the UN Treaty Bodies* (2015) 17 – 18.

<sup>18</sup>

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=EN).

**Table 2: Reporting periods to UN treaty bodies and Australia's reporting obligations**

Treaty	Reporting provision	Initial state report	Periodic reports	Australia's last reporting cycle*	Due date for last report	Date last report submitted	Australia's next reporting obligation
CERD	Article 9	One year	Every two years (but in practice generally every four years as two combined periodic reports)	XVIII-XX	30 October 2020	(not yet online)	Not yet known
ICCPR	Article 40	One year	Generally every four years, but the HRC varies the periodicity in accordance with its follow-up procedure	VI	20 December 2013	2 May 2016	2026
ICESCR	Articles 16, 17	Two years	Every five years	V	30 June 2014	1 February 2016	Sept 2023
CEDAW	Article 18	One year	Every four years, or whenever requested by CEDAW	VIII	1 July 2014	8 December 2016	20 July 2022
CAT	Article 19	One year	Every four years, but varies due date for	VI	28 November 2018	16 January 2019	Nov 2026

Treaty	Reporting provision	Initial state report	Periodic reports	Australia's last reporting cycle*	Due date for last report	Date last report submitted	Australia's next reporting obligation
			next periodic report				
CRC	Article 44	One year	Every four years, but varies due date for next periodic report	V-VI	15 January 2018	15 January 2018	15 January 2024
CRC-OPSC	Article 12	Two years	Every five years or integrated into the state parties next CRC report	II (Combined with report to V-VI CRC)	15 January 2018	15 January 2018	15 January 2024
CRC-OPAC	Article 8	Two years	Every five years or integrated into the state parties next CRC report	II (Combined with report to V-VI CRC)	15 January 2018	15 January 2018	15 January 2024
CRPD	Article 35	Two years	Every four years	II-III	2 September 2018	7 September 2018	17 August 2026

\*Number of reporting cycles to UN treaty body complete.

### 2.1.2 Overview of the formal periodic reporting process

Subject to each Committee's procedures, the periodic reporting process generally follows several stages:<sup>19</sup>

- The state party prepares and submits a report to the treaty body on the implementation of its treaty obligations at the national level. The government may determine to compile the report in consultation with national human rights institutions ('NHRIs') and non-governmental organisations ('NGOs'). The reports contain information on the legislative, judicial, administrative and other measures the state has adopted to achieve the enjoyment of the treaty rights.<sup>20</sup> Subject to the harmonised 'common core document' between treaty bodies,<sup>21</sup> the precise format for state party reports differs between Committees.<sup>22</sup>
- NHRIs can submit a separate report or information to the Committee. NGOs, independently or in coalition, may submit alternative or 'shadow' reports evaluating the state report and providing information enabling the Committee to address gaps in implementation that may not otherwise be apparent.
- All UN treaty bodies prepare a list of issues and questions to state parties in advance of formally examining their state party reports in public session. In some cases, the

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<sup>19</sup> For more detailed examination of this process, see: International Service for Human Rights, *A Simple Guide to the UN Treaty Bodies* (2015) 16 – 25.

<sup>20</sup> Report of the Secretary-General, *Compilation of Guidelines on the form and content of reports to be submitted by state parties to the international human rights treaties*, UN Doc HRI/GEN/2/Rev.6 (3 June 2009) [2].

<sup>21</sup> The 'common core document' allows common information on each State (background information and the general national framework for human rights implementation) to be reported to each UN treaty body in a harmonised format: see Report of the Secretary-General, *Compilation of Guidelines on the form and content of reports to be submitted by state parties to the international human rights treaties*, UN Doc HRI/GEN/2/Rev.6 (3 June 2009). There are also word limit requirements imposed on initial and periodic state reporting by *Strengthening and enhancing the effective functioning of the human rights treaty body system*, GA Res 68/28, UN GAOR, 68<sup>th</sup> sess, Agenda Item 125, UN Doc A/RES/68/268 (21 April 2014).

<sup>22</sup> Of those treaties to which Australia is a party, see: Committee on the Elimination of Racial Discrimination, *Guidelines for the CERD-Specific Document to be Submitted by States Parties under Article 9, Paragraph 1, of the Convention*, 71<sup>st</sup> sess, CERD/C/2007/1 (13 June 2008); Economic and Social Council, *Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Article s 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2008/2, GE.09-41339 (24 March 2009); Committee on the Elimination of Discrimination against Women, *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.1/Add.2, GE.03-41751 (5 May 2003); Human Rights Committee, *Guidelines for the Treaty-Specific Document to be Submitted by States Parties under Article 40 of the International Covenant on Civil and Political Rights*, CCPR/C/2009/1, GE.10-46789 (22 November 2010); Committee Against Torture, *Guidelines on the Form and Content of Initial Reports under Article 19 to be Submitted by States Parties to the Convention Against Torture*, CAT/C/4/Rev.3, GE.05-42837 (18 July 2005); Committee on the Rights of the Child, *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a) of the Convention*, CRC/C/5, GE. 91-1171/7789a (30 October 1991); Committee on the Rights of Persons with Disabilities, *Guidelines on Treaty-Specific Document to be Submitted by States Parties under Article 35, Paragraph 1, of the Convention on the Rights of Persons with Disabilities*, CRPD/C/2/3, GE.09-46379(E) (18 November 2009).

- Committee will hold a pre-session working group to identify a list of issues and questions that is provided to the state party in advance of the public session. NGOs may be invited to participate in pre-session working groups by briefing Committee members.
- Formal consideration of the state party report by the Committee meeting in public session, in dialogue with a delegation of the state party. NGOs may have an opportunity to make presentations during the session.
  - The Committee makes Concluding Comments or Observations on the performance of the reporting state party. These include positive comments on the state party's performance, as well as identification of problematic areas and practical recommendations to improve the state's compliance with its obligations. The state party will also identify areas for the state to report on in the next reporting cycle, including its implementation of the Committee's recommendations.
  - Concluding Comments or Observations are submitted, as part of the UN treaty body's annual report or as a standalone submission, to the UN General Assembly.<sup>23</sup>

All Committees request that state parties include information on their response to their Concluding Comments or Observations in their next reporting cycle. Some UN treaty bodies have also developed follow-up procedures requiring state parties to report separately in the interim period on their implementation of recommendations that have been identified as priority, urgent or protective in nature. State parties must provide these reports within a stipulated time period (generally within one or two years).<sup>24</sup>

In Australian law and policy, Concluding Comments or Observations of UN treaty bodies themselves have no direct effect or enforceability. It is a matter for the Australian Government to determine if, and how, to comply with them. Nevertheless, they provide an authoritative and public evaluation of how Australia is implementing its treaty obligations.

### 2.1.3 *The role of NGOs in the periodic reporting process*

NGOs play an important part in the UN Committee process in ensuring state accountability for the implementation of treaty obligations and any breaches of those obligations, including through alternative or shadow reporting. They play a key role in monitoring and reporting on state implementation of Committee recommendations, lobbying and working with governments to increase compliance with treaty obligations, as well as raising domestic awareness of UN treaty body findings.

#### 2.1.3.1 Reporting requirements

Regardless of whether they were consulted or involved in the preparation of a state party report, NGOs may submit a report to a treaty body on a state's implementation of its human rights

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<sup>23</sup> The concluding observations or comments of each treaty body can be accessed here: United Nations Human Rights Office of the Commissioner, *Universal Human Rights Index* <<https://uhri.ohchr.org/en>>.

<sup>24</sup> An overview of UN treaty body follow-up procedures and guidance issued by different treaty bodies is compiled at: United Nations Human Rights Office of the Commissioner, *Human Rights Bodies: Follow Up to Concluding Observations* <<https://www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx>>.

obligations.<sup>25</sup> NGOs may also submit information to treaty bodies to inform the preparation of lists of issues and questions to be considered in respect of a state and arrange informal briefings for Committee members in advance of review sessions.<sup>26</sup>

### 2.1.3.2 Accreditation and participation requirements

Generally, NGOs do not require accreditation in order to submit alternative or shadow reports or other information to the treaty bodies.<sup>27</sup> However, formal accreditation from the UN treaty body Secretariat is required for an NGO to participate in or observe a pre-sessional working group or public session of a treaty body.<sup>28</sup> Each UN treaty body has its own guidelines on NGO participation in its periodic reporting processes and deadlines for submission of information. These are set out in Table 3.

**Table 3 Guidance on NGO participation in periodic reporting processes**

Treaty body	Treaty	Guidelines on NGO participation	Deadlines for submission of written information
Committee on the Elimination of Racial Discrimination	CERD	An electronic version (by email) and 24 hard copies (by post or given personally) should be submitted to the secretariat, with a summary page.	For country reviews: at any time, but preferably two months before the Committee's session. <sup>29</sup>
Human Rights Committee	ICCPR	NGOs with <i>general</i> consultative status may submit written statements of up to 2,000 words. NGOs with <i>special</i> consultative status or on the roster may submit written statements of up to 1,500 words. <sup>30</sup>	At any time, but preferably two weeks before the session at which the given country report is to be examined and six weeks before the meeting of the country report task force which determines the list of issues to be addressed

<sup>25</sup> International Service for Human Rights, *A Simple Guide to the UN Treaty Bodies* (2015) 39. For an example of a Joint Coalition NGO shadow report in respect of Australia's treaty obligations, see: Australian NGO Coalition, *CEDAW Shadow Report 2018*, <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT\\_CEDAW\\_NGO\\_AUS\\_314\\_35\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT_CEDAW_NGO_AUS_314_35_E.pdf)>.

<sup>26</sup> For further information on briefing practices of each UN treaty body, see: International Service for Human Rights, *A Simple Guide to the UN Treaty Bodies* (2015) 42.

<sup>27</sup> International Service for Human Rights, *A Simple Guide to the UN Treaty Bodies* (2015) 20.

<sup>28</sup> For an overview of these requirements, see: United Nations Human Rights Office of the High Commissioner, *Information Note on Accreditation to attend sessions of Treaty Bodies* <<https://www.ohchr.org/EN/HRBodies/CERD/Pages/Accreditation.aspx>>.

<sup>29</sup> Daisuke Shirane, *The International Movement Against All Forms of Discrimination and Racism, ICERD and CERD: A Guide for Civil Society Actors* (2011) <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CERD/INF/7827&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CERD/INF/7827&Lang=en)>.

<sup>30</sup> Office of the High Commissioner for Human Rights, *Working with the United Nations Programme: A Handbook for Civil Society* (2008) HR/PUB/06/10/Rev.1, 92 <[https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf)>.

			at the Committee's next session. <sup>31</sup>
Committee on Economic, Social and Cultural Rights	ICESCR	NGOs may submit information to the secretariat for both the reporting sessions and the pre-sessions. At least 25 hard copies should be submitted for the reporting sessions, and at least 10 for the pre-sessional working group.	Information may be submitted at any time, but preferably at least two weeks in advance. <sup>32</sup>
Committee on the Elimination of Discrimination against Women	CEDAW	Due to the high number of submissions received at each session, such submissions should not exceed 3,300 words (6,600 words for submissions by NGO coalitions) and be in pdf format, with 35 copies to be submitted by post. <sup>33</sup>	For country reviews: two weeks before the pre-sessional meeting or three weeks before the Committee's session. <sup>34</sup>  For the list of issues: five weeks prior to the pre-sessional working group.
Committee against Torture	CAT	All information must be submitted in electronic form and at least 15 hard copies should be sent to the secretariat.	No later than four weeks before the opening of the session. <sup>35</sup>
Committee on the Rights of the Child	CRC, CRC-OPSC, CRC-OPAC	At least 20 hard copies should be submitted to the secretariat in addition to an electronic copy. Civil society actors may request their written submissions to be kept confidential.	At least two months before the relevant pre-sessional working group. <sup>36</sup>

<sup>31</sup> Office of the High Commissioner for Human Rights, *Working with the United Nations Programme: A Handbook for Civil Society* (2008) HR/PUB/06/10/Rev.1, 64  
<[https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf)>.

<sup>32</sup> United Nations Human Rights Council, *A Practical Guide for NGO Participants* (2013),  
<[https://www.ohchr.org/Documents/HRBodies/HRCouncil/PracticalGuideNGO\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/PracticalGuideNGO_en.pdf)>.

<sup>33</sup> Committee on the Elimination of Discrimination Against Women, *Information Note Prepared by OHCHR for NGO Participation*,  
<[https://www2.ohchr.org/english/bodies/cedaw/docs/NGO\\_Participation.final.pdf](https://www2.ohchr.org/english/bodies/cedaw/docs/NGO_Participation.final.pdf)>.

<sup>34</sup> Committee on the Elimination of Discrimination Against Women, *Participation by Non-Governmental Organisations*, 71<sup>st</sup> session (22 October 2018).

<sup>35</sup> Committee Against Torture, *Information for Civil Society Organisations and National Human Rights Institutions*, <<https://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx>>.

<sup>36</sup> Committee on the Rights of the Child, *Guidelines for the Participation of Partners (NGOs and Individual Experts) in the Pre-Sessional Working Group of the Committee on the Rights of the Child*, <[https://www.ohchr.org/Documents/HRBodies/CRC/GuidelinesForPartners\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/CRC/GuidelinesForPartners_en.pdf)>.

Committee on the Rights of Persons with Disabilities	CRPD	NGOs may submit information on serious, grave or systematic violations of the Convention to the secretariat. The information must be reliable and indicate that the State party is systematically violating the rights contained in the Convention.	For country reviews: up to three weeks before the Committee's session. For the list of issues: four months before the session. <sup>37</sup>
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## 2.2 Interaction of UN treaty bodies with UN Human Rights Council Universal Periodic Review

The main human rights body of the UN, the Human Rights Council, was established in 2006 pursuant to *UN General Assembly Resolution 60/251*, which defines its mandate and functions.<sup>38</sup> It succeeded the former UN Commission for Human Rights.

The UN Human Rights Council is a subsidiary organ of the UN General Assembly and replaced the former UN Commission on Human Rights.<sup>39</sup> Unlike the UN human rights treaty bodies, comprised of experts, the Human Rights Council is an inter-governmental political body constituted by forty-seven UN member states. Australia was elected a member of the Human Rights Council in October 2017 for a three-year term.

The decision to seek election to the Human Rights Council inevitably invites greater scrutiny of a country's human rights record. In 2017 this was described as a 'more positive indication of Australia's future commitment to human rights'.<sup>40</sup> It was suggested that the election of Australia might 'provide an impetus to improve Australia's engagement with the international human rights regime and to translate its treaty obligations into enforceable national laws.'<sup>41</sup>

After its election, Australia both ratified and implemented OP-CAT in domestic law, demonstrating its improved engagement with the international human rights regime as a result of its Human Rights Council membership. Notwithstanding Australia's ratification of OP-CAT,

<sup>37</sup> Committee on the Rights of Persons with Disabilities, *Guidelines on the Participation of Disabled Persons Organisations (DPOs) and Civil Society Organisations in the Work of the Committee*, CRPD/C/11/12, annex II.

<sup>38</sup> *United Nations General Assembly Resolution*, GA Res 60/251, UN GAOR, 60<sup>th</sup> sess, UN Doc A/RES/60/251 (3 April 2006).

<sup>39</sup> *United Nations General Assembly Resolution*, GA Res 60/251, UN GAOR, 60<sup>th</sup> sess, UN Doc A/RES/60/251 (3 April 2006), [1].

<sup>40</sup> Hilary Charlesworth and Gillian Triggs, 'Australia and the International Protection of Human Rights' in Donald Rothwell and Emily Crawford (eds), *International Law in Australia* (Law Book Co., 3<sup>rd</sup> ed, 2017) 117, 137.

<sup>41</sup> Hilary Charlesworth and Gillian Triggs, 'Australia and the International Protection of Human Rights' in Donald Rothwell and Emily Crawford (eds), *International Law in Australia* (Law Book Co., 3<sup>rd</sup> ed, 2017) 117, 137.

McGuire, McGaughey and Monaghan contend that Australia's international and domestic human rights performance during its membership of the Human Rights Council was 'relatively tokenistic' and 'more characterised by performativity than performance.'<sup>42</sup>

One of the main functions of the Human Rights Council is to conduct Universal Periodic Reviews, in which the Council examines each UN member state's human rights record at four and a half year intervals. These are akin to 'peer review' exercises and are different from the assessment by committees associated with particular treaties. Universal Periodic Reviews (UPR) focus upon systemic issues, rather than individual human rights violations. The basis of the Council's review includes the state's compliance with human rights treaties to which it is a party.<sup>43</sup> In addition to information provided by state parties, the UN Office of the Human Rights Commissioner provides the Council with a summary of UN treaty body reports on states' human rights records.<sup>44</sup>

Australia underwent two cycles of Universal Periodic Review in 2010 and 2015. In 2015, the Human Rights Council made 291 recommendations to Australia in respect of its compliance with its human rights obligations at international law.<sup>45</sup>

As noted by Charlesworth and Triggs, the response to the first cycle in 2011 (including the development of a National Human Rights Action Plan) appeared to be more receptive than that of the subsequent federal Government in 2015 (which included unsubstantiated assertions of compliance with around half of the recommendations under existing laws and policies).<sup>46</sup>

Full compliance with recommendations made in the first cycle was measured at around ten percent, and it 'remains to be seen whether Australia's response to the second cycle UPR will prove to be any more effective'.<sup>47</sup> Australia contended that it has initiated action on most of the 2015 proposals.<sup>48</sup> In recent years, various reforms have been introduced, including the legalisation of same sex marriage; the establishment of a National Disability Insurance Scheme; various inquiries into the institutional treatment and abuse of vulnerable people; initiatives

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<sup>42</sup> Amy Maguire, Fiona McGaughey and Georgia Monaghan, 'Performance or performativity? Australia's membership of the United Nations Human Rights Council' (2019) 25(2) *Australian Journal of Human Rights* 317, 332.

<sup>43</sup> UN Human Rights Council, *Resolution 5/1 Institution building of the United Nations Human Rights Council*, HRC Res 5/1, 7<sup>th</sup> mtg, A/HRC/RES/5/1 (18 June 2007) annex [1(c)].

<sup>44</sup> UN Human Rights Council, *Resolution 5/1 Institution building of the United Nations Human Rights Council*, HRC Res 5/1, 7<sup>th</sup> mtg, A/HRC/RES/5/1 (18 June 2007) annex [15(a)-(b)].

<sup>45</sup> UN Human Rights Council, *Report of the Working Group on Universal Periodic Review: Australia*, 31<sup>st</sup> sess, Agenda Item 6, UN Doc A/HRC/31/14 (13 January 2016).

<sup>46</sup> Hilary Charlesworth and Gillian Triggs, 'Australia and the International Protection of Human Rights' in Donald Rothwell and Emily Crawford (eds), *International Law in Australia* (Law Book Co., 3<sup>rd</sup> ed, 2017) 117, 134-5.

<sup>47</sup> Hilary Charlesworth and Gillian Triggs, 'Australia and the International Protection of Human Rights' in Donald Rothwell and Emily Crawford (eds), *International Law in Australia* (Law Book Co., 3<sup>rd</sup> ed, 2017) 117, 135. Factsheets on the implementation of recommendations in various key issue areas are available on the Human Rights Law Centre website <<https://www.hrlc.org.au/upr-2020-21-factsheets>>.

<sup>48</sup> See Attorney-General's Department, 'National Report submitted in accordance with paragraph 5 of the Annex to Human Rights Council Resolution 16/21' <<https://www.ag.gov.au/sites/default/files/2020-12/national-report-of-australia-upr-2021.pdf>>.

addressing family and domestic violence; reforms addressing human trafficking and modern slavery; and a commitment to investigate and where appropriate prosecute offenders in respect of war crimes allegedly committed by Australian soldiers overseas.

Australia submitted its most recent National Report in late 2020 for its third Periodic Review in 2021.

In July 2020, Human Rights Watch made submissions to the further UPR of Australia concerning Australia's implementation of the recommendations it accepted<sup>49</sup> through the 2015 UPR, together with information on human rights developments in Australia not addressed in the 2015 review.<sup>50</sup> The Australian Human Rights Commission also made a submission.

Human Rights Watch outlined its concerns about Australia's human rights record, including in relation to its treatment of asylum seekers and refugees, the rights of Indigenous peoples, children's rights, disability rights, the rights of older persons, and national security and counter-terrorism measures.

In advance of the review, over 200 NGOs across Australia endorsed a report prepared by a coalition of organisations concerned with human rights.<sup>51</sup> The Report provides a comprehensive insight into the state of human rights in Australia before the impact of the COVID-19 pandemic, and its far-reaching rights consequences, were felt.<sup>52</sup>

In January 2021, Australia appeared before the United Nations as part of the 'peer review' process in which UN member states can participate. In addition to oft-repeated concerns about

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<sup>49</sup> Of the 291 recommendations made at the 2015 review, Australia accepted 150, agreed to review a further 50 and 'noted' 90. See Australian Human Rights Commission, 'Australia's Second Universal Periodic Review on human rights' <<https://humanrights.gov.au/our-work/rights-and-freedoms/australias-second-universal-periodic-review-human-rights>>. See also UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Australia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', UN Doc A/HRC/31/14/Add.1 (29 February 2016) <<https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Documents/ResponsetoUPRrecommendations.pdf>>.

<sup>50</sup> See Human Rights Watch, 'Submission to the Universal Periodic Review of Australia' (July 2020) <<https://www.hrw.org/news/2020/09/16/submission-universal-periodic-review-australia>>; Additional information on the human rights issues in Australia can be found at Human Rights Watch, 'Australia – World Report 2020', <<https://www.hrw.org/world-report/2020/country-chapters/australia>> and Australia – World Report 2021', <<https://www.hrw.org/world-report/2021/country-chapters/australia#>>.

<sup>51</sup> See the 88 recommendations made in the *Australia's Human Rights Scorecard: Australia's 2020 United Nations UPR NGO Coalition Report*, <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5f15222b049f73378f136fa0/1595220535385/UPR+++Australian+NGO+Coalition+Submission++domestic+publication+version+July+2020.pdf>>. The Report was prepared by the Human Rights Law Centre, Caxton Legal Centre and Kingsford Legal Centre, working in consultation with an Advisory Group and other expert NGOs.

<sup>52</sup> Human Rights Law Centre, 'Universal Periodic Review', <<https://www.hrlc.org.au/universal-periodic-review>>.

problems in relation to the treatment of asylum seekers and the rights of Indigenous peoples, human rights concerns were raised in relation to Australia's inaction on climate change.

In recent years, criticisms of Australia's human rights record have focused on, inter alia: the lack of constitutional recognition of Indigenous peoples; the reduced life expectancy of Aboriginal and Torres Strait Islanders; the over-representation of First Nations people in the juvenile and adult criminal justice system; Aboriginal deaths in custody; the low age of criminal responsibility; the failure to open off shore detention centres to external oversight in compliance with the convention against torture which Australia ratified in 2017; crackdowns on the media, journalists and whistle-blowers to protect from disclosure classified information; the recognition by the international criminal court in 2019 that the offshore detention regime was 'cruel' and unlawful; and the failure to implement a national charter of human rights.

### 2.2.1 NGO participation in Universal Periodic Reviews

As indicated above, the UPR process provides an opportunity for stakeholders, including NGOs and national human rights institutions to submit information to the Human Rights Council.<sup>53</sup> The Office of the High Commissioner for Human Rights makes a summary of written submissions by stakeholders.<sup>54</sup> The information gathering and submission role of NGOs and other civil society groups is critical to the proper functioning of the UN UPR and other reporting mechanisms for the scrutiny of human rights compliance by member states. In Australia, '[t]he unpopularity of such groups with successive Australian governments, manifested for example in reductions in government funding, is a measure of their success'.<sup>55</sup>

## 3. UN treaty body complaint procedures

Several of the core human rights treaties or their optional protocols establish complaints mechanisms. Under these mechanisms, an individual (as well as groups in the case of the CERD, *OP-CEDAW* and *OP-CRPD*) who have suffered an alleged violation of their rights under the relevant treaty by a state party can make a complaint to the UN treaty body.<sup>56</sup>

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<sup>53</sup> See 3rd UPR cycle: contributions and participation of "other stakeholders" in the UPR' (United Nations Human Rights Council website) <<https://www.ohchr.org/en/hrbodies/upr/pages/ngosnhris.aspx>>.

<sup>54</sup> See Human Rights Council, *Report of the Office of the High Commissioner for Human Rights: Summary of Stakeholders' submissions on Australia, 37<sup>th</sup> sess*, UN Doc A/HRC/WG.6/37/AUS/3 (5 November 2020). See also Australia's Human Rights Scorecard: Joint NGO Submission on behalf of the Australian NGO Coalition (April 2020)

<<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5f15222b049f73378f136fa0/1595220535385/UPR+++Australian+NGO+Coalition+Submission++domestic+publication+version+July+2020.pdf>>.

<sup>55</sup> Hilary Charlesworth and Gillian Triggs, 'Australia and the International Protection of Human Rights' in Donald Rothwell and Emily Crawford (eds), *International Law in Australia* (Law Book Co., 3<sup>rd</sup> ed, 2017) 117, 136.

<sup>56</sup> Some international human rights treaties also contain provisions allowing state parties to submit complaints to the UN treaty body about another State party's alleged violation of the treaty, or to refer disputes concerning the interpretation or application of the treaty to the ICJ: see, for example, CAT, art 21; CEDAW, art 29.

These complaints procedures are also known as ‘communications’. Complainants are known as ‘authors’ of complaints. If a complaint is admissible, and the treaty body determines that the author’s human rights have been violated, the Committee issues its views on a state party’s obligation to remedy the violation in respect of the affected individual and how it should proceed to address systemic issues revealed by the complaint.

Decisions of UN treaty bodies on communications have no domestic enforceability in Australian law. It is a matter for Australian domestic authorities whether and how a human rights violation that has been determined by a UN treaty body is remedied, and whether any other recommendations are implemented.<sup>57</sup>

However, international complaints procedures are a means by which to hold the Australian Government to account for human rights violations and to pursue law reform. Adverse decisions by UN treaty bodies serve to highlight failings in Australian law and policy and can successfully mobilise domestic pressure for change.<sup>58</sup>

The most prominent example of this, as discussed in research paper 2, was in respect of the Human Rights Committee’s decision of *Toonen v Australia*. The Committee found Tasmanian legislation criminalising homosexual acts between men violated the right to freedom from arbitrary or unlawful interference with privacy and non-discrimination on the basis of sexual orientation recognised in the *ICCPR*. The Committee recommended that the legislation be repealed.

In response, the Commonwealth Government enacted legislation with the aim of constitutionally overriding the Tasmanian legislation. The Tasmanian Government repealed the legislation after an unsuccessful High Court application to strike out a challenge to the constitutionality of the legislation on the basis of its inconsistency with Commonwealth law.<sup>59</sup>

UN treaty body decisions on individual communications can also be influential in Australian courts (for further discussion, see research paper 2). For example, the Full Federal Court observed in *Minister for Immigration and Multicultural and Indigenous Affairs v Al-Masri*:

[A]lthough the views of the [Human Rights Committee] lack precedential authority in an Australian court, it is legitimate to have regard to them as the opinions of an expert body established by the treaty to further its objects by performing functions that include reporting, receiving reports, conciliating and considering claims that a state party is not fulfilling its obligations.<sup>60</sup>

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<sup>57</sup> Dinah Shelton, *Remedies in International Human Rights Law* (1999) 55.

<sup>58</sup> Elizabeth Broderick, ‘Foreword’ in Australian Human Rights Commission, *Mechanisms for advancing women’s human rights: A Guide to Using the Optional Protocol to CEDAW and other international complaint mechanisms* (2011).

<sup>59</sup> *Croome v Tasmania* (1997) 91 CLR 119.

<sup>60</sup> *Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri* (2003) 126 FCR 54, 91 [148].

In addition, in *Mabo v Queensland (No 2)*, Brennan J (with whom Mason CJ and McHugh J agreed) stated that:

The opening up of international remedies to individuals pursuant to Australia's accession to the Optional Protocol to the International Covenant on Civil and Political Rights brings to bear on the common law the powerful influence of the Covenant and the international standards it imports. The common law does not necessarily conform to international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights.<sup>61</sup>

Nevertheless, as an avenue for individual remedy, rather than as part of a broader law and policy reform strategy, the use of the international communications procedures has limitations.

UN treaty bodies receive a high volume of complaints. There are often significant delays – of years – before a treaty body considers the merits of an individual communication.<sup>62</sup> Further, the requirement that a complainant exhaust available and effective domestic remedies for their communication to be admissible, with limited exceptions, can be a difficult threshold requirement to meet, as we address below.

Treaty body jurisprudence is such that, in general, a lack of financial means to pursue domestic remedies is not an exception to the exhaustion of domestic remedies requirement.<sup>63</sup> For many individuals, that is a significant barrier to accessing the communications procedure.

Australia's record on implementing UN treaty body decisions is also mixed. In 2003, Hovell wrote that, while in its early relationship with UN treaty bodies the Australian Government occasionally showed great willingness to remedy determined inconsistencies with its human rights obligations, in later instances the Government showed complete defiance of treaty body decisions.<sup>64</sup> Charlesworth characterised this, in 2006, as symptomatic of an ideological attitude revealing mistrust of international institutions responsible for monitoring human rights, and a concern with maintaining domestic sovereignty.<sup>65</sup>

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<sup>61</sup> *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 42.

<sup>62</sup> This is well illustrated by the table of UN treaty body decisions on communications in respect of Australia, showing both the year in which individual communications were received and when the merits decision issued: see Appendix C.

<sup>63</sup> See, for example, Human Rights Committee, *Views: Communication No 1921/2009*, 107<sup>th</sup> sess, UN Doc CCPR/C/107/D/1921/2009 (14 May 2013) 5 [6.3] (*'KS v Australia'*); Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/13/2013 (30 May 2016) (*'Lockrey v Australia'*) 7 [4.2]. The limited qualifications to this principle are discussed below.

<sup>64</sup> See generally: Devika Hovell, 'The sovereignty stratagem: Australia's response to UN human rights treaty bodies', (2003) 28(6) *Alternative Law Journal* 297.

<sup>65</sup> Hilary Charlesworth, *Human Rights: Australia versus the UN – Democratic Audit of Australia Discussion Paper 22/06* (August 2006).

More recently, in 2017 the civil society organisation Remedy Australia found that the results of an assessment of Australia's implementation of UN Human Rights Committee decisions were 'damning'.<sup>66</sup> It reported:

Only 5 out of the 40 Australian cases [in which human rights violations were found by the Committee] have been fully remedied and one of those required no action on Australia's part (*Rogerson v Australia*). Ten cases have been partially remedied, but the rest have not been remedied at all. Meanwhile, some gross violations identified in individual communications, far from being remedied, continue unchecked.<sup>67</sup>

This record suggests that the utility of making an international communication for the purpose of *individual* redress rather than in pursuit of broader *systemic* change may be limited. However, Remedy Australia did find that for authors of UN treaty body complaints and their cases, civil society support was important where they were able to obtain some of the substantive remedies from the Australian Government recommended by UN Human Rights Committees.<sup>68</sup>

We address below the applicability of individual complaints procedures to Australia, the procedural requirements for the format and submission of complaints and rules relating to admissibility and merits consideration. In Appendix C, we detail individual communications brought in relation to human rights violations by Australia in the period 2010-2020.

### 3.1 Australia's acceptance of individual complaints procedures

A UN treaty body cannot register and consider an individual complaint against a state that does not recognise its competence to do so. States recognise the competence of a treaty body either by ratifying the relevant Optional Protocol or making a declaration accepting the applicability of the procedure.<sup>69</sup> As set out in Table 1 above, Australia has currently accepted the operation of UN treaty body individual communication procedures under each of the:

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<sup>66</sup> Remedy Australia, *Follow-up report on violations by Australia of ICCPR in individual communications (1994-2017)* (October 2017) Remedy Australia, 3 <[https://remedy.org.au/reports/2017\\_RemedyaAustralia\\_Follow-Up\\_Report\\_on\\_individual\\_communications.pdf](https://remedy.org.au/reports/2017_RemedyaAustralia_Follow-Up_Report_on_individual_communications.pdf)>.

<sup>67</sup> Remedy Australia, *Follow-up report on violations by Australia of ICCPR in individual communications (1994-2017)* (October 2017) Remedy Australia, 3 <[https://remedy.org.au/reports/2017\\_RemedyaAustralia\\_Follow-Up\\_Report\\_on\\_individual\\_communications.pdf](https://remedy.org.au/reports/2017_RemedyaAustralia_Follow-Up_Report_on_individual_communications.pdf)>.

<sup>68</sup> Remedy Australia, *Follow-up report on violations by Australia of ICCPR in individual communications (1994-2017)* (October 2017) Remedy Australia, 3 <[https://remedy.org.au/reports/2017\\_RemedyaAustralia\\_Follow-Up\\_Report\\_on\\_individual\\_communications.pdf](https://remedy.org.au/reports/2017_RemedyaAustralia_Follow-Up_Report_on_individual_communications.pdf)>.

<sup>69</sup> *OP-ICCPR*, art 1; Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) rr 84(3) and 96(a); *CAT*, art 22(1); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) rule 104(2)(a); *CERD*, art 14(1); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) rule 83(3); *OP-CRPD*, art 1(2); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1 r 55(4); *OP-CEDAW*, art 3; Committee

- *CAT*
- *CERD*
- *OP-ICCPR*, in respect of violations of the *ICCPR*
- *OP-CRPD*, in respect of violations of the *CRPD* and
- *OP-CEDAW*, in respect of violations of the *CEDAW*.

Our discussion of individual communications procedures therefore only relates to the procedures under the treaties above.

Treaty bodies are also only competent to consider complaints against a state in relation to treaty provisions recognised by the state party. Treaty bodies generally will be unable to receive complaints that would be incompatible with a state party's reservation to the treaty. As discussed in research paper 2, the effectiveness of treaty reservations is subject to principles described in the *Vienna Convention on the Law of Treaties* (1969). Australia's current reservations to human rights treaties are set out in Appendix A. Appendix B sets out the international treaties concerning human rights to which Australia is a party.

While Committees do not consider complaints brought against non-party states, a Committee is not prevented from considering a complaint against a state party that concerns actions of a non-party state, so long as the interests of the non-party state are not the subject matter of the Committee's decision.

For example, in *Hicks v Australia*, the Human Rights Committee considered the admissibility of complaints against Australia by Hicks that relied upon alleged breaches of principles of the *ICCPR* by the United States, which is not party to the *OP-ICCPR*.<sup>70</sup> The United States detained Hicks, an Australian citizen, at Guantanamo Bay after his apprehension in Afghanistan shortly after September 11 on suspicion of fighting for the Taliban or Al-Qaeda. He was tried and convicted by the Guantanamo Military Commission for a retroactive terrorism offence under United States law. Hicks was subsequently transferred from Guantanamo Bay to Australia and detained for a period in Australia pursuant to an agreement between the United States and Australia. Among other complaints, Hicks alleged that through the operation of that agreement, Australia participated in his retrospective punishment and imprisonment. He also submitted that his Australian detention was arbitrary, as it was pursuant to his conviction in proceedings that violated his substantive and procedural rights to a fair trial. He submitted both that the rules and procedures of the Guantanamo Military Commission were unfair, and that evidence adduced against him was obtained unlawfully through his own and other Guantanamo detainees' alleged torture and ill-treatment in US custody.

The Committee was satisfied that the complaints were directed at Australia rather than the United States and that it was unlikely that the interests of the United States would be engaged, as the

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on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 56(3)(a).

<sup>70</sup> Human Rights Committee, *Views: Communication No 2005/2010*, 115<sup>th</sup> sess, UN Doc CCPR/C/115/D/2005/2010 ('*Hicks v Australia*') 4–5 [2.6-2.7].

conviction of Hicks had been set aside in the United States as unlawfully retrospective. The Committee determined his complaints to be admissible.

### 3.2 Form of complaints

#### 3.2.1 *In writing*

Complaints to UN treaty bodies, which are usually referred to as communications, must be submitted in writing.<sup>71</sup> There is an exception for communications to the Committee on the Rights of Persons with Disabilities. The Committee's Rules of Procedure allow for the Committee to receive complaints in alternatively accessible formats of communication.<sup>72</sup> Complaints must also be submitted in the working languages of the Secretariat to the Committees, a function performed by the Office of the UN High Commissioner for Human Rights. The Secretariat's working languages are the UN working languages: Arabic, Chinese, English, French, Spanish and Russian.

#### 3.2.2 *Anonymity and confidentiality of the identity of the complainant*

Committees will only receive complaints that are not anonymous. An anonymous communication will be inadmissible for the Committees' consideration.<sup>73</sup> However, some UN treaty bodies maintain the confidentiality of the identity of complainants from state parties in certain circumstances. The Committee on the Elimination of Racial Discrimination will bring communications to the attention of the state party without revealing the identity of the individual or group of individuals concerned, unless the individual/s give their express consent.<sup>74</sup>

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<sup>71</sup> United Nations Human Rights Office of the High Commissioner, *Human Rights Treaty Bodies – Individual communications*,

<<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregeneral>>. *OP-ICCPR*, art 2; Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 104(2)(c); *OP-CEDAW*, art 3 Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 56(b).

<sup>72</sup> Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, rr 24, 55(1) (providing that the Committee may received communications in alternative accessible formats of communication pursuant to rule 24). Rule 24 provides that the Committee will use methods of communication including 'languages, display of text, Braille, tactile communication, large print and accessible multimedia, as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communications, including accessible formats that may become available in the future through advances made in information and communication technology.'

<sup>73</sup> *OP-ICCPR*, art 3; Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(1); *CAT*, art 22(2); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 104(2)(b); *CERD*, art 14(6)(a); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(a); *OP-CRPD*, art 2(a); *OP-CEDAW*, art 3; Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 56(3)(c).

<sup>74</sup> *CERD*, art 14(6)(a).

In contrast, the Committee on the Elimination of Discrimination Against Women requires that complainants consent to the disclosure of their identity to the state party in order to bring a complaint to the attention of the state party for its investigation.<sup>75</sup> However, the alleged victim may request that the Committee not publish their name and identifying details following its decision, for example, if the author is concerned about their privacy.<sup>76</sup>

The Committee on the Rights of Persons with Disabilities also requires that an individual or group of individuals consent to their identity or other forms of identifying details being disclosed to the state party concerned in order to register a complaint.<sup>77</sup> The Committee may also elect not to publish the name or identifying details of the author of the complaint or the alleged victim or victims in its decision, either on their request, the request of the state party or on its own determination.<sup>78</sup> If a complainant is concerned about the provision of their identity to domestic authorities, the inquiries procedure may be a preferable mechanism by which to submit information about a human rights violation to those two Committees.

### 3.2.3 *Format and information to be included in a complaint*

There is no particular format for presenting an individual complaint. However, it is highly advisable to use the model complaints forms and guidelines issued by each Committee. These are set out at Table 4. The precise requirements for the information that must be included in a communication vary by Committee and are provided for in the Rules of Procedure of each Committee. However, at a minimum, communications should provide sufficient information to establish the *prima facie* applicability of the communications procedure to the complaint.<sup>79</sup>

This will include:

- the name, address, age and occupation of the author and verification of their identity;
- the name of the state party complained against;
- the provision or provisions of the relevant Convention alleged to have been violated;
- the object of the complaint, or the remedies sought;
- the facts of the complaint;

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<sup>75</sup> *OP-CEDAW*, art 6(1); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 58(5).

<sup>76</sup> Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 74(4).

<sup>77</sup> Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 70(1).

<sup>78</sup> Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 76(6).

<sup>79</sup> See, for example, Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 86(1); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 105(1); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 84; Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 57 Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 58(1).

- steps taken by the author to exhaust domestic remedies;
- whether the same matter is being, or has been, examined under another procedure of international investigation or settlement.

Complaints determined to be an abuse of process, manifestly unfounded, ill-founded, or insufficiently substantiated on a *prima facie* basis will be inadmissible for merits consideration. We discuss these admissibility principles further below, including how they relate to the necessity of supporting communications with evidentiary materials.

However, in brief, to avoid the danger of a determination of inadmissibility, complainants should, so far as possible:

- provide detailed information on their claims in relation to the applicable treaty provisions and how the provisions have been interpreted.
- support the facts and circumstances of their complaint with relevant documents, where possible. This includes decisions of administrative authorities, courts and tribunals where relevant to the complaint, particularly with a view to showing the steps taken to exhaust domestic remedies.

**Table 4: UN treaty body individual communications – forms and guidelines in relation to format**

Committee (Treaty)	Guideline document <sup>80</sup>
Committee against Torture (CAT)	Model complaint form
Committee on the Elimination of Racial Discrimination (CERD)	
Human Rights Committee (OP-ICCPR)	
Committee on the Rights of Persons with Disabilities (OP-CRPD)	<ul style="list-style-type: none"> <li>• Fact sheet on the procedure for submitting communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention</li> <li>• Guidelines for submission of communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention</li> </ul>

<sup>80</sup> These forms are published at: United Nations Human Rights Office of the High Commissioner, *Human Rights Treaty Bodies – Individual Communications – Procedure for Complaints by individuals under the human rights treaties*  
<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#theadmissibility>.

Committee on the Elimination of Discrimination against Women (OP-CEDAW)	Guidelines for complaints under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
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### 3.3 Submission of complaint

The Office of the High Commissioner for Human Rights receives individual communications for all UN treaty bodies, acting as their Secretariat. Communications should be submitted to:

Petitions Team  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
1211 Geneva 10, Switzerland  
Email: tb-petitions@ohchr.org

## 4. An overview of the complaint and decision-making process

Once a complaint has been received and submitted to the relevant UN treaty body, the communication procedure consists of several stages. An overview of the stages and key terminology is set out below.

### 4.1 Preliminary examination

If the complaint contains the requisite elements, it will be registered, generally by the Secretary-General of the Committee, a decision of the Committee, or by the Rapporteur on new complaints and interim measures to the Committee – and brought to the attention of the Committee.<sup>81</sup> If the complaint provides insufficient information in relation to the elements listed above, further information may be requested from the complainant.<sup>82</sup>

Subject to there not being a requirement for the Committee to act urgently and request that the state party take interim measures (discussed below), the communication is submitted to the state party for its observations on the complaint's admissibility and merits.

<sup>81</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) rr 84-85; Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 104[1]; Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 83(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 55(1); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 59.

<sup>82</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 84, 86; Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 105(1); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 84(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 55(1) & 57; Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 58(1).

The state party has a set amount of time by which to make its submission, which may include statements clarifying the remedy to the complaint that has been undertaken by the state (under *OP-ICCPR*, *CAT*, *OP-CRPD* and *OP-CEDAW*, generally six months; under *CERD*, generally three months).<sup>83</sup> The Committee will then provide the author of the complaint the opportunity to comment on the state party's observations.

#### 4.2 Interim measures

At any time after receipt of the complaint prior to determining its admissibility and merits, on the basis of the information in the complaint, a Committee may request on an urgent basis that a state party take any interim measures that the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged human rights violations.<sup>84</sup> A request that a state party take interim measures does not constitute a determination of either the admissibility or merits of a communication.<sup>85</sup>

#### 4.3 Admissibility

As a threshold procedural issue, for a Committee to consider the merits or substance of a communication, it must be satisfied that the communication meets the admissibility requirements contained in the relevant treaty or optional protocol, or the Committee's Rules of Procedure.<sup>86</sup> The consideration of issues of admissibility and merits by the Committee may proceed separately or together,<sup>87</sup> the latter occurring if a question of admissibility is so interrelated to the merits of the case that the Committee determines it should be reviewed at

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<sup>83</sup> *OP-ICCPR*, art 4(2); Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 97(2); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 115[1] (although the time limits may vary depending upon whether the State party comments on the threshold admissibility requirements alone or together with the merits, see rule 115); *CERD*, art 6(b); *OP-CRPD*, art 3; Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 70(3); *OP-CEDAW*, art 6(2).

<sup>84</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 92; Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 114; Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 94(3); *OP-CRPD*, art 4(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 64(1); *OP-CEDAW*, art 5(1); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 63.

<sup>85</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 92; Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 94(3); *OP-CRPD*, art 4(2); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 64(2); *OP-CEDAW*, art 5(2); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 63(4).

<sup>86</sup> *OP-ICCPR*, art 5(2); *CAT*, art 22; Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91; *OP-CEDAW*, arts 7(4)-(5).

<sup>87</sup> A Committee may also consider that an issue of admissibility – e.g., the State party's jurisdiction – is so linked to the merits of the case, it should be reviewed together.

that stage.<sup>88</sup> The Committee may issue a decision on admissibility only, or on both admissibility and merits at the same time. This is discussed further below.

#### 4.4 Merits

Subject to the complaint's admissibility, the Committee will consider its merits: the substantive issue of whether the state party has violated the author's human rights under the relevant treaty.

With respect to the relevant Committee's consideration of the merits of an individual communication, the burden of proof rests upon the author to present an arguable, substantiated case. However, there are circumstances in which the burden of proof may shift to the state party. For example, in considering the merits of a complaint in respect of the non-refoulement obligation under the CAT, where the complainant can demonstrate that they have no real likelihood of obtaining documents supporting their allegation of torture or arbitrary deprivation of their liberty, the state party is required to investigate the allegation and verify the information in it.<sup>89</sup>

#### 4.5 Process for examination of complaints

Generally speaking, UN treaty bodies consider communications in closed sessions, on the basis of the written information and supporting documents before them.<sup>90</sup> Special provisions apply to the complaints processes of the Committee Against Torture and to the Committee on the Elimination of Racial Discrimination, which allow those Committees to request a party to attend in person to provide further information in respect of the alleged violation.<sup>91</sup> If this occurs, both the complainant and the state party are provided with the opportunity to attend.

#### 4.6 Conclusions and recommendations

Where a Committee is of the view that a state party has failed to fulfil its obligations under the relevant treaty in respect of the facts of the complaint before it, the Committee will issue its opinion or views, including recommendations to the state party on compliance with its obligation

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<sup>88</sup> Human Rights Committee, *Views: Communication No 2005/2010*, 115<sup>th</sup> sess, UN Doc CCPR/C/115/D/2005/2010 ('*Hicks v Australia*'), 4 [2.5] (on the issue of whether Australia exercised any jurisdiction over the author while he was in the custody of the United States at Guantanamo Bay).

<sup>89</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> session, UN Doc CAT/C/GC/4 (4 September 2018), 11 [38]

<sup>90</sup> *OP-ICCPR*, arts 5(1) and (3); Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 100; Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 88; Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, rr 59, 73; *OP-CEDAW*, art 7(2); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 74(1); Committee on the Elimination of Racial Discrimination, *Rules of Procedure of the Committee on the Elimination of Racial Discrimination*, UN Doc CERD/C/35/Rev.3, r 88; Committee Against Torture, *Rules of Procedure of the Committee Against Torture*, UN Doc CAT/C/3/Rev.6, r 107.

<sup>91</sup> Committee on the Elimination of Racial Discrimination, *Rules of Procedure of the Committee on the Elimination of Racial Discrimination*, UN Doc CERD/C/35/Rev.3, r 94; Committee Against Torture, *Rules of Procedure of the Committee Against Torture*, UN Doc CAT/C/3/Rev.6, r 117.

to provide an effective remedy to the author, compliance with its treaty obligations in respect of the author and recommendations on any systemic violations revealed by the complaint.

#### 4.7 The legal status of Committee decisions and follow-up procedures

Once a Committee has issued its merits decision, implementation of the Committee's views and recommendations is a matter for the state party. However, most Committees have follow-up procedures requiring the state party to report on any measures taken in light of the Committee's decision and recommendations.<sup>92</sup> Decisions of UN treaty bodies are published on a database of jurisprudence on the website of the UN Office of the High Commissioner of Human Rights.<sup>93</sup> Treaty bodies also publish a summary of communications in their annual reports.

Committee decisions on the merits of individual complaints have no precedential value within the body of UN treaty body jurisprudence. However, Committee decisions on the merits may elucidate the nature and scope of treaty rights as they apply to an individual's circumstances.

Committee interpretations of the rules on admissibility in treaty provisions, which are generally common across the human rights treaties, are treated as quasi-precedential. A Committee may also refer to decisions of another Committee on admissibility principles.

#### 5. Admissibility of a complaint

Before a UN treaty body considers the substantive human rights violations alleged in a complaint, it must be satisfied that the communication is admissible for consideration by the Committee under the requirements of the governing treaty provision, optional protocol or the Committee's Rules of Procedure.<sup>94</sup>

Where a complaint is found to be inadmissible, the Committee will not consider it. We outline below the admissibility requirements that must be satisfied before a treaty body will examine the merits of a communication. The discussion applies generally in respect of admissibility of individual communications to each of the procedures to which Australia is a party, except where otherwise stated.

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<sup>92</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 101; Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 75; *OP-CEDAW*, art 7(4); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 73; Committee Against Torture, *Rules of Procedure of the Committee Against Torture*, UN Doc CAT/C/3/Rev.6, r 120; Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 75. By way of example, see *Given v Australia*, 12 [10] ('In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including any information on action taken in the light of the present Views and recommendations of the Committee.')

<sup>93</sup> United Nations Human Rights Office of the High Commissioner, *Jurisprudence*, <<http://juris.ohchr.org/>>.

<sup>94</sup> *OP-ICCPR*, art 5(2); *CAT*, art 22; Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91; *OP-CEDAW*, arts 7(4)-(5).

## 5.1 Standing of the complainant

Generally, a complaint will only be received by a UN treaty body from or on behalf of an individual (or group of individuals in the case of the *CERD*, *OP-CEDAW*, and *OP-CRPD*) who alleges that they have suffered a violation of the provisions of the relevant treaty by a state party. In certain circumstances, a person other than the alleged individual victim or victims can submit complaints.

### 5.1.1 *Victim*

An individual or individuals claiming to be a ‘victim’ of a violation by a state party of the provisions of the relevant treaty may submit a communication to the competent Committee.<sup>95</sup> For a person to establish they are a ‘victim’ of a violation of a protected right, they must be able to demonstrate that an act or omission of the state party concerned has already adversely affected their personal enjoyment of that right, or that the effect of the violation is imminent or the risk of a violation is a real threat, for example on the basis of existing law and/or judicial or administrative decision or practice.<sup>96</sup>

It is a matter of degree how concretely the requirement that a person be actually affected should be taken.<sup>97</sup> However, an individual complaint will not be admissible if it contests a law or practice in theoretical terms, or by way of an *actio popularis* (or, in the interests of the public as a whole).<sup>98</sup>

The ability to submit a complaint relating to the real or imminent threat of an alleged violation, although it has not yet taken place, has particular application to individuals facing deportation in the context of the obligation of non-refoulement, as it applies in respect of the *CAT* and articles 6

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<sup>95</sup> *OP-ICCPR*, art 1; Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(1); *CAT*, art 22(1); *CERD*, art 14(1); *OP-CRPD*, art 1(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 69; *OP-CEDAW*, art 2; Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 68(1).

<sup>96</sup> See Committee on the Rights of Persons with Disabilities, *Views: Communication No 12/2013*, 13<sup>th</sup> sess, UN Doc CRPD/C/13/D/12/2013 (29 May 2015) (*AM v Australia*), 13 [8.5]; following views such as *EW et al v The Netherlands*, Human Rights Committee, Communication No 429/1990, UN Doc CCPR/C/47/D/429/1990 (8 April 1993) [5.4]-[5.5]; *Bordes and Temeharo v France*, Human Rights Committee, Communication No 645/1995, UN Doc CCPR/C/57/D/645/1995 (22 July 1996) [5.4]-[5.5]. In *AM v Australia*, the author was an activist engaged in efforts to change the NSW Government position on the exclusion of deaf people who require Auslan interpreting from jury service but had not been personally selected to perform jury services. In *EW et al v The Netherlands*, the authors were thousands of citizens who claimed violations of their rights because of the Netherlands Government decision to deploy cruise missiles fitted with nuclear warheads in its territory. The Committee concluded that the preparation for deployment of these weapons and the existence of other nuclear weapons in the territory did not make the authors victims whose right to life had been violated or was under imminent prospect of violation. *Bordes and Temeharo v France* related to underground nuclear tests in the South Pacific region by the French Government by citizens who lived in French Polynesia. Their claims were insufficiently substantiated.

<sup>97</sup> Human Rights Committee, *Views: Communication No 2172/2012*, 119<sup>th</sup> sess, UN Doc CCPR/C/119/D/2172/2012 (28 June 2017), 12 [6.4] (*G v Australia*).

<sup>98</sup> Committee on the Rights of Persons with Disabilities, *Views: Communication No 7/2012*, 16<sup>th</sup> sess, UN Doc CRPD/C/16/D/7/2012 (10 October 2016), 14 [7.9].

and 7 of the *ICCPR* (the right to life and freedom from torture). The Committee Against Torture will assess whether there is a risk of torture that is foreseeable, personal, present and real where at the time of its decision the existence of facts relating to the risk (for example, personal characteristics of the complainant such as ethnicity or sexual orientation) would by themselves affect the rights of the complainant under the Convention to be free from torture if they were deported.<sup>99</sup>

The Human Rights Committee has adopted a similar approach. For example, in *C v Australia*, the Committee found that Australia's deportation of C to Iran would violate article 7 of the *ICCPR*, as he had a well-founded fear that he would face persecution there as an Assyrian Christian and would be unable to obtain medical treatment necessary for a mental illness caused by his prolonged period in Australian immigration detention.<sup>100</sup>

Generally speaking, a Committee will accept that it is for the relevant organisations of state parties to review or evaluate facts and evidence in order to determine whether an imminent risk or real threat exists in respect of an individual. Thus, it is necessary for a complainant to show any factor or evidence not accounted for by the authorities, irregularities in the decision-making process, or that the domestic authority's decision was in some way manifestly unreasonable.<sup>101</sup>

It will not suffice to establish imminence, and the victim requirement, if the adverse effect of a measure is theoretical or hypothetical.<sup>102</sup> For example, in *AM v Australia*, the hearing-impaired complainant submitted that his rights under the *CRPD* would be violated by his exclusion from jury service, on the basis that he would require assistance from an Auslan interpreter. At the time of making the communication, AM was eligible to serve on a jury, but had not been selected for jury service. The Committee on the Rights of Persons with Disabilities found AM's claim to victim status to be hypothetical, without his having been selected for jury duty and subject to an assessment by the authorities as to whether his accessibility needs could be accommodated.<sup>103</sup> The Committee found the communication inadmissible.<sup>104</sup>

This determination can be contrasted with the outcome in *Beasley v Australia*, which concerned discrimination against an individual who had been summoned to serve as a juror and who

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<sup>99</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> session, UN Doc CAT/C/GC/4 (4 September 2018) 13 [45].

<sup>100</sup> Human Rights Committee, *Views: Communication No 900/1999*, 76<sup>th</sup> sess, UN Doc CCPR/C/76/D/900/1999 (13 November 2002) ('*C v Australia*'), 20 [8.5].

<sup>101</sup> Human Rights Committee, *Views: Communication No 2053/2011*, 112<sup>nd</sup> sess, UN Doc CCPR/C/112/D/2053/2011 ('*BL v Australia*'), 10-11 [7.3-7.4].

<sup>102</sup> See Committee on the Rights of Persons with Disabilities, *Views: Communication No 12/2013*, 13<sup>th</sup> sess, UN Doc CRPD/C/13/D/12/2013 (29 May 2015) ('*AM v Australia*'), 13 [8.5]; following views such as *EW et al v The Netherlands*, Human Rights Committee, Communication No 429/1990, UN Doc CCPR/C/47/D/429/1990 (8 April 1993) [5.4]-[5.5]; *Bordes and Temeharo v France*, Human Rights Committee, Communication No 645/1995, UN Doc CCPR/C/57/D/645/1995 (22 July 1996) [5.4]-[5.5].

<sup>103</sup> See Committee on the Rights of Persons with Disabilities, *Views: Communication No 12/2013*, 13<sup>th</sup> sess, UN Doc CRPD/C/13/D/12/2013 (29 May 2015) ('*AM v Australia*'), 14 [8.7].

<sup>104</sup> See Committee on the Rights of Persons with Disabilities, *Views: Communication No 12/2013*, 13<sup>th</sup> sess, UN Doc CRPD/C/13/D/12/2013 (29 May 2015) ('*AM v Australia*'), 14 [8.7].

required an Auslan interpreter. The Committee considered that the state had violated the complainant's rights under the *CERD* by failing to take necessary steps to ensure reasonable accommodation of the complainant, without assessing whether the complainant's requests for accommodation would be disproportionate or an undue burden.

The Human Rights Committee has also considered the victim requirement in the *OP-ICCPR* to be met where there is legislation in force that has a punitive, regulatory or enforcement effect specific to the individual complainant, even where it has not been enforced against them.<sup>105</sup> For example, in *Toonen v Australia*, a complaint founded on the existence of Tasmanian legislation criminalising homosexual sex was deemed admissible, although Toonen had not been charged or prosecuted under the legislation and the legislation itself had not been enforced in Tasmania by judicial authorities for many years.<sup>106</sup>

### 5.1.2 *Persons other than an alleged victim*

Depending upon the treaty, there are circumstances in which a complaint may be submitted other than by the victim personally. Complaints may be submitted:

- *By the victim's representative* (for example, a lawyer). This exception applies to the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee Against Torture.<sup>107</sup> It also applies to the Committee on the Rights of Persons with Disabilities, which accepts communications made on behalf of an individual or a group of individuals,<sup>108</sup> and the Committee on the Elimination of Discrimination Against Women (with the consent of the alleged victim or victims).<sup>109</sup>
- *Through the relatives of the victim*.<sup>110</sup> This exception applies to the Committee on the Elimination of Racial Discrimination and the Committee Against Torture.
- *By another person* on behalf of the victim.

This latter exception applies to the Committee on the Elimination of Discrimination Against Women where the alleged victim consents, or without consent where the complainant can justify

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<sup>105</sup> See Committee on the Rights of Persons with Disabilities, *Views: Communication No 12/2013*, 13<sup>th</sup> sess, UN Doc CRPD/C/13/D/12/2013 (29 May 2015) ('*AM v Australia*'), 7 [4.4].

<sup>106</sup> *Toonen v Australia*, Human Rights Committee, Communication No 488/1992, UN Doc CCPR/C/50/D/488/1992, 5 [5.1] (31 March 1994).

<sup>107</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(b); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 113(a); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(b); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 68(1).

<sup>108</sup> Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 69.

<sup>109</sup> *OP-CEDAW*, art 2.

<sup>110</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 113(a); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(b).

that action.<sup>111</sup> It also applies in circumstances where it appears that the victim is unable to submit the complaint personally, to the Human Rights Committee, the Committee on the Elimination of Racial Discrimination (where the author of the communication also justifies his or herself acting on the victim's behalf) and the Committee Against Torture (with appropriate authorisation submitted to the Committee).<sup>112</sup>

### 5.1.3 *Special issues relating to capacity in respect of communications under the OP-CRPD*

In relation to communications brought in respect of alleged violations of the *CRPD*, the Committee will recognise the legal capacity of a person with a disability to bring a communication in accordance with the principles of article 12 of the *CRPD* (on equal recognition before the law), notwithstanding that their legal capacity might not be recognised by the state party against which the communication is directed.<sup>113</sup>

## 5.2 Jurisdiction

### 5.2.1 *Temporal jurisdiction in respect of the alleged violation*

For a complaint to be admissible, a treaty body must establish that it has jurisdiction to consider the complaint against the state party. As a general rule, a treaty body will only consider complaints relating to violations alleged to have taken place after the treaty entered into force, and after the state party against which the complaint is made recognised the competence of the treaty body to receive individual complaints. As set out in table 1 in research paper 2, Australia ratified the *ICERD* and the *CAT* on 30 September 1975 and 8 August 1989, respectively. Australia acceded to the *OP-ICCPR* on 25 September 1991, the *OP-CEDAW* on 4 March 2009 and the *OP-CRPD* on 20 September 2009.

There are exceptions to this general rule. The first is where the alleged human rights violation preceded the state party's entry into the treaty and recognition of the Committee's competence to accept individual communications, but the effects of the alleged violation extend beyond the date of that recognition. The Committee Against Torture has issued guidance providing that it will consider communications on alleged violations which occurred before a state party's recognition of its competence, if the effects of the alleged violations continued after the state party's recognition, and if the effects may, in themselves, constitute a violation of the Convention.<sup>114</sup>

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<sup>111</sup> Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 68(1)-(3).

<sup>112</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(b); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 113(a); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(b).

<sup>113</sup> Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 68(2).

<sup>114</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> session, UN Doc CAT/C/GC/4 (4 September 2018) 10 [32], citing *NZ v Kazakhstan* (CAT/C/53/D/495/2012), para 12.3.

An exception also exists where the facts constituting the alleged violation commenced prior to the entry into force of the treaty and the state party's recognition of the communications procedure, but continue after that date.<sup>115</sup> The Human Rights Committee has interpreted a continuing violation as an affirmation, after the entry into force of the relevant treaty, by act or clear implication, of the previous violations.<sup>116</sup> In *Noble v Australia*, for example, Noble – a man with an intellectual impairment – was detained in custody pursuant to the *Criminal Law (Mentally Impaired Defendants) 1996 Act* (WA) prior to the entry into force of the *OP-CRPD* in 2009. However, his detention under that legislation continued until 2012.<sup>117</sup> Therefore, the Committee was satisfied of its competence to consider Noble's claim that his detention violated article 14(1)(b) of the *CRPD*, which provides that the existence of a disability shall not justify a deprivation of liberty.

### 5.2.2 State party jurisdiction over the complainant

State parties to the human rights treaties accept individual complaints procedures in respect of individuals subject to their 'jurisdiction'. Thus, before a treaty body can examine the merits of a complaint, the state party's jurisdiction over the complainant at the time of the alleged human rights violation must be established.<sup>118</sup>

To do this, it must be shown either that the alleged violation occurred within the state party's territory or, exceptionally, that the state party was exercising 'power' or 'effective control' over the complainant outside of its territory.<sup>119</sup> This principle applies not only to citizens of the state, but all persons within their territory or power and effective control.<sup>120</sup> The generally accepted definition of 'effective control' in public international law is that described in *Bankovic v Belgium*. A state 'exercises all or some of the public powers normally to be exercised by [the] government' of a territory.<sup>121</sup> The principle applies regardless of the circumstances in which that power or effective control was obtained, for example, through military occupation, a peace keeping operation or otherwise by the consent, invitation or acquiescence of the government of the territory.<sup>122</sup>

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<sup>115</sup> See, for example, *OP-CRPD*, art 2(f); *OP-CEDAW*, art 2(e).

<sup>116</sup> Committee on the Rights of Persons with Disabilities, *Views: Communication No 7/2012*, 16<sup>th</sup> sess, UN Doc CRPD/C/16/D/7/2012 (10 October 2016), 13 [7.4] ('*Noble v Australia*').

<sup>117</sup> *Noble v Australia* UN Doc CRPD/C/16/D/7/2012, 13 [7.5].

<sup>118</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(a); *CAT*, art 22(1); *CERD*, art 14(1); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(a); *OP-CRPD*, art 1(1); *OP-CEDAW*, art 2.

<sup>119</sup> Human Rights Committee, *General comment no 31: The nature of the general legal obligation imposed on state parties to the Covenant*, 80<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) [10].

<sup>120</sup> Human Rights Committee, *General comment no 31: The nature of the general legal obligation imposed on state parties to the Covenant*, 80<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) [10].

<sup>121</sup> *Bankovic v Belgium* (2001) 11 BHRC 435.

<sup>122</sup> Human Rights Committee, *General comment no 31: The nature of the general legal obligation imposed on state parties to the Covenant*, 80<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) [10].

Under Human Rights Committee jurisprudence, power or effective control requires more than evidence of influence over the complainant's treatment. In the case of *Hicks v Australia*, for example, while the Committee was satisfied that Australia was in a position of some influence over the way the United States treated Hicks while in its custody and had the capacity to take measures to ensure his treatment was consonant with the *ICCPR*, the influence could not be seen as amounting to the exercise of power or effective control over the author, who was detained in a territory controlled by the United States which was outside of Australia's sovereignty and jurisdiction.<sup>123</sup>

### 5.3 Other requirements

#### 5.3.1 *The communication must not be an abuse of the Committee's process, manifestly unfounded or not sufficiently substantiated*

There are various circumstances related to the legal foundation and substantiation of a complaint whereby it may be deemed inadmissible, depending upon the relevant treaty provisions. Communications, depending upon the relevant treaty, will not be admissible where they are:

- An abuse of the Committee's process or the right of submission of such communications.<sup>124</sup> This applies to all of the UN Committees with competence to consider individual communications against Australia in respect of alleged human rights breaches.
- Manifestly unfounded or ill-founded.<sup>125</sup> This applies to communications brought to the Committee Against Torture, the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Discrimination Against Women.
- Not sufficiently substantiated.<sup>126</sup> This applies to communications brought to the Human Rights Committee, the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Discrimination Against Women.

There is some overlap between these concepts. A complaint that is an abuse of the Committee's process may be one that is completely unsubstantiated, frivolous or vexatious, or in which significant delay has occurred in submission of the complaint, taking into account the circumstances of the case.<sup>127</sup>

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<sup>123</sup> Human Rights Committee, *Views: Communication No 2005/2010*, 115<sup>th</sup> sess, UN Doc CCPR/C/115/D/2005/2010 ('*Hicks v Australia*'), 7 [4.4]-[4.6].

<sup>124</sup> *OP-ICCPR*, art 4; Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(c); *CAT*, art 22(2); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(d); *OP-CRPD*, art 2(a); *OP-CEDAW*, art 2(d).

<sup>125</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) rule 113(b); *OP-CRPD*, art 2(e); *OP-CEDAW*, art 2(c).

<sup>126</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(b); *OP-CRPD*, art 2(e); *OP-CEDAW*, art 2(c).

<sup>127</sup> The Human Rights Committee had in its earlier – not current - Rules of Procedure a rule that to prevent abuse of process it would not accept complaints submitted more than 5 years after the exhaustion of domestic remedies, or more than 3 years after conclusion of another procedure of international investigation or settlement, without sufficient justification for the delay: United Nations Human Rights

For example, in *JB v Australia*, the Human Rights Committee considered JB's complaint inadmissible as an abuse of process, as the complaint was submitted to the Committee more than five years after the complainant had last evidently pursued efforts with domestic authorities to obtain a remedy for the alleged violation of her rights.<sup>128</sup> The complainant did not provide any explanation as to the circumstances occasioning the delay, such that the Committee considered it unreasonable and excessive.<sup>129</sup> There is no express definition of a 'manifestly unfounded' complaint. It may encompass complaints alleging a violation of a right not guaranteed by the treaty, or which relies upon an interpretation of the treaty that is inconsistent with the treaty.<sup>130</sup>

In this respect, there is overlap with the requirement that a complaint be sufficiently substantiated, which imposes requirements, both in relation to the treaty basis for the complaint and its evidentiary support. For example, in *Lockrey v Australia*, the Committee on the Rights of Persons with Disabilities found that Lockrey's complaint under articles 2 and 4 alone, rather than together with other provisions, was insufficiently substantiated to be admissible, as those provisions, being general in character, do not give rise to a freestanding claim under the treaty.<sup>131</sup>

Jurisprudence of the Human Rights Committee also refers to a claim as 'not merely an allegation', but an allegation supported by substantiating material, submitted with sufficient evidence to establish a *prima facie* case.<sup>132</sup> To be admissible, a complaint must therefore be submitted with sufficient argument and material supporting the existence of the facts relied upon to establish a *prima facie* case.

In *Alger v Australia*, the Human Rights Committee found the complainant's communication in respect of an alleged violation of article 18 of the *ICCPR* (right to freedom of thought, conscience and religion) inadmissible on the basis that he had failed to submit sufficiently convincing arguments to demonstrate that his wish not to vote in the 2010 federal election was on the basis of a belief in the sense of article 18.<sup>133</sup>

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Office of the High Commissioner, *Human Rights Treaty Bodies – Individual Communications – Procedure for Complaints by individuals under the human rights treaties*  
<<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#theadmissibility>>.

<sup>128</sup> Human Rights Committee, *Decision: Communication No 2798/2016*, 120<sup>th</sup> sess, UN Doc CCPR/C/120/D/2798/2016 (21 July 2017) ('*JB v Australia*'), 10 [7.7].

<sup>129</sup> Human Rights Committee, *Decision: Communication No 2798/2016*, 120<sup>th</sup> sess, UN Doc CCPR/C/120/D/2798/2016 (21 July 2017) ('*JB v Australia*'), 10 [7.7].

<sup>130</sup> See, eg, Donna Sullivan, 'Commentary on the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*' in San Jose Inter-American Institute of Human Rights (ed), *Optional Protocol: Convention on the Elimination of All Forms of Discrimination Against Women* (2000) 43.

<sup>131</sup> Committee on the Rights of Persons with Disabilities, *Views: Communication No. 13/2013*, 20<sup>th</sup> sess, UN Doc CRPD/D/15/D/13/2013, (30 May 2016) 14 [7.5] ('*Lockrey v Australia*').

<sup>132</sup> Committee on the Rights of Persons with Disabilities, *Views: Communication No. 19/2014*, 19<sup>th</sup> sess, UN Doc CRPD/C/19/D/19/2014 (29 March 2018), 5 [4.8] ('*Given v Australia*').

<sup>133</sup> Human Rights Committee, *Views: Communication No 2237/2013*, 120<sup>th</sup> sess, UN Doc CCPR/C/120/D/2237/2013 (9 October 2017), 10 [6.5] ('*Alger v Australia*').

In *Nystrom v Australia*, the author's Australian visa was cancelled on character grounds related to his criminal record and he was subject to deportation. The Human Rights Committee found that without the complainant showing that the cancellation and deportation were intended to impose any additional punishment on him, his complaint that he was being doubly punished for a criminal offence in breach of article 14 of the *ICCPR* was insufficiently substantiated and inadmissible.<sup>134</sup>

### 5.3.2 *Compatibility with the treaty*

A complaint that is incompatible with the subject matter of either the treaty, or the treaty provisions alleged to be violated, is inadmissible.<sup>135</sup> This applies, for example, where a complaint makes reference to violations of rights outside of the Convention subject to the treaty body's subject matter jurisdiction. For example, in *Y.G.H. et al v Australia*, the Committee Against Torture did not address the complainant's allegations about violations of the *ICCPR* and the *CRC*.<sup>136</sup>

The limitation also applies when the facts of the complaint do not enliven the subject matter of the treaty provision that the complainant alleges has been, or is being, violated. For example, in *Beasley v Australia* (discussed above), the complainant alleged that she was denied her right under article 12 of the *CRPD* to enjoy legal capacity on an equal basis with others on account of a refusal to provide her with Auslan interpretation, so as to be able to participate in jury service.<sup>137</sup> The Committee on the Rights of Persons with Disabilities found that Australia had denied her request for Auslan interpretation on other grounds and had not questioned her legal capacity to perform jury duty, so her article 12 claim was inadmissible on the basis of subject matter incompatibility.<sup>138</sup> However, the Committee did find that the state had violated her rights under other articles of the *CRPD*.

### 5.3.3 *Communication must not concern the 'same matter'*

Except in the case of the Committee on the Elimination of Racial Discrimination, to which the limitation does not apply, a Committee must not consider a communication from an individual

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<sup>134</sup> Human Rights Committee, *Views: Communication No 1557/2007*, 102<sup>nd</sup> sess, UN Doc CCPR/C/102/D/1557/2007 (1 September 2011) 17 [6.4] (*'Nystrom v Australia'*).

<sup>135</sup> *OP-ICCPR*, art 3; Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(d); *CAT*, art 22(2); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 113(c); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(c); *OP-CRPD*, art 2(b); *OP-CEDAW*, art 2(b).

<sup>136</sup> Committee Against Torture, *Views: Communication No 434/2010*, 51<sup>st</sup> sess, UN Doc CAT/C/51/D/434/2010 (14 November 2013), 6 [4.7] (*'Y.G.H. et al v Australia'*).

<sup>137</sup> Committee on the Rights of Persons With Disabilities, *View: Communication No 11/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/11/2013 (25 May 2016) (*'Beasley v Australia'*).

<sup>138</sup> Committee on the Rights of Persons With Disabilities, *View: Communication No 11/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/11/2013 (25 May 2016) (*'Beasley v Australia'*), 14 [7.6].

unless it has ascertained that the same matter is not being examined by it or under another international investigation or settlement process.<sup>139</sup>

Additionally, the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of Persons with Disabilities will be unable to consider a complaint where the same matter *has been* subject of consideration by another international investigation or settlement procedure.<sup>140</sup>

Both the Human Rights Committee and the Committee Against Torture have issued express guidance that they will consider the ‘same matter’ as a matter relating to the same parties, the same facts, and the same substantive treaty rights.<sup>141</sup> In this respect, the Human Rights Committee considers that facts that have been submitted to another international mechanism can be brought before it if the *ICCPR* provides for a broader protection, or if a complaint was dismissed on procedural grounds without it having been substantively examined.<sup>142</sup>

Other international investigation or settlement procedures include other UN treaty bodies, but also regional mechanisms. No regional mechanisms currently apply to Australia, however internationally these include the Inter-American Commission on Human Rights and the European Court of Human Rights.<sup>143</sup>

#### 5.3.4 *Exhaustion of all available domestic remedies*

Before a complaint is admissible, it must be shown that the alleged victim has exhausted all available remedies for the alleged violation of their rights at the national level, subject to limited exceptions.<sup>144</sup>

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<sup>139</sup> *OP-ICCPR*, art 5(2)(a); Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(e); *CAT*, art 22(4)(a); *OP-CRPD*, art 2(c); *OP-CEDAW*, art 4(2)(a).

<sup>140</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014), r 113(d); *OP-CEDAW*, art 4(2)(a); *OP-CRPD*, art 2(c).

<sup>141</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> session, UN Doc CAT/C/GC/4 (4 September 2018), 10 [33].

<sup>142</sup> United Nations Human Rights Office of the High Commissioner, *Human Rights Treaty Bodies – Individual Communications – Procedure for Complaints by individuals under the human rights treaties* <<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#theadmissibility>>.

<sup>143</sup> United Nations Human Rights Office of the High Commissioner, *Human Rights Treaty Bodies – Individual Communications – Procedure for Complaints by individuals under the human rights treaties* <<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#theadmissibility>>.

<sup>144</sup> *OP-ICCPR*, art 5(2)(b); Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 96(f); *CAT*, art 22(4)(b); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 113(e); *CERD*, art 14(2); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(e); *OP-CRPD*, art 2(d); *OP-CEDAW*, art 4(1).

This means that the complainant must attempt to make use of all judicial or administrative avenues objectively offering them a reasonable prospect of redress.<sup>145</sup> Generally, this requires that the complainant has pursued national proceedings through all available judicial appeal options. This requirement must be met either at the time of submission or when a Committee considers the admissibility of the communication.

While domestic remedies must be exhausted, the requirement only applies to remedies directly related to the alleged violation of the right as recognised in the treaty in question. For example, in considering alleged violations of the principles of non-refoulement, the Committee Against Torture will only consider whether a complainant has applied for remedies directly related to the risk of them being subjected to torture if forcibly returned or sent to another state, rather than remedies that would allow the complainant to remain in the sending state party for other reasons, such as at the discretion of the state's government on compassionate or medical grounds.<sup>146</sup>

Subject to any applicable exceptions, domestic remedies will not have been fully exhausted if legal proceedings are pending, or are still on foot, or if issues subject of the individual's complaint to the UN treaty body were not raised in earlier domestic legal proceedings.<sup>147</sup>

Generally, a lack of financial means to pursue domestic remedies will not absolve the person from the requirement to exhaust them.<sup>148</sup> However, in some limited circumstances, complainants have been allowed to proceed without exhausting all available remedies due to their financial circumstances. In these cases, complainants have showed that they attempted to pursue judicial remedies but were unable to pursue them to exhaustion because of their prohibitive cost and the inability of the complainant to obtain legal aid from the state.<sup>149</sup>

There are two exceptions to the general rule that all available domestic remedies must have been exhausted, depending upon the applicable treaty. The first is if a complainant can show that pursuing domestic remedies would be unreasonably or unduly prolonged.<sup>150</sup> This means that it would take an unreasonable period of time for the remedy to be provided. This exception is

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<sup>145</sup> Committee on the Rights of Persons with Disabilities, *Views: Communication No 19/2014*, 19<sup>th</sup> sess, UN Doc CRPD/C/19/D/19/2014 (29 March 2018) (*'Given v Australia'*) 3 [4.3], citing CCPR/C/52/D/437/1990, para 5.2.

<sup>146</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> session, UN Doc CAT/C/GC/4 (4 September 2018), 11 [34] (in respect of non-refoulement, the Committee considers that exhaustion of remedies means that the complainant has applied for remedies directly related to the risk of being subjected to torture in the country to which the person would be deported, not remedies that would allow the complainant to remain in the sending state for other reasons).

<sup>147</sup> *A v Australia*, HRC, Communication No 560/1993, UN Doc CCPR/C/59/D/560/1993 (30 April 1997).

<sup>148</sup> See, for example, Human Rights Committee, *Views: Communication No 1921/2009*, 107<sup>th</sup> sess, UN Doc CCPR/C/107/D/1921/2009 (14 May 2013) 5 [6.3] (*'KS v Australia'*); Human Rights Committee, *Views: Communication No 1875/2009*, 113<sup>rd</sup> sess, UN Doc CCPR/C/113/D/1875/2009 (26 March 2015) (*'MGC v Australia'*) 15 [10.3]; Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/13/2013 (30 May 2016) (*'Lockrey v Australia'*) 7 [4.2].

<sup>149</sup> Human Rights Committee, (*'Quelch v Jamaica'*) 5.4. For further information, see: International Justice Resource Center, *Exhaustion of Domestic Remedies in the United Nations System* (August 2017), 15 – 16.

<sup>150</sup> *OP-ICCPR*, art 5(2)(b); *CAT*, art 22(4)(b); *CERD*, art 7(a); *OP-CRPD*, art 2(d); *OP-CEDAW*, art 4(1).

expressly recognised in respect of communications under *OP-ICCPR*, *CAT*, *CERD*, *OP-CRPD* and *OP-CEDAW*. There is no precise time frame beyond which a Committee will consider the availability of a remedy to be unreasonably prolonged. Rather, the assessment is made in the circumstances of the case. Factors that may be considered include: the issue in the case; its complexity; delays occasioned by either the complainant or the state party; the age of the complainant; and the time already undertaken in pursuing domestic remedies for the complaint.<sup>151</sup> In *ZUBS v Australia*, the Committee on the Elimination of Racial Discrimination was satisfied that, while the complainant could have appealed a judgment of the Equal Opportunity Tribunal to the Supreme Court of New South Wales, the circumstances of his case justified the conclusion that domestic remedies would be unreasonably prolonged. The Committee took into account that the complainant's proceedings before the Anti-Discrimination Board and Equal Opportunity Tribunal took in excess of two years.<sup>152</sup>

The second exception to the general rule is where domestic remedies would be ineffective in the specific case.<sup>153</sup> 'Mere doubts about the effectiveness' of available remedies will not absolve the author of a complaint from pursuing them.<sup>154</sup> The exception applies in circumstances where the state of the law is such that legal proceedings objectively have no prospect of success, such that pursuit of proceedings is futile.<sup>155</sup>

In *Young v Australia*, the Human Rights Committee noted that this will apply where 'under applicable domestic laws the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result'.<sup>156</sup> In that case, the Committee was satisfied that the complainant, the homosexual partner of a war veteran, had no basis on which to successfully pursue an appeal of a refusal to provide him a pension as a veteran's dependant. The relevant legislation only recognised partners as 'dependants' who were the partner of a person of the opposite sex. The Committee found there were no effective domestic remedies available.

This exception also applies in circumstances where no remedy is directly available to the complainant through the courts. In *Given v Australia*, for example, the complainant submitted that federal election voting procedures violated, among other provisions, article 29 of the *CRPD*.

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<sup>151</sup> International Justice Resource Center, *Exhaustion of Domestic Remedies in the United Nations System* (August 2017), 13.

<sup>152</sup> Committee on the Elimination of Racial Discrimination, *Opinion: Communication No 6/1995*, 55<sup>th</sup> sess, UN Doc CERD/C/55/D/6/1995 (26 August 1999) ('*ZUBS v Australia*'), 8 [6.4].

<sup>153</sup> See for example, this express recognition in: *CAT*, art 22(4)(b); *OP-CRPD*, art 2(d); *OP-CEDAW*, art 4(1).

<sup>154</sup> See *Given v Australia*, CRPD/C/19/D/19/2014, para 4.3, citing CCPR/C/52/D/437/1990, para 5.2. See also Committee on the Rights of Persons with Disabilities, *Views: Communication No 14/2013*, 17<sup>th</sup> sess, UN Doc CRPD/C/17/D/14/2013 (19 May 2017) ('*DR v Australia*') 9 [4.21], citing Human Rights Committee, communication No 9/1997, *DS v Sweden*, decision of inadmissibility adopted on 17 August 1998, para 6.4.

<sup>155</sup> Human Rights Committee, *Views: Communication No 941/2000*, 78<sup>th</sup> sess, UN Doc CCPR/C/78/D/941/2000 (6 August 2003) ('*Young v Australia*') 14 [9.4]; see also Committee on the Elimination of Racial Discrimination, *Opinion: Communication No 42/2008*, 75<sup>th</sup> sess, UN Doc CERD/C/75/D/42/2008 (14 August 2009) ('*DR v Australia*') [6.5].

<sup>156</sup> Human Rights Committee, *Communication No 941/2000 (Young v Australia)*. CCPR/C/78/D/941/2000 (6 August 2003).

Article 29 protects the right of persons with disabilities to full and effective participation in public life on an equal basis, including by guaranteeing the right to vote. Voters with a disability occasioning difficulty in voting by ballot paper, such as Given, were legislatively entitled to assistance from an electoral officer to cast their vote. Given claimed that denying her access to electronically assisted voting prevented her from casting an independent secret ballot on the same basis as other voters. The Committee on the Rights of Persons with Disabilities found her claim admissible, accepting there was no direct basis domestically on which she could challenge the electoral officer's assistance to her as unlawful discrimination under the *Disability Discrimination Act 1992* (Cth), as it was provided for by legislation.

If a domestic remedy is available for the violation of domestic law correlating to some aspects of a treaty right, but the law is not as broad as the right recognised in the treaty, the Committee will consider it ineffective. For example, in *Griffiths v Australia*, the Human Rights Committee found that there was no effective remedy available to the complainant for a violation of his rights under article 9 of the *ICCPR*.<sup>157</sup> Article 9(1) provides for the right to freedom from arbitrary detention. Article 9(4) provides for the right of an individual to pursue court proceedings for their release from detention, so that a court can decide on the lawfulness of their detention and order their release if it is unlawful. The complainant was held for a prolonged period in immigration detention prior to his extradition to the United States. The Committee considered that his detention had become arbitrary in violation of article 9(1) over time, due to its disproportionate length.<sup>158</sup> While Australian law provided Griffiths with the ability to pursue judicial review of the lawfulness of the grounds for his detention, there was no scope for a court to make orders for his release on those grounds later. Thus, the Human Rights Committee found that there was no effective domestic remedy available for Griffiths concomitant to article 9(4) of the *ICCPR* and his complaint was admissible.

The availability of administrative avenues of redress is also relevant to the consideration of whether a complainant has exhausted all available domestic remedies.<sup>159</sup> For example, in the Australian context, these might include pursuing conciliation through the Australian Human Rights Commission or official complaints processes. However, to the extent non-legal avenues are 'hortatory', that is not having a binding and enforceable effect upon authorities, they will not be considered effective and therefore fall within the exception to the requirement to exhaust domestic remedies.<sup>160</sup>

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<sup>157</sup> Human Rights Committee, *Views: Communication No 1973/2010*, 112<sup>nd</sup> sess, UN Doc CCPR/C/112/D/1973/2010 (21 October 2014) ('*Griffiths v Australia*'), 15 [7.5].

<sup>158</sup> Human Rights Committee, *Views: Communication No 1973/2010*, 112<sup>nd</sup> sess, UN Doc CCPR/C/112/D/1973/2010 (21 October 2014) ('*Griffiths v Australia*'), 15 [7.5].

<sup>159</sup> Human Rights Committee, *Views: Communication No 1184/2003*, 86<sup>th</sup> sess, UN Doc CCPR/C/86/D/1184/2003 (27 April 2006); see also, in the context of the *OP-CRPD*, *Given v Australia* UN Doc CRPD/C/19/D/19/2014, 4 [4.7].

<sup>160</sup> *DR v Australia* UN Doc CRPD/C/17/D/14/2013, 3 [2.10] (in which the author argued that conciliation procedures before the Australian Human Rights Commission will not give rise to any enforceable remedy for violations of human rights and cannot be considered effective). See also Human Rights Committee,

For example, in *C v Australia*, the Human Rights Committee found that although an inquiry of the Australian Human Rights Commission is an administrative remedy, it could not be described as effective, as it is legally unenforceable.<sup>161</sup> Similarly, in *DR v Australia*, the Committee on the Rights of Persons with Disabilities found that complaints procedures before the Anti-Discrimination Commission of Queensland and the Australian Human Rights Commission are not effective, as they do not give rise to any enforceable remedy.<sup>162</sup> Within the context of the CAT, and state party obligations not to return an individual to a state where there is a well-founded basis to fear they would be subjected to torture, the Committee considers that recourse should be a legally based right not to be returned to the state to be an effective remedy, and not merely an *ex gratia* concession given by the authorities concerned.<sup>163</sup>

In submitting a complaint, authors must substantiate their efforts made to exhaust local remedies.<sup>164</sup> This includes providing details of claims pursued before national authorities with supporting documents. Failure to do so may result in the Committee being unable to conclude that domestic remedies have been exhausted and a determination of inadmissibility, where a state party provides information suggesting that domestic remedies might be available.<sup>165</sup>

Where the complainant claims that pursuing domestic legal proceedings will not result in an effective remedy because of the state of the law, the complainant must substantiate those arguments for the Committee to be able to conclude that the requirement to exhaust domestic remedies has been fulfilled.<sup>166</sup> Underlying the importance of substantiating such arguments, a

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*Views: Communication No 1184/2003*, 86<sup>th</sup> sess, UN Doc CCPR/C/86/D/1184/2003 (27 April 2006) (*'Brough v Australia'*) 16 [8.5].

<sup>161</sup> Human Rights Committee, *Views: Communication No 990/1999*, (*'C v Australia'*) [7.3]. This would not be the case in relation to complaints of unlawful discrimination, which may have a pathway to judicial consideration and enforceable remedies.

<sup>162</sup> *DR v Australia* UN Doc CRPD/C/17/D/14/2013, 13 [6.3].

<sup>163</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> session, UN Doc CAT/C/GC/4 (4 September 2018), 11 [35].

<sup>164</sup> For further detail, see United Nations Human Rights Office of the High Commissioner, *Human Rights Treaty Bodies – Individual Communications – Procedure for Complaints by individuals under the human rights treaties*

<<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#theadmissibility>>.

<sup>165</sup> *DR v Australia* UN Doc CRPD/C/17/D/14/2013, 14 [6.6] (“The author argues that his [legal] complaints against the Commonwealth would therefore inevitably fail. Nonetheless, the Committee also notes that the author does not substantiate any of these arguments, while the State party refers to a range of successful discrimination complaints made under the *Disability Discrimination Act*...Accordingly, the Committee considers that it is not in a position to conclude that the author has fulfilled his obligation to exhaust domestic remedies”). See, in contrast, Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/13/2013 (30 May 2016) (*'Lockrey v Australia'*) 13-14 [7.3]-[7.4] (finding sufficient substantiation by the author that he had exhausted all available domestic remedies).

<sup>166</sup> *DR v Australia* UN Doc CRPD/C/17/D/14/2013, 14 [6.6] (“The author argues that his [legal] complaints against the Commonwealth would therefore inevitably fail. Nonetheless, the Committee also notes that the author does not substantiate any of these arguments, while the State party refers to a range of successful discrimination complaints made under the *Disability Discrimination Act*...Accordingly, the

Committee may determine that it will not be precluded from considering a complaint where there are competing submissions and it is unable to positively conclude that domestic remedies have a reasonable prospect of success or provide an effective remedy.<sup>167</sup>

Some Committees have limitation periods for receipt of communications after the exhaustion of domestic remedies has elapsed. The Committee against Torture's Rules of Procedure provide that a condition for the admissibility of a complaint is that the 'time elapsed since the exhaustion of domestic remedies is not so unreasonably prolonged as to render consideration of the claims unduly difficult by the Committee or the State party'.<sup>168</sup> The Rules of Procedure for the Committee on the Elimination of Racial Discrimination provide that a communication must be submitted within six months after all domestic remedies have been exhausted, except in the 'case of duly exceptional circumstances'.<sup>169</sup>

#### 5.4 Effect of inadmissibility

Where a complaint is found to be inadmissible, the decision will be transmitted from the Committee to the complainant and state party concerned as soon as possible.<sup>170</sup> Under some Committee procedures, the decision that a complaint is inadmissible may be reviewed on request of either a Committee member or a written request of the individual concerned, providing evidence as to why the reasons for inadmissibility no longer apply.<sup>171</sup> Treaty bodies may also find

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Committee considers that it is not in a position to conclude that the author has fulfilled his obligation to exhaust domestic remedies"). See, in contrast, Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/13/2013 (30 May 2016) ('*Lockrey v Australia*') 13-14 [7.3]-[7.4] (finding sufficient substantiation by the author that he had exhausted all available domestic remedies).

<sup>167</sup> Committee on the Rights of Persons With Disabilities, *View: Communication No 11/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/11/2013 (25 May 2016) ('*Beasley v Australia*') 13 [7.4].

<sup>168</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) rule 113(f).

<sup>169</sup> Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 91(f);

<sup>170</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 98(1); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 116(1); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 93(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 71(1); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 70(1).

<sup>171</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 98(2); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 116(2) (on request of a Committee member or the complainant); Committee on the Elimination of Racial Discrimination, *Rules of Procedure*, 85<sup>th</sup> sess, UN Doc CERD/C/35/Rev.3 (1986) r 93(2) (on request of the complainant); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 91(2); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 70(2).

parts of complaints admissible, and only proceed to consider those aspects deemed admissible on the merits.<sup>172</sup>

## 6. Interim measures

As noted above, at any time after receipt of a communication, prior to determination of either the complaint's admissibility and merits, on the basis of the information in the complaint, the Committee may request on an urgent basis that a state party take any interim measures that the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged human rights violations.<sup>173</sup>

This has occurred on a number of occasions relating to alleged human rights violations by Australia. For example, the Human Rights Committee requested Australia take interim measures to prevent the deportation of a complainant to China before its consideration of his communication, where the substance of the complaint was that his rights to freedom from torture and the arbitrary deprivation of his liberty under the *ICCPR* would be violated if he were returned there.<sup>174</sup>

The Human Rights Committee also requested Australia take interim measures to ensure the physical and mental well-being of 37 complainants held in Australian immigration detention, protect them from the risk of self-harm and alleviate the high risk of anxiety resulting from their prolonged detention prior to its consideration of their complaints.<sup>175</sup>

Interim measures are not part of the substantive treaty provisions. However, a number of Committees have adopted the approach that a failure to comply with interim measures is a breach of a state party's treaty obligations. The Human Rights Committee explained the reasoning underlying this approach in *Piandiong v the Phillipines* as follows:

[b]y adhering to the Optional Protocol, a State party to the Covenant recognises the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee

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<sup>172</sup> See, by way of example, Committee on the Rights of Persons With Disabilities, *View: Communication No 11/2013*, 15<sup>th</sup> sess, UN Doc CRPD/C/15/D/11/2013 (25 May 2016) (*'Beasley v Australia'*).

<sup>173</sup> Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.8 (22 September 2005) r 92; Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 114; *OP-CRPD*, art 4(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 64(1); *OP-CEDAW*, art 5(1); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 63.

<sup>174</sup> Human Rights Committee, *Views: Communication No 1957/2010*, 107<sup>th</sup> sess, UN Doc CCPR/C/107/D/1957/2010 (21 March 2013) (*'Biao Lin v Australia'*). However, it should be noted that the relevant committee may grant Australia relief from these interim measures, and committees have done so on a number of occasions. In the context of communications from people seeking asylum in Australia to the Committee Against Torture, this means that concluding observations on non-refoulement are made after the author has been forcibly removed.

<sup>175</sup> Human Rights Committee, *Views: Communication No 2094/2011*, 108<sup>th</sup> sess, UN Doc No CCPR/C/108/D/2094/2011 (28 October 2013) (*'F.K.A.G. et al. v Australia'*).

in good faith so as to permit and enable it to consider such communications...It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.<sup>176</sup>

The Committee Against Torture has also issued guidance that, in its view, non-compliance with a request for interim measures breaches article 22 of the CAT, as non-compliance presents the threat of serious damage and obstacles to the effectiveness of the Committee's deliberations on a complaint and casts serious doubt on the willingness of the state party to implement the Convention in good faith.<sup>177</sup>

In 2015, Australia forcibly removed a complainant to the Committee Against Torture to Sri Lanka, in contravention of the Committee's request for interim measures that it not deport him prior to its consideration of his complaint that his deportation would contravene Australia's non-refoulement obligations. Australia was strongly censured by the Committee:

The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 24 June 2015, the State party seriously failed in its obligations under article 22 of the Convention, in particular as the removal of the complainant to Sri Lanka hindered an effective examination of his complaint by the Committee.<sup>178</sup>

## 7. Remedies

Observing again that their recommendations have no domestic enforceability and are subject to the government's willingness and ability to implement recommendations once a determination is made that an individual's rights have been violated, UN treaty bodies can recommend a large number of potential remedies that state parties should adopt to provide a remedy to an individual.

UN treaty bodies might also make recommendations to a state party to address systemic issues revealed in the complaint. In respect of the individual complainant, this is guided by the human rights requirement at international law to provide an effective remedy for human rights violations.

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<sup>176</sup> UN GAOR, 56th sess, Supp No 40 (A/56/40), *Report of the Human Rights Committee*, (2001) vol 2, 181.

<sup>177</sup> Committee Against Torture, *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 62<sup>nd</sup> sess, UN Doc CAT/C/GC/4 (4 September 2018), 11 [37].

<sup>178</sup> Committee Against Torture, *Decision: Communication No 614/2014*, 61<sup>st</sup> sess, UN Doc CAT/C/61/D/614/2014 (9 August 2017), 7 [6.3] (*'Subakaran R Thirugnanasampanthar v Australia'*).

Recommendations of UN treaty bodies for an effective remedy might include, generally, that the state party:

- compensate an individual complainant, including for legal costs in respect of the communication;
- guarantee and enable the individual's enjoyment of their rights under the relevant treaty;
- acknowledge its wrongdoing and publication of the Committee's views in respect of its wrongdoing on a widespread basis;
- review and potentially amend legislation and policies to ensure compliance with its treaty obligations, including the requirement to provide an effective remedy.

Committee recommendations in complaints where Committees have found Australia has violated human rights are set out at Appendix C.

Where the subject matter of an individual communication is rendered moot before the Committee's determination of the complaint, including by fulfillment of the remedy sought, the Committee on the Rights of Persons with Disabilities may discontinue it.<sup>179</sup>

For example, in *MR v Australia*, the Committee discontinued a complaint authored by a person with disability's request to be released from institutional living into social housing on the author being housed in the community after adapted social housing and funding for support services were made available to him.<sup>180</sup>

## **8. Individual communications in respect of Australia**

Various decisions of the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities on the merits of admissible communications brought against Australia are set out in Appendix C.<sup>181</sup>

The Office of International Law in the Attorney-General's Department coordinates the response of the Australian Government to complaints against Australia and prepares submissions to the relevant committee.

An updated list of complaints and the responses of the Australian Government are on a website maintained by the Attorney-General's Department which also has links to the websites of the various United Nations committees dealing with complaints and also to the JURIS database which is a central repository of the jurisprudence of the United Nations treaty bodies.<sup>182</sup>

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<sup>179</sup> Committee on the Rights of Persons with Disabilities, *Rules of Procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 74.

<sup>180</sup> Committee on the Rights of Persons with Disabilities, *Decision: Communication No 16/2013*, 18<sup>th</sup> sess, UN Doc CRPD/C/18/D/16/2013 (5 July 2018) ('*MR v Australia*').

<sup>181</sup> Decisions issued by the relevant UN treaty bodies were accessed at: United Nations Human Rights Office of the High Commissioner, *Jurisprudence*, <<http://juris.ohchr.org/>>.

<sup>182</sup> <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-communications>.

In May 2019, eight indigenous people from four Torres Strait Islands represented by ClientEarth lodged a landmark claim against the Australian Federal Government with the Human Rights Committee alleging that the Government has violated their fundamental human rights to culture and life through its inaction on climate change.<sup>183</sup> The complainants allege breaches of Articles 6, 17 and 27 of the *ICCPR*,<sup>184</sup> arising from the Government's failure to adopt adequate measures to tackle greenhouse gas emissions according to its obligations under the Paris Agreement and ensure that adaptation measures are put in place to mitigate the effects of climate change on low-lying communities in the Torres Strait, such as seawalls. The complaint also encompassed claims on behalf of six children under article 24(1), read alone and in conjunction with articles 7, 17 and 27 of the *Covenant*.

In its response to the complaint, the Australian Government denied having responsibility, contended that it was already doing enough in respect of climate change generally and mitigation in the areas in question and argued that future impacts were too uncertain to require it to act.

The views adopted by members of the Human Rights Committee were published on 22 September 2022. Before considering the merit of the claims the Committee is required to decide, pursuant to rule 97 of its rules of procedure, whether the complaint is admissible under the *Optional Protocol*. The Committee concluded that the claims under article 2, read alone and in conjunction with articles 6, 17, 24(1) and 27 were inadmissible under article 3 of the *Optional Protocol*.

The Committee proceeded to consider the merits of the claims under articles 6, 17, 24(1) and 27 of the *Covenant*.

The majority members were of the view that there was not a violation of article 6.

The claims under articles 17 and 27 of the *Covenant* were upheld. Having found a violation of articles 17 and 27 the Committee did not consider it necessary to examine the remaining claims under article 24(1).

Having found the violations in question article 2(3) of the *Covenant* imposes an obligation on the state party to provide the complainants with an effective remedy. According to the Committee:

... the state party is obligated, inter alia, to provide adequate compensation, to the authors for the harm they have suffered; to engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and to monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State

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<sup>183</sup> *Billy et al. v Australia* (Communication No. 3624/2019).

<sup>184</sup> The right to life, the right to be free of arbitrary interference with privacy, family and home and the right to enjoyment of culture, respectively. See Ebony Back and Rebecca Lucas, 'Climate change and human rights to collide before the United Nations Human Rights Committee' *AUSPUBLAW* (17 July 2019) <<https://auspublaw.org/2019/07/climate-change-and-human-rights-to-collide-before-the-united-nations-human-rights-committee/>>.

party is also under an obligation to take positive steps to prevent similar violations in the future.<sup>185</sup>

Five separate partially dissenting individual views are annexed to the collective views of the majority. Several individual members were of the view that there was also a violation of Article 6 of the *Covenant*.

The complaint underlines the interrelation between issues of climate change and human rights and the Committee's views clarify the obligations of states to address and mitigate climate change in order to comply with their human rights obligations under international law.

Karima Bennoune, the Special Rapporteur in the field of cultural rights in a report on climate change, culture and cultural rights, has commented that the 'view of the Human Rights Committee could have a significant impact on building the relevant jurisprudence'.<sup>186</sup>

The current class action in the Federal Court against the Australian Government brought by and on behalf of Torres Strait Islanders is discussed in research paper 11.

The Committee on the Elimination of Racial Discrimination has issued views on only one communication in respect of Australia since 2010, in relation to its admissibility. The Committee has previously considered complaints against Australia in relation to, for example, the naming of a football stand with a racially offensive epitaph,<sup>187</sup> the application of a quota to the entitlement of doctors trained overseas to take examinations necessary for registration in Australia,<sup>188</sup> and entitlements to social security and education of New Zealand citizens residing in Australia.<sup>189</sup>

Decisions in respect of communications on alleged violations of the *CEDAW* by Australia are not included. The Committee on the Elimination of Discrimination against Women on 6 March 2023 issued its views on a complaint against Australia alleging violations of the *CEDAW* in respect of the right to social security and family benefits.<sup>190</sup> The Committee concluded that the complaint was inadmissible under article 2 of the *Optional Protocol* as it was not submitted by or on behalf of an individual who had been directly and personally affected by the violations alleged.

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<sup>185</sup> Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019*, 22 September 2022, CCPR/C/135/D/3624/2019

<sup>186</sup> Special Rapporteur in the field of cultural rights, Karima Bennoune, *Report on Climate Change, Culture and Cultural Rights*, UN Doc A/75/298 (10 October 2020) annex [30]. The Special Rapporteur also refers to the pending case on the cultural rights of minority and indigenous children related to climate change of *Saachi et al v. Argentina, Brazil, France, Germany and Turkey*, 104/2019, 105/2019.

<sup>187</sup> Committee on the Elimination of Racial Discrimination, *Opinion: No 26/2002*, 62<sup>nd</sup> sess, UN Doc CERD/C/62/D/26/2002 (20 March 2003) ('*Hagan v Australia*').

<sup>188</sup> Committee on the Elimination of Racial Discrimination, *Opinion: No 8/1996*, 54<sup>th</sup> sess, UN Doc CERD/C/54/D/8/1996 (12 March 1999) ('*BMS v Australia*').

<sup>189</sup> Committee on the Elimination of Racial Discrimination, *Opinion: No 42/2008*, 75<sup>th</sup> sess, UN Doc CERD/C/75/D/42/2008 (14 August 2009) ('*DR v Australia*'); Committee on the Elimination of Racial Discrimination, *Opinion: No 39/2006*, 72<sup>nd</sup> sess, UN Doc CERD/C/72/D/39/2006 (22 February 2008) ('*DF v Australia*').

<sup>190</sup> Communication No 123/2017, concerning alleged discrimination in the *Welfare to Work* legislation, invoking articles 2 (d) and (f); 11 (e) and 13 (a)

## 9. UN treaty body inquiry mechanisms

Some UN treaty bodies are empowered to undertake inquiries into information indicating grave and systematic violations by a state party of the rights contained in the relevant Convention, which may include visiting the territory of a state party. In order for these Committees to conduct an inquiry under this mechanism, a state party must have recognised the competence of the Committee in respect of its inquiry function, through having ratified the treaty establishing the inquiry mechanism without opting out of the procedure by declaration.<sup>191</sup>

Australia recognises the competence of the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of Persons with Disabilities to undertake such inquiries in respect of its compliance with its human rights obligations (see Table 6.1). No treaty body inquiries have yet been conducted, or at least publicised, in respect of Australia.

### 9.1 Initiation of an inquiry

As a threshold issue, for an inquiry to be initiated:

- The Committee Against Torture must receive '*reliable information* which appears to it to contain *well-founded indications* that torture is being systematically practiced in the territory of a State Party'.<sup>192</sup>
- The Committee on the Elimination of Discrimination Against Women must receive '*reliable information* indicating grave or systemic violations by a State Party of rights (emphasis added)' under *CEDAW*.<sup>193</sup>
- The Committee on the Rights of Persons with Disabilities must receive '*reliable information* indicating grave or systematic violations by a State Party of rights (emphasis added)' under the *CRPD*.<sup>194</sup>

Subject to the requirement of reliability, unlike the procedure for individual communications, there are no strict admissibility criteria for the consideration of information indicating alleged systematic human rights violations. In particular, a victim of the alleged human rights violation(s) by the relevant state party need not submit the information for it to be considered by the Committee and, in practice, a large amount of information received under the inquiry procedure originates from NGOs.

Once information has been received, the information will be subject to preliminary consideration by the Committee to determine its reliability. The Committee may also obtain additional relevant information on its own initiative to substantiate the facts of the situation.<sup>195</sup> The Committee will

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<sup>191</sup> *CAT*, arts 20 and 28(1); *OP-CRPD*, art 8; *OP-CEDAW*, art 10.

<sup>192</sup> *CAT*, art 20(1).

<sup>193</sup> *OP-CEDAW*, art 8(1).

<sup>194</sup> *OP-CRPD*, art 6(1).

<sup>195</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 81(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 82(1); Committee on the Elimination of Discrimination Against Women, *Rules of*

also determine in this preliminary consideration whether the information indicates a pattern of misconduct rising to the level of grave and systematic human rights violations (in the case of the *CRPD* and *CEDAW*),<sup>196</sup> or the systematic practice of torture (in the case of the *CAT*).<sup>197</sup>

## 9.2 Process for the conduct of an inquiry

Once the Committee has received the information and conducted a preliminary examination, and if it meets the relevant standard of reliability and indicates grave and systemic human rights violations, the process for the inquiry mechanism is as follows:

- The Committee shall invite the state party to cooperate in the examination of the information and submit observations with respect to it.<sup>198</sup>
- The Committee might consider any other reliable information available to it (this might include, for example, information from representatives of the state party concerned, regional integration organizations, government organisations, NHRIs, NGOs and individuals, including experts).<sup>199</sup>
- Taking into account the information before it, the Committee may then decide to conduct an inquiry into the allegations of grave and systematic violations, through one or more of its members, that will report back to the Committee. The inquiry may include a visit to the territory of the state party,<sup>200</sup> or hearings before Committee members.<sup>201</sup>
- The inquiry process is conducted confidentially, including maintenance of the confidentiality of all documents and proceedings of the Committee in relation to the inquiry.<sup>202</sup>

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*Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 82(1).

<sup>196</sup> Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 82(2); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 82(2).

<sup>197</sup> *CAT*, art 20(1).

<sup>198</sup> *CAT*, art 20(1); *OP-CRPD*, art 6(1); *OP-CEDAW*, art 8(1).

<sup>199</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 82(4); *OP-CRPD*, art 6(2); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 83; *OP-CEDAW*, art 8(2); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 83(2)-(3).

<sup>200</sup> *CAT*, art 20(3); *OP-CRPD*, art 6(3); *OP-CEDAW*, art 8(2).

<sup>201</sup> Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 87(1); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 87; Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 87(1).

<sup>202</sup> *CAT*, art 20(5); Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> sess, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 78; *OP-CRPD*, art 6(5); Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, rr 80, 84(2); *OP-CEDAW*, art 8(5); Committee on the Elimination of Discrimination Against Women, *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, 24<sup>th</sup> and 25<sup>th</sup> sess, UN Doc A/56/38 Annex 1, r 74.

- The Committee will issue its findings to the state party, along with any comments or any other recommendations, and the state party will submit its observations in respect of the inquiry to the Committee.<sup>203</sup>

Reports of the findings of the Committee are published on the relevant Committee website.<sup>204</sup>

## 10. Early warning and urgent action procedures

Both the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of Persons with Disabilities have early warning and urgent action procedures aimed at preventing serious violations of the *CERD* and the *CRPD* respectively. Individuals and civil society groups can submit information to the Committees on situations occurring in states which are parties to the Conventions requesting the application of the procedures.

### 10.1 Committee on the Elimination of Racial Discrimination

In 1993, the Committee on the Elimination of Racial Discrimination adopted early warning and urgent procedures to prevent and limit serious violations of the *CERD*, particularly those that could lead to ethnic conflict and violence.<sup>205</sup> Where the Committee determines these procedures are required, it may take measures including:

- requesting the state party submit information about the situation to the Committee on an urgent basis;
- collecting information from UN bodies and field presences in the state party; and
- adopting expressions of specific concern and recommendations for action addressed to the state party and relevant UN bodies and personnel, including potentially notifying the UN Secretary-General of a situation with a recommendation that the matter be brought to the attention of the UN Security Council.<sup>206</sup>

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<sup>203</sup> *CAT*, art 20(4); *OP-CRPD*, arts 6(3)-(4); *OP-CEDAW*, arts 8(3)-(4).

<sup>204</sup> United Nations Human Rights Office of the High Commissioner, *Confidential inquiries under article 20 of the Convention against Torture - Completed inquiries and related documentation by State party*, <[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Inquiries.aspx](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Inquiries.aspx)>; *Committee on the Rights of Persons with Disabilities – Access to inquiry reports*, <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7)>; *Committee on the Elimination of Discrimination Against Women – Access to inquiry reports*, <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7)>.

<sup>205</sup> Committee on the Elimination of Racial Discrimination, *Guidelines for the Early Warning and Urgent Action Procedures*, 71<sup>st</sup> sess, UN Doc Annual report A/62/18 (August 2007) Annexes Chapter III, [1].

<sup>206</sup> Committee on the Elimination of Racial Discrimination, *Guidelines for the Early Warning and Urgent Action Procedures*, 71<sup>st</sup> sess, UN Doc Annual report A/62/18 (August 2007) Annexes Chapter III, [14] (further potential measures are outlined in paragraph 14).

The Committee has issued Guidelines, including indicators, to assist the Committee to identify situations where its immediate attention is required under early warning and urgent action procedures to prevent and limit serious violations of the *CERD*. These include, for example:

- the presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
- the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other State officials;
- adoption of new discriminatory legislation; and
- encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources.<sup>207</sup>

The Committee has taken urgent action on four occasions to date in respect of Australia, issuing letters to the Australian Government:

- twice in 2009, in respect of the incompatibility of the Northern Territory Emergency Response ('NTER') with the *CERD*, including the suspension of the *Racial Discrimination Act 1975* (Cth) which was necessary for the Government to enact the measures under the NTER, and reports that the NTER allegedly led to serious discrimination against Aboriginal people in the Northern Territory;<sup>208</sup>
- in 2010, regarding the curtailment of funding of Aboriginal legal aid, in light of information submitted to the Committee by the Aboriginal Legal Rights Movement that the denial of access of Aboriginal people to legal services in Australia was compounding their precarious situation and its particular impact on specific groups of Aboriginal people including indigenous women who are over-represented in the prison population and members of the Stolen Generation;<sup>209</sup> and
- in 2018, in relation to the impact of the Carmichael Coal Mine and Rail Project (the Adani Mine) in Queensland upon the local Wangan and Jagalingou indigenous people and its potential infringement of the *CERD*, noting concerns that consultation processes with indigenous native title holders over land affected by the proposed mine were allegedly not conducted in good faith, because of the failure to include all members of the native

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<sup>207</sup> Committee on the Elimination of Racial Discrimination, *Guidelines for the Early Warning and Urgent Action Procedures*, 71<sup>st</sup> sess, UN Doc Annual report A/62/18 (August 2007) Annexes Chapter III, [12] (further indicators are outlined in paragraph 12).

<sup>208</sup> Letter from Fatimata-Binta Victoire Dah (Chairperson of the Committee for the Elimination of Racial Discrimination) to Her Excellency Caroline Millar (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 13 March 2009; Letter from Fatimata-Binta Victoire Dah (Chairperson of the Committee for the Elimination of Racial Discrimination) to Her Excellency Caroline Millar (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 28 September 2009.

<sup>209</sup> Letter from Anwar Kemal (Chairperson of the Committee for the Elimination of Racial Discrimination) to His Excellency Peter Woolcott (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 31 May 2010.

title claim group in those processes, and that the project did not enjoy the free, prior and informed consent of all representatives of the Wangan and Jagalingou people.<sup>210</sup>

## 10.2 Committee on the Rights of Persons with Disabilities

In 2011, the Committee on the Rights of Persons with Disabilities adopted early-awareness and urgent-action procedures aimed at problems requiring the immediate attention of the Committee to avoid serious violations of the *CRPD* or to reduce the number or degree of such violations.<sup>211</sup> A working group of the Committee advises the Committee on a request that it activate its special procedures and communication from the Committee to the state party concerned. Representatives of the state party are invited to meet with the Committee to address the issues of concern, along with other interested parties including NGOs. After its examination, the Committee will adopt a final decision, which may ask the state party to take specific measures to rectify the situation and submit further information in its next periodic report.<sup>212</sup> To date, it does not appear that the Committee has applied its early-awareness or urgent-action processes in respect of violations of the *CRPD* by Australia.

## 11. UN Human Rights Council complaints and special procedures

In addition to the Universal Periodic Review function, the UN Human Rights Council has both a complaints procedure and a set of special procedures by which to address human rights violations by states. Special procedures encompass mechanisms including Independent Experts, Special Rapporteurs and Working Groups, to whom human rights complaints can also be submitted in addition to the complaints procedure of the Human Rights Council.

### 11.1 Complaints procedure

The complaints procedure was established pursuant to UN Human Rights Council *Resolution 5/1 Institution-building of the United Nations Human Rights Council* to address ‘consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances’.<sup>213</sup> The procedure is directed at systemic patterns of serious human rights violations, rather than remedying complaints in respect of individual violations.<sup>214</sup>

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<sup>210</sup> Letter from Nourredine Amir (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva) to Her Excellency Sally Mansfield (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 14 December 2018.

<sup>211</sup> Committee on the Rights of Persons with Disabilities, *Working methods of the Committee on the Rights of Persons with Disabilities adopted at its fifth session (11-15 April 2011)*, 5<sup>th</sup> sess, UN Doc CRPD/C/5/4/2 (2 September 2011) 5 [26].

<sup>212</sup> Committee on the Rights of Persons with Disabilities, *Working methods of the Committee on the Rights of Persons with Disabilities adopted at its fifth session (11-15 April 2011)*, 5<sup>th</sup> sess, UN Doc CRPD/C/5/4/2 (2 September 2011) 5 [28].

<sup>213</sup> UN Human Rights Council, *Resolution 5/1 Institution-building of the United Nations Human Rights Council*, 9<sup>th</sup> mtg, UN Doc A/HRC/RES/5/1 (18 June 2017) para 85.

<sup>214</sup> UN Human Rights Council, *Resolution 5/1 Institution-building of the United Nations Human Rights Council*, 9<sup>th</sup> mtg, UN Doc A/HRC/RES/5/1 (18 June 2017) paras 89 and 95.

The confidential procedure applies to all member states of the UN, regardless of whether they have ratified or made reservations to a treaty relating to the human rights allegedly violated. Communications can be submitted either:

- by individuals or a group of individuals claiming to be victims of human rights violations; or
- by any individual or group, including NGOs, with direct and reliable knowledge of the alleged violations concerned.<sup>215</sup>

Communications where the knowledge of the alleged violations is second-hand may also be admissible, provided that they are reliably attested and accompanied by clear evidence.<sup>216</sup>

Additionally, a complaint will be admissible if, in summary:<sup>217</sup>

- it is not manifestly politically motivated nor inconsistent with the *UN Charter*, the *Universal Declaration* or other applicable human rights law instruments;
- it gives a factual description of the alleged violations and which rights are alleged to be violated;
- its language is not abusive;
- it is not exclusively based upon media reports;
- it is not in respect of a matter already being dealt with by a special procedure, a treaty body or other UN or regional human rights complaints procedure;
- domestic remedies are exhausted, except if it appears that the said remedies would be ineffective or unreasonably prolonged.

A Working Group on Communications of the UN Human Rights Council assesses the admissibility and merits of the allegations of violations, including whether (alone or together with other communications) there is a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.<sup>218</sup>

If the communication is admissible, the Working Group can decide to monitor the complaint and seek further information from the complainant and state party or to transmit it to the Human Rights Council's Working Group on Situations, which may, in turn, present the situation to the Human Rights Council with recommendations for the latter body to take action.<sup>219</sup>

The Human Rights Council may take the following measures:<sup>220</sup>

- discontinue considering the situation when it forms the view that further consideration is not warranted;

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<sup>215</sup> UN Human Rights Council, *Resolution 5/1 Institution-building of the United Nations Human Rights Council*, 9<sup>th</sup> mtg, UN Doc A/HRC/RES/5/1 (18 June 2017) para 87(d).

<sup>216</sup> *Ibid* para 87(d).

<sup>217</sup> *Ibid* para 87.

<sup>218</sup> *Ibid* para 95.

<sup>219</sup> *Ibid* para 98.

<sup>220</sup> *Ibid* para 109.

- keep the situation under review, requesting further information from the state within a reasonable time period or appointing an independent expert to monitor the situation and report back to the Council;
- discontinue reviewing the matter under the confidential complaints procedure and take up public consideration of the matter;
- recommend to the Office of the High Commissioner for Human Rights that it provide technical cooperation, capacity-building assistance or advice to the state concerned.

To date, no situations in respect of Australia have been referred to the UN Human Rights Council for consideration under the complaints procedure. Examples of situations considered by the Committee include human rights situations in Turkmenistan, Tajikistan and the Democratic Republic of the Congo, and the status of trade unions, human rights defenders and religious minorities in Iraq.

## 11.2 Special procedures

On its establishment, the UN Human Rights Council assumed the special procedures system of the former UN Commission for Human Rights.<sup>221</sup> Under the special procedures, the Human Rights Council appoints independent experts by resolution with mandates to report and advise on thematic issues and country-specific human rights situations. Special Procedures encompass individual Independent Experts or Special Rapporteurs, or Working Groups comprised of five experts, typically appointed for terms of six years (or two-terms of three years for thematic mandates).<sup>222</sup> Special Rapporteurs and other UN representatives have drawn negative conclusions about the human rights record of Australia on numerous occasions.<sup>223</sup>

Recent thematic special procedure mandates include the Working Group on Arbitrary Detention, the Special Rapporteur on the Rights of Persons With Disabilities and the Independent Expert on the Enjoyment of All Human Rights by Older Persons.<sup>224</sup>

Recent country special procedures include Special Rapporteurs on the human rights situations in each of Cambodia, the Democratic People's Republic of Korea and the Islamic Republic of Iran.

The mandate of special procedures includes actions such as:

- country visits;

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<sup>221</sup> *United Nations General Assembly Resolution*, GA Res 60/251, UN GAOR, 60<sup>th</sup> sess, UN Doc A/RES/60/251 (3 April 2006), para 6.

<sup>222</sup> UN Human Rights Council, *Resolution 5/1 Institution-building of the United Nations Human Rights Council*, 9<sup>th</sup> mtg, UN Doc A/HRC/RES/5/1 (18 June 2017) para 45.

<sup>223</sup> See, for example, Michael Forst, 'End of mission statement: United Nations Special Rapporteur on the Situation of Human Rights Defenders, visit to Australia' (18 October 2016) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID>>. See also Katharine Gelber, 'The Universal Declaration of Human Rights at 70: protection of human rights in Australia' (2019) 73(4) *Australian Journal of International Affairs* 313, 315.

<sup>224</sup> 'Current and Former Mandate-Holders for Existing Mandates Valid as of 1 November 2020' (*Office of the High Commissioner for Human Rights website*) <<https://www.ohchr.org/EN/HRBodies/SP/Pages/Currentmandateholders.aspx>>.

- normative work, including the development of human rights standards and technical advice within the subject matter of the mandate;
- annual reporting to the Human Rights Council;
- issuing communications to states, including on individual cases and systemic patterns of alleged human rights violations.

On receiving credible information relating to individual or systemic human rights violations within the scope of their mandate, special procedures may be invoked by sending a communication to the relevant state. Communications can relate to past human rights violations (a so-called ‘letter of allegation’), ongoing or potential human rights violations (‘urgent appeals’), or address concerns relating to current or draft legislation, state policies or practices that do not comply with international human rights law and standards.

Communications issued by special procedures may deal with individual or systemic violations, trends or patterns of human rights violations, or cases affecting a particular group or community. A communication:

- presents the facts of the allegation and the relevant human rights norms and standards alleged to be violated;
- requests clarification of the allegation;
- requests that the state take follow-up action, including requesting that the state investigate and address the allegation, or where relevant take urgent or remedial action to guarantee the human rights of alleged victims.

Any individual, civil society actor or national human rights body may submit information as part of the special procedures. A request for action must be sent via the Office of the United Nations High Commissioner for Human Rights.<sup>225</sup> The request should contain:<sup>226</sup>

- details of the alleged victim(s);
- details of the alleged perpetrator(s) of the violation, if known, including substantiated information on the actors involved;
- date, place and detailed description of the violation which has occurred, is about to occur or is ongoing;
- identification of the author of the communication, if distinct from the alleged victim;
- confirmation of whether the alleged victim(s), their families or representatives consent to their identity being disclosed to the government of the state in question or disclosure of their identity in information published by the Human Rights Council.

Experts will determine whether they will act on information provided to them, subject to the scope of their mandate.

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<sup>225</sup> United Nations Human Rights Office of the High Commissioner, *Submission of information to the Special Procedures*, <<https://spsubmission.ohchr.org/>>.

<sup>226</sup> United Nations Human Rights Office of the High Commissioner, *Special Procedures – Communications*, <<https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>>.

When alleged violations of human rights fall within the scope of one or more mandates of special procedures, the special procedure mandate-holders may issue a joint communication. In contrast to the UN treaty body and Human Rights Council complaints mechanisms, special procedures are not limited to situations where the state in question has ratified a relevant human rights instrument. There is also no requirement that the alleged victim exhaust domestic remedies. This means that expeditious action can be more readily facilitated by special procedures than other complaints procedures.

However, the use of information on allegations by special procedure entities is subject to criteria in the *Code of Conduct of the Special Procedures mandate-holders of the Human Rights Council*.<sup>227</sup> This provides that:

- the communication should not be manifestly unfounded or politically motivated;
- the communication should contain a factual description of the alleged violations of human rights;
- the language in the communication should not be abusive;
- the communication should be submitted on the basis of credible and detailed information;
- the communication should not be exclusively based on reports disseminated by mass media.

The Working Group on Arbitrary Detention has its own special procedures in respect of communications and urgent action and is also authorized to make determinations as to whether it is of the opinion that a deprivation of liberty raised in a communication is arbitrary.<sup>228</sup>

The UN Office of the Human Rights Commissioner has, at the time of writing, published 55 communications issued by UN Human Rights Council special procedures to Australia since 1 December 2010. The Working Group on Arbitrary Detention has issued a number of communications in relation to Australia's treatment of people seeking asylum, including those who are in detention pursuant to offshore regional processing arrangements.<sup>229</sup>

Recent communications have also been sent about issues including:

- allegations of torture and other ill-treatment and prolonged solitary confinement of juvenile detainees in Northern Territory's Youth Detention Centres (in particular, at Don

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<sup>227</sup> UN Human Rights Council, *Resolution 5/2. Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*, 9<sup>th</sup> mtg (18 June 2007) article 9.

<sup>228</sup> UN Human Rights Council, *Methods of work of the Working Group on Arbitrary Detention*, HRC, 36<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/36/38 (13 July 2017).

<sup>229</sup> Letter from Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention), Dainius Puras (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), Felipe Gonzáles Morales (Special Rapporteur on the human rights of migrants), Léo Heller (Special Rapporteur on the human rights to safe drinking water and sanitation) to His Excellency John Quinn (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 11 November 2017 (on the situation of refugees and asylum seekers on Manus Island in connection with the closure of the Manus Regional Processing Centre).

- Dale Youth Detention Centre) by the Special Rapporteur on indigenous peoples and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in August 2016;<sup>230</sup>
- the compliance of the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 with international human rights law, in response to a call by the Commonwealth Parliamentary Joint Committee on Intelligence and Security for submissions on the Bill. Communications were authored by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in February 2018;<sup>231</sup> and
  - the involvement of Australian domiciled company BHP Billiton in the 2015 socio-environmental Doce River disaster in Brazil and the difficulties of affected communities in obtaining effective remedies. Communications were made by the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the human rights to safe drinking water and sanitation in October 2018.<sup>232</sup>

## **12. Other international mechanisms for bringing human rights complaints against Australia**

Australia is a member of the International Labour Organization ('ILO') and the UN Educational, Scientific and Cultural Organization ('UNESCO'). Both Organizations have mechanisms by which –

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<sup>230</sup> Letter from Victoria Lucia Tauli-Corpus (Special Rapporteur on the rights of indigenous peoples) and Juan Ernesto Mendez (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) to His Excellency John Quinn (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 5 August 2016.

<sup>231</sup> Letter from David Kaye (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), Michael Forst (Special Rapporteur on the situation of human rights defenders), Fionnuala Ni Aoláin (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) to the Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva, 15 February 2018.

<sup>232</sup> Letter from Dante Pesce (Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises), David R Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), Baskut Tuncak (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), Victoria Lucia Tauli-Corpus (Special Rapporteur on the rights of indigenous peoples) and Léo Heller (Special Rapporteur on the human rights to safe drinking water and sanitation) to Her Excellency Sally Mansfield (Permanent Representative, Ambassador for the Permanent Mission of Australia to the United Nations at Geneva), 17 October 2018.

depending upon the procedure – individuals or groups can submit complaints relating to violations of human rights within the fields of their organisational competence.

### 12.1 International Labour Organization complaints mechanisms

The ILO issues international labour standards in the form of Conventions and Recommendations to advance social justice and ensure decent work standards, including rights at work. Australia has, at the time of writing, ratified 58 ILO Conventions.<sup>233</sup> In addition to supervising Member States' implementation of their Convention obligations through a periodic reporting system, the ILO has special procedures for:

- representations on the application of ratified ILO Conventions;
- complaints of non-observance of ratified ILO Conventions; and
- complaints relating to issues of freedom of association, through the ILO Committee on the Freedom of Association.

Complaints of non-observance by a member state of ratified ILO Conventions may be filed by other member states of the ILO, a delegate to the International Labour Conference (comprised of government, workers' association representatives and employers' association representatives) or the ILO's Governing Body.<sup>234</sup>

#### 12.1.1 Representations procedure

Under articles 24 and 25 of the ILO Constitution, an industrial association of employers or workers may make a representation to the ILO that a member state has failed to secure effective observance within its jurisdiction of any ILO Convention to which it is a party.<sup>235</sup> The acceptance of representations is governed by criteria of the ILO's *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization*.<sup>236</sup>

To be considered, a representation must:

- be communicated in writing;
- emanate from an industrial association of employers or workers;
- refer to article 24 of the ILO Constitution;

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<sup>233</sup> For up-to-date information on the status of Australia's ratification of ILO standards, see: International Labour Organization, *ILO – Countries – Australia*, <[https://www.ilo.org/gateway/faces/home/ctryHome?locale=EN&countryCode=AUS&\\_adf.ctrl-state=zb0trcoh8\\_11](https://www.ilo.org/gateway/faces/home/ctryHome?locale=EN&countryCode=AUS&_adf.ctrl-state=zb0trcoh8_11)>.

<sup>234</sup> See, broadly, *Constitution of the International Labour Organization (ILO)* arts 26 – 34. This aspect of the complaints procedure falls outside our primary focus on the mechanisms by which individual and groups of individuals who allege human rights violations, and civil society groups, can seek to hold the Australian Government to account for human rights violations.

<sup>235</sup> *Constitution of the International Labour Organization (ILO)* art 24.

<sup>236</sup> *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization*, adopted by the Governing Body at its 57<sup>th</sup> sess (8 April 1932), modified at its 82<sup>nd</sup> sess (5 February 1938), 212<sup>th</sup> sess (7 March 1980), and 291<sup>st</sup> sess (18 November 2004) art 2.

- concern a Member of the ILO;
- refer to a Convention to which the Member against which the representation is made is a party; and
- indicate how the member state has allegedly failed to secure the effective observance of the relevant Convention in its jurisdiction.

The procedure for examining a representation is also governed by the ILO's Standing Orders.<sup>237</sup> In general, a three-member committee of the ILO Governing Body may examine the representation and the government's response and report on the case to the Governing Body along with recommendations as to the decision the Governing Body should make. In turn, the Governing Body will consider the substantive issues in the representation and issue its decision to the member state, including recommendations as to any follow-up required. If the state's response is unsatisfactory, the Governing Body may publish the representation and the government's response.<sup>238</sup> To date, no representations have been published in respect of Australia.

#### 12.1.2 *Complaints in relation to the freedom of association*

In 1951, the ILO Governing Body established an additional supervisory procedure to secure freedom of association, which is a foundational principle of the ILO and essential to trade union rights. The ILO Committee on Freedom of Association, a nine-member committee of the ILO Governing Body, may examine complaints about infringement of freedom of association rights and principles by ILO Member States brought by employers' and workers' associations, as well as complaints against ILO Member States forwarded to it by the UN Economic and Social Council.<sup>239</sup>

The Committee's mandate is to determine whether any legislation or practice is compliant with the principles of freedom of association and collective bargaining, as recognised in ILO Conventions No 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining).<sup>240</sup> If complaints are sufficiently substantiated, the Committee issues a report to the ILO Governing Body, making recommendations on how the violations should be remedied.<sup>241</sup>

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<sup>237</sup> *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization*, adopted by the Governing Body at its 57<sup>th</sup> sess (8 April 1932), modified at its 82<sup>nd</sup> sess (5 February 1938), 212<sup>th</sup> sess (7 March 1980), and 291<sup>st</sup> sess (18 November 2004).

<sup>238</sup> *Constitution of the International Labour Organization (ILO)* art 24.

<sup>239</sup> *Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association*, adopted by the Governing Body at its 117<sup>th</sup> sess (November 1951), modified at its 123<sup>rd</sup> sess (November 1953), 132<sup>nd</sup> sess (June 1956), 140<sup>th</sup> sess (November 1958), 144<sup>th</sup> sess (March 1960), 175<sup>th</sup> sess (May 1969), 184<sup>th</sup> sess (November 1971), 202<sup>nd</sup> sess (March 1977), 209<sup>th</sup> sess (May-June 1979) and 283<sup>rd</sup> sess (March 2002), arts 3 – 11. The nine-member Committee is comprised in equal proportion of the Government, Employer and Worker Groups of the ILO Governing Body (art 7).

<sup>240</sup> *Ibid* art 14.

<sup>241</sup> *Ibid* art 19.

The Committee's competence to consider and receive complaints, as well as its processes for doing so, are governed by Special Procedures of the ILO.<sup>242</sup> The Committee is competent to consider complaints, regardless of whether they may be political in origin or present political aspects, if the Committee determines that they directly relate to the infringements of trade union rights (unless the matter is so purely political in character that it is undesirable to pursue it any further).<sup>243</sup>

The Committee is, however, not competent to consider complaints on working conditions; social security legislation; landownership and tenure governed by national legislation; and the degree of legislative regulation of the industrial relations system in any particular country.<sup>244</sup>

Complaints must be presented in writing, signed by a representative of a body entitled to present them, and be as fully supported as possible by evidence of specific infringements of trade union rights.<sup>245</sup> Complaints will be receivable by the Committee:<sup>246</sup>

- which are submitted by governments, organisations of workers or employer organisations (if directly interested in the matter, or in a consultative status or capacity);
- where the complaint is against a state, regardless of whether the state concerned has ratified ILO Conventions No 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining Convention);
- regardless of whether a trade union has deposited its by-laws as may be required by national laws or is officially recognised by the state (so long as it has a *de facto* existence).

The Committee has considered 16 complaints against Australia. One complaint against Australia was recently subject to consideration by the Committee. The Complaint was brought in 2017 by the Australian Council of Trade Unions, referring to the *Building and Construction Industry (Improving Productivity) Act 2016* and the *Code for the Tendering and Performance of Building Work 2016*.<sup>247</sup> The ACTU made several allegations in the complaint, inter alia: alleging that the increased maximum penalties for unlawful industrial actions are higher for the construction industry than for other industries and are coercive; investigation procedures are coercive and expressly override the common law privilege against self-incrimination; the prohibition on 'unlawful picketing' has a broad application which covers peaceful assemblies at building sites and the dissemination of information to workers entering or leaving a building site, which is said to infringe on the right to freedom of assembly; and alleging that there are prohibitive requirements in the Code which are inconsistent with the right to freedom of association and the right to organise under the Convention and restrict the level at which collective bargaining is possible.<sup>248</sup>

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<sup>242</sup> Ibid arts 20 – 30.

<sup>243</sup> Ibid arts 18, 25.

<sup>244</sup> Ibid arts 20 – 23.

<sup>245</sup> Ibid art 40.

<sup>246</sup> Ibid arts 31 - 37.

<sup>247</sup> *Case No 3278* (Australia) (27 April 2017).

<sup>248</sup> ILO Committee on Freedom of Association, 388<sup>th</sup> *Report of the Committee on Freedom of Association*, 335<sup>th</sup> sess, Agenda Item 13, GB.335/INS/13 (March 2019) [109]-[165]

The Committee requested to be kept informed of developments and invited the Governing Body to approve a series of recommendations.<sup>249</sup> These recommendations were subsequently adopted by the Governing Body.

Previous complaints have related, for example, to the *Fair Work Act 2009* (Cth) and restrictions under the legislation on freedom of association principles relating to the rights to organise, to bargain collectively and strike.<sup>250</sup> Complaints have also related to state and territory laws, such as a case relating to NSW legislation allegedly restricting free collective bargaining on wages and other matters for state public sector workers, thus violating the principles of freedom of association and collective bargaining.<sup>251</sup>

## 12.2 UN Educational, Scientific and Cultural Organization human rights communications procedure

The UN Educational, Scientific and Cultural Organization ('UNESCO') has a communications procedure by which its Committee on Conventions and Recommendations, a subsidiary to UNESCO's Executive Board, examines complaints in relation to alleged violations by UNESCO member states of human rights in its field of competence. As a member state of UNESCO, Australia is subject to the complaints mechanism.

The procedure for complaints is not treaty-based, but is laid out in a decision of the UNESCO Executive Board, 104 EX/Decision 3.3.<sup>252</sup> Victims of alleged violations, or any person, groups of persons or NGOs with reliable knowledge of alleged violations, may bring complaints in respect of breaches of human rights in UNESCO's areas of competence (education, science, culture and communication).<sup>253</sup> This aligns with communications in respect of violations of the following rights recognized in the *Universal Declaration*:<sup>254</sup>

- the right to education (article 26);
- the right to share in scientific advancement (article 27);
- the right to participate freely in cultural life (article 27); and
- the right to information, including freedom of opinion and expression (article 27).

By implication, those rights may also imply the exercise of others, including:<sup>255</sup>

- the right to freedom of thought, conscience and religion (article 18);

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<[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_679796.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_679796.pdf)>.

<sup>249</sup> Ibid [165].

<sup>250</sup> *Case No 2698* (Australia) (20 February 2009).

<sup>251</sup> *Case No 3118* (Australia) (4 March 2015).

<sup>252</sup> UNESCO Executive Board, *104 EX/Decision 3.3*, 104<sup>th</sup> sess, Agenda Item 3.3, UN Doc 104 EX/Decisions (12 July 1978).

<sup>253</sup> Ibid [14(a)(iii)] (that the communication must concern violations of human rights falling within UNESCO's competence) and [14(a)(ii)] (on who may submit a communication).

<sup>254</sup> UNESCO, *UNESCO's Procedure for dealing with alleged violations of human rights* <[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104\\_2018EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104_2018EN.pdf)>.

<sup>255</sup> Ibid.

- the right to seek, receive and impart information and ideas through any media and regardless of frontiers (article 19);
- the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (article 27); and
- the right to freedom of assembly and association (article 20) for the purposes of activities connected with education, science, culture and information.

Consideration of communications by the Committee on Conventions and Recommendations is subject to conditions of admissibility set out at paragraph 14 of 104 EX/Decision 3.3.<sup>256</sup> If a communication is admissible, the Committee is mandated to seek to find a ‘friendly solution’ to ‘advance the promotion of human rights’, with the aim of resolving the issue through dialogue and conciliation.<sup>257</sup>

Questions revealed in communications that relate to massive, systemic or flagrant violations of human rights and fundamental freedoms— such as the implementation of a policy of genocide or apartheid, or national and social oppression – may be considered by the UNESCO Executive Board and its General Conference in public meetings.<sup>258</sup> However, the Committee’s consideration of individual communications is in private session and the results are confidential.<sup>259</sup> Consequently, the effectiveness of the UNESCO complaints procedure, as it might assist individuals or groups seeking to hold Australian authorities to account in human rights areas within UNESCO’s competence, cannot be readily discerned. However, from the limited information which is published by the Committee, the communications procedure can be seen to have had some positive outcomes, including the release of prisoners before the completion of their sentence, resumption of banned publications or broadcast programmes, and the changes to laws in respect of education which discriminated against ethnic or racial minorities.<sup>260</sup>

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<sup>256</sup> UNESCO Executive Board, *104 EX/Decision 3.3*, 104<sup>th</sup> sess, Agenda Item 3.3, UN Doc 104 EX/Decisions (12 July 1978) [14].

<sup>257</sup> *Ibid* [14(k)]; see also: UNESCO, *UNESCO’s Procedure for dealing with alleged violations of human rights*

<[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104\\_2018EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104_2018EN.pdf)>.

<sup>258</sup> UNESCO Executive Board, *104 EX/Decision 3.3*, 104<sup>th</sup> sess, Agenda Item 3.3, UN Doc 104 EX/Decisions (12 July 1978) [18].

<sup>259</sup> *Ibid* [14(b)], [16], [18]; see also: UNESCO, *UNESCO’s Procedure for dealing with alleged violations of human rights*

<[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104\\_2018EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104_2018EN.pdf)>

The number of admissible communications with respect to a particular state are publicly available. From 1978 to 2019, 609 communications were considered by the Committee, of which 407 were admissible.

<sup>260</sup> UNESCO, *UNESCO’s Procedure for dealing with alleged violations of human rights*

<[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104\\_2018EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/BrochureProcedure104_2018EN.pdf)>

. Over half of the 407 communications which had been resolved by 2019, more than half (237) involved the release or acquittal of prisoners.

**Research Paper 7, Appendix A – Rights in core international human rights treaties to which Australia is party, with Australia’s reservations and declarations**

Article	Content	Australian reservation or declaration
<b>Convention on the Elimination of all Forms of Discrimination Against Women</b>		
-	-	<p>General declaration: Australia has a Federal Constitutional System in which Legislative, Executive and Judicial Powers are shared or distributed between the Commonwealth and the Constituent States. The implementation of the Treaty throughout Australia will be effected by the Commonwealth State and Territory Authorities having regard to their respective constitutional powers and arrangements concerning their exercise.</p>
-	-	<p>General Reservation: The Government of Australia states that maternity leave with pay is provided in respect of most women employed by the Commonwealth Government and the Governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all other women employed in the State of New South Wales and elsewhere to women employed under Federal and some State industrial awards. Social Security benefits subject to income</p>

Article	Content	Australian reservation or declaration
		tests are available to women who are sole parents.
Article 1 (definition)	Article 1 of CEDAW defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and other field”.	-
Article 2 (law, policy and prejudices)	Article 2 of CEDAW urges all countries to work towards eradicating discrimination against women by introducing new laws or policy, changing existing discriminatory laws and providing sanctions for discrimination where it occurs.	-
Article 3 (law, policy and prejudices)	Article 3 of CEDAW requires countries to actively promote women's full development and advancement, so that they can enjoy human rights and fundamental freedoms on the same basis as men.	-
Article 4 (law, policy and prejudices)	Article 4 of CEDAW allows temporary special measures that favour women, on the basis that they are designed to speed up the achievement of equality.	-
Article 5 (law, policy and prejudices)	Article 5 of CEDAW requires countries to address and	-

Article	Content	Australian reservation or declaration
	change social and cultural patterns that reinforce the stereotyping of women and traditional gender roles, or that promote the relative superiority or inferiority of either of the sexes.	
Article 6 (exploitation and prostitution)	Article 6 of CEDAW requires countries to aim to eliminate all forms of trafficking of women and exploitation of prostitution of women.	-
Article 7 (politics and public life)	Article 7 of CEDAW asserts that women should have the right to vote, the right to stand for election, be involved in formulating government policy and actively participate in political parties, lobby groups and NGOs.	-
Article 8 (politics and public life)	Article 8 of CEDAW states that women should have the same opportunities as men to represent their countries internationally and be involved in the work of international organisations.	-
Article 9 (nationality)	Article 9 of CEDAW requires that women have the same rights as men to acquire, retain or change their nationality and the nationality of their children. These rights are not affected by the choices of a woman's husband or changes to his nationality.	-
Article 10 (education and training)	Article 10 of CEDAW urges countries to ensure that women have the same opportunities as men in all aspects of education and training - from kindergarten to tertiary education.	-

Article	Content	Australian reservation or declaration
	<p>Women should have access to the same curricula, professional staff and programs of continuing and adult education, especially those aimed at reducing any existing gender gaps within education, and opportunities to benefit from the same scholarships and grants as men. Governments are required to ensure that all stereotypical concepts of the roles of men and women are eliminated.</p>	
<p>Article 11 (employment)</p>	<p>Article 11 of CEDAW requires countries to protect women's rights to work, to ensure that women have the same training and employment opportunities as men, that women receive equal pay for work of equal value, that women have access to the same benefits, compensatory schemes, and allowances as men, especially in relation to retirement and incapacity to work. This Article further requires that countries prohibit discrimination in the workplace on the basis of marriage, pregnancy and maternity, and introduce paid maternity leave without loss of benefits or career opportunities, and encourage the provision of supporting social services to allow parents to combine family obligations with work responsibilities.</p>	<p>The Government of Australia advises that it is not at present in a position to take the measures required by article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits throughout Australia.</p> <p>30 August 2000 Reservation: The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat duties.<sup>1</sup></p>

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<sup>1</sup> The Government withdrew this reservation on 14 December 2018.

Article	Content	Australian reservation or declaration
Article 12 (health)	<p>Article 12 of CEDAW requires countries to take all necessary measures to eliminate discrimination against women in the field of health care and ensure women and men have equal access to health services.</p> <p>This Article further requires that countries provide free and accessible health services in relation to pregnancy and post-natal care.</p>	-
Article 13 (economic life, sports and culture)	<p>Article 13 of CEDAW expressly requires that women have equal access to family benefits, forms of financial credit, including mortgages, and the same rights as men to participate in recreational activities and cultural life.</p>	-
Article 14 (women living in remote and rural areas)	<p>Article 14 of CEDAW requires all countries to ensure that the particular needs of rural women are met in relation to access to services, training and employment opportunities, and social equity schemes.</p>	-
Article 15 (equality before the law)	<p>Article 15 of CEDAW requires countries to treat women and men equally in all matters relating to the law, including civil matters, contractual matters, and property ownership.</p>	-
Article 16 (family relations)	<p>Article 16 of CEDAW requires countries to ensure that women and men have equal rights in the freedom to choose a spouse and enter into marriage; the same</p>	-

Article	Content	Australian reservation or declaration
	rights and responsibilities as men within marriage and upon divorce, especially with regards to choosing a family name, a profession, and the rights of ownership; and equal rights in all matters relating to the birth, adoption and the raising of children.	
<b>Convention on the Elimination of All Forms of Racial Discrimination</b>		
Article 1 (definition)	Article 1 defines "racial discrimination" as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.	-
Article 2 (action to eliminate discrimination)	Article 2 requires countries to condemn and eliminate all racial discrimination by all appropriate means and without delay by reviewing and changing policies and legislation as well as by taking appropriate measures in the social, economic and cultural fields.	-
Article 3 (segregation and apartheid)	Article 3 requires countries to condemn, prevent and prohibit racial segregation and apartheid.	-
Article 4 (racial discrimination and propaganda as an offence)	Article 4 requires countries to eradicate all incitement of racial discrimination by	The Government of Australia ... declares that Australia is not at present in a position specifically to

Article	Content	Australian reservation or declaration
	declaring it an offence punishable by law.	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).
Article 5 (civil and political rights)	Article 5 requires countries to guarantee equality before the law in regard to everyone's civil and political rights without distinction as to race, colour, or national or ethnic origin.	-
Article 6 (protection and remedies)	Article 6 requires countries to assure effective protection and remedies against any acts of racial discrimination which violate rights and freedoms set out in the Convention.	-
Article 7 (teaching, education, culture and information)	Article 7 requires states to adopt immediate and effective measures to promote understanding, tolerance and friendship among nations and racial or ethnical groups and to combat racial discrimination.	-
-	-	The Government of Australia hereby declares that it recognises, for and on behalf of Australia, the competence of the Committee to receive

Article	Content	Australian reservation or declaration
		and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by Australia of any of the rights set forth in the aforesaid Convention. (28 January 1993)
<b>International Covenant on Civil and Political Rights</b>		
Article 1 (right to self-determination)	Article 1 states that all peoples have the right to self-determination.	-
Article 2 (right to equality and non-discrimination)	Article 2 requires states to ensure everyone's rights are recognized equally and without any discrimination.	Australia advises that, the people having united as one people in a Federal Commonwealth under the Crown, it has a federal constitutional system. It accepts that the provisions of the Covenant extend to all parts of Australia as a federal State without any limitations or exceptions. It enters a general reservation that article 2, paragraphs 2 and 3, and article 50 shall be given effect consistently with and subject to the provisions in article 2, paragraph 2. Under article 2, paragraph 2, steps to adopt measures necessary to give effect to the rights recognised in the Covenant are to be taken in accordance with each State Party's Constitutional processes which, in the case of Australia, are the processes of a federation in which legislative, executive and judicial powers to give effect to the rights recognised in the Covenant are distributed among the

Article	Content	Australian reservation or declaration
		<p>federal (Commonwealth) authorities and the authorities of the constituent States. In particular, in relation to the Australian States the implementation of those provisions of the Covenant over whose subject matter the federal authorities exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and the implementation of those provisions of the Covenant over whose subject matter the authorities of the constituent States exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and where a provision has both federal and State aspects, its implementation will accordingly be a matter for the respective constitutionally appropriate authorities (for the purpose of implementation, the Northern Territory will be regarded as a constituent State). To this end, the Australian Government has been in consultation with the responsible State and Territory Ministers with the object of developing co-operative arrangements to co-ordinate and facilitate the implementation of the Covenant.</p>
Article 3 (equal rights of men and women)	Article 3 declares the right to equality between men and women in the enjoyment of their civil and political rights.	-

Article	Content	Australian reservation or declaration
Article 4 (derogation from rights in emergencies)	Article 4 allows states to derogate from some of their obligations under the Covenant to a necessary extent in a time of officially proclaimed public emergency, so long as such derogation does not involve racial discrimination.	-
Article 5 (non-diminution of rights)	Article 5 states that the Covenant does not imply any right to undertake activities aimed at destruction or limitation of any rights and freedoms recognised in the Covenant.	-
Article 6 (right to life)	Article 6 states that every human has a right to life.	-
Article 7 (freedom from torture or other cruel, degrading or inhuman treatment)	Article 7 states that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.	-
Article 8 (freedom from slavery and forced labour)	Article 8 states that no one shall be held in slavery or servitude or be required to perform forced or compulsory labour.	-
Article 9 (security of the person and freedom from arbitrary detention)	Article 9 states that everyone has the right of liberty and security of person, and no one should be subjected to arbitrary arrest or detention.	-
Article 10 (right to humane treatment in detention)	Article 10 states that all persons deprived of their liberty should be treated with humanity and respect.	Australia accepts the principle stated in paragraph 1 of article 10 and the general principles of the other paragraphs of that article, but makes the reservation that these and other provisions of the Covenant are without prejudice to laws and lawful arrangements, of the type

Article	Content	Australian reservation or declaration
		now in force in Australia, for the preservation of custodial discipline in penal establishments. In relation to paragraph 2(a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraphs 2(b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.
Article 11 (prohibition on imprisonment for inability to fulfil a contract)	Article 11 states that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.	-
Article 12 (right to freedom of movement)	Article 12 states that everyone has the right to liberty of movement and freedom to choose a residence.	-
Article 13 (expelling an alien)	Article 13 requires states to expel an alien only where there are compelling reasons of national security to do so.	-
Article 14 (fair trial and hearing)	Article 14 declares the right to equality before the law, the right to be presumed innocent until proven guilty and to have a fair and public hearing by an impartial tribunal.	"Australia accepts paragraph 3(b) on the understanding that the reference to adequate facilities does not require provision to prisoners of all the facilities available to a prisoner's legal representative." Australia accepts the requirement in paragraph 3(d) that everyone is entitled to be tried in his presence, but reserves the right to exclude an accused person where his

Article	Content	Australian reservation or declaration
		<p>conduct makes it impossible for the trial to proceed.</p> <p>"Australia interprets paragraph 3(d) of article 14 as consistent with the operation of schemes of legal assistance in which the person assisted is required to make a contribution towards the cost of the defence related to his capacity to pay and determined according to law, or in which assistance is granted in respect of other than indictable offences only after having regard to all relevant matters." Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision".</p>
Article 15 (prohibition on retrospective criminal laws)	Article 15 prohibits states from holding anyone guilty of any criminal offence which did not constitute a criminal offence at the time of commission.	-
Article 16 (right to recognition as a person)	Article 16 states that everyone shall have the right to recognition everywhere as a person before the law.	-
Article 17 (freedom from interference with privacy, family, home or reputation)	Article 17 states that no one shall be subjected to unlawful interference with their privacy, family, home, correspondence, honour or reputation.	Australia accepts the principles stated in article 17 without prejudice to the right to enact and administer laws which, insofar as they authorise action which impinges on a person's privacy, family, home or

Article	Content	Australian reservation or declaration
		correspondence, are necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the protection of public health or morals or the protection of the rights and freedoms of others
Article 18 (freedom of thought, conscience, religion or belief)	Article 18 requires states to ensure the right to freedom of thought, conscience and religion.	Australia declares that laws now in force in Australia relating to the rights of persons who have been convicted of serious criminal offences are generally consistent with the requirements of articles 14, 18, 19, 25 and 26 and reserves the right not to seek amendment of such laws.
Article 19 (freedom of information, opinion and expression)	Article 19 states that everyone shall have the right to hold opinions without interference.	Australia interprets paragraph 2 of article 19 as being compatible with the regulation of radio and television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people.
Article 20 (prohibition of advocacy of national, racial or religious hatred)	Article 20 imposes a prohibition on propaganda advocating war or national, racial or religious hatred.	Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interests of public order (order public), the right is reserved not to introduce any further

Article	Content	Australian reservation or declaration
		legislative provision on these matters.
Article 21 (freedom of assembly)	Article 21 requires states to recognise the right to peaceful assembly.	-
Article 22 (freedom of association)	Article 22 requires states to recognise the right to freedom of association with others.	-
Article 23 (right to marry and found a family)	Article 23 requires states to protect families entered into with free and full consent.	-
Article 24 (rights of children)	Article 24 requires states to register every child and declares a child's right to declare a nationality.	-
Article 25 (right to take part in public affairs, voting rights and access to public service)	Article 25 declares the right to take part in the conduct of public affairs, vote and be elected, and to have access to public service.	The reference in paragraph (b) of article 25 to "universal and equal suffrage" is accepted without prejudice to law which provide that factors such as regional interests may be taken into account in defining electoral divisions, or which establish franchises for municipal and other local government elections related to the sources of revenue and the functions of such government.
Article 26 (equality before the law)	Article 26 requires states to guarantee to all persons equal and effective protection against discrimination.	The provisions of articles 2(1) and 24(1), 25 and 26 relating to discrimination and distinction between persons shall be without prejudice to laws designed to achieve for the members of some class or classes of persons equal enjoyment of the rights defined in the Covenant. Australia accepts article 26 on the basis that the object of the provision is to confirm the right of each

Article	Content	Australian reservation or declaration
		person to equal treatment in the application of the law.
Article 27 (rights of members of ethnic, linguistic and religious minorities)	Article 27 declares the right of members of religious, ethnic or linguistic minorities to enjoy their culture, practice their religion and use their language.	-
<b>International Covenant on Economic, Social and Cultural Rights</b>		
Article 1 (right to self-determination)	All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development. <sup>2</sup>	-
Article 2 (rights to equality and non-discrimination)	Each State Party undertakes to take steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty. Everyone is entitled to the same rights without discrimination of any kind.	-
Article 3 (equal rights of men and women)	The States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty.	-
Article 4 (limit rights only for the welfare of society)	Limitations may be placed on these rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.	-
Article 5 (non-diminution of rights)	No person, group or government has the right to destroy any of these rights.	-
Article 6 (right to work)	Everyone has the right to work, including the right to gain one's living at work that	-

<sup>2</sup> Council of Europe, *Compass Summary of ICCPR and ICESCR*  
[http://www.eycb.coe.int/compass/en/pdf/6\\_4.pdf](http://www.eycb.coe.int/compass/en/pdf/6_4.pdf).

Article	Content	Australian reservation or declaration
	is freely chosen and accepted.	
Article 7 (just conditions of work)	Everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.	-
Article 8 (freedom of association)	Everyone has the right to form and join trade unions, the right to strike.	-
Article 9 (social security)	Everyone has the right to social security, including social insurance.	-
Article 10 (family protection and assistance)	Protection and assistance should be accorded to the family. Marriage must be entered into with the free consent of both spouses. Special protection should be provided to mothers. Special measures should be taken on behalf of children, without discrimination. Children and youth should be protected from economic exploitation. Their employment in dangerous or harmful work should be prohibited. There should be age limits below which child labour should be prohibited.	-
Article 11 (standard of living)	Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.	-
Article 12 (physical and mental health)	Everyone has the right to the enjoyment of the highest	-

Article	Content	Australian reservation or declaration
	attainable standard of physical and mental health.	
Article 13 (education)	Everyone has the right to education. Primary education should be compulsory and free to all.	-
Article 14 (free and compulsory primary education)	Those States where compulsory, free primary education is not available to all should work out a plan to provide such education.	-
Article 15 (cultural life and benefits of scientific progress)	Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress	-
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment</b>		
Article 1 (torture definition)	Article 1 defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.	-
Article 2 (torture prevention)	Article 2 requires states to undertake measures to prevent acts of torture, with no justifications of torture being acceptable.	-

Article	Content	Australian reservation or declaration
Article 3 (danger of torture overseas)	Article 3 prohibits states from expelling, returning or extraditing a person where there are substantial grounds for believing that person would be in danger of being subjected to torture.	-
Article 4 (torture as criminal offence)	Article 4 requires states to ensure that all acts or attempts of torture are offences under criminal law.	-
Article 5 (necessary measures)	Article 5 requires states to establish jurisdiction over torture offences if required.	-
Article 6 (custody and other legal measures)	Article 6 requires states to take torture offenders into custody for such time as is necessary to enable any criminal or extradition proceedings to be instituted.	-
Article 7 (fair treatment in the proceedings)	Article 7 requires states to guarantee fair treatment at all stages of proceedings if such are brought to the competent authorities for the purpose of prosecution.	-
Article 8 (torture as extraditable offence)	Article 8 requires the extradition to be subject to other conditions provided by the law of the requested state.	-
Article 9 (assistance in criminal proceedings)	Article 9 requires states to afford each other the greatest level of assistance in connection with criminal proceedings brought in respect of torture.	-
Article 10 (education on prohibition against torture)	Article 10 requires states to educate and provide information on prohibition against torture for persons involved in the custody, interrogation or treatment of people subjected to any	-

Article	Content	Australian reservation or declaration
	form or arrest, detention or imprisonment.	
Article 11 (systematic review)	Article 11 requires states to keep under systematic review interrogation rules, instructions, methods and practices.	-
Article 12 (torture investigations)	Article 12 requires states to ensure a prompt and impartial investigation of an act of torture.	-
Article 13 (complainants and witnesses)	Article 13 requires states to protect complainants and witnesses from and ill-treatment or intimidation and examine their case promptly and impartially.	-
Article 14 (redress for torture victims)	Article 14 requires states to ensure that the victim of torture has an enforceable right to fair and adequate compensation.	-
Article 15 (evidence obtained by means of torture)	Article 15 prohibits the use of statements obtained by means of torture to be used as evidence in any proceedings, except against a person accused of torture.	-
Article 16 (torture prevention)	Article 16 requires states to prevent other acts of cruel, inhuman or degrading treatment which are not covered by the article 1 definition.	-
<b>Convention on the Rights of the Child</b>		
Article 1	Everyone under 18 years of age has all the rights in this Convention.	-
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from.	-

Article	Content	Australian reservation or declaration
Article 3	All organisations concerned with children should work towards what is best for each child.	-
Article 4	Governments should make these rights available to children.	-
Article 5	Governments should respect the rights and responsibilities of families to guide their children so that, as they grow up, they learn to use their rights properly	-
Article 6	Children have the right to live a full life. Governments should ensure that children survive and develop healthily.	-
Article 7	Children have the right to a legally registered name and nationality. Children also have the right to know their parents and, as far as possible, to be cared for by them.	-
Article 8	Governments should respect a child's right to a name, a nationality and family ties.	-
Article 9	Children should not be separated from their parents unless it is for their own good. For example, if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might harm the child.	-
Article 10	Families who live in different countries should be allowed to move between those countries so that parents and children can stay in	-

Article	Content	Australian reservation or declaration
	contact, or get back together as a family.	
Article 11	Governments should take steps to stop children being taken out of their own country illegally.	-
Article 12	Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.	-
Article 13	Children have the right to get and to share information, as long as the information is not damaging to them or to others.	-
Article 14	Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide children on these matters.	-
Article 15	Children have the right to meet with other children and young people and to join groups and organisations, as long as this does not stop other people from enjoying their rights.	-
Article 16	Children have the right to privacy. The law should protect them from attacks against their way of life, their good name, their family and their home.	-
Article 17	Children have the right to reliable information from the media. Mass media such as television, radio and newspapers should provide information that children can understand and should not	-

Article	Content	Australian reservation or declaration
	promote materials that could harm children.	
Article 18	Both parents share responsibility for bringing up their children and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.	-
Article 19	Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.	-
Article 20	Children who cannot be looked after by their own family must be looked after properly by people who respect their religion, culture and language.	-
Article 21	When children are adopted the first concern must be what is best for them. The same rules should apply whether children are adopted in the country of their birth or if they are taken to live in another country.	-
Article 22	Children who come into a country as refugees should have the same rights as children who are born in that country.	-
Article 23	Children who have any kind of disability should receive special care and support so that they can live a full and independent life.	-
Article 24	Children have the right to good quality health care,	-

Article	Content	Australian reservation or declaration
	clean water, nutritious food and a clean environment so that they will stay healthy. Richer countries should help poorer countries achieve this.	
Article 25	Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.	-
Article 26	The Government should provide extra money for the children of families in need.	-
Article 27	Children have the right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this.	-
Article 28	Children have the right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthier countries should help poorer countries achieve this.	-
Article 29	Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, their cultures and other cultures.	-
Article 30	Children have the right to learn and use the language and customs of their families, whether or not these are shared by the majority of the people in the country where they live, as long as this does not harm others.	-

Article	Content	Australian reservation or declaration
Article 31	Children have the right to relax, play and to join in a wide range of leisure activities.	-
Article 32	Governments should protect children from work that is dangerous or that might harm their health or education.	-
Article 33	Governments should provide ways of protecting children from dangerous drugs.	-
Article 34	Governments should protect children from sexual abuse.	-
Article 35	Governments should make sure that children are not abducted or sold.	-
Article 36	Children should be protected from any activities that could harm their development.	-
Article 37	Children who break the law should not be treated cruelly. They should not be put in a prison with adults and should be able to keep in contact with their family.	Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply

Article	Content	Australian reservation or declaration
		with the obligation imposed by article 37 (c). <sup>3</sup>
Article 38	Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.	-
Article 39	Children who have been neglected or abused should receive special help to restore their self-respect.	-
Article 40	Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.	-
Article 41	If the laws of a particular country protects children better than the articles of the Convention, then those laws should override the Convention.	-
Article 42	Governments should make the Convention known to all parents and children.	
<b>Convention on the Rights of Persons with Disabilities</b>		
Article 1 (purpose)	Article 1 states that the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.	-
Article 2 (definitions)	Article 2 provides definitions for communication, language, discrimination on the basis of disability, reasonable accommodation, and universal design.	-

<sup>3</sup> UN Treaty Collection, *Convention on the Rights of the Child*  
[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec).

Article	Content	Australian reservation or declaration
Article 3 (general principles)	The general principles in Article 3 include non-discrimination, accessibility, equality of opportunity, etc.	-
Article 4 (general obligations)	Article 4 requires states to fulfil listed general obligations to ensure the full realization of the Convention.	-
Article 5 (equality and non-discrimination)	Everyone is entitled to the equal protection and benefit of the law without discrimination.	-
Article 6 (women with disabilities)	Countries must take all appropriate measures to ensure that women with disability are able to fully enjoy the rights and freedoms set out in the Convention.	-
Article 7 (children with disabilities)	The best interests of the child must be a primary consideration in all actions concerning children with disability.	-
Article 8 (awareness-raising)	Countries must raise awareness of the rights, capabilities and contributions of people with disability.	-
Article 9 (accessibility)	People with disability have the right to access all aspects of society on an equal basis with others including the physical environment, transportation, information and communications, and other facilities and services provided to the public.	-
Article 10 (right to life)	People with disability have the right to life. Countries must take all necessary measures to ensure that people with disability are able to effectively enjoy this	-

Article	Content	Australian reservation or declaration
	right on an equal basis with others.	
Article 11 (situations of risk and humanitarian emergencies)	Countries must take all necessary measures to ensure the protection and safety of all people with disability in situations of risk, including armed conflict, humanitarian emergencies and natural disasters.	-
Article 12 (equal recognition before the law)	People with disability have the right to recognition as people before the law. People with disability have legal capacity on an equal basis with others in all aspects of life. Countries must take appropriate measures to provide support to people with disability so that they can effectively exercise their legal capacity.	-
Article 13 (access to justice)	People with disability have the right to effective access to justice on an equal basis with others, including through the provision of appropriate accommodations.	-
Article 14 (liberty and security of the person)	People with disability have the right to liberty and security of person on an equal basis with others.	-
Article 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment)	People with disability have the right to be free from torture and from cruel, inhuman or degrading treatment or punishment.	-
Article 16 (freedom from exploitation, violence and abuse)	People with disability have the right to be protected from all forms of exploitation, violence and abuse, including their gender based aspects, within and outside the home.	-

Article	Content	Australian reservation or declaration
Article 17 (protecting the integrity of the person)	Every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others.	-
Article 18 (liberty of movement and nationality)	People with disability have the right to a nationality and liberty of movement.	-
Article 19 (living independently and being included in the community)	People with disability have the right to live independently in the community.	-
Article 20 (personal mobility)	Countries must take effective and appropriate measures to ensure personal mobility for people with disability in the manner and time of their choice, and at affordable cost.	-
Article 21 (freedom of expression and opinion, and access to information)	People with disability have the right to express themselves, including the freedom to give and receive information and ideas through all forms of communication, including through accessible formats and technologies, sign languages, Braille, augmentative and alternative communication, mass media and all other accessible means of communication.	-
Article 22 (respect for privacy)	People with disability have the right to privacy. Information about people with disability, including personal information and information about their health should be protected.	-
Article 23 (respect for home and the family)	People with disability have the right to marry and to found a family. Countries must provide effective and	-

Article	Content	Australian reservation or declaration
	appropriate support to people with disability in bringing up children, and provide alternative care to children with disability where the immediate family is unable to care for them.	
Article 24 (education)	People with disability have a right to education without discrimination. Countries must provide reasonable accommodation and individualised support to maximise academic and social development.	-
Article 25 (health)	People with disability have the right to the enjoyment of the highest attainable standard of health without discrimination.	-
Article 26 (habilitation and rehabilitation)	Countries must take effective and appropriate measures to enable people with disability to develop, attain and maintain maximum ability, independence and participation through the provision of habilitation and rehabilitation services and programmes.	-
Article 27 (work and employment)	People with disability have the right to work, including the right to work in an environment that is open, inclusive and accessible.	-
Article 28 (adequate standard of living and social protection)	People with disability have the right to an adequate standard of living including food, water, clothing and housing, and to effective social protection including poverty reduction and public housing programmes.	-

Article	Content	Australian reservation or declaration
Article 29 (participation in political and public life)	People with disability have the right to participate in politics and in public affairs, as well as to vote and to be elected.	-
Article 30 (participation in cultural life, recreation, leisure and sport)	People with disability have the right to take part in cultural life on an equal basis with others, including access to cultural materials, performances and services, and to recreational, leisure and sporting activities.	-
Article 31 (statistics and data collection)	Countries must collect information about people with disability, with the active involvement of people with disability, so that they can better understand the barriers they experience and make the Convention rights real.	-
-	-	<p>General Declaration:          “Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;</p> <p>Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its</p>

Article	Content	Australian reservation or declaration
		<p>understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards;</p> <p>Australia recognizes the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria."<sup>4</sup></p>
<b>Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women</b>		
Article 11 (protection from intimidation)	Article 11 requires a state party to ensure the protection of those submitting communications.	-
<b>Optional Protocol to the International Covenant on Civil and Political Rights</b>		
Article 1 (competence to receive communications)	Article 1 acknowledges that the Committee is competent to receive and consider	-

<sup>4</sup> UN Treaty Collection, *Convention on the Rights of Persons with Disabilities*.  
[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en&clang=en#EndDec).

Article	Content	Australian reservation or declaration
	communications from individuals who claim to be victims of a violation of any of the rights set forth in the Covenant.	
Article 2 (exhaustion of local remedies)	Article 2 sets out that the individual claimant's submission will be considered if the claimant exhausted all available domestic remedies.	-
Article 3 (anonymous communications)	Article 3 declares any anonymous communications to be inadmissible.	-
<b>Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the abolition of the death penalty</b>		
Article 1 (execution and death penalty)	Article 1 declares that no one within the jurisdiction of a State Party shall be executed and requires states to abolish the death penalty.	-
<b>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict</b>		
Article 1 (age of 18 years)	Article 1 requires states to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.	-
Article 2 (compulsory recruitment)	Article 2 prevents states from compulsorily recruiting persons under the age of 18 years into the armed forces.	-
Article 3 (voluntary recruitment)	Article 3 requires states to raise the minimum age for the voluntary recruitment and only allow voluntary recruitment for persons under 18 years old if it is genuinely voluntary, is carried out with informed consent of parents or legal guardians, persons are fully informed of the duties	-

Article	Content	Australian reservation or declaration
	involved in military service and can provide reliable proof of age.	
Article 4 (non-State armed forces)	Article 4 requires states to prevent recruitment and use in hostilities of persons under the age of 18 years by armed groups distinct from the armed forces of a State.	-
Article 5 (non-diminutive)	Article 5 states to not preclude any other laws and provisions that are more conducive to the realisation of the rights of the child.	-
Article 6 (implementation and enforcement)	Article 6 requires states to take all necessary measures to ensure effective implementation and enforcement of the provisions, make them widely known and accord appropriate assistance to persons who were used in hostilities contrary to the Protocol.	-
-	-	<p>The Australian Defence Force (ADF) shall continue to observe a minimum voluntary recruitment age of 17 years.</p> <p>Pursuant to Article 3 (5) of the Optional Protocol, age limitations do not apply to military schools. A list of authorised establishments, both military and civilian (including those used to train apprentices), to which this age exemption applies is held by the Service Director-General Career Management. Age limitations also do not apply to cadet schemes, members of which are not recruited</p>

Article	Content	Australian reservation or declaration
		<p>into, and are therefore not members of, the ADF.</p> <p>Persons wishing to join the ADF must present an original certified copy of their birth certificate to their recruiting officer. Before their enlistment or appointment, all ADF applicants who are less than 18 years of age must present the written informed consent of their parents or guardians.</p> <p>All applicants wishing to join the ADF must be fully informed of the nature of their future duties and responsibilities. Recruiting officers must be satisfied that an application for membership by a person less than 18 years of age is made on a genuinely voluntary basis.</p>
<b>Optional Protocol to the Convention on the Rights of Persons with Disabilities</b>		
Article 1	Provides that the state recognises the competence of the Committee on the Rights of Persons with Disabilities (the Committee) to receive and consider complaints—referred to as ‘communications’—from individuals or groups of individuals who claim to be victims of violation by a state party of the provisions of the Convention. The Committee cannot receive communications about a state not a party to the Protocol, even if that state is a party to the Convention.	Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards; Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity

Article	Content	Australian reservation or declaration
		<p>on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards; Australia recognizes the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.</p>
Article 2	Sets out the basis upon which the Committee will consider a communication inadmissible. This includes situations where the communication is anonymous; where domestic remedies have not reasonably been exhausted; and, where the alleged violation occurred prior to the entry into force of the	-

Article	Content	Australian reservation or declaration
	Protocol in relation to the state.	
Article 3	Requires the Committee to bring any communication it receives to the attention of the relevant state. The state then has six months to respond to the communication.	-
Article 4	Empowers the Committee to request a state to take interim measures to avoid irreparable damage to the victims of the alleged violation following receipt of the communication but before its determination.	-
Article 5	Provides that the Committee shall examine communications in closed session. After this examination, the Committee is required to forward its suggestions and recommendations, if any, to the relevant state and the complainant.	-
Article 6	Provides that the Committee has the power to conduct an inquiry into alleged grave or systematic violations by a state of rights provided by the Convention. Such an inquiry will, as far as possible, be conducted in co-operation with the state.	-
Article 7	Provides that the Committee may invite a state that has been subject of an inquiry conducted under article 6 of the Protocol to include in its	-

Article	Content	Australian reservation or declaration
	report under article 35 of the Convention details of any measures taken to address the findings of the Committee. The Committee is also empowered, after six months, to request a specific report from the state on the measures it has taken to address the Committee's findings.	
<b>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</b>		
Article 1	Article 1 sets out an objective for the Protocol to establish a system of regular visits to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment.	-
Article 3	Article 3 requires states to set up, designate or maintain a national preventive mechanism.	-
Article 4	Article 4 requires states to allow visits to any place under its control where persons may be deprived of their liberty.	-
Article 15	Article 15 prohibits states to order any sanction against any person for communicating to the Subcommittee on Prevention.	-
Article 18	Article 18 requires states to guarantee the functional independence of the national preventative mechanisms and their personnel, and provide it with sufficient resources.	-
Article 19	Article 19 requires national preventative mechanisms to	-

Article	Content	Australian reservation or declaration
	be able to examine the treatment of persons deprived of their liberty in places of detention, make recommendations to relevant authorities and submit proposals and observations.	
Article 21	Article 21 prohibits any authority or official to order any sanction against person or organization for communicating with national preventive mechanism.	-
-	-	In accordance with Article 24 of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Australia declares the postponement of the implementation of Australia's obligations under Part IV of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, for three years.
<b>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</b>		
Article 1 (prohibitions)	Article 1 requires states to prohibit the sale of children, child prostitution and child pornography.	-
Article 2 (definitions)	Article 2 defines sale of children as any act whereby a child is transferred to another for consideration. Child prostitution is defined as the use of a child in sexual activities for consideration, and child pornography is defined as any	-

Article	Content	Australian reservation or declaration
	representation of a child engaged in real or simulated sexual activities.	
Article 3 (criminal activities)	Article 3 requires states to ensure that the context of sale of children, child prostitution and sale of child pornography are fully covered under its criminal or penal law.	-
Article 4 (necessary measures)	Article 4 requires states to take all necessary measures to establish its jurisdiction over the offences when committed outside of its geographical territory.	-
Article 5 (extraditable offences)	Article 5 states that such offences are extraditable.	-
Article 6 (state assistance)	Article 6 requires states to afford one another assistance in investigations, or criminal or extradition proceedings in relation to such offences.	-
Article 7 (seizure and confiscation)	Article 7 requires states to seize and confiscate goods used to commit such offences and proceeds derived from such offences, and take measures at closing premises used to commit such offences.	-
Article 8 (protect interests of child victims)	Article 8 requires states to undertake particular measures to protect child victims, including informing them of their rights, providing appropriate support services, and so on.	-
Article 9 (prevention of child abuse offences)	Article 9 requires states to create and modify instruments which prevent such offences, promote awareness in the public at large, provide appropriate	-

Article	Content	Australian reservation or declaration
	assistance to victims and ensure victim's access to compensation.	
Article 10 (international cooperation)	Article 10 requires states to strengthen international cooperation for the prevention, detection, investigation, prosecution and punishment of such offences.	-
Article 11 (non-diminutive)	Article 11 states that the Protocol does not affect other provisions that are more conducive to the realization of the rights of the child which may apply.	-

## Research Paper 7: Appendix B – Other multilateral treaties to which Australia is a party containing human rights protective obligations

<b>LABOUR</b>	
<b>The International Labour Organisation's (ILO) Fundamental Conventions</b>	
Forced Labour Convention, 1930 (No. 29)	Ratified in 1932
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	Ratified in 1973
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	Ratified in 1973
Equal Remuneration Convention, 1951 (No. 100)	Ratified in 1973
Abolition of Forced Labour Convention, 1957 (No. 105)	Ratified in 1960
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Ratified in 1974 <sup>1</sup>
Worst Forms of Child Labour Convention, 1999 (No. 182)	Ratified in 2006
<i>NOTE that Australia has not ratified the Minimum Age Convention, 1973 (No. 138)</i>	
<b>The ILO's Governance Conventions<sup>2</sup></b>	
Labour Inspection Convention, 1947 (No. 81) (excluding Part II)	Ratified in 1975
Employment Policy Convention, 1964 (No. 122)	Ratified in 1969
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	Ratified on 11 June 1979
<i>NOTE that Australia has not ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129).</i>	
<b>NATIONALITY, REFUGEES AND STATELESSNESS</b>	
Convention Relating to the Status of Refugees (1951)	Ratified on 22 January 1954
Convention relating to the Status of Stateless Persons (1954)	Acceded to on 13 December 1973
Convention on the Nationality of Married Women (1957)	Acceded to on 14 March 1961
Convention on the Reduction of Statelessness (1961)	Acceded to on 13 December 1973

<sup>1</sup> Convention No. 111 is appended to Schedule 1 of the *Australian Human Rights Commission Act 1986* (Cth) and underpins the *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth).

<sup>2</sup> Australia is also party to a number of the ILO's technical conventions all of which can be viewed on the ILO's website:

<[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200\\_COUNTRY\\_ID:102544](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:102544)>. For example, the Convention on Workers with Family Responsibilities, 1980 (No.156) is reflected in sections 4A and 7A of the *Sex Discrimination Act 1984* (Cth) and Part 6-4 (Additional Provisions Relating To Termination Of Employment) of the *Fair Work Act 2009* (Cth). This Act also reflects the Convention on Termination of Employment at the Initiative of the Employer, 1982 (No. 158).

Protocol Relating to the Status of Refugees (1967)	Ratified on 13 December 1973
<b>CRIME AND TERRORISM</b>	
International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (1923)	Acceded to on 20 June 1935
Slavery Convention (1926)	Ratified on 18 June 1927
1947 Protocol to amend the Convention for the Suppression of the Circulation of and Traffic in Obscene Publications	Signed definitively on 13 November 1947
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	Ratified on 8 July 1949
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	Ratified on 6 January 1958
Convention Against the Taking of Hostages (1979)	Ratified on 21 May 1990
United Nations Convention Against the Illicit Traffic in Narcotic Drugs Psychotropic Substances (1988)	Ratified on 16 November 1992
Convention on Laundering Search, Seizure and Confiscation of Proceeds from Crime (1990)	Ratified on 31 July 1997
Convention for the Suppression of Terrorist Bombings (1997)	Ratified on 9 August 2002
Convention on Combating Bribery of Foreign Officials in International Business Transactions (1997)	Ratified on 18 October 1999
Rome Statute of the International Criminal Court (1998)	Ratified on 1 July 2002
Convention for the Suppression of the Financing of Terrorism (1999)	Ratified on 26 September 2002
Convention against Transnational Organized Crime (2000)	Ratified on 27 May 2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)	Ratified on 14 Sep 2005
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000)	Ratified on 27 May 2004
<i>Note that Australia has not ratified the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime</i>	
Convention on Cybercrime (2001)	Acceded to on 30 November 2012
Convention against Corruption (2003)	Ratified on 7 December 2005
The International Convention for the Suppression of Acts of Nuclear Terrorism (2005)	Ratified on 16 March 2012
<b>THE ENVIRONMENT</b>	

The World Heritage Convention (1972)	Ratified on 22 August 1974
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973) <sup>3</sup>	Ratified on 29 July 1976
Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Sub-Soil thereof (1971)	Ratified on 23 January 1973
The International Convention for the Prevention of Pollution from Ships (MARPOL) and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships (1973) <sup>4</sup>	Ratified on 14 October 1987
Vienna Convention for the Protection of the Ozone Layer (including the Final Act) (1985)	Acceded to on 16 September 1987
Montreal Protocol on Substances that Deplete the Ozone Layer (1987)	Ratified on 17 August 1989
Convention on Biological Diversity (CBD) (1992) <sup>5</sup>	Ratified on 18 June 1993
United Nations Framework Convention on Climate Change (UNFCCC) (1992)	Ratified on 30 Dec 1992
UNFCCC Kyoto Protocol (1997)	Ratified on 12 Dec 2007
Stockholm Convention on Persistent Organic Pollutants (2001)	Ratified on 20 May 2004
Minamata Convention on Mercury (2013)	Not yet ratified
The Paris Agreement	Ratified on 10 November 2016
<b>ECONOMIC, SOCIAL AND CULTURAL RIGHTS</b>	
Paris Convention for the Protection of Industrial Property and Final Protocol (1907)	Acceded to on 10 October 1925
International Convention for the Protection of Literary and Artistic Works (1908)	Acceded to on 14 April 1928
Additional Protocol to the International Convention for the Protection of Literary and Artistic Works (1914)	Ratified on 8 July 1914
International Sanitary Convention (1926)	Ratified on 6 September 1928
1938 Convention amending the 1926 International Sanitary Convention	Ratified on 28 September 1939
1944 International Sanitary Convention modifying the 1926 International Sanitary Convention	Acceded to on 3 April 1945

<sup>3</sup> Ibid.

<sup>4</sup> The *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Navigation Act 2012* incorporate MARPOL into Australian law.

<sup>5</sup> The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) incorporates this Convention into Australian law in order to comply with Australia's obligations under the Convention. See in particular ss303BA (1)(a) and 303ER.

Convention against Discrimination in Education (1960) [under the auspices of UNESCO]	Accepted on 29 November 1966
Convention for the Mutual Recognition of Inspections in Respect of the Manufacture of Pharmaceutical Products (1970)	Accepted on 27 October 1992
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1990)	Accepted 30 October 1989
International Treaty on Plant Genetic Resources for Food and Agriculture (2001)	Ratified on 12 December 2005
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2009)	Acceded to on 18 September 2009
<b>WAR AND WEAPONS</b>	
Geneva Gas Protocol (1925)	Ratified on 24 May 1930
Convention relative to the Treatment of Prisoners of War (1929)	Ratified on 23 June 1931
First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)	Ratified on 14 October 1958 <sup>6</sup>
Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)	Ratified on 14 October 1958
Third Geneva Convention relative to the Treatment of Prisoners of War (1949)	Ratified on 14 October 1958
Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)	Ratified on 14 October 1958
Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) (1954)	Ratified on 19 September 1984
Treaty on the Non Proliferation of Nuclear Weapons (1968)	Ratified on 23 January 1973
Biological Weapons Convention (1972)	Ratified on 5 October 1970
Additional Protocol I relating to the Protection of Victims of International Armed Conflicts (1977)	Ratified on 21 June 1991
Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts (1977)	Ratified on 21 June 1991
Convention on the prohibition of military or any hostile use of environmental modification techniques (ENMOD) (1977)	Ratified on 7 September 1984
Convention on Certain Conventional Weapons (1980) and Protocols I, II and III	Ratified on 29 September 1983

<sup>6</sup> International Committee of the Red Cross, *The Geneva Conventions and their commentaries* <<https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>>. Australia's obligations under the four Geneva Conventions have been incorporated into Australian law by the *Geneva Conventions Act 1957 (Cth)*. This Act was amended in 1991 after Australia ratified the Additional Protocols of 1977. Australia has also enacted other legislation to implement obligations pursuant to arms control and disarmament treaties and to provide for the prosecution of war crimes in certain limited circumstances. The four Geneva Conventions were published in the Official Gazette as scheduled to the *Geneva Conventions Act 1957*. Additional Protocol I was published in the Gazette as schedule to the *Geneva Conventions Amendment Act 1991*.

Protocol IV and Amended Protocol II, Amendment to the Convention Protocol V	Ratified on 22 August 1997 Ratified on 3 December 2002 Ratified on 4 January 2007
Chemical Weapons Convention (1993)	Ratified on 6 May 1994
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Treaty) (1997)	Ratified on 14 January 1999
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2002)	Ratified on 26 September 2006
Additional Protocol III relating to the Adoption of an Additional Distinctive Emblem (2005)	Ratified on 15 July 2009
Convention on Cluster Munitions (2008)	Ratified on 8 October 2012
<b>WOMEN</b>	
Convention on the Political Rights of Women (1953)	Acceded to on 10 July 1974
<b>CHILDREN</b>	
Hague Convention on the Civil Aspects of International Child Abduction (1980)	Ratified on 29 October 1986
<b>INTELLECTUAL &amp; INDUSTRIAL PROPERTY World Intellectual Property Organisation (WIPO)</b>	
Marrakesh Treaty to Facilitate Access to Published Works for People who are Blind, Visually Impaired or otherwise Print Disabled (2013) <sup>7</sup>	Ratified on 10 December 2015

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<sup>7</sup> The Treaty came into force on 30 September 2016.

## Appendix C – UN treaty body communications in respect of Australia 2010-2020

### Committee Against Torture<sup>1</sup>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>Chun Rong v Australia</i>	CAT/C/49/D/416/2010 (2012)	<ul style="list-style-type: none"> <li>• Non-refoulement (No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture: CAT, art 3(1)).</li> <li>• Chun Rong, a person seeking asylum, claimed that his forced return to China would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be in danger of being subjected to torture by Chinese authorities, because of his recorded profile as a Falun Gong leader. Chun Rong claimed that, prior to seeking asylum, he had been arrested, detained and tortured by Chinese authorities.</li> <li>• Chun Rong had initially applied for a protection visa in Australia, which was refused without him being interviewed. He then did not receive an invitation to give evidence at an appeal hearing of the Refugee Review Tribunal. The Tribunal found there was insufficient evidence to support his allegations and that there were inconsistencies in his initial</li> </ul>	<ul style="list-style-type: none"> <li>• Removal of Chun Rong to China would violate article 3 of CAT.</li> <li>• In determining whether there were substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of torture if deported to China, Australian authorities failed to verify his allegations and evidence through proceedings meeting its obligations to provide for effective, independent and impartial review of his allegations. Therefore, he did not have access to an effective remedy against the decision to reject his application for a Protection Visa.</li> </ul>

<sup>1</sup> Not including those communications where the Committee discontinued its consideration of the communication, pursuant to rule 116(1) of the Committee's Rules of Procedure: Committee Against Torture, *Rules of Procedure*, 50<sup>th</sup> session, UN Doc CAT/C/3/Rev.6 (1 September 2014) r 116.

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>application. Subsequent court decisions recognised that he was not informed of the Tribunal hearing and the opportunity to give evidence.</p>	
<i>ES v Australia</i>	CAT/C/59/D/652/2015 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> </ul> <p>ES, a person seeking asylum, claimed his forced return to Sri Lanka would violate his rights under article 3 of CAT, as he was at risk of serious and foreseeable harm of torture or inhuman and degrading treatment by Sri Lankan authorities or paramilitary groups, as a Christian Tamil from the Eastern Province of Sri Lanka, who was also known by Sri Lankan authorities as a member of the Liberation Tigers of Tamil Eelam (Tamil Tigers). ES claimed, when in Sri Lanka, Sri Lankan authorities had detained him for 1.5 years, during which time he was tortured and subject to inhuman and degrading treatment; 5 years later, he was again detained by Sri Lankan authorities for three months, during which time he was tortured again. During this period, he forcibly signed a confession of involvement with the LTTE.</p>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The evidence and circumstances invoked by the complainant did not show sufficient grounds for believing that he would run a real, foreseeable, personal and present risk of being subjected to torture in case of his removal to Sri Lanka, Australian authorities determined that ES' claims were not credible or substantiated by evidence and did not engage Australia's non-refoulement obligations, and the Committee also found that the burden of proof was not discharged by the complainant on the material before it, or in demonstrating that the Australian authorities' determination to deny him protection was arbitrary or unjust.</li> </ul>
<i>GA v Australia</i>	CAT/C/64/D/680/2015 (2018)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• GA, a person seeking asylum, claimed his forced return to Pakistan from Australia would violate his rights under article 3 of CAT, as there were substantial grounds for believing he faced a real risk of torture from members of the Pakistani Taliban. GA claimed he had been subject to threats and</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant did not adduce sufficient grounds to enable the Committee to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon return to Pakistan. The complainant's allegations of previous attacks</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>attacks from the Pakistani Taliban, among other things for running a music store, prior to his seeking asylum. He claimed that Pakistani authorities were unable to prevent gross human rights violations by the Pakistani Taliban and would not be able to protect him if he were returned.</p>	<p>by the Taliban were found to be inconsistent by Australian authorities, and occurred nine years prior to his complaint to the Committee, such that a real current risk of torture was not apparent.</p>
<i>GE v Australia</i>	CAT/C/61/D/725/2016 (2017)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• GE, a person seeking asylum, claimed his forced return to Sri Lanka from Australia would violate his rights under article 3 of CAT. GE claimed that he was likely to be subject of torture, inhuman or degrading treatment in Sri Lanka due to him being of Tamil ethnicity and Hindu from the Batticaloa District and therefore liable to forcible recruitment by the Liberation Tigers of Tamil Eelam (Tamil Tigers) and harassment by the Sri Lankan Army. He claimed that he had been subject to torture by the Criminal Investigation Unit of the Sri Lankan Army prior to seeking asylum.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant did not adequately demonstrate the existence of substantial grounds for believing that his return to Sri Lanka would expose him to a foreseeable, real and personal risk of torture. Australian authorities found that his accounts were inconsistent, unsupported by documentary evidence and assessed he was not entitled to refugee status. While not being bound by the findings of the Australian authorities, the Committee gave weight to their findings of fact. While the complainant disagreed with those findings, he failed to show that the decision of Australia to refuse him protection was clearly arbitrary or a denial of justice.</li> </ul>
<i>HK v Australia</i>	CAT/C/60/D/701/2015 (2017)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• HK, a person seeking asylum, claimed his forced return to Pakistan would violate his rights under article 3 of CAT. HK claimed there were substantial grounds for believing he would be in danger of being subjected to torture if returned, on the basis</li> </ul>	<ul style="list-style-type: none"> <li>• Removal of HK to Pakistan would violate article 3 of CAT. Australia is obligated not to forcibly remove him to Pakistan or any other country where he faced a real risk of being expelled or returned to Pakistan.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>of his connections with the Balochi community. He claimed that he was kidnapped by Pakistani authorities and tortured while detained, on suspicion of being a member of the Balochi nationalist independence movement. He was forced to become an informant against suspected members of the movement on threat of death.</p>	<ul style="list-style-type: none"> <li>• Australia failed to duly consider the period of time HK spent in detention and the threats made against him by Pakistani authorities in assessing the alleged risk he would face if returned to his country of origin. The complainant provided sufficient evidence for it to consider that his return to his country of origin would put him at a real, present and personal risk of being subjected to torture.</li> </ul>
<i>K v Australia</i>	CAT/C/56/D/591/2014 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• K, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as there were substantial grounds for believing that he would be in danger of being subjected to torture. He claimed the grounds for the risk of torture were his Tamil ethnicity, as well as his known involvement with the Liberation Tigers of Tamil Eelam (LTTE), having hidden LTTE cadres in his home after their escape from Sri Lankan army camps. He claimed that the Criminal Investigation Department searched his house and detained and tortured him for a week, after finding material belonging to LTTE in his home. He also claimed his father was shot dead by the Criminal Investigation Department because of his assisting his son to obtain his release.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant did not adduce sufficient grounds for the Committee to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his return to Sri Lanka. There were inconsistencies going to a lack of credibility of his claims, and a lack of objective evidence, that he was at risk of torture as a result of his ethnicity or political activities. He failed to discharge his burden of proof in presenting an arguable case, or to demonstrate that Australian authorities had failed to properly investigate his allegations in assessing that he was not entitled to protection.</li> </ul>
<i>KN v Australia</i>	CAT/C/59/D/649/2015 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<ul style="list-style-type: none"> <li>• KN, a person seeking asylum, claimed his rights under article 3 of CAT would be violated by his forcible removal to Sri Lanka. He claimed to be at risk of torture, inhuman or degrading treatment. KN spent four years in the Liberation Tigers of Tamil Eelam, before absconding. After absconding, members of the Karuna faction of the LTTE visited his father's home and sought his whereabouts, threatening to kill him. KN alleged he would be at risk of being detained and persecuted by Sri Lankan authorities if returned, because of his connections with the LTTE and his illegal departure.</li> </ul>	<ul style="list-style-type: none"> <li>• State authorities had found the complainant's claims of his personal situation not to be credible or sufficiently substantiated, so as to substantiate the existence of a personal risk. Before the Committee, the complainant failed to discharge the burden of proof to show an arguable case that Australian authorities' refusing him a protection visa as clearly arbitrary or a denial of justice, having failed to submit comments on the State party's observations to the Committee.</li> </ul>
<i>KV v Australia</i>	CAT/C/58/D/600/2014 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• KV, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as he would be at risk of torture, inhuman or degrading treatment as a man of Tamil ethnicity of the Batticaloa District. He also claimed to have been subject to threats by Sri Lankan Army soldiers, prior and after seeking asylum, after witnessing soldiers attacking a woman.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant did not discharge the burden of proof, providing insufficient material to enable the Committee to conclude that he would run a real, foreseeable, personal and present risk of being subject to torture if returned to Sri Lanka. The complainant had not provided sufficient evidence to support his claims that the Sri Lankan Army was interested in him, and that his fears were based upon anything other than speculation.</li> </ul>
<i>LP v Australia</i>	CAT/C/59/D/666/2015 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• LP, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT. LP claimed that there were substantial grounds for believing that he would be</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant did not discharge the burden of presenting an arguable case showing sufficient grounds for believing he would run a real, foreseeable, personal and</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>in danger of torture, inhuman or degrading treatment. LP was Tamil and claimed that the Sri Lankan Army shot his brother, and that he personally would be in danger for previous active volunteer work with the Tamil National Alliance in supporting the election of SY, a Tamil National Alliance politician.</p>	<p>present risk of being subjected to torture on being removed to Sri Lanka, as he failed to demonstrate on the State authorities' assessment that his claims as to his political involvement were sufficiently credible or that they elevated his risk profile. A general risk of violence based upon his ethnic status and status as a returned asylum seeker were insufficient to demonstrate a likelihood that he would be at personal risk, as required to enliven article 3 obligations.</p>
<p><i>MKM v Australia</i></p>	<p>CAT/C/60/D/681/2015 (2017)</p>	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• MKM, a person seeking asylum of Tajik ethnicity and Sunni Muslim religion, claimed that his forced removal to Afghanistan by Australia would violate his rights under article 3 of the <i>CAT</i>, as he would be subject to persecution, torture and potentially killed by the Taliban. He claimed that Afghan government would be unwilling or unable to protect him. Prior to seeking asylum, he claimed that both he and his father had been detained for five months by the Taliban, during which he was tortured; he also witnessed his father and another detainee be decapitated by the Taliban.</li> <li>• After seeking asylum in Australia, MKM was diagnosed with post-traumatic stress disorder, a condition exacerbated by his detention in Australia. He would not be able to obtain adequate medical care for his condition in Afghanistan.</li> </ul>	<ul style="list-style-type: none"> <li>• Removal of MKM to Afghanistan would violate article 3 of <i>CAT</i>. Australia is obligated not to forcibly remove him.</li> <li>• It was undisputed that MKM was detained and tortured by the Taliban, and that he was in a fragile medical condition. The Committee considered Australia failed to comply with its obligation to make a substantial effort to determine whether his risk profile represented a danger of being subject to torture and ill-treatment if he was returned to Afghanistan, and also did not give sufficient weight to the inability or unwillingness of Afghan authorities to protect him from persecution by the Taliban.</li> <li>• The Committee considered internal flight or relocation within Afghanistan did not represent a reliable or durable alternative for</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
			<p>MKM, the lack of protection from persecution of civilians by anti-government forces being generalized and often random.</p> <ul style="list-style-type: none"> <li>• Australia also failed to adequately assess the complainant's mental health condition, the availability of adequate treatment in Afghanistan, and the potential consequences of his return upon his condition.</li> </ul>
<i>RK v Australia</i>	CAT/C/58/D/609/2014 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• RK, a person seeking asylum, claimed his forced return to Sri Lanka would violate his rights under article 3 of CAT. RK claimed that he feared being arrested, interrogated, imprisoned, beaten or killed by the Sri Lankan Army, the Criminal Investigation Department or police or political groups as a Liberation Tigers of Tamil Eelam (LTTE) supporter. He claimed that as a young, single Tamil man with a scar on his head, he would be harmed on the suspicion that he was involved in fighting for the LTTE. He also claimed his brother had been killed by the Sri Lankan Army on suspicion of support for the LTTE.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant had not discharged his burden of proof as he failed to demonstrate he was subject of any attention by Sri Lankan authorities on the basis of his own suspected involvement with the LTTE, or to show why authorities would be interested in him 15 years after the death of his brother.</li> </ul>
<i>SH v Australia</i>	CAT/C/65/D/761/2016 (2018)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• SH, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as he feared he would be subjected to torture by Sri Lankan authorities</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The Committee concluded that the complainant had not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		because of his Tamil ethnicity and imputed political beliefs of support for the LTTE.	return to Sri Lanka. Claims of harassment were not considered to be substantiated.
<i>SJD v Australia</i>	CAT/C/51/D/387/2009 (2013)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• SJD, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of <i>CAT</i>, as he feared he would be subjected to torture by Sri Lankan authorities because of his past involvement as a local United National Party (UNP) activist and organizer, and the key organizer of the UNP affiliated local JSS Transport Board union organisation. He claimed to have been subject to threats, abduction and torture by authorities previously. He also claimed to fear that he would be killed or harmed by the Liberation Tigers of Tamil Eelam (LTTE) for having divulged information to Australian authorities about the process arranged by the LTTE by which he obtained a tourist visa to enter Australia, his family in Sri Lanka having been subject to threats by the LTTE.</li> </ul>	<ul style="list-style-type: none"> <li>• Removal of SJD to Sri Lanka would violate article 3 of <i>CAT</i>, and Australia obliged to refrain from forcibly returning SJD to Sri Lanka or any other country where he runs a real risk of being expelled or returned to Sri Lanka.</li> <li>• The Committee considered that the risk alleged by the complainant is real, personal and foreseeable. He faced a real risk of persecution on the basis of his political profile and information on the situation in Sri Lanka before the Committee. The Committee takes particular note of the fact that the complainant was diagnosed with post-traumatic stress disorder (PTSD) and a major depressive disorder linked to trauma suffered in Sri Lanka, and physical medical evidence supported he had been tortured previously.</li> </ul>
<i>SP v Australia</i>	CAT/C/68/D/718/2015 (2019)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• SS, a person seeking asylum, claimed his forced return to Sri Lanka would violate his rights under article 3 of <i>CAT</i>. He claimed he would be at real risk of significant harm, including torture, because of his Tamil ethnicity and imputed political opinion of</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of <i>CAT</i>.</li> <li>• The Committee concluded that the claim was not sufficiently substantiated and the deportation of the complainant to Sri Lanka would not be a violation.</li> <li>• The complainant had been removed to Sri Lanka prior to the decision in 2019.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>SS v Australia</i>	CAT/C/61/D/720/2015 (2017)	<p>support for the LTTE, because of his ethnicity and because of his brother's association with the LTTE.</p> <ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• SS, a person seeking asylum, claimed his forced return to Sri Lanka would violate his rights under article 3 of <i>CAT</i>, as he would be at real risk of being tortured and subjected to inhuman or degrading treatment by the Sri Lankan Army or associated paramilitary groups, due to his being of Tamil ethnicity from Palai village. He claimed that, prior to leaving Sri Lanka and seeking asylum, he had been detained by the Sri Lankan Army who accused him of being a member of the Liberation Tigers of Tamil Eelam (LTTE). He was assaulted during his detention.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of <i>CAT</i>.</li> <li>• The complainant did not adequately demonstrate the existence of substantial grounds for believing that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture. While the complainant was credible about past events and the Committee acknowledged the occurrence of general human rights violations against persons with real or perceived connections to the LTTE, the complainant adduced sufficient information to demonstrate a personal risk of torture if returned.</li> </ul>
<i>Subakaran R Thirugnanasampanthar v Australia</i>	CAT/C/61/D/614/2014 (2017)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• Thirugnanasampanthar, a person seeking asylum, claimed his forced return to Sri Lanka would likely result in his torture, being of Tamil origin and having been subject to torture and threats by the Sri Lankan Army for alleged involvement in LTTE activities prior to his seeking asylum.</li> <li>• The complainant was forcibly returned to Sri Lanka by Australia prior to his communication being considered, in breach of the Committee's request for interim measures that Australia not deport the complainant to Sri Lanka prior to the Committee considering his communication.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of <i>CAT</i>.</li> <li>• The complainant did not adequately demonstrate the existence of substantial grounds for believing that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture.</li> <li>• Australia violated article 22 of <i>CAT</i> by failing to cooperate with the Committee's request for interim measures in good faith, preventing the Committee from considering the communication effectively.</li> <li>• Australia is obligated to prevent similar violations of article 22 in the future and to</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
			<p>ensure that, where the Committee requests interim measures, it not deport complainants until the Committee has decided the complaint on the merits.</p>
<i>Susith Wasitha Ranawaka v Australia</i>	CAT/C/68/D/855/2017 (2019)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• The complainant, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT. He feared torture because of this political beliefs, namely his opposition to the United People’s Freedom Alliance, and having previously experienced significant harm because of his political beliefs.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The Committee concluded that the claim was not sufficiently substantiated and the deportation of the complainant to Sri Lanka would not be a violation.</li> </ul>
<i>TTP v Australia</i>	CAT/C/65/D/756/2016 (2018)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• TTP claimed that his forced return to Vietnam would violate his rights under article 3 of CAT.</li> <li>• No English version translation of the full decision of the Committee is publicly available. An advance unedited version is available.</li> </ul>	<ul style="list-style-type: none"> <li>• The complaint was found to be inadmissible due to non-exhaustion of domestic remedies.</li> </ul>
<i>VM v Australia</i>	CAT/C/67/D/723/2015 (2019)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• VM, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as he feared significant harm including torture because of his Tamil ethnicity and imputed political beliefs, as well as his membership of a particular social group, being a witness to war crimes and as a failed asylum seeker.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The Committee concluded that the complainant has not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his return to Sri Lanka.</li> <li>• The complainant had been removed to Sri Lanka prior to the decision in 2019.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>XQL v Australia</i>	CAT/C/52/D/455/2011 (2014)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• XQL, a person seeking asylum, claimed that her forced return to China would violate her rights under article 3 of CAT, as she feared being tortured by the Chinese authorities because of her continued involvement with the Tien Tao religion, particularly in Fujian province from where she came. She claimed to have been arrested, detained and beaten by Chinese authorities, prior to seeking asylum, because of her practice of the religion.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The complainant failed to satisfy the burden of proof to present an arguable case that there were substantial grounds on which to consider she was in danger of being subjected to torture on her return to China, as she failed to submit convincing evidence to substantiate her claims, having given various different names and identity documents to Australian authorities and provided information initially that she was a Falun Gong not Tien Tao practitioner.</li> </ul>
<i>YGH et al v Australia</i>	CAT/C/51/D/434/2010 (2013)	<ul style="list-style-type: none"> <li>• Non-refoulement; duty of State parties to prevent cruel, inhuman and degrading treatment: CAT, art 16(1).</li> <li>• YGH, a person seeking asylum, claimed that his own and his wife's forced return to China would violate their rights under article 3 of the CAT, as there were substantial grounds for believing that he would be subjected to torture due to his religion, because he had already been subjected to detention and abuse while detained by Chinese authorities for his religious activities. YGH claimed that he and his wife were also unfit to travel to China due to his general psychological state, as well as his wife's general state of health, and to return them would violate article 16 of the CAT.</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints under article 16 of CAT inadmissible. Aggravation of the condition of a complainant's health by virtue of deportation is generally insufficient, without other factors, to amount to degrading treatment in violation of article 16 and YGH's claim was therefore insufficiently substantiated. The article 16 claim in respect of YGH's wife was insufficiently substantiated by medical documents.</li> <li>• No violation of article 3 of CAT. Insufficient evidence provided to support an assessment that the complainant's return to his country of origin would result in a foreseeable, real and personal risk of torture, there being no medical evidence provided supporting his</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>YR v Australia</i>	CAT/C/61/D/713/2015 (2017)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• YR, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of <i>CAT</i>, as there were substantial grounds for believing he would be in danger of suffering torture due to his Tamil ethnicity, a longstanding dispute between his family and the Sri Lankan Army over its occupation of his family home, and as a failed asylum seeker. He also claimed to have been subjected to persecution and attempted abductions by paramilitary groups.</li> </ul>	<p>allegations of past torture or that his arrest and detention was on religious grounds.</p> <ul style="list-style-type: none"> <li>• No violation of article 3 of <i>CAT</i>.</li> <li>• The complainant had not adequately demonstrated the existence of substantial grounds for believing his forcible removal to Sri Lanka would expose him to a foreseeable, real and personal risk of torture, or that the decision to refuse him a protection visa by Australian authorities was clearly arbitrary or demounted to a denial of justice.</li> </ul>
<i>YS v Australia</i>	CAT/C/59/D/633/2014 (2016)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• YS, a person seeking asylum, claimed that his forced return to Sri Lanka would violate his rights under article 3 of <i>CAT</i>, as he would face a risk of detention and torture, cruel and inhuman treatment at the hands of Sri Lankan authorities for his illegal departure from Sri Lanka, his Tamil ethnicity and past involvement with the Tamil Eelam Liberation Organisation (TELO). He had been abducted and forced to work for the TELO at a camp of the organisation. After his escape, he claimed that the Tamil Makkal Viduthalai Pulikal, a Tamil paramilitary group, had threatened to kill his wife and children and had forced them out of their house.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of <i>CAT</i>.</li> <li>• The complainant did not discharge the burden of proof for presenting an arguable case. Australian authorities had thoroughly evaluated his claim and found the information insufficient to show that he was in need of protection. The complainant failed to demonstrate that the decision to refuse him a protection visa was clearly arbitrary or amounted to a denial of justice, thus not discharging his burden of proof.</li> <li>• The complainant had submitted insufficient credible evidence to show Sri Lankan authorities were interested in him prior to or after his departure for his involvement with the TELO.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>YZS v Australia</i>	CAT/C/49/D/417/2010 (2012)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• YZS, a person seeking asylum, claimed that his forced removal to China would violate his rights under article 3 of CAT, as there were substantial grounds for believing that he would be in danger of being subjected to torture as a Falun Gong practitioner. He claimed to have been previously arrested by Chinese authorities and detained in Zhangshi Labour Camp and tortured.</li> </ul>	<ul style="list-style-type: none"> <li>• No violation of article 3 of CAT.</li> <li>• The Committee considered that the complainant failed to provide sufficient evidence to demonstrate that he faced a foreseeable, real and personal risk of being subjected to torture at the time he was deported back to China, noting the lack of details provided by the complainant concerning his Falun Gong activities and several inconsistencies in his account of facts that undermined the general credibility of his claims, as well as his failure to provide any compelling evidence corroborating his claims.</li> </ul>
<i>Z v Australia</i>	CAT/C/53/D/511/2012 (2014)	<ul style="list-style-type: none"> <li>• Alleged violation of article 14 of CAT (Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation).</li> <li>• Z, an Australian national who was born in China, is a Falung Gong practitioner. While visiting Beijing on a number of occasions to pursue activism as a member of Falung Gong, she was arbitrarily detained and tortured by Chinese authorities. When she returned to Australia, Z attempted to pursue claims through Australian courts against the President of China for the torture she experienced. Her claims were dismissed on the basis of the</li> </ul>	<ul style="list-style-type: none"> <li>• The complaint was found to be inadmissible.</li> <li>• Article 14 of CAT is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party and requires States parties to ensure that all victims of torture and ill treatment are able to access remedy and obtain redress. However, in the complainant's case, Australia could not establish jurisdiction over foreign officials for acts committed outside its territory, and so it is inadmissible.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>Foreign State Immunities Act, which provides that foreign government officials enjoy immunity from civil liability for torture.</p> <ul style="list-style-type: none"> <li>• Z claimed that Australia violated her article 14 rights, as it failed to provide her with an enforceable right to redress and compensation for the State-inflicted torture she endured in China, arguing the right is not limited to torture committed within a State party's territory.</li> </ul>	
<i>ZW v Australia</i>	CAT/C/62/D/669/2015 (2018)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• ZW claimed that his forced deportation to China would violate his rights under article 3 of CAT. ZW is a Chinese national, who previously worked for the Taiwan Affairs Office of the Chinese government. ZW applied for protection in Australia; his application was refused and he unsuccessfully appealed to the Federal Magistrate's Court. The published judgment of the Court incorrectly referred to him as a Taiwanese national; this was corrected after three months. ZW submitted that by publishing false information regarding his national status, the Federal Magistrates Court of Australia placed him at serious risk of being considered a Taiwanese agent and, therefore, of being charged with treason, imprisonment and execution if returned to China.</li> </ul>	<ul style="list-style-type: none"> <li>• ZW's complaint was inadmissible as it was insufficiently substantiated, the complainant having failed to articulate how the facts relied upon might justify a claim under article 3 of CAT.</li> <li>• The Australian authorities found that the complainant's statements and accounts of his situation generally were inconsistent and contradictory in fundamental aspects, and on the basis of his accounts Australian authorities could not find grounds necessary for protection.</li> </ul>

### Committee on the Elimination of Racial Discrimination

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>Moylan v Australia</i>	CERD/C/83/D/47/2010 (2013)	<ul style="list-style-type: none"> <li>• Discrimination on the ground of race.</li> <li>• Moylan, an indigenous man, claimed to be victim of race discrimination in access to social services. He claimed the legislative requirement for qualification for the aged pension at ages 65 to 67 for all men did not apply equitably to indigenous men, whose average life expectancy at the time of the complaint was 59 years old. Moylan claimed that this violated his rights under articles 5 and 6 of the <i>CERD</i> by applying legislation of discriminatory effects to Australians of Aboriginal origin, without enabling special measures to prevent such indirect discrimination in violation of article 2(2) <i>CERD</i>, and not giving him the opportunity to challenge the legislation.</li> </ul>	<ul style="list-style-type: none"> <li>• The complaint was not admissible, as the complainant did not establish successfully that he had exhausted domestic avenues for remedy. He did not advance sufficient arguments before the Committee to demonstrate that no avenues exist in Australia to claim that the legislation has racially discriminatory effects.</li> </ul>

### Committee on the Rights of Persons with Disabilities<sup>2</sup>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>AM v Australia</i>	CRPD/C/13/D/12/2013 (2015)	<ul style="list-style-type: none"> <li>• Discrimination on the ground of disability.</li> </ul>	<ul style="list-style-type: none"> <li>• Communication inadmissible under article 1(1) of the <i>OP-CRPD</i>, as AM had not been</li> </ul>

<sup>2</sup> Not including those communications where the Committee discontinued its consideration of the communication, pursuant to rule 74 of the Committee's Rules of Procedure: Committee on the Rights of Persons with Disabilities, *Rules of procedure*, 16<sup>th</sup> sess, UN Doc CRPD/C/1/Rev.1, r 74.

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<ul style="list-style-type: none"> <li>• Equal recognition before the law; access to justice; freedom of expression and opinion; access to information; participation in public life.</li> <li>• Equality and non-discrimination; equal recognition before the law; freedom of expression; participation in public life</li> <li>• AM is deaf and requires Auslan interpretation to communicate with others. AM alleged that the Sheriff of New South Wales (a statutory officer) systematically categorised deaf people requiring Auslan interpreting as having 'good cause' for exemption from jury duty on the basis of a disability, regardless of whether they had requested exemption from jury service. AM alleged this was discriminatory and violated the rights of hearing-impaired persons to enjoy legal capacity on an equal basis with all others in all aspects of life, as well as the right to enjoy political rights on a non-discriminatory basis. Australia submitted that the position in NSW was that assessments as to whether accommodations to make jury service accessible for persons with disabilities could be made were conducted on a case-by-case basis.</li> <li>• At the time of submitting the communication, AM had never been selected for jury service but was eligible to be selected.</li> </ul>	<p>selected for jury service his enjoyment of his rights had not been affected and any adverse impact upon him was insufficiently imminent to claim victim status.</p>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<ul style="list-style-type: none"> <li>Alleged violations of articles 12, 13, 21 and 29 of the Convention.</li> </ul>	
<i>Beasley v Australia</i>	CRPD/C/15/D/11/2013 (2016)	<ul style="list-style-type: none"> <li>Participation of deaf people in jury duty.</li> <li>Equality and non-discrimination; reasonable accommodation; equal recognition before the law; freedom of expression; political participation.</li> <li>Beasley is deaf and requires Auslan interpreting of formal communications in order to communicate with others. She was summoned to serve as a juror in NSW and sought assistance of an Auslan interpreted to participate in jury service, but was advised her request could not be accommodated. Beasley claimed that the refusal to provide a reasonable adjustment such as Auslan interpreting to enable her to take part in jury service constituted a violation of her right to equal recognition before the law, her right to enjoy legal capacity on an equal basis with others, her right to non-discrimination and to receive and impart information on an equal basis through a form of communication of her choice.</li> <li>Alleged violation of articles 4, 5, 9, 12, 13 and 29 of the Convention.</li> </ul>	<ul style="list-style-type: none"> <li>Part of communication inadmissible, in respect to claims under articles 2 and 4 alone (on the basis that claims unsubstantiated, as those provisions do not give rise to a free-standing claim due to their general character), and in respect of the claim under article 12 (legal capacity) as the facts did not enliven the subject matter of that provision (incompatibility with treaty).</li> <li>Failure to take necessary steps to ensure reasonable accommodation of the complainant, without assessing whether the complainant's requests for accommodation would be disproportionate or an undue burden, amounts to disability-based discrimination, a violation of her right to participation on an equal basis with others in public life, denial of the right of freedom of expression and opinion in official interaction (ie, performing jury service).</li> <li>Violations of articles 5(1) and (3), 9(1), 13(1) read alone and in conjunction with articles 2, 4, and 5(1) and (3) of the Convention.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
			<ul style="list-style-type: none"> <li>• The Committee’s view was that Australia must: <ul style="list-style-type: none"> <li>- provide an ‘effective remedy’ including reimbursement for the legal costs of the communication and compensation</li> <li>- enable the complainant’s participation in jury duty</li> <li>- ensure that every time a person with disabilities is summoned to perform jury duty, to thoroughly and comprehensively assess any request they make for adjustment, and all reasonable accommodations are carried out to enable their participation.</li> </ul> </li> </ul>
<i>Doolan v Australia</i>	CRPD/C/22/D/18/2013 (2019)	<ul style="list-style-type: none"> <li>• Discrimination on the ground of disability, in respect of the institutionalization of persons with intellectual and psychosocial impairments.</li> <li>• In 2008, the complainant was arrested and charged with common assault in the Northern Territory and incarcerated in a high security section of a correctional centre. He was found to be unfit to stand trial but liable to supervision and remanded in custody, then subject to a supervision order in prison to 2013. During this time, he was held in maximum security, and kept in isolation for long</li> </ul>	<p>The Committee concluded that there had been violations of articles 5, 12, 13, 14 and 15. The Committee recommended that Australia is under an obligation to provide him with an effective remedy and to publish the Views in an accessible format.</p> <ul style="list-style-type: none"> <li>• The Committee requested the amendment of the relevant part of the NT Criminal Code and related legislation in consultation with disabled people and representative organisations; ensure adequate support and accommodation measures for disabled</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>periods with limited access to rehabilitation programmes and mental health services. His condition deteriorated as a result.</p> <ul style="list-style-type: none"> <li>• The complaint alleged violations of violated articles 5, 12, 13, 14, 15, 19, 25, 26 and 28.</li> </ul>	<p>people before the courts; protect the right to live independently by taking steps to create community residences and ensure training on the Convention for law reform bodies and the legislature, courts and people working with people with intellectual and psychosocial disabilities; avoid using high-security institutions for people with intellectual and psychosocial disabilities.</p>
<i>DR v Australia</i>	CRPD/C/17/D/14/2013 (2017)	<ul style="list-style-type: none"> <li>• Discrimination on the ground of disability, in respect of the institutionalization of persons with intellectual and mental impairments and their access to social housing.</li> <li>• Discrimination on the ground of disability; exercise of legal capacity; deprivation of liberty; restrictions of rights.</li> <li>• DR, a mentally and intellectually disabled man as a result of an acquired brain injury, was a resident at a rehabilitation centre administered by Queensland Health. He was assessed ready for discharge by medical staff, subject to social housing and disability support services being made available for him in the community. Funding for his required community disability support services was denied; his application for social housing was dependent upon disability support and therefore deferred.</li> </ul>	<ul style="list-style-type: none"> <li>• Communication inadmissible under article 2(d) <i>OP-CRPD</i>, as a result of the Committee not being in a position to conclude that the author had exhausted domestic remedies, the author's submission that legal remedies under the Disability Discrimination Act would be likely unavailable not having been substantiated by the author.</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>Consequently, DR could not be discharged, and continued to live in circumstances of limited privacy at the centre. DR alleged this was in violation of his right to liberty of the person and movement, privacy and entitlement to progressive realisation of habilitation and rehabilitation, alleging his ongoing residency at the rehabilitation centre increased his level of dependency on care.</p> <ul style="list-style-type: none"> <li>Alleged violation of articles 14, 18, 19, 22, 26 and 28 of the <i>CRPD</i>, alone and in conjunction with articles 4 and 5(2).</li> </ul>	
<p><i>Given v Australia</i></p>	<p>CRPD/C/19/D/19/2014 (2018)</p>	<ul style="list-style-type: none"> <li>Right to vote by secret ballot.</li> <li>General obligations under the <i>CRPD</i>; equality and non-discrimination on the basis of disability; accessibility and participation in political and public life</li> <li>Given, who has cerebral palsy and as a result has limited muscle control and dexterity and no speech, was unable to vote in the 2013 federal election by marking a ballot paper, folding it and depositing it in a ballot box without live assistance of an electoral official or her nominee, compromising the secrecy of her vote. Electronically assisted voting was only made available to voters registered as having a visual impairment. Given sought access to</li> </ul>	<ul style="list-style-type: none"> <li>Failure to provide the complainant with access to an electronic voting platform already available in Australia, without providing her with an alternative that would enable her to cast her vote without having to reveal her voting intention to another person, denied her rights under article 29(a)(i) and (ii), read alone and in conjunction with articles 5(2), 4(1)(a)-(b), (d), (e) and (g) and 9(1) and (2)(g)</li> <li>The Committee's view was that Australia must:</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>electronically assisted voting technology – such as that used in NSW State elections - so as to be able to cast an independent and secret ballot, so as to effectively and fully participate in political and public life on an equal basis with other electors.</p> <ul style="list-style-type: none"> <li>Alleged violations of articles 29(a)(i)-(iii), read alone and in conjunction with articles 4(1)(a)-(d), (e) and (g), 5(2)-(3) and 9 of the <i>CRPD</i>.</li> </ul>	<ul style="list-style-type: none"> <li>provide an ‘effective remedy’ including compensation for the legal costs of the communication</li> <li>take adequate measures to ensure that the author have access to voting procedures and facilities to enable her to vote by secret ballot in all future elections and referendums</li> <li>guarantee in practice the right to vote for persons with disabilities on an equal basis with others through ensuring the appropriateness, accessibility and ease of understanding and use of voting procedures and facilities, and use of assistive technology to guarantee secret ballot voting.</li> </ul>
<i>JH v Australia</i>	CRPD/C/20/D/35/2016 (2018)	<ul style="list-style-type: none"> <li>Participation of deaf people in jury duty.</li> <li>Equality and non-discrimination; reasonable accommodation; equal recognition before the law; freedom of expression; political participation</li> <li>Jh is deaf and required an AUSLAN interpreter to be provided to enable her to serve on a jury.</li> <li>Alleged violations of articles 5, 12, and 21.</li> </ul>	<ul style="list-style-type: none"> <li>The Committee found that there had been a failure to fulfil the obligations under articles 5(2) and (3) and 21(b).</li> <li>The Committee recommended that the State party is under an obligation to <ul style="list-style-type: none"> <li>Provide her with an effective remedy, including reimbursement of any legal costs and compensation and</li> <li>Enable her to perform jury duty, by providing Auslan interpretation</li> </ul> </li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
			<ul style="list-style-type: none"> <li>• The Committee also recommended that Australia is under an obligation to take measures to prevent similar violations in future. Australia is required to: <ul style="list-style-type: none"> <li>- Ensure that ‘a thorough, objective and comprehensive assessment’ of requests for adjustment by every person with disabilities who is summoned to perform jury duty and ensure that reasonable accommodation is provided to allow their full participation.</li> <li>- Ensure that local authorities, judicial officers and staff receive ‘appropriate and regular training’ on the scope of the Convention including accessibility for people with disabilities.</li> <li>-</li> </ul> </li> </ul>
<i>Leo v Australia</i>	CRPD/C/22/D/17/2013 (2019)	<ul style="list-style-type: none"> <li>• Complaint alleging violations of 5, 12, 13, 14, 15, 19, 25, 26 and 28 of the Convention and 2 of the Optional Protocol.</li> <li>• The complainant had an intellectual impairment arising from a brain injury, epilepsy and mental illness. During an apparent psychotic episode, he assaulted a council worker. He was arrested and found to be liable to supervision in the high-security section of Alice Springs Correctional</li> </ul>	<ul style="list-style-type: none"> <li>• The Committee found that there had been violations of articles 5, 12, 13, 14 and 15.</li> <li>• The Committee recommended that Australia is under an obligation to provide him with an effective remedy and publish the Views and circulate them widely. Further, Australia is under an obligation to take measures to prevent similar violations in future by amending the relevant legislation in consultation with representative groups and</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>Centre. He was held in maximum security and was held in isolation for long periods with inadequate access to mental health services.</p>	<p>people with disabilities, ensure without delay adequate support and accommodation measures are provided to people with intellectual and psychosocial disabilities, to create community residences to protect the right to live independently and be included in the community, and ensure training on the Convention and Optional Protocol to relevant groups.</p>
<p><i>Lockrey v Australia</i></p>	<p>CRPD/C/15/D/13/2013 (2016)</p>	<ul style="list-style-type: none"> <li>• Participation of deaf people in jury duty.</li> <li>• Equality and non-discrimination; reasonable accommodation; equal recognition before the law; freedom of expression; political participation.</li> <li>• Lockrey is deaf and requires real-time steno-captioning of formal communications in order to communicate with others. Lockrey was summoned to serve as a juror on a number of occasions and requested steno-captioning of proceedings and jury deliberations be made available, so that he could participate in the jury process and enjoy legal capacity and receipt of information and ideas on an equal basis, and without discrimination. His request was denied on the basis that accommodation to his disabilities could not be made, such accommodations being assessed on a case-by-case basis. Lockrey also asserted that his right to</li> </ul>	<ul style="list-style-type: none"> <li>• Part of communication inadmissible, in respect to claims under articles 2 and 4 alone (on the basis that they do not give rise to a free-standing claim due to their general character), and claim under article 12 (legal capacity) as the facts did not enliven the subject matter of that provision.</li> <li>• Failure to provide the complainant with a reasonable accommodation in the form of steno-captioning, in a manner maintaining the confidentiality of jury deliberations, amounted to disability based discrimination in violation of the Convention, denial of his ability to participate fully in civic life and denial of the right of freedom of expression and opinion in official interaction (ie, performing jury service, a public</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>participate in public life was infringed by the denial of a technological accommodation to enable his participation.</p> <ul style="list-style-type: none"> <li>Alleged violations of articles 2, 4, 5, 9, 12, 13, 21 and 29 of the <i>CRPD</i>, read alone and in conjunction with articles 2 and 4.</li> </ul>	<p>responsibility in the administration of justice).</p> <ul style="list-style-type: none"> <li>Violations of articles 5(1) and (3), 9(1), 13(1) read alone and in conjunction with articles 3, 5(1) and 29(b), and 21 (b) read alone and in conjunction with articles 2, 4 and 5(1) and (3) of the <i>CRPD</i>.</li> <li>The Committee's view was that Australia must: <ul style="list-style-type: none"> <li>provide an 'effective remedy' including compensation for the legal costs of the communication</li> <li>enable the complainant's participation in jury duty</li> <li>ensure that every time a person with disabilities is summoned to perform jury duty, to thoroughly and comprehensively assess any request they make for adjustment, and all reasonable accommodations are carried out to enable their participation.</li> </ul> </li> </ul>
<i>Noble v Australia</i>	CRPD/C/16/D/7/2012 (2016)	<ul style="list-style-type: none"> <li>Right to enjoy legal capacity on an equal basis with others.</li> <li>Access to court; mental and intellectual disability; exercise of legal capacity; deprivation of liberty;</li> </ul>	<ul style="list-style-type: none"> <li>The Mentally Impaired Defendants Act as it was applied to the complainant's circumstances was discriminatory, denying him the protection and equal benefit of the law, in not allowing him the capacity to test</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<p>discrimination on the ground of disability; restriction of rights.</p> <ul style="list-style-type: none"> <li>• Noble has a mental and intellectual disability. He was charged with child sexual offences, but determined unfit to plead and detained in custody with convicted detainees for approximately 10 years pursuant to the Mentally Impaired Defendants Act, a term far exceeding the reasonable term of imprisonment in relation to the offences. On Noble being judged fit to plead, the Director of Public Prosecutions declined to prosecute him, so he was unable to enter a plea of not guilty. He was conditionally released into community subject to a civil detention order. Noble alleged the application of the Mentally Impaired Defendants Act is a discriminatory disability status-based law, which denied him the opportunity to exercise legal capacity before the courts on an equal basis with others and obtain access to justice, and resulted in deprivation of his liberty on the basis of his disability (both in respect of his detention in prison and application of a civil detention order to his residence in the community).</li> <li>• Alleged violation of articles 5(1), 12, 13, 14(1)(b), 14(2) and 15 of the <i>CRPD</i>.</li> </ul>	<p>the evidence against him and plead guilty, as he was presumed unfit to stand trial in a process focusing on his mental capacity that did not assess accommodations or support to enable him to exercise his legal capacity. The author's detention was decided on the basis of the potential consequences of his disability in relation to future offending and a lack of available medical facilities or support services, so justifying his deprivation of liberty in contravention of the Convention. The indefinite detention of the complainant was cruel and inhuman treatment.</p> <ul style="list-style-type: none"> <li>• Violation of articles 5(1)-(2), 12(2)-(3), 13(1), 14(1)(b) and 15 of the Convention</li> <li>• The Committee's view was that Australia must: <ul style="list-style-type: none"> <li>- provide an 'effective remedy' including reimbursement for the legal costs of the communication and compensation</li> <li>- revoke any conditions on the complainant's community detention, and provide all necessary support for him to live in the community</li> <li>- amend the Mentally Impaired Defendants Act (WA) and all related</li> </ul> </li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
			legislation to ensure compliance with the <i>CRPD</i> principles - ensure appropriate accommodation and support measures are in place to enable disabled persons to exercise their legal capacity whenever necessary.

See also: *JH v Australia* (CRPD,2018). In 2014 JH was summoned to serve on a jury in Western Australia She is deaf and uses Australian Sign Language ((Auslan) to communicate. She sought the use of an interpreter but was advised that the *WA Juries Act 1957* did not allow an interpreter in the jury room. She was unsuccessful in seeking a remedy through the WA Equal Opportunity Commission. As noted by Remedy Australia:

She petitioned the UN CRPD Committee, arguing the provision of an Auslan interpreter would not be a disproportionate or undue burden on the courts. In responding, Australia maintained the cost of providing the interpreters and training necessary to permit Deaf people to serve on juries was not reasonable and that the jury confidentiality necessary to a defendant’s right to a fair trial took precedence.

The Committee noted that denial of reasonable accommodation is a form of discrimination (CRPD art. 2) and that “discrimination can result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, but that disproportionately affects persons with disabilities” (para. 7.3). To comply with the CRPD, courts must conduct thorough and objective assessments of what reasonable accommodation(s) may be requested on an individual basis “before concluding that the support and adaptation measures would constitute a disproportionate or undue burden” (para. 7.4); the Committee found this had not occurred in Ms JH’s case.

The Committee accepted the importance of jury confidentiality and suggested that Auslan interpreters making a special oath of confidentiality before the court would be a suitable adjustment to meet this aim.

The Committee found Australia had discriminated against JH in violation of article 5(2) and 5(3), and denied her freedom of expression in “official interactions” as protected by article 21(b) and 21(e). It recommended both individual remedies, including compensation, and non-repetition measures, including reasonable accommodation assessments, law reform and training (see box).

Responding in 2020, Australia did not accept the Committee’s Final Views, and refused to provide an effective remedy. Reiterating many of its prior arguments, Australia maintained that it did undertake a thorough and objective assessment of JH’s request and found it unreasonable, owing to its negative impact on the cost, duration and complexity of trials”, the need for training and preparation, and the possibility the trial may feature “non-verbal audio evidence that would be difficult or impossible” for an Auslan interpreter to convey (para. 9).

It said the Western Australian government was “exploring the possibility of the participation of deaf people in jury service” (para. 15) and, will consult with key stakeholders regarding existing barriers that may prevent people with certain disabilities being considered for jury service. In relation to deaf jurors particularly, the Western Australian Government, through the Department of Justice, monitors developments in disability aids, technologies and interpreter services for incorporation into courtroom design. (para. 23 & 24).

The full decision is available at: <https://juris.ohchr.org/casedetails/2512/en-US>.

Australia’s response to the Committee’s final views is available at: [https://remedy.org.au/correspondence/2020\\_Aust\\_response\\_to\\_CRPD\\_views\\_in\\_JH\\_v\\_Aust.pdf](https://remedy.org.au/correspondence/2020_Aust_response_to_CRPD_views_in_JH_v_Aust.pdf).

## Human Rights Committee

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
<i>Alger v Australia</i>	CCPR/C/120/D/2237/2013 (2017)	<ul style="list-style-type: none"> <li>• Compulsory voting in federal elections.</li> <li>• Right to privacy; freedom of thought, conscience and religion; freedom of expression' right to hold an opinion; right to take part in the conduct of public affairs and right to vote; right to equality before the law and equal protection of the law without discrimination; right to an effective remedy.</li> <li>• Voting in federal elections in Australia is compulsory, with some exceptions. One expressly recognised valid and sufficient reason for not voting is an elector's belief that they have a religious duty not to vote. Alger did not vote in the 2010 election. He was asked to provide a valid and sufficient reason for not doing so by the Australian Electoral Commission, to which he replied that he was unable to differentiate between true and false statements in political campaigns, so did not have sufficient means to make a meaningful decision to vote. It was determined this was not a valid or sufficient reason, and he was fined by the Australian Electoral Commission. Alger unsuccessfully contested his fine before the Election</li> </ul>	<ul style="list-style-type: none"> <li>• The author failed to submit convincing arguments to show that his decision not to vote in the 2010 federal election was founded upon a 'belief' within the meaning protected by article 18 of the <i>ICCPR</i>; the purpose of the penalty was to implement obligations of all electors to vote, not to intimidate or punish the author for his opinion, so did not contravene his right to hold an opinion under article 19 of the <i>ICCPR</i>. It followed there was no article 26 discrimination. The requirement to provide the Electoral Commission as reason for not voting did not require him to reveal his political opinions, and so the article 17 claim was not substantiated. Claims in respect of articles 17, 18, 19 and 26 were found inadmissible as insufficiently substantiated.</li> <li>• The complainant's rights under article 25(b) - to vote by secret ballot, in elections guaranteeing the free expression of the will of electors - were not violated.</li> </ul>

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		<p>Commission and Human Rights Commission. Alger claimed that the requirement to provide reasons for not voting, which were founded upon his long held non-religious thoughts, beliefs and opinions, violated his right to privacy. He also claimed that the penalty limited his freedom to manifest his beliefs, violated his right not to profess a religion or belief and discriminated against him on religious grounds, non-religious beliefs not providing a valid and sufficient reason not to vote.</p> <ul style="list-style-type: none"> <li>• Alleged violation of articles 2(1), 17 and 18, read alone and in conjunction with articles 2(2) and (3), 19, 26 and 50 of the <i>ICCPR</i>.</li> </ul>	
<p><i>Biao Lin v Australia</i></p>	<p>CCPR/C/107/D/1957/2010 (2013)</p>	<ul style="list-style-type: none"> <li>• Deportation to China.</li> <li>• Right to life, right to protection from cruel, inhuman or degrading treatment or punishment; right to be free from arbitrary detention; right to protection from interference with the family and home.</li> <li>• Fan Biao Lin, a Chinese national and Falun Gong practitioner, was refused a protection visa from Australia on the basis that there was no sufficient evidence that he was at real</li> </ul>	<ul style="list-style-type: none"> <li>• The complainant's claim that his right to life would be violated if returned to China, and his family or home interfered with, were general allegations only and therefore insufficiently substantiated to be admissible.</li> <li>• The Committee could not conclude on the basis of the information before it on the merits that the complainant would face a real risk of violation of his rights</li> </ul>

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		<p>threat of persecution on the basis of his religious beliefs. He was therefore liable to be returned to China from Australia. The complainant claimed that he would be detained and tortured if returned to China, therefore being subject to persecution and non-refoulement.</p> <ul style="list-style-type: none"> <li>• Alleged violations of articles 6(1), 7, 9(1), and 17 alone and read in conjunction with article 2(1) of the <i>ICCPR</i>.</li> <li>•</li> </ul>	<p>to freedom from torture and arbitrary deprivation of his liberty if returned to China, therefore the author's rights would not be violated if returned to China.</p>
<i>BL v Australia</i>	CCPR/C/112/D/2053/2011 (2014)	<ul style="list-style-type: none"> <li>• Deportation to Senegal.</li> <li>• Right to life; right to protection from cruel, inhuman or degrading treatment or punishment; right to freedom of thought, conscience and religion</li> <li>• BL, a Senegalese national, faced imminent removal from Australia to Senegal after being denied a protection visa. BL claimed that because of his conversion from Islam to Christianity, he had been subject to persecution – including assaults - in Senegal by his family and associates of his family belonging to a Muslim group known was the Mourides Brotherhood. He claimed that he had been denied protection from the</li> </ul>	<ul style="list-style-type: none"> <li>• Accepting the assessment of Australia's domestic authorities, the Committee could not conclude on the merits of the complaint that the Senegalese authorities would not generally be willing and able to protect BL against threats to his physical safety, and that therefore removing BL to Senegal would not violate his rights under articles 6, 7 and 18 of the <i>ICCPR</i>.</li> </ul>

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		<p>Mourides Brotherhood by the Senegalese police.</p> <ul style="list-style-type: none"> <li>• BL claimed that he had a well-founded fear of being harmed or killed by either his family or the Mourides Brotherhood generally if returned to Senegal, that the police would be unable to protect him, and that his deportation to Senegal would therefore violate his right to life and his right to protection from cruel, inhuman or degrading treatment or punishment. He also claimed that he would, alternatively, be forced to convert to Islam on pain of death, violating his right to freedom of thought, conscience and religion.</li> <li>• Alleged violations of articles 6, 7 and 18 of the <i>ICCPR</i>.</li> </ul>	
<i>Blessington and Elliot v Australia</i>	CCPR/C/112/D/1968/2010 (2014)	<ul style="list-style-type: none"> <li>• Imposition of life sentence on juveniles.</li> <li>• Cruel, inhuman and degrading treatment; essential aims of the penitentiary system; retroactive application of penal legislation; right of minors to protection.</li> <li>• The complainants at the time of the complaint were serving life sentences in prison in NSW. The complainants met while</li> </ul>	<ul style="list-style-type: none"> <li>• Australia did not challenge the admissibility of the complaint.</li> <li>• The Committee considered that the imposition of life sentences on juveniles can only be compatible with article 7, read together with articles 10(3) and 24 of the <i>ICCPR</i> if there is a possibility of review and a prospect of release,</li> </ul>

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		<p>homeless teenagers, and committed a number of serious offences together for which they were convicted, including assault, abduction, rape and murder. They were tried as adults, with consideration given as to their age as children consistent with legislation applying to children subject to criminal proceedings. They were sentenced to life imprisonment, a discretionary sentence applying to child offenders (murder carrying a life sentence for adults). Legislation was amended over time such that an entitlement to apply for release on licence at 8 years was eroded to an entitlement to apply for parole after 30 years and if they were either in imminent danger of dying or incapacitated to the extent that they no longer have the physical ability to do harm to any person. There was no account in the relevant legislation for the age of the offender at the time of the offence.</p> <ul style="list-style-type: none"> <li>• The authors claimed that imposition of a life sentence without possibility of parole for crimes the authors committed as juveniles is inherently incompatible with the obligations of the State party under article 24(1) (the</li> </ul>	<p>notwithstanding the gravity of the crime they committed and the circumstances around it, without meaning release should be granted. This means that release should not be a mere theoretical possibility and that the review procedure should be a thorough one, allowing the domestic authorities to evaluate the concrete progress made by the authors towards rehabilitation and the justification for continued detention, in a context that takes into consideration the fact that they were juveniles at the time they committed the crime. The review procedure in the case of the authors is subjected, through various amendments of the relevant legislation, to such restrictive conditions that the prospect of release seems extremely remote, based on the impending death or physical incapacitation of the authors, rather than on the principles of reformation and social rehabilitation. The Committee considers that treating juvenile offenders in a manner appropriate to their age and legal status</p>

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		<p>right to protection as a child as consistent with status as a minor) and article 10(3) (that the penitentiary system should have the essential aim of rehabilitation, and juvenile offenders be treated in accordance with their age and legal status). They also claimed that the imposition of a life sentence on juvenile offenders amounted to cruel, inhuman and degrading treatment in violation of article 7 and the State violated article 15 through retroactive application of a heavier penalty than that provided for at the time of the offence.</p> <ul style="list-style-type: none"> <li>Alleged violations of articles 7, 10(3), 15(1), and 24(1) of the <i>ICCPR</i>.</li> </ul>	<p>precludes a definitive conclusion that a juvenile's actions make that person incapable of rehabilitation and undeserving of release, regardless of any future personal and social development, for the entire length of a lifetime.</p> <ul style="list-style-type: none"> <li>The Committee was of the view on that basis that the life sentences applied to the authors did not meet the obligations of the State party under article 7, read together with articles 10, paragraph 3, and 24 of the Covenant.</li> <li>The Committee was of the view that Australia is obligated to provide the authors with an effective remedy, including compensation. Australia should also take steps to prevent similar violations in the future, including reviewing its legislation to ensure its conformity with the requirements of article 7, read together with articles 10, paragraph 3, and 24 of the Covenant without delay, and allow the authors to benefit from the reviewed legislation.</li> </ul>

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<i>C v Australia</i>	CCPR/C/119/D/2216/2012 (2017)	<ul style="list-style-type: none"> <li>• Prohibition of access to divorce proceedings for same-sex couples married abroad.</li> <li>• Equal access to courts and tribunals; discrimination on the basis of sexual orientation.</li> <li>• C, an Australian and UK citizen, alleged discrimination on behalf of herself and her minor daughter. C was married under Canadian law to A, with whom she had her daughter. After A and C's relationship disintegrated, C was unable under Queensland and Australian law to obtain a divorce from A, marriage at the time only being recognised under legislation as between a man and a woman (resulting in adverse financial consequences for C in respect of mortgage and other debt repayments). C claimed that the denial under Australian law of access to divorce for same-sex couples, validly married abroad, amounted to discrimination on the basis of sexual orientation and denial of equal treatment before the law on the basis of a prohibited ground and that was not directed towards a legitimate aim.</li> </ul>	<ul style="list-style-type: none"> <li>• While the complaint was admissible in respect of C, the claim was inadmissible in respect of her minor daughter as there was no demonstration that her legal situation was adversely affected by her mother's inability to obtain a divorce under Australian law.</li> <li>• Australia violated C's rights under article 26 of the <i>ICCPR</i> through her differential treatment under law based on her sexual orientation through denial of access to divorce proceedings without reasonable and objective criteria for that differential treatment. The State party's explanation as to the reasonableness, objectivity and legitimacy of distinguishing same sex marriage access to divorce was not persuasive, that right having been provided to other categories of foreign-recognised marriage not recognised as lawful in Australia.</li> <li>• The Committee was of the view that Australia should C full reparation for the discrimination she suffered through lack of access to divorce proceedings, and</li> </ul>

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		<ul style="list-style-type: none"> <li>Alleged violations of articles 14(1), read together with 2(1), and 26 of the <i>ICCPR</i>.</li> </ul>	<p>take steps to prevent further violations including reviewing its laws.</p>
<p><i>FKAG et al v Australia</i></p>	<p>CCPR/C/108/D/2094/2011 (2013)</p>	<ul style="list-style-type: none"> <li>Indefinite detention of persons in immigration facilities.</li> <li>Right to liberty; right to protection from inhuman treatment; right to family life; right of children to protection.</li> <li>The authors of the communication were 37 individuals held in Australian immigration facilities, having been deemed unlawful citizens in Australia, including parents with infant children. They were all Sri Lankan citizens of Tamil ethnicity except one author, a Myanmar citizen of Rohingya ethnicity. The authors were refused protection visas from Australia, however they did not wish to return voluntarily to their countries of nationality. Australia had not informed them of any intention to remove them to their country of nationality or a third country, with no country being obliged to admit them. The authors had been held in immigration detention since periods between March 2009 and March 2010, and it was alleged</li> </ul>	<ul style="list-style-type: none"> <li>The complaints made in respect of violations of the rights from arbitrary interference in family life and of the family to protection from the State were insufficiently substantiated and inadmissible, given special provisions made for the families in detention and to facilitate access between family in detention and those in community.</li> <li>The prolonged and continuous indefinite detention of the complaint authors was an arbitrary deprivation of liberty in violation of the <i>ICCPR</i>, with no justification by the State party provided as to why detention vis-à-vis other measures was necessary to address any security risk attributable to any author, and no information provided to or legal safeguard available to the authors by which to challenge their indefinite detention.</li> <li>The combination of the arbitrary character of the authors' detention, its</li> </ul>

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		<p>their detention was prolonged and potential indefinite.</p> <ul style="list-style-type: none"> <li>• The complainants alleged: <ul style="list-style-type: none"> <li>- their detention was arbitrary and unlawful, no individual justification of the need for their detention having been conducted</li> <li>- the conditions of their detention constituted violations of the right of freedom from torture, inhuman, cruel and degrading treatment and the requirement that detainees be treated with respect for their humanity and inherent dignity</li> <li>- (where the authors were part of families) their detention or separation of detainees in immigration detention and living in community, its protracted manner, resulting effects on their wellbeing and its conditions, interferes with family life and is not compatible with the State party's obligation to protect the family and children.</li> </ul> </li> <li>• Alleged violations of articles 7, 9(1)-(2) &amp; (4), 10(1), 17(1), 23(1) and 24(1) of the <i>ICCPR</i>.</li> </ul>	<p>protracted and/or indefinite duration, the refusal to provide information and procedural rights to the authors and the difficult conditions of the detention were cumulatively inflicting serious psychological harm upon them, and constituted treatment contrary to the right to freedom from torture, inhuman, cruel and degrading treatment.</p> <ul style="list-style-type: none"> <li>• The Committee view was that Australia must: <ul style="list-style-type: none"> <li>- provide the authors with an effective remedy, including release under individually appropriate conditions, rehabilitation and appropriate compensation</li> <li>- take steps to prevent similar violations in the future, including review its migration legislation to ensure its conformity with the requirements of the <i>ICCPR</i>.</li> </ul> </li> </ul>

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<i>G v Australia</i>	CCPR/C/119/D/2172/2012	<ul style="list-style-type: none"> <li>• Refusal to have the sex changed on the birth certificate of a married transgender person.</li> <li>• Right to privacy and family; right to non-discrimination; right to an effective remedy.</li> <li>• G is male-to-female transgender. The author applied to the NSW Registry of Births, Deaths and Marriages to have her sex changed on her birth certificate. Her application was denied as relevant NSW legislation provided that a person must be unmarried at the time of their application to register a change of sex (because at the time Australia did not permit same-sex marriage). G is married to her current partner, a female, and did not intend to divorce from a loving relationship. G had had her gender changed on her passport. G claimed that the refusal to change her sex on her birth certificate, unless she divorces, constituted direct arbitrary interference with her right to privacy, as the certificate thereby reveals private information about the fact she is transgender. She also claimed the requirement to divorce to correct her birth certificate constituted a denial of the right to family, and that failure to prohibit discrimination based on marital and</li> </ul>	<ul style="list-style-type: none"> <li>• The Committee found that G was subjected to arbitrary interference with her privacy and family, in violation of article 17 of the <i>ICCPR</i>. By denying transgender persons who are married a birth certificate correctly identifying their sex, in contrast to unmarried transgender and non-transgender persons, Australia also failed to afford G and similar individuals equal protection under the law as a married transgender person in violation of article 26.</li> <li>• The Committee was of the view that Australia should make full reparation by issuing G with a birth certificate consistent with her sex and revise its legislation to ensure compliance with the <i>ICCPR</i> and no future violations.</li> </ul>

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		<p>transgender status violated her rights to non-discrimination.</p> <ul style="list-style-type: none"> <li>Alleged violations of rights under articles 2(3), 17 and 26 together with 2(1) of the <i>ICCPR</i>.</li> </ul>	
<p><i>Griffiths v Australia</i></p>	<p>CCPR/C/112/D/1973/2010 (2014)</p>	<ul style="list-style-type: none"> <li>Detention pending extradition</li> <li>Right to liberty and security; right to a fair trial; protection of aliens against arbitrary expulsion; right to an effective remedy.</li> <li>Griffiths, a British citizen, had resided in Australia permanently since the age of 7. US authorities requested Griffiths' extradition for involvement in copyright infringement offences under US law, the relevant materials being downloaded by end users in the US notwithstanding he was located in Australia. Griffiths was extradited to the US, following unsuccessful legal appeals in Australia, convicted and detained there. Griffiths alleged that a lengthy period of detention in Australia prior to his extradition to the US was arbitrary and disproportionate in character, without avenue to appeal potentially indefinite detention and not taking into account his personal</li> </ul>	<ul style="list-style-type: none"> <li>The complainant's claims in respect of his right to a fair trial, his protection from arbitrary expulsion and right to an effective remedy were inadmissible.</li> <li>The Committee found that Griffiths was subjected to arbitrary detention in violation of his right to liberty under article 9 of the <i>ICCPR</i>. Detention should not continue beyond the period for which the State party can provide appropriate justification to avoid characterisation as arbitrary. In the circumstances, Griffiths' prolonged continued detention while pursuing appeals against his extradition, without due regard to his personal circumstances and its necessity, violated article 9. Under Australia case law, detention pending extradition is neither time limited nor limited by</li> </ul>

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		<p>circumstances in respect of medical conditions, absence of a criminal record and flight risk. He also claimed his right to a fair trial was violated, as he was not afforded procedural fairness as a similar offence in Australia would have attracted a significantly lesser term of imprisonment, and he was provided limited opportunity in the extradition proceedings to test or challenge the evidence against him for the US offences, judicial review of the decision to extradite in the circumstances being too limited a remedy.</p> <ul style="list-style-type: none"> <li>Alleged violations of rights under articles 2, 9, 13 and 14 of the <i>ICCPR</i>.</li> </ul>	<p>necessity, but extradition is required as soon as reasonably practicable. Australia did not demonstrate how Griffiths' detention period met the standard of reasonable practicability and so whether it was justified and necessary; his inability to challenge the lawfulness of his detention after a lapse of time also constituted a violation of article 9(4).</p> <ul style="list-style-type: none"> <li>The Committee was of the view that Australia should provide the complainant with an effective remedy, including compensation and legal costs. Australia should also ensure such violations do not occur in the future, reviewing its law and policy in respect of its practice in relation to extraditions to ensure their compliance with its obligations under the <i>ICCPR</i>.</li> </ul>
<p><i>Hickey v Australia</i></p>	<p>CCPR/C/111/D/1995/2010 (2014)</p>	<ul style="list-style-type: none"> <li>Lack of independence in investigation of the death of a person that involved the police.</li> <li>Right to effective remedy; right to life; prohibition of discrimination.</li> </ul>	<ul style="list-style-type: none"> <li>The complaint was inadmissible. The author of the complaint did not appeal about any concrete aspect of the police investigation or the coronial inquest at the national level, or claim that the</li> </ul>

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		<ul style="list-style-type: none"> <li>• Elizabeth Hickey authored the complaint on behalf of her deceased son, Thomas James (TJ) Hickey, both indigenous Australians. TJ Hickey was riding his bicycle in Redfern, Sydney, in the vicinity of a NSW police operation. According to witnesses, he was followed by a police vehicle and rode his bike at speed; he fell and was impaled on a metal fence, dying in hospital as a result of his injuries. The police in question denied pursuing TJ Hickey, and a coronial inquest made a finding on the balance of probabilities that it could not conclude police contributed to his death.</li> <li>• The author of the complaint alleged that as the State – through police authorities - was implicated in the unlawful and arbitrary death of her son, TJ Hickey, in violation of article 6 of the <i>ICCPR</i>, in those circumstances an investigation into his death was required to be impartial to be effective. The State acted inconsistently with this requirement as the NSW State coronial inquest into TJ Hickey's death, although not conducted by police, relied upon information gathered by the police. Proper process was not followed</li> </ul>	<p>coroner was not independent before the Committee. On that basis, her claims were in general terms only and insufficiently substantiated to be admissible.</p>

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		<p>to ensure the integrity of evidence gathered by police, and the coronial inquest had no power to correct shortcomings in the investigation, so the inquest was not truly independent although the Coroner was. The complainant alleged any investigation should also have considered whether discrimination played a part in TH Hickey's death, given the historic relationship of violence and neglect between police and Aboriginal people in Redfern.</p> <ul style="list-style-type: none"> <li>• Alleged violation of rights under articles 2, 6 and 26 of the <i>ICCPR</i>.</li> </ul>	
<i>Hicks v Australia</i>	CCPR/C/11/D/2005/2010 (2016)	<ul style="list-style-type: none"> <li>• State party's responsibility in executing a foreign sentence.</li> <li>• Retroactive punishment; torture; arbitrary detention; conditions of detention; unfair trial; non-discrimination; right to privacy</li> <li>• Hicks was apprehended in Afghanistan in 2001 and transferred to Guantanamo Bay, where he was detained for five years. Hicks agreed to a plea sentence to providing material support to terrorism and was sentenced to seven years prison by the Guantanamo Military Commission. While</li> </ul>	<ul style="list-style-type: none"> <li>• While Hicks was in the custody of the United States, a non-party to the <i>OP-ICCPR</i>, Australia had influence but no power or effective control over him such that he could not be considered under its jurisdiction, so that the Committee could not pronounce <i>ratione loci</i> on his claims pertaining to his treatment while in United States custody.</li> <li>• In giving effect to the terms of the transfer arrangement, under which</li> </ul>

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		<p>Hicks was in United States custody, the Australian government interviewed Hicks and took steps to investigate allegations of torture against him. He was transferred to Australia in a prison swap, where he was released subject to an interim control order after seven months. By that arrangement, under the international principles of state responsibility, Hicks argued Australia participated in his retrospective punishment and imprisonment to which he was subjected under jurisdiction of the US (the offence of providing material support to terrorism not being an offence under international or US law at the time it was allegedly carried out by Hicks, being enacted with retrospective effect). Hicks also alleged unfairness of process in his US trial (including likelihood of use of evidence against him obtained by torture, inhuman or degrading treatment, and in obtaining admissions from him), which automatically rendered his detention in Australia arbitrary and unlawful. Hicks' subjection to a control order in Australia continued to violate his rights, given it relied upon evidence obtained while at Guantanamo Bay.</p>	<p>Hicks was deprived of his liberty for seven months in Australia, in circumstances where Australia could not but be aware of serious concerns about the fairness of the complainant's trial and the retrospective offence of which he was convicted, Australia violated his rights under article 9(1) of the <i>ICCPR</i> (right to liberty).</p> <ul style="list-style-type: none"> <li>• The Committee was of the view that Australia was required to provide an effective remedy through satisfaction, including preventing similar violations in the future and disseminating the Committee's decision widely and publicly in Australia.</li> </ul>

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		<ul style="list-style-type: none"> <li>Alleged violations of articles 2, 7, 9, 12, 14, 15, 17, 19, 22 and 26 of the <i>ICCPR</i>.</li> </ul>	
<p><i>Horvath v Australia</i></p>	<p>CCPR/C/110/D/1885/2009 (2014)</p>	<ul style="list-style-type: none"> <li>Non-enforcement of judgement providing compensation for police misconduct.</li> <li>Right to an effective remedy.</li> <li>In 1996, police officers attended Horvath's house to arrest her, without warrant, during which a police officer punched Horvath in the face. She was arrested, taken handcuffed to the police station and denied immediate medical attention. Horvath brought proceedings against the State of Victoria and the police officers and was awarded compensation from the State and the police officers personally for trespass, assault, wrongful arrest and false imprisonment and malicious prosecution. However, the State of Victoria appealed successfully, on the basis that the police officers acted intentionally in bad faith and she had no legal right to compensation from the State for an intentional or bad faith police tort under Victorian law. Horvath filed a complaint against the police officers, but disciplinary proceedings were dropped on basis of lack of</li> </ul>	<ul style="list-style-type: none"> <li>In view of the acknowledgement by Australian domestic courts of police misconduct amounting to violations of the <i>ICCPR</i>, the real issue for the Committee's consideration was whether the complainant's right to an effective remedy was violated, and the Committee declined to consider the substance of the underlying violations.</li> <li>The complainant's right to an effective remedy was violated, as the disciplinary proceedings were not effective given they were dismissed for lack of evidence without evidence from civil witnesses being called or a public hearing.</li> <li>In limiting the State's liability for wrongful intentional or bad faith acts by police, without alternative mechanisms for full compensation for violations of the <i>ICCPR</i> by State agents, the State failed to provide access to an effective remedy to the complainant.</li> </ul>

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		<p>evidence and the officers continued to serve in the police force, despite the court's finding of their fault. Horvath alleged violation of her right to an effective remedy, in compensation and disciplinary outcomes. She also alleged she was subject to inhuman, cruel and degrading treatment during her arrest and subsequent treatment, that she was arbitrarily and unlawfully deprived of her liberty as her arrest was without warrant, and that without a warrant the police invasion of her house was an unlawful and arbitrary interference with her right to a home, family and privacy.</p> <ul style="list-style-type: none"> <li>Alleged violations of articles 2, 7, 9 (1) and (5), 10 and 17 of the <i>ICCPR</i>.</li> </ul>	<ul style="list-style-type: none"> <li>The Committee found Australia was under an obligation: <ul style="list-style-type: none"> <li>to provide the author with an effective remedy, including adequate compensation</li> <li>to take steps to prevent similar violations in the future, including to review its legislation to ensure its conformity with the requirements of the <i>ICCPR</i>.</li> </ul> </li> </ul>
<i>HS v Australia</i>	CCPR/C/113/D/2015/2010 (2015)	<ul style="list-style-type: none"> <li>Right to a hearing before a competent, independent and impartial tribunal; access to court.</li> <li>HS, an Australian and Polish national, was convicted of a corporate offence of failing to provide the books for a company of which she was a former director, an offence carrying a term of imprisonment. She alleged that this requirement to provide company</li> </ul>	<ul style="list-style-type: none"> <li>The complaint was found inadmissible. The complainant failed to sufficiently substantiate her claims that the various court proceedings against her proceeded on an incompetent or arbitrary basis, or that her daughter experienced trauma as a result of the publication of judgments against her or her inability to find gainful employment</li> </ul>

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		<p>books was a contractual obligation, and that the offence carried a term of imprisonment therefore violated article 11. She alleged that article 14 of the <i>ICCPR</i> applied in respect of its guarantees for criminal proceedings and that the court procedures she was subject to were not competent, impartial and independent as required. She alleged that, among other things, the Court of Appeal Judge presiding over the proceedings against her was biased and that there was judicial incompetence and arbitrariness in all of the proceedings against her. She also claimed that publication of the results of the proceedings against her on the internet traumatised her daughter, who was subsequently unable to find employment, in violation of article 17 of the <i>ICCPR</i> (right to freedom against unlawful or arbitrary interference with the family).</p> <ul style="list-style-type: none"> <li>• Alleged violations of rights under articles 11, 14, 15 and 17 of the <i>ICCPR</i>.</li> <li>•</li> </ul>	<p>was a result. Parts of the complainant's claims were also incompatible with the provisions of the <i>ICCPR</i>, including a claim in respect of article 15 prohibiting retrospective criminalisation, without alleging the provision under which she was charged was not in force at the time of her alleged criminal conduct.</p>
<i>JB v Australia</i>	CCPR/C/120/D/2798/2016 (2017)	<ul style="list-style-type: none"> <li>• Custody over a child/young woman diagnosed with autism spectrum disorder.</li> </ul>	<ul style="list-style-type: none"> <li>• The complaint was determined to be inadmissible on the basis that it constituted an abuse of the right of</li> </ul>

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		<ul style="list-style-type: none"> <li>JB submitted the complaint in respect of herself and her daughter, EB. The author claims that the State party has violated her rights and the rights of her daughter under articles 2, 7, 9, 12, 14, 17, 23, 24 and 26 of the International Covenant on Civil and Political Rights, because her daughter, who is diagnosed with autism spectrum disorder, was taken from her custody by the New South Wales Government Department of Community Services when she was 6 years old. JB alleged she and her daughter were discriminated against on the basis of their mental health status. She alleged that her daughter and her own rights under article 7 were violated, as they were inhumanly and degradingly treated through their separation and her daughter's treatment in case; her daughter's rights to liberty of the person and movement were violated by her detention in care. JB alleged that court proceedings to obtain the return of her daughter had proceeded unfairly, and she and her daughter were discriminated against under law and not subject to equal protection of the law on the basis of her daughter's</li> </ul>	<p>submission. The complaint was submitted more than five years after the complainant's last complaint to domestic authorities, in this case the Children's Commissioner of the Human Rights Commission, without there being evidence it was a formal complaint o that she had exhausted other available domestic remedies. No explanation was provided by the complainant as to the reasons for the delay, and in those circumstances the Committee determined the delay was unreasonable and excessive, amounting to an abuse of the right of submission.</p>

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		<p>disability. She also alleged that she and her daughter's rights to freedom from arbitrary interference with the family and the protection of the family were violated by their separation.</p>	
<i>KS v Australia</i>	CCPR/C/107/D/1921/2009 (2013)	<ul style="list-style-type: none"> <li>• Changes in legislation imposing penalties after commission of a crime.</li> <li>• KS was charged with wilful murder on 10 November 1994. He was convicted on 27 September 1995 and sentenced on 21 November 1995 to life imprisonment with a minimum of 17 years before being eligible for parole. However, under legislation applying prior to 20 January 1995, the minimum non-parole period was 12 years. Under different legislation, the sentence for willful murder was a minimum of 15 years and not more than 19 years. The author claimed that the State party has violated his rights under article 15(1) of the Covenant by applying legislation that entered into force after the commission of the offence and that had the effect of extending what he claimed was the minimum years of imprisonment prior to being eligible for parole from 12 to 17 years.</li> </ul>	<ul style="list-style-type: none"> <li>• The complaint was inadmissible as the complainant had failed to exhaust domestic remedies in not seeking special leave to appeal to the High Court from a decision of the Court of Appeal of Western Australia to apply the 17 year imprisonment period, his lack of financial means to do so not absolving him from the requirement to do so consistent with general jurisprudence of the Committee.</li> </ul>

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		<p>Article 15(1) provides that a heavier penalty shall not be imposed than the one applying at the time the criminal offence was committed.</p> <ul style="list-style-type: none"> <li>Alleged violation of article 15(1) of the <i>ICCPR</i>.</li> </ul>	
<p><i>Mansour Leghaei et al</i></p>	<p>CCPR/C/113/D/1937/2010 (2015)</p>	<ul style="list-style-type: none"> <li>Expulsion to the Islamic Republic of Iran.</li> <li>Compelling reasons of national security; review of expulsion; discrimination on the ground of national origin; discrimination on the ground of other status; arbitrary interference with family life; best interest of the child.</li> <li>The author of the complaint was an Iranian national who had lived in Australia lawfully with his family for 16 years before being denied a permanent visa on the basis of national security concerns and became liable to deportation to Iran. He brought a communication on his own behalf, as well as that of his wife and children. The author claimed his right to a fair hearing (article 13) according to law and subject to procedural guarantees was denied, as he was not provided sufficient reasons and evidence for the national security assessment against him</li> </ul>	<ul style="list-style-type: none"> <li>The complainant's claims in respect of articles 2 and 26 (discrimination on racial grounds) were inadmissible for failure to exhaust domestic remedies.</li> <li>The State's decision to refuse the complainant a visa was an interference with his family life within the meaning of article 17, resulting in substantial changes to his settled family life. The author was never formally provided with the reasons for the refusal to grant him the visa resulting in his duty to leave Australia, except for a general explanation that he was a threat to national security based on security assessments of which he did not even receive a summary. In the absence of anything other than a general explanation, the State party's procedure lacked due process under law and</li> </ul>

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		<p>to be able to adequately challenge it. He was denied procedural fairness violating articles 2 and 26 on the basis of his being a non-citizen. The legal effect of his deportation would be his separation from his family in violation of articles 17, 23 and 24; as he was denied a fair hearing, his deportation was arbitrary and therefore an arbitrary interference with family life.</p> <ul style="list-style-type: none"> <li>Alleged violations of articles 2, 13, 17, 23, 24 and 26 of the <i>ICCPR</i>, in respect of the author of the complaint, as well as his wife and children.</li> </ul>	<p>violated his and his family's rights under articles 17 and 23.</p> <ul style="list-style-type: none"> <li>The Committee was of the view that Australia was obliged to provide the author with an effective and appropriate remedy, including a meaningful opportunity to challenge the refusal to grant him a permanent visa; and compensation. Australia should also prevent such violations in the future.</li> </ul>
<i>MGC v Australia</i>	CCPR/C/113/D/1875/2009 (2015)	<ul style="list-style-type: none"> <li>Deportation to the United States of America.</li> <li>Arbitrary detention; expulsion of aliens lawfully in the territory; equality of arms and fair hearing; arbitrary interference with family life; best interest of the child.</li> <li>MGC is an American national, who while resident in Australia had a relationship with an Australian woman, with whom he had a son. After committing criminal offences and a period of imprisonment, a delegate of the Australian Minister for Immigration determined that according to the legislative</li> </ul>	<ul style="list-style-type: none"> <li>The complaints in respect of articles 13, 14, 18 and 24 were found inadmissible by the Committee for grounds including failing to exhaust domestic remedies and failing to sufficiently substantiate the claims.</li> <li>The Committee considered the claims under articles 9, 17 and 23 on the merits. Australia's decision to deport MGC was made on reasonable grounds and therefore did not amount to arbitrary interference with family life or</li> </ul>

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		<p>test MGC did not satisfy the character test for a visa and his visa was cancelled. On this occurring, MGC became an unlawful non-citizen. The relevant decision-maker was required to take into account, among other factors, the best interests of MGC's child. After unsuccessfully exhausting avenues for legal appeal and an application for ministerial discretion, he was deported from Australia. MGC alleged that the decision-maker did not take into account Australia's obligation under the <i>ICCPR</i> to protect the family and not to arbitrarily interfere with his family life, and to take into account the best interests of his child or his rights as a father to ensure his child's moral and religious education. He also alleged his detention in immigration detention for three and a half years while he pursued appeal options was arbitrary.</p> <ul style="list-style-type: none"> <li>• Alleged violations of articles 9, 18 (4), 23 (1) and (4) and 24 (1) of the <i>ICCPR</i>.</li> </ul>	<p>a failure to protect the family. The Committee determined that MGC's right to freedom from arbitrary detention (article 9) was violated by his prolonged period in immigration detention, with no demonstration that his individual circumstances were considered or justified the period of detention, nor consideration of whether less intrusive means would have satisfied the need for his availability for removal.</p> <ul style="list-style-type: none"> <li>• The Committee was of the view that Australia should provide the author with an effective and appropriate remedy, including compensation. The Committee was of the view that Australia was also obligated to prevent similar violations in the future, including by reviewing its migration legislation to ensure its conformity with the requirements of article 9 of the <i>ICCPR</i>.</li> </ul>
<i>MMM et al v Australia</i>	CCPR/C/108/D/2136/2012 (2013)	<ul style="list-style-type: none"> <li>• Indefinite detention of persons in immigration facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Violation of articles 7 and 9 of the <i>ICCPR</i>.</li> <li>• The detention of the complainants was arbitrary in contravention of article 9 of</li> </ul>

Name	UN Doc (Year of decision)	Background	Outcome and recommendations
		<ul style="list-style-type: none"> <li>• The authors of the complaint were nine asylum seekers recognised as refugees (including children), but denied protection visas on the basis of adverse security assessments against them, with no entitlement to pursue merits review of the assessments against them, and review of jurisdictional error limited due to not being provided the information against them. At the time of lodging the complaint, the complainants had been variously held in Australian immigration detention since 2009 or 2010. Australia had not indicated when they would be removed to a third country, or that any active negotiations were underway to do so.</li> <li>• They alleged that their right to liberty, and the right to protection from inhuman treatment, had been violated. They were detained before the assessment of their refugee status, and subsequently without any individual assessment of the necessity of their detention, or without that assessment being subject to due process of law. The state of the law in Australia was such that their indefinite detention could not be challenged</li> </ul>	<p>the <i>ICCPR</i>. Whatever justification there may have been for an initial detention, Australia did not, in the Committee’s opinion, demonstrate on an individual basis that the continuous indefinite detention of the complainants was justified or that other, less intrusive, measures could not have achieved the same end of managing the security risk that the adult authors were determined to represent. Furthermore, the authors were kept in detention in circumstances where they are not informed of the specific risk attributed to each of them and of the efforts undertaken by the Australian authorities to find solutions that would allow them to obtain their liberty and were deprived of legal safeguards allowing them to challenge their indefinite detention, contributing to its arbitrary nature.</p> <ul style="list-style-type: none"> <li>• The negative impact that prolonged indefinite and arbitrary detention in difficult conditions was having upon the complainants’ psychological health, without information and procedural</li> </ul>

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		<p>and was subject to a lack of legal safeguards. The arbitrary character of their detention, its protracted and/or indefinite duration and the difficult conditions in the facilities where they are being held are cumulatively inflicting serious, irreversible psychological harm upon the authors, contrary to articles 7 and/or 10 (para. 1) of the <i>ICCPR</i>.</p> <ul style="list-style-type: none"> <li>Alleged violations of articles 7, 10 (1) and 9 (1)-(2), (4) of the <i>ICCPR</i>.</li> </ul>	<p>rights, amounted to the cumulative infliction of serious psychological harm upon them, and constituted treatment contrary to article 7 of the Covenant.</p> <ul style="list-style-type: none"> <li>It was not considered necessary by the Committee to consider the complainants' claim under article 10 <i>ICCPR</i>.</li> </ul>
<i>Nasir v Australia</i>	CCPR/C/116/D/2229/2012	<ul style="list-style-type: none"> <li>Nasir, a person from Indonesia who was charged with people smuggling offences, alleged violations of articles 9, 10, 14, 17 and 23 of the <i>ICCPR</i> in relation to his ongoing detention following arrival in Australia by boat.</li> </ul>	<ul style="list-style-type: none"> <li>The Committee found the majority of the author's claims to be inadmissible. However, the Committee concluded that the mandatory detention in respect of a particular period of five months without formal charge, 'was not justified, was arbitrary, in violation of article 9 (1) of the Covenant and could not be challenged before a court, in violation of article 9 (4) of the Covenant' and also found that article 9(3) had been violated.</li> </ul>
<i>Nystrom v Australia</i>	CCPR/C/102/D/1557/2007 (2014)	<ul style="list-style-type: none"> <li>Expulsion of the author from his country of residence.</li> </ul>	<ul style="list-style-type: none"> <li>The complaint that the complainant was being punished twice for the same offence thereby violating article 14 was</li> </ul>

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		<ul style="list-style-type: none"> <li>• Arbitrary interference with right to privacy, family and home; right to protection of the family; right to enter one’s own country; freedom from arbitrary detention; <i>ne bis in idem</i>; and prohibition of discrimination.</li> <li>• Stefan Lars Nystrom – a Swedish citizen – submitted his claim on his behalf, as well as his mother’s (a Swedish citizen) and his sister’s (an Australian citizen). Nystrom had lived in Australia on a Transitional (Permanent) Visa since he was 27 days old; he had minimal connections to Sweden, and did not speak Swedish. The author had a substantial criminal record. Nine years after he finished his final prison sentence and with evidence suggesting he was rehabilitated, the Minister for Immigration cancelled his visa status on the basis of a character test relating to his criminal record, and he was deported to Sweden. Nystrom alleged his deportation and the prohibition upon his return to Australia arbitrarily deprived him of the right to enter his own country (Australia), and that his deportation and detention prior to it amounted to punishment for offences for which he had already been punished and</li> </ul>	<ul style="list-style-type: none"> <li>not substantiated, given the purpose for his expulsion as an non-national in Australia unlawfully was not punishment, and therefore inadmissible.</li> <li>• The complainant’s ties to Australia made it “his own country” and deprivation of his right to return to Australia was arbitrary considering he was in a state of rehabilitation and the time that had passed between the end of his prison term and visa cancellation. This arbitrariness also meant it was an interference with his right to family, although not his mother and sister’s right as they remained located in Australia.</li> <li>• The complainant’s deportation to Sweden violated his rights under articles 12(4), 17 and 23(1) of the <i>ICCPR</i>.</li> <li>• Australia is obligated to: <ul style="list-style-type: none"> <li>- provide the complainant with an effective remedy, including allowing the author to return and materially facilitate his return to Australia</li> </ul> </li> </ul>

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		<p>an arbitrary deprivation of his liberty. Nyrstom also alleged his deportation amounted to arbitrary interference with his own, his mother and sister's family life and the right to protection of the family.</p> <ul style="list-style-type: none"> <li>• Alleged violation of articles 9(1), 12(4), 14(7), 17, 23(1) and 26 of the <i>ICCPR</i> in respect of the complainant, and article 2(1) in conjunction with the preceding articles.</li> <li>• Alleged violation of articles 17 and 23(1) of the <i>ICCPR</i> in respect of the complainant's mother and sister.</li> </ul>	<ul style="list-style-type: none"> <li>- avoid exposing others to similar risks of a violation in the future.</li> </ul>
<i>QHL v Australia</i>	CCPR/C/107/D/1938/2010 (2013)	<ul style="list-style-type: none"> <li>• Non-refoulement.</li> <li>• Right to life, right to protection from cruel, inhuman or degrading treatment or punishment; right to be free from arbitrary detention; right to a fair trial; right to protection from interference with the family and home.</li> <li>• QHL, a person seeking asylum, claimed that his forced return to China would violate his rights under the <i>ICCPR</i>, as he held a well-founded fear of persecution on account of his political opinion supporting China's pro-democracy movement and his attempts to</li> </ul>	<ul style="list-style-type: none"> <li>• The communication was determined to be inadmissible, due to failure to exhaust all available and effective domestic remedies. The complainant failed to provide information showing why he had not pursued an appeal to the Federal Court of a decision of the Federal Magistrates' Court finding there was no jurisdictional error in the determination of his protection claim by Australian authorities.</li> </ul>

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		<p>halt corruption in China. He claimed to have been subject to persecution in China due to his anti-communist and anti-corruption activities, and feared persecution including torture and imprisonment on his return by Chinese authorities due to his political beliefs and as a failed asylum seeker (Chinese authorities were notified by the Australian Department of Immigration of his failed asylum bid). He also claimed he would be unable to obtain employment, due to leaving China to seek asylum without his employer's permission, and that this would constitute persecution.</p> <ul style="list-style-type: none"> <li>• Alleged violations of articles 6(1), 7, 9(1) and 17, in conjunction with article 2(1) of the <i>ICCPR</i>.</li> </ul>	
<i>SYL v Australia</i>	CCPR/C/108/D/1897/2009 (2013)	<ul style="list-style-type: none"> <li>• Cruel, inhuman or degrading treatment or punishment.</li> <li>• No full decision of the Committee has been published.</li> <li>• Alleged violation of article 7 of the <i>ICCPR</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• Inadmissibility decision.</li> <li>• No full decision of the Committee has been published.</li> </ul>
<i>Z v Australia</i>	CCPR/C/115/D/2279/2013 (2015)	<ul style="list-style-type: none"> <li>• Removal of child from Poland to Australia without the father's consent.</li> </ul>	<ul style="list-style-type: none"> <li>• The author's claims under articles 14 (relating to treatment of evidence) and</li> </ul>

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		<ul style="list-style-type: none"> <li>• Fair trial; arbitrary or unlawful interference with family; protection of the family; protection of the child; discrimination.</li> <li>• Z submitted a complaint on his own and his infant son's behalf. Both were dual Polish and Australian nationals. With a passport for the child issued by Australian authorities, Z's wife flew with his child to Australia without Z's consent in 2010, after Z initiated divorce and child custody proceedings in Poland. The Full Family Court of Australia issued a decision in 2011 concluding that the child was habitually resident in Australia and overturning acceptance of an application by Polish authorities to return the child to Poland under the Hague Convention governing international child abduction. Poland issued proceedings seeking the child's return twice, which were denied. In 2014, the Family Court issued an order allowing Z access to his child under supervision in Australia, after Z commenced proceedings to gain access in 2011. During the intervening period, the State party did not take steps to enable Z's provisional access to his son.</li> </ul>	<p>26 of the <i>ICCPR</i> were inadmissible, as the author had insufficiently substantiated his claims that the Full Family Court's assessment of the evidence before it was arbitrary, or lacked impartiality so as to be a manifest error or denial of justice, or to indicate a ground for article 26 discrimination.</p> <ul style="list-style-type: none"> <li>• Australia's failure to adopt measures to enable contact between Z and his son between 2010 and 2014 violated their rights to family life, and a failure to guarantee the right of a family to protection under the <i>ICCPR</i>, and undue delays in the determination of access proceedings between 2011 and 2014 violated article 14 (right to equality before the courts).</li> <li>• The Committee was of the view that Australia should make full reparation by ensuring regular contact between Z and his son and providing compensation to Z, and to prevent similar violations in the future.</li> </ul>

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		<ul style="list-style-type: none"> <li>• Z alleged that his child’s removal from Poland amounted to arbitrary or unlawful interference with his family life, the right to protection of the family. Z also alleged the Australian court proceedings violated his right to equality before courts and tribunals and equal protection before the law, as well as his son’s.</li> <li>• Alleged violations of rights under articles 14, 17, 23(1), 24(1) and 26 of the <i>ICCPR</i>.</li> </ul>	
<i>Z v Australia</i>	CCPR/C/111/D/2049/2011 (2014)	<ul style="list-style-type: none"> <li>• Deportation of the author to China.</li> <li>• Risk of irreparable harm in country of origin.</li> <li>• Z, a Chinese national and Falun Gong practitioner, was refused a protection visa from Australia and was liable to return to China. The complainant claimed that, prior to seeking protection from Australia, he had been subject to assault and humiliation from authorities and legal sanctions because of his beliefs. He alleged his return to China would be in violation of his rights to freedom from torture, cruel, inhuman and degrading treatment, freedom of thought, conscience and religion and the right to hold opinions without interference.</li> </ul>	<ul style="list-style-type: none"> <li>• The Committee was unable to conclude on the merits that the complainant was at real risk of treatment contrary to articles 7, 18 and 19 of the <i>ICCPR</i>.</li> <li>• The Committee observed that the author’s refugee claims had been thoroughly examined by the State party’s authorities, finding that he did not demonstrate an actual commitment to the practice of Falun Gong, and the author was unable to show that the Australian authorities’ conclusions were manifestly unreasonable.</li> </ul>

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		<ul style="list-style-type: none"> <li>Alleged violation of rights under articles 7, 18 and 19 of the <i>ICCPR</i>.</li> </ul>	
<i>ZZ v Australia</i>	CCPR/C/120/D/2941/2017 (2017)	<ul style="list-style-type: none"> <li>The right to a fair trial.</li> <li>ZZ, an Australian national born in China, was arrested and charged in Australia with the alleged offence of incitement to murder his ex-wife. ZZ claimed that the police refused to provide him with protection against domestic violence by his ex-wife. He also claimed violation of further rights, as he alleged the police conspired against him and falsely accused him of conspiring to murder his ex-wife, arrested him therefore arbitrarily and denied him bail in order to spy on his legal communications, and that his criminal trial did not accord him with due process. He also claimed his rights were violated by police allegedly forcing him to undertake a DNA test, and by failure to obtain employment as a public transport driver because of his failure to obtain a Working With Children Check.</li> <li>Alleged violations of articles 2, 3, 5, 7, 9 (1), (3) and (5), 14 (1), (2) and (3), 16, 17 (1), 19 and 26 of the <i>ICCPR</i>.</li> </ul>	<ul style="list-style-type: none"> <li>Complaints inadmissible.</li> <li>ZZ failed to show sufficient evidence in respect of the failure of police to protect him and procedural failures in court proceedings against him, such that the Court's evaluation of the evidence and application of the law in his criminal proceedings amounted to manifest error or denial of justice. His claims were inadmissible as insufficiently substantiated.</li> <li>As to other claims of a forcible DNA test and failure to obtain employment, it was not demonstrated that all domestic remedies had been exhausted.</li> </ul>

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