**Questionnaire on UN Human Rights Treaty Body System**

**Australian Government Response – July 2020**

Australia has a long tradition of promoting and protecting human rights around the world and has been closely involved in the development of the international human rights system. As the human rights treaty bodies play a key role within this system, Australia welcomes the opportunity to put forward suggestions on how to strengthen these bodies and the reporting process. We thanks Morocco and Switzerland for leading this process.

The primary purpose of any reform of the treaty body system must be to enhance human rights protections at the domestic level through improved State party compliance with human rights treaty obligations. If the system is not efficient, it makes it difficult for States parties—especially developing States—to engage with the system and comply with its procedures. States parties’ resources may be directed solely towards complying with procedures, rather than focussing on the priority area of human rights compliance.

*The functioning of the treaty body system: its efficiency, effectiveness, strengths and weaknesses; suggestions for its further improvement*

There are key challenges which remain in the treaty body system. A number of these were raised by Australia in the recommendations made at the time of the High Commissioner’s treaty body strengthening process in 2012. Australia continues to support these recommendations, including the need for:

* A master calendar for all the Committees including due dates for States parties’ reports and appearance dates;
* Consistent page limits and uniform templates for reports;
* Time limits on appearances to improve the focus and quality of questions and answers;
* Improving the accessibility of the OHCHR website and online resources;
* Enhancing the independence and expertise of Committee members; and
* Video-teleconferencing capability to enable high-level government experts to participate.

*Implementation of UNGA resolution 68/268 and views on biennial report of the UN Secretary-General on the status of the treaty body system*

Australia supports the use of the simplified reporting procedure and has adopted that procedure where available. For example, Australia’s 2016 ICCPR, 2018 CRPD and 2019 CAT reports were prepared in accordance with the simplified reporting procedure.

Australia supports the use of the common core document. Australia submitted its current common core document in August 2007 and is currently preparing an updated common core document.

Australia supports and facilitates NHRI and NGO involvement in our treaty body reporting processes. For further information, see response to point 8.

Further reflections of relevance to UNGA resolution 68/268 are included in the responses below.

*Good practices and methodologies in relation to working methods and procedural matters, including harmonization and alignment of working methods*

Australia reiterates its strong support for the harmonisation of working methods across all Committees. It also notes that greater coordination of scheduling would avoid duplication of reporting processes and overlap of appearances before different treaty bodies and the Human Rights Council’s Universal Periodic Review mechanism. Advance notice of reporting deadlines and scheduled appearances would similarly facilitate better reporting by allowing for adequate time to coordinate responses with Australia’s constituent States and Territories, given the subject matter of human rights treaties frequently lies within their jurisdictions.

*Coordination and predictability in review cycles and reporting*

The development by the OHCHR of a master calendar for all of the Committees would provide valuable assistance to States parties in engaging effectively with the treaty body system. The master calendar should be coordinated across all Committees and include the due dates for States parties’ reports and appearance dates. Greater coordination within the treaty body system in relation to scheduling appearances could also assist States parties by ensuring, where possible, appearances before different treaty bodies and the Human Rights Council’s Universal Periodic Review mechanism do not overlap.

Such a master calendar would ensure States parties do not duplicate reporting and briefing processes. The current uncoordinated process can make domestic planning and engagement difficult. Reducing the reporting burden and making the reporting systems simpler, more efficient and focused would support States parties to focus on follow-up and implementation.

Greater notice of reporting deadlines and scheduled appearances would also facilitate better reporting, particularly in States parties with federal systems (such as Australia) where domestic engagement in the reporting cycle is more complex. Advanced notice would ensure States parties have adequate time to coordinate inter-ministerial responses and briefings and therefore improve the quality of reporting.

*Current reporting system, including common core document, and ways to further improve and simplify reporting for States parties whilst ensuring the substantive quality of the national reports*

Australia supports the imposition of word limits for treaty body reports. However, with Lists of Issues Prior to Reporting and Lists of Issues, there can be great difficulty in meaningfully responding to the number of issues raised within the word limit. This is particularly the case where one question might require the respondent to address multiple issues, or explain how one policy or program affects numerous cohorts of people.

Australia supports measures to clarify or limit the number of issues presented in Lists of Issues Prior to Reporting and Lists of Issues. Consideration should be given to how realistic reporting guidelines are in the context of word limits. Guidance from Committees as to the desired or necessary balance between breadth and depth of information to be provided would be of great use.

Australia supports the standardisation of the use of a Common Core Document with treaty-specific List of Issues Prior to Reporting through a consistent, clear policy on its use. This measure would help ensure the treaty body system is effective and efficient in the future.

Australia recommends the implementation of strict time limits for appearances, which would improve the focus and quality of questions and answers. Australia welcomes time limits that encourage both the State party and Committee to make the most efficient use of time available and allow sufficient time and scope to discuss issues in detail and present their perspectives fully.

Australia also supports the use of targeted, clearly-articulated questions that expressly reference relevant articles of the treaty to ensure that the Committee receives the most relevant and appropriate information from States parties. Australia strongly supports the proposal for the provision of a list of questions to the State party delegation 24 hours prior to the appearance to avoid duplication of questions and to allow States parties the best opportunity to provide targeted and detailed answers.

*Dialogue between States and treaty bodies both in preparation for and during States reviews as well as in follow-up to the review*

The preferred outcome of any treaty body appearance is that both the State party and the Committee feel there has been sufficient time and scope to discuss issues in detail and present their perspectives fully. If appearances become too formulaic and time‑pressured, there is a risk this outcome is not achieved.

Australia considers proposals to reduce the length of the appearance before treaty bodies from six to three hours are worthy of further exploration, given the significant resource savings that would be involved. The observance of strict time limits, would help ensure there remained sufficient time and scope to discuss all pertinent issues during a three hour appearance.

Shorter appearances that make the most efficient use of the time available may be possible if the Chairs at each session keep members of the Committee and State party delegations to strict time limits. Rather than detract from the quality of the appearance, time limits would improve the focus and quality of questions and answers.

Targeted, clearly‑expressed questions that are focused on relevant treaty obligations (that is, by expressly referencing the relevant article of the treaty) would also help ensure the Committee receives relevant and appropriate information from States parties. Cooperation and coordination between Committee members to limit duplication of questions would also assist. As mentioned above, Australia strongly supports the proposal for the Committee to prepare a specific list of questions that is provided to the State party delegation at least 24 hours before the appearance.

A consistent policy across all the Committees on the general approach to reviewing follow-up action by States parties would also be useful. At present, each Committee takes a different approach to follow-up.

*Assessment of the concluding observations and recommendations*

Australia notes that the precision and accuracy of concluding observations may influence the ability of States parties to implement them. Clear links to specific provisions of the treaties and the issues discussed at the appearance are essential. Australia supports greater consistency between concluding observations and relevant recommendations by Human Rights Council Special Procedures Mandate Holders. Australia also supports a consistent policy allowing States parties to review concluding observations before their release to identify and correct any factual errors.

Australia supports refocusing and simplifying concluding observations to incorporate a more practical approach, with priority areas for follow-up or short-, medium- and long-term goals. Better tailoring concluding observations towards the different domestic legal and political contexts of individual States parties and sharing best practice examples would also assist with implementation. Australia also supports the formulation of a consistent policy on reviewing follow-up actions by States parties.

*Strengthening the engagement with civil society and other relevant stakeholders*

Australia supports and facilities National Human Rights Institution and Non-Government Organisation involvement in our treaty body reporting processes.

Australia is a traditional co-sponsor and strong defender of the resolution on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (reprisals). Australia condemns all acts of intimidation or reprisals against individuals and groups who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights. At HRC35, Australia joined a Dutch-led joint statement committing to, inter alia, ‘engage robustly to prevent and address acts of intimidation and reprisals, speaking up to address such incidents when they occur’.

Australia values the important role civil society plays in ensuring transparency and accountability in human rights treaty body reporting. Australia actively seeks to engage civil society and NGOs during the preparation of all human rights treaty reports. For example, Australia often provides funding to NGOs to undertake consultations for the preparation of shadow reports, and to participate as members of the NGO delegation at Australia’s appearance.

*The capacity-building programme, experiences and impact, in terms of reporting and in terms of national implementation of recommendations*

While Australia has no experience with the OHCHR’s Treaty Body Capacity Building Program, we support its objectives and welcome its continued operation.

*Use of new information and communications technologies and its potential to further increase efficiency and accessibility*

Australia supports measures to improve the accessibility and accuracy of information relating to the treaty body system. The OHCHR website contains valuable and largely up-to-date information for States parties, non-government organisations (NGOs) and members of the public. Australia suggests that the accessibility of the OHCHR website may be improved through easier navigation between pages, an enhanced search function and a continued focus on ensuring it is user-friendly for persons with disabilities.

Australia welcomes the introduction of webcasting of a large number of public meetings and State party reviews. Australia reiterates its support for the broadcasting of all public meetings of the Committees through social media to enhance the visibility of dialogues and the Committee’s work and to encourage greater NGO and general public participation in treaty reporting processes.

Australia notes OHCHR’s interest in facilitating video-teleconferencing and reiterates its support for the use of this technology as a cost-effective means for enabling more high-level government experts to participate without having to travel to appearances. Australia encourages OHCHR to make arrangements for small States parties, particularly Small Island Developing States, that do not have access to adequate video-teleconferencing facilities to make use of such facilities in the OHCHR regional offices where possible.

*Opportunity of reviews in countries or in regions*

Australia would strongly support conducting treaty body sessions at a regional level. Such regional sessions may:

* reduce travel costs for States parties;
* enable more high-level experts to engage with the process;
* improve visibility and accessibility of the appearances due to being held in similar time zones; and
* promote efficiency by facilitating communication between delegations and governments.

For example, the recent Extraordinary Outreach Session of the Committee on the Rights of the Child (CRC) in Samoa recognised the difficulties faced by Pacific nations in having to travel to Geneva for treaty body appearances. We note that, as the first regional meeting of any United Nations treaty body to take place outside of Geneva or New York, it required substantial commitment and dedicated funding in order to be realised.

The cost-effectiveness of ongoing regional reviews would need to be carefully assessed. Australia supports resource saving or cost-neutral proposals that facilitate State party engagement with the system and improved compliance with human rights obligations. Australia does not support reform proposals that have significant resourcing implications.

It is important to have government experts on State party delegations to ensure high-quality dialogue at appearances. However, attending appearances can be a great strain on the limited resources of smaller States parties. As noted above, in the absence of video-teleconferencing facilities in the State party concerned, consideration could be given to the use of such facilities in the OHCHR regional offices (where available). While travel would still be required, it is likely to be significantly cheaper and less burdensome than travel to Geneva or New York for those States parties.

*Preserve and strengthen the independence and impartiality of treaty body members and ensure diversity in terms of gender, geography, background, expertise, representation of different forms of civilization and principal legal systems, as well as the participation of persons with disabilities*

Australia reiterates its support for the nomination of independent and highly qualified candidates for membership of all Committees. Australia welcomes the adoption of the Addis Ababa guidelines on the independence and impartiality of the human rights treaty bodies by most Committees. Australia also welcomes the General Assembly’s steps to encourage States parties to adopt national policies or procedures with respect to nomination of experts.

Australia considers the qualifications, experience and expertise of candidates in the election of treaty body experts, and gives careful consideration to matters such as geographical distribution, gender balance and the participation of persons with disabilities in the membership of human rights treaty bodies.

Australia seeks to nominate qualified and recognised experts to human rights treaty bodies as appropriate. For example, Australia successfully supported the nomination of Ms Rosemary Kayess, an accomplished human rights lawyer, researcher and academic, as candidate to the Committee on the Rights of Persons with Disabilities for the term 2019-2022.

Australia remains supportive of the recommendation that members of all Committees serve a maximum of two terms (we note such a limit is already in place for the Committee on the Rights of Persons with Disabilities and the Subcommittee on the Prevention of Torture).

*Enhancement of the coordinating role of treaty bodies Chairpersons*

Australia acknowledges the efforts of the Committees and their members to work together and harmonise practices. Australia supports further coordination and harmonisation of practices across treaty bodies.

*Overall coherence of the treaty body system and the collaboration among treaty bodies as well as within the UN system and with regional monitoring bodies*

As noted above in relation to questions 3 and 4, Australia reiterates its strong support for the harmonisation of working methods across all Committees. Australia also notes that greater coordination of scheduling will avoid duplication of reporting processes and overlap of appearances before different treaty bodies and the Human Rights Council’s Universal Periodic Review mechanism.

Australia is also supportive of harmonisation of working methods as they relate to the Human Rights Council’s Special Procedures Mandate Holders (SPMHs). Where a SPMH has made a recommendation on an issue of concern to a treaty body, it would assist States parties with implementation if the treaty body recommendation was consistent with that of the SPMH.

As mentioned above, Australia supports the development by OHCHR of a master calendar for all of the Committees

*Current system of processing individual communications, inter-State communications and urgent actions: its efficiency, effectiveness, strengths and weaknesses; suggestions for its further improvement*

Australia supports strengthening of individual communications processes.

Australia has previously suggested clearer timeframes for treaty bodies’ consideration of communications, limitations on the number of times parties can make additional arguments, and the need to increase efficiency and reduce delays in individual communications processes generally. Australia notes the recent adoption (in 2019) of revised rules of procedure of the Human Rights Committee, which specify limited circumstances in which parties may file additional written submissions. Australia welcomes changes consistent with the aims of increasing efficiency and avoiding protraction of the communications process. However, Australia remains concerned about delays in some communications processes, noting instances of Australia receiving complainant submissions one to two years after they were filed.

Australia has previously recommended that treaty bodies give consideration to determining the admissibility of communications before requiring a State party’s observations on the merits (‘split decisions’). Australia reiterates its support for split decisions on admissibility in appropriate cases. Separate and preliminary determinations on admissibility can increase efficiency by avoiding the need for the State party to comment unnecessarily on the merits of claims later found to be inadmissible. Australia considers that transparent and reasoned consideration of the admissibility of an author’s claim is a key procedural element of individual communications processes, and essential to the success of the complaints framework. Australia welcomes recent decisions in which treaty bodies have expressly considered and assessed the admissibility of the communication, and given detailed reasons for a decision on admissibility.

In respect of the treaty bodies’ acceptance of communications with multiple authors, Australia notes that the individual communications mechanism is intended to be an individual complaints mechanism. While Australia acknowledges that in certain circumstances it is proper and appropriate for more than one individual to collectively submit a communication alleging breaches of a treaty by a State party arising from the same conduct, Australia submits that there must be reasonable limits. The absence of such limits risks creating a new category of communication more akin to a class action. The ability of multiple individuals to submit a single communication imposes a significant burden upon both the State party responding to these claims and to the treaty body itself.

Australia has recently received a number of communications that have been transferred between forums, that is, they were originally submitted in one forum (for example, the Working Group on Arbitrary Detention) but then transferred to, and accepted by, a treaty body without amendment. This makes responding to the communication difficult, given that the claims have been formulated in the context of the former forum’s mandate and requirements, rather than those of the treaty body. Australia considers that where this occurs, the treaty body should require that the communication be reformulated consistent with the procedural and substantive requirements of the treaty body, before accepting the communication.

*Accessibility for persons with disabilities and wider accessibility and visibility of the work of the treaty bodies*

All OHCHR online content should be made accessible to persons with disabilities, for example, by providing html versions of all documents. This would be a key opportunity for the UN, through the designated communications officer, to be a world leader on this important issue.

Australia supports measures to improve the accessibility and visibility of the work of the treaty body system, especially for persons with disabilities. For further information, see response to point 10.