



The United Nations' Universal Periodic Review and Summary of the Peter McMullin Centre on Statelessness' UPR Joint Submission

This factsheet provides an overview of the United Nations Human Rights Council's Universal Periodic Review and how this international process can engage with statelessness issues. The Peter McMullin Centre on Statelessness' joint submission regarding Australia's next review is also summarised.

a. What is the Universal Periodic Review?

The Universal Periodic Review ('UPR') is a process which examines human rights in the 193 countries which are members of the United Nations (known as 'Member States'). All 193 Member States are reviewed during the UPR, which operates on a 4 - 4.5 year cycle. All nations were reviewed during both the first and second cycles. The third cycle is currently underway. The purpose of the UPR is to improve and protect human rights in all countries through the ongoing process, and 'address violations'.¹

b. Who reviews each State?

Each country is reviewed by the UPR Working Group which meets for three sessions each year. The working group is made up of the 47 Member States of the Human Rights Council ('HRC'). Countries are elected to the HRC for three year terms by the United Nations General Assembly.

c. What are the main phases of the UPR?

Initial documents submitted

Firstly, reports are prepared and provided to the HRC prior to the review. These reports are:

- **National Report:** Information prepared by the government of the country under review;
- **Summary of UN Information:** Information collated from various bodies of the United Nations;
- **Stakeholder Information:** Information provided by stakeholders collated into a report by the United Nations Office of the High Commissioner for Human Rights ('OHCHR').

Review by the Working Group in Geneva

The UPR Working Group conducts the review at the UN Office in Geneva. The country under review reports on domestic processes developed to address human rights. Through an 'interactive dialogue', any UN Member State may 'pose questions, comments and/or make recommendations'.²

Outcome report

Three HRC Member States prepare an ‘Outcome Report’ on the State under review. The State under review then submits an addendum, determining which of the recommendations it will accept or reject. Lastly, the HRC formally accepts the final report of the Working Group at a plenary session.

d. When was Australia’s last review?

Australia’s third cycle review took place on Wednesday 20 January 2021.

e. Why is the UPR process an important mechanism for addressing statelessness?

The UPR reviews how States are meeting their obligations under the human rights treaties to which they are party (for information on how a State becomes party to a treaty, see our factsheet [United Nations Statelessness Conventions: An Introduction](#)). Therefore, any State which is a party to the 1954 Convention relating to the Status of Stateless Persons (‘**1954 Convention**’) or the 1961 Convention on the Reduction of Statelessness (‘**1961 Convention**’) may have their records in this area assessed.³ Countries may also be assessed in relation to further obligations relevant to statelessness and nationality found in other human rights treaties to which they are party.⁴

States may report on or commit to addressing statelessness issues in their National Report. The Compilation of UN Material Report may also highlight a country’s obligations under these treaties.

As the UPR allows for contributions from relevant stakeholders including NGOs, there is significant opportunity for institutions to bring attention to any current statelessness issues relevant to the particular country under review. Through this avenue, the Peter McMullin Centre on Statelessness partnered with three organisations⁵ to write a joint submission to the HRC addressing statelessness in Australia, for consideration as part of Australia’s third cycle review, in early 2021.

f. Summary of the Peter McMullin Centre on Statelessness Joint Submission to the HRC

The Peter McMullin Centre’s joint submission is available [here](#). Based on four key issues identified in the submission, a series of recommendations were made.

Issue 1: Australia’s lack of a statelessness determination procedure and specific visa category

There is no procedure established in Australian law to identify and protect stateless persons. Statelessness itself is not sufficient for refugee protection, and there is no specific visa category for stateless persons. Accordingly, where a person is stateless but not also a refugee, there is no mechanism in Australian law to deliver the fundamental rights owed to them under the 1954 Convention.

The submission recommends that Australia develop and introduce a statelessness determination procedure to identify stateless persons, and that a dedicated visa category be established.

Issue 2: Australia's indefinite detention of stateless persons

Australia has a mandatory immigration detention regime for non-citizens who arrive without a valid visa. Stateless persons who do not meet the refugee criteria are at greater risk of prolonged immigration detention. This is because no state recognises stateless persons as a national; hence they are unable to be returned to another country. The High Court of Australia has held it lawful to detain stateless persons indefinitely.

The submission recommends the introduction of maximum timeframes, and independent review avenues for immigration detention.

Issue 3: Australia's citizenship deprivation powers

Australia's domestic legislation in relation to citizenship deprivation creates the risk of rendering Australian citizens stateless. Current provisions introduced into the Australian Citizenship Act 2007 (Cth) by the Australian Citizenship Amendment (Allegiance to Australia) Act 2015 (Cth) provide for deprivation of citizenship if a person engages in various terrorist activities, serves in the armed forces of an enemy country or a declared terrorist organisation, or has been convicted of terrorism offences or certain other offences.⁶ Further, at the time of the joint submission, the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth) had been proposed, seeking to further extend these citizenship deprivation powers. More recently, this bill was passed into law in September 2020.

Under article 8(1) of the 1961 Convention, there is a general prohibition (with limited exceptions) against depriving a person of their nationality where the person may become stateless. Australia's citizenship deprivation laws contain insufficient safeguards to protect against statelessness. For further information, see our submissions to the Australian Government regarding the 'Review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019' and 'Review of the Australian Citizenship renunciation by conduct and cessation provisions', available on [our website](#).

The submission recommends that Australia amend existing citizenship deprivation laws to ensure international compliance. The submission recommended that the proposed 2019 Bill not be passed in its current form, however since the Australian Citizenship Amendment (Citizenship Cessation) Act 2020 (Cth) has now come into force, it is recommended that this law be repealed.

Issue 4: The impact of the COVID-19 pandemic on stateless persons in Australia

In light of the COVID-19 pandemic, stateless persons 'now face even greater, life threatening marginalisation'.⁷ Approximately 46 stateless persons are held in Australian immigration detention. Such facilities are at heightened risk of virus transmission due to crowded conditions. Social distancing and self-isolation cannot be maintained, and many detainees already have poor health.

Asylum seekers on bridging visas, temporary visa holders, migrant workers, and stateless persons are excluded from the Australian Government's economic support measures. Further, medical care access is limited for many asylum seekers in the community as they are not eligible for Medicare.

The submission recommends that people be removed from closed immigration detention facilities, and that Medicare benefits and COVID-19 responsive economic measures be extended to all people holding bridging visas and temporary visas.

Suggested further reading:

[Office of the High Commissioner for Human Rights, 'Universal Periodic Review', United Nations Human Rights Council](#)

[Australia's National Report submitted for the 1st cycle review: UN Human Rights Council, National Report submitted in accordance with paragraph 15\(a\) of the annex to Human Rights Council resolution 5/1: Australia, UN Doc A/HRC/WG.6/10/AUS/1 \(5 November 2010\)](#)

[Australia's National Report submitted for the 2nd cycle review: UN Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: Australia, UN Doc A/HRC/WG.6/23/AUS/1 \(7 August 2015\)](#)

[Australia's National Report submitted for the 3rd cycle review: UN Human Rights, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Australia', UN Doc A/HRC/WG.6/37/AUS/1 \(28 December 2020\)](#)

[Australian Human Rights Commission 'Universal Periodic Review on Human Rights – FAQ \(2016\)' \(Web Page\)](#) ❖

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1. [Human Rights Council, Human Rights Council Resolution 5/1, UN Doc A/HRC/RES/5/1 \(18 June 2007\) annex 'Institution-Building of the United Nations Human Rights Council' paras 1 – 2; UN Human Rights Council hosted by OHCHR, 'Universal Periodic Review' \(Web Page\).](#)
 2. [Ibid paras 3\(b\), 21; UN Human Rights Council hosted by OHCHR, 'Basic Facts about the UPR' About the UPR \(Web Page\).](#)
 3. Convention Relating to the Status of Stateless Persons, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); Convention on the Reduction of Statelessness, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).
 4. See, for example, International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 24(3); International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 7 March 1966, 600 UNTS 195 (entered into force 4 January 1969) art 5(d)(iii); Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 9; Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 7, 8; Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 18.
 5. Refugee Advice and Casework Service, Statelessness Network Asia Pacific, and Institute on Statelessness and Inclusion.
 6. Australian Citizenship Act 2007 (Cth) ss 33AA, 35, 35AA, 35A.
 7. [Joint statement by 84 Civil Society Organisations, 'In Solidarity with the Stateless' \(27 May 2020\).](#)