

Freedom Respect Equality Dignity: Action

NGO Submission to the UN Committee on Economic, Social and Cultural Rights

Executive Summary: Australia



May 2009

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ABOUT THIS SUBMISSION

This document is an Executive Summary of the combined NGO Report (April 2008) and Addendum (May 2009) on Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights*.

These NGO Reports to the UN Committee on Economic, Social and Cultural Rights have been prepared by the National Association of Community Legal Centres, the Human Rights Law Resource Centre and Kingsford Legal Centre.



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Introduction and Context for the Committee's Review

1. This submission documents areas in which Australia is falling short of its obligations under the *ICESCR* and focuses on areas that have been the subject of extensive NGO activity and research in Australia.
2. This document is an **Executive Summary** which seeks to summarise the information contained in:
 - (a) a major **NGO Report**, entitled *Freedom, Respect, Equality, Dignity: Action* submitted to the Committee in April 2008; and
 - (b) an **Addendum** to the *Freedom, Respect, Equality, Dignity: Action* report submitted to the Committee in May 2009.
3. This Executive Summary is structured as follows:
 - (a) Introduction and brief comments on the context of the review by the Committee
 - (b) Comments on the Australian Government's response to the Committee's List of Issues
 - (c) Major additional concerns that are not raised by the Committee in its List of Issues
 - (d) Updated list of Proposed Recommendations that we consider would be important to include in the Committee's Concluding Observations on Australia.

Current Context for the Committee's Review

4. Fundamental human rights issues have been at the core of national political and social policy and debate in Australia in the last decade.
5. Since its election in November 2007, the current Australian Government has taken a number of significant steps towards the realisation of *ICESCR* rights and the promotion of human rights generally, including:
 - (a) announcing a public consultation regarding the legal recognition and protection of human rights in Australia;
 - (b) ratifying the *Convention on the Rights of Persons with Disabilities*;
 - (c) acceding to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*;
 - (d) indicating an intention to accede to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*;
 - (e) announcing its support for the UN Declaration on the Rights of Indigenous Peoples, which had previously been opposed by the former Australian Government;
 - (f) committing to more extensive and constructive engagement with the United Nations human rights mechanisms, including by issuing a standing invitation to the Special Procedures of the UN Human Rights Council and developing domestic mechanisms to review implementation of treaty body recommendations;
 - (g) issuing a formal parliamentary 'Apology' to the Indigenous Stolen Generations;

- (h) committing to achieve equality of health status and life expectancy between Indigenous Australians and non-Indigenous Australians by 2030, including ensuring primary health care services and health infrastructure for Indigenous peoples that are capable of bridging the gap in health standards by 2018;
 - (i) reforming and repealing certain aspects of the Northern Territory Intervention;
 - (j) reforming and repealing certain aspects of Australia’s industrial relations system known as ‘Work Choices’;
 - (k) undertaking key reforms of the immigration system, including:
 - (i) ending the so-called ‘Pacific Solution’;
 - (ii) removing the system of temporary protection visas for asylum seekers; and
 - (iii) reforming Australia’s policy of mandatory immigration detention;
 - (l) establishing a new Social Inclusion Unit within the Department of Prime Minister and Cabinet, and appointing a senior minister to the portfolio of Social Inclusion;
 - (m) announcing a strategy to tackle the problem of homelessness in Australia through the development of a comprehensive, long-term plan, as well as developing a ‘National Rental Affordability Scheme’ to address the issue of lack of housing availability and affordability;
 - (n) directing the Productivity Commission to undertake an inquiry into the establishment of a national paid parental leave scheme; and
 - (o) amending federal laws that discriminated against same-sex couples and financial and related benefits.
6. Despite these very welcome developments, there remain a number of very significant concerns in relation to the realisation of *ICESCR* rights for many Australians.

Comments of the List of Issues

7. This section provides a very brief analysis and summary of each of the Committee's List of Issues and, where relevant, makes comment on the Australian Government's response to the List of Issues. Each of the issues raised below are discussed in greater detail in the NGO Report (dated April 2008) and the Addendum (dated May 2009).

I. GENERAL FRAMEWORK

List of Issue 2: Effective Remedy for Breaches of Covenant rights

8. The Covenant rights have not been comprehensively incorporated into Australia's domestic law. As a result, there are no competent judicial, administrative or legislative authorities to remedy any breaches of Covenant rights. While there are remedies for some violations in limited circumstances, such as in the area of anti-discrimination, there is no general mechanism for the adjudication and remedy of human rights breaches.
9. Although the Australian Human Rights Commission is responsible for monitoring Australia's compliance with international human rights treaty obligations, it has limited jurisdiction over the Covenant rights and, in any event, its findings are not legally binding.
10. This issue is discussed in further detail in the NGO Report at pages 23-24 and in the Addendum at page 9, as well as in the Fact Sheet: Legal Protection of Human Rights.

II. FOLLOW-UP TO PREVIOUS CONCLUDING OBSERVATIONS

List of Issue 4: Incorporation of Covenant into Australian Domestic Law

11. Australia remains the only developed democracy without legal or constitutional protection of basic human rights at a national level. Successive Australian governments have failed to provide clear and effective protection of many of the individual rights contained in both the *ICESCR* and the *International Covenant on Civil and Political Rights*.
12. In its previous Concluding Observations, the Committee on Economic, Social and Cultural Rights strongly recommended that Australia incorporate the Covenant in its domestic legislation. Similar concerns about the lack of legislative protection of basic human rights in Australia have also been expressed by the Human Rights Committee, the Committee against Torture and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.
13. At state and territory levels, human rights legislation has recently been enacted in both the Australian Capital Territory and Victoria. However, these instruments are limited to the protection of civil and political rights only. Recently, both the Tasmanian and Western

Australian governments conducted consultations on the need for specific human rights legislation in those states. Both consultations recommended that human rights legislation should be enacted and that these instruments should enshrine economic, social and cultural rights, as well as civil and political rights. To date, neither the Tasmanian nor Western Australian governments have implemented this recommendation.

14. Australia must incorporate comprehensive protection of all economic, social and cultural rights into domestic law.
15. This issue is discussed in further detail in the NGO Report at pages 23-24 and in the Addendum at page 9, as well as in the [Fact Sheet: Legal Protection of Human Rights](#).

List of Issue 5: ‘Legitimate Expectations’

16. Several judgments of the High Court of Australia have reduced or may reduce the availability of remedies for government actions that breach any of the *ICESCR* rights. In the case of *Lam*, a majority of the High Court indicated that individuals cannot rely on a legitimate expectation that a government decision-maker will give proper consideration to, or act compatibly with, Australia’s international treaty obligations. The precedent set by these decisions means that there is no effective remedy available at the domestic level, either protected through legislation or by the common law, for breaches of the *ICESCR* rights.
17. This issue is discussed in the NGO Report at page 24.

List of Issue 6: Minimum Wages and Home Workers

18. The *Fair Work Act 2009* (Cth) establishes a new industrial relations tribunal, called ‘Fair Work Australia’, which is responsible for reviewing minimum wages. The previous body, the Australian Fair Pay Commission, focused on overall economic prosperity, employment and competitiveness when determining minimum wages. However, Fair Work Australia must now also have regard to the following social factors when setting minimum wages:
 - (a) promoting social inclusion through increased workforce participation;
 - (b) relative living standards and the needs of the low paid;
 - (c) the principle of equal remuneration for work of equal or comparable value; and
 - (d) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.
19. The shift of focus from purely economic factors to both social and economic factors is a welcome change from the situation under Work Choices.
20. This issue is discussed in further detail in the NGO Report at page 61 and in the Addendum at page 32, as well as in the [Fact Sheet: Work Rights](#).
21. Recent legislative changes have resulted in greater protections being afforded to outworkers. In particular, special entry rights for unions and amendments enabling increased union representation of outworkers are welcome positive changes that reflect the special circumstances and vulnerability of outworkers.

22. The Australian Government should be commended for its reform of Industrial Relations insofar as it protects the minimum wages of workers.
23. This issue is discussed in further detail in the NGO Report at pages 43-44 and in the Addendum at pages 25-26, as well as in the [Fact Sheet: Work Rights](#).

List of Issue 7: Extent of Poverty

24. In 2008, 12 per cent of Australians were found to be living in poverty, which is a higher proportion than the OECD average. Despite this, Australia does not have a comprehensive anti-poverty strategy and the current Australian Government has not yet committed to poverty reduction benchmarks or targets. A range of communities and groups are at greater risk of living in poverty, including Indigenous people, asylum seekers, new migrants, people over 65 years of age, people with disability, women, children and young people.
25. Poverty is a significant issue for Indigenous people, with remoteness of some communities exacerbating poverty. Indigenous peoples continue to be more frequently deprived than all other sub-groups in the community in all aspects of an adequate standard of living. The risk of poverty is also extremely high sole parents, at 70 per cent, and for older Australians, at 50 per cent.
26. In addition to its development and implementation of a comprehensive anti-poverty and social inclusion strategy, the Australian Government must provide adequate income support for those with difficulties finding paid employment.
27. This issue is discussed in further detail in the NGO Report at pages 93-94 and in the Addendum at pages 51-52, as well as in the [Fact Sheet: Adequate Standard of Living](#).

III. GENERAL PROVISIONS OF THE COVENANT

Article 2

List of Issue 8: National Human Rights Consultation

28. On 10 December 2008, the Commonwealth Attorney-General announced a broad-ranging consultation on whether and how human rights could be better protected in Australia. The national consultation process is being conducted by an independent Consultation Committee appointed by the Attorney-General.
29. Public submissions to the Consultation Committee are due by 15 June 2009. The Committee has been asked to submit a report to the Australian Government by 31 August 2009 which sets out the means by which the Government can improve the protection and promotion of human rights, the costs and benefits (both social and economic) of the various options, and their level of community support.

30. While the terms of reference for the consultation are broad, they explicitly rule out the option of a constitutional ‘bill of rights’ on the grounds that the Australian Government wishes to preserve parliamentary sovereignty. Of concern in relation to Covenant rights is that the consultation’s terms of reference do not make any specific reference to the question of whether — and if so how — economic, social and cultural rights should be protected. Further, regardless of the outcome of the consultation, the Australian Government has not yet committed to any further legislative measures to protect human rights.
31. The Australian Government must incorporate comprehensive protection of all economic, social and cultural rights into Australia’s domestic law.
32. This issue is discussed in further detail in the Addendum at page 9 and in the Fact Sheet: Legal Protection of Human Rights.

List of Issue 9: Foreign Aid

33. Before it came to office, the current Australian Government committed to increasing Australia’s aid spending to 0.5 per cent of Gross National Income (**GNI**) by 2015, although still well short of the internationally-agreed 0.7 per cent target. However, in 2008-2009, the Australian Government will provide \$3.7 billion worth of official development assistance, which amounts to an estimated 0.32 per cent of GNI, only a slight increase from 0.3 per cent in 2007/2008.
34. Australia must increase its foreign aid commitment to meet the target of 0.7 per cent of GNI set by the Millennium Development Goals.
35. This issue is discussed in further detail in the NGO Report at pages 26-27.

Article 3

List of Issue 10: Equality for Women

36. The *Sex Discrimination Act 1984* (Cth) fails to provide the legislative framework necessary to adequately address discrimination against women and to promote substantive equality for women. In this respect, the Sex Discrimination Act fails to implement fully the standards and obligations required under the *Convention on the Elimination of All Forms of Discrimination against Women* (**CEDAW**) and does not cover all forms of sex and gender-based discrimination, or apply in all areas of life.
37. As a result, women continue to be significantly disadvantaged in the realisation of many of the Covenant rights, including:
 - (a) the failure of Australia to introduce a paid maternity leave system and the inadequacy of the child care system (see NGO Report at pages 79-80 and Addendum at pages 43-44);
 - (b) the high levels of violence experienced by women and the inadequate services available to women who experience violence (see NGO Report at pages 41-43 and Addendum at pages 24-25);

- (c) the significant gap in pay between women and men, with women earning on average 18.4 per cent less than men (see NGO Report at pages 43 and 63 and Addendum at page 33);
- (d) the diminished work conditions experienced by women, particularly those in lowly paid professions, and an increase in discrimination based on pregnancy and family responsibilities. Women are almost twice as likely to be under-employed than men (see NGO Report at page 63 and Addendum at page 33);
- (e) the incidence of forced labour of women in the form of sexual servitude (see NGO Report at pages 54-55 and Addendum at page 31);
- (f) the inadequacy of the social security system for single parents, the majority of whom are women, as evidenced by both the insufficiency of single parent payments and the disproportionate effect of the Welfare to Work changes on single parents (see NGO Report at page 112 and Addendum at page 58);
- (g) the lack of access to health services for women with disability (see NGO Report at page 123);
- (h) the inadequacy of health care received by women, particularly Indigenous women, women in prisons, as well as the arbitrary practice of strip searching in prisons (see NGO Report at page 126 and Addendum at pages 72-73);
- (i) inadequate and discriminatory access to reproductive technology for particular groups of women, such as single women and lesbians (see NGO Report at page 127 and Addendum at page 73);
- (j) women remain significantly under-represented in many aspects of political and public life, including in particular political representation and managerial levels in business (see Addendum at page 26); and
- (k) women continue to experience unacceptably high levels of sexual harassment in the workplace (see Addendum at page 27).

38. These issues are summarised in the Fact Sheet: Women.

Indigenous Women

39. Indigenous women remain significantly disadvantaged in relation to a very large number of areas:

- (a) Indigenous women prisoners are the fastest growing prison population (see NGO Report at page 126);
- (b) Indigenous women continue to experience much higher levels of ill-health, disease and death than non-Indigenous women (see NGO Report at page 120);
- (c) Indigenous children, particularly females, have lower levels of access to education, from pre-school through to tertiary levels (see NGO Report at pages 135-136);
- (d) Indigenous women frequently experience barriers to accessing adequate and culturally appropriate public housing (see NGO Report at pages 110-111);
- (e) Indigenous women are more likely to be working in low income jobs (see NGO Report at page 51); and

- (f) violence against women is a serious issue in many Indigenous communities (see NGO Report at page 42).
40. These issues are also summarised in the [Fact Sheet: Women](#) and in the [Fact Sheet: Indigenous Australians](#).

Article 6

List of Issue 11: Rates of Unemployment and Underemployment

41. A number of disadvantaged groups confront significant barriers to workforce participation, including Indigenous people, asylum seekers, new migrants and persons with disabilities. For example, in 2003 the unemployment rate of people with a disability was almost twice that of people without a disability, and the labour force participation rate was 60 per cent for people with a disability compared to 90 per cent for people without a disability. Women with disabilities are particularly disadvantaged in this regard, with lower pay and employment rates than males with similar disabilities.
42. Australia must design special programs and measures to address the significant barriers to workforce participation faced by many Indigenous people, asylum seekers, migrants, people with disabilities and women.
43. These issues are discussed in further detail in the NGO Report and the Addendum under Article 2 (non-discrimination) and Article 6 (right to work), as well as in the [Fact Sheet: Work Rights](#).

List of Issues 12 and 13: Unfair Dismissal Laws and Job Security

44. The unfair dismissal provisions in the Fair Work Act improve on the very poor protection that was afforded to workers under Work Choices, but still fail to adequately protect the right to just and favourable conditions at work. Under the Fair Work Act, employees will only be eligible for protection from unfair dismissal if they earn less than \$100,000 and have been employed for at least 12 months (if their employer has fewer than 15 employees) or 6 months (if their employer has 15 or more employees).
45. The Australian Government has also indicated that it will implement a Small Business Fair Dismissal Code. If a business with less than 15 employees follows the Code then the dismissal will not be unfair. Of particular concern is that the current draft Code removes procedural fairness and scrutiny of dismissals for poor performance or serious misconduct.
46. The Australian Government ensure equal protection for all employees against unfair dismissal by their employer.
47. These issues are discussed in further detail in the NGO Report at pages 64-65 and in the Addendum at page 34, as well as the [Fact Sheet: Work Rights](#).

Article 7

List of Issue 14: Australian Workplace Agreements

48. Under the new *Fair Work Act 2009* (Cth), there will be no new individual statutory agreements, such as Australian Workplace Agreements (**AWAs**). As indicated in the Australian Government's response to the Committee's List of Issues, the increased use of AWAs resulted in a reduction of employee entitlements. The Fair Work Act is a positive and welcome shift away from individualised agreement-making and towards collective agreement-making.

List of Issue 15: Home Workers

49. As discussed above in paragraph 21, recent legislative changes have resulted in greater protections being afforded to outworkers. These changes include special entry rights for unions and enabling increased union representation of outworkers.

Article 8

List of Issue 17: Trade Unions, Strikes and Collective Bargaining

50. Collective bargaining and the expansion of unions' rights of entry are at the heart of the recent legislative changes made by the current Australian Government. While many of the changes are welcome and to be commended, the new system still imposes unreasonable limits on freedom of association by:
- (a) limiting the content of collective agreements to 'permitted matters';
 - (b) failing to protect industrial action in support of 'pattern bargaining', matters that are not 'permitted' and multiple business agreements;
 - (c) failing to ensure an employee's right to automatic representation by their union in individual discussions and negotiations;
 - (d) stopping industrial action in a range of circumstances; and
 - (e) imposing significant penalties for 'unprotected' industrial action, including fines of up to \$22,000 for an individual.
51. The right to strike is not protected by Australian law and is denied to workers in many situations. As discussed above, the Fair Work Act fails to protect industrial action in support of 'pattern bargaining', matters that are not 'permitted' and multiple business agreements. Further, in order to facilitate a strike, the Fair Work Act requires that at least 50 per cent of employees vote in the ballot and that more than 50 per cent of those employees vote in favour of taking industrial action. Such restrictions unduly complicate and restrict the strike process, particularly for employees of large organisations, and are incompatible with the right to strike at international law.

52. Australia should fully protect and enshrine the right to strike in legislation.
53. These issues are discussed in further detail in the NGO Report at pages 67-70 and in the Addendum at pages 35-39, as well as the [Fact Sheet: Work Rights](#).

Article 9

List of Issue 18: Adequacy of Social Security Payments

54. Social security payments in Australia are indexed around or below the Henderson Poverty Line, which in many cases is insufficient to guarantee an adequate standard of living. For example, in September 2007:
 - (a) Newstart, the base unemployment benefit, was paying \$212.15 per week to single unemployed adults – 43% below below the Henderson Poverty Line;
 - (b) the maximum welfare payment for a couple with three children was 11% below the Henderson Poverty Line.
55. The aged pension is also currently inadequate to support the needs of older Australians, with a recent Senate Committee describing the full pension payment as 'insufficient to maintain a basic, decent standard of living'.
56. These issues are discussed in further detail in the NGO Report at page 72 and in the Addendum at page 40, as well as in the [Fact Sheet: Social Security](#) and [Fact Sheet: Adequate Standard of Living](#).

Article 10

List of Issue 19: Child Protection in Indigenous Communities

57. The former Australian Government's 'Emergency Intervention' into Indigenous communities (discussed in further detail below at paragraphs 128 to 131) in the Northern Territory was supposedly based on the outcome of a report on the protection of children from sexual abuse in Indigenous communities, entitled *Little Children are Sacred*. That report made a very large number of recommendations spanned a wide range of areas, including in relation to school education, awareness campaigns, improving family support services and the empowerment of Indigenous communities.
58. Of most concern is that there is very little relationship between the recommendations contained in the *Little Children are Sacred* report and the former Australian Government's 'national emergency intervention'. The Australian Government's response fails to use a child rights framework to address the complex issue of the protection of children from sexual abuse in Indigenous communities. Notwithstanding its descriptor as a 'national emergency intervention', the Australian Government has made no effort to use children's rights and human rights principles to frame its response.

59. The Australian Government should use a human rights framework to ensure its response to child protection issues in Indigenous communities is appropriate and does not impermissibly encroach on the enjoyment of other human rights.
60. These issues are discussed in further detail in the NGO Report at pages 17-20 and in the Addendum at page 47, as well as in the [Fact Sheet: Indigenous Australians](#).

List of Issue 20: Children in the Workforce

61. Australia lacks uniform laws across industries that specifically protect children from the particular health risks in the workplace. Factors that put children at increased risk in an employment environment include inexperience, failure to recognise unsafe conditions and a reluctance to ask for assistance. Specific industries of risk include farming, construction sites and clothing manufacture outsourcing — industries in which children frequently work with parents. The Australian Government should ensure a coordinated national approach is taken to address the protection of children in the workplace.
62. Further, the Australian Government should ratify ILO Conventions 138 Concerning the Minimum Age for Admission to Employment and 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. It should also implement the minimum employment age requirement across all Australian jurisdictions and industries.
63. These issues are discussed in further detail in the NGO Report at page 88 and in the [Fact Sheet: Children](#).

List of Issue 21: Sterilisation of Children

64. While the Australian Government in its response to the List of Issues indicated that it has removed the sterilisation of children with intellectual disabilities from its agenda and will instead work on promoting contraceptive needs of minors with a decision-making disability, we consider that practice should be prohibited by law.
65. This issue is discussed in further detail in the NGO Report at page 89 and in the [Fact Sheet: Children](#).

Article 11

List of Issue 22: Standard of Living of Asylum Seekers

66. Despite some positive improvements in the Government's policies toward asylum seekers, there are still many asylum seekers on Bridging Visas who cannot access work, welfare benefits or healthcare. As the Australian Human Rights Commission has stated, these restrictions result in many asylum seekers and refugees facing poverty and homelessness. The Commission states that 'without the ability to support themselves through work or social security, asylum seekers are entirely dependent on community services for their basic subsistence.'
67. The Australian Government must provide appropriate services for asylum seekers living in the community to ensure that they have an adequate standard of living.
68. These issues are discussed in further detail in the NGO Report at page 111 and in the Addendum at page 59, as well as the Fact Sheet: Immigration Law, Policy and Practice and Fact Sheet: Adequate Standard of Living.

List of Issue 23: Indigenous Homelessness

69. Indigenous communities in both urban and rural areas face a severe housing crisis. In 2006, the UN Special Rapporteur on Adequate Housing was 'particularly disturbed' by the adverse housing conditions he observed in Indigenous communities in Australia, describing it as a 'humanitarian tragedy'. Lack of affordable housing, lack of appropriate support services, overcrowding, significant levels of poverty, a lack of culturally appropriate housing and underlying discrimination are all factors that contribute to the housing situation facing Indigenous Australians. Indeed, the state of Indigenous Australians' housing and homelessness has been described by the UN Special Rapporteur on Adequate Housing as a 'humanitarian tragedy'.
70. The causal links between inadequate housing, severe overcrowding and inappropriate styles of housing, particularly in remote areas, on adverse social, health and justice outcomes is well established.
71. Whilst the some recent improvements in Indigenous housing and homelessness are welcome, consultation with Indigenous people is important in order to ensure that housing is culturally appropriate. In the absence of an Indigenous representative body, the ability to conduct this type of consultation is compromised.
72. These issues are discussed in further detail in the NGO Report at pages 110-111 and in the Addendum at page 58, as well as in the Fact Sheet: Indigenous Rights in Australia and Fact Sheet: Adequate Standard of Living.

List of Issue 24: National Housing Strategy

73. In December 2008, the Australian Government released a White Paper on homelessness. The paper, *The Road Home*, sets out an action plan to halve homelessness by 2020 and improve housing affordability for vulnerable Australians. The White Paper commits the Australian Government to provide \$800 million over five years to fund a range of initiatives, including new housing for homeless individuals and families.
74. Despite these significant commitments, the White Paper fails to explicitly recognise homelessness as a human rights issue. The Government needs to commit Australia to ensuring the core minimum necessities to ensure that people have the right to live somewhere in security, peace and dignity, such as guaranteed access to emergency accommodation and adequate housing or the payment of social security or income support above the poverty line.
75. These issues are discussed in further detail in the NGO Report at pages 93-96 and in the Addendum at pages 51-55, as well as the [Fact Sheet: Homelessness](#) and [Fact Sheet: Adequate Standard of Living](#).

List of Issue 25: Nutrition

76. While Australia is a developed country and has experienced increased economic prosperity in recent years, access to and quality of food are key concerns for particularly vulnerable groups such as low-income earners, asylum seekers and Indigenous Australians. 15 per cent of clients of major welfare agencies do not enjoy a decent meal at least once a day, with the proportion increasing to 16 per cent for households with children and to 18 per cent for clients with disability or restrictive medical conditions.
77. Indigenous Australians have generally less access to nutritious foods than the wider population. Remoteness and poverty are more common for Indigenous than non-Indigenous Australians, and are major factors that often severely limit access to food. The much higher prevalence of illnesses related to food and nutrition in the Indigenous community is a clear indicator of the extent of the food access problems faced by Indigenous Australians.
78. These issues are discussed in further detail in the NGO Report at pages 101-105.

List of Issue 26: Access to Water

79. Climate change and/or sustained periods of drought have led to increasing numbers of households, especially low-income households, not having reliable and affordable access to fresh clean water. Climate change, drought and government policies have made rises in the price of water inevitable.
80. Access to clean water is unreliable for many Indigenous Australians, who also continue to suffer from poor environmental health and related diseases and infections at a higher rate than the non-Indigenous population.
81. The right to water is still not enshrined in legislation. Further, the Australian Human Rights Commission has criticised the Australian government's water plan, *Water for the Future*, for failing to use a human rights-based approach, which would have had the benefit of requiring

that decision makers 'be guided by the core minimum human rights standards when weighing competing demands on limited resources'.

82. The Australian Government must use a human rights-based approach in its water policy and immediately put necessary law and policy in place to ensure that all Australians have continuing access to affordable water, an essential aspect of the guarantee of an adequate standard of living and of life itself.
83. These issues are discussed in further detail in the NGO Report at pages 105-109 and in the Addendum at pages 56-57, as well as the Fact Sheet: Adequate Standard of Living.

Article 12

List of Issue 27 and 28: Indigenous Health

84. The state of Indigenous health in Australia continues to result from and present serious human rights breaches. Indigenous Australians, and in particular Indigenous women, continue to experience much higher levels of ill-health, disease and death than non-Indigenous Australians.
85. In November 2008, the Federal Government and State governments committed a joint \$1.6 billion to improve indigenous health. This constitutes the biggest single injection of new funding by an Australian government to improve Indigenous health outcomes. Whilst the significant commitment of funding is to be welcomed, reports suggests that Indigenous children continue to be subject to extreme disadvantage compared with the non-indigenous population in many health statistics, including the number of stillborn babies, pre-term births, low birth weights, infant mortality rates, deaths from respiratory problems, infectious and parasitic diseases and many other significant health problems.
86. Whilst the Australian Government's commitment to further funding is to be commended, the Government should ensure that it implements the range of strategies suggested by the Australian Medical Association's 2008 report card on Indigenous health.
87. This issue is discussed in further detail in the NGO Report at pages 118-120 and the Addendum at pages 65-66, as well as the Fact Sheet: Indigenous Australians.

List of Issue 29: Mental Health Care

88. Mental health inpatient and crisis services are significantly under-resourced in Australia and there are widespread problems with access to care, quality of care and adequate accommodation for people requiring mental health services. People with mental illness are significantly over-represented in key measures of disadvantage such as homelessness, unemployment, poverty, substance abuse, and incarceration rates. Furthermore, within mental health services, there is still too great a use of aversive treatments with harmful side effects and reliance on involuntary treatment regimes. These factors jeopardise the adequacy of mental health treatment for mental health consumers.

89. The Government should take immediate action to ensure that mental health services are adequately funded and that consumers have appropriate input into their own treatment.
90. This issue is discussed in further detail in the NGO Report at pages 120-121 and the Addendum at pages 66-67, as well as the Fact Sheet: People with Disability and Mental Illness.

Articles 13 and 14

List of Issue 30: Public Expenditure on Education

91. Australian Government spending on early childhood education is the worst in the developed world. As a result, children from non-English speaking backgrounds, low income families, Indigenous children or those with additional needs are less likely to attend early childhood education, which has major implications for the realisation of many other *ICESCR* rights.
92. In 2005, secondary school completion rates were 67 per cent, a figure which had not improved in the last decade. There is also a significant resource gap between private and public schools in Australia. The current Australian Government has recently legislated to continue the funding model adopted by the former Australian Government until 2012. This model perpetuates an unfair funding formula which sees students in public schools receiving less funding than their counterparts in private and non-governmental schools.
93. Access to higher education is also becoming increasingly difficult for many Australians, particularly due to the continuing decline of investment by governments in university education.
94. Australia must invest progressively using the maximum available resources in public education. Australia must also take appropriate steps and measures, including budgetary measures, to ensure that tertiary education is equally available to all persons on the basis of merit and capacity and that special measures be implemented to ensure equality of opportunity and access for students with disability, Indigenous students, low income students, and students from rural and remote areas.
95. This issue is discussed in further detail at pages 130-138 of the NGO Report and pages 75-77 of the Addendum, as well as in the Fact Sheet: Education.

List of Issue 31: Indigenous Education

96. Indigenous children and young people have lower levels of access to education, from pre-school through to tertiary levels. Indigenous students are still only half as likely as non-Indigenous students to complete secondary school. In addition, participation and completion rates are much worse for female Indigenous students.
97. The Northern Territory Intervention includes a measure to enforce school attendance by withholding welfare payments from Indigenous parents whose children do not attend school. This punitive approach to school attendance is particularly troublesome. Of most concern is

that government funding of school services in Indigenous communities remains severely inadequate.

98. In October 2008, the Northern Territory Government announced a new policy requiring the first four hours of education in all Northern Territory schools to be conducted in English. The United Nations Educational, Scientific and Cultural Organization has claimed that more than 100 languages in Australia are in danger of extinction and it is feared that the new policy will further endanger Indigenous languages. Some Indigenous education initiatives are also being promoted through the Government's Closing the Gap scheme.
99. As a matter of urgency, Australia must continue its progress towards addressing the serious disadvantage in accessing all levels of education experienced by Indigenous Australians.
100. This issue is discussed in further detail at pages 135-136 of the NGO Report and pages 76-77 of the Addendum, and in the [Fact Sheet: Education](#) and [Fact Sheet: Indigenous Australians](#).

List of Issue 32: Education for Children with Disability

101. Children with disability confront many issues in the Australia's educational system, including a lack of accessibility, inadequate curricula and insufficient levels of support and resources available to students with disability. As a result, secondary school completion rates are much lower, which leads to further concerns such as significant lower employment rates, increased incidences with the criminal justice system and increased situations of discrimination.
102. Australia must implement and adequately resource programs to enable children with disabilities to participate fully in and complete secondary education.
103. This issue is discussed in further detail at pages 136-138 of the NGO Report and in the [Fact Sheet: Education](#).

Article 15

List of Issue 33: Indigenous Cultural Rights

104. Australian laws governing the admissibility of Indigenous evidence and, in particular, Indigenous oral testimony in native title litigation, fail to recognise the rights of Indigenous Australians to take part in and to achieve the full realisation of their cultural life. The major concern is that Australian law favours written evidence over the oral testimony of Indigenous witnesses, causing particular burdens for Indigenous societies who rely on passing information via oral traditions. In native title claims, this disadvantage faced by Indigenous people in the legal system is compounded by the onerous evidential burdens required.
105. In addition, as referred to in paragraph 98 above, recent education policies in the Northern Territory have the potential to seriously threaten the existence of Indigenous languages.

106. Australia must ensure that the cultural impact of the Northern Territory Intervention is consistent with Australia's obligations under Article 15 of the *ICESCR*. Australia should also amend evidentiary laws governing the admissibility of Indigenous testimony so as to allow for the recognition and respect of Indigenous oral testimony in native title claims.
107. This issue is discussed in further detail in the NGO Report at page 142 and the Fact Sheet: Indigenous Rights.

List of Issue 34: Indigenous Cultural and Intellectual Property

108. Indigenous cultural and intellectual property rights are not adequately protected under Australian laws. Indigenous cultural and intellectual property rights are communally, rather than individually, owned. In light of the often weak bargaining position of Indigenous artists, legislation must provide for the appropriate protection of their property rights as well as the communal moral rights of Indigenous artists.
109. This issue is discussed in further detail in the NGO Report at pages 142-143 and the Fact Sheet: Indigenous Rights.

Major Concerns Additional to the List of Issues

110. This section provides a summary of the major issues that we consider are extremely significant in the Australian domestic context but were not included in the Committee's List of Issues. We consider that these issues should be raised by the Committee with the Australian Government.

ARTICLE 1 — RIGHT OF SELF-DETERMINATION

A.1 National Indigenous Representative Body

111. Indigenous Australians continue to be denied the right of self-determination and are inadequately politically represented. Without national or regional Indigenous-controlled representative organisations, the ability of Indigenous people to contribute to the formulation of Indigenous policy is extremely limited. The Australian Government's historical policy of merely 'consulting' with Indigenous Australians regarding policies which are particularly likely to affect them does not meet the standards of meaningful engagement, participation and empowerment required by the right of self-determination.
112. The Australian Government has commenced a consultation process to develop a new national Indigenous representative body. The consultation aims to design an effective body that will represent the interests of Indigenous Australians in political and policy debates and foster a strong relationship between the government and Indigenous communities. An announcement detailing the form and structure of this new body will be made in July 2009.
113. The establishment of a properly representative and effective Indigenous body is essential for the realisation of Article 1 of the *ICESCR* by Indigenous Australians.
114. This issue is discussed in further detail in the NGO Report at pages 14-15 and the Addendum at pages 4-5, as well as the [Fact Sheet: Indigenous Rights](#).

A.2 The Stolen Generations

115. In February 2008, the Australian Government formally apologised to Indigenous Australians for past injustices and especially for the forced removal of Indigenous Australian children from their families during the 20th century. Despite the welcome Apology, the Australian Government has ruled out providing compensation to the people and families of the Stolen Generation.
116. The Australian Government must make adequate reparations, including compensation, for the harm and suffering caused by previous government policies and programs.
117. This issue is discussed in further detail in the NGO Report at pages 1-17 and the Addendum at page 5, as well as the [Fact Sheet: Indigenous Rights](#).

ARTICLE 2 — TREATY ENTRENCHMENT

B.3 Optional Protocol to ICESCR

118. Australia is currently not a party to the Optional Protocol to the *ICESCR*. Particularly in light of the lack of available remedies in Australia's domestic laws for breaches of ESC rights, adoption of the Optional Protocol would provide victims with an important avenue for redress where their ESC rights may have been breached. Australia should take steps to ratify the Optional Protocol to the *ICESCR* as soon as it is possible to do so.
119. This issue is discussed in further detail in the NGO Report at pages 24-25 and in the Addendum at page 10.

B.6 Extra-Territorial Application of the ICESCR

120. There is no clear framework of human rights obligations that applies to Australian corporations in their relationships overseas with host state governments or populations. Similarly, Australia has failed to take steps to properly ensure corporate accountability for activities carried out outside Australia. Australian corporations may operate in areas of relaxed or no regulation or where host governments lack the will or capacity to monitor corporate conduct in their jurisdictions or to enforce standards. Australian companies, particularly mining companies, are having a severe impact on the human rights of people in many parts of the world, particularly the rights to food, water and health.
121. Australia should enact laws to enact a human rights framework that includes human rights obligations that apply to Australian corporations in their relationships overseas with host state governments or populations.
122. This issue is discussed in further detail in the NGO Report at pages 27-28.

B.7 Human Rights Education

123. In its previous Concluding Observations, the Committee called upon Australia to take effective steps to ensure that human rights education is included in primary and secondary school curricula. Despite this, Australia has yet to formulate a National Action Plan for human rights education. No formalised human rights education exists in any state or territory. Where it is touched upon, it has been largely superficial and limited to civil and political rights.
124. As a result, economic, social and cultural rights do not receive comparable public attention and exposure to that afforded to civil and political rights, and suffer from a perception that they do not carry the same significance and importance as civil and political rights. Further, the Australian Human Rights Commission, the primary body in Australia responsible for human rights education, has been consistently de-funded over a period of over 10 years.
125. The Australian Government must ensure that the Australian Human Rights Commission is provided with adequate funding to properly discharge its education and other functions.

126. This issue is discussed in further detail in the NGO Report at pages 28-29 and in the Addendum at pages 10-11.

ARTICLE 2 — NON-DISCRIMINATION

127. Australian anti-discrimination legislation does not provide comprehensive protection against all forms of discrimination in all areas of life, in accordance with the requirements of ICESCR. The Australian Government should conduct a comprehensive review of all existing federal anti-discrimination legislation with a view to:
- (a) enacting an Equality Act which creates a comprehensive regime promoting equality and addressing all grounds of discrimination; and
 - (b) conducting a referendum on a Constitutional amendment to include a guarantee of equality before the law.

C.1 Indigenous Peoples — Northern Territory Intervention

128. The Northern Territory Intervention, which has been largely continued by the current Australian Government, consists of a range of extraordinary measures, such as the compulsory acquisition of Indigenous land, the suspension and direction of representative community councils, the deployment of military and police in traditional lands, and the quarantining of social security payments. The Australian Government continues to justify extreme intervention in the lives of communities under the Northern Territory Intervention on the basis of improved protection for Indigenous children.
129. The legislation was passed without consultation with Indigenous communities and suspends the operation of the *Racial Discrimination Act 1975* (Cth). While there are some aspects of the Northern Territory Intervention that are producing beneficial outcomes, there are many individuals and communities who are adversely affected by the measures, raising significant concerns regarding Australia's obligations to respect and promote the human rights of Indigenous Australians.
130. Inadequate consultation with affected communities continues and the operation of the *Racial Discrimination Act 1975* (Cth) remains suspended, drawing sharp criticism from both the UN Committee on the Elimination of Racial Discrimination (in response to a Request for Urgent Action) and the Human Rights Committee in its recent Concluding Observations.
131. This issue is discussed in further detail in the NGO Report at pages 17-20 and the Addendum at pages 11-12, as well as the [Fact Sheet: Indigenous Australians](#) and [Fact Sheet: Equality and Non-Discrimination](#).

C.1 Indigenous Peoples — Criminal Justice System

132. Many Indigenous Australians confront serious human rights issues in the justice system, in particular issues resulting from the disproportionate impact of certain criminal laws and the incidence and impacts of incarceration. The unfair treatment of Indigenous Australians in the justice system raises concerns in relation to the realisation of their ICESCR rights, including in particular Articles 2, 10, 11, 12 and 15.
133. Indigenous Australians are among the most highly incarcerated peoples in the world. Despite representing only approximately 2 per cent of the Australian population, around 24 per cent of the total prison population is Indigenous.
134. Mandatory sentencing laws, which continue to operate in Western Australia, have a disproportionate impact on Indigenous Australians, and in particular young Indigenous people. This is reflected in the statistics that in Western Australia Indigenous Australians are 21 times more likely to be in prison than non-Indigenous Australians and young Indigenous people, who are a small fraction of the total youth population of Western Australia, constitute three quarters of those sentenced in mandatory sentencing cases.
135. Of particular concern is that 25 per cent of all deaths in custody continue to be Indigenous Australians, despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody, which were made over 15 years ago.
136. This issue is discussed in further detail in the NGO Report at pages 31-32 and the Addendum at pages 48-49, as well as the [Fact Sheet: Indigenous Australians](#).

C.1B Racial Discrimination

137. Despite the positive developments referred to above, concerns have recently been raised regarding the racism and violence experienced by young people in the Australian-Sudanese community. A December 2008 report highlights the discrimination faced by the Sudanese community and provides an insight into the ostracised nature of Sudanese and African immigrant communities due to fear, poor integration and systemic racism. Many young Sudanese immigrants continue to be victims of systemic racial discrimination and are often too scared to venture onto the streets.
138. The Australian Government must implement programs to address discrimination faced by newly arrived African communities.
139. This issue is discussed in further detail in the Addendum at pages 12-14 and in the [Fact Sheet: Equality and Non-Discrimination](#).

C.3 People with Disability and Mental Illness

140. People with disability and mental illness do not enjoy *ICESCR* rights on an equal basis in Australia. Although the *Disability Discrimination Act 1992 (Cth)* provides protection from discrimination and harassment for people with disabilities in areas of employment, education and the provision of goods and services, it does not provide any protection from vilification.
141. Persons with disabilities and mental illness remain significantly disadvantaged in Australian society in relation to key indicators of well-being. And often because of the way they look, talk, act or walk, many people with disability are stopped by police and subjected to questioning or have their bag or person searched.
142. This issue is discussed in further detail in the NGO Report at pages 33-35 and the Addendum at pages 16-18, as well as the [Fact Sheet: People with Disability and Mental Illness](#) and [Fact Sheet: Equality and Non-Discrimination](#).

C.4 Homelessness and Social Status

143. At least 105,000 people across Australia are homeless every night. The incidence of homelessness has increased over the last decade, despite a sustained period of economic growth and prosperity. People experiencing homelessness are subject to multiple and intersectional human rights violations that significantly curtail the ability of a person to live with dignity.
144. Discrimination against people who are homeless is widespread in all Australian jurisdictions. Discrimination is a major causal factor of homelessness and can systematically exclude people from access to goods, services, the justice system, health care, housing and employment. Despite this, it remains lawful to discriminate against people on the basis of their housing status in all Australian jurisdictions.
145. This issue is discussed in further detail in the NGO Report at pages 35 and 94-96 and the Addendum at pages 52-55, as well as in the [Fact Sheet: Homelessness](#) and [Fact Sheet: Equality and Non-Discrimination](#).

C.6 Sexual Orientation and Gender Identity

146. While most state and territory governments have amended their anti-discrimination legislation to prohibit direct and indirect discrimination on the grounds of sexual orientation and gender identity, there is still no federal law specifically prohibiting discrimination on the basis of sexual orientation, gender identity and sex identity. In addition, in 2004, the federal *Marriage Act 1961 (Cth)* was amended by the former Australian Government specifically to exclude same-sex marriage. The current Australian Government, which was in opposition at the time, supported the substance of the legislation.
147. The Australian Government must legislate to prohibit discrimination on the grounds of sexual orientation and gender identity and sex identity.

148. This issue is discussed in further detail in the NGO Report at page 37 and the Addendum at pages 18-19, as well as the [Fact Sheet: Same-Sex Couples and Their Families](#) and [Fact Sheet: Equality and Non-Discrimination](#).

C.7A Asylum Seekers

149. The Australian Government has made some important reforms to improve the services provided to persons seeking asylum. The abolition of temporary protection visas is to be welcomed, however reforms are needed to ensure that *all* asylum seekers receive adequate nutrition and healthcare while their immigration status is waiting to be resolved. Many asylum seekers still cannot access work, welfare benefits or healthcare if they are on bridging visas.
150. Australia's policy of mandatory detention of asylum seekers also raises issues under Article 2, as well as access to appropriate healthcare and adverse impacts on mental health of detainees. Australia must cease discriminating against persons on the basis of their nationality and status as refugees in its immigration policy.
151. These issues are discussed in the Addendum at pages 19-23 and in the [Fact Sheet: Immigration Law, Policy and Practice](#) and [Fact Sheet: Equality and Non-Discrimination](#).

C.8 Exemptions to Discrimination Legislation

152. There remain significant problems with the breadth of exceptions and exemptions in discrimination laws. Tribunals in several Australian jurisdictions have recently affirmed that United States of America companies operating in Australia can discriminate in defence related employment against nationals of countries considered by the United States Government to be terrorist countries.
153. In addition to such ad hoc judicially sanctioned exemptions, there are also many permanent statutory exemptions from anti-discrimination laws which permit discrimination. Such exemptions entrench stereotypes and perpetuate structural barriers to equality.
154. This issue is discussed in further detail in the NGO Report at page 38 and in the [Fact Sheet: Equality and Non-Discrimination](#).

ARTICLE 3 — EQUAL RIGHTS OF MEN AND WOMEN

D.1 Violence against Women

155. Violence against women continues to occur at appalling levels in Australia. Statistics indicate that 19 per cent of all women experience sexual violence during their lifetime; 33 per cent of all women experience at least one incident of physical violence during their lifetime; and approximately half of female homicide victims are killed as a result of a domestic dispute. These figures are likely to be much higher due to the fact that reporting of violence against women and sexual assault remains low. Violence against women is a particularly serious issue in many Indigenous communities.

156. Currently, the primary government response requires women to leave their homes. This causes particular issues for Indigenous women living in remote or rural communities who may be required to leave their family and communities. Only the needs of a small proportion of women in need are met by temporary housing refuges and women who leave their homes often struggle to find adequate long-term accommodation.
157. On 29 April 2009 the Government released *Time for Action*, the major report of the *National Council to Reduce Violence against Women and their Children*. The Government has agreed to immediately progress 18 of the 20 priority recommendations made in *Time for Action*, for which it should be commended. But while the federal and state and territory governments have prioritised the issue of violence against women, much remains to be done.
158. This issue is discussed in further detail in the NGO Report at pages 41-43 and the Addendum at pages 24-25, as well as the [Fact Sheet: Women](#).

ARTICLE 6 — RIGHT TO WORK

E.5 Indigenous People

159. Indigenous people experience significant disadvantages in their right to work, particularly in relation to having a greater likelihood to be working in low income jobs or to be unemployed. The abolition of the Community Development Employment Projects (**CDEP**) program, which was implemented to assist Indigenous people in securing work, in certain areas also serves to further disadvantage many Indigenous people. Indeed, many work entitlements are not available to people participating in CDEP programs, including paid maternity leave.
160. Special programs and measures be designed to address the significant barriers to workforce participation faced by many Indigenous people.
161. This issue is discussed in further detail in the NGO Report at pages 51-52 and the Addendum at page 29, as well as the [Fact Sheet: Indigenous Australians](#).

E.6 Asylum Seekers

162. Asylum seekers in Australia on bridging visas may have their right to work restricted as a condition of the visa. If they are prohibited from working under the terms of a Bridging Visa, the asylum seeker will also be unable to do voluntary work or to study (save in proven cases of severe financial hardship, where a bridging visa holder may seek permission to work).
163. While the Australian Government has indicated that it will reform the policy in this area, to date the situation remains that many asylum seekers are unable to work. This restriction on the right to work raises serious concerns about the work rights of asylum seekers on bridging visas and the realisation of other Covenant rights. The Government should provide all asylum seekers with work rights.
164. This issue is discussed in further detail in the NGO Report at pages 52-53 and the Addendum at page 30, as well as the [Fact Sheet: Immigration Law, Policy and Practice](#).

E.7 Migrants

165. The Temporary Business (Long Stay) — Standard Business Sponsorship 457 Visa (**457 Visa**), which allows employers to sponsor overseas workers to work in Australia for a period of between three months and four years, exposes many migrant workers to forced labour and concerns with the realisation of their work rights. In 2008, the Australian Government has announced a broad reform agenda for the 457 Visa regime. While the suggested reforms, if adopted, will enhance monitoring and investigative powers, it remains to be seen whether these reforms will be effective in improving the working conditions of 457 Visa holders.
166. This issue is discussed in further detail in the Addendum at page 30, as well as the Fact Sheet: Immigration Law, Policy and Practice.

ARTICLE 6 — FREEDOM FROM FORCED WORK

F.1 Trafficking in Human Beings: Sexual Servitude

167. Current strategies in relation to the trafficking of women into sexual servitude focus on the criminal justice response to the issue, rather than on the recognition of the rights of trafficked persons. Sex workers are ineligible to apply for temporary work visas, and generally enter Australia on short-term travel visas and in many cases are illegal non-citizens. A visa system was introduced in 2004 to enable the Minister of Immigration to grant a visa to trafficked persons. However, this visa is only available if the Minister is satisfied that they have played a 'significant' role in the criminal justice process and/or they are 'in danger' if they return to their country of origin. The visa system contributes to the vulnerability of trafficked persons, and fails to acknowledge their exploitation as an abuse within the workplace.
168. Australia must strengthen its measures to prevent and eradicate trafficking in human beings, including by adopting a comprehensive strategy, and provide equal assistance and protection to all victims identified regardless of their participation or otherwise in criminal proceedings against perpetrators.
169. This issue is discussed in further detail in the NGO Report at pages 54-56 and in the Addendum at page 31, as well as in the Fact Sheet: Women.

F.2 Indigenous Stolen Wages

170. Indigenous Australians have not been adequately compensated for 'Stolen Wages', being the wages of many Indigenous workers whose paid labour was controlled by governments for much of the 19th and 20th centuries. Indigenous stolen wages have affected every Australian jurisdiction and extensive recommendations have been made for redress. However, no coordinated response has been initiated by the Australian Government.
171. Australia must implement a national compensation plan for Indigenous stolen wages.
172. This issue is discussed in further detail in the NGO Report at pages 56-57, as well as the Fact Sheet: Indigenous Australians.

F.3 Prison Labour

173. Prisoners confront a number of issues in relation to their working rights. Such issues include a lack of access to and the inadequacy of unemployment payments, penalties that are imposed for refusal to work, the lack of availability of work that develops useful vocational skills and the inadequacy of remuneration rates. These issues should be properly addressed in law.
174. This issue is discussed in further detail in the NGO Report at pages 57-58 and the Fact Sheet: Prisoners and Prison Conditions.

ARTICLE 7 — RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

G.2 Fair and Equal Conditions

175. The Fair Work Act introduces a range of positive measures which recognise that not everyone is on a level playing field when it comes to negotiating employment conditions. However, the following shortcomings in the Fair Work Act will fail to fully protect the right to fair and equal conditions of employment:
- (a) unfortunately, one of the National Employment Standards, the right of parents to request flexible working arrangements, lacks any enforcement mechanism. Further, this 'right' is only available to parents of pre-school aged children and children with a disability, and only then if the parent has 12 months' service with their employer. As a result, many parents are excluded from the limited protection that is provided;
 - (b) the Fair Work Act does not improve on the maximum ordinary hours test contained in Work Choices, which is outlined in paragraphs 217 and 218 of the NGO report in relation to G.5 – Working Hours. Under the Fair Work Act, employers may still require their employees to work reasonable additional hours;
 - (c) the Fair Work Act imposes significant limitations on the award-making powers of Fair Work Australia, including restricting the allowable subject matters of awards and limiting the making of new awards; and
 - (d) workers earning over \$100,000 will be excluded from award protection.
176. The Australian Government should ensure that these shortcomings are rectified in legislation.
177. This issue is discussed in further detail in the NGO Report at page 62 and in the Addendum at pages 32-33, as well as in the Fact Sheet: Work Rights.

G.5 Working Hours

178. The Fair Work Act does not improve on the maximum ordinary hours test contained in Work Choices. As with Work Choices, the Fair Work Act provides that the maximum ordinary hours of work are 38 hours plus *reasonable additional hours*. Accordingly, employers may still require their employees to work additional hours that are reasonable depending on the business's requirements and those of the employee. Maximum working hours should be protected in legislation.

179. This issue is discussed in further detail in the NGO Report at page 56 and in the [Fact Sheet: Work Rights](#).

ARTICLE 9 — RIGHT TO SOCIAL SECURITY

J.1 Availability of Social Security Payments

180. Social security payments should be provided to all people who experience a loss of income beyond their control. However, Australian courts have interpreted social security as 'no more than a gratuity, to payment of which a person can have no rights enforceable at law', meaning that social security benefits are not prioritised as a human right at Australian law.
181. As a result, not all people in Australia who require social security are able to access it. Such people include newly arrived migrants, people unable to provide adequate proof of identity and people unable to satisfy 'mutual obligation' requirements, all of which have a particularly adverse impact on marginalised and disadvantaged people.
182. All necessary legislative and administrative steps must be taken to ensure that social security payments are available to persons in need.
183. This issue is discussed in further detail in the NGO Report at page 72 and in the [Fact Sheet: Social Security](#).

J.3 Conditionality of Social Security Payments: Welfare to Work

184. In Australia, the provision of social security is conditional on meeting certain 'mutual obligation' requirements. Those experiencing significant labour market barriers, such as homeless people, single parents, people with disability, people with a drug or alcohol disorder and women escaping domestic violence, are not excused from the mutual obligation requirements. These people are more likely than others to fail to comply with their obligations and, as a result, to breach their agreements.
185. Recent amendments to social security laws, which will come into effect on 1 July 2009, will provide greater flexibility around the administering of penalties for failure to comply with the mutual obligation requirements. While these reforms are welcome, social security payments should be available to all people who experience a loss of income beyond their control or who require income support to ensure realisation of their human right to an adequate standard of living.
186. This issue is discussed in further detail in the NGO Report at pages 72-74 and the Addendum at pages 40-41, as well as the [Fact Sheet: Social Security](#).

J.4 Indigenous Australians

187. The Northern Territory Intervention introduces a regime of compulsory income quarantining by requiring 50 percent of income support and 100 percent of advances and lump sum payments to be diverted to an 'income management account'. Money in an income management account can only be spent on 'priority needs', such food, clothing, household items, household utilities, childcare and development, education and training and is prohibited from being spent on items such as alcohol, tobacco, gambling and pornography. Welfare payments are linked directly to children's school attendance.
188. Income quarantining in the Northern Territory applies to people receiving social security entitlements on the basis of their residence in a Prescribed Area, regardless of whether the person has responsibility for children. It is mandatory and non-discretionary in respect of the persons subjected to it and there are limited opportunities for review.
189. Income quarantining that is applied on a racially discriminatory basis should be immediately prohibited.
190. This issue is discussed in further detail in the NGO Report at page 74 and the Addendum at pages 41-42, as well as the [Fact Sheet: Social Security](#) and [Fact Sheet: Indigenous Australians](#).

J.5 Immigration and Social Security

191. Despite the Committee's previous Concluding Observations, newly arrived migrants to Australia must still, generally, wait for two years before being able to access any social security payments. People serving the waiting period can only access a safety net payment if they are in financial hardship and have 'suffered a substantial change in circumstances beyond their control' after they have arrived in Australia.
192. Asylum seekers continue to have no right to access Australia's mainstream social security system. Asylum seekers on Bridging Visas cannot access social security at all. An asylum seeker who arrives in Australia on a valid visa and has applied for a protection visa more than six months ago may be eligible for some financial assistance. There are also some special categories of asylum seekers, such as unaccompanied minors, who are eligible. In any event, Asylum Seeker Assistance Scheme payments are at a level significantly below the Henderson Poverty Line.
193. Australia must ensure that newly arrived migrants and asylum seekers are not left in severe hardship and that they have access to social security payments, as well as other benefits such as Medicare, higher education funding schemes and other social assistance.
194. This issue is discussed in further detail in the NGO Report at pages 74-76, as well as the [Fact Sheet: Social Security](#).

J.7 Same-Sex Couples

195. As of 1 July 2009, same-sex de facto couples will be assessed as a couple and receive the same rates of social security and family assistance payments as opposite-sex de facto couples. These laws will also allow for the recognition of children of same-sex couples.
196. While changes promoting equality for same-sex couples are welcome, the amendments have been criticised for not allowing a longer period to phase-in the changes and failing to include mechanisms to ease their burden which have been adopted for other changes to social security law.
197. This issue is discussed in further detail in the Addendum at page 42, as well as the [Fact Sheet: Same-Sex Couples and Their Families](#) and [Fact Sheet: Social Security](#).

ARTICLE 10 — RIGHT TO FAMILY

K.1 Maternity Leave and Child Care

198. Australia remains one of only two OECD countries in the world not to have introduced a national paid maternity leave scheme. The current workplace relations system requires women to negotiate paid maternity leave with their employers. In September 2008, the Productivity Commission released a Draft Report commissioned by the current Federal Government, which recommended the introduction of a taxpayer-funded scheme that would provide for a total of 18 weeks paid maternity leave, to be paid at the adult minimum wage. The final report was delivered to the government in February 2009 but at time of writing has not yet been made public. The Australian Government is currently considering whether to implement the proposed parental leave scheme in the 2009 Federal Budget, in light of the economic downturn.
199. The Australian Government should implement a comprehensive national taxpayer-funded paid parental leave scheme in accordance with the Draft Report of the Productivity Commission.
200. This issue is discussed in further detail in the NGO Report at pages 79-80 and in the Addendum at pages 43-44, as well as the [Fact Sheet: Women](#) and [Fact Sheet: Protection of Families](#).

K.2 Family Separations

201. The *Family Law Act 1975* (Cth) now places a greater emphasis on the role of both parents in the life of a child and contains a presumption that 'equal shared parental responsibility' is in the best interests of the child. The presumption does not apply if there are reasonable grounds to believe that family violence or child abuse is involved.
202. While there are some legislative safeguards for cases involving family violence or abuse, concern remains that the emphasis on 'the benefit to the child of having a meaningful relationship with both of their parents' may directly conflict with and override the provisions that are intended to recognise the need to protect children from family violence and abuse'.

A further concern is that the provisions requiring the consideration of equal shared time arrangements prioritise parents' claims to equality and diminish the principle that the best interests of the child are paramount in deciding a child's living arrangements.

203. Australian family laws should be amended to ensure appropriate protection for persons experiencing domestic violence and to ensure that the rights of the child remain the paramount concern in deciding a child's living arrangements.
204. This issue is discussed in further detail in the NGO Report at pages 80-81 and in the Fact Sheet: Protection of Families.

K.3 Immigration

205. Australia's migration law, policy and practice still have discriminatory aspects that impact adversely on families. For example, decisions made under the *Migration Act* are not subject to Australia's disability discrimination laws. This means that decisions on immigration can be made on the basis of the disability or health condition of a family member.
206. Discrimination legislation should be amended to prohibit discrimination in migration decisions.
207. This issue is discussed in further detail in the NGO Report at pages 81-83 and the Addendum at pages 44-46, as well as the Fact Sheet: Immigration Law, Policy and Practice and Fact Sheet: Protection of Families.

K.4 Same-Sex Couples and their Families

208. As stated in paragraph 195 above, the Australian Government has introduced significant reforms to federal laws that discriminated against same sex couples.
209. Despite these improvements, the right of same-sex couples to have their families protected and assisted continues to be infringed. Australian federal law prohibits formal recognition of the relationship between same-sex couples through marriage or civil unions. Adoption by same-sex couples is permitted only in the ACT and Western Australia. Tasmania permits adoption by a same-sex step parent, and New South Wales permits individual adoption by a lesbian, gay, bisexual or transgender person.
210. Laws across all Australian jurisdictions should ensure that same-sex couples are not discriminated against in adoption and marriage.
211. This issue is discussed in further detail in the NGO Report at pages 84-85 and the Addendum at page 46, as well as the Fact Sheet: Same-Sex Couples and Their Families.

K.5 Parents with Intellectual Disability

212. The lack of appropriate parenting support services in Australia has contributed to a disproportionate number of parents with intellectual disability having their children removed by child-protection services. There is a tendency for workers to favour removing the child of a parent with intellectual disability rather than instituting early-intervention measures and providing services to support the adult's parenting capacity.

213. Australia must ensure that child-protection services use early intervention measures and support parent with intellectual disability in the first instance.
214. This issue is discussed in further detail in the NGO Report at page 85, as well as in the Fact Sheet: Protection of Families.

K.6 Prisons

215. Various policies and practices of both correctional and law enforcement officers raise concerns in relation to the ability of many prisoners to have access to their family members. For example, the interests of dependent children are not a formal consideration in matters such as discretion to arrest, bail laws and the maintenance of contact with dependent children once a parent is incarcerated. Australian prisoners frequently report difficulties in maintaining a relationship with their children. In addition, practices such as strip searching – of both prisoners and, in some cases, visitors to prisons – have the effect of causing women to forego visits from family or external medical treatment in order to reduce the number of searches.
216. Australia ensure that all states and territories implement consistent policies addressing the needs of dependent children during the arrest and incarceration of their primary carer. Strip searching at prisons should be conducted appropriate and only where strictly necessary.
217. This issue is discussed in further detail in the NGO Report at pages 85-86, as well as in the Fact Sheet: Prisoners and Prison Conditions.

ARTICLE 10 — PROTECTION OF CHILDREN

L.1 Children in Immigration Detention

218. The former Australian Government promised an end to immigration detention of children, however, that guarantee has not been supported by amendments to the *Migration Act 1958* (Cth). Currently, although children are no longer held in ‘immigration detention centres’, they are still being held in other immigration detention facilities, including closed facilities, on the Australian mainland and on Christmas Island (a remote island 2,600 kilometres from the nearest capital city).
219. Other immigration detention facilities include immigration residential housing, immigration transit accommodation and alternative places of detention. Immigration residential housing and immigration transit accommodation are still closed detention facilities. Children and their families are not free to come and go as they please, and although children might be permitted to attend school or to go on external excursions, these must be supervised and pre-arranged.
220. There have been repeated calls for the Australian Government to amend immigration laws to ensure that no children are detained in immigration detention facilities.
221. This issue is discussed in further detail in the NGO Report at page 87 and the Addendum at pages 46-47, as well as the Fact Sheet: Immigration Law, Policy and Practice and Fact Sheet: Children.

L.5 Care and Protection

222. The number of children in out-of-home care in Australia has risen by almost 115 per cent over the last decade. Some steps have already been taken to improve the protection of children. These include increased information sharing between various governments to help identify families where child abuse is suspected and the introduction in selected Western Australian communities of an income management trial giving state protection authorities the power to recommend the quarantining of income support and family payments to Centrelink.
223. While steps to improve the protection of children are welcome, any measures that are implemented must be compatible with human rights and, in particular, use a children's rights framework.
224. This issue is discussed in further detail in the Addendum at pages 49-50, as well as the [Fact Sheet: Children](#).

ARTICLE 11 — RIGHT TO AN ADEQUATE STANDARD OF LIVING

M.3 Housing Stress, Affordability and Availability

225. Accessibility to affordable, appropriate and safe housing in Australia has dramatically decreased as a direct result of increased house prices relative to income, increased private rental costs and an ongoing reduction in the funding for public housing, including under-investment in the low-cost end of the private rental market.
226. In addition to those experiencing homelessness and marginal housing, it is estimated that up to 35 per cent of low income people experience 'housing stress', meaning that their housing costs are so great relative to their income so as to jeopardise their ability to meet other basic needs.
227. Over the past ten years, funding for public housing was cut by 25 per cent. As a result, public housing stock is severely depleted and available to only the most severely disadvantaged households.
228. The Australian Government has created a new National Affordable Housing Agreement (**NAHA**), which commenced in January 2009. The NAHA promises to provide \$6.2 billion in funding over the next five years on measures including social housing, assistance to people in the private rental market, support and accommodation for people who are homeless or at risk of homelessness, and assistance with home purchasing. Whilst these commitments are welcome, they are not based on policies that explicitly recognise homelessness as a human rights issue. The NAHA does not commit Australia to ensure the core minimum necessities for a dignified life, such as guaranteed access to adequate housing or the payment of social security or income support above the poverty line.
229. This issue is discussed in further detail in the NGO Report at pages 97-98 and the Addendum at page 55, as well as the [Fact Sheet: Adequate Standard of Living](#).

M.6 Tenancy Protection and Evictions

230. Tenancy legislation in Australia is a matter for each state and territory. Each Australian jurisdiction regulates how often rent increases may occur and makes provision for tenants to apply to an independent body for a determination as to whether rent or a rental increase is excessive. Stakeholder groups have consistently called for Australia to develop a federal housing strategy that includes provisions to protect tenants from arbitrary or unreasonable evictions and arbitrary and excessive rent increases.
231. This issue is discussed in further detail in the NGO Report at page 101, as well as the Fact Sheet: Adequate Standard of Living.

M.15 Climate Change

232. Within Australia 'climate change induced disasters' such as flooding, cyclones or droughts could diminish the availability of food or safe drinking water, whilst changed climatic conditions could promote the spread of disease. Climate change is also likely to result in a decline in regional food production, for example as increased temperatures accelerate grain sterility, or as previously productive land is rendered infertile through erosion and desertification or as extreme weather events disrupt agriculture.
233. The Australian Government has committed Australia to reducing greenhouse gas emissions by 5 per cent (compared to 1990 emissions) by 2020. Given the potential impact of climate change on the human rights of all Australians and globally, the Australian Government should be encouraged to increase its overall commitment to the issues of climate change and carbon reduction schemes. The Australian Government should also directly address the human rights issues associated with climate change, including particularly with respect to access to water, food and the spread of disease.
234. This issue is discussed in further detail in the Addendum at pages 60-63, as well as the Fact Sheet: Adequate Standard of Living.

ARTICLE 12 — RIGHT TO HEALTH

N.4 Asylum Seekers

235. Many asylum seekers who have been detained for long periods have developed mental health problems, or have had their mental health problems become worse because of their time in detention. Given the increased risks of distress and vulnerability to mental illness, there have been particular concerns about the suicide and self-harm observation rooms at Villawood Immigration Detention Centre: where detainees should receive adequate psychiatric care, individuals requiring mental health care are placed in what amounts to solitary confinement. This has been labelled a 'disgrace' by the Australian Human Rights Commission.
236. On 9 August 2008 the Australian Government abolished temporary protection visas for refugees. This is a welcome improvement to the right of many asylum seekers in the community to access appropriate healthcare. People engaging the protection obligations of

Australia are now placed on either permanent protection visas or Resolution of Status visas, both of which provide immediate access to health care benefits, among other things.

237. Despite the welcome reforms, further changes are needed to ensure that all asylum seekers in the community receive adequate nutrition and healthcare while their immigration status is waiting to be resolved. Many asylum seekers on bridging visas still cannot access work, welfare benefits or healthcare. Bridging visa holders who are not allowed to work are also illegible for Medicare and the Pharmaceuticals Benefits Scheme; they are without the support of the Australian public health system.
238. These issues are discussed in further detail in the NGO Report at pages 121-122 and the Addendum at pages 67-69, as well as the [Fact Sheet: Immigration Law, Policy and Practice](#) and [Fact Sheet: Right to Health](#).

N.6 Homeless People

239. In December 2008, a White Paper on homelessness was released by the Australian Government, detailing its commitment to provide \$800 million over five years to fund mental health services to all Australians, including those who are homeless. The links between poor health and homelessness are well-established.
240. This issue is discussed in further detail in the NGO Report at pages 123-124 and the Addendum at pages 69-70, as well as the [Fact Sheet: Homelessness](#) and [Fact Sheet: Right to Health](#).

N.7 Prisoners

241. Prisoners face major health issues, including high rates of injecting drug use and high rates of sexually transmitted diseases. Despite this, most Australian prisons have not developed adequate harm minimisation strategies, including the provision of free condoms, and needle and syringe exchange programs.
242. There is also substantial evidence that mental health care in Australian prisons is manifestly inadequate and constitutes a severe level of neglect. The number of forensic patients and mentally ill inmates housed in Australian prisons has steadily increased, but without a proportionate increase in mental health resources. Recent research indicates that of a total Australian prison population of around 25,000 people, approximately 5,000 inmates suffer from serious mental illness. In some jurisdictions, such as the Northern Territory, people with mental health issues who have committed minor offences are often placed in jail due to insufficient mental health housing facilities.
243. This issue is discussed in further detail in the NGO Report at pages 124-126 and the Addendum at pages 70-73, as well as the [Fact Sheet: Prisoners and Prison Conditions](#).

N.8 Access to IVF

244. There is not currently equal access to in vitro fertilisation (**IVF**) and Assisted Reproductive Technology (**ART**) in Australia. As the laws are state-based, there is no uniform position across Australia. All states and territories other than South Australia and Victoria currently allow lesbian couples access to IVF and ART, although access in Victoria will be effective from January 2010. Only the ACT and Western Australia allow access to IVF by surrogates of gay male couples, while Victoria will allow it from January 2010.
245. The right to access IVF and ART, are important aspects of the right to health, and should be protected by Federal legislation in Australia. Equitable access to IVF and ART also raise concerns under Article 15.
246. This issue is discussed in further detail in the NGO Report at page 127 and the Addendum at page 73.

ARTICLE 15 — CULTURAL AND SCIENTIFIC PROGRESS RIGHTS

P.1 Native Title

247. The Australian Government has proposed reforms to the native title system, including the way that Australia's federal courts and tribunals deal with native title claims and legislative amendments to encourage more negotiated settlements of native title claims.
248. While these proposed developments would be welcome, the fact remains that the standard and burden of proof currently required under the native system places particularly onerous evidential burdens on Indigenous people seeking to gain recognition and protection of their native title, raising concerns with Articles 1 and 15 of the *ICESCR*.
249. This issue is discussed in further detail in the NGO Report at pages 141-142 and the Addendum at pages 78-80, as well as the Fact Sheet: Indigenous Rights.

Proposed Recommendations for Concluding Observations (UPDATED)

250. This section summarises key concerns in relation to *ICESCR* breaches and implementation failures since Australia's Fourth Report under the *ICESCR*.

Article 1 – Right of Self Determination

THAT the recent formal apology to Indigenous Australians be congratulated.

THAT the Australian Government be commended for its formal support for the UN Declaration on the Rights of Indigenous Peoples.

THAT Australia continue its efforts in the process of reconciliation with Indigenous Australians and its efforts to improve their disadvantaged situation.

THAT the Australian Government provide resources for healing and counselling services for those affected by the Stolen Generations and for reparation options.

THAT all of the recommendations contained in the Human Rights and Equal Opportunity Commission's *Bringing Them Home* report be implemented.

THAT, in light of the abolition of the Aboriginal and Torres Strait Islander Commission, the Australian Government establish an Indigenous body that consists of elected Indigenous representatives who can contribute to policy-making in domestic Indigenous affairs.

THAT the Australian Government consider repealing those aspects of the Northern Territory Intervention legislation that are incompatible with domestic and international human rights standards.

THAT the Australian Government immediately enter into direct, ongoing and formal consultations with affected Indigenous communities and their advocates regarding the operation and impact of the Northern Territory Intervention.

THAT the Australian Government ensure that the Australian Human Rights Commission is provided with adequate funding to properly discharge its functions.

Articles 2 and 26 – Treaty Entrenchment and Non-Discrimination

THAT Australia incorporate the Covenant in its legislation in order to ensure the enforceability of the provisions of the Covenant in domestic courts.

THAT the Australian Government ensure that economic, social and cultural rights are protected in Australia's domestic law in order to ensure Australia's compliance with Article 2 of the *ICESCR*.

THAT Australia support the adoption of an Optional Protocol to *ICESCR* and commit to promptly signing and ratifying this instrument, including the inquiry procedure component.

THAT Australia increase its foreign aid commitment to meet the target set by the Millennium Development Goals.

THAT Australia include education about human rights, including economic, social and cultural rights, in primary and secondary school curricula.

THAT, as requested in the Committee's 2000 Concluding Observations, the Australian Government provide additional and more detailed information including statistical data that is disaggregated according to age, sex and minority groups, particularly with respect to the right to work, just and favourable conditions of work, social security, housing, health and education.

THAT the Australian Government immediately reinstate the operation of the *Racial Discrimination Act* in respect of all aspects of the Northern Territory Intervention and that it engage in meaningful consultation with affected Aboriginal communities.

THAT the Australian Government implement programs to address discrimination faced by newly arrived African communities.

THAT the Australian Government be congratulated for signing the OP-CEDAW and encouraged to establish mechanisms to implement it.

THAT the Australian Government implement the recommendations of the Senate Legal and Constitutional Affairs Committee in relation to strengthening the *Sex Discrimination Act 1984*.

THAT Australia legislate to address issues of substantive inequality and systemic discrimination against vulnerable communities and groups.

THAT, as recommended by the Senate Legal and Constitutional Affairs Committee, the Australian Government conduct a comprehensive review of all existing federal anti-discrimination legislation with a view to:

- (a) enacting an Equality Act which creates a comprehensive regime promoting equality and addressing all grounds of discrimination; and
- (b) conducting a referendum on a Constitutional amendment to include a guarantee of equality before the law.

THAT the Australian Government implement the recommendations of the Senate Legal and Constitutional Affairs Committee to strengthen the *Disability Discrimination Act 1992* and the *Human Rights and Equal Opportunity Commission Act 1986*.

THAT the Australian Government be congratulated for ratifying the Disability Convention and encouraged to accede to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*.

THAT the Australian Government be congratulated for the significant changes to the protection of the rights of same-sex couples and their families.

THAT the Australian Government introduce comprehensive legislation prohibiting all forms of discrimination against same-sex attracted people and their families, especially in the areas of marriage and family rights.

THAT the Australian Government be congratulated for the steps taken to improve the human rights of asylum seekers, including the closure of some detention centres and the ending of Temporary Protection Visas.

THAT the Australian Government immediately end the policy of mandatory detention.

THAT the Australian Government recognise those parts of Australian territory that have been excised for the purpose of asylum seekers making applications of asylum.

THAT the Australian Government ensure that all asylum seekers, irrespective their visa status (including while waiting for the processing of their application and any reviews) be eligible to access all basic services including social security and public health services.

THAT Australia legislate to ensure that any exemptions or exceptions permitted under domestic anti-discrimination law are compatible with the prohibition against discrimination under the *ICESCR*.

THAT Australia implement the recommendations of the Human Rights and Equal Opportunity Commission's *Isma — Listen* report, to address the issue of discrimination against and vilification of Arab and Muslim Australians.

Article 3 – Equal Rights of Men and Women

THAT Australia take concrete steps, including legislative, budgetary and administrative steps, to address the significant disadvantage of women compared to men in relation to key indicators of well-being, including income, access to health, education, housing and political representation.

THAT in addition to addressing the underlying causes of domestic violence, Australia increase funding to shelters and support services that are appropriate to women fleeing situations of domestic violence.

THAT Australia ensure that Indigenous women are properly consulted in relation to appropriate services and solutions to address violence in their communities.

THAT Australia take immediate steps to reduce the significant gender wage gap that exists in the Australian workforce.

THAT Australia introduce a national Mandatory Code of Practice to protect outworkers and THAT Australia develop policies and programs to protect homeworkers, including by ensuring that they receive the official minimum wage, benefit from adequate social security and enjoy fair working conditions.

THAT the Australian Government be commended for the introduction of the *Fair Work Act 2009* and for new measures to protect Outworkers.

THAT all Australian Governments and other relevant public and private authorities fully implement the recommendations contained in the October 2008 report of the Australian Human Rights Commission, *Sexual Harassment: Serious Business*.

Article 6 – Right to work

THAT special programs and measures be designed to address the significant barriers to workforce participation faced by many Indigenous people, asylum seekers and migrants.

THAT Australia extend work rights to all asylum seekers regardless of how and when they entered Australia.

THAT Australia ensure that recognition is given to qualifications of skilled migrants who are educated overseas and that access to bridging training is promptly available. In addition, that Australia ensure that effective programs are implemented to address negative community and employer perceptions regarding migrant workers.

THAT Australia develop and implement a comprehensive national strategy, including within a workers' rights framework, to combat the trafficking of women and children and to address exploitation resulting from sexual servitude or debt bondage.

THAT Australia implement the recommendations contained in the *Unfinished Business: Indigenous Stolen Wages* report, including the establishment of a national compensation plan.

THAT Australia implement laws to ensure that prisoners are:

- (a) fairly remunerated for their work;
- (b) not penalised through loss of other opportunities or privileges for refusing to undertake paid work;
- (c) provided with opportunities to acquire vocational skills to assist them to find post-release employment; and
- (d) equally protected in relation to workplace injury as other workers.

Article 7 – Right to Just and Favorable Work Conditions

THAT Australia be congratulated for its commitment to abolish Work Choices and for taking steps to phase out individual statutory agreements and restoring some unfair dismissal rights.

THAT Australia take steps to ensure that the realisation of Australian workers rights under Article 7 continues to evolve. In particular, that Australia take steps to ensure the award-making powers of any future award-making tribunal be sufficiently broad to allow for such evolution.

THAT Australia remove restrictions on unfair dismissal protection and refrain from reducing the time limit in which employees may apply for unfair dismissal remedies.

THAT the Australian Government ensure equal protection to employees against unfair dismissal, regardless of the size of their employer.

THAT Australia take steps to prevent further casualisation of the workforce and to promote job security.

THAT Australia take immediate steps to reduce the significant gender wage gap that exists in the Australian workforce.

THAT Australia introduce a compulsory paid maternity leave scheme consistent with the Draft Report of the Productivity Commission, or alternatively in accordance with the internationally-recognised standard of 14 weeks.

Article 8 – Freedom of Association and Right to Strike

THAT Australia ensure that industrial relations laws and practices reflect the principle that the right to freedom of association and the right to strike encompass both the right to join a trade union and extend to the membership of a union.

THAT the Australian Building and Construction Commission be abolished so that building and construction workers are subject to the same legislative and regulatory treatment as other workers.

THAT in the interim and as a matter of urgency, the Australian Government implement the recommendations of the Senate Education, Employment and Workplace Relations Committee and place appropriate safeguards on the use of coercive powers by the Australian Building and Construction Commission as a matter of urgency.

THAT Australia fully protect and enshrine the right to strike in legislation.

Article 9 – Right to Social Security

THAT all necessary legislative and administrative steps be taken to ensure that:

- (a) social security payments are available to all people who experience a loss of income beyond their control or who require income support to ensure realisation of their human right to an adequate standard of living;
- (b) social security payments are increased to levels above the Henderson Poverty Line so that recipients are able to meet their material needs and participate in society. Payments should be sufficient to ensure that recipients can afford adequate housing, health care and an adequate standard of living; and
- (c) the breach penalty regime under the *Social Security Act 1991* (Cth) be amended so that people are only penalised if they wilfully and intentionally breach their mutual obligations. Penalties should be no longer than 8 weeks duration, no greater than 25 per cent of income and recoverable on compliance or reasonable steps.

THAT the waiting period for all newly arrived residents, including New Zealand citizens, be reduced to six months and that where a person is in financial hardship they have access to the special benefit – regardless of whether there has been a 'substantial change in circumstances beyond a person's control'.

THAT Australia ensure that asylum seekers are not left destitute and that they have access to social security payments, Medicare, higher education funding schemes and other social assistance

Article 10 – Right to Family

THAT Australia introduce a compulsory paid maternity leave scheme consistent with the Draft Report of the Productivity Commission, or alternatively in accordance with the internationally-recognised standard of 14 weeks.

THAT Australia make it a priority to resettle family members of individual refugee and humanitarian permanent residents.

THAT the Australian Government enact the Migration Amendment (Abolishing Detention Debt) Bill 2009 to waive the detention debts of asylum seekers and remove detainees' liability for costs of immigration detention.

THAT the *Migration Act 1958* and the *Disability Discrimination Act 1992* be amended to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.

THAT Australia commit to working with state and territory governments towards a nationally consistent approach to relationship recognition, in particular one that includes both same-sex and, mixed-sex couples on terms of equality, and also other interdependent relationships.

THAT the Australian Government be congratulated for the significant changes to the protection of the rights of same-sex couples and their families.

THAT Australia take steps to ensure that families can access housing, health and employment services following the release of a parent from prison.

THAT Australia ensure that all states and territories implement consistent policies addressing the needs of dependent children during the arrest and incarceration of their primary carer, in particular by considering alternative sentencing options such as the suitability of home detention, periodic detention or community-based orders.

THAT Australia legislate comprehensively to ensure that no child may be held in an immigration detention centre.

THAT Australia commit to a specific timeframe for all Australian state and territory governments to provide a minimum age for paid employment and/or a maximum number of allowable work hours for children subject to compulsory schooling.

THAT Australia ensure all states and territories abolish junior or youth rates of pay replacing them with equal rates of pay for equal work, with payments based on responsibilities and skills required in the job, not age.

THAT Australia ratify ILO Conventions 138 Concerning the Minimum Age for Admission to Employment and 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

THAT Australia adopt legislation to prohibit the sterilisation of children, including children with disability.

THAT the Australian Government review and implement the recommendations contained in the report of the Australian Human Rights Commission, *Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues*.

THAT the Australian Government immediately introduce the necessary laws, policies and practices to divert young Indigenous Australians from the criminal justice system.

THAT the Australian Government ensure that all aspects of the proposed National Child Protection Framework be compatible with the *ICESCR* and the *Convention on the Rights of the Child*.

Article 11 – Right to an Adequate Standard of Living

THAT Australia amend the *Supported Accommodation Assistance Act 1994* (Cth) to enshrine a right of access to crisis accommodation for homeless people and THAT there be a 40 per cent increase in funding to the Supported Accommodation Assistance Program to meet demand.

THAT federal, state, territory and local governments commit to increase funding, access and availability to various forms of supported housing and accommodation, particularly housing which

meets the needs of people with disability, people experiencing mental illness, people with drug or alcohol disorders, and people with complex and multiple needs.

THAT Australia develop a National Housing and Taxation Plan that includes strategies to align the supply of affordable housing with demand. The availability of affordable housing, including public housing, should be progressively increased through both direct expenditure, and fiscal and taxation policy reforms.

THAT Australia fully implement the recommendations of the Special Rapporteur on the Right to Adequate Housing contained in the Report on the Special Rapporteur's Mission to Australia.

THAT Australia take all necessary steps and measures, including through the development of a comprehensive anti-poverty and social inclusion strategy, to ensure that all persons are free from food insecurity and have adequate access to appropriate, nutritious and affordable food.

THAT Australia develop and implement a national strategy to ensure that all Australians, including in particular Indigenous Australians, have adequate access to affordable drinkable water and sanitation services.

THAT the Australian Government use a human rights-based approach in its water policy and immediately put necessary law and policy in place to ensure that all Australians have continuing access to affordable water, an essential aspect of the guarantee of an adequate standard of living and of life itself.

THAT the Australian Government ensure that Indigenous communities are appropriately and adequately consulted on any Indigenous housing policies to ensure culturally appropriate housing policies are developed.

THAT the Australian Government ensures that all asylum seekers, irrespective of their visa status, have access to essential services required for an adequate standard of living.

THAT the Australian Government provide adequate support for sole parents, who are predominantly women, to alleviate the disadvantage suffered by women in their enjoyment of the right to an adequate standard of living, and also of their right to social security under Article 9.

THAT Youth Allowance is increased to levels above the Henderson Poverty Line so that recipients are able to meet their material needs and participate in society. Payments should be sufficient to ensure that recipients can afford adequate housing, health care and an adequate standard of living.

THAT Australia's policy and practice in relation to climate change respond to the human rights issues and obligations associated with climate change, including particularly with respect to access to water, food and the spread of disease.

Article 12 – Right to Highest Attainable Standard of Physical and Mental Health

THAT Australia take steps, including budgetary steps, to increase the availability of dental care services to low and middle-income families.

THAT Australia take immediate steps to ensure that Indigenous Australians have an equal opportunity to be as healthy as non-Indigenous Australians, including by ensuring that Indigenous Australians have equal access to primary health care and that the basic health needs of Indigenous communities are met through the provision of adequate housing, safe drinking water, electricity and effective sewerage systems.

THAT the Australian government implement the recommendations in the Australian Medical Association's 2008 report card on Indigenous health.

THAT Australia commit to adequate resourcing of mental health support and treatment services and research initiatives so that funding levels are in line with actual level of need.

THAT the Australian Government immediately end mandatory detention and detention on Christmas Island.

THAT the Australian Government provide all persons on Bridging Visas with access to Australia's public health system.

THAT the Australian Government provide all detainees with appropriate health and medical care.

THAT Australia provide the same rights and entitlements to all asylum seekers, regardless of their mode of entry.

THAT Australia prohibit the sterilisation of girls under the age of 18 years, unless the sterilisation is performed as a life saving measure or medical emergency.

THAT Australia deliver specifically targeted health care services to improve health outcomes for homeless people, including programs to address underlying causes of homelessness, including in the areas of housing, income support, primary health care, training and employment, protection from discrimination, rehabilitation and reintegration.

THAT Australia take appropriate measures to reduce the over-representation of people with a mental illness in the prison system, and to ensure that all prisoners receive adequate and appropriate mental health treatment as needed while in prison.

THAT Australia ensure that solitary confinement is not used as a substitute for adequate mental health treatment and care and that all necessary steps be taken to minimise the deleterious impacts of incarceration on mental health.

THAT Australia take steps to ensure equitable access to reproductive technologies for all women, regardless of marital status or sexual orientation, or geographic location.

THAT the Australian government respond to climate change by addressing the serious impact that climate change will have on the right to health, including necessary investment in public health services.

Articles 13 & 14 – Right to Education

THAT Australia invest progressively using the maximum available resources in public education and reduce the funding inequity between public government schools and private schools.

THAT Australia implement and adequately resource programs to address the issues of bullying, truancy and exclusion from schools, particularly in respect of Indigenous children.

THAT Australia take appropriate steps and measures, including budgetary measures, to ensure that tertiary education is equally available to all persons on the basis of merit and capacity and that special measures be implemented to ensure equality of opportunity and access for students with disability, Indigenous students, low income students, and students from rural and remote areas.

THAT, as a matter of urgency, Australia take immediate steps to address the serious disadvantage in accessing all levels of education experienced by Indigenous Australians.

THAT Australia implement and adequately resource programs to enable children with disabilities to participate fully in and complete secondary education.

Article 15 – Cultural and Scientific Progress Rights

THAT Australia ensure, through legislation, that the moral and material rights of Indigenous authors are protected.

THAT Australia ensure that the cultural impact of the Northern Territory Intervention is consistent with Australia's obligations under Article 15 of the *ICESCR*.

THAT Australia amend evidentiary laws governing the admissibility of Indigenous testimony so as to allow for the recognition and respect of Indigenous oral testimony in native title claims.

THAT the Australian Government provide full and fair compensation to Indigenous individuals and communities deprived of land, property or other benefits by the operation of the Northern Territory Intervention.

THAT all Australian Governments take positive and necessary measures to ensure that Indigenous people, together with their communities, enjoy the right to identity and culture, including through the maintenance and use of their traditional languages.

THAT Australia take steps to ensure equitable access to reproductive technologies for all women, regardless of marital status or sexual orientation, or geographic location.