AUSTRALIA'S COMPLIANCE WITH THE UN COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

COMMUNITY PERSPECTIVES

THE AUSTRALIAN SOCIAL AND ECONOMIC RIGHTS PROJECT (ASERP) SUBMISSION TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

CO-ORDINATED BY THE VICTORIAN COUNCIL OF SOCIAL SERVICE WITH ASSISTANCE FROM THE STEGLEY FOUNDATION

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VCOSS

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This document was compiled by Annie Pettitt and edited by Bette Moore

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This submission is the work of many organisations. As a result the submission as a whole does not necessarily represent the view of each contributing organisation.

National

- Australian Council for Overseas Aid – the peak body of overseas relief and development agencies
- Australian Education Union – union for teachers in public schools
- Centre on Housing Rights and Evictions
- Foundation for Aboriginal and Islander Research Action (FAIRA) Aboriginal Corporation
- Human Rights Council of Australia
- National Tertiary Education Union
- National Union of Students -– the union body that represents Australian University students.
- National Welfare Rights Network

New South Wales

- New South Wales Combined Community Legal Centre Group – the peak body for community legal centres in New South Wales:
    - Human Rights and Discrimination Sub-committee of the New South Wales Combined Community Legal Centre Group – formed in mid-1995 in response to the increased need to develop policy responses on issues of human rights and discrimination:
        - Welfare Rights Centre
        - Public Interest Advocacy Centre
        - Kingsford Legal Centre
        - Disability Discrimination Legal Centre
        - Immigration and Advice Rights Centre
        - South West Sydney Legal Centre
- Australian Human Rights Centre – based in the Faculty of Law, university of New South Wales, was established in 1989 to address human rights issues in Australia and the Asia-Pacific region.

- Redfern Legal Centre is a community legal centre established in 1977 in response to concern over the lack of accessible legal advice for low-income people in inner city Sydney.

- Rentwatchers – a coalition of community organisations that formed in 1997 in response to rising rent levels in Sydney.

Western Australia

- Adams, Toby – individual

- Anglicare – a multifaceted social service agency

- Armadale Youth Accommodation – short-term supported crisis accommodation for young people aged 14-18

- Human Rights International – an independent Human Rights consultant

- People with Disabilities WA Inc. – the peak disability consumer organisation in Western Australia representing the rights, needs and equity of people with disabilities

- Salvation Army: Lentara Hostel – provides accommodation for men

- Shelter Western Australia – a peak community managed housing organisation that seeks to represent the views of consumers and community groups in major housing issues

- Southern Communities Advocacy Legal and Educational and Legal Service – a community legal service that is part of Murdoch University, which advises economically disadvantaged people on legal matters:

    - Ave Maria Centre – assists clients aged 25 – 44 who are homeless or victims of domestic violence

    - Calvary Youth Services – supported accommodation for people over the age of 15

    - Fremantle Women' s Refuge

    - Milligan House

    - Moorditch Koolack Aboriginal Refuge – an agency delivering refuge services to the Indigenous community

    - The Lucy Saw Refuge – provides short-term accommodation to women and their children after they have been subjected to domestic violence

    - Salvation Army: Family Support Services

    - Warrawee Refuge -– services include a refuge for women and children and an out-reach service for families experiencing domestic violence

- Pat Thomas House – a women's refuge

- Supported Housing Assistance Program - provides assistance for disadvantaged families in order to keep them within mainstream accommodation

- Tenants Advice Service – an independent, non-profit, community legal centre that provides specialist advice and help for tenants

- Western Australia Council of Social Services – the peak body of Western Australian social and community services organisations

- Western Australian Association Mental Health – the Western Australian peak body for organisations working in the area of mental health

- Youth Affairs Council Western Australia – the Western Australian peak body for organisation working in the area of youth

South Australia

- South Australian Anti-Poverty Working Group (SAAPWG) – a network of groups working toward the alleviation of poverty in South Australia:

    - SAAPWG ASERP Sub-Group:
      Michelle Jarvis - Human Rights Lawyer
      Clancy Kelly – International Human Rights Law Consultant
      Trish Hensley – Sector Development Officer, ShelterSA
      Rhonda Dunstan – Low-Income Support Program Project Officer, Sout Australian Council of Social Service

    - Adelaide Central Mission – welfare and accommodation services

    - Centacare – welfare and accommodation services

    - Lutheran Community Care – welfare and accommodation services

    - Nunkuwarrin Yunti – Aboriginal health service

    - Overseas Chinese Association – welfare service

    - Rights Advocates of Australia – human rights advocate, particularly for Indigenous people

    - Salvation Army Family Support Services – welfare and accommodation service

    - Shelter South Australia – peak housing body

    - South Australian Council of Social Services – the peak body of South Australian social and community services organisations

- St. Vincent de Paul - welfare and accommodation services
- Wesley Uniting Mission - welfare and accommodation services

Other contributors to the South Australian Anti-Poverty Working Group:

- Australian Education Union of South Australia – advocate for education services and workers
- Children and Domestic Violence Action Group Inc. – advocates for women and children suffering domestic violence
- Parent Advocacy – advocates for parents of people with disability
- United Trades and Labour Council of SA – peak body for trade unions
- Welfare Rights Centre – advocate for social security recipients
- Women's Health Statewide – health services for women
- Women's Legal Service – legal service for women

- Ngarrindjerri Treaty Working Party for the Ngarrindjerri Nation
  - Darryl Sumner
  - Tom Trevorrow
- Norwood Community Legal Service

Tasmania

- Tasmanian Coalition for the Eradication of Poverty:
  - Anglicare Tas.
  - Baha'i Community
  - Caritas Australia
  - Catholic Media Centre
  - Community Aid Abroad
  - National Council of Women (Tas)
  - Quaker Services
  - Save the Children Fund

- Shelter Tasmania
- Tasmanian Council of Churches
- Tasmanian Council of Social Service
- Tasmanian Development Education Centre
- Results
- Womens' International League for Peace and Freedom
- World Vision Australia

Queensland

- Queensland Shelter – works towards a fairer and more just housing system and advocates for low-income housing consumers.

Victoria

- ASERP – VWG: Victoria Working Group of the Australian Social and Economic Rights Project Centre
- Australian Education Union, Victoria – Union for teachers in Victorian public schools
- Brotherhood of St. Laurence – a non-Government welfare agency working for an Australia free of poverty.
- Casey North Community Information and Support Service – provides generalist information and support to the Casey North Community
- FairWear – Community and church organisation working for the elimination of the exploitation of outworkers in Australia.
- Fernandes, Ken – individual
- Law Institute of Victoria Human Rights Committee
- Shelter Victoria
- Uniting Church in Australia, Synod of Victoria – The Uniting Church in Australia is the third largest Christian denomination in Australia.
- Victorian Aboriginal Legal Service Co-orperative Ltd.
- Victorian Council of Social Service – the peak body for Victorian social and community services organisations
- Victorian Independent Education Union

- Victorian Trades Hall Council
- Women's Rights Action Network Australia
- Victorian Welfare Rights Unit – an independent community organisation that provides advice and information on social security matters

EXECUTIVE SUMMARY

INTRODUCTION

This submission has been developed with input from over fifty non-government organisations from across Australia. Most of these organisations come into daily contact with people who face discrimination and disadvantage. The contributions cite extensive research and other evidence which demonstrates that the Australian government has failed to meet its obligations under the ICESCR.

Since assuming office in 1996, the current Australian government has introduced a number of reforms which have undermined the realisation of economic, social and cultural rights especially for minority and disadvantaged groups. Indigenous Australians are disproportionately represented among the most disadvantaged social groups and are consequently deprived of their social, economic and cultural rights, as detailed in the Covenant. In particular, we draw the Committee's attention to Appendix Two which is a contribution that has been made on behalf of the Ngarrindjerri Nation.

ARTICLE 1: THE RIGHT TO SELF-DETERMINATION

A policy shift by the Australian Government from self determination to 'self-empowerment' and 'self-management' fails to address the issue of how Indigenous self-determination has been actualised. The Government's failure to respond to the recommendations of various National Inquiries is indicative of their failure to comply with the terms of Article 1.

ARTICLE 2 (1): LEGISLATIVE MEASURES TO REALISE THE COVENANT

The only avenue of redress available to someone whose rights have been violated is through the Human Rights and Equal Opportunity Commission (HREOC), which is non-judicial and cannot compel compliance. The ICESCR is the only major human rights instrument not included in the HREOC system.

ARTICLE 2 (2): THE RIGHT NOT TO BE DISCRIMINATED AGAINST

Mechanisms afforded by the HREOC fail to protect individuals from discrimination. While various legislative measures may partially implement Covenant rights, the High Court of Australia has ruled that these measures are mere gratuities which do not legally require the government to provide, or to ensure their adequacy. Covenant rights have no place within the HREOC's functions of investigation and conciliation of complaints, nor in its functions of human rights promotion, research and legislative review. This gravely undermines the relative effectiveness of remedies for violations of Covenant rights. At the very least, as such differential treatment of Covenant rights requires compelling justification. In addition HREOC remedies have major deficiencies and fail to provide effective remedies.

Due to substantial funding cuts, HREOC's work force has been reduced by about one third which has severely affected its ability to effectively handle individual complaints, education, public inquiry and policy work.

Freedom from discrimination as provided through Commonwealth legislation is based on individuals enforcing their rights through a judicial process in the Federal Court or the Federal Magistrates Court. Many of those people suffering discrimination are the most disadvantaged in our society and are not in a position to pay the legal costs associated with enforcing their rights through a judicial process. An associated issue is that in 1997, the Australian Government substantially cut funding to the Legal Aid.

There are a number of vulnerable groups in Australian society who suffer from the discriminatory practices of other individuals, corporations and the State. Indigenous people are disproportionately represented among the most disadvantaged social groups across a broad range of key indicators, including: health, housing, employment, and education. Evidence cited in this submission suggests that they are being deprived of their social, economic and cultural rights.

ARTICLE 6: THE RIGHT TO WORK

Through the privatisation of labour market, funding cuts (of $1.8 billion over four years) assistance for unemployed people has been substantially reduced. Most employment programs have been abolished. The centrepiece of the remaining funded programs for unemployed people is 'Work-for-the-Dole', which provides work experience only, and has no focus on the particular needs of the individual, no provision for training, and has no links to on-going job opportunities. Many long-term unemployed people do not have access to accredited training.

The Government has expanded the number of employment categories excluded from unfair dismissal laws. These include the growing categories of casual, contract and fixed term employment. This means an increasing number of employees are unprotected by federal unfair dismissal laws, purely on technical grounds and are therefore not eligible to seek a remedy in the Australian Industrial Relations Commission.

ARTICLE 7: THE RIGHT TO JUST AND FAVOURABLE CONDITIONS AT WORK

There is considerable evidence that *Workplace Relations Act 1996* has resulted in poor outcomes for workers. For example, evidence from studies of textile, clothing and footwear industries indicate that conditions for the growing group of homeworkers are poor, their rates of pay low, (as little as $2 per hour) instances of chronic injury are commonplace and that children are involved in this work. There is concern about what the Government is doing to facilitate award compliance, ensure the exploitation of women and children ceases and that wages and conditions for home-based outworkers are fair and just.

ARTICLE 8: THE RIGHT TO FORM AND JOIN TRADE UNIONS

The International Labour Organisation (ILO) Committee of Experts has criticised the Workplace Relations Act 1996 for: a) discouraging collective bargaining; and b) restricting the right to strike. The ILO urged the Government to review and amend this legislation. The responsible minister has dismissed the ILO's observations as irrelevant.

ARTICLE 9: THE RIGHT TO SOCIAL SECURITY

Certain groups of people are denied access to the social security system including:

- people who have 'breached' a compliance measure under the 'Work for the Dole' scheme unemployed people are compelled to participate in work programs or face loss or reduction of their income support payments;

- new migrants must wait two years before they are entitled to receive income support, regardless of their hardship. Research shows that some new migrants have experienced malnutrition and illness, while others have been forced into exploitative employment situations, including in some cases prostitution;

- refugees who arrive in Australia without lawful documentation are given temporary visa status for three years during which they cannot access the full range of social security benefits; and

- Asylum seekers in the review process concerning their refugee determinations cannot access the social security system and are not eligible for any other income support.

Administrative changes and funding cuts have denied people's enjoyment of the rights under the Covenant. For example:

- significant cuts to the funding for social security administration have resulted in a reduction of service quality and access but also an increase in the number of mistakes which adversely impact on claimants; and

- under the Enhanced Compliance Initiative, the Government will hire private detective agencies to secretly monitor unemployed people.

ARTICLE 10: THE RIGHT TO PROTECTION AND ASSISTANCE FOR THE FAMILY

Concern has been expressed by contributing organisations that the social security system is not meeting the needs of families. The reduction in the coverage of social security has forced families to survive on reduced income. The level of support that is provided is inadequate. Two indicators of this are child poverty figures and the discrepancy between social security payments and the cost of caring for a disabled child. There is also concern about the lack of attention and recognition of generalist and specialist services needed by Indigenous families.

ARTICLE 11: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Recent estimates show that as many as 23% of Australian children under 15 years of age live in poverty. As noted in its report to this Committee, the Australian Government has legislated to ensure that pension rates are maintained at 25% of Male Average Weekly Earnings. However, this is not the case for other social security payments, including those for unemployed families. Levels of social security income are insufficient to ensure the right to an adequate standard of living.

The lack of access to affordable housing, and increasing rates of homelessness is a major concern. The recent shift in government policy from the supply of public housing to subsidies for private renters has increased the pressures on low income earners, who continue to spend in excess of 31% of their incomes on rent.

Concerns relating to forced evictions include: private renters being forced to leave their homes within 90 days with no explanation, and boarders and lodgers still have no tenancy rights. Of particular concern are the forced evictions of people in the inner city of Sydney in anticipation of the forthcoming Olympic Games and the radical increases in rent that will force people out of the inner city.

ARTICLE 12: THE RIGHT TO ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

Decreases in social expenditure, decentralisation of responsibility from federal to state/territory levels and increasing privatisation of health services have had a detrimental impact on the delivery of specialist services. However, the Government's report fails to mention the effects that this restructuring has and will have for disadvantaged groups such as women and Indigenous people.

The health of Indigenous people is by far the worst of any group in Australia and compares unfavourably with the health of other Indigenous people in the USA, Canada and New Zealand. In 1999 life expectancy for Indigenous males and females was 56.9 and 61.7 years respectively. This

compares to a life expectancy for non-Indigenous women of 81.1 years and 75.2 years for non-Indigenous men. The infant mortality rate for Indigenous children is around two to four times the rate of non-Indigenous Australians. Although there have been improvements in infant mortality rates have remained unchanged. The appalling state of Indigenous health requires urgent government attention and substantially increased resources.

Further concerns include the lack of adequate specialist services for women and children recovering from sexual assault, the lack of pre- and post-release support, information and education for women in prison, the high rate of deaths soon after release from prison, and the disadvantage suffered by older women of non-English speaking backgrounds, particularly in their access to health services.

ARTICLE 13: THE RIGHT TO EDUCATION

Access to free education at all levels in Australia has decreased rather then progressively increasing as prescribed by the Covenant. Australian Government figures (1992-98) show a decline in students remaining until the end of secondary school. The State and Federal governments' funding policies have resulted in increased funding to private schools, while the public schools have received inadequate funding. Many public schools are charging fees to cover core costs. Cuts to higher education funding have resulted in increased student fees while student income support has been reduced. There is evidence that the material conditions for teachers have become worse over recent years and have not improved as prescribed by the Covenant.

ARTICLE 1 – THE RIGHT TO SELF-DETERMINATION

AUSTRALIAN GOVERNMENT'S REPORT

Since assuming office in 1996, the current Australian government has reversed many of the advances that have been made over the previous twenty years, especially with regard to respect and promotion of Indigenous Australians' right to self-determination.

In the Government's report there is no reference to self-determination as detailed under Article 1. Instead, the reader is referred to the Government's most recent International Covenant on Civil and Political Rights Report (1994) which does not encompass the period of the International Covenant on Economic, Social and Cultural Rights (CESRC) report period, and does not address the issue of how Indigenous self-determination has been actualised.

The Government's failure to respond to the recommendations of two major National Inquiries[1] is indicative of their failure to comply with the terms of Article 1. Both Inquiries contained recommendations relating to the rights of Indigenous Australians to self-determination and proposed guidelines for its implementation and achievement.

NATIONAL ISSUES

RETROGRESSIVE ACTIONS

There are many areas where the current Government has effectively undermined many of the incremental advances of Indigenous Australians' right to self-determination, including:[2]

- a policy shift from self-determination to 'self-empowerment' and 'self-management;'[3]
- reduced funding of the Aboriginal and Torres Strait Islander Commission (ATSIC)and the Human Rights and Equal Opportunity Commission (HREOC) over the past four years;[4]

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[1] The Commissioner Elliott Johnston, Australian Royal Commission 1991, *Royal Commission into Aboriginal Deaths in Custody* and Human Rights and Equal Opportunity Commission 1997, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.*

[2] See Women's Rights Action Network Association (WRANA) 1999, *Retreating from the full realization of Economic, Social and Cultural Rights in Australia: A Gendered Analysis, Shadow Report to Australia's Third Periodic Report to the Committee on Economic, Social and Cultural Rights, covering period 1990-1997* (prepared by Barbara Palmer and Di Otto), and the Foundation for Aboriginal and Islander Research Action (FAIRA) reports for more detail on regressive steps taken by the current Government.

[3] Recent Committee for the Elimination of Racial Discrimination (CERD) Concerns and Recommendations reiterated its recommendation 'that the State party [Australia] ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5(c) of the Convention and General recommendation XXIII of the Committee, which stresses the importance of ensuring the informed consent of indigenous peoples.' See *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia 24/03/2000 CERD/C/56/Misc.42/rev.3* at point 9.

[4] CERD also noted their concern about the proposed changes to ATSIC and HREOC, 'Concern is expressed that changes introduced and under discussion regarding the functioning of both institutions

- failure to sufficiently and adequately implement the recommendations of both the *Royal Commission into Black Deaths in Custody* and *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*;[5]

- the 1998 amendments to the *Native Title Act 1993* which have impaired, and in some cases, extinguished native title;[6]

- the introduction of mandatory sentencing laws in the Northern Territory and Western Australia that are in direct violation not only of the International Convention on Civil and Political Rights, but also of the Australian Constitution, as these state laws are in contradiction to national commitments to human rights policy. [7]

EFFECTS OF THE FORCIBLE REMOVAL OF INDIGENOUS CHILDREN FROM THEIR FAMILIES

One of the most pressing issues that continues to impact on the Indigenous community is the ongoing effect of the forced removal of their children. Forcible removal of mixed-race fairer-skinned children was initiated by governments in the 1880s and continued into the 1960s to assimilate them into 'white' society.

Many children reported physical, sexual and emotional abuse after being removed. For Indigenous societies the effect has been devastating. Their children were not only dispossessed from their families and communities, they also lost their cultural knowledge of their heritage, languages, and their connection to the land. This amounts to a gross violation of Article 1(1), which states that, by virtue of the right to self-determination, all peoples may freely pursue their economic, social and cultural development.

NEED FOR REPARATION

The *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* recommended the use of the internationally acclaimed van Boven Principles to guide

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may have an adverse effect on the carrying out of their functions. The Committee recommends that the State party give careful consideration to the proposed institutional changes, so that these institutions preserve their capacity to address the full range of issues regarding the indigenous community.' See *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia 24/03/2000 CERD/C/56/Misc.42/rev.3* at point 11.

[5] Although CERD acknowledges with appreciation that measures have been taken to implement the *Deaths in Custody* recommendations, it should be noted that many of the concerns and recommendations articulated by CERD parallel recommendations made in both *Deaths in Custody* and *Bringing Them Home*.

[6] CERD further noted that 'after its renewed examination in August 1999 of the provisions of the Native Title Act as amended in 1998, the devolution of power to legislate over the "future acts" regime has resulted in the drafting of state and territory legislation to establish detailed "future acts" regimes which contain provisions reducing further the protection of the rights of native title claimants…'. See *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia 24/03/2000 CERD/C/56/Misc.42/rev.3* at point 8.

[7] CERD also expressed its concern 'about the mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially in the case of juveniles, leading to a racially discriminatory impact on their rate of incarceration'. See *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia 24/03/2000 CERD/C/56/Misc.42/rev.3* at point 16.

compensation for atrocities endorsed by Government policies between 1885 and 1969 and found to be a gross violation of human rights and in contravention of the Convention on Genocide. These principles are:

- an acknowledgement of the truth and an apology;
- the guarantee that these human rights won't be breached again;
- restitution;
- rehabilitation; and
- compensation

Most of the specific recommendations to implement particular measures for reparation purposes, have not been implemented. One recommendation was that the government should establish a national compensation fund so that people do not have to go to court to be compensated for the wrongs done to them. This fund was to be administered by a Board chaired by an Indigenous person, but comprising both Indigenous and non-Indigenous member. No Board or tribunal has been established. Consequently, Indigenous people have to use the court system to claim for compensation. Clearly, in this regard Governments inaction has not promoted the right to self-determination for Indigenous Australians.

ARTICLE 2(1) A – INTERNATIONAL ASSISTANCE AND COOPERATION

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's Report to the Committee does not mention Australia's contribution to international assistance and cooperation in achieving the full realisation of the rights within the Covenant, under Article 2(1) nor Article 11(1).

NATIONAL ISSUES

INTERNATIONAL COOPERATION

Australia's foreign aid to developing countries as a percentage of GNP has been in decline since 1983, falling from 0.5% in that year to 0.25% in the 1998-99 financial year[8] (Figure 1). As an OECD country, Australia's foreign aid should comply with the UN target of 0.7% of GNP. The Australian Council for Overseas Aid, the peak body of overseas relief and development agencies in Australia, said that Australia's fair share of funding for basic social services in developing countries should be $400m per annum (currently $155m[9]), based on UNDP and UNICEF estimates of total need and with one third coming from donor countries. Australia's share is 1.76% based on Australia's percentage of OECD wealth.

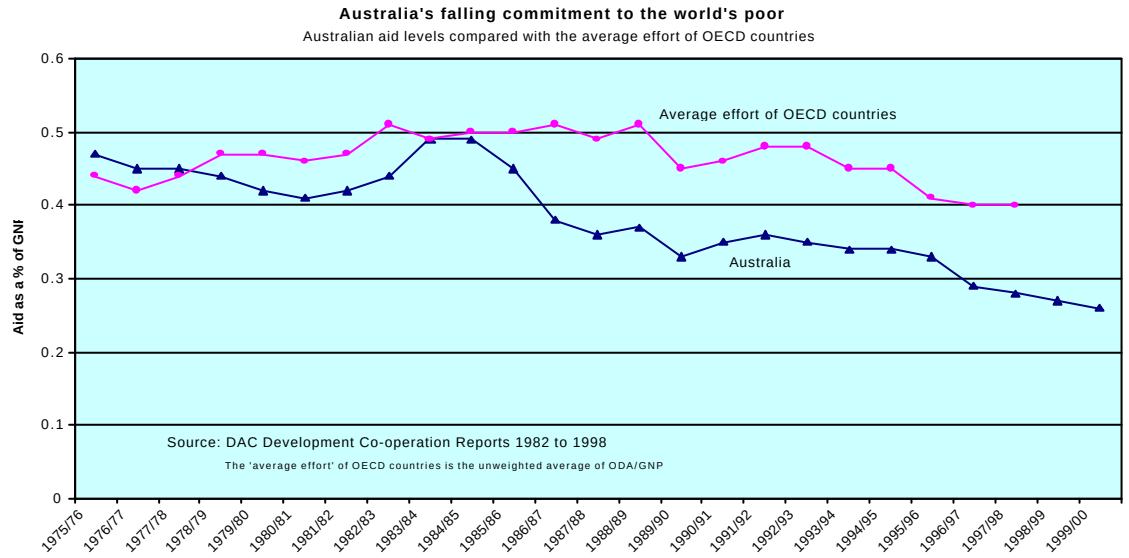

Figure 1: Australia's foreign aid as a percentage of GNP over time.[10]

[8] Australian Council for Overseas Aid, *East Timor and Beyond. An integrated approach to Australia's Overseas Development Assistance. Submission to the 2000-2001 Federal Budget,* December 1999.
[9] *Ibid*.
[10] *Ibid*.

ARTICLE 2(1) B – EFFECTIVE DOMESTIC LEGAL REMEDIES

AUSTRALIAN GOVERNMENT'S REPORT

Article 2(1) of the Covenant sets out the obligation of States Parties to undertake realisation of Covenant rights. Appropriate steps for the realisation of rights include both legislative measures and the provision of effective domestic legal remedies.[11] The Government's Report, under Article 2, briefly describes the provision of domestic remedies for both general protection of Covenant rights and anti-discrimination protection. With respect to the general protection of Covenant rights, the Report refers to the institutional machinery detailed in the Core Document of Australia, in particular, the Human Rights and Equal Opportunity Commission (HREOC), and outlines anticipated changes to HREOC.

With respect to anti-discrimination protection, the Report enumerates legislative measures enacted by federal and state/territory parliaments, again including HREOC, and refers to discussion of these measures in Australia's report under the ICCPR. As explained below, the Government's Report is misleading in that it implies 1) that HREOC provides effective domestic remedies for general or discriminatory violations of Covenant rights, and 2) that the various state/territory anti-discrimination measures together provide comprehensive protection against discrimination in the enjoyment of Covenant rights.

NATIONAL ISSUES

COVENANT RIGHTS ARE NOT WITHIN GENERAL PROTECTION JURISDICTION OF HREOC

Although the Government's Report makes continued reference to HREOC as providing domestic remedies for the general protection of Covenant rights, it fails to mention that the Covenant is not included within the ambit of the HREOC system.[12] This means that Covenant rights have no place within the HREOC's functions of investigation and conciliation of complaints, nor in its functions of human rights promotion, research and legislative review. This difference in treatment gravely undermines the relative effectiveness of remedies for violations of Covenant rights. At the very least, as the Committee has noted, such differential treatment of Covenant rights requires 'compelling justification'.[13]

[11] *General Comment No. 9: The domestic application of the Covenant: 03/12/98. E/C.12/1998/24, 3 December 1998.*

[12] HREOC can only take action in respect of the following instruments: International Covenant on Civil and Political Rights; Declaration of the Rights of the Child; Convention on the Rights of the Child; Convention Concerning Discrimination in Respect of Employment and Occupation (ILO 111); Declaration on the Rights of Mentally Retarded Persons; Declaration on the Rights of Disabled Persons; and Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief. Furthermore, only complaints with respect to laws, practices and actions of the Federal Government can be made to HREOC, except for complaints of discrimination in employment in respect of actions by the state and territory Governments.

[13] *General Comment No. 9*, above note 11, para. 7.

COVENANT RIGHTS ARE NOT FULLY PROTECTED BY ANTI-DISCRIMINATION JURISDICTION OF HREOC

HREOC also has responsibility for investigating and conciliating complaints under federal anti-discrimination legislation.[14] However, these enactments do not comprehensively recognise Covenant rights, but merely provide non-discrimination protection in areas such as work, education, accommodation and provision of goods and services.

HREOC DOES NOT PROVIDE *LEGAL* REMEDIES

Even if Covenant rights were brought under the general protection jurisdiction of HREOC, the remedies presently available under that jurisdiction are not *legal* in the sense of being judicially enforceable, because HREOC is a non-judicial conciliation body. If conciliation fails, HREOC's remedial power is limited to reporting to the Commonwealth Attorney-General. Further, as noted in the Government's Report, while individuals can also complain to HREOC about discrimination in various circumstances, failure to comply with HREOC determinations (which can be made when conciliation fails) can only be addressed through the institution of new, separate proceedings in the Federal Court, posing problems of access to justice. HREOC remedies are therefore lacking in effectiveness.

REDUCED FUNDING FOR HREOC

The current Federal government cut funding for the HREOC from $20.5M in 1996/7 financial year to $17.9M in the 1997/8 financial year and $12.3M in 1998/9 financial year. As a direct result of these funding cuts, HREOC's staff has been reduced by about one third, from 180 to 120 staff. This has affected HREOC's ability to handle individual complaints efficiently and undertake its education, public inquiry and policy work.

NO FEDERAL PROTECTION FOR COVENANT RIGHTS OTHER THAN HREOC

Although the Commonwealth Constitution guarantees a few express and implied rights, it does not protect any Covenant rights. While various legislative measures, discussed in other parts of this submission, may partially implement Covenant rights, the High Court of Australia has ruled that these measures are mere gratuities which the government is not legally required to provide or to ensure their adequacy.[15] However, the High Court has ruled that, in the absence of contrary government indication, the act of entering into an international instrument can give rise to a legally recognised 'legitimate expectation' that administrative decisions will comply with those instruments[16] although successive federal governments have expressly negated such expectations.[17] In 1999 the government introduced a bill to legislate that negation.[18]

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[14] *Racial Discrimination Act 1975*; *Sex Discrimination Act 1984*; and, *Disability Discrimination Act 1992*.

[15] *Green v Daniels* (1977) 51 ALJR 463. This case is discussed at greater length in Peter Bailey, *Human Rights: Australia in an International Context* (Butterworths 1990) 328.

[16] *Minister for Immigration and Ethnic Affairs v Teoh*, (1995) 183 CLR 273.

[17] See, for example, *The Effect of Treaties in Administrative Decision Making*, Joint Statement, Minister for Foreign Affairs and the Attorney General and Minister for Justice, 25 February 1997, http://law.gov.au/aghome/agnews/1997newsag/attachjs.htm on 30/12/1999.

[18] *Administrative Decisions (Effect of International Instruments) Bill 1999*, currently before Parliament (as at April 2000). Source http://www.aph.gov.au/parlinfo/billsnet/99195b01.doc on 30/12/1999.

Where Covenant rights are included in Commonwealth legislation, individuals are given rights which they must enforce through the court system. Systemic inequality is not addressed because the legal system is based upon the making and resolution of individual complaints. For example, in the area of discrimination, Commonwealth legislation grants rights to complain about discrimination on certain specified grounds in prescribed areas of activity by governments and private parties. However, this legislation falls short of recognising Covenant rights or establishing the comprehensive regime envisaged by Article 2(2).

REDUCED FUNDING FOR LEGAL AID

Freedom from discrimination as provided through Commonwealth legislation is based on individuals enforcing their rights through a judicial process in the Federal Court or the Federal Magistrates Court. This process is extremely expensive. The costs of legal representation for one day in the Federal Court can be up to A$20,000. Many people suffering from discrimination are the most disadvantaged in our society; they are not in a position to pay these costs and are reliant upon funding from the Legal Aid Commission, a statutory body which provides legal assistance to people on low incomes.

In 1997 the Federal Government substantially cut its funding to the Legal Aid Commission. Because most of the funding is used for representation of people facing criminal charges, funds are not available for discrimination complaints. In May 1999 a report commissioned by the Federal Attorney-General found, in relation to unmet need for legal aid that, the major shortfalls in legal aid included 'almost all civil matters, including discrimination'.[19] Therefore, the cuts in legal aid have prevented those most disadvantaged and discriminated against from enforcing their right to freedom from discrimination even in areas where there are legislative provisions proscribing discrimination.

[19] *Legal Assistance Needs Project: Phase Two, Summary Report***,** prepared by Rush Social Research Agency and John Walker Consulting Services prepared for Commonwealth Attorney-General's Department, May 1999, p 33.
In September 1998 the Law Society of New South Wales, the professional body for lawyers in NSW, said that: 'Recent and rapid reduction in funding from the Commonwealth Government has meant that many [legal aid] services are no longer available to those in the community who are most at risk and in need. In the 1997/8 budget the Commonwealth Government reduced its contribution to legal aid by 21%. Funding for legal aid now ranks amongst the Government's lowest funding priorities'. See: *The Law Society of New South Wales, Discussion Paper, Access to Justice*, September 1998 p 51.
Other states also have little or no funding for discrimination complaints. The Law Council of Australia, the national council of lawyers in Australia, stated in October 1999: 'The Law Council feels compelled to comment that the provision of adequate legal aid funding is an essential foundation for a fair justice system. The recent withdrawal of funds by the Federal Government has significantly undermined the ability of the current justice system to deliver a fair legal process for the disadvantaged in Australian society'. See: Law Council of Australia Submission to the Australian Law Reform Commission on Discussion Paper 62: *Review of the Federal Civil Justice System,* October 1999, at Chapter 7.

ARTICLE 2(2) – THE RIGHT NOT TO BE DISCRIMINATED AGAINST

AUSTRALIAN GOVERNMENT'S REPORT

In its Report, the Australian Government states that rights enumerated in the Covenant 'may be guaranteed by any of the sources of law recognised in Australia'. However, as noted in the Women's Rights Action Network Association (WRANA) report,[20] the development of the federal and state anti-discrimination regime, consisting of the *Human Rights and Equal Opportunity Act 1986*, the *Racial Discrimination Act 1976* (RDA), the *Sex Discrimination Act 1984* (SDA), and the *Disability Discrimination Act 1992* (DDA), has been incremental and consequently fails to comprehensively implement State Party requirements under the ICESCR. The Government's Report again refers the Committee to its previous reports to the Committtees for the International Covenant on Civil and Political Rights (ICCPR) (1994), the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) (1995) and Convention for the Rights of the Child (CRC) (1996), which were compiled before this Government's term of office. Hence, the Government's Report not only fails to respond to the existing limitations of the anti-discrimination legislation, also it fails to assess the impact of current policies and practices.

NATIONAL ISSUES

There are many vulnerable people in Australian society who suffer, in varying degrees, from discrimination. In particular, the most vulnerable are Indigenous people, people with disabilities, people from non-English speaking backgrounds**,** women, gay men and lesbians.

Protection against discrimination for these groups is found in the *Human Rights and Equal Opportunity Act 1986,* the *Racial Discrimination Act 1976* (RDA), the *Sex Discrimination Act 1984* (SDA) and the *Disability Discrimination Act 1992* (DDA) at Commonwealth level, and in similar State legislation. [21]

The development of anti-discrimination legislation has been *ad hoc* as each of the Acts focus on individual instances of discrimination and include many exemptions from their coverage, such as the *Migration Act* exemption from the DDA,[22] and the exclusion from entitlement to superannuation (upon death of a partner) in the case of same sex couples. In some cases the more insidious forms of discrimination, such as wage disparity between men and women, are left unaddressed.[23]

All of the Federal anti-discrimination laws and most state anti-discrimination laws were enacted under previous governments. In Australia, discrimination laws rely on individuals or groups of individuals making complaints under those laws in order to enforce their human rights. However, laws which seriously seek to eliminate and prevent discrimination need enforcement provisions.

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[20] WRANA, above note 2, p. 12.

[21] On the differences between the regimes see Mark Nolan 'Some Legal and Psychological Benefits of Nationally Uniform and General Anti-discrimination Law in Australia', *Australian Journal of Human Rights,* Vol 6 (No 1), 2000.

[22] See Article 9 for further details.

[23] For more information on the limitations of current legislation in reducing inequality, particularly structural inequality affecting groups of individuals, see Ronnit Redman and Karen O'Connell 'Achieving Pay Equity through Human Rights Law in Australia', *Australian Journal of Human Rights,* Vol 6 (No 1), 2000.

DISCRIMINATION AGAINST INDIGENOUS PEOPLE

A comparison of key indicators for the Australian Indigenous and non-Indigenous population clearly shows different outcomes. Almost all of these indicators show that Indigenous Australians are disproportionately represented among the most disadvantaged social groups and are consequently being deprived of their social, economic and cultural rights, as detailed in the Covenant.

According to the *1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People,* Indigenous people made up 2.1% of the Australian population totalling 386,049.[24]

Indigenous Australians experience extreme disadvantage in employment, housing, health and education and continue to suffer from the impact of historically discriminatory practices and policies. The following sections illustrate this discrimination (see specifically articles 6, 7, 11, 12, and 13 of this submission).

PEOPLE WITH DISABILITIES

In Australia, all immigrants without disability (except for those immigrating on humanitarian grounds) have to wait two years before they can access income support. However, immigrants with a disability have to wait ten years before being eligible for the Disability Support Pension (DSP) which is the usual entry criteria for services such as Post-School Options Program, Home and Community Care (HACC), Program of Appliances for Disabled People (PADP) etc.

Impact of Current Policies and Practices

This discriminatory policy creates financial and emotional strain for people with a disability and their families who are left to cope with financial or other assistance and by the time they are eligible for the DSP, their support needs are much higher. This results in additional costs for Governments by placing extra demands on already limited resources.

Human Rights Framework

The current Commonwealth policy, which restricts support to immigrants with disabilities, is a blatant act of discrimination and a total disregard of the human rights of people with a disability.

Under the Declaration on the Rights of Disabled Persons, people with disabilities are entitled to measures which will enable them to become as self-reliant and independent as possible. The Declaration also specifies that people with disabilities have a right to appropriate services so they can develop capabilities and skills needed to participate in the community.

In Australia, access to disability-specific services usually requires the receipt of the Disability Support Pension. However, restricting income-support and access to disability services for ten years while allowing further deterioration, leads to dependency, isolation and poverty.

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[24] This figure was projected to increase to somewhere between 411,000 and 453,000 in 1999 – a population growth of nearly twice the rate of the total population between 1991 and 1996. Australian Bureau of Statistics, 1998, *Experimental Projections of the Aboriginal and Torres Strait Islander Population, June 1996 to June 2006*, ABS Cat. No. 3231.0, ABS, Canberra; and Australian Bureau of Statistics, 1999, *Year Book Australia 1999*, ABS Cat. No. 1301.0, ABS, Canberra. Cited in Aboriginal and Torres Strait Islander Commission (ATSIC) *Annual Report 1999*.

ARTICLE 3 – EQUAL RIGHTS OF WOMEN AND MEN

The report of the Women's Rights Action Network Australia: *Retreating from the full realization of Economic, Social and Cultural Rights in Australia: A Gendered Analysis* contains a comprehensive analysis of Australia's performance under Article 3 of the Covenant.

ARTICLE 6 – THE RIGHT TO WORK

AUSTRALIAN GOVERNMENT'S REPORT

The Government has provided statistics which show that Australia continues to experience very high levels of unemployment, long-term unemployment and underemployment, and that the composition of employment has changed substantially with a significant increase in the proportion of jobs that are part-time, casual and temporary.

The report acknowledges that unemployment is unacceptably high among Indigenous Australians and that reduced government sector employment will make this situation worse. In particular, it also notes that their higher growth rate and younger age structure will lead to a higher demand for jobs in the future. However, no significant response to this or any further analysis of the employment situation of Indigenous Australians is offered. The Government reports that its response to Indigenous unemployment will be to increase funding for Indigenous education and ensure that there are special provisions for Indigenous people in the reformed employment services, but no details are provided.

Further discussion under Article 6 of the Government's Report of those persons or groups who are disadvantaged with regard to employment is limited to issues of vocational education and training. While the Report claims that employment opportunities will arise from the introduction of a 'fully competitive market for employment services' in its discussion under Article 9, it fails to mention that these reforms were accompanied by substantial reductions in funding for labour market assistance.[25]

Groups vulnerable to exclusion from the workforce include people with a disability, single parents, Indigenous Australians, people from non-English speaking backgrounds, young people and older workers. Women are over-represented in lower-paid and part-time and casual employment. There are very significant regional variations with some urban and rural areas experiencing very high unemployment rates over long periods.

The Government reports on the introduction of the Federal *Workplace Relations Act (WRA) 1996* which replaced the *Industrial Relations Act (IRA) 1998* and which provides the framework for regulation of employment. The Government does not report that Schedule 8 of the IRA which comprised the Preamble and Parts II and III of the ICESCR no longer exist in the WRA.

NATIONAL ISSUES

INDIGENOUS AUSTRALIANS EMPLOYMENT AND UNEMPLOYMENT

Unemployment among Indigenous Australians remains unacceptably high. The estimated unemployment rate of 38% given in the Government's Report is from the *National Aboriginal and Torres Strait Islander Survey* of 1994.[26] While the ABS urges caution in interpreting the estimate of 23% unemployment rate among Indigenous people (from the Australian Population Census of 1996) it should be noted that the 1996 unemployment rate for all Australians was 9%.

[25] Commonwealth of Australia 1998, *Australia's Report Under the International Covenant for Economic, Social and Cultural Rights 1990-1997*, p. 27.

[26] Australian Bureau of Statistics (ABS) 1995, *National Aboriginal and Torres Strait Islander Survey 1994*, Catalogue no. 4199.0, ABS, Canberra.

These unemployment surveys do not include Indigenous people who are engaged in the Community Development Employment Projects scheme (CDEP). Under this scheme Indigenous people who are unemployed work part-time in community-based projects as a condition of receiving their income support payments. [27] The Government's Report notes that the unemployment rate for Indigenous peoples would be over 50% if CDEP employment were excluded.

Indigenous labour force participation rates are also well below those of the total Australian population. The 1996 Census figures give Indigenous males' workforce participation rate as 63.8%, compared with a rate of 71.4% for the total population of workforce-aged males, and a participation rate for Indigenous females of 42.6%, compared with 52.8% for the total population of workforce-aged females. Reflecting low levels of employment, the incomes of Indigenous Australians are much lower than those of non-Indigenous Australians. In 1999 the median weekly income for Indigenous males was $189, compared with $415 for non-Indigenous males. For Indigenous females the median weekly income was $190, while for non-Indigenous females it was $224.[28]

In a 1996 report commissioned by the Aboriginal and Torres Strait Islander Commission (ATSIC) Drs J Taylor and B Hunter, estimated that, to maintain 1996 levels of employment and unemployment, 25,000 extra jobs would be required for Indigenous people by 2006 while current trends indicate that only 21,000 jobs will be created in this period. A further 77,000 jobs would be required by 2006 if the Indigenous population were to achieve the same employment and unemployment rates as the total population.[29]

The Government's Report does not indicate any action to ensure that reduced public sector employment does not have a disproportionate impact on Indigenous peoples' employment opportunities nor does it outline action to improve their employment opportunities in the private sector, where Indigenous employment rates are extremely low. There is no reference to action to increase the range of jobs, or training opportunities or to improve earnings for Indigenous people in employment, particularly in the CDEP scheme

REDUCTIONS IN FUNDING AND PROGRAMS TO ASSIST LONG-TERM UNEMPLOYED PEOPLE

For most of the 1990s unemployment in Australia has remained over 8%, only dropping below this level in the last twelve months. Australia has very high levels of long-term unemployment with approximately a third of unemployed people being unemployed for 12 months or more. As detailed in its report, in 1997, the Australian Government, through a process of administrative reform, privatised the provision of labour market assistance for unemployed people. At the same time it reduced funding for these services by $1.8 billion dollars over four years and dismantled most of the employment programs which had been in place. These programs, many of which had been targeted to long-term and other disadvantaged unemployed people (for example, recent migrants from non-English speaking backgrounds and people with a disability), provided combinations of accredited training and paid work experience and involved assessment of individual needs and development of comprehensive return-to-work plans in the context of emerging employment opportunities.

Non-Government service providers receive funds from the Government for achieving employment 'outcomes' for their unemployed clients, so have no incentive to provide assistance to those likely to be most difficult to place in employment. The centrepiece of the remaining funded programs for unemployed people is called 'Work-for-the-Dole', a program which provides mandatory work

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[27] Whitehouse, A. 1994, 'Aboriginal employment and industrial relations in the '90s, *Aboriginal Law Bulletin* Vol. 3, no. 66, February.

[28] Australian Bureau of Statistics (ABS) & Australian Institute of Health and Welfare 1999, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, ABS, Canberra.

[29] Taylor J and Hunter B, 1998, *The Job Still Ahead: Economic costs of continuing Indigenous employment disparity*, ATSIC, Canberra.

experience only; and has no focus on the particular needs of the individual; no provision for training, and is without links to on-going job opportunities.

There are no structured labour market programs for long-term unemployed people and the Government has not indicated any measures to ensure that they will have access to accredited training. Nor has it provided any indication of evaluating the new system to ensure that unemployed people, especially those who are disadvantaged, have not been adversely affected by the abolition of programs and the reduction in funding.

EMPLOYEES EXCLUDED FROM PROTECTION AGAINST UNFAIR DISMISSAL FROM EMPLOYMENT

The Federal Government's 1996 *Workplace Relations Act* expanded the categories of employees excluded from the unfair dismissal provisions to include: casual workers during the first 12 months of employment; employees engaged under a contract for a specified period or specified task; trainees; and employees serving a period of probation.

Australia has the second highest incidence of temporary employment in the OECD. Casual employment increased to 26% in 1996 with one in three women and one in five men employed on a casual basis. From 1985 to 1997 casual employment increased by 900,000, nearly double the 550,000 permanent jobs created in the same period. The proportion of workplaces using contracted agency workers increased from 14% to 21% and one third of workplaces report outsourcing some functions to contractors.[30]

These figures show that there is a strong trend towards casual, contract and fixed term employment, all of which are now excluded from the unfair dismissal laws. This means that an increasing number of employees in Australia are left unprotected from unfair dismissal. Further, the legislation deems a three-month probation period as 'reasonable' which has the effect of allowing unfair dismissals to go unchallenged in cases where a three-month probation period may not in fact be reasonable.[31]

The Government's rationale for expanding the categories of employees excluded from the unfair dismissal provisions of the *Workplace Relations Act 1996* is not clear. If it is intended to allow flexibility as a means to increase productivity and employment growth, evidence should be provided of this. If it is intended to achieve fairness to both employee and employer the Government should explain how it does this.

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[30] Australian Council of Trade Unions (ACTU) 1999, *Submission to the Australian Senate Employment, Workplace Relations, Small Business and Education Committee Inquiry into the Workplace Relations Legislation Amendment Bill 1999*, p28.

[31] Australian Council of Trade Unions (ACTU) 1998, *Submission to the Twelve Month Review of Federal Unfair Dismissal Provisions*.

ARTICLE 7 – THE RIGHT TO FAVOURABLE WORK CONDITIONS

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government reports that 'enterprise bargaining and agreement-making are now the principal means for fixing wages in Australia' and that the system of industry-wide industrial awards has become 'a safety net'. Historically these awards have set the conditions for most employees, but in introducing the 1996 *Workplace Relations Act*, the Government stated that it wants to ensure that 'awards are focused only on the minimal'.[32] However, the report fails to add that the matters which can be included in these 'safety net' awards, effectively reduce the conditions of many of Australia's lowest-paid workers.

The shift from a centralised collective bargaining system to individualised bargaining at the workplace is justified by the assertion that it will increase productivity and deliver greater rewards to employees.[33] The Government's report states that actual wages and conditions should be determined as far as possible by agreement at the workplace or enterprise level and that this will enable effective choice and flexibility in reaching both collective and individual agreements. However, there are no effective monitoring mechanisms in place to ensure that low-paid and disadvantaged workers with little bargaining power, especially women and workers from non-English speaking backgrounds, are not further disadvantaged by this shift away from centralised collective bargaining.

The Government does not report on the situation of workers who are have no protection of minimum wages, such as the outsourced home-based workers in the clothing industry.

Similarly, there is no report on action to monitor and ensure safe and healthy working conditions.

NATIONAL ISSUES

LACK OF ADEQUATE MINIMUM STANDARDS – THE AWARD SYSTEM

The industrial award system would have provided an adequate underpinning to the new industrial bargaining arrangements under the Government's *Workplace Relations Act* if it had been left intact. However, the powers of the Australian Industrial Relations Commission to make, vary and enforce awards has been substantially reduced, and restrictions have been introduced on the range of matters which are allowed to be specified in awards.[34] The result is that the award system can provide only minimal safety net protections. As pointed out by WRANA in their report to the CESCR, for women workers who are already in receipt of lower rates of pay than men, the maintenance of award rates and conditions is critical and extremely difficult to achieve in the new system.[35]

Under the *Workplace Relations Act,* the Government cannot guarantee that the elimination of entitlements from awards has not diminished employees' rights to just and favourable working conditions. Provisions that have been removed from one or more industrial awards include: consultation in relation to major workplace change; sexual harassment; prohibition on requirements to wear inappropriate clothing; minimum and maximum hours for part-time employees; prohibition on harsh, unjust or unreasonable termination; provision of a first aid kit in the workplace; requirements to

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[32] Commonwealth of Australia 1998, *Australia' s Report under the International Covenant for Economic, Social and Cultural Rights, 1990-1997*, p. 11.
[33] Commonwealth of Australia 1996, *Workplace Relations Act,* Section 3(b).
[34] Commonwealth of Australia 1996, *Workplace Relations Act,* Section 89A.
[35] WRANA, p 18.

provide staff dressing rooms, a meal area, adequate toilets, lockers and heating and cooling devices; protective clothing; suitable accommodation and transport of a certain standard; a limitation on night shifts for juniors; leave without pay; a requirement to employ one person trained in first aid; trade union training leave other than directly related to a disputes procedure; leave to attend industrial proceedings unless summonsed; entitlement of shop stewards to reasonable time to discuss employment-related matters with employees other than directly related to disputes procedure; requirement for training committee to comprise equal number of employee and employer representatives; disciplinary procedure and code of conduct for dismissals; and consultation with employees and unions about redundancy.

AUSTRALIAN WORKPLACE AGREEMENTS

The *Workplace Relations Act* introduced a new form of individual employment agreement called an Australian Workplace Agreement (AWA). An AWA is a confidential individual agreement negotiated between an employee and his or her employer which regulates the employment relationship. AWAs override industrial awards subject to a 'no-disadvantage test' which is administered by the Office of the Employment Advocate (OEA). In applying the no-disadvantage test the OEA is supposed to ensure that the AWA does not result in conditions which, *overall*, leave the employee worse off when compared to the safety net minima in the Award. However, because awards have been stripped to 20 allowable matters it is difficult to establish that, overall, employment conditions are reduced.

An AWA can be negotiated at the enterprise level, but more usually is negotiated on a one-to-one basis. AWAs must be signed by individual employees. While the employee has the right to appoint a bargaining agent who can be a union official, lawyer, friend or relative, in 1997 93.5 per cent of employees who were party to an AWA were not represented by a bargaining agent. Employers were more likely to use a bargaining agent in the formation of the agreement.[36] Statistics from the OEA show that since March 1997 over 54,000 AWAs have been made and 30% were with new employees. These figures that suggest there are serious implications for workers in a weak position in regard to negotiating favourable working conditions.

Further, if an employer breaches an AWA the employee does not have access to the Australian Industrial Relations Commission for a remedy, but must apply to an eligible court. 'Eligible' courts, are the Federal Court, District Court or Magistrates Court – all of which are usually slow and expensive.

The potential for exploitation in situations of inequality in bargaining power has been increased substantially under the *Workplace Relations Act.*

HOMEWORKERS

It is estimated that there are 329,000 home-based workers in the clothing and textile industries in Australia and that the majority are non-English speaking migrant women with very little knowledge of their rights and entitlements.[37] In the garment-making industry there is evidence that the number of home-based workers has doubled over the last 15 years. Conditions for this growing group of workers are poor, their rates of pay low, instances of chronic injury are commonplace, and children are involved in this work.[38] For example, the Textile Clothing and Footwear Union of Australia has

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[36] National Institute of Labour Studies (NILS) 1998, *1997 Report on Agreement-Making Under the Workplace Relations Act*, NILS, Adelaide.

[37] Textile, Clothing and Footwear Union of Australia, *Fairwear Campaign Kit: Background Information*, TCFUA, Melbourne.

[38] Mayhew, C & Quinlan, M 1998; 'Outsourcing and Occupational Health and Safety: A Comparative study of factory-based and outworkers in the Australian TCF Industry', Industrial

received numerous reports from home-based workers in Australia who have worked in excess of 60 hours per week, with no annual leave payments or workers' compensation cover and whose payments have amounted to as little as $2 an hour. The Government has taken no action towards implementing a Homeworkers' Code of Practice, despite this recommendation arising from a Senate Inquiry.[39]

5 The Government has failed to address the exploitative wages and conditions experienced by outworkers in the textile industry and has taken no effective steps to ensure that this exploitation of women and children ceases and that the wages and conditions of home-based outworkers are fair and just in relation to those of employees doing the same work in factories.

Relations Research Centre Monograph no. 40, University of New South Wales; and Textile, Clothing and Footwear Union of Australia (TCFUA) 1995, *The Hidden Cost of Fashion*, TCFUA.

[39] Commonwealth of Australia 1996, *Senate Inquiry into Outwork in the Clothing Industry 1996*.

ARTICLE 8 – THE RIGHT TO FORM TRADE UNIONS

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's Report acknowledges that the provisions of the Federal *Workplace Relations Act 1996* introduced new restrictions on the functioning of trade unions but implies their insignificance because they only apply to registered trade unions. Further, the Report states that this legislation widens the right of employees to strike whereas it introduced new limitations on the rights of employees to take industrial action. The claim that this Act has promoted free collective bargaining is misleading because it has effectively promoted individual over collective bargaining.

NATIONAL ISSUES

RESTRICTIONS UNDER THE FEDERAL GOVERNMENT'S WORKPLACE RELATIONS ACT

The ability to bargain collectively is a core function of trade unions. The ILO Committee of Experts has criticised the *Federal Workplace Relations Act 1996* in two separate observations. First, in regard to ILO Convention 98 on the Right to Organise and to Bargain Collectively, the Committee concluded that the provisions of the Act did not promote collective bargaining. The Australian Government was requested to indicate in its next report steps taken to review the relevant provisions of the Act and to amend it to ensure that it encouraged collective bargaining as required by Article 4 of that Convention. In addition, in its consideration of Convention 87 regarding Freedom of Association and Protection of Right to Organise, the ILO Committee considered that Australian law restricted the right to strike and called for amendments to the legislation.

The Australian Government has taken no action to review the relevant provisions of the Act. In 1998, the responsible Minister declared that no undue weight should be accorded to the 'gratuitous observations from Geneva,'[40] and in 1999 dismissed the ILO Committee's Observations as being 'not relevant to the Australian workplace'.[41] The Act itself, however, has among its principal objectives: 'assisting in giving effect to Australia's international obligations in relation to labour standards'.[42] In 1999, the Government proposed further restrictions on the ability of workers to bargain collectively through the *Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999*. However, this legislation has been blocked by opposition parties in the Federal Parliament.

The restrictions contained in the *Workplace Relations Act* are not consistent with the Government's responsibilities under Article 8 of the CESCR. The Government must explain why it has made no attempt to amend the legislation to ensure the protection of the relevant rights and why it has instead proposed new legislative reforms which further restrict the capacity of trade unions to function freely.

[40] 'ILO criticism won't prompt IR law review: Reith', *The Australian*, 11 March 1998.

[41] The Hon. Peter Reith, MP, Media Release, 12 March 1999: 'ILO wrong on Australia's Workplace Relations Act' at http://www.dewrsb.gov.au/ministers/reith/mediarelease/1999/pr23_99.htm on 30 September 1999.

[42] Commonwealth of Australia, *Workplace Relations and Other Legislation Amendment Act 1996*, 'Schedule 1 – The principal object of the Workplace Relations Act 1996.

ARTICLE 9 – THE RIGHT TO SOCIAL SECURITY

AUSTRALIAN GOVERNMENT'S REPORT

Australia's Social Security system is a universal system funded by general tax revenue, as opposed to a contribution or insurance system. The Australian Government's report to the CESCR states that changes have been made in response to labour market and social changes. Recent policy changes include: greater targeting and individualisation of benefits, reforms aimed at encouraging self-provision and a greater emphasis on 'capacity to pay to achieve a more equitable and sustainable system of welfare provision'.[43]

The Government's report makes a passing reference to newly arrived migrants inability to receive social security for two years. There is no mention of the impact of this policy on this and other groups who are denied access to the social security system, such as non permanent residents and asylum seekers.

The Government's report mentions tightening of activity testing and increasing penalties for breaches of the *Social Security Act* as a means of ensuring compliance and better targeting of assistance. There is no information provided on the number of breaches incurred, nor is there comment on the implications of these policy changes for the rights of unemployed people to social security. How the Government will evaluate the effectiveness of these policies is also not established. While reporting on the establishment of a new government service delivery agency, Centrelink, which replaces the former Department of Social Security offices, the Government does not provide any information about how the subsequent reduction in staffing and resources has affected service delivery and standards.

NATIONAL ISSUES

TWO YEAR WAITING PERIOD FOR NEWLY ARRIVED MIGRANTS

As stated in the Government's report to the CESCR, newly arrived immigrants or those who were granted permanent residence after 4 March 1997 have to wait two years before being able to access substantive social security benefits. Previously, the waiting period was six months and did not include the safety net payment of Special Benefit for which there was no waiting period. Special Benefit is the 'payment of last resort' in the Australian social security system and for people who are in extreme financial hardship, unable to earn a sufficient livelihood, and not eligible for any other social security payment. The extension of the waiting period from six months to two years, and which includes the Special Benefit, is a retrogressive step from the rights outlined in the Covenant.

During the waiting period, new migrants are able to access Special Benefit only if they can show that they have suffered a substantial change of circumstances beyond their control. Practically, it is very difficult for them to gain this benefit as administrators have taken a restrictive view of this provision. Claims are also being rejected without proper consideration of set principles and claimants have had to pursue a lengthy and humiliating appeals process. Effectively many new migrants have been left without access to any help during their first two years in Australia.

[43] Commonwealth of Australia 1998, *Australia' s Report under the International Covenant for Economic, Social and Cultural Rights, 1990-1997*, p. 23.

Research has shown that the impact of this policy on new migrants has been devastating for many individuals and families.[44] Those most affected have migrated to Australia on the basis of their skill and experience and have little or no family or community support here on arrival. Their expectations are shattered when they are unable to find employment, they exhaust all their funds and they have no money for basic food, shelter and health care. Incidences of malnutrition and bouts of depression and other mental illnesses are not uncommon. Their inability to provide for basic food and shelter further frustrates their attempts to find employment. For some it has meant being forced into exploitative employment situations including, in some cases, prostitution.[45]

It has been estimated that if, at the very least, Special Benefit was exempted from the waiting period, newly arrived residents who would receive Special Benefit would correspond to only between 0.011% and 0.014% of all Social Security recipients. This estimate is based on the proportion of all Social Security recipients who were new resident Special Benefit claimants in May 1995 (0.014%) and June 1996 (0.011%), at which times there was a six month wait for social security payments other than Special Benefit.[46]

The introduction of the extended waiting period for new migrants has had minimal financial impact on social security outlays as a whole. However, by discriminating against this particular group of residents who have permission to reside in Australia permanently, and who are otherwise wholly bound by Australian laws and obligations, the impact of this legislation is significant.

DENIAL OF SOCIAL SECURITY FOR NON-PERMANENT RESIDENTS AND ASYLUM SEEKERS

Prior to 1991, Special Benefit was available as a last resort to anyone who was in extreme financial hardship, regardless of residency status. Currently there is no provision in the social security system to provide any income support to people who are temporary visa holders and people awaiting determination of their visa applications, regardless of their circumstances.

This is particularly disturbing in light of recent long-term temporary visa categories being offered by the Department of Immigration and Multicultural Affairs to particular groups in the community. For example, people who have been granted special 10-year temporary visas[47] are not eligible for any social security payments for the duration of their 10-year temporary status. When they are granted permanent visas,[48] they must then wait a further two years before being eligible for support.

Asylum seekers may apply for special assistance in limited circumstances under a separate scheme administered by the Australian Red Cross. This assistance ceases after the primary decision has been made by the Department of Immigration. If they are refused refugee status and decide to appeal, delays in the appeals system mean they can be left without adequate income support for substantially long periods.

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[44] Isolde Kauffman Network for Safety Net Payments for New Residents 1999, *Prophets Among Us: new residents show how social security law is creating poverty*. See also *Waiting to Settle, the impact of the Social Security two year newly arrived resident's waiting period on new migrants and our community*, Welfare Rights Centre in association with a number of other community organisations, January 1998.

[45] Isolde Kauffman Network for Safety Net Payments for New Residents *Prophets Among Us*, p26.

[46] Isolde Kauffman Network for Safety Net Payments for New Residents *Prophets Among Us*, p38.

[47] Resolution of Status [Temporary] subclass 850.

[48] Resolution of Status [Residence] subclass 851.

RESTRICTION OF SOCIAL SECURITY BENEFITS FOR CERTAIN REFUGEES

In October 1999 the Government introduced new migration regulations which deny refugees permanent visas if they arrive in Australia illegally and then make their claim for refugee status. Denial of a permanent visa has consequences for their access to social security benefits. Before this change, all refugees were granted permanent visas if their refugee claims were accepted. They then had immediate access to the full range of social security payments. This change in the regulations means that refugees who arrive in Australia illegally will now only be able to access limited support.

Being able to access the full range of social security benefits is especially important for those refugees who have experienced trauma and substantial disruption to their lives and require special assistance to resettle. There are now two classes of refugees in Australia; one class is denied access to appropriate social security benefits solely because of how they arrived in Australia. This clearly breaches our international obligations under ICESCR as well as the Convention on the Status of Refugees 1951, to which we are also a party.

RESTRICTING ACCESS TO SOCIAL SECURITY BASED ON HARSH COMPLIANCE REQUIREMENTS

The Government has introduced increased penalties for non-compliance with conditions attached to unemployment benefits. In 1998, 128,748 people were penalised for having 'breached' these conditions. Breaches are most likely to affect some groups of disadvantaged people, for example those with literacy problems, homeless people, people from non-English speaking backgrounds and people with drug addictions. Breach rates for Indigenous Australians are nearly twice as high as for non-Indigenous Australians.

Penalties attached to breaches can be either an 18-24% reduction in benefits for six months, or total withdrawal of benefits for two months (depending on the history of breaches). Many breaches relate to relatively trivial issues, such as failing to respond to correspondence on time or not keeping an appointment. Some other requirements giving rise to breaches are unreasonable. For example, people can now be breached for six weeks for participation in industrial action, and for six months for moving to an area of lower employment prospects, even if the move is made to secure cheaper accommodation.

REDUCED ACCESS AS A RESULT OF RESOURCE AND STAFF CUTS TO THE SOCIAL SECURITY ADMINISTERING BODY 'CENTRELINK'

Since 1997 there have been significant cuts to the social security budget. Over this same time there is strong evidence of an overall reduction in service provision, leading to administrative delays and errors which have restricted peoples' rights to social security.

In 1997, with the establishment of Centrelink as the agency responsible for administering social security payments, the Government budgeted for a total reduction of 5,200 staff in the period 1997 to 2000, most in the service delivery area. In this period, the independent non-government specialist legal centres which provide advice on social security matters reported an increase in Centrelink administrative errors resulting in delays and increasing debt to people receiving social security payments.

The Welfare Rights Centre in South Australia reported that the proportion of cases which were debt-related rose from 6.79% in 1996 to 43.79% in 1999. There had also been a significant increase in the time taken for decisions about social security matters to be made and it was common for applicants to wait three to four weeks for an appointment and up to eight weeks for a decision to be reviewed.[49] The

[49] Welfare Rights Centre South Australia 1999, *Survey of Reviews 1999,* Welfare Rights Centre, SA.

difficulties associated with contacting Centrelink by telephone provided further evidence of the negative impacts of staff reductions. It has been widely reported that in 1998 eight out of every ten telephone callers to Centrelink received an engaged signal. In 1997-98 there were 10,000 complaints made to the Commonwealth Ombudsman about Centrelink, representing a total of 53% of all complaints received by that office.

ARTICLE 10 - PROTECTION OF THE FAMILY

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's report makes no explicit reference to protection and assistance accorded to Indigenous Australian families. This is despite the fact that many Indigenous Australians continue to suffer disadvantage as a result of being separated from their families and their culture.

The Government's report provides no details of the situation of children with disabilities other than to report on the provision of the Child Disability Allowance.

NATIONAL ISSUES

INADEQUATE PROTECTION AND ASSISTANCE FOR INDIGENOUS FAMILIES AND CHILDREN

The historical removal of Indigenous children from their families, and the over-representation of Indigenous children in juvenile justice institutions continues to have devastating effects on Indigenous people. The Government's failure to implement key recommendations of the *Royal Commission into Aboriginal Deaths in Custody* and the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* is a failure to meet its obligations under Article 10 of the Covenant. Article 10 requires the widest possible protection and assistance to families, including special measures of protection and assistance on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

Stolen Children

As noted earlier under Article 1, the Australian Government has rejected the central recommendations arising from the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*.[50] The Inquiry was established in May 1995 to inquire into the history of forcible removal of Indigenous children from their families by 'compulsion, duress, or undue influence' and into the effects of removal. The Inquiry found the effects on children were multiple, continuing and profoundly disabling. The trauma of separation and attempts at 'assimilation' into the non-Indigenous community damaged individuals' self esteem and well being and impaired their parenting and relationships skills and abilities, culminating in a cycle of damage people find difficult to escape unaided.[51] These children lost their cultures, their languages, their heritage and their land as well as their families and communities.

To date, while some funding has been committed to assist people affected by forced child removal policies, the Federal Government has rejected the central recommendations of the *Bringing Them Home* report, including the recommendation that the Government makes an official apology and that those people affected by separation be compensated. It has also failed to act to implement the Inquiry's recommendations in regard to 'addressing the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people'.[52]

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[50] These recommendations are contained in the Human Rights and Equal Opportunity Commission (HREOC) 1997, *Bringing Them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Sydney.
[51] HREOC 1997, *Bringing them Home*, Summary Report, p. 18.
[52] HREOC 1997, *Bringing Them Home*, Recommendation 42.

Continued separation of children from their families

Indigenous children continue to be separated from their families at much higher rates than non-Indigenous children through the legislation, policies and practices of the child welfare system, adoption and family law, and through the juvenile justice system.

Amnesty International reports that over a 12-month period, 25% of Indigenous people over 13 years of age in Western Australia were arrested at least once in the last five years.[53] Despite the fact that Indigenous children constitute 2.6% of the 10-17 year-old population of Australia, in 1996 they represented 36% of the juvenile justice centre population and an Indigenous young person was 21 times more likely to be in a juvenile correctional institution than an non-Indigenous young person.[54]

Unacceptable practices in the juvenile justice area are: the New South Wales *Children (Parental Responsibility)* legislation;[55] the Northern Territory mandatory sentencing legislation;[56] and the Western Australian 'Three strikes & you're in' legislation.[57] In the Northern Territory:

> A magistrate or judge must impose a period of at least 28 days detention on a juvenile (anyone aged 15 or 16 years of age) who has been found guilty of one of certain property offences, and has at least one prior conviction for a property offence. This regime for juveniles is essentially a 'second strike' regime; that is, a person 15 or 16 years of age found guilty of one of the relevant property offences, and who has at least one prior conviction for a property offence, is subject to a mandatory minimum term of detention.[58]

A recent agreement by the Northern Territory Government to only apply mandatory sentencing to offenders over the age of 18 and to establish diversionary programs for younger offenders does not change the nature of this legislation in substance.

The Government has failed to implement key recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADC) concerning the urgent need to address the high levels of involvement of juveniles in the welfare and criminal justice system, including the recommendation 'in particular to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise'.[59]

CHILDREN WITH DISABILITIES

Children with disabilities are inadequately accommodated (and educated) within state education systems and there is some evidence that children in Queensland may be being denied access to any education throughout compulsory school years. The discriminatory practices within education were documented by the National Children's and Youth Law Centre.[60] Children with disabilities are

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[53] Amnesty International 1996, 'Aboriginal Deaths in Prison Reach Record High', *Amnesty International News*, February, Vol. 26, no. 6.
[54] Human Rights and Equal Opportunity Commission (HREOC) 1997, *Bringing Them Home*, p. 496.
[55] The *Children (Parental Responsibility) Act* 1994 (NSW), which was re-enacted in the *Children (Protection & Parental Responsibility) Act* 1997 (NSW), allows police in 'operational areas' to remove children under 15 years old not under the supervision of an adult from any public place.
[56] *Juvenile Justice Amendment Act (No 2)* 1996 (NT): mandatory imprisonment of young people over 17 years of age found guilty of more than one property offence no matter how minor.
[57] *Criminal Code Amendment Act (No 2)* 1996 s5 (WA): mandatory detention of at least 12 months for young people found guilty of three or more burglary offences.
[58] Territorians for Effective Sentencing at http://www.users.bigpond.com/firstdegree/Default.html
[59] Recommendation no. 62 in Commonwealth of Australia 1991, *Royal Commission into Aboriginal Deaths in Custody, National Report*, Australian Government Publishing Service, Canberra.
[60] Flynn C, *Disability Discrimination in Education* NCYLC 1996.

disproportionately in care, and incidences of abuse are significant. Despite the decision in *Marion's Case*[61] that all non-therapeutic invasive surgery requires the consent of the Family Court, there is evidence that hundreds of young people with disabilities continue to be sterilised without Court consent.[62]

CHILDREN OF NON-RESIDENTS

Australian-born children of non-permanent resident parents who have no other source of family income are precluded from receiving the social security Special Benefit if they are enrolled in primary or secondary school. Parents in this situation are effectively required to choose between receiving basic income support and proving an education for their children. They cannot do both. This situation can be easily remedied by amendments to Section 737 of the *Social Security Act 1991*.

[61] *Secretary, Department of Health and Community Services v JWB & SMB* (1992) 175 CLR 218.
[62] Brady S & Grover S, *The Sterilisation of Girls & Young Women in Australia: A Legal, Medical & Social Context,* HREOC 1997.

ARTICLE 11 – THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

POVERTY

AUSTRALIAN GOVERNMENT'S REPORT

The Government does not report on the incidence of poverty in Australia and provides inadequate information about the standard of living of low income groups and Indigenous Australians.

The Government's report notes legislation to ensure that pension rates are maintained at 25% of Male Total Average Weekly Earnings, but does not report on the levels of other social security payments or benefits, including income support payments for unemployed families which are lower than pensions and which are not maintained in relation to wages.

NATIONAL ISSUES

POVERTY AND INCREASING INEQUALITY

The Australian Government does not publish official estimates of poverty. However, since the mid-1970s the Henderson Poverty Line (HPL) has been widely used to estimate poverty in Australia. The HPL is a relative poverty index based on estimates of the disposable income required to support the basic needs of a family of two adults and two children. It is adjusted for other types of families and individuals and is updated quarterly.[63] It is estimated that the number of households living below the poverty line has increased by one third since the Henderson Poverty Inquiry of 1973.

Recent statistics estimate that 16.7% of the total Australian population live in poverty, while a further 13.7% are regarded as 'rather poor'. Therefore, 30.4% of the total population fall below, or only slightly above the poverty line.[64]

The National Centre for Social and Economic Modelling (NATSEM)[65] has recently used the HPL along with three other more conservative measures[66] to estimate the extent of child poverty in Australia. NATSEM has found poverty rates for children under 15 years in Australia in 1995-96 to be between 8.5% and 25.3% (between 335,000 and 996,000 children living in poverty). Once housing costs are accounted for, the (after-housing) poverty rate estimates range from 16% to 23% for children under 15 years.

The principal source of family income for over half these children was Government cash benefits (social security payments). These payments are insufficient to ensure an adequate standard of living

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[63] Saunders, P 1996, 'Poverty and deprivation in Australia' in Australian Bureau of Statistics, 1996, *Year Book Australia 1996*, No. 78 Cat. No. 1301.0, ABS, Canberra.

[64] Fincher, R and Nieuwenhuysen, J (1998) *Australian Poverty Then and Now,* Melbourne University Press, Melbourne

[65] Harding, A & Szukalska, 1999, *Trends in Child Poverty in Australia: 1982 to 1995-96*, Discussion Paper No. 42, NATSEM, University of Canberra, Canberra.

[66] Henderson equivalence scales (used to adjust an income benchmark for different family sizes) were applied to two other poverty measures: 'half of the median equivalent family disposable income'; and 'half of the average equivalent family disposable income'. The third alternative measure used was an OECD poverty measure based on 'half the median family disposable income' and using an OECD equivalence scale (Harding & Szukalska 1999).

for individuals and families reliant on them. In addition, the Government has recently converted some social security support payments for some groups (principally single parent families) from 'pensions' to 'benefits'. Levels of payments of these benefits, unlike pensions, are not maintained relative to wages.

Many of the poorest children are Indigenous children living in remote areas, where there is not only poverty but little in the way of government services and support: 'On any social indicator, such as health, housing, education, income or contact with the criminal justice system, Indigenous people are the most disadvantaged group in Australia.[67]

ADEQUATE HOUSING

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's Report states that, 'In recognition of the right to adequate housing for all, assistance is available'.[68] Yet it does not provide details of the accessibility or effectiveness of such assistance in providing adequate housing.

While the Report states that the Commonwealth State Housing Agreement (CSHA), as embodied in the *Housing Assistance Act 1989*, 'aims to assist every Australian with access to housing that is affordable, secure and appropriate', there is no definition or context to establish its relevance to the Covenant.

Although the report notes that legislation concerning landlord/tenant rights and obligations falls under the jurisdiction of individual States and Territories, there is no indication as to whether or not the state/territory-specific legislation actually meets the Covenant's standards, particularly in relation to security of tenure.

The Australian Government's report notes that there is national legislation that aims to protect tenants against discrimination from property owners and managers. However, recent research conducted in South Australia indicates that discrimination in the private rental market is widespread.[69]

NATIONAL ISSUES

HOUSING ASSISTANCE

Over the past decade, successive Australian governments have presided over a significant redirection in housing policy. In accordance with a broader agenda which privileges the private market over the public sector, the focus of housing assistance in Australia has moved from the provision of public housing stock for households on low incomes to the provision of a subsidy to assist low income households access the private rental market.

There are two major Commonwealth Government programs under which most housing assistance is provided in Australia – the *Commonwealth/State Housing Agreement* (CSHA) and *Commonwealth Rent Assistance* (CRA).

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[67] Human Rights and Equal Opportunity Commission (HREOC)/Australian Law Reform Commission (ALRC) 1996, *Speaking for Ourselves: Children & the Legal Process*, Issues Paper 18, March.

[68] Commonwealth of Australia, *Australia's Report under the International Covenant for Economic, Social and Cultural Rights 1990-1997*.

[69] Shelter SA, *Tenants' Experience of the Private Rental Market*, work in progress.

COMMONWEALTH/STATE HOUSING AGREEMENT (CSHA)

The CSHA is the framework used by governments to provide housing assistance. The Commonwealth Government provides both capital and recurrent funds to the State and Territory governments for the purchase, construction and management of public, community and Aboriginal housing (these tenures are collectively referred to as 'social housing'). The CSHA also funds home ownership assistance and, in some States, assistance for private renters.

Capital funding for public housing infrastructure has been effective in ensuring access to non-discriminatory affordable housing, which provides security of tenure.[70]

Between 1984-85 and 1994-95, the Commonwealth Government's share of CSHA funding declined by 25% in real terms.[71] There have been further reductions in CSHA funding of over $334 million since 1996, in spite of almost a quarter of a million households nationally being on public housing waiting lists.[72]

A combination of reduced CSHA funding and a 1996 Commonwealth Reform Agenda has resulted in changes to housing assistance programs in all States and Territories, including:

- stricter eligibility requirements for public housing tenants;
- restricted security of tenure for new public housing tenants; and
- a greater emphasis on community housing owned or managed by non-government organisations.

COMMONWEALTH RENT ASSISTANCE (CRA)

The Commonwealth Government also provides rental assistance to low income households in the private rental market. Funding under the Commonwealth's Rent Assistance program has increased significantly relative to the reduction in funds under the CSHA. In 1998-99, Commonwealth Rent Assistance (CRA) funds totalled $1,505m, compared to a total of $1,276.6m under the CSHA.[73]

Housing in Australia is generally considered to be affordable if it constitutes 30% or less of a households income.[74] The average Australian household spends 13% of their income on housing costs. By contrast, mean housing costs for households on the lowest income quintile who are in the private rental market is 66% of their income. [75]

The CRA has not succeeded in delivering affordable housing for the poorest households in Australia who are renting in the private sector.

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[70] Industry Commission, *Public Housing Volume 1: Report*, 1993, Australian Government Publishing Service, Canberra.
[71] Australian Institute of Health and Welfare, 1997 *Australia's Welfare: Services and Assistance*, Canberra, AGPS.
[72] Department of Human Services, Office of Housing, May 1999 *Summary of Housing Assistance Programs 1997-98*, Victorian Government, Melbourne.
[73] McIntosh, G, 2000 *The Changing Face of Public Housing, Department of the Parliamentary Library Research Note No.24, 1999-2000*, Canberra, Commonwealth of Australia.
[74] Australian Institute of Health and Welfare, 1997 *Australia's Welfare: Services and Assistance*, Canberra, AGPS.
[75] Australian Bureau of Statistics, 1997-98 *Housing Occupancy and Costs*, Australia

HOMELESSNESS

In Australia on Census night in 1996, 105,000 people were counted as homeless.[76] Of this number, only 12% were accommodated by the Australian Government's Supported Assistance and Accommodation Program (SAAP) funded services. Nationally, during 1997-98 the number of homeless people approaching services for assistance increased by 11.4%.[77]

Reduced funding under the CSHA has led to a reduction in public housing stock and tighter eligibility criteria. The increasing number of homeless people and reductions in public housing stock mean that fewer households in housing need are gaining access to public housing. As a result, the increasingly narrowly targeted housing programs funded through the CSHA has reduced their capacity to prevent homelessness.

PRIVATE RENTAL MARKET ISSUES

Tenancy legislation fails to provide any minimum housing standards for rental housing in Australia and many low income households are renting accommodation which falls seriously short of meeting community standards.

Those people on low incomes who can sustain themselves in the private market do so by going without other basic rights, including food, clothing and heating. Moreover, certain groups in housing-related poverty are over represented, such as the young, the elderly, Indigenous Australians and single parents.

BOARDING HOUSES AND CARAVAN PARKS

In addition to those who experience housing need in the private market, there are others who are excluded from private rental altogether. Discrimination on a number of grounds including race and physical or mental health problems mean that, for many, it is not an option. Unless these people can fit the ever-more prescriptive requirements for public housing, they may end up living in a boarding house or a caravan park. Over 200,000 Australians live in these forms of accommodation permanently, often enduring exceptionally poor conditions and restricted tenancy rights.

INDIGENOUS HOUSING

Improvements have occurred in housing statistics of Indigenous communities, but there are still areas where they suffer from years of government neglect and have no proper access to basic water and sewage facilities, let alone adequate and healthy housing.

In comparison to the general population, Indigenous people are less likely to obtain private rental because of discrimination and are less likely to own their own homes or even have the opportunity to own their own homes. The *1996 Census* revealed that there was a disproportionately low rate of home ownership among Indigenous Australians. While 70.7% of all Australians owned their homes in 1996, only 30.8% of Indigenous households were owned by their occupants.

Furthermore, Indigenous Australians are more likely to be housed in one of the Indigenous housing programs or make up part of the hidden homeless. According to the Australian Bureau of Statistics, Indigenous people were over-represented among clients seeking support from the Supported

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[76] Australian Bureau of Statistics, 1999 *Counting the Homeless: Implications for Policy Development* Canberra, ABS.

[77] Australian Institute of Health and Welfare, 1999 *SAAP National Data Collection annual report 1997-98 Victoria,* Canberra, AIHW.

Accommodation Assistance Program (SAAP) for homelessness, in all States and Territories (12% compared with the Indigenous proportion of total population, 1.6%). An even higher proportion of female clients were identified as Indigenous (17%), compared with (8%) males.[78]

ADEQUATE FOOD

AUSTRALIAN GOVERNMENT'S REPORT

The Government's Report states that: 'Australia's food supply is abundant, and data suggest that nutritional deficiencies should be uncommon. The energy content of the Australian food supply has never been lower than 12.9 megajules per day.' It also notes that the emphasis is placed on education about over-eating and associated health risks.

The only other references to the right to adequate food in Australia's report is the provision of food services to older Australians through the National Home and Community Care Program and the recognition that Indigenous health is worse than non-Indigenous health in relation to all conditions.

NATIONAL ISSUES

The available evidence suggests that nutritional deficiencies are not uncommon. The Australian Institute of Health and Welfare 1995 Survey[79] and National Nutrition Survey 1995[80] respectively found that 9% and 5% of adult Australians stated that there were times in the previous year when they ran out of food and couldn't afford to buy more. The Australian Nutrition Foundation reports that 50% of children eat a nutritionally worthless breakfast or miss out on breakfast altogether.[81] There have also been reports of a lack of adequate food in institutions for older people and people with disabilities.

For Indigenous Australians the situation is worse. In the Northern Territory and Western Australia at least 20% of Indigenous children under two years of age are undernourished.[82] Indigenous babies are twice as likely as all Australian babies to have a birthweight less than 2,500g.[83] At least 34% of discrete Indigenous communities had a water supply below Commonwealth Government safety standards while 13% did not have a regular water supply.[84]

The Australian Government has not monitored the realisation of the right to adequate food in Australia in accordance with the Committee's guidelines. No information has been provided on the nutritional status of Indigenous people, homeless people, sole-parent families, children, unemployed people, low

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[78] Australian Bureau of Statistics & Australian Institute of Health and Welfare 1999 *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Australian Bureau of Statistics, Canberra, pp.26-30.

[79] Australian Institute of Health and Welfare, 1995, 'A look at the Population Survey Monitor' in *Food and Nutrition Monitoring News*, No.5 December.

[80] Australian Bureau of Statistics, 1995, *National Nutrition Survey: Selected Highlights Australia*, Australian Bureau of Statistics, AGPS, Canberra.

[81] Castle, J 1999, 'Aussie Kids – Hungry for Knowledge, or Just Plain Hungry?' in *Big Issue Australia*, No.66, 8-22 February.

[82] Wilson, J 1997, 'Australia: Lucky Country/Hungry Silence' in Graham Riches (ed) *First World Hunger: Food Security and Welfare Politics*, MacMillan Press Ltd, London p 14-36.

[83] Australian Institute of Health and Welfare, 1997, *National Prenatal Statistics Unit.*

[84] Aboriginal and Torres Strait Islander Commission, 1992, *National Housing and Community Infrastructure Needs Survey*.

income earners, older people, people with disabilities, rural people, refugees and asylum seekers in relation to their access to adequate food, water and clothing.

The Government has inadequately addressed the effect of its employment and social security policies upon nutrition in circumstances where food is often viewed as the only expendable item in a low income budget.[85] The casualisation of the Australian labour force (see discussion under Article 6) and the Australian Government's denial of social security payments to certain newly arrived migrants, non permanent residents, asylum seekers and refugees, combined with harsher compliance requirements for all social security recipients (see discussion under article 9), is likely to be detrimental in the realisation of the right to adequate food.

Indeed, the Government has failed to establish any institutional framework to monitor and ensure the realisation of the right to adequate food for all Australians.

[85] Wood, B 1996, *Low Income, Food, Nutrition and Health*, unpublished paper prepared for Foodbank Victoria.

ARTICLE 12 – THE RIGHT TO THE HIGHEST ATTAINABLE PHYSICAL AND MENTAL HEALTH

NATIONAL ISSUES

There are a number of serious health concerns in Australia. These include problems with the health of Indigenous Australians, women (particularly, but not only with respect to violence), and environmental health and safety issues. The population sub-group suffering the most severe health problems are Indigenous Australians.

THE HEALTH OF INDIGENOUS AUSTRALIANS

The estimated Indigenous population at 30 June 1996 was 386,049, representing 2.1% of the total Australian population of 18,310,700.[86] The Indigenous population is significantly younger than the non-Indigenous population with 40% aged under 15 years compared with 21% of non-Indigenous peoples.[87] Only 2.6% of Indigenous people are over the age of 65 years compared to 12% of non-Indigenous people.[88] The health of this group is by far the worst of any group in Australia and compares unfavourably with the health of other Indigenous peoples in the USA, Canada and New Zealand.[89] According to the 1999 Commonwealth government report, *The Health and Welfare of Aboriginal and Torres Strait Islanders*, from 1991-1996, the life expectancy for Indigenous males and females was 56.9 and 61.7 years respectively.[90] This compares to a life expectancy of 81.1 years for non-Indigenous women and 75.2 years for non-indigenous men.[91] The infant mortality rate for Indigenous people is around two to four times the rate of non-Indigenous Australians.[92] Although there has been considerable improvements in infant mortality rates there have been no improvements in adult mortality rates in recent decades.[93] In 1997, the former President of the Australian Medical Association (AMA), Dr. Keith Woollard, stated that: ..the state of health of this small part of the Australian population is an absolute disgrace. It is the worst health status of any identifiable group on this planet as far as we can find…'[94]

[86] National Aboriginal and Torres Strait Islander Health Clearinghouse, *Summary of Indigenous Health Status, 1999*, http://www.cowan.edu.au/chs/nh/clearinghouse/summary99.htm#mortality
[87] *Ibid.*
[88] *Ibid.*
[89] Australian and Torres Strait Islander Commission (ATSIC), 1998, *As a matter of a fact, answering the myths and misconceptions about Indigenous Australians.*
[90] Australian Bureau of Statistics, Commonwealth Government of Australia.
[91] *Ibid.* This represents an average of three times the death rate of non-Indigenous Australians. For some age groups the rate is as much as seven times that of the rest of the population for some conditions, such as diabetes, it is 12-17 times higher." Deeble, J Mathers, C Goss, L Webb R and Smith, V May 1998. *Expenditures on Health Services for Aboriginal and Torres Strait Islanders*, Public Affairs, Parliamentary and Access Branch, Commonwealth Department of Health and Family Services (Publication No. 2225), Executive summary.
[92] National Aboriginal and Torres Strait Islander Health Clearing House, *Summary of Indigenous Health Status*, http://www.cowan.edu.au/chs/nh/clearinghouse/summary99.htm#mortality.
[93] *Expenditures on Health Services for Aboriginal and Torres Strait Islanders*, para. 4.20.
[94] Australian and Torres Strait Islander Commission (ATSIC) 1998, *As a matter of a fact, answering the myths and misconceptions about Indigenous Australians*, p 34.

Aboriginal and Torres Strait Islander peoples suffer higher rates of disease than non-Indigenous Australians for most conditions. The 1998 Commonwealth government, *Review of Health Expenditures on Aboriginal and Torres Strait Islander Peoples in Australia*, reports that Indigenous people have a double burden of disease, suffering from 'fourth world' health problems of infectious and parasitic diseases, rheumatic heart disease and genitourinary problems, as well as diseases common in developed countries such as coronary heart disease and diabetes.[95]

The multidimensional nature of health is recognised in the World Health Organisation's definition of health, 'Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.'[96]

The poor health status of Indigenous Australians is clearly related to the deprivation and discrimination they suffer in the Australian community. Many Indigenous people lack adequate food and housing, are exposed to high levels of family and community violence, have high rates of substance abuse, and are victimised by the criminal justice system where they are disproportionately represented in prisons and juvenile detention centres. Their lower incomes resulting from less access to education and employment means that they are more likely to be impoverished than non-Indigenous Australians. The powerlessness of a community lacking self-determination underpins many of the burdens on their health. This is widely recognised, at least with respect to the role of Aboriginal controlled health care services and health care workers in improving Aboriginal health. Federal Secretary of the Australian Nursing Federation Ms. lliffe, stated in 1999 that: 'Australia's low indigenous registered nurse numbers are a national disgrace and a hindrance to social and personal healing in Aboriginal communities'. [97]

Despite many studies and reports on Indigenous people's health and the formulation of a culturally appropriate Aboriginal health policy in the National Aboriginal Health Strategy (1989), little has been done to improve the health of Indigenous people in Australia. The National Aboriginal Health Strategy has been poorly implemented and under funded.[98] The *Review of Health Expenditures on Aboriginal and Torres Strait Islander Peoples in Australia* reports that for all systems of funding (private, State and Commonwealth Government) both mainstream and Aboriginal-specific, Australia spends A$1.08 on Aboriginal health for every A$1.00 spent on non-Aboriginal health. Levels of illness for Indigenous Australians are three times that of non-Indigenous populations. Dr Woollard stated in 1997 that:

> '..if we were to spend on Aboriginal people, the same amount of money as would be provided for white Australians with the same level of illness it would probably require an extra $600 million or more a year to be spent on Aboriginal health care in this country.'[99]

[95] Executive summary.
[96] Preamble, 1948, *Constitution of the World Health Organisation.*
[97] Internet site of the ANF, http://www.anf.org.au/
[98] Gardner, H 1997, *Health Policy in Australia.*, Oxford University Press: Melbourne.
[99] Australian and Torres Strait Islander Commission (ATSIC) 1998, *As a matter of a fact, answering the myths and misconceptions about Indigenous Australians*, p 34.

ARTICLE 13 – THE RIGHT TO EDUCATION

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's report does not outline how Australian education is being directed to the full development of human potential and dignity. Nor is human rights education mentioned. There is also limited information on how education is enabling all Australians to participate effectively in a free society, and little discussion on inequities in the education system.

NATIONAL ISSUES

RIGHT OF EVERYONE TO EDUCATION

Australian Government figures show a significant decline in the number of students completing their secondary level education from 1992 to 1998. In this period, the proportion of students dropping out increased from 23% to 29%.[100]

PRIVATE VERSUS PUBLIC SCHOOL FUNDING

The Federal and State Governments are providing disproportionate funding increases to private schools at the same time as failing to provide sufficient funding to public schools to maintain the quality of education.

During 1988-1996, both Commonwealth and State funding to private schools increased significantly, with Federal funding increasing by 21.3% (compared with a 1% increase in funding to public schools) and State funding increasing by 23.3%. The increase in funding to private schools exceeded their increase in enrolments.[101] Australia-wide, in 1998, expenditure on private schools per dollar spent on government schools was 7 cents more than in 1993.

Between 1994 and 1998 public school enrolments increased by 1.1% compared to 8.5% for private schools,[102] with approximately 70% of students in public schools. However, the funding changes between 1993 and 1998 were a 4.9% decrease for public schools compared to a 23.5% increase for private schools.[103]

The *Federal States Grants (Primary and Secondary Assistance) Act 1996* introduced the 'Enrolment Benchmark Adjustment' (EBA) that cuts Federal funding to public schools for each new place in a private school. The Australian Education Union reports that, since the introduction of the EBA, public schools have increased enrolments by nearly 24,000 students, while nearly $30m of Federal Government funding has been cut from them.

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[100] Australian Bureau of Statistics, *Schools Australia*, 4221.0, 4220.0 and Department of Education Submission to the Public Accounts and Estimates Committee Public Hearing, June 1997, July 1998.
[101] Australian Senate Employment, Education and Training Committee, 11 February 1999, *A Class Act*, Department of the Senate.
[102] Calculated from *National Report on Schooling in Australia*, various years.
[103] Calculated from Commonwealth Grants Commission Report on General Grant Relativities 1999, Canberra, Vol 2, pp. 340-341, adjusted to 1997 prices using a schools price deflator prepared by Doug Newton.

HUMAN RIGHTS EDUCATION

Human rights education is not explicitly at the core of the education curriculum in any State or Territory in Australia, but it is mentioned and left to the discretion of individual schools to apply.

A study of government primary schools in the ACT found that, while there were varying levels of activities or programs supporting human rights education, these were mostly on an incidental basis.[104]

In Victoria, the curriculum[105] has no requirement that the human rights guaranteed within the UN Universal Declaration of Human Rights and other international human rights instruments be taught. However, it does provide some human rights education under the Studies of Society and Environment learning area an under the area of 'citizenship', students are taught about Australia's democratic tradition and the roles and responsibilities of its citizens. References are made to students being taught their rights and responsibilities, but there is no reference linking these rights to international human rights instruments.

There are no significant learning outcomes in the curriculum that relate to human rights education. The Victorian Department of Education *Strategic Directions 1997-98* statement does not include human rights education at any level.

ARTICLE 13 (2) - THE RIGHT TO EDUCATION

AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's Report states that primary education is free of instruction fees in all government schools, but does not mention the pressure felt by low income parents to pay voluntary fees, nor that in some States, compulsory fees in secondary schools are required.

In 1996 the retention rate for Indigenous students from prep grade at primary school to year 12 was 29%. In the same year, about 59% of students from lower socioeconomic backgrounds are estimated to have completed year 12, compared with 76% of higher socioeconomic students.

Only 13% of the Indigenous population have completed tertiary qualifications, compared to 39% of the general population.

The Government has allowed universities to charge up-front fees for up to 25% of domestic undergraduate students, and universities will be allowed to admit a limited number of Australian students on a full fee paying basis over and above their Commonwealth funded load. The freedom to charge fees to Australian students for undergraduate courses is a major policy change in the Australian higher education system, and one which undermines the right of higher education being made equally accessible to all.

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[104] Bazyar, T 1999, *Education is Central to the Promotion of Human Rights: A Needs Assessment Exploring Human Rights Education in Government Primary Schools in the ACT*, University of Canberra.

[105] Curriculum is outlined in Board of Studies 1999, Curriculum and Standards Framework II', Draft for Consultation.

ACCESSIBILITY TO EDUCATION FOR DISADVANTAGED GROUPS

Indigenous Students

Indigenous people are experiencing disproportionate difficulty in accessing education:

- Only 2.8% of Indigenous people surveyed in 1996 said that they had never attended school, compared with 4.6% in 1991. However, this is still almost four times higher than the 0.73% of non-indigenous Australians who have never attended school.[106]

- In the *Third International Mathematics and Science Study*, Indigenous primary and secondary students scored an average 'significantly lower' than non-indigenous students.[107]

- Results from state literacy and numeracy tests show that results for Indigenous students are, on average, below those of non-Indigenous students, with the gap between them getting wider as the students get older.[108] In the *National School English Literacy Survey* conducted in 1996 by the Australian Council for Educational Research, Indigenous students had average levels of English literacy achievement that were three or four years below other students tested.

- The 1991 report of the Royal Commission into Aboriginal Deaths in Custody pointed to the link between educational disadvantage and the high rate of incarceration for Indigenous people compared to the general population.

- A review of the effectiveness of the National Aboriginal and Torres Strait Islander Policy in 1994 found that while educational disadvantage had been slightly reduced, the improvements were inconsistent across education sectors, States and institutions.

Students with Disabilities

People with disabilities are often either completely excluded from educational institutions, subject to segregated learning, or discriminated against in the mainstream.[109]

Due to a shortage of resources and supports available, many children with disabilities are only going to school for two to three days per week. Although statistics to support this statement are difficult to obtain. However, both Education Department managers and teaching staff readily admitted that this occurred on a regular basis but were unable or unwilling to provide definitive data.

An advocacy service reported that they receive 15-20 telephone inquiries per year requesting advocacy support for children with disabilities who were excluded from part of the education system because of insufficient resources to support them full-time.

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[106] 1996 Australian Census figures.

[107] Ministerial Council on Education, Training and Youth Affairs, 1997, *National Report on Schooling in Australia*, Curriculum Corporation, Melbourne.

[108] *Ibid*.

[109] Jones, M December 1999, *Lost Opportunities in Education: The Difficulty of Securing Human Rights for People with Disabilities*, Access.

The Australian Education Union reports that special needs staffing in Victorian public schools was cut by 1,590 primary teachers and 1,403 secondary teachers between 1992 and 1997. Special needs staff includes people such as speech therapists, student welfare officers and educational psychologists.[110]

ACCESSIBILITY TO HIGHER EDUCATION

While the overall participation of students in higher education has increased significantly, the participation rate of disadvantaged groups remains low (Table 1).

The Commonwealth Department of Education, Training and Youth Affairs (DETYA) confirmed in its most recent report on equity in higher education that lack of access is not a reflection of the ability of students from disadvantaged backgrounds. DETYA confirms that: …once members of those equity groups are in the university system they can, with the appropriate support, achieve outcomes little different to those of the rest of the student body.'[111]

Table 1: Equity group participation in higher education as a percentage of total students 1995-1998[112]

Equity Group	**% of the Australian Population***	**1995**	**1996**	**1997**	**1998**
People with a disability	4	N/A	1.8	2.4	2.5
Aboriginal and Torres Strait Islanders	1.7	1.2	1.2	1.3	1.2
People of non-English Speaking Backgrounds	4.8	5.5	5.4	5.1	4.2
People from Rural Backgrounds	24.3	17.7	17.7	17.4	16.1
People from Isolated Backgrounds	4.5	2.0	1.8	1.8	N/A
People from low Socio-Economic Backgrounds	25	14.9	14.4	14.5	13.4

* % based on most recent Census – with the first three being from 1996 and the next three being from 1991.

The Commonwealth Government has not introduced appropriate programs to assist the entry of people from disadvantaged backgrounds, or maintained appropriate programs to support them after their enrolment at universities. Instead, Government policies that have tended to inhibit the participation of disadvantaged groups in higher education include:

- decreasing the availability of income support for students – restructuring of income support in 1998 led to 45,000 students losing all or part of the income support they had previously received;
- cutting funding for universities – in 1996 expenditure for higher education was reduced by $840m. University funding has fallen by 12.7% between 1995-98;[113] and

[110] McCaughey, J., J. Walker and J. Mansfield, October 1999 *Voices from our Schools*, People Together Project.
[111] Department of Education, Training and Youth Affairs, 1999 *Equity in Higher Education*, Occasional Paper Series 99-A.
[112] *Ibid*.

- insufficient contributions to equity programs at universities – in 1999 the Commonwealth Government allocated $5.545m under the Higher Education Equity Program.[114] This allocation is split between Australia's 38 public universities; then further split into programs for the six designated equity groups. Hence, in 1999, an average of $2 per student from a non-English Speaking Background enrolled at Australian universities was provided.

The number of fully-subsidised places for non-fee-paying students in Australian universities has fallen by nearly 5,000 between 1996 and 2000.[115]

FREE EDUCATION

Voluntary fees and levies in Australian primary and secondary schools undermine the right to free education. The Senate Employment, Education and Training References Committee in its report *Not a Level Playground: The Private and Commercial Funding of Government Schools* (1997), estimated that the average amount paid by parents in fees and levies to government schools was of the order of $200 per annum.[116]

In Western Australia, *The School Education Bill 1997* allows secondary schools to charge compulsory fees and primary schools to ask for voluntary fees of up to $60. The compulsory fees for secondary school range up to $225 per student per year. The South Australian Government of has also allowed for the collection of compulsory fees.

Voluntary fees and levies also appear to be increasing with time. The school council of a Victorian metropolitan secondary college reported that, in 1994, a year seven student was asked to pay $190, while in 1999 the same student would be asked to pay up to $395.[117]

Voluntary fees and levies effectively reduce accessibility to education for children from families with low incomes, due to the humiliation many of them feel when they cannot pay. A 1997 Smith Family survey in four States found that 34% of disadvantaged families experienced discrimination or pressure because of difficulties in paying school fees.[118] In 1998, of the 136 disadvantaged Victorian families that responded to this survey, 36% reported that their children had experienced discrimination or humiliation by school authorities because of difficulties in paying 'voluntary' fees. Examples of practices creating humiliation were having their names placed on the class blackboard until the fees were paid, and being made to stand up in front of the class with the teacher saying: "Your parents have not paid these school fees yet; when will they pay?"[119]

The children of parents who do not pay voluntary fees in Victoria have been threatened with educational sanctions. For example, one primary school wrote: 'If we do not receive your contribution this could well jeopardise the extent of your child's educational programs.'[120] Research in Tasmania

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[113] Australian Bureau of Statistics, 1999, *Expenditure on Education* 1997-1998, ABS 5510.0
[114] Department of Education, Training and Youth Affairs, 1999, *Higher Education Report for the 1999-2001 Triennium*, Canberra.
[115] Department of Education, Training and Youth Affairs Higher Education Triennial funding reports.
[116] McCaughey, J, Walker J and Mansfield J, October 1999, *Voices from our Schools*, People Together Project.
[117] *Ibid*.
[118] Synod Schools Task Group, 1998 *The State of Our State Schools*, Anglican Diocese of Melbourne.
[119] McCaughey, J, Walker J and Mansfield J, October 1999, *Voices from our Schools*, People Together Project.
[120] Victorian Council of Social Service, 1998 *Voluntary Schmoluntary! The reality of school fees and parent contributions in Victorian State Primary Schools.*

has also identified similar educational issues for people living on low incomes across the whole State.[121]

Children included in residence applications of their parents are eligible to free education only if their parents have the right to work in Australia. If the parents of the child do not enjoy the right to work, fees must be paid to the Department of Education. Given that most non-permanent residents are not eligible for any social security benefits, those who do not have permission to work are unlikely to be able to afford to send their children to school.

There has been an increase in the fees that students pay for higher education. Fees introduced since 1989 include:

- the introduction of full up-front fee charges for postgraduate studies in 1996. Postgraduate course work students pay full up-front fees for many courses. In 1999, postgraduate full fee payment increased by 15% to 22, 952 students.[122]

- the introduction of up-front fees for up to 25% of domestic undergraduate students at universities. Students who have failed to achieve sufficient marks to gain a government-funded position at university can now purchase a place. Students without the funds cannot compete for these places;

- allowing universities to charge ancillary fees, that is, all fees and charges paid by students to universities and affiliated bodies, in addition to tuition fees.

It is of particular concern, that the number of students paying up-front fees is increasing steadily. Full-fee paying students constituted 12.9% of the overall student load in 1999 and over 70% of the increase in the total student load in 1999 were full-fee paying students.

Fees and charges paid by Australian students in 1997 made up 15% of all university funding.[123]

MATERIAL CONDITIONS OF TEACHERS

Teachers have generally indicated that because their workload has increased, they have less time to attend to the needs of students with learning or behavioural difficulties.

The Australian Council of Trade Unions conducted a survey of 1,761 education workers in primary and secondary schools and higher education facilities which shows the distribution of working hours for teachers.[124] Almost one third of the teachers surveyed were working 50 or more hours in the average week (see Figure 2). The survey also found that:

- 40% of teachers claimed to work at least 10 hours of unpaid overtime per week;
- 78% indicated that their workload had increased in the last 12 months;
- 69% indicated that the amount of stress in their work had increased in the last 12 months;
- 79% felt that they could not provide the right level of service or quality of performance because there is too much work to be done;

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[121] Anglicare Tasmania, Social Action and Research Centre, November 1999 *Hearing the Voices: Life on a Low Income in Tasmania.*

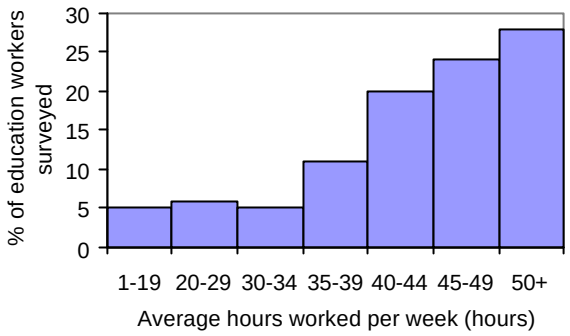
[122] Australian Vice Chancellors' Committee, 1999 Media Release: *Diversification of University Funding Sources Continues.*

[123] Department for Education, Training and Youth Affairs, 1999 *Higher Education Report for the 1999-2001 Triennium*, Canberra.

[124] Yann, Campbell, Hoare, and Wheeler, 1999 *Employment Security and Working Hours – A National Survey of Current Workplace Issues.*

- 63% felt they were expected to work through their meal breaks; and
- 41% indicated that they found it difficult to take sick leave.

Figure 1: Distribution of the average hours per week worked by teachers.



The Australian Educations Union's *Beyond the Limits* report, which surveyed education workers in Australian public schools, found that:[125]

- 83% reported that the pressures of overwork were damaging the quality of their work; and
- 93% reported that they were unable to give students enough individual attention.

A further measure that has eroded teachers' conditions and especially affected morale and perceived job security, is the use of short term contracts for teachers. The Senate Committee inquiry into the teaching profession[126] found that the use of casual teachers increased their workload as they 'may be thrown at short notice into subject areas with which they are unfamiliar. Casualisation also adds stress as teachers are denied the opportunity to build up supportive networks with their colleagues. Increasingly, [State Education] departments are employing casual teachers for the school year, terminating their appointments in December and re-employing them in February, thus saving salary costs but forcing teachers to find other temporary work.'[127]

In terms of salaries, the Senate inquiry found that the primary disadvantage suffered by teachers, relative to other professionals with similar qualifications, related to their compressed salary scale. In this respect the teaching profession compares unfavourably with many other professions that have both more extended salary scales and more opportunities for promotion. [128]

[125] Australian Education Union, 1999 *Beyond the Limits: Public Education Workers Running on Empty: An Analysis of the ACTU Working Time and Job Security Survey in relation to the Public Education Workforce.*
[126] Australian Senate Employment, Education and Training Committee, 11 February 1999 *A Class Act*, Department of the Senate.
[127] *Ibid.*
[128] *Ibid*.

APPENDIX 1 – STATE SPECIFIC HOUSING ISSUES

ARTICLE 11: THE RIGHT TO ADEQUATE HOUSING

VICTORIA

Public Housing

Reductions in CSHA funding by the Australian Government have resulted in reduced numbers of public housing stock available in Victoria, from 64,525 units in 1996-97 to 64,244 units in 1997-98.[129] This has occurred in spite of 49,000 Victorian households being on public housing waiting lists.[130]

The former Victorian State Government introduced a number of changes to housing assistance policies and programs during the latter part of the 1990s. These include new public housing eligibility guidelines and restricted security of tenure. In order to be eligible to apply for public housing, households must be in receipt of at least one dollar ($1) of Centrelink (social security) benefits. Many households on low incomes, who in the past would have been eligible to apply for public housing, are now excluded from accessing government housing assistance. This places further pressure on the lower end of the private rental market.

In the past, public housing tenants generally enjoyed lifetime security of tenure. New public housing tenants will now be reviewed every three to five years concerning their eligibility to receive Centrelink benefits. If a person's income reaches a level at which they are no longer eligible for Centrelink payments then they will have to move out of public housing. There has been no analysis by the Victorian Government as to how many people will be affected or how difficult it will be for them to access the private rental market. This policy also acts as a disincentive for public housing tenants to seek either part-time or full-time employment as an increase in household income will result in reduction or termination of Centrelink benefits.

WESTERN AUSTRALIA

Housing

In the last five years, the State Housing Authority, Homeswest's presence has declined as a percentage of total housing stock. Between 1991 and 1996 Homeswest's presence decreased from 6% of total dwellings to 5.4%. Stock numbers have declined from 36,151 in 1993/94 to 35,457 in 1998/99. However, in this period the total number of dwellings in Western Australia has increased by more than 15% (Homeswest, 1996) and the waiting list for Homeswest housing has fluctuated between 11,799 (1995/96) and 14,326 (1998/99) applicants (Ministry of Housing, 1999). Homeswest's presence varies across the State, ranging from 4.7% in the North Metropolitan region to 24.2% in the Kimberley.

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[129] Ibid.

[130] Department of Human Services, Office of Housing, May 1999 *Summary of Housing Assistance Programs 1997-98*. Melbourne, Victorian Government.

NEW SOUTH WALES

Rising Rents in Sydney

Sydney is the most expensive city in Australia to live. Since 1993 rents have increased by 40%. Melbourne, the capital city with the next biggest rise in rents, experienced an increase of 9.6%.[131] Sydney tenants pay almost twice as much rent for a 3-bedroom home compared to tenants in Melbourne or Canberra.[132] In 1998, 160,000 Sydney households face a choice of paying over 30% of their income on rent or else live on the city fringe.[133]

Impact of the Olympics

In 1994 Shelter NSW commissioned a report on the potential impact of the Olympics on Sydney's housing situation. In response to concerns about the possibility of rent increases and evictions and the criminalisation of homelessness. The report highlighted a number of potential impacts of the Olympics, based on a study of similar 'hallmark' events and comparisons with the Sydney housing market. These included:

- accelerating processes of urban change, especially gentrification;
- pressure on the private rental market – increased rents and conversions to other uses;
- conversion of boarding houses to tourist accommodation;
- displacement of low income tenants;
- event site development displacing existing residents;
- increased house prices;
- 'crowding out' of affordable housing investment; and
- harassment of homeless people.

The report noted that many of these effects reflected pre-existing trends, but that the Olympics would accelerate or exacerbate them.[134]

SOUTH AUSTRALIA

Public Housing

Public housing provides the most cost-effective means of ensuring access to affordable, adequate housing in the long-term. It has helped to build communities in South Australian regional areas as well as in Adelaide, and encouraged commercial growth. Unfortunately, the South Australian Government is currently undertaking substantial reductions in public housing stock. Stock levels have been reduced from 63,000 to the current level of 54,533 properties. Further reductions are planned over the next five years.

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[131] Sydney Morning Herald, 27/1/98.
[132] Real Estate Institute of Australia, 1998.
[133] University of Sydney Planning Research Centre, 1998 *Housing NSW's low to moderate-income households*.
[134] Cox, G et al, September 1994 *The Olympics and Housing*, Shelter NSW.

Homelessness

In South Australia, 50% of demand for services by homeless people is unmet according to the Department of Human Services Evaluation of the Supported Accommodation Assistance Program in South Australia.

QUEENSLAND

Public Housing

Historically Queensland has a very poor record of providing adequate social housing. We still have the lowest percentage of public and community housing of all the States. Public housing constitutes less than 4% of housing in Queensland. To make matters worse, the stock that we do have is in very poor condition due to lack of maintenance and poor quality construction practices that were standard until the 1990s. The waiting lists are long, but are no reflection of the real housing need. Generally applicants face continued difficulty to be housed appropriately by the Department of Housing, although there are some programs which have improved the service for people with a disability.

On January 4 this year, the State Housing Minister, Rob Schwarten, announced that his department is considering reducing their stock by up to 25% due to the difficulty in maintaining the current houses. Reduced funds due to Federal Government cuts to CSHA and the efficiency dividend scheme, as well as inadequate compensation for the GST were said to have caused a cash crisis.

APPENDIX 2 – NGARRINDJERRI NATION CONTRIBUTION

SUMMARY OF NGARRINDJERI ISSUES AND QUESTIONS ARISING FROM THE AUSTRALIAN REPORT TO THE UN CESCR

ISSUES

Article 1: The Right to Self-Determination

The Government has violated this article by promoting the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997*. This Act abrogates the Ngarrindjeri right of self-determination over the entitlement to maintain Ngarrindjeri heritage and native title in accordance traditional spiritual and cultural beliefs. This affects the entire Ngarrindjeri Nation which comprises a substantial proportion of the Aboriginal population in South Australia. The negative implications for all Indigenous heritage, native title and spiritual and cultural beliefs in Australia are significant. Without international assistance on this issue, there can be no domestic remedy, as the judicial avenues have been exhausted.

Article 2 (2): The Right Not to be Discriminated Against

The enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament deprives the Ngarrindjeri Nation of substantial social, economic and cultural rights in relation to Hindmarsh Island and their surrounding native title land and waters, and constitutes deliberate discrimination against them in favour of the State of South Australia and certain other non-Indigenous interests.

Article 3: Equal Rights of Women and Men

The enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament deprives Ngarrindjeri women of their entitlement to a separate 'womens' business', apart from the spiritual and cultural beliefs of their male fellow Ngarrindjeri people, and disparate from the variety of cultural and spiritual beliefs held by non-Indigenous South Australians. This Act negates the right of Ngarrindjeri women to access administrative or judicial remedies to a clear denial of their social, economic and cultural rights on the basis of their gender.

Article 10: The Right to Protection and Assistance for the Family

The enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament directly divided Ngarrindjeri families over the social, economic and cultural rights of the Ngarrindjeri Nation, leading to Ngarrindjeri family relationships. Degenerating.

Article 11: The Right to an Adequate Standard of Living

The enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament without just compensation or reasonable reparations, deprived the constituents of the Ngarrindjeri Nation of their social, economic and cultural rights to maintain their traditional lifestyles through establishing livelihoods substantially based upon the direct social, economic and cultural activities of Ngarrindjeri people.

Article 12: The Right to Attainable Standard of Physical and Mental Health

The enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament had a direct and detrimental impact upon the physical and mental health of

constituents of the Ngarrindjeri Nation. The Commonwealth and South Australian Governments violated the social, economic and cultural rights of the constituents of the Ngarrindjeri Nation by acting to strike out representative litigation undertaken for them to seek a remedy to the lowering of the physical and mental health arising from the enactment of the Commonwealth legislation.

Article 15: The Right to take Part in Cultural Life

The enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament directly vetoed the enjoyment by the Ngarrindjeri Nation of its time immemorial cultural life on and near Hindmarsh Island, as had been the right and tradition of the constituents of the Ngarrindjeri Nation to pursue until their social, economic and cultural rights in this area were abrogated by the Commonwealth and South Australian Governments.

QUESTIONS

Article 1

Could the Government explain how the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament is consistent with the right of self-determination ?

What steps have been taken to redress the mental harm suffered as psychological and emotional distress and injury by the Ngarrindjeri people as a result of the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by, and to redress the physical harm and impact on the native title, heritage and constituents of the Ngarrindjeri Nation from the enactment of the this Act 1997?

Why has the Government acted to strike out representative litigation over the social, economic and cultural rights sought by the Ngarrindjeri Nation to redress the physical and mental harm suffered by them as a result of the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997*.

Article 2(2)

Could the Government explain how the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* is consistent with the right not to be discriminated against?

Why has the Government deprived the Ngarrindjeri Nation of substantial social, economic and cultural rights in relation to Hindmarsh Island, their surrounding native title land and waters, and deliberately discriminated against them in favour of the State of South Australia and certain other non-Indigenous interests?

What steps have the Government taken to redress the mental and physical harm suffered by the constituents of the Ngarrindjeri Nation and the infringement of their rights arising from the deprivation of their substantial social, economic and cultural rights in relation to Hindmarsh Island, their surrounding native title land and waters and discrimination against them in favour of the State of South Australia and certain other non-Indigenous interests?

Article 3

Could the Government explain how the enactment of the Commonwealth Aboriginal Heritage (Hindmarsh Island) Act 1997 by the Commonwealth Parliament is consistent with the equal rights of women and men?

Why has the Government deprived Ngarrindjeri women of their entitlement to a separate 'women's business', apart from the spiritual and cultural beliefs of their male fellow Ngarrindjeri people, and disparate from the variety of cultural and spiritual beliefs held by non-Indigenous South Australians?

Why has the Government negated the right of Ngarrindjeri women to access administrative or judicial remedies in relation their social, economic and cultural rights on the basis of their gender.

What steps has the Government taken to redress this negation of equal rights for Ngarrindjeri women and men?

Article 10

Could the Government explain how the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament is consistent with the right to protection and assistance for the family?

Why has the Government directly divided Ngarrindjeri families over the social, economic and cultural rights of the Ngarrindjeri Nation, and instigated degeneration in a substantial number of Ngarrindjeri family relationships?

Why has the Government not acted to maintain the Ngarrindjeri right to protection and assistance for their families by redressing the direct division arising among their families over the social, economic and cultural rights of the Ngarrindjeri Nation?

What steps have the Government instigated to redress the degeneration in a substantial number of Ngarrindjeri family relationships?

Article 11

Could the Government explain how the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997 by* the Commonwealth Parliament is consistent with the right to an adequate standard of living?

What steps have the Government taken to maintain the right of the Ngarrindjeri to an adequate standard of living enabling them to maintain their traditional lifestyles by establishing livelihoods for themselves substantially based upon the direct social, economic and cultural activities of Ngarrindjeri people?

Why has the Government deprived the constituents of the Ngarrindjeri Nation of their social, economic and cultural rights to maintain their traditional lifestyles by establishing livelihoods for themselves substantially based upon the direct social, economic and cultural activities of Ngarrindjeri people?

Why has the Government not provided just compensation or reasonable reparations to the Ngarrindjeri Nation to enable them to maintain their traditional lifestyles by establishing livelihoods for themselves based upon their direct social, economic and cultural activities?

Article 12

Could the Government explain how the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament is consistent with the right to an attainable standard of physical and mental health?

What steps has the Government taken to redress the violation of the social, economic and cultural rights of the constitiuents of the Ngarrindjeri Nation by the Commonwealth of Australia and the State

of South Australia acting to strike out representative litigation undertaken for them seeking to remedy the lowering of their physical and mental health arising from the enactment of the legislation?

Why has the Government legislated directly against Ngarrindjeri cultural and spiritual beliefs, native title, and heritage rights to impact detrimentally upon the physical and mental health of the constituents of the Ngarrindjeri Nation?

Article 15

Could the Government explain how the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997* by the Commonwealth Parliament is consistent with the right to take part in cultural life?

What steps have the Government taken to maintain the right of the Ngarrindjeri to partake in their traditional cultural life?

Why have the Government directly vetoed the enjoyment by the Ngarrindjeri Nation of its time immemorial cultural life on and near Hindmarsh Island, as had been the native title right, heritage and tradition of the constituents of the Ngarrindjeri Nation to pursue?

What steps have the Government taken to redress the abrogation of the cultural rights of the Ngarrindjeri Nation and its constituents by the enactment of the Commonwealth *Aboriginal Heritage (Hindmarsh Island) Act 1997*?

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