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I. Introduction

Amnesty International submits the following information for consideration by the Committee on Economic, Social and Cultural Rights (the Committee) in advance of its pre-sessional working group meeting on 19-23 May 2008, during which Australia's Fourth Periodic Report¹ will be considered. The briefing identifies issues that have arisen from Amnesty International's current work on Australia and which, in the view of Amnesty International, raise concerns about Australia's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (the Covenant). This report does not reflect the full range of concerns of the organisation in terms of respect, protection and fulfilment of economic, social and cultural rights in Australia.

Amnesty International notes that Australia ratified the Covenant in 1976. The organization also notes the following positive developments since the 2007 federal election:

- In the first session of the parliament the Prime Minister, Kevin Rudd, and opposition leader Brendan Nelson made an apology to members of the Stolen Generations for suffering caused by the forced removal of Indigenous children from their families. The event was widely celebrated across Australia, and the apology resonated strongly with members of the Stolen Generations and their families.
- The Prime Minister has announced a bi-partisan commission, jointly chaired by himself and the leader of the opposition, to address Indigenous disadvantage, beginning with a focus on housing.
- The election platform of the party now forming government contains strong support for internationally recognised human rights, and promises incorporation of international human rights treaties into Australia's domestic law. Since coming to power, however, the government has noted that the party platform is a guide for government. The extent to which the election platform will be translated into active government policy remains to be seen.
- The election platform of the party now forming the new government included supporting the UN Declaration on the Rights of Indigenous Peoples, and in a recent announcement at the UN Permanent Forum on Indigenous Issues, a government official stated that the government was currently undertaking detailed consultations on this matter.²

The present briefing focuses on the following concerns:

- Lack of entrenchment of Covenant rights, and failure to provide for these rights to become justiciable through incorporation of the Covenant into domestic law.
- Inadequate promotion of human rights education in schools and throughout the community generally.

¹ See UN Doc. E/C.12/AUS/4, 7 January 2008 and Australia's Core Document, UN Doc. HRI/CORE/AUS/2007, 13 February 2008.

² Statement by Deputy Secretary of the Australian Department of Families, Housing, Community Services and Indigenous Affairs on 21 April 2008 at UNPFII.

- Having apologised to the Stolen Generations, the government has yet to adopt a rights-based approach to its Indigenous policy, which would require re-examination of a range of issues, including redress for members of the Stolen Generations, compensation for Stolen Indigenous wages, and re-alignment of Native Title rights with the principles enunciated in the Mabo decision.
- The policy intervention in Northern Territory Indigenous communities, introduced in response to high levels of violence and child abuse in these communities, contains discriminatory measures that have no demonstrated role in protecting Indigenous children. The most notable of these are proposed changes to the permit system and land tenure arrangements. Land rights are of particular importance to Indigenous peoples in Australia for cultural and spiritual reasons and because their enjoyment of other rights has been so limited. Interventions that affect Indigenous peoples' control and use of their land thus require the strongest justification. Although the Intervention offers, at least temporarily, improvements in health and policing services, Amnesty International is concerned that its discriminatory elements are more likely to harm than improve Indigenous welfare.
- Given the high prevalence of violence against Australian women, there is an urgent need for the new government to honour its election commitment and international obligation under the Beijing Platform for Women to develop a comprehensive national plan of action to address this issue.

II. Framework for Implementation (Articles 2(1), 13(1))

2.1 *Need for entrenchment in domestic law/Bill of Rights*

In its concluding observations in 2000, the Committee expressed regret that, “because the Covenant has not been entrenched as law in the domestic legal order, its provisions cannot be invoked before a court of law.”³

It also urged the government to follow the principle of “legitimate expectations” set out in a decision of the High Court.⁴ That principle, articulated in the majority judgment in *Teoh*⁵ concerns the impact on administrative decision-making of a treaty that has been ratified but not incorporated into domestic law. The decision by the majority in a differently constituted High Court in the case of *Lam*⁶ has cast doubt on that principle.

³ Concluding observations of the Committee on Economic, Social and Cultural Rights: Australia, UN Doc. E/C.12/1/Add.50, 1 Sept 2000, para. 14, available at www.unhchr.ch/tbs/doc.nsf/0/693c56f3d2694130c12569580039a1a2?Opendocument [henceforth: Committee's Conclusions, 2000].

⁴ *Ibid.*, para. 24.

⁵ *Minister for Immigration and Ethnic Affairs v Teo* (1995) 183 CLR 273.

⁶ *Minister for Immigration and Ethnic Affairs; Ex parte Lam* (2003) 214 CLR 1.

Nevertheless, Amnesty International is pleased to note that the election platform of the party now forming the government included incorporation of international treaties into domestic law⁷ in addition to holding public consultations on a Human Rights Bill. However, it appears that the government does not consider elements of its election platform as binding commitments.⁸

The fragility of protections offered by statute law is evident in the explicit over-riding of the *Racial Discrimination Act 1975* (Cth⁹) in legislation passed by the previous government, first in the *Native Title Amendment Act 1998* (Cth)¹⁰, and more recently in the *Northern Territory National Emergency Response Act 2007* (Cth)¹¹ and associated legislation¹². Constitutional entrenchment of treaty rights would overcome this weakness.

Amnesty International recommends the Committee asks what concrete steps are being taken to ensure justiciability and enforcement of its treaty obligations under the Covenant.

⁷ “Labor supports both the promotion of human rights internationally and the development of international standards and mechanisms for the protection and enforcement of these rights Labor will adhere to Australia’s international human rights obligations and will seek to have them incorporated into the domestic law of Australia and taken into account in administrative decision making”. Australian Labor Party National Platform & Constitution 2007, Chapter Thirteen 13 “Respecting Human Rights and a Fair Go for All”, pp 206-7 at www.alp.org.au/download/now/2007_national_platform.pdf (as at 22/02/08)

⁸ “First of all, just so we are clear: the Australian Labor Party platform provides broad guidance to government. It is not the same as one’s election commitments. It generally speaks in broad principles, and that is the role the platform plays. Governments use it as a point of direction for implementing policy over time.” Remark by Minister for Immigration & Citizenship, Senate Standing Committee on Legal & Constitutional Affairs Estimates (Additional Budget Estimates) 19 February, 2008 p. 51, available at: <http://www.aph.gov.au/hansard/senate/committee/S10636.pdf> (27/03/08)

⁹ Commonwealth legislation, that is, federal legislation as opposed to state legislation.

¹⁰ “The protection afforded by legislation, including the Racial Discrimination Act, can be removed by Parliament enacting inconsistent subsequent legislation, as for example occurred under the Native Title Amendment Act 1998 (Cth). Section 7(1) of that Act states ‘this Act is intended to be read and construed subject to the provisions of the Racial Discrimination Act’. However, section 7(2) provides that the Racial Discrimination Act has no operation if the intention to override native title is unambiguous.” Submission dated 6 November 2002 by Gilbert and Tobin Centre of Public Law to Senate Legal and Constitutional Affairs Committee Inquiry into Progress Towards National Reconciliation at www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/reconciliation/submissions/sub04.doc (as at 21/02/08).

¹¹ S 132(2) of the Northern Territory National Emergency Response Act 1977 (Cth) reads: “The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act 1975.”

¹² For example, s. 4(3) of the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth) exempts changes to income support affecting Indigenous people in the Northern Territory from the Racial Discrimination Act 1975 (Cth).

2.2 Need for stronger action on human rights education - Article 13(1)

Promoting understanding and awareness of human rights is a major responsibility of State Parties. Australia's record under this obligation has been of long-standing concern to the Committee:

The Committee notes with concern that no steps have been taken to respond to its 1993 recommendation to strengthen human rights education in formal and non-formal curricula.¹³

All jurisdictions in Australia have created bodies that include the responsibility of undertaking human rights education. The Human Rights and Equal Opportunity Commission (HREOC) is charged with this responsibility at federal, or Commonwealth, level.

In 1998, the Commonwealth government established a National Committee on Human Rights Education, designed to complement the role of HREOC:

by providing a forum for representatives from non-government organisations, government agencies, community bodies, businesses and the media to discuss and implement initiatives dealing with human rights education.¹⁴

However, it is not clear whether the Committee is currently active. It was not mentioned in the 2006-07 Annual Report of the Commonwealth Attorney General's Department.¹⁵

HREOC itself produces a range of human rights education resources for schools, and advises federal, state and territory education departments in their implementation of the World Program for Human Rights Education.¹⁶ However, the scope of HREOC's activities has been affected by the substantial funding cuts under the previous government.¹⁷

¹³ Committee's Conclusions, 2000, para. 23.

¹⁴ Australia's National Framework for Human Rights National Action Plan, Commonwealth of Australia 2004, p. 9.

¹⁵ Report at www.ag.gov.au/annualreport07.

¹⁶ Human rights education modules for upper primary and secondary schools include Youth Challenge: Teaching Human Rights and Responsibilities and Voices of Australia, to help combat racism and promote a culture of respect and equality among young Australians. Op.cit.

¹⁷ "The real decrease [excluding effects of loss of function etc] in HREOC's budget over the life of the current government is around \$7.3 million in actual dollars." HREOC response to Questions on Notice arising from evidence given to the Senate Legal and Constitutional Legislation Committee's Reference on the Australian Human Rights Commission Legislation Bill, 8 May 2003, at <http://humanrights.gov.au/legal/submissions/qon/8may.html> (as at 21/02/08).

Efforts to bring human rights into the classroom have been largely ad hoc, resulting in inconsistencies between school curricula across jurisdictions.¹⁸

Perceived ignorance of human rights concepts and international instruments amongst tertiary law students at Monash University recently provided the motivation for a study of human rights education in secondary schools.¹⁹ Major barriers to human rights education at the secondary level were identified as being absence of a government mandate; a crowded curriculum; lack of resources; and lack of teacher training.²⁰

Relatively few of the teachers interviewed for this study thought of international law instruments as part of human rights education, and none of them identified HREOC as a source of materials. They were more likely to rely on NGOs for materials or speakers.²¹

Amnesty International is concerned that governments at State/Territory and Commonwealth levels have not provided a national implementation strategy and appropriate resources to train human rights educators, or facilitated consistent human rights education in Australian primary and secondary schools. Amnesty International hopes that the new government will honour its election platform pledge to support a “properly funded Human Rights and Equal Opportunity Commission (HREOC) as an independent body advising on, and inquiring into, the protection and advancement of human rights in Australia” and to “promote an awareness and understanding of human rights that should be enjoyed by all Australians and provide education to all Australians about the significance of, and the need to respect, human rights.”²² Amnesty International would urge the Australian government to support the work of civil society organisations that educate people about their rights at work, accessing accommodation and other services.

Amnesty International suggests the Committee asks the Australian government to outline what activities the National Committee on Human Rights Education has undertaken and how it is working with HREOC.

¹⁸ Ibid.

¹⁹ The findings from a survey and interviews with a sample of Melbourne secondary school teachers and education administrators were presented by Paula Gerber at the Human Rights Education Conference, Melbourne University, 16 February 2007 see www.law.monash.edu.au/castancentre/events/2006/conf-06-gerber-paper.html

²⁰ Ibid.

²¹ Ibid.

²² Australian Labor Party National Platform & Constitution 2007, Chapter 13 Human Rights and a Fair Go for All, pages 206 and 207 resp. at www.alp.org.au/download/now/2007_national_platform.pdf (as at 22/02/08).

The organization also suggests the Committee asks the government to provide its national implementation strategy for human rights education including resources allocated.

III. Discrimination against Indigenous Australians (Articles 2(2), 10, 15)

3.1. Northern Territory Intervention – discriminatory provisions

In August 2007 the Australian government introduced measures comprising the Northern Territory Emergency Intervention (the Intervention), which affects Indigenous Australians living in communities within the Northern Territory.

The stated aim of the Intervention is to:

- protect children and make communities safe, and
- create a better future for Aboriginal people in the Northern Territory.²³

It includes the following initiatives:

- Law and order: putting more police in communities to make people safe;
- Health: providing health checks and follow-up treatment for children;
- Welfare and jobs: changing welfare payments, so that benefits intended to help children are used for children and creating jobs in communities;
- Restrictions: banning alcohol and pornography in Aboriginal areas;
- Community improvements: putting in managers who would look after government business and cleaning up communities;
- Land and permits: acquiring five-year leases over townships and opening up communities by changing the permit system so people can go into the common areas in communities;
- Education: ensuring all Aboriginal children attend school.²⁴

The Intervention was very rapidly developed and implemented in response to what was described as the “crisis of child abuse in Australian Indigenous communities.”²⁵

The immediate nature of the response reflected the first recommendation of the *Little Children are Sacred* report from the Northern Territory Board of Inquiry into the

²³ Northern Territory Emergency Response - Fact Sheet 1 www.facsia.gov.au/nter/docs/factsheet_01.htm

²⁴ Ibid. The initial changes announced by the government of the time, including quarantining of 50% of welfare payments to parents/guardians, abolition of the permit system, and compulsory acquisition of leases over townships on Indigenous land, are summarized in Indigenous Land Rights News, August 2007, p.12 at www.nlc.org.au/html/files/p12&13.pdf (as at 24/02/08).

²⁵ Then leader of the Opposition Kevin Rudd speaking on ABC Radio's PM on Thursday, 21 June 2007, Reporter: Peta Donald See transcript “Indigenous child abuse a 'national emergency'” at www.abc.net.au/pm/content/2007/s1958368.htm (as at 22/02/08).

Protection of Aboriginal Children from Sexual Abuse – which asked that ‘Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory governments.’²⁶

Amnesty International acknowledges that the Intervention was initiated in an effort to address serious problems, and welcomes some of the measures it introduced. However, the organization has concerns about the discriminatory nature of other elements. The legislation enabling the Intervention describes its measures as “special measures” in accordance with s.8(1) of the *Racial Discrimination Act* (1975),²⁷ but also exempts them from application of that Act.²⁸ However, Amnesty International believes that these measures cannot constitute “special measures” as provided explicitly in Article 10(3) of the Covenant and implicitly elsewhere. As explained by the Committee, for example in its General Comment 13:

The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.²⁹

As one prominent expert has noted in relation to the Intervention:

Many of the government’s proposals – for instance, scrapping the permit system, assuming control of Aboriginal land and instituting welfare reform – are simply not raised in the Anderson/Wild report [*The Little Children Are Sacred*]. No reason is given as to how measures such as scrapping the permit system will address the problem of child sexual abuse. Conversely, a number of the issues that are raised in the report – in relation to community justice process, education/awareness campaigns in relation to sexual abuse, employment, reform of the legal processes, offender rehabilitation, family support services or the role of communities, for example – have not, yet, been addressed by the Australian government response.³⁰

²⁶ Website of the Department of Families, Housing, Community Services and Indigenous Affairs www.facsia.gov.au/nter/ (as at 31/01/08).

²⁷ Reflecting Article 1(4) of the Convention on the Elimination of all forms of Racial Discrimination. See for example s.132(1) of the Northern Territory National Emergency Response Act 2007 (Cth) which says “The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975 , special measures.”

²⁸ See notes 5 and 6 above.

²⁹ Committee on Economic, Social & Cultural Rights, General Comment 13, The Right to Education (Article 13) UN Doc. E/C.12/1999/10 (1999), para. 32.

³⁰ Ian Anderson, Professor of Indigenous Health and Director of the Centre for Health & Society and Onemda VicHealth Koori Health Unit at the University of Melbourne. Australian Policy Online, 26 June 2007, www.apo.org.au/webboard/comment_results.html?filename_num=161613 .

It has long been noted that the prevalence of family violence is higher in Indigenous communities than in the population at large.³¹ An association between the rate of family violence and the incidence of child sexual abuse has also been noted in the literature.³²

It is apparent there is an urgent and long-standing need for effective policies to address the violence, offer protection to those at risk, prosecute as well as achieve rehabilitation and re-integration for offenders, and reparation for victims. It is also important to identify and address the underlying causes.

The Report of the Royal Commission into Aboriginal Deaths in Custody in 1991 provided an account of the factors underlying high rates of Indigenous incarceration,³³ many of which are highlighted in more recent analyses of the causes of violence and abuse in Indigenous communities.

The causes of family violence in Indigenous communities are commonly viewed in terms of a response to past traumas, including the impact of the large-scale removal of Indigenous children from their families and the long history of oppression and dispossession, as well as being due to present significant disadvantage. The present problems relate to economic, social and health disadvantage, complicated for some, by the experience of racism, substance abuse and behavioural problems. It would appear that repeated layers of pain have contributed to manifestations of despair and self-destruction, behaviour that did not appear to be present prior to the disintegration of many traditional cultural laws.³⁴

According to Stanley, Kovacs, Tomison and Cripps:

Best practice responses and solutions to Indigenous violence are difficult to find due to both what would seem to be a dearth of programs and the lack of documented evaluations about the effectiveness of programs. The many reports on the problems within Indigenous communities conclude that the general failure to find solutions is exacerbated by a significant lack of resources, an on-going paternalistic approach towards Indigenous people and a reluctance to address the problem. The latter being

³¹ A paper by the Parliamentary Research Service, "Northern Territory National Emergency Response Bill 2007" by Magarey K, Spooner D, Harris-Rimmer S, O'Neill P, Coombs M, Jagers B, Tomaras J, PaoYi Tan, Dow C, Gardiner-Garden J, & Jolly R, lists research dating back to 1986 on the high prevalence of family violence in Indigenous communities. See p 7 at www.aph.gov.au/library/pubs/bd/2007-08/08bd028.pdf

³² See for example Tomison, A. 'Child abuse and other family violence; findings from a case tracking study.' *Family Matters* No. 4 Winter, 1995: 33-37

³³ Commissioner Elliott Johnston QC, Royal Commission into Aboriginal Deaths in Custody 15 April 1991, available at: www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/national/vol1/

³⁴ Stanley J, Kovacs K, Tomison A & Cripps K (Indigenous Advisor) (2002) "Child Abuse and Family Violence in Aboriginal Communities - Exploring Child Sexual Abuse in Western Australia" For the Western Australian Government Inquiry into Responses by Government Agencies to complaints of Family Violence and Child Abuse in Aboriginal Communities. Australian Institute of Family Studies at <http://www.aifs.gov.au/nch/pubs/reports/wabrief.pdf>

due to issues such as Indigenous mistrust of the government and government uncertainty about what should be done. A number of broad principles for programs are repeatedly identified in the literature. They include the need for major policy change which gives power and decision-making back to the Indigenous community, together with financial resources adequate to make a change and professional support to the community.³⁵

Amnesty International is concerned about the failure to undertake meaningful consultations with the Indigenous peoples affected by the proposed measures in an effort to achieve their informed consent.

Further, the lack of genuine participation of the Indigenous peoples affected by the intervention measure to quarantine 50% of social security payments to all individuals living within the affected communities, demonstrates a failure to comply with the requirements of the Covenant on retrogressive measures in respect of the right to social security. As the Committee has stated:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was *genuine participation of affected groups* in examining the proposed measures and alternatives...³⁶

The legislation enabling the Intervention over-rides the Commonwealth Racial Discrimination Act (RDA) and excludes the Northern Territory legislation on discrimination, at the same time as it declares the measures to be “special measures” within the meaning of the RDA and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) on which it is based.

The Intervention takes away control of welfare payments regardless of individual history. It treats Indigenous Australians less favourably than others, in terms of their ability to control access to and use of land over which they have collective land rights. While certain elements such as health checks and improved access to medical services, and increased levels of policing are likely to contribute to improved welfare

³⁵ Ibid.

³⁶ CESCR, General Comment 19, the right to social security, UN Doc. E/C.12/GC/19 (2008), para 42 (emphasis added).

in Indigenous communities, they may be overshadowed by the impact of its discriminatory and disempowering elements.³⁷

Amnesty International welcomes the new government's stated intention to consult with the Indigenous Australians affected by this policy. However, the organization is concerned that the government's public espousal of consultation does not appear to be linked with the need to review policies vis-à-vis Northern Territory Indigenous communities and remove the discriminatory elements within them. Australia's recent statement to the United Nations Permanent Forum on Indigenous Issues included the following:

As our Minister for Indigenous Affairs, the Honourable Jenny Macklin, said recently: "... solutions can't be imposed on people... To work and be sustainable, the solutions have to be developed on the ground and driven by the communities that own them."

The Government is committed to the emergency response in the Northern Territory to protect Indigenous children from the shocking levels of abuse and neglect reported in the Little Children Are Sacred Report.

A comprehensive, independent review of the Northern Territory emergency response will be undertaken at the 12 month mark, and will start in the middle of the year. This will identify what is effective and what needs to be changed or strengthened.³⁸

Amnesty International believes that key elements of the Intervention are discriminatory, going beyond what is justified as "special measures," and as such involve violations of rights under the Covenant. The organization therefore calls on the Committee to inquire what the government intend to do to in both the short and longer term to ensure compliance with the prohibition of discrimination under Article 2(2) of the Covenant.

3.2. Redress for the Stolen Generations (ensuring effective remedies for violations of Article 10)

This year marks the eleventh anniversary of the report "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families", which documented rights violations suffered by a large number of Indigenous parents and their children.³⁹

³⁷ See for example Bree Blakeman, "The contradictory effects of quarantining Indigenous Welfare Payments" on Professor John Quiggin's Blog at <http://johnquiggin.com/index.php/archives/2008/02/16/guest-post-on-welfare-quarantining/> (as at 24/02/08)

³⁸ Seventh Session of the United Nations Permanent Forum on Indigenous Issues 21 April 2008 Opening Statement Statement by Mr Bernie Yates, Deputy Secretary, Australian Department of Families, Housing, Community Services and Indigenous Affairs (As delivered)

³⁹ Available at www.hreoc.gov.au/social_justice/bth/preliminary.html

The Committee on the Elimination of Racial Discrimination (CERD) has expressed concern about Australia's failure to properly address past breaches of Indigenous peoples' rights. In its concluding observations on Australia's tenth, eleventh and twelfth periodic reports, it stated:

The Committee notes the conclusions of the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families" and acknowledges the measures taken to facilitate family reunion and to improve counselling and family support services for the victims. Concern is expressed that the Commonwealth Government does not support a formal national apology and that it considers inappropriate the provision of monetary compensation for those forcibly and unjustifiably separated from their families, on the grounds that such practices were sanctioned by law at the time and were intended to "assist the people whom they affected."⁴⁰

Amnesty International welcomes the formal apology extended by the Prime Minister and opposition leader to members of the Stolen Generations, their families and descendants as the first item of business for the new Parliament on 13 February 2008.

However, the organization is concerned that the government has rejected the idea of a national compensation fund. Minister for Indigenous Affairs Jenny Macklin has stated:

We [the Government] don't think that it's the right thing to have a national compensation fund. We think it would be far more productive to really put that money into addressing the very serious levels of disadvantage that still exist in Aboriginal communities.⁴¹

Amnesty International welcomes measures to address general inequality of Indigenous Australians. However, the organization believes that these measures alone would not satisfy the requirement for an effective remedy for the systematic violations of Article 10 perpetrated against Indigenous peoples. The Committee has previously stated that the right to an effective remedy for violations of the ICESCR includes restitution, compensation, satisfaction and guarantees of non-repetition.⁴² The refusal to provide

⁴⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia, UN Doc. CERD/C/304/Add.101, 19 April 2000, para 13, available at: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/eb3df96380faaf97802568ac00544c55?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/eb3df96380faaf97802568ac00544c55?Opendocument) (as at 29/02/08).

⁴¹ www.abc.net.au/7.30/content/2007/s2133493.htm

⁴² See General Comment 14, the right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para 59. It should be noted that whereas the Committee states that "adequate reparation... may take the form of restitution, compensation, satisfaction or guarantees of non-repetition" (ibid.), international standards consider these requirements to be cumulative rather than alternative. See for instance the UN Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles), UNGA Res. A/RES/60/147, 16 December 2005, paras. 18-23; and the UN Updated set of principles for the protection and promotion of human rights through action to combat
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compensation in these cases may impede the full realisation by victims of their right to reparation.

Although a number of individuals affected by the practice of removal have sought compensation through the courts, to date only one case has succeeded. In August 2007, Mr. Bruce Trevorrow became the first member of the stolen generations to secure compensation.⁴³ He was awarded 525,000 AUD (approximately 480,000 USD) by the Supreme Court of South Australia for losses and suffering as a result of his forcible removal from his family between the ages of 13 months and 10 years. The court found that the state, by failing to follow its own guidelines for removing children from their families, had breached its duty of care to Mr. Trevorrow and that his removal amounted to false imprisonment. In reaching its decision, the court had regard to the stark differences between Mr. Trevorrow, who struggled with serious depression and alcoholism throughout his life, and his brothers who were not removed from the family and went on to become respected members of their communities. The court concluded that Mr. Trevorrow's adult life, "has been scarred by his earlier experiences" and that the illegal removal was, "a material cause of his depression and other losses."

The South Australia Attorney General has announced that his government will appeal the Judge's findings on a number of questions of law, but will not seek return of Mr Trevorrow's compensation.⁴⁴

Despite Mr. Trevorrow's success, there are significant obstacles to obtaining compensation through private litigation. A recent study of a number of earlier unsuccessful cases highlights some such obstacles:

The major limitations of the litigation process which we identify include the problem of overcoming statutory limitation periods, the difficulty of locating evidence, the emotional and psychological trauma experienced by claimants in the hostile environment of an adversarial court system, the enormous financial cost and time involved, the problem of establishing specific liability for harms that have been caused,

impunity (Joinet-Orentlicher Principles), UN Commission on Human Right Res E/CN.4/2005/81, 15 April 2005, Principle 34 and Sec. B (Principles 35-38).

⁴³ *Trevorrow v State of South Australia (No 6)* [2008] SASC 4, available at: www.courts.sa.gov.au/judgements2008/0204-SASC-004.htm.

⁴⁴ "[Attorney-General] Mr Atkinson says the appeal will be based on specific points including the judge's interpretation of the powers and duties of the Aborigines Protection Board under the (now repealed) Aborigines Act 1934-1939 and whether the extension of time under the Limitations of Actions Act 1936 should have been allowed to enable Mr Trevorrow to make his claim [and on] matters relating to the judge's finding of misfeasance in public office by various parties and his finding of a duty of care owed to Mr Trevorrow by various officers and offices". Excerpt from News Release, Premier and Ministers, Government of South Australia, "Findings to be tested in Trevorrow appeal" 28 February 2008, available at: <http://www.ministers.sa.gov.au/news.php?id=2838> (5/03/08).

and the problem of overcoming the judicial view that 'standards of the time' justified removal in the best interests of the child.⁴⁵

In 2007, the Western Australian government announced a compensation scheme, Redress WA. It is available to individuals who have suffered abuse and neglect whilst under the protection of the State, including victims of the Stolen Generations. The Scheme would offer eligible persons an ex-gratia payment of up to 10,000 AUS, or up to 80,000 AUD in cases where there was evidence of physical or psychological harm. Those who access the scheme will forfeit future rights to Court action.⁴⁶

Similarly, the Queensland government announced on 31 May 2007 a 100 million AUD Redress Scheme offering payments of 7,000 AUD to former child residents of Queensland institutions and detention centres who experienced abuse or neglect while in care. A second payment of up to 33,000 AUD is available in cases where there is evidence of abuse that is more serious or neglect.⁴⁷

A scheme developed by the Tasmanian government is exclusively for the benefit of Stolen Generations victims. The *Stolen Generations of Aboriginal Children Act 2006*⁴⁸ was based on extensive consultation with the Indigenous community, and provided for:

- The creation of a fund of 5 million AUD;
- *Ex gratia* payments of up to 5,000 AUD per person, and up to 20,000 AUD per family, for the children of deceased members of the Stolen Generations;
- The balance of the fund to be shared amongst members of the Stolen Generations;
- The appointment of a Stolen Generations Assessor;
- A defined period for claims⁴⁹ and for claim determination.⁵⁰

⁴⁵ Cuneen C & Grix J (2004), *The Limitations of Litigation in Stolen Generations Cases*, AIATSIS Discussion Paper, p4. Available at www.aiatsis.gov.au/__data/assets/pdf_file/4727/DP15.pdf (as at 29/02/08).

⁴⁶ "WA govt unveils abuse compensation plan", Nicolas Perpitch, 17/12/07 *Wagin News* at <http://wagin.yourguide.com.au/articles/1144530.html?src=topstories> (29/02/08).

⁴⁷ Joint Statement, Deputy Premier, Treasurer & Minister for Infrastructure The Hon. Anna Bligh, Minister for communities, Disability Services, Aboriginal and Torres Strait Islander Partnerships, The Hon. Warren Pitt, Thursday May 31 2007. www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=52151 (as at 29/02/08).

⁴⁸ Available (29/02/08) at www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=34%2B%2B2006%2BAT%40EN%2B20070619000000;histon=;prompt=;rec=-1;term=

⁴⁹ Claims must have been lodged within 6 months of the date of commencement of the Act on 15 January 2007. The strict time limit may create difficulties for individuals who, through illness or misadventure, have failed to lodge a claim within this period.

⁵⁰ The Assessor must determine all claims within a 12 month period of their lodgment.

On 23 January 2008, it was reported that the independent assessor of the Tasmanian scheme had received 151 applications for compensation. Of the applications received, 45 have been rejected and 106 accepted. Twenty-two of those accepted were from the children of victims who had died, and 84 were from living victims. The 22 children of victims would share in 100,000 AUD and the remaining 4.9 million AUD would be shared equally among the 84 living victims, giving them about 58,000 AUD each⁵¹.

Amnesty International regrets that the Australian government has so far not followed up the apology to the Stolen Generations with a compensation scheme developed through a consultation process similar to that undertaken in Tasmania, and calls on the Committee to ask whether the government is reconsidering the possibility of undertaking a process of participation with Indigenous peoples in order to determine an appropriate reparations package.⁵²

3.3 Diminution of land rights established under *Mabo* (enjoyment of Indigenous cultural rights under Article 15).

The amendments to the Aboriginal Land Rights Act (Northern Territory) 1976 submitted in parliament during the Special Rapporteur's visit to Australia, raise grave concerns as to the extent to which the land rights of indigenous peoples in the NT will be maintained."⁵³

Land rights are fundamental to the enjoyment of cultural rights and are central to the effective enjoyment of other Covenant rights by Indigenous Australians. The historic *Mabo* judgement established native title rights at common law.⁵⁴ In *Wik*, the High

⁵¹ Sydney Morning Herald, 'Tasmania pays \$5m to stolen generations', 23 January 2008 at www.smh.com.au/news/national/tasmania-pays-5m-to-stolen-generations/2008/01/22/1200764264522.html (as at 29/02/08)

⁵² At the time of writing the Senate Committee on Constitutional and Legal Affairs is conducting an Inquiry into the Stolen Generation Compensation Bill 2008, a private member's Bill available at http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/index.htm (16/03/08)

⁵³ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 97.

⁵⁴ *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992), available at: www.austlii.edu.au/au/cases/cth/high_ct/175clr1.html "In the High Court's 1992 *Mabo* decision, the Court decided for the first time that land rights under traditional Aboriginal laws and customs (known as "native title" rights) were recognised by the common law of Australia, and formulated the general common law principles for determining their existence, content and extinguishment. The development of native title law in Australia, both through the Commonwealth and State Parliaments and in the courts, has largely been based on what the High Court said in *Mabo*. [...] It was therefore widely believed that all Crown leases, including pastoral leases which cover about 40% of mainland Australia, had extinguished native title." From "Native Title after *Wik*: Where to Now?" by Peter van Hattem in Murdoch University Electronic Journal of Law, Volume 4, Number 1 (March 1997), available at: www.murdoch.edu.au/elaw/issues/v4n1/vanhatt1.html (as at 3/02/08).

Court decided that native title is not necessarily extinguished by the grant of a pastoral lease; that it can co-exist with other interests, but that in the case of conflict, leaseholders' interests will prevail.⁵⁵ In response to *Wik* the then government under Prime Minister John Howard introduced the *Native Title Amendment Act 1998 (Cth)*, the amendments of which were developed from the government's "Ten Point Plan". The ten points were as follows⁵⁶:

1. The National Native Title Tribunal holds absolute authority over claims for Native Title;
2. State governments are empowered to extinguish Native Title over crown lands for matters of 'national interest,'
3. Lands providing public amenities are exempt from Native Title claims;
4. Mining and pastoral leases are allowed to co-exist with Native Title;
5. The National Native Title Tribunal can create access to traditional lands rather than granting full Native Title;
6. A registration test is imposed on all claimants;
7. The right to claim Native Title in or around urban areas is removed;
8. The government may manage land, water and air issues in any site;
9. Very strict time limits are placed on all claims;
10. The creation of Indigenous Land Use Agreements to promote co-existence.

The CERD had concerns about diminution of land rights granted under the *Mabo* judgment and the *Native Title Act 1993*⁵⁷ and recommended:

that the State party refrain from adopting measures that withdraw existing guarantees of Indigenous rights and that it make every effort to seek the informed consent of Indigenous peoples before adopting decisions relating to their rights to land. It further recommends that the State party reopen discussions with Indigenous peoples with a view to discussing possible amendments to the Native Title Act and finding solutions acceptable to all.⁵⁸

The former government's response to the CERD was as follows:

⁵⁵ *The Wik Peoples v The State of Queensland & Ors: The Thayorre People v The State of Queensland & Ors* [1996] HCA 40 ('Wik'), available at: www.austlii.edu.au/au/cases/cth/HCA/1996/40.html See papers by Coral Dow and Peter Van Hattem ops. Cit.

⁵⁶ <http://australianpolitics.com/issues/aborigines/amended-10-point-plan.shtml>

⁵⁷ The Native Title Act 1993 (Cth) "addresses the consequences of recognising native title for past actions by governments and sets up rules for future dealing in native title land and waters. The legislation followed lengthy debates and negotiations between Indigenous stakeholders, governments, pastoralists and the mining industry". *Mabo ten Years On E-Brief: Online Online* issued 23 May 2002 Coral Dow, Social Policy Group, Parliamentary Library at <http://www.aph.gov.au/intguide/SP/mabo.htm>.

⁵⁸ Committee on the Elimination of Racial Discrimination, Concluding observations: Australia, UN Doc. CERD/C/AUS/CO/14, 14 April 2005, . para. 21.

The Government of Australia also does not accept that it cannot, or should not, make any decisions directly relating to the rights and interests of Indigenous Australians without their “informed consent”, and is of the view that general recommendation XXIII is not binding. Although there have been some claims that Indigenous peoples have a right of “free, prior informed consent”, recent international discussions indicate that this remains a highly contentious issue amongst many States, and there is much objection to such a broad, unqualified right. Indeed, there was much dissent on the issue in relation to the Committee on the Elimination of Racial Discrimination’s general recommendation XXIII. In some situations, Governments must make decisions or take action that may not allow for prior informed consent procedures, or decisions may need to be made or action taken even if consent is refused (for example, because of public policy considerations or third party rights). It would be inconsistent with Australia’s democratic system if Parliament’s ability to enact and amend legislation was subject to the consent of a particular subgroup of the population.⁵⁹

Amnesty International welcomes the acknowledgement in the ruling party’s election platform of the principle that, “land and water are the basis of Indigenous spirituality, law, culture, economy and well-being.”⁶⁰ The organization would like to see the new government review the state of land rights policy in Australia.

Amnesty International is encouraged by its endorsement of principles that are respectful of Native Title rights and of the need to provide resources for negotiation rather than litigation of competing claims:

- Labor recognises that a commitment was made to implement a package of social justice measures in response to the High Court’s Mabo decision. Labor will honour this commitment.
- Labor fully supports Native Title as a property right under Australian law.
- Labor also fully supports the statutory recognition of inalienable freehold title under the Aboriginal *Land Rights (Northern Territory) Act* 1976 and the right of property owners to provide free, prior and informed consent to any major changes affecting their interests.
- Labor believes that negotiation produces better outcomes than litigation and that land use and ownership issues should be resolved by negotiation where possible.

⁵⁹ Comments by the Government of Australia on the concluding observations of the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/AUS/CO/14/Add.1, 16 May 2006, para 20, available at: [www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/ab03a4d0c60b7a52c1257198004b9568/\\$FILE/G0642059.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/ab03a4d0c60b7a52c1257198004b9568/$FILE/G0642059.pdf).

⁶⁰ Labor Party, National Platform and Constitution, 2007 p. 216, available at http://www.alp.org.au/download/now/2007_national_platform.pdf (29/02/08).

- Labor will facilitate the negotiation of more Indigenous Land Use Agreements and ensure that traditional owners and their representatives are adequately resourced for this task.⁶¹

Amnesty International calls on the Committee to ask the government what steps are being taken to review the state of its land rights policy and bringing it in line with international standards, and outline its present position on free, prior and informed consent.

3.4 Stolen wages

Recent research has documented the withholding or stealing of wages of Indigenous workers over a long period.⁶² A Senate Inquiry on this issue approved the model of compensation adopted by New South Wales, and criticised that of Queensland. Amongst other things, it recommended Commonwealth government funding of further research to document cases of abuse, and exhorted those States and Territories that had not developed compensation schemes to do so in consultation with Indigenous people.⁶³

Amnesty International calls on the Committee to ask the government what steps have been taken to implement the recommendations of the Senate inquiry.

3.5 UN Declaration on the Rights of Indigenous Peoples

Amnesty International is concerned that the previous administration was amongst a small group of governments that opposed and voted against the Declaration on the Rights of Indigenous Peoples, which addresses, among other things, rights protected under the Covenant. The organization welcomes the ruling party's election pledge to reverse this policy and support the Declaration:

A Federal Labor Government would endorse Australia becoming a signatory to the International Declaration of the Rights of Indigenous Peoples.⁶⁴

⁶¹ Ibid.

⁶² "Unfinished Business: Indigenous Stolen Wages" Report by Senate Committee on Constitutional and Legal Affairs, 7 December 2006 at www.aph.gov.au/Senate/committee/legcon_ctte/stolen_wages/report/index.htm (29/02/08) and Thalia A, "Unmapped Territory: Wage Compensation for Indigenous Cattle Station Workers", *Australian Indigenous Law Review*, 11 (1) 2007; and talk by Dr Ros Kidd at Queensland Institute of Technology. April 2005 "Stolen Wages: Truth and Justice", available at: www.linksdisk.com/roskidd/tpages/t25.htm (as at 29/02/08).

⁶³ Recommendations of Senate Inquiry available at: www.aph.gov.au/Senate/committee/legcon_ctte/stolen_wages/report/b01.htm.

⁶⁴ "International Declaration On The Rights Of Indigenous Peoples" Media Statement by Jenny Macklin, 14th September 2007, available at: www.alp.org.au/media/0907/msia140.php (5/03/08).

Amnesty International looks forward to the Declaration's prompt implementation and suggests the Committee enquire into the progress of this.

IV. Discrimination against women (Articles 3, 7(1))

4.1 Lack of social, economic and political equality

Australian women do not currently enjoy economic social and cultural rights on an equal basis with men. Because of discrimination, they suffer many disadvantages that affect their ability to participate in the workforce and to balance work and family commitments, to acquire property, particularly a home, to secure adequate retirement income, and to achieve equality and security in relationships with a partner.

Australian women:

- Are on average, paid 84.3% of male earnings;⁶⁵
- Are under-represented in senior management in the Australian Public Service,⁶⁶ the private sector⁶⁷ and in Commonwealth, State and Territory legislatures;⁶⁸

⁶⁵ Calculated from a comparison of male and female full time adult ordinary time earnings in Table 1, Average Weekly Earnings Trend Cat 6302.2 November 2007 at [www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/8B51D3FD1EDAC921CA2573F500152A3B/\\$File/63020_nov%202007.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/8B51D3FD1EDAC921CA2573F500152A3B/$File/63020_nov%202007.pdf) (as at 27/02/08).

⁶⁶ "In 2005 around one in five (21%) of Australia's ambassadors and heads of diplomatic missions were women. In 2005, in the Commonwealth Public Service women comprised almost one in three of senior executives (32%). Women also made up close to one third (32%) of members on Commonwealth government public sector boards and committees." From Measures of Australia's Progress 2006, Australian Bureau of Statistics Cat.No. 1370.0, p. 185, available at [:www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/47132EE72AC3581DCA25717F0004ACE8/\\$File/13700_2006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/47132EE72AC3581DCA25717F0004ACE8/$File/13700_2006.pdf) (as at 29/02/08).

⁶⁷ "The Commonwealth Equal Opportunity for Women in the Workplace Agency (EOWA) collects information on women in executive management and board director positions, by conducting a census of Australia's top 200 companies listed on the Australian Stock Exchange (ASX200). In 2004, 10% (174) of executive managers of ASX200 companies were women, compared with 8% (113) in 2002." [...]The proportion of board directors in ASX200 companies who are women remained unchanged between 2002 (96) and 2004 (112) at 9%. 47% (82) ASX200 companies did not have any female board directors in 2004.Op. cit. pp184.-5.

⁶⁸ "Between 1999 and February 2007 Australia slid from 15th to 33rd place on the Inter- Parliamentary Union ranking of countries by the parliamentary representation of women. This was less because the number of women in the House of Representatives was dropping (although there was a small drop in 2004) than because other democracies were making concerted efforts to increase the presence of women in public decision-making." Democratic Values: Political equality? Marian Sawer Democratic Audit of Australia, Australian National University, Discussion Paper 9/07 (May 2007) p 5, available at: http://democratic.audit.anu.edu.au/papers/20070525_sawerdemvals.pdf At the time of writing there are 4 women in the 20 member Commonwealth Government Cabinet.see Rudd Ministry, available at: http://www.pmc.gov.au/parliamentary/docs/ministry_list_feb_2008.rtf (as at 27/02/08).

- Are participating more in paid work, but still undertake most unpaid domestic work;⁶⁹ and
- Are without access to a national paid maternity leave scheme.

Amnesty International welcomes the new initiatives to address these and other forms of discrimination against women that are outlined in: “Women: Making Equality Real”⁷⁰ in the Labor Party’s National Party Platform. Such initiatives include strengthening and improving the Sex Discrimination Act and the powers of the Commissioner to protect women against discrimination on the basis of gender and family and carer responsibility, and investing in lifelong learning so that women are provided with equal opportunities to improve their skills and their life opportunities by getting a better education. Amnesty International supports the early development of plans to implement these policies.

The organization suggests the Committee asks the Australian government to detail the improvements undertaken.

V. Rights of refugees and asylum seekers (Articles 11(1), 12(1), (2)d)

5.1 Access to adequate social support for on-shore asylum seekers

Under the *Migration Act 1958* (Cth) certain groups of asylum seekers, especially those seeking judicial review or Ministerial intervention, may be granted the Bridging Visa E (BVE), which enables them to live in the community for a limited time instead of being detained. These visa holders, however, do not have access to the right to work, income support or government-provided health services pending the processing of their applications. Research undertaken by the Hotham Mission on two groups of asylum seekers, those released from detention for medical reasons and community-based asylum seekers with unique and exceptional welfare needs, found “a wide range

⁶⁹ See for example paper “Post-Familial Families and the Domestic Division of Labor: A View From Australia “ by Janeen Baxter, Belinda Hewitt and Mark Western, Melbourne Institute 2003, available at: <http://www.melbourneinstitute.com/hilda/Biblio/wp/hwp2003n01.pdf> (as at 27/02/08) p.20 “we have witnessed dramatic changes in women’s participation rates in paid employment and in particular a large increase in the involvement of married women in paid employment. Despite these changes however, gender stratification within families has changed far more slowly. Gender is still the key determinant of who does domestic labour with women continuing to far outperform men in this area.” Table 2 shows mean hours of domestic work by both members of a couple by employment status of each. Where both members were in full time work, men did an average of 6.0 hours of domestic work per week, women 14.3 hours.

⁷⁰ Australian Labor Party, National Platform and Constitution, 2007 pp 104, 208-209 at www.alp.org.au/download/now/2007_national_platform.pdf (22/02/08).

of serious welfare concerns,” including the risk of homelessness and the detrimental impact on health and overall wellbeing, particularly for child asylum seekers.⁷¹

Children of asylum seekers, on BVEs, do have access to education but are charged as overseas students. While waivers are usually granted to avoid these fees, funding for textbooks, uniforms, etc, remain a serious concern and have serious poverty implications.

Some BVE recipients may be entitled to services, including access to health, through special programs, such as the Asylum Seekers Assistance Scheme (ASAS), funded by the Department of Immigration and Citizenship (DIAC) and administered by the Australian Red Cross, which provides eligible asylum seekers with financial assistance and limited healthcare assistance. Eligibility extends to unaccompanied minors, elderly persons and pregnant women. However, only those determined by DIAC to be eligible are entitled to such services, which may leave some children without de facto access to health.⁷² The numbers of those who can be provided with ASAS and the amount of time they can receive ASAS remain limited.

The Community Care Pilot, another initiative funded by DIAC, allows families and individual asylum seekers with complex needs to be released from detention and stay in the local community with support, and provides them with community assistance, immigration information and counselling, migration advice, and one-off support.⁷³ Other services include income support, access to health care, access to counselling, and assistance with accessing accommodation. The Community Care Pilot commenced in Sydney and Melbourne on 15 May 2006⁷⁴ and is currently only available in Victoria, New South Wales, and Queensland.⁷⁵ The introduction of the Community Care Pilot has provided some asylum seekers with the necessary support and assistance to live with dignity in the community while their protection case is assessed.⁷⁶ However, the scope of the pilot remains limited.

⁷¹ “Minimum Standards of Care for Asylum Seekers in the Community,” Asylum Seeker Project-Hotham Mission, 5 May 2004, available at: <<http://asp.hothammission.org.au/index.cgi?tid=25>>, (27 February 2008).

⁷² “Asylum Seeker Assistance Scheme,” Australia Red Cross, available at: <http://www.redcross.org.au/ourservices_aroundtheworld_tracingrefugeeservices_ASAS.htm>, (25 March 2008).

⁷³ “Community Care Pilot,” Australian Red Cross, available at: <http://www.redcross.org.au/ourservices_aroundtheworld_tracingrefugeeservices_commcare.htm>, (26 March 2008).

⁷⁴ “Current Issues: Alternatives to detention,” Refugee Council of Australia, available at: <<http://www.refugeecouncil.org.au/current/alternatives.html>>, (26 March 2008).

⁷⁵ “Community Care Pilot,” Australian Red Cross.

⁷⁶ “Current Issues: Alternatives to detention,” Refugee Council of Australia.

Amnesty International supports a change to the current policy to ensure that all BVE holders have access to programs like ASAS or to work rights, and that the Community Care Pilot is expanded to cover all of Australia in order to provide asylum seekers with adequate support services to sustain an adequate standard of living while they remain in the community.

Amnesty International suggests the Committee asks what steps are being taken to ensure that asylum seekers lawfully residing in Australia enjoy their economic, social and cultural rights.

VI. Poverty (Articles 6, 7, 9, 10, 11, 12).

6.1 *The need for indicators of low living standards*

Despite the availability of resources in Australia, there is an absence of key indicators on poverty at both the state and federal levels. In its Concluding Observations on Australia's third periodic report, the Committee expressed regret concerning the absence of an official poverty line in Australia and recommended that one be established.⁷⁷

Australia currently has no official benchmark estimating the incidence of poverty. However, the ruling party platform states that:

Labor is committed to the development of robust whole of government indicators to measure national progress in addressing poverty and improving living standards, including measures of income, health, educational attainment and participation through employment and housing affordability.⁷⁸

Poverty in the sense of the definition that the CESCR has developed is not well monitored by the government through relevant indicators. Amnesty International believes that the development of official benchmarks and survey instruments, allied with the collection of appropriately disaggregated data, to assess poverty and the progressive realisation of related Covenant rights is crucial to ensuring appropriate policy responses and to realising Australia's obligations under the Covenant.

The recent rise in the numbers of "working poor" in Australia was among the major findings of a 2004 report from a Senate Committee Inquiry into poverty:

This report has challenged traditional assumptions that joblessness is often a sufficient reason for the presence of poverty. The committee has heard that over 1

⁷⁷ Committee's Conclusions, 2000, para. 33.

⁷⁸ Australian Labor Party Platform p 125.

million Australians are living in poverty despite living in a household where one or more adults are in employment.⁷⁹

It should be noted that the labour market has changed markedly over the last two decades, with casual and part-time work taking up an increasingly large share of positions.

The prevalence of working poor households in poverty is due simply to low-wage employment. Driving this change has been a casualization of the workforce in the last two decades and a more recent weakening of the industrial relations systems. Between August 1988 and 2002 total employment of casual workers in Australia increased by 87.4 per cent (141.6 per cent for men and 56.8 per cent for women). By August 2002 casual workers comprised 27.3 per cent of all employees, an increase of 7 percentage points since August 1991.⁸⁰

“Under-employment”, defined as part-time workers who want to work more hours, and full-time workers who worked less than full-time hours in the reference week, provides another perspective on this problem. There were more than half a million (518,300) underemployed people in Australia in September 2007, most of whom worked part-time.⁸¹

Amnesty International calls on the Committee to ask the government to provide its indicators measuring progress in addressing poverty and improving living standards, including measures of income, health, educational attainment and participation through employment and housing affordability, disaggregated according to age, gender and minority groups.

6.2 Restrictions on social security benefits

Policy changes introduced since mid-2002 have increased “mutual obligation” requirements on working age recipients of unemployment benefits, whereby recipients are required to undertake activities demonstrating that they are actively seeking work, striving to improve their competitiveness and are giving something back to the community. Breaches of these requirements result in the suspension of benefits. The administration of these breach provisions has been criticised as being unreasonable in its operation and harsh in its effects:

⁷⁹ “A hand up not a hand out: Renewing the fight against poverty.” Report of the Senate Community Affairs Reference Committee, March 2004, available at: [http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/poverty/report/\(13/03/08\)](http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/poverty/report/(13/03/08)).

⁸⁰ Op. cit. p. xviii, cited statistics from ABS, Employee Earnings, Benefits and Trade Union Membership, Cat. No. 6310.0.

⁸¹ Australian Bureau of Statistics Media Release 25 February 2008, available at: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/6265.0Media%20Release1Sep%202007?op=endocument&tabname=Summary&prodno=6265.0&issue=Sep%202007&num=&view= \(7/03/08\)](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/6265.0Media%20Release1Sep%202007?op=endocument&tabname=Summary&prodno=6265.0&issue=Sep%202007&num=&view= (7/03/08)).

while the system often functions in an appropriate manner, there are many occasions on which its operation in relation to particular jobseekers can be reasonably described as arbitrary, unfair or excessively harsh. There are also many occasions when it diminishes people's capacity and opportunity to continue seeking work and become less dependent on social security.⁸²

Policy changes made since 2005 under the Welfare to Work banner restrict access to the more generous so-called pension payments for single parents whose youngest child is over eight, and for persons with a disability deemed capable of part-time work. Moving from pension to unemployment allowance has resulted in an estimated average loss of 29 AUD per week for a sole parent with one child, and a ten percent loss of free area⁸³ and a 292 AUD reduction of the cut-out point.⁸⁴ Given that households whose main source of income is social security benefits are among those most at risk of relative income poverty,⁸⁵ this policy change appears to increase hardship amongst the group whose incomes are already low.

6.3 “Social wage” and relative price movement

Living standards amongst the lowest income earners are strongly affected by the level of the “social wage”, which represents in-kind income for households that has been provided by the government in the form of free or subsidised services. The costs of education, health, social housing, public transport, childcare, and even of utilities such as water and electricity are major components of the social wage. With the rise of “user-pays” and privatisation of services previously provided by the public sector, the cost of many of these components has risen faster than the Consumer Price Index (CPI), and faster than the rise in the incomes of the lowest income earners.

Duffy (2005) showed the impact on various household compositions of changes in relative prices between 1990 and 2005. He found that substantial increases in cost pressures on poor families over this period, for example in dental and other ancillary

⁸² Pearce D, Disney J & Ridout H (2002) *The Report of the Independent Review of Breaches and Penalties in the Social Security System*, para 1.42, available at <http://dspace.anu.edu.au/html/1885/41938/index.html> (14/03/08).

⁸³ Earnings that do not affect the rate of benefit.

⁸⁴ Harding A, Ngu Vu Q & Payne A (2007) “A Rising Tide? Income Inequality, the Social Safety Net and the Labour Market in Australia” Paper prepared for the Conference on Labour Markets in Australia and Japan, Canberra, July 6 NATSEM, Table 1, p. 3 The cut-out point is the level of earnings at which all benefits are withdrawn. Paper available at: http://www.canberra.edu.au/centres/natsem/publications?sq_content_src=%2BdXJsPWh0dHAIM0EIMkYlMkZhbmltYWwuY2FuYmVycmEuZWR1LmF1JTNBNTgwJTJGbmF0c2VtJTJGaW5kZkZgucGhwJTNGbW9kZSUzRHB1YmxpY2F0aW9uJT12cHVibGlyXRpb24lMOQxMDIyJmFsbD0x (14/03/08).

⁸⁵ Saunders, Hill & Bradbury op. cit, p.18.

health costs, costs of public transport and of education, were likely to increase social exclusion.⁸⁶

6.4 Inequality and social exclusion

Indigenous Australians have consistently been found to experience the most severe form of inequality in Australia. The Senate Inquiry on poverty mentioned above found that even amongst the groups at highest risk of poverty and social exclusion:

Indigenous Australians remain the most disadvantaged and marginalised group in Australia. On all the standard indicators of poverty and disadvantage, Indigenous people emerge as the most socially and economically deprived.⁸⁷

The government has recently signed a Statement of Intent with States, Territories, groups of health professionals, and non-government organisations committing to bridge the health and life expectancy gap between Indigenous and non-Indigenous Australians by 2030.⁸⁸ Research on the socio-economic determinants of health⁸⁹ indicates that achieving full equality in health outcomes will require achieving equality in the enjoyment of the full range of human rights. The table below provides a summary of the trend over time, according to a study based on national censuses, of the gap between Indigenous and other Australians on a range of social and economic indicators.

Ratio of Indigenous to non-Indigenous socioeconomic outcomes, 1971–2006⁹⁰

Variable	1971	1981	1991	1996	2001	2006
Unemployment rate (% labour force)	5.63	4.24	2.70	2.52	2.78	3.06
Employment to population ratio (% adults)	0.73	0.61	0.66	0.72	0.71	0.71
Private-sector employment (% adults)	0.65	0.42	0.51	0.47	n.a.	0.63
Labour force participation rate (% adults)	0.78	0.77	0.84	0.85	0.82	0.80

⁸⁶ Dufty D (Principal Author) 2005, “Winners and Losers: The Story of Costs”, Social Policy Issues Paper No. 2, National Council of Australia, St Vincent de Paul Society, available at: <http://www.vinnies.org.au/UserFiles/File/NATIONAL/Social%20Justice/2005%20Dec%2019%20-%20Winners%20and%20Losers.pdf> (7/ 4/08).

⁸⁷ Senate Report op. cit. p 301.

⁸⁸ Close the Gap, Indigenous Health Equality Summit, Statement of Intent, 20 March 2008 at http://www.hreoc.gov.au/Social_Justice/health/statement_intent.pdf (18/03/08)

⁸⁹ For example M Marmot and R Wilkinson (eds)(2006) Social Determinants of Health, 2nd Edition. Oxford: Oxford University Press

⁹⁰ Altman J, Biddle N & Hunter B April 2008 “The Challenge of ‘Closing the Gaps’ in Indigenous Socioeconomic Outcomes” Centre for Aboriginal Economic Policy Research ANU

Median weekly personal income (\$A 2006)	n.a.	0.55	0.62	0.64	0.56	0.58
Household size	1.35	1.32	1.38	1.33	1.31	1.31
Median weekly household income (\$A 2006)	n.a.	0.72	0.77	n.a.	0.78	0.78
Home owner or purchasing (% population)	0.37	0.27	0.27	0.36	0.37	0.41
Never attended school (% adults)	37.83	15.29	5.10	4.43	3.20	3.00
Post-school qualification (% adults)	0.14	0.18	0.29	0.33	0.44	0.52
Degree or higher (% adults)	n.a.	n.a.	n.a.	0.20	0.23	0.24
Attending educational institution (% 15-24 year olds)	n.a.	n.a.	n.a.	0.56	0.61	0.62
Population aged over 55 years (%)	0.43	0.34	0.32	0.31	0.31	0.33
Male life expectancy at birth (years)	0.74	0.79	0.77	0.76	0.74	n.a.
Female life expectancy at birth (years)	0.67	0.82	0.80	0.79	0.77	n.a.

Note: 'n.a.' means that the data was not available in that year. Results have been rounded to two decimal places.

Amnesty International commends Labor Party pledge to develop and use “robust and whole of government” indicators for poverty and living standards. The organization supports the government’s commitment to increase emergency accommodation for the homeless, and to focus on neighbourhoods suffering multiple disadvantages.⁹¹ The organization believes this should be undertaken in a manner that ensures the participation of representatives of disadvantaged groups in Australia, and measures to redress inequality should be developed with effective participation of those affected.

Amnesty International calls on the Committee to ask the government what concrete, targeted and effective measures it is taking to address the continuing inequality faced by Indigenous Australians.

The organization also calls on the Committee to recommend that Australia frame the implementation of this part of its Party Platform in a manner consistent with its human rights obligations, particularly in the area of economic, social and cultural rights.

Labor is committed to preventing and eliminating poverty in Australia, to improving the living standards of all Australians and to reducing inequality between Australians,

⁹¹ An Australian Social Inclusion Agenda, available at: http://www.alp.org.au/download/now/071122_social_inclusion.pdf (24/03/08).

by providing people with a secure income and access to the services and opportunities they need so that all Australians can live with decency and dignity.⁹²

VII. The Right to Adequate Housing (Article 11(1))

The right to adequate housing is guaranteed in Article 11(1) of the Covenant and is recognised in more than 10 different texts adopted by the United Nations.⁹³

In 2000, the Committee strongly recommended that the Australian government develop a federal housing strategy and ensure all state and territory governments establish housing policies in line with such a strategy.⁹⁴

The UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (the Special Rapporteur), Miloon Kothari, visited Australia in 2006. He concluded that “Australia has failed to implement its international legal obligation to progressively realize the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country.”⁹⁵ Following visits and consultations, the Special Rapporteur made several specific recommendations to address what he described in his report as “a serious national housing crisis.” Some elements are considered below.

Homelessness is currently unacceptably high. Census data suggests homeless assistance services support only 15 percent of Australia’s homeless population. Domestic and family violence remains one of the primary causes of homelessness.⁹⁶

⁹² Ibid.

⁹³ The right to housing is recognised in 12 UN covenants, conventions, commissions and recommendations. These include the International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989), Convention Relating to the Status of Refugees (1951), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990). It is also included in the Draft Declaration on the Rights of Indigenous Peoples.

⁹⁴ Concluding observations of the Committee on Australia’s third periodic report of its implementation of the International Covenant on Economic Social and Cultural Rights in 2000.

⁹⁵ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 126.

⁹⁶ Australian Institute of Health and Welfare, Homeless People in SAAP: SAAP National Data Collection Annual Report 2005-06, www.aihw.gov.au/publications/hou/saapndcar05-06/saapndcar05-06-c05.pdf.

Youth homelessness in Australia has doubled in the last 20 years.⁹⁷ Indigenous Australians are still vastly over represented in the homeless population.⁹⁸

The new government has made several statements regarding the issue of homelessness. Prime Minister Kevin Rudd in particular has stressed his personal commitment to addressing the issue as a priority.⁹⁹ The government has also indicated that it will adopt a new approach and has initiated processes to develop a plan of action. Amnesty International is supportive of the increased attention to the issue and calls on the government of Australia to take fully into account the findings of the Special Rapporteur in devising a national strategy to combat homelessness.

Australian Census data indicate that on any night there are approximately 100 000 people who are homeless.¹⁰⁰ Approximately half of these are staying with family, 20 percent are in boarding houses, 15 percent are sleeping rough and 15 percent are accommodated in homelessness services.¹⁰¹

Crisis support and accommodation in Australia is provided through the Supported Accommodation Assistance Program (SAAP). SAAP is a jointly funded Australian and State and Territory Government Program that assists homeless people or at risk of becoming homeless, seeking to achieve self-reliance and independence through a range of support and transitional accommodation services. In 2005/06, SAAP services supported an estimated 161,200 people, 106,500 were adults or unaccompanied children and 54,700 accompanying children.

Homeless services are not able to meet the level of the current need – as mentioned above, they shelter only 15 percent of the homeless population. Every day, just over half of those seeking accommodation in a homeless service are turned away. This includes two in every three children accompanying adults seeking support.¹⁰² An evaluation of SAAP undertaken in 2004 suggested that a 15 percent increase in funding would be necessary to sustain services at current levels. The evaluation estimated that a further 35-40 percent funding increase would be necessary for the homeless services to meet the current demand and effectively address the needs of

⁹⁷ Mackenzie and Eldridge, "A roof over every head," *The Australian*, April 08, 2008, www.theaustralian.news.com.au/story/0,25197,23502479-7583,00.html.

⁹⁸ Homelessness Australia, "Homelessness and Aboriginal and Torres Strait Islander People," www.homelessnessaustralia.org.au/UserFiles/Indigenous%20Homelessness.pdf.

⁹⁹ for example see media releases at www.alp.org.au/media/0108/pcpm280.php, www.alp.org.au/media/1107/pcpme270.php.

¹⁰⁰ These are the data from 2001. Although 2006 Census data is available there is normally a delay in carrying out the analysis. Extracting the data on homelessness is a special enumeration process which is not yet available, but may be before the end of the year.

¹⁰¹ Counting the Homeless, www.salvationarmy.org.au/reports/ABS_homeless_census_2001.pdf

¹⁰² Demand for SAAP accommodation by homeless people 2005–06: summary as at www.aihw.gov.au/publications/aus/bulletin56/bulletin56.pdf

people using services to obtain independent living.¹⁰³ These conclusions were not reflected in the 2005 funding agreement, which provided no growth in the overall level of funding and actually reduced the level of funding per service user.¹⁰⁴

The organization calls on the Committee to enquire what measures have been put in place to tackle homelessness and its causes as a priority, and seek information on what action is being taken by state/territory governments to review residential tenancy laws in order to ensure compliance with international human rights standards, particularly with respect to guaranteeing minimum acceptable accommodation standards, and the prohibition on forced evictions.

7.1 Young People

A national inquiry revealed that youth homelessness in Australia has doubled in the past 20 years,¹⁰⁵ and the 2001 Census showed that one in three homeless people are aged between 12 and 25. The inquiry recommended that the government ensures access to crisis services for all young people and provides early intervention to young people at risk of homelessness and their families, as well as post-crisis support to prevent young people from re-entering homelessness. The Inquiry also stressed that these measures should be laced within a broader national framework and an action plan to address homelessness.

7.2 Children

Children are not formally recognised as users of homeless services in their own right. This means that homeless services in Australia do not receive funding to support the children who use the service. Despite such lack of funding, in 2005/06, homelessness services supported 54,700 children, the vast majority under the age of 12, who were accompanying their parent(s) or another adult to the service. This included 50,100 under the age of 12. Almost two in every 100 children will visit a homeless service every year.¹⁰⁶

Two thirds of children accommodated in homeless services in Australia have been affected by domestic violence. There are currently no government funded services in existence to provide these children with the specialised support services that they need.¹⁰⁷ The high numbers of homeless children may also have an ongoing impact on

¹⁰³ National Evaluation of the Supported Accommodation Assistance Program (SAAP IV), [www.facs.gov.au/internet/facsinternet.nsf/vIA/saap_iv/\\$File/SAAP_evaluation.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/vIA/saap_iv/$File/SAAP_evaluation.pdf)

¹⁰⁴ National Youth Commission, *Australia's Homeless Youth: a report of the National Youth Commission Inquiry into Youth Homelessness, 2008*, www.nyc.net.au/files/Australias_Homeless_Youth.pdf

¹⁰⁵ *ibid*

¹⁰⁶ Australian Institute of Health and Welfare, *Homeless children in SAAP 2004–05*, www.aihw.gov.au/publications/aus/bulletin48/bulletin48.pdf.

¹⁰⁷ Homelessness Australia, "Homelessness and Children," www.homelessnessaustralia.org.au/UserFiles/Homelessness%20and%20Children.pdf.

the future incidence of homelessness, as children and young people who experience homelessness are more likely to experience homelessness as adults.¹⁰⁸

7.3 Women

The Special Rapporteur notes with concern the specific vulnerability of women to inadequate housing, particularly single women, women with children, women within other vulnerable groups (e.g. Indigenous communities, people with disabilities, refugees and asylum-seekers), and the specific flow-on impacts of inadequate housing on women.¹⁰⁹

Women are disproportionately affected by homelessness in Australia. Domestic violence is the major cause of homelessness for women in Australia, and is the main reported reason for seeking assistance amongst women with children, followed by relationship or family breakdown.¹¹⁰ Young women aged between 18 and 19 are the most likely to use a homeless service, with one in every 57 young women in that age group in Australia accessing support every year. A primary reason behind their need for support has been found to be interpersonal conflict, including relationship breakdown, sexual abuse, domestic and family violence and other forms of physical or emotional abuse.¹¹¹

Women's homelessness cannot be considered independently of issues of domestic violence and discrimination. Amnesty International welcomes the government's commitment to addressing homelessness in National Plan of Action, and supports the government's announcement that 150 million AUD will be spent to construct 600 additional houses as part of this new initiative to accommodate homeless people, including women and children escaping domestic violence.¹¹² However, Amnesty International is concerned that the strategy linked to the initiative, called "A Place to Call Home" does not appear to address the needs of women and children escaping violence.¹¹³ The need to identify and address the multiple forms of discrimination which women face, from the information so far released, also appears to be absent from the strategy. To give one example of the discrimination, the Special Rapporteur

¹⁰⁸ Chamberlain C & MacKenzie D 2003. *Homeless careers: pathways in and out of homelessness*. Melbourne: Swinburne and RMIT Universities.

¹⁰⁹ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 101.

¹¹⁰ Australian Institute of Health and Welfare, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2005-06*, www.aihw.gov.au/publications/hou/saapndcar05-06/saapndcar05-06-c05.pdf.

¹¹¹ Australian Institute of Health and Welfare, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2005-06*,

www.aihw.gov.au/publications/hou/saapndcar05-06/saapndcar05-06-c05.pdf

¹¹² Australian Labor Party, "Prevention And Protection: Federal Labor's National Plan To Reduce Violence Against Women And Children," www.alp.org.au/media/1107/mswom180.php

¹¹³ Minister for Housing, "\$150M to build new homes for the homeless," www.tanyaplibersek.fahcsia.gov.au/Internet/tanyaplibersek.nsf/content/new_homes_homeless_08apr08.htm

on adequate housing has noted how Indigenous women in the Northern Territories require referees, in order to qualify for public housing, a requirement that is not exercised for non-Indigenous women.¹¹⁴

Amnesty International notes that enjoyment of the right to adequate housing is fundamental to well-being, and denial of the right to adequate housing has a particularly profound impact of the realisation of other human rights of women and children. Given that the causes of homelessness are complex, strategies to address it at the primary secondary and tertiary levels¹¹⁵ need to be integrated across government. In particular they need to be aligned with strategies designed to address family violence and abuse.

7.4 Indigenous people

The Special Rapporteur was particularly disturbed by the adverse housing conditions in the Indigenous communities he visited. In both urban and rural areas in all states, those he visited are facing a severe housing crisis, evidenced by the lack of affordable and culturally appropriate housing, the lack of appropriate support services, the significant levels of poverty and the underlying discrimination.¹¹⁶

Indigenous Australians in urban areas, regional and remote communities are disproportionately affected by homelessness and the lack of affordable housing in Australia, and their housing situation has been called a “humanitarian tragedy.”¹¹⁷

While only two percent of the population in Australia identify as Indigenous, they represent nine percent of the total homeless population.¹¹⁸ Indigenous Australians are

¹¹⁴ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 102.

¹¹⁵ This is how homelessness is defined in Australia for the purposes of the census. Primary homelessness describes people without conventional accommodation - people living on the streets, sleeping in parks and public places, squatting, or sleeping in tents, cars or railway carriages. Secondary homelessness describes people without stable accommodation - people staying in emergency or transitional accommodation, staying temporarily with friends or family or staying in boarding houses on a short-term basis. Tertiary homelessness refers to people who live in boarding houses on a medium to long-term basis, who do not have a separate bedroom and living room; or kitchen and bathroom facilities of their own; their accommodation is not self-contained; and they do not have security of tenure provided by a lease.

¹¹⁶ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 80.

¹¹⁷ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 133.

¹¹⁸ Australian Census Analytic Program, Counting the Homeless 2001, www.salvationarmy.org.au/reports/ABS_homeless_census_2001.pdf NB in 2001, the guidelines for census collectors in remote communities were changed. The instructions in the Field Officer's Manual *Amnesty International May 2008* *AI Index: ASA 12/002/2008*

more than three times more likely to be homeless than non-Indigenous Australians.¹¹⁹ Indigenous homelessness is compounded by poor health, poverty, racism and a history of colonisation and dispossession. Their over-representation extends to all sections of the homeless population, but is particularly notable in the population experiencing primary homelessness (people living in improvised homes, tents and sleeping rough). Indigenous people account for 19 percent of Australians who are sleeping in public places or improvised dwellings.¹²⁰

Indigenous Australians are also over-represented as users of homeless services – nationally they accounted for 17 percent of users in 2005/06.¹²¹ This rate varies significantly across states and territories – almost two-thirds of the people who use homeless assistance services in the Northern Territory and 41 percent in Western Australia identify as being Indigenous. Indigenous Australians are over-represented among those who are turned away from assistance services; one in every three people turned away is Indigenous.¹²²

Indigenous people using homelessness services are more likely to be women than men (21 percent of women using services identified as Indigenous compared with 12 percent of men).¹²³ Domestic violence is the most common reason for Indigenous people seeking assistance from homeless services.¹²⁴ Indigenous women living in rural and remote areas are one and one half times more likely to be a victim of domestic violence than those living in metropolitan areas and 45 times more likely to be a victim of domestic violence than the non-Indigenous population.¹²⁵

(remote Indigenous communities) stated that, 'to be counted as a house for the census a dwelling needs to be a permanent structure built for the purpose of housing people'. This means that householders were no longer asked whether their dwelling had a working bathroom and toilet as was used to define a house from an improvised dwelling or shelter in the 1996 Census. As a result, the number of improvised dwellings in Indigenous communities declined from 8,727 to 823 in 2001. While there can be argument made that this definition is more culturally appropriate it is also important to make the comparison between this definition and what is considered adequate housing for the rest of the Australian population.

¹¹⁹ Australian Institute of Health and Welfare 2005. Indigenous housing needs 2005: a multimeasure needs model, p. 26, www.aihw.gov.au/publications/hou/ihn05/ihn05-c01.pdf.

¹²⁰ Australian Bureau of Statistics, Counting the Homeless 2001, p. 39, www.salvationarmy.org.au/reports/ABS_homeless_census_2001.pdf.

¹²¹ Australian Institute of Health and Welfare 2007, Homeless people in SAAP: SAAP National Data Collection annual report 2005–06 Australia. SAAP NDCA report Series 11. Cat. no. HOU 156. Canberra: AIHW.

¹²² AIHW, Demand for SAAP accommodation by homeless people 2005–06: summary, www.aihw.gov.au/publications/aus/bulletin56/bulletin56.pdf

¹²³ AIHW, Homeless People in SAAP: SAAP National Data Collection Annual Report 2005-06, www.aihw.gov.au/publications/hou/saapndcar05-06/.

¹²⁴ Australian Institute of Health and Welfare 2005. Indigenous housing needs 2005: a multimeasure needs model, www.aihw.gov.au/publications/hou/ihn05/ihn05-c01.pdf

¹²⁵ Oberin, J, Domestic Violence in Rural Australia, www.wesnet.org.au

As the Committee has clarified, adequate housing should not be interpreted in a narrow or restrictive sense but should be seen as the right to live somewhere in security, peace and dignity.¹²⁶ However, on his recent visit, Mr Kothari described the housing conditions in which some Indigenous Australians live as some of the worst he had seen in the world.¹²⁷

Although a high proportion of Indigenous households do live in housing that meets the definition of adequate housing developed by the Committee in its General Comment 4, a disproportionate number of Indigenous households do not. Amnesty International is concerned at the fact that any households remain disconnected from essential services in a country as relatively wealthy and prosperous as Australia. In 2002, 1,700 Indigenous households reported that they did not have working washing facilities, 3,500 did not have working laundry facilities, 8,300 did not have working facilities for storing or preparing food and 1,900 did not have working sewerage. Some 58,100 Indigenous households (35 percent of households) reported that their dwelling had serious structural problems.¹²⁸

Many Indigenous communities are also far removed from services essential for the realisation of human rights. In 2002, 156 communities were over 100 km away from the nearest primary school, 534 communities were over 100 km away from the closest secondary school with facilities up to year 10, and 811 communities were over 100 km away from the nearest secondary school with facilities up to year 12, and 534 of these were more than 250 km away. Less than one percent of communities had a hospital located within the community. For two-thirds of communities, or 57,222 people, the closest hospital is more than 100 km away and 174 communities have to travel a similar distance just to access a community health centre.¹²⁹ The majority of remote Aboriginal communities have no access to mental health services.¹³⁰ This pushes people to move to urban areas, where they risk homelessness.

A higher proportion of Aboriginal and Torres Strait Islander people live in overcrowded conditions than other Australians, which can adversely affect their health. It can lead to the spread of infectious diseases such as meningococcal, tuberculosis, rheumatic fever and respiratory diseases and skin infections,¹³¹ and is according to the World

¹²⁶ CESCR General Comment 4(7), The Right to Adequate Housing, [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument).

¹²⁷ www.abc.net.au/worldtoday/content/2006/s1709845.htm.

¹²⁸ ABS and AIHW, The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2005, p.40, www.aihw.gov.au/publications/index.cfm/title/10172.

¹²⁹ ABS 2002a. Housing and infrastructure in Aboriginal and Torres Strait Islander communities. Cat. No. 4710.0. Canberra: ABS.

¹³⁰ Urbis Keys Young, Homelessness in the Aboriginal and Torres Strait Islander context and its possible implications for the Supported Accommodation Assistance Program. www.facsia.gov.au.

¹³¹ ABS & AIHW, The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2005, p.38, www.aihw.gov.au/publications/index.cfm/title/10172.

Health Organisation a factor that increases the risk of child abuse.¹³² There has been some improvement in terms of over-crowding; between 2001 and 2006, the percentage of Indigenous households that are overcrowded dropped from 14.7 to 12.4 percent.¹³³ However, the problem remains significant and is particularly pronounced in community housing, provided though housing assistance programs, were one third of households are overcrowded.¹³⁴

The Special Rapporteur noted a lack of culturally appropriate housing for Indigenous Australians:

*the limited number of house designs, which are mostly unadapted to cultural and social specificity stemming from different notions of "home" or "house". The dominant European-style housing design does not accommodate cultural living practices, including the obligation to extended family members and groups, or use of outdoor living areas, often leading to evictions for alleged overcrowding or anti-social behaviour.*¹³⁵

In 2001, all Housing Ministers adopted a 10-year statement of new directions, *Building a Better Future: Indigenous Housing to 2010* and a new policy of safe, healthy and sustainable housing for Indigenous Australians. The Commonwealth, State and Territory Housing Ministers' Working Group on Indigenous Housing has developed the *National Framework for the Design, Construction and Maintenance of Indigenous Housing* and the *National Indigenous Housing Guide* that are intended to ensure that housing is safe, functional and sustainable. However, these guides have focussed on the issues of safety and habitability. While the need for culturally appropriate housing is explicitly referred to, there is little information on what this would actually mean for Indigenous Australians in urban and remote Australia. It is likely that improvements in the design and construction of housing for Indigenous Australians would reduce the number of people living in overcrowded conditions.

Amnesty International considers that the Committee should enquire about government plans to provide availability of an adequate housing stock suitable for people with diverse housing needs, including culturally appropriate housing that diverges from European-style housing to accommodate communities with different cultural housing needs, as well as appropriate housing for people with disabilities.

Amnesty International suggests the Committee asks the government if there have been any efforts to develop and revitalize rural and remote areas with a view to diminishing

¹³² World Health Organisation, World report on violence and health, Chapter 3, Child abuse and neglect by parents and other caregivers, www.who.int/violence_injury_prevention/violence/global_campaign/en/chap3.pdf.

¹³³ Australian Institute of Health and Welfare 2007. Indigenous housing indicators 2005–06. Indigenous housing series no.2. Cat. no. HOU 168.Canberra: AIHW, www.aihw.gov.au/publications/hou/ih05-06/ih05-06.pdf.

¹³⁴ Ibid.

¹³⁵ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 95.

the migration from rural to urban areas with a view to easing the housing problems in cities.

The organization further suggests the Committee asks the government to enhance the funds for rural and remote communities indigenous housing including money set aside for the processes required to obtain free, prior and informed consent.

7.5 National Housing Policy

One of the key recommendations made by the Special Rapporteur was that “Australia should adopt a comprehensive and coordinated national housing policy, and develop a clear, consistent, long-term and holistic housing strategy that addresses structural problems, is efficient and embodies an overarching human rights approach, with the primary task of meeting the needs of the most vulnerable groups.”¹³⁶

Public housing in Australia is provided through the Commonwealth/State Housing Agreement (CSHA). It is joint funding agreement between the Australian government and the states and territories whereby funds are allocated on an equal per capita basis. Commonwealth funding under this agreement has decreased by almost 25 percent over the last decade,¹³⁷ and the State Housing Authorities has tightened eligibility, allocation and tenancy arrangements. Aboriginal and Torres Strait Islander people have been particularly affected by the decline in public housing. While 15 percent of households in the general Australian population rent from a State or Territory Housing Authority, almost 40 percent of the Indigenous population are public housing tenants.¹³⁸

While decreasing its contribution to the CSHA, the Australian government has increased funding for the Commonwealth Rental Assistance scheme (CRA). The Committee has recommended that personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. In Australia that level has been defined as when housing costs are below 30 percent of the household’s income.¹³⁹ People who pay more than 30 percent of their income are considered to be in housing stress, those who pay more than 50 percent are in housing crisis. CRA is a payment

¹³⁶ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 127.

¹³⁷ Report on Government Services 2007, <http://www.pc.gov.au/gsp/reports/rogs/2007/housing/attachment16.pdf>.

¹³⁸ Australian Institute of Health and Welfare 2005. Indigenous housing needs 2005: a multimeasure needs model, p 10, www.aihw.gov.au/publications/hou/ihn05/ihn05-c01.pdf.

¹³⁹ See National Centre for Social and Economic Modelling work at www.canberra.edu.au/centres/natsem/publications?sq_content_src=%2BdXJsPWh0dHAIMOEIMkYIMkZhbmltYWwuY2FuYmVycmEuZWR1LmF1JTNTBNTgwJTJGbmF0c2VtJTJGaW5kZXgucGhwJTNGbW9kZSUzRHNIYXJjaCZhbGw9MQ%3D%3D. There has been a lot of discussion as to whether or not the 30 percent of income rule is adequate. Many people argue that the measure should be of after housing income – i.e., can a household meet its basic needs after paying for adequate housing. There is a good discussion of this issue in the ACT Shelter/ACTCOSS paper, The Wealth of Home, www.actshelter.net.au.

that is intended to offset the high cost of private rental. Amnesty International is concerned that CRA does not appear to be an effective way of addressing housing stress. CRA does not address the increasing shortage of both private and public rental properties and are only available to low income households in receipt of government income support. CRA payments are linked to CPI increases, but not to market rental prices, which are increasing at a greater rate. Despite these payments approximately 35 percent of CRA recipients are still in housing stress or in housing crisis.¹⁴⁰

Simultaneously, housing prices and private rents have increased significantly. According to the 2006 Census, in the last five years the median weekly rent has increased by 31 percent (45 AUD) and the median monthly housing loan repayment increased by almost 50 percent (433 AUD per week).¹⁴¹ Mortgage stress is also increasing, with one in five households in mortgage stress likely to lose their homes.¹⁴² Housing costs are also linked to the high rate of homelessness for families. Almost 60 percent of couples with children in homeless services require support because of accommodation issues (overcrowding, eviction, accommodation ending) and/or financial difficulties.¹⁴³

The organization calls on the Committee to enquire whether the government has developed a comprehensive and coordinated national housing policy, and developed a clear, consistent, long-term and holistic housing strategy that addresses structural problems, is efficient, and embodies an overarching human rights approach, with the primary task of meeting the needs of the most vulnerable groups.

The Committee may wish to ask the government whether it is considering creating a Ministry that focuses exclusively on housing, as the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has recommended.

7.6 Role of Civil Society organisations

Amnesty International has noted a reduction in the power and voice of civil society and advocacy organisations focussed on housing in Australia over the past decade. National Shelter (the national housing association, which aims to improve housing access, affordability, appropriateness, safety and security for people who are on low-incomes, or who face disadvantage in the housing system) lost its government funding

¹⁴⁰ Australian Institute of Health and Welfare 2008. Housing assistance in Australia, www.aihw.gov.au/publications/index.cfm/title/10563.

¹⁴¹ Australian Bureau of Statistics (ABS), 2006 Census results, www.censusdata.abs.gov.au/ABSNavigation/prenav/ProductSelect?newproducttype=QuickStats&btnSelectProduct=View+QuickStats+%3E&collection=census&period=2006&areacode=0&geography=&method=&productlabel=&producttype=&topic=&navmapdisplayed=true&javascript=true&breadcrumb=LP&topholder=0&leftholder=0¤taction=201&action=401&textversion=false.

¹⁴² Kelsey Munro, "Homes at risk as stress takes toll," *The Sydney Morning Herald*, April 22, 2008, www.smh.com.au/news/national/mortgage-stress-takes-toll/2008/04/21/1208742851984.html.

¹⁴³ Australian Institute of Health and Welfare, Homeless People in SAAP: SAAP National Data Collection Annual Report 2005-06.

in 1997. Similarly, Victorian Shelter has also been de-funded, while ACT Shelter has faced debilitating funding cuts. In 1998, the youth and general homelessness associations as well as the women's domestic violence association were amalgamated into one small homelessness association – the Australian Federation of Homelessness Organisations, now Homelessness Australia. Victoria and New South Wales are the only states with state-funded homelessness associations.

Associations, or “peak bodies” as they are known as in Australia, have traditionally been involved in lobbying, research and analysis of public policy. However, a recent study showed that 90 percent of non-government organisations in Australia under the previous government believe that organisations who speak out against government policies risk losing their funding.¹⁴⁴ Amnesty International is concerned that this has severely constrained any public comment and advocacy on the issue of housing and homelessness.

Amnesty International calls on the Committee to reiterate the recommendation of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

Amnesty International also encourages the Committee to enquire about the government's plans to undertake genuine consultation in the design of policies, strategies and planning in housing.

¹⁴⁴ Sarah Maddison, Clive Hamilton, Richard Denniss, www.tai.org.au/documents/dp_fulltext/DP65.pdf